

**IN THE MATTER OF** the *Insurance Act*, R.S.O. 1990, c. 1.8, s. 268(2), as amended, and  
O. Reg 283/95 thereunder

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

**AND IN THE MATTER OF** claims for Accident Benefits by AB  
arising from injuries sustained in a motor vehicle accident  
which occurred on November 9, 2015

**BETWEEN:**

**ECONOMICAL MUTUAL INSURANCE COMPANY**

**Applicant**

- and -

**ECHELON GENERAL INSURANCE COMPANY**

**Respondent**

**AWARD**

**Appearances:**

Economical Mutual Insurance Company (Applicant): Helen Friedman

Echelon General Insurance Company (Respondent): Jamie Pollack

**Introduction:**

This matter came before me pursuant to the *Arbitration Act*, 1991, the *Insurance Act*, R.S.O. 1990, c.1.8, as amended, section 268 and Ontario Regulation 283/95 as amended to arbitrate an issue between the above-noted insurers with respect to a priority dispute that arose as a result of a motor vehicle accident that occurred on November 9, 2015.

On November 9, 2015 AB sustained injuries in the accident and advanced a claim for Statutory Accident Benefits to Economical Mutual Insurance Company. Economical Mutual Insurance Company insured DP, the father of AB. Economical Mutual Insurance Company (hereinafter called "Economical") takes the position that AB was principally dependent for financial support on his mother, AR, spouse of DR, who is insured with Echelon Insurance (hereinafter called "Echelon").

The parties selected me as their Arbitrator on consent and the matter proceeded to a written hearing only on October 24, 2017.

**The Issue in Dispute:**

The issue for my determination was as follows:

1. Was AB principally dependent for financial support on his mother, AR, or his father, DP, at the time of the motor vehicle accident of November 9, 2015?

The parties agreed that at the time of the accident AB was principally dependent for financial support or care on either his mother or his father and their respective spouses. This is not a case where the parties argued that AB was independent of his family and principally dependent on himself for financial support.

The parties filed the following documents which were made exhibits at the arbitration hearing:

Exhibit 1 (a): Joint Document Brief Volume 1

Exhibit 1 (b): Joint Document Brief Volume 2

Exhibit 2: Partial Agreed Statement of Facts

The parties also filed Factums and Books of Authority. No witnesses were called. An Arbitration Agreement was signed and formed part of Exhibit 1 (a).

**Result:**

AB was financially dependent on his father, DP, at the time of the accident on November 9, 2015 and accordingly priority rests with Economical.

**Background and Summary of Facts:**

AB was born on September 8, 1997 and had just turned 18 at the time of the accident.

The parties agree that AB was not a named insured, spouse of a named insured, deemed named insured or a listed driver under any policy of motor vehicle insurance at the time of the accident.

When the accident occurred, AB was driving a 2001 Honda Civic motor vehicle that was owned by his father, DP. The 2001 Honda Civic was insured under a standard automobile insurance policy issued by Economical which is acknowledged to have been in full force and effect at the time of the accident.

After the accident AB submitted his OCF-1 to Economical in February of 2016 and Economical has been paying accident benefits to or on behalf on AB pending the resolution of this dispute.

As a result of this accident AB has been rendered a quadriplegic and has been accepted as catastrophically impaired.

Echelon as of the time of the accident insured a Dodge Ram truck with the named insured DR. DR is the spouse of AR (they were married in 1999). AR is AB's mother.

AR and DP are the biological parents of AB. They were involved in a common law relationship which broke up approximately one year after AB's birth. They have not lived together since that time.

AB has lived at AR's home all his life except for a brief period of time at age 6 when AB lived with DP. This time period ranged from several weeks to 3 months depending upon whose evidence you reviewed. It should be noted that while the parties agreed on a Partial Agreed Statement of Facts, they were unable to fully agree on the facts. The parties filed the transcripts and statements of DP, AB and AR as well as the testimony of one JD from a criminal proceeding arising out of this accident (AB was charged and convicted of possession of marijuana and methamphetamine as a result of the accident). JD was with AB at the time. Unfortunately the evidence as among DP, AB and AR reflect a number of inconsistencies. None of these individuals were called as witnesses. Therefore as there is only partial agreement between the parties I have had to make some specific findings with respect to facts not based on the credibility or presentation of the witnesses but based on the statements and examinations under oath. In making these findings of fact I have selected the version of the facts that appear most consistent and makes the most sense in the context of the overall evidence as I understand it.

It is important to have the background information with respect to each of the relevant players in this priority dispute.

DP, AB's father, is 42 years of age. He owns a 2 storey house in Walton and is involved in a common law relationship with BP. Prior to the accident DP lived in this house with BP's daughters (2 of them) and DP's daughter. DP and BP slept in the den and each girl had their own room upstairs.

At the time of the accident DP was employed at Bateman Equipment as a welder fitter. His total income for 2015 was slightly over \$50,000.00. BP was also employed as an administrative assistant with an income in 2015 of close to \$38,000.00.

AR is 44 years of age and has lived at a home in Bluevale, Ontario for the past 10 years with her husband DR, their son TR and AB. AR and DR have been married for approximately 17 years. Their home has 3 bedrooms, one occupied by TR, one by AR and DR and the third occupied by AB.

At the time of the accident DR was employed full time as a supervisor earning approximately \$1,000.00 every 2 weeks. They did not own their home. It was rented from AR's father. AR was not employed but was in receipt of ODSP.

AB was completing high school (grade 12) via the COPE program (correspondence) through F.E. Madill Secondary School in Wingham. This program required him to turn in booklets every 2 weeks. He was short of 3 credits needed to graduate from high school. It was anticipated that that would be completed in 2015. He last attended a classroom school in June, 2015.

While AB was unemployed at the time of the accident he had had a part time job from March, 2015 to September, 2015 working as a truck washer for Canadian Crane Rentals. He earned slightly over \$3,500.00 in that position.

The summary of the evidence outlined above is one which formed the Partial Agreed Statement of Facts. The conflicting evidence arrives when one looks at the status of AB's living arrangements at the time of the accident. The issue is whether AB was living and had fully transitioned into living with his father or whether the transition was not yet complete and AB was still residing in the home of his mother. Economical takes the position that AB still resided with his mother and was therefore principally dependent for financial support or care on her. Echelon takes the position that AB had completed a transition to moving out of his mother's home for reasons that will be discussed below and was now living with his father. In light of the decision that I have reached I have concluded that indeed AB had transitioned and was now living in his father's home and was no longer living with his mother and therefore was principally dependent for financial support on his father.

Relevant to this issue are the problems in the relationship among DR and AR and DR and AB. DR moved out and left AR for about 5 years. During that time AR's position is that AB took on the role of the man of the house. AR had some trouble with finances during that time and DP occasionally helped out. DR returned to AR's house about a year prior to the motor vehicle

accident. A review of all the evidence (AR, DR and AB) supports that during that year there was ongoing and increasing conflict between DR and AB. The extent of that conflict is not clear. There are some suggestions from AB that it may have become physical. What I do accept and find is that some time prior to the motor vehicle accident the friction reached the point where AR felt compelled to ask AB to leave the house. AB describes it in his examination under oath as having reached the conclusion that he and DR could not live together any longer. He agreed that there were some pretty major arguments beginning in the household and they were starting to get violent.

In AR's statement of March 4, 2016 she states that about 2 and a half weeks prior to the accident AB was asked to leave. She said he had been given several warnings that his behaviour had to change. He quit working, quit going to school and was just sitting at home. When he refused to change his behaviour he was asked to leave.

In her examination under oath AR expands with respect to the circumstances surrounding AB's departure and states that DR more or less said that it was either him or AB. She tried to get AB to cooperate but DR said he had limited time and if AB didn't change he was going to be out. Approximately 3 to 4 weeks before the accident there was another argument and the result was that AB was to move out.

It also seems to be consistent across these families' evidence that it was expected that DP who was perhaps more of a disciplinarian would "guide AB in the right direction".

As a result of DR's ultimatum AB moved into his father's home. It is important to look at the evidence surrounding what occurred in terms of the moving into his father's home from the time his mother asked him to leave up until the date of the motor vehicle accident.

Firstly the timeframe is still not clear. At best it seems that this argument took place and AB moved out some time between 3 and 4 weeks prior to the motor vehicle accident.

AB will say that he began moving his belongings into DP's home about 3 weeks before the accident. He says by the time of the accident everything he needed was at his dad's place and that the last bag of clothes to be moved was in his car.

AB did not take any furniture from his room in his mother's home. His furniture remained there including his TV. However his clothes and his "belongings" were moved to his father's home.

Prior to the accident DP had arranged for one of the daughters to vacate her room and to make that room available for AB. In his examination under oath AB says that he had helped with the sanding of the floors in that room. It was being refinished for him as it had been a girl's room. He says it had not yet been completely set up but that BP had wanted it to feel like it was his space.

According to DP AB would get the bedroom upstairs and that while there was still a bit of work to be done there was "his bed and everything in there". DP claimed that he had purchased a bed through work for AB. Prior to AB moving into DP's house when AB had stayed over he did not have a bed and would sleep on the sectional couch. He also believed that there was a dresser and an end table in the room for him as well as a stand-up lamp. DP states in his EUO "In my eyes he was living with us. He had most of his belongings in there, his room was set up".

To complicate the facts is the evidence that AB had not only moved to his father's home and was spending time there but was also sleeping (as he had before the accident) at his girlfriend's. Also both AB and AR will say that AB came back to AR's house daily or regularly after he had moved to his father's house. He would come during the hours that DR was at work. AR acknowledges that at that time AB had moved all his belongings out of his room at her home and that when he came over it was to spend time with her, talk to her or assist her in some work in the yard.

According to AB he was still getting adjusted to living at his father's home in the weeks leading up to the accident and would spend time at his girlfriend's home. However I read the evidence as indicating that this was something he was doing prior to the accident as well. There is no evidence that once AB left his mother's home on the night of that argument that he ever moved back, put his belongings back or slept there. He was either sleeping at his father's house where his belongings were or at his girlfriend's.

DR's evidence on this point is that it was his understanding that AB was living with his father when the accident happened. He acknowledged that his message to AB was either he "change his ways or leave". He confirms there was no discussion with AB in the 3 week period prior to the accident that he would come back home. As far as DR was concerned AB was not living in his house and was not planning to come back at any certain time.

Another area of inconsistency that was reflected in the evidence before me was how long these individuals believed that AB would remain with his father and/or whether there was any planned time to move out from his father's home. I find that there was no such plan. I find that the plan was that AB would remain there, DP would help him get his act together and that AB would only move out if he was in a position to get his own place.

AR's evidence on this issue is inconsistent. In a statement she says the plan was that he would stay with his father for a month or 2. However in her EUO she acknowledges that it would not be possible for DR and AB to live in the same household. She confirms that prior to the accident there had been no reconciliation between AB and DR and they hadn't even spoken. While AR may have believed that AB's move to his father might have been temporary there is no actual evidence of that other than her belief. The evidence in my view points to the fact that this move was permanent and that the only plan that AB had to leave was if he was able to get his own place. There was no evidence to suggest that AB had any plan to move back in with his mother.

In his examination under oath AB says when asked whether he had any idea how long he was going to stay with his father he states:

“I wasn’t too sure at the time. I just knew it was going to be until, hopefully, I got my own place. Or something along those lines”.

Similarly when asked what discussions he had with his mother about how long he would stay with his father he states:

“She knew I was going to my dad’s but I think she knew it was kind of more of a permanent thing than just temporary”.

I do not find the fact that AB chose to sleep some nights at his girlfriend’s home to take away from the permanent nature of his move to his father’s prior to the motor vehicle accident.

DP was asked how long he thought his son would live with him. He said that there was no timeline. He stated:

“Just pretty much til he was set up and ready to do his thing. He was talking about getting his own place, eventually. There was no timeline on it though. I just wanted to make sure he was set up and ready to go”.

I do note that after this accident occurred AB returned to his father’s home and has continued to reside there.

Counsel for Economical raised the fact that there was some evidence to suggest that AB was sleeping in his car after he moved out from his mother’s home. The evidence with respect to that is most unclear. At best I find that AB was certainly sleeping at his girlfriend’s home as he had when he was living with his mother. I also find that the night the accident occurred AB had been out with JD. It appears that they spent the night prior to the accident in the car and were involved with doing drugs. This is indicative of the behaviour that was so distressing to AR and that lead AB to being asked to leave the home. However where AB slept from time to time does not take away from the fact that he was otherwise living and residing with his father with the result being that his financial support came from his father only. It is important to note that the parties did agree that if I find AB was residing with his father at the time of the accident that a finding of principal financial dependency would flow from that and vice versa if I concluded he was continuing to reside with his mother at the time of the accident. It is therefore not necessary for me to go into any analysis with respect to the financial wherewithal of AB’s parents and whether he was principally dependent for financial support on one more than the other.

Counsel for Economical also put forward facts that she claims supported an argument that AB was principally dependent for care on his mother. She accepted that there was no physical dependency on his mother in terms of care but suggested that his mother provided him with emotional support and a sense of security as evidenced by the fact that AB even after he had been asked to leave his mother's home and was living with his father continued to come back allegedly daily to spend time with his mother. While certainly that is indicative of a loving relationship between mother and child it does not in my view reach the "level or type of care that is contemplated by the dependency provisions under the SABS". There was very little evidence other than outlined above with respect to this issue. I have no doubt that AR was a loving mother and provided the normal level of emotional support and caring to her son. However one must also keep in mind that she had reached out to DP to ask him to provide emotional support, direction and care to their son to help him get back on track.

There was also evidence with respect to the contact information of AB as reflected on his driver's license (as an example). However I note that there had only been a few weeks prior to the accident within which AB would have had time to change his contact information and I do not find it unusual that his driver's license was still reflecting his mother's address. Notably almost all the post accident documentation reflects his father's address.

Counsel for Economical also pointed to notes from the broker with respect to the accident that AB was involved in. The loss was reported on November 12 and the notes indicate "D's son A (who does not live with Dan) was taking the Honda into the body shop...". However there was no evidence as to the source of this information and I did not find this of any assistance on the issue of dependency.

This case seems to me to be one where AB's mother was distressed at the decision she had to make to ask her son to leave. While she may have wished as any mother would that her son would be able to return home, even at her EUO she admitted that there had been no discussion about that prior to his accident. She stated that no one had mentioned to her that AB was planning on coming home at any time and she agreed that as far as she was concerned her son was not living in her house and was not planning to come home at any certain point in time.

Counsel for Economical asked that I take note that AB had some significant injuries in this accident. She noted and the evidence before me confirmed that not only did he have a significant spinal cord injury but while he initially had a GCS of 15 it declined to a GCS of 3. He had been ejected through the driver's side window and he reports to the occupational therapist that he has no first hand recollection of the accident. Not having AB before me as a witness it is hard to assess his memory. In reviewing his transcripts and statement, as a whole I did not find that there was any apparent problem with his ability to remember the 2 or 3 week period prior to this accident.

Counsel for Economical also suggested that on this issue of inconsistent facts that I consider whether AB and DP are colluding. She pointed to evidence that DP was a controlling individual.



DR gave evidence that there was a rumour that if AB didn't move back and live with his father that there would not be any insurance money and that therefore there may be good reason for AB and DP to have consistent stories as to where he was living at the time of the accident. In reviewing all of the transcripts and statements, other than DR's suggestion with respect to this rumour, I found no evidence that DP and AB were.

### **Position of the Parties:**

Economical's position is that at the time this accident occurred AB had not fully transitioned into living with his father and that he remained under the care of his mother and remained principally dependent on her for financial support. Economical says I must look at the big picture and not look only at the 3 weeks prior to this motor vehicle accident. Economical submits that it would not be fair to focus on the relatively brief period of time in AB's life that represented a marked departure from his previous life. Economical submits that this was a transient change for a short period of time that did not change the general nature of the dependency relationship. Economical submits a momentary snapshot does not yield any useful information and that the bigger picture should look at one year or even 6 months prior to the date of loss. Economical submits that during that time AB never strayed from his more or less lifetime residence with his mother and dependency on her financially. Economical submitted a number of cases in support of that, the leading case being *Oxford Mutual Insurance Company v Co-operators General Insurance Company* 2006 CarswellOnt 6991 (Ontario Court of Appeal). Economical submits that if I look at the 6 month or one year period prior to this accident I will be satisfied that during that timeframe that AB was principally dependent for financial support on his mother.

Echelon on the other hand takes the position that this is a case where the choice of the 6 month or one year period pre accident does not in fact fairly reflect the dependency situation on the date of loss. Echelon submits that the dependency analysis and the choice of timeframe should be determined by examining the period of time which fairly reflects the status of the parties at the time of the accident. Echelon comments that while there is consensus in the jurisprudence in this area that a "momentary snapshot" does not yield useful information, it also points out that the Court of Appeal in the *Oxford Mutual* (*supra*) held that the dependency analysis requires a "consideration of that relationship over a period of time particularly in the case of young adults whose lives are in transition. The parameters of that period will depend on the case". Echelon points to a number of decisions where short periods of time have been accepted by Arbitrators and Judges as more fairly reflecting the period of time that establishes the status of the parties at the time of the accident.

As with most dependency cases the time period that I select as relevant for determining dependency is key as clearly AB's life had taken a dramatic change in the 3 weeks prior to the accident. The question posed to me was whether that 3 week period fairly reflected the status of the parties at the time of the accident or whether the longer time period was more reflective of that status. I have concluded that in the circumstances of this case for reasons that I will

outline that the shorter timeframe more fairly reflects AB's status vis-à-vis dependency than the longer timeframe. While it may be more of a snapshot than the 6 month or one year timeframe it is my finding that that snapshot reflects the status of AB with respect to the question of dependency as of the date of the accident. AB had moved in with his father, had left his mother's home and there was no evidence that that move had any time limits on it and I am satisfied that the transition to the father's home was complete at the time of the accident.

**Dependency Analysis and Relevant Law:**

Priority for the payment of Statutory Accident Benefits is analyzed pursuant to Section 268 (2) of the *Insurance Act* R.S.O. 1990, c. I.8. With respect to an occupant of the automobile this Section provides that the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured.

An insured person is defined in the Statutory Accident Benefits Schedule as:

“The named insured, any person specified in the policy as a driver of the insured automobile, and if the named insured is an individual, the spouse of the named insured and a dependent of the named insured or his or her spouse”.

A dependent is defined in Section 3 (7) (b) of the Statutory Accident Benefits Schedule as:

“Principally dependent for financial support or care on the individual or the individual's spouse”.

As counsel agreed that AB was either dependent as defined under the SABS on his mother if you took the 6 month or one year time period and that he was dependent as defined under the Statutory Accident Benefits Schedule on his father if you took the shorter 3 to 4 week snapshot time period I do not see the need to review the evidence or conduct any analysis with respect to principal financial dependency. The sole issue is what time period is appropriate for determining dependency and why.

In determining that the 3 to 4 week period is appropriate in this case I have carefully reviewed the Court of Appeal's decision in *Oxford Mutual* (supra) and the decision in *Federation Insurance Company of Canada v Liberty Mutual Insurance Company* (Arbitrator Samis May 7, 1999, affirmed *Liberty Mutual Insurance v Federation Insurance* [1999] O.J. No. 5777 SCJ and [2000] O.J. No. 1234 (Court of Appeal)) 2 cases that I am intimately familiar with.

In the *Federation* case Arbitrator Samis noted that relationships change from time to time perhaps suddenly. He noted that transient changes may alter matters for a short period of time but not change the general nature of a relationship. He notes that choosing the appropriate timeframe will be critical and that an evaluation should be made by examining a time period which fairly reflects the status of the parties at the time of the accident. Arbitrator Samis'

analysis was upheld through to the Court of Appeal. It was referred to by the Court of Appeal in the *Oxford Mutual* case. I therefore approach this case to pick the time period which fairly reflects the status of the parties at the time of the accident while recognizing that I must be satisfied that if I choose a short time period it must be one that is not transient and that it is one that does change the general nature of the relationship.

In this case I am satisfied on the evidence before me that the move by AB to his father's home was not a transient change. Overall the evidence indicated that this was at least a semi-permanent change. There was no date set when AB would leave his father's home. At best the plan was that AB would leave if and when he found a place of his own. There was no evidence to suggest that there was a plan for AB to return to his mother's home. I am satisfied that the move by AB to his father's home changed the nature of the relationship/dependency that had existed for years. This move which was not transient changed AB's relationship from one of dependency on his mother to one of dependency on his father.

In many of the cases referred to by Economical where a shorter timeframe is rejected it is in cases involving young people who have just started off with employment. For example in the case of *Co-operators v Zurich* (private arbitration decision Lee Samis May 18, 2005) Arbitrator Samis found that if the 3 week time frame prior to the accident was chosen (a time when the claimant was fully employed at a substantial hourly rate) that that would not be truly reflective of his economic status at the time of the accident. The Arbitrator noted that the employment was probationary, it was early in the relationship and it was much too early to draw the conclusion that this would have been long term employment. I find employment to be quite different than dependency and living with one's parents. Unlike Arbitrator Samis I can feel comfortable in drawing a conclusion that AB was planning to live with his father at least until he himself could become independent and that the move to his father's was not probationary.

Other cases provided by Economical involved individuals who had tried to move out from their parents' home and make it on their own but unsuccessfully. For example the decision of *Echelon General Insurance Company v Wawanesa Insurance Company* (decision Arbitrator Bialkowski November 4, 2008). In that case in October of 2004 the claimant left his father's home. He wasn't kicked out of the house but he just wanted to go and live on his own. The evidence was that he lived with some friends, then with a girlfriend, then he moved in with his uncle. He was trying to make it on his own but the evidence was fairly clear that he was quite unsuccessful and in fact 4 or 5 days prior to the motor vehicle accident he moved back to live with his father. His father testified that he had to move back because he and his uncle were going to be evicted. Arbitrator Bialkowski looked at the big picture and held that the claimant had always lived at home with one parent or another and that his 5 month attempt at independence had failed. He therefore concluded that the claimant continued to be dependent on his father throughout. Of note is the Arbitrator's statement that had he formed the opinion that the claimant's return to home after 4 or 5 days preceding this accident was only going to be short lived and then he would go out elsewhere on social assistance that he would have reached a different result.

I also considered the decision in *Waterloo Insurance Company v The Personal Insurance Company* (decision of Arbitrator Novick from May 13, 2014). The facts of that case are quite similar to those here. 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 September of 2007 and lived with his father while attending grade 9, the summer after grade 9 and then during the grade 10 academic year. He then moved back to his mother's house in Scarborough in early 2009 one month prior to the accident. As in this case all parties agreed that the claimant was not independent but was principally dependent for financial support upon each parent while he was living in their home. The issue was the appropriate timeframe. Arbitrator Novick concluded that while often a one month timeframe is too short a period to consider the financial dependency of a teenager that in the case before her that one month period was appropriate because it accorded with the reality of his life up to the time of his accident. His mother had been his primary caregiver throughout his life. She held that the 22 months he spent at his father's home in Mississauga was an anomaly. Those are not the facts in this case. I do not find the 3 to 4 weeks that AB spent with his father to be an anomaly and rather I find that the move was not a transient change as in Arbitrator Novick's case. AB's move to his father was a new reality and he had clearly transitioned from his previous longstanding reality of living with his mother. I find AB had a settled intention in place to move in with his father and continue to live with his father in a relationship that was more than merely transitory. The move broke the chain of dependency on his mother that had existed otherwise through AB's life.

Counsel for Echelon provided a number of cases where short time periods had been chosen as an appropriate timeframe for the termination of dependency. In the Court of Appeal's decision in *Intact v Allstate* 2016 ONCA 609 the court accepted that the 7 week time period preceding the accident did not merely present a snapshot of the relationship between the relevant parties. The Court of Appeal in that case also found that the Arbitrator committed an error by importing a permanency requirement. I do not find that I have to conclude that AB's move to his father was permanent but rather that it had been completed and effected a change in the relationship.

Arbitrator Samis in the decision *ICBC v Federated* (Arbitrator Samis July 3, 2009) concluded that where an individual had been living in British Columbia for about 4 weeks that the 4 week timeframe was the appropriate one to use taking into consideration that this young man had a number of time periods prior to that that were also transitional but that he was not dependent for financial support on his father.

Finally in *TD Home and Auto Insurance Company v Co-operators* (Arbitrator Samis February 26, 2013) Arbitrator Samis again found that a period of just over 3 months was an appropriate timeframe. That case involved a 17 year old who found he could no longer remain at home and with the help of Children's Aid has been placed in the home of a couple to whom rent was paid by the student from the Ontario Student Welfare Benefit. It was accepted that the situation

with his parents was one that simply couldn't continue. Arbitrator Samis concluded that this was a significant change in life and was more than transitional and reflected a situation of permanence. I find that to be the same in the case before me of AB.

As noted earlier counsel for Economical also argued that it was not only a question of principal financial dependency but also a question of whether AB was also principally dependent on his mother for care. As I have found that AB was principally dependent financially on his father and had transitioned into his father's home at the time of the accident the issue of care is not really relevant. I find that the nature of care provided by the mother prior to her son leaving the home was social and emotional care. After he left the home she continued to provide certainly some emotional care. However as in the case of *Oxford v Co-operators* this was the type of care that would have been provided by a mother to her son because she loved him and not because he needed the care. This type of care in my view does not constitute the type of care contemplated under the Statutory Accident Benefits Schedule.

I therefore conclude that AB at the time of this accident was principally dependent for financial support on his father, BP, and therefore Economical Mutual Insurance Company is the priority insurer with respect to AB's claim for Statutory Accident Benefits.

**Order:**

I find that Economical Mutual Insurance Company is the priority insurer responsible for paying Statutory Accident Benefits to or on behalf of Mr. AB arising from the accident of November 9, 2105.

**Costs:**

The Arbitration Agreement signed by the parties agrees that the expenses of the Arbitrator and the expenses of the arbitration are to be apportioned as determined by the Arbitrator taking into account the success of the parties, any 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. With respect to the conduct of the proceedings I can only say that the conduct of both counsel and their submissions were excellent and a true example of good advocacy. That being said Echelon was wholly successful in this matter and accordingly Economical Mutual Insurance Company is responsible for the expenses of the Arbitrator and is responsible for paying costs on a partial indemnity scale of this arbitration to Echelon. If counsel cannot agree on costs then we can schedule a further prehearing to set a time to have brief submissions on that issue.

DATED THIS 21<sup>st</sup> day of December, 2017 at Toronto.

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Arbitrator Philippa G. Samworth  
**DUTTON BROCK LLP**