

Ontario Court of Appeal Clarifies Insured's Duty to Cooperate

It is not often that a case discussing the duty to cooperate comes along, although this is an important condition of coverage in virtually all insurance policies. The Ontario Court of Appeal decision in *Ruddell v. Gore Mutual Insurance Company*¹ comes as helpful and reassuring guidance to policyholders on what the "duty to cooperate" language in their policy obligates them to do. Specifically, the *Ruddell* court held that an insured's failure to update her current address did not amount to a substantial breach of the duty to cooperate under her auto policy.

Gayle Bass had an auto policy through Gore Insurance Company ("Gore"). Her son, Alan Stewart, was an insured under that policy. Mr. Stewart got into an accident injuring passenger Michael Ruddell. When initially making the claim, Ms. Bass provided Gore with her temporary address, and directed the insurer to her son who had first-hand knowledge of the accident. In a later communication about the claim, which was served to Ms. Bass at her temporary address, Gore asked her to "keep us advised of any change of address." As the underlying claim progressed, Gore was unable to contact Ms. Bass at any of the numbers or addresses on record, and unable to reach her son as his job on oil rigs required him to travel constantly. Gore denied coverage, alleging that Ms. Bass breached her duty to cooperate by failing to assist in obtaining her son's cooperation. The lower court disagreed, finding that Ms. Bass had not breached her duty to cooperate.

The Ontario Court of Appeal affirmed the lower court's holding. The court emphasized that an insured's breach of duty to cooperate must be substantial enough to affect the "insurer's assessment of the risks of litigation," quoting from an earlier case:

The duty of the insured to co-operate with the insurer, being a condition precedent to his right to recover, requires him to assist willingly and to the best of his judgment and ability. ... Lack of co-operation, however, must be substantial. No inconsequential or trifling breach of such obligation should serve to exonerate the insurer from his contractual liabilities under the policy.²

The court explained that Ms. Bass' failure to update her address with the insurer did not hinder Gore's defense. There was no evidence that she was "acting in concert with her son, encouraged him not to cooperate, or failed to assist Gore" in locating him. To the contrary, Bass herself did not know her son's location, and Mr. Stewart's actions were not a reflection of her cooperation. The court stressed, "Given the circumstances of what appears to be Mr. Stewart's employment ..., it is not unreasonable that Ms. Bass could not assist Gore any more than she did."

The Rudell decision is helpful to policyholders because it sets out the parameters of the insured's duty to cooperate with its insurer³, and makes clear that smaller failures on the part of the insured will not jeopardize coverage as long as the breach of the duty to cooperate is not deemed "substantial." As this determination inevitably turns on the specific facts of each case, policyholders are now less likely to lose coverage under their policies for failing to cooperate with their insurer in insignificant ways.

For more information about this case alert or SDV's international practice group, please contact [Stella Szantova Giordano](mailto:ssg@sdvlaw.com) at ssg@sdvlaw.com. This case alert was written with assistance from Jasjeet Sahani of UCONN Law School, a summer associate at SDV.

¹*Ruddell v. Gore Mut. Ins. Co.*, 2019 ONCA 328 (2019).

²*Canadian Newspapers Co. v. Kansa Gen. Ins. Co.*, 30 O.R. (3d) 257 (C.A.) (1996) at 279.

³Author's Note: The *Rudell* decision analyzed the insured's duty to cooperate in the context of the Statutory Conditions, O. Reg. 777/93, s. 5(3) which apply to all auto policies in Ontario. However, the language of the Statutory Conditions is very similar to "duty to cooperate" language found in other types of policies, notably in the ISO form of the commercial general liability policy. Therefore, arguably the same analysis of the insured's duty to defend applies to other types of policies.