

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kallu v. The Wawanesa Mutual Insurance Company*,  
2025 BCSC 1724

Date: 20250904  
Docket: S1810420  
Registry: Vancouver

Between:

**Parveen Kallu, Gurvinder Kallu, and  
Kuldeep Cheema**

Plaintiffs

And

**The Wawanesa Mutual Insurance Company**

Defendant

Before: The Honourable Justice Whately

## **Reasons for Judgment**

Counsel for the Plaintiffs,  
Parveen Kallu and Gurvinder Kallu:

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Place and Dates of Trial:

Vancouver, B.C.  
November 4-8 & 12, 2024

Place and Date of Judgment:

Vancouver, B.C.  
September 4, 2025

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**Introduction**

[1] This matter involves an insurance claim.

[2] The plaintiffs, Parveen Kallu (“Mr. Kallu”), and Gurbinder Kallu (“Mrs. Kallu”), own a property in Abbotsford, British Columbia. On March 1, 2018, the Kallus suffered a devastating house fire that was sparked by a prayer cabinet candle in the children’s room. The fire caused substantial damage to the family home.

[3] The defendant, Wawanesa Mutual Insurance Company (“Wawanesa”), issued a personal insurance policy to Mr. Kallu, Mrs. Kallu and Kuldeep Cheema with respect to the property, which included the family home and an outbuilding (the “Policy”). Kuldeep Cheema was removed as a named insured on the policy, and is no longer a party to this action.

[4] The plaintiffs allege that Wawanesa breached the contract of insurance by refusing to indemnify them for losses resulting from the fire.

[5] Wawanesa says that on March 22, 2018, it voided the Policy because of a material change of risk that was not properly disclosed prior to the fire. The material change of risk, as alleged by Wawanesa, was the presence of a marihuana grow operation in the outbuilding on the Kallus’ property.

[6] The plaintiffs deny that they knew about the marihuana grow operation, and in any event, they had previously sought to remove the outbuilding from the Policy coverage. Further, there was no material risk caused by the outbuilding such that it should cause the Policy regarding the family home to be voided.

[7] The plaintiffs’ monetary claim includes losses of personal property, compensation for labour and materials for cleaning, repairs and other remedial tasks, and costs associated with the loss of use of their home. They also provided a repair and abatement estimate as of July 2018. The plaintiffs’ total claim, insofar as I can make it out, appears to be in the range of \$300,000–\$400,000.

[8] Wawanesa says that the plaintiffs have failed to prove their damages, either with respect to the quantum claimed, or that items claims were covered by the Policy. Wawanesa also says that the Kallus failed to mitigate their loss.

[9] For the reasons that follow, I dismiss the plaintiffs' claim in its entirety, and find in favour of Wawanesa.

**Background Facts**

[10] In addition to Mr. Kallu and Mrs. Kallu, several witnesses testified at trial. I will not recount each witness's evidence in detail in these reasons unless it is directly relevant to the issues I must decide.

[11] At the time of trial, Mr. Kallu and Mrs. Kallu had been married for 27 years. They have two children, then aged 13 and 21.

[12] The Kallus purchased the property in 2015. They had been living in Cloverdale and had always wanted an acreage. They sold their Cloverdale home and looked for a home with at least 5 acres.

[13] By the time they found the property in Abbotsford, they had already viewed many options and were concerned about their living situation, as they were living with relatives. They wanted to stay within their budget, so that they could be comfortable when they moved in. The Abbotsford property was run down and dirty, and as Mr. Kallu put it, "needed some TLC". However, the land was perfect for them.

[14] When they viewed the property with their realtor, there was a caretaker there, picking up mink traps. He claimed the house was occupied, but it did not appear to be to the Kallus, as it was filled with cobwebs and flies. They observed a lot of pots around for plants, and it looked like someone had been doing nursery work.

[15] They saw the outbuilding, and asked the caretaker about it. He advised that it was not used, and it was not connected to power. Mr. Kallu said he "took a peek" and saw a lot of plastic and leakage in an "empty building." He said that while they

looked at the house and the outbuilding, their primary focus was the land. The Kallus' first offer was accepted and they purchased the property.

[16] The completion of the purchase was based on obtaining an appraisal and mortgage approval, which included the requirement of insurance. Wawanesa had the best prices, so they chose it as their home insurance carrier. The Policy covered all buildings on the property, including the family home and the outbuilding.

[17] Mr. Kallu arranged for the insurance coverage. Mrs. Kallu said that she had no role in arranging for insurance, and in the ordinary course, simply signed papers that her husband asked her to sign. The Kallus held the same policy with Wawanesa throughout the relevant time, which was renewed on a yearly basis.

[18] On or around June 13, 2017, the Kallus completed a "reduction of coverage" form, asking to remove the outbuilding from coverage. Mr. Kallu stated that he requested to remove the outbuilding in hopes of reducing the total cost of the insurance. He said that the building was leaking and run down, needed repair and they did not want to repair it. He said he told the broker all of this, and then signed the request form.

[19] However, he recalled that submitting the form did not seem to reduce the cost of insurance as hoped or expected. He did not follow up with the broker.

[20] The cost of the Kallus' insurance did not change, because the outbuilding was never removed from coverage. For some reason, Wawanesa did not receive the request to remove the outbuilding from coverage from the broker and the request was not considered or processed.

[21] Jeremy Espiritu, a Policy underwriter for Wawanesa, testified at trial. He stated that even if the form had been received, a request to remove coverage for a covered building on the property would not have been approved. He said it would be bad underwriting practice to remove a covered structure because of leaking or other similar reasons. The request would be a red flag to the underwriter with respect to other structures on the property, and may affect coverage as a whole. He reviewed

the Kallus' file and confirmed that the request was not there, and there was no note in the file because coverage was not changed.

### **The Outbuilding**

[22] The outbuilding is situated close to the main house, approximately 200 feet away. It is clearly visible from the main house. It would take less than a minute or two to walk between the two buildings.

[23] At the time of the fire, there was an addition to the red main building that was covered in blue Tyvek wrap. There was a white vent installed on the Tyvek covered addition, and black pots scattered around the outside of the outbuilding. The realtor who sold the property to the Kallus on behalf of the previous owners, Ben Oryall, said that this new addition was not there when the property was sold to the Kallus. During the trial, there was some confusion about a "lean-to" that appeared as part of the plans, and the addition shown with blue wrap in the photos. It was later clarified that these were two different structures.

[24] Mr. Kallu stated that he did not go into the outbuilding during the three years the Kallus had owned the property before the fire. He said they were busy with the house and the rest of the property, and he had no need to go in it. He said he was not aware of the hundreds of potted plants that were later discovered in the basement of the outbuilding.

[25] Mrs. Kallu said she did not go into the outbuilding because she was busy with the children and the house. She said she had no interest in the outbuilding. She testified that she went into the outbuilding for the first time in August or September 2019, more than a year after the fire, when they were trying to clean up the house. She said that Mr. Kallu told her it was not safe to go into the outbuilding and so she did not go in at any point before the fire.

[26] Under cross-examination, Mr. Kallu said that he understood there had been a nursery at the property, possibly in the outbuilding. He saw tube lighting in the outbuilding when he poked his head in on his first viewing. He did not notice barrels

of water. He said the walls were covered with white plastic, which hung down in front of the windows.

[27] In Mr. Kallus' examination for discovery, he said he at one time had the intention to fix up the outbuilding and use it, possibly for marihuana. At trial, he said that his plans were less specific, that he hoped to fix it up for whatever purpose, possibly for renters, whenever he could afford to do it. At a certain point, he told the adjuster that he intended to tear it down, but he claimed he only said that because he did not want the building to interfere with his insurance claim.

[28] Mr. Oryall testified that as the sellers' realtor, he did not always personally provide tours to prospective buyers, but he would leave keys for other realtors or viewers in a lock box. However, when he did tour prospective buyers through the property, he would show them the outbuilding, and expected that prospective buyers would want to see it. He also toured the property himself, including the outbuilding, when he was preparing to list it.

[29] He confirmed that there was no grow operation in the basement when he toured the property, only a dry concrete floor with some cardboard boxes. He also did not see white plastic, pots, plants, or hanging lights. It was his memory that the outbuilding had electricity. Under cross-examination, he confirmed that he did not use photographs from previous listings when he advertised the house and property. He stated that he used photos that were taken within about a week of the listing going live, and he was present for the taking of the photos, because he is particular about how he presents the properties he lists.

[30] I will comment briefly that the plaintiffs called a neighbour, Mr. Sheves, as a witness on their behalf. Mr. Sheves testified initially that contrary to the evidence of Mr. Oryall, it was his recollection that the outbuilding had not been changed since the Kallus purchased the property, and that the addition was already there when they purchased it.

[31] Under cross, however, Mr. Sheves was no longer certain and could only “guess” as to when the outbuilding was altered. He confirmed that while he drove by the property every day, the state of the Kallus’ outbuilding was not a concern to him, and he could not say when the addition was added.

**The Kallus’ Marihuana Licences**

[32] Both Mr. Kallu and Mrs. Kallu had, or at one time had, licences to grow marihuana.

[33] In 2013, while living in Cloverdale, Mr. Kallu obtained authorization from Health Canada to possess 2400 grams of marihuana, which was later increased to 6000 grams. He also obtained a personal use production licence, which authorized him to grow 974 plants indoor at his Cloverdale property. Mr. Kallu said that he did not grow marihuana at the Cloverdale property.

[34] Mrs. Kallu testified that she applied for a licence to grow marihuana because she suffered from neck pain, and was looking for alternatives to the pain medications she had been using. She obtained a prescription from her physician and used edibles, which helped with her pain, but she only used it for about a year. She did not explain why she also needed a licence to grow in addition to using edibles. She stated that she had heard about legalization, which was the reason she got the licence.

**The Fire**

[35] On March 1, 2018, Mr. Kallu was alone in the home when he heard some crackling. He opened the door to the children’s room and saw a small flame that immediately turned into a large flame. He tried to put out the fire by carrying water in a salad bowl back and forth from the kitchen. Soon, he was overtaken by smoke and had to run out of the house.

[36] Mr. Kallu recalled feeling as if the fire department arrived immediately, but he was confused as to whether he called his wife or the fire department. He recalls being attended by a firefighter, then being taken away by ambulance despite

wanting to stay. Mr. Kallu was treated in the hospital for 5 hours, presumably for smoke inhalation. When he returned to the house, he was not allowed to go in.

[37] Mrs. Kallu recalled receiving a phone call from her husband when she was at work. He was having trouble speaking and breathing. She told him to call 911. When she arrived at their home, the fire department was there and told her she could not go into the house. She saw firefighters pulling a burnt cabinet out from the children's room.

[38] Mrs. Kallu confirmed that the fire originated in the prayer cabinet in the children's room. The prayer room is a significant place in her culture, and is placed in the best room in the house. Mrs. Kallu set it up in her children's room so they could have the benefits of its blessings. She lit the candle in the morning as was her practice, and did not put it out, because the candles were meant to burn down. It could take anywhere from an hour to a day for a candle to burn down.

[39] During her testimony, Mrs. Kallu was tearful when recalling the damage caused by the fire, in particular to the children's room. She recalled her son's trophies, their prized Lego collection, and Star Wars collectibles that meant so much to her sons that could not be replaced.

[40] I later explain why I found certain key aspects of the Kallus' testimony to be not believable. However, I pause to say that I had no difficulty believing that Mrs. Kallu is a caring mother and a skilled homemaker, who was absolutely genuine in her expressions of great sorrow about the losses suffered, in particular by the children, as a result of the fire.

### **The Discovery of the Grow Op**

[41] Mr. Kallu notified the insurance broker on the day of the fire to notify Wawanesa about the fire damage to the family home. The evidence showed that an adjuster contacted Mr. Kallu on March 1, 2018, and likely attended the property on March 2, or at latest, March 3, 2018.

[42] Mr. Kallu recalled that upon arriving at the property, the adjuster demanded to see the outbuilding, even before looking at the house, where the fire had taken place. He felt she was rude, and commented that she uttered a racial slur. He advised her that the outbuilding was not covered by the insurance, it was not safe to enter and that they did not use it, but she insisted that they go inside anyway.

[43] When they entered the building, there was nothing on the main floor. Mr. Kallu testified that the building was dusty with cobwebs, with no light as there was no power. He said there was water all over the floor from a leak.

[44] They went down to the basement, they saw many dead plants, pots and water on the ground. There were hanging lights, drying plants and potted plants.

[45] Several photos entered into evidence were taken by the adjuster who visited the property after the fire. She took photos of the damage caused by the fire to the family home, as well as of the outbuilding.

[46] The photos of the outbuilding basement show an extensive grow operation, with rows upon rows of pots. Some of the pots appeared to just have dirt in them, but many had the remnants of wilted plants in them. The photos are not well lit, but it is clearly visible that some of the plants, while certainly dead or dying, still appear somewhat green, and there are one or two leafy plants hanging from the ceiling to dry.

[47] There were wires hanging from the ceiling and walls, lights hanging from the wires, and plastic on all the walls.

[48] There were fans, and cooling components. The electrician who testified at trial, Frank Deck, said that when he viewed the outbuilding in 2019, he identified seeing lights that he identified as high intensity, 1000 watt lamps with ballasts. He commented that he had seen similar equipment and lighting in other grow operations.

[49] Frank Deck commented that the electrical equipment was in poor condition but was not inoperable. The wiring was haphazard, and not code compliant. There was a cable running between the outbuilding and house, but he recalled that the power appeared to have been shut off at the road.

[50] The photos show the pots as carefully arranged on benches or in rows, and the area is relatively neat, rather than being in complete disarray. There were approximately 200 plants, or evidence of plants, discovered in the outbuilding.

[51] No testing was done on the plant material found in the outbuilding. To my admittedly untrained eye, while the plants were certainly abandoned at some point, they did not look like they were over three years old. Aside from the dead or dying plants, the photos do not show the rot, mold, dust or substantial disarray that one might expect from a nursery or grow op that had been abandoned for years.

[52] Wawanesa submits, and I agree, that there is no doubt that there was a marihuana grow operation in the Outbuilding. This is clear from the photographs taken by the adjuster on or about March 2, 2018. In any event, this fact is not in dispute.

[53] Wawanesa issued a notice to admit on July 26, 2019, seeking an admission that the Outbuilding contained marihuana plants on March 1, 2018. The Kallus did not respond to the notice to admit. The notice to admit also confirmed that the photos taken by the adjuster were taken when she attended the property immediately after the fire with Mr. Kallu, and that the photos are authentic. These facts are deemed admitted by virtue of Rule 7-7(2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*].

[54] The adjuster met with Mr. Kallu a few days after attending at the property. They met at a Denny's restaurant. The adjuster showed Mr. Kallu her typed statement by turning her laptop to face him, before getting him to sign electronically with his finger.

[55] Mr. Kallu says that he was not given a chance to read the statement before signing on the adjuster's laptop, and he was not given a copy. He does not agree that the statement accurately reflects what he told the adjuster.

[56] The adjuster's report to Wawanesa confirmed that she had discovered a grow operation in the outbuilding.

[57] Wawanesa issued a reservation of rights letter to the Kallus on March 9, 2018. On March 15, 2018 Wawanesa informed them that their policy was voided due to a failure to disclose a material change to risk prior to the yearly renewals in 2016 or 2017, and advised that there was therefore no coverage for the fire damage to their home. Wawanesa issued the Kallus a refund of insurance premiums paid since July, 2016, the date Wawanesa determined that the policy was voided.

[58] Counsel for the plaintiffs ask that I draw an adverse inference against Wawanesa for failing to call the adjuster as a witness. I agree with counsel for the defendants that given the notice to admit, and the photographs, I do not see the purpose in doing so. There is no dispute about what was found in the outbuilding.

[59] Mr. Kallu agreed in his examination for discovery that, in his view, there was a grow operation in the outbuilding when they purchased the property. He viewed the photographs taken by the adjuster and denied that he put any of the equipment or plants in the outbuilding. He maintained that he had no idea who did.

### **Post Fire**

[60] The plaintiffs did not return to the property, or begin to clean or remediate the contents or the structure until late August or early September of 2019. The family moved back to the family home in February of 2020.

[61] In the interim, the house was left in the condition it was in immediately after the fire was put out by firefighters. For 18 months, no steps were taken to place fans in the home, or dry any wet rooms, furniture or contents. No contents were removed or cleaned.

[62] Shortly after the fire, First OnSite provided an estimate for Wawanesa, and provided a separate quote to the plaintiffs with respect to the cost of remediation. The plaintiffs did not hire First Onsite at that time, but undertook their own repairs 18 months later.

[63] These repairs included the removal and replacement of the kitchen, drywall bathrooms, and almost all the contents of the house and deck, including furniture and appliances throughout the home. According to Mr. Kallu and Mrs. Kallu, much of the damage was due to mold, and the effects of water and soot left to sit on all surfaces in the home for approximately 18 months.

**Credibility**

[64] This case, in part, turns on whether I believe Mr. Kallu and Mrs. Kallu when they say that they did not know of the presence of a grow operation in the outbuilding on their property, or that the grow operation existed, and had been abandoned before they purchased the property.

[65] If I find that Wawanesa improperly voided the contract of insurance, I must determine if I believe Mr. Kallu and Mrs. Kallu’s account of the damages they suffered, particularly given the deficiencies in the evidence presented, in terms of verifiable receipts or proof of lost contents.

[66] The factors set out in the well-known case of *Bradshaw v. Stenner*, 2010 BCSC 1398, are key when assessing the credibility of witnesses, including:

- the capacity and opportunity of the witnesses to observe the events at issue;
- his or her ability to remember those events;
- the ability of the witness to resist being influenced by his or her interests in recalling those events;
- the internal and external consistency of the witness’s evidence;

- whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence;
- whether his or her evidence seems unreasonable, impossible or unlikely, bearing in mind the probabilities affecting the case;
- whether a witness has a motive to lie; and
- the witness's demeanour, meaning the way he or she presents while testifying.

[*Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to S.C.C. refused, 2013 CanLII 11302 (S.C.C.).]

[67] *Faryna v. Chorny*, [1952] 2 D.L.R. 354, 1951 CanLII 252 (B.C.C.A.), at 357 states:

... In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions ...

[68] Wawanesa says that the evidence of both Mr. Kallu and Mrs. Kallu conflicts with the evidence of the independent witnesses, including the realtor Ben Oryall who testified as to the state of the property at the time of sale.

[69] I find that where the evidence of Mr. and Mrs. Kallu conflicts with Mr. Oryall's, or, frankly, with the clear physical and photographic evidence of a large, well established, albeit abandoned, grow operation on their property, I prefer the independent evidence. Put simply, I do not believe that the grow operation in the outbuilding pre-existed the Kallus' purchase of the property.

[70] I do not believe the Kallus when they say that they did not look inside their own outbuilding between the time they purchased the property until after the fire in the family home. The outbuilding was mere feet from their home. There were clearly recent renovations to the building. It strains belief that, after investing their life

savings into a property, they would not investigate or seek to make use of the whole of the property, including an entire building located immediately beside their home.

[71] This, accompanied with the fact that both Mr. Kallu and Mrs. Kallu had, or once had licences to grow marihuana, makes it nearly impossible for me to accept that they had nothing to do with the grow operation on their property.

[72] To conclude, I do not find the Kallus to be credible on most, if not all the key facts relating to this claim. Their evidence was not reasonably believable for a practical or informed person.

**The Contract of Insurance**

**Statutory Conditions**

[73] The statutory conditions set out at s. 29 of the *Insurance Act*, R.S.B.C. 2012, c. 1 (the “Act”) state that the statutory conditions are deemed to be part of every insurance contract in force in British Columbia and must be printed on every policy under the heading “Statutory Conditions”.

[74] The statutory conditions are included in the Policy’s declaration pages. Statutory condition 4, material change, states:

Material change in risk

4(1) The insured must promptly give notice in writing to the insurer or its agent of a change that is:

- (a) material to the risk; and
- (b) within the control and knowledge of the insured.

(2) If an insurer or its agent is not promptly notified of a change under subparagraph (1) of this condition, the contract is void as to the part affected by the change.

[75] In order for Wawanesa to rely on statutory condition 4 to void the Policy, it must prove that:

- a) there was a change that was material to the risk;
- b) the change was within the Kallus’ control;

- c) the Kallus had knowledge of the change; and
- d) neither Wawanesa nor its agent was promptly notified in writing of the change.

[*Drechsler v. Canadian Northern Shield Insurance Company*, 2021 BCSC 1673, at para. 31.]

**Materiality**

***Evidence***

[76] Jeremy Espiritu, Wawanesa’s personal lines underwriting manager, testified at trial. His evidence included the following:

- a) the Kallus’ Policy included \$426,000 coverage for the home, \$63,900 for the Outbuilding, \$340,800 for personal property/contents and \$85,200 for loss of use;
- b) the Policy included the Statutory Conditions which are required to be included in all policies by the *Insurance Act*, and the basis for claims payment for personal property is set out on page 46 of the Policy wording;
- c) Wawanesa will not insure a risk with a marihuana grow operation because properties with a marihuana grow operation are on Wawanesa’s “do not submit” list;
- d) The homeowner Policy, such as the Kallus’ Policy, is not designed or priced for this type of risk. There is increased risk of fire, mold, water damage, and theft, and their products are simply not priced for these risks, or intended to cover them;
- e) It is possible to insure a property with a former grow op, but it requires reports to help to assess increased exposure and risk. Wawanesa would not have insured a current grow op even with an added risk assessment.

Wawanesa is a standard market insurer. Insuring current or active grow ops is possible, but in the substandard market;

- f) Wawanesa expects its customers to report changes to their broker. Wawanesa was not aware there was a marihuana grow operation on the Property at the time of the fire or at any time during the coverage period;
- g) Wawanesa received a request from the Kallus' broker to remove Kuldeep Cheema as an insured and an amended declaration page was issued to reflect this change on the Policy;
- h) Wawanesa did not receive a request from the Kallus' broker to remove the Outbuilding from coverage and would not have approved it if it had;
- i) Under cross-examination, Mr. Espiritu confirmed that he did not know if the broker received the request to remove coverage, but it did not make its way to Wawanesa's underwriting team. The Policy was not changed, and an amended declaration page was not issued;
- j) even if the issue with respect to the outbuilding was limited to leaking, as reported by Mr. Kallu in the purported request to remove the outbuilding, this would be a "red flag" for the broker or underwriter. Coverage of outbuildings on a property is standard. Such a request would have lead to discussions with the broker or further investigation;
- k) Wawanesa received a report from the adjuster in which she advised that she discovered a grow operation in the Outbuilding;
- l) Wawanesa issued a reservation of rights letter to the Kallus; and,
- m) Wawanesa decided to void the Policy and informed the Kallus of that decision. Wawanesa's claims department sent a letter to the Kallus advising them there was no coverage for their claim.

[77] Euen Rafferty testified as a qualified underwriting expert. He provided a report and testified as to his opinion on the materiality of risk. He said that the presence of a marihuana grow operation at a residential property would be material to an underwriter.

[78] Mr. Rafferty confirmed that his opinion would be the same regardless of whether there were 100 plants or 700 plants, because the risk factors are the same.

[79] Under cross-examination, Mr. Rafferty disputed the contention that if the outbuilding was not connected to power or water, it would not affect the risk associated with the family home. He also would not confirm that there was no risk from fire from the outbuilding to the house.

[80] Mr. Rafferty had no comment on the Kallus' request to remove the outbuilding from coverage, as his understanding in reviewing the file was that the outbuilding was covered by the Policy.

***Law***

[81] The contract of insurance is a contract of utmost good faith. The principle of *uberrima fides* was set out by Lord Mansfield in *Carter v. Boehm*:

First. 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 underwriter 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.

[*Carter v. Boehm* (1766), 3 Burr 1905, 97 ER 1162 (Eng. K.B.) at 1164.]

[82] It is not disputed that the Kallus were required to disclose any information material to the risk and such disclosure had to be full and accurate.

[83] The question of materiality is a question of fact for the court and the burden of proof is on the insurer. It is a question of fact in each case whether, if the matters misrepresented had been truly disclosed, they would, on a fair consideration of the evidence, have influenced a reasonable insurer to decline a risk or to have stipulated for a higher premium: *Insurance Act*, R.S.B.C. 2012, c. 1, s. 17(2); *Henwood v. Prudential Insurance Co. of America*, [1967] S.C.R. 720; *Kehoe v. British Columbia Insurance Co.*, [1993] B.C.J. No. 1172 (C.A.) at para. 7.)

[84] This analysis has both a subjective and an objective component. The courts consider the insurer's own practice, and whether that practice accords with an insurer acting as a reasonable or prudent insurer: *Kehoe*, at paras. 24–25; *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196, aff'd 2020 BCCA 22, leave to appeal ref'd [2020] S.C.C.A. No. 69 at para. 62.)

[85] In *Kehoe*, the court found that once an insurer has led evidence of its own practice as to what it considers to be information material to the risk and has demonstrated that other insurers have similar standards, it will be very difficult to categorize the insurer whose decision on materiality is in issue as other than a reasonable insurer: *Kehoe*, at para. 25.)

[86] Wawanesa's personal lines underwriter, Mr. Espiritu, and Mr. Rafferty, a qualified underwriting expert, both testified as to the nature of risk assessment with respect to grow operations. Their testimony was straightforward and frank. They outlined how Wawanesa and the insurance industry at large treats marihuana grow operations generally and with respect to residential properties like the Kallus. I accept their evidence that the existence of a grow operation, even a non-operational one, is information that is material to the risk for a reasonable property insurance insurer.

[87] The plaintiffs argue that any risk arising from an existing or past grow operation in the outbuilding should have no bearing on coverage for the family home, which was damaged by a fire not caused by, or in any way related to the outbuilding or its contents.

[88] More generally, if I understand their argument correctly, they say regardless of whether it was undisclosed, any risk that derives from a grow operation in the outbuilding, should not void the home Policy, because:

- a) it cannot be material because a fire caused by a grow operation could not travel from the outbuilding to the home, and
- b) the plaintiffs had “removed” the outbuilding from coverage.

[89] With respect, I did not find these arguments to be compelling or convincing.

[90] The first point was raised as mere speculation, with no evidence to support the contention. Fire experts were not called, and no evidence was put before me with respect to disproving the reasonableness of the risks associated with grow operations in, near or in the vicinity of a family home.

[91] In fact, the plaintiffs provided nothing to counter the evidence of Mr. Espiritu and Mr. Rafferty, nor was their evidence substantively challenged on cross.

[92] On both a subjective and objective basis, the existence of a grow operation on the property changes the nature of the risk an insurance company is being asked to cover. The pricing of any policy is dictated by the nature of the coverage being sought, and the types of risk that an insurer is prepared to cover in the aggregate.

[93] Mr. Espiritu testified that Wawanesa’s standard market homeowner policy is not designed to cover properties with grow operations. Mr. Rafferty confirmed that with respect to the insurance industry as a whole, a grow operation of 100 plants is as material as a 500–700 grow operation. The risks are the same.

[94] The plaintiffs did not present any evidence to show that Wawanesa’s approach to risk assessment of grow operations was markedly, or at all different than any other insurer in the standard homeowner policy market. As mentioned, they failed to adduce any evidence to refute Mr. Espiritu’s or Mr. Rafferty’s evidence, or anything in relation to the reasonableness of the insurer’s position on materiality.

[95] Further, even if I accepted that the Kallus had successfully “removed” the outbuilding from coverage because it was leaking, which I do not, this would not change the nature of the risk Wawanesa says is not coverable by their homeowner policy.

[96] I do not accept that the outbuilding was ever removed from coverage. The process to alter coverage was not completed as the request did not even make its way to Wawanesa’s underwriting team. I also have certain doubts about whether Mr. Kallu’s request was made in good faith, in terms of providing accurate information to the broker as to the reasons for seeking the removal.

[97] Regardless, I do not find the effort to remove the outbuilding from coverage to be helpful to the Kallus. If the Kallus had asked to remove the outbuilding because of a past, current or future grow operation, I may have certain questions about whether they at least attempted to provide notice to their insurer, regardless of whether the change was ever affected. This is not what happened, however.

[98] On the contrary, while I do not have to make a definitive finding about who started the grow operation, and precisely when it was up and running, given all the evidence before me, including the photographs, it would not be a stretch for me to find that the timing of the request to remove the outbuilding and the existence of an “operational” grow operation were temporally linked in some manner.

[99] In *Bahniwal v. The Mutual Fire Insurance Company of British Columbia*, 2016 BCSC 422, the plaintiffs had rented a portion of their property to a tenant who used the property to grow marihuana. The plaintiff denied having knowledge of the grow operation. Joyce J. stated:

I am satisfied, and the plaintiff does not contest, that if the Attached Suite contained a marihuana grow operation and the Bahniwals were aware of that fact, the failure to disclose its existence when applying for insurance or renewing insurance would constitute the failure to disclose a material fact. The Vice President of Underwriting for the defendant testified that had the defendant been aware of the presence of a marihuana grow operation, they would have declined to extend coverage or, if its existence came to their knowledge after the Policy had been extended, the defendant would have voided the Policy.

[*Bahniwal v. The Mutual Fire Insurance Company of British Columbia*, 2016 BCSC 422, at para. 24.]

[100] I understand that there is some variability in the case law in terms of whether it is necessary to show that an insured had subjective knowledge of the change in risk, or that the insured knew that the change in risk would be material to the insurer.

[101] In this case, I find that the Kallus had subjective knowledge of the change in risk. I do not believe that they did not know that the grow operation existed in their outbuilding. I do not believe that the grow operation had been dormant since before the purchase of the property in 2015.

[102] That said, I do not understand the Kallus' argument to be that they did not know such a risk would be material to the insurer generally.

[103] Rather, they disagree that the existence of a grow operation on their property ought to be considered a material risk, given that it existed in the outbuilding rather than in the house where the fire took place. As mentioned above, I have accepted the evidence of the Policy underwriter, and the underwriting expert on this point, namely that the risks associated with a grow operation are not obviated simply by a short distance between buildings.

[104] In addition, there is no requirement that the material change in risk be causally connected to the loss in order for an insurer to rely on the material change to void the Policy. In *Schellenberg*, the British Columbia Court of Appeal rejected the appellants' argument that there should be coverage because the fire was not caused by the grow operation: *Schellenberg*, at paras. 50–52.

[105] I find that Wawanesa proved that the Kallus had knowledge of change that was material to the risk, the change was within the Kallus' control; the Kallus had knowledge of the change; and neither Wawanesa nor its agent was promptly notified in writing of the change.

[106] Wawanesa has successfully proven, on a balance of probabilities, that there was clear breach of statutory condition 4.

[107] I find that Wawanesa was justified in voiding the Policy as of July 31, 2016 and did not breach the contract of insurance when it failed to provide coverage to the plaintiffs in respect of the fire that took place on March 1, 2018.

**Damages**

[108] Given my findings above, I decline to make findings with respect to the quantum of damages I would have awarded had I found the policy was improperly voided.

[109] I will briefly note that the evidence in support of the Kallus' claims for contents, materials and repair was sparse, poorly or unhelpfully documented, and exaggerated in certain respects. It was not adequately explained why many items claimed as complete losses, whether small personal items like clothing, or entire rooms of the house not directly impacted by the fire, could not have been cleaned or repaired, whether immediately, or even several months later. The almost complete absence of receipts or other clear evidence was not mitigated by photographs of contents or rooms taken by the plaintiffs in 2019, many of which were unhelpful to the court.

[110] The burden for proving the quantum of damages is on the plaintiffs and then shifts to the defendants to establish that the plaintiffs failed to mitigate their damages. In my view, it would not have been a significant hurdle for Wawanesa to prove that abandoning the property and contents for 18 months, without any heat, water mitigation or sufficient or any attempts to clean even individual items, was not reasonable under all the circumstances.

**Conclusion**

[111] The plaintiffs' claims are dismissed, with costs to the defendants.

“J. Whately J.”