

IN THE MATTER OF THE *INSURANCE ACT*
R.S.O. 1990 C. I.8, AND REGULATION 283/95
AND IN THE MATTER OF THE *ARBITRATION ACT*, R.S.O. 1991, C.17
AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

SECURITY NATIONAL INSURANCE COMPANY

Applicant

- and -

ELITE INSURANCE COMPANY and PEEL MUTUAL INSURANCE COMPANY

Respondents

AWARD

COUNSEL

Ryan Bowes, counsel for the Applicant, Security National Insurance Company (hereinafter referred to as "TD").

Sonya M. Katrycz, counsel for the Respondent, Peel Mutual Insurance Company (hereinafter referred to as "Peel")

Andy Smith and Crystal T. Olorunsogo, counsel for the Respondent, Elite Insurance Company (Aviva) (hereinafter referred to as "Aviva").

BACKGROUND

This matter comes before me pursuant to s. 268 of the *Insurance Act* and Regulation 283/95 thereto as amended, and the *Arbitration Act*, R.S.O. 1991, c. 17. The parties on consent appointed me as their arbitrator to deal with a priority dispute among three automobile insurers arising out of accidents that occurred on May 30, 2023 and June 3, 2023.

On May 30, 2023 the claimant was a passenger in her boyfriend's vehicle. This vehicle was insured by TD.

On June 3, 2023 the same claimant was involved in a pedestrian versus car collision. The car that

struck the claimant was insured by TD.

The claimant applied to TD for statutory accident benefits arising out of both incidents.

TD takes the position that Aviva or Peel are the priority insurers in accordance with s. 268 of the *Insurance Act*. Both Peel and Aviva insured A.P. Both the Peel and Aviva policies were in full force and effect on the date of the accidents. TD takes the position that the claimant was principally dependent for financial support on A.P. on both dates of loss and therefore is a insured person under the Peel and Aviva policies.

Therefore, the issue before me is principal financial dependency. I also note that Aviva and Peel advised that I do not need to address which insurer as between Peel and Aviva should be responding to the two accidents if I find that the claimant was principally dependent on A.P.

PROCEEDINGS

This was a written hearing with oral submissions. The parties filed an Arbitration Agreement dated May of 2026.

Each of the parties filed submissions. There was a Joint Book of Documents and each party filed various Books of Authority relating to the dependency issue.

The following documents form part of the evidence that I reviewed:

1. Signed statement of the claimant dated August 4, 2023;
2. Transcripts of the examination under oath of the claimant dated January 31, 2025;
3. Correspondence between TD and the claimant's counsel dated June 25, 2025;
4. Visa application of the claimant;
5. Bank statements of the claimant from September 2021 to June 2024;
6. PDF entitled "Closed Philippines Bank Account";
7. Transcript of the examination under oath of F.P. (wife of A.P.) dated November 17, 2025;
8. Transcripts of the examination under oath of A.P. dated November 17, 2025;
9. Statistics Canada Low Income Cut-off (LICO) by community and family size; and
10. Statistics Canada Market Basket Measure thresholds by Market Basket Measure region and family size.

No oral evidence was called. All parties relied on the three transcripts submitted.

DECISION

For the reasons that I outline below, I find that the claimant was not principally dependent for financial support on A.P. on either May 30, 2023 or June 3, 2023.

FACTS

The claimant is from the Philippines. She was 39 years old on the date of loss. She had a common-law spouse in the Philippines and two children ages roughly 17 and 16. She has a history of post-secondary education and employment. She secured a diploma in hospitality and tourism from Datamex Computer College. She attended there from 2004 to 2006.

She also has a college diploma in computing/IT from SAT Chamuel Institute of Technology. She attended there from 2006 to 2008.

She also has a college diploma in health sciences from the same institute. She attended there from 2013 to 2015.

In 2020 she worked as a homemaker in United Arab Emirates. It is unclear whether this was employment or whether she was simply a homemaker for her own children at the time.

From August 2021 until July 2022 she reports being in a sales and service occupation involved in online selling of branded apparel bags and watches. The employer was "Tres Marias Fashion Corner and Online Shop".

Commencing in July of 2022 the claimant and her sister opened up a business which is described as a restaurant/food service. It was called BMG Kitchenette. This business was in the Philippines. The claimant describes her main duties as staff management and food preparation.

Turning now to Canada and the involvement of the claimant with A.P. A.P. and his wife had a child with Down syndrome and various other problems. These included some problems with both cancer and kidney issues. They had a PSW that would come in most days and provide care. However, they decided that it would be helpful to try and find a companion for their daughter who could give her companionship doing hobbies or crafts with her and as well some assistance with personal care. They began looking on various websites to see if they could find someone who was interested in coming and providing compassionate care. I understand compassionate care to mean that the individual would not be paid for whatever help they provided but in return they may be provided with free room and board.

Sometime in 2020 or 2021 the claimant decided she was interested in becoming a nanny and

possibly getting involved in the caregiver program between the Philippines and Canada. She posted her information on a website.

While there were not too many details on this point, somehow A.P. and his wife became connected with the claimant through this website and/or through her sister who lived in Kitchener, Ontario. There appears to have been an effort to have the claimant come to Canada under a compassionate care program. This did require sponsorship. The claimant reported that the application was rejected.

The claimant then began her new business with her sister and was doing quite well and she decided that she no longer wanted to try to come to Canada under the nanny program. However, again while unclear, it appears that sometime in 2022 the claimant and A.P. and his family connected again. The claimant says that she decided that she would offer to come and spend a month or so with A.P. and provide care to his daughter. She reported this was because she had had a sister with similar problems and she wanted to help out.

This arrangement was ultimately agreed upon and the claimant came to Canada in October of 2022. Her Government of Canada visa application was produced. The claimant applied for a visitor's visa or super visa. She indicated the reason for this was "to provide care for a loved one who needs medical support". The time period was from October 24, 2022 to November 24, 2022. A.P., his wife and another family member were identified as the individuals to whom she would be providing care. They were also identified as "somebody who would be giving her money for her stay in Canada". There was no information about what money would be provided. There did not appear to be any requirement on the visitor's visa application that she have a specific sponsor and that that sponsor sign off on agreeing to provide a certain level of monetary support.

However, the visa did ask the claimant how much money she had for her stay in Canada and she reported \$7,000. In her examination under oath she also said that she brought \$10,000 in cash. She described this as her savings but that she had it on hand with her. She described it as carry-on money.

Everyone seems to agree that the arrangement between A.P. and the claimant was that she would live with them for free in return for providing this compassionate care to their daughter. All parties agreed that there was no undertaking to pay the claimant. There was no agreement to provide her any money.

There is inconsistent evidence, which I will review in more detail in due course, with respect to the nature of the care provided by the claimant, what her hours of work were, and how many days she resided on a weekly basis with A.P. and his family. There is no inconsistency in that both A.P. and his wife reported that the claimant looked after their daughter well and they were pleased with the care she provided.

The claimant did not return to the Philippines in November of 2022. She did, however, return in January of 2023. It is important to note that A.P. paid for her airfare to Canada in October of

2022 and her airfare to go back to the Philippines in January of 2023.

The claimant returned to Canada in February of 2023. The evidence of A.P. and his wife is that the return was not specifically at their request. Apparently, the claimant advised she wanted to come back for the daughter's birthday. In any event, the previous arrangement resumed with the claimant living with A.P. and his family for free while she provided some care/companionship. This remained the situation up until the time of both accidents.

There is evidence that the claimant did establish a new relationship while she was in Canada despite being involved in a common-law relationship in the Philippines. The claimant says she found out her common-law husband was cheating so she decided to go on a dating app and ended up meeting an individual who lived in the Kitchener area which happened to be where her aunt lived. They did establish a relationship and she would spend some overnights with him. She also reported that when they were together she paid for everything: their dates, groceries, etc.

When the first accident occurred on May 30, 2023 the claimant was a passenger in this boyfriend's vehicle. He was bringing her back from Kitchener to Bolton where the A.P. family resided. It was his vehicle that was insured by TD.

The second accident on June 3, 2023 occurred in Collingwood with the A.P. family including the daughter. It is described as a brief holiday. They had stayed at least one night in a hotel. The A.P. family paid for all the claimant's expenses on this brief holiday. She continued to provide care and companionship to the daughter while in Collingwood.

The accident occurred when they were out for a walk. The daughter was in a wheelchair. There was a crosswalk and everyone was deciding to cross the street. The daughter was managing her wheelchair on her own and coming through the crosswalk when a truck that had been stopped began to move forward. The claimant describes jumping in front of the truck and the daughter's wheelchair to avoid her being hit. The claimant was hit and sustained injuries. This truck was insured by TD.

There was some significant evidence put forward by both parties with respect to various facts and events that occurred after June of 2023. For example, it is reported that the claimant continued to live with the A.P. family and provide some care. The parties gave evidence that circumstances changed in that the claimant began to pay rent of \$500. There was also evidence that in 2024 she secured another job as a nanny/caregiver, moved out of the house and began to earn money independently. Reportedly, she was given refugee status and therefore permitted to work. As this is post-accident evidence, it has little relevance to the claimant's circumstances on the dates of loss. I have not provided any detailed summary of that evidence in light of that.

In terms of income, in addition to the \$17,000 the claimant reports that she came to Canada with, she also says that she was sent \$2,000 to \$3,000 Canadian per month from her business in the Philippines. It would come either by Western Union or some other mode of e-transfer. This money continued to be sent to the claimant monthly from the time she came to Canada in

October of 2022 and was continuing at the time of the accident of June of 2023.

In terms of expenses, the claimant acknowledged and the evidence was consistent from the A.P. family that she did not pay for any expenses in the household. A.P. paid for rent, utilities, groceries, etc. The claimant reported that she paid for her own phone which was approximately \$150 a month. In addition, she sent home \$800 Canadian per month to her family in the Philippines. She also spent quite extensively on shopping and other similar activities. In addition to paying "everything" when she was dating the gentleman from Kitchener. She also reportedly spent approximately \$16,000 of her own money over the eight-month period she was in Canada on shopping, recreational or leisure activities, dining and sightseeing. Occasionally she would buy her own food. Otherwise, her living expenses were covered by the A.P. family in return for the services she was providing for their daughter.

Extracts from the claimant's bank account from the Philippines were produced. Starting in September of 2021 and through to the date of the accident the bank account shows significant cash deposits. These amounts are in Philippine currency but still show regular monthly or more frequent deposits ranging in amounts from 5,000 to 50,000. The bank statements also show significant credit card expenses over the same time. There are Visa charges ranging from 1,000 to 17,000. These are not just monthly; sometimes they are more frequent. However, there always appears to be money in the bank account sufficient to cover these expenses. I also note cash deposits of 71,000 in November of 2021 and 182,000 also in November of 2021.

These large sums do not appear between October of 2022 and June of 2023 but there are still significant deposits with the highest being 50,000 during this time period .

I now turn to a summary of the evidence from the examinations under oath of A.P., his spouse F.P. and the claimant herself.

SUMMARY OF THE EVIDENCE

Statement of the Claimant Dated August 4, 2023

The claimant confirms that she did not file any tax returns with Revenue Canada. She was living in Canada temporarily in order to help A.P. and F.P. care for their disabled daughter. She reported she was not employed and she does not get paid for her assistance with the daughter; rather it is voluntary care.

A.P. takes care of her living expenses. She does not pay rent or groceries. She does not have a licence. She does not drive their vehicles. At the time of the accident she was not listed on an automobile policy. She states, "At the time of the accident I was financially dependent on A. and F.P."

EUO of the Claimant

She reports that her monthly income at the time of the first accident was \$2,000 to \$3,000 Canadian per month. It would depend on what was going on back home with the restaurant. Her family would send the money by MoneyGram or Western Union.

She describes her relationship with A.P.'s family as friends. They had met online.

While in Canada she would send money home to her children, approximately \$800 per month, and look after her phone bills.

She reports that F.P. was working at Walmart while she lived with them in Canada and A.P. worked in a car company.

While living with A.P., the family paid for utilities, rent/mortgage, groceries and items for personal hygiene for the claimant.

She had her own bedroom and her own bathroom in the home.

She confirms that she came to Canada on a visitor's permit as she had previously been denied a compassionate care support application that had been sponsored by the A.P. family. She reports she had been planning to work in Canada and to be a caregiver through the website but by 2022 her business was really successful and she decided she would not go to Canada to work.

Her business had been started in January of 2022 with her sister. After about six months she began earning \$2,000 a month Canadian in that business.

Sometime in 2023 while in Canada she started a relationship with another gentleman. They were still in this relationship at the time of the accident of May 30, 2023. However, they did not live together and he did not give her any money for bills. In fact, she paid for everything.

With respect to her assistance with the daughter, she reports that she would assist for eight hours a day. She would give her a bath, feed her and transfer her from the bed to the wheelchair. She did not have any set hours. If something happened in the middle of the night she would be expected to help.

Generally, she would work on weekends as that is when F.P. worked. Therefore, she could not go out on weekends. If F.P. was home then yes, she could go out and F.P. was home Monday through Friday.

When she came to Canada she had the \$7,000 that was required by the visitor's visa and \$10,000 cash. The \$7,000 was in her bank account. From the time she came to Canada up until the time of the accident she spent approximately \$16,000. This was spent on her boyfriend, shopping, movies, recreational activity, travel, and she also paid a friend's credit card who had paid for

airfare for her.

Her business in the Philippines was a cash business. Therefore, she does not have any invoices and does not claim the business on her taxes. Further, the money received and noted in her bank account showing deposits via interbank fund transfers (IBFT) and other transfers was not in relation to her business. According to an email from her counsel, "she does not recall the purposes of the transfers."

Evidence of F.P.

She confirms that she and her husband were looking for some help in the home. They offered free room, board and food. There was no money involved. They came to know the claimant through the process of trying to find this help.

The claimant had no personal support worker or caregiving responsibility. F.P. would do all the cleaning and all her daughter's personal hygiene. She had PSWs coming in to do her personal care every day in the morning and then F.P. would take over from there. The claimant's job was just being a friend. She would do crafts and be a companion to her daughter.

Although they did not pay her cash, they gave the claimant a place to live, food to eat and bought anything she needed for her personal hygiene as well as coats and clothes.

The claimant would help out with the daughter three days of the week. She would be out of the home four days of the week, sometimes visiting her aunt or cousin in Kitchener.

Sometimes the claimant would ask for money and generally she and her husband would give it. This could range anywhere from \$100, \$200, \$500 or \$600.

On one occasion the claimant asked for help with a situation in the Philippines. There had been a typhoon and somebody was sick and the family helped the claimant out.

F.P. did not know anything about what money the claimant came with. She was told that the claimant had some kind of business in the Philippines. She reports the claimant told her that it was some kind of uncle that owned the business. The business was turned around and he put it into her name so that she could come to Canada.

The claimant came initially in October of 2022 and went back to the Philippines in January of 2023. She came back in February four days before her daughter's birthday but she had not been invited to do so. That was her choice. F.P. reports that she said, "Do whatever you want but there is no money here. You are going to have to pay your own ticket back." Reportedly the claimant did pay for her own ticket.

According to the evidence of this witness it appears that the relationship deteriorated over time. She reports there were arguments between the claimant and her husband. The claimant was

always asking for money and the family did not want to give her any more money.

F.P.'s evidence was that she was not responsible for money and if the claimant got any it would be through her husband.

F.P. reported that she worked one day a week. However, on the one day she goes to work she has PSWs coming in. On the weekend they come in for five hours and during the week they come in for two hours a day for a total of 14 hours. She described the claimant's time with her daughter as like a babysitter or a sister. They would do crafts to keep her mind going. She did music, "that kind of stuff."

Evidence of A.P.

A.P.'s evidence was that the claimant came to Canada in October of 2022 on a visitor's visa. She stayed initially three months and then returned to the Philippines.

She did not receive any compensation for the care that she was providing to his daughter. She was to get free room, board and food in return for being available to relieve his wife or himself while they were out shopping for a couple of hours.

The claimant had no specific hours.

With respect to her source of income A.P. understood that she had a business out of the Philippines and that she had some \$10,000 saved. He did not know a great deal about what money she may or may not be receiving.

She came and went as she pleased. She was only in their home three days a week.

He reports that she was on online dating sites and she did meet one individual. Also, he reports that there were "a lot of people coming to my house at the time. Different guys. Different guys would come to my house and pick her up."

With respect to giving the claimant cash, A.P. reported that she would ask for a couple of hundred dollars and he would give it to her because she was treating his daughter very nicely. He reported that she was very good with his daughter.

Contrary to his wife's evidence, he reported that she did do some PSW work. She would take her to the bathroom and the odd time would feed her.

As with his spouse, there was evidence to suggest that this relationship began to deteriorate sometime after the accident. There were reports of lending more significant sums of money as her business was no longer going in the Philippines due to her injuries. Other people would be knocking on the door suggesting that she owed them money. There was all kinds of mail coming from different visa departments suggesting that she owed money. He stated, "That's when we

see the true colours - like after she left."

RELEVANT LEGISLATION

The key piece of legislation in dealing with priority disputes is s. 268 of the *Insurance Act* which provides a cascading hierarchy of responsibility to pay statutory accident benefits depending on whether you are a named insured, a deemed named insured, an occupant or a pedestrian.

The parties here agree that if the claimant is not principally dependent for financial support on A.P., then priority rests with the vehicle in which she was a passenger in May of 2023 (TD) or the vehicle that struck her in June of 2023 (TD).

The parties also agree that if I find that the claimant was principally dependent for financial support on A.P., that the Aviva and Peel policies rank equally under s. 268 of the *Insurance Act*. The parties have indicated that I do not need to address which of these two policies would respond or deal with the issue of an election.

Section 3(1) of the Statutory Accident Benefits Schedule (Ontario Regulation 34/10) defines an insured person as:

"the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and the dependant of the named insured or of his or her spouse."

Section 3(7)(b) of the same schedule defines a dependant as:

"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."

It is accepted here that the claimant did not own a vehicle. She was not a named insured under an auto policy. She was not a listed driver on any auto policies nor did she have a spouse in Ontario who was covered under an auto policy. Therefore, the claimant would only be an insured under the Peel and Aviva policies if she were found to be a dependent of A.P. or his spouse.

SUBMISSIONS OF THE PARTIES

SUBMISSIONS OF TD

TD submits that the claimant was principally dependent for financial support on A.P. or his spouse at the times of both the accidents of May 2023 and June 2023.

TD submits that the criteria for determining financial dependency has been set out by the Court of Appeal in the seminal case of *Miller v. Safeco* (1984) 48 O.R. (2d) 451 (H.C.J.) affirmed 50 O.R. (2d) 797 (CA).

TD submits that the court in that case confirmed that the legislative intent of the *Insurance Act* was to broaden insurance coverage and to protect consumers. It also held that the following four criteria should be considered in determining financial dependency:

- (a) The amount of dependency;
- (b) The duration of the dependency;
- (c) The financial needs of the claimant; and
- (d) The ability of the claimant to be self-supporting.

With respect to the duration of the dependency, TD submits that the proper time period is from when the claimant arrived in Canada in October of 2022 up until the time of the second accident of June 3, 2023. This is a period of eight months.

With respect to the amount of dependency and the financial needs of the claimant, TD submits that there are three primary methods that are used for determining this.

The first is known as the mathematical approach or the 51% rule. It flowed from the decision of Arbitrator Lee Samis in *Federation Insurance Company of Canada v. Liberty Mutual Insurance Company* (May 7, 1997). Arbitrator Samis in that case noted that one had to look at a person's capacity to earn in order to measure dependency. In order to assess principal dependency, one looks as to whether the claimant has the financial wherewithal to meet more than 51% of their needs or whether someone else is providing more than 51% of their needs.

The second method is known as the statistical approach. Essentially, this is still a mathematical approach but instead of relying on evidence as to what the actual needs of an individual may be (cost of utilities, cost of housing, cost of groceries, entertainment, etc.), which invariably is inaccurate, rather statistical evidence is used. The first approach that had been adopted by arbitrators used the Low Income Cut-off or LICO approach (see *Allstate Insurance Company v. ING*, Arbitrator Vance Cooper, May 1, 2014, affirmed *Allstate v. ING*, 2015 ONSC 4020). This still required an application of the 51% rule but the analysis with respect to the needs or expenses is based on statistical evidence rather than specific-to-the-claimant evidence.

However, TD takes the position that neither of these methods should be used in this case. They rely on what is known as the "big picture" approach.

TD submits that the big picture approach is broader and only includes as one of the factors the mathematical analysis but instead looks much more broadly at the *Miller v. Safeco* criteria to ensure that the actual overall picture of the individual on the date of loss is what is being considered, not just some bright line from a mathematical perspective.

TD references a recent decision from Arbitrator Ryan Murray in *TD Insurance v. Certas Home & Auto Insurance Company* with respect to the use of the big picture approach.

In addition, TD references the decision of Justice Myers in *Allstate Insurance v. ING Insurance and Aviva*, 2015 ONSC 4020 where it was noted that the assessment of principal dependency for financial support should not just turn on a mathematical analysis but requires a broader consideration of the factors approved by the Court of Appeal in *Miller*.

Lastly, TD references the decision of Justice McLeod in *The Economical Insurance Group v. Desjardins Insurance*, 2020 ONSC 1363 where Justice McLeod noted that the big picture approach comes from cases where there is insufficient or non-credible evidence to do the mathematical analysis or the big picture should be used in circumstances where the mathematical analysis is too arbitrary and presents too nuanced a cut-off when looking at the overall circumstances as displayed by the big picture.

In applying this to the present case, TD argues that it should be clear that the claimant was principally dependent for financial support on A.P.

She did not have the right to work in Canada and therefore did not have the capacity to be self-supporting.

She confirmed in her visa application that she would be receiving financial assistance from A.P.

TD submits that the evidence of the claimant with respect to her alleged earnings from her business is inconsistent and arbitrary. At best, TD says it may support that the claimant's income in or around the year prior to the accident was \$16,000 or \$1,333 a month.

TD submits there are no records to support that the claimant had the additional \$10,000 she says when she came to Canada.

TD submits that her financial records (bank records) are deficient and her testimony with respect to that is inconsistent and unreliable.

The claimant relied on A.P. and his family to cover all her needs including food, housing, driving, some clothing and some personal care. She also relied on them to provide her with some cash money.

The only expenses not covered by the family were her shopping expenses, her phone bill and paying back some debts as well as sending money back home to the Philippines. The claimant estimates that at \$16,000 which is also the amount that she suggested she received in income prior to the accident while staying in Canada from her business in the Philippines. TD therefore submits that the claimant spent her entire income on things other than basic necessities and was therefore reliant on A.P.'s family.

TD submits that the claimant's bank account is inconsistent with her evidence with respect to monies and expenses. TD relies on the bank statements' closing balances at various points in time to suggest that the claimant had minimal funds in her bank records. For example, on

May 29, 2023 the claimant's closing balance in her bank account was ₱143.31 pesos (\$3.44 Canadian based on the relevant exchange rates). Similarly, on June 1, 2023, two days before the second accident, her closing balance was ₱46.02 pesos (or \$1.11 Canadian).

SUBMISSIONS OF THE RESPONDENT, PEEL

Peel takes the position that the claimant is not principally dependent for financial support on A.P. and submits that the mathematical test is the appropriate one to use based on statistical analysis. However, Peel also submits that even using the big picture there is overwhelming evidence that the claimant was not dependent on the family she was living with.

Peel also agrees that the *Miller v. Safeco (supra)* four criteria with respect to dependency is the starting point for an analysis of principal financial dependency.

With respect to the duration of the dependency, Peel also suggests the eight-month period prior to the June accident which reflects the time the claimant came to Canada in October of 2022. Peel also points out that during that time period the claimant was actually back in the Philippines for one month.

Peel points to the following evidence to support their position in terms of dependency.

The claimant is educated, having attended college in the Philippines. She and her sister began a restaurant in 2022 which became profitable within six months and the claimant's share was approximately \$2,000 Canadian per month.

The claimant came to Canada on a visitor's visa. This did not require sponsorship. It did require proof of possession of \$7,000 Canadian due to the fact that no sponsor was required.

The claimant, in addition to the \$7,000 in a bank account, also had \$10,000 in cash. While here in Canada, she also received \$2,000 a month from her restaurant in the Philippines.

Between October of 2022 and June of 2023 the claimant's relationship with the A.P. family did not change. She came to Canada to provide compassionate care to the daughter. She was not paid in cash. She was given room and board in exchange for her assistance.

Throughout her time in Canada, the claimant maintained a home in the Philippines.

The evidence suggests that the claimant did not spend seven nights a week with the A.P. family. While the evidence differed on how much, it appears that she would stay anywhere from three to five nights with the family.

The claimant paid for her cell phone, her transportation, her credit card bill, and sent \$800 back to the Philippines every month to her adult children. She also reportedly spent \$16,000 shopping and on leisure and paying a friend who used her credit card to pay for her flights.

She paid for her own flight to come back to Canada in February of 2023.

As of the date of the first accident on May 30, the claimant had \$7,000 in her bank account and a further \$8,000 in cash (see EUO).

Peel submits that regardless of which method is deployed, the facts above establish that the claimant is not principally dependent for financial support on A.P. or his spouse.

Peel submits that while there are some inconsistencies in the evidence, there is no reason not to rely on the claimant's testimony with respect to the earnings from her restaurant, what was in her bank account, and what she had available when she came to Canada.

Peel submits that therefore the mathematical analysis using statistical data is appropriate.

Peel estimates that the claimant had \$33,000 available over the eight months. This would include:

- \$7,000 in a bank account
- \$10,000 in cash
- \$16,000 from the restaurant (\$2,000 per month)

The claimant gave evidence, she may get \$2,000 or \$3,000 a month from the restaurant, and that would have increased her earnings over the eight months to \$41,000.

If one then takes the prorated statistical figures from the LICO for a single individual residing in a town of less than 30,000, the claimant's needs would be assessed at \$13,156.08 (prorating \$18,938 over eight months). If one applied the Market Basket Measure based on the same single individual residing in similar circumstances, again prorated over eight months, it would come to \$16,841.88 (prorating \$25,518 over eight months). Peel submits that the available income of \$33,000 is far more than the 51% of the claimant's statistical expenses over that time.

Peel notes that TD suggested that the claimant had available \$16,000 in income. Peel submits that even if you take the \$16,000 of TD and apply that to the prorated figures noted above, the claimant would still have enough money to cover more than 51% of those statistical expenses.

This does not even take into consideration the fact that the claimant did not live with this family for eight months but rather lived for three months with them, moved out for a month, and then had returned for another four months by the time the first loss occurred.

Peel submits that taking into consideration the facts outlined above, if one applied the big picture approach, the claimant would still not be found to be principally dependent for financial support on this family. She clearly had the ability to be self-supporting considering her available income. She chose to enter into a relationship with the A.P. family whereby she provided services to their

daughter in return for free room and board. This does not speak to any actual need to receive room and board but rather simply the particulars of this arrangement. The claimant did not need to live somewhere for free room and board because of financial need. Rather, it was a choice to provide compassionate care to a family in need.

SUBMISSIONS OF AVIVA

Aviva's submissions in many respects mirror those of Peel. They too accept that the eight-month period prior to the second accident is the appropriate timeframe.

Aviva's position is that the claimant was not principally dependent for financial support on the A.P. family during that time period. They too submit that the mathematical approach relying upon statistical data for the needs of the claimant is the appropriate approach.

Aviva relied on the claimant's "income" from her business with respect to her ability to be self-sufficient and to establish her available income. Allowing that at \$2,000 a month for an eight-month period establishes \$16,000 for the eight-month period. They did not include in the income calculation the \$17,000 available in cash and savings that she had when she came to Canada.

Aviva submits that if you take the LICO threshold for a one-person household in Bolton in 2022, the statistical needs of the claimant would be \$18,227 and in 2023 would be \$18,938. If you apply that over the eight-month period (two months in 2022 and six in 2023), the prorated amount is \$12,506.83. The claimant earned \$16,000 during this period which is well above 50% of the LICO amount.

Aviva submits that you get the same result if you use the MBM. In 2022 the MBM for individuals not in an economic family was \$24,529 and in 2023 it was \$25,518. If you prorate that over the relevant eight-month period that comes to \$16,847.17 and with an income of \$16,000, the claimant would be able to meet 95% of her basic statistical needs.

As to the use of the big picture approach, Aviva's position is that it should not be used here as this is not a case where there is insufficient evidence to apply the 51% rule.

Aviva submits that there is clear, reliable and quantifiable information with respect to the statistical needs and available financial resources and therefore using the mathematical method provides the most accurate reflection of the claimant's financial dependence.

However, if one still accepts the big picture, the result would be the same. Aviva submits the evidence shows that the claimant had sufficient income, resources and earning capacity to support herself and therefore would not be principally financially dependent on the A.P. family on the date of the accident.

Aviva submits that the factors in *Miller* must be applied using logic and common sense. Applying that, Aviva submits that the evidence here supports that the claimant came to Canada to provide

caregiving without any financial support but in return was given room and board. Aviva submits that it makes no sense to suggest that the claimant left her spouse and children to come to Canada to care for another family without any form of compensation, even if that compensation was not financial in nature.

The claimant provided a measurable value to the A.P. household. She had access to independent income and savings. Her relationship with the A.P. family was characterized by the reciprocal exchange of services and accommodation and is therefore not indicative of dependency under the *Miller* factors or under the big picture.

Aviva therefore submits that TD is the priority insurer.

DECISION AND ANALYSIS

Having carefully considered the facts and the arguments of the parties, I conclude that I agree with Peel and Aviva that in this particular case the statistical analysis is the most appropriate approach and properly reflects the circumstances of the claimant at the time of the accident. However, I also find that even if I used the "big picture" approach as suggested by TD, that the result would be the same. The claimant was not principally dependent for financial support on A.P. on either date of loss.

I have carefully reviewed the four criteria set out by the Court of Appeal in *Miller v. Safeco (supra)* that all parties submit is to be relied upon in determining dependency.

I accept that it is not appropriate, when looking at these four criteria, to simply rely on the mathematical side of dependency. It is one criterion to be examined and I must ensure that the mathematical analysis conducted is based on reasonably clear evidence with respect to expenses/needs and financial resources and that the resulting analysis fairly reflects the claimant's circumstances on the date of loss.

The first criterion from *Miller v. Safeco* is to determine the appropriate time period in the circumstances of the case. The time period is not to be just a snapshot but rather be the time period that fairly reflects all the claimant's circumstances as of the date of loss.

In this case, all the parties agree that the appropriate timeframe is from October of 2022 when the claimant arrived in Canada until June 3, 2023 which is the date of the second accident. I agree with counsel and I choose that eight-month time period as the appropriate timeframe with respect to the duration of the dependency. I am also aware that during one of those months the claimant was in the Philippines.

The next question to look at is, what were the financial or other needs of the claimant during this time period? There was no evidence led with respect to the expenses that A.P. incurred in his household. We do not know whether he rented the home, paid a mortgage, what he paid for utilities, etc. What we do know is that the claimant lived in A.P.'s home and did not pay anything

for room and board or groceries and some personal items. In return for this, she provided compassionate care services to A.P.'s daughter.

With respect to what the claimant actually spent her money on during this time period, there is evidence to suggest that she spent a considerable amount of money on her boyfriend, her cell phone, shopping, leisure, as well as sending \$800 back to the Philippines every month to her adult children. In my view, little of what the claimant spent could be described as evidence of her "needs". Rather, this falls more in the category of her standard of living which the Court of Appeal in *Miller v. Safeco* clearly indicated was not an appropriate consideration.

Therefore, I feel comfortable that this is an appropriate case to look at a statistical analysis. TD did not provide any specific statistics as they argued that this was a case in which I should look at a big picture rather than a mathematical approach. Both Peel and Aviva relied on information from Statistics Canada with respect to the "low income cut-off statistics" and the "market basket measure statistics". Both Peel and Aviva provided statistics for a town of less than 30,000 which is appropriate for the town that the claimant was living in over the eight months (Bolton). I find that the way in which Aviva calculated the relevant statistical needs of the claimant is probably the most accurate.

Aviva took the LICO and MBM thresholds for the year 2022 and prorated that over a two-month period and then took the same statistical needs for 2023 and prorated that over a six-month period in 2023. This accurately reflects the statistical needs for the eight-month period that is to be calculated as it spans two different years. Therefore, I find that the statistical needs of the claimant using the MBM would be \$16,847.17. As I have noted in previous decisions, I find the MBM more accurately reflects the statistical needs that an arbitrator is to consider in dependency cases.

The next criterion to be reviewed to determine this issue is the amount of dependency and the ability of the claimant to be self-supporting.

While there was some inconsistent evidence in this case, particularly surrounding what the claimant did in A.P.'s home for his daughter, what was expected of her, what her hours were and how long she lived there, the evidence appeared to be quite consistent with respect to the monies available to the claimant during the eight-month period.

Her visa clearly indicated that she had \$7,000 in a bank account. The visa notes that the appropriate documentation was provided to support that.

There is no evidence contrary to the claimant's that she also had \$10,000 in cash. Considering the claimant's bank account, I am satisfied that she had that type of money available to her to bring to Canada. I also find it consistent that someone coming to this country in her circumstances would come with cash support in addition to the amount that she was required to have in a bank account to satisfy the government that she had available funds when she came as a visitor.

I am also satisfied that the claimant received somewhere between \$2,000 and \$3,000 Canadian a month from a business in the Philippines. Both A.P. and his spouse made reference to this. There was no evidence to suggest to the contrary. While the bank records were not particularly helpful, they did not in my view suggest that the claimant's evidence on this point should not be accepted. In fact TD, in calculating the base income that the claimant may have available to her while here in Canada, accepted the \$16,000. TD noted that while they suggested the evidence on this point was inconsistent and arbitrary, they submitted that "at best" her income would be \$1,333 a month or a total of \$16,000 over the relevant time period.

There was no evidence presented that suggested the claimant did not in fact have a business in the Philippines or that she did not in fact receive any income while in Canada. In the circumstances, I accept the claimant's evidence that she was receiving at the very least \$2,000 a month from her business in the Philippines and that that continued from the time she came to Canada through to the date of the second accident.

Peel, in their approach, looked at two scenarios to determine whether the claimant had sufficient funds to cover 51% of her statistical needs. One could either take the \$16,000 in income from her business or you could take the \$16,000 and combine it with the \$17,000 she had brought with her from the Philippines and had in her bank account. In one case that would give her \$16,000 and in the other it would give her \$33,000. In either case, it would be more than sufficient to cover her statistical needs based on the market basket measure of \$16,847.17 for the eight-month period .

Aviva relied on the income only from the Philippines at the \$16,000 and submitted that even just using that income she would be able to meet 95% of her statistical needs.

TD submitted that if you took the \$16,000 figure she would not be able to meet 51% of her needs. I disagree with TD and I accept Peel and Aviva's submissions on this point.

I conclude that the claimant was receiving income of at least \$16,000 in the eight months prior to the motor vehicle accident and that alone would be sufficient to cover her statistical needs whether one employs the LICO or the MBM.

With respect to the issue of the big picture versus mathematical analysis, the Applicant relied particularly on the decision of Arbitrator Ryan Murray in *TD v. Certas (supra)*. TD submitted that this case stands for the proposition that the big picture analysis is now to be preferred over the mathematical analysis in dependency cases. TD submitted, and I quote:

"More recently, courts and arbitrators have shifted towards a more nuanced big picture approach. This is with the understanding that neither the mathematical nor the LICO approach is to be applied mechanically without using a big picture analysis to the facts of the case and the dependency issue."

TD relies on Arbitrator Murray's comments in *TD v. Certas* where he states:

"Courts and arbitrators have shifted away from the 51% rule and the LICO approach to a more general big picture approach. Using the general big picture approach recent decision makers have been looking at the overall situation of an alleged dependant, rather than adhering strictly to either of the above-referenced approaches."

If TD is right and Arbitrator Murray is suggesting that the big picture should be used now in most cases rather than the mathematical approach, then I must disagree with Arbitrator Murray. It is my view that the big picture approach should be used where there is insufficient or non-credible evidence to apply the mathematical analysis (see *The Economical Insurance Group v. Desjardins Insurance*, 2020 ONSC 1363, Justice MacLeod).

While no doubt in considering a mathematical analysis one must still look at all the criteria in *Miller v. Safeco*, I do not see the recent case law as excluding the mathematical approach and arbitrators who conduct priority disputes looking primarily at the big picture approach. It is my view that the big picture approach is appropriate where there is simply not enough evidence to have a reliable determination of a claimant's income or where there are some unique facts that suggest that the simple mathematical approach does not result in fairly reflecting an individual's circumstances on the date of loss (see *The City of Ottawa v. Commonwell Mutual Insurance Company*, Arbitrator Samworth, June 3, 2026, and *Definity Insurance Company v. Aviva General Insurance Company*, Arbitrator Samworth, February 14, 2026).

In this case, I have found that there is clear, reliable and quantifiable information with respect to the claimant's available financial resources and their statistical needs, and that that approach is consistent with the claimant's actual circumstances on the date of loss.

As noted earlier, even if I were to accept TD's submissions that the big picture approach should be generally used, and particularly used in these circumstances, I would still conclude that the facts point to the claimant not being principally dependent for financial support on A.P. Some of the relevant facts that I have considered with respect to the big picture include the following:

1. The claimant received free room and board as a result of an agreement whereby she would provide compassionate care to A.P.'s daughter. There was no evidence that the claimant needed free room and board.
2. The claimant had an independent source of income from the Philippines and came to Canada with \$17,000 on a one-month visitor's visa.
3. She had sufficient funds available to spend up to \$16,000 on non-necessary expenses such as shopping, recreational activities and dates with her boyfriend. These monies would have otherwise been available to cover her needs had the A.P. family not been providing them for free as part of their agreement.

4. The claimant sent \$800 Canadian home per month to her family. Inherently, if one can send money home to provide support to one's family, that would be counterintuitive to financial dependency.

Therefore, whether I look at a mathematical analysis based on statistical needs or a big picture, I conclude that the evidence overwhelmingly supports that the claimant was not principally dependent for financial support on A.P. on either date of loss.

AWARD

Security National Insurance Company is the insurer responsible for the payment of statutory accident benefits to the claimant arising out of the motor vehicle accidents of May 30, 2023 and June 3, 2023.

COSTS

Peel and Aviva have been entirely successful in this matter. Accordingly, I find that Security/TD is to pay the arbitrator's account in accordance with the Arbitration Agreement.

In addition, I find that Security/TD is responsible for paying any legal costs and disbursements with respect to this arbitration incurred by Aviva and Peel. Those costs would be payable on a partial indemnity scale.

If the parties cannot agree on the quantum of costs, they can contact me to schedule a further pre-hearing.

DATED THIS 15th day of June, 2026 at Toronto.



Arbitrator Philippa G. Samworth
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