

**IN THE MATTER OF AN ARBITRATION PURSUANT TO S. 148.2
OF THE INSURANCE (VEHICLE) REGULATION,
B.C. Reg. 447/83 and the ARBITRATION ACT [SBC 2020] c. 2**

BETWEEN:

HW, ZT, SH AND CT

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

APPLICATION RULING

Counsel for the Claimants,
HW, ZT, SH and CT

Christopher R. Bacon
Joseph Kennedy

Counsel for the Respondent,
Insurance Corporation of British Columbia

Ryan W. Parsons
Sudhir K. Padmanabhan

Dates of Application

October 10 and 30, 2025

Place of Application

Vancouver, BC
Via Zoom

Date of Ruling:

November 13, 2025

Arbitrator:

Dennis C. Quinlan, K.C.

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I. INTRODUCTION

[1] Effective May 1, 2021, Part 10 of the Insurance (Vehicle) Act [1996] Chapter 231 (the “Act”) fundamentally changed the handling of claims for injury sustained in vehicle accidents in British Columbia from a fault-based tort system to a no-fault enhanced care model (“Enhanced Care”).

[2] Subject to limited exceptions which include inter alia, Criminal Code driving offences, a person under Enhanced Care no longer has a right of action for bodily injury caused by a vehicle, and any action or proceeding arising therefrom is prohibited.

[3] Residents and some non-residents are now entitled to increased benefits to cover medical expenses resulting from the vehicle accident regardless of fault (“Enhanced Accident Benefits”).

[4] The Claimants apply pursuant to Rule 7-1 (11) of the Supreme Court Civil Rules (the “Rules”) for an order that the Respondent disclose certain planning documents from the underwriting stage in respect to the enactment of Part 10 of the Act and section 148.1(3) of the Regulation, and subsequent related claims history since May 1, 2021.

[5] The application is brought within an underinsured motorist protection (UMP”) arbitration commenced pursuant to section 148.2 of the Insurance (Vehicle) Regulation, B.C. Reg. 447/83 (the “Regulation”) and arising from a vehicle accident on July 26, 2022, in New Westminster, British Columbia (the “Accident”).

[6] With the introduction of Enhanced Care, underinsured motorist protection (“UMP”) continues to be provided as part of the plan of universal compulsory vehicle insurance. However, section 148.1(3) of the Regulation was amended to

add sub-section (e) stating that no UMP coverage is provided to an insured who is entitled to Enhanced Accident Benefits.

[7] The Claimants each received Enhanced Accident Benefits in the approximate amount of \$15,000 by way of death benefits.

[8] The central issue in the UMP arbitration is whether the Claimants or any of them are entitled to UMP coverage pursuant to Part 10, Division 2 of the Regulation.

[9] The issue on this application is one of statutory interpretation and whether as an aid to interpreting the purpose and intention of the legislation, the requested documents may lead to a train of inquiry that will allow the Claimants to advance their own case or damage that of the Respondent.

II. ADDITIONAL BACKGROUND FACTS

[10] The Accident occurred when a Toyota Yaris operated by SH collided with a Nissan Altima driven by CB. YM was a passenger in the Toyota Yaris operated by SH.

[11] YM and SH died from their injuries sustained in the Accident. CB was subsequently convicted of two counts of criminal negligence causing death contrary to section 220(b) of the *Criminal Code* R.S.C. 1985, c. C-46 (the “Criminal Code”).

[12] The Claimants are the respective parents of YM and SH.

[13] Neither of the vehicles involved in the Accident was an “excluded vehicle” or a “non-standard vehicle” within the meaning of sections 113 and 114 (2) of the Act.

[14] The Accident occurred on a “highway” within the meaning of sections 1 of the Act, Enhanced Accident Benefits Regulation, B.C. Reg. 59/2021 (the “EAB

Regulation”), Motor Vehicle Act, [RSBC 1996] Chapter 318, and Transportation Act [SBC] 2004] Chapter 44.

[15] On January 2, 2024, the two sets of parents commenced respective actions under the Family Compensation Act, [RSBC 1996] Chapter 126 naming CB as a Defendant.

[16] On June 25, 2024, the Insurance Corporation of British Columbia (“ICBC”) sent a letter to counsel for the Claimants confirming that CB had been convicted of a prescribed offence under the Criminal Code and the Claimants’ claim was thereby exempt from the bar for personal injury lawsuits pursuant to section 116 (2) of the Act and section 12 of the EAB Regulation.

[17] On November 18, 2024, ICBC sent a letter to counsel for the Claimants advising that because the Claimants were entitled to Enhanced Accident Benefits, there was no entitlement to UMP pursuant to section 148.1(3)(e) of the Regulation.

[18] By Notice to Arbitrate dated February 18, 2025, the Claimants sought arbitration requesting an interpretation of sections 116 of the Act and 148.1(3)(e) of the Regulation and a declaration that they were entitled to UMP.

[19] In correspondence exchanged between counsel in August 2025, the Claimants set out the basis of their request for further disclosure:

“...[I]n my submission, the Respondents (sic) are also aware that the documents we have requested are being sought because the Claimants seek to prove that the Respondent’s Underinsured Motorist Policy, either accidentally or deliberately, was drafted and legislated under s.148.1(3) of the Insurance (Vehicle) Regulations (sic) so that policyholders could never qualify, or would qualify so rarely that the value of the coverage is statistically nullified* (see the Claimants’ Notices to Arbitrate).

In order to decide the interpretation of s. 148.1, the arbitrator will need to know what facts, statistics, actuarial studies, and

scenarios the Respondent considered in order to set a premium and advertise and describe Underinsured Motorist coverage to policyholders and regulators.

In particular, the arbitrator will need to know if the Respondent considered what risks (if any) it would face regarding the payment of potential claims, how it determined a premium to charge policyholders for their exposure to those payments, and what those planning documents show that the Respondent considered when developing a new auto policy in the time preceding May 1, 2021 i.e; do the planning documents show that the Respondent intended to define the parameters of coverage so that no claims could ever be advanced? Or such claims would be so rare that they would be statistically insignificant?

What will further assist the arbitrator, as requested in paragraphs 4-6 will be the application of the Respondent's risk predictions to the real world claims history the Respondent has recorded since May 1, 2021; a period of over 4 years. If the Respondent has paid no claimants, that may assist the arbitrator's interpretation. If hundreds, or thousands of claims have been paid, the Respondent will have a good defence to the Claimant's nullification claim."

*All underlining hereinafter added for emphasis unless otherwise noted.

[20] The documents requested by the Claimants in their Notice of Interlocutory Application are as follows:

(a) All documents within the possession or control of the Respondent identifying the risks and circumstances within which underinsured motorist protection was intended to apply for insured ICBC policy holders after May 1, 2021;

(b) All documents within the possession or control of the Respondent identifying the amount of premium charged to insured ICBC policy holders for the underinsured motorist protection aspect of Part 10 after May 1, 2021;

(c) All documents generated at the planning stage which canvass the possible source or circumstances of potential underinsured motorist claims in

anticipation of the new underinsured motorist coverage required to be purchased by ICBC policy holders after May 1, 2021;

(d) The number of underinsured motorist claims made by ICBC policy holders under Part 10 for damages incurred for occurrences after May 1, 2021;

(e) The number of claims the Respondent has accepted for damages to policy holders caused by underinsured motorists under Part 10 broken down per year;

(f) The number of personal injury claims the Respondent has accepted under Part 10 for damages to policy holders caused by underinsured motorists after May 1, 2021 and broken down per year, with a summary of the circumstances of each claim; and

(g) The total amount the Respondent has paid to personal injury claimants alleging damages caused by underinsured motorists and which occurred after May 1, 2021, broken down per year.

(collectively the “Requested Documents”)

[21] The Claimants have not challenged the validity of the Enhanced Care legislation on constitutional or administrative grounds.

III. LEGAL BASIS FOR ADDITIONAL DOCUMENT DISCLOSURE

[22] The parties generally agree on the test for production of additional documents pursuant to Rule 7-1 (11) to (14).

[23] A party is permitted to seek broader or second-tier disclosure of documents that relate to any and all matters in question with contextual reference to the pleadings: *Araya v. Newsun Ltd.*, 2020 BCSC 511 at paras. 74, 80.

[24] The test for relevance as determined through the *Peruvian Guano* test, is whether the requested documents contain information which may, directly or indirectly, allow the requesting party to advance their case or damage the case of the opposing party: *Biehl v. Strang*, 2010 BCSC 1391 at para. 12.

[25] A party applying for further disclosure must provide some evidence showing the potential relevance of the requested documents: *More Marine Ltd. V. Shearwater Marine Ltd.*, 2011 BCSC 166 at para. 8.

[26] It is important to recognize this is an interlocutory application for production of documents that may contain relevant information. It is not an application to determine whether the Claimants are entitled to UMP coverage.

IV. STATUTORY VEHICLE INSURANCE SCHEME

[27] The Act establishes the statutory plan of insurance governing claims for compensation arising from vehicle accidents in British Columbia. The statutory provisions and their interaction are complex.

[28] In *Ocean Park Ford Sales Ltd. v. Insurance Corporation of British Columbia*, 2016 BCCA 337, Justice Willcock speaking for the Court at para. 20 referred to the

“...labyrinth statutory contract embodied in the Motor Vehicle Act, 1996, c. 318; the Motor Vehicle Act Regulations, B.C. Reg. 26/58; the Insurance Vehicle Act, and the Insurance (Vehicle) Regulation... [A]n examination of the relevant provisions of these enactments is a complex, but necessary step in determining the proper interpretation of s. 52 of the Insurance Vehicle Regulation.”

[29] The Court was dealing with a different legal issue under the at fault tort system, but the comments of Justice Willcock carry as much, if not more, weight under Enhanced Care.

[30] In order to interpret the relevant statutory provisions, it is necessary to review their underlying structure.

[31] I am guided by the governing principle of statutory interpretation that the sections of legislation are presumed to fit together logically to form a rational and internally consistent framework. In *Sullivan on the Construction of Statutes*, 5th ed. (Markham, Ont: LexisNexis, 2014, the principle was stated as follows at page 223:

“It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something towards accomplishing the intended goal.”

(1) UNIVERSAL COMPULSORY VEHICLE INSURANCE

[32] Part 1 of the Act is entitled Universal Compulsory Vehicle Insurance and applies to basic mandatory coverage that can only be purchased through ICBC.

[33] Section 2 of the Act authorizes ICBC to operate the plan of universal compulsory vehicle insurance:

Corporation to provide universal compulsory vehicle insurance

2 If under the *Insurance Corporation Act*, the Lieutenant Governor in Council authorizes the corporation to operate the plan of universal compulsory vehicle insurance, the corporation must operate the plan of universal compulsory vehicle insurance in accordance with this Act and the regulations.”

[34] Section 7 of the Act requires ICBC to administer a plan of universal compulsory vehicle insurance providing coverage under a motor vehicle liability policy.

[35] The term “plan” is used throughout the *Act* and *Regulation* and is specific to universal compulsory vehicle insurance. It is defined in section 1 of the *Act* as follows:

“**plan**” means the plan of universal compulsory vehicle insurance referred to in section 2 and operated by the corporation under Part 1, 10 or 11 and the regulations under those Parts.

[36] The coverage provided by the plan is set forth in section 1.1 of the *Regulation*:

Universal compulsory vehicle insurance

1.1 The plan provides insurance coverage as follows:

(a) Coverage under Part[s] 10of the Act and Parts6, 7, and 10 of this Regulation

[37] Part 10 of the *Act* is entitled Enhanced Accident Benefits and Limits on Actions and Proceedings.

[38] Part 10 of the *Regulation* is entitled First Party Coverage and Division 2 of Part 10 deals specifically with UMP coverage.

[39] Enhanced Care and UMP are both provided under the plan of universal compulsory vehicle insurance.

(2) ENHANCED CARE

[40] As set out in paragraph 37 herein, Part 10 of the *Act* is the legislation which transformed British Columbia to the Enhanced Care insurance model.

[41] Section 114 (1) of the *Act* provides that Enhanced Care applies to an accident where there is bodily injury caused by a vehicle and occurring on or after May 1, 2021.

[42] In circumstances where Enhanced Care applies, there are two critical components.

[43] First, a person no longer has a right of action and cannot commence an action for bodily injury caused by a vehicle accident:

No actions or proceedings for bodily injury

115 Despite any other law or enactment but subject to this Part,

(a) a person has no right of action and must not commence or maintain proceedings respecting bodily injury caused by a vehicle out of an accident, and

(b) no action or proceeding may be commenced or maintained respecting bodily injury caused by a vehicle arising out of an accident

[44] Second, enhanced benefits are payable by the corporation regardless of who is at fault for the accident.

Enhanced accident benefits

117 Subject to this Part, benefits under this Part are payable by the corporation regardless of who is responsible for the accident.

[45] Section 114 (2) of the Act then sets out certain types of accidents and bodily injury to which Enhanced Care does not apply.

[46] Generally speaking, those excluded accidents occur off highway and involve “excluded” or “non-standard” vehicles as defined in section 113 of the Act, and more specifically prescribed in section 10 of the EAB Regulation.

[47] Examples of such prescribed accidents are a vehicle operated by remote control without a driver in the vehicle, an aircraft except when the aircraft is being

drawn as a trailer on a highway, and an amphibious vehicle being used in or upon water.

[48] Examples of bodily injury to which Enhanced Care does not apply are prescribed in section 11 of the EAB Regulation and include bodily injury arising from an autonomous act of an animal being transported by a vehicle, hazardous properties of nuclear substances, and a declared or undeclared war or insurrection.

[49] Finally, section 116 (2) of the Act states that the bar to a right of action does not apply to actions for non-pecuniary and punitive or other similar non-compensatory damages against a person whose use or operation of a vehicle causes bodily injury and results in their conviction of a prescribed Criminal Code offence.

Exceptions

116 (2) Subject to the regulations and subsection (3), section 115 does not apply to an action or proceeding for non-pecuniary damages and punitive, exemplary or other similar non-compensatory damages against any of the following:

...

(f) a person whose use or operation of a vehicle

(i) caused bodily injury, and

(ii) results in the person's conviction of a prescribed Criminal Code offence;

(3) UNDERINSURED MOTORIST PROTECTION

[50] UMP is a statutory contract of first party insurance which provides compensation to an insured person in the event an at-fault motorist has insufficient or no liability insurance or other assets with which to pay a judgement: *S.A. (Re)*, 2020 BCSC 1323 @ para. 20, 21.

[51] The limit of coverage for UMP is \$1 Million per insured person as set forth in section 13 of Schedule 3 to the Regulation.

[52] In explaining the pre-May 1, 2021 UMP scheme, Arbitrator Yule described the legislation as benefit conferring to be interpreted in a broad and generous manner: *K.P. On Her Own Behalf and As The Litigation Guardian N.P., An Infant v. ICBC* (Arbitration Award April 30, 2019 at para. 48).

[53] I see no reason to depart from that approach albeit recognizing that the insurance scheme is much different under Enhanced Care.

[54] UMP compensation was and is a fund of “last resort”. Compensation is payable only after all listed deductible amounts set out in section 148.1 (1) have been taken into account: *S.A. (Re)*, supra. at para. 25.

[55] Notwithstanding the introduction of Enhanced Care, UMP coverage continues to be provided by the plan of universal compulsory vehicle insurance, but has been severely curtailed through the addition of section 148.1 (3) (e) of the Regulation and the removal of a person’s right of action:

148.1 (3) No coverage is provided under underinsured motorist protection to an insured who is

(e) ... an individual who is entitled to benefits under Part 10 of the Act arising out of the same accident.

[56] On its face, section 148.1 (3) is clear in stating that UMP coverage is not provided to an insured who is entitled to Enhanced Accident Benefits. By elimination UMP coverage is only available in those situations where Enhanced Care does not apply as outlined in paragraphs 45 to 48 herein.

[57] It is straight forward to determine when UMP coverage does not apply. It is more difficult to determine when it does.

[58] Although the bounds of imagination can be employed to formulate examples of when UMP coverage might realistically engage, they are rare as confirmed in the Respondent's webpage.

V. POSITION OF THE PARTIES

(1) CLAIMANTS

[59] The Claimants' position is that the provisions of Part 10 of the Act when read in their entire context effectively nullify UMP coverage. In Mr. Kennedy's words, "...there is a catch 22 here where an insured will never find themselves entitled to UMP so long as the enhanced accident benefits apply."

[60] The Claimants' Arbitration Notice dated February 18, 2025, concisely describes their position:

31. The Exclusion has also produced an inequitable result. It is clear that under section 115 of the IVA, a person cannot commence an action respecting bodily injury caused by a motor vehicle. However, in circumstances where a person is able to commence an action against a driver, UMP is always excluded from coverage.

[61] The Claimants submit that both the limited exception to the bar against bringing an action in circumstances of a Criminal Code conviction and their UMP coverage provided under the plan of universal compulsory vehicle insurance are misleading and of no benefit.

[62] They say they are left in the position of having no UMP coverage because they received Enhanced Accident Benefits and unable to sue CB under section 114 (2)

because the accident did not occur off highway and involve excluded or non-standard vehicles.

[63] I would add that subject to any insurance money being available under section 76 of the Act, they would have to execute against the assets of CB in order to satisfy a section 116 (2) judgment. I will address the applicability of section 76 later in this decision.

[64] The Claimants submit that in enacting Enhanced Care, the Legislature created ambiguity by purporting to provide UMP coverage but then immediately excluding it if an insured was entitled to Enhanced Accident Benefits. In effect, the Legislature ‘giveth but then taketh away’, albeit after having charged a premium for the coverage.

[65] They assert that in the face of this ambiguity, the interpretive aids of nullification of coverage and reasonable expectation of the parties must necessarily be invoked to avoid absurdity and attain a resolution favoring the insured. The Requested Documents will assist in establishing the relevant context and aid in determining the intention and objective of the Legislature.

[66] In conclusion, the Claimants submit that in circumstances where the injury arises from a vehicle accident caused by a person convicted of a prescribed Criminal Code offence, the insured person should be entitled to both Enhanced Accident Benefits and UMP coverage.

(2) RESPONDENT

[67] The Respondent submits there is no ambiguity in the meaning of section 148.1(3)(e) of the Regulation and interpretive principles such as nullification and reasonable expectations have no application. Under the modern approach to

statutory interpretation, the documents sought are irrelevant to resolution of the central issue and the application should be dismissed.

[68] The Respondent asserts the Claimants' fall into error by viewing Enhanced Care through the 'old lens' of the fault-based tort system. In enacting Enhanced Care, the Legislature brought in comprehensive reforms curtailing the right of a party to sue in tort and the kind of damages recoverable, restricting ICBC's obligation to indemnify a tortfeasor, and providing Enhanced Accident Benefits.

[69] These reforms were intended to apply and work harmoniously together to achieve the Legislature's objective of decreasing the cost of insurance premiums and expanding no fault treatment. The fact that UMP compensation may on some measure not be as attractive as it was under the fault-based tort system does not mean the relevant legislation is to be interpreted in a manner other than in accordance with Driedger's modern approach.

[70] The Respondent submits the Claimants' approach is an attempt to create ambiguity where ambiguity does not exist.

VI. DISCUSSION

(1) PRINCIPLES OF STATUTORY INTERPRETATION

[71] Section 148.2 (1) of the Regulation provides that any dispute as to whether an insured is entitled to UMP compensation or the amount of compensation, must be submitted to arbitration under the Arbitration Act [SBC 2020] Chapter 2.

[72] Those two questions of entitlement and compensation reflect the extent of my jurisdiction.

[73] In *Ocean Park Ford Sales Ltd.* supra at para. 21, the Court succinctly stated the general principles of statutory interpretation to be applied to a statutory insurance contract:

“The general principles of statutory interpretation apply to this analysis. The contra proferentem rule that applies to private insurance policies has no application to the terms of a statutory insurance contract: *Squire v. Insurance Corporation of British Columbia* (1990), 44 B.C.L.R. (2d) 65 (C.A.) at 69. However, if there is doubt regarding the meaning of a statutory provision establishing and governing coverage and there are multiple possible meanings that accord with the principles of statutory interpretation, the one more favourable to the insured should be applied: *July v. Neal* (1986), 57 O.R. (2d) 129 (C.A.) at 135.”

[74] The parties agree the proper approach to statutory interpretation begins with Driedger’s modern approach for “...words of an Act to be read in their entire context and grammatical and ordinary sense harmoniously with the scheme of the Act”: *Bell Express Vu Ltd. Partnership v. Rex*, 2002 SCC 42 at para. 26.

[75] In interpreting statutory language, it is a presumption that a legislature does not intend to produce absurd consequences as described in *Piekut v. Canada (National Revenue)*, 2025 SCC 13 at para. 98:

“...a statutory provision produces absurd consequences if, for example, it frustrates the purpose of the legislation, creates irrational distinctions; leads to ridiculous or futile consequences, is extremely unreasonable or unfair; leads to incoherence, contradiction, anomaly, or disproportionate or pointless hardship...”

[76] Where the parties differ is whether other principles of interpretation such as nullification of coverage and the reasonable expectation of the parties can be used as aids to interpret the relevant sections.

[77] The modern approach recognizes that statutory interpretation cannot be founded on words alone, because “...words like people take their colour from their surroundings. Further, words that appear clear and unambiguous may in fact prove to be ambiguous once placed in their context.”: *Piekut*, *ibid.* para. 44.

[78] The Supreme Court of Canada has on several occasions stated the primary interpretive principle is that when the language of an insurance policy is unambiguous, effect should be given to clear language reading the contract as a whole: *Progressive Homes Ltd. v. Lombard General Insurance Company*, 2010 SCC 33 at para. 22.

[79] It is only when the language is ambiguous that resort can be made to general rules of contract. In *Turpin v. The Manufacturers Life Insurance Company*, 2013 BCCA 282, Justice Neilsen stated:

[42] ... I agree with the insurer the preponderance of authority indicates these principles will only apply to assist in construing an ambiguity. The Supreme Court of Canada has repeatedly and consistently affirmed that the reasonable expectations of the parties only become relevant if the provisions of an insurance contract are ambiguous. This was recently reiterated in *Progressive Homes Ltd.* as set out earlier at para. 22.

[80] Ambiguity at law means the words of the provision are reasonably capable of more than one meaning after considering the entire context of the relevant legislation. The test for ambiguity was summarized in *Bell ExpressVu*, supra. at para 29:

“What, then, in law is an ambiguity? To answer, an ambiguity must be “real”. The words of the provision must be “reasonably capable of more than one meaning” (citations omitted). By necessity, however, one must consider the “entire context” of a provision before one can determine if it is reasonably capable of multiple interpretations...”

[81] Rules of construction are to resolve ambiguity. They do not operate to create ambiguity where none exists in the first place: *Progressive Homes*, supra. para 23.

(2) APPLICATION TO THIS CASE

[82] The Claimants submit there is ambiguity as to when UMP will apply which entitles them to invoke the interpretive aids of nullification of coverage and the reasonable expectation of the parties.

[83] They say that subject to certain limited exceptions, a person under section 115 of the Act cannot commence an action for bodily injury caused by an accident. If no action is permitted, UMP is of no consequence.

[84] However in those circumstances under section 116 of the Act where a person can commence an action such as when the at fault driver is convicted of a prescribed Criminal Code offence, UMP is excluded by operation of section 148.1 (3)(e) of the Regulation.

[85] In the result UMP is always excluded from coverage except in the most unusual of circumstances.

[86] I agree with the theme of the Claimants that the circumstances are rare where UMP will apply.

[87] However in my view the submissions of the Claimants are not that the legislation is ambiguous in the sense of being reasonably capable of more than one meaning but rather that it is unfair as drafted.

[88] I agree the legislation is complex.

[89] Section 114 of the Act provides that Part 10 applies to accidents occurring on or after May 1, 2021 and then sets out the type of accident and bodily injury to which it does not apply.

[90] Sections 115 and 116 of the Act are structured as a prohibition against commencing an action for bodily injury followed by certain limited exceptions to the

prohibition, which include conviction for a prescribed Criminal Code driving offence. Similarly structured legislation was under scrutiny *in Bell Express Vu*, supra. at paras 32 and 52.

[91] Section 148.1(2) of the Regulation states when an insured is entitled to UMP coverage, but sub-section 3 then sets out the exclusions where UMP coverage is not provided, including where an individual is entitled to benefits under Part 10 of the Act.

[92] As a result of the structure of the Enhanced Care legislation, the interpretation of its provisions requires what may be characterized as negative deductive logic ...it may be this because it is not that.

[93] I agree with Mr. Parson's analysis of the three categories through which a person injured in a vehicle accident after May 1, 2021, may seek compensation.

[94] First the injured person is entitled to Enhanced Accident Benefits under sections 117 and 118 of the Act. The section 115 statutory bar precludes the person from commencing an action in respect to the bodily injury and there is no UMP coverage pursuant to section 148.1 (3)(e) of the Regulation because of the person's entitlement to Enhanced Accident Benefits. This will be the largest category of people.

[95] Second the person is injured in a vehicle accident and similarly entitled to Enhanced Accident Benefits but may also have a limited right to sue in circumstances *inter alia* of a criminal conviction for non-pecuniary and non-compensatory damages pursuant to section 116 (2) of the Act. Once again there is no UMP coverage because of the person's entitlement to Enhanced Accident Benefits.

[96] Third the person is injured in an off-highway accident or sustains a prescribed bodily injury as described in section 114 (2) of the Act. As a result, the section 115 statutory bar and section 148.1 (3) (e) exclusion do not apply. This person can sue the tortfeasor for the full spectrum of damages with access to UMP. This will likely be the smallest category.

[97] As stated by Justice Willcock in *Ocean Park Ford Sales*, it may be a complex exercise to examine the relevant provisions of the legislation, but a necessary step to be taken.

[98] In the result I find that notwithstanding the complexity of the Enhanced Care legislation, such complexity does not equate to ambiguity in the legal sense of being reasonably capable of more than one meaning.

[99] Section 148.1 (3) (e) of the Regulation is clear in stating that a person entitled to Enhanced Care Benefits is not entitled to UMP coverage.

[100] Similarly section 114 (2) of the Act accompanied by sections 10 and 11 of the EAB Regulation spell out in detail the circumstances wherein Part 10 of the Act does not apply. The fact those circumstances may be rare does not detract from their clarity.

[101] I agree that UMP as insurance coverage under Enhanced Care is less attractive than it was prior to May 1, 2021. But that is not the issue. The legislation must be considered within the context of its objective to reduce the cost of insurance premiums and expand treatment regardless of fault.

[102] My role is not to conduct a cost benefit analysis of the Enhanced Care model as compared to the fault-based tort system existing before May 1, 2021.

[103] Re-writing the legislation because a person may feel it is unfair, in the absence of ambiguity, would not be in accordance with principles of statutory interpretation and not within my mandate.

[104] I conclude the Requested Documents will not assist me in interpreting the legislation. It is evident the circumstances resulting in UMP coverage under Enhanced Care are very limited and I do not require documentary information concerning premiums or claims history since inception of Enhanced Care to make that observation. That is the nature of the Enhanced Care model within the context of the objectives of the legislation.

[105] I note the Claimants did not provide authority in support of their position that similar type documentation is producible to be used as an aid in interpreting the purpose and intention of the legislation.

[106] I must also address the Claimants stated purpose for which the Requested Documents are being sought:

“....because the Claimants seek to prove that the Respondent’s Underinsured Motorist Policy, either accidentally or deliberately, was drafted and legislated under s 148.1 (3) of the Insurance (Vehicle) Regulation so that policyholders could never qualify for coverage, or would qualify so rarely that the value of the coverage is statistically nullified (see the Claimants’ Notices to Arbitrate)”

[107] In my view an issue as to whether the legislation was drafted accidentally or deliberately so that the policy holder could never qualify for coverage is not an issue that falls within my jurisdiction as arbitrator pursuant to section 148.2 (1) of the Regulation. Nor is the question of whether an insured received proper value for the premium paid for UMP coverage.

[108] Finally I wish to comment on the issue that arose in argument as to whether a person in the position of the Claimants might be entitled to access insurance money attached to the third party liability policy applicable to the vehicle being operated by CB, as provided for by section 76 of the Act.

[109] As a fund of last resort, one of the deductible amounts to be considered in determining UMP compensation is an amount paid or payable under a plan of insurance providing third party legal liability indemnity to the underinsured motorist:

Underinsured motorist protection

148.1 (1) In this section:

“deductible amount” means an amount

...

(g) paid or payable to the insured under a certificate, policy or plan of insurance providing third party legal liability indemnity to the underinsured motorist,

[110] Sections 76 (1) and (2) of the Act permit a person (defined as **“claimant”**) who has a claim or judgment against an insured for which indemnity is provided by the plan, to have the insurance money applied towards the claimant’s judgment or settlement.

Third party rights

76 (1) In this section and sections 77 and 78, **“claimant”** means a person who has a claim or a judgment against an insured for which indemnity is provided by the plan...

(2) Even though a claimant does not have a contractual relationship with the insurer, the claimant is entitled, on recovering a judgment against an insured or making a settlement with the insurer, to have the insurance money applied toward the claimant’s judgment or settlement...

[111] Importantly, section 76 (6) of the Act states that the person entitled to have the insurance money applied to a judgment or settlement is not prejudiced, nor is the corporation able to raise as a defence, an act or default of the insured, or contravention of the Criminal Code by the driver of the vehicle in respect of which the insurance money is payable under a plan.

[112] Any amount paid pursuant to section 76 (2) of the Act under a plan of insurance providing third party legal liability indemnity is necessarily linked to determination of the amount of UMP compensation because it is a deductible amount under section 148.1 (1) of the Regulation.

[113] The Claimants argue that the limited exception to the section 115 bar against bringing an action in circumstances of a Criminal Code conviction is of no value because UMP coverage is not provided due to receipt of Enhanced Accident Benefits in the form of death benefits.

[114] In that circumstance and if there was no other insurance money available such as under section 76 (2) of the Act, the Claimants would be left to pursue the assets of CB to satisfy any judgment.

[115] In my view the question of whether a claimant is entitled to insurance money pursuant to section 76 (2), may form part of the contextual backdrop in determining how that section interacts with the UMP provisions to “...fit together logically ...[and] work together dynamically...towards accomplishing the intended goal.”

[116] To the extent any insurance money is paid or payable under section 76 (2), reliance on UMP compensation is reduced or eliminated.

[117] I recognize section 72.1 of the Regulation provides that the corporation must not indemnify an insured for liability imposed on the insured by law in respect to the Criminal Code exceptions in section 116 (2) (f) and (g) of the Act.

[118] This raises the statutory interpretation question of how section 72.1 of the Regulation is to be read together with sub-sections 76 (1), (2) and (6) of the Act and the definition of “plan” and “insurance money” in conjunction with section 1.1 of the Regulation.

[119] This question however is not before me as section 76 (3) of the Act provides for a claimant to bring an action against the insurer to have the insurance money applied in accordance with subsection (2).

VII. CONCLUSION

[120] I dismiss the application for production of the Requested Documents.

[121] Given the nature of the application my preliminary view is that each party should bear their own costs. However, given the complexity of the issues and matters I may not be aware of, and if agreement cannot be reached on costs, the parties have liberty to deliver written submissions to be made within thirty days of this decision and any reply to be fourteen days thereafter.

Dated: November 13, 2025

Arbitrator - Dennis C. Quinlan, K.C.

