

IN THE MATTER of the *Insurance Act*, R.S.O. 1990 c. I.8 s, as amended

AND IN THE MATTER of the *Arbitration Act*, 1991, S.O. 1991 c.17 as amended

AND IN THE MATTER of an Arbitration

BETWEEN

**DEFINITY INSURANCE COMPANY
(FORMERLY ECONOMICAL MUTUAL INSURANCE COMPANY)**

Applicant

and

AVIVA GENERAL INSURANCE COMPANY

Respondent

AWARD

COUNSEL

Domenic Nicassio counsel for the Applicant, Definity Insurance Company (hereinafter called "Definity").

Cezary Paluch counsel for the Respondent, Aviva General Insurance Company (hereinafter called "Aviva").

INTRODUCTION

This matter comes before me pursuant to the *Arbitration Act* 1991 and section 268 of the *Insurance Act* and Regulation 283/95 as amended to arbitrate a dispute between the above-noted insurers with respect to a priority matter arising out of a motor vehicle accident that occurred on October 30 2022.

On October 30, 2022 the claimant was a passenger in a vehicle insured by Definity when it was involved in a motor vehicle accident. The claimant applied to Definity for statutory accident benefits.

Aviva insures an individual that I will refer to as "the friend". Definity takes the position that the claimant was principally dependent for financial support on the friend and accordingly pursuant to section 268 of the *Insurance Act* Aviva would be the priority insurer.

Therefore, the issue in dispute is: "Was the claimant principally dependent for financial support on the friend at the time of the accident?"

PROCEEDINGS

The parties chose me on consent to act as the arbitrator in this matter.

We had a number of prehearings.

The matter was set down for a written hearing and the parties filed written submissions and various books of authority as well as a joint book of documents. There was also an opportunity for oral submissions.

The Joint Book of Documents contained the following relevant materials:

1. Application for Accident Benefits (OCF-1), November 16, 2022;
2. Bank statements from BMO of the claimant, August to October, 2022;
3. Statutory declaration of the claimant, December 19, 2022;
4. Transcript of the EUO of the claimant, May 11, 2023;
5. Transcript of the EUO of the friend, July 8, 2024;
6. Accounting Report, Davis Martindale, August 25, 2025;
7. Accounting Report, Williams Meaden & Moore, October 22, 2025;
8. Accounting Rebuttal Report, Davis-Martindale, December 3, 2025;
9. Accounting Rebuttal Report, Williams Meaden & Moore, November 24, 2025;
10. Toronto GTA January Rent Report, 2022;
11. Kijiji advertisement for a room for rent in Brampton, November 27, 2025;
12. CMHC Rental Market Survey 2022 results;
13. ODSP proof of assistance summary July 31, 2023;
14. Refugee Protection Document of the claimant, August 2, 2023; and
15. Arbitration Agreement signed by the parties November 6, 2025.

There were also various emails and other documents with respect to some preliminary issues raised by Aviva with respect to some concerns relating to the evidence and the proceedings.

PRELIMINARY ISSUES RAISED BY AVIVA

Aviva raised some concern with respect to the manner in which Definity's expert reports had been completed and the failure to provide a Form 53. Aviva also submitted that the expert report of Definity's accountant did not qualify as an expert as it did not comply with some formalities relating to how accounting reports should be completed. There were also issues raised with respect to adverse inferences flowing from the failure to produce various documents.

These preliminary issues were responded to both in writing and dealt with during oral submissions. I concluded that I would admit the expert's report and there was no issue with the manner in which it was completed. Counsel for Definity filed a Form 53 as well as CVs supporting the status of his experts. In addition, I was satisfied that there was no concern with the production process. Counsel for Aviva acknowledged that no detailed written reasons were

required with respect to these findings and that I could focus on the key issue in dispute.

AWARD

Having reviewed all of the materials the case law and the submissions of the parties I conclude that the claimant was not principally dependent for financial support on his friend on the date of loss of October 30, 2022. Accordingly, Definity is the priority insurer responsible for paying statutory accident benefits.

SUMMARY OF FACTS

There was no dispute by and large with respect to the facts of this case. The summary I provide below is drawn from the documentary evidence put before me as there was no oral evidence.

The claimant was approximately 41 years old on the date of loss. He was originally from Sri Lanka and came to Canada in July of 2022. It appears that he entered Canada via the United States crossing into Montreal and then taking an Uber/taxi from Montreal to Toronto.

The claimant was a refugee. He came to Canada with no money. He had no family here in Toronto. From his arrival in Toronto until the date of the accident he rented a room from the friend. The friend was also from Sri Lanka and he and the claimant had known each other while at school in Sri Lanka.

The friend lived in a home with his wife and children. He rented the basement out to other tenants. He provided the claimant with a room with a joining bathroom and access to the kitchen and laundry facilities.

The claimant paid rent to the friend in the amount of \$400 per month. This included all the utilities.

Shortly after arriving in Toronto, the claimant secured a lawyer to process his refugee application. Not long thereafter he began to receive Ontario Works in the amount of \$733 per month.

The rent charged to the family who rented the basement from the friend was \$850 a month.

The claimant was looking for work up until the time of the accident but there is no evidence that he had any interviews or secured any employment. The parties agree his sole source of income was Ontario Works for \$733 per month.

The friend did assist the claimant financially in a couple of other ways. He reported that he paid for the following:

1. \$350 for the taxi/rideshare fare to bring the claimant from Montreal airport to Toronto;
2. A \$50 deposit for each of two bank accounts that the claimant opened in Canada;

3. The cost of the claimant's first haircut; and
4. Approximately \$500.00 worth of clothing was given to the claimant.

About one month prior to the accident the claimant enrolled in a cell phone plan at \$125 per month. This was included in the friend's cell phone bill but the evidence was clear that the claimant would pay that back in full each month.

With respect to transportation the claimant did not use a bus or taxis. He either walked or would get help from other friends with respect to transportation. The friend would also occasionally drive him when they were going to the same destination.

The claimant had no entertainment expenses as he could not afford any entertainment. He would eat out, eat with friends and occasionally eat with the friend and his family.

Set out below are the highlights of the evidence that I rely on to reach my conclusion:

1. **Banking statement from the BMO:** This statement confirms the initial deposit of \$50 in order to open the bank account. The direct deposits from Ontario Works can be seen at \$733 per month. In terms of monies going out there are a couple of entries for modest expenses for Tim Horton's. There are two withdrawals for \$700, one for \$440. There is also an online payment of \$170 to Enbridge.
2. **Application for Accident Benefits, OCF-1:** This is signed by the claimant on November 16, 2022. It confirms that he is unemployed on the date of loss.
3. **Statutory Declaration:** The claimant completed a statutory declaration for Definity on December 19, 2022. This indicates that "the friend" resides at the claimant's home. The claimant does not know his date of birth. He notes that the friend's wife and three children also live there, but he does not recall their names either. He does not have a health card or social insurance. He describes his status as "refugee status".

He confirms that he has not worked since he has arrived in Canada. He receives Ontario Works at \$733 a month.

He pays rent of \$400 a month which includes utilities (electricity, water, cable, internet). In terms of a monthly budget for groceries he indicates he has \$300 a month for food and household items.

With respect to public transportation he notes that his friend paid the cost of the transportation. This seems to be in relation to the trip from Montreal. He also notes that his friend gave him clothes and that he did not buy any. His friends had paid for his haircut. With respect to entertainment he says he had no money to spend on entertainment.

4. **EUO of the Claimant May 11, 2023:** He confirms that when he arrived at Toronto he moved in with a friend that he knew from back home. His friend owned the property. There were three bedrooms upstairs with two bathrooms. He paid rent which included the utilities. The rent was \$400 a month.

Other than the \$733 received from Ontario Works he did not receive any other government assistance. He received no financial assistance from friends or family members back in Sri Lanka. He did not receive any income or financial assistance from anyone in Canada.

With respect to groceries once he paid the rent, he would manage his groceries on the remaining balance he would have from his Ontario Works.

With respect to transportation he did not have a car. He did not take public transportation. Generally, he would go out with his friends to a nearby park. There were no other monthly expenses that he had.

When asked about who assisted him financially, he responded, "I have no other assistance in Canada. No one did anything for me, I paid rent and managed the rest of my money and that was it."

With respect to entertainment he said he hardly ever goes out but if his friend goes out, he would take him, but most of the time he is at home on the internet or on his phone.

He confirms that the friend did pay once for a haircut and also gave him some clothing. He did not sponsor him to come over.

With respect to groceries and food in the house where he was living, the claimant's evidence was that he would pay for his own groceries and "Once in a while I would have a meal with them."

He also reportedly cleaned his own room, but sometimes would help them with the outdoor work.

5. **EUO of the Friend, July 8, 2024:** The friend knew the claimant from back home when they were a young age. He was a classmate and they had studied together.

When the claimant came to Canada he came to live with the friend because he did not know anybody else and he wanted to stay with the friend temporarily until he found a job and another place.

He agreed to pay rent of \$400 a month. He lived in the upper level of the house and had his own bedroom and bathroom.

In terms of time together they did not spend a lot of time together. The friend was working as a short-haul truck driver and was working most days. Sometimes he would help the claimant and drive him to his lawyers or take him shopping or take him to the temple "nothing more than that". If he did take him shopping whatever the claimant would buy he would pay for himself.

He thinks the claimant was looking for a job because he had applied for a work permit through his lawyer. He did not believe the claimant received any financial support from anyone while he was living with the friend. While living in the house the claimant only paid \$400. He did not contribute anything else. However, if they were cooking and he was there they would give him food. He used the washing machine.

The friend's evidence was that the claimant would not cook and "When my wife cook for us if he's around he will eat with us".

The claimant was responsible for cleaning his own room but not responsible for cleaning any of the rest of the house. While he helped him with some clothes and getting his hair cut he does not recall giving any other money to the claimant once he started receiving Ontario Works.

With respect to a cell phone the claimant did get one and when the bill came in which was approximately \$125 for his share he would pay the friend.

While the claimant was in their house he did not buy any groceries for him.

Sometimes the claimant would buy something at Walmart like cookies or something to keep in his room but generally did not buy groceries because he does not cook and/or he eats out.

With respect to how often he would eat with the family the friend's evidence was "I am not sure, but on average, at least twice a day he will eat at home. Once or twice".

With respect to the basement there was a family from India living in the basement as tenants. They paid \$850 a month which also included utilities.

6. **Accounting Reports:**

(a) Davis Martindale, August 25, 2025

Davis Martindale was retained by Definity to provide an opinion with respect to dependency. The approach was to rely on the statistical approach rather than a mathematical approach.

A period of 3.7 months prior to the accident was used. This was July 10, 2022 to October 30, 2022 which represented the time period that the claimant had moved to Canada and was

receiving Ontario Works.

The available financial source for the claimant was only Ontario Works at \$733 per month. From July 10, 2022 to October 20, 2022 the total amount received from Ontario Works (supported by the bank statements) was \$2,817.

From a statistical perspective these accountants relied on the 2022 LICO statistics for a population of 500,000 inhabitants and the Market Basket Measure statistics for 2020 with population centres of 500,000 people or more.

Under the LICO statistics to live independently the accountants determined the claimant would incur costs of \$24,347. This was for the average of a one-person home in a 500,000 population community. This was then recalculated for 3.7 months which came to \$7,507.

The accountants concluded that considering the claimant's available income of \$2,817 he was only able to cover 37.5% of his statistical LICO needs.

A similar analysis was done with respect to the Market Basket Measure. For an individual not in an economic family the cost of the basic needs was \$25,153. For 3.7 months that amount would be \$7,884 and the claimant's available income would only cover 35.7% of that amount.

Therefore, as the claimant did not have sufficient income to pay for at least 50% of his statistical expenses using either measure he was therefore principally dependent on the friend.

(b) Williams Meaden & Moore Report, dated October 22, 2025

This firm was retained by Aviva to determine the issue of dependency.

Their instructions requested that they also look at the statistical analysis but as well apply the mathematical approach. These accountants used the same time period as Davis Martindale of July 10, 2022 to October 30, 2022.

It is not necessary to go through their calculations under the MBM or LICO as they agreed with Davis Martindale that the claimant was not financially independent as his estimated monthly income was less than 51% of his total monthly expenditures based on the statistical numbers. However, the accountants did not go further in their report and make a determination that the claimant was therefore principally dependent for financial support on the friend. Only that he was not financially independent.

However, under the mathematical approach they concluded that the claimant was not financially dependent on the friend as his estimated monthly net income was greater than 51% of his total monthly expenditures.

The following are some of the key assumptions made by the accountants in completing their

mathematical analysis:

1. The claimant's share of the friend's residential expenses was one-sixth based on the number of occupants in the residence. They did not include the individuals in the basement who rented out the basement unit.
2. As no or insufficient information was provided with respect to the expense of the household they relied on Statistics Canada Table 11-10 "Household spending Canada regions and provinces for Ontario average expenditure per household 2021." They took that statistic and estimated the 2022 value by applying a CPP increase and used those statistics to establish the following:
 - Cost of accommodation.
 - Utilities.
 - Internet.
 - Food.
 - Transportation (vehicle)
 - Personal care.
 - Miscellaneous.

They assumed that the statistics relied on above were for a four-person household and prorated it to one person to account for the claimant's share.

3. For cost of accommodation statistical expense they excluded one-third as that might pertain to the basement level rented out to another family.
4. They also made various assumptions with respect to the cost of transportation such as the cost of a PRESTO card for public transportation in Brampton, the average cost of a haircut and they also assumed that the claimant's food costs were borne entirely by the friend's family.

Using two scenarios, one of which includes legal fees and one of which excludes potential legal fees for a claim for refugee status the accountants determined that the total monthly expenses of the claimant on the mathematical analysis ranged from \$994.72 to \$1,439.64. When compared to his net monthly income he had sufficient income to cover 77% of his expenses under the first scenario and 53% under the second scenario and therefore he was not principally dependent for financial support on his friend.

(c) Responding Report, Davis Martindale, November 3, 2025

Definity asks Davis Martindale to comment on the Aviva accounting report.

The following were the key concerns with the report:

1. The Aviva accountant used statistics for the household expense analysis and that was not a reasonable approach.
2. The accountants inconsistently divided the expenses between a factor of three and six to arrive at the cost per individual. In one case they split the accommodation costs among six but the utility expenses were split among four.
3. The accountants acknowledged that they were not provided with sufficient documentation to support a household expense analysis and therefore had to resort to statistics.

The accountants summarized their conclusions as follows:

“When evidence of an individual’s income and/or expenses is unreliable or unclear it becomes difficult to assess financial dependency using the mathematical approach. Overall, we find the mathematical approach used in the WWM report to be unreliable as sufficient information has not been provided to support the household expenses incurred.”

(d) Rebuttal Report, Williams Meaden & Moore, November 24, 2025

The Aviva accountants noted that Davis Martindale still had not provided any mathematical approach calculations in either of their reports.

In response to the criticism with respect to the inconsistent use of three to six members in the household the accountants reworked the calculations using revised percentages for the mathematical approach based on the census family structure of 2.9 people. Under this approach using scenario A where no legal fees were involved the claimant was able to provide for 65% of his needs but if you assumed there was legal fees then he was only able to provide 47% of his needs. However, based on the evidence they also looked at the contribution of the friend to the claimant’s needs and concluded that under scenario A the friend contributed 38% and under scenario B, only 28%. Therefore, while it may be that the claimant was not able, under one scenario, to contribute more than 51% of his needs, these accountants concluded that the friend was not contributing more than 50% of those needs. They therefore concluded:

“Based on the conflicting results above, we remain unable to definitively conclude whether the claimant was financially independent or not. However it appears that he was not dependent on the friend during the period of analysis as the friend’s contribution to the claimant was below his own.”

7. **Toronto Rent Dupont/Brampton:** Also submitted into evidence was the Toronto Rent Report from 2022 for the Greater Toronto Area. For Brampton the average rent for a one-bedroom apartment was \$1,621. In addition was an advertisement from Kijiji advertising rooms in the Mississauga Peel region.

This advertisement which appears to be from November 27, 2025 offered a private room

available in a furnished home for \$500. The description is set out below:

“I’m offering a private room in a beautifully furnished house perfect for anyone looking for a comfortable and convenient living space. The house features a fully equipped kitchen, a cozy living room and a well-maintained bathroom. Shared laundry facilities close proximity to public transport. The rent of \$500 includes utilities and it’s fully furnished.”

POSITION OF THE PARTIES

(a) Submissions of Definity

Definity relies on the reports from Davis Martindale with respect to their position that the claimant was principally dependent for financial support on the friend.

Definity notes that the claimant was a refugee and had only arrived three months prior to the accident. He came with no funds whatsoever. His only source of income was \$733 per month from Ontario Works.

Definity submits that the only support that the claimant received was from the friend. The friend paid all the household bills. He paid the mortgage, property tax and utilities. He provided the claimant with shelter, food, as well as the occasional financial assistance with transportation and clothing, as well as the cost of a haircut.

Definity submits that this is not a case where the mathematical approach is appropriate. Rather, the statistical approach used by Davis Martindale is more reflective of the actual circumstances. The mathematical approach suffers from a lack of information. In addition, Definity points to the fact that even Aviva’s accountants indicated that they lacked information to do a pure mathematical approach and had to rely on statistical evidence with respect to expenses.

Definity also points to the fact that Aviva’s own report accepts that on a statistical analysis the claimant was not independent. With their responding report, Aviva’s accountants outlined circumstances when the claimant, even on the mathematical approach, is not independent. Definity translates the conclusions of Aviva’s accountants that if the claimant is not independent, then he must be principally dependent for financial support on the friend as he is the only individual providing the claimant with shelter, food and assistance covering expenses.

Definity makes reference to a number of arbitration decisions where arbitrators have consistently espoused a preference for the use of the statistical approach which is consistent with the requirement that priority disputes be determined in an efficient and expedient manner (see, for example *Wawanesa Mutual Insurance Company v. State Farm Insurance Company* (2018), Arbitrator Samis; *Unifund Assurance Company v. Desjardins Insurance Company* (2019), Arbitrator Bialkowski; *Certas Home & Auto Insurance Company v. Aviva Insurance Company of*

Canada (2019), Arbitrator Novick; and *Co-operators General Insurance Company v. Definity Insurance Company* (2024), Arbitrator Samworth).

Definity points to my comments in *Co-operators v. Definity (supra)* where I stated, “Many arbitrators have commented that the mathematical approach is fraught with inaccuracies due to the lack of information in many cases.”

Definity also points to the decision of Justice Myers in *Allstate Insurance Company of Canada v. ING Insurance Company of Canada* 2015 ONSC 4020. In that case, Justice Myers stated:

“As this case so amply demonstrates, the assessment of needs based on approximations of household expenses is always going to be both inaccurate and expensive. ... Using government statistics has the benefit of simplicity, low-cost, proportionality, and it was accepted in *Miller*.”

Definity submits that even if one considers the mathematical approach, that the Aviva accounting report has numerous flaws. I set out the flaws noted by Definity below:

1. They did not have the TD Bank statements (the claimant had two bank accounts);
2. They did not have details of any legal fees that the claimant had incurred;
3. The details of the monthly household expenses at the friend’s home were not provided including mortgage costs, insurance cost, property taxes, household supplies, internet and phone costs and food;
4. They did not have details of 2022 monthly automobile expenses of the friend including insurance, gas and repairs;
5. The Aviva accountants conceded, “It is not known what effect the above-noted information may have had on our calculations if it had been made available to us.”;
6. Aviva’s accountants rely on statistical measures to estimate the claimant’s needs yet do not clarify which statistical measures with respect to expenses should not be used. There is an internal inconsistency;
7. There were inconsistent assumptions with respect to dividing up the share of residence expenses;
8. There was no supporting documentation for any of the estimated expenses.

Definity submits that the proper timeframe is 3.7 months: July 10, 2022 to October 30, 2022 as that represents the time period when the claimant moved to Canada, was receiving Ontario

Works and was living with the friend. During that time period, the total amount the claimant received in terms of income from Ontario Works was \$2,817.

In using either the Market Basket Measure or the LICO statistics, the claimant would either have been able to cover 37.5% of his statistical needs (LICO) or 35.7% of his statistical needs (MBM).

It therefore follows, as he was residing with the friend who was providing him with shelter, food and other necessities, that the claimant must be principally dependent on the friend and accordingly Aviva is the priority insurer under s. 268 of the *Insurance Act*.

(b) Submissions of Aviva

Despite the fact that Aviva's own Accounting Report relied on the same time period as the Definity Accounting Report (3.7 months prior to the accident), Aviva, both in their written and oral submissions, argued that that period was too short and that a 12-month period was more appropriate. However, Aviva also argued that whether you use the 12-month period or the 3.7-month period, that the claimant would still not be considered to be principally dependent on the friend.

Aviva submits that, as set out by the Court of Appeal in *Oxford Mutual Insurance Company v. Co-operators General Insurance Company*, 2006 CanLII 37956, that it is inappropriate to choose a "snapshot" approach to determine dependency. The timeframe chosen must be one that provides a fair picture of the relationship at the time of the accident. Only by looking at the relationship as a whole over a reasonable time period can an arbitrator determine the nature of the relationship at the time of the accident. Aviva submits that a short timeframe can create the risk of error.

Aviva argues that in this case the true nature of the relationship between the claimant and the friend must be assessed on a holistic basis for 9 to 12 months leading up to the accident. This covers a time period when the claimant was working as a seaman and a fisherman. Aviva submits this is not a case of a typical young person in transition where generally shorter timeframes apply. The claimant was 41 years old with a wife and children and a house in Sri Lanka.

Aviva also submits that one should consider the fact that when the claimant came to Canada, he was in a transitional phase in his life and was planning to move out of the friend's home and obtain employment.

Aviva submits that therefore the claimant residing in the friend's home was only a temporary arrangement, noting the comments by the friend himself during the EUO where he stated, "He wanted to stay with me temporarily until he found a job and found another place."

Aviva submits that during 9 or 12 months while the claimant was either in the United States or in Sri Lanka before coming to Canada, that the friend provided no support whatsoever.

With respect to the question of dependency, Aviva submits that there is a two-stage test that must be considered:

1. Is the claimant capable of meeting at least 50% of his or her needs from his or her financial earnings? If the answer is yes, the enquiry ends.
2. If the answer is no, then the enquiry continues and the second question is whether the claimant's resources are less than 50% of the cost of meeting his or her needs, and if so then one looks further to determine dependency on others.

Aviva submits that neither Definity nor its accountants followed this required two-stage test.

Aviva submits that the Definity accountant did conclude that the claimant did not have sufficient income to pay for at least 50% of his expenses he would incur if he had to live independently. Aviva submits that once the accountants came to that conclusion, they then had to look at what the friend's contribution to the claimant was.

Aviva submits that Definity's Accounting Report did not do that. Aviva submits that Definity's report does not reference or consider what amounts the friend contributed to the claimant and what those percentages were. There is no calculation or consideration of whatever amounts the friend provided to the claimant and whether that met the 51% threshold.

Aviva submits that the friend provided \$975 over a three-month period (\$500 estimate for clothing, \$25 estimate for haircut, \$350 taxi fare from Montreal, \$100 cash deposit for opening two bank accounts), and that does not meet the required 51%.

Aviva relies on its report, which did do the required calculation with respect to the second stage of the test and determined that while the claimant may not be financially independent in all their scenarios, that it did not then follow that he was principally dependent for financial support on the friend.

According to Aviva's report using the mathematical approach under scenario A (with legal fees), the friend's contribution towards the claimant's needs was 38% with legal expenses. Under scenario B, without any legal expenses, the contribution is 28%. Therefore, it does not meet the 51% requirement and even if under their mathematical scenario or the statistical scenario that the claimant is not financially independent, that does not then translate that he is principally dependent for financial support on the friend.

Aviva submits that the claimant in fact had the ability to meet 89% of his needs if one looks at the exact income and expenses that have been proven.

The income of the claimant is not in dispute and he has \$733 per month. The claimant's expenses included:

1. Rent (inclusive of utilities)	\$400
2. Cell phone	\$125
3. Groceries	<u>\$300</u>
Total	\$825

The claimant was able to pay 89% of those needs. Therefore, the friend could not have been supporting the claimant for 51% or more of his needs.

Therefore, Aviva asked me to find that the claimant is not a dependant of the friend as the friend did not provide more than the dependant did to provide for his own expenses. The friend did not provide more than 51% of the friend's needs.

As to the various approaches to use: statistical, mathematical or big picture, Aviva seems to fall at the end of the day on either the big picture or the mathematical approach.

Aviva submits that this is a unique case. Aviva submits that I should rely on the *Miller* criteria (*Miller v. Safeco* (1994) 48 O.R. (2d) 451 affirmed 1985 (CanLII 2022 Ontario Court of Appeal)).

The *Miller* criteria include the amount of dependency, duration of dependency, the financial needs of the claimant and the ability of the claimant to be self-supporting. Aviva submits I should use these criteria to develop the "big picture" of the claimant's unique circumstances.

Aviva submits that the big picture approach should be used in cases where there is either insufficient evidence to apply the 51% approach or where to use that approach appears to be too arbitrary and too nuanced a cut-off when viewed against the overall circumstances of the "big picture" (see *Economical Insurance Group v. Desjardins Insurance*, 2020 ONSC 1363 (Justice MacLeod)).

Aviva also points to the decision of Arbitrator Novick in *The Personal Insurance Company v. RBC General Insurance Company* (2018). This was a refugee case when a claimant had come to Canada for approximately two years prior to the accident. Arbitrator Novick applied a 12-month time frame and held that the big picture approach was more appropriate. She noted the claimant's income was very modest and relied heavily on government assistance yet was found not to be financially dependent.

Aviva also relied on my decision in *Co-operators Insurance Company v. Dominion of Canada Insurance Company* (2025), Arbitrator Samworth. In that case, a young individual had come from Syria. At the time of the accident, he was living with his parents and brothers. I held that there was insufficient documentary evidence to establish clear information about needs or income, and accordingly I chose to use the big picture approach.

However, as I understand Aviva's submissions, whether one uses the statistical approach, mathematical approach, or big picture approach, the second part of the independency test is

never met as the evidence does not establish that even with a lack of financial dependency, the claimant did not rely on the friend to provide for more than 51% of his needs.

(c) Definity's Reply

With respect to the timeframe, Definity noted that Aviva's own expert expressly adopted the same 3.7-month window that the Definity expert did. Definity noted that Aviva, for the first time in their responding submissions, challenged the use of that time period.

Definity submitted that that larger time window of 9 to 12 months simply does not reflect the reality of the relationship at the time of the accident. Definity submits that the timeframe does not have to have an element of permanency nor should it allow speculation. Therefore, it is irrelevant whether the claimant's stay at the friend's house was temporary. What is relevant is that he had been there for 3.7 months at the time of the accident and that is the timeframe that should be chosen. Definity submits that speculations about future arrangements are not permitted.

With respect to the time period that reflects on Sri Lanka and/or the United States, Definity submits that there had been a material change in the claimant's circumstances on July 10, 2022 when he came to Canada. Where such a material change in circumstances occurs, it creates a new normal and in those circumstances a shorter timeframe can be appropriate.

In addition, Definity notes that there is no access to any financial information about the claimant's finances in the United States or in Sri Lanka. Further, while Aviva had an opportunity to explore the claimant's 12-month financial history during the EUO of both the claimant and the friend, that information was not secured. In fact, the evidence was that the claimant arrived in Canada without money.

Definity submits that since the claimant's arrival in Canada, the friend's address was his sole address. Definity submits the claimant was fully integrated into the household. He occupied a private bedroom with an attached bathroom on the upper level of the home and resided there along with the insured's family. His only source of housing and social support was that provided by the friend's household.

Definity also provided reply submissions on Aviva's reliance on a holistic or a big picture approach.

Definity submitted that to do so would be legally unsound. Definity submits that the case law supports that such an approach should only be reserved for cases involving sparse or unreliable financial data or extraordinary circumstances. Definity submits that that is not the case here. Rather, both parties have produced forensic accounting reports, detailed financial records including Ontario Works payment, rent information and household support.

Definity submits that therefore resorting to the big picture is unnecessary and would undermine consistency and predictability. While Definity agrees that one should rely on the four factors set out in *Miller v. Safeco (supra)*, that test is to be applied along with the statistical analysis in order to determine dependency.

DECISION AND ANALYSIS

The key to determining dependency in the context of a priority dispute starts with the Statutory Accident Benefits Schedule and the definition of dependency. I set that definition out below:

"For the purposes of this regulation, a person is a dependent of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse."

Both Definity and Aviva agree that the lead case that should assist me in my decision is that of the Court of Appeal in *Miller v. Safeco (supra)*. Those criteria were set out earlier when reviewing Aviva's submissions.

By way of preliminary comments, I agree with Aviva that this is a unique case. The circumstances of the claimant are quite different than any dependency case I have reviewed as an arbitrator or seen in other priority disputes.

Aviva argues that these unique facts reflect a scenario where the claimant was not dependent on the friend. Rather, the friend was simply an individual from whom he rented a room and the support provided by the friend forms part of the claimant's expenses.

Definity argues that this is a more traditional dependency case where the claimant moves in with a family, becomes part of their household, and has the benefit of that household to provide him with shelter, food, accommodation and other expenses.

Aviva however points to one significant difference from the more traditional cases, and that is that the claimant was not a relative or a family member of the household where he had his room. While they may have been friends in the past, it was the distant past and I should look at this as more of an arm's length transaction.

Depending upon which scenario I accept, Definity's integrated household scenario, or the arm's length transaction between two individuals for shelter, provides the backdrop for my analysis and decision.

For reasons that I will outline, it is my conclusion that at the time of the accident the relationship between the claimant and the friend was more along the lines described by Aviva. This was not an individual integrated into a household for support while he was in transition, but rather an arm's length transaction between two individuals, one providing room and board and the other paying for room and board.

However, the first stage in the analysis of dependency is for me to determine what the appropriate time period is in the circumstances of this case. Both sets of accountants chose the timeframe from July 10, 2022 to October 30, 2022. This is a timeframe of 3.7 months running from when the claimant arrived in Canada, moved in with the friend, started receiving Ontario Works, and up until the time of the motor vehicle accident.

I believe that this timeframe of 3.7 months is the most accurate time period to reflect the status of the relationship between the claimant and the friend at the time of the motor vehicle accident. I agree with Definity that the claimant had transitioned from living in Sri Lanka, staying in the United States, and had made a move to Canada. I also agree with Definity that I need not make any determination as to whether the claimant's stay in Toronto or renting the room from the friend was permanent or temporary. For those 3.7 months, the claimant lived in Toronto, rented a room from the friend, and those were the circumstances that best reflect the relationship between these parties on the date of loss.

I therefore find that a 9-month or 12-month period does not serve as an accurate reflection of the relationship at the time of the accident, and I choose 3.7 months for my analysis.

What then are the claimant's financial circumstances? The evidence is clear he came to Canada with no money. He had no access to any funds in Canada through any family members. His only source of income was Ontario Works. Ontario Works paid him \$733 per month. I agree with the calculations of Davis Martindale that when you look at the claimant's bank statements from BMO (which show the Ontario Works deposits), the total the claimant received during the 3.7 months was \$2,817.

I now turn to the needs of the claimant. In this case, I find that the mathematical approach combined with a big picture overview is more appropriate than the statistical analysis.

The statistical analysis simply does not fit with this particular claimant. He is not an individual where one could argue that the statistics for the market basket measure are a remotely accurate reflection of what his needs were during the relevant time period. The claimant had no entertainment expenses. He did not own or drive a car. He rarely used public transit. His living expenses, including the cost of his room, utilities and internet, cost him \$400 a month.

According to the Davis Martindale report, the LICO statistics for an average one-person home in a 500,000 population community for one year was \$24,347. At 3.7 months, that represented \$7,507. I find that that does not reasonably reflect what we know about this gentleman's circumstances and to avoid the actual facts and unique circumstances of this case and to rely on statistics would not, in my opinion, result in a proper analysis of dependency.

I find the same is true if one applied the Market Basket Measure approach that was also used by Davis Martindale.

What were then the claimant's expenses/needs? I find the claimant lived in essence in a rooming house. The friend not only rented a room to the claimant, but also rented his basement to a family.

He charged the claimant \$400 a month to have a room with adjoining bathroom and access to kitchen and laundry facilities. This included utilities and internet. It did not include a cell phone. When you consider that the friend rented the basement apartment for \$850 a month where three people lived in a separate area, it would seem that the \$400 a month charged to the claimant is consistent with an arm's length-style transaction.

The claimant paid \$125 a month for his cell phone albeit it was paid to the friend who added him to his cell phone plan. The claimant also gave evidence that he would spend around \$300 a month for groceries. While there was inconsistency in the claimant's and the friend's evidence as to how often he ate with the friend's family, I find that it was relatively irregular. The claimant did not know the birthday of the friend. He did not know the names of his family. His evidence was that he would pay for his own groceries and once in a while would have a meal with the friend. I find that evidence more consistent with the overall picture of this claimant's relationship between himself and the friend.

The evidence of the claimant was that he did not use Presto or take any transportation. He would get rides with friends or walk. He had no entertainment expenses. It appears he did not purchase any clothes other than what he brought with him to Canada. He was also given about \$500 worth of clothing by the friend.

There is no evidence that the friend gave the claimant any money independently to assist him on a month-to-month basis. He did give him \$100 to help him open the bank account, pay for the taxi, and a haircut, as well as give him clothes, but these were one-off events. According to the friend's own evidence, once the claimant started to receive Ontario Works, he did not provide him with any other assistance. All the friend did was provide the claimant with a room for which he charged him an appropriate amount.

I therefore find that the claimant, with his available Ontario Works (3.7 months, \$2,817), was able to pay for more than 51% of his needs. He paid for his room and board. He paid for his cell phone. He then had \$300 left over to pay for groceries.

There is no evidence before me that the friend provided any other assistance. I find that the shelter provided by the friend was more consistent with an arm's length transaction: providing a room to an individual for which he received appropriate compensation.

This analysis is also consistent with a more holistic and big picture approach. Even though a mathematical analysis can be applied based on the fact that the claimant had such limited expenses and income, the conclusion that he is not dependent on the friend from a mathematical perspective is also consistent with the conclusion one would reach if applying the big picture.

The claimant was living independently in the friend's home, paying him appropriate funds for room and board, and managing the majority of the remainder of his expenses on his own.

Even if I were to conclude that the claimant was not able to provide for 51% of his expenses, I agree with Aviva that Definity has not proven the second part of the test and that any deficiency was being provided by the friend.

I also note that Aviva put into evidence an advertisement from Kijiji for a private room available in a furnished house in the Brampton area. This private room was available at \$500 a month and it included a fully equipped kitchen, a cozy living room, and a well-maintained bathroom, with shared laundry facilities. It is noted that the \$500 included utilities. This seems consistent with the price charged by the friend to the claimant for renting the room in his home.

In reaching this conclusion, I particularly reflect on Arbitrator Samis's comments in the decision *Federated Insurance Company of Canada v. Liberty Mutual Insurance Company* (1999, Carswell ON 7813). This decision was ultimately upheld by the Court of Appeal. In that case, Arbitrator Samis states:

"Dependency implies something more than receipt of a financial benefit. It requires some kind of need on the part of the person alleged to be a dependant. A very wealthy person might receive food, shelter and other financial benefits from family but this would not support a conclusion that the person is principally dependent upon the family structure."

The claimant clearly led a modest existence with very modest needs. This was by choice due to his limited financial means. However, even with his limited financial needs, he was able to meet at least 50% of his very modest lifestyle/needs.

I therefore conclude that the claimant in this matter was not principally dependent for financial support on Aviva's insured: the friend, on October 30, 2022.

AWARD

Definity is the insurer responsible for the priority of payment of statutory accident benefits of the claimant arising out of the accident of October 30, 2022.

COSTS

According to the Arbitration Agreement signed by both parties, the arbitrator's account is to be paid for by the unsuccessful party to the arbitration. The same is true with respect to legal costs. The Arbitration Agreement specifically provides that I should not quantify costs.

As Aviva has been entirely successful in this matter, I find that Definity is responsible for paying the arbitrator's fees and expenses and the legal fees of Aviva.

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

DATED THIS 14th day of February, 2026 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
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