

**CITATION:** Aviva Insurance v. Haan, 2025 ONSC 3762  
**COURT FILE NO.:** CV-23-00001704-0000  
**DATE:** 2025/06/24

**SUPERIOR COURT OF JUSTICE-ONTARIO**

**RE:** AVIVA INSURANCE COMPANY OF CANADA, Applicant

**AND:**

UDO HAAN, Respondent

**BEFORE:** Gibson J.

**COUNSEL:** Christopher Dunn, Counsel for the Applicant

Mark Radulescu, Counsel for the Respondent

Theresa Hartley, Counsel for the Intervenors Samuel James Bailie  
and Sharee Anne Bailie

**HEARD:** February 24, 2025

**ENDORSEMENT**

**Overview**

[1] This is an application brought by Aviva Insurance Company of Canada (“Aviva”), seeking a determination with respect to its coverage obligations to the Respondent, Udo Haan (“Haan”), under an insurance policy issued by Aviva to Haan, Policy No W0303996 (“the Policy”), insuring Haan’s residence at 56 Sprucedale Crescent, Kitchener, Ontario. Aviva seeks confirmation that it has no duty to defend or indemnify Haan under a policy of homeowners’ liability insurance issued to him in response to a series of legal actions brought by his neighbours relating to physical damage he caused to their homes when he blew up his own home.

[2] Aviva provided homeowners’ property and liability insurance to Haan under the Policy. On August 22, 2018, Haan killed his wife, Edresilda Haan (“Mrs. Haan”), at the Haan residence by strangulation. Following the killing, Haan tampered with a gas line in the house with the intention of releasing gas into the house in order to blow the house up and kill himself. The Haan residence caught

fire and exploded, destroying the house and causing extensive damage to surrounding neighbours' homes.

[3] Haan was charged with a number of offences under the *Criminal Code of Canada* relating to the murder of Edresilda Haan, the subsequent arson of the Haan Residence and the damage to his neighbours' homes. At the hearing of these charges before the Ontario Superior Court of Justice, Haan was found not criminally responsible pursuant to s. 16 of the *Criminal Code*.

[4] The Aviva policy only provides coverage for unintentional injuries. It specifically excludes coverage for property damage caused by intentional or criminal acts.

[5] Aviva submits that, based on the applicable case law and the finding that Haan was not criminally responsible, along with certain admissions made by him, Haan's actions were both intentional and criminal, triggering an exclusion in the policy, or preventing the triggering of the insuring agreement.

[6] Haan contends that he did not intend to cause any damage to neighbouring homes. Aviva submits that claim cannot succeed, as Haan admitted at his criminal trial to intentionally causing damage to his neighbours' property. Further, where one acts intentionally, it asserts, all damage resulting from one's actions is considered to arise from the intentional act and is therefore excluded from coverage.

[7] These reasons explain why Aviva's Application will be granted.

### **Summary of Facts**

[8] The Applicant, Aviva Insurance Company of Canada ("Aviva"), is a federally licenced insurance company. The Respondent Udo Haan is an individual who, at the material time, resided at 56 Sprucedale Crescent in Kitchener, Ontario. Haan and his wife Edresilda Haan owned the residence at 56 Sprucedale Crescent (the "Haan Residence") as joint tenants.

[9] The Haan's neighbours included Samuel James Bailie and Sharee Anne Bailie - 60 Sprucedale Crescent (the "Bailie Residence"), James Kuehn and Rosemarie Kuehn - 48 Sprucedale

Crescent (the “Kuehn Residence”), Mary Mitchell and David Mitchell - 64 Sprucedale Crescent (the “Mitchell Residence”) and Jeffrey Willmer and Ermine Willmer - 68 Sprucedale Crescent (the “Willmer Residence”).

[10] Aviva issued a policy of homeowners’ insurance to Haan and Mrs. Haan for the Haan Residence (Aviva Policy No. W0303996). This policy included liability insurance coverage for bodily injury or property damage caused by Mr. or Mrs. Haan to third parties.

[11] On August 22, 2018, Udo Haan killed Edresila Haan by strangulation. He then opened the gas line running to the furnace at the Haan Residence with the intention of causing the house to catch fire and explode. The house caught fire and exploded, destroying it and causing extensive damage to surrounding neighbours’ homes.

[12] Haan was charged with offences under the *Criminal Code of Canada* relating to the murder of Mrs. Haan and the subsequent arson of the Haan Residence.

[13] A number of legal actions were commenced by neighbouring homeowners and/or their insurers against Haan seeking recovery of the amounts paid by them to repair the damaged homes. Haan sought coverage for these third-party claims under the Aviva Policy. Aviva appointed defence counsel for Haan on a without prejudice basis pending the outcome of the criminal charges against him. Haan was advised that a finding that he acted intentionally or criminally with respect to the explosion of the Haan Residence would preclude coverage for him under the Aviva Policy.

[14] The criminal charges laid against Haan were resolved on February 1st and 2nd, 2023, before Justice Sweeny of the Ontario Superior Court of Justice. Udo Haan was found not criminally responsible (“NCR”) on all charges, including the murder of his wife, the subsequent explosion of the Haan Residence, and the resulting property damage to neighbours’ homes.

#### *The Terms of the Aviva Insurance Coverage*

[15] The Aviva Policy, Coverage E, provides liability insurance coverage for unintentional bodily injury or property damage caused by an insured:

## Coverage E - Your Personal Liability Protection

This is the part of the policy you look to for protection if you are sued. We will pay all sums which you become legally liable to pay as compensatory damages because of unintentional bodily injury or property damage arising out of:

1. your personal actions anywhere in the world;
2. your ownership, use or occupancy of the premises defined in Section II.

[16] Exclusion 6 for Coverage E excludes coverage for third party property damage caused by an intentional or criminal act by any person insured under the policy:

We do not insure claims arising from: ...

6. Resulting from an intentional or criminal act or failure to act by:
  - a. any person insured by this policy;
  - b. any other person at the direction of any person insured by this policy; or
  - c. any tenant, tenants' guests, boarder or employee, or any member of the tenants' household.

### *Events preceding the Loss*

[17] At Haan's NCR hearing before Justice Sweeny, it was stipulated by the parties, and accepted by the court, that Mr. and Mrs. Haan were in a relationship for over 40 years, were married on the date of the loss, and had lived together in the detached house at 56 Sprucedale Crescent for approximately 25 years.

[18] In the months leading up to Mrs. Haan's murder and the explosion at the Haan Residence, the relationship between Mr. and Mrs. Haan had deteriorated. They had agreed to separate at the time of the loss. Udo Haan's mental state deteriorated and he became increasingly paranoid. He felt that he was being watched and followed and suspected that Mrs. Haan had been unfaithful to him. He began to confront her on a regular basis with accusations of infidelity. Haan had surveillance cameras installed in and around the Haan Residence and inside his vehicle, and routinely contacted the police, private investigators, and his home security company to report that he was being followed.

[19] On May 15, 2018, Udo Haan attempted suicide by overdosing on a combination of Tylenol and alcohol. Haan underwent a Form 1 psychiatric assessment, during which he related the events leading up to his suicide attempt. The attending psychiatrist determined that Haan was psychotic and admitted him involuntarily.

[20] Haan was discharged from the psychiatric intensive care unit on June 4, 2018, with a diagnosis of “psychosis and other related disorder, likely worsened by marijuana use”. He was prescribed antipsychotic medication. During Haan’s treatment at the psychiatric day program in June of 2018, it was recommended that he continue to take antipsychotic medication as well as an antidepressant, and that he participates in both group and individual therapy. Haan was not always compliant with taking his medication as prescribed and he continued to consume alcohol on a regular basis.

[21] On August 20, 2018, Haan was involved in a motor vehicle collision. Haan drove his vehicle into that of another driver who was stopped at a yield sign. After the first impact, he proceeded to reverse and then drive into the other vehicle for a second time. The driver of the other vehicle was unknown to Haan. When police attended at the scene, he told them that he suspected that this driver had been following him.

[22] On the evening of August 21, 2018, and into the following morning, Udo Haan was experiencing paranoid delusions. He says that he believed Edresilda Haan was in a prostitution ring controlled by the mafia and that the mafia was going to kill him.

[23] At approximately 4:41 a.m. on August 22, 2018, Haan disarmed the home security system at the Haan Residence. Early in the morning, Haan entered Mrs. Haan’s bedroom and strangled her using a rope that he had fashioned into a garrotte-type ligature. He then went to the basement of the Haan Residence where he opened the gas line allowing the home to fill with natural gas. Haan then returned to Mrs. Haan’s bedroom where he poured gasoline over the bed and used a lighter to ignite the gasoline.

[24] At approximately 8:10 a.m., the Haan Residence had filled with a sufficient concentration of natural gas to ignite. The house exploded and caught fire, destroying it completely, and causing significant damage to neighbouring homes.

[25] As a result of the police investigation into the death of Mrs. Haan and the subsequent explosion and fire, Udo Haan was charged with the following series of offences under the *Criminal Code of Canada*:

- a. First degree murder of Edresilda Haan contrary to s. 235.1 of the *Criminal Code of Canada*;
- b. Intentionally or recklessly causing damage by fire explosion to a dwelling house situated at 56 Sprucedale Crescent, Kitchener, Ontario, knowing that or being reckless in respect to whether the said property was inhabited or occupied contrary to s. 433(a) of the *Criminal Code of Canada*;
- c. Intentionally or recklessly causing damage by fire or explosion to a dwelling house, that being the property of Samuel and Sharee Bailee, located at 60 Sprucedale Crescent, Kitchener, Ontario, contrary to s. 434 of the *Criminal Code of Canada*; and
- d. Intentionally or recklessly causing damage by fire or explosion to a dwelling house, that being the property of Matthew and Daphne Gorman, situated at 52 Sprucedale Crescent, Kitchener, Ontario, contrary to s. 434 of the *Criminal Code of Canada*.

[26] The criminal hearing proceeded before Sweeny J. on February 1 and 2, 2023. The purpose of the hearing was to determine whether Udo Haan was suffering from a mental disorder that rendered him not criminally responsible pursuant to s. 672.34 of the *Criminal Code of Canada* with respect to the offences with which he was charged.

[27] At the hearing, Haan admitted to the underlying facts constituting all four offences.

[28] Haan was interviewed by forensic psychiatrist Dr. Giovanna Amarin Levin, and made the following statements regarding his intentions leading up to the loss: Haan decided on the date of the loss that he had to end it all and made the decision to cause the explosion of the home to ensure that he would not survive; and, after strangling his wife with a rope, Haan went to the basement, opened the gas valve and went into the garage. He wanted to make sure that the house would fill up with gas so he could ignite it and that “would be the end of everything”.

[29] Dr. Levin concluded that Mr. Haan suffered from a delusional disorder, persecutory type. It was Dr. Levin’s opinion that Mr. Haan was capable of understanding the nature and quality of his acts and that, at the time of the loss, he had an intellectual understanding that killing his wife and blowing up their home was wrong. Due to his delusional interpretation of events, he genuinely believed that his actions were morally justified under the circumstances.

[30] On February 1, 2023, Dr. Levin gave evidence before the Court with respect to her assessment. Dr. Levin explained that Udo Haan met the criteria for a finding of NCR on the basis of his inability to understand that his acts were morally wrong. Although Haan’s psychosis distorted his thoughts insofar as he legitimately believed that his acts were morally justified, he was aware of what he was doing at all times and rationally understood that his actions would cause his wife’s death as well as the destruction of their home and damage to nearby homes.

[31] Udo Haan was also interviewed by forensic psychiatrist Dr. Scott M. Woodside. Haan consistently stated that he intended to commit the offences and, that in doing so, he was aware of the harm that would be caused to his wife, to himself, to his own house, and to the houses of his neighbours.

[32] Dr. Woodside concluded that Udo Haan would be eligible for a defence of not criminally responsible due to a mental disorder on the basis that his psychosis likely rendered him incapable of knowing that his acts were morally wrongful. On February 2, 2023, Dr. Woodside gave evidence before the court with respect to his findings. Dr. Woodside’s testimony echoed that of Dr. Levin with respect to the grounds for Udo Haan’s eligibility for a finding of NCR. He stated that Haan was likely not criminally responsible due to his incapability of knowing that his actions were morally wrong,

but that he had still been able to appreciate the nature and quality of the acts giving rise to the offences.

[33] At the hearing, Justice Sweeny concluded that, although Udo Haan was capable of appreciating the nature and quality of the acts and knew what he was doing at the time of the loss, he met the requirement for NCR on the basis that he lacked the capacity to rationally decide whether the act was right or wrong.

*Claims by Third Parties*

[34] Two legal actions were commenced against Haan on behalf of neighbouring homeowners whose homes suffered property damage: a. Samuel James Bailie and Sharee Anne Bailie v. Haan - 60 Sprucedale Crescent (collectively referred to as the “Bailie Plaintiffs”) (Ontario Superior Court of Justice, Court File No. CV-20-00000971-0000) ; b. James Kuehn, Rosemarie Kuehn, Mary Mitchell, David Mitchell, Jeffrey Willmer, and Ermine Willmer v. Haan (collectively referred to as the “Kuehn Plaintiffs”) (Ontario Superior Court of Justice, Court File No. CV200001059-0000). Both the Bailie Plaintiffs and the Kuehn Plaintiffs have claimed against Haan for damages in negligence or alternatively in nuisance, arising from the damage to their properties caused by the incident.

[35] Aviva advised Haan by letter on August 24, 2020 and April 7, 2022, that it had appointed defence counsel to defend the legal actions against him on a without prejudice basis, pending the outcome of his criminal trial. Haan was made aware that there would be no coverage available to him in the event that it was ultimately determined that he had committed an intentional or criminal act, and that Aviva might, at some point, seek approval of the Ontario Superior Court of Justice with respect to its coverage position.

*Aviva’s Position with Respect to the Claims of the Third Parties*

[36] Aviva’s position on this Application is that the finding that Haan was not criminally responsible for having caused damage to the third-party properties precludes coverage for him under the Aviva homeowners’ policy on the basis that:

- a. Haan was found to have intended to commit the act of blowing up his house, resulting in the damage to neighbours' homes. This act was not "unintentional" as required by the Aviva Policy's liability insuring agreement; and
- b. Haan's acts were both intentional and criminal in violation of Exclusion 6 of Coverage E.

*The position of the Respondent Udo Haan*

[37] Udo Haan's position is that coverage is triggered under the Policy, no exclusion applies and the Applicant has a duty to defend the Respondent in the neighbours' actions. The primary question for the Court to consider, the Respondent submits, is whether the Respondent's actions were "intentional" as the Court considers the word in the context of homeowner insurance policies and their exclusions. The Respondent requests that the court determine that Aviva has a duty to defend Haan in the neighbours' actions and that the Application should be dismissed.

[38] The Respondent submits that the offence of arson under the *Criminal Code* is not limited to damage caused intentionally but extends to damage caused recklessly, and that the act of "recklessly" causing damage does not constitute an intentional act for the purpose of the application of the exclusion in the Policy.

*The position of the Intervenors Samuel and Sharee Bailie*

[39] The Intervenors submit that the Application should be dismissed and that Aviva has a duty to defend and indemnify Haan in the Bailie action. They submit that, on its facts, this case is different from others due to the combination of the NCR finding on the criminal charges, plus what they say is the non-intentionality of the consequences to neighbouring homes of Haan's actions.

**Issues**

[40] The issues that arise for determination on this Application are:

1. Is Haan entitled to coverage under the Aviva homeowners' policy?
  - a. Do Haan's actions trigger the Aviva Policy's insuring agreement?
    - i. Are compensatory damages being sought for property damage?

- ii. Was such property damage caused unintentionally?
2. Does the Aviva Policy's criminal or intentional act exclusion apply to exclude coverage?
    - a. Were Haan's acts criminal?
    - b. Were Haan's acts intentional?
  3. Can Haan obtain coverage on the basis that he did not intend to inflict damage on neighbouring homes?

### Assessment

*Is Haan entitled to coverage under the Aviva policy?*

[41] This is a duty to defend application. In interpreting insurance contracts, the language of the policy is what governs. The principles emerging from the case law relating to the duty to defend were described by the Court of Appeal for Ontario in *Tedford v. TD Insurance Meloche Monnex*, 2012 ONCA 429, at para. 14:

[14] The following principles emerge from the case law governing the duty to defend:

1. The insurer has a duty to defend if the pleadings filed against the insured allege facts which, if true, would require the insurer to indemnify the insured: *Monenco Ltd. v. Commonwealth Insurance Co.*, 2001 SCC 49, [2001] 2 S.C.R. 699 (S.C.C.), at para. 28.
2. If there is any possibility that the claim falls within the liability coverage, the insurer must defend: *Nichols v. American Home Assurance Co.*, [1990] 1 S.C.R. 801 (S.C.C.), at p. 810.
3. The court must look beyond the labels used by the plaintiff to ascertain the "substance" and "true nature" of the claims. It must determine whether the factual allegations, if true, could possibly support the plaintiff's legal claims: *Monenco*, at paras. 34-35; *Scalera*, at para. 79.

4. The court should determine if any claims plead are entirely "derivative" in nature, within the meaning of that term as set out in *Scalera*. A derivative claim will not trigger a duty to defend.

5. If the pleadings are not sufficiently precise to determine whether the claims would be covered by the policy, "the insurer's obligation to defend will be triggered where, on a reasonable reading of the pleadings, a claim within coverage can be inferred": *Monenco*, at para. 31.

6. In determining whether the policy would cover the claim, the usual principles governing the construction of insurance contracts apply, namely: the *contra proferentem* rule and the principle that coverage clauses should be construed broadly and exclusion clauses narrowly: *Monenco*, at para. 31; *Scalera*, at para. 70. As well, the desirability, where the policy is ambiguous, of giving effect to the reasonable expectations of the parties: *Scalera*, at para. 71.

7. Extrinsic evidence that has been explicitly referred to in the pleadings may be considered to determine the substance and true nature of the allegations: *Monenco*, at para. 36; see *1540039 Ontario Ltd. v. Farmers' Mutual Insurance Co. (Lindsay)* 2012 ONCA 210 (Ont. C.A.).

*Do Haan's actions trigger the Aviva Policy's insuring agreement?*

[42] The insuring agreement for the Aviva Policy provides as follows:

Coverage E - Your Personal Liability Protection

This is the part of the policy you look to for protection if you are sued. We will pay all sums which you become legally liable to pay as compensatory damages because of unintentional bodily injury or property damage arising out of:

1. your personal actions anywhere in the world;
2. your ownership, use or occupancy of the premises defined in Section II.

[43] Accordingly, coverage will be available for an insured under the Policy where (1) compensatory damages are sought for (2) unintentional (3) bodily injury or property damage.

*Are compensatory damages being sought for property damage?*

[44] It is patent that compensatory damages are being sought for property damage by the neighbouring homeowners in the Bailie and Kuehn Actions.

*Was such property damage caused unintentionally?*

[45] At the NCR application hearing, Haan admitted that his acts were intentional, in that he was aware, at the time of committing the acts, that the damage that ultimately occurred to the Haan Residence was intended and expected. Further, based on Haan's admissions at the hearings of his NCR Application, his acts were also criminal.

[46] Under cross-examination on his Affidavit sworn in response to this Application, Haan acknowledged that:

- a. He hired an experienced criminal lawyer to provide him with advice with respect to the criminal charges he was facing. He was comfortable with the advice he was provide with;
- b. Based on legal advice, he pleaded that he was not criminally responsible for the events that lead to the charges, and did not object to that plea;
- c. He reviewed and agreed with the Agreed Statement of Facts entered at his criminal trial;
- d. He admitted to the facts underlying all of the charges that he was facing, including all charges relating to intentionally or recklessly damaging his neighbours' homes;
- e. He was interviewed by Dr. Levin and admitted to Dr. Levin that i. he opened the gas valve in the house to make sure that the house would fill up with gas so he

could ignite it, and that would be the end of everything; ii. He poured gasoline on his wife's body and used a lighter to ignite it;

- f. He was interviewed by Dr. Woodside and admitted to Dr. Woodside that i. He opened the gas valve and let the house fill up with gas for about four hours; ii. After opening the valve he waited in his garage for the gas to fill up the house, waiting to make sure he would die in the explosion ... "I wanted to make sure it was a massive explosion"; iii. He poured gas on the bed and lit it on fire with a lighter;
- g. Haan was found not criminally responsible by Justice Sweeny on all charges and did not appeal from that finding.

[47] I find that, based on the admissions made by Haan, and the applicable principles of law, Haan's actions were intentional, and accordingly, the insuring agreement of the Aviva Policy is not triggered.

[48] The decision of Braid J. in *Butterfield v. Intact Insurance Company*, 2022 ONSC 4060, upheld on appeal in *Butterfield v. Intact Insurance Company*, 2023 ONCA 246, is on all fours with the facts of this Application. In *Butterfield*, Brett Butterfield sought coverage from his homeowners' insurer in response to a legal action brought against him by a Mr. Carr. Mr. Butterfield had attacked and injured Mr. Carr with a knife during a psychotic episode in which he held the honest but deluded belief that he was defending himself and/or his family from Mr. Carr. Mr. Butterfield's insurer, Intact, denied coverage on the basis that the loss was excluded by the policy's exclusion for intentional and criminal acts.

[49] Justice Braid agreed that there was no duty on Intact to defend Mr. Butterworth on the basis that a finding of not criminally responsible rendered the acts of the insured both intentional and criminal.

[50] Justice Braid pointed out that there are two arms to a s. 16 NCR defence, stating at paras. 29-30:

[29] There are two arms of the s. 16 defence, which are as follows:

1. Appreciating the nature and quality of their act: If an accused is incapable of appreciating the nature and quality of their act under the first arm, the *mens rea* is negated: *R. v. Abbey* [1982] 2 S.C.R. 24 (S.C.C.) at p. 34. It is an inability to understand the physical consequences of the wrongful act. In such a case, the accused had no intention to bring about the consequence of death: *R. v. Chaulk*, at p. 1321.

2. Knowing it was wrong (or knowing the penal consequences): If an accused is incapable of knowing their act is wrong under the second arm, their incapacity does not go to the *mens rea* of the offence. In such a case, the insanity claim is manifested not as a denial of *actus reus* or *mens rea*, but rather as a defence in the nature of an excuse or exemption based on the fact that the accused's mental condition rendered them incapable of knowing that the act was wrong. The second branch is based on a claim to be excused for what would otherwise be criminal behaviour: *Chaulk*, at pp. 1321-1324.

[30] It is not necessary to prove both arms of s.16. Only one needs to be proven: *R. v. Ejigu*, 2016 BCSC 2278 (B.C. S.C.), at para. 342.

[51] With respect to the criminal aspect of the exclusion, Justice Braid noted that a court must be satisfied that both the *actus reus* and the *mens rea* of the offence have been established before considering the question of not criminally responsible, thus rendering the admission that of committing a “criminal” act, stating:

[31] The court must be satisfied that both the *actus reus* and the *mens rea* of the offence have been established before an NCR finding is made. This requirement is for the protection of the accused, since consequences will be imposed upon the NCR finding being made. The court cannot proceed to a determination on the NCR issue until the Crown has proven the case beyond a reasonable doubt: *R. v. Tshiamala*, 2022 ONSC 422, at paras. 34 and 46.

[32] In this case, Justice McKay of the Ontario Court of Justice must have been satisfied that the *actus reus* and *mens rea* of the offence of aggravated assault were proven, beyond a reasonable doubt, when he found that Mr. Butterfield committed the criminal act and found him not criminally responsible. An NCR finding is not available absent a finding that the elements of the offence have been made out. Mr. Butterfield admitted that he intended to stab Mr. Carr, although he was under a delusional belief about what Mr. Carr had done and did not appreciate that stabbing Mr. Carr was morally wrong. The court's finding was clearly made under the second arm of the s.16 defence.

[52] A criminal conviction is not required for an act to constitute a criminal offence. The two are not synonymous. A finding of NCR means that the accused individual will be exempt from a criminal conviction, but the elements of the offence establishing a criminal act must first be made out. This negates the Respondent's argument about intentionality.

[53] In the present case, Udo Haan admitted to the elements of the offence of Arson - Damage to Property, pursuant to s. 434 of the *Criminal Code of Canada*. This represents an admission that he (1) committed the acts that caused damage to the neighbouring properties, and (2) that he had the necessary intent to do so.

[54] Section 434 provides that,

Every person who intentionally or recklessly causes damage by fire or explosion to property that is not wholly owned by that person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

[55] With respect to the intentional aspect of the exclusion, Justice Braid held that Mr. Butterfield both admitted to, and was found by two forensic psychiatrists to have intended to, commit the acts, and to have understood the physical nature and consequences of his acts:

[45] Mr. Butterfield formed the intention to stab Mr. Carr and then took several steps to fulfill his intention. He left the store and went to retrieve a hunting knife. He

returned to the store with the hunting knife in hand. He walked up to Mr. Carr and stabbed him, yelling that he needed to be murdered. Mr. Butterfield's stated goal was to harm Mr. Carr.

[46] Mr. Butterfield understood the physical nature and consequences of his act. He clearly did not appreciate that what he was doing was morally wrong given the schizophrenia diagnosis, but that does not change the fact that his actions were intended to harm Mr. Carr. Mr. Butterfield's actions demonstrate a clear intention to injure or kill Mr. Carr with a large knife, even if it was based on a delusional belief wherein he did not know his actions were morally wrong.

[56] Justice Braid concluded that the exclusion applied, stating:

[48] In this case, I find that the knife attack was both an intentional act and a criminal act. Intact has established, on a balance of probabilities, that the exclusionary clauses in the insurance policy apply. Intact does not owe a duty to defend or indemnify Mr. Butterfield against the claims in the action.

[57] The findings at Udo Haan's not criminally responsible hearing were identical to those involving the insured in *Butterworth*. Dr. Levin concluded the following with respect to Haan's understanding of the nature and consequences of his acts:

In my opinion, Mr. Haan was clearly suffering from a mental disorder at the time of the offence. In terms of assessing the degree of mental disorder, it involves the thoughts, perceptions and motivations leading up to the offence. It also involved the individual's understanding of the consequences of the act. In my opinion, Mr. Haan was capable of understanding the nature and quality of his act. In terms of knowing that it was wrong, Mr. Haan's mind was operating based on a psychotic process, with delusional and irrational beliefs. He had repeatedly attempted, based on his fixed beliefs to identify his persecutors, other than his wife, whom he believed was part of the conspiracy. He likely had an intellectual understanding that killing his wife and exploding the house was wrong.

[58] Dr. Woodside reached the same conclusion, stating:

Overall, in my opinion, Mr. Haan was experiencing both active symptoms of psychosis primarily of a persecutory nature at the material time along with symptoms of depression. Regardless of which version of events is accepted by the trier of fact, it is also my opinion that none of these symptoms would have rendered Mr. Haan incapable of appreciating the nature and quality of his actions or omissions, insofar as he knew his actions were likely to or intended to cause the death of his wife and for his home to explode.

Regarding whether he was capable of knowing that his actions were legally wrong, it is my opinion that he remained capable of knowing his actions could lead to arrest, regardless of which version of events is ultimately accepted in court.

[59] Justice Sweeny found that Udo Haan was capable of appreciating the nature and quality of his actions, and further, that he knew his actions were likely to, or intended to, cause his house to explode, stating:

Dr. Levin and Dr. Woodside agree that Mr. Haan was capable of appreciating the nature and quality of his actions or omissions insofar as he knew his actions were likely to or intend to cause the death of his wife and for his home to explode.

[60] The Statement of Claim in *Butterfield* was entirely based in negligence, with no allegations of an intentional act. In spite of this, Justice Braid read this into the pleadings based on the facts. In the case of the underlying actions against Haan, the neighbours each plead that Haan intentionally blew up his house.

*Does the Aviva Policy's criminal or intentional act exclusion apply to exclude coverage?*

[61] This engages two questions: Were Haan's acts criminal? Were they intentional?

[62] With respect to the criminal or intentional act exclusion, it is not necessary for an insurer to prove that an insured's act was both intentional and criminal in order for the exclusion to apply. Proof

of either on its own is sufficient. In *Eichamnis v. Wawanesa Mutual Insurance Co.*, 2007 ONCA 92, the Court of Appeal for Ontario considered this question, concluding that the language of the exclusion is disjunctive, such that proof of either a criminal act or an intentional act will trigger the exclusion. On this point the court stated:

[23] The language of the exclusion is disjunctive. An act of an insured that causes injury is excluded when it is either an intentional act, or a criminal act. In *Buttar v. Safeco Insurance Co. of America* (1986), 30 D.L.R. (4th) 762 (B.C. S.C.), the insured, who had been convicted of arson, contended that the criminal act exclusion did not apply because, although he intended to set fire to clothing and blankets, he had no intention of causing a fire to his house. In rejecting this submission, MacKinnon J. stated at p. 765:

In any event there is no authority for the proposition that the exclusionary clause in the policy is to be read as if "criminal act" applies only to criminal offences carried out with the intent of causing the loss. The exclusionary clause is not so worded. It does exclude criminal acts causing the loss. There is no ambiguity or uncertainty in the language used. Criminal acts causing the loss are excluded. In addition wilful acts causing the loss are excluded.

[63] In this case, for the reasons set out above, Haan's acts were both intentional and criminal. Moreover, I do not accept the Respondent's submission that because the *mens rea*, or mental fault element, for the s.434 offence of Arson may be made out either by an intentional or reckless act, that this means that the act was not criminal. The s.434 offence is a general intent offence. Parliament has specified in the *Criminal Code* that either is sufficient, together with the requisite *actus reus*, for the acts to constitute a criminal offence. The *actus reus* is the damaging of property by fire. The mental element is the intentional or reckless performance of the illegal act. No additional knowledge or purpose is needed. In assessing the issue of intent, the trier of fact must consider all of the surrounding circumstances. The manner in which the fire started is likely to be an important consideration. Ultimately, the question is whether it can be inferred that the accused intends to

damage someone else's property or was reckless whether damage ensued or not: *R. v. Tatton*, 2015 SCC 33, [2015] S.C.R. 574.

*Can Haan obtain coverage on the basis that he did not intend to inflict damage on neighbouring homes?*

[64] Udo Haan's evidence, as set out in his Affidavit in response to Aviva's Application, is that he did not intend to damage neighbouring properties when he intentionally blew up his own house. I agree with the Applicant that this is not a defence available to Haan for two reasons: a. Haan admitted at his NCR hearing to the elements of the offence of intentionally or recklessly causing damage to his neighbours' houses. He is bound by this admission; and b. Haan admitted that he was aware that his acts would cause the destruction of his own house. An intentional tortfeasor is legally responsible for all resulting damage from the act, even if the scope of the damage exceeded the actor's intentions or was not reasonably foreseeable.

[65] In *Sirois v. Saindon*, 1975 CanLII 180 (SCC), the defendant raised a lawnmower above his head to threaten the plaintiff. The plaintiff reacted in fear, resulting in the fingers of his left hand being severed. The defendant sought insurance coverage from his homeowners' liability insurer. The insurer denied coverage on the basis that the insured's acts were intentional. The defendant argued that he did not intend to injure the plaintiff, only to scare him. This argument was rejected by the Supreme Court of Canada, with the court stating:

[24] ...I agree with the learned trial judge that this constituted criminal conduct which caused damage and the fact that the "scare" intended by the respondent had more serious consequences than he may have anticipated does not alter the fact that it was his threatening gesture which caused the damage. I am accordingly of opinion that the respondent's actions were in breach of the public policy rule as expressed in s.2 of the *New Brunswick Insurance Act*.

[66] In *Non-Marine Underwriters, Lloyd's London v. Scalera*, 2000 SCC 24, at para. 99, the Supreme Court of Canada stated:

[99] Moreover, if a tort is intended, it will not matter that the result was more harmful than the actor should, or even could have foreseen. Linden, *supra*, at p. 45, quotes Borins Co. Ct. J. (as he then was) in *Bettel v. Yim* (1978), 20 O.R. (2d) 617 (Ont. Co. Ct.), at p. 628:

If physical contact was intended, the fact that its magnitude exceeded all reasonable or intended expectations should make no difference. To hold otherwise ... would unduly narrow recovery where one deliberately invades the bodily interests of another with the result that the totally innocent plaintiff would be deprived of full recovery for the totality of the injuries suffered as a result of the deliberate invasion of his bodily interests.

[67] In the case of intentional acts, liability for any resulting damage is not limited by the doctrine of foreseeability. The intentional actor is liable for all damage resulting from the intentional act, regardless of whether it was reasonably foreseeable.

[68] The Intervenors have raised the case of *University of Western Ontario (Board of Governors) v. Yanush* (Ont HCJ), (1988) 67 O.R. (2d) 525 (ON SC). That case is clearly distinguishable on its facts from the present case, as the court found that the harm had originated in an accident, whereas in the present case the harm originated in a criminal act of arson.

### **Conclusion**

[69] I find that Udo Haan's arson of his home at 56 Sprucedale Crescent Kitchener was both an intentional act and a criminal act. There is no possibility that the claim falls within the liability coverage. Aviva has established, on a balance of probabilities, that the exclusionary clauses in the insurance policy apply. Aviva does not owe a duty to defend or indemnify Udo Haan against the claims in the neighbours' actions. Aviva's Application will be granted.

**Order**

[70] The Court Declares that:

1. Aviva has no duty to defend and/or indemnify Udo Haan with respect to the following legal actions brought against him for third party property damage: a. Action by Samuel James Bailee and Sharee Anne Bailee in the Ontario Superior Court of Justice (Court File No. CV-20-00000971-0000) (the “Bailee Action”); b. Action by James Kuehn, Rosemarie Kuehn, Mary Mitchell, David Mitchell, Jeffrey Willmer, and Ermine Willmer in the Ontario Superior Court of Justice (Court File No. CV-20-00001059-0000) (the “Kuehn Action”); and,
2. Udo Haan’s claim for a defence and indemnity under the Aviva Policy with respect to the Bailee Action and the Kuehn Action is excluded from coverage by the Aviva Policy’s exclusion for intentional or criminal acts, as Haan was found not criminally responsible (“NCR”) with respect to criminal charges relating to the explosion and fire at the Haan Residence which allegedly caused the third party property damage at issue in the Bailee and Kuehn actions. The finding of NCR, and the admissions made by Haan during the NCR hearing, confirm that his actions in causing the explosion were both intentional and criminal, and that the policy exclusion therefore applies to preclude coverage.

**Costs**

[71] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at [mona.goodwin@ontario.ca](mailto:mona.goodwin@ontario.ca) and to [Kitchener.SCJJA@ontario.ca](mailto:Kitchener.SCJJA@ontario.ca). The Applicant may have 14 days from the release of this decision to provide its submissions, with a copy to the Respondent; the Respondent a further 14 days to respond, with a copy to the Applicant; and the Applicant a further 7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified

timeframes after the Applicant's initial submissions, I will consider that the parties do not wish to make any further submissions and will decide on the basis of the material that I have received.

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M. Gibson J.

**Date: June 24, 2025**