In the Court of Appeal of Alberta

Citation: Abbas v Esurance Insurance Company of Canada, 2023 ABCA 36

Date: 20230206
Docket: 2101-0125AC
Registry: Calgary

Between:

Ali Alreda Abbas

Appellant
(Plaintiff)

- and –

Esurance Insurance Company of Canada

Respondent
(Defendant)

The Court:

The Honourable Justice Jack Watson
The Honourable Justice Thomas W. Wakeling
The Honourable Justice Jolaine Antonio

Reasons for Judgment Reserved of
The Honourable Justice Watson and The Honourable Justice Wakeling

Reasons for Judgment Reserved of The Honourable Justice Antonio
Concurring in the Result

Appeal from the Order by
The Honourable Justice B.B. Johnston
Dated the 21st day of April, 2021
Filed on the 19th day of July, 2021
(Docket: 1701 14565)

Reasons for Judgment Reserved of
The Honourable Justice Watson and The Honourable Justice Wakeling

I. Introduction

[1] This is an important insurance case. It declares that the common-law-fraudulent-claims rule – an insurer is relived of the obligation to indemnify an insured for *any* loss arising from the same event and under the same insurance policy if the insured files a fraudulent proof of loss that is material with respect to one or more parts of the claim whether or not some part of the proof of loss is not tainted by fraud – is still good law in Alberta. This severe rule has existed for roughly 200 years.[1] And the rationale for the fraudulent claims rule has remained constant[2].

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[1] *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶ 1; [2016] 4 All E.R. 907, 912 per Lord Sumption ("there may be a genuine claim, the amount of which has been dishonestly exaggerated. This is the paradigm case for the application of the [common law] rule. The insurer is not liable") & ¶ 51, [2016] 4 All E.R. at 930 per Lord Hughes ("the fraudulent claims rule is well established in English law and that it operates to bar the whole of the policy holder's claim where that claim is either wholly invented *or* fraudulently exaggerated. The claiming policyholder, if he is found fraudulently to have exaggerated his claim, recovers nothing; he does not recover the unexaggerated part") (emphasis in original); *Manifest Shipping Co. v. Uni-Polaris Shipping Co.*, [2001] UKHL1, ¶ 62; [2001] 1 All E.R. 743, 764 per Lord Hobhouse ("Where an insured is found to have made a fraudulent claim upon the insurers, the insurer is obviously not liable for the fraudulent claim. But often there will have been a lesser claim which could properly have been made and which the insured, when found out, seeks to recover. The law is that the insured who has made a fraudulent claim may not recover the claim which would have been honestly made. The principle is well established and certainly has existed since the early nineteenth century"); *Galloway v. Guardian Royal Exchange (U.K.) Ltd.*, [1997] EWCA Civ 2487; [1999] Lloyd's Rep. I.R. 209 (the Court upheld the insurer's position that it did not have to pay the insured anything because the insured falsely claimed that he lost £18,000 worth of goods in a robbery, when he lost only £16,000); *Britton v. Royal Ins. Co*, 176 Eng. Rep. 843, 844 (Nisi Prius 1886) per Willis, J. ("The law is, that a person who has made such a fraudulent claim could not be permitted to recover at all. ... It would be most dangerous to permit parties to practise such frauds, and then, notwithstanding their falsehood and fraud, to recover the real value of the goods consumed. And if there is wilful falsehood and fraud, the insured forfeits *all* claim whatever upon the policy") (emphasis added); 60 Halsbury's Laws of England 180 (2018) ("an insured who makes a fraudulent claim forfeits the whole of the claim including any part of it that was or might otherwise be good is consistent with principle, since the policy of the rule is to discourage any feeling that the genuine part of the claim can be regarded as safe, and that any fraud will lead at best to an unjustified bonus, and, at worst, to no more than a refusal to pay a sum which was never insured in the first place. The rule is deliberately designed to operate in a draconian and deterrent fashion") & *Mosrie v. Automobile Ins. Co.*, 141 S.E. 871 (W.Va. Sup.Ct. 1928) per Litz, J. ("A false or fraudulent claim in respect to one of the cars [claimed to be haven damaged by fire] precludes the right of recovery as to the others").

[2] *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶ 95; [2016] 4 All E.R. 907, 942 per Lord Hughes ("The need for [the common law fraudulent claims] ... rule, severe as it is, has in no sense diminished over the years").

II. Questions Presented

[2] Mr. Abbas was injured while he was a passenger in an automobile operated by an uninsured driver.[3]

[3] An insurance contract between Mr. Abbas and Esurance Insurance Company of Canada contained an Alberta standard policy form No. 1 and a standard endorsement form No. 44.

[4] Mr. Abbas filed with Esurance a claim for Section B SPF No. 1 and SEF No. 44 benefits.[4] Section B catalogues the no-fault benefits available to an insured who has suffered injuries in an automobile accident – including a modest employment income replacement payment.[5] SEF No. 44 coverage assists an insured who is injured in an automobile accident caused by an uninsured or inadequately insured driver by requiring the insurer to step into the shoes of the uninsured driver to a stipulated amount.[6]

[5] The insured admitted that he lied in the form that he filed to support his application for Section B benefits.[7] He stated that he was employed for a specific period of time when he was not. He also admitted that he lied to the adjuster and provided a false employer's certificate and hiring letter in support of his Section B benefits claim.

[6] Esurance refused to provide Mr. Abbas with either Section B or SEF No. 44 benefits. The insurer maintained that the insured's false statements in support of his Section B benefits claim forfeited his right to recover SEF No. 44 benefits.[8]

[7] The insured sued the insurer for SEF No. 44 benefits.

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[3] *Abbas v. Esurance Co. of Canada*, 2021 ABQB 303, ¶ 5.

[4] Id. ¶ 8.

[5] S.P.F. No. 1, s. B, 2, Part II ("A weekly benefit for the period during which the injury shall wholly and continuously disable such insured person, provided (a) such persons was employed at the date of the accident; (b) within 60 days from the date of the accident such injury prevents the insured person from performing any and every duty pertaining to the insured person's occupation or employment; (c) no benefit shall be payable for the first seven days of such disability or for any period in excess of 104 weeks").

[6] S.E.F. No. 44, 2 ("In conclusion of the premium charged and subject to the provisions hereof, it is understood and agreed that the insured shall indemnify each eligible claimant for the amount that such eligible claimant is legally entitled to recover from an inadequately insured motorist as compensatory damage in respect of bodily injury or death sustained by an insured person by accident arising out of the use or operation of an automobile").

[7] *Abbas v. Esurance Co. of Canada*, 2021 ABQB 303, ¶ 9.

[8] Id. ¶ 10.

[8] The insurer applied for summary dismissal of the insured's claim.[9]

[9] Master Summers dismissed the insurer's application.[10] He was of the opinion that it would be "patently unfair" to the insured to deprive him of SEF No. 44 benefits when the subject matter of the fraud was entirely unrelated to the eligibility criteria for SEF No. 44 benefits.

[10] The insurer appealed.

[11] The appeal was successful.[11]

[12] Justice Johnston granted the insurer summary judgment.[12] She disagreed with "the Master that there is a level of materiality required between the claim in which the fraud is present and other claims that may be advanced under the same policy".[13] Justice Johnston held that the insured and insurer must act in utmost good faith[14] and that severe sanctions must be visited upon fraudster insureds to deter them from filing false proofs of loss.[15] She described the insured's conduct as "reprehensible",[16] noting that "[h]e lied on multiple occasions and falsified documents".[17]

[13] Paragraphs 554(1)(b) and (c) of the *Insurance Act*[18] read as follows:

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[9] Extracts of Key Evidence of the Appellant 3.

[10] Oral Reasons for Judgment of Summers, M. dated August 4, 2020. Appeal Record 13.

[11] *Abbas v. Esurance Co. of Canada*, 2021 ABQB 303, ¶ 67.

[12] Id. ¶ 66.

[13] Id. ¶ 61.

[14] Id. ¶ 49.

[15] Id. ¶ 50.

[16] Id. ¶ 57.

[17] Id.

[18] R.S.A. 2000, c. I-3 (emphasis added). Section 554(1) was introduced by the *Insurance Amendment Act, 2008*, S.A. 2008, c. 19, s. 29. Other Canadian jurisdiction have similar provisions. See *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, s. 75 ("All claims by … an insured are invalid … and the right of an insured … to insurance money under the plan … is forfeited if … (b) the insured ... commits a fraud in relation to the plan ... or (c) the insured makes a wilfully false statement with respect to the claim"); *Insurance Act*, R.S.B.C. 2012, c. 1, s. 29, statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to the particulars required under statutory condition 6 invalidates the claim of the person who made the declaration"); *The Insurance Act*, S.S. 2015, c. I-9.11, ss. 8-28, statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to the particulars required under statutory condition 6 invalidates the claim of the person who made the declaration"), s. 8.40(1)(c) ("A claim by the insured is invalid and the right of the insured to recover indemnity is forfeited if ... the insured wilfully makes a false statement with respect to a claim under the contract") & s. 11 ("Any fraud or wilfully false statement in a proof of loss invalidates the claim of the person making proof of loss"); *The Insurance Act*, C.C.S.M., c. 140, s.

If

…

(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.

[14] What is a "fraud"? Neither the *Insurance Act* nor the *Interpretation Act*[19] define the term.

[15] Did the insured, by making a statement in writing in his proof of loss that he knew to be false and in his communications with the adjuster regarding his Section B claim, commit a fraud under section 554(1)(b) of the *Insurance Act*?

[16] What is a "false statement"? This is not a defined term.

236(1) ("Where ... (b) the insured ... 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") & s. 299 statutory condition 11 ("Any fraud or wilfully false statement in a proof of loss shall vitiate the claim of the person making such proof of loss."); *Insurance Act*, R.S.O. 1990, c. 1.8, s. 148 statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, vitiates the claim of the person making the declaration") & s. 233(1) ("Where ... (b) the insured ... 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"); *Insurance Act*, R.S.N.B. 1973 c. I-12, s. 127 statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration") & s. 229(1) ("Where ... (b) the insured ... 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"); *Insurance Act*, R.S.N.S. 1989, c. 231, s. 111(1)(a) ("Where ... the insured wilfully makes a false statement with respect to a claim under the contract, a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited") & Schedule to Part VII statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration"); *Insurance Act*, R.S.P.E.I. 1988, c. 1-4, s. 114 statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration"); *Insurance Act*, R.S.N.W.T. 1988, c. 1.4, s. 64 statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars vitiates the claim of the person making the declaration") & s. 128(1) ("Where ... 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") & *Insurance Act*, R.S.Y. 2002, c. 119, s. 71, statutory condition 7 ("Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particular vitiates the claim of the person making the declaration") & s. 136(1) ("If ... (b) the insured ... 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").

[19] R.S.A. 2000, c. I-8.

[17] Did the insured's statements that he knew to be untrue in support of his application for Section B benefits constitute a wilfully false statement under section 554(1)(c) of the *Insurance Act*?

[18] If either or both of paragraphs 554(1)(b) and (c) are engaged, is the insured's claim for SEF No. 44 benefits "a claim by the insured [that] is invalid" and for which the insured forfeited the right to recover indemnity?

[19] Does section 554(1) of the *Insurance Act* relieve the insurer of the obligation to provide the insured with SEF No. 44 benefits because the injuries that the insured claims entitle him to both Schedule B and SEF No. 44 benefits were caused by the same event – the automobile accident caused by the uninsured motorist – and both claims are made under the same insurance contract? The insurer says yes. The insured says no.

[20] Or is the insured correct and the insurer is not relieved of the obligation to provide SEF No. 44 benefits because the insured's employment status – the subject matter of his lie in his proof of loss for Schedule B benefits – is not a fact that determines his eligibility for SEF No. 44 benefits? In other words, the lie about his employment status was not material for the purpose of ascertaining the insured's entitlement to SEF No. 44 benefits.

III. Brief Answers

[21] "Fraud" and "false statement" have well-known meanings at common law. This condition brings into play the canon that if a legislature "borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed".[20] According to Black's Law Dictionary[21], "fraud" is "[a] knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment". The same highly regarded

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[20] *Morissette v. United States*, 342 U.S. 246, 263 per Jackson, J. (1952). See also *The Queen v. D.L.W.*, 2016 SCC 22 ¶ 20; [2016] 1 S.C.R. 402, 421 per Cromwell, J. ("When Parliament uses a term with a legal meaning, it generally intends the term to be given that meaning. Words that have a well-understood legal meaning when used in a statute should be given that meaning unless Parliament clearly indicates otherwise"). Some academics question this principle. See Krishnakumar, "The Common Law as Statutory Backdrop", 136 Harv. L. Rev. 608, 618-19 (2022) ("More recently, scholars have expanded their criticisms beyond the derogation canon to include the canon that statutes should be presumed to incorporate the common law meaning of the terms they employ. Professor Abbe Gluck has argued that both common law canons 'seem designed to push against congressional practice' and has questioned '[w]hy on earth should [the derogation] canon, as well as its first cousin – that courts presume Congress incorporates the common-law meaning of terms – remain default presumptions in the 'Age of Statutes'?").

[21] Black's Law Dictionary 802 (11th ed. 2019 B Garner ed. in chief).

dictionary defines "false statement" this way[22]: "An untrue statement knowingly made with the intent to mislead".

[22] The insured admits his statements in support of his Section B claim qualify both as a "fraud" under section 554(1)(b) of the *Insurance Act*[23] and a "false statement" under section 554(1)(c) of the *Insurance Act*. Given his admission, we will not consider these issues in the "Analysis" part of these reasons.

[23] Section 554(1) of the *Insurance Act* relieves the insurer of the obligation to provide the insured with SEF No. 44 benefits. There are two reasons for this conclusion. First, the insured's lie in his proof of loss for Section B benefits and in his statements to the Section B adjuster constituted a fraud under section 554(1)(b) and wilful false statements under section 554(1)(c). They were material with respect to the Section B claim. Second, the insured's claims for Section B and SEF No. 44 benefits constitute "a claim" under section 554(1) because they both arise from the same event – the automobile accident caused by the uninsured motorist – and are made under the same insurance contract. An insured who files a fraudulent proof of loss under that circumstance is not entitled to a single dime from the insurer.

IV. Relevant Provisions of the *Insurance Act*

[24] The key parts of the *Insurance Act*[24] are set out below:

> 516(6) The application or proposal for insurance must not, as against the insured, be deemed to be a part of or be considered with a contract except insofar as the Court determines that it contains a *material misrepresentation* by which the insurer was induced to enter into the contract, the proof of which rests with the insurer.
>
> (7) No contract may contain or have endorsed on it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that the contract is avoided by reason of any statement in the application or proposal for the insurance inducing the insurer to enter into the contract, unless the term, condition, stipulation, warranty or proviso is limited to cases in which the statement is material to the contract, and no contract may be avoided by reason of the inaccuracy of any such statement unless it is material to the contract.
>
> (8) The question of materiality in any contract is a question of fact, and no admission, term, condition, stipulation, warranty or proviso to the contrary

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[22] Id. 1699.

[23] R.S.A. 2000, c. I-3.

[24] Id.

contained in the application or proposal for insurance or in the policy or in any agreement or document relating to the contract has any force or validity.

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540 Statutory Conditions

MISREPRESENTATION 1 If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

….

554(1) If

…

(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.

….

652(1) An applicant for insurance and a person whose life is to be insured must each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the applicant's or person's knowledge that is material to the insurance and is not so disclosed by the other.

V. Analysis

A. The Insured and the Insurer Disagree as to the Relevance of Materiality When Applying Section 554(1) of the *Insurance Act*

[25] During the course of oral argument, the Court presented counsel with several hypotheticals to ensure that the Court properly understood counsel's positions on materiality.

[26] In the first hypothetical, the insured had a homeowner's policy that covered twenty-five pieces of described jewelry of equal value that together were valued at $2.5 million. When the insured returned home from a family vacation, he discovered that a thief had entered the family home without tripping the alarm system and opened the safe in which the jewelry was stored. The insured completed a proof of loss form and submitted it to the insurer. He listed all twenty-five

pieces as stolen even though he had given ten to each of his two daughters-in-law just before he left on vacation. The adjuster expressly asked the insured if he or his wife had given away any of the jewelry as gifts. He denied doing so. Subsequent investigations revealed the truth. The insurer refused to pay the insured $500,000 for the five pieces the jewel thief actually stole, relying on section 554(1) of the *Insurance Act*.[25] Both counsel agreed that section 554(1) authorized the insurer to take this position.[26]

[27] In the second hypothetical the insured did not discover the theft of the jewelry until several weeks after he and his wife returned from the family vacation and another calamity befell them. An electrical fire in their mechanical room caused the house to burn to the ground. One of the items that was not destroyed was the safe. When the insured opened the safe he discovered that the jewelry was missing. He believed that a thief had broken into his home while he and his wife were away and stole the jewelry. The insured filed a proof of the loss caused by the fire and jewel theft. The proof of loss contained the same false statement as was made in the first hypothetical. Both counsel agreed that section 554(1) relieved the insurer of the obligation to indemnify the insured for the jewelry that was actually stolen. And both agreed that the insurer had to indemnify the insured for the loss caused by the machine room fire. Mr. Pick, counsel for Esurance, based his position on the fact that the two losses were attributable to discrete events – the work of a jewel thief and the malfunction of equipment in the machine room. Mr. Hoornaert, counsel for the insured, argued that the insurer must pay the fire loss because the wilfully false statements did not have any material effect on the insurer's obligation to indemnify the insured for the fire loss. The false information set out in the insured's proof of loss related to the jewelry and had no bearing on the insured's obligation to indemnify the insurer for the fire loss.

[28] Their distinct reasons account for the different positions they took before us on the facts at hand.

[29] Mr. Pick asserted that the two losses the insured asks the insurer to compensate him for were caused by the same event – an automobile accident – and arise under the same insurance contract. He argued that this means section 554(1) of the *Insurance Act* relieves the insurer of the obligation to provide the insured with both Section B and SEF No. 44 benefits.

[30] Mr. Pick denied the applicability of the materiality concept in Alberta to claims under valid insurance contracts.

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[25] R.S.A. 2000, c. I-3.

[26] See *Claflin v. Commonwealth Ins. Co.*, 110 U.S. 81, 96 (1884) per Matthews, J. ("The fact whether Murphy had an insurable interest in the merchandise covered by the policy was directly in issue between the parties. By the terms of the contract he was bound to answer truly every question put to him that was relevant to that inquiry. His answer to every question pertinent to that point was material, and made so by the contract, and because it was material as evidence; so that every false statement on that subject, knowingly made, was intended to deceive and was fraudulent").

[31] This Court has imposed harsh consequences on an insured who engaged in fraud in the course of claiming entitlement to benefits under an admittedly valid insurance contract. This is the case even if the insured's fraud did not prejudice the insurer directly. In *Swan Hills Emporium & Lumber Co. v. Royal General Insurance Co. of Canada*,[27] the Appellate Division of the Supreme Court of Alberta relieved the insurer of any obligation to indemnify the insured for fire losses because the insured falsely listed three televisions as fire losses when they were not. It mattered not to the appeal court that the insured had promised to pay up to $30,000 for fire losses and that the loss, without taking into account the televisions, exceeded $30,000.[28] The appeal court based its decision[29] on statutory condition 7 in a fire insurance policy:[30] "Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration."

[32] Chief Justice McGillivray, the author of the *Swan Hill Emporium & Lumber Co*. judgment, relied on *Dolloff v. Phoenix Insurance Co*.,[31] an opinion of Maine's highest court. Maine's Supreme Judicial Court rejected the insured's argument that his fraudulent clam did not harm the insured because the conceded losses exceeded the policy limit:[32]

> The court will not undertake for him the offensive task of separating his true from his false assertions. Fraud, in any part of his formal statement of his loss taints the

[27] 2 A.R. 63 (1977).

[28] Id. 81-82.

[29] Id. 70.

[30] *The Alberta Insurance Act*, R.S.A. 1970, c. 187, s. 223, statutory condition 7.

[31] 82 Me. 266; 19 A. 396 (Sup. Jud. Ct. 1890). There are a number of American cases that both adopt and reject the materiality concept in pre-insurance contract cases. E.g., *Friesmuth v. Agawam Mutual Fire Ins. Co.*, 64 Mass. 587, 590 (Sup. Jud. Ct. 1852) per Bigelow, J. ("The plaintiff further contends if he is not entitled to recover the whole sum for which the property was insured on account of the misrepresentation respecting incumbrances on a portion of the property, he has nevertheless a valid claim for amount insured on the stock in trade, because the four subjects embraced in the policy, being valued separately, and a distinct sum insured on each, and there having been no incumbrances on the stock, there was no misrepresentation respecting this part of the property, which can affect this claim for loss thereon. But it appears to us that this argument proceeds upon a mistaken view of the nature of the contract, and the respective rights and liabilities of the parties. The contract of insurance ... was not distinct and separate on each class or subject embraced in the policy. It was separate and distinct only so far as to limit the extent of the risk assumed by the defendants on each kind of property. In all other respects it was an entire contract"); *Gottsman v. Pennsylvania Ins. Co.*, 56 Pa. 210 (Sup. Ct. 1867) (the appeal court enforced an insurance contract term that stated, in effect, any untrue statement in the application for insurance voids the contract whether or not the misrepresentation had any connection to the ultimate loss) & *Lovejoy v. Augusta Mut. Fire Ins. Co.*, 45 Me. 472, 473 (Sup. Jud. Ct. 1858) per Hathaway, J. ("The contract of insurance was entire, and the representations made by the plaintiff, in his application for insurance, of his ownership of the store, being of a material fact, and being false, the policy was, therefore, void").

[32] 82 Me. 266, 271; 19 A. 396, 397 (Sup. Jud. Ct. 1890).

> whole. Thus corrupted, it should be wholly rejected, and the suitor left to repent that he destroyed his actual claim by the poison of his false claim.

[33] While it is true that the *Swan Hills* opinion does not address the materiality concept in detail, it is safe to conclude that the Court held that any false statement in a proof of loss in a fire loss claim is material.[33] The insurer promised to indemnify the insured for losses attributable to fire and statutory condition 7 focuses on a false statement "in relation to any of the above particulars".

[34] *Swan Hills* stands for the proposition that an insurer is relieved of the obligation to pay any claim made by an insured who makes a wilfully false statement in a proof of loss that is material, including any claims untainted by the fraud. This is a severe measure designed to deter fraudulent insureds from making false claims and reduce the cost of insurance.[34]

[35] *Swan Hills* is still good law in Alberta. No subsequent decision of this Court has diminished its precedential value in any way.

[36] Alberta courts have applied it as recently as 2015. It is interesting to note that in the Alberta cases that have applied *Swan Hills* the insured's wilfully false statements have been material.[35] For example, in *Kemp v. State Farm Mutual Auto Insurance Co.*,[36] the insured dishonestly claimed no-fault income replacement benefits for a period when he was not employed.

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[33] *Swan Hills Emporium & Lumber Co. Ltd. v. Royal General Ins. Co. of Canada,* 2 A.R. 63, 81 per McGillivray, C.J. ("It is argued on Appeal on behalf of the respondents that even if the items which were not destroyed [in the fire] had been as they should have been, excluded from the Proof of Loss, the sound value of the goods which had been destroyed still exceeded the limits of the Policy, and that Wenger's statements were immaterial. I am unable to accept this. ... It is self-evident that, if an insured advances a claim which is over policy limits, the claim may not receive the same scrutiny which it would if every item forms the basis for the claim").

[34] *Galloway v. Guardian Royal Exchange (U.K.) Ltd.*, [1997] EWCA Civ 2487; [1999] Lloyd's Rep. I.R. 209, 214 per Millett, L.J. ("The making of dishonest insurance claims has become all too common. There seems to be a widespread belief that insurance companies are fair game, and that defrauding them is not morally reprehensible. The rule which we are asked to enforce today may appear to some to be harsh, but is in my opinion a necessary and salutary rule which deserves to be better known by the public").

[35] See *Kemp v. State Farm Mutual Auto. Ins. Co.*, 2015 ABPC 204 & *Pitchon v. Meloche Monnex Inc.*, 2005 ABPC 174; 28 C.C.L.I. 4th 321 (the Court relied on *Swan Hills* to deny a dishonest insured in recovery under his homeowner's policy).

[36] 2015 ABPC 204, ¶¶ 39 & 41.

[37] *Swan Hills* was consistent with the common law when it was pronounced[37] – and the common law has not changed one iota in the forty-five years following its pronouncement.

[38] The Ontario and Manitoba appeal courts have cited *Swan Hills* with approval.[38]

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[37] *Manifest Shipping Co. v. Uni-Polaris Shipping Co.*, [2001] UKHL1, ¶ 62; [2001] 1 All E.R. 743, 764 per Lord Hobhouse ("The law is that the insured who has made a fraudulent claim may not recover the claim which could have been honestly made. The principle is well established and has certainly existed since the early nineteenth century").

[38] *Frenchie's Farm and Ranch Ltd. v. Peace Hills Ins. Co.*, 2022 MBCA 10, ¶¶ 2-3 & 5 ("The plaintiff argues that the trial judge erred in ... dismissing the entirety of its claim pursuant to statutory condition 7 of *The Insurance Act* ... on the basis of a wilfully false statement in the proof of loss submitted ... . We see no error warranting appellate intervention. .... The trial judge correctly noted that a false statement will violate statutory condition 7 if it is made knowingly without belief in its truth or recklessly without caring whether it is true or not ... . Further, *he noted that, where an insured makes an intentionally false declaration, the claim is voided in its entirety* (... see also *Swan Hills Emporium & Lumber Co. v. Royal General Insurance Co.* ...)") (emphasis added) & *Sagl v. Cosburn, Griffiths & Brandham Ins. Brokers Ltd.*, 2009 ONCA 388, ¶¶ 77 & 80; 249 O.A.C. 234, 251-52 leave to appeal ref'd, [2009] S.C.C.A. No. 303 ("Chubb submits that the trial judge erred in two respects in his analysis of its proof of loss defence. First, the trial judge mistakenly relied on the fact that Sagl was underinsured. Second, Sagl's credibility was the foundation of her proof of loss and the reasons are deficient in that they do not indicate how the trial judge resolved the serious challenges to her credibility. This issue was pivotal to the assessment of both whether Sagl fulfilled her obligation to establish the amount of her loss and Chubb's defence of intentional overstatement of the amount. .... *Assuming Chubb's interpretation of the trial judge's reasoning is correct, it is clear that fraud in connection with any part of the claim will void the entire policy, and the fact that the insured may be underinsured has no relevance*: *Swan Hills Emporium & Lumber Co. v. Royal General Insurance Co. of Canada* ... .") (emphasis added). But note id. ¶ 107; 249 O.A.C. at 257 ("In order to vitiate a policy for fraud, the insured must have made a wilfully false statement in relation to something material to the proof of either the existence or extent of the loss, which would include intentionally inflated values").

[39] Other Canadian,[39] English[40] and American[41] courts have visited the same harsh consequences on dishonest insureds who filed fraudulent proofs of loss.

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[39] E.g., *Anastasov v. Halifax Ins. Co.*, 15 B.C.L.R. 2d 263, 268 (C.A. 1987) per MacFarlane, J.A. ("The claim was not payable unless the plaintiffs had replaced the goods. They knew that was so; they had been told so by the adjuster. The female plaintiff represented that the goods had been replaced and paid for. They had not. She intended that the defendant should pay the claim when it was not properly payable under the terms of the policy. The misrepresentation related to the integrity of the claim itself. It was a serious breach of the duty of an insured to act in good faith"); *Lazy K & T Cattle Enterprises Ltd. v. British American Assur. Co.*, [1977] I.L.R. 1-881, 639 (B.C. Sup. Ct.) ("there was but one contract and the fraudulent claim with respect to the household goods and personal effects vitiates the whole contract"); *Sokolowsky v. Fire Assoc. of Philadelphia*, [1938] 5 I.L.R. 332, 341 (B.C. Sup. Ct.) ("the whole claim is vitiated by reason of the fraud and wilfully false statements in the statutory declaration [regarding his household furniture, furnishings and personal effects] ... and the claim [for fire loss of his dwelling house] must be dismissed"); *Woloschuk v. Saskatchewan Mutual Ins. Co.*, 2000 SKQB 538, ¶ 32; 24 C.C.L.I. 3d 141, 148 per Gunn, J. ("I am satisfied on a balance of probabilities that the plaintiff made false claims [contrary to statutory condition 7] to the defendant with respect to the value of the items stolen. The effect of his falsification of his claim is to vitiate the whole claim. The plaintiff's claim is void by reason of the submission of a wilfully false statement. The claim is dismissed with costs"); *Maple Leaf Milling Co. v. Colonial Assur. Co.*, 36 D.L.R. 202, 215 & 216 (Man. C.A. 1917) per Cameron, J.A. ("a false statement in a statutory declaration of loss under a policy in reference to part vitiates the whole. .... [A] wilfully false statement was made by the plaintiff in his statutory declaration on a material point [.] ... [H]e must fail in his action"); *Marchak v. Guardian Assur. Co.*, [1924] 4 D.L.R. 887, 892 (Man. K.B.) per Mathew, C.J. ("A false statement in the statutory declaration respecting the loss of the furniture vitiates the claim also respecting the loss of the buildings"); *Miller-Morse Hardware Co. v. Dominion Fire Ins. Co.*, 61 D.L.R. 114, 119 (Sask. C.A. 1921), aff'd 65 D.L.R. 292 (S.C.C. 1922) per Turgeon, J.A. ("Mary Stockhammer had two policies with the Dominion Fire Insurance Company; one on the goods for $3,000, and one on the building for $1,600. The proof of loss put in by her covers all the property, real and personal, included in both policies. The claim in the goods policy is defeated by her false statement, but does it follow that the claim for the insurance on the building is also vitiated? I think not. Each of these policies constitutes a separate contract between the parties. There is no suggestion of any false statement regarding the building, and I do not think the insured or her assignees have lost the right to claim under that policy. It would be different if all the property was covered by the one policy, because in that case there would be only one contract, and fraud in one particular would vitiate the contract altogether"); *Cashman v. London and Liverpool Fire Ins. Co.*, 10 N.B.R. 246 (C.A. 1862) (the Court held that false swearing regarding merchandise loss vitiated the insured's claim for a loss related to the building) & *Harris v. Waterloo Mut. Ins. Co.*, 10 O.R. 718, 725 (High Ct. C.P. Div. 1886) per Rose, J. ("I also agree to the observation of the learned Chief Justice as to the object of the Legislature in making fraud or a false statement in the declaration, in relation to any of the above particulars, shall vitiate the whole claim. When a fire has occurred and it becomes difficult, sometimes almost impossible, to check the truth of the account given by the claimant, it does not seem too severe to say to him, 'if you send in a statutory declaration made in fraud and founded on falsity you shall recover nothing'").

[40] E.g., *Manifest Shipping Co. v. Uni-Polaris Shipping Co.*, [2001] UKHL 1, ¶ 62; [2001] 1 All E.R. 743, 764 per Lord Hobhouse ("Where an insured is found to have made a fraudulent claim upon the insurers, the insurer is obviously not liable for the fraudulent claim. But often there will have been a lesser claim which could properly have been made and which the insured, when found out, seeks to recover. The law is that the insured who has made a fraudulent claim may not recover the claim which could have been honestly made. The principle is well established and has certainly existed since the early nineteenth century"); 60 Halsbury's Law of England 180 (2018) ("an insured who makes a fraudulent claim forfeits the whole of the claim to which the fraud relates, whether the policy contains an express condition to that effect or not. The forfeiture of the whole claim including any part of it that was or might otherwise

[40] Mr. Hoornaert maintains that section 554(1) is not applicable because the insured's false statements about his employment status would prejudice the insurer only when considering the insured's assertion that he was entitled to Section B replacement employment income benefits. The insured's employment status was not a relevant consideration when considering his entitlement to SEF No. 44 benefits – was he injured by the negligent acts of an uninsured driver? Any obligation the insurer had under SEF No. 44 to the insured did not turn on the employment status of the insured.

[41] The insured relies on three British Columbia cases.

[42] The first is *Inland Kenworth Ltd. v. Commonwealth Insurance Company*,[42] a 1990 opinion of the Court of Appeal. The insured, after his truck had been involved in an accident, had it inspected and submitted a backdated inspection report to the insurer to satisfy an obligation under the insurance contract to have the truck inspected before a stipulated date. The insurer refused to pay, relying on the British Columbia counterpart to section 554(1) of Alberta's *Insurance Act*.[43] The trial judge held that the false statement was not material and ordered Commonwealth Insurance to pay the insured for the property loss.

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be good is consistent with principle, since the policy of the rule is to discourage any feeling that the genuine part of the claim can be regarded as safe, and that any fraud will lead at best to an unjustified bonus, and , at worst, to no more than a refusal to pay a sum which was never insured in the first place") & *Galloway v. Guardian Royal Exchange (UK) Ltd.*, [1997] EWCA Civ 2487; [1999] Lloyd's Rep. I.R. 209 (the Court dismissed an appeal from a trial judgment rejecting an insured's entire claim for losses arising from an admitted burglary – the thief stole approximately £16,000 worth of goods – because the insured falsely claimed £2,000 for the loss of a nonexistent computer).

[41] E.g., *Werber Leather Coat Co. v. Niagara Fire Ins. Co. of New York*, 254 A.D. 298, 300 (N.Y. App. Div. 1938) per Hagarty, J. ("If there is willful misrepresentation of a material fact, or concealment thereof, on the part of the insured in the proof of loss, examination pursuant to the policy, or otherwise, the policy is void in accordance with its terms"); *Fowler v. Phoenix Ins. Co.*, 57 P. 421, 424 (Ore. Sup. Ct. 1899) per Wolverton, C.J. ("We have found no case where fraud or false swearing is introduced as an element in the consideration wherein the contract is construed to be divisible except in Texas, and the statute of that state is held to be the controlling factor in the construction"); *Henricksen v. Home Ins. Co.*, 392 P. 2d 324, 326 (Ore. Sup. Ct. 1964) per O'Connell, J. ("The jury should have been instructed that if plaintiffs wilfully overstated the value of the goods in the inventories or in the proof of loss or if they included items not damaged or lost as a result of the fire, then defendant is not liable irrespective of whether the misrepresentations caused damage to defendant") & *Mosrie v. Automobile Ins. Co.*, 141 S.E. 871, 873 (W. Va. Sup. Ct. 1928) per Litz, J. ("A false and fraudulent claim in respect to one of the cars precludes the right of recovery as to the others").

[42] 72 D.L.R. 4th 594 (B.C.C.A. 1990).

[43] *Insurance Act*, R.S.B.C. 1979, c. 200, s. 231(1).

[43] Chief Justice McEachern, for the Court, allowed the appeal, holding that the fraudulent inspection certificate was a material misstatement. Of interest was his opinion that a false statement must be material to vitiate coverage:[44]

> I believe a fraud or wilfully false statement about the quality or condition of the insured property – the subject of the claim – which is capable of affecting the mind of the insurer regarding the claim must be material. …
>
> ….
>
> I do not say that any wilfully false statement will be sufficient to vitiate coverage. It must be material. I think the wilfully false statement about the subject matter of the insurance … also related to the question of value, and was capable of affecting the mind of the insurer, destroyed the integrity of the claim, and was material at least to the latter question. Under the Act, and at law, this forfeits the right of the insured to indemnity.

[44] In *Petersen v. Bannon*,[45] a 1993 case, the British Columbia Court of Appeal interpreted section 18(1)(e) of the *Insurance (Motor Vehicle) Act*:[46]

> 18(1) Where
>
> …
>
> (e) an insured makes a wilfully false statement with respect to a claim under a plan,
>
> all claims by or in respect of the applicant or the insured shall be rendered invalid, and his right and the right of a person claiming through or on behalf of or as a dependent of the applicant or the insured to benefits and insurance money shall be forfeited.

[45] The insured lied when he stated in a statutory declaration that another vehicle forced the truck in which he was a passenger off the road. Justice Finch concluded that this was a material misstatement.[47] This was important given that, he opined, "*Inland Kenworth* ... affirmed that if an insured makes a wilfully false statement about the subject-matter of his or her claim, that person risks forfeiture if the statement is material to any issue arising in the claim. ... A wilfully false

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[44] 72 D.L.R. 4th 594, 598 & 599. See *Dimario v. Royal Ins. Canada*, 26 O.A.C. 370, 372 (Div. Ct. 1987) ("wilfully false statements on material matters in a proof of loss will vitiate the right to any recover under the policy") & *Crowley v. Agricultural Mut. Assur. Ass'n of Canada*, 21 U.C.C.P. 567, 570 (1871) per Galt, J. ("a false statement made by the plaintiff [in support of a claim under an insurance contract] must be one bearing on the proof of the plaintiff's loss").

[45] 107 D.L.R. 4th 616 (B.C.C.A. 1993), leave to appeal ref'd, [1994] S.C.C.A. No. 39.

[46] R.S.B.C. 1979, c. 204.

[47] 107 D.L.R. 4th 616, 629, leave to appeal ref'd, [1994] S.C.C.A. No. 39.

statement will invalidate an insured's claim only if the statement is material to the claim at risk of forfeiture."[48] The appeal court concluded that the insured's false statement was material.[49]

[46] *Brown v. Insurance Corporation of British Columbia*[50] is the third case. A five-member panel adopted the statements of the law made in *Inland Kenworth* and *Petersen v. Bannon*.[51]

B. The Governing Principles of Statutory Interpretation Are Not Complicated

[47] We will now consider paragraphs 554(1)(b) and (c) of the *Insurance Act*.[52]

[48] The governing principles of statutory interpretation are straightforward and not contentious.[53]

[49] First, an adjudicator must read the entire statute and related statutes.[54] "Context is a primary determinant of meaning. A legal instrument typically contains many interrelated parts that make up the whole. The entirety of the document thus provides the context for each of its parts."[55]

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[48] Id. 628.

[49] Id. 629.

[50] 2004 BCCA 254; 196 B.C.A.C. 204.

[51] Id. at ¶ 12; 196 B.C.A.C. at 207.

[52] R.S.A. 2000, c. I-3.

[53] *Alexis v. Alberta*, 2020 ABCA 188, ¶ 42 per Wakeling & Greckol, JJ.A. ("The basic approach to a statutory interpretation problem is easy to state").

[54] *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27, 41 per Iacobucci, J. ("the words of an Act are to be read in their entire context"); *Estate of Hicklin v. Hicklin*, 2019 ABCA 136, ¶ 49; [2019] 6 W.W.R. 238, 255 ("an adjudicator interpreting a ... statute must read the whole ... statute"); *Attorney General v. Prince Ernest Augustus of Hanover*, [1957] A.C. 436, 463 (H.L.) per Viscount Simonds ("no one should profess to understand any part of a statute ... before he ha read the whole of it") & *Panama Ref. Co. v. Ryan*, 293 U.S. 388, 439 (1935) per Cardozo, J. ("the meaning of a statute is to be looked for, not in any single section, but in all the parts together and in their relation to the end in view").

[55] A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 167 (2012). See *Sealy (Western) Ltd. v. Upholsterers' International Union of North America, Local 34*, 20 L.A.C. 3d 45, 50 (Wakeling 1985) ("we will review the entire ... [collective agreement] in order to gain some insight into the reasons why the parties utilized singular or plural forms. We are anxious to determine with what care the document has been drafted. Have the parties followed any particular pattern with respect to the use of the singular or plural forms? Our search suggests they have not. Frequently the singular form has been used when the plural would be more appropriate. And on occasion the plural has been used when the singular would have been the better choice").

[50] Second, an adjudicator must ask what the plain and ordinary meaning of the contested text is.[56] "A permissible meaning is one that a reasonable reader who uses the language correctly would give the text at the time of its production".[57] It goes without saying that it is a cardinal sin for an adjudicator to give text a meaning it cannot possibly bear.[58]

[51] If the text supports only one plausible meaning, the inquiry is complete.[59]

[52] But if the text can be legitimately interpreted to have more than one plausible meaning, the adjudicator must "select the option that best advances the purpose that accounts for the text."[60]

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[56] *Humphreys v. Trebilcock*, 2017 ABCA 116, ¶ 109; [2017] 7 W.W.R. 343, 375-76, leave to appeal ref'd, [2017] S.C.C.A. No. 228 ("[a tribunal] must identify the potential permissible meanings of these terms, taking into account their ordinary meanings"); *The Queen v. D.A.I.*, 2012 SCC 5, ¶ 26; [2012] 1 S.C.R. 149, 166 per McLaughlin, C.J. ("The first and cardinal principle of statutory interpretation is that one must look to the plain words of the provision"); *The Queen v. Secretary of State for the Environment, Transport and the Regions, ex p. Spath Home Ltd.*, [2001] 2 A.C. 349, 397 per Lord Nicholls ("language is to be taken to bear its ordinary meaning in the general context of the statute"); *Caminetti v. United States*, 242 U.S. 470, 485-86 (1917) per Day, J. ("Statutory words are uniformly presumed, unless the contrary appears, to be used in their ordinary and usual sense, with the meaning commonly attributed to them"); R. Sullivan, Sullivan on the Construction of Statutes 28 (7th ed. 2020) ("It is presumed that the ordinary meaning of legislative text is the meaning intended by the legislators) & 229 ("the grammatical and ordinary meaning of a text ... is the starting point for all interpretation") & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 69 (2012) ("Words are to be understood in their ordinary, every day meanings – unless the context indicates they bear a technical sense").

[57] *Alexis v. Alberta*, 2020 ABCA 188, ¶ 47 per Wakeling & Greckol, JJ.A.

[58] *Zuk v. Alberta Dental Ass'n*, 2018 ABCA 270, ¶ 159; 426 D.L.R. 4th 496, 539, leave to appeal ref'd, [2018] S.C.C.A. No. 439 ("Words must not be given meanings they cannot possibly bear").

[59] *Alexis v. Alberta*, 2020 ABCA 188, ¶ 49 per Wakeling & Greckol, JJ.A. ("If the statutory text supports only one plausible or permissible meaning, the inquiry is complete. In this scenario there is no need to take into account the enactment's purpose") & *Black-Clawson Ltd. v. Papierwerk Waldhof-Aschattenburg A.G.*, [1975] A.C. 591, 613 (H.L.) per Lord Reid ("We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said. In the comparatively few cases where the words of a statutory provision are only capable of having one meaning, that is an end of the matter and no further inquiry is permissible").

[60] *Humphreys v. Trebilcock*, 2017 ABCA 116, ¶ 109; [2017] 7 W.W.R. 343, 376, leave to appeal ref'd, [2017] S.C.C.A. No. 228. See also *Celgene Corp. v. Canada*, 2011 SCC 1, ¶ 21; [2011] 1 S.C.R. 3, 13 per Abella, J. ("The words, if clear, will dominate; if not, they yield to an interpretation that best meets the overriding purpose of the statute"); *Hamilton v. Rathbone*, 175 U.S. 414, 419 (1899) per Brown, J. ("where a statute is ... susceptible upon its face of two constructions, the court may look into ... the purpose intended to be accomplished by it, to determine its proper construction. But where the act is clear upon its face, and when standing alone it is fairly susceptible of but one construction, that construction must be given to it"); *National Tax Credit Partners L.P. v. Havlik*, 20 F. 3d 705, 707 (7th Cir. 1994) per Easterbrook, Cir. J. ("Knowing the purpose behind a rule may help a court decode an *ambiguous* text") (emphasis added) & *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992) per Scalia, J. ("courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, the first canon is also the last: 'judicial inquiry is complete'").

Legislators always pass laws for a purpose.[61] The best indicator of a statute's purpose is the statute's text.[62] Section 12 of the *Interpretation Act*[63] – "Every enactment ... shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" – strongly supports this direction.

[53] This means that on most occasions a court must search for the reason the legislature passed the contested provisions.[64]

[54] Suppose a municipal bylaw prohibits the operation of a lawn mower in designated residential neighbourhoods between 9:00 pm and 8:00 am the next day. Council enacted the bylaw after residents complained that noisy lawn mowers disturbed the peace of the neighbourhoods and prevented their young children from falling asleep. The bylaw did not define "lawn mower". Councillors were fearful that a noise-level marker would impair the effectiveness of the bylaw. Contests would inevitably arise as to the amount of noise a lawn mower actually emitted. Councillors were concerned that this would deter bylaw-enforcement officers from applying the bylaw. As a result, the bylaw prohibits the operation of all lawn mowers – gasoline lawn mowers, electric lawn mowers and reel push lawn mowers. Webster's Third New International Dictionary of the English Language Unabridged[65] utilizes a picture of a reel push mower in its definition of lawn mower. This bylaw undeniably prohibits the operation of a reel push mower, even though a reel push mower makes no noise when operated.

[55] If a bylaw-enforcement officer charged a resident who was using his reel push mower during prohibited hours and the prosecutor led evidence of the key facts, the outcome would be predictable. The adjudicator would not have to devote any time to ascertaining the purpose of the bylaw. The text supports only one plausible meaning.

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[61] Frankfurter, "Some Reflections on the Reading of Statutes", 47 Colum. L. Rev. 527, 538-39 (1947).

[62] *Frank v. Canada*, 2019 SCC 1, ¶ 130; [2019] 1 S.C.R. 3, 71 per Côté & Brown, JJ. ("the best way of discerning a legislature's purpose will usually be to look to the legislation itself").

[63] R.S.A. 2000, c. I-8.

[64] *Black-Clawson Ltd. v. Papierwerk Waldhoff-Aschattenburg A.G.*, [1975] A.C. 591, 613 (H.L.) per Lord Reid ("In the comparatively few cases where the words of a statutory provision are only capable of having one meaning, that is an end of the matter and no further inquiry is permissible").

[65] Webster's Third New International Dictionary of the English Language Unabridged 1280 (2022).

C. Application of the Governing Principles of Statutory Interpretation

1. Our Review of the *Insurance Act*

[56] We must familiarize ourselves with the entire *Insurance Act*.[66] This allows us to ascertain the use to which various insurance concepts have been put and under what circumstances.

[57] Our review discloses one important fact. The concept of materiality is utilized in several places in the *Act*.

[58] There are a number of provisions regulating applications or proposals for insurance that incorporate the materiality concept.

[59] The first is section 516. It appears in the segment of the *Insurance Act* that records the provisions that must appear in all insurance contracts. It follows:[67]

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[66] R.S.A. 2000, c. I-3.

[67] Emphasis added. Other jurisdictions also adopt the materiality concept into their rules governing applications or proposals for insurance. E.g., *Marine Insurance Act 1906*, c. 41, s. 18 (U.K.) ("(1) Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every *material* circumstance which is known to the assured … . If the assured fails to make such disclosure, the insurer may avoid the contract. (2) Every circumstance is material which would influence the judgment of a private insurer in fixing the premium, or determining whether he will take the risk") (emphasis added), now overtaken by the *Insurance Act 2015*, c. 4, s. 12 (U.K.), s. 21 ("(2) In the Marine Insurance Act 1906, sections 18 (disclosure by assured), 19 (disclosure by agent effecting insurance) and 20 (representations pending negotiation of contract) are omitted. (3) Any rule of law to the same effect as any of those provisions is abolished") & ss. 3 & 7(3) ("(1) Before a contract of insurance is entered into, the insured must make to the insurer a fair presentation of the risk. ... (4) The disclosure required is as follows, except as provided in subsection (5) – (a) disclosure of every *material* circumstance which the insured knows or ought to know, or (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances. .... A circumstance or representation is material if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms") & 8(1) ("The insurer has a remedy against the insured for a breach of the duty of fair presentation only if the insurer shows that, but for the breach, the insurer a – (a) would not have entered into the contract of insurance at all, or (b) would have done so only on different terms") (emphasis added); *Insurance Contracts Act 1984*, No. 80, s. 54 (N.S.W.) ("(1) Subject to this section, where the effect of a contract of insurance would, but for this section, be that the insurer may refuse to pay a claim, either in whole or in part, by reason of some act of the insured … being an act that occurred after the contract was entered into but not being an act in respect of which subsection (2) applies, the insurer may not refuse to pay the claim by reason only of that act but the insurer's liability in respect of the claim is reduced by the amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of that act. … (3) Where the insured proves that no part of the loss that gave rise to the claim was caused by the act, the insurer may not refuse to pay the claim by reason only of the act") & N.Y. Ins. Law § 3105(b)(1) (McKinney) ("No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless such misrepresentation was *material*. No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless such misrepresentation was material. No misrepresentation shall be deemed material unless

(6) The application or proposal for insurance must not, as against the insured, be deemed to be a part of or be considered with a contract except insofar as the Court determines that it contains a *material* misrepresentation by which the insurer was induced to enter into the contract, the proof of which rests with the insurer.

(7) No contract may contain or have endorsed on it, or be made subject to, any term, condition, stipulation, warranty or proviso providing that the contract is avoided by reason of any statement in the application or proposal for the insurance inducing the insurer to enter into the contract, unless the term, condition, stipulation, warranty or proviso is limited to cases in which the statement is *material* to the contract, and no contract may be avoided by reason of the inaccuracy of any such statement unless it is *material* to the contract.

(8) The question of materiality in any contract is a question of fact, and no admission, term, condition, stipulation, warranty or proviso to the contrary contained in the application or proposal for insurance or in the policy or in any agreement or document relating to the contract has any force or validity.

[60] Two other sections also incorporate the materiality concept:

540(1) Subject to subsections (2) and (3),

(a) the conditions set out in this section are deemed to be part of every contract in force in Alberta … .

…

Statutory Conditions

Misrepresentation 1 If a person applying for insurance falsely describes the property to the prejudice of the insurer, or misrepresents or fraudulently omits to communicate any circumstance that is material to be made known to the insurer in order to enable it to judge the risk to be undertaken, the contract is void as to any property in relation to which the misrepresentation or omission is material.

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knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract") (emphasis added). See *Ambac Assurance Corp. v. Countrywide Home Loans, Inc.*, 31 N.Y. 3d 569, 580; 106 N.E. 3d 1176, 1183 (Ct. App. 2018) per Garcia, J. ("section 3105 was intended to overrule prior case law which did not require a showing of materiality for an insurer to avoid its obligation under a policy based on the insured's misrepresentations") & *Glickman v. New York Life Ins. Co.*, 291 N.Y. 45, 51; 50 N.E. 2d 538, 540 (Ct. App. 1943) per Desmond, J. ("Apparently in section 150 the Legislature was seeing to it that a policy of insurance will not be avoided by proof of immaterial 'breach of warranty'. Arguments and decisions as to the legal effect of nondisclosure of trivial ailments, or consultations with physicians relative to such ailments, do not furnish the answer to this case. … In the present case we have the covenant in the application, the undisclosed consultations, and the unquestioned fact that the condition found was not trivial. … The fact that the applicant died from another cause does not disprove the increase of risk").

…

> 652(1) An applicant for insurance and a person whose life is to be insured must each disclose to the insurer in the application, on a medical examination, if any, and in any written statements or answers furnished as evidence of insurability, every fact within the applicant's or person's knowledge that is *material* to the insurance and is not so disclosed by the other.

[61] This suggests that the complete absence of any reference to the materiality concept in paragraphs 554(1)(b) and (c) may be telling and may support the argument that materiality is not an element of paragraphs 554(1)(b) and (c). We will address this issue later in our judgment.

2. Object of Paragraphs 554(1)(b) and (c) of the *Insurance Act*

a. The Legislative History

[62] The subject matter of paragraphs 554(1)(b) and (c) of the *Insurance Act*[68] first appeared in statutory conditions for fire, hail and automobile insurance in the period commencing in 1914 and ending in 1923.

[63] *An Act to amend The Alberta Insurance Act*,[69] a 1914 statute, introduced statutory condition 20 to fire insurance contracts: "Any fraud or false statement in *any* statutory declaration in relation to any of the above particulars, [particularizing the loss] shall vitiate the claim of the person making the declaration".

[64] A slightly different text recorded statutory condition 8 for hail insurance contracts:[70] "Any fraud or false statement in *a* statutory declaration in relation to any of the above particulars [particularizing the loss] shall vitiate the claim of the person making the declaration".

[65] *The Automobile Insurance Policy Act*,[71] a 1923 exactment, adopted modest changes to the earlier statutory conditions for fire and hail insurance. Statutory condition 11 provided that "[a]ny fraud or wilfully false statement made under oath, or in a declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration in any matter affected by such fraud or false statement".

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[68] R.S.A. 2000, c. I-3.

[69] S.A. 1914, c. 20, s. 113 (emphasis added).

[70] *An Act to amend The Alberta Insurance Act*, S.A. 1918, c. 33, sch. D, hail insurance condition 8 (emphasis added).

[71] S.A. 1923, c. 45, sch, statutory condition 11.

[66] The 1923 statutory condition 11 for automobile insurance contracts appears to incorporate the materiality concept – "any matter affected by such fraud or false statement".[72]

[67] But it is important to note that this element was not featured in subsequent enactments.

[68] The key parts of the first two statutory conditions were recorded in section 253(1) of *The Alberta Insurance Act, 1926, Amendment Act, 1933*:[73]

> 253(1) … [W]here the insured violates any term or condition of the policy or commits any fraud, or makes any wilfully false statement with respect to a claim under the policy, *any* claim by the insured shall be rendered invalid and the right of the insured to recover indemnity shall be forfeited.

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[72] It appears that this section was changed as a result of recommendations from the Association of Superintendents of Insurance of the Provinces of Canada. Bill 21 of 1933, A Bill to Amend The Alberta Insurance Act, 1926, note ("Section 4 of the Bill strikes out Part VII of the Act dealing with automobile insurance and substitutes therefor the uniform provisions prepared by the Association of Superintendents of Insurance of the Provinces of Canada") & 4 The Fortnightly L.J. 257, 263 (1935) ("The Automobile Insurance provisions [in Ontario] were extensively revised in 1932, and enacted by all the provincial legislatures except that of Quebec").

[73] S.A. 1933, c. 57, s. 4 (emphasis added). Minor changes were made in subsequent enactments. See *The Alberta Insurance Act*, R.S.A. 1942, c. 201, s. 264 ("where the insured violates any term or condition of the policy or commits any fraud, or makes any wilfully false statement with respect to a claim under the policy, *any* claim by the insured shall be rendered invalid and the right of the insured to recover indemnity shall be forfeited") (emphasis added); *The Alberta insurance Act*, R.S.A. 1955, c. 159, s. 286(1) ("where the insured violates a term or condition of the policy or commits a fraud, or makes a wilfully false statement with respect to a claim under the policy, a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited"); *An Act to amend The Alberta Insurance Act*, S.A. 1967, c. 39, s. 283(1) ("Where … (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"); *The Alberta Insurance Act*, R.S.A. 1970, c. 187, s. 287(1) ("Where … (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"); *Insurance Act*, R.S.A. 1980, c. I-5, s. 298(1) ("If … (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"); *Insurance Act*, S.A. 1999, c. I-5.1, s. 613(1) ("If … (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"); *Insurance Act*, R.S.A. 2000, c. I-3, s. 554(1) ("If … (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, claim by the insured is invalid and the right of the insured to recover indemnity is forfeited") & *Insurance Amendment Act, 2008*, S.A. 2008, c. 19, s. 29 (s. 554(1)) ("If ... (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").

[69] A careful reader will detect that the 1933 statutory provision used "any" to modify "fraud", "wilfully false statement" and "claim" and that the current version – paragraphs 554(1)(b) and (c) – substitutes "a" for "any".

[70] Is this significant?

[71] No.

[72] The American Heritage Dictionary of the English Language[74] defines "any" as follows: "adj. 1. One, some, every, or all without specification: Take any book you want. Are there any messages for me? Any child would love that. Give me any food you don't want".

[73] "Any" may mean one or more of something.

[74] What is significant is the reason why the Legislative Assembly of Alberta adopted these statutory conditions and ultimately section 253(1) of *The Alberta Insurance Act 1926, Amendment Act 1933*.

b. Paragraphs 554(1)(b) and (c) and Their Predecessors Codify the Common Law

[75] The legislature, more likely than not, passed these enactments to codify[75] the common law. It is not unusual for legislatures to do this.[76]

[76] Codification of the common law serves important purposes.

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[74] The American Heritage Dictionary of the English Language 81 (5th ed. 2016). See also Webster's Third New International Dictionary of the English Language Unabridged 97 (2002) ("any … 1: one indifferently out of more than two … 2: one, some or all indiscriminately of whatever quantity: a: one or more: not none") & 1 The Oxford English Dictionary 538 (2d ed. 1989) ("Any … An indeterminate derivative of *one*, or rather of the weakened adj. form *a, an*, in which the idea of unity … is subordinated to that of indifference as to the particular one or ones that may be selected").

[75] R. Sullivan, The Construction of Statutes 527 (7th ed. 2022) ("When an existing common law rule, principle, remedy or jurisdiction is reproduced without change in a statute, it is said to be 'codified'").

[76] See *Pan Atlantic Ins. Ltd. v. Pine Top Ins. Co.*, [1995] 1 A.C. 501, 518 (H.L. 1994) per Lord Mustill ("Although the issues arise under a policy of non-marine insurance it is convenient to state them by reference to the Marine Insurance Act 1906 since it has been accepted in argument, and is indeed laid down in several authorities, that in relevant respects the common law relating to the two types of insurance is the same, and that the Act embodies a partial codification of the common law").

[77] It increases the likelihood that those who are most likely to be immediately affected by it will hear of it and adjust their actions to comply with it.[77]

[78] The Legislative Assembly of Alberta is not alone in doing so. In England, a fraudulent claim not only vitiates the claim but also allows the insurer to terminate the contract.[78] This same principle was extended to fraudulent personal injury claims.[79]

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[77] See R. Sullivan, The Construction of Statutes 527 (7th ed. 2022) ("codifications are intended to clarify or [stabilize] … the common law or make it more readily available without changing it"). See also J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 652-53 (14th ed. 2018) ("ss. 12-13 of the Insurance Act 2015 … codify, and thus replace, the common law rule with a statutory regime … . However, the common law position remains of considerable importance … . … [T]he statutory regime has much in common with the existing common law position, and indeed leaves much, including the definition of a 'fraudulent claim', to be determined by the common law. Although some of the debates as to the source and ambit of the common law rule have been resolved by the statutory regime, the common law of fraudulent claims is therefore likely to remain relevant to the interpretation of that regime. Nonetheless, the practical effect of the introduction of the new statutory regime should be felt in increased clarity and certainty, rather than in any major difference in the substantive outcomes involving fraud by the insured") & 60 Halsbury's Laws of England Insurance 180 (2018) ("The Insurance Act 2015 preserved the existing common law under which an insured who makes a fraudulent claim forfeits the whole of the claim to which the fraud relates, whether the policy contains an express condition to that effect or not"); *Harris v. Waterloo Mut. Fire Ins. Co.*, 10 O.R. 718, 725 (High Ct. C.P. Div. 1886) per Cameron, C.J. ("The Legislature in adopting these statutory conditions ['Any fraud or false statement in a statutory declaration, in relation to any of the above particulars, shall vitiate the claim'] may have been desirous of enforcing the observance of the utmost good faith between insurer and insured, and to prevent the making by the latter of unjust and dishonest claims, and so enacted that a wilfully false statement made with the dishonest purpose of obtaining more than the loss actually incurred, should avoid the whole claim, and not confine the effect of the dishonesty to the property in respect of which it is made") & 725 per Rose J. ("I also agree to the observation of the learned Chief Justice as to the object of the Legislature in making fraud or a false statement in the declaration vitiate the whole claim. When a fire has occurred and it becomes difficult, sometimes almost impossible, to check the truth of the account given by the claimant, it does not seem too severe to say to him, 'if you send in a statutory declaration made in fraud and founded on falsity you shall recover nothing.'").

[78] *Insurance Act 2015*, c. 4, s. 12 (U.K.) ("(1) If the insured makes a fraudulent claim under a contract of insurance – (a) the insurer is not liable to pay the claim, (b) the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and (c) in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act. (2) If the insurer does treat the contract as having been terminated – (a) it may refuse all liability to the insured under the contract in respect of a relevant event occurring after the time of the fraudulent act, and (b) it need not return any of the premiums paid under the contract. (3) Treating a contract as having been terminated under this section does not affect the rights and obligations of the parties to the contract with respect to a relevant event occurring before the time of the fraudulent act. (4) In subsections (2)(a) and (3), 'relevant event' refers to whatever gives rise to the insurer's liability under the contract (and includes, for example, the occurrence of a loss, the making of a claim, or the notification of a potential claim, depending on how the contract is written").

[79] *Criminal Justice and Courts Act 2015*, c. 2, s. 57 (U.K.) ("(1) This section applies where, in proceedings on a claim for damages in respect of personal injury ('the primary claim') – (a) the court finds that the claimant is entitled to damages in respect of the claim, but (b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that *the claimant has been fundamentally dishonest in*

[79] In the United States, on the other hand, courts enforce the contractual provisions that insurers utilize to the same effect[80] if relevant criteria for invoking the defence are met.[81]

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relation to the primary claim or a related claim. (2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed. (3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest") (emphasis added) & House of Lords Hansard 1267 per Lord Faulks (July 23, 2014) ("Under the current law, the courts have discretion to dismiss a claim in cases of dishonesty, but will do so only in very exceptional circumstances, and will generally still award the claimant compensation in relation to the "genuine" element of the claim. The Government simply do not believe that people who behave in a fundamentally dishonest way ... by grossly exaggerating their own claim or colluding should be allowed to benefit by getting compensation in spite of their deceit. Clause 45 seeks to strengthen the law so that dismissal of the entire claim should become the norm in such cases. However, at the same time, it recognises that the dismissal of the claim will not always be appropriate and gives the court the discretion not to do so where it would cause substantial injustice to the claimant").

[80] S. Plitt, D. Maldonado, J. Rogers & J. Plitt, Couch on Insurance § 197:1 (Dec. 2022 update) ("Since one of the primary purposes of the proof of loss requirement and the insurer's subsequent investigation is to determine the legitimacy of the claim and avoid fraudulent claims, most policies provide that in the event of fraud, false swearing, or willful misrepresentation, the policy will be voided and recovery will be barred") & § 197:2 ("Contracts of insurance may expressly declare that any fraud, attempted fraud, false swearing, or willful misrepresentation on the part of the insured or the claimant in the making of proofs of loss will forfeit all rights under the policy and bar recovery. Such provisions are held valid and binding on all parties in the absence of statutory provisions to the contrary") & 44 Corpus Juris Secundum Insurance § 1765 (Jan. 2023 update) ("An insurance company has a compelling interest in and a right to accuracy in the proof-of-loss forms; and under policy provisions voiding coverage if the insured willfully conceals any material fact, or in the case of fraud or false swearing, courts will deny recovery to an insured who has made deliberate material misstatements in the sworn proof of loss. … This type of provision is valid and enforceable. The purpose of a false claims exclusion clause in a policy is to protect insurance companies against claims which themselves are false").

[81] S. Plitt, D. Maldonado, J. Rogers & J. Plitt, Couch on Insurance § 197:37 (Dec. 2022 update) ("Generally speaking, where an insured makes a false statement regarding a material fact, with an intent to deceive the insurer, and, where applicable, the insurer relies on the insured's misrepresentation, the insured has committed fraud or false swearing, and pursuant to the terms of the policy the insurer is entitled to void the policy and bar recovery") & §§ 197:9, 12, 18 & 21 ("Generally, in order to constitute fraud … a person with the specific intent to defraud or deceive the insurer must make a fraudulent statement in a proof of loss which relates to a material fact. …. [O]ne of the elements is whether the insured in filing proofs of loss made a false statement with respect to a material matter willfully and with the intent to deceive the insurer. …. In order to avoid a policy on the ground of fraud or false swearing in the proof of loss, the statement in question must be material. Public policy allows misrepresentation clauses to render insurance policies void or voidable only for fraudulent, material misrepresentations that mislead insurers into waiving or losing defenses. …. There is a difference of opinion among jurisdictions regarding whether an insurer must establish that it was misled or deceived by the insured's false statements in order to avoid liability. Some jurisdictions take the position that while justifiable reliance is an element in the defense of fraudulent procurement of the policy, it is not an element of the defense of the insured's fraud in submission of a claim, at least where the policy does not contain such a requirement") & 44 Corpus Juris Secundum, Insurance § 1765 (Jan. 2023 update) ("To establish the defense of misrepresentation of proofs of loss, an insurance company must demonstrate that representations made by insured were relevant, material and intentionally false. ... However, a misrepresentation after loss need only be made with actual intent to deceive the insurance company and be related to the matter which is material. Under policy provisions voiding coverage for fraud or false swearing, concealment or misrepresentation, recovery will be denied to insured who has made deliberate material misstatements in a sworn proof of loss. Rights under a policy are not to be forfeited except for concealment or misrepresentation relative to the loss claimed").

Legislation may instead come into play to limit the application of contract terms[82] or modify the common law requirements for relying on those clauses.[83]

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[82] S. Plitt, D. Maldonado, J. Rogers & J. Plitt, Couch on Insurance § 197:32 (Dec. 2022 update) ("It has been held that an intentional overvaluation is not material where the actual loss exceeds the total insurance coverage since such overvaluation does not prejudice the insurer and, therefore, does not prevent recovery on the fire policy. For example, a false swearing defense was not applicable where it appeared that, even if the insured was guilty of padding losses, the insured's losses were unquestionably greater than the policy limits so that the insured did not attempt to collect more money than the insured's actual loss. On the other hand, an insured's fraud in including numerous items of unscheduled personal property on an inventory list which were not at the insured's house when the fire occurred was material and voided the entire policy even though the insured's actual personal property loss exceeded unscheduled personal property policy limits. Similarly, where a statute specifically forbids the making of false or fraudulent claims, it is immaterial whether the loss, stated in a proof of loss, is less or greater than the amount of the insurance")& 44 Corpus Juris Secundum Insurance § 1765 (Jan. 2023 update) ("False swearing in the proof of loss is immaterial where the property insured is totally destroyed and under statute the full amount of insurance stated in the policy becomes due and payable"). See Neb. Rev. St. § 44-501.02 ("Whenever any policy of insurance is written to insure any real property in this state against loss by fire, tornado, windstorm, lightning, or explosion and the property insured is wholly destroyed without criminal fault on the part of the insured or his or her assignee, the amount of the insurance written in such policy shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages") & *Heady v. Farmers Mut. Ins. Co.*, 349 N.W.2d 366, 371-72 (Neb. Sup. Ct. 1984) ("The final issue involving the effect of § 44–380 concerns the proof of loss statement filed by Heady after the fire, in which he swore that the actual cash value of the insured property was $60,000. At trial Heady's testimony and that of a real estate appraiser placed that value, at the most, at $10,000. Farmers Mutual contends that the false sworn proof of loss statement served to void the insurance binder. … Several relatively old cases from other jurisdictions lend support to the proposition that the overvaluation of totally destroyed property in a proof of loss statement filed in connection with recovery on a valued insurance policy is immaterial and no defense to recovery on the policy, even when a provision in the policy would void the policy for such statements. … We think the rationale expressed in *Cayon* is sound and adopt it. 'It is not perceived how the company could have been influenced by any such over-estimate to settle or compromise, or not to settle or compromise, the claim for the insurance so fixed *conclusively* by the statute; for in no case could the company be compelled to pay more, or could the insured be induced thereby to receive less, than the amount so fixed by law'") (emphasis in original). Some states require that the false statement be material before the insured can void the contract altogether. 28 N.Y. Ins. Law, § 3425(c)(1)(C) ("After a covered policy has been in effect for sixty days …, no notice of cancellation shall be issued … unless it is based on one or more of the following: (1) With respect to automobile insurance policies … (C) discovery of fraud or material mis-representation in obtaining the policy or in the presentation of a claim thereunder") & § 3105(b)(1) ("No misrepresentation shall avoid any contract of insurance or defeat recovery thereunder unless such misrepresentation was material. No misrepresentation shall be deemed material unless knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract").

[83] S. Plitt, D. Maldonado, J. Rogers & J. Plitt, Couch on Insurance § 197:4 (Dec. 2022 update) ("statutes have regulated the extent to which fraud in connection with a proof of loss will be permitted to avoid the insurer's liability by requiring that the statute be read into all policies subject to state law or by establishing the circumstances under which an insurer may void a policy. … While some statutes have prospectively eliminated the common-law fraud requirement of reliance, others have required an insurer to rely on the insured's misrepresentation to its detriment in order to void the policy. For example, Texas statutes regarding false statements plainly reveal a public policy opposed to the use of forfeiture clauses to avoid obligations of policies solely upon a showing that the insured had made, at any time, a false statement with respect to the insurance or the subject thereof. This 'anti-technicality' statute set forth a scheme under

[80] A review of the common law's historical development reinforces the validity of the assertion that Alberta has codified the common law.

[81] Justice Willes, writing in 1886, in *Britton v. Royal Insurance Co.*,[84] described the settled common law on this topic as follows:

> The law is, that a person who has made such a fraudulent claim could not be permitted to recover at all. The contract of insurance is one of perfect good faith on both sides, and it is most important that such good faith should be maintained. … [I]f there is wilful falsehood and fraud in the claim, the insured forfeits *all* claim whatever upon the policy.

[82] This passage makes two important statements. First, the insured and insurer must exhibit good faith in dealing with each other. This is true both in the pre- and post-contract stages of the insurer-insured relationship.[85] Second, an insured who makes a wilful falsehood or engages in

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which two basic types of falsehoods could form the basis for voiding a policy pursuant to a forfeiture clause: those falsehoods material to the risk made before the loss occurs; and those falsehoods made after the loss occurs which are material, fraudulently made, and mislead the insurer causing it to lose some valid defense. Accordingly, forfeiture of a policy has been precluded where the policy's provision was broader than the statute").

[84] 176 Eng. Rep. 843, 844 (Nisi Prius 1886) (emphasis added). See also *Summers v. Fairclough Homes Ltd.*, [2012] UKSC 26, ¶ 29; [2012] 4 All. E.R. 317, 328 per Lord Clarke ("there is a special rule of insurance law that an insured cannot recover in respect of any part of a claim in a case where the claim has been fraudulently exaggerated or where a genuine claim has been supported by dishonest devices"); *Black King Shipping Corp. v. Massie*, [1985] 1 Lloyd's Rep. 437, 518 (Q.B.) per Hirst, J. ("the duty not to make fraudulent claims and not to make claims in breach of duty of utmost good faith is an implied term of the policy") & E. Ivany, General Principles of Insurance Law 407 (5th ed. 1986) ("Since it is the duty of the insured to observe the utmost good faith in his dealings with the insurers throughout, the claim which he puts forward must be honestly made; and, if it is fraudulent, he will forfeit all benefit under the policy whether there is a condition to that effect or not. The assured must make a full disclosure of the circumstances of the case").

[85] *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶¶ 54-55; [2016] 4 All E.R. 907, 931-32 per Lord Hughes ("The law has for centuries recognised that special rules need to apply to insurance contracts. At the stage when a policy is being taken out, the potential insured will typically know a great deal more about his circumstances, and thus about the risk, than can the insurer to whom he is applying. The response of the common law to this truth was to develop the rule that a contract for insurance must be conducted on both sides in the utmost good faith. In particular, when the contract is in negotiation the general common law rule was that the applicant must volunteer to the insurer, whether he is asked or not, anything which he knows or ought to know and which a prudent insurer would regard as relevant to the assessment of the risk. The consequence of breach, at common law, was that the insurer is entitled to avoid the policy altogether. … As will be seen, this common law/statutory rule has recently been modified by statute, differentially for consumer insurance and non-consumer policies, but exacting duties of disclosure are still imposed on the applicant for insurance at the pre-contract stage. Otherwise, no doubt, the consequence would either be difficulty obtaining insurance or, more likely, demands for higher premiums. At the later stage when a claim is made, the policyholder will also typically know a good deal more about the facts which give rise to the claim than the insurers possibly can, whether the claim arises out of a motor accident, a burglary, fire damage to a factory or warehouse, the loss of luggage on holiday or the ingress of seawater into a ship. Insured loss

fraud in the course of making a claim under an insurance contract "forfeits *all* claim whatever upon the policy".[86]

[83] Unstated is the nature of the relationship between the two norms.[87]

[84] The idea that contracts of insurance mandate a special kind of good faith on the part of both insured and insurer is firmly entrenched in the common law going as far back as 1776. This notion reflects the information deficit under which the insurer, as opposed to the insured, operates.[88]

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is generally adventitious. It may occur anywhere in the world and with or without witnesses. Only sometimes will thorough investigation of the circumstances of the claimed loss be a realistic option for insurers. Moreover, it is very much in the interest of policyholders generally that when a claim arises, it should be accepted promptly by the insurers, payment should be made, and business or private life should be allowed to resume with the loss repaired. Typically, insurers market their policies in part by advertising what they assert to be their prompt and uncomplicated response to claims. If such is to be the response to claims, insurers must take the claiming insured to a considerable extent on trust. Furthermore, if claims have to be investigated in detail and routinely verified by insurers, the cost of the systems necessary to do this will fall on policyholders generally through increased premiums, and good claims will be delayed alongside the bad. The response of the common law to these truths was the development of the fraudulent claims rule").

[86] Emphasis added.

[87] See Bennett, "Mapping the Doctrine of Utmost Good Faith in Insurance Contract Law", Lloyd's Mar. & Comm. L.Q. 165 (1999).

[88] *Manifest Shipping Co. v. Uni-Polaris Ins. Co.*, [2001] UKHL 1, ¶ 42; [2001] 1 All E.R. 743, 757-58 per Lord Hobhouse ("The acknowledged origin [of the concept of good faith in relation to the law of insurance] is Lord Mansfield CJ's judgment in *Carter v Boehm* ... . Lord Mansfield was at the time attempting to introduce into English commercial law a general principle of good faith, an attempt which was ultimately unsuccessful and only survived for limited classes of transactions, one of which was insurance. His judgment ... was an application of his general principle to the making of a contract of insurance. It was based upon the inequality of information as between the proposer and the underwriter and the character of insurance as a contract upon a 'speculation'. He equated non-disclosure to fraud. ... It ... was not actual fraud as known to the common law but a form of mistake of which the other party was not allowed to take advantage"); *Carter v. Boehm*, 97 Eng. Rep. 1162, 1164 (1766) per Lord Mansfield ("Insurance is a contract upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstance in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist, and to induce him to estimate the risque, as if it did not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention; yet still the under-writer is deceived, and the policy is void; because the risque run is really different from the risque understood and intended to be run, at the time of the agreement. The policy would equally be void, against the under-writer, if he concealed; as, if he insured a ship on her voyage, which he privately knew to be arrived: and an action would lie to recover the premium. The governing principle is applicable to all contracts and dealings. Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain, from his ignorance of that fact, and his believing the contrary") & Halsbury's Laws of Canada – Insurance HIN-39 (2019 Reissue, rel. 57 Sept. 2022) ("The relationship between the insured and the insurer is a vulnerable one. Insurers determine whether to cover a risk based primarily on information provided by the insured, and insured persons are vulnerable because they are generally the less sophisticated party, and it is the insurer who determines whether

[85] In many classes of insurance the insurer is unable to verify the losses the insured claims to have suffered without the expenditure of significant resources. For insurance to be a viable commercial commodity strong deterrent measures must be in place to encourage insureds to file accurate proofs of loss and to discourage them from submitting false exaggerated claims that drive up the cost of insurance. Justice Emery of the Supreme Judicial Court of Maine addressed this important issue in the nineteenth century:[89]

> The contract of insurance is one of indemnity only. The sole lawful object of obtaining a policy of insurance is to secure simple re-imbursement for actual loss. Any purpose of making a profit on the part of the assured is unlawful and will vitiate the contract. Such being the nature of the contract, it requires good faith on the part of the assured toward the insurers. Especially is this so in the adjustment of the loss after a fire. It is impracticable for the insurers to ascertain for themselves the extent of the losses, particularly where the contents of a dwelling-house and barn are insured, as in this case. The assured, and his family or servants, are usually the only persons who can give a true account of the losses. The insurers … usually … require from the assured a detailed statement on oath of such losses, as a necessary preliminary to the payment of the indemnity. … When … [the assured] meets this demand with knowingly false statements of losses he did not sustain, in addition to

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they are paid and what the amount of the payment will be. In recognition of such vulnerabilities, insurance contracts are characterized as being contracts of '*uberrimae fideis*' or 'utmost good faith'. The principle of utmost good faith has been a fundamental concept with respect to insurance for over 200 years").

[89] *Dolloff v. Phoenix Ins. Co.*, 82 Me. 266, 271; 19 A. 396, 397 (Sup. Jud. Ct. 1890) (emphasis added). See also *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶ 55; [2016] 4 All E.R. 907, 932 per Lord Hughes ("when a claim is made, the policyholder will also typically know a good deal more about the facts which give rise to the claim than the insurers possibly can … . Insured loss is generally adventitious. It may occur anywhere in the world and with or without witnesses. Only sometimes will thorough investigation of the circumstances of the claimed loss be a realistic option for insurers. Moreover, it is very much in the interest of policyholders generally that when a claim arises, it should be accepted promptly by the insurers, payment should be made, and business or private life should be allowed to resume with the loss repaired. Typically, insurers market their policies in part by advertising what they assert to be their prompt and uncomplicated response to claims. If such is to be the response to claims, insurers must take the claiming insured to a considerable extent on trust. Furthermore, if claims have to be investigated in detail and routinely verified by insurers, the cost of the systems necessary to do this will fall on policyholders generally through increased premiums, and good claims will be delayed alongside the bad"); *Galloway v. Guardian Royal Exchange (UK) Ltd.*, [1997] EWCA Civ 2487; [1999] Lloyd's Rep. I.R. 209, 213 per Lord Woolf, M.R. ("the contract [is] … one of good faith and the insured is required to exercise good faith in the making of the claim. In the making of the claim the facts are normally wholly within the insured's knowledge. The insurers are dependent on the insured exercising good faith in order to evaluate the claim") & J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 652 (14th ed. 2018) ("The nature of the insurance business, and the asymmetries of information involved mean that insurers are particularly exposed to fraudulent claims. They face difficulties both in detecting fraud and refusing claims they believe to be fraudulent, since the evidence will usually be in the hands of the insured and the insured's witnesses. … Over the centuries, the common law developed a severe but salutary rule that penalised fraud on the part of the insured in making an insurance claim by relieving the insurer of all liability on that claim").

> those he did sustain, he ought to lose all standing in a court of justice as to *any* claim under that policy.

[86] The common law responded to the existence of this information gap.[90]

[87] It constructed a rule that false statements in a claim vitiate coverage.[91] More recently, this has been viewed as a rule of law grounded in public policy that is separate and apart from the special duty of good faith in insurance contracts that is primarily concerned with disclosure of relevant information at the time of contract formation.[92] Fraudulent claims may have consequences

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[90] J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 652 (14th ed. 2018) ("The nature of the insurance business and the asymmetries of information involved mean that insurers are particularly exposed to fraudulent claims. They face difficulties both in detecting fraud and refuting claims they believe to be fraudulent, since the evidence will usually be in the hands of the insured and the insured's witnesses. This has led to the evolution of multiple, overlapping but not co-extensive, protections for the insurer") & S. Plitt, D. Maldonado, J. Rogers & J. Plitt, Couch on Insurance § 197:8 (Dec. 2022 update) ("Insurance fraud is a growing problem in which the number of fraudulent claims is increasing, and the nature of fraudulent claims is both expanding, and becoming increasingly intricate").

[91] *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG,* [2016] UKSC 45, ¶ 55; [2016] 4 All E.R. 907, 932 per Lord Hughes ("The response of the common law to these truths was the development of the fraudulent claims rule. It is a rule of law, imposed by the courts whether or not the policy contains a clause to the same effect"). See also 1 C. Brown & T. Donnelly, Insurance Law in Canada 9-18 (looseleaf ed. March 2022 – rel. 2) ("fraud in connection with making a claim will also result in forfeiture. This is made express for fire and automobile insurance in the uniform legislation. … For policies other than fire and automobile policies, a condition may be included to achieve the same effect as these statutory provisions. However, if there is no term covering the point in … a policy, the consequence of fraud is not only that the particular claim is forfeited but that the insurer is entitled to avoid the contract as a whole and … be reimbursed any insurance money already paid in respect of the claim. This follows from the general principle that a contract of insurance is one of utmost good faith") & J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 652 (14th ed. 2018) ("Over the centuries, the common law developed a severe but salutary rule that penalised fraud on the part of the insured in making an insurance claim by relieving the insurer of all liability on that claim. Since at least the eighteenth century, it has also been common for insurers to protect themselves by special terms in the contract. Such market practice and judicial decisions in cases concerned with contractual provisions undoubtedly interacted with the development of the common law rule. Moreover, fraud on the part of the insured in presenting a claim would seem to be a clear breach of the continuing duty of utmost good faith. ... The exact source and ambit of the common law rule were to some extent uncertain, although in many cases of fraud by the insured those uncertainties did not call into question the central outcome that the insured was deprived of its right to claim and had to disgorge any payments it may already have received in respect of that claim before the fraud was discovered").

[92] *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶ 8; [2016] 4 All E.R. 907, 915 per Lord Sumption ("Willes J regarded the fraudulent claims rule as a manifestation of the duty of utmost good faith, a view adopted by Christopher Clarke LJ, delivering the leading judgment in the Court of Appeal in the present case … . … But I am inclined to agree … that once the contract is made, the content of the duty of good faith and the consequences of its breach must be accommodated within the general principles of the law of contract. On that view of the matter, the fraudulent claims rule must be regarded as a term implied or inferred by law, or at any rate an incident of the contract. The correct categorisation matters only because if it is a manifestation of the duty of utmost good faith, then the effect of s 17 of the 1906 Act is that the whole contract is voidable ab initio upon a breach, and not just the fraudulent claim. If, on the other hand, one adheres to the contractual analysis, the right to avoid the contract for breach of the duty must depend on the principles governing the repudiation of contracts, and avoidance

both under this rule and as a breach of the special duty of good faith in insurance contracts,[93] to the extent that the latter applies.[94]

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would operate prospectively only") & J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 661 (14th ed. 2018) ("It is now increasingly accepted that the common law rule discussed above is not an aspect of the continuing duty of good faith but an independent rule of law grounded in public policy"). *Cf. Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶ 67; [2016] 4 All E.R. 907, 935 per Lord Hughes ("There is no occasion in the present case to pursue the elusive matter of definitive analysis of the content of the post-contract duty of good faith, for it is enough that it plainly includes the fraudulent claims rule"). See also S. Plitt, D. Maldonado, J. Rogers, & J. Plitt, Couch on Insurance §§ 198:4, 7, 16 & 23 (Dec. 2022 update) ("Generally, the common law implies a covenant of good faith and fair dealing in every contract. This view is also encompassed by the most common authorities on matters of contract, such as the Restatement of Contracts and the Uniform Commercial Code. …. Insurance contracts are generally considered significantly different than most other types of contracts. …. Modern contract law imposes a mutual duty of good faith and fair dealing on the insurer and the insured in many situations. This duty keenly arises in the insurance context where the insurer and insured contract under the umbrella of a special relationship that imposes particular attention to the idea of good faith and fair dealing. … The duty on the insured is largely a requirement of honesty and a duty to be forthcoming and provide information. An insurer undertakes risk in providing insurance, and out of this obligation comes the entitlement to accurate information from the insured. The insured must not, therefore, give the insurer false or misleading information in applying for a policy and must cooperate with the insurer when a claim arises. …. [T]he duty of good faith applies to most activities, particularly activities occurring after a loss or during the claims-handling process").

[93] J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 661-62 (14th ed. 2018) ("making a fraudulent claim may still constitute a breach of the duty of utmost good faith which continues after the formation of the contract, as stated in s. 17 of the Marine Insurance Act 1906. The duty of utmost good faith and the sanctions for its breach therefore operate distinctly from the common law [fraudulent claims rule] … and are not co-extensive with it. … [I]n certain circumstances the availability of a remedy of avoidance for breach of the duty of utmost good faith may enlarge the scope of the insurer's remedies beyond the scope of protection provided by the common law rule; while in certain other circumstances, the insurer may have no remedy under s. 17 but still be relieved of liability under the common law rule. … [T]he insurer is entitled to avoid the contract for a breach of the duty of utmost good faith … where: (a) the fraud would have an effect upon insurer's ultimate liability; and (b) the gravity of the fraud or its consequences would entitle the insurer, if it wished to do so, to terminate the policy for breach of contract. It follows that the right to avoid the insurance contract retrospectively arises only where the insurer could accept the insured's conduct as repudiatory and terminate the contract. … [T]he paradigm cases of the baseless claim, the inflated claim, and the suppression of a defence would most probably pass … [both tests] when viewing the common law rule as one based on a contract term. However, the insurer could not rely on s. 17 when the insured … knowingly … [put] forward false evidence to promote a valid claim, since this would only pass test '(a)'").

[94] *Insurance Act 2015*, c. 4, s. 14 (U.K.) ("(1) Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the other party is abolished. (2) Any rule of law to the effect that a contract of insurance is a contract based on the utmost good faith is modified to the extent required by the provisions of this Act ..."); *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶ 8; [2016] 4 All E.R. 907, 914-15 per Lord Sumption ("It was settled from an early stage of the history of English insurance law that the duty of utmost good faith applied not only in the making of the contract but in the course of its performance. ... But I am inclined to agree ... that once the contract is made, the content of the duty of good faith and the consequences of its breach must be accommodated within the general principles of the law of contract") & ¶¶ 64-68; [2016] 4 All E.R. at 934-35 per Lord Hughes ("It seems likely that the fraudulent claims rule developed as a matter of history from the general rule that the parties to a contract of insurance owe each other the

[88] While the doctrinal roots of the fraudulent claims rule may be debatable, the rationale for the fraudulent claims rule is simple and clear: to deter fraud in insurance claims.[95]

[89] Insurers resorted to self-help. They produced terms that were designed to reduce the adverse effects of information asymmetry.[96]

[90] The evolved consensus of the common law to the present time sends an unequivocal message to would-be-insured fraudsters – any false statement in a proof of loss will deprive an

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duty to act with the utmost good faith. ... In the past it has from time to time been assumed, in cases where any difference between the two rules did not fall for examination, that the fraudulent claims rule was simply a manifestation of the rule of good faith. ... In fact, there are significant differences between the two rules. ... It has, however, been clear for many years, and is now indisputable following *Manifest Shipping Co Ltd v Uni-Polaris Shipping Co Ltd* ... that although some duty of good faith continues post contract, it differs significantly from the pre-contract rule both as to the obligation which it imposes and as to the remedy for breach. ... There is no occasion in the present case to pursue the elusive matter of definitive analysis of the content of the post-contract duty of good faith, for it is enough that it plainly includes the fraudulent claims rule. ... [R]ecent legislation ... treats the rules of good faith and fraudulent claims differently. It modifies the rule of utmost good faith but leaves the fraudulent claims rule untouched"); *Manifest Shipping Co. v. Uni-Polaris Ins. Co.*, [2001] UKHL 1, ¶¶ 52 & 57; [2001] 1 All E.R. 743, 761 & 762 per Lord Hobhouse ("A coherent scheme can be achieved by distinguishing a lack of good faith which is material to the making of the contract itself (or some variation of it) and a lack of good faith during the performance of the contract which may prejudice the other party or cause him loss or destroy the continuing contractual relationship. The former derives from requirements of the law which pre-exist the contract and are not created by it although they only become material because a contract has been entered into. The remedy is the right to elect to avoid the contract. The latter can derive from express or implied terms of the contract; it would be a contractual obligation arising from the contract and the remedies are the contractual remedies provided by the law of contract. .... These authorities show that there is a clear distinction to be made between the pre-contract duty of disclosure and any duty of disclosure which may exist after the contract has been made") & ¶ 102; [2001] 1 All E.R. at 777 per Lord Scott ("These authorities make clear that the content of the duty of good faith owed by an assured post-contract is not the same as the duty owed in the pre-contract stage. So what is the content of the duty owed at the claim stage? It is, at least, that of honesty in the presentation of a claim").

[95] *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶ 9; [2016] 4 All E.R. 907, 915 per Lord Sumption ("the rationale of the [fraudulent claims] rule ... is the deterrence of fraud").

[96] J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 657 (14th ed. 2018) ("Insurers have long sought protection against fraudulent claims by including express conditions in their policies, in terms that sometimes caused harshness to the insured. In the eighteenth century it was common to find a clause requiring the insured to procure: '[a] certificate under the hand of the minister and churchwardens, together with some other reputable inhabitants of the parish … importing that they were well acquainted with the character and the circumstances of the person … insured and do know or verily believe that he she or they really and by misfortune without any fraud or evil practice have sustained the claimed loss or damage by fire'. … By the early nineteenth century is was more usual to find a clause in these terms, '[i]f there appear fraud in the claim made, or false swearing or affirming in support thereof, the claimant shall forfeit all benefit under the policy' and the common Lloyd's form in use in the twentieth century has been: 'If the assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall become void and all claim thereunder shall be forfeited.' If the insured makes a claim where he has suffered no loss or claims for a loss which he has himself caused, insurers do not need to rely on any condition relating to fraudulent claims; but in practice, where the circumstances are suspicious, it may be much easier to show that the insured has made a fraudulent statement in the advancement of his claim than it is to show that he wilfully destroyed his own property. The clause thus enables the insurers to assume a lesser burden and still defeat the claim").

insured of all benefits linked to the same loss-causing events claimed under the same insurance policy, including those benefits not tainted by the false statement. This is a draconian doctrine but it needs to be.[97] Nothing less will have the desired effect. A bright-line rule is undoubtedly essential.

[91] This does not mean that any false statement an insured makes in support of a claim will deprive the insured of the benefit of insurance coverage. Suppose an insured files a proof of loss claiming that a thief broke into his Cadillac Escalade while the insured was having dinner with his wife and stole his golf clubs and his computer. He was not having dinner with his wife – he was having dinner with his mistress. Not only must an insurer prove on a balance of probabilities that the insured knew the information the insured provided the insurer was false or was reckless, it must also prove that it was material to one of the claims.[98] It must be more than a "collateral lie" designed to bolster an otherwise valid claim that, while false, has no impact on the claim.[99]

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[97] *Galloway v Guardian Royal Exchange (U.K.) Ltd.*, [1997] EWCA Civ 2487; [1999] Lloyd's Rep. I.R. 209, 214 per Millett, L.J. ("The making of dishonest insurance claims has become all too common. There seems to be a widespread belief that insurance companies are fair game, and that defrauding them is not morally reprehensible. The rule which we are asked to enforce today may appear to some to be harsh, but it is in my opinion a necessary and salutary rule which deserves to be better known by the public"). See 60 Halsbury's Laws of England 180 (2018) ("an insured who makes a fraudulent claim forfeits the whole of the claim to which the fraud relates … . The forfeiture of the whole claim including any part of it that was or might otherwise be good is consistent with principle, since the policy of the rule is to discourage any feeling that the genuine part of the claim can be regarded as safe, and that any fraud will lead at best to an unjustified bonus, and at worst, to no more than a refusal to pay a sum which was never insured in the first place. The rule is deliberately designed to operate in a draconian and deterrent fashion, and it is not appropriate to reduce the severity of that rule to reflect settled expectation") & J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 652 (14th ed. 2018) ("Over the centuries, the common law developed a severe but salutary rule that penalised fraud on the part of the insured in making an insurance claim by relieving the insurer of all liability on that claim"), 654 ("It is well established that where there is a fraudulent claim the law forfeits not only that which is known to be untrue but also any genuine part of the claim. This is a consequence of a rule of public policy that the courts will not allow such an insured to recover") & 662 ("In line with the recommendations of the Law Commission in its 2014 report, the Insurance Act 2015 provides that if a fraudulent claim is made the insurer is relieved of all liability on that claim and is entitled to terminate the policy as from the date of the fraudulent act. It is notable that the Law Commission and Parliament chose to confirm and legislate for a relatively draconian 'bright line' rule grounded in public policy, even though a number of respected Commercial Court judges had argued for a more flexible approach").

[98] J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 654 (14th ed. 2018) ("To come within the [common law fraudulent claims] rule, the insured's fraud must relate to a substantial, not trivial part of the claim being made, it must be material to the claim, and the insured must either know that he is providing incorrect information in order to obtain a benefit, or be reckless as to whether what he says is true"). See also *Insurance Act*, R.S.A. 2000, c. I-3, s. 554(1)(c) ("If … the insured *wilfully* makes a false statement") (emphasis added).

[99] 60 Halsbury's Laws of England 180 (2018) ("The fraudulent claims rule applies to a wholly fabricated claim, an exaggerated claim, and even to the genuine part of an exaggerated claim if the whole is to be regarded as a single claim, but does not apply to justified claims supported by collateral lies"); J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 654-55 (14th ed. 2018) ("The question of whether the ambit of the fraudulent claims rule extends to 'fraudulent devices' (or, 'collateral lies') has now been resolved by the Supreme Court in *The DC Merwestone*.

[92] When the false statement has a bearing on the insured's claim, the insured loses the benefit of insurance coverage, including for other parts of that claim or other claims untainted by the false

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Formerly, it had been held that a 'sub-species' of the rule applied to dishonest devices used to promote or support a claim for which the insured had a good cause of action, such as the invention of evidence in support of the quantum of the claim or making false statements which would make the insured more likely to accept the claim without further investigation. ... Lord Sumption ... held that the rule did not apply to what he renamed; collateral lies', namely lies which turn out 'when the facts are found to have no relevance to the insured's right to recover.' ... The key distinction between ... [(1) wholly fabricated claims and (2) genuine claims, the amount of which had been dishonestly exaggerated] and collateral lies, which made it appropriate for the Court not to apply the fraudulent claims rule to the latter category, was that in both of cases (1) and (2) the insured's dishonesty is calculated to get him something more than he is actually entitled, whereas in the case of collateral lies, by the dishonesty the insured seeks to obtain no more than the law regards as his entitlement, and the lie is irrelevant to the existence or amount of that entitlement. Accordingly, the test of materiality is to be judged with the benefit of hindsight, by reference to the facts as ultimately ascertained or determined, and in light of the insurer's true legal liability") & *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶¶ 25-26; [2016] 4 All E.R. 907, 923-24 per Lord Sumption ("there is an obvious and important difference between a fraudulently exaggerated claim and a justified claim supported by collateral lies. Where a claim has been fraudulently exaggerated, the insured's dishonesty is calculated to get him something to which he is not entitled. The reason why the insured cannot recover even the honest part of the claim is that the law declines to sever it from the invented part. The policy of deterring fraudulent claims goes to the honesty of the claim, and both are parts of a single claim ... . The position is different where the insured is trying to obtain no more than the law regards as his entitlement and the lie is irrelevant to the existence or amount of that entitlement. In this case the lie is dishonest, but the claim is not. The immateriality of the lie to the claim makes it not just possible but appropriate to distinguish between them. I do not accept that a policy of deterrence justifies the application of the fraudulent claim rule in this situation"), ¶ 36; [2016] 4 All E.R. at 927 per Lord Sumption ("although a lie uttered in support of a claim need not have any adverse impact on the insurer, I consider that it must at least go to the recoverability of the claim on the true facts. By that test, the fraudulent claims rule applies to a wholly fabricated claim. It applies to an exaggerated claim. It applies even to the genuine part of an exaggerated claim if the whole is to be regarded as a single claim, as it must be. But it does not apply to a lie which the true facts, once admitted or ascertained, show to have been immaterial to the insured's right to recover. It is true that the moral character of the insured's lie is in no way mitigated by the fact that it turns out to have been unnecessary. But there are principled limits to the role which a claimant's immorality can play in defeating his legitimate civil claims. These limits have been applied outside the realm of insurance ever since the failure two centuries ago of Lord Mansfield's attempt to introduce a general duty of good faith in the law of contract. Ultimately, however, even the law of insurance is concerned more with controlling the impact of a breach of good faith on the risk than with the punishment of misconduct. The extension of the fraudulent claims rule to lies which are found to be irrelevant to the recoverability of the claim is a step too far. It is disproportionately harsh to the insured and goes further than any legitimate commercial interest of the insurer can justify") & ¶ 100; [2016] 4 All E.R. at 944 per Lord Hughes ("The extension of forfeiture to a purely collateral lie is not justified as part of a generally imposed legal rule irrespective of any expressly agreed term of the policy. It is simply too large a sledgehammer for the nut involved").

statement or fraud. This is the law in Canada,[100] the United Kingdom,[101] and, generally, the United States.[102]

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[100] 1 C. Brown & T. Donnelly, Insurance Law in Canada 9–25-26 (looseleaf ed. March 2022 – rel. 2) ("Where the fraud that is proved relates only to part of the claim (and where statutory or policy provisions state that only the claim and not the whole policy is avoided), the entire claim is vitiated. For example, where both buildings and contents are covered and separate claims are made for each, one made fraudulently and the other not, both claims are forfeited. This is so even where the actual loss in the category not subject to fraud exceeds the policy limits. An exception to the principle that all parts of a claim are defeated when there has been fraud in relation to only one part, may arise where there is more than one insured person").

[101] 60 Halsbury's Laws of England 180 (2018) ("an insured who makes a fraudulent claim forfeits the whole of the claim to which the fraud relates, whether the policy contains an express condition to that effect or not. The forfeiture of the whole claim including any part of it that was or might otherwise be good is consistent with principle, since the policy of the rule is to discourage any feeling that the genuine part of the claim can be regarded as safe, and that any fraud will lead at best to an unjustified bonus, and at worst, to no more than a refusal to pay a sum which was never insured in the first place. The rule is deliberately designed to operate in a draconian and deterrent fashion, and it is not appropriate to reduce the severity of that rule to reflect settled expectation") & 181 ("Fraud in relation to part of a claim will cause the whole claim to fail, and the claimant is not entitled to recover that part of the claim to which the fraud does not apply"); J. Birds, B. Lynch & S. Paul, MacGillivray on Insurance Law 654 (14th ed. 2018) ("It is well established that where there is a fraudulent claim the law forfeits not only that which is known to be untrue but also any genuine part of the claim. This is a consequence of a rule of public policy that the courts will not allow such an insured to recover") & 656 & 663 ("It is now fairly well established that under the common law rule the insured loses the claim on which the fraud is employed and is also deprived … of any right to the continuation of the insurance contract in that the insurer becomes entitled to terminate it, but the insured does not forfeit moneys already paid out by the insurer in response to previous honest claims. …. [Under section 12 of the Insurance Act 2015,, which provides that 'If the insured makes a fraudulent claim under a contract of insurance --- (a) the insurer is not liable to pay the claim'] the making of a fraudulent claim will relieve the insurer of all liability to pay out on 'the claim', but will not – even if the insurer exercises his right to terminate the contract – affect the insurer's liability to pay out of any previous, non-fraudulent claims the liability for which had crystallised before the fraudulent act"); *Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG*, [2016] UKSC 45, ¶¶ 9-10; [2016] 4 All E.R. 907, 915 per Lord Sumption ("the rationale of the [fraudulent claims] rule ... is the deterrence of fraud. ... 'The logic is simple. The fraudulent insured must not be allowed to think: if the fraud is successful, then I will gain; if it is unsuccessful, I will lose nothing.' ... The courts have explained the lack of a similar rule in other areas of the law of contract by pointing to the asymmetrical positions of the parties to an insurance contract, the insurer being vulnerable on account of his dependence on the insured for information both at the formation of the contract and in the processing of claims ... . Fraudulent insurance claims are a serious problem, the cost of which ultimately falls on the general body of policy-holders in the form of increased premiums") & ¶¶ 25 & 26; [2016] 4 All E.R. at 923-24 per Lord Sumption ("Where a claim has been fraudulently exaggerated, the insured's dishonesty is calculated to get him something to which he is not entitled. The reason why the insured cannot recover even the honest part of the claim is that the law declines to sever it from the invented part. The policy of deterring fraudulent claims goes to the honesty of the claim, and both are parts of a single claim ... . The principle is the same as that which applies in the law of illegality. The courts will not sever an agreement affected by illegality into its legal and illegal parts unless it accords with public policy to do so, even if each part is capable of standing on its own ... . [T]he insured should not be allowed a one-way bet: he makes an illegitimate gain if the lie persuades, and loses nothing if it does not") & *Manifest Shipping Co. v. Uni-Polaris Insurance Co.*, [2001] UKHL 1, ¶¶ 62-63; [2001] 1 All E.R. 743, 764-75 per Lord Hobhouse ("Where an insured is found to have made a fraudulent claim upon the insurers, the insurer is obviously not liable for the fraudulent

[93] Were it otherwise, the deterrent effect of the rule would be feeble, if not nonexistent. If the only risk associated with a false representation by an insured is that the eligibility for coverage on the claim to which the fraud related would be lost then that risk would deter little – the insured would not likely have had a valid claim to begin with. It is therefore necessary to lift the insurer's liability to cover any benefits linked to the loss-causing events claimed under the policy.

3. Plain and Ordinary Meaning of the Contested Text

[94] Mr. Hoornaert argues that the only detriment his client should endure as a result of his wilfully false statements is loss of his claim for Section B benefits that he readily admits his client

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claim. But often there will have been a lesser claim which could properly have been made and which the insured, when found out, seeks to recover. The law is that the insured who has made a fraudulent claim may not recover the claim which could have been honestly made. The principle is well established and has certainly existed since the early nineteenth century ... . This result is not dependent upon the inclusion in the contract of a term having that effect or the type of insurance; it is the consequence of a rule of law. Just as the law will not allow an insured to commit a crime and then use it as a basis for recovering an indemnity ..., so it will not allow an insured who has made a fraudulent claim to recover. The logic is simple. The fraudulent insured must not be allowed to think: if the fraud is successful, then I will gain; if it is unsuccessful, I will lose nothing").

[102] S. Plitt, D. Maldonado, J. Rogers & J. Plitt, Couch on Insurance § 197:18 (Dec. 2022 update) ("the concept of materiality does not involve any aspect of the extent or proportion to which the proofs are fraudulent. Fraud in any material part or as to any material items of a formal statement of loss taints the whole and operates to defeat a recovery upon any part of the policy") & § 194:41 ("Oftentimes one policy provides more than one kind of coverage. For example, a homeowners' policy generally has a liability component and a property damage component. Similarly, a homeowners' policy might have a component insuring against risk of damage to the structure and a separate component insuring against risk of damage to the contents. In addition, an insured may insure against the same risk with a number of insurers or under different policies. In a situation where a sequence of events gives rise to more than one claim under more than one type of coverage, it has been held that the insurer is not required to maintain the insured's insurance policy beyond the moment of the insured's breach and the insurer's own injury. … In a situation where the same event prompts a claim under more than one type of coverage in the same policy, there is a split of opinion with regard to the effect of fraud as to one type of coverage on the claim under another type of coverage. Under one view, it has been held that a homeowners' policy provision denying 'coverage' to any insured who intentionally concealed or misrepresented any material fact or circumstance did not violate public policy by permitting the forfeiture of all benefits with respect to misrepresentation regarding one type of coverage. Accordingly, … the insured could not recover under either personal property or dwelling coverage when, in a sworn proof of loss, he claimed as destroyed in the fire enumerated personal property which, in fact, was not in the building at the time of the fire. … [W]here alleged false swearing by the insureds related only to a personal property loss and not to damage to the structure of house itself, the insureds were still entitled to collect on that portion of policy which covered damage to dwelling. Where the policy was ambiguous as to the extent to which material misrepresentation voided coverage, only that portion of the claim to which the fraud related was void and coverage denied for that portion"). Whether a false claim voids coverage for other claims may also depend on whether the policy is divisible, which is determined based on the policy language. If it is, the part of the policy voided by the falsehood does not preclude recovery under the other policy. *Merechka v. Vigilant Ins. Co.*, 26 F.4th 776, 786 (8th Cir. 2022) ("Once Merechka lied on his proof-of-loss forms, it voided the policy altogether, making this a case 'about whether there was any insurance at all,' rather than 'the amount of [the] insurance.' ... [Merechka] further argues that he is entitled to a full payout for his dwelling even if he lied about its contents. The assumption underlying his argument is that the insurance policy is divisible: one policy for the dwelling and a separate one for its contents. ... If the policy is divisible, voiding one has no effect on the other").

is not entitled to. He suggests that the insurer should pay him his SEF No. 44 benefits because his client's fraud had no bearing on his entitlement to SEF No. 44 benefits. Counsel asserts that his client's position with respect to SEF No. 44 benefits would be untenable only if section 554(1)(c) stated that "[i]f ... the insured wilfully makes a false statement in respect to a claim under the contract, *any* claim by the insured is invalid and the right of the insured to recover indemnity is forfeited".

[95] In effect, Mr. Hoornaert asks us to read "a claim" narrowly and to restrict its force to the one claim to which the fraud or wilfully false statement is related.

[96] Mr. Pick does not read "a claim" in section 554(1) as restricting the insurer's right to refuse to pay the insured for only the claim tainted by the wilfully false statement. He argues that "a claim" refers to all claims the insured has under the same insurance contract and arising from the same event.

[97] For example, an insured who is involved in an automobile accident may submit a claim that demands the insurer discharge its promise to indemnify the insured for the cost of a rental car while the insured's automobile is being repaired, for the costs of repairing the insured's damaged automobile, and for the cost of specified physiotherapy services.

[98] There is merit in both of these arguments. A reasonable reader familiar with the proper use of the English language could give the text the meaning each advocate before us has proposed. It is fair to suggest that the text of paragraphs 554(1)(b) and (c) could have been clearer.

[99] It is conceivable that this ambiguity arises from the structure of section 554, which deals with three types of impugned conduct by an insured – pre-contract misrepresentations (section (a)), contraventions or fraud with respect to terms of the contract (section (b)), and false statements with respect to a claim (section (c)). The consequence for all three is the same: "a claim by the insured is invalid and the right of the insured to recover indemnity is forfeited".

[100] Ostensibly, "a claim" will have the same meaning in all three instances.[103] This suggests that "a claim" ought to be read generously as "any claim" – surely it cannot be that an insured who gave false information to the insurer at contract formation, contravened a contract term or committed a fraud can nevertheless recover indemnity for some of his or her claims.

[101] But this is not enough to resolve the ambiguity. We must look to the purpose of this section.

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[103] R. Sullivan, Sullivan on the Construction of Statutes 217 (7th ed. 2022) ("It is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the same meaning and different words have different meanings. … The presumption of consistent expression applies not only within statutes but across statutes as well, especially statutes or provisions dealing with the same subject matter").

4. The Purpose of Paragraphs 554(1)(b) and (c) of the *Insurance Act* Is Determinative

[102] The ambiguity we have identified forces us to "select the option that best advances the purpose that accounts for the text".[104]

[103] We are satisfied that the meaning the insured asks us to accept would not advance the purpose that underlies paragraphs 554(1)(b) and (c) of the *Insurance Act*[105] – implementation of the common law objective of deterring fraudsters from filing false proofs of loss or providing the insurer with false or incomplete information or both. In fact, it would do just the opposite. The insured's proposal would encourage fraudsters to make false claims because there would be no adverse effects visited upon the fraudster if the insurer detected the fraud. Lord Hobhouse put it this way:[106] "The fraudulent insured must not be allowed to think: if the fraud is successful, then I will gain; if it is unsuccessful, I will lose nothing".

[104] If we gave paragraphs 554(1)(b) and (c) the reading favored by the insured, their intended sting would be completely lost.

[105] Mr. Pick's position squares perfectly with the principle that insurance contracts demand utmost good faith from those bound by them and that the legal system must adopt harsh measures to deter fraudsters from exploiting the inherent weaknesses in the insurance contract.

[106] We are satisfied that "a claim" in section 554(1) means all claims arising from the same event and under the same insurance contract that an insured who has committed a fraud or made a wilfully false statement in support of a claim asks the insurer to cover.

[107] In this case, the insured lied about his employment status in completing a proof of loss for Section B benefits. The insured's lie, by his own admission, is both a fraud and a wilfully false statement. It is unquestionably material with respect to the Schedule B benefits claim. This fraud and wilfully false statement relieves the insurer of the obligation to provide the insured with SEF No. 44 benefits that would otherwise have been payable – the automobile accident is the event that prompted the insured to apply for both Section B and SEF No. 44 benefits and these benefits are covered by the same insurance contract.

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[104] *Humphreys v. Trebilcock*, 2017 ABCA 116, ¶ 109; [2017] 7 W.W.R. 343, 376, leave to appeal ref'd, [2017] S.C.C.A. No. 228.

[105] R.S.A. 2000, c. I-3.

[106] *Manifest Shipping Co. v. Uni-Polaris Co.,* [2001] UKHL 1, ¶ 62; [2001] 1 All E.R. 743, 764-65. See also 60 Halsbury's Laws of England 180 (2018) ("The forfeiture of the whole claim including any part of it that was or might otherwise be good is consistent with principle, since the policy of the rule is to discourage any feeling that the genuine part of the claim can be regarded as safe, and that any fraud will lead at best to an unjustified bonus, and at worst, to no more than a refusal to pay a sum which was never insured in the first place").

D. Section 554(1) of the *Insurance Act* Does Not Alter the Use the Common Law Makes of the Materiality Concept

[108] There is a presumption that a statute changes the common law only "when that disposition is clear".[107]

[109] The text of section 554(1) does not meet that onerous test.

[110] Section 554(1) of the *Insurance Act* does not alter the use the common law makes of the materiality concept and make it a relevant factor for all claims under the same insurance contract.[108] Section 554(1)(c) in particular embodies only the initial requirement that the false statement bear some connection to the claim: that it be "*in respect of* a claim under the contract".

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[107] A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 318 (2012). See *The Queen v. D.L.W.,* 2016 SCC 22, ¶ 21; [2016] 1 S.C.R. 402, 421 per Cromwell, J. ("Absent clear legislative intention to the contrary, a statute should not be interpreted as substantially changing the law, including the common law… . This principle… reflects the common sense idea that Parliament is deemed to know the existing law and is unlikely to have intended any significant changes to it unless that intention is made clear"); *Lizotte v. Aviva Ins. Co. of Canada*, 2016 SCC 52, ¶ 56; [2016] 2 S.C.R. 521, 548 per Gascon, J. ("This Court has held that it must be presumed that a legislature does not intend to change existing common law rules in the absence of a clear provision to that effect") & *Schiell v Morrison*, [1930] 2 W.W.R. 737, 741 (Sask. C.A.) per Martin, J.A. ("if it is clear that it was the intention of the Legislature in passing a statute to abrogate the common law, it must give way, and the provisions of the statute must prevail"). Australia's Parliament has altered the common-law-fraudulent-claim rule. *Insurance Contracts Act 1984*, No. 80, s. 56(2) (Cth)("In any proceedings in relation to such a claim, the court may, if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair, order the insurer to pay, in relation to the claim, such amount (if any) as is just and equitable in the circumstances"). See the Parliament of the Commonwealth of Australia House of Representatives Insurance Contracts Bill 1984 Explanatory Memorandum 81 ("Clause 56 – Fraudulent Claims 185. Present Law – Since it is the duty of the insured to observe the utmost good faith, his claim must be honestly made. If it is fraudulently made, he will forfeit all benefit under the contract whether or not there is an express term to that effect. The insurer does not have to pay the claim even if the fraud relates to only a part of that claim. … 186. Proposed Law – Where a fraudulent claim is made, the insurer will be unable to avoid the contract but may refuse to pay the whole of the claim … . The application of clause 56 may, however, be modified by the court which will have the power to order an insurer to pay, in respect of a fraudulent claim, an amount that it assesses is just and equitable in the circumstances. However, the court may exercise this power if only a minimal or insignificant part of the claim is made fraudulently and non-payment of the remainder of the claim would be harsh and unfair … . 187. Rationale – Fraud should be discouraged but not to the extent that the insured suffers loss far in excess of the damage his fraud has caused to the insurer").

[108] *Harris v. Waterloo Mut. Fire Ins. Co.*, 10 O.R. 718, 722 (High Ct. C.P. Div. 1886) per Cameron, C.J. ("At the trial, having regard to the first statutory condition endorsed on the policy and the conditions thereunder, I was under the impression that the false declaration would only prejudicially affect the plaintiff's right to recover in respect of the property destroyed by fire for the loss on the property as to which the false declaration had been made; but a consideration of the authorities cited on the argument satisfies me that I was wrong. I thought the fifteenth condition might be restricted or limited in its operation: that the words, 'any false statement in a statutory declaration in relation to any of the above particulars shall vitiate the claim,' might be construed to mean 'any false statement shall vitiate the claim in respect of which it is made'").

[111] But it says nothing about the effect of the section being limited to only the particular claim to which the enumerated transgressions are material. The distinction between the two is important. Confounding them can lead us astray.[109]

[112] This Court's decision in *Swan Hills Emporium & Lumber Co. v. Royal General Insurance Co. of Canada* and the common law, as it has existed for over 200 years, preclude us from adopting Mr. Hoornaert's argument that his client's wilfully false statement with respect to Schedule B benefits does not justify the insurer's decision to refuse to pay him SEF No. 44 benefits on the ground that the insured's employment status has no bearing on his entitlement to SEF No. 44 benefits. *Swan Hills* stands for the proposition that an insurer has no obligation to provide an insured with any benefits if the insured made a wilfully false statement in support of a claim under a policy and all other claims arise under the same insurance contract and from the same event.

[113] It would have been very easy to incorporate materiality into section 554(1) if the Legislature intended to modify the common law and make materiality a component of the legislative regime regarding proofs of loss in the way Mr. Hoornaert suggests.[110] Here is what such a provision would look like:

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[109] It appears that this might have happened in the cases upon which Mr. Abbas relies. *Brown v. Insurance Corporation of British* Columbia, 2004 BCCA 254, ¶ 9; 196 B.C.A.C. 204, 206 (" I.C.B.C.'s position is that once it has been established that the respondent's false statement that his vehicle had been stolen was material to his claim for vehicle repairs, the court ought to have found that the respondent's claim for third party indemnity was also forfeited pursuant to s. 19(1)(e) of the Act … [that mandates] forfeiture of 'all claims by or in respect of the applicant or the insured' where it has been established that the insured has made a wilfully false statement 'with respect to a claim under a plan' … , regardless of whether the false statement is material to the particular claim in dispute. To succeed in that argument, I.C.B.C. would have to persuade us that the decisions of this Court in *Inland Kenworth Ltd. v. Commonwealth Insurance Co.* … and *Petersen v. Bannon* … were in error in interpreting similar provisions in insurance legislation. In *Inland Kenworth*, … McEachern C.J.B.C. said: I agree that a wilfully false statement which is not material may not usually be relied upon by the insurer. … I do not say that any wilfully false statement will be sufficient to vitiate coverage. It must be material. … ' . In *Petersen* …, Finch J.A., as he then was, said …: 'A wilfully false statement will invalidate an insured's claim only if the statement is material to the claim at risk of forfeiture. …' In many cases, a wilfully false statement which is material to one claim will also be material to another but whether the false statement is material to a claim at risk of forfeiture does not flow from the construction of the statutory provision but from a determination on the evidence in light of the nature of the claim") (emphasis omitted). But both *Inland Kenworth* and *Petersen* were talking about materiality before the insurer can rely on the statutory provision to avoid *any* claim – the initial requirement of materiality. In *Inland Kenworth*, the insured submitting a backdated inspection report after an accident was a material misstatement that vitiated coverage for his accident claim. In *Petersen*, the insurer's false statement that another vehicle forced the truck in which he was a passenger off the road was material to the insurance claim arising from that accident. They did not, as far as we can tell, suggest that this requirement applies anew for each related claim or component of that claim after the initial threshold is met.

[110] R. Sullivan, The Construction of Statutes 531 (7th ed. 2022) ("Although legislation is paramount, it is presumed that legislatures respect the common law and do not intend to interfere with common law rights … or generally to change the policy of the common law. … This presumption permits courts to insist on precise and explicit direction from the legislature before accepting any change. The common law is thus shielded from unclear or inadvertent

If

...

(b) the insured … 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 *with respect to which the fraud or false statement is material* is invalid and the right to recover insurance is forfeited.

[114] But it did not.

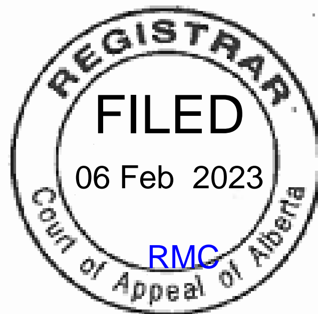
VI. Conclusion

[115] This appeal is dismissed.

[116] We acknowledge the assistance counsel provided. They willingly answered our many questions.[111]

Appeal heard on November 8, 2022

Reasons filed at Calgary, Alberta
this 6th day of February, 2023



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legislative encroachment") & A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 318 (2012) ("statutes will not be interpreted as changing the common law unless they effect the change with clarity").

[111] An appeal is a formal conversation between counsel and the members of the appeal court. Questions are a vital feature of this formal conversation. See Wakeling, "The Oral Component of Appellate Work", 5 Dalhousie L.J. 584, 598 (1979) ("As no position is impregnable counsel should expect damaging questions. An honest answer and the admission certain hurdles bar the way does not foreclose one from stressing the countervailing considerations which offset the admitted deficiencies. The court appreciates frankness and Lord Macmillan believes that concessions invoke the judges' aid") & A. Scalia & B. Garner, Making Your Case: The Art of Persuading Judges 189 (2008) ("In many modern courts, much less oral-argument time is spent in set-piece presentations by counsel than in back-and-forth discussions between counsel and court, prompted by questions from the judges").

Antonio J.A. (concurring in the result):

[117] I have read the reasons of my colleagues and concur in the result.

[118] The dispute centers around the interpretation of s 554(1)(b) and (c) of the *Insurance Act*, RSA 2000, c I-3, which reads:

> **Misrepresentation, fraud or violation of condition**
>
> 554(1) If
>
> > …
> >
> > (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.

[119] There is no doubt the appellant committed a fraud. The appellant admitted he lied, falsified documents, and conspired with relatives to obtain coverage under Section B when he did not qualify. As a result, the circumstances of s 554(1)(b) are met.

[120] The closing phrase of s 554(1) sets out the consequences to an insured who has committed fraud. There are two, given the plain and ordinary meaning of the language used: (i) the claim is invalid; and (ii) the right to recover indemnity is forfeited. Both consequences have legal force: see for example, *Andrusiw v Aetna Life Insurance Co. of Canada*, 2001 CanLII 61004 at para 53, 289 AR 1 (KB). Thus, even without considering the meaning of "a claim" in part (i) of the phrase, part (ii) applies. The appellant forfeited his right to recover indemnity as against the insurer. This conclusion is sufficient to dispose of the appeal.

[121] The appellant's argument focuses on the construction of "a claim". He submits the closing phrase of s 554(1)(c) uses the singular form of "a claim", rather than "any claim" or "all claims". He essentially asks this Court to read the provision as follows: "If the insured wilfully makes a false statement in respect of a claim under the contract, **the** claim by the insured is invalid."

[122] I decline to adopt this interpretation. First, the legislature did not choose to use the word "the". Second, the dictionary defines "a" as an indefinite article which can act as "one", "some", or "any" (Katherine Barber, ed, *Canadian Oxford Dictionary* (Don Mills, Ont., 2004) *sub verbo* "a"). Finally, legislative convention suggests that there is no difference between "a" / "any" / "every". That is, "any" is not broader in scope that "a". For example, "any" person who does X is unavoidably "a" person who does X.: Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto, Ont: LexisNexis Canada Inc., 2022) at § 4.05.

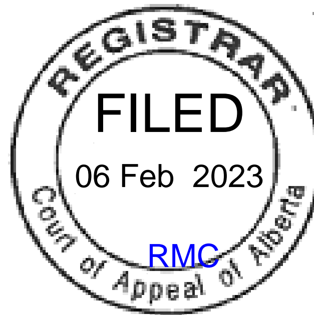
[123] Reading "a" as "any" in these circumstances gives a workable grammatical meaning to the whole section and its parts.

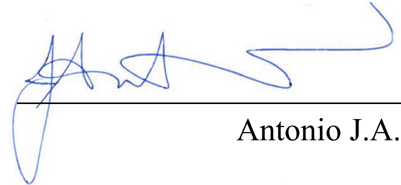
[124] Because the appellant has no right to seek to recover indemnity from the insurer and because his false statement in respect of his claim invalidated any claim made, the chambers justice properly granted summary dismissal.

[125] I agree the appeal should be dismissed.

Appeal heard on November 8, 2022

Reasons filed at Calgary, Alberta
this 6th day of February, 2023





Antonio J.A.

Appearances:

M.L. Hoornaert
for the Appellant

D.M. Pick
M.M. Thorne (no appearance)
for the Respondent