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## CASE SUMMARY: SOIL UNDER THE HOUSE WAS NOT INSURED PROPERTY UNDER HOMEOWNER'S POLICY

Insurance law – Homeowner's insurance – Property insurance – Remediation – Policies and insurance contracts – Interpretation of policy – Exclusions – Building – definition

*Snow v. Royal Sun Alliance Insurance Co. of Canada*

The appeal of a motion judge's decision determining that remediation of the contaminated land underneath the respondent's home was covered under the homeowner's insurance policy was allowed.

[2016] N.S.J. No. 54

2016 NSCA 7

Nova Scotia Court of Appeal

February 11, 2016

D.P.S. Farrar, J.E. Scanlan and E. Van den Eynden JJ.A.

The homeowners brought a motion seeking coverage under their homeowner's policy to remediate an oil spill that occurred on a neighbouring property and had contaminated their land. The homeowner's basement had a dirt floor. The motion judge found coverage on the basis that the definition of "building" was broad enough to include the soil underneath it. Alternatively, the motion judge held that the term "building" was ambiguous and therefore should have been interpreted broadly to include soil under the building. In the further alternative, the lower court found that the reasonable expectations of the parties warranted coverage.

The Court of Appeal allowed the appeal. First, it found that, in arriving at his conclusion that the land underneath the building was covered, the motions judge failed to apply the principles of the interpretation of insurance contracts properly. Specifically, the motions judge erred in deeming "premises" to have been insured property. Second, the Court of Appeal found error in the lower court's failure to deem the policy ambiguous without applying the proper interpretive principles. Finally, the Court of Appeal held that the lower court erred in determining that the reasonable expectations of the parties did not warrant coverage. The application of reasonable expectations doctrine takes place only after the contract is found to be ambiguous. In any event, reasonable expectations cannot create obligations which do not otherwise exist. Moreover, the reasonable expectations of all of the contracting parties must be considered.

This case was digested by [Kora V. Paciorek](#) and edited by [David W. Pilley](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at [kpaciorek@harpergrey.com](mailto:kpaciorek@harpergrey.com) or [dpilley@harpergrey.com](mailto:dpilley@harpergrey.com) or review their biographies at <http://www.harpergrey.com>.