IN THE MATTER OF the *Insurance Act,* R.S.O. 1990, c. I.8, as amended

AND IN THE MATTER of the *Arbitration Act*, S.O. 1991, c.17, as amended

AND IN THE MATTER of an Arbitration

BETWEEN:

THE DOMINION OF CANADA GENERAL INSURANCE COMPANY

Applicant

- and -

TD GENERAL INSURANCE COMPANY

Respondents

AWARD

Counsel:

The Dominion of Canada General Insurance Company (Applicant): Gabriel J. Flatt

TD General Insurance Company (Respondent): Stuart Norris

Introduction:

This matter came before me pursuant to the *Arbitrations Act*, 1991 to arbitrate a dispute between the above-noted insurers with respect to a priority dispute pursuant to the *Insurance Act* and Regulation 283/95 as amended. Specifically this claim arises out of a motor vehicle accident that occurred on June 12, 2014 and a claim for Statutory Accident Benefits that was advanced by one Rommel Simmons.

The parties selected me as their Arbitrator on consent and this matter proceeded to a hearing with documentary evidence only for one day on February 2, 2017.

Exhibits:

The following documents were made exhibits at the hearing:

Exhibit 1: Arbitration Agreement dated November 8, 2016

Exhibit 2: Agreed Statement of Facts

Exhibit 3: Joint Document Brief

Exhibit 4: Supplementary Document Brief

The Issue:

There was one issue before me. The issue was whether or not Rommel Simmons and Raichel Rowe were spouses as defined under the *Insurance Act* (Section 224 (c) ii) on the date of the accident of June 12, 2014.

If Rommel Simmons is found to be a spouse of Raichel Rowe then TD General Insurance Company (hereinafter called "TD") would be the priority insurer.

Result:

I conclude that Rommel Simmons and Raichel Rowe were not spouses as defined under Section 224 of the *Insurance Act* on the date of loss of June 12, 2014 and therefore Dominion is the priority insurer in this matter.

Background:

On June 12, 2014 Rommel Simmons was a pedestrian who was struck by a vehicle driven by Brian Kirton and owned by Jeannine Gates.

The vehicle that struck Mr. Simmons was insured under a policy issued by The Dominion of Canada General Insurance Company (hereinafter called "Dominion) under policy number APP1443450.

Mr. Simmons was uninsured at the time of the accident and therefore he applied to Dominion for Statutory Accident Benefits by way of an OCF-1 dated August 13, 2014.

According to the Application for Accident Benefits Mr. Simmons indicated that at the time he completed the document he was single. Under Part 4 of the OCF-1 when Mr. Simmons was asked whether was covered under a spouse's policy he responded "no". He also indicated on

this document that as of the date of loss he was the main caregiver of a child, Rommel Brisou King Simmons, whose date of birth was January 30, 2014.

An EUO was conducted of Rommel Simmons pursuant to the *Statutory Accident Benefits Schedule* by a representative of Dominion on August 27, 2014. As a result of information secured through that examination under oath Dominion determined that TD may be the priority insurer on the basis that Mr. Simmons was a spouse of one Raichel Rowe.

Raichel Rowe, at the time of the accident, was the named insured under a motor vehicle liability policy with TD bearing policy number 37921903.

Dominion served a Notice to Applicant of Dispute Between Insurers on TD on November 8, 2014 taking the position that Simmons was a common law spouse of Rowe. This document was also served on Mr. Simmons on November 11, 2014.

Facts:

The Agreed Statement of Facts did indicate there were some areas of agreement between counsel which I set out as follows:

1. Simmons and Rowe entered into a conjugal relationship with each other in late 2010 or early 2011.

2. At the time of the accident Simmons and Rowe were the biological parents of a child, Rommel Simmons Jr., born January 30, 2014.

3. At the time of the accident Rowe and Rommel Simmons Jr. had beds, clothes and toothbrushes at Simmons' apartment.

4. At the time of the accident, Rowe had a key to Simmons' apartment.

5. At the time of the accident Rowe would habitually spend a portion of each week sleeping at Simmons' apartment as well as a portion sleeping in her mother's apartment.

6. At the time of the accident Ms. Rowe did not contribute to the rent or the utility expenses with respect to Simmons' apartment.

7. Rowe and Simmons discontinued their conjugal relationship in 2015.

What counsel do not agree upon is what flows from these facts. While counsel agree that Rowe and Simmons were in a conjugal relationship outside marriage and that they were the natural parents of a child, they disagree as to whether Rowe and Simmons were "living together" in a relationship of some permanence. Counsel for Dominion also advances the position that Rowe and Simmons had lived together in a conjugal relationship outside marriage continuously for a period of not less than 3 years. The issue in this case really revolves around whether these individuals "lived together".

In addition to the facts noted above I also reviewed the transcript of the examination under oath of Rommel Simmons and the transcript of the examination under oath of Raichel Rowe (the latter being done in April of 2016). The evidence supports that Simmons and Rowe were in a relationship of some sort from late 2010/early 2011 until some time in 2015 when the relationship ended. The evidence of Simmons was that this relationship as with many was an up and down relationship. Raichel Rowe had a child of her own from a prior relationship (Brianna Leos) who was 4 years old at the time of the accident. It is significant that Mr. Simmons made reference to her as his "step daughter". According to Ms. Rowe from the time that she met Simmons up until they separated she resided primarily at 3479 St. Clair Avenue East, Apartment 303. She resided there with her mother and daughter and later her son when he was born in 2014. However in September of 2012 Simmons moved to an apartment at 552 Birchmount Road, Apartment 509. The evidence indicates that Rowe's mother's apartment and Simmons' apartment are 350 metres apart from each other.

Both Rowe and Simmons agree that for one month or one and a half months during Rowe's pregnancy she moved in with Simmons. This seems to have been in the last stages of her pregnancy. While Rowe does not appear to accept that it was an "actual move in" she acknowledges that during that time period she would spend more time at Simmons' apartment.

Rowe also gave evidence that when Simmons chose that apartment that she was involved in that. She stated that she was supposed to move in there but never did. However she acknowledges that she had a key. She acknowledges that it was a 2 bedroom apartment and that the second bedroom was used for the children.

Both Simmons and Rowe acknowledge that Rowe kept clothing for her daughter and son and herself at 525 Birchmount Road, kept toothbrushes and they all had beds.

What complicates this case is the fact that at the same time that Rowe was clearly spending some time at the Birchmount address she also maintained a residence at her mother's address. She kept clothes at her mother's, she had a place for her children to sleep at her mother's and her children kept things at her mother's house. In her evidence under oath Rowe states that she has lived at the 3479 St. Clair address for 20 years. On the issue of whether she ever lived with Mr. Simmons she states:

"We never really lived together, it was more so like we lived across the street from each other. So it was, like, whenever I would want to I would be there. Like, weeks at a time, but I still resided and had, like, I had stuff both places."

With respect to her intention with respect to living together with Mr. Simmons Ms. Rowe stated:

"Not enough to say that I would live there ... so it's, like, I don't know, I guess I was just not fully ready to leave my mother's, but sometimes it would be like a week or a couple of days".

She goes on to say that she was definitely sleeping more nights at her mother's place than she would at Simmons'.

Finally she states with respect to planning to move in with Mr. Simmons when they were looking for the apartment together:

"Yeah, it's a 2 bedroom, like, with the intention when we got the 2 bedroom, like, I was supposed to move there but I never did. Like I never, ever moved. Like, I had, I had the key and everything, but I just never moved ... like, after I had the baby we were supposed to and in fact I would stay there, but I was never really 100% comfortable".

While Rowe admits that her daughter had a great relationship with Mr. Simmons she also noted that the feel of the relationship was that the apartment was never her house and that they did not move in together because the whole thing made her feel a bit uncomfortable.

Mr. Simmons' evidence from his EUO on the same issue is remarkably similar. While there are some inconstancies in how this couple perceived their relationship there seemed to be consistency with respect to the issue of living together.

Mr. Simmons states that they lived together for a couple of months during her pregnancy until the last stages. Otherwise she would:

"She comes and spends time, because we have a baby together. She is go back home with her mother, because financial issues she goes back home with her mom, and she comes sometimes on weekends, every other weekend, so she comes over".

Mr. Simmons goes on to say that at the time the 2 of them were looking for the apartment together in 2012 that he in fact did not want Ms. Rowe to stay with him at that time so they didn't rent it together. He states:

"It never – they didn't work out. She – we always get mad, so she comes and goes, so – she – not like she living stably there but she just comes and when she comes and spends weekends with me and yeah. And everything the baby she comes and stays a couple of months ... maybe a month a month and a half she go back to her mom".

With respect to the time immediately leading up to the accident of June, 2014 Mr. Simmons indicated that Ms. Rowe moved back in with her mother in February or March. She would then come in maybe after that maybe one or 2 weekends or maybe one weekend in the month.

There is more than sufficient evidence that Rowe did not make any financial contribution to the apartment on Birchmount. She would do some housekeeping. She continued with a sexual relationship with Simmons up until their separation in 2015.

As part of the evidence in this arbitration hearing I was provided with copies of 2 medical reports to support the position of the Applicant that Mr. Simmons viewed Ms. Rowe as his spouse. This despite the fact that he referred to her as his girlfriend during his examination under oath.

Dr. Harrington an orthopaedic surgeon conducted an examination on May 12, 2014. According to Dr. Harrington's report Mr. Simmons said he was in a common law marriage. He said he and his wife had 2 children: a 4 year old daughter and a 3 month old son. Mr. Simmons describes Rowe as his wife and says that they were living together in a 2 bedroom apartment.

Similarly in an assessment conducted by Dr. Marino, psychologist, on January 29 and February 25, 2014 Mr. Simmons reports that he has been involved in a common law relationship for the past 3 years. He says his wife is 23 years old and in good health. They have a positive relationship with one step daughter as a result of the union and that his wife recently gave birth to their son in January of 2014.

When asked about his sleep by this doctor Mr. Simmons said that his newborn son is often awake during the night but that he did not feel that his son's behaviour was contributing to his sleep difficulties. He does say that his girlfriend has complained about Mr. Simmons being restless at night in bed and that she is getting less sleep than usual. These reports from Mr. Simmons in January through to May of 2014 suggest that Ms. Rowe and Mr. Simmons were "living together" just prior to this accident. This evidence appears to conflict with Mr. Simmons' Application for Accident Benefits in which he notes that he is single and does not have access to a policy with a spouse.

Also placed into evidence was a surveillance report completed by Intrepid Investigations in April of 2015. While the report of investigation deals with events almost a year after the accident it does reflect somewhat on the parties' relationship and what one might draw from their evidence under oath. According to the surveillance on April 2, 2015 Mr. Simmons was seen as

he exited his residence with Ms. Rowe and their child. They got into a car together and they proceeded to go shopping. They went to a McDonald's restaurant together.

On April 12, 2015 Mr. Simmons was seen coming out of his residence carrying his son and accompanied by Ms. Rowe. Once again they got into a vehicle together. On surveillance conducted on April 9 and April 11 there was no observations made of Mr. Simmons or Ms. Rowe.

Position of the Parties:

The Applicant's position is that Mr. Simmons and Ms. Rowe qualify as spouses under both aspects of the spousal definition relating to common law spouses under Section 224 of the *Insurance Act*. Dominion submits that there is an agreement that Simmons and Rowe were in a conjugal relationship and there is agreement that they are the natural parents of a child. That agreement is supported by the evidence. Dominion submits that the evidence supports that these individuals had lived together continuously for a period of not less than 3 years and on that basis would qualify as spouses. Dominion also submits that Simmons and Rowe lived together in a relationship of some permanence.

TD accepts that Simmons and Rowe were in a conjugal relationship outside of marriage and that they were the natural parents of a child. However TD takes the position that Simmons and Rowe only lived together for a period of 2 months and that the overall nature of the Simmons Rowe relationship was that they did not live together and Rowe clearly maintained a separate residence and spent more time in the separate residence. TD submits that Rowe never felt that she moved in or in fact even wanted to move in with Simmons for a variety of reasons. TD submits that the time Rowe spent at Simmons apartment was less than she spent at her mother's apartment and even though she kept some clothes there, a toothbrush there and there was a space for her children to sleep that that is not sufficient to establish that they were living together.

TD also argues that based on Mr. Simmons' evidence that these individuals were not in a relationship of some permanence. TD submits that Mr. Simmons says that the relationship was up and down, he describes it as harsh and at his EUO he didn't even seem to know if they were still girlfriend and boyfriend let alone spouses. TD points to the inconsistency of the understanding between the 2 parties of the nature of their relationship as support for the fact that one cannot consider it of some permanence.

Finally TD argues that Simmons did not move into the apartment on Birchmount until September of 2012 and with the accident taking place on June 12, 2014 that therefore there is no evidence to support Dominion's position that the 2 individuals have lived together for a period of at least 3 years.

Analysis:

A. The Burden of Proof

Counsel agreed that in a priority dispute such as this that the insurer who receives an Application for Accident Benefits and who is thereafter obliged to pursue a priority dispute does not have the onus of proof. Counsel agreed that it is completely arbitrary in some cases as to which insurer receives the first Application for Accident Benefits and therefore the insurer who received that first Application is in no better position to lead evidence than the second insurer put on notice.

Counsel referred to the following cases in support of their position with respect to the onus of proof:

1. *The Dominion of Canada General Insurance Company v The Motor Vehicle Accident Claims Fund* (November 10, 1997, Samis, Private Arbitration)
2. *Allstate Insurance Company of Canada v Allianz Insurance Company of Canada* (March 7, 2007, Samis, Private Arbitration)
3. *Aviva Canada Inc. v State Farm Mutual Automobile Insurance Company* (May 14, 2013, Densem, Private Arbitration)
4. *Intact Insurance Company v Her Majesty the Queen in Right of Ontario as Represented by the Minister of Finance on Behalf of the Motor Vehicle Accident Claims Fund* (July 10, 2013, Densem, Private Arbitration)

As both counsel agreed that neither held the burden of proof I did not seek any further submissions on this issue. Counsel asked me to hear the arbitration proceeding as if an arbitration had been commenced by Rommel Simmons against both insurers claiming spousal status.

Taking that into consideration I considered all the evidence and I felt the evidence was clear and that Mr. Simmons as a putative Plaintiff had not established his spousal status.

B. Spouses

Section 224 of the *Insurance Act* R.S.O. 1990, c. I.8 provides the following definition of spouse:

> "Spouse" means either of two persons who,
>
> (c) have lived together in a conjugal relationship outside marriage,
>
> (i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

As noted earlier there is no dispute that Rowe and Simmons had a conjugal relationship outside marriage. Similarly there is no dispute that they were the natural parents of a son born in January of 2014. The question is whether they were "living together" in a relationship of some permanence or living together continuously for not less than 3 years.

Counsel have also agreed based on their Factums and the case law presented that whether a relationship of a particular couple fits within the definition depends on a number of criteria. That criteria includes the following:

a) Duration of relationship

b) Existence of children

c) Stability of relationship

d) Interdependence of the parties

e) Cohabitation

f) Conjugal relationship

g) Personal relations

h) Responsibility for household services

i) Interaction in a family and social context

j) Financial arrangements and support

k) Responsibility toward children

l) Temporary interruptions in physical living arrangements

m) The expectations of the parties

n) The intentions of the parties

(See *M v H* (SCC) [1999] 2 S.C.R. 3 and *Wawanesa Mutual Insurance Company v Kingsway General Insurance Company* (April 6, 2005, Arbitrator Jones).

However as the parties have already agreed that Rowe and Simmons were together in a conjugal relationship I do not believe that all of this criteria is relevant to my determination as to whether they were living together on the date of the accident although the criteria has some relevance to the question of the permanency of the relationship.

C. A Relationship of Some Permanence

The parties agree that Rowe and Simmons entered into a conjugal relationship some time in late 2010 or early 2011 and that relationship continued until 2015.

Ms. Rowe's evidence is that the relationship was consistent from the time that the baby was born until the relationship ended in 2015. She does not appear to agree with Mr. Simmons that the relationship was on and off and/or up and down. My impression of the evidence is that these individuals were clearly in a relationship of some permanence but the relationship was somewhat tempestuous. Clearly Simmons and Rowe had disagreements. Clearly Rowe was not comfortable moving in with Simmons. While the relationship certainly appears to have had its "off times" there is in my view more than sufficient evidence that these individuals between late 2010 or early 2011 through to some time in 2015 had a relationship of some permanence. They had a child together. They had an ongoing sexual relationship. In the months leading up to the accident Rowe stayed for at least a month and a half with Simmons in his apartment and continued to spend time with him thereafter albeit more time was being spent at her mother's home. In my view the evidence is overwhelming that Simmons and Rowe's relationship would meet the criteria of "some permanence".

D. Living Together

The harder question in this case is whether Rowe and Simmons were living together in this conjugal relationship of some permanence.

There is no doubt that the traditional "move in together" did not seem to occur in this case. While Simmons and Rowe had some intention of perhaps moving in together when they jointly found the apartment in 2012 that certainly did not happen at that time. Rowe continued to have as her prime residence her mother's apartment. In 2012 and 2013 the evidence appears that Rowe would sleep over at the Birchmount apartment. There is not a great deal of evidence as to how frequently that would happen.

The evidence also seems to be clear that in the later stages of her pregnancy (there were apparently some difficulties with the pregnancy) she did move in with Simmons. While she continued to keep her apartment with her mother and did not change her address she and her daughter moved in with Simmons. However this was for no more than 1 to 1 ½ months. Some

time prior to the accident it looks as though there was a dispute between the parties and Rowe began to spend less time in the apartment and more time at her mother's. Simmons suggests after that she was only in his apartment every other weekend or one weekend a month.
I am satisfied by a review of the case law outlined below that in order to find that Rowe and Simmons "lived together" I do not have to find that they physically lived together all of the time in the same residence in order to be spouses. You can be spouses and still maintain separate residences.

In the case of *Alfred v Allstate Insurance Company of Canada* (OICA-009267, November 30, 1995 confirmed on appeal (OICP96-00015 April 23, 1997) it was determined that although 2 individuals kept separate residences that they were found to be spouses.

In that particular case the parties had separate residences, had separate financial arrangements and one did not contribute to the household management in any material respects. The evidence also indicated that the couple's religious and cultural precepts prohibited their living together before marriage. It was noted that whether a couple share the same home is a very important factor in determining whether they are spouses but in some instances couples who maintain separate residences have been held to be spouses when their living arrangements are viewed in the broader context of their relationship. The Director Delegate noted the importance of focusing on the overall relationship rather than the simple question of residency. Further it was noted that each case turns on its own special facts.

While the facts in that case are quite different than the facts in this case I am satisfied that in order for Rowe and Simmons to be found as spouses there does not have to be evidence that they lived together in the same apartment. I am satisfied that one can "live together" where as in this case the couple maintain one residence together and one of the couple maintains a separate residence elsewhere. There is no doubt in this case that Ms. Rowe maintained a residence prior to the accident in Simmons' Birchmount apartment. She had a key, she had clothes there, she had a toothbrush there, she had a room for her daughter and her son and she spent varying amounts of time living at that apartment albeit keeping an exit strategy available to her by also maintaining a residence at her mother's apartment.

I also note that under the definition of spouse there is no specific time set out for how long a period of living together is sufficient when dealing with the portion of the definition that looks at a relationship of some permanence with a natural child. There is no requirement under this portion of the definition that requires me to find that this couple had been living together for 3 years. Rather I have to find they had a conjugal relationship, that they were living together in a relationship of some permanence and that they had a child together. According to the *Alfred* decision (supra) a minimal period of time of living together can be sufficient where other indicators of spousal status are strong and there are reasons the couple spends time apart. However I do not find that that analysis is applicable to this case.

This is not a case where a couple is kept apart because of religious issues and a requirement that they not live together prior to marriage as in *Alfred v Allstate*. When one looks at the broader context of the Rowe and Simmons relationship I do not find that there are the strong indicators of a spousal status referred to in other cases. There were no joint bank accounts. There was no intermingling of funds. While Simmons may have paid for some diapers he made no other financial contribution to Rowe. Rowe and Simmons seem to have kept themselves completely independent of each other. While Rowe may have done some housekeeping at the apartment this seems to have been on a very irregular basis and not because she felt she had any obligation to keep the place clean. There is no evidence to suggest that Rowe and Simmons presented themselves to others as spouses. In fact throughout their EUO they referred to each other as girlfriend and boyfriend. There is minimal evidence that the 2 of them considered themselves to be spouses, presented themselves as spouses or that they were intending to be spouses. Rather as suggested by counsel for TD this seems to be a situation of 2 individuals who had some relationship, had a child together, tried for a very brief period of time to live together but never got beyond that stage. I agree with counsel for TD that the image presented by Rowe and Simmons to the world was not that of a married couple or a family unit but that of a boyfriend and girlfriend who happened to share parenting of a child.

I also found the decision of *Shannon Stewart v Liberty Mutual Insurance Company* (FSCO A03-000833) a decision of Arbitrator Susan Sapin from November 16, 2004 to be helpful.

The facts in the *Stewart* case involved 2 individuals of whom it was alleged that they had a common law relationship starting as college students in Orillia from September of 1993 until the summer of 1996. During that time period they had lived together in Fredericton, New Brunswick. However in the summer of 1996 the couple mutually agreed to separate and Ms. Pyles decided to return to Ontario. She subsequently discovered she was pregnant with Mr. Stewart's child but went ahead and returned to Owen Sound and moved in with her parents in October of 1996. Mr. Stewart came back to Ontario about 5 months later in March of 1997 and moved to Barrie about 100 kilometres from Owen Sound where he found work as a car salesman. Their child was born on May 12, 1997. Ms. Pyles died in a motor vehicle accident about a month later.

The question for determination by the Arbitrator was whether Mr. Stewart and Ms. Pyles could be considered to be cohabiting in relationship of some permanence even though they were living in separate towns. It was noted that cohabitation is defined as "the fact or state of living together". Arbitrator Sapin noted that the words "relationship of some permanence" is intended to be a less stringent and more flexible alternative to a requirement of continuous cohabitation. She further noted that the question of spouses is not determined solely on whether or not a couple actually live together under the same roof. Rather you must look at what the intentions of the parties were towards each other.

In the *Stewart* case there was no evidence that Ms. Pyles planned to move to Barrie. Mr. Stewart would visit her every weekend in Owen Sound and would stay overnight at her parents' home on the family room sofa. Occasionally she visited him in Barrie and might stay overnight. There was no financial contribution as between the 2 of them.

Despite the fact that Ms. Pyles had moved back to Ontario the Arbitrator concluded that the relationship difficulties fell far short of any convincing evidence that the relationship was over.

In concluding that Mr. Stewart and Ms. Pyles were spouses Arbitrator Sapin stated the following:

> "Having considered the evidence as a whole, the comparatively low threshold for establishing a relationship of some permanence and the criteria set out in the jurisprudence, I find that Mr. Stewart and Ms. Pyles regularly spent time together in an affectionate, physical and exclusive relationship, were both involved in the birth and care of their child, were mutually supportive of and emotionally dependent on each other, and socialized as a couple ... although no one could predict with certainty where their relationship was headed at the time of the accident, there was no clear and convincing evidence that either party intended to permanently sever their relationship and neither had taken the concrete steps to do so."

I do note that the definition considered by Arbitrator Sapin was different than the one I was considering. She was looking at the question of cohabitation. I am looking at the question of living together. Further I do not find that Rowe and Simmons regularly spent time together in an affectionate and physical and exclusive relationship or that they were mutually supportive and emotionally dependent on each other and socialized as a couple. While clearly the relationship of Simmons and Rowe had not ended at the time of the accident of June, 2014 there was just not the same type of evidence as was before Arbitrator Sapin with respect to a history of living together and the commitment to be a couple.

I therefore conclude that while Rowe and Simmons lived together at the Birchmount apartment for 1 to 1 ½ months prior to the accident that the overall evidence does not support that they were living together at the time of the accident. In fact I find that the short time period that they actually lived together while there may have been hope that it would become permanent, it never did. Rowe never gave up her mother's apartment. Some time in February Rowe moved back to her mother's and thereafter was only an intermittent visitor to Simmons' apartment. The evidence is simply insufficient to support that these individuals were "living together" in the context of spouses at the time of the accident.

E. Living Together Continuously for a Period of Not Less than Three Years

While I have concluded that Simmons and Rowe were not living together I also feel I should address the question of what evidence there is of them having lived together continuously for a period of not less than 3 years.

Even if I had found that Rowe and Simmons had been living together I would not have found that they had been doing so continuously for a period of not less than 3 years.

In my view the evidence is clear that Simmons only moved into the Birchmount apartment in 2012. As the accident occurred in June of 2014 clearly the period was less than 3 years. Further the evidence is absolutely clear that whatever living together arrangements one could describe these individuals had it was never continuous.

Summary:

Therefore based on the evidence reviewed, the case law and the definition of spouses under the *Insurance Act* I am satisfied that Rowe and Simmons were not spouses. While they lived together in a conjugal relationship outside marriage and were the natural parents of a child I do not think that it has been proven that they were living together although I do find that they had a relationship of some permanence. I also find that they had not lived together continuously for a period of not less than 3 years.

Award:

The Dominion of Canada General Insurance Company is the priority insurer with respect to the claim for Statutory Accident Benefits for Rommel Simmons arising out of the motor vehicle accident of June 12, 2014.

While the Arbitration Agreement did raise a question as to the quantum of benefits in light of my finding with respect to Dominion being the priority insurer this issue is no longer relevant as there would be no requirement for reimbursement.

Costs:

According to the Arbitration Agreement paragraph 4 the expenses of the Arbitrator and the expenses of the arbitration are to be determined by the Arbitrator taking into account the success of the parties, offers to settle, the conduct of the proceedings and the principles generally applied in litigation before the Courts of Ontario.

I am not aware of any offers to settle. As TD was entirely successful in this arbitration I conclude that the expenses of the Arbitrator and the arbitration are payable by Dominion to TD.

If counsel are unable to agree on the amount of costs then a further prehearing should be arranged to set up a cost assessment.

DATED THIS 7 day of April, 2017 at Toronto.

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP