

CITATION: McGrimmon v. The Personal Insurance Company, 2010 ONCA 655  
DATE: 20101006  
DOCKET: C51632

COURT OF APPEAL FOR ONTARIO

Goudge, Lang and Karakatsanis JJ.A.

BETWEEN

Anna M. Poplawski and Geoffrey J. Hutchinson

Plaintiffs

and

Derek John McGrimmon, Jennifer Lea Sholea, Kevin Kelly c.o.b. as Homepro Inspections, Cornerstone Home Inspections, John W. Roberts, Remax Metro-City Realty Ltd. and The City of Ottawa

Defendants (Respondents)

and

Grenville Mutual Insurance Company and The Personal Insurance Company and Federation Insurance Company of Canada

Third Parties (Appellant)

Thomas J. Hanrahan, for the appellant

Joseph Obagi and Thomas Connolly, for the respondents

Heard: October 5, 2010

On appeal from the judgment of Justice C. McKinnon of the Superior Court of Justice dated January 7, 2010, with reasons cited at 2010 ONSC 108.

## APPEAL BOOK ENDORSEMENT

[1] The appellant fairly and properly concedes that the occurrence here took place during the policy period and that there is therefore coverage unless the exclusion “claims made against you arising from damage to property you own...” applies.

[2] In our view, the motion judge correctly found that the exclusion does not apply. It is uncontested that the appellant insurer has the onus to show that the exclusion is clearly and unambiguously operative. It cannot do that. The property here is not owned by the respondent although it once was. The exclusion cannot be read as if it was written both in the present tense and the past tense. It is in the present tense only.

[3] The appeal must therefore be dismissed.

[4] The parties agree that costs of the appeal should be as follows. The respondents were entitled to a defence by their insurer without expense to them. Accordingly, that matter now having been determined in their favour, they should have their costs on a solicitor and his own client scale for the defence of the main action and cross-claims until such time as the respondent insurer serves and files a Notice of Change of Solicitors and takes over the insurers’ defence. Such costs would include the conduct of the third party proceedings and the motion before McKinnon J. and this appeal. It would, of course, obviate the necessity of this court determining their party and party costs of this appeal as ordered by the court.