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CASE SUMMARY: MORTGAGOR'S CLAIM TO PROCEEDS OF FIRE LOSS PAID OUT UNDER STANDARD MORTGAGE CLAUSE TOOK PRIORITY OVER CRA'S CLAIM DUE TO MORTGAGEE'S TAX LIABILITY

Mortgagor's claim to proceeds of fire loss paid out under standard mortgage clause took priority over CRA's claim due to mortgagee's tax liability

Insurance law – Mortgages – Standard mortgage clause – Priority coverage

Travelers Canada v. Elite Builders Inc., [2017] N.J. No. 432, 2017 NLTD(G) 214, Newfoundland and Labrador Supreme Court – Trial Division – General Division, December 22, 2017, G.L. Murphy J.

A dispute arose between the Canada Revenue Agency (“CRA”) and a mortgage lender over monies which had been paid into Court by an insurer pursuant to an insurance policy.

The insured property was damaged by fire and the insurer paid the proceeds of the insurance into Court because both the CRA and the lender made claims to the funds.

The policy contained a standard mortgage clause. The Court found the lender had a separate independent and distinct contract of insurance with the insurer. Ultimately, the Court concluded the insurance monies payable to the lender pursuant to the standard mortgage clause were not subject to the deemed trust provisions of the *Income Tax Act*, *Canada Pension Plan*, and *Employment Insurance Act* and as such, the lender's claim to the remaining insurance monies paid into Court by the insurer took priority over the claim of CRA.

This case was digested by [Cameron B. Elder](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Cameron B. Elder at celder@harpergrey.com.