

## Recent Decision of the Supreme Court of Canada regarding the definition of “Accident” for the purposes of accident insurance

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On December 18, 2009, in the case of *Co-operators Life Insurance Co. v. Gibbens*, 2009 SCC 59 the Supreme Court of Canada held that the definition of the term “accident” for the purposes of an accident insurance policy does not encompass a disease acquired in the ordinary course of events.

In this case, the insured had contracted genital herpes from engaging in unprotected sex, which in turn caused transverse myelitis, a rare complication of herpes that resulted in total paralysis from his mid-abdomen down. He was aware of the risk of contracting a sexually transmitted disease but did not know that any of the women had genital herpes. He claimed compensation under his group insurance policy which provided coverage for losses sustained “as a direct result of a Critical Disease or resulting directly and independently of all other causes from bodily Injuries occasioned solely through external, violent and accidental means, without negligence” on the insured’s part. The definition of (critical) diseases in the policy did not include transverse myelitis.

The insured commenced an action and the parties applied to the British Columbia Supreme Court for a determination of whether his paraplegia qualified as a “bodily injur[y] occasioned solely through external,

violent and accidental means”. The trial judge answered the question in the affirmative and awarded the insured \$200,000. The Court of Appeal upheld the trial judge’s decision.

The Supreme Court of Canada allowed the insurer’s appeal from the Court of Appeal’s decision. Justice Ian Binnie held that the interpretation of insurance policies should avoid unrealistic results that would not have been contemplated by the insured and the insurer when they entered into the policy agreement. In doing so, he emphasized that insurance is written to protect against certain defined risks. Care should be taken not to convert, for example, an accident policy into a general health, disability, or life insurance policy. Accident insurance is relatively cheap compared to the more comprehensive forms of insurance.

In his reasons, Justice Binnie cited several traditional definitions of the concept of an “accident” with approval including the following definition from the text *The Law Relating to Accident Insurance*:

The word “accident” involves the idea of something fortuitous and unexpected, as opposed to something proceeding from natural causes; and injury caused by accident is to be regarded as the antithesis to bodily infirmity caused by disease in the ordinary course of events.

Justice Binnie rejected the argument that an unlooked-for or unexpected event, without more, will meet the expectation of an “Accident”. Otherwise, every bad happening,

natural or unnatural, whether caused by disease in the ordinary course of events or otherwise, would be classified as an accident. Justice Binnie used the illustrative example of an insured who is sitting on a couch in front of her television set when suddenly she suffers a stroke and dies. The tragedy is totally unexpected. Yet, there is no “accident” involved in any ordinary manner of speech.

However, Justice Binnie did emphasize that the contraction of a disease may still satisfy the legal definition of an accident. Referring to the decision of the Ontario Divisional Court in *Toronto Professional Firefighters’ Association v. Toronto (City)*, he agreed that a firefighter who died of renal failure caused by his contact with toxic substances over his 20 years fighting fires had experienced an “unlooked for mishap or occurrence” since such an event caused the disease. It was not a case of the spread of the disease itself in the ordinary course of events.

The full text of the decision is available at:  
<http://scc.lexum.umontreal.ca/en/2009/2009scc59/2009scc59.html>

For more information on this decision and its impact, please contact James T. Neilson (jneilson@parlee.com) or any member of our Insurance Litigation Practice Group.

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