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## **CASE SUMMARY: A FAMILY MAKES A HOUSE A HOUSEHOLD**

A home owner was not covered by her homeowner’s insurance policy for a claim for damages arising from her daughter’s personal injuries after a fall at the home.

**Insurance law – Homeowner’s insurance – Members of a household – Residence employee – Tenant – Exclusions – Interpretation of policy – Practice – Appeals**

*Traders General Insurance Co. v. Gibson*, [2019] O.J. No. 6312, 2019 ONCA 985, Ontario Court of Appeal, December 13, 2019, K.M. van Rensburg, D. Paciocco and J.A. Thorburn JJ.A.

The insured purchased a homeowner’s insurance policy issued by Traders General Insurance Company. The insured’s adult daughter was injured at the insured’s home when she fell from the porch. The daughter lived at the home with the insured, paid a minimal amount of rent, and they shared household chores. The daughter commenced an action against the insured for personal injuries, and the insured sought coverage from the insurer. The insurer denied coverage based on the policy’s exclusion for claims made against the policy holder arising from “bodily injury to ... any person residing in your household other than a residence employee”.

The application judge held that although the insured’s daughter was a member of the household, there was coverage because the daughter was a tenant. The application judge determined that it would have been in the reasonable contemplation of the parties that the owner may have rented a room to a tenant for remuneration, and that the owner would have coverage if the tenant was injured on the property. However, the application judge determined that if the daughter was not a tenant, then the claim would have been excluded because there was no applicable exemption from the exclusion, as the daughter was not a “residence employee”.

The insurer appealed and the insured cross-appealed.

The Court of Appeal agreed with the application judge that the daughter resided in the insured’s household. Whether a person is a member of a “household” is not restricted to the use and management of one particular residence, but depends on the degree to which the choices and actions of all members are motivated by the collective interest of the household, as distinct from their individual interests. The facts established that the daughter was a member of the household, considering that the plaintiff and her daughter shared responsibility for household chores, doing groceries, ate meals together, took care of one another, and shared an emotional bond.

The Court of Appeal agreed with the application judge that the daughter was not a “residence employee” and thus the exception to the exclusion did not apply. While the daughter performed household services, they were not for the insured but rather for their mutual benefit. The insured did not direct her daughter to do work and her daughter was not remunerated for doing specific tasks.

The final issue was whether the daughter's payment of rent gave rise to coverage. The Court of Appeal distinguished the case of *Wright v. Canadian Group Underwriters Insurance Co.*, 2002 BCCA 254, upon which the application judge relied. In *Wright*, the tenant lived at the insured premises but was not in the insured's "household" as they were essentially strangers without any family connection. The Court of Appeal reasoned that, unlike in *Wright*, the relationship between the plaintiff and her daughter was as a member of the household. As such, the fact that the daughter paid rent did not give rise to coverage. The Court of Appeal therefore granted Traders' appeal and dismissed the plaintiff's cross-appeal.

This case was digested by [Joe Antifaev](#), and first published in the LexisNexis® Harper Grey Insurance Law Netletter and the Harper Grey Insurance Law Newsletter. If you would like to discuss this case further, please contact Joe Antifaev at [jantifaev@harpergrey.com](mailto:jantifaev@harpergrey.com).