

Beyond Four Walls: BC Court of Appeal Determines Scope of Coverage for Property Damage Occurring 'Within Your Dwelling' in *Gill v. The Wawanesa Mutual Insurance Company* 2023 BCCA 97

The homeowners emerged victorious in the recent Court of Appeal decision interpreting coverage for property damage that occurred “within the dwelling”.

In December 2019, water backed up and escaped from a drain located in an area of the appellant homeowners (the “Gills”) property. The drain was located on a sun deck and water overflowed from the sun deck to the interior of the Gills’ home, causing damage.

The Gills had an all-risks insurance policy with Wawanesa. A *Sewer Backup Endorsement* added coverage “against direct physical loss or damage to property...caused by sewer backup”.

Sewer backup was defined in the policy as “sudden and accidental backing up or escape of water or sewage within your dwelling or detached private structures through a sewer on your premises...”.

Dwelling was defined in the policy as “the building...wholly or partially occupied as a private residence”.

Located at the lowest level of the home, the sun deck was entirely within the exterior of the concrete foundation and footings of the Gills’ property. It was partially covered and had a ceiling with lights in it. Two sides of the perimeter of the sun deck had openings to the outdoors. The sun deck was “well and comfortably furnished and occupied” by the Gills.

In denying insurance coverage to the Gills, Wawanesa took the position that the drain on the sun deck was not within the dwelling and therefore not within the meaning of The Sewer Backup Endorsement. The Gills’ brought on a summary trial application seeking a declaration that insurance coverage applied.

During the summary trial, Wawanesa admitted that the sun deck was part of the building and thus formed part of the dwelling as defined in the policy. Despite this, in dismissing the Gills’ claim, the trial judge concluded that the sun deck was an outdoors area and was not “within the dwelling”.

The trial judge reviewed the principles of contractual interpretation that apply to insurance policies and arrived at the following conclusions:

1. The relevant terms of the Sewer Backup Endorsement of the policy are simple; clear and unambiguous. Any average person reading the policy would know and understand that dwelling and building mean the Plaintiffs’ house;
2. Any average person applying for insurance would understand the phrase “within your dwelling” to mean inside the dwelling or inside the house;
3. Any average person viewing the sun deck area would know and understand it to be outside, not inside, and would describe it as a patio, albeit a covered patio;
4. Bolstering these conclusions were the dictionary definitions of ‘within’ meaning ‘inside’ and ‘patio/sun deck’ meaning ‘a paved outdoor area adjoining a house’; and

5. Giving the words of the Sewer Backup Endorsement their usual and ordinary meaning as they would be understood by the average person applying for insurance, the single interpretation that emerges is that the backing up or escape of water must occur within the exterior walls of the dwelling or building. The average person would readily understand that the sun deck, though partially protected, is an outdoor patio and not “within” the dwelling.

The Gills appealed, submitting that the judge erred in his analysis of the plain language of the Sewer Backup Endorsement, particularly the words “within your dwelling”.

The issue at appeal was the interpretation of this standard form of insurance, a question of law for which the standard of review is correctness. The Court of Appeal reviewed the well-established principles that apply to interpretation of insurance policies which are summarized in *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada* 2010 SCC 33 at paras. 22-24.

In allowing the Gills’ appeal, the court stated that the trial judge did not interpret the policy as a whole, misapplied the average person perspective and therefore arrived at an incorrect interpretation. The judge’s ‘average person’ was erroneously disconnected from the language of the policy as it considered the perspective of an average person engaged in conversation about what was inside their house, not the average person considering the coverage afforded by the Wawanesa policy.

The Court of Appeal further stated that the lower court’s analysis incorrectly reduced the plain language ‘within your dwelling or detached private structures’ as turning on the word ‘within’ which does not always equate to indoors/outdoors but simply begs the question: within what?

A detached private structure was not defined and there was nothing in the policy language to indicate that this was only a structure entirely enclosed by four walls. Moreover, Wawanesa admitted the sun deck was part of the building/dwelling. To hold otherwise would disregard Wawanesa’s acknowledgement and would result in the “inconsistent and nonsensical result” of the sun deck being both part of the dwelling but entirely outside the dwelling.

Returning to the perspective of an average person purchasing insurance, the Court determined the drain on the sun deck would be interpreted by an average person as ‘within the dwelling’ which is consistent with the manner in which the sun deck was built and used as a living area, and with the parties’ expectations. The appeal was allowed and declaration for coverage was granted to the Gills.

Questions?

Should you have any questions with respect to this bulletin, or if you would like more detailed information related to coverage concerns, please contact the following member of the Brownlee LLP [Insurance Practice Team](#):

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