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Defender

January 2026

Interpreting Indemnity: The Judicial Analysis of Indemnification and Defence Clauses



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Overview

The case of [Van Daele v Waring House et al](#) highlights the importance of paying close attention to the specific wording used in indemnification and defence clauses. In this case, the Court did not find a duty to defend or indemnify because there was an insufficient connection between the plaintiff's injury and the insured's operations.

Facts

In the Statement of Claim, the plaintiff, Shawn Van Daele, sought damages from the defendants, The Waring House Restaurant and Inn (the "Waring House"), and various Waring House employees, for an incident that occurred on the Waring House premises. The plaintiff alleged that he tripped and fell while walking along a ramp or pathway due to an uneven surface. The plaintiff had been hired by the bride, Stacy Barroso, and the groom, Jonathon Singh, to photograph their wedding which took place at the Waring House.

Ms. Barroso and Mr. Singh entered into an Event Services Agreement with the Waring House for their August 28, 2021, wedding, which required them to obtain event insurance. Mr. Singh obtained event insurance from Co-Operators General Insurance Company, which was operating as Duuo Event Insurance. The event insurance policy included the following provision: "The Venue Owner, as named on the "You're Covered Screen" of the Duuo App, is added as an additional insured, but only with respect to the activities and operations conducted by you." The event insurance policy went on to state: "We will pay those sums that the insured becomes legally liable to pay as compensatory damages because of unintentional bodily injury or property damage originating at the covered location during the policy period only in relation to the hosting of the event covered."

The defendants argued that they were entitled to a defence and indemnity from Co-operators

because they were additional insureds under the event insurance policy. Co-operators took the position that the allegations did not arise from the activities and operations conducted by the named insured or their hosting of the event.

Interpreting the Wording of Insurance Policies

Where the language of an insurance policy is unambiguous, courts should give effect to its clear language. However, if the language is ambiguous, courts should favor interpretations that are consistent with the reasonable expectations of the parties.

The Court relied on the established principles set out by the Supreme Court of Canada in [Monenco Ltd. v. Commonwealth Insurance Co.](#) In that decision, the Supreme Court held the “pleadings rule” is instructive when determining whether an insurer has a duty to defend. The pleadings rule “requires an assessment of the pleadings to ascertain the “substance” and “true nature” of the claims.” The Supreme Court further clarified that only a mere possibility that a claim may succeed is required to trigger the duty to defend.

The third-party insurer, Co-operators, relied on the British Court of Appeal decision [Vernon Vipers Hockey Club v. Canadian Recreation Excellence](#), where the Court of Appeal upheld the chambers judge’s decision to dismiss the third-party claim. The liability policy stated that it applied “... only in respect of liability arising out of the named insured’s operations.” The Court of Appeal held this provision requires more than a simple but-for test, as it demands a closer connection, “an unbroken chain of causation.”

The same proposition was held in [Potvin v. Canadian Museum of Nature](#), that there must be a proximate connection between the injury and the insured’s operations. In that case, the defendant, Canadian Museum of Nature, rented out a portion of the Museum’s facilities to the third-party, Royal LePage Real Estate Services Ltd. (“Royal”), to host a Christmas dinner. During the event, the plaintiff alleged that he was injured after falling on the marble stairs. The indemnification clauses stated it applied to “... any loss of or damages to property which arise out of or in connection with the entry onto and use of the Museum’s facilities...” The court found that while the plaintiff’s injury occurred during Royal’s event, the injury itself was not connected to the activities of the event. Therefore, Royal was not required to indemnify the Museum for the plaintiff’s injury.

There is No Causal Link Between the Injury and Waring House’s Operations

The Court held there was no ambiguity in the wording of the event insurance policy. The statement of claim did not contain any allegations that stated the plaintiff’s injuries were caused or contributed to by the insured’s operations. The Court further held the accident did not occur while the plaintiff was engaged in photographing the wedding. Therefore, the incident was insufficient to establish the required connection of the insured’s operations in hosting the wedding.

Accordingly, the Court concluded that Co-operators did not have a duty to defend or indemnify the defendants due to the insufficient connection to the insured’s operations.

Takeaways

The case of *Van Daele* illustrates the importance of the breadth of and terminology used in indemnification provisions. The more broad the provision, the more insurable activities it will cover. Insurer's should be mindful of the specific purpose the policy is being sought for, and ensure the provision is drafted in a way that will not result in excess coverage.

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