IN THE MATTER OF SECTION 268 OF THE *INSURANCE ACT,*
R.S.O. 1990 S. I.8, AND O. REG 283/95

AND IN THE MATTER OF THE *ARBITRATION ACT, 1991.*
S.O. 1991, C. 17

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

LAMBTON MUTUAL INSURANCE COMPANY

Applicant

- and –

ING INSURANCE COMPANY OF CANADA

Respondent

AWARD

Introduction:

This matter comes before me as an Arbitration pursuant to the Arbitrations Act 1991. The parties have selected me as their Arbitrator on consent and the matter proceeded to a two day hearing in London on May 25th and 26th, 2009.

The Applicant and the Respondent are automobile insurers and a dispute has arisen between them as to which of the two insurer's should pay no fault accident benefits to Stephen Richardson as a result of an accident that occurred on April 22, 2007.

Counsel:

Lambton Mutual Insurance Company – Matt Duffy

ING Insurance Company of Canada – Douglas A. Wallace

Record:

The record in this matter consists of nine Exhibits, the list of which is attached to this Award. In addition oral evidence was led from Stephen Richardson, Pauline Richardson, Ed Richardson, Lindsay Shaw, Kelly Shaw and two expert witnesses: accountants Karen Dalton and Bruce Webster.

The Issue:

The parties entered into an Arbitration Agreement and the issue I have been asked to determine is as follows:

2. (a) Whether or not at the time of the accident of April 22, 2007 Stephen Richardson was a dependent of his mother, Pauline Richardson?

   (b) If the answer to (a) is answered in the affirmative, a determination of the quantum of indemnification payable by the Respondent to the Applicant.

   (c) If the answer to (a) is answered in the affirmative, a determination of the quantum of interest payable on any indemnity; and

   (d) A determination of the costs of this Arbitration proceeding.

The parties agreed that I would deal with issue 2(a) only in this Arbitration and once my Award was rendered, if needed, the Arbitration could resume on issues 2(b) and (c).

Background Information:

Stephen Richardson, date of birth May 5, 1984 was involved in an extremely serious single car motor vehicle accident on April 22, 2007. As a result of that accident Mr. Richardson sustained catastrophic injuries and is now confined to a wheelchair.

On the date of the accident Mr. Richardson was operating a 1998 GMC truck owned by his mother Pauline Richardson and insured by ING Insurance Company of Canada. Stephen Richardson was not a listed driver or named insured on this policy.

Lambton Mutual Insurance Company insured a vehicle owned by Stephen Richardson's mother Pauline and father Edward Richardson which was not involved in the motor vehicle accident. Stephen Richardson was a listed driver on that vehicle. Mr. Richardson applied to Lambton Mutual Insurance Company for statutory accident benefits.

Lambton claims that Stephen Richardson at the time of the accident was principally dependant for financial support on his mother, Pauline Richardson and that therefore ING should be the priority insurer.

Facts:

Stephen Richardson is a remarkable young man and comes from what can only be described as a salt of the earth family. His father Ed runs the family farm: he is a cash cropper. The farm has been in the family for over 100 years and Stephen will be the fourth generation to inherit the farm which is handed down from son to son. To establish his inheritance Stephen was required to work the farm from a very young age to show that he was interested and prepared to work. Stephen started working on the farm when he was six or seven. His work and responsibilities increasing as he became older.

At the time of the accident Stephen's mother, Pauline worked for Metaldyne as a shipping clerk earning approximately $50,000.00 per year. She and Ed had three children between them with Stephen being the youngest and the only one living at home at the time of the accident. Ed had four other children.

Stephen was involved with a young woman with whom he had formed a very close and loving relationship prior to this accident. Stephen met Lindsay Shaw when they were in high school. Within a year or so they had formed a relationship and in the year prior to the accident more or less lived together. They were either together at Stephen's home or together at Lindsay's home except when separated due to work, school or separate social functions.

Lindsay's mother is Kelly Shaw who works for Union Gas. She had what is described as an easy going open door house. She and her husband Richard and their 22 year old son lived with Lindsay in Tupperville while Stephen Richardson lived in Dresden. If any of their children or their friends were home she would give them a meal.

Living Arrangements in the Year Prior to the Accident:

While there was some inconsistent evidence given on this issue I accept the evidence of Kelly Shaw, Stephen Richardson and Lindsay that this young couple spent the majority of their time at the Shaw home. Stephen's evidence was that the year prior to the accident he was "almost always" at Lindsay's. He estimated that roughly five nights he would be at her home and approximately one night at his home. The majority of his meals were at her home. He described himself as rarely being around his mother's and father's home except to get clean clothes. It is important to note that at the time this accident occurred the farming season was only just beginning. Ed Richardson's evidence was that the intense time period for farming work began around April the 1st.

Lindsay's evidence was that as her home was closer to town and was a bit more relaxed that she and Stephen spent at least five nights out of seven at her home. She believed he would spend one night at his own home. At this time Lindsay was a nurse in training and attending school in Windsor two days a week from 8 a.m. to 2 p.m. and then returning home after school. She would also work one day of the week doing home care for her co-op program. This would take her out of the house from 8 a.m. to 10 a.m. and then from 4 p.m. to 8 p.m. She states that when she was not working or at school and when Stephen was not working or at school they would for the majority of the time be together during the day.

Kelly Shaw's evidence was that Stephen and Lindsay would be at her house more often than they were at the Richardson's. Her estimate was three to four nights out of the seven they would be at her home. Lindsay and Stephen shared a room in the Shaw home. Stephen would mainly be there to sleep there for weekends. Sometimes he would leave Lindsay at home, go out with friends but then return to Lindsay's home to sleep.

Stephen did not make any monetary contribution towards the Shaw home although occasionally he would help out with things such as cutting grass or cleaning the pool. Occasionally he and Lindsay bought some food and contributed to the family.

Similarly Stephen did not pay any room and board at his home although he was certainly required to work at the family farm. Ed Richardson stated that Stephens work on the farm served a two fold purpose: to ensure his inheritance and to contribute work in return for room and board.

Although Stephen did not "live" at his family's home at all times it was his mailing address and it was where he kept his clothes. As Stephen described it, his home was more or less a "landing strip" that he occasionally touched down on.

Stephen's Education:

Stephen attended Lambton Kent Composite School in Dresden from 1998 to 2003. From September 2003 to December 2005 he attended the Police Foundations program at Lambton College. However in order to become employed with the OPP as a police officer (which was Stephen's chosen career) he had to have an average of 60% in all his courses from the Police Program. As he did not have that 60% he returned for another semester from January to April of 2006 to upgrade his courses. He therefore graduated in April of 2006.

Stephen very much wanted to become a police officer and in order to smooth his way into potential employment he did a great deal of volunteer services through the OPP particularly through the Marine Unit.

Stephen's Employment:

Stephen's employment really began when he was approximately eight or nine years old when he started doing daily chores on the farm. By the time he was eleven or twelve his job duties on the farm increased and he was doing more complex functions involving the machinery such as filling the planter. As he grew and developed into a strong young man he was assigned heavier jobs.

Ed Richardson's evidence was that the farming season for crop farmers ran from April 1st to November 1st. The busiest time would be in the spring and the fall with summer less busy but still a number of duties. As soon as the first snow fell the farming work drew to a close and there was little to do over the course of the winter other than to clear snow.

By the time Stephen was sixteen he was doing more of the heavier work on the farm and was also able to operate more of the machinery such as hooking up the cultivator. From the age of sixteen on to the time of the accident during the busy season Stephen would work anywhere from 20 to 30 hours per week and in the summer that might drop to more in the range of 20 hours per week. Stephen was not paid for this employment. His father estimates that if he had had to hire somebody to do the work Stephen did he would have to pay him "at least" $12.00 an hour. For some of the mechanical work that Stephen did, if he had to hire someone to do that it could have been as high as $40.00 per hour. Stephen's work on the farm included driving the tractor, maintenance work on the machinery, cutting the grass, delivering straw, seeding and general farm work.

In addition to the work he did on his father's farm Stephen also worked for others. He worked for Mr. Sayers a former neighbour between April of 2006 and April of 2007. He would load pigs, separate pigs, plant, plow, remove snow and haul grain. He was paid in cash and he describes that Mr. Sayers "paid him well". He did not report any of these earnings to Revenue Canada. Stephen reports as Mr. Sayers as advising that he paid him during that time period anywhere from $5,000.00 to $10,000.00.

Stephen also had a number of his own enterprises in the year prior to the motor vehicle accident. He would gather straw from his father's field, store it and then sell it during the year primarily to horse people. He would sell about one load every couple of weeks for a couple of hundred dollars.

He also cut wood and sold it and earned anywhere from $1,000.00 to $1,500.00. None of these earnings were reported on his Income Tax Returns.

He also worked at Brown's Esso. Stephen had been employed part-time at Brown's Esso from September 20, 2004 to June 19, 2006 earning $2,916.44 in 2005 and $1,157.56 in 2006. Stephen's evidence was however that he continued to work part-time at Brown's subsequent to June 10, 2006 but was paid on a cash basis. He estimates he worked there four to five hours a week. He could not estimate his cash earnings.

In addition to these "cash jobs" Stephen also worked with a number of companies where he was paid by cheque and had T4's. In Exhibit 4 which sets out a partial chronology of employment for Stephen Richardson. What stands out is that this young man always seemed to be employed on a part-time basis during school and on a full-time basis during the summer. For example he worked at Watson's TimBR Mart in the summer of 2004 performing deliveries, he worked part-time at the Village Fireplace Shop in 2004, from April to August of 2005 he worked for the OPP Marine Unit. Between June and September 12, 2006 Stephen worked for N. Franklin Wilson as a farm labourer and was paid $12.00 per hour and earned $3,652.50 gross.

In 2006/2007 he worked as a cell guard for the Lambton OPP where he worked on a casual, on-call basis. He earned $1,752.57 in 2006 and in 2007 he earned $886.51. For a brief period of time from June 5th to June 16th, 2006 he worked for Metaldyne where his mother was employed and earned $1,157.73. In addition to all this Stephen gave evidence that he put in approximately 250 extra hours of volunteer work for the Police Department in an effort to ensure he was known.

Just prior to the accident occurring Stephen secured employment as a full-time sales representative of McGrail Farm Equipment. He started work there on April 12, 2007. He had not even received a paycheque prior to the accident occurring on April 22nd. The evidence was, however, that this job would pay him $30,000.00 per year plus commission, plus a truck with gas paid for and a paid for cell phone. His job was a salesman for lawn and garden agricultural equipment. According to the Employer's Confirmation of Income Form, in his first week of work he earned $153.85 and in his second week of work including commission he earned $911.78. Employer's Confirmation Certificates through the AB claim were also received and the following information is noted:

1. Metaldyne two weeks worked June 5, 2006 to June 16, 2006 earning $570.00 in week one and $605.73 in week two.

2. Brown's Service Station September 20, 2004 to June 10, 2006 7 weeks worked with a gross income of $479.58.

3. Lambton OPP on call cell guard 2006 to June 2007 12 weeks worked for a gross of $1,408.56.

4. Franklin Wilson Labourer June 2006 to September 2006 10 weeks worked earnings of $3,652.50.

A summary of Stephen's employment is not complete without mentioning the border guard job he had applied for prior to the accident. When Stephen was in hospital after the accident he received a letter indicating that he had been offered an interview for this job. This involved being a customs officer at the border. Stephen's evidence was that had he had an opportunity to be interviewed and offered this job he would have accepted it and he would then have earned approximately $50,000.00 per year. The evidence suggests (Exhibit 1, Tab 12(h)) that it was not an interview but an entrance test that was being offered.

With respect to the future Stephen had some very specific plans. All his other employment appears to have been simply a stepping stone to getting to a job with the OPP as a police officer. Stephen's evidence was that he believes he would have ultimately got that job and it was just a matter of time. He would then have worked as a police officer and as well run the farm with his father.

<u>Stephen's Expenses:</u>

Stephen appears to have had relatively minimal expenses. He paid no room and board anywhere. He contributed minimally to food at the two places where he lived. He reported his biggest expense was gas at close to $100.00 a week. He estimates entertainment expenses at anywhere from $20.00 to $40.00 a week. He purchased his own clothes although his mother from time to time would buy him underwear and socks. He paid for his own cell phone. He did not own a car or have to pay any insurance on a car but had access to his mother's car and she paid for the insurance on that. It appears Stephen paid for his hobbies which would include things such as a hunting or fishing license. Stephen also had a student loan and was making payments on that other than one payment which was paid for by his mother.

<u>Independent Living:</u>

Stephen was asked whether he wanted to move out from his family home or if he had any plans in that regard prior to the accident. I found Stephen's evidence on this point very important. He and Lindsay had prior to the accident talked about getting a place together. However they had no money. Stephen explained that he did not believe in renting. By having no money he meant that he wanted to wait until he had enough money for the down payment on a home. He estimated he would need $20,000.00. Stephen did not want to rent he wanted to buy and have the money he paid to the mortgage going towards the ownership of the home rather than going down the drain as rent. He also seemed to have some specific ideas as to where he wanted to buy. He did not want to live in town, he wanted to live outside of town. He had looked at some places in the area he was interested in but they were for rent and he described them as "just junk." From Stephen's evidence I draw the conclusion that Stephen was not going to leave home until he had enough money to buy his own place. This in my view does not mean that Stephen did not have enough money to live in a reasonable accommodation on his own and to be capable of being self-sufficient. In fact Stephen himself indicated in his evidence at the Arbitration that prior to the accident he was 80% to 90% financially independent based on the money he made.

Accounting Evidence:

Each side called an accountant. On behalf of Lambton Ms. Karen Dalton of Marcus & Associates was called and a report was filed. On behalf of ING Mr. Bruce Webster of PricewaterhouseCoopers was called and his report was filed.

Karen Dalton:

Ms. Dalton's qualifications were brought into issue. Ms. Dalton candidly admitted that she had not, prior to completing the report for this Arbitration, ever completed a report or given evidence with respect to dependency issues under the SABS/priority. However, the evidence and her CV clearly showed Ms. Dalton to be a fully qualified expert in accounting and accounting principles who has given evidence in court numerous times. As it was my view that it is not the role of the accountant to give evidence or express an opinion as to whether someone is or is not dependent on another individual I ruled that Ms. Dalton was not to comment on what was, in my view, the key issue in this case. However as Ms. Dalton's report and her evidence was being presented for the purpose of calculating the net cash shortfall, if any, incurred by Stephen Richardson in the 8 to 12 month period ending April 30, 2007. I was prepared to accept her as an expert in the calculation of income and expenses in relation to the ability of Stephen Richardson to be self-supporting during the relevant time period prior to the accident.

Ms. Dalton approached this issue in two ways. The first was to see whether Mr. Richardson was able to cover his own personal expenses in the 8 or 12 months prior to the motor vehicle accident. Ms. Dalton calculated Mr. Richardson's income for the relevant time period and then calculated his expenses for both the 8 and 12 month period prior to the accident. She determined that there was a cash shortfall in the eighth month period paid of \$5,630.00 and in the twelve month period of \$3,785.00. She therefore concluded that he was not capable of being self-supporting.

In this approach Ms. Dalton did not assign any value on the income side of the calculation to the services Mr. Richardson provided to his father on the farm. She was cross examined extensively on that issue and took the position that that calculation should not be done as the value of Mr. Richardson's work on the farm was set off by the value of the room and board, the value of the services his mother provided as well as the fact that Mr. Richardson had to use the farm equipment and/or barn in order to generate some of his income and was not charged by his father for that. In cross examination Ms. Dalton acknowledged that the unreported income that she calculated could be higher or lower depending on which evidence was accepted and whether or not you considered some potential expenses that Mr. Richardson incurred in making some of his cash income. She also acknowledged that some of the items listed as expenses were subject to some revision based on the evidence given at the Arbitration. For example she accepted that the cost of entertainment at \$100.00 per week should be reduced to a maximum of \$40.00 per week based on the evidence of Mr. Richardson that he in fact included gas expenditures in his entertainment cost.

Ms. Dalton's second approach was to take from Statistics Canada the estimated annual living expenses of a person living in a single member household. According to Statistics Canada this was estimated to be \$26,975.00 per year or \$2,248.00 per month. She then applied the same analysis as she did in her first scenario but used the statistical expenses against Mr. Richardson's income. Under this scenario in the eight months prior to the motor vehicle accident Mr. Richardson's cash shortfall was \$14,425.00 and in the twelve month scenario his cash shortfall was \$16,718.00.

The problem with Mr. Dalton's analysis is that it avoided allocating who paid for the expenses whether they were determined on a statistical basis or on an actual basis. Her analysis only looked at what Stephen needed and how much he had to meet those needs. While the analysis was helpful in some ways in my view it did not assist significantly in determining the issue as to whether Stephen was principally dependent for financial support on his parents at the time of the accident. In my view someone can have a cash shortfall as between their needs and their income but it does not necessarily flow from that that they are principally dependent for financial support on some other individual.

I should mention that Ms. Dalton also prepared an additional document entitled "Assessment of Dependence-12 Months" which was made Exhibit 7. This represented Ms. Dalton's efforts to follow what I will call the "PricewaterhouseCoopers'" approach. I will deal with this approach in my analysis of the PWC evidence.

Bruce Webster:

Mr. Webster was qualified as an expert but I also ruled that I did not want to hear any evidence from him on the issue I was to determine: whether in his view Stephen Richardson was principally dependent for financial support on his family.

Mr. Webster's approach was different than that of Ms. Dalton. Mr. Webster was asked to analyze Stephen's personal expenditures and needs and then to determine as between his mother and father, himself and any other individual how these were covered. As a result of the new information that had been given as evidence during the course of the hearing Mr. Webster had prepared a new analysis revised as of May 25, 2009 and this was made Exhibit 9.

Mr. Webster took the time period of 12 months prior to the accident and 10 days prior to the accident to do his analysis. In my view 10 days is not a reasonable time period and represents too much of a "snap shot." I am of the view that the 12 month period is a reasonable time period for the analysis of dependency at the time of the accident in this particular case.

In determining Stephen Richardson's annual needs Mr. Webster did not do an analysis of his actual needs. He took a statistical approach and relied on Statistic Canada's average expenditures per household for the year 2007 in Ontario to estimate the value of shelter provided to Stephen. The average annual cost was $19,127.00. As there were three people residing in the Richardson household at the time of the accident Mr. Webster allocated this equally among the three individuals living there resulting in an allocation to Stephen of $6,376.00 per year for shelter.

Mr. Webster used actual figures to estimate Stephen's annual needs including cost for clothing, entertainment, cell phone, fishing license, vehicles and his student loan. He estimated that the annual needs were $22,149.00.

Mr. Webster then calculated Stephen's earnings for the 12 month period. He calculated T4 earnings, allowed unreported employment income (cash income) at $4,000.00 and then deducted out CPP and EI coming up with a net after tax income of $11,853.00. In addition to that he also calculated an estimated value of the work that Mr. Richardson performed on the farm. Mr. Webster calculated these numbers as follows: During the busy time 144 days at 27.5 hours a week at $12.00 an hour plus less busy time 62 days at 20 hours a week at $12.00 an hour for a total of $8,918.00. However it was Mr. Webster's view that this number should not be included in potential income as it was off set by the value of shelter provided by his family. He acknowledged that the value of shelter was $6,376.00 and that the value of the work was $8,918.00 and that that differential arguably could be added to his potential income. However he accepted that there would be a number of arguments such as those accepted by Ms. Dalton that suggested this should be offset. If however the estimated value of the work he did for his father were added to the T4 and cash income calculated then it would increase Mr. Richardson's "earnings" for the year prior to the accident to $20,771.00.

Mr. Webster's next step was then to allocate who provided what and how much of Mr. Richardson's needs. Based on an assumption that Stephen spent 50% of his time at his parent's home and 50% of his time at Lindsay's parents home he allocated a 50/50 basis to each of those homes. He allocated shelter of $6,376.00 (the total of Stephen's needs) to his parents. He however also allowed $3,188.00 as shelter being provided by Lindsay's parents. Mr. Webster's argument appeared to be that as long as there was a room available for Stephen (whether he was in it or not) that one should attribute the value of that shelter to the person providing it. As Stephen shared a room with Lindsay at her parents' home he therefore only allowed one half of Stephen's estimated shelter needs. I do not accept that approach as a reasonable one. It seems to duplicate the provision of shelter and ends up artificially increasing Stephen's annual needs. I do not agree that if a room is made available for an individual and they do not use it that the expenses of providing that room (heat, hydro, etc.) can be attributed to that individual. Based on Mr. Webster's approach if Mr. Richardson was also spending a couple of nights at a friend's house then some attribution would have to be made to that individual for providing some portion of Mr. Richardson's needs. Further if that individual's room was available to Mr. Richardson whenever he wanted, whether or not he stayed there, then the value of the shelter provided by the friend would increase as well.

Mr. Webster's conclusion was that for the 12 month period, Stephen could provide for 70% of his needs through his net cash income, his mother was providing 8% and Lindsay's parents were providing 21%. It should be pointed out that this is based on the assumption that the mother's provision for shelter was cancelled out by the work Stephen did on the farm to earn that shelter.

Ms. Dalton using the "Webster approach" but with some changes to the allocation and value of shelter concluded that Stephen contributed to 40% of his needs, his mother contributed to 35.12% of his needs and Lindsay's parents contributed 24.7%.

Both counsel acknowledged in their submissions that I can ignore the written and oral evidence and opinions of the accountants. Mr. Wallace encouraged me to do so. While I found the analysis of the accountants to be interesting I did not find that either approach helped me in reaching a conclusion on the issue I have been asked to address.

Relevant Statutes:

In determining priority one must first look at s.268 of the Insurance Act and I have included the relevant provisions as follows:

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

> *1. In respect of an occupant of an automobile;*
>
> *i. The occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured;*
>
> *ii. If recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant;*
>
> *iii. If recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose;*
>
> *iv. If recovery is unavailable under subparagraph i, ii, or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.*
>
> *(5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependent, as defined in the Statutory Accident Benefits Schedule, of a named insured, the person shall claim statutory accident benefits against the insurer under that policy. 1993, c.10, s.26(2).*
>
> *(5.2) If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, at the time of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependent of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant. 1993, s.10, s.26(2); 1999, c.6, s.31(10); 2005, c.5, s.35(14).*

If Stephen Richardson is found to be a dependent of his mother then under s.268 (5.2), statutory accident benefits will be payable by ING.

The SABS provide a definition of dependency as follows at (s.2(6)) of the Statutory Accident Benefits Schedule:

> "For the purpose of this regulation, a person is a dependent of another person if the person is principally dependent for financial support or care on the other person or the other person's spouse of same sex partner."

The issue before me is only one of financial dependency.

In reaching my decision I have considered all the evidence that I have outlined above as well as the nine Exhibits, a list of which is attached to this Decision.

Analysis:

While this case is not unusual in that it involved a young man who was just finished school and is starting a career, it is unusual as to who might be considered as providing financial support. Mr. Richardson did not appear to spend a great deal of time in his home. While certainly his family's home remained the place where he kept his clothes, was his mailing address and was his "landing strip," the fact that he spent five nights per week at Lindsay's parents' home in the year prior to the accident is a significant fact and an unusual fact that must be considered in this case. I am not being asked to determine someone's legal residence. I must look at the issue of financial dependency.

I am directed by the Decision of the Court of Appeal in *Federation Insurance Company of Canada v. Liberty Mutual Insurance Company* [2000] O.J. No. 1234 (C.A.) to apply the four criteria established in the *Miller v. Safeco Insurance Company of America* [1985] O.J. No. 2742 (C.A.) in determining dependency. The four criteria are:

1. The amount of dependency;
2. The duration of dependency;
3. The financial or other needs of the alleged dependent;
4. The ability of alleged dependent to be self-supporting.

I am also mindful of the case law that has developed since *Federation v. Liberty* in looking at the individual's capacity to earn and not only his actual earnings in determining the issue of dependency. I am not only limited in my analysis to consider Mr. Richardson's actual earnings but I can also look at his reasonable capacity to earn. This in my mind includes any potential income Mr. Richardson could have earned had he put in 20 to 30 hours a week on someone else's farm as opposed to providing those services on a gratuitous basis to his father in anticipation of securing his inheritance. I should say I am satisfied that Mr. Richardson was not an individual to shun work. If there was work available Mr. Richardson would do it. There was no evidence lead as to Mr. Richardson's efforts to be employed during the year prior to the accident nor was there any evidence as to the availability of work in the rural area where Mr. Richardson resides. Based on my assessment of Mr. Richardson and the evidence presented I am satisfied that Mr. Richardson, while perhaps not employed to his fullest capacity, was working in the fullest capacity available to him at the time.

Taking into consideration Mr. Richardson's T4 earnings, a reasonable estimate of his cash earnings net of any possible expenses and allowing for an imputed value to the work that he did on a volunteer basis on his father's farm my estimate of Mr. Richardson's income between April of 2006 and April of 2007 as follows:

1.	Brown's Esso both part-time T4 and cash	$1,500.00;
2.	N. Franklin Wilson – farm labour	$3,652.50;
3.	Metaldyne Factory	$1,175.73;
4.	Lambton OPP	$1,408.56;
5.	McGrail (excluding any imputed value for provision of cell phone and truck)	$1,065.63;
6.	Cash income including Sayers, fire wood, straw and net of expenses	$4,000.00;
7.	Value of work on father's farm	$7,500.00.
8.	**TOTAL:**	**$20,302.42.**

Considering these earnings and in particular considering the full-time job that Mr. Richardson had just commenced at the time of the accident, I am satisfied that at the time of the accident on April 22, 2007 Mr. Richardson had the ability to be self-supporting. However that is not the end of the analysis as one must also look at the other criteria from *Miller v. Safeco* dealing with the amount and duration of dependency and the financial needs of Mr. Richardson. I must ask whether based on his earnings Mr. Richardson had sufficient resources to fund 51% of his financial needs. In looking at Mr. Richardson's expenses I calculate them as follows:

1.	Shelter (per Statistics Canada and Webster's analysis)	$6,356.00;
2.	Food	$1,300.00;
3.	Clothing	$1,500.00;
4.	Entertainment	$1,560.00;
5.	Cell phone	$1,200.00;
6.	Toiletries	$300.00;
7.	Hunting/fishing licenses	$100.00;
8.	Vehicle	$3,080.00;
9.	Student loan	$1,800.00;
10.	Healthcare	$500.00;
11.	**TOTAL:**	**$17,696.00.**

The case law indicates that to be principally dependent for financial support an individual must receive more than 50% of their financial needs for someone other than themselves. In applying that to this case Mr. Richardson must derive at least 51% of his financial support from that other person. In looking at Mr. Richardson's ability to pay for his own expenses with an income of slightly in excess of $20,000.00 per year, he is clearly capable of being self-supporting. 51% of Mr. Richardson's financial needs is $9,024.96 and Mr. Richardson has $20,000.00 in actual earnings plus imputed or capacity to earn earnings which would clearly cover that percentage share of his expenses.

I now turn to an analysis of the amount and duration of the dependency. I have accepted one year as being the appropriate time period to look at the duration of the dependency in order to fully review Mr. Richardson's circumstances considering he had only just finished school in April of 2006. Both counsel presented scenarios which included one year as an appropriate time period and there did not appear to be any dispute with respect to that.

As to the amount of the dependency this is where consideration must be given to the involvement of Lindsay's family. I accept the evidence of Lindsay, her mother and Stephen that in the year prior to the accident Stephen spent at least five nights per week at the Shaw home. I also accept that at least one night a week Lindsay would spend a night at the Richardson's home. I must therefore consider the value of the shelter and food provided by the Richardson family and by the Shaw family. Although I accept that there was a room available for Stephen at home I must consider the use he made of that room. I also accept the evidence of Lindsay that in the year before the accident when Stephen was working that she made his lunch for him. Lindsay's family provided dinner and breakfast for both of them when they were there. Mrs. Richardson would provide Stephen with money from time to time, purchased his underwear and some of his toiletries. However I am struck with the fact that the significant portion of Stephen's needs, being his shelter was provided primarily by Lindsay's family.

Whether you assume that 50% of his needs for shelter and food were provided by his family and 50% by Lindsay's family or whether you accept that it was 80% for Lindsay's family and 20% for Stephen's family, either results in a conclusion that Stephen was not principally dependent for financial support on his mother.

It may be trite to say that each of these dependency cases turns on its facts but certainly that must be noted in relation to this case. Even if I am wrong in my conclusion that Stephen Richardson had the ability to be self-supporting and had sufficient resources to fund 51% of his financial needs I still reach the inescapable conclusion that Stephen's mother did not contribute 51% or more to Stephen's financial needs. If Stephen is not able to fund 50% of his needs then his remaining needs were covered either on a 50/50 basis between Lindsay's family and the Richardson family or Lindsay's family made a more significant contribution. Those facts do not lead to a conclusion that Stephen was principally dependent for financial support on his mother.

Therefore following the criteria set forward by the Court of Appeal in *Miller v. Safeco* I conclude that Stephen Richardson had the ability to be independent and if he did not, in any event, he was not principally dependent for financial support on his mother. As a result Stephen Richardson's statutory accident benefits should be paid by Lambton Mutual Insurance Company.

Conclusion:

The question posed by the Arbitration Agreement is as follows:

> *Whether or not at the time of the accident of April 22, 2007 Stephen Richardson was a dependent of his mother, Pauline Richardson?*

The answer to this question is: No.

The parties have agreed that costs should follow the event. If the parties are unable to agree with respect to costs then a further pre-hearing will be scheduled to set a timetable and process for submissions and argument with respect to costs.

Order:

It is ordered that Lambton Mutual Insurance Company is responsible for the payment of accident benefits to Stephen Richardson arising out of the motor vehicle accident of April 22, 2007.

DATED this 5th day of June, 2009 at Toronto

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP