

**IN THE MATTER OF REGULATION 283/95 TO THE *INSURANCE ACT*, R.S.O. 1990, c. I. 8, and *THE ARBITRATION ACT*,  
S.O. 1991, c. 17;**

**AND IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**WATERLOO INSURANCE COMPANY**

**Applicant**

- and -

**THE PERSONAL INSURANCE COMPANY**

**Respondent**

**ARBITRATION AWARD**

**COUNSEL:**

Daniel Strigberger for the Applicant

Kimberley J. Tye and Shelley C. Khan for the Respondent

**ISSUE:**

1. Was the Claimant principally dependent for financial support upon his biological father at the time of the accident, and accordingly an “insured person” under the policy issued to him by The Personal?

**RESULT:**

1. No, the Claimant was not financially dependent upon his father at the relevant time. Rather, he was financially dependent upon his mother, and therefore an “insured person” under her Waterloo policy.

**BACKGROUND:**

1. Jahvon Dinnall was struck by a vehicle as he was crossing the street in Scarborough on September 2, 2009. He was sixteen years old at the time, and was about to begin eleventh grade.

2. At the time of the accident Jahvon’s mother, Arlene Buchanan-Sutherland, lived in Scarborough with her husband, Owen Sutherland. Mr. Sutherland was a named insured under an auto policy issued by Waterloo Insurance Company (“Waterloo”). As his spouse, Jahvon’s mother was also an “insured person” under that policy.

3. The Claimant’s biological father, Carleton Dinnall, lived in Mississauga and was insured under an auto policy issued by The Personal Insurance Company (“The Personal”). The Claimant’s parents had never married, and it was agreed that they were not “spouses” as defined in the *Insurance Act* at the time of the accident.

4. The Claimant submitted an Application for payment of accident benefits under the *Schedule* to Waterloo. They accepted his application and have paid benefits to him and on his behalf. Waterloo contends however, that Jahvon was principally dependent for financial support upon his father at the relevant time, and that consequently, The Personal is in higher priority to pay the claim.

5. The Claimant had lived with his mother in Scarborough from the time he was born until the beginning of high school. He then moved to his father’s house in Mississauga in September 2007, prior to starting ninth grade. He lived with his father while attending ninth grade at a Catholic high school in Mississauga. He remained at his

father's home over the following summer, and during the grade 10 academic year. He then moved back to his mother's house in Scarborough in early August 2009, one month prior to the accident.

6. The parties agree that Jahvon was not financially independent at the time, and that he would have been principally dependent for financial support upon each parent while he was living at their home. They disagree, however, on what time frame should be considered in the dependency analysis.

**RELEVANT PROVISIONS:**

The following provisions are relevant to my determination of this matter:

***Insurance Act -***

**268(2)** *The following rules apply for determining who is liable to pay statutory accident benefits:*

**2. In respect of *non-occupants*,**

*i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,*

*ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,*

***Statutory Accident Benefits Schedule –***

**2. (1) In this Regulation,**

***“insured person”, in respect of a particular motor vehicle liability policy, means,***

***(a) the named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured and any dependant of the named insured or spouse, if the named insured, specified driver, spouse or dependant,***

*(i) is involved in an accident in or outside Ontario that involves the insured automobile or another automobile,*

*2. (6) For the purpose of this Regulation, a person is a dependant of another person if the person is principally dependent for financial support or care on the other person or the other person's spouse.*

**THE EVIDENCE:**

7. None of the relevant facts are in dispute. Counsel filed a Joint Document Brief prior to the hearing, containing various documents and the transcripts of evidence provided by the Claimant, his mother and his father at Examinations Under Oath conducted prior to the Arbitration. Both parties referred to and relied on the evidence contained in the transcripts. No witnesses were called at the hearing.

8. The evidence indicates that the Claimant lived with his mother in Scarborough from the time he was born until he was fourteen years old. His mother covered all of his financial needs including his living expenses and food during this period. His father paid \$300 per month in child support.

9. Prior to starting high school, the Claimant left his mother's home and moved in with his father in Mississauga. The evidence suggests that this was done at his father's instance, as he felt that his son's school work and conduct needed to be more closely monitored. While living with his father, the Claimant attended ninth and tenth grade at a high school in Mississauga. He also attended summer school in Brampton during the summers prior to and after tenth grade, while remaining at his father's home.

10. The parties agree that the Claimant spent most of his weekends and holidays during this period with his mother in Scarborough. While his father covered most of his financial needs, the evidence indicates that his mother regularly provided him with spending money and paid for his clothing over this period.

11. Jahvon moved back to his mother's home in Scarborough on July 31, 2009, after completing summer school in Brampton. Both parents testified that he had planned to attend eleventh grade at a high school in Scarborough. While he had not registered for school at the time of the accident in early September, his mother explained that they were debating which school would be more suitable for him at that point. Jahvon joined a track and field club based in Scarborough near his mother's home in August, and was returning from a practice there when the accident occurred.

12. The Claimant did not see his father between the time he left his home in late July and the date of the accident in early September 2009. Both parents agreed that Mr. Dinnall would no longer make the monthly child support payments that he had been making in the past, after Jahvon returned to his mother's house.

13. When the Claimant's father was asked at his Examination Under Oath whether Jahvon had visited his mother often during the two years that he had lived with him in Mississauga, he responded that he had. He explained that for the "majority of his life, she was the primary caregiver", and that Jahvon had moved to his home in Mississauga "just for high school, just to sort of straighten him out with school work and stuff..."

14. The evidence provided by the Claimant and both of his parents suggested that after he returned to his mother's home in Scarborough during the summer of 2009, he had no intention of moving back to Mississauga to live with his father.

**PARTIES' ARGUMENTS:**

15. The parties agree that while the criteria set out by the court in *Miller v. Safeco* (1984) 48 O.R. (2d) 451; aff'd (1985) 50 O.R. (2d) 797 should be applied in any dependency analysis, the only issue in dispute in this case is the duration of dependency. Counsel also agree that the Claimant was financially dependent upon the parent that he was living with, while residing at their home. The narrow question to be determined in this case is what time frame to take into account when analysing whether Jahvon was

financially dependent upon his mother (the Waterloo insured) or his biological father (the Personal insured).

16. Waterloo contends that a one-year time frame is the most appropriate period to consider in these circumstances. Counsel explained that early September 2008 to September 2, 2009, the date of loss, incorporates one full school year and the summer months, and provides the best reflection of the Claimant's life at that point. If that were the period selected, the Claimant would be principally dependent for financial support upon his father, as he would have spent eleven of those twelve months living at his home.

17. Counsel for The Personal claimed that the month prior to the accident, during which the Claimant was living at his mother's house, is the time frame that most accurately reflects the reality of Jahvon's life and relationships at the time of accident. She noted that he had lived with his mother for fourteen years, moved into his father's home for less than two years, and then resumed living with his mother in Scarborough. He did not see his father, nor receive any money from him, after he moved back to Scarborough and was principally dependent upon his mother for financial support.

18. Counsel for The Personal contended that the evidence was clear that Jahvon intended to resume his life in Scarborough, and finish high school while living there with his mother. She noted that his father had testified that once Jahvon left to return to his mother's home, he did not expect him to return. She contended that the decision to move back to his mother's home was not a 'snap decision' but rather a well-thought out plan for the future. While acknowledging that a one-month time frame is a short period, she suggested that this was his "new reality", referencing the phrase I used in my decision in *Intact Insurance v. Economical Mutual Insurance Company* (December 5, 2011).

19. Counsel for Waterloo responded that restricting the analysis to one month prior to the accident would only reflect a "snapshot" in time, and would be contrary to what the jurisprudence in this area instructs. Mr. Strigberger noted my decision in *RBC General Insurance Company v. MVACF* (July 22, 2013), in which I stated that a "broader lens"

should be used when considering the dependency of young adults whose lives are in transition. He also referred to the appeal decision in *Dominion of Canada v. MVACF* (2013) ONSC 4717, in which the judge affirmed an Arbitrator's finding that a one-year time frame was an appropriate period to consider in analysing whether a young adult was financially dependent upon his parents.

**ANALYSIS & FINDINGS:**

20. In most cases involving teenagers or young adults, the two key issues that arise in the dependency analysis is whether they themselves are able to provide for most of their financial needs, and if not, what time frame should be considered when determining who has been providing them with financial support. It is clear that as a sixteen year-old student, the Claimant in this case was not able to provide for his own needs and was not financially independent. The question then becomes what period of time prior to the accident should be considered when determining upon whom he was financially dependent. A full review of the *Miller v. Safeco, supra*, criteria is not required as the only issue to be determined is the duration of his financial dependency.

21. I find that a realistic view of the Claimant's life at the time of the accident leads to the conclusion that he was principally dependent for financial support upon his mother. While I agree that a one-month time frame is often too short a period to consider when analysing the financial dependency of a teenager, the evidence in this case suggests that the Claimant's decision to move back to his mother's home one month prior to the accident accorded with the reality of his life up to the time of the accident. His mother had acted as his primary caregiver throughout his life. Her house in Scarborough was his 'real' home, and he was principally dependant for financial support upon her and Mr. Sutherland, his stepfather, while living with them.

22. While he had been living with his father during the ninth and tenth grade, I find that when a long view is taken of the Claimant's life, the twenty-two months that he spent at his father's home in Mississauga was an anomaly. Mr. Dinnall explained that the impetus for that move was his hope that Jahvon would be more disciplined with his

schoolwork while living with him. While it is not clear whether that turned out to be the case, that plan was clearly abandoned by late July 2009, prior to the start of grade 11.

23. While living with his father, Jahvon spent his holidays and weekends with his mother. The Claimant returned to his mother's home, and did not see his father for the five weeks between leaving his home in Mississauga and the accident. His father also stopped the monthly child support payments that he had made during the course of Jahvon's life, once he moved out. I can only conclude from all of this that his relationship with his father had shifted, and that it was not likely to involve financial dependence from that point forward.

24. While it is somewhat surprising that the Claimant had not enrolled in a school by the time of the accident in early September, both parents (and Jahvon) stated unequivocally at the Examinations Under Oath conducted that he intended to resume his schooling in Scarborough, while living with his mother. The evidence was clear that he had no plans to return to live with his father.

25. While the facts of each case differ, the jurisprudence that has developed on the issue of the appropriate time frame to consider has been generally consistent. Arbitrator Samis made the following comments in *Federation Insurance Co. of Canada v. Liberty Mutual* (May 7, 1999; aff'd [1999] O.J. No. 5777'; aff'd [2000] No. 1234 (C.A.) -

*...relationships change from time to time, perhaps suddenly. Transient changes may alter matters for a short period, but not change the general nature of the relationship. A momentary snapshot would not yield any useful information about these time-dependant relationships...*

*The evaluation should be made by examining a period of time which fairly reflects the status of the parties at the time of the accident.*

26. I agree with this statement. I also note that it was cited with approval by the Court of Appeal in *Oxford Mutual Insurance Company v. Co-operators General Insurance Company* (2006) 83 O.R. (3d) 591. In that case, Justice Lang applied these principles and



concluded that the arbitrator's decision in that case to look beyond the specific period in which the claimant was subject to a surety order and find that he had been financially independent from his mother prior to that was correct.

27. In *RBC v. Her Majesty The Queen (MVACF)*, *supra*, I stated that a "broader lens" should be used in a dependency analysis involving young adults or teenagers, given that their living arrangements may change over short periods of time. It is difficult to translate this idea into specific time lines, as each case will present different facts. Counsel for Waterloo suggested in this case that the Claimant's move back to his mother's house in Scarborough was a transitory change in his living arrangements, and that they could have changed again if the accident had not occurred. Given the evidence before me, I do not accept this proposition. I find instead that the Claimant's decision to move back to his mother's home in Scarborough was a return to a longstanding reality that had existed before he moved to Mississauga to live with his father. That reality also involved him being principally dependant for financial support upon his mother.

**ORDER:**

28. For the reasons expressed above, I find that the Claimant was principally dependent for financial support upon his mother, a Waterloo insured, at the time of the accident. He is therefore also an insured under the Waterloo policy. Waterloo is therefore in higher priority to pay his accident benefits claim in accordance with section 268(2)2 of the *Insurance Act*.

The Application for Arbitration is hereby dismissed.

**COSTS:**

The parties' Arbitration Agreement provides me with the discretion to determine which party is to pay legal costs and the expenses of the Arbitration, based on the success of the parties, *inter alia*. In light of my findings above, I order Waterloo to pay the legal costs borne by The Personal in this proceeding, as well as the expenses of the Arbitration.

If the parties cannot agree on the quantum of costs payable, I invite them to contact me and I will hear submissions on the matter.

I will send my account for arbitration fees and disbursements to Mr. Strigberger, under separate cover.

**DATED at TORONTO, ONTARIO this \_\_13<sup>th</sup>\_\_ DAY OF MAY, 2014.**

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**Shari L. Novick**

**Arbitrator**