Court of King's Bench of Alberta

Citation: Harris v Co-Operators General Insurance Company, 2025 ABKB 532

2025 ABKB 532 (CanLII)

Date: 20250916
Docket: 2301 10420
Registry: Calgary

Between:

Gary Harris, Tracy Harris, Zachery Harris by his Litigation Representative Gary Harris, Colby Harris by his Litigation Representative Gary Harris

Applicant

- and -

Co-Operators General Insurance Company

Respondent

Reasons for Judgment
of the
Honourable Justice N.E. Devlin

Overview

[1] The Applicants ("**the Harris family**") are residents of Fort McMurray who were impacted by the large-scale wildfire disaster that struck the community in May of 2016. While their home and outbuildings survived the blaze, the structures and contents incurred heat and smoke damage. Despite extensive repairs and remediation, the Harris family could not reach an agreement with their insurer, the Respondent Co-Operators, on the full scope of work required to return their home to habitability.

[2] The Harris family took the position that their home must be reconstructed to remove drywall, insulation, and other materials contaminated with heavy metals and other toxic fire byproducts. Co-Operators countered that additional cleaning would be sufficient.

[3] The dispute was referred to an umpire under ss. 519 and 540 of the Alberta *Insurance Act*, RSA 2000, c I-3. After receiving submissions and extensive expert reports from both sides, the Umpire, Steven Fries, ("**the Umpire**") sided with Co-Operators and ordered further remediation at a cost of approximately $95,000.

[4] The Harris family seeks judicial review of the Umpire's decision ("**the Decision**"), alleging that it is unreasonable and driven by a flawed understanding of the Umpire's authority under s. 519(7) of the *Insurance Act*. For the reasons that follow, the application for judicial review is dismissed.

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The Relevant Facts

[5] It is not disputed that a wildfire ravaged the Fort McMurray region in May of 2016, claiming more than 2,400 buildings and creating one of the largest insurance loss-events in Canadian history. The Harris family's home, on the outskirts of the city, fortunately escaped destruction. The fire, however, burned very close to their home and outbuildings, which suffered considerable damage.

[6] Co-Operators has already paid over $790,000 for remediation of that damage. The Harrises returned to their home in September 2016, but moved out eight months later, believing that the buildings' contaminated state was making them chronically ill. No medical evidence was submitted. Thus, while the *bona fides* of the Harris' belief that their home is contaminated, unsafe, and was making them sick, is not questioned, the factual determination as to whether and to what extent the home required further work to be fully restored to pre-fire safety for habitation fell to be determined on the expert reports prepared for both sides.

[7] Various scientific consultants were engaged to assess the impact of the wildfire on the Harris' home. Between May 2017 and May 2022, numerous reports were issued by different companies. Further, two cleaning companies, Stratford Contracting Ltd. ("**Stratford**") and Chatman Restoration Ltd. ("**Chatman**"), were engaged in June 2016 and August 2017, respectively, in attempts to restore the Harris' home. An expanded chronology of these reports and cleaning efforts is helpful to understanding the case and the Umpire's Decision.

[8] The first set of cleaning and remediation was performed by Stratford between June and October 2016. Stratford performed exterior repairs to the Harris' home, shop, and cabin. It also replaced the attic insulation, shed, playhouse, and exterior electrical distribution lines. Further, Stratford cleaned the home, cabin porch, HVAC system, and the cabin. Notably, no testing or sampling was conducted prior to or immediately following Stratford's cleaning.

[9] The first set of testing was performed by DST Consulting Engineering Inc. ("**DST**") and was completed on May 1, 2017. DST's testing included carpet sampling and surface swab sampling of the home and the garage. In its report issued on May 16, 2017, DST detected antimony and carpet contaminations, both of which presented potential health and safety risks to occupants. DST recommended the cleaning of horizontal surfaces and air ducts. DST also recommended that the carpet be removed and replaced and that clothing, bedding, and drapes be washed.

[10] Pinchin West Ltd. ("**Pinchin**") completed testing on April 22, 2017. Its testing included surface wipe sampling and bulk sampling of surface insulation. Pinchin issued its report on July 19, 2017, noting that all samples tested negative for evidence of combustion products.

[11] Western Site Technologies Inc. ("**Western**") completed testing on June 15, 2017. Western performed air sampling for heavy metals as well as surface swab and microvac sampling. Western's report was issued on July 21, 2017, and identified char at two attic access

points as well as within the Harris' great room, cabin, and shop. Western recommended that the attic insulation be replaced and that other affected areas be cleaned.

[12] In August 2017, Co-Operators advised the Harrises that further cleaning was necessary. Chatman Restoration Ltd. ("**Chatman**") began its cleaning on November 1, 2017. The Harrises instructed Chatman to stop its cleaning prior to completion because they felt protocol was not being followed. Chatman's cleaning was therefore not completed.

[13] DF Technical & Consulting Services Ltd. ("**DF**") attended the home on November 21, 2017. It conducted surface sampling and visual inspections of the home's contents. DF is the only company that tested the home's contents. Its November 27, 2021, report noted a concern with one sample and recommended HVAC cleaning.

[14] On April 26, 2018, Geosyntec Consultants ("**Geosyntec**") tested for heavy metal contamination and fire by-product contamination within the home. It did so through bulk dust, tape lift, and surface wipe sampling. Its July 13, 2018, report did not identify char, ash, or soot particles in the home. While barium was detected, the levels detected did not pose a health risk.

[15] Geosyntec was also asked to comment on DST's May 1, 2017, report. Geosyntec did not agree that the antimony and carpet contaminants detected were sufficient to require remediation. Regarding antimony, Geosyntec used more recent guidelines with lower screening levels than DST. Regarding the suspected carpet contamination, Geosyntec noted that DST's report did not provide adequate details regarding the sampling techniques used. It opined that, if DST's sample identified as "Carpet H-7" was of the carpet itself, the guidelines DST referenced may have been inappropriate.

[16] Notably, however, prior to Geosyntec's arrival, some work had already been done to address the antimony and carpet contaminants based on DST's report. For instance, the carpet had been removed, and some cleaning was done by Chatman to address the antimony.

[17] Akron Engineering Consultants Group Ltd. ("**Akron**") was engaged to visually inspect the home and the cabin as well as to comment on the inspection reports of others and prepare its own report. Akron visited the home on December 1, 2017, and issued its report on December 11, 2017. Akron did not retest or collect new samples. Relying on DST's detection of antimony, Akron deduced that antimony had been distributed throughout the home. It therefore recommended that insulation and drywall be replaced. It also recommended that furniture and soft goods be cleaned or replaced and that the basement floor and crawlspace be cleaned.

[18] During its site visit, Akron observed cracking and deformation of interior walls, doors, and flooring in the home and cabin, which it suspected were caused by heat stress and rapid changes in groundwater levels. Akron recommended that the wooden foundation in the cabin be levelled. For the home, however, Akron recommended more detailed investigations.

[19] Akron also noted that the exterior cladding of the home and cabin were cracked, brittle, and discoloured. It opined that this was caused by excessive heat from the wildfire and recommended that the cladding be replaced.

[20] Alberta Safety & Environmental Services Ltd. ("**ASE**") completed testing on June 8 and 9, 2021. ASE conducted air sampling for char, ash, soot, and polycyclic aromatic hydrocarbons ("**PAH**") as well as 24-hour and spot indoor aid quality monitoring. ASE's October 26, 2021, report detected char and PAH with concentrations below 10% of the occupational exposure limit.

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[21] Given the amount of time that had passed since the May 2016 wildfire, ASE stated that no clear conclusions could be drawn from the source of the low-level char and PAH detected. ASE recommended regular maintenance and cleaning of the HVAC system and lightly used areas.

[22] No further testing has since been conducted.

[23] Geosyntec was engaged to review and critique ASE's conclusions. Its May 25, 2022, report stated that ASE's air sampling method was inappropriate given the time that had passed since the wildfire. Further, Geosyntec noted that the PAH detected was consistent with levels present in a typical residential home.

[24] The Harrises have never returned to their home, which continues to sit empty, choosing instead to live on a trailer on the property. The personal, human impact on them of this, and of the distressingly long time it has taken for this dispute to move forward, is undoubtable and regrettable, whatever the outcome of the legal issues before the Court.

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The Umpire's Decision

[25] The Umpire rendered a lengthy and comprehensive written decision. Based on the various reports provided, the Umpire determined that cleaning was sufficient to remediate the Harris' home and its contents.

[26] Throughout the Decision, the Umpire grappled with the various expert reports provided. The Umpire relied on DST and Western's reports to support his finding that contaminants had been detected in the home. While some cleaning had been completed, he concluded that further work was required to remediate the home and its contents.

[27] In determining the nature of the remediation needed to restore the Harris' home, the Umpire assessed the various reports provided and reasoned that most of the experts recommended cleaning as a sufficient means of remediation. He noted that, although Akron recommended replacements to remedy various issues, its assessment was limited to visual inspections and commentary on other reports.

[28] In a passage the Harris family are particularly critical of, the Umpire observed that Akron did not complete any detailed engineering analysis or geotechnical testing of its own. Based on the totality of the reports, the Umpire determined that further cleaning was sufficient to remediate the home.

[29] Since only DF assessed the restorability of the home's contents, the Umpire agreed with its recommendation that cleaning was sufficient to remediate these goods.

[30] In assessing a reasonable cost for further cleaning, the Umpire compared the costs presented by the Harris family and Co-Operators. The Umpire determined that Co-Operators' estimates were most reasonable. Thus, he concluded that further cleaning in the amount of $87,064.41 for the insured structures, and $8,022.99 for the insured contents, was warranted, generating a combined total of $95,087.40. His Decision was bolstered by the fact that previous cleaning performed by Chatman was priced at $78,436.41, a figure close to Co-Operators' estimate for the further work.

[31] Regarding the home, the Umpire preferred Co-Operators' cleaning estimates of $87,064.41 over those provided by the Harris family, as they claimed a total replacement cost for

their home of $1,313,951.25 or an alternate remediation cost of $1,089,104.80. According to the Umpire, the Harris' proposed costs were unreasonably high. Having determined that cleaning was a reasonable remediation method, he concluded that the Harris' proposed replacement cost was not appropriate.

[32] The Umpire reasoned that the amount sought by the Harris family was inappropriate, in part because it included removing and replacing numerous building components, essentially amounting to a reconstruction of the home.

[33] Regarding the home's contents, the Umpire preferred Co-Operators' cleaning estimate of $8,022.99. The Umpire rejected the Harris' claim of $1,403,821.02 in replacement costs because he again found cleaning, rather than replacement, to be a reasonable and sufficient means of remediation.

[34] The Umpire noted that neither party's proposed total accurately reflected the costs needed to effectively clean the insured contents. However, according to his interpretation of s. 519(7) of the *Insurance Act*, his empowering provisions require umpires to select the most reasonable position presented, rather than formulate an independent alternative. As between the available options, the Umpire found that Co-Operators presented the most reasonable and factually supported path.

The Errors Alleged

[35] The Harris family argues that the Umpire's Decision was unreasonable, in particular in its treatment of Akron's expert report. They also argue that the Umpire misunderstood his authority under s. 519(7) of the *Insurance Act* by restricting his Decision to an either-or choice between the quantum of the cleaning costs of either the Harris' or Co-Operators' estimates.

The Standard of Review

[36] This judicial review is uncontroversially governed by the principles articulated in ***Vavilov v Canada (Minister of Citizenship and Immigration)***, 2019 SCC 65. This Court may interfere with a decision only where it is shown to be unreasonable. It must determine whether that decision provides "internally coherent reasoning" and is "justified in relation to the constellation of law and facts that are relevant": ***Vavilov*** at para 105; ***Intact Insurance Company v Parsons***, 2021 ABCA 123 at para 12. It must not, however, comb through the Umpire's work, conducting a "line-by-line treasure hunt for error": ***Vavilov*** at para 102; ***Parsons*** at para 18.

[37] The Umpire's factual determinations and resolutions of competing evidence must be respected, unless they are tainted with pervasive or critical errors that render them unreasonable: ***Vavilov*** at para 125.

[38] Flaws relied on by a party to challenge a decision must be "sufficiently central or significant to render the decision unreasonable": ***Pepa v Canada (Minister of Citizenship and Immigration)***, 2025 SCC 21 at para 49, citing ***Vavilov*** at para 100. Fundamental flaws include a failure of rationality internal to the reasoning process and a failure of justification given the legal and factual constraints bearing on the decision: ***Pepa*** at para 49, citing ***Vavilov*** at para 101.

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Factual Errors Alleged

[39] The Harris family points out that the Umpire appears to have operated under two factual misapprehensions.

[40] The first factual error alleged concerns the timing of the replacement of the attic insulation and Western's report. Specifically, at page six of the Decision, the Umpire articulates that cleaning is a complete solution to Western's concerns based on the fact that the insulation *was to be* replaced by one of the contractors:

> Western Site does recommend the attic insulation be replaced; however, the Stratford scope of work included replacement of the insulation. Without further testing, it remains unclear if cleaning the attic access points would sufficiently address the results identified by Western Site.

[41] In fact, Stratford had already replaced the attic insulation when Western conducted its testing, meaning this work had failed to eliminate all the char from the attic entrance points.

[42] While the Umpire likely misunderstood the timing of the replacement of the attic insulation, this error does not constitute a fundamental flaw in the Decision. Although Western detected char at two attic access points, subsequent reports that tested for char did not recommend replacing the attic insulation. For instance, Geosyntec's July 13, 2018, report did not identify any char.

[43] While ASE's October 26, 2021, report detected char, given the amount of time that had passed since the wildfire, ASE could not conclusively determine its source. Moreover, and more significantly, ASE's recommended remediation method was cleaning, not replacement. Thus, while the Umpire misunderstood the timing of the attic replacement, his ultimate conclusion that cleaning was sufficient to remediate the home was consistent with subsequent reports. This erroneous understanding neither undercut the factual bases for his ultimate Decision nor constituted, or precipitate, a failure of rationality internal to the reasoning process.

[44] Second, the Harris family argues that the Umpire misunderstood that DF only tested for mould, and not the presence of heavy metals and PAH contamination in the furniture and of their soft goods in the home, based on the following reasoning articulated at page 11 of the Decision:

> Akron's suggestion that the current age and condition of the furniture and soft goods likely resulted in increased heavy metal absorption is also speculation in the absence of analytical testing. The testing completed by DF Technical & Consulting Services Ltd. did not identify any concerns in the sample analysis of the content items selected by the Insured.

[45] It is argued that the reasoning articulated in this passage suggests that the Umpire was taking DF's results as rebutting Akron's admittedly inferential conclusion about the contamination of the home's contents *with heavy metals*, when DF's sampling was limited to an analysis of mould.

[46] In oral arguments, Co-Operators suggested that the Umpire may have intended to refer to DST's testing, not that of DF, and simply confused the acronyms in his written reasons. In contrast to DF, DST tested for heavy metals and detected antimony. This explanation would be consistent with preceding paragraphs on page 11 of the Decision.

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[47] Prior to the reasoning that the Harrises take issue with, the Umpire describes that Akron made several statements regarding DST's findings, particularly its detection of antimony. It was based on DST's findings, Akron speculated that antimony was distributed throughout the home and recommended that all furniture and soft goods be cleaned or replaced.

[48] Ultimately, whether the Umpire intended to refer to DF or DST, the reasoning on page 11 does not constitute a fundamental flaw.

[49] If the Umpire intended to refer to DST, he is correct in noting that DST did not recommend content replacements. DST detected antimony and recommended that the air ducts be remediated or cleaned and that the carpets be replaced. Its report did not say that the antimony was likely absorbed in the home's furniture and soft goods. This was an extrapolation proffered by Akron.

[50] If the Umpire intended to refer to DF, it remains true that Akron did not conduct analytical testing to substantiate that heavy metals were likely absorbed into the home's furniture and soft goods. The Umpire classified Akron's inferences as speculative because they were not supported by analytical testing. DF was the only expert that tested the restorability of the home's contents and ultimately recommended that the contents be cleaned. It was thus reasonable for the Umpire to determine that Akron's lack of testing made its statements speculative either way.

Unfair Dismissal of Akron's Opinion for Lack of Independent Testing

[51] One of the Harris family's central complaints is that the Umpire dismissed or devalued Akron's opinion on the basis that it relied on testing results from a third party and had not conducted its own sampling. Specifically, they take issue with the following conclusion:

> Akron have stated that toxins have been distributed throughout the House and without analytical testing or some form of quantitative analysis, their statement is speculative. Akron did not complete independent testing; therefore, I cannot reasonably accept their statement of contamination as confirmation of same.

[52] It was never disputed that Akron based its report on the testing conducted by DST. Equally, the professionalism and accuracy of that testing is also not in issue. Therefore, the fairest reading that can be given to this part of the Umpire's Decision is that he was critiquing the absence of testing going specifically to Akron's hypothesis of widespread absorption and distribution of heavy metals throughout the home, and not to the provenance of the skinnier results Akron used to reach its opinion.

[53] The Umpire is correct that Akron did not conduct testing to specifically back its broad opinion that toxins were distributed *throughout* the home. DST's results do not *directly* confirm Akron's opinion. Rather, DST found antimony in three specific surface locations. Akron's opinion is the result of *inferences* derived from this limited-point sampling and the overall nature of the fire event. In this sense, Akron's conclusion on likely widespread contamination was literally "speculative", and the Umpire was not wrong in his characterization of it.

[54] The Umpire did not completely reject or devalue Akron opinion because of its provenance. He never suggested Akron's opinion was unscientific or unsustainable. Rather, he treated the unproven nature of Akron's conclusion as a basis upon which it could be given less weight than other competing opinions. This was a reasonable approach to the conflicting expert evidence before him.

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[55] The question thus reduces to whether the Umpire reasonably chose to prefer Geosyntec's opinion over Akron's, based on its scientific opinion and testing methods.

[56] In reviewing the Umpire's Decision, the Court must refrain from reweighing and reassessing the evidence considered by the decision maker: ***Vavilov*** at para 125.

[57] The comprehensive Decision rendered by the Umpire clearly demonstrates that he grappled with the evidence before deciding whether to side with the Harris family or Co-Operators. He was presented with a plethora of scientific reports written over the course of five years and clearly paid careful attention to their contents and methodologies. His task was considerably complicated by the fact that each of the experts used different testing methods, tested for and found different contaminants, and recommended different remediation methods. The Umpire evaluated and weighed all this evidence in a process that discloses neither error nor unreasonableness of approach.

[58] The Umpire's conclusion that cleaning was the most reasonable remediation measure was supported by the reports presented. Numerous reports, including that of DST, Western, DF, Akron, and ASE recommended cleaning as either a partial or complete remediation measure.

[59] Notably, none of the reports, including Akron's, recommended a complete reconstruction of the home. It is understandable that the Harris family preferred that outcome because it aligned with their experiences. However, there was nothing in the scientific evidence that made the *de facto* reconstruction of the home and full replacement of all contents the most objectively reasonable or rational path forward.

[60] The Umpire's Decision was well within the realm of the reasonable on the evidence before him. Indeed, the situation appears to call out for cleanings followed by further testing. As disappointing as it was to the Harris family, the Umpire's Decision was not unreasonable, if the decision he was called upon to make was restricted to an either-or choice between the parties' positions. This leads to the next question, which is a consideration of the dispute resolution process mandated by s. 519 of the *Insurance Act*.

Dispute Resolution under s. 519 of the *Insurance Act*

[61] The Harris family further argues that the Umpire misunderstood his authority under s. 519(7) of the *Insurance Act* by treating his choice as purely binary between the proposals presented to him. According to the Harrises, in making his Decision, the Umpire was not restricted to the cost estimates provided by the parties, but could have come to an independent middle-ground result.

[62] The resolution process for insurance disputes in Alberta is governed by ss. 519 and 540 of the *Insurance Act*. The provision at issue is s. 519(7), which provides that:

> **519(7)** The representatives must determine the matters in dispute by agreement and, if they fail to agree, submit their differences to the umpire, <u>and the written determination of any 2 of them determines the matters</u>.
>
> [emphasis added]

[63] The Harris family argues that s. 519(7) only relates to the definition of the issues in dispute and does not govern the substantive decision-making process itself. By contrast, Co-Operators asserts that s. 519(7) governs the substantive decision-making process and requires

umpires to choose between the positions of the parties in the event that they cannot agree. The preponderance of legal authority, together with the principles of interpretation, support Co-Operators' position.

[64] The correct interpretation of s. 519(7) must be guided by the modern approach to statutory interpretation. This approach requires that the words of s. 519(7) be "read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": ***Rizzo & Rizzo Shoes Ltd (Re)***, [1998] 1 SCR 27 at para 21. The language, context, and purpose of s. 519(7) and the *Insurance Act* support that s. 519(7) defines how the dispute is to be adjudicated, and not merely the issues identified.

[65] Section 519(7) must be read in conjunction with Statutory Condition 11 of the *Insurance Act*, which provides:

> **IN CASE OF DISAGREEMENT**
>
> **11(1)** In the event of disagreement as to the value of the insured property, the value of the property saved, the nature and extent of the repairs or replacements required or, if made, their adequacy, or the amount of the loss or damage, those questions must be determined using the applicable dispute resolution process set out in the *Insurance Act* whether or not the insured's right to recover under the contract is disputed, and independently of all other questions.

[66] Statutory Condition 11 outlines the types of disagreements that engage the dispute resolution process under s. 519. It explicitly contemplates that disagreements regarding "the nature and extent of the repairs or replacements required" must follow s. 519. This is logically consistent only with that provision governing the method by which the question of compensatory quantum will be answered.

[67] The wording of s. 519(2) also clarifies the matters to which s. 519's dispute resolution process applies:

> **519(2)** This section applies to disputes between an insurer and an insured about a matter that under Statutory Condition 11 set out in section 540 or another condition of the contract must be determined using this dispute resolution process.

[68] Read in the context of the Act, the words "matters in dispute" in s. 519(7) refer to the types of disagreements outlined in Statutory Condition 11. Rather than providing a process to determine which issues are in dispute, s. 519(7) defines how the substantive dispute itself is to be adjudicated. Any other reading is inconsistent with the language of the statute and the common-sense purposes of the provision, namely the establishment of a comprehensive dispute resolution mechanism.

[69] Section 519(7) encourages the parties to come to a consensus regarding the dispute at issue. The very language of the section says so in mandating parties' representatives to resolve matters "by agreement". In keeping with this and Part V of the *Insurance Act's* fundamental purpose of creating a fair, cost-effective, and expeditious dispute resolution mechanism, umpires appointed under it have a dual mediator/arbitrator role.

[70] Within their mediative function, umpires can and should point the parties towards principled compromises that accord with the evidence, where they perceive these as fair and

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reasonable settlements to the claim. If an agreement is reached between one of the parties and the umpire, that outcome, as memorialized in writing, fulfils the requirements of s. 519(7). The nature of the claim, and the dispute arising over it, will define where opportunities to settle the case in this manner are available or appropriate.

[71] If the umpire does not see fit to propose compromise positions lying between the parties' positions, or if neither party agrees to a compromise from their base position, the Umpire's arbitral role is engaged. When performing this adjudicative function, they are limited by the language of s. 519(7) to choosing between the competing, steadfast positions of the insurer and insured.

[72] As noted in ***New Dawn Enterprises Limited v Northbridge General Insurance Corporation***, 2020 NSSC 150 at para 80, "the statute leaves the particulars of the process to the umpire's discretion." What matters is that the process affords the parties basic procedural fairness: *Insurance Act*, s 519(16); ***Parsons*** at paras 4-10; ***New Dawn*** at para 104. Beyond that, the level of in/formality is up to the umpire, as guided by the subject matter of the dispute, the nature of the evidence, and the parties' wishes. This discretion includes whether and by what means the umpire attempts to move the parties towards a consensus or plurality compromise before exercising their strict adjudicative function.

[73] This interpretation of s. 519(7) is consistent with how courts have interpreted effectively identical provisions under insurance legislation in Ontario and Nova Scotia.

[74] Section 128(3) of Ontario's *Insurance Act*, RSO 1990, c I.8 provides that:

> **128(3)** The appraisers shall determine the matters in disagreement and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

[75] In ***Desjardins General Insurance Group v Campbell***, 2022 ONCA 128 at paras 36-37, the Ontario Court of Appeal held that the purpose of this provision is to encourage parties to work collaboratively and to reach an agreement, with the umpire acting as a tie breaker where the parties cannot agree on a particular issue.

[76] The application of s. 128 in other Ontario cases confirms that s. 128 relates to the substantive decision, not the definition of the issues: see ***Madhani v Wawanesa Mutual Insurance Company***, 2018 ONSC 4282 at paras 7-9.

[77] Section 32(3) of Nova Scotia's *Insurance Act*, RSNS 1989, c 231 is also comparable to s. 519(7) and has been interpreted similarly to s. 128(3) in Ontario. It provides that:

> **32(3)** The appraisers shall then determine the matters specified in the conditions and, if they fail to agree, they shall submit their differences to the umpire, and the finding in writing of any two determines the matters.

[78] In ***New Dawn***, at para 80, the Nova Scotia Supreme Court noted that "section 32 contemplates two potential routes to a final determination on valuation: agreement between the two appraisers, or agreement between one appraiser and the umpire."

[79] I appreciate that certain quarters of the insurance industry in Alberta have interpreted s. 519(7) as only permitting the Umpire to select between pre-established positions advanced by the parties, with no room for a process of discussion or compromise. This limited view is, in my respectful opinion, incompatible with both the language and intentions of s. 519(7).

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[80] What is not permitted is for the umpire to impose a 'third way' solution to which neither of the parties subscribe. Such an outcome would, by definition, lack the agreement of two of the parties required by the *Insurance* Act. The Umpire here committed no error by restricting his ultimate adjudicative decision to a choice between the positions before him.

Conclusion on Reasonableness

[81] The Umpire's Decision was reasonable. The evidence before him included numerous scientific reports that detailed various testing methods, contamination findings, and remediation recommendations. None of them endorsed the wholesale reconstruction of the Harris' home, and none concretely located contamination that was incapable of remediation through further cleaning, at least as an initial step.

[82] Although contaminants were identified in some reports, numerous experts recommended cleaning as either a partial or complete remediation measure. The technical evidence provided did not support a complete reconstruction of the Harris' home. The minor factual misunderstandings in the Umpire's recitation of the facts do not undercut the fundamental reasonableness of his Decision.

[83] The Court understands, and is sympathetic to, why the Harris family feels that nothing short of total renewal will ameliorate what they subjectively experienced when living in the home. The evidence before the Umpire, however, did not support this more drastic alternative as the only reasonable one.

[84] The Umpire's approach was fair, comprehensive, and statutorily compliant. There is no basis for this Court to intervene.

[85] Costs may be spoken to if not agreed.

Heard on the 12th day of June 2025

Dated at the City of Calgary, Alberta this 16th day of September 2025.

N.E. Devlin, JCKBA

Appearances:

Timothy J Byron
For the Applicants

Paul J Stein, KC
For the Respondent

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