

# ROCHON REPORT

## ROCHON ENGINEERING INCORPORATED

### Criminal Investigations

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Insurance companies are obligated to deal with insurance losses in the timeframes prescribed by the Insurance Act. They are also bound by the legal obligation of dealing with the insured in the “utmost of good faith”. In the majority of cases, insurance claims are settled and issues that arise during a claim are dealt with to the satisfaction of both parties. There is a growing trend, however, to claim for “punitive damages” when issues cannot be resolved.

To complicate matters, a criminal investigation can interfere with the insurance investigation. For instance, physical evidence collected during a criminal investigation can be sealed from the eyes of an independent engineer hired by the Insurance Company. The police normally refer to the matter as being “under investigation” and they will not allow interested parties to access the evidence until charges are laid. The term “under investigation” has been used very loosely by the police and generally refers to any involved police matter where charges have not been laid. Criminal cases can be open for years and be considered to be “under investigation” even though there is no police activity on the file. These cases are sometimes referred to as “cold cases” and they can be reopened should more evidence become available in the future. An insurance company that is waiting for an independent opinion from an independent engineer can potentially suffer monumental financial losses if their independent engineer cannot access the evidence collected at the site during the criminal investigation. Insurance Companies must respond to a claim within the timeframe prescribed by the Insurance Act and this timeframe does not



Access to evidence is an important step in investigating a claim.

normally correspond with the timeframe for the criminal investigation.

In the past, the police have stated that the Criminal Code of Canada and a criminal investigation supersedes all other Laws. Numerous Case Law decisions have stated that every law (i.e. including the Charter of Rights and Freedoms, the Criminal Code of Canada, Provincial Legislation, and Case Law) should be treated equally. In other words, the Criminal Code of Canada does not have precedence over Case Law or the Insurance Act. The police however continue to maintain their position that other interested parties will not have access to evidence collected from a site while the alleged crime is “under investigation”. A recent decision has changed this.

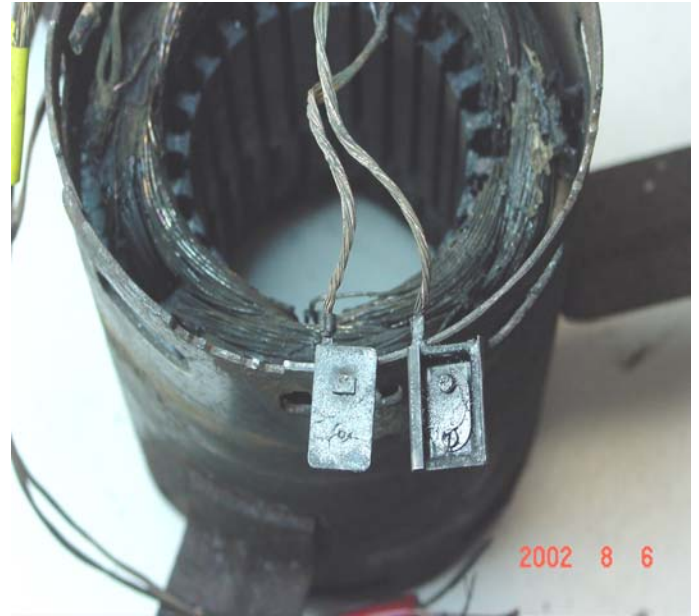
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A Motion application was brought before a Provincial court judge by an Insurance Company for access to exhibits that were seized for an ongoing criminal investigation. The judge considered the insurance companies obligations under the Insurance Act and their duty of “utmost good faith”. He noted that the Insurance Company “should not be expected to wait indefinitely for the Crown to complete its investigation” since it could “cause damage to an innocent insured”. The judge ruled in favour of the Insurance Company and ruled that the Insurance Company’s representative be provided with access to photograph and photocopy the exhibits. He also assessed costs of the Motion to the Ontario Provincial Police and Ontario Fire Marshal’s Office.

The decision provides groundbreaking relief for Insurance Companies who are struggling to deal with insured’s in the “utmost good faith” but cannot prove that the loss resulted from other than a criminal act (i.e. fraud, arson, etc.). The good news is that the Courts recognize that Insurance Companies have a legal obligation and that Criminal Code matters do not take precedence over the Insurance Act. It is important for Insurance Companies to exercise their legal rights so the police or other authorities that have jurisdiction recognize their “interest”.

This decision is only the beginning. Hopefully, this trend in Case Law will continue into the future.



Engineering assessments of physical evidence can change the outcome of a claim.

