

**IN THE MATTER OF THE *INSURANCE ACT*, R.S.O. 1990, c. I. 8, as amended
and ONTARIO REGULATION 283/95**

AND IN THE MATTER OF THE *ARBITRATION ACT*, S.O. 1991, c.17

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

TD INSURANCE

Applicant

- and -

INTACT INSURANCE

Respondent

DECISION

COUNSEL

Eric Boate – McCague, Borlack LLP
Counsel for the Applicant, TD Insurance
(hereinafter referred to as “TD”)

A. Sandy Williams and Suzan Park – Intact Insurance Company
Counsel for the Respondent, Intact Insurance
(hereinafter referred to as “Intact”)

ISSUE – FINANCIAL DEPENDENCY

[1] In the context of a priority dispute pursuant to s.268 of the *Insurance Act*, R.S.O. 1990, c. I.8 and Ontario Regulation 283/95, the issue before me is to determine which insurer stands in priority to pay statutory accident benefits to or on behalf of the claimant EC with respect to personal injuries sustained in a motor vehicle accident, which occurred on October 30, 2017.

[2] This determination requires an analysis as to whether the 17 year-old claimant was principally financially dependent on her father (insured by Intact) or on his partner/stepmother (insured by TD). The claimant was a passenger in the vehicle owned by her stepmother at

the time of the accident. The claimant was residing with her father and his partner/stepmother at the time of the accident.

PROCEEDINGS

[3] The matter proceeded on the basis of Examination Under Oath transcripts of the claimant, her father and her father's partner, as well as Document Briefs, Books of Authority and written submissions.

FACTS

[4] On October 30, 2017, the claimant EC was a passenger in a motor vehicle insured by TD and owned by her stepmother JB.

[5] The claimant was born on August 30, 2000, making her a minor, aged 17, at the time of the accident. She did not own a vehicle or have her own insurance at the time of the accident. She was a full-time high school student with no financial resources according to TD, while Intact maintains that the claimant had some savings and had received some money from her stepfather's death benefit payment. She had previously worked as a supervisor at Tim Hortons while living with her mother in Hamilton and had some savings of an unknown amount. The evidence contained not even an estimate as to what her savings and survivor benefit may have been. At the time of the accident though, she was residing with her father SC and his partner Ms. JB (hereinafter "JB") for a few months in Midland, Ontario. There were five members of the household, including two children of JB from a previous relationship. The claimant was a high school student. There is no evidence that she was employed at any time while in Midland. The claimant had a G1 licence.

[6] Following the accident, the claimant applied for accident benefits through TD, which insured JB. The claimant's name does not appear anywhere on the TD Certificate of Insurance, either as a named insured or as a listed driver. On the application for benefits, the claimant identified JB as a "step parent" and in Part 4 of the application, indicated that the claimant was claiming under an auto policy issued to JB as her "dependent". In her Examination Under Oath testimony, JB indicated that it was maybe not financially.

[7] There is no biological relationship between the claimant and TD's insured JB. Intact's insured was the claimant's father. This would have no bearing on the financial dependency analysis.

[8] According to JB's Statutory Declaration and in contrast to the information contained in the application for benefits, the claimant was not financially dependent on her.

[9] Household expenses of the claimant, such as housing, groceries, clothing, toys, entertainment, school supplies, medication, cellphone and utilities, were paid by her father

SC according to the claimant's Statutory Declaration, but additional and more specific information was provided in the Examination Under Oaths of those involved.

[10] According to the claimant's October 10, 2019 Examination under Oath, she was living at her father's home at the time of the accident. There is a divergence of evidence as to how long the claimant lived there prior to the accident. It would be anywhere from one to three months. The claimant's father is the sole owner of the property. She had resided with her mother in Hamilton for at least a year prior to moving into her father's home. The claimant testified on her Examination Under Oath that she moved into her father's home because she did not have a good relationship with her mother and stepfather.

[11] The claimant's father paid \$300 per month in child support for the claimant while she lived in Hamilton. This came to an end when the claimant moved in with her father and JB.

[12] It was her father who provided money for the claimant's personal spending, which included money for school lunches, going to the movies and to the mall. It would appear from the evidence that the father would provide lunch money of \$5-\$10 per day and would provide \$40 -\$50 for weekends that the claimant would go out. The father estimated his contribution in the two months his daughter was with them at between \$400 and \$600. He also said that he may have paid her cellphone bill, which was \$150 per month, but there is conflicting evidence on this point and the cellphone may well have been still on the plan paid for by her mother in Hamilton, as she perhaps had not yet changed phones.

[13] With respect to household expenses, JB contributed \$1,000 per month. In turn, the claimant's father paid for all the household expenses, including the mortgage, home insurance, groceries, electricity, hydro, property taxes, internet and cable, from the combined earnings that they would pool together. JB believed the total was around \$2,300 per month. According to the claimant's father, the mortgage was \$1,100 per month, home insurance was \$800 per year (\$66 per month), electricity was \$200 per month, the water bill was \$100 quarterly (\$25 per month), the property taxes were \$2,800 to \$3,000 per year (\$233.33 to \$250.00 per month), the cable and internet was \$260 per month and the combined cellphone bill was \$200 per month (\$100 per person/month). The accountants retained in this proceeding calculated household expenses, exclusive of groceries, at \$1,901.67.

[14] There was conflicting evidence as to the amount that SC and JB contributed to groceries. JB stated she paid about \$400 per month on groceries. JB would pay for the smaller purchases and SC would pay for the large grocery purchases. It was JB's evidence that it was "pretty close to 50/50 on groceries".

[15] Both her father and JB would each pay their own vehicle expenses, including lease payments, gas and insurance. It was JB's vehicle that was mainly used when the claimant required transportation. JB testified that for the time the claimant lived with them, which could have been since the beginning of August, she would have paid about \$100 in additional gas for transporting the claimant. The claimant's father would only occasionally drive the claimant around.

[16] There was conflicting evidence as to the cost of manicures. JB would take the claimant and her own daughter to have their nails done every three weeks or so, at a cost of \$50 per person. JB testified at one point that she may have paid once or twice while the claimant lived with them. Later she testified that payment was “back and forth” - sometimes she would pay and at others, the father would have given me the money. At another point in her testimony, she said she only paid 5% of the nail costs.

[17] When the claimant started school, her father paid for school uniforms. JB testified that he paid between \$500-\$600 for the uniforms. If annualized, that would be \$45.83 per month.

[18] The claimant had a cellphone. The claimant believed her father was paying \$150 per month. Her father and JB both testified that they were not sure if the claimant’s plan was still in her mother’s name and ongoing payments still being made by her mother.

[19] Each party retained accountants to analyze financial dependency during the two month period that the claimant was assumed to have been residing with her father and stepmother. Matson Driscoll & Damico (“MDD”) was retained by TD and Martindale Davis (“MD”) was retained by Intact. On the same evidentiary background, each came up with different results. The MDD report prepared for TD found the claimant principally financially dependent (54.88%) on Intact’s insured (father), whereas the MD report prepared for Intact found the claimant principally financially dependent (56.09%) on TD’s insured (JB). The priority determination therefore requires a careful review of the evidence and an analysis of the competing accounting reports.

ANALYSIS AND FINDINGS

[20] A priority dispute arises when there are multiple motor vehicle liability policies which might respond to a statutory accident benefits claim made by an individual involved in a motor vehicle accident. Section 268 (2) of the *Insurance Act* sets out the priority rules or hierarchy of priority to be applied to determine which insurer is liable to pay statutory accident benefits.

[21] Since the claimants were occupants of a vehicle at the time of the accident, the following rules with respect to priority of payment apply:

- (i) *The occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured;*
- (ii) *If recovery is unavailable under (1), the occupant has recourse against the insurer of the automobile in which he or she was an occupant;*
- (iii) *If recovery is unavailable under (1) or (2), the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose;*

- (iv) *If recovery is unavailable under (1), (2) or (3), the occupant has recourse against the Motor Vehicle Accident Claims Fund.*

[22] Section 3(1) of the Statutory Accident Benefits Schedule – Accidents On or After September 1, 2010, Ontario Regulation 34/10 defines an “insured person” as follows:

- (a) 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 a dependent of the named insured or of his or her spouse.

[emphasis mine]

[23] Section 3 (7)(b) of the Statutory Accident Benefits Schedule – Accidents On or After September 1, 2010, Ontario Regulation 34/10, as amended, reads as follows:

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

[24] Where there is more than one insurer against which a person may claim benefits, the applicant may choose the insurer from which to claim the benefits. Section 268(5.1) of the *Insurance Act* states:

Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits.

[25] In terms of traditional legal principles, criteria for determining dependency for the purposes of the SABS were established by the Court of Appeal in *Miller v. Safeco* (1986), 48 O.R. (2d) 451 (H.C.J.) aff'd 50 O.R. (2d) 797 (C.A.). Consideration should be given to criteria as follows in determining dependency for the purposes of the *Schedule*:

- i. The amount of dependency;
- ii. The duration of the dependency;
- iii. The financial needs of the claimant;
- iv. The ability of the claimant to be self-supporting.

[26] In *Federation Insurance Company of Canada v. Liberty Mutual Insurance Company* (Arbitrator Lee Samis, May 7, 1999), it was determined that a person's capacity to earn must be taken into account in measuring dependency. A person can only be principally dependent for financial support if the cost of meeting their needs is more than twice their resources. This has come to be known as the 51% rule.

[27] Early jurisprudence applied this 51% rule using a detailed analysis of the claimant's income sources in comparison to the value of that provided by the person or persons upon whom the claimant was said to be dependent. This has been referred to as the "mathematical approach". The exercise of determining the value of that provided in many cases proved to be a difficult and expensive task. In the last few years a new approach to the analysis of dependency has emerged known as the "LICO approach". In *Allstate Insurance v. ING*, (Award of Arbitrator Vance H. Cooper, dated May 1, 2014), the arbitrator preferred to resort to an alternative approach to determine dependency, namely, to use Low Income Cut-Off measure as a qualifying number in relation to which 51% rule is to be applied (as opposed to using actual expenses of the claimant). The LICO approach focuses on statistical average needs of an individual in the geographical area where the claimant lived rather than an analysis of the claimant's specific individual needs.

[28] After hearing all evidence including evidence at cross-examinations and re-examinations of the three accountants involved in that case, Arbitrator Cooper noted that all of the accountants who gave evidence and offered expert opinions, acknowledged the inherent difficulty and weaknesses when trying to gather reliable information, documentation and evidence regarding a family's expenditures and individual expenditures in relation to needs.

[29] Arbitrator Cooper referred to decisions of Arbitrator Samis in *Coseco v. ING Insurance of Canada* (Award July 21, 2010) and *St. Paul Travelers v. York Fire & Casualty Insurance Company* (Award, dated August 11, 2011). In these decisions, Arbitrator Samis explained the intrinsic difficulties of trying to ascertain the needs of the claimant by attributing to the claimant a share of household expenditures. The allocated portion of the household expenditures may be greater than the claimant's needs or lesser than the claimant's actual needs. Arbitrator Samis compared this exercise to looking at the general standard of living in household – the exercise we were directed not to follow by *Miller and Safeco* appeal. Instead, Arbitrator Samis suggested we should follow a "*more objective valuation of the costs of meeting someone's needs*". The history of family setting may assist in calculating the costs of meeting a person's needs, but is not determinative.

[30] To that end, Arbitrator Samis used Canada LICO threshold statistic numbers as determined by Statistics Canada which he characterized as the "*best and most reliable approach to the evidence respecting one's needs*". The LICO approach was used by Arbitrator Cooper and formed the basis for his decision.

[31] Arbitrator Cooper's decision in *Allstate Insurance v. ING* was appealed to Superior Court on the ground that Arbitrator Cooper did not use the correct methodology. On appeal

as reported at 2015 ONSC4020, Justice Myers found that mathematical calculation or application of 51% rule in relation to needs/means is an important factor, but it is not the only factor. Justice Myers dismissed the appeal after concluding that dividing or allocating estimated gross household spending to determine one's needs is not a "*particularly meaningful proxy*" and "*is no better than looking at government statistic to determine the cost of housing in a locale*".

[32] More recently and in a move toward a more statistical analysis of dependency, jurisprudence has emerged wherein information from Statistics Canada's Market Basket Measure has been employed. That data provides "the cost of meeting basic modest needs for different family sizes, for different parts of the country, segmented by size of community". In *The Wawanesa Mutual Insurance Company v. State Farm Insurance Companies* (Arbitrator Samis - September 13, 2018), the arbitrator preferred use of the statistical data of the "Market Basket Measure" or "MBM" approach to the other approaches aforesaid. Arbitrator Samis writes at p. 10 of his decision:

"In order to compare resources to the cost of meeting needs I prefer to look at statistical information from Statistics Canada as I find the statistical approach is likely to be more reliable than the evidence of the witnesses here. I also think that the components of the Market Basket Measure are more focused on the costs of meeting needs than the alternative of simply compiling an inventory of any and every expenditure.

Statistics Canada publishes the "Market Basket Measure" data which gives us the cost of meeting basic modest needs for different family sizes, for different parts of the country, segmented by size of community. Additionally, the measure is adjustable to all sizes of families.

According to information from Statistics Canada, the "basket" of goods and services measures a "specified basket of goods and services representing a modest, basic standard of living. Taken into consideration are the costs of specified quantities and qualities of food, clothing, footwear, transportation...". This is compiled by work done by Human Resources and Skills Development Canada during the 1990's.

According to Statistics Canada the Market Basket Measure is a measure more sensitive to geographical variations and other scales.

By reference to the Market Basket Measure we can credibly get a number that represents the denominator making the when making the 50% calculation that the regulation requires.

I find the "Market Basket Measure" an appropriate source for this purpose."

[33] In cases where there are several contributors to a claimant's needs, another approach has emerged with respect to the analysis of dependency. It has been referred to as the "plurality approach". It finds its origin in *Economical Mutual Insurance Company v. Aviva*

Canada Inc. (Arbitrator Densem – January 2013) and involves situations where there are several contributors to a claimant's financial needs.

[34] In *Economical*, the claimant was receiving financial support from both her father and mother. The financial support received from her father and mother, individually, was greater than her own financial contribution to her own needs. Despite this, none of the parties contributed to at least 51% of the claimant's financial needs.

[35] Arbitrator Densem found that principal dependency exists where the claimant is chiefly, mainly, or for the most part (i.e. more), dependant on one, independent source of support, than he or she is on their self-supporting resources and on any other single independent source of support.

[36] The claimant can have any number of independent support sources. If one of these support sources is the largest contributor to the claimant's support, then by definition that source is the principal supporter. The value does not need to be greater than 50%, it only has to exceed the value of any other independent support contribution and that of the claimant's self-support.

[37] Using this scenario, Arbitrator Densem concluded that the claimant was only able to contribute 20% to her own financial needs, while her father was contributing 45% and her mother was contributing 35%. With these values, Arbitrator Densem determined that the claimant was principally financially dependent on her father, as he was making the largest contribution when compared separately to his wife and the claimant herself. He found the father's automobile insurer in priority even though the father did not contribute more than 50% of the claimant's needs.

[38] If this approach is accepted as being the approach which should be used in situations where there are multiple parties providing financial support, then the formula to be used by the arbitrator would be:

- 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 a consistent and reliable picture of the amount and duration of the claimant's financial and care needs can be ascertained.
- Determine what the needs of the claimant are with respect to such requirements as food, clothing, shelter, the basic necessities of life, social, emotional, physical, and protection needs. In making this determination one must distinguish between the claimant's needs, and enhancements to the claimant's lifestyle provided either by the claimant or through other support sources.
- Determine whether the claimant is providing for or reasonably has the capacity to provide for 51% of the claimant's financial and care needs. If so, there can be no principle dependency. If not, determine whether there is an independent source of support that is greater than any other independent source of support, and is also

greater than the value of the claimant's self-supporting resources. If so, the claimant is principally dependent upon that source.

[39] As jurisprudence currently stands, the “mathematical”, “LICO”, “MBM” and “plurality” approaches are being applied by arbitrators of priority disputes involving dependency issues. In the case before me, the accountants have made no reference to LICO or MBM figures and have assessed financial dependency on a mathematical basis.

[40] The first step in the process of determining financial dependency is finding the appropriate time frame for such analysis. There is considerable jurisprudence on the issue of the appropriate time frame for consideration of dependency. A common thread in all of such jurisprudence is that the determination of the appropriate time frame must be based on the facts of each particular case.

[41] General guidance is found in *Oxford Mutual Insurance Co. v. Co-operators General Insurance Co.* [2006] O.J. No. 4518, where the Ontario Court of Appeal held that a “snapshot” approach on the day of the accident is inappropriate. Rather, the time frame 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 period of time, is the arbitrator able to determine the nature of the relationship at the time of the accident.

[42] Further guidance is found in the decision of Arbitrator Robinson in *Saskatchewan Government Insurance v. Lombard Canada Inc.* (January 23, 2004), where it was held that while transient changes over short periods may not reflect a general change in the nature of a relationship between a dependent and his or her parent, shorter time frames may be appropriate to use provided they yield a more accurate reflection of the circumstances of the person(s) at the time of the accident. Arbitrators must be attuned to the totality of the circumstance and the “big picture” of the claimants’ lives.

[43] On the basis of the jurisprudence provided by both parties, it is clear that arbitrators, myself included, have considered periods as short as several weeks and as long as several years when considering the appropriate time frame for the determination of financial dependency.

[44] It was found that a three month time frame was the appropriate time to evaluate financial dependency in *Unifund Assurance Company and TD Meloche Monnex – Arbitrator Novick July 14, 2015*). In this case, a 60 year-old claimant had been living in India with her husband until his death in 2008. Prior to that time, the two of them had visited their daughters in Toronto regularly, having spent 2½ months in 2002 and 5½ months in 2006 in Canada with them. The year following her husband’s death, she spent four months with her daughters. The accident happened July 23, 2010 in Canada while the claimant was here on a six month visitor’s visa. Prior to the accident, arrangements had been made to rent an apartment in Mississauga where the claimant would live with her daughter Niti, while in Canada. First and last months’ rent had been paid and \$10,000 in furniture purchased. The claimant’s plan was to spend more time in Canada. Arbitrator Novick found that the

claimant's life had changed significantly when her husband died before the motor vehicle accident and the claimant was shifting her routine to spend more time in Canada helping her daughter with laundering, cooking and cleaning, while her daughter worked full time. It was clear she was not financially independent while in Canada. Arbitrator Novick found that the three month period the claimant was in Canada best reflected the relationship she had at the time of the accident. Arbitrator Novick stated:

"While I understand the temptation to adopt a standard and therefore predictable time frame, peoples' lives and the shifts and transitions they experience often do not follow a predictable pattern. In my view, parties, accountants and arbitrators considering financial dependency cases must remain open to considering different time periods depending on the evidence provided."

[45] In *Waterloo Insurance Company and The Personal Insurance Company* (Arbitrator Novick – May 13, 2014), the Arbitrator found a one month time period prior to the accident was the appropriate time period to evaluate dependency and concluded that the evidence of each case, in addition to the reality of the claimant's life circumstances leading up to the accident, must be evaluated. The 16 year-old claimant had lived with his mother in Scarborough until high school. He then moved in with his father in Mississauga in September 2007 until August 2009, which was a month before the subject accident. He then returned to live with his mother. While living with his father, he spent most weekends and holidays with his mother. The evidence indicated that he had no intention of returning to live with his mother. The claimant was found to be dependent on his mother at the time of the accident, even though he had only been living with her for one month.

[46] The most recent appellate decision on the issue is that of *Intact Insurance Co. v. Allstate Insurance Co. of Canada* 2016 ONCA 609, which provides considerable guidance in the method for determining the appropriate time frame for analysis. The Ontario Court of Appeal made it clear that there did not need to be an element of permanency with respect to the time frame selected and that there cannot be speculation as to the future of the relationship. The Arbitrator at first instance accepted a 12 month period for analysis rather than a 7 week period pre-accident, where the claimant had entered into a new relationship. The Arbitrator found on the facts that the relationship was transient and given the conduct of the claimant on previous occasions, the relationship was unlikely to succeed, therefore favouring the longer time frame for analysis. As indicated in overturning the Arbitrator's finding, the Ontario Court of Appeal concluded that there need not be any element of permanency and that one could not speculate as to the future of a relationship.

[47] In a subsequent appeal decision, Justice Sanfillipo in *State Farm Mutual Insurance Company v. Her Majesty the Queen* 2018 ONSC 4258, overturned an Arbitrator's decision to use a six month time frame rather than a three month time frame, emphasizing that there need not be an element of permanency and emphasizing that the relationship must fairly reflect the status of the parties "at the time of the accident". Justice Sanfillipo accepted a three month time frame as being the most appropriate time frame between the claimant Devi's separation from her husband and her move to live with her brother, Prakash.

According to Justice Sanfillipo, the separation from her husband represented a “groundshift in the support provided”.

[48] I am bound by the guidance provided by these appellate decisions and must therefore find that true nature of the relationship “at the time of the accident “ is best reflected by the short period of time that the claimant was residing with her father and JB. There is no evidence to suggest that the arrangement was only temporary. This new arrangement was “the new normal” at the time of the accident. There was conflicting evidence as to whether this time frame was one month, two months or three months. Regardless, the relative contributions of her father (Intact) and his partner JB (TD) ought to be the same. The accountants retained by both insurers have used a two month period for analysis and I have used the average monthly contributions for my calculations.

[49] During the two month period leading up to the subject accident, the claimant was a full-time high school student and was not working. Although the claimant may have had some savings, having previously worked some while living in Hamilton, and may have had the benefit of a survivor’s pension from the death of her stepfather, there is no suggestion that they were sufficient to support her. Had they been of any significance, I would think the claimant would have been using her own money for her nails and lunch money. If of any significance, she may have been asked to contribute to the household expenses. I find that the claimant was dependent on her father and JB at the time of the accident, leaving the issue as being which of the two was the largest contributor as per the “plurality” rationale of Arbitrator Densem in *Economical* (supra).

[50] This analysis is made difficult by reason of the fact that there is conflicting and ambiguous evidence with respect to many of the contribution components, such as the payment for manicures, transportation, groceries and cellphone.

[51] The evidence with respect to household expenses though is without conflict. As generally agreed by both accountants, monthly household expenses were as follows:

mortgage	\$1100
insurance	\$66.67
hydro	\$200
water	\$33.33
taxes	\$241.67
cable/internet	\$260

	\$1901.67

[52] The evidence is clear that JB contributed \$1,000 monthly towards these household expenses. Dividing the household expenses by five, since it was a five person household, the father’s monthly contribution would be \$380.33 (1/5 of \$1901.67), less the \$200 (1/5 of

JB's \$1,000/mo.) contributed by JB. The father's monthly contribution to the claimant's household expenses would be \$180.33, compared with JB's of \$200.

[53] There was conflicting evidence as to the amount that SC and JB contributed to groceries. JB stated she paid about \$400 per month on groceries. JB would pay for the smaller purchases and SC would pay for the large grocery purchases. It was JB's evidence that it was "pretty close to 50/50 on groceries". I find that each contributed \$200 per month, with 1/5 being for the claimant's benefit in the five person household. I find that each contributed \$40 each per month toward the groceries consumed by the claimant.

[54] As for contribution to transportation expenses, the evidence supports a finding that JB's vehicle was used for the most part, with the father's vehicles only being used occasionally. JB testified that in the three months the claimant resided with them, she probably spent \$100 on gas for driving the claimant around. That would amount to \$33.33 per month. I arbitrarily find that the father's monthly gas expenditure for driving the claimant to be \$5. Both of their vehicles would be needed regardless of the claimant living with them, so I find that the costs of ownership of their respective vehicles offset one another.

[55] There was conflicting evidence as to the cost of manicures. JB would take the claimant and her own daughter to have their nails done every three weeks or so at a cost of \$50 per person. JB testified at one point that she may have paid once or twice while the claimant lived with them. Later, she testified that payment was "back and forth" - sometimes she would pay and at others, the father would have given her the money. At another point in her testimony, she said she only paid 5% of the nail costs. Despite the conflicting evidence, I find that each contributed equally to the \$75 per month expended on manicures.

[56] With respect to the claimant's personal expenses, the claimant received a discretionary allowance for school lunches, entertainment and purchasing hygiene products from her father. Her lunches alone amounted to \$40 to \$50 per week. There was also evidence that he would give her \$40 -\$50 on weekends that she went out. He also testified that he spent between \$400 and \$600 in the two months she was with them for personal expenses. I find the father's monthly contribution to his daughter's personal expenses to be on average \$250.

[57] The claimant had a cellphone. The claimant believed her father was paying \$150 per month. Her father and JB both testified that they were not sure if the claimant's plan was still in her mother's name. The evidence does not support a finding that the father had yet assumed the claimant's cellphone costs. I am therefore unable to find that he was contributing to the cell phone costs of his daughter at the time of the accident.

[58] I therefore find the relative monthly contributions by the father and JB to be as follows:

	<u>Father SC</u>	<u>JB</u>
household expenses	\$180.33	\$200
groceries	\$40	\$40
transportation	\$5	\$33.33
nails (\$75/mo.)	\$37.50	\$37.50
uniforms	\$45.83	
personal expenses/allowance	\$250	

	\$558.66	\$310.83
	(64.25%)	(35.75%)

[59] I therefore find that SC, father of the claimant and insured by Intact, was the largest contributor toward the claimants needs. Such finding is consistent with some of the general comments made by JB in her testimony. She did state that while the claimant was living with them, she may have only spent \$200 on things for the claimant. She thought the claimant had been living with them for three months. At another point in her testimony, she stated the she only paid 5% of everything for her. I take those statements to mean over and above the common household expenses that she shared with the claimant's father. Most importantly, JB at one point in her testimony stated that the father was definitely the sole supporter. Looking at the big picture, I take from the evidence overall that household expenses were shared equally, but that the claimant's personal expenses were largely paid for by the claimant's father making the claimant principally financially dependent on him at the time of the accident.

[60] Accordingly, I find that Intact is the priority insurer and is to assume carriage of the claimant's accident benefits claim.

ORDER

[61] On the basis of my findings, I hereby order that:

- a) Intact is the priority insurer;
- b) Intact indemnify TD for all benefits reasonably paid to or on behalf of the claimant;
- c) Intact pay the legal costs of TD with respect to this arbitration on a partial indemnity basis;
- d) Intact pay the Arbitrator's account.

DATED at TORONTO this 23rd)
day of June, 2020.)

KENNETH J. BIALKOWSKI
Arbitrator