

## Homeowners Policy Exclusion for Household Member's Claims: Ontario Court of Appeal Decides *Bawden* Case

On November 26, 2013, the Ontario Court of Appeal held in *Bawden v. Wawanesa Mutual Insurance Co.* that standard homeowner's policy exclusions, which preclude liability coverage for injuries caused to other members of the household, do not apply to third party claims made against parents/other members of the household. The exclusion only applies to direct claims.

Eight year old Kelly Bawden was injured after being struck by a car. Action was brought on Kelly's behalf against the driver and owner of the car, who third partied Kelly's parents for failure to properly supervise. Kelly's parents sought coverage under their homeowner's policy with Wawanesa, but were denied on the basis of the policy's standard exclusion for injuries caused to other members of the household. The Wawanesa exclusion at issue precluded coverage for claims made or actions brought against a member of the household "for bodily injury to you or to any person residing in your household." Although Wawanesa was initially successful at the motion level, that decision has now been overturned by the Ontario Court of Appeal.

In finding that the exclusion did not apply, the Court of Appeal focused on the difference between the coverage grant and the exclusion. The coverage was for bodily injury or property damage "arising out of your personal activities anywhere in the world." This was contrasted with the exclusion which applied only to claims "for bodily injury to you or to any person residing in your household other than a residence employee." The appeal court held that the claim was not one "for" the injuries to Kelly, but instead, was one "for" contribution and indemnity arising out of negligent supervision.

Some insurers may see no concern with *Bawden*, as their policies utilize the broader exclusionary language "arising out of bodily injury to you or to any person residing in your household...". However, even this language may not suffice, as the court noted that the exclusion was not intended to apply to claims other than those being made directly against another member of the household by the injured plaintiff. According to this decision, the intent of the exclusion is to preclude coverage for direct claims between family members given the risk of collusion. There is no risk of collusion in a third party claim.

This decision reinforces our view that each case turns on the language of its own policy.

### Dutton Brock LLP

438 University Avenue, Suite 1700  
Toronto, Canada M5G 2L9

Telephone: (416) 593-4411 Fax: (416) 593-5922

[www.duttonbrock.com](http://www.duttonbrock.com)