

# Publisher's Note

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<b>PROPERTY DAMAGE CLAIMS UNDER COMMERCIAL INSURANCE POLICIES</b> by Richard Krempulec, Q.C. Release No. 6, December 2021
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### Publisher's Special Release Note 2021

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This is a concise, comprehensive and practical guide to handling liability and first party claims under commercial insurance policies focusing on property damage claims. It's an ideal resource for assisting lawyers, risk managers, claims adjusters, and others, in dealing with claims of a property nature, and providing a better understanding of property insurance claims in general.

### **What's New in this Update:**

This release features valuable updates to the case law and commentary in Chapters 2 (Voiding Policies and Denying Claims) and 4 (Duty to Defend).

### **Case Law Highlights**

- **Voiding Policies and Denying Claims – Material Change in Risk** – Voiding Policies and Denying Claims – Material Change in Risk - The court accepted that the insurer would not have renewed the policy had it known the home was not the insured's primary residence. However, the policy was not void because there had not been a change in risk. Although the owner's brother was a named insured, his status was the same as his adult children in that he was a family member of the owner. After the brother moved out, the court reasoned that there was no change because the home continued to be occupied by family members of the owner and the insurer continued to insure the same risk: *Dubroy v. Canadian Northern Shield Insurance Co.*, 2021 BCSC 352.
- **Property Damage and Policy Triggers – Duty to Defend** – The insured under a homeowner's policy was involved in a brawl and he injured another person during the fight. The injured person commenced an action against him and others and their insurers. Sécurité Nationale refused to defend the son on the grounds that, in the action, he was accused of assault and intention to inflict bodily harm, which, were excluded from coverage under the homeowner's policy. The son's obviously wilful or intentional conduct could not be likened to negligence or unintentional tort. There was also nothing in the wording of the insurance policy for coverage for acts of self-defence. Furthermore, the exclusion clause provided that coverage did not apply to bodily injury caused, among other things, by "intentional [...] act[s]" committed by the insured. The wording therefore included all intentional acts and any failure to act. As the policy provided no coverage for the acts on which the claim against the insured were based and such acts were clearly excluded, there was no duty to defend: *Michaud v. Sécurité Nationale compagnie d'assurance*, 2021 CarswellNB 446, 2021 CarswellNB 447, 2021 NBCA 39.

## **ProView Developments**

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- The opening page is now the title page of the book as you would see in the print work
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- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
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