



## **#Vanlife During COVID-19: What You Need to Know Before Heading Out in an RV**

**By Dakota Forster**

With Italian Riviera and even Mayan Riviera summer vacations not in the cards this year due to COVID-19, many families across Ontario are looking for other ways to get away. Since the only form of travel that seems safe these days happens to be the old-fashioned “road trip”, increasingly people are re-discovering the wide variety of provincial parks and campsites across Ontario as alternative vacation destinations. Renting an RV is a great and affordable option for many people to re-capture childhood memories of family road-trips, and make new ones of their own.

Before packing up and heading out on the road, there are a few things to consider to make sure you are properly covered.

For people dipping their toes into the RV lifestyle, a towable camper/trailer is a popular option. Towable camper/trailers are generally not classified as motor vehicles and therefore do not require their own insurance policy. Nevertheless, for those wanting some additional peace of mind, many Ontario insurers offer additional insurance coverage for towable camper/trailers.

If you are planning on renting a larger RV bus (Class A), a smaller camper van (Class B), or a RV truck with some extra sleeping-room at the back (Class C), it is important to check whether the rental agency includes insurance coverage as a part of the rental. If not, or if you are looking to buy, Ontario insurers offer a variety of insurance options for Class A, B, and C motor homes.

Once you have made it out onto the road, your insurance coverage for your RV will be substantially similar to your regular auto insurance. But what about once you have reached your destination?

Since the Court of Appeal for Ontario’s decision in *Economical Mutual Insurance Co. v. Caughy*, 2016 ONCA 226 what is considered an “accident” for the purposes of accident benefits coverage under the *Statutory Accident Benefits Schedule* (“SABS”) has expanded. Mr. Caughy parked his camping trailer next to other trailers and cars in a horseshoe around a central campsite, leaving a walkway between his camper and the next truck over. When night fell, some other campers parked their motorcycles in the walkway. As Mr. Caughy was playing tag with his daughter and her friend around his trailer, he tripped over one of the motorcycles. This propelled him forward into his trailer before falling to the ground. Mr. Caughy sustained serious spinal cord injuries as a result of the fall.

The Court of Appeal examined the two-part test for what constitutes an “accident” as set out by the Supreme Court of Canada in *Amos v. Insurance Corp. of British Columbia*, [1995] 3 S.C.R.



405 and as modified by 1996 amendments to the SABS and the previous Court of Appeal decisions in *Greenhalgh v. ING Halifax Insurance Company* (2004), 72 O.R. (3d) 338 and *Martin v. 2064324 Ontario Inc. (Freeze Night Club)*, 2013 ONCA 19.

Essentially, the insured must establish that the use or operation of the vehicle in question was the direct cause of their injuries. Pursuant to the Supreme Court of Canada decision in *Citadel General Assurance Co. v. Vytlingam*, 2007 SCC 46, the use or operation of the vehicle must be for “the ordinary and well-known activities to which automobiles are put” and not for aberrant or unusual purposes. Second, the insured must establish that there was no intervening act that resulted in the injuries that cannot be said to be part of the “ordinary course of things”.

The Court of Appeal in *Caughy* held that parking a vehicle is an ordinary use of the vehicle, and thus the purposive test for what constitutes an “accident” was met.

Since the *Caughy* decision, the Licence Appeal Tribunal has found that tripping and falling into a parked vehicle constitutes an accident,<sup>1</sup> but tripping while walking to<sup>2</sup> and from<sup>3</sup> a vehicle does not. The key element of these decisions is whether the insured made direct contact with a parked vehicle causing injury. The Ontario Superior Court has even held that injuries arising from routine maintenance on a vehicle, such as checking the windshield wiper fluid, are considered “accidents” for the purposes of the SABS arising out of the “ordinary and well-known activities to which automobiles are put”.<sup>4</sup>

Disputes over what constitutes an “accident” involving an RV are not new however. In *Gordon McAllister v. Dominion General Insurance*, 1992 OABC para. 2038 Mrs. McAllister was murdered during the course of an armed robbery in their motor home while they were stopped overnight in a rest area. Mr. McAllister brought an accident benefits claim for death and funeral benefits. The Ontario Insurance Commission found that at the time of Mrs. McAllister’s murder, the RV was being used as accommodation and not as an automobile. Accordingly, the murder did not involve the use or operation of the RV as an automobile. Further, the use of the RV did not cause the murder, it was merely the location of the crime. The murder was therefore not an “accident” under the relevant legislation and did not trigger coverage under the insurance policy.

It is not unreasonable that such decisions could be applied to the variety of potential accidents that could occur involving RVs. As more and more people are considering buying or renting RVs, the possibility for such accidents increases. While what constitutes an accident triggering

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<sup>1</sup> *D.S. v. TD Insurance Meloche Monnex*, LAT 16-000131/AABS, 16 June 2017.

<sup>2</sup> *K.B. v. Aviva Insurance Company*, LAT 16-004096/AABS, September 27, 2017.

<sup>3</sup> *I.S. v. Aviva Insurance Canada*, LAT 17-000942/AABS, September 14, 2017.

<sup>4</sup> *Davis v. Aviva Canada Inc.*, 2017 ONSC 6173.



coverage under an RV insurance policy is highly fact-specific, our Coverage and Licence Appeal Tribunal practice groups are ready to assist our clients in navigating these claims.

**About the Author:**

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Dakota received his J.D. from the University of Toronto Faculty of Law in 2019. Prior to attending law school, Dakota obtained a B.A.H. in Political Studies with a minor in Psychology from Queen’s University. Dakota articulated with the firm before returning as an associate following his call to the bar. Prior to joining the firm, Dakota summered at an intellectual property litigation boutique and a family law firm.

Dakota’s practice areas involve tort, accident benefits, examinations under oath, workplace safety insurance (WSIB), and appeals. Dakota also has experience with commercial and real-estate litigation, international priority disputes, subrogation, occupier’s liability, fraudulent and suspicious claims, and property loss/damage claims.

While Dakota is a passionate advocate and works diligently to achieve an early resolution for his clients, he greatly enjoys advocating in court. Dakota has regularly appeared before the Superior Court of Justice, and has appeared at Small Claims Court. Dakota works on cases involving complex issues of fact and law, and his attention to detail has produced excellent results for his clients.

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