

CHAPTER 1 — INTRODUCTION TO THE MODERN CLAIMS LANDSCAPE AND THE NEED FOR TMR

§1.01 — Purpose of This Treatise

This treatise establishes a modern doctrinal framework for property insurance appraisal in Ontario. It restores the constitutional separation between legal and valuation functions, corrects the misuse of appraisal as an extension of adjusting, and provides a clear, structured architecture for resolving disputes under Statutory Conditions 6, 11, and s.128(3) of the Insurance Act.

The Milnes Rule (TMR) is the product of decades of adjusting, appraisal, umpiring, construction estimating, forensic investigation, and legal analysis. It is designed for all stakeholders:

- policyholders
- insurers
- adjusters
- public adjusters
- lawyers
- umpires
- judges

Each group interacts with appraisal differently, yet all benefit from a unified doctrinal structure.

§1.02 — The Modern Claims Environment

In the 21st century, most Canadian property insurance claims arise from **weather-related perils**. Windstorms, overland water, sewer backup, lightning, and wildfires generate thousands of losses each year. Even traditional accidental fires now produce more damage from smoke migration and water used in suppression than from the initial ignition.

These trends shape the claims landscape for both high-value and middle-class insureds.

High-Value Insureds

High-value property owners often purchase full replacement cost policies that:

- are not subject to depreciation
- do not require repair or replacement to recover indemnity
- provide broad coverage and flexible recovery options

These insureds typically have access to resources, advisors, and legal support.

Middle-Class Insureds

Most Canadian homeowners carry policies designed primarily to satisfy mortgage requirements. These policies usually provide:

- replacement cost **only if actually incurred**
- ACV recovery otherwise
- deductibles in the low-thousand-dollar range
- limited financial flexibility

Middle-class insureds rely heavily on insurers for:

- Additional Living Expense (ALE) advances
- emergency services
- mitigation funding
- interim payments for repairs or replacement

Their first interaction with the claims process is through insurer personnel or independent adjusters who follow the **lawful direction** of insurers and apply insurer operational policies.

§1.03 — The Growing Adversarial Dynamic

While most claims proceed smoothly, a growing number become adversarial. Insureds often examine their policy wording for the first time during a loss and question whether they are being treated fairly. Some believe they are being lowballed — whether accurate or not — and seek external assistance.

This dynamic has contributed to:

- the rise of public adjusters
- increased involvement of plaintiff counsel
- greater scrutiny of insurer practices
- heightened expectations for transparency and fairness

It has also contributed to the **misuse of appraisal**.

§1.04 — The Misuse of Appraisal as Adjusting

A cottage-industry has emerged that uses appraisal improperly as an extension of Phase 1 adjusting. Appraisal is increasingly invoked:

- prematurely
- without Stat 6 compliance
- without legal matters resolved
- without agreed scope or methodology

- without proper separation between adjusting and valuation

This misuse creates:

- procedural confusion
- cost escalation
- inconsistent awards
- judicial review
- erosion of trust in the statutory scheme

The Milnes Rule addresses these systemic issues by restoring the constitutional separation between:

- **Phase 1 — Adjusting**
- **Phase 2 — Legal Determination**
- **Phase 3 — Valuation (Appraisal)**

This treatise explains how and why this separation must be respected.

§1.05 — Why This Treatise Matters

All stakeholders benefit from a clear doctrinal framework:

Policyholders

Gain clarity, fairness, and protection from premature appraisal.

Insurers

Gain procedural integrity, reduced disputes, and reduced indemnity leakage.

Adjusters

Gain a structured understanding of their lawful role and limits.

Public Adjusters and Counsel

Gain clarity on when legal matters must be resolved before valuation.

Umpires and Appraisers

Gain a constitutional roadmap for jurisdictional purity.

Judges

Gain doctrinal support for judicial review and statutory interpretation.

§1.06 — The Author's Perspective

This treatise reflects the author's lifetime of experience in:

- adjusting
- public adjusting
- appraisal
- umpiring
- construction estimating
- forensic investigation
- legal analysis

In semi-retirement, the author limits his professional activities to consulting and umpire services grounded in **The Milnes Rule**.

The full implications of the modern claims landscape — and the systemic need for TMR — are explored in detail in **Chapter 21**, the concluding chapter of this treatise.

§1.07 — Final Introductory Statement

The Milnes Rule restores the constitutional structure of appraisal. It protects insureds, insurers, adjusters, lawyers, umpires, and judges. It corrects the misuse of appraisal and strengthens the integrity of Ontario's statutory scheme.