

CITATION: Gore Mutual Insurance Company v. Hamilton Township Mutual Insurance Company, 2026 ONSC 2550
COURT FILE NO.: CV-23-00703186-0000
DATE: 20260429

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Gore Mutual Insurance Company)	
Appellant)	<i>Athur Camporese</i> , for the Appellant
)	
– and –)	
)	
Hamilton Township Mutual Insurance Company)	<i>Bill Sproull, Daniel Hinds</i> , for the Respondent
Respondent)	
)	
)	
)	
)	HEARD: April 16, 2026

DES ROSIERS J.

REASONS

- [1] This is an appeal from an arbitral award dated June 19, 2023. Mr. Kenneth Bialkowski (“the Arbitrator”) found that Mr. John Krolczyk (“The Claimant”) was a “deemed named insured” under a policy issued by the appellant, Gore Mutual Insurance Company (“Gore Mutual”), and concluded that Gore Mutual was the priority insurer liable to pay statutory accident benefits by application of Section 268 (5.2) of the *Insurance Act*, R.S.O. 1990, c. I-8.

- [2] The Claimant was injured in a car accident on October 11, 2020. At the time of the accident, he was driving a 2004 Chevrolet Silverado owned by his elderly mother, Ms. Zofia Krolczyk, and insured by Gore Mutual.

- [3] The Claimant applied to the respondent, Hamilton Township Mutual Insurance Company (HTM), for statutory benefits because HTM was the insurer of two other vehicles co-owned by the Claimant and his wife, Deborah Krolczyk, namely, a Nissan Murano and a Chrysler Sebring. The Claimant was also the principal operator of a Ford truck F-250 owned by Korel Farms Inc. (“Korel Farms”) and insured by HTM.

- [4] The Claimant is a director, manager and vice-president of Korel Farms. His mother is a shareholder. It is unclear whether the Claimant is also a shareholder of Korel Farms. There is no dispute that the Claimant manages the operations of Korel Farms.
- [5] HTM provided notice to Gore Mutual of its intention to dispute priority and initiated an arbitration for the determination of which insurer stood in priority to pay statutory accident benefits to the Claimant.
- [6] The Claimant was a named insured on HTM's policy and a listed driver on Gore Mutual's policy at the time of the accident. The Claimant was also the principal user of the Silverado.
- [7] The Arbitration proceeded on the basis of written submissions, document briefs, Examination under Oaths transcripts, books of authority and oral submissions on June 7, 2023.
- [8] The central issue before the Arbitrator was whether the Claimant was a "deemed insured person" pursuant to section 3(7) (f) (i) of the *Statutory Accident Benefits Schedule*, O. Reg. 34/10. The Arbitrator had to determine whether, at the time of the accident, the Chevrolet Silverado was being made available to the Claimant's "regular use" by a "corporation, unincorporated association, partnership, sole proprietorship or other entity" pursuant to Section 3 (7) (f) (i), which provides as follows:
3. (7) For the purposes of this Regulation,
- (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,
- [9] The Arbitrator determined that Gore Mutual was the priority insurer because he concluded that the Claimant had regular use of the Chevrolet Silverado and that the Chevrolet Silverado was being made available to him either by a corporation, Korel Farms, or by other entity, specifically, as a "family unit" or joint venture.
- [10] Gore Mutual appeals the award on two grounds. First, it argues that the Arbitrator misdirected himself regarding who had the onus of proof. Second, Gore Mutual argues that the Arbitrator erred in finding that the Chevrolet Silverado was made available to the Claimant by a corporation or other entity as required by the Schedule.
- [11] HMT argues that the appeal should be dismissed because the Arbitrator did not make any error of law nor did he make a palpable and overriding error in his conclusions of mixed law and facts.

- [12] The parties agree that the standard of review applicable in the circumstances is the ordinary appellate standard, that is, questions of law are subject to a correctness standard, while questions of mixed law and fact, that is, questions about whether the facts meet the legal tests, are subject to a higher more deferential standard of review: *Northridge General Insurance Corp. v. Jevco Insurance Co.* 2024 ONSC 120 (par. 116-120) (“*Northridge General Insurance Corp.*”).
- [13] In *Northridge General Insurance Corp.*, Perell J. describes the standard of review in the following way:
- “Where the ground of appeal raises a question of fact, an appellate court must pay substantial deference to it. The appellate court cannot set the decision aside simply because it views the evidence as showing a different probability from that found below. Before it may properly interfere, the appellate court must conclude that the submitted error amounts to a “palpable and overriding error”. The word “palpable” means “clear to the mind or plain to see”, and “overriding” means “determinative” in the sense that the error “affected the result”. The Supreme Court of Canada has held that other formulations capture the same meaning as “palpable error”: “clearly wrong”, “unreasonable” or “unsupported by the evidence”. (par. 118, references omitted).
- [14] Gore Mutual argues that the Arbitrator made inconsistent findings of fact in light of his evidentiary conclusions and that the Arbitrator’s conclusions were unsupported by the evidence. Gore Mutual also argues that the Arbitrator misinterpreted section 3(7) (f) (i) of the Schedule because it extended its application further than the Legislature intended it by allowing an individual, Ms. Zofia Krolczyk, to make available the regular use of her vehicle to another person and trigger the deeming provision.
- [15] The debate between the parties arises out of three aspects of the Arbitrator’s decision. The Arbitrator concluded that, despite the fact that the cross-examination under oath of the Claimant was “equivocal”, the totality of the evidence supported a finding that Ms. Zofia Krolczyk was acting in her capacity as a shareholder and director of Korel Farms when she made her truck available to her son. Second, Gore Mutual objects to the finding that Korel Farms, through the Claimant, made the vehicle available. Finally, Gore Mutual disputes the alternative finding of the Arbitrator that a family unit or a joint venture was involved to made available the use of the vehicle.
- [16] Some facts are not in dispute. The Silverado is a truck initially purchased by Mr. John Krolczyk Sr., the Claimant’s father and Ms. Zofia Krolczyk’s husband. Mr. Krolczyk Sr. purchased the truck as a commercial vehicle in 2005. When Mr. Krolczyk Sr. died in 2016, the truck was transferred to his wife, Ms. Zofia Krolczyk. Ms. Krolczyk began driving the truck and insured it as a “pleasure or commute vehicle” with Gore Mutual.
- [17] The Krolczyk family operates two farms on two different pieces of property. The Baltimore farm is owned by the Claimant, his wife and his mother, Ms. Zofia Krolczyk. At the time of the accident, Ms. Zofia Krolczyk lived on the Baltimore farm. The Cobourg farm is owned by the Claimant and his wife. The Claimant and his wife reside

on the Cobourg farm. The farms are about 15 to 20 kms away from each other. The Baltimore farm is a crops farm and the Cobourg farm is a cattle farm.

- [18] In 2014, the Claimant began to drive the Silverado because his mother was no longer licensed to drive. The Claimant changed the plates on the vehicle in 2017 and he purchased commercial plates for the vehicle which remained in his mother's ownership.
- [19] At the time of the accident, the Claimant was driving the Silverado to return to his mother's farm after a Thanksgiving dinner at his home because he had to harvest a crop of beans. It is unclear whether the beans were for his personal use or for sale. He was struck head on by another vehicle and suffered serious personal injuries.
- [20] The Arbitrator's findings are expressed in the following terms:

(Par. 44) On the evidence before me, I am satisfied that the subject Silverado was used by the claimant to commute to and from the two farms on a daily basis as part of his work as general manager of Korel Farms Inc. and that it was used occasionally to pick up parts for farm equipment on the Baltimore farm. More importantly, it was used regularly to transport bales of hay from the Baltimore farm to the Cobourg farm where Korel Farms Inc.'s beef cattle were kept. In my view, this was clearly a business use of the vehicle. It was periodic and routine. The regular movement of bales of hay from one farm to the other cannot be said to be "irregular of (sic) out of the ordinary". Hence, I find that the claimant had "regular use" of the Silverado.

(...)

(par. 46) There is no evidence available from Zofia, the registered owner of the Silverado, as to whether she provided it to the claimant for use on the farms in her personal capacity or in her capacity as officer and owner of Korel Farms Inc. In my view, the examination under oath evidence of the claimant is equivocal in that regard. At one point the claimant stated that it was his mother who provided him with the vehicle, and not Korel Farms Inc., but in the questions that followed admitted that in a sense, since both he and his mother were directors, officers and shareholders, it was provided in that capacity. It is the totality of evidence that must be assessed to determine whether the Silverado was provided to the claimant in her personal capacity or as owner of Korel Farms Inc. It must be determined on the totality of evidence whether Zofia really had any say in how the vehicle was to be used or whether it was simply a decision made by the claimant as general manager and operator of Korel Farms Inc. at the two farm properties.

(par. 47) On the totality of evidence, the unique facts of this case overwhelmingly support a finding that the vehicle was made available by Zofia in her corporate capacity for use by the claimant on a daily basis in the business of the operation of Korel Farms Inc. on both farm properties. Although insured for pleasure use, the evidence shows otherwise. The significant annual kilometer usage of the Silverado, as demonstrated by the VIN history, is in stark contrast to the statement to the broker that it was used for "pleasure or commute not more than 5 kms". The broker was advised in 2015 that the Silverado would

be used as a back up truck for transporting hay and picking up and delivery of parts and supplies between the two farms.

(par. 48) The totality of evidence also supports a finding that the Silverado was provided to the claimant by himself as Vice President and general manager of Karel Farms Inc. as the evidence shows he had full control over who would use the Silverado and how the vehicle would be used. It would appear that Zofia played no role whatsoever in the day to day operations of Karel Farms Inc. Clearly, this was a business vehicle. As indicated, the annual kilometer usage is totally inconsistent with its use as being just to run errands for his mother and to take her to medical appointments. It was admittedly used on a daily basis by the claimant as general manager of Karel Farms Inc. It was used daily to commute between farms. It was the vehicle used to transport bales of hay to the Cobourg farm to feed the Karel Farms Inc. cattle at that location.

(par. 49) Significant to the finding that the Silverado was made available to the claimant by his mother in her capacity as owner of Karel Farms Inc., is the fashion in which vehicle expenses were treated for tax purposes. The expenses for fuel, maintenance and repair were claimed as business expenses by Karel Farms Inc. The claimant testified on his examinations under oath that he mostly used his Sebring and Murano vehicles owned by he and his wife for his own personal activities. I am accordingly satisfied that the Silverado was essentially being made available to him by the corporation and not by his mother in her personal capacity.

(...)

(par. 59) In the final analysis, the unique facts of this case support a finding that the Silverado involved in the subject accident was used regularly in a commercial enterprise and provided by the registered owner in her capacity as owner of Karel Farms Inc., by the "family unit" or "joint venture" operating the two farms. It was provided by a "corporation or other entity" so that s. 3(7)(f) of the Schedule would be applicable. The subject Silverado was being used in a commercial enterprise. It was essentially a "company car". It was plated as a commercial vehicle. The fuel, maintenance and repair expenses with respect to the Silverado were treated as a business expense by Karel Farms Inc. In keeping with the legislative intent outlined above, I find that it ought to be the insurer of the commercial vehicle, as opposed to the insurer of the claimant's personal automobiles, that should bear the risk of the accident benefit claim of John Krolczyk.

[21] Gore Mutual argues that the findings of fact made by the Arbitrator are incompatible with the Claimant's testimony under oath when the Claimant agreed with the proposition that the Silverado was his mother's car, that he used it mostly for personal use, to drive his mother to her medical appointment and to do errands, and occasionally used it to pick up parts for machinery and transport bales of hay. Gore Mutual's argument is that such statements by the claimant ought to have been determinative of the case.

[22] The issue before me is whether the Arbitrator made palpable and overriding errors in his conclusions on mixed questions of facts and law or made errors on the questions of law.

- [23] For reasons below, I conclude that the Arbitrator did not make any error that warrants appellate review. There was evidence for the Arbitrator's findings and his legal analysis reflects the evolution of the caselaw on the interpretation of section 3(7) (f) (i) of the *Statutory Benefits Schedule*.
- [24] It is clear that the Arbitrator instructed himself appropriately on the onus. At par.40 of his decision, he states: "As stated in *The Dominion of Canada General Insurance Company v. Certas Direct Insurance Company (Arbitrator Samworth - December 7, 2015)* the onus to so prove would rest with the Applicant, HTM, in this proceeding". Gore Mutual's argument is that, despite acknowledging that the onus rested on HTM, the Arbitrator effectively disregarded the onus and the frailties of HTM's evidence to conclude that HTM had met its burden. I disagree. As explained below, the Arbitrator considered the evidence in its entirety and was convinced on a balance of probabilities that the use of the truck was provided either by a corporation or another entity. The Arbitrator did not err in his assessment of the onus of evidence.
- [25] I also conclude that the Arbitrator considered the "equivocal nature" of the Claimant's examinations under oath, but put such evidence in context. He considered additional questions and answers put to the Claimant as well as the documentary evidence, particularly the fact that the truck expenses were deducted as business expenses. The Arbitrator also considered the mileage on the Silverado to conclude that it was used regularly. It was up to the Arbitrator to review the evidence in its entirety and make his factual findings. I cannot conclude that he made palpable errors in doing so.
- [26] Gore Mutual argues that the Arbitrator erred when he found a regular use made available by a corporation (Korel Farms) when the evidence pointed to undetermined transports of bales of hay or retrieval of small machinery parts. Gore Mutual points to the examination under oath of the Claimant who disagreed with the proposition that he used the car for business 40% of the time. HTM argues that there is no set percentage in the courts' interpretation of section 3(7) (f) (i) of *Statutory Benefits Schedule* and there is no set percentage of business use required for the deeming provision to apply. I find that the Arbitrator did not err in concluding that although there was no evidence of the number of transports of bale of hay, they were not irregular nor out of the ordinary, which is the test to be met.
- [27] Gore Mutal is also arguing that the Arbitrator made an erroneous conclusion when he found that the mother, Ms. Zofia Krolczyk, made her car available in her capacity as a shareholder of Korel Farms when the Arbitrator had also found that Ms. Krolczyk had no involvement in the running of the farming business. The parties agree that Ms. Krolczyk was 88 or 89 years old at the time of the accident, she had not been driving the Silverado for several years because she was no longer licensed to do so. At the time of the examinations under oath, she was being cared for in a nursing home. The Arbitrator considered other evidence to palliate the fact that Ms. Krolczyk was no longer able to be cross-examined. There was no error in doing so.

- [28] Gore Mutual relies on the 1996 Arbitration Award of J.T. Fidler in *Axa Insurance v. Markel Insurance Company of Canada* for the proposition that when the owner of a vehicle does not relinquish ownership but rather offers to use the vehicle for a business purpose, that person cannot be deemed to be someone to whom the vehicle was made available. Gore Mutual's argument is that Ms. Zofia Krolczyk made her car available to Korel Farms, and not the other way around; therefore, it remained that an individual had made the car available. In my view, the 1996 case does not reflect the evolution of the law on this question. In 2012, in *Kingsway General Insurance Co. v. Gore Mutual Insurance Co.* 2012 ONCA 683 the Ontario Court of Appeal reviewed the question and, in similar business arrangements, upheld the decision of Perell J. The Court of Appeal concluded that "the purpose of the regulation provision is to deem the person, for whom a vehicle is made available for regular use, to be a "named insured". This is clearly a recognition that in these types of transactions the regular user is in such a relationship with the vehicle and the vehicle insurer that that person should claim their benefits first from the insurer of the vehicle, rather than claim the benefits from some other insurance company." (par 44)
- [29] Gore Mutual also objects to the finding by the Arbitrator that there was a joint venture between Korel Farms and Creighton Farms since there was no evidence of any formal contractual arrangement between the two corporations. I find that it was up to the Arbitrator to find on the evidence before him that the family operated as a unit to manage both farm locations, one where the elderly mother lived and that was operated as a grain farm and one where the Claimant and his wife lived which was a cattle farm. He concluded that after Mr. Krolczyk Sr.'s death, the family organized its affairs to ensure that the farming operations continued under the management of the Claimant.
- [30] In addition, the Arbitrator referred to the caselaw on the definition of the expression "other entity". In particular, he relied on two arbitral decisions, *TD General Insurance Company v. Pilot Insurance Company* (Arbitrator Paul Torrie, 2007) and *The Cooperators Insurance Company v. Lloyds of London* (Arbitrator Guy Jones, 2002). In *TD General Insurance*, Arbitrator Torrie explains that a family can qualify as an "other entity". He writes:
- "it must share characteristics with the other entities enumerated in the subsection. At the same time, the scope of what "other entity" means cannot be construed so broadly as to render the restrictive quality of the subsection meaningless. All entities described in the subsection might own automobiles which they provide to persons in furtherance of their objectives. The inclusion of "partnership" and "sole proprietorship" as named entities in the subsection, albeit entities with commercial objectives, suggests that as few as one or two people can form a qualifying entity. Moreover, the entities specifically named in the subsection also include "unincorporated associations" and therefore a qualifying "other entity" is not restricted to having a commercial or "for profit" objective.
- [31] It was a reasonable conclusion on the part of the Arbitrator that the family operated as a unit to manage the two farms and that the Claimant had the discretion to use the cars and

the tucks as he saw fit to respond to his needs, those of the family and of the farming operations. I also conclude that the Arbitrator was correct in his legal interpretation of “other entity”. The Arbitrator concluded that the caselaw on section 3(7)(f)(i) recognizes that “other entities” may be family purposes or joint ventures. In my view, it was not an error to conclude that a “joint venture”, informal and fluid as in the present case, may give rise to the deeming provision.

- [32] The Arbitrator concluded that the Claimant had control of the vehicle and used it regularly to drive between the two farms and engage in a variety of purposes, including supporting the farming operations. Such conclusion is not beyond the scope of the intent of the section, it reflects a recognition that the Claimant had a substantial connection with the vehicle that was used regularly to support the farming operations. I find no error in the Arbitrator’s decision.
- [33] The appeal is dismissed.
- [34] The parties have agreed on the amount of costs. Pursuant to this agreement, I award \$6500 in costs to the respondent.



Des Rosiers J.

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BETWEEN:

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Appellant

– and –

Hamilton Township Mutual Insurance Company

Respondent

REASONS FOR JUDGMENT

Des Rosiers J.

Released: April 29, 2026