

RECOMMENDED PROCEDURAL STEPS WHEN APPRAISAL IS DEMANDED UNDER THE ONTARIO INSURANCE ACT

General Information Only — Not Legal Advice

by
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A practical, experience-based guide for policyholders, adjusters, appraisers, and umpires navigating the statutory appraisal process when legal issues are present. This document outlines structured steps that respect the statutory purpose of appraisal — determining the value of the property insured, the property saved, or the amount of the loss — including situations where co-insurance requires all three to be established. It also addresses the tribunal structure, the two-of-three rule, and the umpire's independent duty to identify legal issues requiring resolution outside of appraisal.

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For Public Adjusters, Independent Adjusters, Claim Representatives, Appraisers, Umpires, Lawyers, and Judges

Ontario's statutory appraisal process was created as a narrow, efficient mechanism to resolve **valuation disputes**—not to replace the adjusting process, and not to determine legal entitlement under the policy. Over time, however, appraisal has drifted far beyond its intended purpose. Technical disagreements, expert conflicts, and even coverage issues are increasingly being pushed into appraisal, where they cannot be reliably or lawfully resolved.

This preamble explains the core misunderstanding driving that drift, clarifies the meaning of **“amount of loss,”** and outlines why restoring the proper role of the adjusting phase is essential for policyholders, insurers, and the administration of justice.

Clarifying “Amount of Loss”: The Most Misunderstood Term in the Act

A recurring source of confusion—across adjusters, contractors, appraisers, umpires, lawyers, and even the courts—is the meaning of **“amount of loss.”**

Many assume it means the cost to restore the building to its pre-loss condition. **It does not.**

“Amount of loss” is a legal entitlement concept — not a construction cost.

The cost to restore the building is **RCV/ACV**, which is determined by:

- extent of physical damage
- repair or replacement methodology
- code compliance
- manufacturer specifications
- matching
- deterioration
- and other technical considerations

These are **adjusting issues**, not appraisal issues.

The **“amount of loss”** is the **amount payable under the policy**, after:

- coverage determinations
- exclusions
- limitations deductibles
- conditions
- and legal entitlement issues

This is why the Insurance Act uses the phrase:

“value of the property insured, the property saved, or the amount of loss.”

The first two are valuation concepts. The third—**“amount of loss”**—is a legal concept.

Appraisal cannot determine legal entitlement.

Appraisal cannot determine scope or methodology.

Appraisal cannot determine causation or code compliance.

Appraisal cannot determine matching or deterioration.

These issues must be resolved **before** appraisal.

The Correct Process: Adjusting First, Appraisal Last

The solution is not to expand appraisal beyond its statutory mandate. The solution is to **restore the adjusting phase** to what it was designed to be:

- a full investigation,
- with proper experts retained by adjusters,
- where factual and technical disagreements are resolved **before** appraisal is invoked.

If the adjusting phase is done properly, the only issues left for appraisal are **valuation**—not scope, not methodology, not causation, not code compliance, not matching, not deterioration, not manufacturer specifications.

Appraisal was never designed to resolve those issues, and it cannot resolve them reliably.

Guidance for Public Adjusters and Policyholder Representatives

When giving notice of appointment, Public Adjusters should expressly state:

- willingness to work collaboratively with the insurer and its vendors,
- desire to resolve all matters in disagreement during the adjusting phase,
- expectation that technical disputes be addressed before appraisal is invoked,
- intention to identify any unresolved issues requiring legal determination.

If an insurer refuses to cooperate, and that refusal results in unnecessary legal or court costs, those costs may be viewed as preventable. Courts have defined bad faith as **anything other than utmost good faith**. Policyholders should not bear the financial burden created by an insurer's unwillingness to address matters in disagreement during adjustment.

Restoring the adjusting process protects policyholders. Restricting appraisal to valuation protects policyholders. Clarifying "amount of loss" protects policyholders.

Why This Matters to All Stakeholders

Policyholders retain representatives to achieve a **fair and reasonable settlement**—not a fast but flawed one. When technical disputes are mishandled inside appraisal, the policyholder pays the price.

A modernized, principled approach ensures:

- fair treatment,
- lawful process,
- proper use of experts,
- and a clear separation between adjusting and appraisal.

These reforms strengthen the industry, reduce unnecessary litigation, and support the administration of justice.

Purpose of the Document That Follows

The following document— **“Recommended Procedural Steps When Appraisal is Demanded Under the Insurance Act”**— provides a structured, practical framework for all participants in the appraisal process. It is designed to:

- clarify roles,
- reduce conflict,
- prevent jurisdictional overreach,
- and ensure that appraisal is used only for what the statute intended: **valuation of the agreed-upon entitlement.**

This guidance is offered to support Public Adjusters, Independent Adjusters, Claim Representatives, Appraisers, Umpires, Lawyers, and Judges in applying the appraisal process fairly, consistently, and in accordance with the Insurance Act.

Recommended Procedural Steps When Appraisal Is Demanded

Under the Ontario Insurance Act

(General information only — not legal advice)

Author: George R. Milnes **Date:** July 2026 **Version:** 1.0

This document provides practical, experience-based guidance for policyholders, adjusters, appraisers, and umpires navigating the statutory appraisal process when legal issues are present. It does not interpret the law or provide legal advice. Instead, it outlines a structured approach that respects the legislation, protects both parties, and helps ensure the appraisal proceeds within its proper boundaries.

Introduction

The statutory appraisal process in Ontario was designed to resolve disagreements about **the value of the property insured, the property saved or the amount of the loss** — not legal disputes. Although the amount of the loss is the most common subject of appraisal, situations involving **co-insurance** may require determining the value of the property insured and the value of the property saved as part of the calculation. These determinations remain valuation matters, not legal ones.

In practice, appraisal is frequently invoked in situations where legal issues remain unresolved, including questions of coverage, entitlement, causation, policy interpretation, statutory meaning, the scope of loss and methodology of repair or replacement, identifying indemnity. When legal issues are present, the appraisal process becomes vulnerable to jurisdictional overreach, procedural unfairness, and inconsistent outcomes. Appraisers and umpires may be placed in positions where they are asked — or pressured — to make determinations they are not authorized to make under sections 128 and 143 of the Insurance Act, including the Statutory Conditions incorporated through section 148.

This guidance is intended to:

- promote procedural fairness
- prevent jurisdictional overreach
- encourage transparency and communication
- support proper sequencing of legal and valuation issues
- reduce unnecessary cost and delay
- protect the integrity of the appraisal process

It may be used by policyholders, adjusters, appraisers, umpires, and industry participants seeking a principled, practical approach to appraisal when legal issues arise.

Recommended Procedural Steps When Appraisal Is Demanded

Appraisal becomes mandatory once either party invokes it. The statutory mechanism does not provide discretion to decline or postpone the process at the outset. The question is not whether appraisal occurs, but how it proceeds in a manner that respects the statutory limits of sections 128 and 143.

Appraisal is intended to determine **the value of the property insured, the value of the property saved, or the amount of the loss**. When legal issues are present, proper sequencing becomes essential.

Before an Umpire Is Appointed

Either party may ask umpire candidates:

“If legal issues are identified, will you pause the appraisal until those issues are resolved?”

This question is practical, neutral, and grounded in experience. No reasonable umpire would refuse. Proceeding while legal issues remain unresolved exposes the umpire to unnecessary procedural and professional risk, including the possibility of jurisdictional overreach.

After the Umpire Is Appointed

Either party may identify legal issues that must be resolved before valuation can proceed. These may include questions relating to:

- coverage
- entitlement
- causation
- policy interpretation
- statutory meaning
- the scope of loss
- methodology of repair or replacement
- indemnity
- the timing or nature of loss

Appraisal cannot decide legal matters. When legal issues are raised with supporting reasoning, the umpire will almost always allow them to be resolved before continuing.

The Umpire Cannot Order Litigation or Arbitration

An umpire’s authority is limited to determining **the value of the property insured, the value of the property saved, or the amount of the loss**. The umpire cannot:

- order litigation
- order arbitration
- direct either party to pursue a legal remedy
- Both litigation and arbitration are legal processes outside the umpire’s jurisdiction.

Either Party May Request Arbitration

Once the umpire agrees to pause the appraisal due to identified legal issues, either party may formally request arbitration as the forum for resolving those issues.

This request may be made by either party, to the opposing party, copying both appraisers and the umpire.

Arbitration is typically faster and less costly than litigation. It allows legal questions to be resolved in the proper forum before the appraisal resumes.

The Tribunal Structure and the Umpire's Independent Duty

The appraisal panel functions as a **three-member tribunal**, where any two members agreeing on a determination may issue a binding award. This structure exists because, in practice, the two appraisers rarely agree; if they did, no umpire would be required. The statutory intent is that the umpire will agree with one appraiser, forming the necessary majority. Because the tribunal's authority is limited to determining **the value of the property insured, the value of the property saved, or the amount of the loss**, the umpire has an **independent duty** to ensure that the panel does not exceed this mandate. This duty exists **even when neither party nor either appraiser identifies legal issues**.

If, during the appraisal, the umpire observes matters that appear to be legal in nature — including questions of coverage, entitlement, causation, policy interpretation, statutory meaning, or the scope of indemnity — the umpire should identify these issues and pause the appraisal until they are resolved in the appropriate forum.

This safeguard protects:

- the integrity of the tribunal
- the rights of both parties
- the neutrality and independence of the umpire
- the statutory limits of sections 128, 143, and 148
- the procedural fairness owed to all participants

The umpire's independent duty ensures that the tribunal does not inadvertently make legal determinations under the guise of valuation.

Rationale and Context

The statutory appraisal mechanism is narrowly focused. It does not provide:

- procedural safeguards for legal adjudication
- authority to interpret policy language
- jurisdiction to determine entitlement
- mechanisms to resolve disputes about coverage or causation

When legal issues are present, the appraisal panel is structurally incapable of resolving them. If the panel attempts to do so, it risks exceeding its statutory mandate, undermining procedural fairness, producing an award vulnerable to challenge, and exposing the umpire to professional risk.

Umpires understand these boundaries. Courts scrutinize appraisal awards for jurisdictional overreach. This is why the question posed to umpire candidates is so effective: it is not confrontational or tactical — it is simply a recognition of the umpire’s professional reality.

Early identification of legal issues protects the insured, the insurer, the umpire, and the process itself. It ensures that valuation proceeds only after legal matters are properly addressed.

Structural Integrity and Procedural Safeguards

Respecting the statutory mandate prevents instability. Pausing appraisal when legal issues arise prevents jurisdictional error. Ensuring procedural fairness protects both parties. Supporting umpire neutrality reinforces independence. Proper sequencing protects legal rights. Clear communication strengthens the process. These steps help address systemic concerns including lack of safeguards, unclear boundaries, inconsistent valuation practices, limited oversight, and outdated statutory language.

Closing Summary

The statutory appraisal process is an important mechanism within Ontario’s property insurance system. When used properly, it provides a structured means of resolving disagreements about **the value of the property insured, the value of the property saved, or the amount of the loss**. When used improperly — particularly when legal issues remain unresolved — it becomes vulnerable to jurisdictional overreach, procedural unfairness, and inconsistent outcomes.

By following a structured approach — pausing appraisal when legal issues arise, communicating openly, and resolving legal questions through appropriate channels — parties can help ensure that appraisal proceeds within its statutory limits and fulfills its intended purpose.

Final Notes

- This document is provided for general informational purposes only.
- It does not constitute legal advice.
- Parties should seek legal counsel for advice on their specific circumstances.
- The recommended steps support procedural fairness and proper sequencing, not legal outcomes.
- The author’s experience reflects practical realities within the appraisal system; individual cases may differ.