DRINK, DRIVE AND DIE! THEN ASK US TO DEFINE "ACCIDENT"

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Few words have generated more insurance litigation than the words "accident" and "accidental," and few questions have proven more intractable of satisfactory solution than the question what constitutes an accident for the purposes of applying the language of an insurance policy.

Take one person insured in respect of death resulting from "accidental bodily injuries" received while driving an automobile. Add five pints of beer or seven and a half ounces of alcohol. Allow time for the mixture to mature. Place the insured person in the driver's seat of an automobile and release. Observe the automobile crash headlong into a brick building thus instantly killing the insured person. Did the death result from "accidental bodily injuries?"

The problem of defining "accident" has arisen in respect of two types of insurance policies: policies which insure in respect of accidental death, dismemberment or disability, and liability policies which indemnify in respect of liability for loss caused accidentally to a third person. Does "accident" have the same meaning for the purpose of defining the coverage under the two different kinds of policy?

The *Stats* Case

The two questions posed in the two preceding paragraphs have recently been answered in the Supreme Court of Canada judgment in *Mutual of Omaha Insurance Co.* v. *Stats.*[1]

The Facts

Evelyn Isobel Stats was the named beneficiary in a policy which extended a $25,000 death benefit in respect of her sister, Helen Kathleen Brown, a member of the Canadian Automobile Association through the Kingston Club of the Ontario Motor League. On the day of her death, Mrs. Brown backed her car out of a driveway onto Craighurst Avenue in Toronto and, in a manner not explained, collided with a vehicle parked twenty-five feet to the west of the driveway and on the opposite side of the street. As she could not start her car again, it was started for her by Mr. John Green and found by him to be in good mechanical condition. Mrs. Brown re-entered her car and drove easterly along Craighurst Avenue. She crossed Duplex Avenue without stopping for a stop sign, collided with the south

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1. [1978] I.L.R. 3638 (S.C.C.).

curb, mounted the north curb, narrowly avoided a hydrant, a utility pole and several parked cars, and entered Yonge Street without stopping for a stop sign. Both Duplex Avenue and Yonge Street are heavily travelled. The remainder of the facts are rather charmingly stated by Spence, J. who delivered the majority opinion in the Supreme Court of Canada:

> By some miracle, she proceeded straight across Yonge Street east bound without colliding with any traffic. Craighurst Avenue does not continue east of Yonge Street and a brick building faced Craighurst standing on the east side of a broad sidewalk. The late Mrs. Brown's vehicle proceeded across that sidewalk and hammered into the brick building with such an impact as to drive the front of her car inside the building and collapse the whole front of her automobile.[2]

Mr. Green testified that throughout the entirety of this short journey Mrs. Brown's car was accelerating and that it entered Yonge Street at an estimated speed of fifty miles an hour. An autopsy of Mrs. Brown's body produced a blood alcohol reading of .19 and a urine alcohol reading of .27.

On this evidence the trial Judge, Lerner, J., found that Mrs. Brown was "grossly intoxicated" and "grossly impaired." The other judges in the case agreed with this finding. Spence, J. specifically noted his agreement that Mrs. Brown was grossly impaired.

However, judicial opinion was divided as to the question whether Mrs. Brown's death resulted from "accidental bodily injuries." Lerner, J. dismissed the claim on the ground that Mrs. Brown's death was not accidental, but resulted from her self-induced impairment and her decision to drive in a condition which she must have known was likely to lead to serious harm to herself.[3] Three judges of the Ontario Court of Appeal were unanimous in allowing the appeal by the claimant.[4] In the Supreme Court of Canada the insurer's appeal was dismissed by a bench of five, with one dissent.

The Distinction Argued by the Insurer

Of the meaning of "accident" *Halsbury* says, "The idea of something haphazard is not . . . necessarily inherent in the word; it covers any unlooked for mishap or an untoward event which is not expected or designed. . . ."[5] In *Marshwell Wells of Canada Ltd.* v. *Winnipeg Supply and Fuel Co. Ltd.* Freedman, J.A., dissenting, said,

> One must avoid the danger of construing [accident] as if it were equivalent to 'inevitable accident'. That a mishap might have been avoided by the exercise of

2. *Id.*, at 3640.
3. (1975), 54 D.L.R. (3d) 29; [1975] I.L.R. 1104 (Ont. S.C.).
4. (1977), 73 D.L.R. (3d) 324; [1976] I.L.R. 2817 (Ont. C.A.).
5. 22 *Halsbury's Laws of England*, (3rd ed.) 294, para. 585.

> greater care and diligence does not automatically take it out of the range of accident . . . 'negligence' and 'accident' . . . are not mutually exclusive terms. They may co-exist.[6]

And in the important recent Supreme Court of Canada case, *Canadian Indemnity Co.* v. *Walkem Machinery & Equipment Ltd.*, Pigeon, J. rejected the proposition that a result which was foreseeable by the ordinary reasonable man was not an "accident."

> [T]his is a wholly erroneous view of the meaning of the word 'accident' in a comprehensive business liability insurance policy. On that basis the insured would be denied recovery if the occurrence is the result of a calculated risk or of a dangerous operation. Such a construction of the word 'accident' is contrary to the very principle of insurance which is to protect against mishaps, risks and dangers.
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> . . . negligence is by far the most frequent source of exceptional liability which a businessman has to contend with. Therefore, a policy which would not cover liability due to negligence could not properly be called 'comprehensive.'[7]

In the *Stats* case counsel for the insurer sought to develop a distinction based upon Pigeon, J.'s reasoning. He argued that a liability policy must necessarily indemnify the insured against the consequence of negligent conduct inasmuch as the insured's liability would usually arise from negligence. By contrast, Kathleen Brown's policy, he argued, was a "pure accident" policy, in no way an indemnity; accidental death could, and should, occur without negligence; and accordingly judicial decisions defining "accident" for the purpose of interpreting a liability policy were immaterial to the question of determining what constitutes "accident" for the purposes of a policy like that which covered Kathleen Brown.

This argument, if accepted, would lead to two quite different standards for the definition of "accident" in insurance law. Martland, J. was prepared to adopt this distinction. He pointed out that the above extract from *Halsbury* defining "accident" forms part of a discussion of the meaning of "accident" in personal accident insurance policies. As noted above, "it covers an unlooked for mishap or an untoward event which is not expected or designed. . . ." *Halsbury's* discussion then continues, "The test of what is unexpected is whether the ordinary reasonable man would not have expected the occurrence. . . ."[8]

The majority in the Supreme Court of Canada rejected counsel's proposed distinction. Spence, J. said,

> The insured in both an accident policy and an indemnity policy seeks cushioning against results of a risk. In an accident policy, he seeks a monetary sum which will cushion the expense caused by injury to himself. In an indemnity policy, he seeks cushioning against a liability to pay the costs of injury to others. Surely the

6. (1964), 49 W.W.R. 664, at 665 (Man. C.A.).
7. [1976] 1 S.C.R. 309, at 315-16; 53 D.L.R. (3d) 1, at 6-7.
8. *Supra* n. 5.

> word 'accident' must be, apart from specific definitions in specific policies, similarly interpreted in both policies.[9]

However terse and unconvincing Spence, J.'s reasoning, the judgment in *Stats* stands for the proposition that "accident" will be similarly interpreted in liability policies and in accidental injury or death policies.

Anterior Jurisprudence

The voluminous case law on the meaning of "accident" had developed two important basic propositions which arose for discussion in *Stats*. First, in some of the cases the courts entangled the question of defining "accident" with the question of causation and the vexing problem of determining "proximate cause." Undoubtedly it was with this in mind that Lerner, J. said "[Mrs. Brown's] death was a direct consequence of deliberately driving her motor car in the circumstances described . . . It was not because of the intervention of any fortuitous circumstance . . . the proximate cause of the collision was her self-induced impairment, her actions and manner of driving."[10]

Second, a number of judgments had established that loss would not be "accidental" when the insured had so deliberately or so recklessly exposed himself to the peril insured against as to be said to have "courted the risk." With this line of authority in mind, Lerner, J. emphasized that Mrs. Brown "voluntarily undertook to drive while in her impaired condition and when she had to know that it would or could cause her foreseeable harm."[11] Martland, J. described Mrs. Brown's conduct as "a foolhardy venture" of which personal injury was "an almost inevitable consequence."[12]

Proximate Cause

The invitation to connect the definition of "accident" with the search for proximate cause arises from the following language in *Halsbury*: "what is postulated is the intervention of some cause which is brought into operation by chance so as to be fairly describable as fortuitous."[13]

Two accidental death cases frequently cited by the courts are *The North West Travellers' Assn.* v. *The London Guarantee and Accident Co.*[14] and *Sklar* v. *Saskatchewan Government Insurance Of-*

9. *Supra* n. 1, at 3642.
10. *Supra* n. 3, at 36; [1975] I.L.R., at 1107.
11. *Id.*
12. *Supra* n. 1, at 3646.
13. *Supra* n. 5.
14. (1895), 10 Man. R. 537 (Q.B.).

fice.[15] In the former case, the insured's wagon broke down in severe winter weather. Feeling himself unable to ride one of the horses, he stayed with the wagon while his driver rode to the nearest town. In *Sklar*, the insured stayed with his car and attempted to free it from a snow bank, although offered a ride by a passing motorist. In both cases recovery was allowed for accidental death. In *Sklar*, where the insured's death resulted from carbon monoxide poisoning, Sirois, J. indicated that death was not caused by Sklar's decision to remain with his car, but by the swirling snow piling up at the rear of the vehicle.

In *Bowering* v. *Mutual Life Assurance Co.*, the insured died of exposure to very cold and wet weather while on a hunting trip. At trial, Furlong, C.J. held that the chain of causation began with a voluntary decision to go into rough country in the autumn season, and that there was no element of accident about the resulting fatigue and the serious deterioration of the weather.[16] This judgment was reversed on appeal.[17] Mifflin, J.A. pointed out that the insured did not plan or design his death, and there was no deliberate and conscious "courting of the risk."

Thus, it may be observed that though the courts occasionally introduce the problem of causation, the dominant factor in deciding the cases is the conduct and the state of mind of the insured. Indeed, in *Stats* Lerner, J. was the only judge to focus on the problem of proximate cause.

Courting the Risk

It is axiomatic that the insured will not recover under any insurance policy for damage which he has deliberately inflicted.[18] On the other hand, as already noted, even an "accident" policy is not avoided by every act of the insured which involves some conscious exposure to the risk insured against. As noted by Pigeon, J. in the *Walkem* case,[19] it would be quite unsatisfactory to construe a comprehensive business liability policy so that the insured was denied recovery whenever liability arose from a calculated risk or a dangerous operation.

Two cases which nicely illustrate the polar positions are *Candler* v. *London & Lancashire Guarantee & Accident Co.*[20] and *Trynor*

15. (1965), 54 D.L.R. (2d) 455; [1965] I.L.R. 689 (Sask. Q.B.).
16. [1974] I.L.R. 928 (Nfld. S.C.).
17. [1976] I.L.R. 2480 (Nfld. C.A.).
18. An exception must be admitted in respect of suicide under life insurance policies, and in respect of certain third party liability insurances.
19. *Supra* n. 7.
20. [1963] 2 O.R. 547; 40 D.L.R. (2d) 408; [1963] I.L.R. 537 (H.C.).

Construction Co. v. *Canadian Surety Co.*[21] In *Candler,* the insured fell to his death while attempting some acrobatic stunts on the ledge of a 13th story balcony. Grant, J. conceded that recovery under an accidental death policy would not necessarily be excluded even by gross negligence. But he concluded that Candler's conduct, admittedly designed to demonstrate his nerve, was so deliberately a "courting of the risk" as to take the death quite outside the meaning of "accident." In *Trynor,* the insured's two employees were faced with the problem of moving a truck and bulldozer across a stream which was crossed by a highway bridge of limited capacity. After concluding against the feasibility of unloading the bulldozer and driving it through the stream, and after trying to gauge the likelihood that the bridge could support the loaded truck, they attempted to cross the bridge. The bridge collapsed and the truck was damaged. The Nova Scotia Court of Appeal found that, although the two employees had deliberately and consciously exposed the truck to the very risk which caused the damage, they had applied their best judgment and could not be said to have "courted the risk" or to have engaged in "reckless misconduct."

Two other instructive cases are *Crisp* v. *Great American Indemnity Co.*[22] and *R.D. McCollum Ltd.* v. *The Economical Mutual Insurance Co.*[23] In *Crisp,* a terrazo grinding operation was carried out in a customer's basement without any effort to seal off the remainder of the house. Damage resulted from permeation of terrazo dust throughout the house. The contractor's claim to be indemnified by its insurer was denied on the ground that the loss which ensued was so obvious that the contractor's conduct was reckless and amounted to "courting the risk." In *McCollum,* the insured was liable for damage done to a large number of windows during the course of sandblasting the exterier of a large building. Landreville, J. noted that the insured issued plywood shields to its employees, but that the shields did not always tightly fit the window openings. Landreville, J. drew a distinction as between some windows which were scored around the perimeter and others which showed that they had not been protected by shields at all. He denied recovery from the insurer in respect of the latter damage which showed a complete lack of any care to avoid the injury to the windows.

The Greenway *and* McConkey *Cases*

Two cases which must specifically be compared with *Stats,* because they are more analogous on the facts than the cases reviewed

21. (1970), 10 D.L.R. (3d) 482; [1970] I.L.R. 1033 (N.S.C.A.).
22. [1961] I.L.R. 228 (Ont. C.A.).
23. [1962] O.R. 850; 34 D.L.R. (2d) 386; [1962] I.L.R. 387 (H.C.).

above, are *Greenway* v. *Saskatchewan Government Insurance Office*[24] and *McConkey* v. *The Imperial Life Insurance Co.*[25] In *Greenway*, the claim was for the value of the insured's car which was destroyed when it performed a somersault while the insured was fleeing from police pursuit at a high speed. Moore, D.C.J. held that the loss was not accidental. "The plaintiff set the stage for his own mishap. . . . [and he] derived the natural consequences of his own act."[26] In *McConkey*, the claim was for the proceeds of an accidental death policy. The insured died when his car ran off the road and into the side of a rock-cut. Eye witness evidence of erratic driving, together with a blood alcohol analysis, confirmed a very high degree of impairment. Fraser, J. gave the opinion that the death was accidental in that it was neither designed nor foreseen by the insured. However, it must be noted that this opinion was rendered orally and very briefly and that Fraser, J. commented on the point only because of the possibility of an appeal. He dismissed the claim on the ground that it was within a policy exclusion against loss which resulted from the commission of a criminal offence.

Public Policy and Committing a Criminal Offence

Although the *McConkey* case is of slight value as a comparison of the judicial definition of "accident," it does serve to introduce an alternative defence available to insurers in respect of that most ubiquitous and troublesome character in the world of insurance, the drinking driver. The defence of public policy has been raised by insurers from an early date, and not always very meritoriously, in a variety of settings. In *Cleaver* v. *Mutual Reserve Fund Assn.*[27] a life insurer resisted payment where the beneficiary named in the policy killed her husband, the life insured. It was held that though the beneficiary could not collect the proceeds, they were payable to the life insured's estate.

O'Hearn v. *Yorkshire Insurance Co.*[28] is an early and well-known Canadian application of the defence of public policy. While drunk, and while driving at forty miles per hour on a Toronto street (a furious speed in 1919), the insured killed a man called Plum. He was convicted of a Criminal Code offence and, in a civil action, was found liable for an amount of $6,275 in respect of Plum's death. O'Hearn's claim to be indemnified by his insurer in respect of this liability was dismissed on the ground that it would be contrary to

24. (1967), 59 W.W.R. 673 (Sask. Dt. Ct.).
25. [1973] I.L.R. 579 (Ont. S.C.).
26. *Supra* n. 24, at 682.
27. [1892] 1 Q.B. 147; 66 L.T. 220; 8 T.L.R. 139 (C.A.).
28. [1921] 51 O.L.R. 130; 67 D.L.R. 735 (C.A.).

public policy to allow him to be indemnified against the consequence of his own criminal act.

A dozen years later, in Edmonton, John Beattie drove his car while intoxicated. The car was badly damaged in a collision, and Beattie's passenger, Miss Lindal, was seriously injured. Beattie's insurers refused to indemnify him for two reasons, first that his claim was barred by a policy exclusion against intoxicated driving, and secondly that public policy prevented Beattie from being indemnified in respect of his own criminal act. The Supreme Court of Canada dismissed the first ground of defence on the basis that the policy exclusion was inaptly worded to apply to Beattie's case. However, the second ground of defence was sustained.[29] Although Beattie was apparently not prosecuted, the trial Judge in the insurance action found that Beattie had been clearly intoxicated and that his conduct amounted to the Criminal Code offence of driving while intoxicated.

The jurisprudential development of the public policy defence against claims by drinking drivers was greatly retarded by two significant changes in the Insurance Acts of the various provinces. A statutory condition, introduced into the automobile insurance part of each Act, more aptly applied to persons such as O'Hearn and Beattie, and barred their claims for indemnity.[30] Moreover, the following provision, of general application to insurance policies of all kinds was added:

> Unless the contract otherwise provides, a violation of any criminal or other law in force in the Province or elsewhere does not *ipso facto* render unenforceable a claim for indemnity under a contract of insurance, except where the violation is committed by the insured, or by another person with the consent of the insured, with intent to bring about loss or damage.[31]

The Judgment in *Stats*

As noted above, none of the judges in *Stats*, except for Lerner, J., focussed on the problem of determining the proximate cause of the death, and thus the case adds little to this particular doctrinal wrinkle on the definition of "accident."

The defence of public policy was argued by the insurer before the Ontario Court of Appeal, but was unanimously rejected. Dubin, J.A. dismissed the defence without giving reasons. Evans, J.A. concluded that public policy was no objection because Kathleen Brown's

29. *Home Insurance Co.* v. *Lindal and Beattie*, [1934] S.C.R. 33, [1934] 1 D.L.R. 497.
30. *See e.g., The Alberta Insurance Act*, R.S.A. 1970, c. 187, s. 288, stat. cond.#(2)(1)(a). An identical statutory condition was removed from Ontario's *Insurance Act*, R.S.O. 1970, c. 224, and from Manitoba's *Insurance Act*, R.S.M. 1970, c. 140, in 1972; *see* S.O. 1972, c. 66, s. 8 and S.M. 1972, c. 20, s. 4.
31. The quoted language represents s. 135(1) of *The Alberta Insurance Act*, R.S.A. 1970, c. 187. Substantially identical language may be found in s. 92 of Ontario's *Insurance Act*, R.S.O. 1970, c. 224, and in s. 92 of Manitoba's *Insurance Act*, R.S.M. 1970, c. 140.

death was an accident arising from her negligence and not because of her wilful act. Blair, J.A. considered the defence at length and in detail, and drew a distinction between a rule which would prevent an insured from claiming indemnity against the consequence of his own criminal act, and a rule which would bar the claim of a beneficiary of proceeds payable in respect of the insured's death by reason of the criminal conduct of the insured. He asserted that the *rationale* for the public policy restriction did not extend to this latter situation, and accordingly was no bar to recovery by Evelyn Isobel Stats.

Before the Supreme Court of Canada, the insurer abandoned the public policy defence and concentrated on the argument that Kathleen Brown's death was not "accidental." Martland, J., in a lone dissent, agreed with the insurer's argument. He adopted the "courting the risk" concept and said,

> [I]t was not necessary for the insurer to show that [the insured] deliberately drove her car into the building. . . . If a person voluntarily embarks upon a foolhardy venture from which personal injury could be foreseen as an almost inevitable consequence it cannot properly be said that when the mishap occurs, it is an accident.[32]

Martland, J. also accepted the insurer's distinction between a policy of liability insurance and a policy insuring in respect of accidental death, and agreed that "accident" might quite appropriately be more restrictively defined in the latter kind of policy.

In his majority opinion Spence, J. rejected this distinction and affirmed a common definition of "accident" for all types of policy except where the policy itself might provide a special definition of the word. Spence, J. distinguished cases like *Candler* in which the insured had quite deliberately calculated and exposed himself to the very peril which led to disaster, and applied to the word "accident" the test of the ordinary meaning which would be assigned by the layman. He concluded that the layman would include as an "accident" even losses which resulted from gross negligence of the insured. While admitting that Kathleen Brown was grossly negligent, Spence, J. emphasized that John Green, and other witnesses who had observed Mrs. Brown immediately before her short and final trip along Craighurst Avenue, had noticed no sign of impairment. His Lordship then ventured into the field of forensic medicine with a theory that Mrs. Brown's latent impairment was perceptible neither to the witnesses nor to herself but that her slight collision with Mr. Green's automobile "must have caused that impairment to surge up . . . [and become] active and in truth seemed to deprive the late Mrs. Brown of any intelligence or judgment whatsoever."[33] On this

32. *Supra* n. 1, at 3646.
33. *Id.*, at 3641.

somewhat speculative medical assessment, Mrs. Brown, of course, could not be said to have knowingly courted the risk which eventuated.

In the Ontario Court of Appeal, Blair, J.A. had not attempted to fortify his conclusion in this manner. He had simply drawn a distinction between foreseeability of a high degree of risk and voluntarily "looking for" or "courting" the risk. Spence, J. adopted Blair, J.A.'s distinction.

The Impact of *Stats*

The drunken driver has long been a pestiferous problem, particularly in respect of automobile insurance, but also as we observe from *Stats* in respect of coverage in respect of accidental death. Notwithstanding that Spence, J.'s excursive theorizing, about the way in which Kathleen Brown's alcoholic impairment operated on her intellect, should facilitate the distinction of future cases in which the evidence is clear that the insured was noticeably impaired and must have known of his own serious impairment before attempting to drive, the *Stats* case probably effectively means that insurers will consistently fail in a defence that injury, death or loss resulting from drunken driving (and quite possibly other drunken conduct) is not "accidental."

In the earlier cases there could be detected two threads leading to the concept of "courting the risk." The most obvious application of the phrase was in a case like *Candler* where the insured had deliberately and consciously exposed himself to the very peril which eventuated. A much larger group of cases applied the phrase to describe conduct which was reckless or wanton in its disregard of the peril. Examples are *Crisp* where the terrazo grinders presumably did not deliberately calculate the likelihood of dust escaping from the basement, but were grossly negligent in not appreciating the near certainty of that result and protecting against it, and *McCollum* where the workmen ignored an obvious and prescribed technique for preventing damage to the windows. A somewhat larger application of the concept appears in *Marshall Wells of Canada Ltd.* v. *Winnipeg Supply and Fuel Co. Ltd.*[34] where the collapse of a tank was held not to be accidental. The insured was liable for the damage caused by the collapse and it is worth noting that the insured's claim was for indemnity under a liability policy. The insured's claim was rejected on the ground that the tank had been left inadequately supported and that the insured knew that it might fall. In the majority opinion, Guy, J.A. quoted from Rand, J. in *Canadian Indemnity*

34. *Supra* n. 6.

Co. v. *Andrew & George Co. Ltd.*[35] to the effect that "accident" meant something out of the ordinary or fortuitous and that insurance against liability for accidental loss was not aimed at expectable damages from the daily risks which it was part of the insured's business to face and eliminate.

The judgment in *Stats* pretty clearly enlarges the meaning of "accident" by reducing the importance of a showing of foreseeable harm and even of gross negligence. It tends to restrict the defence of "courting the risk" to the more calculated and deliberate conduct of the sort described in *Candler*. *Stats* also represents a clear equation of the meaning of "accident" in accidental death policies with its meaning in liability and other policies. This is the culmination of a gradual shift in our jurisprudence over some sixty years. In the early cases, though the judges did not articulate a different definition of "accident" as contended for by the insurer in *Stats*, it is observable that "accidental death" tended to be given a very restrictive meaning as may be illustrated by cases such as *Wyman* v. *Dominion of Canada General Ins. Co.*[36] where the insured died of sunstroke, *Sloboda* v. *Continental Casualty Co.*[37] where death resulted from infection of a blister formed by wearing a new pair of shoes, *Miles* v. *Ontario Equitable Life Ins. Co.*[38] where the insured died of blood poisoning after attempts to remove a thistle from his thumb, using a knife and a needle, and *Smith* v. *British Pacific Life Ins. Co.*[39] where the insured suffered a heart attack while attempting to free his car from a snow drift. Of course, there co-existed with the above cases and many others taking a similar view of "accidental death," a number of cases which gave a somewhat less restrictive meaning to the phrase. Three of these, the *Northwest Commercial Travellers'* case, *Sklar* and *Bowering*, have been noted above.[40]

It should be observed that the result in many of the accidental death cases was not determined exclusively by the definition given "accident" or "accidental death," but was influenced by additonal policy language requiring death from "external, violent and accidental means" or exclusions against death caused partly by disease or physical infirmity. It is clear from Spence, J.'s judgment that insurers may continue to restrict their coverage by reference to such exclusions. It is useful, and probably desirable, to have it settled that the basic definition of "accident" will be the same for all types of insurance.

35. [1953] 1 S.C.R. 19, at 27; [1952] I.L.R. 369, at 372.
36. [1936] O.R. 154; [1936] 2 D.L.R. 268; 3 I.L.R. 256 (H.C.).
37. [1938] 2 W.W.R. 237; [1938] 3 D.L.R. 166; 5 I.L.R. 270 (Alta. C.A.).
38. (1925), 57 O.L.R. 343 (H.C.).
39. (1965), 51 W.W.R. 417; 51 D.L.R. (2d) 1 (S.C.C.).
40. *See Supra* n. 14, 15, and 17.

Finally, though this point did not form part of the Supreme Court of Canada judgment, *Stats* probably sounds the death knell for the generalized defence of public policy. Many insurance policies contain an exclusion against loss resulting from the insured's criminal conduct,[41] and this more specific defence is being raised against the drunken driver.[42]

41. This sort of exclusion is impliedly authorized by the *Insurance Act* provision concerning the effect of a violation of the law by the insured. That provision begins "Unless the contract otherwise provides . . .." *See Supra* n. 31.

42. *See e.g., Liberty Mutual Insurance Co.* v. *Partridge* (1976), 12 O.R. (2d) 16; 67 D.L.R. (3d) 603; [1976] I.L.R. 2788 (Cty. Ct.); *Gagnon-Couture* v. *Excelsior Cie. d'Assurance-Vie*, [1977] I.L.R. 3313 (Que. S.C.).