

**INCLUSION OF STATUTORY CONDITIONS IN POLICY DOES NOT MAKE THE
CONDITIONS CONTRACTUALLY BINDING SAYS NFLD C.A.**

Reported Case: Co-Operators General Insurance Company v. Burry, Donahue and O'Quinn

Citation: 2007 NLCA 52

At Issue: Whether the statutory conditions contained in the *Fire Insurance Act* apply to all-risks or multi-perils policies, particularly when the statutory conditions have been included in the policy.

The Court: Newfoundland and Labrador Court of Appeal

Judgment Rendered: August 6, 2007

Factual Summary: Insurer denied coverage to their insured with respect to a fire loss claim made under an all-risks policy. Their denial was based on the statutory condition in the Newfoundland and Labrador *Fire Insurance Act*, which stated that claims had to be made within one year. The insured's claim was made outside that time frame. The policy specifically referred to and included the Statutory Conditions of the *Act*. The question of whether the *Act* applied was submitted to the trial judge as a preliminary question of law.

Disposition By Lower Court: The trial judge decided that the *Act* was not applicable to the policy in question. Furthermore, the relevant provisions were included in the policy as statutory conditions, and did not therefore reflect agreements made between the parties in the negotiation of a contract. They were not considered to have been incorporated into the contract as contractual terms.

Appellate Decision: Appeal dismissed. The comprehensive policy issued to the insured could not fit within the *Act* without reconstruction, and the statutory conditions had not been adopted contractually by the parties.