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:

UNICA

Applicant

- and -

WAWANESA

Respondent

DECISION

Appearances:

Unica Insurance Inc.: Mark H. Fonseca

Wawanesa Mutual Insurance Company: Daniel Strigberger

Introduction:

This matter comes before me pursuant to the *Arbitration Act, 1991,* Section 268 of the *Insurance Act*, R.S.O. 1990 (C.1.8 as amended) and Ontario Regulation 283/95, as amended. I am retained as a private arbitrator to arbitrate an issue between the above-noted insurers with respect to a priority dispute that arose due to a motor vehicle accident that took place on September 30, 2015.

On that date RO was riding a bicycle on his way to work at approximately 5:30 a.m. when he was struck by a motor vehicle. Wawanesa Mutual Insurance Company (hereinafter called Wawanesa) insured the striking vehicle.

RO was not licenced to drive and was not a named insured or listed driver under any other policy at the time.

RO's step-mother, MCO, was the named insured under a motor vehicle policy issued by the Applicant herein, Unica Insurance Inc. (hereinafter called Unica).

RO applied for his statutory accident benefits to Unica and Unica has been paying benefits to this significantly injured young man. Unica takes the position that RO was not principally dependent for financial support on either MCO or her spouse, RO Senior, at the time of the accident and accordingly Wawanesa as the striking vehicle is the priority insurer.

The hearing proceeded by way of written evidence only on one day on February 22, 2018.

The following documents were made an Exhibit:

Exhibit 1: Joint Document Brief (2 volumes)

This exhibit included an agreed Statement of Facts as well as the Arbitration Agreement. There was also the Application for Accident Benefits, various documents relating to employment, income tax returns, bank records, transcripts of examinations under oath, some medical reports and 2 accounting reports. The accounting reports were completed by BDO and PricewaterhouseCoopers. No witnesses were called. Both parties filed Factums and Briefs of Authority.

Issue in Dispute:

The issue for my determination as set out in the Arbitration Agreement is:

> "At the time of the subject motor vehicle accident was the claimant, RO Jr., principally dependent for financial support on his step-mother, MCO and his father, RO Sr.?"

Result:

At the time of the accident of September 30, 2015 RO was not principally dependent for financial support on his father, RO Sr., or his stepmother, MCO.

Background and Summary of Facts:

RO was born on January 9, 1989 and at the time of the motor vehicle accident was 26 years of age. What follows is a summary of the evidence as I have found it from the Agreed Statement of Facts, Joint Document Brief and as well from the examinations under oath.

RO left school when he was 13 years of age. He did not complete high school but dropped out of school at grade 8. He began working around the age of 13. Since that time he describes himself as being employed in various jobs primarily in the construction industry. RO also gave

evidence that other than for a short period of time before the accident of September 30, 2015 he had been continuously employed from the time he stopped school.

RO moved out of his parent's home around age 20. In addition to construction he had also been employed in restaurants. After moving out of his parent's home RO developed a relationship with a young woman and had a child with that individual. His son was 3 or 4 years old at the time of the accident.

RO and his son's mother lived together for about 3 years. They split up when the young boy was about 2 and ½ years old and did not live together thereafter. However RO did have regular visitation with his son until around August of 2014 when his son's mother moved away and did not disclose her new address.

After that occurred RO did not see his son. He therefore decided to seek the assistance of a lawyer in order to locate his son and the mother and get visitation through the courts. He did not feel he could afford a lawyer and needed to get help though Legal Aid. However in order to qualify for Legal Aid he had to be laid off from his job.

In the time leading up to RO asking to be laid off from his job (2014) he was actively employed through Personnel By Elsie. This appears to have been a company that placed RO in various jobs. According to the employee detail report from Personnel By Elsie for the year 2014 he worked from May 18, 2014 through to November 16, 2014 with earnings totalling $7,625.79.

His job before deciding to take a lay off was with a company called Winmar. He worked for Winmar from August 22, 2014 until November 21, 2014. This was a full time job. Winmar was involved in restoration work. RO would do home renovations where there was fire or water damage or mould. He would remove damaged property such as drywall and carpet, furniture and then put it back once the damage had been cleaned up and sanitized. He earned $12.00 an hour.

According to RO's Application for Accident Benefits he describes himself at the time of the accident as employed and working. He identifies his pre accident employer with Personnel By Elsie. He also identified employment from September 21 to September 28, 2015 with Bellwood Poultry with employment as an artificial insemination crew. This will be discussed further when I deal with this immediate pre accident employment.

It is also relevant to look at RO's tax returns. In 2013 he earned $14,617.00. In 2014 he earned $11,179.00.

On his examination under oath RO advised that as it would be a long process to find his son's mother and get her into court as lawyers were really expensive he would need to go to Legal Aid. He indicated that in order to qualify for Legal Aid he would have to request to be laid off.

He also gave up his apartment. Therefore in late November of 2014 RO sought to be laid off from his full time remunerative employment with Winmar.

RO then chose to move back in with his parents and 4 siblings in April or May of 2015. RO's father works full time as an auto mechanic and his stepmother works full time in a deli. He also had 2 sisters and 2 brothers at home. When he moved back into the home he slept on a sectional sofa in the basement of his parent's home.

Just before moving home RO lived with a friend. He paid her about $400.00 a month as well as "spending money" and also purchased some groceries. When he moved out he left all of his furniture in his friend's house which included his bed, his son's bed, a couch, 2 dressers, 2 end tables, a kitchen table, chairs for a kitchen table, lamps, some outdoor patio furniture as well as some clothing.

In approximately February of 2015 RO applied for unemployment insurance. On the document required to be completed for that application he indicated that the reason he was no longer working was because of shortage of work. He also confirmed that he was not prevented from working for medical reasons. Finally he confirmed that he is "available for and able to work but can't find a job." He was refused unemployment insurance as he did not have sufficient insurable hours between February 2, 2014 and January 31, 2015.

While living with his parents RO worked sporadically for a friend who owned a roofing business. He was paid in cash approximately $100.00 a day doing framing, siding and roofing. This was in the summer of 2015. He earned enough money from this to cover off his personal expenses which included cigarettes, cell phone, attending at stock car races and playing some paintball and going to paintball tournaments. He estimates that the jobs through his roofing friend would lastly roughly 2 to 3 days each and on his EUO he could remember at least 7 of those jobs during the course of the summer.

During the summer he also did retain and use Legal Aid counsel to assist in finding his son's mother and moving the process forward through the courts to get access to his son. With the assistance of Legal Aid RO was eventually able to locate the mother and serve her with papers requiring her to attend in court. He was able to assert his right to visit with his son and had had his first court ordered visit a few weeks before the accident occurred.

As a result of being able to move forward and successfully serve the mother of his son and move forward with visitations RO went out and found employment. His last full day of work was September 29, 2015. According to the records from Bellwood he worked anywhere between 8 to 10 hours per day and earned $12.00 per hour. Over the course of the time he worked for Bellwood he put in a total of 24.25 hours. His evidence was that this was full time employment and that he was not under any probationary period. Further RO gave evidence that had the accident not occurred he had planned to continue working there fulltime. There was evidence that the job at Bellwood Poultry was not a particularly pleasant one and that the

business was always looking for people who could hack the job. RO described it as almost a guaranteed job.

As to the reason why he now took employment RO's evidence was and I quote:

> "The court process was finally moving after being fairly stagnant for 9 to 10 months. So I figured now was a good time. I could finally get back to work and I'm not going to end up with an outrageous for – for the lawyers."

In addition prior to the accident of September, 2015 RO had started to look for a place to move into from his parent's home. He had not yet found a place but had looked at a number. These were going to be places that were appropriate for not only RO but for his son also. He had looked at rental apartments with a range of $750.00 to $900.00 per month. His expectation was that he would only live at home for maybe another month or a month and a half.

It should also be noted that while RO lived at home he did help out both indoors and outdoors more than his siblings had. He helped with chores including housework and yard work. He helped paint the outside of the house (that took about 8 days). He would help empty the dishwasher, load it, mow the lawn, cut branches, do some weeding, clean up after himself and vacuum.

RO Sr. gave evidence that he assumed that once his son got the job with Bellwood Poultry that he would have moved out probably by December of 2015. In reviewing the evidence of RO Sr. it appeared to be clear that he saw his son's move back into the home in April/May of 2015 to be temporary. After all this was the first time RO had moved back home since he was 20 and he had lived independently and looked after himself for some 8 years. In fact RO Sr. said that from the time his son moved out until the time he moved back in he always supported himself. When he wasn't living at home he did not provide him with rent money, food money or anything like that. He agreed with the description that his son was completely independent.

Both the father and stepmother were aware that RO had asked to be laid off from his job at Winmar and that was why he had moved home.

The stepmother went out and looked for a couple of apartments with RO. She understood that he was hoping to move into his own apartment before the winter set it.

Of some significance is the report from RO's post-accident rehabilitation/case manager. In a report dated February 8, 2016 RO reports that at the time of the accident he was living in a bedroom located in the basement of his parent's home. He says this was "a temporary situation with his eventual plan to move into his own apartment."

In a report prepared by a neuropsychologist, John Strang, dated September 6, 2016 RO reports that he worked in roofing and landscaping jobs. He described himself as good at these jobs and that he was never on welfare and could always find work.

As noted earlier, two accounting reports were put into evidence. The first was completed by BDO and the second by PriceWaterhouseCoopers. Both accounting reports looked at RO's income that he earned between April 27 and September 30, 2017 and made various assumptions with respect to those calculations. The purpose of the reports was to assess whether RO was able to provide for his needs with the income available to him for a specific time period chosen either by the accountant or instructing counsel.

The accountants also looked at determining a manner of assessing ROs needs in order to be able to compare those to the available income. The reports looked at Low Income Cut Off tables (LICO) to determine ROs financial needs prior to the accident.

Counsel made extensive arguments with respect to which LICO table I should consider in this case. The submissions revolved primarily around statistical information provided by counsel relating to various locations. Their submissions dealt with whether the LICO tables for certain size metropolises were more reflective of where RO lived at the time as opposed to others.

However, in the unique circumstances of this case, I found neither of the accounting reports nor the information with respect to statistics relating to LICO to be of any help. I do not see this as a case where one should look at RO's income or his needs for any particular time period in order to determine the issue of dependency.

The reason that I find the accounting reports to be of little help is because I conclude that on the facts before me that RO had a proven track record of a capacity to earn monies sufficient to be independent and to live on his own. There was no evidence that he had been dependent on anyone else for financial support since he moved out of the house when he was 20 years of age. RO voluntarily chose not to work. I find that someone who voluntarily requests to be laid off from work in order to qualify for Legal Aid and who demonstrated a capacity to work at cash jobs during the course of the time that he was voluntarily laid off, and who secured employment on a full time basis promptly after he made the decision to do so cannot be said to be principally dependent for financial support on anyone. For that reason, I do not find the expert reports to be of any assistance on the facts of this case. I do not find that an analysis of income vs. needs is appropriate or necessary to determine dependency on the facts before me.

I now turn to a summary of the submissions of counsel, an analysis of the law in this area and the reason for my determination.

Position of the Parties

Unica's position is that on the facts of this case it cannot be concluded that RO is principally dependent for financial support on either his step-mother or his father. Unica submits that I must look at the criteria as set down by the Ontario Court of Appeal in *Miller v. Safeco Insurance Company of Canada*, 48 O.R. (2d) 451, and look at the following issues in reaching my decision:

1. The amount of dependency;

2. Duration of dependency;

3. Financial or other needs of the alleged dependent;

4. The ability of the alleged dependent to be self-supporting.

Unica stresses the latter criteria as key in this case although acknowledging that one should look at all the criteria relating to dependency. Unica submits that if a person can earn significant income but chooses not to do so that an individual can't be regarded as a dependent in the sense that there is some need for financial support imposed on that individual. Unica submits that as RO voluntarily chose to be laid off for purposes relating to his quest to access his son that one cannot just ignore the fact that RO has the ability to be self-supporting but chose not to do so. Unica points to the fact that RO was capable of securing roofing jobs during the course of the summer for cash. There was no evidence that he could not have secured more of those jobs should he have wished to do so. Further, Unica points to the fact that as soon as the court case moved sufficiently forward with respect to his son that RO almost immediately was capable of securing a reasonably well-paying job. Unica submits that his choice to live in his family's home was temporary and that I must look at the "bigger picture" in order to determine dependency.

Unica submits that in terms of the "big picture" that RO had been living independently since he was roughly 19 or 20 and had supported himself financially since that time. While he had temporarily moved into his parents' home for roughly a five month period prior to the accident this was not out of financial necessity but was discretionary.

Finally, Unica indicates that as an alternative to looking at the "big picture" that I should look at the situation "at the time of the accident". At the time of the accident itself RO was in the process of looking for apartments to move out of his parents' home. He was employed on a full-time basis with Bellwood Poultry. Unica submits if I look at the eight day period leading up to the accident that that is also evidence of a lack of dependency on the part of RO vis-à-vis his step-mother and father.

Wawanesa on the other hand submits that the timeframe that I should look at to determine dependency is the five month period prior to the accident. Wawanesa submits that this reflects a material change in ROs financial situation and living situation. Further, Wawanesa argues that

this time period reflects "RO's reality that would have continued into the foreseeable future had the accident not occurred". By this I understand Wawanesa to suggest that had the accident not occurred RO would have continued to live with his parents. Further, Wawanesa submits that with respect to RO's employment that when one looks at his past employment it can be described as sporadic. Wawanesa submits that RO was a young man who had been unable to hold down a full-time job. They point to his earnings in 2014 as modest. They also suggest that the employment with Bellwood Poultry was likely not to be long-term. They rely on RO's father's evidence who described that particular employment as a "revolving door". The nature of the employment at Bellwood Poultry was not particularly pleasant and accordingly they had difficulty keeping employees.

Wawanesa also submits that if I look at that five month period that the evidence supports that RO was living with his parents, he took on no financial responsibilities of the household, he had no savings, and while he might move out eventually, there was no evidence of any concrete plans to do so. Wawanesa points to the fact that RO had not received his first paycheque from Bellwood at the time that the accident occurred.

Thereafter the majority of Wawanesa's submissions related to the LICO table to be used and reliance on their accounting report to establish that with RO's earnings from the roofing company that he did not have the financial means to meet more than 50% of his financial needs at the time of the accident. Accordingly, they asked me to draw the conclusion that he was principally dependent for financial support on his parents.

Both Unica and Wawanesa relied on similar case law but arguing that while they agreed on the principles one should apply in determining dependency that different time periods for assessing that dependency would yield different results.

Wawanesa submits that the big picture approach also requires a consideration of whether the claimant is faced with any "negative prognosticators" with respect to employment prospects. Wawanesa suggests that in accordance with the case of *Co-operators General Insurance Company v. AXA* (supra) that an arbitrator in reviewing these negative prognosticators must look at education, behavioural problems, previous work history, rural geographic location, substance abuse problems, whether the claimant has a licence or a car. Wawanesa submits that in OR's case that a number of these negative prognosticators were present. They suggest that he partied and used drugs in high school, that he dropped out of school at grade 8 at the age of 13, that he used marijuana and would typically smoke once a day prior to the accident, that he had a spotty work history and that he did not have a driver's licence at the time of the accident. By way of contrast, Unica submits that there is no evidence to suggest that any of those criteria resulted in RO being unable to provide for himself prior to his decision to seek a voluntary lay-off. Unica further submits that the real question is whether there is any evidence that the factors outlined above actually limited RO's ability to work at the time of the accident to the extent that he could not earn an income sufficient to meet 50% of his financial needs. I

would agree with Unica that that is the analysis. I also agree with Unica that there was no evidence to support this conclusion and the facts were clearly to the contrary.

Analysis of the Law

I now turn to an analysis of the law in this area and also an examination of the time period that I have selected for determining the issue of dependency.

The Statutory Accident Benefit Schedule for accidents on or after November 1, 1996 defines a dependent under Section 2(6) as someone who is "principally dependent for financial support" at the time of the accident. Therefore, in order for RO to qualify as a dependent of his step-mother or father it must be established that he was principally dependent for financial support on her or her spouse at the time of the accident.

There is a long line of cases that have set out the test for financial dependency. This is commonly known as the 51% Rule. To be principally dependent for financial support the individual must receive more than 50% of his financial needs from someone other than himself. If the individual is able to meet 51% of his financial needs then he cannot be principally dependent for financial support on others. (*Federation v. Liberty Mutual supra*)

In addition to the criteria set out above in *Miller & Safeco* in conducting a dependency analysis an arbitrator is also required to look at the alleged dependency relationship during the "period of time that fairly reflects the status of the parties at the time of the accident." Therefore, in selecting what a reasonable time period is in order to analyze dependency one must be satisfied that the period of time selected fairly reflects the status of the parties at the time of the accident. (*Intact Insurance Company v. Allstate Insurance Company of Canada*, 2016 ONCA (609) CanLII, at paragraphs 67 and 69).

I agree with counsel that the starting point in any dependency analysis is the decision of the Court of Appeal in *Miller v. Safeco* (supra). I have looked at each of those four criteria carefully, and the evidence available to me in reaching my conclusion. I agree with Unica that in this case the most relevant criteria, although not the only criteria is that of the ability of the alleged dependent to be self-supporting.

I find that whether I look at the big picture (a year), the five month period put forward by Wawanesa or the eight day period put forward by Unica that my conclusion is still the same. RO voluntarily chose to cease employment. He was capable of employment had he wished to do so and therefore he was not principally dependent for financial support on either his step-mother or his father at the time of the accident.

I find the case of *Federation Insurance Company of Canada v. Liberty Mutual Insurance Company* (Arbitral Award of Lee Samis, May 7, 1999) AFF'd [1999] O.J. 5777 (S.C.J.) AFF'd [2000] O.J. 1234 (C.A.) to be on point and not only binding on me but of significant assistance in the

analysis of this case. In *Federation v. Liberty* Arbitrator Samis examined the dependency of a young man who had had significant periods of lay-offs but had also had periods of employment and earnings. In the 19 weeks prior to the accident he had earned $5,700.00. During that interval he had lived at home with his parents and performed household chores. His parents had provided him with free room and board plus some cash to assist. In the last few days prior to the accident he was not employed. However, he had been employed in the year leading up to the accident.

In that case Arbitrator Samis felt that it was not appropriate to look at bare capacity in order to evaluate dependency. Arbitrator Samis indicated that one must look at whether the individual alleged to be dependent is "**reasonably exercising his or her capacity by providing for his or her own needs to the extent permitted by the circumstances.**" Arbitrator Samis went on to note that while earnings were evidence of capacity, that many individuals may not be earning up to their full capacity. For some cases it could be because of the unavailability of work or "on the other hand a person who could earn significant income but simply chooses not to, can't be regarded as dependent in the sense that a need for financial support is imposed on that person". Those latter comments of Arbitrator Samis in my view are significant and are clearly applicable to the case of RO.

Arbitrator Samis went on to comment that a wealthy person might receive food and shelter and other financial benefits from a family and choose not to work but that that would not support a conclusion that the person is principally dependent upon the family structure. Again, this looks at the voluntary nature of the issue of dependency or capacity to earn.

In reaching his conclusion that the insured in his case was not principally dependent on the date of the accident, Arbitrator Samis said the following:

> "In short, he was not providing for any of his own basic needs. Nonetheless he had the reasonable ability to do so... Jonathan Sebastian was a young able-bodied man, regularly employed, earning $13.00 per hour, not working to full capacity he earned $300.00 a week... on those facts I find he is not principally dependent for financial support on his parents."

Arbitrator Samis' decision was appealed and upheld by Justice O'Leary. The appeal to the Court of Appeal was dismissed.

I'm also mindful of the comments of Justice Perell in the case of *Co-operators General Insurance Company v. Gore Mutual Insurance Company*, Arbitral award of Guy Jones (February, 2008) AFF'd [2008] O.J. 3603. This again was a case on appeal from Arbitrator Jones with respect to the interplay between the capacity to earn and the actual earnings versus need of the individual being examined. Justice Perell in commenting on the earning capacity analysis stated:

> "A person's earning capacity is a product, amongst other things, of his or her formal and informal education, natural and acquired talents, physical and mental abilities and disabilities, and external factors such as the availability of employment, and the supply and demand for labour. Determining a person's earning capacity would involve taking these factors and also a person's prior employment history."

Justice Perell also points out as noted by the Court of Appeal in *Co-operators General Insurance Company v. Halifax Insurance Company* [2006] O.J. 451a (C.A.) that the determination of dependency is a factual issue and each case must be analyzed on its own particular facts and the applicable law. In this case I have carefully looked at the criteria outlined by Justice Perell with respect to earning capacity. I am satisfied that the evidence before me indicated that RO, since he was 20, had managed to support himself. He had not lived at home since he was 20. There was no evidence before me of the sporadic nature of his employment as alleged by Wawanesa. In fact, the evidence appeared to be that generally RO was always employed and had never been on Welfare. While he may not have had a high level of education, he had managed over the years since he left home to secure employment and live independently. I also note in looking at capacity to earn, the fact that as soon as RO decided that he was ready to work, having completed the legal issues relating to his son, that he promptly secured employment with Bellwood Poultry. I found no evidence to suggest that employment was temporary. Indeed, I find to the contrary. The evidence seemed to me to be overwhelming that while the work was not pleasant that RO was capable of doing it, had not suggested he did not plan to continue with that employment and there was no evidence that the employer was dissatisfied with him.

Counsel spent some time making submissions about transition cases. This did not seem to me to be a transition case. Rather the facts of this case struck me as one in which there was a very temporary change in circumstances for RO due to the issues relating to the quest to have access to his son and his need to have legal assistance to do so. RO did not move back with his parents immediately on voluntarily laying himself off in November, 2014; rather, he continued to support himself by living with a friend and living off his savings. He had only moved in with his parents some five months after the lay-off. There was evidence that the court process was taking longer than anticipated. Both step-mother and father gave evidence that this arrangement of RO living at home in the basement was temporary in nature. They were both aware that shortly before the accident he had started looking for apartments to move into. This was not therefore a case of RO transitioning from independence and living on his own to moving home with his parents for an unknown period of time. Again, this was a temporary arrangement in order to allow RO to access legal aid.

I note a similar conclusion was reached by Arbitrator Bruce Robinson in the decision *AXA Insurance Company & Royal Insurance Company* (decision May 28, 1997). In similar circumstances, Arbitrator Robinson stated:

> "I find that Mr. Chettle had been on his own and financially independent since leaving his mother's home in 1989 or 1990. A return to his mother's home on a temporary basis, in these circumstances, did not place him in a financially dependent position."

The analysis by Arbitrator Robinson is consistent with my own in these facts and also goes to support that the bigger picture is probably the more appropriate way to approach RO's case. Although as I have already said, whether you look at the big picture, the five months or the eight days, in each case I find that RO would not be principally dependent for financial support on his parents as he had the capacity to earn, had been independent for years, but had for a brief temporary period of time chosen not to earn in order to pursue Legal Aid entitlement.

Onus of Proof

Although there were not a great deal of submissions of this issue, Wawanesa took the position that in a dependency case neither side is in any better position to lead evidence on dependency issues. Rather, it is up to the Arbitrator to consider all the evidence before them and to weigh it accordingly. Wawanesa therefore suggested that in accordance with some earlier cases (*Dominion of Canada General Insurance Company v. The Motor Vehicle Accident Claims Funds* (Samis, November 10, 1997) and *Intact Insurance Company v. Her Majesty the Queen* (Arbitrator Densem, July 10, 2013)) that this case should be treated as if the insured had the burden of proof and that Wawanesa and Unica were equal in terms of the burden of proof. (See also *ACE INA Insurance v. State Farm Mutual Insurance Company* (Bialkowski, May 24, 2017)).

I struggle with the concept that neither Unica nor Wawanesa has the burden of proof in this case. Somebody has to establish on a balance of probabilities that RO was or was not principally dependent for financial support on his step-mother or her spouse. Unica commenced this application as against Wawanesa and in my view they have the onus of proof to establish that Wawanesa is the priority insurer. To do so Unica must prove that RO was not principally dependent for financial support on his step-mother or her spouse. I am satisfied that Unica has met its onus in that regard.

Alternatively, if you apply the Wawanesa theory and that neither side has any onus, then again, I still remain satisfied on the evidence before me that RO was not principally dependent for financial support on his step-mother or his father.

I therefore find that taking the big picture approach to the issue of dependency that whether one takes the 12 month period, the 5 month period or the 8 day period that RO was principally dependent upon himself at the time of the accident. He was an able bodied 26 year old man who was working full-time on the date of the accident, had been working full-time prior to the accident, continued to be employed on a part-time basis in the months leading up to the accident and had the capacity to be more fully employed should he choose to do so. His move

back home was temporary. RO could have supported himself the five months that he lived at home with his parents but chose not to do so.

Accordingly I find that Wawanesa Mutual Insurance Company is the priority insurer with respect to RO's statutory accident benefits.

Award

Wawanesa Mutual Insurance Company is the priority insurer with respect to statutory accident benefits payable to RO with respect to the motor vehicle accident of September 30, 2015.

Costs

The arbitration agreement provides that the unsuccessful party will pay the costs of the arbitrator and I so order.

The agreement has similar wording with respect to legal costs but does give me the discretion to order otherwise. In this case Unica was completely successful. Therefore I find that Wawnesa should not only pay the cost of the arbitrator but also the legal costs of Unica. If counsel cannot agree on the quantum of costs in the next 60 days I will arrange a further prehearing.

If any issue arises with respect to the quantum of accident benefits to be reimbursed by Wawanesa Mutual Insurance Company to Unica Insurance Company Inc. then counsel can advise and a further pre-hearing will be scheduled.

DATED THIS **9th** day of **May, 2018** at Toronto.

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP