What is an "Accident": The Story of a Muddled Definition

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What is an "accident"?

We all know one when we see one; or do we?

The word "accident" is a seemingly simple word, with a definition commonly understood to mean a single, unexpected, coincidental event that has resulted in some misfortune. Unfortunately, over time, this has been distorted by the courts.

When insurers do not explicitly delineate the parameters for what constitutes an "accident" or do not define the word in a policy, it can result in exposure for an insurer and lead to unexpected and uncertain outcomes

This however is frequently overlooked by even the most comprehensive accident insurance policies.

History of the Definition of "Accident" in the Common Law

It has long been accepted that the term "accident" is to be given its ordinary meaning, unless contractually defined, as that word does not have a legal definition.

Lord Macnaghten, of the English House of Lords, once opined that the "expression 'accident' is used in the popular and ordinary sense of the word as denoting an unlooked-for mishap or an untoward event which is not expected or designed".[1]

The Supreme Court of Canada in 1978 approved of Lord Macnaghten's interpretation in *Mutual of Omaha Insurance Co v Stats*[2] and this definition continues to appear in Canadian case law to this day.

The Court in *Stats* also expressly noted that the definition of "accident" does not vary as between indemnity and accident insurance policies – the definition is to be consistent in the common law, absent any modifiers in the relevant policy. Notably, the common law

definition at this time clearly demarcated that an "accident" is *an event*, and not a series of events.

Unfortunately, the courts have since distorted the term, making it difficult for insurers to accurately assess whether a given injury resulted from an "accident".

The Ontario Court of Appeal in *Voison v Royal Insurance Co of Canada*[3] elaborated on Lord Macnaghten's definition in the context of an accident insurance policy. Although generally in agreement with prior interpretations of the term, the Court of Appeal supported the proposition that the term "accident" is not limited to cases where there is a single inciting event.

The Court held that an accidental injury need not arise from an antecedent mishap that results directly in injury. Where the injury is unforeseen, unexpected, and without design, and would not be likely to result naturally, the unusual result could be considered an accidental injury, though caused by an intentional act. In that case a person assumed an awkward position, stood up, suffered pain and ultimately was paralyzed as he had suffered an occlusion of the spinal artery.

Following *Voison*, the common law was largely unchanged until the Supreme Court of Canada decision *Martin v American International Assurance Life Co*[4]. In this decision, the Court was asked to determine whether the death of an insured doctor that had injected himself with an overdose of opiates could be classified as an accident such that his family would be entitled to an Accidental Death Benefit Provision under his life insurance policy.

The insurer denied the claim, arguing that the self-injection was a deliberate act and could not be considered a "death by accidental means" as required by the policy.

In response to the insurer's argument, the Supreme Court of Canada abolished the previously held distinction between "death by accidental means" and "accidental death". This distinction allowed insurers to narrow coverage and only pay a benefit where both the death and the actions leading to that death were accidental.

By abolishing this distinction, the Court modified the legal test for determining whether an accident had occurred, opining that the analysis was "whether a reasonable person in the position of the insured expected to die". This analysis is a subjective one.

More recently, in *Gibbens v Co-operators Life Insurance Co*.[5], the Supreme Court of Canada was tasked with determining whether an insured that had developed transverse myelitis, resulting from genital herpes acquired through unprotected sex, could be considered accidental.

As transverse myelitis was not defined as a critical disease, and the policy otherwise required death or dismemberment to result from external, violent, and accidental means, the insurer denied payment of the benefit.

In the decision, the Supreme Court recognized that the term “accident” lacked a bright line legal definition, but declined to introduce one, instead advocating for a “generous interpretation”. The Court did recognize two important, limiting considerations.

Firstly, although the term is to be read generously, a clear policy can restrict that definition. Secondly, care should be taken by the courts to ensure that accident insurance is not so broadly interpreted that it effectively becomes a general, comprehensive policy.

In a modification to their decision in *Martin*, the Supreme Court in *Gibbens* stated that there is no necessary equivalence between “unexpected” and “accident”, in that an event may not be defined as an accident solely because it was unexpected. The Court provided an example: “if a man, sitting at a bus station, is hit by a bus that has careened out of control, that is unquestionably an accident – but it is not an accident by virtue of the fact that the man did not expect it”.

The Supreme Court’s decisions in *Martin* and *Gibbens* created uncertainty and confusion. The analysis for which the Court advocated in *Martin* seems to be at odds with the Court’s decision in *Gibbens*, with the expectation test contrasting with the Court’s determination that there is no equivalence between “unexpected” and “accident”.

Essentially, if the court is left to decide what constitutes an accident under a policy that has not defined the term, it would be tremendously difficult to predict the outcome. The definition of Lord Macnaghten, once an effective tool to determine whether an accident had occurred, has essentially been cast aside.

Current State of the Law

Considering the above, what is an accident?

As the Court noted, in *Gibbens, a “century and a half of insurance litigation has failed to produce a bright line definition of the word “accident”".*

We know that:

- An accident is no longer limited to a single event
- Intentional acts can be considered an accident if the outcome was unintended or unexpected

- Unintended or unexpected outcomes may not be an accident if arising from a natural cause or illness or disease
- Depending upon the circumstances, an objective or subjective or combined analysis may be required
- One must always have regard to the policy, the definitions and the exclusions in a policy
- Based on the current state of the law, the analysis is muddled and uncertain

There are several other decisions that illustrate the difficulty in predicting what the court will consider an accident.

Toronto Professional Firefighters' Assn v Toronto (City)[6] is a clear example of this unpredictability. In this decision, the Toronto Professional Firefighter's Association sought to overturn an arbitrator's decision that the estate for a deceased firefighter was not entitled to receive accidental death benefits.

The firefighter's death resulted from renal cancer, which was linked to his exposure to toxic substances during his employment. The arbitrator had found that his death was not unexpected, or alternatively, that he had died of natural causes. The Divisional Court overturned the arbitrator's decision, stating that, since the increased risk of cancer was unknown, the firefighter could not have expected to die.

In *Van Berlo v Aim Underwriting Ltd.*[7], the Court was tasked with determining whether an aircraft crash was an accident within the terms of the relevant policy. Before taking off, the owner, and pilot, of the aircraft noticed that one of the engines had failed to start. After getting out of the aircraft and inspecting the engine, he determined that it was still safe to fly the short distance to his home from the airstrip.

The insurer denied his claim, reasoning that his actions constituted negligence and he had voluntarily and knowingly assumed the risk.

In rejecting the insurer's argument, the Court found that the pilot had believed he could fly the plane home without incident and had not expected to suffer an injury. The Court found that the crash was a "close-call" and that the pilot, although negligent, had not assumed the risk such that the injury should fall outside the scope of the policy.

What Can Insurers Do?

Despite the debate and confusion over what is an "accident", the solution is quite simple. All insurers, whether providing accident insurance or a comprehensive policy, can and should consider defining the term "accident".

A narrow definition, excluding repeat choices, injuries borne through repeated events, or injuries arising from the negligence of the insured, would allow for insurers to reduce coverage, if that is what is intended.

This would allow insurers to more easily assess their risk. Explicitly delineating what sorts of events may constitute an accident could prevent the judicial unpredictability that has plagued this area of the law.

Conclusion

Despite being a simple question: what is an "accident", the answer is far from clear.

One could argue that the lack of clear insurance policy language is to blame. One could also argue that the courts have strived to ever expand the definition of accident in favour of insureds.

Either way, insurers should consider clear language, a policy definition of "accident", in combination with clear exclusions if the intent on providing coverage is to limit coverage to what we all can easily identify as an "accident".

After all, don't we all know an accident when we see one?

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[1] *Fenton v. Thorley & Co., Ltd.*, [1903] A.C. 443.
[2] *Stats v. Mutual of Omaha Insurance Co.*, [1978] 2 S.C.R. 1153, 87 D.L.R. (3d) 169.
[3] *Voisin v. Royal Insurance Co. of Canada* (1988), 66 O.R. (2d) 45, 53 D.L.R. (4th) 299 (CA).
[4] *Martin v. American International Assurance Life Co.*, 2003 SCC 16, [2003] 1 S.C.R. 158.
[5] *Gibbens v. Co-operators Life Insurance Co.*, 2009 SCC 59, [2009] 3 S.C.R. 605.
[6] *Toronto Professional Fire Fighters' Assn. v. Toronto (City)* (2007), 156 A.C.W.S. (3d) 962, 223 O.A.C. 146 (Ont. Div. Ct.).
[7] *Van Berlo v. Aim Underwriting Ltd.*, 2014 ONSC 7214, 248 A.C.W.S. (3d) 45.