THE APPRAISAL PROBLEM:

A STRUCTURAL, DOCTRINAL, AND PROCEDURAL ANALYSIS OF STATUTORY APPRAISAL

UNDER THE ONTARIO INSURANCE ACT

by

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for a Modernized, Government-Ready Framework

Addressing Structural Drift in Statutory Appraisal

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THE STATUTORY APPRAISAL PROCESS IN ONTARIO

A SYSTEMIC FAILURE IN NEED OF STRUCTURAL REFORM

By George R. Milnes — 2026

Author's Note

This thesis is the product of several decades of direct experience inside the statutory appraisal process under the Ontario *Insurance Act*. It reflects lived experience, legal analysis, and a sustained effort to understand why the process has drifted so far from its statutory purpose. My goal is not to assign blame, but to illuminate structural failures and propose a principled path forward.

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I also extend my appreciation to the mentors and industry colleagues who shared their practical experience within the appraisal system. Their observations regarding claims handling, valuation practices, and procedural challenges were instrumental in illustrating the systemic issues examined in this thesis.

Finally, I acknowledge the many individuals—past and present—whose commitment to fairness, professionalism, and integrity in the insurance sector continues to inspire efforts toward meaningful reform. While their names are not listed here, their contributions are sincerely appreciated.

Executive Summary

The statutory appraisal process in Ontario has become structurally unsound. What was intended as a narrow, efficient valuation mechanism has evolved into an unregulated, inconsistent, and often procedurally unfair system that routinely exceeds its jurisdiction. This thesis identifies the root causes of that drift, analyzes key case studies, and proposes a comprehensive reform framework grounded in statutory interpretation, procedural fairness, and comparative jurisprudence — including the British Columbia Supreme Court's decision in *Farrier*, (appendix A) which remains the clearest articulation of the limits of appraisal in Canada for provinces with similar wording statutes.

The Four Structural Pillars of Reform proposed in this thesis are:

- **Jurisdictional Discipline**
- **Completeness of Valuation**
- **Procedural Fairness and Integrity**
- **Structured Judicial Oversight and Remedies**

These pillars form the foundation for restoring the statutory purpose of appraisal and ensuring fairness for insureds, insurers, and the public.

Preface

The appraisal mechanism under the Ontario *Insurance Act* was never designed to be a quasi-judicial process. It was drafted by lawyers who argue cases, not by adjudicators who decide them. The result is statutory language that is vague, incomplete, and susceptible to misinterpretation. Over time, industry practices, insurer lobbying, and judicial deference have compounded these weaknesses, producing a system that no longer functions as intended.

This thesis seeks to restore clarity, fairness, and statutory fidelity to the appraisal process.

Chapter 1 — Introduction

The statutory appraisal process under the Ontario *Insurance Act* was conceived as a narrow, efficient mechanism for resolving disputes about **the value of the property insured, the value of the property saved, or the amount of the loss** — nothing more. It was never intended to adjudicate causation, coverage, scope of work, or legal liability. Yet over time, the process has drifted dramatically from its statutory purpose. Appraisers routinely assume powers they don't have, umpires apply inconsistent standards, and insurers exploit structural gaps to shape outcomes.

This chapter introduces the central thesis: **Ontario's appraisal system is structurally unsound**, not because of individual misconduct, but because the statutory framework is incomplete, ambiguous, and vulnerable to misuse. The system's failures are systemic, predictable, and correctable — but only through principled reform grounded in statutory interpretation, procedural fairness, and judicial oversight.

Three foundational themes guide this thesis:

- **Statutory Purpose** — Appraisal is a valuation mechanism, not a dispute-resolution tribunal. Its jurisdiction is narrow and must remain so.
- **Structural Drift** — Over decades, industry practice and judicial deference have allowed appraisal to expand far beyond its intended scope.
- **Reform Imperative** — Without structural reform, appraisal will continue to produce inconsistent, unfair, and legally unsustainable outcomes.

This chapter sets the stage for a detailed examination of how the system functions, where it fails, and how it can be rebuilt on principled foundations.

Chapter 2 — The Statutory Framework

The appraisal mechanism in Ontario is governed primarily by **section 128 of the *Insurance Act*** and the corresponding provisions in the **Standard Fire Policy (SFP)**. These provisions outline a simple, ostensibly straightforward process:

- Each party appoints an appraiser.
- The appraisers identify matters in disagreement.
- The appraisers attempt to agree on the amount of loss.
- If they cannot agree, they select an umpire.
- Any two of the three may set the amount of loss.
- The decision is binding.

On its face, the process appears efficient and self-contained. In practice, however, the statutory language is **vague, incomplete, and structurally deficient**. Several critical gaps undermine the process.

1. No Procedural Framework

The statute provides no guidance on:

- evidence
- disclosure
- timelines
- conflicts of interest
- qualifications
- standards of conduct
- remedies for misconduct
- record-keeping
- reasons or transparency

This vacuum force umpires to invent procedures on the fly, leading to inconsistency and procedural unfairness. Courts have struggled to define their role, often deferring excessively to appraisal outcomes even when they exceed statutory limits.

2. No Jurisdictional Boundaries

The statute does not explicitly limit appraisal to valuation. It assumes that umpires and appraisers understand their jurisdiction — an assumption that has proven false.

As a result, tribunals frequently:

- decide **causation**
- interpret **policy language**

- determine **coverage**
- resolve **legal disputes**
- make **findings of fact** unrelated to valuation

None of these matters fall within appraisal jurisdiction.

3. No Mechanism for Judicial Oversight

The statute provides no clear pathway for:

- judicial review
- appeals
- setting aside decisions
- correcting jurisdictional errors

Without a structured review mechanism, legally unsustainable awards often remain unchallenged.

4. No Standards for Umpire Selection

The statute assumes that appraisers will select a neutral, qualified umpire. In reality, the selection process is often:

- adversarial
- strategic
- influenced by insurer preferences
- shaped by informal networks

This undermines neutrality and public confidence in the process.

5. No Requirement for Completeness

The statute does not require appraisers or umpires to:

- value the entire loss
- address all disputed items
- provide a complete or coherent award

As a result, partial, inconsistent, or incomplete awards are common — and extremely difficult to challenge.

The Consequence: A System Built on Assumptions

The statutory framework assumes:

- umpires understand their jurisdiction
- umpires are neutral
- parties act in good faith
- the process is self-correcting
- courts will intervene when necessary

None of these assumptions hold reliably in practice.

The result is a system that:

- lacks procedural safeguards
- lacks jurisdictional discipline
- lacks transparency
- lacks accountability
- lacks consistency
- lacks meaningful oversight

This chapter establishes the legal foundation for the deeper analysis that follows. The next chapters examine how these structural weaknesses manifest in real cases, how they distort outcomes, and why reform is urgently needed.

The Standard Fire Policy and the Problem of Outdated Definitions

Ontario's appraisal clause is built on the **Standard Fire Policy (SFP)** — a statutory template drafted for a single-peril, ACV-based fire policy. Modern multi-peril property policies bear little resemblance to the SFP, yet the statutory appraisal mechanism has never been updated to reflect this evolution.

This creates several foundational problems.

1. The Appraisal Clause Is Built on the SFP, Not Modern Multi-Peril Policies

The *Insurance Act* incorporates the SFP wording directly into the statutory conditions. The appraisal mechanism was therefore designed for:

- a single peril (fire)
- a single valuation model (ACV)

- a simple indemnity structure
- a narrow dispute profile

Modern property policies, by contrast, are:

- multi-peril
- replacement-cost based
- governed by complex endorsements
- dependent on incurred costs
- structured around layered coverage triggers

The statutory appraisal clause has never been modernized, leaving a structural mismatch between the law and contemporary insurance practice.

2. The Meaning of "Value" Under Statutory Condition 11

Statutory Condition 11 refers to disputes about **"value,"** but the *Insurance Act* never defines the term. When the legislation was drafted, the only valuation concept in use for appraisal was **Actual Cash Value (ACV)** under the Standard Fire Policy (SFP).

However, property can be valued in many different ways, including:

- market value
- lending value
- mortgage value
- estate value
- reproduction cost new
- replacement cost value (RC value)
- insurance-to-value calculations

None of these appear in the Act.

Modern multi-peril policies introduced **Replacement Cost (RC)** coverage — a valuation concept that did not exist when the SFP was drafted. However, to determine ACV, one must first determine RC value, a concept unknown to the statute.

This creates a structural problem:

- The Act refers only to ACV, not RC value.
- Policies require RC value to be calculated first.
- ACV in many modern policies now includes **market value**, which is a real estate concept, not an insurance concept.
- Market Value in law includes highest and best use and reproduction cost new — not the "replacement cost" used in insurance.

The Undefined Term "Value" in Statutory Condition 11 and Its Modern Implications

3. ACV Under the SFP Does Not Include Market Value

The Standard Fire Policy does not define Actual Cash Value. Historically, courts determined ACV using:

- replacement cost
- less depreciation
- based on life expectancy, wear, and tear
- depreciation limited to 50% if property used for its original intended purpose

Market value was **not** part of the statutory ACV concept.

In the early 1990s, insurers introduced Clear Language policies, some expressly adding **market value** as a consideration when determining ACV. This contractual definition now appears in many — but not all — modern policies.

This creates a jurisdictional problem:

- ACV becomes a **legal definition**, not a valuation formula.
- The statutory appraisal clause predates modern ACV wording.
- Appraisal often proceeds without clarity on what ACV legally means.

This is a legal interpretation issue, not a valuation issue.

The Evolution of Actual Cash Value: From Depreciated Replacement Cost to a Legal Determination

The meaning of Actual Cash Value (ACV) has undergone a significant transformation in Canadian insurance law. Historically, under the **Standard Fire Insurance Policy (SFIP)**, ACV referred to a narrow and well-defined concept: **depreciated replacement cost**, with depreciation applied only to materials subject to wear and tear. Courts consistently held that:

- depreciation applied to **physical components only**,
- **soft costs** such as overhead, profit, equipment rental, engineering fees, and adjuster costs were **not depreciated**,
- market value played **no role** in determining ACV.

This approach reflected the SFIP's structure, which insured only to ACV and did not contemplate broader economic measures of value.

The Introduction of Multi-Peril Policies and the Expansion of ACV

The modern expansion of ACV began not with legislative reform, but with the introduction of **multi-peril policies**. These policies introduced new contractual definitions of ACV that expressly referenced **market value** as a permissible or required consideration. This contractual shift fundamentally altered the nature of ACV by expanding the evidentiary base beyond physical depreciation.

Once market value became part of the contractual definition, courts began to consider a wider range of factors when determining ACV. This development did not originate in the *Insurance Act* or in the SFIP; it arose from **policy wording drafted by insurers.**

The Importation of the Broad Evidence Rule from U.S. Jurisprudence

As market value entered the ACV analysis, Canadian courts increasingly relied on the **Broad Evidence Rule**, a doctrine imported from U.S. case law. The Broad Evidence Rule permits consideration of **any evidence logically tending to establish the value of the property**, including:

- market value
- income potential
- economic obsolescence
- functional obsolescence
- replacement cost less depreciation
- all relevant "soft costs" associated with repair or replacement

This rule dramatically expanded the scope of ACV and transformed it from a mechanical calculation into a **legal determination requiring judicial interpretation.**

Soft Costs and the Expansion of Depreciation

Under the SFIP, soft costs were not depreciated because they were not subject to wear and tear. However, once the Broad Evidence Rule was adopted, courts began to consider:

- overhead and profit
- engineering and consulting fees
- adjuster and claim-preparation costs (if not excluded)
- other non-physical components of loss

as part of the ACV analysis. This expansion occurred **without statutory amendment**, driven solely by judicial interpretation of modern policy wording.

Why ACV Is Now a Legal Issue, Not a Valuation Issue

The evolution of ACV has created a fundamental mismatch between:

- the **statutory appraisal mechanism**, which assumes a narrow, mechanical valuation exercise, and
- the **modern legal meaning of ACV**, which requires interpretation of policy wording, case law, and the Broad Evidence Rule.

Determining ACV today requires:

- interpreting contractual definitions,
- applying judicial doctrines,
- weighing competing legal principles, and
- assessing evidence beyond the scope of construction pricing.

These are **legal questions**, not valuation questions. Appraisers and umpires lack jurisdiction to interpret policy wording or apply legal doctrines such as the Broad Evidence Rule. When ACV includes market value or other legal considerations, the dispute falls **outside the statutory jurisdiction of appraisal.**

Implications for the Appraisal Process

The modern meaning of ACV reinforces the central thesis of this work:

- appraisal cannot lawfully determine ACV when ACV requires legal interpretation.
- disputes involving market value, soft-cost depreciation, or the Broad Evidence Rule are **coverage disputes**, not valuation disputes.
- sending such disputes to appraisal results in **jurisdictional overreach** and **procedural unfairness.**

This doctrinal evolution underscores the need for a modernized appraisal framework that respects statutory limits and ensures that legal questions are resolved through appropriate legal processes.

The Meaning of "Cost" and "Costs" Under Statutory Condition 6

Statutory Condition 6 governs the insured's obligations after a loss, but it also contains the only references in the Insurance Act to the terms **"costs"** (plural) and **"cost"** (singular).

Although the distinction appears subtle, it has significant implications for valuation, depreciation, and the insured's investigative obligations.

Under SC6, the insured must provide:

- inventories
- documents
- estimates
- and information relating to **"costs"**

The plural term **"costs"** has a long-established meaning in insurance law: it refers to the **full economic cost of repair or replacement**, including:

- labour
- materials
- overhead
- profit
- engineering and consulting fees
- estimating costs
- project management
- permit fees
- and all other soft costs necessary to complete the work

These are not optional components. They are part of the **real-world cost of repair**, and SC6 requires the insured to disclose them so that the insurer consider them when determining the amount of loss.

By contrast, the singular term **"cost"** historically referred to **purchase price** under the Standard Fire Policy. But modern multi-peril policies no longer use "cost" in this narrow sense. Replacement Cost (RC) coverage requires the insurer to determine the **actual cost to repair or replace the damaged property at the time of loss**, which necessarily includes the full suite of **costs** listed above.

This creates a structural problem:

- The Insurance Act still uses the outdated SFP terminology.
- Modern policies require a broader, real-world valuation.
- Appraisal tribunals often default to the narrow, historical meaning of "cost."
- Insurers sometimes treat, engineering, and estimating as discretionary.
- Appraisers sometimes depreciate soft costs, even though they are not subject to wear and tear.

The result is a valuation process that is inconsistent with both modern insurance practice and the statutory purpose of indemnity.

Insurers and re-insurers measure and record loss ratios based on "cost" and combined loss ratios to include "costs" when considering reinsurance claim thresholds and entitlement.

Why the Distinction Matters for Appraisal Jurisdiction

The meaning of "costs" under SC6 is not a valuation question — it is a **legal interpretation** of statutory language, unless incurred. Appraisers and umpires have no jurisdiction to determine,

- the meaning of "costs"
- the scope of SC6 obligations
- whether soft costs are depreciable
- whether engineering or estimating fees are part of the loss
- whether overhead and profit should be included

These are **coverage and entitlement questions**, not valuation questions.

If the parties disagree on:

- whether overhead and profit are payable
- whether engineering fees are part of the loss
- whether estimating costs are recoverable
- whether soft costs can be depreciated
- whether "costs" includes project management or permit fees

...then the dispute is **not** about the amount of loss. It is a **legal dispute** that must be resolved before appraisal can begin.

Implications for the Appraisal Process

The SC6 distinction between "cost" and "costs" reinforces several core principles:

- Appraisal cannot proceed until the insured completes its SC6 investigation.
- Appraisal cannot determine or forecast entitlement to soft costs.
- Appraisal cannot interpret the meaning of "costs" under the Act.
- Appraisal cannot depreciate soft costs.
- Appraisal cannot exclude overhead and profit unless the policy expressly does so.
- Appraisal cannot determine whether engineering or estimating fees are payable.

These are **legal determinations**, not valuation determinations.

When umpires attempt to resolve these issues, they exceed their jurisdiction and undermine the statutory purpose of appraisal.

4. ALE (Additional Living Expense) Is Payable Only When Incurred

ALE did not exist under the Standard Fire Policy. It was introduced with modern multi-peril policies, yet the *Insurance Act* still contains **s. 143(1)(b)**, which prohibits appraisal of "loss of profits." ALE is an indemnity coverage and is payable only when:

- the insured **incurs** an expense, and
- the expense is **reasonable and necessary**

Forecasting future ALE is therefore a **legal entitlement question**, not a valuation question.

Yet in practice:

- appraisers routinely "value" ALE prospectively
- umpires set ALE amounts without proof of expense
- insurers treat ALE as subject to appraisal
- courts are not known to intervene

This is structurally incorrect. Appraisal can only value ALE **after** it is incurred and **only** if the amount is disputed.

5. The Umpire's Role in Establishing Scope and Method of Repair

Appraisal jurisdiction exists only when:

- the **extent of damage** is known, and
- the **method of repair or replacement** is not in dispute

The umpire's lawful role is to:

- facilitate clarity between the appraisers
- ensure both appraisers are working from the same scope of loss
- confirm agreement on the method of repair or replacement
- identify when the dispute is actually about scope, causation, or coverage — issues outside appraisal jurisdiction

If the appraisers cannot agree on scope or methodology, the umpire must:

- **pause the appraisal**, and
- direct the parties to resolve the dispute through:
    - litigation
    - arbitration

- or a bifurcated award recording each appraiser's final position

A valuation cannot occur without an agreed-upon scope. This is a structural precondition for jurisdiction.

Chapter 3 — Structural Failures in Practice

Ontario's appraisal system does not merely suffer from theoretical weaknesses — its structural deficiencies manifest in predictable, recurring patterns that distort outcomes and undermine fairness. This chapter examines the most common and consequential failures observed across hundreds of appraisal files, umpire decisions, and judicial reviews.

These failures fall into four broad categories:

- **Jurisdictional Overreach**
- **Incomplete or Fragmented Valuations**
- **Procedural Unfairness**
- **Lack of Transparency and Accountability**

1. Jurisdictional Overreach

Appraisers and umpires routinely exceed their statutory mandate by deciding issues that belong exclusively to the courts. Examples include:

- determining **causation** ("what caused the damage")
- interpreting **policy language**
- deciding **coverage**
- resolving **scope-of-work disputes**
- making **credibility findings**
- adjudicating **legal liability**

These are not valuation questions.

The British Columbia Supreme Court in *Farrier* made this explicit: appraisal is limited to determining the **amount of loss**, not the cause of loss or the interpretation of policy terms.

Despite this, Ontario umpires frequently treat appraisal as a miniature trial — without rules, without evidence standards, and without jurisdiction.

The result is legally unsustainable awards that are difficult to challenge because the statute provides no clear review mechanism.

2. Incomplete or Fragmented Valuations

A second systemic failure is the widespread practice of issuing:

- partial awards

- incomplete valuations
- selective pricing
- fragmented scopes
- awards that ignore disputed items entirely

This occurs because:

- the statute does not require completeness
- appraisers often avoid difficult or contentious items
- umpires sometimes "split the difference"
- insurers strategically narrow the scope
- no one is required to produce a full, coherent valuation

Incomplete awards create downstream chaos:

- insureds cannot complete repairs
- insurers deny payment for missing items
- disputes escalate into litigation
- courts struggle to interpret what was decided

A valuation mechanism that does not require completeness cannot reliably resolve valuation disputes.

Procedural Gaps and Absence of Safeguards

Statutory Condition 6 vs. Statutory Condition 13: Distinct Roles and Frequent Misapplication

A recurring source of confusion in the adjustment and appraisal process is the conflation of **Statutory Condition 6** and **Statutory Condition 13**. Although both conditions appear within the same statutory framework, they serve entirely different purposes and impose different obligations.

Statutory Condition 6 — Requirements After Loss

SC6 governs the insured's obligations following a loss. It requires the insured to:

- provide prompt notice,
- deliver an inventory of damaged property,
- produce relevant documents,
- if required, submit to examination under oath,
- cooperate with the insurer's investigation.

These obligations form the backbone of the insurer's investigative process. SC6 is the statutory mechanism through which the insurer obtains the information necessary to determine **coverage, scope,** and **entitlement** before any valuation dispute can arise.

Statutory Condition 13 — Repair or Replacement

SC13 is fundamentally different. It governs the insurer's **election** to repair, rebuild, or replace the damaged property instead of making a monetary payment. It requires the insurer to:

- give written notice of its intention within **35 days** after receiving the **proofs of loss,** and
- commence repair or replacement within **45 days** of receiving the **proofs of loss,**
- thereafter proceeding with **due diligence** to completion.

SC13 does **not** impose investigative obligations. It does **not** govern document production. It does **not** relate to appraisal.

Its sole function is to regulate the insurer's election to repair.

Why the Distinction Matters

Confusing SC6 and SC13 leads to two systemic problems:

1. **Insurers sometimes bypass SC6 obligations** and prematurely invoke appraisal, shifting investigative burdens onto appraisers and umpires.
2. **Insureds are sometimes told they may submit only one proof of loss,** contrary to the plural wording of SC13 and the case law permitting supplemental proofs.

A modernized appraisal framework must respect the distinct roles of SC6 and SC13 and ensure that appraisal is not used as a substitute for investigation.

3. INTEGRATION OF THE "PROOFS OF LOSS" (PLURAL) DOCTRINAL POINT

The Significance of "Proofs of Loss" in the Plural

Statutory Condition 13 refers to **"proofs of loss"** in the plural, not the singular. This wording reflects the long-standing principle that an insured may submit more than one proof of loss, including interim, supplemental, or revised proofs, provided that appraisal has not yet been carried out and no legal or arbitral determination has been made. The plural wording confirms that the proof-of-loss process is iterative, not fixed, and that insurers must consider updated proofs when new information becomes available. Practices that reject interim proofs or demand a single "final" proof of loss

before investigation or entitlement is complete are inconsistent with the statutory scheme and undermine procedural fairness.

Comparison to Other Ontario Regimes (Tarion Warranty Program)

A useful point of comparison for understanding the structural deficiencies of the appraisal process under the *Insurance Act* is the dispute-resolution framework used by the **Ontario New Home Warranty Program**, now administered by **Tarion Warranty Corporation**. Although the two regimes operate in different sectors, they share a common legislative ancestry and contain parallel provisions governing dispute resolution, including language functionally equivalent to **Statutory Condition 13** of the *Insurance Act*.

Tarion's Equivalent Provision and Its Modernized Framework

In contrast, the Tarion Warranty system employs a dispute-resolution framework that mirrors the investigative purpose of SC13 but incorporates **modern procedural safeguards**. Tarion's equivalent provision requires:

- mandatory investigation by the warranty provider,
- mandatory written reasons for decisions,
- defined timelines for each stage of the process,
- structured disclosure requirements,
- jurisdictional screening to determine whether a dispute is eligible for resolution, and
- an internal appeal mechanism before matters proceed to adjudication.

These safeguards ensure that disputes are not advanced to adjudication until the underlying investigative and procedural requirements have been satisfied. The process is transparent, structured, and designed to ensure fairness for both homeowners and builders.

It is note that while insurers very seldom invoke Statutory Condition 13, Tarion Warranty exercises its right to repair or rebuild unless the loss is financial, such as deposit refunds.

Why the Comparison Matters

The comparison between SC13 and the Tarion framework highlights two important points:

1. **Ontario has already modernized a valuation-based dispute mechanism in another statutory context.** The Tarion model demonstrates that the legislature recognizes the need for procedural safeguards, investigative obligations, and jurisdictional screening in systems where valuation disputes arise.
2. **The appraisal process under the Insurance Act has not been modernized in the same way.** Despite sharing similar statutory roots, the appraisal mechanism lacks the procedural protections that Tarion has implemented. As a result, appraisal is frequently used in circumstances where the insurer has not completed its investigative

opportunity (Statutory Condition 10), leading to disputes that fall outside the intended scope of appraisal.

Implications for the Appraisal Process

The Tarion comparison reinforces the central thesis of this work: the appraisal process under the *Insurance Act* is structurally outdated. It lacks the procedural safeguards necessary to ensure fairness, transparency, and proper jurisdictional boundaries. The existence of a modernized parallel framework within Ontario's own legislative landscape demonstrates that reform is both feasible and consistent with established regulatory practice.

A modernized appraisal framework—such as the Model Procedure proposed in this thesis—would align the insurance appraisal process with contemporary standards of administrative fairness and ensure that valuation disputes are resolved only after proper investigation and entitlement determinations have been completed.

Procedural Gaps and Comparative Frameworks

The structural deficiencies of the appraisal process under the *Insurance Act* become more apparent when examined in light of two important developments: the evolution of Actual Cash Value (ACV) into a legal determination, and the existence of modernized procedural frameworks in other Ontario regulatory regimes. Together, these developments demonstrate that the current appraisal mechanism lacks the procedural safeguards necessary to ensure fairness, transparency, and proper jurisdictional boundaries.

1. The Evolution of ACV and the Emergence of Legal Questions

Historically, under the Standard Fire Insurance Policy (SFIP), ACV referred to a narrow and well-defined concept: depreciated replacement cost, with depreciation applied only to materials subject to wear and tear. Soft costs such as overhead, profit, engineering fees, rental equipment cost and adjuster costs were not depreciated. Market value played no role in the analysis.

This changed with the introduction of multi-peril policies, which expanded ACV definitions to include market value. This contractual shift did not originate in the *Insurance Act*; it arose from insurer-drafted policy wording. Once market value became part of the ACV definition, courts began to consider a broader range of evidence, ultimately importing the **Broad Evidence Rule** from U.S. jurisprudence.

The Broad Evidence Rule permits consideration of any evidence logically tending to establish value, including:

- market value
- income potential
- economic and functional obsolescence
- replacement cost less depreciation
- soft costs and non-physical components of loss

This expansion transformed ACV from a mechanical calculation into a **legal determination** requiring interpretation of policy wording, judicial doctrines, and competing legal principles. As a result, modern ACV disputes often involve questions of law that fall outside the jurisdiction of umpires. When ACV includes market value or other legal considerations, the dispute is no longer a valuation question but a coverage or entitlement question requiring proper legal analysis.

2. Comparison to Other Ontario Regimes (Tarion Warranty Program)

A comparison to the Ontario New Home Warranty Program, administered by Tarion Warranty Corporation, further illustrates the procedural gaps in the appraisal process. Tarion's dispute-resolution framework contains provisions functionally equivalent to Statutory Condition 13 of the *Insurance Act*, yet Tarion has implemented modern procedural safeguards that the insurance appraisal process lacks.

Tarion's framework requires:

- mandatory investigation by the warranty provider
- mandatory written reasons for decisions
- defined timelines for each stage of the process
- structured disclosure requirements
- jurisdictional screening to determine eligibility
- an internal appeal mechanism before adjudication

These safeguards ensure that disputes are not advanced to adjudication until investigative and procedural requirements have been satisfied. The process is transparent, structured, and designed to ensure fairness for both homeowners and builders.

In contrast, insurers seldom rely on Statutory Condition 13, despite its purpose. Instead, appraisal is often invoked prematurely, before the insurer has completed its Stat 10 entitlement. This practice shifts the investigation away from the insurer and places appraisers and umpires in the position of resolving disputes that properly belong to the claims or legal process.

3. Implications for the Appraisal Process

The evolution of ACV and the comparison to Tarion highlight two central points:

1. **Modern ACV disputes frequently involve legal questions that fall outside the jurisdiction of appraisal.** Appraisers and umpires lack authority to interpret policy wording, apply the Broad Evidence Rule, or determine entitlement.
2. **Ontario already has a functioning model for procedural fairness in valuation-based disputes.** The Tarion framework demonstrates that the legislature recognizes the need for investigative obligations, procedural safeguards, and jurisdictional screening.

The appraisal process under the *Insurance Act* has not been modernized in the same way. It remains structurally outdated, lacking the procedural protections necessary to ensure fairness, transparency, and proper jurisdictional boundaries. These deficiencies underscore the need for a modernized appraisal framework that aligns with contemporary standards of administrative fairness and respects the statutory limits of the process.

CHAPTER 4 — SYSTEMIC FAILURE IN THE APPRAISAL PROCESS

Transition Into Case Studies A–D

The systemic weaknesses identified in Chapter 3 are not abstract. They appear repeatedly in real appraisal files across Ontario. This chapter presents anonymized case studies that illustrate how jurisdictional overreach, incomplete valuations, procedural unfairness, and lack of transparency distort outcomes and undermine the statutory purpose of appraisal.

These case studies are representative of patterns observed across the industry. They are not isolated incidents — they are symptoms of a system that lacks structure, boundaries, and accountability.

Section 128(3) of the *Insurance Act* provides: *"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."*

In practice, however, the statutory mandate has drifted significantly. Increasingly, it is the insurer who demands appraisal, and the process that follows often results in the umpire making determinations **beyond the scope of their legislative authority**. Rather than limiting their role to resolving valuation differences, umpires frequently weigh competing evidence, assess credibility, and craft a compromise between the two appraisers' submissions. These are functions reserved for a **trier of fact**, not for an appraisal panel whose jurisdiction is limited to determining the *amount of loss*.

This structural drift creates predictable distortions. Representatives of insureds may feel compelled to **maximise** their submissions to counterbalance the insurer's **suppressed** valuations, anticipating that the umpire will "split the difference." On paper, both sides appear to achieve a partial win. In reality, the insured is left under-indemnified, required to fund shortfalls out of pocket, and often burdened with costs. The statutory purpose of appraisal — a fair and efficient mechanism to resolve valuation disputes — is undermined, and the policyholder bears the consequences.

Case Study A — Jurisdictional Overreach and Causation Determinations

In this case, the insured's home suffered damage following a severe storm. The insurer argued that part of the building damage was caused by pre-existing deterioration and

therefore excluded that portion of the loss. It is important to note that the physical condition of the insured property is fundamentally an **underwriting issue**, not a valuation issue. Despite this, the parties proceeded to appraisal.

What Went Wrong

The **tribunal**:

- heard arguments about causation
- evaluated contractor reports
- made findings of fact about the source of wind-driven debris and water damage
- made findings of fact about which components were damaged by the insured peril
- interpreted policy exclusions

None of these issues fall within the jurisdiction of appraisal.

Why This Is a Structural Failure

The statute assumes that appraisal tribunals will limit themselves to determining the **amount of loss**. However, without explicit jurisdictional boundaries or a modernized procedural framework, appraisal routinely drifts into:

- causation
- coverage
- liability
- policy interpretation

These are **legal determinations**, not valuation determinations. When an umpire resolves these issues, the tribunal effectively adjudicates a coverage dispute — something only a court can do.

Consequences

- The insurer treated the award as binding on coverage, despite the tribunal exceeding its jurisdiction.
- Because the insurer's contractor allegedly caused additional damage for which the insurer denied liability, the insured elected to pursue **civil litigation** rather than judicial review. That action remains before the courts.

Case Study B — Incomplete Record, Asymmetric Evidence, and Tribunal Overreach

In this case, the insured's property sustained extensive damage following a second-storey fire. The insurer exercised its rights under Statutory Condition 10 and conducted multiple inspections using staff adjusters, a staff estimator, and approved vendor-contractors for both emergency services and scoping. During destructive testing, one of the insurer's contractors allegedly caused **asbestos migration throughout the building**, contaminating both the structure and personal property.

The insurer acknowledged responsibility for the contractor-caused damage, but the damage could not be segregated from the fire loss. Negotiations between counsel failed, and the insured commenced litigation within the limitation period. Rather than allow the matter to proceed before the courts — where contractor negligence and segregation issues properly belonged — the insurer **demanded appraisal**, even though no Proof of Loss had been delivered. The insurer also appointed an independent adjuster as its appraiser.

This is where the process began to fail.

Pre-Appraisal Breakdown

The insured appointed an appraiser who was initially unaware that no Proof of Loss had been delivered. Upon learning this, the appraiser consulted with the insured's counsel. To avoid delay, counsel offered to proceed with a **voluntary appraisal**, provided that:

- the insurer's prior commitment to pay for their contractors negligence was honoured
- policy limits would not restrict the valuation
- segregation of loss would not be addressed in appraisal, as it was a **trier-of-fact issue**

Counsel for the insurer refused. This led to the **first of three motions** over four years, during which the insurer continued to pay Additional Living Expense (ALE) — ultimately exceeding the policy limit by more than tenfold.

During the first motion, the insured delivered an **Interim Proof of Loss** claiming the amount of loss as "to be determined" (TBD). Counsel for the insurer accepted it. The court appointed the insured's original appraiser and directed that appraisal proceed **without regard to policy limits**.

The insurer's appraiser initially stated he disputed only amounts exceeding interim payments, but he refused to provide documentation supporting those payments when requested by the umpire. Eight months later, he reversed his position and disputed the **entire** claim submission.

Subsequent Motions and the Engineering Report

The insured's appraiser objected to further inspections by the insurer's vendors, particularly the contractor believed responsible for the asbestos migration, but agreed that members of the tribunal could inspect. The umpire and appraiser for the insured attended, the umpire carrying

out the site inspection, unaccompanied. The appraiser for the insured refused to attend unless accompanied by whom ever he wished to bring.

The Motion Court permitted the insurer to conduct another inspection with an engineer of its choosing but not the contractor believed negligent for further damage — **not under Statutory Condition 10**, but under the insurer's **litigation entitlement** arising from the civil action already commenced. The purpose of this inspection was to allow the insurer to update its scope of loss and pricing, the building going untouched following emergency services and the court authorized the umpire to consider the engineering report at his discretion.

The subsequent engineering report — requested by the insurer's appraiser was shared with the tribunal that — **supported the insured's scope of loss.**

Despite this, the insurer's appraiser **chose not to rely on the updated engineering-supported scope**, at appraisal, instead presenting outdated pricing based on a scope prepared shortly after the fire.

What Went Wrong at Appraisal

The **six-day appraisal hearing**, spread over several months, made clear that the appraisers could not agree on anything.

The **tribunal:**

- proceeded despite the absence of agreement on the building scope of loss
- proceeded despite the parties had agreed on what personal property was damaged
- proceeded despite legal matters were raised by the appraiser for the insured
- allowed the insurer's appraiser to rely on outdated pricing
- allowed the insurer's appraiser to not rely on updated engineering-supported scope
- treated the insurer's refusal to rely upon the updated engineering evidence as procedurally acceptable
- allowed the umpire to inspect personal property alone after both appraisers declined
- allowed the umpire to halve the agreed RC value of contents and impose depreciation
- allowed the umpire to determine the ALE period based on his own view of a reasonable repair duration time following the loss should have been
- permitted the umpire to act as **trier of fact** on building, contents, and ALE

These determinations fall **outside the jurisdiction of appraisal**, which is limited to valuation — not fact-finding, scope determination, liability assessment, or coverage interpretation.

Why This Is a Structural Failure

This case demonstrates multiple systemic failures:

1. **Appraisal was invoked despite active litigation and unresolved contractor negligence.** These issues belonged before the courts.
2. **The tribunal proceeded on an incomplete and asymmetric evidentiary record.**

3. **The umpire acted as a trier of fact,** making determinations on:
    - building scope
    - personal property destruction
    - depreciation
    - ALE duration
4. **The judicial review never addressed the real issues,** because counsel argued procedural fairness rather than jurisdictional overreach or fact-finding.

Consequences

- The insured received an award that did not reflect the engineering evidence.
- The umpire's determinations replaced the parties' agreements on contents and ALE.
- The insurer's appraiser agreed to the umpire's findings, knowing they favoured the insurer.
- The insured was left under-indemnified after four years of delay.
- The umpire rejected both appraisers' valuations and made his own findings of fact on building, contents, and ALE. Only the insurer's appraiser agreed with the umpire's independently-derived values, which materially benefited the insurer.

This case illustrates how appraisal, when invoked prematurely and without jurisdictional safeguards, becomes a substitute for litigation — without the protections of litigation — leaving the insured with no meaningful recourse.

Case Study C — Tribunal Drift Into Repair Methodology, Safety Standards, and Scope Determination

In this case, the insured's property sustained significant structural and interior damage following a major fire. The insured's contractor identified repairs requiring full removal and replacement of damaged components, specialized trades, and compliance with manufacturer specifications, building-code requirements, and safety standards. The insurer's appraiser rejected these requirements and priced the work using general-labour rates and non-compliant repair methods that no qualified contractor would accept.

The matter proceeded to appraisal.

What Went Wrong

The **tribunal**:

- accepted repair methods that did not comply with manufacturer specifications or safety standards
- disregarded building-code requirements and contractor feasibility
- substituted its own view of proper repair methodology
- treated specialized-trade requirements as "betterment"
- adopted pricing that no qualified contractor was willing to perform
- allowed the insurer's appraiser to rely on theoretical or non-compliant repair approaches
- treated the absence of contractor acceptance as irrelevant to valuation

These determinations fall **outside the jurisdiction of appraisal**, which is limited to valuation — not scope, safety, or methodology.

Why This Is a Structural Failure

Repair methodology is not a valuation question. It is:

- a **scope** question
- a **safety** question
- a **liability** question
- and often a **code-compliance** question

By accepting non-compliant repair methods, the tribunal effectively:

- redefined the scope of work
- overrode contractor expertise
- ignored safety and code requirements
- and made determinations that belong to building professionals or courts

This occurs because the statute provides **no procedural guardrails** requiring:

- validation of repair methods
- confirmation of safety or code compliance
- contractor feasibility

- or real-world pricing verification

Without these safeguards, appraisal becomes a forum where:

- unsafe or non-compliant methods are priced as if they were acceptable
- specialized trades are replaced with general labour
- the insured is left with an award that cannot be executed legally or safely

Consequences

- The insured could not obtain a contractor willing to perform the work at the awarded price.
- The insurer treated the award as binding, despite its reliance on non-compliant repair methods.
- The insured faced significant out-of-pocket costs to complete repairs safely and legally.
- The award undermined the principle of indemnity by valuing repairs that could not be performed.

This case illustrates how appraisal, without statutory modernization, routinely drifts into areas beyond its jurisdiction and produces outcomes that are unsafe, unworkable, and unfair.

Case Study D — Economic Distortion Through Arbitrary Depreciation and Unrealistic Valuation

In this case, the insured's property sustained extensive interior and exterior damage following a major loss event. Both parties agreed that the building required substantial repair and that many components had reached the end of their useful life due to the loss. The insured's appraiser prepared a valuation based on current market pricing, contractor availability, and industry-standard depreciation schedules. The insurer's appraiser submitted a valuation using significantly lower pricing and applying aggressive depreciation percentages unsupported by evidence or industry practice.

The matter proceeded to appraisal.

What Went Wrong

The **tribunal**:

- accepted depreciation percentages unsupported by evidence, industry standards, or contractor practice
- allowed the insurer's appraiser to apply blanket depreciation across categories without item-specific justification

- disregarded the insured's evidence of actual market pricing and contractor availability
- substituted its own economic assumptions for real-world cost data
- treated theoretical or historical pricing as equivalent to current market conditions

- allowed the insurer's appraiser to rely on pricing that no contractor would honour
- permitted the umpire to impose his own depreciation and ACV calculations without evidentiary foundation

These determinations fall **outside the jurisdiction of appraisal**, which is limited to valuation based on evidence — not economic speculation or arbitrary depreciation.

Why This Is a Structural Failure

Depreciation and ACV/RCV determinations require:

- evidence of condition
- evidence of useful life
- evidence of replacement cost
- evidence of market pricing
- evidence of contractor feasibility

The tribunal had none of this.

Instead, the tribunal:

- treated depreciation as a discretionary tool rather than an evidence-based calculation
- ignored the insured's contractor-supported pricing

- accepted the insurer's theoretical pricing despite contractor refusal
- allowed the umpire to impose his own economic model

This transforms appraisal into a **quasi-economic tribunal**, where:

- depreciation becomes a mechanism to reduce indemnity
- ACV becomes whatever the umpire believes it should be
- RCV becomes disconnected from actual market conditions

The statute provides **no guidance** on depreciation methodology, and without procedural safeguards, the tribunal fills the vacuum with arbitrary assumptions.

Consequences

- The insured received an award based on depreciation percentages unsupported by evidence.
- The RCV and ACV values bore no relationship to actual contractor pricing.

- The insured could not complete repairs at the awarded amounts.
- The insurer treated the award as binding, despite its reliance on unrealistic economic assumptions.
- The award undermined the principle of indemnity by valuing repairs that could not be performed in the real world.

This case illustrates how appraisal, when unconstrained by statutory standards or evidentiary requirements, produces **economically distorted awards** that fail to indemnify the insured and reward the party presenting the least realistic valuation.

Transition — From Individual Failures to a Systemic Pattern

Taken together, Case Studies A through D reveal a consistent and troubling pattern. Although each case arises from different facts — causation disputes, incomplete records, unsafe repair methodologies, and arbitrary depreciation — the underlying failures are the same. In every instance, the appraisal process drifted beyond its statutory purpose, operated without procedural safeguards, and produced outcomes that could not be reconciled with the principle of indemnity.

Across all four cases, the tribunal:

- assumed jurisdiction over matters reserved for the courts
- proceeded on incomplete, asymmetric, or selectively presented evidence
- substituted its own views on scope, safety, methodology, and economic valuation
- relied on pricing or depreciation unsupported by real-world contractor feasibility
- treated the absence of statutory guidance as permission to improvise
- operated without meaningful oversight or accountability

These are not isolated incidents. They are **structural outcomes** produced by a statutory framework that has not been modernized, a process that lacks procedural discipline, and a tribunal model that invites — and sometimes requires — decision-making far beyond valuation.

The four case studies demonstrate that once appraisal is invoked:

- jurisdiction becomes blurred
- evidence becomes optional
- methodology becomes discretionary
- and the insured bears the consequences

This pattern underscores the central thesis of this chapter: **the appraisal process, as currently implemented, is incapable of delivering fair, consistent, or legally coherent outcomes without statutory reform.**

These case studies demonstrate that the failures of Ontario's appraisal system are not isolated or accidental. They are structural, predictable, and systemic. The next chapters build on this foundation to articulate a principled framework for reform, grounded in statutory interpretation, procedural fairness, and comparative jurisprudence — including the guidance provided by *Farrier*.

The next chapter addresses this directly. Building on the failures illustrated in Case Studies A through D, Chapter 5 sets out the reforms necessary to restore appraisal to its intended purpose, align it with modern insurance practice, and ensure that insureds and insurers alike are protected by a process that is fair, transparent, and legally sound.

Chapter 5 — Restoring the Statutory Purpose of Appraisal

The failures documented in the preceding chapter are not the product of individual misconduct or isolated error; they arise from a statutory framework that no longer reflects the realities of modern property insurance. Appraisal has drifted far beyond its intended purpose because the Insurance Act provides no procedural safeguards, no evidentiary standards, and no jurisdictional boundaries capable of containing it. Restoring the statutory purpose of appraisal therefore requires more than incremental adjustment. It requires a modernized framework that defines what appraisal is — and what it is not — supported by clear rules, transparent procedures, and a tribunal structure that respects the limits of valuation. This chapter sets out that framework. It proposes a model appraisal procedure, grounded in the four pillars of reform, designed to realign appraisal with its legislative purpose and ensure that the process delivers fair, consistent, and legally coherent outcomes for both insureds and insurers.

The appraisal process under the *Insurance Act* was intended to serve a narrow and clearly defined purpose: to provide an efficient mechanism for resolving disputes, primarily about the **amount of loss** once coverage, scope, and entitlement have been properly determined. Over time, however, the process has evolved into something fundamentally different. It now functions as an informal, unregulated, and often opaque substitute for claims investigation, coverage analysis, and, in some cases, judicial determination.

The case studies presented in this thesis demonstrate that these outcomes are not isolated or exceptional. They reflect **systemic patterns** arising from structural gaps in the statutory framework, including:

- the absence of procedural safeguards
- the lack of evidentiary standards
- the absence of jurisdictional screening
- the absence of transparency or reasons
- the absence of guidance on valuation principles
- the absence of accountability mechanisms

These deficiencies allow the appraisal process to operate without the procedural protections that are foundational to administrative fairness. As a result, insureds may receive valuations that are incomplete, inaccurate, or inconsistent with the policy they purchased, while courts remain constrained by a statutory scheme that provides no meaningful avenue for oversight.

The consequences extend beyond individual disputes. The current structure undermines public confidence in the insurance system, creates uncertainty for insurers and appraisers, and places umpires in the untenable position of making decisions without clear statutory

direction. It also exposes the system to inconsistent practices, jurisdictional overreach, and outcomes that cannot be reconciled with the principles of indemnity or the rule of law.

This thesis has identified these systemic issues and provided a detailed analysis of how they manifest in real files. It has also proposed a Model Procedure designed to restore the appraisal process to its intended purpose. The Model Procedure offers a practical, implementable framework that:

- clarifies jurisdiction
- establishes procedural fairness
- sets evidentiary expectations
- defines valuation standards
- enhances transparency
- supports consistent, principled decision-making

Reform is both necessary and achievable. The appraisal process can continue to serve as an efficient mechanism for resolving valuation disputes, but only if it operates within a structure that respects statutory limits, ensures procedural fairness, and provides clear guidance to all participants.

By adopting a modernized framework, regulators, insurers, appraisers, and umpires can help ensure that appraisal fulfills its intended role within the insurance system—delivering accurate, fair, and transparent valuations that uphold the principle of indemnity and support public confidence in the claims process.

APPENDIX A

Model Procedure for Appraisal Under the Insurance Act

Introduction

This Model Procedure is designed to restore the appraisal process to its statutory purpose: resolving disputes concerning the value of the property insured, property saved, or the amount of loss **after** coverage, scope, and entitlement have been properly determined. It incorporates principles of procedural fairness, jurisdictional clarity, transparency, and modern administrative practice. It is intended for adoption by insurers, appraisers, umpires, and regulators.

1. Preconditions to Appraisal

Appraisal may only be invoked when:

1. Proof of Loss has been delivered
2. Coverage has been accepted
3. Extent (Scope) of loss or damage has been agreed upon
4. Entitlement to each claimed item has been determined
5. The dispute concerns valuation only

If any of these elements remain unresolved, appraisal is premature and must not proceed.

2. Mandatory Investigation Prior to Appraisal

The insurer must:

- complete its investigation under Statutory Condition 10

- obtain and review all relevant documentation
- provide written reasons for any coverage or scope determinations
- disclose all investigative materials relevant to valuation

Appraisal cannot substitute for investigation.

3. Notice of Appraisal

A party invoking appraisal must provide:

- written notice
- a clear statement of the valuation issues in dispute
- confirmation that preconditions have been met
- identification of the appraiser appointed

The responding party must:

- appoint an appraiser within seven clear days of being served written notice
- have the appraiser acknowledge appointment and confirm or dispute the preconditions within ten days

3A. Mandatory Registration, Education, and Neutrality Requirements for Appraisers

A foundational structural weakness in the current a

A foundational structural weakness in the current appraisal system is the absence of any regulatory framework governing who may act as an appraiser. Historically, the Insurance Act required each party to appoint **"a competent and disinterested appraiser."** This mirrored the legislation in other provinces and ensured that appraisers were independent, qualified, and free from institutional influence.

In the 1960s, however, Ontario amended the Act at the behest of insurers to remove this requirement and permit **"any person"** to act as an appraiser. The practical effect was to allow insurers to appoint staff adjusters, independent adjusters, consultants, and even counsel—many of whom were directly involved in the adjustment of the loss and operated under managerial direction. Although insurers may still appoint a competent and disinterested professional, they seldom do.

On the policyholder side, the same structural problem exists. Public Adjusters—many of whom operate as sole proprietors without supervisory oversight—are frequently appointed as appraisers despite having no standardized training in statutory appraisal. Consultants who fall within the statutory definition of "adjuster" may also act as appraisers without being individually licensed. Lawyers, who are exempt from adjuster licensing, may act as appraisers despite having no regulatory accountability to FSRA.

To restore integrity to the appraisal process, this Model Procedure requires that **any person acting as an appraiser—whether for the insurer or the insured—must be registered with FSRA.** Registration ensures that appraisers fall within FSRA's regulatory jurisdiction, enabling the regulator to impose:

- minimum competency standards
- mandatory education on statutory appraisal
- continuing education requirements
- conduct expectations consistent with administrative fairness
- disciplinary oversight for misconduct or jurisdictional overreach

Staff adjusters, independent adjusters, and public adjusters may satisfy the requirement through an endorsement on their existing licence, while consultants and other non-adjusters must obtain a limited-scope registration authorizing them to act solely as appraisers.

To preserve neutrality and avoid conflicts of interest:

- **no registered appraiser may act as an umpire**, and
- **no lawyer whose practice predominantly involves insurer-side defence work may be appointed as an umpire.**

These safeguards are essential to restoring the independence, competence, and neutrality originally intended by the statutory appraisal mechanism.

4. Jurisdictional Screening by the Umpire

After accepting appointment, the umpire must:

- hold a conference call with appraisers
- place appraisal on hold if legal issues require resolution
- confirm that the dispute concerns valuation only
- issue a brief written jurisdictional determination

This ensures that appraisal does not exceed statutory limits.

5. Disclosure Requirements

Each appraiser must disclose:

- all estimates, reports, and pricing data acquired or relied upon
- contractor statements
- photographs, measurements, and site documentation

- any expert reports relevant to valuation
- the underwriting file and underwriter's notes relevant to valuation

Disclosure must be exchanged at least 10 days before the first meeting.

6. Evidentiary Standards

The following principles apply:

- evidence must be relevant to valuation
- legal questions (coverage, entitlement, policy interpretation) are excluded

- market-based evidence must reflect actual contractor availability
- pricing databases may be used only if validated against real-world conditions
- safety standards and manufacturer requirements must be respected

7. Meetings and Site Visits

The umpire may require:

- joint site visits
- joint contractor interviews
- clarification meetings
- written submissions

All parties must participate in good faith.

8. Decision-Making Framework

The umpire must:

- consider only valuation issues
- apply the policy's valuation clause

- exclude legal interpretation
- provide written reasons
- identify the evidence relied upon
- explain any adjustments made

9. Written Award

The award must:

- state the amount of loss
- identify the valuation method used
- summarize the evidence considered
- confirm that jurisdiction was limited to valuation
- be signed by the umpire and at least one appraiser

10. Post-Award Obligations

Insurers must:

- adjust the claim in accordance with the award
- issue payment promptly
- provide written explanation of any remaining steps

Conclusion

This Model Procedure provides a modern, fair, transparent, and legally coherent framework for appraisal under the Insurance Act. It restores appraisal to its statutory purpose and aligns the process with contemporary administrative standards.

A

APPENDIX B

Farrier v. Maplex General Insurance Co. (1991 BCSC)

Full Decision — Reproduced from User-Provided Text

IN THE SUPREME COURT OF BRITISH COLUMBIA

Vancouver Registry No. C895710 / F900907 Date Released: October 11, 1991

Between: VIRGINIA FERRIER o/a NORTHWOOD RESTAURANT — *Plaintiff*

And: MAPLEX GENERAL INSURANCE COMPANY, ELITE INSURANCE COMPANY, INLAND CLAIMS LTD. — *Defendants*

Reasons for Judgment of the Honourable Mr. Justice McKinnon

Dates of Hearing: October 8 and 9, 1991 **Counsel for the Plaintiff:** M. Sacks **Counsel for Maplex, Elite, Inland and Netzel:** N.H. Smith and S.M. Larter **Counsel for Archibald, Clarke & Defieux and Moore:** H.P. McLaughlin

[1] Background

The plaintiff claims on a fire insurance policy following the total destruction of a restaurant at Wells, B.C. on December 23, 1988... (Full text preserved exactly as provided.)

Farrier 1991.pdf

☆ KEY HOLDINGS (pp. 5–6)

(Emphasis added for clarity — judicial text unchanged)

The Court's Answers to the Umpire's Jurisdiction Questions

1. Can the umpire determine the quantities of items claimed on the proof of loss? — No.

2. Can the umpire hear and consider evidence respecting: a. **quantities claimed? — No.** b. **age and condition of items? — No.**

3. Effect of umpire's findings on fraud allegations at trial? — *None.*

4. Can the umpire determine the meaning or method of "actual cash value" or "replacement value"? — No.

What is the umpire's jurisdiction regarding leasehold improvements? — *He may value them but may not determine what is or is not a leasehold improvement.*

6. If the umpire holds a hearing, is counsel entitled to be present? — Yes.

7. Is the umpire required to give reasons? — No.

Appraisers and umpires may value — but may not interpret, determine entitlement, decide quantity, or resolve legal questions.

APPENDIX C — INDEX