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<p><b>PROPERTY DAMAGE CLAIMS UNDER COMMERCIAL INSURANCE POLICIES</b> by Richard Krempulec, Q.C. Release No. 6, December 2023</p>
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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 7 and 9.

### **Case Law Highlights**

- **Chapter 7 – Perils insured and excluded – Bylaws and building codes** – An insured is obligated to prove the losses they claim coverage for, and that they were caused by the insured peril. In *Walsh c. Intact Insurance Company*, 2023 QCCS 3562, the insured's building was destroyed by fire. The rebuild of the building had to include certain upgrades from the old structure to comply with city regulations that had come into force since the building was first constructed. The insured sought coverage in the repair costs for enhancements to certain parts of the building that had to be updated to code regardless of the fire loss. The court found that the insurer was justified in denying coverage, as this could not be seen as a loss caused by the fire. The insured also sought coverage to replace the entire foundation of the building. The court found that the insurer was justified in denying coverage, as the insured had not proven replacement was necessary. The insured's expert had opined that further testing needed to be conducted on the foundation to determine if replacement was necessary, and such testing had not been completed at the time of trial.
- **Chapter 9 – Loss Evaluation – Calculating the claim** – When faced with differing expert reports opining on the extent of property damage, the court will look to the methodology and surrounding circumstances to determine which report, if any they prefer where the reports diverge. In *Walsh c. Intact Insurance Company*, 2023 QCCS 3562, the insured's building was destroyed by fire. The rebuild of the building had to include certain upgrades from the old structure to comply with city regulations that had come into force since the building was first constructed. The reports provided by the experts had an \$800,000 difference in the replacement cost of the building. The court generally preferred the insured's report, as their expert had thoroughly analyzed many valuations to arrive at his conclusion, and his final estimate closely aligned with other reports that the insured had obtained from other

contractors. In contrast, the insurers expert obtained quotes from only a small number of subtrades, and had a very narrow estimate range, causing the court to doubt the reliability of his report.

### **ProView Developments**

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- 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
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages