Insurance Legal Ledger

Case Summaries

Spring Issue 2026

IN THIS ISSUE:

Supreme Court ruling on GRC coverage in *Emond v. Trillium Mutual Insurance*

In its Jan. 2026 decision in ***Emond v. Trillium Mutual Insurance***, the Supreme Court of Canada held that a homeowner's policy did not cover added costs to comply with conservation authority requirements in rebuilding a home following a loss, notwithstanding that the policy included a guaranteed rebuilding cost (GRC) endorsement.

The 7-1-1 decision offers clarification on the scope and limitations of GRC coverage specifically, while also providing further direction on how the Court approaches policy interpretation generally. It also reinforces the **structured approach to insurance contract interpretation outlined in *Ledcor***, with the Court clarifying that **endorsements are interpreted within the policy as a whole, identifying when language in an insurance contract is ambiguous,** and **explaining when the nullification of coverage doctrine would justify a departure from language that is unambiguous**.

The two dissents highlight tensions between principles of policy interpretation, with a focus on the reasonable expectations of insureds.

The case: Flooded home and conservation authority rebuilding requirements

The litigation arose after the insureds' home suffered a total loss due to flooding.

Their homeowner policy had an exclusion for the increased costs of repair or replacement due to any law regulating the zoning, demolition, repair, or construction of buildings, except as provided for under the additional coverages. One of the additional coverage exceptions stated that the insurer would pay up to $10,000 for increased costs to comply with zoning and construction-related laws.

The policy also included a GRC endorsement, extending the amount payable under the policy beyond the limit stated on the declaration page in circumstances where the insureds repair or replace the damaged or destroyed home at the same location with materials of similar quality using current building techniques.

When the local conservation authority required upgrades during reconstruction, the insurer declined to cover the compliance costs, citing the exclusion for increased costs arising from compliance with by-laws or building codes. The insureds argued that the GRC endorsement expanded coverage sufficiently to override the exclusion.

The application judge found in favour of the insureds, but the Court of Appeal allowed the insurer's appeal. The matter proceeded to the Supreme Court of Canada, which upheld the Court of Appeal's decision.

Supreme Court ruling: GRC endorsement does not override compliance cost exclusion

Justice Rowe, writing for the majority, reaffirmed the Ledcor three stage framework for policy interpretation:

(1) The insured bears the onus of establishing that the loss falls within the coverage grant. Aspects of the endorsement that affect coverage are considered as part of the coverage conferred by the insurance contract.
(2) The insurer bears the onus of establishing that an exclusion or limitation applies.
(3) The insured bears the onus of establishing an exception to the exclusion.

Building on ***Progressive Homes*** and ***Sabean***, the decision also reiterates that the assessment of ambiguity is a threshold issue. Where the language of the insurance contract is unambiguous, effect should be given to that clear language, reading the contract as a whole. Interpretive tools should only be resorted to where the language is ambiguous. Ambiguity arises where there are multiple reasonable but different interpretations of the policy.

In the face of ambiguity, the court cannot rely on the language alone, and instead must move to the second stage and employ rules of contract interpretation to resolve the ambiguity, including:

(1) the interpretation should be consistent with the reasonable expectations of the parties;
(2) it should not give rise to results that are unrealistic, or that the parties would not have contemplated in the commercial atmosphere in which the insurance contract was formed; and
(3) it should be consistent with the interpretations of similar insurance policies.

If ambiguity still remains after the two first stages, the court must employ the *contra proferentem* rule, construing the provision against the drafter (insurer) and in favour of the insured.

Applying this approach, in *Emond v. Trillium Mutual Insurance* the majority held that the homeowners' property policy did not cover the insureds' increased costs of rebuilding their home in compliance with conservation authority requirements beyond the $10,000 in additional coverage. While the loss fell within the grant of coverage, the increased costs were ousted by the exclusion for by-law compliance costs, which was clear and unambiguous.

Unlike the dissenting reasons, the majority did not find that the language of the compliance cost exclusion injected a temporal dimension into the provision. Further, the GRC endorsement did not override the exclusion. The GRC endorsement simply amended the basis of claim payment by increasing the amount payable under the policy beyond the stated limit. The exclusions in the policy continued to apply, which was confirmed by language in the GRC endorsement, stating that in all other respects the policy provisions and limits of liability remained unchanged.

In addition to the oft-cited principles of policy interpretation, the Court also addressed the principle of nullification of coverage. The homeowners argued that applying the compliance cost exclusion would virtually nullify the coverage provided by the GRC endorsement. Courts in Ontario have accepted that a policy provision should not be applied to the extent that it would completely defeat the very objective of having purchased the relevant coverage and render it nugatory.

The insurer disagreed, arguing that the noncompliance cost exclusion may limit what can be recovered under the GRC endorsement, but the endorsement still conferred a benefit such that it was not rendered nugatory. The majority agreed with the insurer. The high bar to show nullification was not met and the compliance cost exclusion applied, despite the GRC endorsement.

The dissent: Should GRC endorsements cover all rebuilding costs?

Two justices dissented in *Emond v. Trillium Mutual Insurance*. Karakatsanis J. found ambiguity in how the GRC endorsement and compliance cost exclusion interacted, concluding that reasonable expectations and commercial realities favoured the insureds. She would limit the exclusion to laws enacted after policy issuance. Côté J. emphasized that GRC endorsements promise peace of mind and reasonably led insureds to expect full rebuilding coverage. Finding both the endorsement and exclusion unclear, she would have allowed the appeal in part, excluding only increased costs from rules not in effect when the policy was last renewed.

What this means for policyholders and insurers

The Supreme Court's decision in *Emond v. Trillium Mutual Insurance* reinforces the structured approach to policy interpretation, with the majority and two dissents converging on the approach and diverging on its application. The majority's decision sharpens the boundaries of guaranteed rebuilding cost coverage and highlights that endorsements must not be read in isolation. On their end, the two strong dissents make clear that tensions may nevertheless arise between insurer and insured interpretations, with clarity being found through consideration of the parties' reasonable expectations and the commercial realities, but only after a threshold determination that ambiguity exists.

By: Erin VanderVeer, Laura Day

Insuring AI: Governance, underwriting, and the opportunity in risk transfer

As AI becomes further embedded in products and services, insurance is emerging as one of the few mechanisms capable of translating technical assurance, governance frameworks, and accountability into deployable commercial confidence. Insurance is shaping which AI systems scale, on what terms, and with what safeguards.

That shift is reframing AI insurance as an opportunity rather than a constraint. Instead of acting solely as a backstop for loss, it is increasingly functioning as part of the market architecture around AI, clarifying expectations, rewarding discipline, and helping organizations move from experimentation to production with greater confidence.

From abstract exposure to underwriting reality

Recent findings from the Lloyd's Market Association reflect where underwriting attention has settled across the Lloyd's market (see **AI adoption more than doubles across the Lloyd's market in 12 months, with 93% of survey respondents building governance frameworks**). According to survey results, AI is no longer treated as a peripheral innovation, but as an operational reality paired with near-universal governance frameworks.

External market analysis, including recent guidance from Aon, reinforces the same point from a buyer-side perspective: insurers are responding incrementally, refining existing programs rather than rushing to create broad, standardised AI cover (see **AI Risk 2026: What Business Leaders Need to Know**).

The insurance response has been incremental rather than expansive, focused less on inventing a new category of coverage and more on refining, and narrowing, how existing programs respond. Three market responses are seen to be unfolding in parallel:

(1) AI-specific exclusions or clarifying endorsements within existing programs;

(2) affirmative AI coverage offered as targeted extensions to established lines; and

(3) standalone AI products, typically narrower in scope and capacity.

This pattern is increasingly visible at the reinsurance level as well. Recent market reporting drawing on Munich Re's global survey data points to a growing cyber and AI insurance market, now estimated at approximately $15 billion, with significant demand for coverage that addresses AI-specific risks.

At the same time, exclusions are tightening while structured products — ranging from performance warranties to targeted AI liability covers — are emerging. The effect is not expansion in the abstract, but differentiation: capacity is available where risks are defined and governed, and constrained where they are not.

Insurance as a governance lever

One of the most meaningful developments in AI insurance is the role insurance is beginning to play as a governance tool. Specialist markets have been unusually direct: insurers do not underwrite intentions or assurances, they underwrite evidence. That evidence now includes testing protocols, performance monitoring, audit trails, escalation procedures, and disciplined vendor management.

This governance-led approach is already being tested in practice through purpose-built AI insurance products developed within the Lloyd's market. Specialist coverholders focused on AI risk combine independent model evaluation with affirmative liability cover designed around how AI systems actually fail, rather than retrofitting coverage to legacy cyber or E&O forms. The importance of these developments is less about any single product and more about what they demonstrate: where AI risk can be described, measured, and governed, underwriting confidence and deployable capacity follow.

Insurance can enable faster — and safer — adoption

The above dynamic leads to a counterintuitive but commercially important point: underwriting scrutiny does not necessarily slow AI adoption, and even can, in some cases, act as an accelerator. That is, insurance can create real incentives for better AI governance by rewarding clarity, testing, and accountability with greater confidence to deploy. Where governance expectations are explicit, organizations

spend less time negotiating uncertainty downstream — with customers, counterparties, or regulators — and more time moving systems into production.

Claims expectations are reinforcing discipline

Gartner has projected a significant rise in AI-related litigation, with claims projected to exceed 2,000 worldwide by the end of 2026. Looking further ahead, Gartner anticipates that insurers may increasingly condition explicit AI liability coverage on demonstrable governance and risk controls.

Within the next decade, insurers will increasingly require demonstrable AI risk controls as a precondition to explicit AI liability coverage, a shift it expects to drive a substantial increase in investment in both governance and security. That dynamic reinforces insurance's emerging role not merely as loss absorption, but as a mechanism that determines what AI systems are deployable at scale.

AI governance enters the D&O conversation

One of the most consequential developments for sophisticated organizations is how directly AI has entered D&O underwriting. Insurers are paying closer attention to board oversight, risk registers, public disclosures, and third-party controls where AI is material to operations or strategy.

This shift does not introduce a new theory of director responsibility. It applies familiar governance expectations to a new operational reality. Where AI meaningfully affects revenue, compliance posture, or customer outcomes, boards are expected to understand its role and boundaries. Insurance underwriting now reflects that expectation.

The quiet narrowing of "silent" AI

Market reporting confirms what many insureds are already encountering at renewal: AI-specific endorsements and exclusions are appearing, often gradually, across commercial lines. The pattern resembles the earlier transition from silent cyber to explicit cyber wording. Coverage that once appeared to exist by implication is being clarified, narrowed, or redirected into more targeted structures.

What sophisticated buyers are doing now

Organizations that are ahead of this curve are treating AI insurance as part of business design, not post-incident cleanup. In practice, that means:

- Mapping AI use cases in insurance-relevant terms, focusing on decisions, representations, and reliance.
- Reviewing policy wording as closely as limits and pricing, recognizing that endorsements often matter more than headline capacity.
- Treating governance evidence as a deployment enabler, not mere compliance — something that supports procurement, underwriting, and scalability.

AI insurance is no longer about absorbing unknown risk. It is about shaping which systems are fit to scale in a commercial environment that demands accountability. As underwriting discipline sharpens, organizations that can demonstrate governed systems, coherent oversight, and defensible documentation will not only secure better coverage outcomes, they will also be better positioned to deploy AI with confidence.

In that sense, the opportunity in AI insurance is not simply protection against failure, but to turn responsible AI into a durable commercial advantage.

By: George Wray

Recent insurance regulatory updates in Canada as of spring 2026

This overview highlights recent federal and provincial insurance regulatory developments including OSFI's evolving prudential guidance, CCIR's distribution channel supervision priorities, British Columbia's proposed restricted licensing framework for incidental sales, and Québec's AMF compliance expectations. Insurers and affected insurance intermediaries will want to consider implementation timelines, control frameworks, and areas where policy, contracting and oversight practices may need to be refreshed.

OSFI: Consultation on a new Credit Risk Management Guideline

At the federal level, **OSFI launched a consultation on Jan. 29, 2026**, on a new Credit Risk Management Guideline that would apply to banks, trust and loan companies, life insurers, and P&C insurers. The project is intended to consolidate and modernize existing credit-risk expectations, including in areas such as real estate secured lending, wholesale credit, non-bank financial intermediation, and counterparty credit risk. The consultation is scheduled to close on July 29, 2026.

Although still in consultation, this initiative is material because it signals where OSFI expects to reduce fragmentation in its guidance, and where insurance groups with meaningful credit exposures should expect policy attention in 2026.

CCIR: Distribution-channel supervision remains a national conduct priority

Also at the extra-provincial level, **the Canadian Council of Insurance Regulators released a report** in January on its cooperative review of insurers' monitoring and supervision of their distribution channels. This is a strong signal that channel oversight, intermediary controls, and fair treatment of customers remain pan-Canadian market-conduct priorities in 2026.

The Insurance Council of British Columbia's consultation on restricted insurance agent licences

British Columbia is moving ahead with a new licensing regime for businesses that sell insurance incidentally to their primary products. Introduced in December 2025 and set to take effect on Jan. 1, 2027, the ***Restricted Insurance Agent Licence Regulation*** will allow certain non insurance businesses to obtain a restricted insurance agency (RIA) licence.

The Insurance Council of British Columbia launched a public consultation on Feb. 10, 2026, on proposed rule amendments addressing definitions, licensing and application requirements, ongoing compliance obligations, fees, and transition rules.

The consultation closes on April 27, 2026, after which the proposed rules will be submitted to the minister of Finance for approval.

Two recent BLG Insights explore this topic in more depth:

- **The wait is (still not) over: British Columbia introduces new restricted licence regime for incidental sales of insurance for January 2027** (December 2025)
- **Next phase, same timeline: Insurance Council of British Columbia's consultation on Restricted Insurance Agent Regulation** (February 2026)

Québec compliance updates from the Autorité des marchés financiers (AMF)

The March 2026 edition of the AMF's **Info Conformité newsletter** reiterates the Québec regulator's expectations regarding compliance and governance while highlighting several recent initiatives affecting financial sector professionals.

The bulletin notes the **new enforcement section on the AMF's website**, which centralizes information on inspections, investigations, and prosecution activities in order to improve transparency and encourage preventive compliance practices among regulated entities.

The bulletin also addresses common compliance risks observed during recent supervisory activities. Following a remote inspection focused on social media use, the AMF reminds firms that advertising, representations, and solicitation remain subject to the ***Act respecting the distribution of financial products and services***, regardless of the communication medium. Firms are expected to implement effective controls governing social media use and to rely on existing AMF guidance to reinforce their culture of compliance; see the regulator's Governance and Compliance Guide (2021) and Representations Guide (2022).

In addition, the March 2026 edition of Info-Conformité highlights new and upcoming regulatory expectations, including the publication of the ***Third Party Risk Management Guideline*** (in French only), which will apply to certain authorized financial institutions, including insurers, as of April 1, 2027.

This new guideline is not fully harmonized with OSFI's Guideline B-10 on Third-Party Risk Management. In particular, the Québec guideline requires financial institutions to maintain registers of all agreements entered into with third parties, and to ensure that these registers are kept up to date at all times. The registers will have to include key elements enabling the identification of interrelationships between the various agreements. In addition, the Québec guideline expressly requires the establishment of a centralized register for critical agreements.

By: Rick Da Costa, Guillaume Talbot-Lachance, Erin VanderVeer, Abby Shine, Arpiné Danielyan

How we can help

BLG commands Canada's largest and most experienced business insurance law practice. Working with multi-disciplinary teams, our insurance lawyers serve as strategic advisors to a variety of clients that include many of the largest national and global insurers, reinsurers, reciprocals, brokerage firms, captives, financial institutions, and regulatory bodies. We resolve every category of insurance claim, from complex class actions to high-volume subrogation, and spanning all major liability areas. We are proven leaders in negotiation, mediation, and arbitration, with a record of success at all trial and appellate courts, including the Supreme Court of Canada. BLG's insurance law practitioners are routinely recognized by *Chambers*, *Benchmark*, *Lexpert*, and *The Best Lawyers in Canada*.

Insurance Firm of the Year

2022, 2023, 2024 and 2026
Benchmark Litigation

"Their pragmatic approach to matters results in reasonable settlements and resolutions. They can parachute colleagues from any of their multi-disciplinary teams on short notice.**"**

Rebecca Bush
Partner and National Business Leader, Specialized Disputes
Toronto
T 416.367.6162
RBush@blg.com

Cecilia Hoover
Partner and Leader, Insurance Group
Calgary
T 403.232.9151
CHoover@blg.com

Larry Elliot
Partner
Ottawa
T 613.787.3537
LElliot@blg.com

Patrick Heinsen
Partner
Calgary
T 403.232.9794
PHeinsen@blg.com

Gilbert Hourani
Partner
Montréal
T 514.954.3101
GHourani@blg.com

Allison Foord
Partner
Vancouver
T 604.640.4079
AFoord@blg.com

Laura Day
Partner
Toronto
T 416.367.6213
LDay@blg.com

blg.com/InsuranceClaimDefence

blg.com | Canada's Law Firm

Borden Ladner Gervais