

IN THE MATTER of the *Insurance Act*, R.S.O. 1990 c. I.8 as amended, and Ontario Regulation
283/95 made under the *Insurance Act*
AND IN THE MATTER of an arbitration under the *Arbitration Act*, 1991, S.O. 1991 c.17 as
amended
AND IN THE MATTER of an arbitration

BETWEEN

CERTAS HOME & AUTO INSURANCE COMPANY

Applicant

and

**INTACT INSURANCE COMPANY and TRAVELERS INSURANCE COMPANY OF CANADA/THE
DOMINION OF CANADA GENERAL INSURANCE COMPANY**

Respondents

DECISION

COUNSEL

Sarah E. Scott, counsel for The Dominion of Canada General Insurance Company (hereinafter referred to as Dominion).

Emma Duggan, counsel for Intact Insurance Company (hereinafter referred to as Intact).

Stacey N. Karellas, counsel for Certas Home & Auto Insurance Company (hereinafter referred to as Certas).

BACKGROUND

This matter comes before me pursuant to s. 268 of the *Insurance Act*, R.S.O. 1990 c. I.8 and more specifically Regulation 283/95. This is a dispute between insurers as to which insurer stands in priority for the payment of statutory accident benefits to the claimant arising out of an accident that occurred on December 22, 2022.

As this dispute was primarily between Intact and Dominion, counsel for Certas, while participating in all pre-hearings, did not participate in the written hearing on the issue of dependency.

On December 22, 2022 the claimant was struck while a pedestrian. He was struck by a car which was owned by an individual who was insured under Certas policy XC929028. However, the vehicle was owned by her daughter and insured by Dominion under policy CHA9549625. Dominion concedes it would be the priority insurer over and above Certas but takes the position that Intact

is the priority insurer. Intact insures the claimant's son. Dominion takes the position that the claimant on the date of loss was principally dependent for financial support on his son and therefore he is a deemed named insured under the Intact policy which would take priority over the striking vehicle.

Certas received the OCF-1 and has been paying statutory accident benefits. Certas served a Notice of Dispute on intact and Dominion thus resulting in these proceedings.

I was appointed as arbitrator in this matter on consent by the parties pursuant to Regulation 283/95.

PROCEEDINGS

There were various pre-hearings in this matter and ultimately counsel agreed that this matter could proceed forward by way of a written hearing with Dominion making the first round of submissions and Intact responding.

The parties filed a Document Brief which included the transcripts of the EUO of the claimant taken September 20, 2023 and of the claimant's son taken November 5, 2024. In addition, Intact submitted a Foreign Income Verification Statement from Canada Revenue Agency (in blank). Also put in evidence with an email exchange between counsel providing some information with respect to the claimant.

Both parties submitted Factums and various Books of Authority. The parties also submitted a signed Arbitration Agreement dated November 25, 2024. No oral evidence was called.

FACTS

The claimant was born on March 9, 1953 and was 69 years old at the time of the accident. He was widowed in 2011. He was born in Pakistan and lived in Pakistan for most of his life. In 2016 the claimant sold his business in Pakistan. He had owned a shop. He has not worked since that time.

The claimant owned, as of the time of the accident, a three-bedroom house in Pakistan. This house was rented out and the claimant would receive approximately \$400 Canadian in rent per month. The arrangement was that the rent that was payable in Pakistan was dropped off in cash by local relatives of the family renting the house. The \$400 was then sent to the claimant in Canada.

The house in Pakistan was estimated to be worth Rs40,000 to Rs50,000 in Pakistani rupees. It was submitted that based on the present exchange rate, the house would have had a value of somewhere between \$241,000 and \$302,000 Canadian Dollars.

The claimant denied having a bank account in Pakistan. In or around December 2020 the claimant came to Canada to live with his son, daughter-in-law and their two young children in Ajax. At the time of the accident, they had been living in their present home in Ajax for approximately one year. Previously, they had lived in a different home in Ajax but at all times the claimant resided with his son and family.

The claimant did not have a driver's licence. He did not own a motor vehicle and had no access to any automobile insurance of his own.

He did have a bank account in Canada but the evidence was that there were no funds in it. However, the claimant came to Canada with some cash and as of the accident he claims to have had approximately \$8,000 in cash. His evidence was that he would give \$200 to \$300 a month to his son to cover expenses.

The claimant's son confirmed that his father would give him some cash every month but reported that it was in fact \$500 to \$600 a month. He also believed that his father had brought \$25,000 with him from Pakistan when he came to Canada.

The evidence of the father and son were consistent that other than the monthly amount the father would give, whether it be \$200 to \$500 a month, that otherwise he did not contribute to any expenses for accommodation or living expenses and his son covered them all.

In terms of the expenses, the son advised under oath that they were as follows:

1. Mortgage, \$6,000 a month for a four-bedroom townhouse
2. Property taxes, \$7,100 a year
3. Electricity, \$60 to \$70 a month
4. Gas, \$100 a month
5. Internet, \$55 a month
6. Groceries and toiletries, \$250 a week
7. Car insurance, \$5,000 per year
8. Home insurance, \$1,500 per year
9. Water, \$50 a month

The son had a 2019 Honda Odyssey which he leased for \$740 to \$750 per month. This vehicle was registered under an Intact policy to the claimant's consulting company and the consulting company was the name insured under the policy. Although Dominion raised a question with respect to regular use and made submissions with respect to that, Intact did not raise any issue with respect to regular use and I therefore find as a fact that the claimant had regular use of the Honda Odyssey at the time of the accident.

In addition to the family household expenses listed above, the son also confirmed that he paid his father's basic cell phone package of approximately \$25 a month and paid for some blood pressure medication which was approximately \$50 every three months.

There was no written agreement between the father and the son with respect to rent or living expenses. Both suggested they had a verbal agreement by which the claimant would give his son cash around the first of the month to cover some of his expenses for accommodation and living expenses. This was the cash the claimant reported he would give in the range of \$200 to \$300 a month and the son reported it was \$500 to \$600.

Dominion submitted that the Market Basket Measure for a single person in Toronto for 2020 was \$24,864. This was taken from the StatsCan census documents. Intact relied on the Market Basket Measure statistics for a single person in Ajax in the amount of \$22,170.

POSITION OF THE PARTIES

Before turning to the position of the respective parties, it is important to set out the relevant statutory provisions.

The key provision in this matter is the definition of a "dependant" set out in s. 3(7)(b) of the Statutory Accident Benefits Schedule which is reproduced below:

"A person is a dependant of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse."

The other relevant legislation is of course s. 268 of the *Insurance Act*. This provides a method for insurers to determine who may be obligated to pay statutory accident benefits depending upon the circumstances. It provides a hierarchy of insurers that an insured person can access. The first rung in the hierarchy is to determine whether or not a claimant is an occupant of the vehicle in which he or she is the named insured. If recovery is unavailable under that category, then you move down to see whether the occupant would have access to the insurer of the automobile they were an occupant of at the time of the accident. In the case here, the claimant was a pedestrian so none of the occupant provisions would be relevant to him. The first step on the Section 268 rung for the claimant would be if he was a dependant of a named insured then in terms of priority that would fall within the first choice. In this case, if the claimant is not a dependant of a named insured such as his son, then his only choice is to have recourse to the vehicle that struck him which would result in priority falling with Dominion as opposed to Intact.

Position of Dominion

Dominion takes the position that the claimant was principally dependent for financial support on his son on the date of loss of December 22, 2022. Therefore, he is a deemed named insured

under the Intact policy and Intact would stand in priority.

Dominion references the four criteria set out by the Court of Appeal in *Miller v. Safeco*, 1995 CanLII 2022. These four criteria are set out below:

1. The amount of dependency.
2. The duration of the dependency.
3. The financial needs of the claimant.
4. The ability of the claimant to be self-supporting.

Dominion submits that in order to determine dependency one must look at the time period which fairly reflects the status of the parties at the time of the accident. Dominion submits that the appropriate period to examine for duration of dependency is the one year leading up to the accident of December 22, 2022. His financial and living arrangements had been consistent during that timeframe. He also had permanent residency status in Canada in that timeframe.

With respect to the financial needs of the claimant, Dominion submits that I should look at the Market Basket Measure for a single person in Toronto for 2020 in the amount of \$24,864. If the claimant had sufficient assets to cover 51% of \$24,864, then he would not be dependent on his son but if he did not have the ability to cover that 51%, then Dominion submits he would be dependent on his son and the facts point to that in this case.

Dominion notes that the claimant did not have any money in his Canadian bank account. Dominion acknowledges that he was collecting rent from Pakistan and that that money was coming to him in Canada of approximately \$400 per month which would result in a yearly income from his Pakistan property of \$4,800. While he had no other source of income, he did have cash on his evidence of \$8,000 when he came into the country on December 2020 but there was no evidence as to how much of that \$8,000 remained. Dominion submits that if you take into consideration the amount that the claimant was receiving in rent plus his available cash, that he would only be able to cover 46.7% of his financial needs. Therefore he is principally dependent on his son.

With respect to the house in Pakistan and its potential value in Canadian money of between \$241,000 and \$302,000, Dominion submits that one should not take into consideration foreign assets or foreign income unavailable to a claimant while residing in Canada. In that regard, Dominion relies upon the decision of Arbitrator Bialkowski in *TD Insurance Company v. Certas Home & Auto Insurance Company* (January 6, 2021, Arbitrator Bialkowski). Therefore Dominion submits I cannot take into consideration in my analysis the value of the claimant's property in Pakistan. However, Dominion does not dispute that I can take into consideration the rent the claimant received from that property as that was available to him and provided to him in Canada.

With respect to the ability to be self-supporting, Dominion's position is that the claimant would

not be able to be employed in Canada and would not have been able to financially support himself based on the rent that he was receiving. Nor would he be able to live on the rental income of \$4,800 per year plus his diminishing cash savings of \$8,000.

Dominion points again to the decision of Arbitrator Bialkowski in *TD Insurance and Certas (supra)* where the arbitrator found that a claimant with an annual disposable income of less than \$10,000 Canadian would not have been able to support herself while residing in the GTA. Dominion submits that this claimant's status is similar to that.

Dominion therefore asks that I find that the claimant was principally dependent for financial support on his son at the time of the accident of December 2022 and that Intact is therefore the priority insurer.

Position of Intact

Intact agrees that the starting point for any dependency analysis is the four principles laid down in *Miller v. Safeco*.

On the issue of the duration of dependency, Intact also agrees that the one-year period leading up to the accident is the appropriate time period for my consideration.

Otherwise, Intact disagrees with Dominion's characterization of the claimant's financial status and submits that he was not principally dependent for financial support on his son.

Intact submits that there are two key inconsistencies in the evidence between the claimant and his son and suggests that I should accept the son's evidence over the claimant's evidence. This is with respect to the amount of rent the claimant was receiving from Pakistan and whether it was \$200 to \$300 a month or \$500 to \$600 a month. The other inconsistency is the claimant's evidence that he came to Canada in 2020 with \$8,000 in cash and his son's evidence that it was \$25,000 in cash.

Intact submits that the claimant's son's evidence should be preferred. Intact notes that due to the claimant's age, vulnerability and the injuries sustained in the accident, that he has memory lapses and difficulties. Intact referenced a number of incidents during the claimant's EUO where he noted that he was having trouble remembering and that his brain did not work as well. Intact also pointed to remarks under oath by the claimant's son indicating that his father's memory is not what it was prior to the accident. Intact notes the following evidence from the son's EUO:

Question: Were those memory issues present before the accident?

Answer: Not a lot. It happened mostly after the accident, especially after the you know, he - he went through. So his - it impacted him a lot mentally and physically

...

Intact also refers to evidence of the claimant where he referenced his own cognitive difficulties. The claimant stated:

1. I don't know, after the accident my brain is weakened so much.
2. Believe me right now my - my memory is so much weak I don't even remember how much I sold it for.
3. Around that because my memory is very weak now, but approximately that much was there.

While it is difficult to draw any conclusions about credibility or accuracy of evidence when it is in a written format only, I do agree with Intact that the evidence of the son appears to be more reliable and more accurate.

Intact's position is that I should consider his property in Pakistan as a financial asset and not consider it as part of the standard of living. Intact submits that the claimant owned the property in Pakistan. He was the sole owner of the house and there was no mortgage. There is no evidence that he had any intention of returning to Pakistan to live in that house. Therefore, it was a financial asset within his power and control to liquidate should he choose to do so. Intact therefore submits I should consider that there are funds available to the claimant should he wish to access them in a range of \$241,000 to \$302,000 Canadian.

Intact seeks to distinguish the matter here with respect to these foreign assets from the decision in *Intact Insurance Company v. TD General Insurance Company* (Arbitrator Samworth, June 10, 2024). In that case, the claimant owned a home in which he had resided with his son back in India. There was a mortgage on it. It was his principal residence. I found in that case that the house in India was an asset that could not be considered in my dependency analysis as it reflected a standard of living. Standard of living is something the Court of Appeal directs us not to consider in a dependency analysis (*Miller v. Safeco*). In that case, I suggested "selling off one's assets is not earning capacity on the date of loss."

Intact submits that here the claimant was the sole owner of the house. There was no mortgage. It was no longer his primary residence as he was living in Canada with his son. He could liquidate the asset when he chose to do so. Therefore as he would not be out of his house or home if he sold the property, I should not therefore consider it as a part of his standard of living. Rather, it had become a financial investment and it should be considered the way any other financial asset should be considered.

Intact also submits that these assets would have been available to the claimant as the claimant did not have any restrictions on bringing money into Canada. There was no evidence that if he

liquidated the property that the money could not be brought into Canada. While he would be obliged to report his foreign asset to the Canadian government as he was a permanent resident, that still did not prevent him from liquidating his asset and ultimately accessing the money in Canada. Therefore, Intact submits the facts of this case do not fall within the line of cases where arbitrators have found that foreign assets or foreign income should not be considered in the dependency analysis if the income or asset is unavailable to the claimant while residing in Canada. Intact submits that is not the case here and the facts here distinguish the case.

With respect to the analysis of financial dependency, Intact points to the MBM figure of an individual living in Toronto relied upon by Dominion to be incorrect as the claimant was not residing in Toronto. In the year prior to the accident he was residing in Ajax with a population of 135,180. It is therefore at a different place on the MBM chart than Toronto is and would fall under "large urban population centre with a population between 100,000 and 499,990". In 2020, the MBM for that category for a single person was \$22,170. Intact relies upon that for the analysis of the claimant's needs.

Intact submits that if one took into consideration the cash value of the claimant's house in Pakistan, then clearly on any analysis there is no dependency. However, Intact also submits that if you eliminate the cash value of the claimant's home and only calculate the amount of rent he receives each month from Pakistan and the cash he brought over to him, then he had funds available to cover at least 52.3% of his financial needs using the figures given by the claimant. If you use the figures provided by his son and you use the Ajax MBM, then the claimant would be able to cover 96.5% of his financial needs.

Intact submits that even on Dominion's own calculations, there is only one scenario when the claimant is found to be principally dependent for financial support and that requires reliance on the incorrect MBM for Toronto as opposed to Ajax and accepting the claimant's evidence re the amount of cash he brought to Canada.

Intact therefore seeks an order that the claimant is not principally dependent for financial support on his son and Dominion is the priority insurer.

ANALYSIS AND DECISION

In reaching my decision I agree with counsel that I must look at the four criteria established by the Court of Appeal in *Miller v. Safeco (supra)* which I set out below.

1. Amount of dependency.
2. Duration of dependency.
3. The financial needs of the claimant.
4. The ability of the claimant to be self-supporting.

As noted earlier, it is important that the Court of Appeal in *Miller v. Safeco* specifically concluded that one should not look at the standard of living in order to determine dependency.

The parties agree with respect to the appropriate timeframe to analyze dependency and I accept that the one year prior to the accident is a reasonable timeframe. This is consistent with the decision of the Court of Appeal in *Oxford v. Co-operators* 2006 CanLII 37956 Ontario Court of Appeal where the Court held that in looking at the appropriate timeframe an arbitrator must pick the time period that best represents the factual situation on the date of loss. This is in keeping with the definition of dependency which requires me to analyze financial dependency as of the date of the accident.

With respect to the financial needs of the claimant, I agree with Intact that the proper statistical analysis under the Market Basket Measure would be for a single individual in Ajax. I therefore conclude that the claimant's financial needs from a statistical perspective was \$22,170.

With respect to the ability of the claimant to be self-supporting, generally this is an analysis of whether a person who is not working has the capacity to go out and secure employment and earn money. This analysis came from Arbitrator Samis's decision in *Federation Insurance v. Liberty* (Arbitrator Samis, May 7, 1999) which was ultimately upheld by the Court of Appeal, [2000] O.J. No. 1234. In that case, Arbitrator Samis directed that dependency must imply something other than the receipt of the financial benefit. It requires some need on the part of the person alleged to be dependent. Arbitrator Samis noted that a very wealthy person might receive food, shelter and other financial benefits from the family but this does not necessarily mean that that person is principally dependent upon the family structure for financial support. While someone's lifestyle may be enhanced by assistance from family members, that does not necessarily constitute dependency.

In the case before Arbitrator Samis, the claimant earned a significant income but was allowed to spend this as he chose and was not required to provide for any basic needs. Again, that was an arrangement within the family and Arbitrator Samis felt that would be part of the consideration of the general standard of living within the family unit, which was not an appropriate consideration. As the claimant in that case had the ability to bring in income to cover his needs, the fact that the parents chose to support him did not make him dependent.

In this case, the claimant does not have an ability to earn a traditional income through employment. He was 69 years of age on the date of loss. He was retired and had sold his business in Pakistan. There was no evidence about any qualifications with respect to work he could do in Canada. There was no suggestion he was looking for work or considering work. Therefore, I find that the claimant here did not have any earning capacity in terms of his ability to secure employment and earn an income. However, that does not mean that he was dependent on his son.

I agree with Intact that the claimant had sufficient income from the cash he had brought with him and from his monthly rent to meet more than 50% of his needs. I accept the claimant's son's evidence on this point as being more accurate and I find that the claimant brought cash in of approximately \$25,000 when he came to Canada in 2020. In addition, he received \$400 per month. He was capable of paying his son \$500 to \$600 per month to contribute towards his expenses. There was no evidence before me as to what remained of the \$25,000 in cash that the claimant had brought with him but even if it had diminished somewhat by paying his son the monthly expenses in the year prior to the accident (\$500 to \$600 per month, average \$6,600), when you add back in his yearly income from his rental in Pakistan he still has over \$23,000 to contribute towards his needs the year prior to the accident.

The fact that the claimant's son covered off all his accommodation expenses and paid for medication and his cell phone does not in and of itself make the claimant a dependent on his son. I agree with Arbitrator Samis's analysis that one must look beyond the family living arrangements and look at true dependency: benefit received versus needs.

As I am satisfied on the monies available to the claimant in the year prior to the accident that they would satisfy more than 51% of his needs for that year, I do not have to look further with respect to whether or not one should consider the value of his home in Pakistan in the overall analysis.

However I outline my thoughts on that issue below. The Court of Appeal in *Security National Insurance v. Wawanesa Mutual Insurance* 2014 ONCA 850 held that the arbitrator's approach of not including a claimant's foreign-owned assets in the analysis was appropriate. I am also aware of Arbitrator Novick's decisions in *Unifund Insurance Company v. TD Meloche Monnex*, July 14, 2025 and *Allstate Insurance v. Intact Insurance*, October 5, 2015 holding that she was bound by the Court of Appeal's findings in the *Security v. Wawanesa* (*supra*) and concluded that foreign-owned assets/investments (in one case a small home) were not to be included in a dependency determination.

I also note that Arbitrator Novick's decision was specific in that foreign assets not available to the person while living in Canada should not affect the outcome of dependency. I also note the decision of Justice Faieta in an appeal from Arbitrator Novick, *Allstate Insurance Company of Canada v. Intact Insurance*, 2016 ONSC 5443 where His Honour concluded "Foreign income that is unavailable to that person should not be included."

Lastly, I note the case of *Co-operators General Insurance Company v. Chubb Insurance Company of Canada* (Arbitrator Samworth, April 8, 2024) where I concluded that I, too, was bound by the Court of Appeal in *Security v. Wawanesa* and that I should not take into consideration a plot of land owned by the claimant in Bangladesh in my dependency analysis. In that case, the claimant had a plot of land in Bangladesh owned by his family and leased to tenant farmers. When the claimant came to Canada, he locked up the house and gave the keys to his brother and allowed

his brother to collect the income from the farmers. The brother did not send any of that money to the claimant while in Canada. In that case, the evidence also suggested that the claimant did not have any intention of going back to Bangladesh.

In this case there was no clear evidence before me as to the “availability” of the foreign asset of the claimant if he chose to sell the home. Also I am not convinced that considering the potential value of the foreign asset is appropriate in a dependency analysis. The value of the asset reflect the the standard of living the claimant had maintained in Pakistan.

Also the fact that the asset was not sold in the year prior to the accident is relevant. Other than the rent from the property there was no income flowing to the claimant form the outset to help his needs in Canada. I interpret the Court of Appeal decision in *Security & Wawanesa* to direct that generally foreign assets are not to be included in a dependency analysis.

AWARD

The claimant was not principally dependent for financial support on his son on December 22, 2022 and accordingly is not a deemed named insured under the Intact policy. I find that Dominion is the priority insurer with respect to the payment of statutory accident benefits to the claimant arising out of the accident of December 22, 2022.

COSTS

The Arbitration Agreement provides that payment of legal costs, disbursements and legal fees will be determined by me taking into account the success of the parties, the conduct of the proceedings and the general principles applied in litigation. With respect to the expense of the arbitrator and the arbitration, the agreement provides that those costs should be borne by the party who is deemed to be the highest in priority position.

Therefore, as Dominion was found to be the highest in priority, they will be responsible for paying the arbitrator's fees and any disbursements.

With respect to the legal costs, as Intact was successful in this matter I find that Dominion is obliged to pay the legal costs of Intact with respect to this hearing. With respect to Certas, they did not attend or make any submissions and in fact did not participate in this written hearing and therefore I find there are no costs payable by Dominion to Certas with respect to the hearing. If there are other costs being claimed by Certas that cannot be resolved and/or any issue with respect to this order of costs, then counsel can contact me and we will schedule a further pre-hearing to discuss costs. I am not fixing the amount of costs and leave that to the parties but if they are unable to agree on the amount of costs again, the parties are to contact me to schedule a further pre-hearing.

DATED THIS 23rd day of July, 2025 at Toronto.

A handwritten signature in black ink, appearing to read 'PLG', with a long horizontal flourish extending to the right.

Arbitrator Philippa G. Samworth

DUTTON BROCK LLP

Barristers and Solicitors

800 – 150 York Street

Toronto, ON M5H 3S5