Accidents: A Legal Mishap in Disability Insurance

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One thing that is common to all insurance policies is that they are written in a way that attempts to reflect the risk that an insurer is willing to accept and the risk that a prospective insured is trying to protect against.

An example of such a policy is accident insurance. By its very title, both parties expect there to be insurance available (disability, sickness, life) in the event that an insured is involved in an accident. That is the easy part. The more difficult question, which often arises after the fact, is what exactly is 'an accident'?

The concept of an accident is a simple one; in fact, everyone understands what an accident is from an early age. An accident that is something that happens which is not intended. For that reason, many policies of insurance do not contain a definition of an accident, since it is assumed that the ordinary, common sense meaning of the word will prevail.

Unfortunately, that has not always been the case. If you were to apply a common sense approach to the definition of an accident, consider whether the following would be accidents:

a) Is it an accident when someone addicted to prescription medications overdoses and dies as a result? (*Martin v. American International Assurance Life Co.*, [2003] 1 S.C.R. 158 (S.C.C.).)

b) Is it an accident when someone with a herniated disc engages in physical activity which results in a spinal cord malfunction? (*Voisin v. Royal Insurance Co. of Canada*, [1988] O.J. No. 1493 (C.A.).)

c) Is it an accident when someone with a history of seizures has a seizure, which causes him to fall in an awkward manner, resulting in asphyxiation? (*Ward v. Allstate Life Insurance Company of Canada*, [1994] B.C.J. No. 720 (B.C.C.A.).)

d) Is it an accident when someone is playing basketball and turns their neck, which ends up causing trauma to an artery, resulting in a stroke? (*Guillet v. American Home Assurance Co.*, June 28, 2004, Ont. C.A.)

Perhaps, to the surprise of many, the courts have concluded that all of the above situations are, in fact, accidents.

The courts used to draw a distinction between policies which insured against incidents that happened by accidental means versus those that insured against an accidental result. This distinction was recently criticized and abolished by the Supreme Court of Canada in *Martin v. American International Life Assurance Co.*, [2003] 1 S.C.R. 158 (S.C.C.). In deciding whether the scenario in (a) above was an accident, the court concluded that the pivotal question was whether the insured expected to die. The new approach is to examine the situation from the standpoint of the insured, and if that is not possible, to look at it from the perspective of a reasonable person. Thus, if a plaintiff can prove that the method by which the injury arose or the result that happened were neither expected nor intended from their own perspective, then based on the Supreme Court's decision, the matter will be found to be an accident. It is important to note that this is an expansion of the common law definition of an accident, and likely does not apply in cases where the policy itself actually defines an accident.

The courts have long held that the word ‘accident’ does not have special legal meaning and should be given its ordinary meaning. The Supreme Court of Canada adopted a definition dating back to 1903, where a different Court stated that the word "accident" is used in the popular and ordinary sense of the word, which is an unlooked for mishap or an untoward event which is neither expected nor designed. How, then, can normally occurring ailments in the body, such as a pre-existing disc protrusion in (c) above or a drug addiction which is solely within the control of an insured, which then lead to adverse results, be said to be accidental?

Perhaps the lesson to be learned is that in the case of the word "accident", the Courts have, in fact, turned it into a term of art which carries a specialized meaning in the law. To avoid being bound by the definition of accident which has been developed in the Courts over the years, insurers may be better off defining the term "accident" in the policy. As well, express definitions of what will not be regarded as an accident could be included. For example, the definition of an accident could include the express provision conveying that, if the means by which the incident occurs and/or the result of an incident are caused

or contributed to in any way by a pre-existing health condition, whether diagnosed or treated, then that will not be regarded as an accident.

It appears that the whole purpose of accident insurance (i.e. that it is there to cover situations that are not foreseen and are, in fact, accidental) is being overlooked. There are other types of insurance, such as disability insurance, for which benefits are available in the event that there are health conditions that lead to disability.

Perhaps it is time for insurers to take a stand and ensure that the risk that they are insuring against is the one that has actually been bargained for. If that happens, and the Courts interpret such incidents in the manner in which they are intended to come across, then at least that will not have been an accident.