



**User Name:** ALEXANDER WILLIAMS

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## Document (1)

1. [Tharmabaskaran v. Security National Insurance Co., \[2012\] O.J. No. 1898](#)

**Client/Matter:** -None-

**Search Terms:** tharmabaskaran v. security national insurance co., [2012] o.j. no. 1898

**Search Type:** Natural Language

Ontario Judgments

Ontario Superior Court of Justice  
Divisional Court - Toronto, Ontario  
K.E. Swinton, T.P. Herman and K.M. van Rensburg JJ.  
Heard: April 13, 2012.  
Oral judgment: April 13, 2012.  
Court File No. 412/11

[2012] O.J. No. 1898 | 2012 ONSC 2293

Between Tharmaraj Tharmabaskaran, Applicant, and Security National Insurance Co./Monnex Insurance Mgmt. Inc. and Financial Services Commission of Ontario, Respondents

(6 paras.)

## Counsel

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Marko Djukic, for the Applicant.

David Silverstone and Alexander Williams, for the Respondent, Security National Insurance Co./Monnex Insurance Management Inc.

Larissa Easson, for the Respondent, Financial Services Commission of Ontario.

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The judgment of the Court was delivered by

**K.E. SWINTON J. (orally)**

**1** The applicant seeks to overturn the decision of the Director's Delegate dated July 14, 2011, dismissing an appeal from a decision of an Arbitrator dated October 16, 2009. The Arbitrator dismissed the applicant's arbitration proceeding because of a parallel civil action raising accident benefit claims arising from the same automobile accident.

**2** We see no error in the decision of the Director's Delegate with respect to reasonable apprehension of bias and the authority of the Arbitrator to determine the motion to dismiss. There is no evidence that the Arbitrator had conducted settlement discussions with the parties so as to be precluded from hearing the motion because of then Rule 33.5 of the *Dispute Resolution Practice Code, Fourth Edition*. Moreover, the applicant did not object to the Arbitrator hearing the motion to dismiss despite the Arbitrator's involvement in the pre-hearing conference and, in fact, the applicant filed written submissions on the merits that were addressed to the Arbitrator.

**3** With respect to the issue of choice of forum, the standard of review of the decision of the Director's Delegate is reasonableness (see *State Farm Mutual Automobile Ins. Co. v. Ramalingam*, [2009] O.J. No. 3491 (Div. Ct.) at paras. 37-40).

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4 The Director's Delegate observed that the caselaw has established that s.281(1) of the *Insurance Act* does not confer an absolute right of forum choice. The Arbitrator considered a variety of criteria which were then reviewed by the Director's Delegate. The Arbitrator noted that the law suit was more comprehensive, and there would be significant diseconomies if there were two proceedings, given the overlapping evidentiary issues. He also held that it was "fatal to file separate and virtually simultaneous proceedings on accident benefits without a reasonable explanation", and the applicant had given no explanation for the two proceedings.

5 The Director's Delegate reasonably upheld the Arbitrator and gave a clear explanation for his decision. There was no evidence from the applicant that he would be prejudiced if required to proceed in the court system. The decision of the Director's Delegate is deserving of deference. Therefore, the application for judicial review is dismissed.

### **COSTS**

6 I have endorsed the Application Record, "This application is dismissed for oral reasons given in Court today. Costs to Security National fixed at \$5,000.00, payable by the applicant. No costs to the Financial Services Commission."

K.E. SWINTON J.

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