COURT OF APPEAL FOR ONTARIO

BEFORE: ROULEAU J.A.

HEARD: JANUARY 16, 2026

DISPOSITION OF COURT HEARING:

COURT FILE NO.: M56589 (COA-25-CV-1680)

TITLE OF PROCEEDING: NATARIO, MARIA V. RBC INSURANCE COMPANY OF CANADA INC.

DATE RELEASED: JANUARY 19, 2026

David Zarek and Alexander Reyes, for RBC Insurance Company of Canada and Aviva Insurance Company of Canada (moving parties)
P. Michael Rotondo, for Maria Natario (responding party)

The moving parties bring this motion to stay an order of Smith J. The motion judge's order denied the moving parties leave to amend their statement of defence to plead civil fraud as an affirmative defence.

The underlying action in which this order was granted is a coverage action under s. 132(1) of the *Insurance Act*, R.R.O. 1990, c. I.8. The plaintiff suffered injuries while visiting the home of the insureds in 2012. She fell through an attic hole and was rendered paraplegic. It is common ground that the insureds fabricated their account of the incident in the ensuing tort action. The plaintiff's tort action was dismissed through a judgment on consent, on terms allowing her to commence an action against the insurer under s. 132 of the *Insurance Act*. She then brought this action in February 2022.

As I understand it, the trial is scheduled for the January 2026 trial sittings and could begin as soon as this week should the stay be denied. In August 2025, the moving parties brought a motion for leave to amend their statement of defence to plead as a defence to the claim that the insureds' deliberate misrepresentations constitute civil fraud. The motion judge did not permit the proposed amendment. He concluded that the amendment was irrelevant and, further, that the responding party showed she would suffer non-compensable prejudice if leave were granted.

For reasons that follow, the motion for a stay pending appeal is dismissed.

<u>Analysis</u>

The legal framework governing motions to stay an order pending appeal is well known. In *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at p. 334, the Supreme Court of Canada set out the applicable three-part test. The party seeking this relief must show that: (1) there is a serious question to be determined on appeal; (2) it will suffer irreparable harm if the stay is not granted; and (3) the balance of convenience favours granting a stay.

The components of the test are not watertight compartments. The strength of one may compensate for the weakness of another: *Circuit World Corp. v. Lesperance* (1997), 33 O.R. (3d) 674 (C.A.), at p. 677. In the end, "the overriding question is whether the moving party has shown that it is in the interests of justice to grant a stay": *Louis v. Poitras*, 2020 ONCA 815, 59 C.P.C. (8th) 297, at para. 16.

Serious Issue

The "serious question" threshold is low and will be satisfied if an appeal is neither frivolous nor vexatious: *2257573 Ontario Inc. v. Furney*, 2020 ONCA 742, at para. 22. On the record before me, I am not prepared to conclude that the proposed appeal is frivolous or vexatious. This component of the test is therefore satisfied.

The issue underlying the appeal is whether civil fraud by an insured falls within s. 132 of the *Insurance Act*:

> 132 (1) Where a person incurs a liability for injury or damage to the person or property of another, and is insured against such liability, and fails to satisfy a judgment awarding damages against the person in respect of the person's liability, and an execution against the person in respect thereof is returned unsatisfied, the person entitled to the damages may recover by action against the insurer the amount of the judgment up to the face value of the policy, but <u>subject to the same equities as the insurer would have if the judgment had been satisfied</u>. [Emphasis added.]

If civil fraud by an insured falls within the "equities" referred to in the underlined portion of s. 132 such that it could vitiate coverage under the insurance policy, then it may be an independent basis for the moving parties to resist liability to the responding party.

Neither party provided me with authority directly considering this issue. The lone support cited by the moving parties did not involve s. 132 and hinged on s. 233 of the *Insurance Act*: *Wong v. Aviva Insurance Company of Canada*, 2024 ONSC 1111, aff'd 2024 ONCA 874. Section 233 expressly provides that a claim for indemnification by the insured is vitiated if the insured "commits a fraud". However, s. 233 applies only to automobile insurance contracts in Part VI of the *Insurance Act*. *Wong* therefore does not address the issue under appeal.

The moving parties have not yet perfected the appeal and, at this stage, even without the operation of s. 233, I am not prepared to say the appeal is frivolous or vexatious, or to deny a stay on this ground alone.

Irreparable Harm

The moving parties submit that they will suffer irreparable harm if the trial proceeds before this appeal is decided. They argue that a new trial will likely be required if this court finds that the motion judge ought to have allowed them to plead civil fraud. The moving parties assert that such a new trial might then lead to irreparable harm. Such harm could take the form of wasted proceedings, possible witness tainting and, perhaps, the risk that two trials will lead to inconsistent findings.

In my view, irreparable harm is, at most, speculative at this stage. The moving parties cannot meet this component of the test through "speculative evidence": *Sorrentino v. Certas Home and Auto Insurance Company*, 2025 ONCA 835, at para. 14. To be sure, a new trial would be an unfortunate outcome. On the other hand, much if not all of the harm suffered by the moving parties in that scenario could be addressed through costs. Any prospect of truly irreparable harm is remote on the record before me.

I note that the moving parties sought to have the trial removed from the January 2026 sittings. At triage attendance, the court directed that any adjournment request would be decided by the trial judge. It is therefore unclear whether the trial will take place during the January 2026 sittings and, even if reached, will not be adjourned by the trial judge.

As a result, I am not satisfied that the moving parties have met their onus under this component.

Balance of Convenience

The balance of convenience does not favour a stay. I do not view the merits of the appeal as strong enough to overcome the absence of clear irreparable harm.

On the other side of the balance, I am persuaded that Ms. Natario would suffer greater harm should her action be further delayed. This proceeding has been ongoing for almost four years, while the accident itself occurred well over a decade ago. It is not in the interests of justice that this court grant a stay that may delay her claim for recovery.

Disposition

The motion is dismissed. The responding party is entitled to costs, which I fix in the all-inclusive amount of $5,000.