

## Insurance

# What is a household?

By **Tom Macmillan**



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(January 22, 2020, 12:33 PM EST) -- Many homeowner policies contain an exclusion similar to that considered by the Ontario Court of Appeal recently in *Traders General Insurance Company v. Gibson* 2019 ONCA 985, which generally excludes coverage for a named insured in relation to actions brought by members of the insured's own household. *Gibson* clarified the law with respect to who qualifies as a member of a household, but the analysis remains very fact-driven. One cannot help but anticipate further disputes in this area, given the increasing prevalence of non-traditional living arrangements, particularly in large Canadian cities.

There is little doubt that this exclusion will be litigated in the future.

### The dispute

Elizabeth Thompson Gibson (Betty) was 60 years old when she fell from the balcony of the house in which she was living and allegedly sustained injuries. She sued the homeowner.

What made this case interesting, and the subject of a ruling from the Ontario Court of Appeal, is the fact that the homeowner was Betty's mother (who shared her name, so let's call her, as the Court of Appeal did, Elizabeth). Following the accident, Elizabeth sought a defence to the action pursuant to her homeowner's insurance policy. What followed was a denial by her insurer and a coverage dispute over the interpretation of the policy.

There was no dispute that Elizabeth was covered under the policy. At issue was whether coverage was excluded in this instance, given the facts of the case, and if so, whether an exception applied to that exclusion. The applicable section read as follows: "We do not insure claims made against you arising from: ... 5. bodily injury to you or any person residing in your household other than a residence employee ..."

The heart of the dispute was the term "household," in the policy wording. The policy did not simply exclude claims arising from those living within the same dwelling or under the same roof. Instead, the policy specifically referred to "your household," suggesting that the exclusion applied only in circumstances in which a certain close communal and familial relationship was present. The policy did not specifically exclude coverage for claims brought by tenants.

Elizabeth made two arguments on the application and on appeal: first that the exclusion did not apply because Betty paid rent and was a tenant (and therefore not a member of the household); and second that even if Betty were a member of the household, the exception to the exclusion applied (namely, that she was a residence employee). In support of these arguments, Elizabeth pointed to the fact that, despite being her daughter, Betty paid monthly rent and performed chores around the house.

The application judge accepted the first argument and rejected the second, finding that Betty was a tenant and thus that the exclusion to coverage did not apply. The motion judge rejected that Betty was a residence employee. The exception to the exclusion did not apply. Traders was ordered to defend Elizabeth in the action brought by Betty.

Elizabeth's insurer appealed the finding that Betty was a tenant. Elizabeth cross-appealed on the

finding that Betty was not a residence employee. The Court of Appeal granted the insurer's appeal and denied the cross-appeal, finding that coverage for the claim was excluded under the policy.

### Household defined

As with much insurance policy language, the intention of the clause is clear on a plain reading: coverage is meant to be excluded for any claims by family members living with her, including anyone close enough to the named insured to be living with her. Coverage is meant to extend, on the other hand, to claims brought by anybody outside of this sphere. If the named insured employs someone who then lives in the house, the policy will also cover any such claims by that person.

But there are many living arrangements that do not fit nicely or clearly within these spheres and many that have features of each sphere. Betty, for example, was clearly a family member living with Elizabeth, but there were some tenant-like features to their relationship as well, including the payment of rent. Statistics show an increased prevalence in Canadian cities of platonic conjugal arrangements involving non-family members. How many of these relationships qualify as a "household?"

The Court of Appeal in *Gibson* reiterated the features of a household. It cited the Supreme Court of Canada definition of a household in *Wawanesa Mutual Insurance Company v. Bell* [1957] 1 S.C.R. 252 at p. 584: "... a collective group living in a home, acknowledging the authority of a head, the members of which, with few exceptions, are bound by marriage, blood, affinity or other bond, between whom there is an intimacy and by whom there is felt a concern with and an interest in the life of all that gives it a unity. "

The Ontario Court of Appeal case of *Ferro v. Weiner* 2019 ONCA 55 was also cited, as stating in part that a household is a place where "its members share the intimacy, stability, and common purpose characteristic of a functioning family unit."

The Court in *Ferro* went on to outline that the courts should consider, when looking at membership in a household, whether,

- a) The person contributes to the household in a meaningful way through time and/or resources for the benefit of the collective good of the household;
- b) The person shares common space with other members of the household; and
- c) The person is motivated by an interest in the life of the household.

The facts in *Gibson* quite clearly reveal an intimate familial relationship between Betty and Elizabeth; the two shared responsibility for household chores, did groceries and ate meals together, took care of one another and shared an emotional bond. They were mother and daughter. The Court of Appeal found that the fact that rent was paid by Betty did not offset this relationship.

The question is how the courts will in the future approach circumstances where many of the above facts are also in play but where the two individuals at issue are not related. It is not uncommon to have individuals who reside together in a platonic relationship, and who nevertheless care for one another, share a common space and an emotional bond. Where rent is paid in such a circumstance, how will the courts apply the above exclusion?

One cannot help but smile in reflecting that too many family members who one would assume are part of one's household nevertheless lack the characteristics outlined by the court in *Gibson*. How many parents of teenagers, for example, would agree that their child shares with them an intimacy and common purpose, contributes time and resources to the mutual benefit of the household and feels a concern and interest in the life of the household?

I jest. It is unlikely that, absent extreme circumstances, the courts would find that a parent and child who live together are not members of a household. This serves merely to illustrate that acquaintances may share the intimate characteristics of a household and family members may not. The courts may face a more difficult set of facts in the future in relation to this exclusion, one more clearly at the edge where the two spheres meet.

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