CITATION: Allstate Insurance Company of Canada v. Intact Insurance Company, 2016 ONSC 5443
COURT FILE NO.: CV-15-538826
DATE: 20160830

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
ALLSTATE INSURANCE COMPANY OF CANADA	)	*Ian Kirby*, for the Applicant
	)	
Applicant	)	
	)	
– and –	)	
	)	
INTACT INSURANCE COMPANY	)	*Tracy L. Brooks*, for the Respondent
	)	
Respondent	)	
	)	**HEARD:** July 21, 2016

M. D. FAIETA, J

REASONS FOR DECISION

INTRODUCTION

[1] Ming Wu Yan was struck by an automobile on April 25, 2013, while she was walking across a street. She suffered injuries to her right ankle and shoulder. At the time of the accident, Yan was a 76-year-old widow who lived with her daughter, her son-in-law and her two granddaughters in an apartment in Toronto. Yan filed an application for accident benefits with the Applicant, Allstate Insurance Company of Canada ("Allstate"). Allstate insures the automobile of Yan's son-in-law. The Respondent, Intact Insurance Company ("Intact"), insures the automobile that struck Yan.

[2] Yan is an insured person under Allstate's automobile insurance policy if she is "principally dependent for financial support or care" on her daughter or son-in-law. If she is not an insured person under the Allstate policy, then Intact is required to pay accident benefits. Allstate and Intact submitted this question to arbitration. The Arbitrator, Shari L. Novick, ruled in Intact's favour, finding that Yan was an insured person under the Allstate policy.

[3] On this appeal, Allstate submits that the Arbitrator erred in concluding that Yan was an insured person under its policy. For the reasons given below, I dismiss Allstate's appeal.

BACKGROUND

Notice of Dispute

[4] On or about July 26, 2013, Allstate delivered a Notice to Applicant of Dispute Between Insurers to Yan. It states:

> You indicate that you were living with your daughter and son-in-law at the time of this accident. You indicated taking care of your grandchildren. You were not dependent on your daughter or son-in-law for care. It is uncertain if you were financially dependent on them, either. While we are investigating this claim and to protect the time-sensitive limits, we are notifying the insurer of the striking vehicle that the priority for your Accident Benefits Claim would rest with them if you were deemed not dependent on your daughter and son-in-law for finance or care.

Arbitration Agreement

[5] Allstate and Intact entered an Arbitration Agreement, dated April 11, 2014, which provides:

> 1. The Applicant and Respondent agree to submit to arbitration pursuant to section 268 of the *Insurance Act*, Ontario Regulation 283/95 and the *Arbitration Act, 1991*, on the following issue:
>
> (a) Is Ming Wu Yan principally dependent for financial support or care on Wei Cheng or his spouse?
>
> 18. The parties reserve the right of appeal of any interim or final Awards of the Arbitrator in this proceeding without leave to a single Judge of the Ontario Superior Court of Justice on issues of fact, law or mixed fact and law within thirty (30) days of the release of the Arbitrator's written decision. …

The Arbitrator's Decision

[6] On October 5, 2015, the Arbitrator found that Yan was principally dependent for financial support upon her daughter and son-in-law and, accordingly, is entitled to accident benefits under her son-in-law's Allstate policy.

Notice of Appeal

[7] By its Notice of Appeal dated October 21, 2015, Allstate seeks an order that the Arbitrator's award be set aside. In its place, Allstate asks the court to make a finding that Yan was not principally financially dependent upon her daughter and son-in-law at the time of the

accident and, accordingly, that Intact is the insurer of priority to respond to Yan's application for statutory accident benefits. Allstate also seeks its costs of this appeal and the arbitration.

ISSUES

[8] This appeal raises the following issues:

(1) Did the Arbitrator err in finding that no monetary value ought to be ascribed to the caregiving and cooking services Yan performed for her daughter, her son-in-law and her grandchildren, and that such services would have been otherwise met by others in the household?

(2) Did the Arbitrator err in excluding Yan's foreign pension income in assessing her financial dependency?

(3) Did the Arbitrator apply the wrong test for determining whether a person is "principally dependent for financial support" on her daughter and son-in-law?

ANALYSIS

Standard of Review

[9] In *Intact Insurance Co. v. Allstate Insurance Co. of Canada*, 2016 ONCA 609, [2016] O.J. No. 4113, the Ontario Court of Appeal ruled that a standard of reasonableness generally applies to the review of all questions arising from a "priority dispute" arbitration. It stated, at para. 53, that:

> In general, an appeal to the Superior Court from an insurance arbitration regarding a priority dispute will engage questions of mixed fact and law that must be reviewed for reasonableness. Even if the appeal involves an extricable question of law regarding SABS [*Statutory Accidents Benefits Schedule – Accidents on or after November 1, 1996*, O. Reg. 403/96], a reasonableness standard of review will still generally apply. In the unlikely scenario that the issue before the insurance arbitrator is an "exceptional" question (one of jurisdiction, a constitutional question, or a general question of law that is both of central importance to the legal system as a whole and outside the adjudicator's specialized area or expertise), a correctness standard of review may be applicable.

[10] In *Intact*, the Ontario Court of Appeal described the scope of a review for reasonableness as follows:

> 63 In *Dunsmuir*, at para. 47, Bastarache and LeBel JJ. explained that
>
> > [a] court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review,

> reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it 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.

64 When reviewing a decision for reasonableness, a court must consider the reasons proffered and the substantive outcome in light of the legal and factual context in which the decision was rendered: *Re Carrick*, 2015 ONCA 866, 128 O.R. (3d) 209, at paras. 25-26; *Loewen v. Manitoba Teachers' Society*, 2015 MBCA 13, 315 Man. R. (2d) 123, at paras. 74-75.

65 A decision may be unreasonable where a decision maker fails to carry out the proper analysis or where the decision is inconsistent with underlying legal principles: *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29, [2012] 2 S.C.R. 108, at paras. 43 and 47. A decision may also be unreasonable where the outcome ignores or cannot be supported by the evidence: *Halifax*, at paras. 47-49.

Statutory Accident Benefits

[11] Section 268 of the *Insurance Act*, R.S.O. 1990, c. I.8 (the "Act") requires that every motor vehicle policy provide coverage for statutory accident benefits. It also provides rules for determining which insurer is liable to pay statutory accident benefits when there is recourse against more than one insurer.

[12] Where there is more than one insurer that may be responsible for paying accident benefits, s. 268(2) of the Act provides:

> 2. In respect of non-occupants,
>
> i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
>
> ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,
>
> iii. if recovery is unavailable under subparagraph i or ii, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to statutory accident benefits arose,
>
> iv. if recovery is unavailable under subparagraph i, ii or iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund. [Emphasis added.]

[13] Section 224(1) of the Act states that "'insured' means a person insured by a contract whether named or not and includes every person who is entitled to statutory accident benefits under the contract whether or not described therein as an insured person" (emphasis added).

[14] In turn, according to s. 3(1) of *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10, an "insured person" means:

> [I]n respect of a particular motor vehicle liability policy,
>
> (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 dependant of the named insured or of his or her spouse … [emphasis added.]

[15] Subsection 3(7) of O. Reg. 34/10 states:

> For the purposes of this Regulation …
>
> (b) a person is a dependant of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse; [emphasis added.]

[16] Accordingly, whether Allstate is obliged to pay statutory accident benefits to Yan turns, in this case, on whether she was "principally dependent for financial support" on her daughter or son-in-law.

[17] With this perspective, I now turn to consider the issues raised by this appeal.

Issue #1: Did The Arbitrator Err In Finding That No Monetary Value Ought To Be Imputed To The Caregiving And Cooking Yan Performed For Her Family And That Such Services Would Have Been Otherwise Met By Others In The Household?

[18] The evidence before the Arbitrator was that Yan's two granddaughters were ages nine and six at the time of the accident. Yan's daughter and son-in-law worked full time. Yan assisted her granddaughters to get ready for school, made them breakfast, walked them to and from school, and supervised them after school. Yan was not paid for the childcare or housekeeping services that she provided. Yan testified that it is customary in Chinese society for grandmothers to live with their children and grandchildren, and that she would participate in the rearing of her grandchildren without payment. Even though Yan was not actually paid for the childcare or housekeeping services that she provided, she reported "other income" ranging from $6,600 in 2010 to $3,200 in 2013 on her Income Tax Returns.

[19] The Applicant submits that the Arbitrator erred in failing to impute any income to the services provided by Yan to her family.

[20] The Arbitrator stated that:

> 55. The unusual feature of this case which mandates a close review of the evidence compiled is

the fact that the Claimant filed income tax returns with the CRA in the years preceding the accident. She reported receiving both "other income" as well as pension income on the returns. Counsel for Allstate argue that the fact that these amounts were reported should be taken as *prima facie* evidence that they were earned by Ms. Yan.

56. I do not agree with this contention. With respect to the amounts claimed for "other income", all of the witnesses clearly stated that no money changed hands, and that the Claimant did not receive any pay for the services that she provided to the household. Her son-in-law, who completed the tax returns on Ms. Yan's behalf, was not able to explain why the amounts appearing on the returns varied each year. My hunch is that this income was reported in order to qualify the Claimant for the tax rebates that she received from the federal and provincial governments. In any event, the motive for reporting these figures is not relevant to my ultimate determination, given the clear evidence that no money actually changed hands.

57. The question then becomes whether a monetary value should be imputed to the services that Ms. Yan provided to the family. Counsel cited Arbitrator Bialkowski's decision in *Unifund v. RBC*, *supra*, in which a nominal amount (approximately $125 per month) was attributed to "services" provided by grandfather who with his wife, looked after the grandchildren in the household while his son and daughter-in-law were at work. Prior to his parents' arrival in Canada, the son's family had paid an independent caregiver to look after their children. I note that the claimant in that case had also paid his son approximately $6,000 upon his arrival in Canada in order to cover the added expenses in having two extra people absorbed into the household. He also contributed between $500 – $600 each month toward the family's household expenses.

58. I find that the fact that these funds were exchanged between the claimant and his son render that case sufficiently distinguishable from those of the instant case. The facts of this case are more similar to those presented to Arbitrator Robinson in *Security National v. Wawanesa*, *supra*, in which Mr. Kibria, the grandfather from Bangladesh, was not paid anything for the time he spent caring for his grandchildren. While I appreciate that Mr. Kibria was not legally entitled to work in Canada, whereas Ms. Yan was, the fact remains that she had not worked outside of the home for the nine years that she spent in Canada prior to the accident, and it is questionable whether she would have been able to secure any such employment, given her very limited English language skills and her advanced age.

59. Accordingly, I agree with Arbitrator Robinson that in this type of scenario "the objective circumstances of this case" do not translate into a "money's worth analysis" (at p. 12). In my view, when a grandparent receives free room and board and the payment of their other expenses from a child with whom they live, and provides caregiving and housekeeping services to the family in order to assist parents who work outside of the home, this relationship of interdependence should generally not lead to a finding that the claimant is financially independent. If the grandparent ceased providing those services – either because they are injured in a car accident, or become ill for some reason – their needs will continue to be met, in most cases, by that household.

60. In some instances, a financial "bargain" may be struck between the parties, which may lead to a different result. In this case, however, despite the figures reported on her tax returns, the evidence is clear that Ms. Yan did not receive any compensation for the services that she provided. She testified that it was customary in her culture for a grandparent to live with a child

> and help care for the grandchildren, without pay, and this is what she was doing. I therefore do not attribute any monetary value to the caregiving services provided by Ms. Yan.
>
> 61. Counsel for Allstate urged me to also consider Ms. Yan's capacity to earn, in accordance with the decisions in *Miller v. Safeco*, *supra*, and *Federation Insurance v. Liberty Mutual* (Arbitrator Samis, May 7, 1999). He noted her legal entitlement to work in Canada, and disputed Ms. Brooks' contention that as a person in her senior years with limited English skills, she did not have any marketable skills. I cannot agree with this contention. While a claimant's capacity to be self-supporting is an important consideration in the dependency analysis, I find that on a realistic assessment of Ms. Yan's circumstances in Canada, she simply did not have the ability to be self-supporting.
>
> 62. It was undisputed that the Claimant was given some "spending money" on a monthly basis by her daughter. She estimated this to be between $100-200 per month. Given that this came from her daughter and was not "self-generated", it should not be included as income in the dependency calculation.
>
> 63. It was also not disputed that the Claimant received tax rebates from both the provincial and federal governments, and that these amounts were deposited directly into the Canadian bank account that her daughter had opened for her. I have reviewed these bank records and see that these deposits total $1,288.60 in 2012. These amounts were clearly received by Ms. Yan from an outside source and should be counted in the calculation of her "means". [Emphasis added.]

[21] I reject Allstate's assertion that the Arbitrator found that the caregiving and cooking provided by Yan would have been met by others in the household if she were not available. No such finding was made. Allstate relies on a paragraph from the Arbitrator's decision, which discusses a statement of principle; it appears that Allstate incorrectly infers from that paragraph that the Arbitrator made the disputed finding.

[22] Further, this is not a case where the Claimant made financial contributions to family members for the cost of her living expenses, in addition to providing caregiving services, as in *Unifund Assurance v. RBC General Insurance* (2 August 2012, Arbitrator Bialkowski), referenced at para. 57 of the Arbitrator's decision. Instead, the circumstances in this case are imbued by the expectations of a culture whereby a daughter welcomes her elderly mother to live in her home, without the expectation or receipt of payment for room and board, and an elderly woman happily cares for her granddaughters, without the expectation or receipt of remuneration, while her daughter and son-in-law are away at work. Accordingly, it is my view that the Arbitrator's finding that no monetary value ought to be imputed to the caregiving and cooking services Yan provided, as explained at paragraphs 59 and 60 of her decision above, is reasonable.

Issue #2: Did The Arbitrator Err In Excluding Yan's Pension Income In Assessing Her Financial Dependency?

[23] Yan receives a pension from the Chinese government that is deposited into a bank account in China. Yan reported this income on the Income Tax Returns that she filed with the Government of Canada. The undisputed evidence before the Arbitrator was that this pension

income was not available to Yan in Canada and, as a result, she travelled to China every other year for a few months to use these funds for her living expenses while abroad.

[24] The Arbitrator stated:

> 64. I turn then to the issue of the Claimant's pension payments from China. This was the subject of much discussion at the hearing, with counsel for Allstate submitting that the amounts reported as pension income on Ms. Yan's income tax returns should be included in the calculation of her means, while counsel for Intact contended that they should not. The amounts reported varied over the few years prior to the accident – $4,475 was reported in 2010, $5,511 in 2011, $6,652 in 2012, and $10,251 was reported in 2013, the year of the accident.
>
> 65. Mr. Weng testified that he did not review any documentation when he reported the amounts on his mother-in-law's tax returns, and simply relied on what she told him to report. This is difficult to reconcile with the Claimant's testimony that while she had signed the returns, she did not "understand the content". Ms. Yan also testified that her pension earnings had increased over the years, and estimated that she received 3,000 RMB per month at the time of the accident in 2013. According to a currency conversion chart filed by counsel for Intact at the hearing, that would amount to approximately $490 (Canadian) per month or $5,880 per year.
>
> 66. The evidence on this point is inconsistent and confusing. While very specific amounts are claimed on the tax returns, it is utterly unclear as to how these figures were arrived at. Counsel for Intact contended that given these inconsistencies, I should not include any pension earnings in the calculation of the Claimant's means. I cannot agree that if a source of earnings is difficult to quantify, it should be completely excluded from the analysis. I think that the trier of fact should consider all of the evidence available on the point, and make a finding on the issue.
>
> 67. However, there are other factors considered in relation to this issue. The evidence was undisputed that Ms. Yan's pension payments were directly deposited into a bank account in her name in China. It is also clear that these amounts were not accessed by Ms. Yan (and were possibly not available to her) while she was in Canada. It is for this reason that I find that these amounts should be excluded from the calculation.
>
> 68. My conclusion on this point is based on the findings and *Security National v. Wawanesa*, *supra*. As I noted in my recent decision in *Unifund v. TD*, supra, the Court of Appeal clearly preferred Arbitrator Robinson's decision to exclude the claimant's foreign-owned assets in his analysis of whether or not he was financially dependent upon his son with whom he lived in Canada. At the first level of appeal, Justice Morgan determined that the arbitrator erred when he did not take into account the significant assets that that claimant owned in Bangladesh, and found that "but for" his decision to come to Canada to live with his son's family, he was not dependent upon him for financial support. The Court of Appeal overturned the decision of the Superior Court and restored Arbitrator Robinson's decision.
>
> 69. I am bound by the ruling of the Court of Appeal on this point. In any event, I agree that assets that are not available to a person while living in Canada should not affect the outcome of a dependency analysis undertaken to consider whether they are principally dependent for financial support upon another person, for the purposes of determining priority among insurers in Ontario pursuant to *Regulation 283/95*. [Emphasis added.]

[25] There was no evidence that the pension income in question was available to Yan in Canada. In assessing financial dependency, it is my view that foreign income that is unavailable to that person should not be included. Accordingly, I find that the Arbitrator's decision to exclude Yan's pension income from the dependency analysis was not only reasonable but also correct.

Issue #3: Did The Arbitrator Apply The Wrong Test For Determining Whether Yan Is Principally Dependent For Financial Support On Her Daughter And Son-In-Law?

[26] The evidence regarding Yan's income and expenses is as follows.

Income

[27] The evidence from Yan's tax returns can be summarized as follows:

Taxation Year	Pension Income	Other Income (Babysitting)	Total Income	Rental Payments
2010	$4,745	$6,600	$11,345	$3,600
2011	$5,511	$4,200	$9,711	$3,600
2012	$6,652	$8,600	$15,252	$5,700
2013	$10,251	$3,200	$13,451	$4,800

[28] Yan does not read or write in English. Her ability to speak English is limited. She speaks Mandarin. Her tax returns were prepared by her son-in-law. She signed the returns but did not understand their content.

Expenses

[29] Despite having reported on her income tax return that she paid rent, Yan, her daughter and her son-in-law all agreed that she had never paid them rent for living with them at any time since she arrived in Canada in 2004. Nor does Yan pay any amount to her daughter or son-in-law in respect of household expenses. Her daughter pays for Yan's clothing, shoes and medicine. Her daughter also pays for Yan's airfare for visits back to China every other year.

[30] The Arbitrator stated:

> 48. As in most cases, each analysis of financial dependency must be conducted with the unique circumstances of the relationship in question, and the relevant legal principles, in mind. These principles were outlined in *Miller v. Safeco*, *supra*, as referenced by both counsel in this case. While this remains the seminal case in this area, the decision by the Court of Appeal is quite

brief, and contains only a basic analysis. As I stated in *Unifund v. TD Meloche Monnex* (July 14, 2015) the court's finding is premised upon the judge's view that the legislative intent of the provision in issue is to broaden insurance coverage to include family members as persons insured under the policy in question, a notion which has shifted in the thirty years since that case was decided.

49. Justice Myers has recently refined the principles enunciated in *Miller v. Safeco, supra*, in his decision in *Allstate Insurance v. ING Insurance and Aviva Canada, supra*. While making the point that the appellant's argument was flawed because it assumed that the "mathematical result necessarily and solely determines the outcome", he stated –

> In my view, the math is just part of the test that has arisen out of the seminal decision in *Miller v. Safeco*. I agree with the insightful comments of Corbett, J. in *State Farm v. Bunyan*, 2013 ONSC 6670, at paras. 19 to 22 to the effect that while math is an important factor it is not the only factor. The legal issue is whether R was principally dependent on her mother… In *Miller*, the Court of Appeal approved four factors to consider dependency. Even those four are not necessarily the exclusive considerations. A change in the math from 50.001% dependency to 49.999% dependency may or may not overcome other aspects of the factual dependency between the relevant parties…

50. Later in that paragraph Justice Myers warned that the focus should remain on the "big picture" rather than a calculation that may cross "a magical mathematical line". I understand that leave is being sought to appeal this decision to the Court of Appeal.

51. This same thread has been enunciated in many earlier cases as well. Counsel for Intact cited Arbitrator Robinson's reference to Justice MacDonald's comments in *Co-operators General v. Halifax Insurance Co.*, [2002] O.J. No. 2459, to the effect that each analysis must be based on a "realistic assessment of the parties' actual financial circumstances at the time of the accident" (at para. 14). It is with these comments in mind that I consider the parties' relationships in this case.

52. At the time of the accident, Ms. Yan was an elderly Chinese woman who could not read or write in English. While she was legally entitled to work in Canada, it is clear that the reason she came here was to live with her daughter and her family, and to help care for her grandchildren, as opposed to seeking paying work outside of their home. While Ms. Yan did spend several hours each day care giving and cooking for the family, she testified that it was customary in the Chinese culture for a parent to live with their children in their retirement years, and to help raise any grandchildren they may have, without pay.

53. All of Ms. Yan's financial needs, including room and board, clothing and the cost of her medication were covered by her daughter and son-in-law while she was in Canada. Her daughter paid for her flights back to China every few years, where Ms. Yan was able to access her pension payments from her previous employment in China. These payments were directly deposited into her Chinese bank account, and the evidence indicated that she was unable to access these funds while she was in Canada. The only money that she received in Canada was a nominal monthly amount paid by her daughter for "spending money" and the tax rebates from the federal and provincial governments that were directly deposited into her Canadian bank account.

> 54. In my view, when this evidence is considered and a "big picture" view of Ms. Yan's relationship with her daughter's family is taken, it is clear that she was principally dependent upon them for financial support at the time of the accident. While she may have been self-supporting for the few months every couple of years that she spent in China, that is not what I am being asked to assess. …
>
> 70. Accordingly, having determined that the Claimant's pension earnings received in China and the amounts claimed as "other income" on her tax returns, but not actually paid to her, should be excluded from the analysis, Ms. Yan's "means" consist solely of the amounts that she received as tax rebates from the provincial and federal governments. As noted above, these amounts total $1,288.60 in 2012.
>
> 71. This sum must then be compared with Ms. Yan's living expenses. The evidence presented through the Examinations Under Oath suggests that an appropriate estimate of her expenses would be $10,000 per year. The LICO statistics for a single-person household in her area suggest a pre-tax figure of $23,298 per year, and an after-tax annual figure of $19,307. Clearly, when any of these figures are plugged into the analysis, it is clear that Ms. Yan did not provide for more than 50% of her financial needs through her own means.
>
> 72. Accordingly, taking both the holistic or "big picture" approach and the strict mathematical approach to Ms. Yan's circumstances, I conclude that she was principally dependent for financial support upon her daughter and son-in-law. She is therefore an "insured person" under their Allstate policy, and priority accordingly remains with Allstate pursuant to section 268(2)2(ii) of the *Act*. [Emphasis added.]

[31] In *Miller v. Safeco Insurance Co. of Canada* (1985), 50 O.R. (2d) 797, affirming 48 O.R. (2d) 451, [1984] O.J. No. 3383, the Ontario Court of Appeal approved a motion judge's determination that a 23-year-old man living with his insured parents, and injured while a passenger on an uninsured motorcycle, was a "dependent relative" within the meaning of the accident benefits provisions of the *Insurance Act*. In considering whether a person is a "dependant relative," the Ontario Court of Appeal agreed with the motion judge that the following principles should be applied:

- The legislative intent should be kept in mind and, in particular, the meaning of this phrase should be informed by the provision's remedial purpose which is "intended to broaden insurance coverage to include members of family units as persons insured under the policy" (motion judge's reasons at para. 7).

- "[M]atters such as the amount and duration of the financial or other dependency, the financial or other needs of the claimant, [and] the ability of the claimant to be self-supporting … should be considered" (motion judge's reasons at para. 8).

[32] The above principles also apply in respect of the phrase "principally dependent for financial support" that is now used. See *Security National Insurance Co. v. Wawanesa Mutual Insurance Co.*, 2014 ONCA 850, [2014] O.J. No. 5682, at para. 2.

[33] The *Concise Oxford English Dictionary*, 12th ed., provides the following definitions:

- "principally" - "for the most part; chiefly";
- "dependent" – "relying on someone or something for financial or other support";
- "financial" – "relating to finance";
- "finance" – "provide funding for [a person or an enterprise]";
- "support" – "give assistance to," "provide with a home and the necessities of life."

[34] Given the ordinary meaning of the words used in the phrase "principally dependent for financial support," and the remedial purpose of the statutory accident benefits provisions, it is my view that the phrase "principally dependent for financial support" refers to a person who mainly relies on another person to provide him or her with the necessities of life, including shelter. Further, I agree with the view expressed by Justice Myers in *Allstate Insurance v. ING Insurance and Aviva*, 2015 ONSC 4020, at para. 4, that the assessment of whether someone is "principally dependent for financial support" on another person does not turn on the mathematical analysis of whether a person provides more than 50% of the needs of another (i.e., on the amount of support provided), but rather requires a broader consideration of the various factors approved by the Ontario Court of Appeal in *Miller*.

[35] In my view, the Arbitrator's finding that Yan was "principally dependent for financial support" on her daughter and son-in-law was reasonable based on the unique circumstances of this case.

CONCLUSIONS

[36] For the reasons given, I dismiss Allstate's appeal. In accordance with the parties' settlement of the issue of costs, I order that Allstate pay costs of this appeal in the amount of $7,500 to Intact.

Mr. Justice M. D. Faieta

Released: August 30, 2016

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SUPERIOR COURT OF JUSTICE

BETWEEN:

ALLSTATE INSURANCE COMPANY OF CANADA

Applicant

– and –

INTACT INSURANCE COMPANY

Respondent

REASONS FOR DECISION

Mr. Justice M. D. Faieta

Released: August 30, 2016