

Appeal by Travelers Insurance from a decision dismissing its appeal from an arbitrator's decision requiring the appellant to reimburse the respondent CAA for the benefits CAA had paid to CAA's insured and to assume responsibility for paying the benefits to her in the future. The claimant was catastrophically injured in an accident in Nunavut where she was temporarily employed. She was driving a Nunavut plated vehicle owned by the Government of Nunavut and covered by a Nunavut motor vehicle insurance policy issued by the appellant to the Government of Nunavut. Under that policy the claimant was entitled to Nunavut statutory accident benefits. The claimant, ordinarily resident in Ontario, owned a car plated in Ontario and insured by CAA. Under the terms of her Ontario insurance policy, the claimant was contractually entitled to claim Ontario statutory accident benefits from CAA. The arbitrator found that the appellant was an Ontario insurer because it was licensed to undertake automobile insurance in Ontario. He also found the appellant was bound by the power of attorney and undertaking, which it signed in 1964 and thus became an insurer in the province or territory where the claim was brought.

Held, the appeal should be allowed.

The arbitrator erred in law in finding that the appellant was an Ontario insurer required to arbitrate priorities with CAA under s. 268 of the Ontario *Insurance Act*, R.S.O. 1990, c. 1.8. In respect of the Nunavut policy and the accident in Nunavut the appellant was not considered an Ontario insurer for the purpose of the priority provisions of the Ontario *Insurance Act*. It was thus not obliged to indemnify CAA or to assume CAA's obligations to the claimant. Ontario's insurance laws did not have extraterritorial effect. The arbitrator erred in finding that a signatory to the power of attorney and undertaking essentially became an insurer in the province or territory where the claim was brought. Even if the appellant was an Ontario insurer, the arbitrator misapplied s. 268 by failing to give effect to Nunavut law regarding the claimant's status and the limits on her entitlement to Nunavut benefits under Nunavut legislation. The Ontario *Insurance Act* had no application to the Nunavut policy on the facts of this case. An insurance policy could not both be governed by Ontario and Nunavut law at the same time. The Nunavut legislation clearly stated that Nunavut law governed the contract. < Under the Nunavut policy >, the claimant was not a named insured and the Nunavut legislation did not include the concept of a deemed named insured. Both the arbitrator and the appeal judge erroneously treated the appellant as an Ontario insurer in this case and the Nunavut policy as an Ontario policy.

[43] Next, assuming that s. 268 of the Ontario *Insurance Act* governs in these circumstances, did the arbitrator apply the section properly? That question turns on which of two subsections is applicable, ss. 268(5.1) or (5.2). They provide:

268(5.1) 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.

(5.2) If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, at the time of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant.

[44] The arbitrator quoted these subsections and referred to s. 3(7)(f) of the *Statutory Accidents Benefits Schedule*, O. Reg. 34/10, which provides:

3(7)(f) An individual who is living and ordinarily present in Ontario is deemed to be the named insured under the policy insuring an automobile at the time of an accident if, at the time of the accident,

(i) the insured automobile is being made available for the individual's regular use by a corporation, unincorporated association, partnership, sole proprietorship or other entity[.]

My Notes:

1. Regarding priority in AB claim, Ontario Insurance act has no effect to an accident occurred outside ON while driving a non-ON insured vehicle.
2. Per s268 of Insurance Act, a claimant could on his/her discretion choose an insurer if s/he has two or more auto insurers, however, if the vehicle s/he was in and involved in an accident is the claimant or his/her spouse's vehicle, the claimant own or his/her spouse' insurance should have the first priority to cover damages.