

December 17, 2018

CV-18-591951

RBC General Insurance v TD Meloche Monnex

- *Mr. Frost* for the appellant insurer RBC
- *Mr. Greenside* for the respondent insurer TD

Insurers' priority dispute. Appeal by RBC from the decision of Arbitrator Kenneth Bialkowski finding that RBC stood in priority to pay SABs to two claimants (parents) who were occupants in a car driven by an adult son when it was involved in an automobile accident in April, 2015. At the time of the accident, the parents/claimants, who were retired and depended on financial support from their adult children, alternated living at the home of their oldest son Prabhjot and the home of their younger son Jagdeep. The priority dispute before the Arbitrator turned on whether the parents/claimants were more financially dependent on TD-insured Prabhjot or RBC-insured Jagdeep. The Arbitrator concluded that the parents' financial dependence on their two sons was "equal" and, because the claimants were occupants in the RBC-insured vehicle when injured in the accident, RBC was obliged to pay the SABs.

Decision: The appeal is dismissed. RBC has priority over TD and shall continue to pay the SABs.

Reasons: Both sides agree that the standard of review is reasonableness. As the SCC noted in *Dunsmuir*, reasonableness "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process." The SCC added that the standard of reasonableness "is also concerned with whether the decision falls within a range of possible acceptable outcomes which are defensible in respect of the facts and law."

I am unable to conclude, in any respect, that the Arbitrator's reasons and decision was unreasonable or otherwise fell outside a range of possible acceptable outcomes that are defensible on the facts and the law.

In coming to his conclusion that the parents/claimants were equally financially dependent on both sons Arbitrator considered and/or applied the Mathematical Approach, the Plurality Approach, the LICO Approach and the Big Picture Approach. He considered the differing evidence provided by the claimants in medical reports versus what they said under oath and, not unreasonably, decided to prefer the evidence given under oath. He rejected the submission that the scale tipped in favour of Prabhjot (TD) because his house was larger or more lavish than that of Jagdeep (RBC) – "I am satisfied that the accommodation provided by each son was more than adequate."

In short, the Arbitrator was alive to the relevant evidentiary and legal issues and made a carefully considered finding in a detailed 12-page decision that cannot be said to be unreasonable.

Costs: The parties agreed that the costs of the arbitration should be fixed at \$7000 and the costs of this appeal at \$5000. Costs are fixed accordingly, payable forthwith by RBC to TD.



Justice Edward P. Belobaba