IN THE MATTER OF the *Insurance Act*, R.S.O. 1990 c. I.8 s. 268 (as amended) and Regulation 283/95 (as amended)

IN THE MATTER OF the Arbitration Act 1991, S.O. 1991 c. 17 (as amended)

IN THE MATTER OF an arbitration

BETWEEN

C0-OPERATORS INSURANCE COMPANY

Applicant

and

THE DOMINION OF CANADA INSURANCE COMPANY

Respondent

DECISION

COUNSEL

Daniel Strigberger for the Applicant, Co-operators Insurance Company (hereinafter referred to as Co-op).

Tim Crljenica, counsel for the Respondent, The Dominion of Canada General Company (hereinafter called Dominion).

BACKGROUND

This matter comes before me pursuant to section 268 of the *Insurance Act* and more specifically regulation 283/95 and *Arbitration Act 1991*. The parties on consent have chosen me as their Arbitrator to determine a dispute between the two insurers with respect to which insurer stands in priority to pay statutory accident benefits to a claimant arising out of an accident that occurred on August 7, 2022.

Co-operators insures the claimant's brother and also insures the claimant's father. It is the claimant's brother's policy that is the focus on this priority dispute. The claimant submitted his OCF-1 to Co-operators. The Co-operators policy would respond if the claimant was found to be principally dependent for financial support on his brother.

Dominion insured the vehicle that was involved in the accident. Co-operators claims that Dominion stands in priority to the Co-operators policy pursuant to the provisions of section 268 of the *Insurance Act*.

PROCEEDINGS

This matter proceeded by way of witness submissions but the parties were also given an opportunity to make oral submissions. However no oral evidence was called. Relevant documents that were produced in the joint document brief include:

1. Certificate of Insurance for the claimant's father and brother from Co-operators;
2. Application for Accident Benefits dated September 2, 2022;
3. Statutory Declaration of the claimant dated November 9, 2022;
4. Statutory Declaration of the claimant dated December 22, 2022;
5. Transcripts of the Examination Under Oath of the claimant dated April 10, 2023;
6. Transcripts of the Examination Under Oath of the claimant's father dated May 7, 2023;
7. Transcripts of the Examination Under Oath of the claimant's Co-operators insured brother dated May 8, 2023;
8. Transcript of the Examination Under Oath of the claimant's other brother dated March 13, 2025;
9. Various TD bank statements of the claimant.
10. The parties also submitted a signed Arbitration Agreement and various Books of Authority.

ISSUE

Both parties identify the issue for my determination is whether or not the claimant is principally dependent for financial support on his Co-operator insured brother on the date of loss.

FACTS

The claimant was born on April 27, 2004 in Syria making him 18 years on the date of loss. He immigrated to Canada with his parents and two brothers in 2016.

At the time of the accident he lived with this parents and two other brother's in Stoney Creek. His parents were unemployed receiving welfare payments and did not have any savings.

The claimant had graduated from high school about 6 weeks prior to the accident but the evidence suggests he was planning to return to school in September of 2022 to upgrade some courses with a plan to go to college in January of 2023.

The claimant had never worked prior to the accident and never earned any income. However he had a plan to work at a summer job in August of 2022 but never started the job as the accident occurred before the start date.

The family home was rented. The rent was $2,500 per month. The claimant did not contribute anything towards the rent or any other of the home expenses. As will be outlined further those expenses were covered by the claimant's father and his two brothers.

The claimant's bank statement from TD showed that he had $1.54 in his savings account on the date of loss.

As there were some inconsistencies in the evidence as between the various family members I set out a summary of the key evidence drawn from various sources in the joint Book of Documents.

EUO of the Claimant

The claimant reported that he was going to go to Hill Park School in September to get better marks in math and English with a view to applying to college the next January.

However, he did take steps to get a job in the summertime. He said he was getting a job in sanitation. He states, "I didn't get a job - well, I basically got accepted." He says he was due to start this job three or four days after the accident.

He also gave evidence that "After September, I would have stopped, or like, tried to work only weekends."

The home in which he was living at the time of the accident with his family was rented. He did not contribute any money towards rent. His evidence suggests he felt he was under some pressure to get a job as "They were asking me for money." He said that just like both his brothers, his parents expected him to pay now he was over 18. The claimant advised that both his brothers paid rent.

In the year of the accident, the claimant says he would get money from both of his brothers. They would pay for his food, "pay for my almost -- almost everything." When he wanted to go out, he would ask them for money. They also paid his phone bill. However, he said his dad would also pay for things.

His evidence was that the parents would get the groceries for the house but his brothers would pay for them. His parents were not working. With respect to the jobs that his brothers did, the claimant's evidence is extremely vague. He suggests his Co-operators-insured brother was doing Uber and Skip the Dishes and the other brother was maybe an electrician or at a restaurant. He seemed to be quite unclear as to who paid for what within the family. He thought maybe each of his brothers was contributing $1,200 towards the rent, but he was not sure.

His parents and his brothers paid for his clothes, his shoes, and if he wanted to go out with friends. His evidence was that his brothers would help him and he would get money from his parents, but "like rarely".

He also gave evidence that he felt his brothers were pressuring him to get work, telling him that they were paying the bills and paying the rent and working and that he was just taking money from them and he should get a job. As between the two brothers as to who gave the claimant more money, his evidence was that the non-Co-operators-insured brother used to give him more.

Evidence of Claimant's Father, Examination Under Oath, May 7, 2024

The father gave evidence that the rent at the home was paid by himself and his two sons. He stated that they do not have an exact share of who pays what. In any one month, whoever has more money will pay. There is no specific division. The rent was $2,400.00 per month.

His evidence was that the same was true with respect to the heating bill, the electricity bill, the water bill, and the cable bill. Heating costs were $130.00 - $140.00 per month. Electricity around $100.00 per month, water approximately $150.00 per month, cable and internet around $100.00 to $115.00 per month.

With respect to the claimant, his father reported that he had an offer to work in a restaurant and was supposed to start working the next day. He also says the claimant had $200 from ODSP through his mother as the claimant was the mother's primary caregiver.

The father seemed to be unclear as to what he and his wife were receiving before the accident as opposed to after the accident. He says his wife was receiving ODSP and before that they had Ontario Works, but they were not sure when that change came about, whether it was pre- or post-accident.

When they went on ODSP, his evidence was that they began to receive $2,550. $200 of this went to the claimant and the remainder was split 50/50 between the husband and wife.

The father also reported that he had a car and insurance with Co-operators and that jointly his wife, the claimant, and himself would pay for the insurance. He would also pay for the gasoline of approximately $200 per month. The insurance on the car was somewhere between $240 and $250.

The father was not able to help with respect to the earnings of either of his two sons.

The father himself last worked in 2018.

With respect to the household groceries, his evidence was that sometimes he would shop and sometimes his two sons would shop. Based on the needs of the household, whoever was available would go and get the groceries and pay for them. They did not pay each other back.

The father's evidence was that the Co-operators-insured brother would pay for the claimant's clothing expenses and sometimes one or other of them would pay for his school supplies. Overall, his evidence was quite vague as to who paid for what. There were no documents produced by the father with respect to his expenses, or source of income.

With respect to the claimant's plans for the fall, the father believed that the plan was to return to school and finish a subject that he had not completed. As to employment, he believes he was looking for a job but had little information about the nature of the job.

EUO of Co-operators-insured, May 8, 2024

This brother was born on January 1, 1990 and was 32 years old at the date of loss. His evidence was that he had two jobs at the time of the accident. The first was with a restaurant, Vida la Pita. He earned $16 an hour, eight hours a day, roughly five days a week. He also worked for Amazon earning $17 an hour working anywhere from five to ten hours a day on days he was not working at the restaurant.

With respect to the rent of the home, the evidence of this brother was that they would all pay rent. He says approximately "me and my father were paying the rent". His estimate is maybe he would pay 50%, sometimes 25%. It would depend on what income had been received at the time.

With respect to the other brother, he also contributed to the rent and would pay maybe $100 to $200 from time to time, but not every month. This was because his brother was saving as he was planning to get married.

The Co-operators-insured brother's evidence was that he or his father, for the most part, paid the majority of the rent before August 2022.

This brother also reported that he had been working at that restaurant since 2016. He left that job in 2018, went back in 2019, and then had to leave again in 2020 due to some problems with his back but returned to the restaurant in 2020. In 2018 he worked for a company called Maple Leaf.

He was unable to give any evidence with respect to the amount that he would contribute to the various bills of the family such as utilities. However, his evidence was that he would contribute varying amounts each month and would not necessarily contribute every month.

With respect to his other brother, he may have contributed to things such as the internet or utility but not every time due to the plan for him to save for his marriage.

The evidence of this brother was that he was not married and did not get married until 2022.

With respect to the groceries, these would be paid by him and his father. If his father was shopping, he would give his father his bank card to go and pay the groceries.

With respect to the claimant, he believed he was not working at the time of the accident but had been planning to work with a friend in a factory that makes pasta/macaroni.

He agreed that the claimant did receive some monies from ODSP because he was the primary caregiver of the mother.

With respect to money he may give the claimant, he reported that sometimes he would give him $50, $60, or $100. This would not be every month. It was based on his need.

Similarly, his other brother would also give the claimant money, maybe $40 or $50 a month.

This gentleman agreed that the family was expecting the claimant to work so that he could contribute to the family expenses. However, he believed that in in September he was supposed to go back to school to finish a course so he could graduate from high school.

This brother owned a Dodge Charger which had been a gift from his other brother. When he received the vehicle there was still money owing on it so he had to pay installments. He also paid for the gas and the insurance.

Evidence of Non-Insured Brother, EUO, March 13, 2025

He was born on May 23, 1994 and was nearly 29.

This brother's evidence was that at the time of the accident he was working full-time with a construction company called Ridge Fire. The company was bankrupt at the time of the EUO. He had been working there about four to five months at the time of the accident. He was paid $1,100 weekly. He believes he was the highest income earner in the family. However, his evidence was that he was not "like supporting much". He says half of the amount that he earned went to supporting the family and the other half went to preparing for his wedding.

His evidence suggests that his father and brother would try to cover the expenses first but if they could not cover the rent, they would ask him to pay the rest. The same was true with respect to the groceries. Sometimes he would not be asked to contribute at all. His evidence was that sometimes he would give the claimant money.

With respect to the claimant, he believed he was that he was planning to work at a restaurant and maybe had done it for a couple of days before the accident. He was looking for a job in construction and his plan was to contribute to the household, particularly as this brother was intending to leave and start his own family. His evidence was he would not be able to support both his family and his wife once he was married.

With respect to groceries, his evidence was that his older brother and father would mostly pay for them.

<u>Bank statements</u>

Bank statements were produced from the claimant's TD Canada Trust account that showed his savings account on the date of the accident had a balance of $1.54.

RELEVANT STATUTORY PROVISION

The key statutory provision with respect to this priority dispute is s. 3(7)(b) of the Statutory Accident Benefits Schedule which provides a definition of "dependency". That section is set out 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 spouse."

Section 268 of the *Insurance Act* is also relevant as it sets out the statutory provision with respect to the determination of priority. However, both parties agree with respect to the interpretation and application of that provision of the *Insurance Act*.

POSITION OF THE PARTIES

<u>Position of Co-operators</u>

It is Co-operators' position that the evidence establishes that the claimant was not principally dependent for financial support on his father or his brother at the time of the accident. Co-operators submits that neither of them were providing him with more financial support than any other source.

Co-operators notes that the claimant was receiving financial support from several sources. In order for there to be recourse against Co-operators as an "insured person" depends on whether the Co-operators-insured brother provided the greatest amount of financial support. Co-operators submits that the evidence does not support that.

Both parties agree that the seminal case with respect to determination of dependency is the Court of Appeal decision in *Miller v. Safeco*, 1984 CanLII 2019 ONSC (affirmed 1985 CanLII 2022, Ontario Court of Appeal).

Both parties agree that that case sets down four criteria to be reviewed in determining dependency:

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

With respect to the duration of the dependency, Co-operators submits that the proper timeframe to look at is 1.5 to at most four to five months pre-accident. Co-operators' position is that a 12-month period is too long. The reason for this, is because this claimant was in transition and the time period that Co-operators has put forward accurately reflects this transition phase.

Co-operators submits that during that time period he had finished school, he had started looking for work, had secured a job and was going to start working a day or so after the accident. During that time period he was receiving the same amount of financial support from all his sources and there had been no change in that.

Co-operators also submits in light of the fact the claimant was in a transition phase and in light of the fact that there was very little in terms of solid documentary evidence with respect to financial needs and income of his family, that "it makes sense to look at the big picture when assessing this matter".

With respect to the amount of dependency, Co-operators points to the fact that the sources of the claimant's financial support was multiple. Co-operators notes that the information on this issue is lacking and mostly unreliable. For example, Co-operators notes that the claimant's father reported that his son was receiving $260 a month in ODSP, yet his bank records show nominal balances, some deposits from unknown sources, and there was little, if anything, in his bank account as of the date of loss.

Co-operators submits that I should look at the Market Basket Measure for a single person living in Hamilton at the relevant time period. For the year 2020 the MBM was $22,472 and if you allowed for inflation in 2022, it would be $25,043. In order to meet 50% of his monthly needs, the claimant would need at least $2,087 per month. Co-operators concedes that the $260 a month the claimant received in ODSP would not result in him being independent. In fact, Co-operators does not submit that this claimant was financially independent at the time of the accident.

Co-operators' position is that he required help but that the majority of any financial assistance he received did not come from the Co-operators-insured brother but came largely from the other brother, with smaller amounts coming from the father.

Co-operators advances two arguments with respect to dependency. Firstly, Co-operators makes reference to what has become known as the "plurality" approach. This approach finds its origin in Arbitrator Scott Densem's decision in *Economical Mutual Insurance Company v. Aviva Canada Inc.* [2013] Carswell ON 19349 (January 2013). In that case, the claimant was receiving financial support from both her father and mother. The financial support received from her parents individually was greater than her own financial contribution to her own needs. Despite this, none of the parties contributed more than 51% of the claimant's financial needs.

Arbitrator Densem concluded that where the claimant is chiefly, mainly, or for the most part dependent on one independent source of support more than on any other single independent source of support, then principal dependency exists. In Arbitrator Densem's case, he concluded that where the claimant was only able to contribute 20% to her own needs, her father was contributing 45% and her mother 35%, that the claimant was principally dependent for financial support on her father as he was the largest contributor when compared to the mother and the claimant herself.

This approach was also adopted in the decision of *North Waterloo Farmers Mutual v. The Guarantee Company of North America*, 2019 Carswell ON 1494 (Arbitrator Bialkowski).

Arbitrator Bialkowski agreed with Arbitrator Densem that in certain cases where there are multiple sources of financial support, that this "plurality" approach was appropriate. Arbitrator Bialkowski set out the formula to be used by the arbitrator when there are multiple parties providing financial support:

1. Determine the amount of the claimant's dependency by examining a sufficient length of time in the claimant's life leading up to the accident that provides a consistent and reliable picture of the amount and duration of the claimant's financial needs.

2. Determine what the needs of the claimant are, distinguishing between needs and enhancement to the claimant's lifestyle.

3. Determine whether the claimant is providing for or reasonably has the capacity to provide for 51% of the claimant's financial needs. If yes, there can be no principal dependency, but if not the arbitrator must then go on to determine whether there is an independent source of support that is greater than any other independent source of support and also greater than the value of the claimant's self-supporting resources. If so, then the claimant is principally dependent upon that source.

In the case before Arbitrator Bialkowski, the parties had stipulated that the claimant was only able to contribute 20% to her own financial needs. With respect to her parents, her father provided a 45% contribution which was the largest, and therefore she was found to be principally dependent for financial support on her father. As an aside, Arbitrator Bialkowski also provided the same analysis to the claimant's dependency for care.

In this case, Co-operators submits that as between the claimant's father and his Co-operators-insured brother, the evidentiary record is devoid of proof that one of them provided more financial support to the claimant than he was receiving from himself or his other brother. The younger (non-Co-operators-insured) brother's evidence was that he was contributing approximately $2,000 a month to household expenses. Co-operators submits that this was at least equal to or more than what the other brother contributed.

Co-operators submits that the evidence suggests that this family pooled their resources and that there is no evidence as to which one contributed more to the pool and specifically that the Co-operators-insured brother did not contribute more to the pool than the other brother. Therefore, the claim of dependency must fail and there is no method of quantifying for the purposes of the plurality approach.

Co-operators says that one should look at the big picture. Co-operators suggests that the evidence shows that by the summer of 2022 the household's financial priorities and expectations were changing. The claimant had finished school. He was under considerable pressure from his parents and his brothers to start working and to contribute to the family's finances. His need to find work and contribute was even more important due to the fact that one of his brothers was planning to get married and both he and his income would leave the family household.

Therefore, any reliance that the claimant may have had on his father or brothers was diminishing and his role in the family was shifting to an independent adult expected to support himself and help with the family expenses.

This then leads into Co-operators' argument that the claimant had the ability to support himself with reference to the fourth criterion from *Miller v. Safeco* (*supra*).

Co-operators suggests that when looking at capacity one must look at formal and informal education, any natural or acquired talents, physical and mental abilities or disabilities, the availability of employment and the supply and demand for labour. See *Gore Mutual Insurance Company v. Co-operators General Insurance Company*, 2008 CanLII 46914 Ontario SC.

In applying those factors to this case, Co-operators submits that while the claimant may not have worked before the accident, he had the ability to work. He had a high school education. There is no evidence of any disabilities. In fact the claimant had secured a job, at least for the summer, with the consideration that he would work part-time thereafter.

Taking all the above into consideration, Co-operators seeks a finding that the claimant was not principally dependent for financial support on his Co-operators-insured brother.

<u>Position of Dominion</u>

Dominion's position is that on any approach that one takes in analyzing the issue of dependency, that there is evidence to support that the claimant was principally dependent for financial support on his Co-operators-insured brother.

Dominion agrees with Co-operators that the starting point is *Miller v. Safeco* (*supra*).

However Dominion does not agree with Co-operators with respect to the time period that one assesses dependency and submits that 12 months is the appropriate timeframe. Within the 12 months prior to the accident, the claimant had turned 18 years of age, never had any income, never worked, and was in high school for most of the 12 months other than a few weeks spent on the summer break. Dominion submits that this is not a case of transition. While the claimant may have been planning on working for a summer job, it was only for a few weeks in August of 2022, and it was the claimant's intention to return to high school in the fall to upgrade his math and English, and then was going to plan on starting college. He was not transitioning out of school to work. However, Dominion also submits that even if you take the time period suggested by Co-operators of 1.5 to five months pre-accident, the result remains the same.

Both Co-operators and Dominion agree that the claimant was not financially independent and was fully dependent on his family for finances. Where they disagree is what the evidence establishes in terms of which of the family members provided the "principal" support to the claimant.

Dominion submits that in the 12 months leading up to the accident the father and the two brothers were not contributing to the claimant's financial needs in equal amounts. Dominion points to the fact that the three of them did not have equivalent financial resources and therefore could not have contributed equally.

The father had been unemployed during the 12 months and had no savings. His only financial resource was his share of his wife's joint payments from Ontario Works which was $750 per month. Out of that, we know he paid for his car, roughly $240 to $250 per month as well as gas estimated at $200 per month. If you deduct those from his share of the Ontario Works, he is only left with $300 or $350 per month to contribute to the remaining expenses of the family and specifically to the expenses of the claimant.

Dominion then points to the evidence of the non-Co-operators-insured brother. While he earned approximately $4,000 a month, 50% of that was put away for his wedding leaving approximately $2,000 to contribute to the family. This brother had only been employed on a full-time basis for two to three months prior to the accident and previously had been employed part-time in a restaurant. He did not have the same history of employment as the older brother did.

In addition, Dominion points to this brother's evidence at page 229, question 25 where he states that “he did not much support the family”. While the transcript does not specifically read that way, possibly due to an interpreter, Dominion submits that that appears to be the intent of the brother's remark. Dominion also points to the evidence from the EUOs where it is reported that the younger brother would only contribute $100 to $200 a month for rent. He himself says in his EUO that he would pay only if the others could not cover the rent and then he would be asked. Dominion also points to the evidence that the father would use the Co-operators-insured's bank card to buy groceries and evidence that was given by this brother that the father and the other brother provided more support than he did.

Dominion, in its oral submissions, provided some rough calculations with respect to what the Co-operators-insured brother was earning from his two jobs. Dominion took the hourly rate from the two employers, allowed a reasonable timeframe with respect to hours worked and days worked, and came up with approximately $3,800 per month. If these calculations were done based on the actual evidence of this brother, which would suggest he was working on some occasions seven days a week, then that could increase to $4,200 per month. This brother was not putting away 50% to save for a wedding and the evidence, Dominion submits, suggests that all his money was going to support the family.

Dominion agrees with Co-operators that this case is appropriate to apply the plurality approach. In oral submissions, Dominion suggested that, based on the evidence, a reasonable analysis could be made as to percentage of income each of the three providers to this family contributed. The suggestion was that the father had $750, the non-Co-operators-insured brother $2,200, and the Co-operators-insured brother $3,580. This totalled $6,530 per month going into the household (and arguably available to provide support to the claimant). If you then applied percentages, the father would be contributing 10%, the middle brother 35%, and the Co-operators-insured brother 55%.

In support of this position, Dominion also noted that the evidence of the father and the two brothers confirmed that the Co-operators-insured brother was paying the most towards rent, utilities, and groceries, as well as paid the most for the claimant's clothing needs and gave him the most spending cash.

Dominion submits that while there are no tax returns, documentary evidence or helpful bank records, that there is sufficient consistency among the evidence of the various family members to support Dominion's position that the claimant was principally dependent for financial support on the Co-operators-insured brother.

Dominion also agrees that this is a case where an arbitrator should apply the "big picture" approach. Using the big picture, Dominion submits that the best available evidence supports that the claimant was principally dependent on his oldest Co-operators-insured brother. Dominion notes the following:

1. This brother was the only family member working full-time for the 12 months leading up

to the accident.

2. He contributed his full financial earnings to the household needs.

3. He primarily paid for the groceries.

Dominion therefore seeks an order that the claimant be found to be an insured person under his brother's Co-operators policy and that the arbitration be dismissed.

DECISION AND ANALYSIS

I agree with Dominion that the available evidence supports that the Co-operators-insured brother was providing the largest amount of financial support to his younger brother, the claimant.

I agree with counsel that the starting point in any dependency analysis is the decision of the Court of Appeal in *Miller v. Safeco* (*supra*). I have looked at those four criteria carefully and also carefully reviewed each party's submissions with respect to these four criteria.

As to the appropriate time period, I agree with Dominion that it does not make a great deal of difference to my conclusion as to whether you pick 12 months, 1.5 months or six months. I do not find that this is a case of an individual who was clearly in transition at the time of the accident. However, I have taken a six-month time period for the purposes of my analysis.

In the six months prior to the accident the claimant had graduated from high school. However, the evidence seems to be quite clear that it was his plan to return to school in the fall to either complete a course or upgrade a course with a view to furthering his education in January of the next year. The fact that he was not yet enrolled in school does not mean that he was not going to be going to school. The claimant himself said that it was not time to enroll yet and he was trying to enjoy his summer. All the family members gave evidence that it was the intention of the claimant to go back to school.

While the claimant had a job that was due to start anywhere from one day to two weeks after the accident, the evidence suggests to me that this was very much a summer job. While the claimant suggested that he may have worked part-time once back at school, there was no other family member that gave that evidence. While this young man may have been under some pressure to get a job and start contributing to the family income, there also seemed to be a recognition among the family members that he should properly complete his schooling and training. There was no evidence to suggest that this family felt that the claimant should not return to school and should seek full-time employment instead.

Even if I found that the claimant was going to be working and earning money when he went to school, I do not find that that is relevant for determining financial dependency on the date of loss.

On the date of loss, he was not employed. He had never been employed. He had never earned any income. He had never contributed any monies to the family. There is no doubt that he was not financially independent on the date of loss.

With respect to the *Miller v. Safeco* criteria of earning capacity, I find there is absolutely no evidence before me that would suggest that this young man had the earning capacity to provide for more than 51% of his needs or even provide more for his needs than any other family member was already providing. As noted, he had never been employed. He has no employment history. There was no evidence as to what he was going to be earning at his summer job. There was no evidence about what jobs he might be able to get had he looked for a job earlier. While he may have had some earning capacity, I am not satisfied on the evidence that I can find as to what that earning capacity may have been and apply any formal analysis of that in the context of a priority dependency case.

I also agree with both counsel that this is a case where the big picture approach is appropriate. The big picture approach is often recommended when there is insufficient evidence, particularly documentary evidence, to establish clear information about needs or income. In taking the big picture in this case, I note that this is a family with multiple contributors to the family finances. If there was a bill to be paid, whoever had the money would pay it and if they did not have sufficient money, other family members would contribute. I agree with Dominion that the best way of looking at dependency in this big picture is to look at what money was available to the various contributors to the family finances. If one member of the family had minimal monies to contribute, then it flows that he would be a small player in the overall family finances and would not therefore be a principal provider of support for the claimant. There is no doubt in my mind that the father had minimal funds. He had not worked since 2018. He was on either Ontario Works or ODSP, receiving at most $750 per month to contribute to rent of $2,400 per month, plus clothing expenses, grocery expenses, and utilities for a family of three. Even if I look at what he needed to contribute to pay for the claimant alone, $750 would be insufficient, particularly when you deduct from that the monies the father was paying for his own car insurance and gas.

While it does appear that the middle brother was earning the most, it is also clear, in my view that he was not contributing the most in terms of income to the family. He was setting aside 50% of his monthly earnings for his wedding/marriage. I agree with Dominion that a review of all the relevant family members' evidence supports the position that the middle brother was contributing less to the family than his older brother. He seems to have been the last person to be called on to help with the rent and/or other expenses.

By way of contrast, the Co-operators-insured brother was contributing all his income to the family and based on my calculations from this brother's evidence as to his earnings from two jobs, that monthly income was in the range of $4,000 per month. (Restaurant job $16/hr x 8 hrs x 5 days/week = $6,400/week; Amazon job $17/hr x 10 hrs/day x 2 days/week = $340 per week. This totals $980 per week which equals $4,246 per month but reduced to $4,000 per month on the argument that the claimant may not have worked the number of hours and number of days I have noted for Amazon).

In terms of the plurality approach, I find there is not sufficient evidence for me to be able to specifically set out percentages of contribution as between the family members. However, both counsel in oral submissions confirmed that they did not argue that the plurality approach required an arbitrator to set out percentages. In this case, I find that the evidence supports that the largest contributor to the family expenses, and specifically the largest contributor to the claimant's needs, was the Co-operators-insured brother.

I pause here to note that I agree with both Arbitrator Densem and Arbitrator Bialkowski with respect to the approaches they set out in their respective decisions dealing with multiple family members. To the extent that I was able in this case, I have followed Arbitrator Bialkowski's most helpful step-by-step approach that he suggests arbitrators should use in this case. Using these cases, that approach has led me to my conclusion in terms of dependency.

I therefore find that the claimant was principally dependent for financial support on the Co-operators-insured brother and therefore Co-operators is the priority insurer responsible for paying statutory accident benefits to the claimant as a result of the accident of August 7, 2022.

COSTS

According to the Arbitration Agreement, the costs of the arbitration shall be borne by the unsuccessful party and that the successful party should be awarded partial indemnity costs of the arbitration to be agreed upon by the parties or assessed by the arbitrator.

As Dominion was entirely successful in this matter, I find that the costs of the arbitrator, including any fees, expenses, or disbursements, including disbursements relating to the examination under oath and the oral submissions, will be paid by Co-operators.

I also award partial indemnity costs to Dominion payable by Co-operators. If the parties cannot agree on costs, then they are to contact me and we will schedule a further pre-hearing.

DATED THIS 25th day of August, 2025 at Toronto.

____

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP
Barristers and Solicitors

800 – 150 York Street

TORONTO ON M5H 3S5