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## **Mishandling of Files by Insurance Brokers Can Limit The Insured's Duty to Disclose Material Facts**

<b>Reported Case:</b>	<i>Federated Life Insurance Company v. Fleet</i>
<b>Citation:</b>	2009 NSCA 76 (CanLII)
<b>At Issue:</b>	Whether the manner in which an insurance broker collected information and completed application forms for insurance policies limited the insured's duty to disclose material facts regarding his wife's health to the insurer.
<b>The Court:</b>	Nova Scotia Court of Appeal
<b>Judgment Rendered:</b>	July 3, 2009
<b>Factual Summary:</b>	An insurance broker acting for the defendant, Federated Life Insurance Company, persuaded the plaintiff, who was already insured by another company, to enter into new life insurance policies with Federated to insure himself and his wife. As part of the application process, the broker asked a number of general and vaguely-worded questions regarding whether the plaintiff's wife's health had changed since the plaintiff entered into his previous insurance policy. The broker also asked the plaintiff's wife several health questions over the phone, and noted on the application form that the plaintiff's wife had no heart problems. Rather than forwarding the forms to the plaintiff or his wife for approval, the broker forged their signatures on the form and forwarded them directly to Federated. About a year later, the plaintiff's wife died of a heart attack. Federated denied coverage under the policy. On appeal, Federated claimed that regardless of the broker's mishandling of the file, the plaintiff and his wife had fraudulently misrepresented the wife's health by failing to disclose her heart condition.
<b>Disposition:</b>	The appeal was dismissed. Although an insured is under a general duty to disclose all material facts to the insurer, where an insurer asks ambiguous questions to the insured during the application process, the ambiguities will be

interpreted against the insurer so as to limit the scope of the insured's duty to disclose. The questions the broker asked to the plaintiff were very vague and general. The broker had approached the plaintiff to sell him an insurance policy, rather than the plaintiff having approached the insurer, and the broker gathered the health information by means of only one or two short telephone calls. In this context, the nature of the questions asked by the broker limited the plaintiff's duty to disclose. As well, because the plaintiff did not see the final insurance form or authorize its contents, the broker was at fault for any misstatements they contained.