

Defining a home - what's within a dwelling?

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In the recent Canadian case of [Gill v The Wawanesa Mutual Insurance Company](#), the Court considered what parts of a home are “*within the dwelling*” under a homeowner’s insurance policy.

The insureds owned a residential property which included a sun deck in a basement which was partially exposed to the outdoors. The perimeter drainage system in their property became blocked, causing water to back up and escape from the drain in the sun deck area. The water entered the property and damaged the basement. The insureds claimed under their all-risks home policy.

The policy

Under the policy, cover for damage caused by water or sewage backup was excluded. However, a ‘Sewer Backup’ Endorsement provided limited coverage for “*sudden and accidental backing up or escape of water or sewage within your dwelling ... through a sewer on your premises*”.

Insurers denied cover on the basis that the location of the sewage backing up was in the sun deck area. The insurer argued the sun deck area was not “*within the “dwelling*” as required by the Endorsement.

The insured disputed insurers’ interpretation and brought claims against insurers and the insurance agency, arguing that the terms “*dwelling*” and “*Building*” should be broadly interpreted to include the entire structure on the property.

Judgement

The Court initially rejected the insureds’ argument, following which the insureds appealed. The Court allowed the appeal, with the Superior Court Justice ruling that “*...any average person applying for insurance would understand the phrase ‘within your dwelling’ to mean inside the dwelling or inside the house.*”

Conclusion

A key takeaway from this judgment is to always consider the policy in its entirety when interpreting. Here, the Supreme Court was criticised for failing to interpret the policy as a whole and incorrectly reduced the definition of “within” to mean inside. Also remember to consider the perspective of an average person when interpreting policy provisions. If you do require a word to have a specific meaning that could differ from the meaning that would be applied by an ‘average person’, it is sensible to consider using a specific definition to reduce the likelihood of a dispute.

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