IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
cite: *Bonn v. Eschelon Insurance and Crawford & Company* 2021 NSSM 2

SCCH 497495

Between:

Matthew A. Bonn

Claimant

— and —

Echelon Insurance and Crawford & Company (Canada) Inc

Defendants

Adjudicator:	Augustus M. Richardson, QC
For the Claimant:	Matthew A. Boon, claimant
For the Defendants:	Lauren A. Harper, counsel
Heard:	January 19, 2021 (by teleconference)
Decision:	February 8th, 2021

DECISION and ORDER

Introduction

[1] Does a driver void his or her automobile insurance if they accept gas money from a friend or acquaintance who has been a passenger in their car? The question arises because on March 21, 2017 the claimant accepted (on his evidence) some money for gas from an acquaintance who had asked him to drive him home. Once the trip was completed the acquaintance pointed a gun at Mr Bonn's head, told him to get out of the car and then drove away with it. The claimant reported the theft to the police and filed a claim with the defendant insurer.

[2] The defendant insurer denied the claim. It alleges that the claimant was in the habit of accepting payments from the acquaintance to drive him about town. It says as a result that section 8 (Excluded Uses) of the Nova Scotia Standard Automobile Policy (Owner's Form), being NSPF No.1, was triggered and voided the claim. Section 8(3) provides as follows:

> **8. Excluded Uses**

Unless coverage is expressly given by an endorsement of this policy, the Insurer shall not be liable under this policy while ...

(3) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be the carrying of passengers for compensation or hire;

> (a) the use by the insured of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
>
> (b) the occasional and infrequent use by the insured of his automobile for the carriage of another person who shares the cost of the trip;
>
> (c) the use by the insured of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse or common-law partner;
>
> (d) the use by the insured of his automobile for the carriage of clients or customers or prospective clients or customers;
>
> (e) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program.

[3] The question to be answered then is whether what happened fell within the confines of s.8(3).

The Hearing

[4] At the hearing by way of teleconference on January 19th, 2021 I heard the testimony of

a. the claimant, Mr Matthew A. Bonn,

b. his mother, Virginia Bonn,

c. Tanya Lake, a case manager who works for the claimant’s family physician, and

d. Lauchlin Eisin.

[5] The claimant also filed with the court a bundle of documents under cover of an email dated January 17, 2021, which I had before me at the hearing.

[6] I should note here that Ms Lake and Mr Eisin had been called by the claimant to speak to the issue of PTSD, which the claimant maintained he had. Counsel for the defendants objected to their evidence on the grounds of relevance. She also objected since neither were experts qualified to provide opinion evidence on the topic of PTSD. I agreed with counsel for the defendants on both points. I have not placed any weight on what I heard from them before the objections were raised.

[7] On behalf of the defendants I heard the testimony of Mr Simon Clements, an independent adjuster working for the defendant Crawford & Company (Canada) Inc. He had taken a statement from the claimant on April 6, 2017. The statement was transcribed and entered into evidence as Tab 6 of the defendants' Book of Evidence ("DBE"). I also heard the testimony of Ms Lisa Atsalinos, a senior underwriter with the defendant Echelon Insurance.

[8] I should also note that the defendants expressly waived any reliance on a limitations defence. Given the claimant's experience (detailed below), as well as the PTSD that he said he suffered from, I accepted that such a waiver was proper and appropriate in the circumstances.

The Facts

[9] There was only one major, substantive area of dispute between the parties on the facts. I will deal with that dispute in what follows. Subject to that observation, I will set out the facts as the parties appeared to have accepted as correct.

[10] In 2016 the claimant was or had been working at Maritime Paper. He purchased a 2008 Mercedes C230. He paid $16,000.00 in cash for it. He was very proud of the car. He went to his insurance broker and applied for comprehensive automobile insurance on April 19, 2016.

[11] The application form contained the following question: "Will the automobile be rented or leased, or used for carrying passengers for compensation or hire, or for carrying explosives or radioactive material?" Mr Bonn answered "No:" DBE, Tab 1.

[12] The application contained a related question: “Will the automobile be used for the transportation of goods for compensation? If so, state class of licence or certificate and radius of operations.” Mr Bonn answered “No.”

[13] Echelon accepted the application and issued a policy of automobile insurance with a policy period of April 19, 2016 to April 19, 2017. It renewed the policy for the period April 19, 2017 to April 19, 2018: DBE, Tab 2. There was no question that the automobile insurance was in place on March 21, 2017, the date of the loss that gives rise to this claim.

The Loss on March 21, 2017

[14] At the hearing Mr Bonn testified that he had been out with some friends or acquaintances in north end Dartmouth, Nova Scotia. One of them (Mr Frankie Downey) offered to pay for gas if Mr Bonn drove him home to East Preston. Mr Bonn testified that Mr Downey had always been “solid, had never disrespected me.” Mr Downey had told him that he was “stuck and needed to get home.” Mr Bonn had little gas at the time, so Mr Downey offered gas money. Mr Bonn explained “that is what happened, I picked him up and drove him home” to East Preston. Upon arrival Mr Downy pulled out a gun, put it to Mr Bonn’s head and told him to get out of the car. Mr Downey then drove away with the car.

[15] Mr Bonn reported the theft to the police. He also filed a claim under his motor vehicle insurance policy with Echelon on or about March 29, 2017. Echelon appointed Crawford & Company (Mr Clements) as its adjuster to investigate and assess the claim: DBE, Tab 3.

[16] Mr Bonn was interviewed by Mr Clements on April 6, 2017. He was asked to walk Mr Clements through what had happened. Over the course of about an hour Mr Bonn made a number of statements that the insured decided amounted to evidence of a breach of section 8(3). These included the following:

> Q: ... just walk me through kind of, from the beginning.
>
> A: Uh, I was just driving around that night, um ... I uh, I didn’t really have any money, I um, I drove this, this guy multiple times, he usually pays me for drives. From the time I met him, I drove him and his friends to Truro so they could go out on the, on the town one night.
>
> Q: Mmhm

A: And they paid me, you know, they pay me in cash so, I gave him a call, so he said ‘yeh, I actually do need a drive tonight, I got a couple of things to do, then I have to go meet up with a buddy, he’s not ready right now but if you want to come get me now we can, we can go make a couple of stops, you know, go to Tim Horton’s or whatever and uh, just wait for my buddy to cal’ so we did that. Um, I picked him up on 21 Ruben, out on Roleika, like off of Main Street.

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A: Um, we drove around. He had a few stops to make, I never, I never went into any of the buildings with him. Um, he was being really nice, you know, he uh, making jokes, but I also noticed he was asking a lot about the car .... We actually went out to East Preston earlier on the night, he had to go into a house.

Q: Mmhm.

Come back, um, we drove around pretty much, burned gas, we were at Tim Horton’s on a, on a, right off of Main Street there for a while and um, I remember asking him, I said like so, ‘yeh, like, do you need to go anywhere’s else?’ and he said, ‘yeh, we still gotta make that one stop, I’m just waiting for my buddy to uh, message me that he’s good’ but he needs to go see him.

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Q: Yeh. So what would he pay you for like, if you were to pick him up at his house or go somewhere, drop him at his house, or vice versa.

A: Well, $20, $40, you know.

Q: Yeh

A: Sometimes $50 right so like ...

Q: So it’d just be time for 20 minutes or whatever.

A: Yeh so it was pretty generous right so now, now that's when I start to think like, he was paying me pretty good for these little drives but in the end, he obviously got what he wanted, you know, I don't even know if I believe the story that this guy paid him, I think he might have just been making this up because I think, like I told you, I told them no so many times.

***

Q: Did you ever go, you mentioned driving a bunch of times like in, but usually from one place to another,, it wasn't like ever a scenario where like you go somewhere with him and go with him? Like to,

A: No, no, like the time we went to Truro even I didn't, they went into the club.

Q: And I stayed in, in with my friend, she was a girl and I stayed in the car and we just kind of waited for them.

A: Yeh, just hanging out in waiting.

Q: Yeah and like they, they were like ‘Oh, we’ll pay you good to take me to Truro’ and that night I said, all right well I had nothing else to do so

Q: Mmhm.

A: So we did.

[17] After reviewing the statement Echelon decided to deny the claim on the ground that Mr Bonn had breached s.8(3). As Mr Clements explained the insurer’s position in a letter dated April 28, 2017, “You confirmed in your statement that you accepted money for transporting passengers for compensation on several occasions. This type of activity is an exclusion under the policy:” DBE, Tab 5.

[18] Mr Bonn was cross-examined closely about the above-noted statements in the April 2017 interview. He acknowledged that he had driven Mr Downey a number of times but maintained it was not for compensation. He said he never drove anyone for hire; he never advertised as a driver for hire. He was not operating a taxi service; he only accepted money once or twice, and only to put gas

in his tank when he had no gas. He added at one point that he wasn't even sure how much he had been given, since from time to time Mr Downey simply went into the gas station and paid for the gas himself.

[19] Mr Bonn also maintained that the statement he had given to Mr Clements had been made when he was under extreme pressure. His grandmother was dying. He had PTSD from having a gun held to his head. Mr Clements had asked leading questions and put answers in his mouth.

[20] Ms Ataslinos testified as to Eschelon's practice when deciding whether to accept a risk (that is, accept an application for insurance). She explained that Eschelon would automatically deny an application for insurance "for taxi purposes or used for same." She noted the question on the application regarding intended use on Mr Bonn's application. If he had answered "yes" rather than "no" Eschelon "would have wanted more information as to what that meant ... and if the broker said it was for a taxi or Uber we would decline the risk."

[21] Ms Ataslinos was pressed during cross-examination about the exceptions to the exclusion that were contained in s.8(3)(b). In particular, she was asked whether accepting a passenger's offer to pay or contribute to the cost of gas would void the policy. She dodged the question, suggesting that the answer lay with the claims and not the underwriting department. She was prepared to say only that Eschelon had rules that "if a private passenger car is used for business purposes we do not write the risk at all."

Analysis and Decision

[22] Mr Bonn's claim, and Echelon's defence, requires a determination of the facts; the interpretation of the meaning and intent of s.8(3); and whether the exclusion contained in s.8(3) was triggered by those facts.

Findings of Fact

[23] I start with my findings as to the nature of the use being made of the car by Mr Bonn on the night of the loss. The only evidence on the point is to be found in the testimony of Mr Bonn at the hearing before me, and in his statement to Mr Clements on April 6, 2017. What then are the facts?

[24] I should say that having listened to Mr Bonn I was satisfied that he was an intelligent and attentive witness. The statements recorded in the transcript were consistent with the way he which he provided his testimony before me. His speech was a bit disjointed and fragmented. He tended to

repeat himself, going back over what he had already said, adding or omitting details to what he had already said. That style of speaking made it sometimes difficult to understand what he was trying to describe. Having said that, and even accepting that he had PTSD, I was nevertheless not persuaded that he had been led by Mr Clements into saying things that were not accurate. His testimony at the hearing was not that dissimilar in content or style from what he had said to Mr Clements. He held his own against stiff cross-examination. He was coherent and thoughtful in his submissions.

[25] Based on the testimony and statement of Mr Bonn I am satisfied as to the following:

a. Mr Downey was not a friend of Mr Bonn, but he was not a stranger—he was a relatively new acquaintance who Mr Bonn had met through a mutual acquaintance;

b. Mr Bonn would hang out with Mr Downey and others, and from time to time would drive Mr Downey to various destinations—Truro, or about town within the Halifax Regional Municipality, or from or to places Mr Downey would request;

c. Mr Downey would sometimes but not always give money to Mr Bonn, sometimes directly, or sometimes by paying for gas himself;

d. There was no evidence that Mr Bonn ever asked anyone, including Mr Downey, for money, either in general or for any specific amount, and I so find as a fact;

e. There was no evidence to suggest that anyone else who ever sat as a passenger in Mr Bonn's car gave him money, and I so find as a fact;

f. the amount of the payments made by Mr Downey, when made, was not based on any pre-existing agreement between Mr Bonn and Mr Downey, nor were they linked in any logical way to the amount of gas or the distance driven that might be required for such trips; and

g. on the night in question the stops made by Mr Bonn were mostly in response to requests made by Mr Downey.

[26] I turn now to the principles to be applied based on these facts.

[27] First, the is no question that

a. Mr Bonn had valid insurance at the time of the loss;

b. that if the exclusion in s.8(3) applies Mr Bonn's claim must fail; and that

c. the onus of establishing that the exclusion applies falls on the defendant insurer.

[28] Exclusions in insurance policies are generally construed narrowly. The insurer bears the onus of establishing not just the facts, but that those facts fall within the scope of the exclusion. In saying this I recognize that the rules of interpretation for contracts may not be applied so strictly in this case because s.8(3) has its origins in statute. Section 8(3) of the policy is an exclusion that the Legislature permitted insurers to include in motor vehicle policies. Section 124(1) of the *Insurance Act* provides as follows:

> s.124(1) The insurer may provide under a contract evidenced by a motor vehicle liability policy in one or more of the following cases, that it shall not be liable while
>
> (c) the automobile is used as a taxicab, public omnibus, or sightseeing conveyance or for carrying passengers for compensation or hire.

[29] Section 124(4) of the Act then goes on to provide what does not fall within the phrase "for carrying passengers for compensation or hire:"

> s.124$4) The following do not fall within the words "for carrying passengers for compensation or hire" used in clause (c) of subsection (1):
>
> (a) the use by a person of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;
>
> (b) the occasional and infrequent use by a person of his automobile for the carriage of another person who shares the cost of the trip;
>
> (c) the use by a person of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse or common-law partner;

(d) the use by a person of his automobile for the carriage of a client or customer or a prospective client or customer;

(e) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program.

[30] Section 8(3) of the policy, which I repeat here, repeats the statutory wording:

8. Excluded Uses
Unless coverage is expressly given by an endorsement of this policy, the Insurer shall not be liable under this policy while ...

(3) the automobile is used as a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire; provided that the following uses shall not be deemed to be the carrying of passengers for compensation or hire;

(a) the use by the insured of his automobile for the carriage of another person in return for the former's carriage in the automobile of the latter;

(b) the occasional and infrequent use by the insured of his automobile for the carriage of another person who shares the cost of the trip;

(c) the use by the insured of his automobile for the carriage of a temporary or permanent domestic servant of the insured or his spouse or common-law partner;

(d) the use by the insured of his automobile for the carriage of clients or customers or prospective clients or customers;

(e) the occasional and infrequent use by the insured of his automobile for the transportation of children to or from school or school activities conducted within the educational program.

[31] What this means in my view is that when interpreting s.8(3) I may also take into account rules of interpretation associated with statutes and, in particular, a.9(5) of the *Interpretation Act*, which provides as follows:

> 9(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters
>
> (a) the occasion and necessity for the enactment;
>
> (b) the circumstances existing at the time it was passed;
>
> (c) the mischief to be remedied;
>
> (d) the object to be attained;
>
> (e) the former law, including other enactments upon the same or similar subjects;
>
> (f) the consequences of a particular interpretation; and
>
> (g) the history of legislation on the subject.

[32] In considering this interpretation of s.8(3) it would also be useful to have the following definitions of the uses excluded by s.8(3), all drawn from the Merriam-Webster Online Dictionary.

[33] taxicab: an automobile that carries passengers for a fare usually determined by the distance travelled

[34] omnibus a usually automotive public vehicle designed to carry a large number of passengers : BUS

[35] livery a concern offering vehicles (such as boats) for rent
// a canoe livery
// an automobile livery

[36] jitney 1: an unlicensed taxicab

2 [from the original 5 cent fare] : BUS sense 1a
especially : a small bus that carries passengers over a regular route on a flexible schedule

[37] sightseeing conveyance [no definition as such]

"sightseeing" has the following definition: "the activity of visiting the famous or interesting places of an area : the act or pastime of seeing sights"

"conveyance" has the following definition: "a means or way of conveying: such as ... a means of transport."

[38] I think it is clear that what Mr Bonn was doing on the night of the loss, or indeed in the past, was not operating a taxicab, omnibus, livery, jitney or sightseeing conveyance. Accepting random amounts of money from an acquaintance in exchange for gas, or, perhaps, in recognition of the favour of driving the acquaintance home, do not in my view fall within the definitions for those uses of a vehicle. The question, remains, however, whether what he did amounted to "carrying passengers for compensation or hire"?

[39] I should note here that judicial decisions relating to the exclusion for such uses prior to the mid-1960s have to be treated with caution. Up until that point the statutory prohibition was limited to the exclusion for the use of the automobile as "a taxicab, public omnibus, livery, jitney or sightseeing conveyance or for carrying passengers for compensation or hire." The exceptions to that prohibition—being those found in s.8(3)(a)-(e) of the policy—were added sometime after the mid-1960s. These exceptions to the prohibition were added in order to recognize changing social conditions "with suburban living and widespread industrial development beyond urban boundaries [that had] led to greater use of automobiles as a means of transportation to and from employment and the inevitable development for economic reasons of the sharing of automobiles as conveyances by those enjoying common employment:" *Labadie v. Co-Operators Insurance Association (Guelph)* (1974) 4 OR (2d) 325 (HCJ), 1974 CanLII 697 (ON SC), per Lerner, J at p.22 of 25. The effect of these added exceptions to the exclusion meant that voluntary payments made by a passenger, at least on occasions when both the driver and the passenger were going to the same place, did not offend the exclusion: *Labadie, ibid*; *Rombeek v. Co-Operators Insurance Association (Guelph)* 15 OR (2d) 568 (HCJ).

[40] Turning then to the interpretation of s.8(3) as it now exists, I note that all of the types of uses of a vehicle listed—taxicab, omnibus, livery, jitney, sightseeing conveyance—are examples of its use "for compensation or hire." They focus on ***commercial*** or ***business-like*** uses of the vehicle by the owner on a ***regular*** basis. That interpretation is consistent with Ms Atsalinos testimony that "if a private passenger car is used for business purposes we do not write the risk at all." In other words, the exclusion relates to arrangements of a commercial nature where it can be said that the owner was in the business of carrying passengers for compensation: *Co-Op Insurance Services v. McKarney* [1978] 2 SCR 1333 at pp.1343-44. As was noted by Ritchie, J for the court in *McKarney* at p.1344, the phrase 'for carrying passengers for compensation or hire' must be interpreted as being limited to risks of the same nature as the uses listed—that is, as a taxicab, public omnibus, livery, jitney or sightseeing conveyance. All of these uses are commercial in nature. They involves contracts of carriage, with set and agreed upon fares for set trips or distances, and owners whose compensation would be considered business income subject to business expenses. The agreements are entered into before the use takes place. The passengers are in ordinary course strangers to the owner of the car.

[41] In coming to this conclusion Ritchie, J had adopted the reasoning of Spence, J in *Teasdale v. MacIntyre* [1968] SCR 735. *Teasdale* dealt with a provision common across Canada at the time which provided that "the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for compensation, is not liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to, or alighting from the motor vehicle." The issue in such cases was whether the circumstances giving rise to the injury to the plaintiff passenger could be said to have arisen from the use of the vehicle "operated in the business of carrying passengers for compensation."

[42] In *Teasdale* the plaintiff and the defendant were fellow students. They planned to take a motor holiday together in the defendant's automobile. Their intention was to camp along the route and the plaintiff supplied the larger portion of the necessary camping equipment. They agreed to share all food and other costs. In so far as the costs of gas and oil were concerned it was decided that the defendant would obtain a credit card and at the end of the trip the plaintiff would pay to the defendant one-half of the amount payable to the oil company. They also arranged to take turns in driving the car. On the trip the car flipped due to the defendant owner's negligence. The plaintiff passenger sued for damages. The defendant relied on what was s.105(2) of the *Highway Traffic Act*, RSO 1960, c.172, which relieved ""the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for compensation, is not liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to, or alighting from the motor vehicle."

[43] The trial judge found that s.105(2) did not apply because what happened was in the nature of "the business of carrying passengers for compensation." The Ontario Court of Appeal reversed on the

grounds that it was not. The Supreme Court of Canada dismissed the appeal from that decision. Writing for the majority, Spence, J set out the facts and then stated:

> "With respect, I share the views enunciated in the Court of Appeal for Ontario by Evans, J.A. There was, in my opinion, no element of a contract of carriage. The arrangement, rather, in my view, was that of a joint adventure, not, in this particular case, an adventure in trade but an adventure in recreation."

[44] The point here is that if the fact scenario in *Teasdale* did not amount to the use of a vehicle that was "operated in the business of carrying passengers for compensation" I have difficulty seeing how the facts in the case before me amount to "the carrying of passengers for compensation or hire." In saying this I take into account the fact that the Legislature did amend s.124(4) of the *Insurance Act* (and hence s.8(3) of the policy of insurance) to add the saving provisions (a)-(e). By doing so it backed away from what had originally been the strict prohibition against any sort of ride- or cost-sharing between an owner and their passengers. The introduction of (a)-(e) represented the Legislature's recognition that the original prohibition failed to take account of changing social realities that had blurred the line between commercial and non-commercial uses of automobiles. The amendment was remedial in the words of s.9(5) of the *Interpretation Act*. And taking all of this into account I was not persuaded that what Mr Bonn did on the night of the loss fell within the exclusion in s.8(3), particularly when regard is had to s.8(3)(b). On the facts what he did did not amount to a commercial venture involving the carrying of passengers "for compensation or hire." It was, if anything, "the occasional and infrequent use by the insured of his automobile for the carriage of another person who shares the cost of the trip." Echelon's defence on this point accordingly fails.

[45] I am also satisfied that any defence based on an allegation of misrepresentation in the original application must also fail and for the same reasons.

Damages

[46] Mr Bonn's car was eventually located in Mississauga, Ontario by the Peel Regional Police. Ms Bonn testified that the car had been located by the police on April 12th, but that she and Mr Bonn did not receive notice of the seizure until April 28th—and that at that point they were told that the car would be auctioned on May 13th if it was not retrieved before that date. Ms Bonn and her partner flew out to Toronto. They obtained a temporary license and a replacement key. The car had sustained damage that made it unsafe to drive. They were able to locate a mechanic near the police pound where the car had been towed. He was able to get the car into road-worthy shape for $2,000.00 cash. (Mrs Bonn had checked with a local Mercedes dealer, but they would not have been able to perform

the work for several weeks.) The car also needed new tires to replace those damaged at the time. Mrs Bonn and her partner then drove the car back to Nova Scotia. They incurred travel costs, in the form of air fare, accommodation, meals and gas. It still needs repair work, and currently is sitting in Mr Bonn's garage. An estimate for the repair cost, together will all the above-noted expenses, was included in the damage documentation presented by Mr Bonn at the hearing. (I find that in incurring these expenses Ms Bonn was acting as the agent for Mr Bonn, and that he is liable to reimburse her for them.)

[47] The exact amount claimed by Mr Bonn was a little unclear. His Notice of Claim set the amount at $16,000.00 plus costs. The damage documentation presented at the hearing contained two figures. One was for the price of the car, minus a $1,000.00 deductible, for a total of $15,000.00. The other was for the total of expenses associated with its return and repair, being $15,186.24. The latter was the claim presented during the hearing.

[48] Counsel for the defendants submitted that in the event the insurer was liable, it was liable only for ACV—that is, adjusted cash value. She submitted that the plaintiff could claim no more than the ACV, and that the ACV could not exceed the cost of repair. That being the case, the only amounts Mr Bonn could claim were those for repair, which by her count of items listed in the damage document came to no more than $9,966.75. She noted that this amount excluded the $2,000.00 cash said to have been paid, since there was no documentation establishing that had actually been paid.

[49] I have considered counsel's submissions carefully. I note that under the policy the insurer agreed to indemnify Mr Bonn for damage to, and loss of use of, the insured automobile due to theft: Section C (Loss of or Damage to Insured Automobile), subject to any deductible. Damage was capped at the cost of repair, or the ACV, whichever was lower: Section F (Mandatory Conditions), sections 5 and 6. In the case of theft the insurer also agreed to indemnify the insured for expenses "not exceeding $25.00 for any one day nor totalling more than $750.00 incurred for the rental of a substitute automobile, including taxicabs and public means of transportation:" Section C, s.7(4(a).

[50] I have reviewed the expense or damage summary. I am satisfied that the cost of repairs (substitute key, cash repair, battery repair, tire repair and repair estimate) totals $11,966.75. I am satisfied that these expenses were incurred and were paid on behalf of Mr Bonn in order to retrieve the car. I am satisfied on the evidence that this amount does not exceed the ACV of the car, since the theft happened only a little more than a year after he paid $16,000.00 for it.

[51] Regarding loss of use, I note the insurer's liability to pay up to $25.00 a day for expenses. The car was stolen on March 27th, 2017. It may be treated as "recovered" on May 14th, 2017, the day the car was driven through the Cobequid Pass. That constitutes a total of 48 days which, at $25.00 a

day, works out to $1,200.00. I add that to the loss of $11,966.75 for a total of $13,166.75, from which I deduct the deductible of $1,000.00, leaving an amount payable of $12,166.75 plus legal costs which I set at $200.00.

[52] The claim as against the defendant Crawford & Company (Canada) Inc is dismissed. There was no evidence pointing to any negligence, breach of contract or oppressive conduct on its part.

[53] I will make an order that Echelon pay the claimant $12,166.75 plus costs of $200.00.

DATED at Halifax, NS
this 8th day of February, 2021.

Augustus Richardson, QC
Adjudicator