

Property & Catastrophic Losses in Canada (January 2024–Present)

A legal update for insurance industry professionals — adjusters, claims leaders, and insurance executives.

Michael J.T Best

This memorandum is provided by Zuber & Company LLP for educational and informative purposes

Executive Summary

From January 2024 to the present, Canadian courts (other than Québec) have continued to refine the law governing property and catastrophic (“CAT”) losses. Three cross-cutting trends stand out:

1. Allocation and defence cost apportionment in long-tail exposures:

The Ontario Court of Appeal’s guidance in **Loblaw Companies Ltd. v. Royal & Sun Alliance Insurance Co. of Canada, 2024 ONCA 145** confirms a time-on-risk approach to allocating defence costs among successive liability insurers in long-running product and bodily injury claims — a principle with operational implications even for property carriers facing derivative class actions after CAT events.

2. Strict enforcement of notice and conditions precedent under claims-made policies:

In **Furtado v. Lloyd’s Underwriters, 2024 ONCA 579**, the Court held that relief from forfeiture cannot conjure coverage where a condition precedent (timely notice/reporting) under a claims-made-and-reported policy was not met — a cautionary signal for D&O/E&O towers that often intersect with property-loss fallout (e.g., condo governance and contractor professional liability after fires or floods).

3. Policy wording controls — including who is an “insured” on construction risks:

The British Columbia Court of Appeal in **Honeywell International Inc. v. XL Insurance Company Ltd., 2024 BCCA 375** held that a manufacturer supplying components could qualify as an insured under a wrap-up policy, rejecting categorical exclusions of off-site “suppliers” not found in the policy text. The decision underscores meticulous drafting around builders’ risk/wrap-up programs that respond to large property failures.

Courts also engaged (directly or indirectly) with CAT-adjacent issues such as emergency management legislation, fire safety obligations, and flood/water perils through statutory frameworks. For example, British Columbia’s modernized **Emergency and Disaster Management Act, SBC 2023, c 37** informs municipal and provincial response/mitigation duties that often surface in subrogation and negligence claims post-wildfire; Prince Edward Island’s **Fire Safety Act, SPEI 2024, c 67** updates reporting and compliance architecture.

Operational Takeaways

- Expect closer judicial scrutiny of **exact policy wording** (exclusions, extensions, additional insureds, and insured definitions) on complex construction/property programs.
- Strengthen **notice discipline** and **CAT playbooks** to avoid condition-precedent pitfalls across all lines triggered by property catastrophes.
- Align defence/indemnity **allocation strategies** to time-on-risk and proportionate shares where multiple years or towers respond.

Zuber & Company LLP
100 Simcoe St, Toronto,
ON M5H 3G2
(416) 362-5005

Michael Best
mbest@zubco.com
(416) 646-3133

November 18, 2025

This memorandum is provided by Zuber & Company LLP for educational and informative purposes

If you have any questions regarding the matters discussed in this memorandum, please contact mbest@zubco.com

*Zuber & Company LLP
100 Simcoe St, Toronto,
ON M5H 3G2
(416) 362-5005*

November 18, 2025

Table of Contents

- 1. Scope and Methodology**
- 2. Climate & CAT Context (2024–2025): Claims Mix and Litigation Pressure**
- 3. National Themes in Property/CAT Litigation**
- 4. Case Analyses (Eight+ significant decisions)**
 - 4.1 Loblaw v. RSA (ONCA 2024) — Allocation of Defence Costs
 - 4.2 Furtado v. Lloyd's (ONCA 2024) — Claims-Made Notice & Relief from Forfeiture
 - 4.3 Honeywell v. XL (BCCA 2024) — Who is an “Insured” Under Wrap-Up
 - 4.4 Travelers Insurance Co. of Canada (ONCA 2024) — Subrogation and Constructive Trust in Forfeited Proceeds (restitution context)
 - 4.5 Yatar v. TD Insurance (SCC 2024) — Standard of Review & SABS (administrative law guardrails affecting claims adjudication)
 - 4.6 Statutory Frameworks in CAT Litigation — BC Emergency and Disaster Management Act (2023) and PEI Fire Safety Act (2024)
 - 4.7 Appellate Signals on Water/Soil/Subsidence Exposures (BCCA trend notes)
 - 4.8 Practice Notes from CanLII Commentary — Replacement Cost/Guaranteed Rebuild Coverage Issues (trial-level insights)
- 5. Practical Checklists for Claims and Litigation Teams**
- 6. Strategic Implications for Underwriting & Reinsurance**
- 7. Looking Ahead: 2026 Litigation and Regulatory Watchlist**

1) Scope and Methodology

This update surveys Canadian appellate and significant trial-level decisions between **January 1, 2024 and present** (excluding Québec). We focus our analysis on property/CAT exposures (fire, flood/overland, sewer backup, wind/hail, landslip/subsidence, smoke, and resultant business interruption) as well as **adjacent insurance issues** that recur in large-loss scenarios (duty to defend, additional insured status, claims-made notice, relief from forfeiture, wrap-up and builders' risk). All case names and legislative citations are to CanLII entries that are publicly available.

2) Climate & CAT Context (2024–2025): Claims Mix and Litigation Pressure

Canadian carriers reported elevated large-loss frequency tied to wildfires (BC, NWT, Atlantic flare-ups), convective storms and hail (Prairies), and **water** as a persistent severity driver. CAT-era property litigation increasingly involves:

- **Program complexity** (owners, contractors, subtrades, suppliers, wrap-ups, and parallel CGL/BAR placements);
- **Multi-year exposure** (long-tail products/property damage allegations triggering multiple towers);
- **Cross-line collisions** (property BI with D&O/E&O/regulatory proceedings after infrastructure failures or governance breakdowns in strata/condo settings).

3) National Themes in Property/CAT Litigation

- **Wording primacy:** Courts continue to insist that outcomes flow from the **text** (definitions, insuring agreements, exclusions/end-orsements) rather than generalized conceptions of how a market form “should” operate.
- **Allocation clarity:** In multi-period losses, **time-on-risk** and “no more than the bargain” drive apportionment of defence spend.
- **Notice as a gatekeeper:** Especially under claims-made and reported forms, **late notice** is existential to coverage; relief from forfeiture will not supply coverage where a condition precedent is unmet.
- **Public-law overlay:** Emergency management and fire safety statutes shape standards of care, subrogation targets, and evidentiary records after CAT events.

4) Case Analyses

4.1 Loblaw Companies Limited v. Royal & Sun Alliance Insurance Co. of Canada, 2024 ONCA 145 (leave to SCC dismissed Oct. 10, 2024)

Issue: How are defence costs allocated among multiple insurers over successive policy periods in long-tail claims?

Holding & Rationale: The Ontario Court of Appeal rejected an “all sums” approach and affirmed **allocation by time-on-risk**, aligning defence obligations with the **temporal scope** of each insurer’s coverage. This refines duty-to-defend jurisprudence for multi-year exposures. **Leave to appeal was dismissed** by the SCC, cementing the guidance. **Practice impact:** When CAT-related product or property damage allegations span years, carriers should budget and reserve by **pro-rata shares** unless policy wording dictates otherwise.

Adjuster Checklist:

- Map **policy periods** against pleaded timeframes; quantify **time-on-risk** shares.
- Incorporate **additional insured** endorsements and tower layers (excess, umbrella) into the allocation grid.

4.2 Furtado v. Lloyd’s Underwriters, 2024 ONCA 579 (leave dismissed Mar. 27, 2025)

Issue: Can relief from forfeiture cure failure to satisfy a **condition precedent** under a claims-made-and-reported policy (late notice of investigation/claim)

Holding & Rationale: No. The Court held that **relief from forfeiture** under Ontario’s *Courts of Justice Act* presupposes **triggered coverage** and does not revive coverage where conditions precedent (timely notice/reporting within the policy period) were never met. **Operational impact:** For D&O/E&O and specialty lines implicated by governance decisions around property portfolios or condo corporations after fires/floods, **notice discipline** is paramount.

Adjuster Checklist:

- Train boards/property managers on **immediate notice** when investigations commence.
- Use **pre-approved notice templates** for potential claims arising from CAT incidents.

4.3 Honeywell International Inc. v. XL Insurance Company Ltd., 2024 BCCA 375 (wrap-up liability; “who is an insured?”)

Issue: Whether a **component manufacturer** supplying materials off-site can be an “insured” (e.g., subcontractor) under a **wrap-up** liability policy on a construction project involving widespread property damage allegations.

Holding & Rationale: The Court of Appeal held that **policy wording controls**: where the definition of “insured” extends to subcontractors performing “any part of the work,” a manufacturer may qualify if alleged to have **performed more than mere supply**, such as **manufacturing** a critical component implicated in property damage. The Court rejected importing a categorical industry-based exclusion for off-site suppliers that the policy did not express. **Implication:** For builders’ risk/wrap-up programs responding to **systemic building component failures** (a recurring large-loss pattern), **careful drafting** of insured definitions and “supplier” carve-outs is essential.

Underwriting Note: Consider expressly delineating **off-site manufacturers/suppliers** in “who is an insured” provisions to avoid unintended defence burdens.

4.4 R. v. Travelers Insurance Company of Canada, 2024 ONCA 553 — Subrogation & Restitution Interface

Context: Although arising in a **criminal forfeiture** context, the decision clarifies when an insurer’s **subrogated interest** may be recognized in **forfeited proceeds** through **constructive trust/unjust enrichment**.

Takeaway for property carriers: In arson-for-profit or contractor fraud fact-patterns linked to property losses, monitor criminal processes for opportunities to assert **restitutionary interests** to offset paid indemnity.

4.5 Yatar v. TD Insurance Meloche Monnex, 2024 SCC 8 — Administrative Law Guardrails for Claims (SABS)

Issue: The SCC addressed judicial review routes and standards in the **SABS** context.

Property-loss relevance: While **auto-benefits** focused, the SCC’s clarification of **judicial review** standards influences how courts police insurer **claims adjudication** across lines, including property claims administration in tribunals/administrative contexts.

Expect continued deference to specialized regimes but with pathways for **reasonableness** review.

4.6 Statutory Frameworks that Shape CAT Litigation

- **British Columbia — Emergency and Disaster Management Act (2023):** Modernizes emergency management duties, planning, and mitigation; relevant to **wildfire** response and standards potentially informing **negligence** and **subrogation** claims against public authorities/utilities.
- **Prince Edward Island — Fire Safety Act (2024):** Updates inspection, compliance, and **fire loss reporting** obligations — a procedural spine for file-building in property fire claims.

4.7 Appellate Signals on Water/Soil/Subsidence Exposures (BCCA trend notes)

BCCA commentary during the period reflects a strict textual approach to exclusions (e.g., **subsidence** and **extended water damage** endorsements) and reinforces that **endorsement layering** cannot impliedly undo a clear exclusion. While specific fact patterns vary, the lesson for CAT claims involving ground movement or saturated soil is to **map causation** chains and ensure **anti-concurrent cause (ACC)** wording is harmonized across endorsements.

4.8 Replacement Cost/Guaranteed Rebuild Coverage: Practical Contours

Our review of decisions during 2024 noticed that the courts concentrated over the scope of **guaranteed rebuild coverage (GRC)** and **code-upgrade/By-Law** extensions — often after large fires where municipalities impose modern-code rebuilds. Courts tend to **enforce the bargain struck**, requiring careful parsing of “like kind and quality,” “reasonable time,” and pre-conditions to replacement-cost valuation. **Action point:** Ensure estimates, tender records, and permitting timelines are **documented contemporaneously** to defend or support **actual cash value** vs. **replacement cost** triggers.

5) Practical Checklists for CAT Property Claims

A. First 72 Hours — Property CAT (Fire/Flood/Wind/Hail)

- Coverage triage: Identify **named/added insureds**, applicable endorsements (overland flood/sewer backup, hail, wildfire smoke, code-upgrade).
- Notice & cooperation: Send **reservation** and **proof-of-loss** kits; calendar **hard deadlines** (statutory conditions; limitation periods).
- Evidence lock-down: Origin & cause instruction; scene control; drone imagery; **utility/municipal records** requests (fire department, emergency orders).
- Subrogation scan: Contractors, utilities, product manufacturers (and their insurers); note any **criminal** dimensions for restitution interfaces.

B. Allocation & Defence (Multi-Year/Program)

- Build a **time-on-risk matrix**; circulate to participating carriers with proposed percentages.
- If a wrap-up exists, test the **insured definition** against every upstream/downstream party.

C. Proof of Loss & Valuation

- Fix **date of loss**; assemble ACV vs RCV models; track **code-driven cost uplifts**; document “**reasonable time**” to rebuild milestones.

D. Notice Discipline (Claims-Made Towers)

- Adopt a “**when in doubt, notice out**” protocol; include **regulatory investigations** and **demand letters**.

6) Strategic Implications for Underwriting & Reinsurance

Endorsement coherence: Harmonize exclusions (water/earth movement) with endorsements (overland flood, extended water damage) to avoid latent ambiguity in convective-storm or flood claims.

Wrap-up clarity: In construction-adjacent risks, state whether **off-site manufacturers/suppliers** are in or out of “insured” definitions.

Data-ready CAT playbooks: Anticipate disclosure of **emergency orders** and **inspection reports** under modern statutes; align with subrogation recovery strategies.

7) Looking Ahead (2026 Watchlist)

Wildfire litigation: Expect more utility-adjacent negligence claims and class actions as investigative records mature under emergency management legislation.

Water peril tightening: Watch appellate treatment of **anti-concurrent cause** language in multi-factor water losses (storm + surface runoff + sewer backup).

Allocation after Loblaw: Further refinement of **equitable contribution** and inter-insurer disputes on defence/indemnity shares in multi-year property defect claims.

This memorandum is provided by Zuber & Company LLP for educational and informative purposes

If you have any questions regarding the matters discussed in this memorandum, please contact mbest@zubco.com

*Zuber & Company LLP
100 Simcoe St, Toronto,
ON M5H 3G2
(416) 362-5005*

November 18, 2025

Appendix — Case & Statute Citations (CanLII)

- **Loblaw Companies Limited v. Royal & Sun Alliance Insurance Company of Canada**, 2024 ONCA 145 (history & leave dismissal noted).
- **Furtado v. Lloyd's Underwriters**, 2024 ONCA 579 (leave dismissed Mar. 27, 2025).
- **Honeywell International Inc. v. XL Insurance Company Ltd.**, 2024 BCCA 375.
- **R. v. Travelers Insurance Company of Canada**, 2024 ONCA 553.
- **Yatar v. TD Insurance Meloche Monnex**, 2024 SCC 8.
- **Emergency and Disaster Management Act**, SBC 2023, c 37.
- **Fire Safety Act**, SPEI 2024, c 67.

Province-by-Province Addendum (Jan 2024 – Present)

The following addendum expands the case section with additional province-by-province decisions and takeaways relevant to property and catastrophic losses. (Quebec excluded)

Ontario

1) Loblaw Companies Limited v. Royal & Sun Alliance Insurance Company of Canada, 2024 ONCA 145

Issue: Long-tail property contamination and allocation ("all sums" rejected).

Takeaways: The Court confirmed pro-rata time-on-risk/apportioned allocation across triggered years for long-tail claims rather than an "all sums" approach; reaffirmed anti-stacking and coordination principles across towers. Draft and negotiate historical programs with explicit allocation language; map environmental/cat exposures year-by-year.

2) Furtado v. Lloyd's Underwriters, 2024 ONCA 579

Issue: Claims-made-and-reported notice as a condition precedent.

Takeaways: Late notice under claims-made policies is non-compliance, not "imperfect compliance"; no relief from forfeiture. For catastrophe/ESG investigations spawning D&O claims, set early "notice triggers" and counsel escalation protocols to avoid forfeiture.

3) Kestenberg Siegal Lipkus LLP v. Royal & Sun Alliance Insurance Co. of Canada, 2024 ONCA 607

Issue: Whether relief from forfeiture can save late reporting under claims made professional liability coverage.

Takeaways: Reinforces Furtado: reporting within the policy period is a hard gateway to coverage. Brokers/insureds must diarize regulatory "investigation" milestones as potential claims circumstances.

4) Live Nation Ontario Concerts GP, Inc. v. Aviva Insurance Company of Canada, 2024 ONCA 634

Issue: Duty to defend for an additional insured and effect of self insured retention (SIR).

Takeaways: Additional insured defence rights turn on the pleaded operations/risk transfer wording; SIRs do not necessarily defeat defence tenders for additional insureds. For venues and contractors, align indemnities/SIRs with additional insured defence grants.

5) Davies v. AIG Insurance Company of Canada, 2024 ONCA 509

Issue: Material misrepresentation/non disclosure at placement; rescission.

Takeaways: The Court underscored rigorous disclosure duties at placement and renewal; rescission risk rises where underwriting questions are answered inaccurately. Implement checklists and written Q&A trails during renewals on high severity risks.

Property & Catastrophic Losses in Canada (January 2024 – Present)

This memorandum is provided by Zuber & Company LLP for educational and informative purposes

If you have any questions regarding the matters discussed in this memorandum, please contact mbest@zubco.com

*Zuber & Company LLP
100 Simcoe St, Toronto,
ON M5H 3G2
(416) 362-5005*

November 18, 2025

British Columbia

6) *Honeywell International Inc. v. XL Insurance Company Ltd.*, 2024 BCCA 375

Issue: Who is an “insured” under a project wrap up (supplier v. subcontractor); duty to defend.

Takeaways: The Court treated certain off site suppliers as qualifying insureds where their scope integrates with project performance—broadening defence access. For wrap ups: tighten “who is insured” definitions; audit supplier/manufacturer involvement and site integration.

Saskatchewan

7) *Kelly Panteluk Construction Ltd. v. Lloyd’s Underwriters*, 2024 SKCA 42

Issue: Project damage exclusions under a wrap up; duty to defend following a collapse during excavation.

Takeaways: A “your work/that particular part” style exclusion can decisively bar a defence where pleadings target the insured’s own work scope. Draft around carve backs (resulting damage/subcontractor exceptions) and verify cross liability language.

Alberta

8) *2102908 Alberta Ltd. v. Intact Insurance Company*, 2023 ABCA 34; leave to appeal dismissed, Jan. 11, 2024 (SCC)

Issue: Flood/water damage exclusions versus “influx of water” extension after river overflow; commercial property.

Takeaways: The appeal outcome maintained indemnity for certain influx of water damage notwithstanding flood exclusions where extension wording deleted competing exclusions. Practical point: read endorsements/extensions as operative text that may displace base form exclusions; if the intent is concurrent causation defeat, draft unmistakable anti concurrent causation language linked to the extension.

Manitoba

9) *Trend Note (2024–2025)*

Water & Freeze Claims: Manitoba decisions continue to focus on interplay between excluded perils (flood/surface water/sewer backup) and carve backs (sudden and accidental discharge; ensuing loss).

Practice Pointers: Confirm whether endorsements (sewer backup, ground water) alter anti concurrent causation clauses; preserve origin and cause and hydrology opinions early to anchor peril characterization.

Nova Scotia

10) *Trend Note (2024–2025)*

Claims Made Timing & Notice: Appellate commentary in 2024 highlights Ontario notice jurisprudence as persuasive on claims made policies.

Practice Pointers: For catastrophe adjacent regulatory investigations (dam failures, hazardous releases), set pre defined “report or circumstances” triggers; memorialize rationale when electing not to report.

New Brunswick

11) *Trend Note (2024–2025)*

First Party Property: Trial level rulings have emphasized strict proof on causation where multiple water perils are in play (surface water vs. leakage vs. sewer).

Practice Pointers: Use agreed statements of fact with care—concessions on water entry points can foreclose coverage theories; structure expert reports to address alternative peril pathways.

Newfoundland & Labrador

12) *Trend Note (2024–2025)*

Catastrophic Loss Adjusting: Courts continue to scrutinize adjustment chronology, expert reliance, and reservation of rights clarity in post storm/wildfire claims.

Property & Catastrophic Losses in Canada

(January 2024 – Present)

ZUBER & COMPANY^{LLP}
LITIGATION COUNSEL

This memorandum is provided by Zuber & Company LLP for educational and informative purposes

If you have any questions regarding the matters discussed in this memorandum, please contact mbest@zubco.com

*Zuber & Company LLP
100 Simcoe St, Toronto,
ON M5H 3G2
(416) 362-5005*

November 18, 2025

Practice Pointers: Maintain a contemporaneous “claims chronology memo” and ensure clear, timely coverage positions when moving from preliminary to definitive causation opinions.

National Synthesis

Across provinces, 2024–2025 appellate guidance coalesces around: (i) strict enforcement of notice under claims-made policies; (ii) careful, text-driven reading of endorsements/extensions that may trump base-form exclusions; (iii) tightened wrap-up insured definitions (with *Honeywell* broadening in BC); and (iv) pro-rata allocation for long-tail property contamination (*Loblaw*). Portfolio-level action items: inventory endorsements that “delete or replace” exclusions; map anti-concurrent causation language; and refresh catastrophe playbooks with early expert engagement and reporting triggers.