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CASE SUMMARY: APPLICATION JUDGE'S REASONS ARE INADEQUATE AND DO NOT PERMIT MEANINGFUL APPELLATE REVIEW IN DUTY TO DEFEND COVERAGE ISSUE

In determining whether the duty to defend has been triggered, the chambers judge must provide adequate reasons that permit meaningful appellate review.

Insurance law – Commercial general liability insurance – Additional named insured – Duty to defend – Interpretation of policy; Practice – Leave to appeal; Actions – Vicarious liability

[National Gallery of Canada v. Lafleur de la Capitale Inc.](#), [2017] O.J. No. 4589, 2017 ONCA 688, Ontario Court of Appeal, September 6, 2017, P.S. Rouleau, K.M. van Rensburg and L.B. Roberts J.J.A.

Lafleur added National as an additional insured on its CGL policy issued by Intact. Coverage for National as an additional insured was limited to National's liability that arose vicariously out of Lafleur's landscaping and snow removal services. The policy excluded workers' compensation claims and claims arising from an employer's liability for injuries to employees in the course of employment.

One of Lafleur's workers was fatally injured while working at National's premises. The employee's family commenced two actions against National. National successfully applied for a declaration that the insurer's duty to defend was triggered. The insurer appealed.

On appeal it was held that the application judge's reasons were inadequate and did not permit meaningful appellate review. A bare statement that the duty to defend was engaged based on allegations related to maintenance was insufficient as the source of these allegations was not identified in the pleadings, and there was no analysis of the terms of the insurance policy. The Court of Appeal allowed the appeal and remitted the matter for a new hearing before a different judge.

This case was digested by [Laura E. Miller](#) and first posted on Quicklaw and published in the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact [Laura E. Miller](mailto:lmiller@harpergrey.com) at lmiller@harpergrey.com.

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