

**CITATION:** Wong v. Aviva Insurance Company of Canada, 2024 ONSC 1111  
**COURT FILE NO.:** CV-22-79960  
And CV-23-80723  
**DATE:** 20240222

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Victoria Pui Yu Wong )  
 ) Branko J. KURPIS, for the Applicant  
Applicant/Respondent )  
on Cross Application )  
 )  
 )  
– and – )  
 )  
Aviva Insurance Company of Canada ) Dennis ONG and Cailyn PRINS, for the  
 ) Respondent  
Respondent/Applicant )  
on Cross Application )  
 )  
 )  
 )  
 ) **HEARD:** November 15, 2023

2024 ONSC 1111 (CanLII)

**ANTONIANI J.**

**REASONS FOR JUDGMENT**

[1] The Respondent, Aviva Insurance Company of Canada (“Aviva”) has denied coverage to the Applicant Victoria Wong (“Wong”), alleging a breach of her insurance contract, pursuant to s. 233(1) *Insurance Act*, R.S.O. 1990, c. I.8, and the regulations, and for having committed civil fraud.

[2] A motor vehicle accident (the “Accident”) took place on March 18, 2019, involving Wong and Natalie Denise Robertson (“Robertson”). As a result of the Accident, Robertson commenced an action under Ontario Superior Court of Justice Court File No. 19-00069213-0000 (the “Main Action”).

[3] Chang Tieu (“Tieu”) is Wong’s mother and the owner of a 2013 Toyota that was being operated by Wong at the time of the Accident.

[4] At the time of the accident, both Tieu and Wong had insurance coverage on the same policy, in good standing, with Aviva.

[5] At the time of the accident, Wong believed that her driver's licence was expired. Concerned that the expired licence would result in criminal consequences, Wong called Tieu and asked her to attend at the scene and to state that she had been driving the vehicle. Tieu attended and agreed to represent herself as the operator of the vehicle at the time of the accident.

[6] Tieu and Wong convinced Robertson to go along with the story to ensure she would have coverage for her damages.

[7] Wong and Tieu attended at the Collision Reporting Centre. Wong completed the necessary forms, naming Tieu as driver, and Tieu signed them. Wong thereafter called Aviva to make the accident claim, representing herself to be Tieu, and representing Tieu to be the driver.

[8] In June 2019, Robertson commenced the Main Action against Tieu, and Aviva embarked on a defence on behalf of its client/insured, Tieu, as the driver.

[9] Tieu repeated the false representation about being the driver to the police, to Aviva, and later, to counsel appointed to defend her in the Main Action. Tieu continued with the misrepresentation while testifying under oath in examination for discovery, which were conducted by videoconference, about two years after the accident. It is admitted that Wong stood by off camera and assisted Tieu in providing some of her responses during the examination.

[10] Aviva first learned of the misrepresentation after the examination for discoveries, after Robertson made some disclosure that a young woman had been driving. Aviva denied coverage to each of Tieu and Wong under the Policy and continues to decline to defend or indemnify them in respect of the claims brought by Robertson.

[11] Aviva took an off-coverage position for Tieu. It was appointed as a Statutory Third Party to the Main Action and filed a defence in this capacity.

[12] Wong brings this Application for a declaration that Aviva owes her a defence under the insurance policy and is required to indemnify her with respect to claims brought by the Plaintiff.

[13] In the alternative, Wong seeks relief from forfeiture pursuant to s. 98 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and/or relief from forfeiture under s. 129 of the *Insurance Act*, on the basis that the misrepresentation amounts to imperfect compliance, and that Aviva has suffered no prejudice as a result of her conduct.

[14] Aviva resists any form of relief requested.

[15] Tieu brings a separate Application seeking the same relief against Aviva, in court file CV-22-00080301-0000. There is much overlap in the Reasons for Decision in that Application, with the Reasons here.

[16] Aviva brings a Cross Application, CV-23-00080723-0000, asking to be added as a Statutory Third Party to the Main Action (Court file No.: CV-19-00069213-0000) in relation to Wong.

[17] Wong's Application and Aviva's Cross Application were heard together, and these are the Reasons for both Applications.

**DECISION:**

[18] I find on a balance of probabilities that Wong breached her insurance contract, and her obligations under the *Insurance Act*, and committed civil fraud. As a result, she is not entitled to the benefits of her policy.

[19] I find that the conduct of Wong, which included lying to police, to Aviva, and in colluding in Tieu's lying under oath during examination for discovery, bars her from relief from forfeiture.

[20] I allow Aviva's cross application, and order that it shall be added as a Statutory Third Party to the Main Action pursuant to s. 258(14) of the *Insurance Act* in relation to Wong.

**ISSUES**

[21] In arriving at my decision, I have considered the following issues:

- a) Was Wong in breach of the policy with Aviva, under which she was a listed driver, per s. 233(1)(b) of the *Insurance Act* and/or the regulations?
- b) Did Wong's conduct amount to civil fraud?
- c) If the answer to either a) or b) is in the affirmative, should Wong be granted relief from forfeiture in the circumstances?
- d) On its cross application, is Aviva entitled to be added as a Statutory Third Party under s. 258(14) of the *Insurance Act*, in relation to Wong?

**ANALYSIS**

**Issue A: Was Wong in breach of Tieu's policy with Aviva, under which she was a listed driver, per s. 233(1)(b) of the *Insurance Act* and/or the regulations?**

[22] Aviva denies coverage pursuant to the *Insurance Act*, alleging that Wong contravened a term of the contract, and failed to cooperate in the defence of the Main Action. It relies on the provisions from the *Insurance Act* and *Statutory Conditions – Automobile Insurance*, O. Reg. 777/93, Sched. 5(3).

[23] Section 233(1) of the *Insurance Act* provides that:

Where,

- (a) an applicant for a contract,
  - (i) gives false particulars of the described automobile to be insured to the prejudice of the insurer, or

(ii) knowingly misrepresents or fails to disclose in the application any fact required to be stated therein;

(b) the insured contravenes a term of the contract or commits a fraud;  
or

(c) the insured wilfully makes a false statement in respect of a claim under the contract,

a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited.

[24] Schedule 5(3) of the *Insurance Act* and *Statutory Conditions – Automobile Insurance* provides:

The insured shall, whenever requested by the insurer, aid in securing information and evidence and the attendance of any witness and shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding or in the prosecution of any appeal.

[25] Wong argues that there was no “request by the insurer” and as such the application of Sched. 5(3) of the *Statutory Conditions – Automobile Insurance* regulation is not triggered. I reject this submission. Wong colluded with Tieu in Tieu’s misrepresentations and failures under Sched. 5(3). Wong knew that she had an obligation to report the accident, and inform Aviva that she was the driver. The full obligation under the schedule states that the insured “shall co-operate with the insurer, except in a pecuniary way, in the defence of any action or proceeding”. Wong failed to cooperate, even when she was fully aware that there was litigation in progress.

[26] It is admitted that Wong convinced Tieu to state that she was the driver and Robertson to go along with the misrepresentation. It is admitted that Wong called Aviva and represented herself to be Tieu. It is admitted that Wong actively participated in Tieu’s giving false evidence under oath at examination for discovery when she stood off camera and assisted with providing information for answers. I am satisfied that the Wong did not aid in securing for Aviva the information and evidence that she was obliged to provide under the legislation, and that she did not cooperate with Aviva in the defence of the Main Action. For these reasons, and for the reasons discussed below regarding the commission of civil fraud, I find that Wong is in breach of the *Insurance Act* and the insurance policy, and her right to recover indemnity is forfeited.

### **Issue B: Did Wong’s conduct amount to civil fraud?**

[27] Aviva alleges that Wong committed civil fraud, and as such is not entitled to the benefits of the policy, or to relief from forfeiture. The elements of the tort of civil fraud include:

- i) a false representation made by the defendant;
- ii) some level of knowledge of the falsehood of the representation on part of the defendant;

iii) the false representation caused the plaintiff to act; and

iv) the plaintiff's actions resulted in a loss.

See *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 86-87; *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 21.

[28] At the hearing of the application, Wong conceded that the first two elements of civil fraud are met in this case. Therefore, I have addressed the first two elements very briefly for context.

**i) A false representation made by the defendant;**

[29] Each of Tieu and Wong actively participated in false representations to Aviva. Wong called Aviva multiple times, representing herself as Tieu, with Tieu's consent. Wong represented herself to be Tieu and represented that Tieu had been the driver of the motor vehicle. Wong completed the accident report at the collision reporting centre, and initiated the claims process in Tieu's name, and Tieu signed the report as driver. Tieu and Wong each actively participated in the deceit of Aviva in their conduct in respect of the claim in the Main Action, where Tieu attended at examinations for discovery, which were held by videoconference, and testified under oath that she was the driver, while Wong stood by off screen to assist with answers.

[30] I find that this element is made out on the facts.

**ii) Some level of knowledge of the falsehood of the representation on part of the defendant;**

[31] Wong herself was the driver. It is admitted that she called on her mother to represent herself as the driver instead of complying with her obligation to assist. Wong completed the form at the collision reporting centre in Tieu's name, and she made phone calls to Aviva, representing herself to be Tieu, as the driver during the accident. Further, it has been admitted that Wong stood by off screen and assisted Tieu with answers during examinations for discovery. I find that the second criteria for civil fraud is met on these facts.

**iii) The actions caused Aviva to act and iv) the plaintiff's actions resulted in a loss**

[32] Wong admits that her actions caused Aviva to defend Tieu in the Main Action when they should have been defending her.

[33] However, Wong argues that the collusion with Tieu will have no impact on Aviva's defence of the Main Action. Wong suggests that the only issue in the Main Action is the extent of the Robertson's damages and therefore, the credibility of either Tieu or Wong will have no impact on the outcome.

[34] I reject this submission. Aviva argues that it relied on the evidence of its insured to challenge Robertson's damage claims, by providing evidence about Robertson's appearance and conduct at the scene, after the accident. During examinations for discovery, Tieu was examined extensively about her driving and her own conduct on the date of the accident, including her speed,

sobriety, vision and more. The entire proceedings to date are no longer of use except as they may be used by Robertson to impugn Wong. Aviva is at a disadvantage since the credibility of Wong has been significantly impacted.

[35] In the alternative, Wong suggests that she and Tieu are prepared to compensate Aviva for the costs thrown away in relation to the proceedings to date, and the wasted discoveries in particular. Wong argues that this would return Aviva to its original position, and as such no loss will have occurred.

[36] I find that a loss occurred. Aviva retained counsel and defended the action for the wrong defendant for over two years. This involved the expenditure of time and money. I have already found that Aviva's position in the Main Action is irreparably impacted. Repayment of monies spent would not return Aviva to its original circumstance.

[37] I find that the conduct of Wong resulted in a loss.

[38] I find that Wong committed civil fraud, on a balance of probabilities.

**Issue C: If the answer to either a) or b) is in the affirmative, should Wong be granted relief from forfeiture in the circumstances?**

[39] I turn next to Wong's request that I grant her relief from forfeiture. The equitable remedy of relief may be considered under each of the *Courts of Justice Act*, or the *Insurance Act*.

[40] Section 98 of the *Courts of Justice Act* provides:

A court may grant relief against penalties and forfeitures, on such terms as to compensation or otherwise as are considered just.

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

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

[42] Relief from forfeiture seeks to prevent hardship to insured persons when they have failed to comply with a condition of their insurance contract, and where leniency in requiring strict compliance with the condition will not result in prejudice to the insurer. Relief from forfeiture is not available where the case involves false statements or fraudulent conduct. As was concluded in *Ghaffari v. Cooperators General Insurance Co.* (1996), 30 O.R. (3d) 144 (S.C.), aff'd (1998) 41 O.R. (3d) 254 (C.A.):

As a consequence of any fraud or wilfully false statement in respect of a claim under the insurance contract, s. 233(1)(c) of the Insurance

Act provides that the claim of the insured is invalid and the right of the insured to recover indemnity is forfeited: see *Royal Insurance Co. of Canada v. Dimario* (1987), 26 O.A.C. 370, [1988] I.L.R. 1-2260 (Div. Ct.).

Once fraud is established, no matter how slight the amount, the entire claim under the proof of loss is forfeited: *Fotinos v. Pitts Insurance Co.*, 1981 CanLII 1687 (ON SC), [1981] I.L.R. 1-1377 at p. 264 (Ont. S.C.). This statutory provision appears to be predicated upon a public policy objective of seeking to deter fraudulent claims thereby ensuring premium costs are in line with true losses and risks. An insured is in control of the information submitted in a proof of a loss and, in many cases, the insurer cannot easily verify its accuracy. A contract of insurance is one of utmost good faith.

Section 129 of the Insurance Act allows for relief against forfeiture where there is "imperfect compliance with a statutory condition as to the proof of loss". This provision has no application in a situation of fraudulent conduct: *West v. Royal Insurance Co. of Canada* (1986), 21 C.C.L.I. 53 at p. 59 (Ont. Dist. Ct.); *Wigmore v. Canadian Surety Co.* (1994), 1995 CanLII 66 (SCC), 27 C.C.L.I. (2d) 96, [1995] I.L.R. 1-3139 (Sask. Q.B.). However, where the insured's proof of loss contains an honest mistake, the court can resort to s. 129 in order to grant relief on the basis that the insured's proof of loss amounted to "imperfect compliance".

[43] In exercising its discretion to grant relief from forfeiture, a court must consider three factors: (i) the conduct of the applicant, (ii) the gravity of the breach, and (iii) the disparity between the value of the property forfeited and the damage caused by the breach: *Kozel v. The Personal Insurance Company*, 2014 ONCA 130, 119 O.R. (3d) 55, at paras. 30-31.

[44] The conduct of Wong described herein is serious. The breach is at the very high end of the spectrum. Lying about who the actual driver was and perpetuating the misrepresentation (in her case, by both inaction and action) in civil litigation for over two years, is a breach which goes to the heart of the contract between the insured and the insurer. Wong's conduct was not imperfect compliance, it was non-compliance. I have considered the fact that the disparity between the value of property forfeited and the breach is significant. I recognize that Wong faces a civil action with potentially significant cost consequences.

[45] Counsel on her behalf submitted that it was not Wong's intent to perpetrate a fraud against Aviva, but rather she was afraid of potential criminal consequences, from a mistaken belief that her driver's licence had expired. I acknowledge that this appears to have been that case, and further that there is evidence in the record before me that Wong has suffered from mental health issues, and that this may have contributed to her decision to make the misrepresentation. I have no doubt that each of Wong and Tieu acted out of fear. However, for facts already discussed, I find that Wong colluded with Tieu to perpetrate a fraud on Aviva. The fraud was not brief nor insignificant, and the immediate reaction of fear post-accident cannot justify the actions which persisted for over two years. Most seriously, the court cannot condone lying under oath in a court proceeding, an activity in which I find that Wong was an active participant.

[46] I find that Aviva cannot be returned to its original position in defending the Main Action, as the credibility of Tieu and Wong are each significantly compromised.

[47] On considering and balancing all of the factors, and in particular, on account of my finding that Wong participated in civil fraud and colluded with Tieu's in lying under oath during examinations for discovery, I decline to grant relief from forfeiture.

[48] Wong's application is dismissed.

**Issue D: On its cross application, is Aviva entitled to be added as a Statutory Third Party under s. 258(14) of the Insurance Act, in relation to Wong?**

[49] Section 258(14) of the *Insurance Act*, provides that:

Where an insurer denies liability under a contract evidenced by a motor vehicle policy, it shall, upon application to the court, be made a third party in any action to which the insured is a party and in which a claim is made against the insured by any party to the action in which it is or might be asserted that indemnity is provided by the contract, whether or not the insured enters an appearance or defence in the action.

[50] Aviva has denied liability to Wong. As such, I make the following Orders:

- a) An Order that Aviva be added as a Statutory Third Party respecting the Respondent, Victoria Pui Yu Wong, to the Main Action, *Roberston v. Tieu et al*, Hamilton Court File No: CV-19-00069213-0000, pursuant to s. 258(14) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, with all rights which are conferred upon such a party by s. 258(15) of the *Insurance Act*, R.S.O. 1990, c. I.8.
- b) An Order that Aviva be added to the title of the Main Action proceedings from the date of this Order and that the title of the Main Action proceedings be amended to reflect "Schedule A" to this Order.
- c) An Order that the fact that Aviva has availed itself of its right pursuant to s. 258(14) of the *Insurance Act*, R.S.O. 1990, c. I.8, as amended, is without prejudice to any and all coverage and policy defences available to Aviva General Insurance Company.
- d) An Order that the time for the delivery of a statement of defence by the added Statutory Third Party shall be thirty (30) days from the date of this Order and that the Plaintiff in the Main Action shall deliver a reply thereto, if any, within twenty (20) days after the delivery of Aviva's statement of defence.
- e) This court further orders that the fact that Aviva is a party to the Main Action shall not be disclosed to the Jury should any party serve a Jury Notice.



**Costs:**

[51] I would urge the parties to agree on costs. If they are unable to do so, then costs submissions may be made as follows:

- a. Wong shall serve and file their written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 21 days of the release of these reasons; and
- b. Aviva shall serve and file its responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, within 30 days of the release of these reasons; and
- c. Wong's reply costs submissions, if any, are to be served and filed within 35 days of the release of these reasons, and are not to exceed two pages.

[52] If no costs submissions are received by the deadlines specified herein, the parties will be deemed to have resolved the issue of costs, and the issue will not be determined by me.

[53] If the parties settle the question of costs or if a party does not intend to deliver submissions, counsel are requested to advise the court accordingly.

  
Antoniani, J.

**Released:** February 22, 2024

**SCHEDULE A**

Court File No. CV-19-00069213-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N

NATALIE DENISE ROBERTSON

Plaintiff

and

CHANG TIEU, VICTORIA PUI YU WONG and  
AVIVA INSURANCE COMPANY OF CANADA

Defendants

and

AVIVA GENERAL INSURANCE COMPANY added by Order pursuant to  
Section 258(14) of the Insurance Act, R.S.O. 1990, c.I.8

Third Party with Respect to  
the Defendants, Chang Tieu and Victoria Pui Yu Wong

**CITATION:** Wong v. Aviva Insurance Company of Canada, 2024 ONSC 1111  
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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

VICTORIA PUI YU WONG

(Applicant)

– and –

AVIVA INSURANCE COMPANY OF CANADA

(Respondent)

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**REASONS FOR JUDGMENT**

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Antoniani J.

**Released:** February 22, 2024