

Ambiguous Exclusion Clauses and Reasonable Expectations: Lessons from *Busato v. Gore Mutual Insurance Company*

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The decision of *Busato v. Gore Mutual Insurance Company*, 2025 BCCA 79 (CanLII) is a recent and noteworthy case from the Court of Appeal for British Columbia. It reaffirms the well-established principle that insurance contracts are to be construed and interpreted according to the reasonable expectations of an average person applying for insurance, rather than through the perceptions of persons versed in the niceties of insurance law.[1] This case should be taken into consideration by insurers whose contracts contain exclusion clauses that are broad and ambiguous. The decision underscores the perils for insurers who wish to narrow coverage by means of explicit exclusion clauses and affirms that insurers are free to do so in any way they wish, provided that they do so clearly, explicitly, and in a manner that does not unfairly leave the insured uncertain or unaware of the extent of coverage.[2]

Background

In 2014, the plaintiff/appellant (the “**insured**”) purchased a homeowners’ insurance policy from the defendant/respondent, Gore Mutual Insurance Company (the “**insurer**”) that covered the risk of fire, among other risks. The insured renewed the policy annually and it remained valid at the time of the loss.

On 23 April 2017, an accidental kitchen fire started in the insured’s home resulting in its destruction. Immediately following the accident, the insured initiated a claim under the policy. The insurer did not dispute that the fire was caused by an insured risk (accidental kitchen fire). However, during its investigation of the fire, the insurer discovered that the insured was growing approximately 25 marijuana plants, pursuant to a valid license issued by Health Canada that permitted the insured to cultivate and possess up to 73 indoor marijuana plants. As such, the insured was well within his legal right to cultivate and possess the marijuana plants.

The insurer nonetheless denied coverage for the loss citing its reliance on an exclusion in the policy relating to marijuana cultivation on the property. The exclusion clause stated:

We do not insure direct or indirect loss or damage, in whole or in part: [...]

32. to dwellings or detached private structures or unscheduled personal property contained in them, used in whole or in part for the cultivation, harvesting, processing, manufacture, distribution or sale of marijuana or any product derived from or containing marijuana or any other substance falling within Schedule (Section 2) of the *Controlled Drugs and Substances Act Narcotic Control Regulations*;

regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage.

Decision of the Supreme Court of British Columbia

As a result of the denial, the insured commenced an action seeking indemnity under the insurance contract. Both parties brought summary trial applications. At first instance, the trial judge determined that the exclusion clause was unambiguous and dismissed the insured’s action.

In finding that the exclusionary clause was unambiguous, the trial judge followed the analysis in *Pietrangelo et al. v. Gore Mutual Life Insurance Company et al.*, 2010 ONSC 568 (“*Pietrangelo*”). Coincidentally, *Pietrangelo* involved the same insurer (Gore), a nearly identical insurance contract, and the same exclusion clause. Notwithstanding the foregoing, the facts of *Pietrangelo* were wholly distinguishable. In *Pietrangelo*, a tenant was illegally producing cannabis resin and caused an explosion that led to the complete destruction of the house. The tenant in *Pietrangelo* did not possess a license for marijuana cultivation and his conduct was subject to criminal charges, which was starkly different from the insured’s action in the case at bar.

In *Pietrangelo*, the judge found that the exclusion clause created three distinct subcategories of excluded coverage:

1. Dwellings or detached private structures or unscheduled personal property contained in them used for the cultivation, harvesting, processing, manufacture, distribution, or sale of marijuana;
2. Any product derived from or containing marijuana; and,
3. Any other substance falling within Schedule (Section 2) of the *Controlled Drugs and Substances Act Narcotic Control Regulations*.

The judge in *Pietrangelo* found that the first subcategory was “clear and unambiguous” and that the second subcategory was inapplicable in the circumstances. However, the judge concluded that the third subcategory relating to substances falling within Schedule (Section 2) of the *Controlled Drugs and Substances Act Narcotic Control Regulation* included a “faulty and confusing reference.” Nonetheless, the trial judge in *Busato* adopted the conclusion of *Pietrangelo* that any ambiguity in the third subcategory did not detract from the clarity of the first and second subcategory.

In *Busato*, the trial judge concluded that the exclusion did apply to legal marijuana-related activity, was broadly worded, and on its plain reading, excluded all marijuana-related uses of the property, whether legal or illegal. Unfortunately for the insured, the judge again relied on *Pietrangelo*, and held that she could not make a finding about any difference in risk associated with insuring a criminal marijuana grow operation versus licensed cultivation for medicinal purposes, and stated:

The Exclusion is broadly worded. Based on the evidence of Gore in *Pietrangelo*, it was intentionally drafted as widely as possible: *Pietrangelo* at paragraph 73. On a plain reading, it excludes all marijuana-related uses of the property, whether legal or illegal.

Accordingly, she found that the exclusion clause did not distinguish legal or illegal marijuana-related activities and concluded that such an interpretation was narrow and not consistent with the plain wording of the exclusion clause. Although she acknowledged the exclusion clause resulted in a harsh outcome, she dismissed the insured’s action against the insurer.

Decision of the Court of Appeal

The Court of Appeal for British Columbia overturned the trial decision, finding that the exclusion clause was ambiguous and must be interpreted narrowly in favour of the insured.

On appeal, the panel concluded the exclusion clause’s wording, specifically, the third subcategory, “Schedule (Section 2) of the *Controlled Drugs and Substances Act Narcotic Control Regulations*” created ambiguity because it combined two separate pieces of legislation, *Controlled Drugs and Substances Act* (“*CDSA*”) and *Narcotic Control Regulations* (the “*Regulations*”). Though the *Regulations* were made pursuant to the *CDSA*, the court found that the insurer’s improper citation of this legislation in the insurance contract reflected poor drafting and created ambiguity as to the relevant legislation and attached schedules purporting to inform the exclusion.

Moreover, the ambiguity extended to the substances that trigger the exclusion. It appeared that the exclusion clause referred to a schedule of the *CDSA*, however, the wording referred to “marijuana or any other substance falling within Schedule (Section 2). Importantly, the *CDSA* has eight schedules numbered I-VII. It is likely that the exclusion referred to a single schedule within the *Regulations* and not the *CDSA*.

Based on the third subcategory, the trial judge recognized that the exclusion clause contained “unclear, inaccurate wording” and a “faulty and confusing reference” to the *CDSA* and the *Regulations* but concluded that there was no ambiguity to resolve. It flowed from her reasoning that any ambiguity in the third subcategory did not taint the first or second subcategory.

The Court of Appeal disagreed, finding that the exclusion clause was not enumerated into three subcategories, nor was it visually separated into subcategories. In the appeal court’s view, the division of the exclusion clause into three subcategories, acknowledging one subcategory as poorly drafted but not tainting the others, rewrote the clause to the disadvantage of the insured. Further, interpreting these subcategories separately directly contradicted the general principles of contract interpretation, which suggests that “the court should give effect to clear language, reading the contract as a whole (emphasis added).”[3]



The Court of Appeal found that exclusion clause was ambiguous. Since the general rules of construction could not resolve the ambiguity, the insurance contract had to be interpreted *contra proferentem*, i.e., in favour of the insured.

Importantly, the Court of Appeal indicated that insurance contracts must be interpreted as they would be understood by the average person applying for insurance, and not as they might be perceived by persons versed in the niceties of insurance law.[4] In resolving ambiguity where there is more than one interpretation supported by the text of an insurance contract, a court will be directed to contemplate the reasonable expectations of the parties and to avoid an interpretation that would provide an unrealistic result or that would not have been considered by the parties. Underpinning the rule of *contra proferentem* is the principle that ambiguity is to be resolved in favour of the party which did not draft the contract. In the case of almost all contracts of insurance, this will be the insured.

Insurers Must Be Mindful of the Clarity of their Exclusions

Insurers can narrow coverage through the use of exclusion clauses but must be careful to draft those exclusions clearly, explicitly, and in a way that does not unfairly leave the insured uncertain or unaware of the extent of the coverage.[5]

This decision reinforces the long-standing principles of insurance contract interpretation and provides a cautionary warning that courts may scrutinize exclusion clauses more closely than insurers may anticipate. Ambiguous drafting, inaccurate statutory references, or overly broad language will not withstand judicial scrutiny.

Ultimately, litigation is expensive, far more so than ensuring that policy wording is clear, unambiguous, and unequivocal from the outset.

As legal landscapes continue to evolve, novel developments in insurance law demand heightened scrutiny. These changes can introduce unforeseen liabilities and coverage determinations, requiring insurers to pay careful attention to emerging topics. Staying proactive and informed is key to mitigating these potential risks. A PDF version is available for download [here](#).

[1] *National Bank of Greece (Canada) v. Katskonouris*, 1990 CanLII 92 (SCC) [National Bank].

[2] *Martin v. American International Assurance Life Co.*, 2003 SCC 16 at para. 29. [Martin].

[3] *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33 (CanLII) at para. 22.

[4] *National Bank*, *supra* note 1.

[5] *Martin*, *supra* note 2.

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