
Believe It or Not – Criminal Negligence is a Criminal Act! Exclusion Clause Applies Says Ontario Court of Appeal.

Reported Case:	Eichmanis v. Wawanesa Mutual Insurance Co.
Citation:	2007 CarswellOnt 699
At Issue:	Whether a conviction for criminal negligence is caught by a clause excluding from coverage claims caused by "any intentional or criminal act".
The Court:	Ontario Court of Appeal
Judgment Rendered:	February 13, 2007
Factual Summary:	Ryan, a 15 year old, lived with his mother from 1986, when she and his father separated, until December 1997 when Ryan moved to live with his father. In June, 1998, Ryan's father was compelled to enter a residential facility for treatment for substance abuse, and arrangements were made for him to live with his aunt and uncle. About 10 days later, Ryan, the plaintiff and another friend broke into Ryan's father's home and the plaintiff was seriously injured when a loaded gun accidentally discharged while being pointed at him by Ryan. Ryan pleaded guilty to criminal negligence causing bodily harm. The plaintiff sued Ryan and his father. At trial, the plaintiff was found to be 25% at fault and was awarded \$800,000 against Ryan (who was found to be 50% at fault) and his father (who was found to be 25% at fault). Ryan's father was uninsured. The plaintiff then commenced proceedings against the insurers of Ryan's mother and Ryan's aunt and uncle for a determination of whether Ryan was insured under either of their home insurance policies.
Disposition By Lower Court:	Plaintiff's injury was covered by the aunt and uncle's policy on the basis that he was living in their household, albeit on a temporary basis. Ryan's conviction for criminal negligence did not constitute a criminal act that was caught by the exclusion clause because it applied only to criminal acts intended to cause injury.
Decision:	The language of the exclusion clause was disjunctive. An act of an insured that causes injury is excluded when it is either an intentional act or a criminal act. The lower court's decision would render the phrase "criminal act" superfluous. Appeal allowed.