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

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

AND IN THE MATTER of an Arbitration

BETWEEN

ECONOMICAL INSURANCE COMPANY

Applicant

and

WAWANESA MUTUAL INSURANCE COMPANY

Respondent

AWARD

COUNSEL APPEARING

William M. Sproull for the Applicant, Economical Insurance Company (hereinafter referred to as "Economical").

Krista Groen for the Respondent, Wawanesa Mutual Insurance Company (hereinafter referred to as "Wawanesa").

INTRODUCTION

This matter comes before me as an arbitrator pursuant to the *Arbitration Act, 1991* to arbitrate a dispute as between two insurers with respect to which insurer is obliged to pay statutory accident benefits pursuant to the *Insurance Act*, R.S.O. 1980, c. I.8, as amended, section 268, to the claimant as a result of a motor vehicle accident that occurred on June 14, 2022.

Economical insured the vehicle that the claimant was a passenger in. This was an Uber rideshare and as the Uber application was on, Economical's policy responded under policy 6962301.

The claimant applied to Economical for statutory accident benefits and at the time of the hearing $3,526.20 had been paid out for medical and rehabilitation benefits.

Wawanesa insured the claimant's father under policy number 37619461. That policy was in full force and effect on the date of loss. The claimant was not a named insured or listed driver under that policy. However, Economical takes the position that Wawanesa is the priority insurer in this

matter on the grounds that the claimant was principally dependent for financial support on his father/parents on the date of loss.

Therefore, the issue for my determination is whether the claimant at the time of the accident was principally dependent for financial support on his father.

THE PROCEEDINGS

The parties submitted document briefs, which included the following:

- OCF-1 dated June 20, 2022;
- OCF-3 dated June 15, 2022;
- Ontario driver's licence and health card of the claimant;
- AutoPlus search under the driver's licence number of the claimant, dated June 28, 2022;
- Clinical notes and records of the family doctor;
- AutoPlus report for the father, dated September 11, 2022;
- Notice to Applicant of Dispute Between Insurers, dated September 9, 2022;
- Wawanesa renewal certificate, effective October 7, 2021;
- Economical policy number 6962301 insuring Uber;
- Transcript of the EUO of the claimant, dated September 6, 2022;
- Transcript of the EUO of the father of the claimant, dated October 1, 2024;
- Transcript of the EUO of the claimant's mother, dated October 1, 2024;
- Various documents from the accident benefit file;
- Statistics Canada Census Profile for the City of Welland, 2021;
- Statistics Canada Census Profile for the City of Toronto, 2021;
- Statistics Canada LICO Table, 2019 to 2023;
- Statistics Canada Table 0.2 (2021): Market Basket Measure threshold for economic families and persons; and
- Arbitration Agreement between Economical and Wawanesa, dated September 19, 2025.

The parties were also given an opportunity to make oral submissions.

FACTS

While there are some facts that the parties can agree upon there are also a number of facts that both parties dispute, reflecting some inconsistent evidence relating to this matter.

I outline below the facts as I have found them. Where there are inconsistencies, I have commented on them and indicated the documentary evidence that supports the conclusions I have drawn from the facts.

It is to be noted that I was not given an opportunity of hearing or seeing the claimant, his father, or his mother. My review of the evidence was limited to written evidence and EUO transcripts.

On June 14, 2022, the claimant was involved in a rear-end collision on Leslie Street near its intersection with Lawrence Avenue East in Toronto.

The claimant was a passenger in a Toyota, which was being operated as an Uber ridesharing vehicle.

The claimant submitted an OCF-1 to Economical.

The OCF-1 dated June 20, 2022 indicated that the claimant did not have access to any other policy and was claiming under the Economical vehicle on the basis that that was the car he was in when the accident occurred.

Under employment status the claimant indicated that he was unemployed. Under Part 6, he indicated that he was not attending school on a full-time basis on the date of loss.

The document also indicates that the claimant's date of birth was January 22, 2003 making him 19 years of age at the time of the accident.

The evidence supports that the claimant graduated from high school in the spring of 2021. Throughout high school and throughout 2021 the claimant resided with his parents. The parents had an apartment at 121 Humber Boulevard in Toronto. At the time of the claimant's graduation they also had a house at 416 Galbraith Street in Shelburne.

The claimant has three younger sisters. The family seems to have alternated between staying in Toronto and staying in Shelburne.

According to the mother's EUO her two daughters had pediatricians in Toronto as well the claimant's mother's family was also in Toronto. She found it difficult to get back and forth from Shelburne to Toronto for daughters' appointments and family visits. Accordingly, she decided to get an apartment. The monthly rent of the Toronto apartment was approximately $1,400 around the time of the accident. This was in her name in the lease.

The claimant's father sold the Shelburne property in August of 2021 and purchased another property in Welland at 45 Alexander Drive in September of 2021. At the time of the accident there was a mortgage on the Welland property of approximately $3,500 per month. The father's evidence was that utilities, including water, gas, and electricity, were approximately $150 per month.

Despite the sworn evidence in his OCF-1, the claimant and his parents testified that he had employment at the time of the accident.

I find that the claimant was employed as a part-time retail sales associate at SoftMoc from December 2021 up until the time of the accident. No employment records and no tax returns

were produced although efforts were made during the course of the arbitration process to secure these through production orders and undertakings.

There is inconsistent evidence as to what the claimant earned from SoftMoc. He reported on his EUO that he was earning $15 per hour. He would work four to five three-hour shifts per week but those increased to four-hour shifts in March of 2022. He estimated that during the time period he worked (December 2021 to the date of loss) that he earned $2,000 gross from that employer.

According to the claimant's father he believed that his son would bring home about $600 per month. He thought his son started working part-time at SoftMoc before he began Seneca and as he was employed he began paying his father rent of approximately $200 to $250 a month. This was paid to his mother. There was nothing in writing.

According to the claimant's mother she did not know when her son started working at SoftMoc. She believed he also worked at the Toronto Outlet Mall with his godmother while he was attending Seneca. However, neither the father nor the claimant gave evidence with respect to this nor was there any information as to what his earnings may have been from that employment.

With respect to Seneca the claimant's evidence was that this was a two-year program. It began in September of 2021 and the campus was in King City but he was completing his courses online.

The claimant's evidence was that he did not receive OSAP to pay for school. He told his parents he wanted to pay for his own tuition. There were no invoices or bank statements to confirm this information but the claimant's evidence was that his first year of tuition was $1,100 which he paid himself. He also paid approximately $100 toward course materials such as books.

While there is inconsistent evidence between the OCF-1 and the evidence under oath, I find that the evidence supports that the claimant was employed on the date of loss with SoftMoc and earned approximately $2,000 from that employment.

The picture in terms of dependency now becomes more complicated.

The claimant was involved with a young woman before this motor vehicle accident occurred. She became pregnant and on March 20, 2022 she gave birth to a daughter. The evidence supports that the claimant was well aware that his parents not only did not approve of his relationship with this young woman but would have been upset and in fact became upset when they learned that she was pregnant and gave birth.

Likely as a result of his parents' objections the claimant moved in with his girlfriend, her baby, her mother, and her brother on March 17, 2022. Their address was 202-3470 Keele Street. The claimant was living at this address on the date of loss.

Prior to that it appears the claimant would live on and off in Welland and on and off in Toronto. I find that he spent more time in Toronto than he would have in Welland considering the circumstances of his employment and attending Seneca. The evidence also confirms that despite moving in with his girlfriend that he would come and visit his mother on weekends in her apartment.

While the claimant gave evidence on his EUO that he was living with four roommates at 3470 Keele Street I find that those roommates were in fact his girlfriend, daughter, girlfriend's mother and brother.

The evidence also seems clear that the claimant made no contribution to the expenses at his girlfriend's family's home.

It is also relevant to note that the claimant's three sisters who were ages approximately 15, 13, and 6 years at the time of the accident were all in school in Welland. The claimant's parents were also employed in the Welland area.

I set out below a summary of the key evidence I have relied upon to reach the conclusions above from the various documents produced and particularly the EUO.

A disability certificate was produced dated June 15, 2022 completed by the claimant's chiropractor. That document indicates that the claimant had not worked 26 out of the previous 52 weeks and confirms that he was attending school at the time of the accident.

The OCF-1 shows the claimant's address at the time the document was completed as 3470 Keele Street in North York. The OCF-3 gives the same address.

The claimant's driver's licence issued October 25, 2021 shows his address as 121 Humber Boulevard, Apartment 917.

The claimant's health card dated February of 2019 was registered to the claimant at the same address as driver's his licence number. Efforts to do an OHIP search and secure his records by using the Keele Street address were unsuccessful, and OHIP indicated that this was an incorrect address.

According to an Ontario Health Ministry document on July 25, 2022 the OHIP summary could not be provided because the authorization signed by the claimant on June 20, 2022 indicated his address as 3470 Keele Street in North York, and that was not the address that matched the Ministry records.

The clinical notes and records of the claimant's family doctor identified his address as 917-121 Humber Boulevard and the patient enrollment form dated June 23, 2022 shows the same address as having been given by the claimant.

Evidence of the Claimant – EUO on September 6, 2022

- At the time of the EUO, the claimant confirmed he was currently residing at 3470 Keele Street, Apartment 202 and that he had been living there at the time of the accident with "school friends."

- He confirmed he was working at SoftMoc in the year prior to the accident. He began in December 2021 and fully stopped after the motor vehicle accident. It was part-time work, four to five shifts per week, approximately three hours long, paying $15 per hour.

- While his hourly rate did not change his shifts increased to four to five hours per shift. This happened in March of 2022.

- He had not been self-employed prior to the accident and he was not employed anywhere else in the year prior to the accident other than SoftMoc.

- With respect to the Keele Street address he lived there for free and did not pay rent or pay for utilities. He would contribute toward groceries somewhere between $200 to $250 per week.

- With respect to SoftMoc his estimate was that for the entire time he worked there he earned $2,000 gross. The claimant did not have any savings built up. He did not get grants or loans when attending Seneca.

- SoftMoc was his first employment after graduating from high school.

- He moved into the Keele Street address on March 17, 2022 and it was his plan to return to live with his parents in the summer of 2022.

- His evidence was that he would pay for his own PRESTO card about $50 per month, $80 in terms of rideshare services, bought his own cell phone at $150 per month and attended a gym for which he paid $25 per month.

- The apartment at 3470 Keele Street cost $1,500 per month in rent and it was split $500 between three of the individuals living there.

Evidence of the Claimant's Father – EUO on October 1, 2024

- At the time of his son's accident he (the father) was living in Welland. He works as a machine operator for a company called Metro Logistics and had been employed for approximately two years as of 2022. The company is in Welland. At the time of the accident his son was living at 3470 Keele Street but the witness did not know anything about that because he was not living with him at that time. His evidence was that he

thought his son had a baby and was hiding it from him. In fact, the father did not know anything about the claimant's accident for some time.

- He did not know that he had a granddaughter until his daughter told him. He may also have been in Ghana at the time some of these events occurred.

- His wife spent most of the time in Welland as she was working in that area. She worked for a hotel.

- The father's understanding was that the claimant's mother did not want her son to live with his girlfriend.

- With respect to money the father would sometimes give the claimant money maybe $100 or $50. When the claimant was working at his part-time job, he did pay about $200 or $250 to his mother for rent. He started his part-time job before he started attending Seneca.

- The father stopped helping out his son and contributing to his finances once he was working part-time as he felt if he could make $700 a month, then he would not need support from his father. He no longer purchased things for him.

Evidence of the Claimant's Mother - EUO on October 1, 2024

- The mother believed that the claimant began living with his girlfriend somewhere around November of 2021 in the Keele Street area. He lived there with his girlfriend, daughter, girlfriend's mother, and brother. Her son told her he contributed rent to the Keele Street address but she did not know how much.

- Generally, between Welland and Toronto the mother would come to Toronto on weekends to see her parents and she would see her son at the same time. He would come to the apartment or her mother's or father's or sister's place.

- The mother was not really aware that her son had been involved in an accident. She had to call his girlfriend to find out.

- When her son came over to visit on the weekends he would sleep at the apartment as he had his own room there.

- Prior to the accident the mother did not believe her son had plans to move back in with her.
- However, after the accident he decided to move in because he needed help.

- At the time of her son's accident his mother was working as a community outreach worker, 40 hours a week, Monday to Friday, in the Niagara–Welland area.

- The mother's evidence was that she believed her son made about $400 and change a week.
- He would sometimes give her $300, $350, or $200, depending on how much he has, for rent and for groceries. This was before he moved in with his girlfriend.

- Prior to the accident, the mother did not give the claimant any money and her evidence was, "Before the accident, he would rather ask money from someone not me."

POSITION OF THE PARTIES

Economical

It is Economical's position that the claimant was a young person in transition who was not financially independent nor capable of being financially independent.

Economical submits that he relied on his parents financially, that his residence with his girlfriend and family were temporary, and that the claimant intended to move back with his parents during the summer.

Economical also submits that the weight of the evidence demonstrates that the claimant was no longer working at the time of the accident and was still in the process of completing his educational program at Seneca.

In regard to the employment Economical points to the claimant's OCF-1 and OCF-3 both of which indicate he was unemployed on the date of the accident and/or had not worked in the 26 of the 52 weeks. Economical also points to the fact that the claimant did not receive an income replacement benefit. Economical submits that even if he was employed it was part-time work that was not permanent and that he intended to return to school.

Economical submits that whichever evidence you accept as to any potential earnings from SoftMoc that they were not sufficient for the claimant to be independent and capable of contributing to at least 51% of his own needs.

Economical notes that the claimant had only finished high school in the spring of 2021 and had not held any form of paid employment prior to that date. That in fact continued until he took up his part-time job with SoftMoc in December of 2021. The evidence is that he had not built up any savings.

With respect to the inconsistencies in the evidence between the claimant and his parents and some of the documentation, Economical submits that in the absence of valid and reliable

documentary evidence, the proper approach is to use statistical data where possible, and where there is inconsistent evidence, the claimant's testimony should be preferred as it was given within three months of the accident and the testimony of his parents was two years later.

With respect to the statistical evidence, Economical points to the Market Basket Measure for 2021 to 2022 for the cost of basic needs for a five-person family residing in Welland was $47,067. Extrapolating this to a six-person family that amount comes to $51,559. Using the Market Basket Measure for the same time period for a five-person family residing in Toronto, it is $47,065. Extrapolating that to a six-person family, the amount comes to $60,903.

Economical then takes one-sixth of the Welland MBM, which comes to $8,593.16. It does the same with respect to Toronto, which comes to $10,150.50. If one accepts that the claimant's total employment earnings from December 2021 to the date of the accident was $2,000 then clearly the claimant did not make enough money to cover more than 50% of his statistical needs. The same is true if you take the average of the amounts between Toronto and Welland, which comes to $9,371.83. Therefore, Economical submits that the claimant had to have been principally dependent for financial support on his parents at the time of the accident.

With respect to the timeframe for determining dependency as required by the case law, Economical submits that the proper time period is one year prior to the date of loss. Economical submits that this timeframe more accurately reflects the claimant's circumstances at the date of loss covering a time period when he was living at home with his parents and supported by them as well as the time period when he was residing with his girlfriend but with the intention of returning home.

With respect to the claimant's earning capacity and the ability to support himself, Economical points to the fact that the claimant was enrolled in a two-year program at Seneca. He had finished his courses for the first year only as of April 2022 and was on summer break at the time the accident occurred. Economical submits that the claimant intended to go ahead with his second year at Seneca and that there was no evidence that he was looking for any employment aside from the part-time job at SoftMoc.

Economical submits that while they acknowledge he was an able-bodied 19-year-old male without any disabilities or a criminal record, the fact is he had little income-earning experience. He was a high school graduate with a background of part-time work only in customer service at SoftMoc for four to five months prior to the accident.

Economical submits that the claimant's stay with his girlfriend and family was temporary and bound to end. It also submits that the weight of the evidence suggests that the claimant was not in fact working at the date of the accident (the OCF-1 and OCF-3) and that he was still completing his educational program at Seneca. He was completely reliant on his parents financially and

accordingly he was principally dependent for financial support on his parents, and Wawanesa is therefore the priority insurer under section 268 of the *Insurance Act*.

Wawanesa

Wawanesa submits that the claimant was employed at the time of the accident having worked part-time for six months prior to the accident while attending Seneca College. Wawanesa notes that the claimant was living on his own. He was not receiving any financial assistance from his parents on the date of the accident.

Wawanesa submits that the claimant was not in a state of transition but rather had already established independence and was supporting himself through his own means.

The claimant was not living with his parents on the date of loss and they provided no financial support to him on the date of loss.

Wawanesa notes that the claimant paid for his own expenses including public transportation, phone bill, and gym membership. He did not receive any social assistance. No one provided him with any money according to the claimant in the year prior to the accident.

With respect to the claimant's employment and earnings, Wawanesa notes that he worked four-hour shifts, four to five times per week at $15 per hour from March to June 2022.

If one calculates out his earnings based on that assumption, his income would be between $2,880 and $3,600 during that time period. When annualized that comes to $11,520 to $14,400 per year.

Wawanesa submits that in the absence of documentary evidence confirming the exact income the claimant received in the months before the accident that I should accept the claimant's own testimony with respect to his work schedule and rate of pay as outlined above.

Wawanesa submits that the onus of proof in this case is on Economical to establish that the claimant was principally dependent for financial support on his parents and that Economical has not met that burden.

With respect to the timeframe for assessing dependency, Wawanesa submits that a 12-month period is too broad and does not accurately reflect the claimant's circumstances at the time of the accident.

Wawanesa submits that the year prior to the accident was marked by some significant life changes, including the birth of the claimant's child, his commencement of employment and moving in with his girlfriend's family.

Wawanesa submits that these circumstances were settled as of the date of loss and that therefore the appropriate timeframe to assess dependency is from March 17, 2022 when the claimant moved in with his girlfriend up to the date of loss. Alternatively, Wawanesa suggests that a reasonable time period would also be from December of 2021 when the claimant started his part-time employment with SoftMoc.

Wawanesa submits that either of those two time period result in a conclusion that the claimant is not principally dependent for financial support on his parents.

With respect to the needs of the claimant Wawanesa agrees that the statistical approach is appropriate using either LICO or MBM.

Wawanesa submits that Economical is wrong in calculating the MBM and/or LICO based on a six-person household as that would only be appropriate if the claimant were living with his parents and three sisters at the time of the accident and he was not. In fact, the claimant was living with a total of five people, including himself. However, Wawanesa notes that even relying on applicant's use of a six-person household that the evidence is such that the claimant would not be dependent on his family.

With respect to the MBM the average amount for a person living in six-person family in Toronto was $9,831.25 and in Welland was $7,835.25. In order to be principally dependent on another person the claimant would have to have earned less than $4,304.10 per year.

If one took the average as Economical did of those two figures at $9,373.83 then effectively if the claimant earned more than $4,685.95 during the relevant time period he would have had sufficient income to cover 51% of his statistical needs.

Wawanesa submits that taking a pre-accident income of $14,400 per year (his four-hour shifts, five days a week extrapolated annually) then he would have had sufficient monies to fund his needs based on the MBM statistics.

The same analysis was done with respect to LICO which statistics were slightly different but came with the same results.

Therefore Wawanesa submits that with a straightforward dependency analysis comparing the claimant's income with the statistics it is clear that he would be able to fund 51% of his financial needs at the time of the accident.

Wawanesa also takes the position that the claimant had the ability to support himself.

Referencing the decision of *Gore Mutual Insurance Company v. The Cooperators General Insurance Company, 2008 O.J. No. 3603*, Wawanesa notes that a person's earning capacity is a product of education, natural or acquired talents, physical and mental abilities or disabilities, as

well as external factors such as availability of employment and the supply and demand of labour. In determining earning capacity one must look at these as well as someone's prior employment history.

Keeping that in mind Wawanesa submits that the claimant had made the transition from a high school student to a financially independent father demonstrating the ability to work part-time and simultaneously complete a college degree based on his own funding. Therefore the evidence supports that the claimant had the ability to be self-supporting.

Lastly, Wawanesa submits that if I accept that the claimant was unable to fund 51% of his needs by himself that there is no evidence whatsoever that 51% of his financial needs or more were being provided for by his parents. Wawanesa submits the testimony is in fact to the contrary and that the claimant received little, if any, financial assistance from his parents during the relevant time period.

Accordingly, Wawanesa submits I should find that the claimant was not principally dependant for financial support on his parents on the date of loss and Economical remains the priority insurer for the payment of statutory accident benefits in this case.

DECISION AND ANALYSIS

Both parties agree that the starting point for an analysis of dependency under the Statutory Accident Benefits Schedule and Regulation 283/95 is the seminal decision in *Miller and Safeco*. *(1984) 48 O.R. (2d) 451, H.C.J. (affirmed 1985, 50 O.R. (2d) 597)*.

Justice O'Brien in the decision that was later upheld by the Court of Appeal confirmed that there were four criteria to be examined when determining dependency.

1. Amount of dependency.
2. Duration of dependency.
3. Financial or other needs of the alleged dependant.
4. The ability of the alleged dependant to be self-supporting

The decision confirms that one does not look at the general standard of living within the family unit in determining dependency.

I turn first of all to the duration of dependency and the appropriate timeframe to be considered in this case.

I agree with Wawanesa that one year in this case is too broad. I find that the claimant's circumstances changed significantly both in December of 2021 and March of 2022. He commenced his first employment since graduating from high school in December of 2021.

In March of 2022 he became a father and he moved out from his family home and into an apartment with his girlfriend, daughter and her family.

I find in this case that the timeframe from March 17, 2022 to the date of the accident of June 14, 2022 is the timeframe that most accurately reflects the situation of the claimant as of the date of loss. He had been living with his girlfriend and child for nearly three months. He had continued with his employment with SoftMoc on a part-time basis while attending school although he was on a school break when the accident occurred.

He had not resided in his family home whether we look at the home in Welland or the apartment in Toronto since March 17, 2022.

I do not find it relevant to make a determination as to whether he was going to stay in the apartment with his girlfriend and baby or whether he was going to move home. In recent years, the Courts have been quite clear in directing arbitrators not to consider permanency when analyzing dependency.

In the decision, *Intact Insurance Company v. Allstate Insurance Company of Canada*, 2016 ONCA 609, the Court held that a permanence requirement is inconsistent with applicable legal principles.

Justice LaForme noted that courts and arbitrators when looking at dependency must sometimes fit fluid and transient human relations into rigid legal categories and that that is not always a comfortable fit.

Justice LaForme referenced the decision of Arbitrator Samis in *St. Paul Travelers v York Fire and Casualty* (August 11, 2011) where Arbitrator Samis noted that the case law requires an arbitrator to identify a time period in order to evaluate dependency. Arbitrator Samis noted it is misleading and sometimes not useful to use too narrow a timeframe particularly in challenging situations where history shows a changing environment. Arbitrator Samis noted

> "To arrive at an appropriate determination of dependency status, we have to look at the status of the person's needs and resources over a time period then, within a selected timeframe we can approach the issue of financial needs and resources in order to determine the person's dependency status."

The Court of Appeal in *Intact and Allstate* (*supra*) was critical of the arbitrator's decision that they were reviewing as the arbitrator had created a permanence test in determining whether he should accept a shorter timeframe for the analysis of dependency. The arbitrator concluded that one should accept a short timeframe only if it can be shown that the relationship at issue (or the circumstances) is likely to be permanent.

The Court of Appeal held that the permanency requirement is not consistent with legal principles and is "simply too divorced from the actual question: what time period accurately reflects the true nature of the particular relationship at issue at the time of the accident."

Keeping that in mind I therefore find it irrelevant as to whether the claimant in this case was or was not going to stay with his girlfriend and her family at the time the accident occurred. His evidence was that he was thinking of moving back home. His mother's evidence was that she did not think he was intending to move back home. Irrespective of the fact there is no hard evidence that I can rely on on this issue I find that the permanency of his residence with his girlfriend is simply not relevant. He had moved in with her in March. He was still living with her some three months later when this accident occurred. His accident benefit documents completed at the time of the accident and shortly thereafter continue to show that as his appropriate address.

As suggested by Wawanesa while the claimant was still in transitional moments in his life he had completed one major transition already. He had graduated from high school, completed one year of a course at Seneca, had maintained part-time employment and had become a father and moved in with his girlfriend. While there would be more transitions once he completed school I do not find that he was in the midst of a transition when this accident occurred.

FINANCIAL NEEDS OF THE DEPENDANT

I agree with both counsel that statistical evidence is much more helpful in determining financial need. In this particular case I agree with Arbitrator Samis that the Market Basket Measure best reflects a statistical analysis of families and individuals' needs.

In this case Economical relied on Market Basket Measures for a family in Welland. I do not find Welland to be relevant as the claimant was not living in Welland at the time of this accident. The claimant was working at SoftMoc in Toronto, he was attending college in Toronto and as of March 17, 2022 he was living with his girlfriend on Keele Street. Clearly the appropriate city or location to consider for the statistical analysis would be Toronto.

However, the statistical evidence relied upon by Economical was for a five or six-person family. I have concluded in other cases and as have other arbitrators that the analysis is not of the financial dependency of the family unit but rather of an individual and whether that individual can be self-supporting and provide up to 51% of his needs. Therefore, I find that the relevant statistic to look at is for individuals who are not in an economic family. According to the Market Basket Measures for people not in an economic family in 2020 the MBM is $24,864. In order to provide for 51% of those statistical needs the claimant would need to make per annum over $12,680.64.

According to Wawanesa's submissions if I take the claimant's own evidence with respect to his earnings in terms of hours, shifts and hourly rate, he would range from an annualized earning of $11,520 to $14,400. This would depend on whether he worked a four- or five-hour shift.

Similarly, it would depend on whether he worked four shifts each week and whether he worked every week.

There is simply not enough evidence before me to reach a conclusion as to whether the claimant was earning at the very least $12,680.64 per year or more.

Unfortunately, there was no documentary evidence before me with respect to the claimant's earnings. There were no tax returns, T4 slips, employment files, wage slips or even bank statements. On top of that there was inconsistent evidence between the claimant, his mother and his father. While I find that the claimant's evidence is probably more reliable it still is not sufficient for me to be able to draw a line in the sand and feel comfortable concluding that he was earning on an annualized basis at the very least $12,680.64. Indeed, in one of Wawanesa's own scenarios he would be earning less than that.

Therefore, on this point I find that Economical has not met its burden of proof.

CAPACITY TO EARN

There is still the question as to whether on the evidence I can draw a conclusion that the claimant had the ability to be self-supporting.

This criteria was looked at very carefully by Arbitrator Samis in his decision *Federated Insurance Company of Canada and Liberty Mutual Insurance Company, (Samis May 7, 1999)* affirmed *Liberty Mutual Insurance Company v. Federation Insurance Company (Ontario Divisional Court September 15, 1999) [2000] O.J. No. 1234 (Court of Appeal)*.

In that case Jonathan Sebastian was found to be a young able-bodied man who was regularly employed earning $13 per hour. Not working up to full capacity he was able to earn $300 per week. He had earned $5,700 in the 19 weeks prior to this accident.

Arbitrator Samis concluded that he was a young able-bodied man capable of working and therefore was not principally dependent for financial support on his parents.

Similarly in the decision *Motors Insurance Corporation and York Fire and Casualty Insurance Company (Arbitrator Samworth December 24, 2009)* I found that a young woman who worked as a cashier with varying hours and with a clear ability to be employed on a part-time basis had the ability to be self-supporting. I noted that she could have chosen to work more hours and she would have in those circumstances earned more than $14,000 per annum. I noted that even if I accepted the evidence that she was attending a school on a part-time basis I still concluded that she had the ability to be self-supporting and was not principally dependent on anyone else.

In this particular case I am however unable to conclude on the evidence that the claimant had the ability to be self-supporting. This was a young man who had only recently graduated from

high school in the spring of 2021. He does not appear to have secured any employment until December of 2021 with SoftMoc. He was employed on a part-time basis earning at best perhaps $2,600 in the time period since his employment started in December and up until the time of the accident in June. There was no evidence before me as to whether there were any efforts made to secure more employment. The evidence was clear that this gentleman was in fact attending school and that he only worked on a part-time basis. The evidence is also clear that there was a second year still to complete at Seneca. I do not find that the evidence of the earnings of this claimant sufficient to establish that like Jonathan Sebastian he was capable of being self-supporting.

AMOUNT OF DEPENDENCY

In this case my findings with respect to the claimant's ability to be self-supporting and his ability to cover his needs are to some extent moot when one considers who the claimant would be dependent on if I were to find that he himself was not independent and capable of looking after his own needs.

In *Federated and Liberty (supra)* Arbitrator Samis noted the following:

> "The problem posed is more difficult than simply measuring the cost of Jonathan's needs and comparing that to his own resources. Even if Jonathan was unable to meet the basic costs this would not render him 'principally' dependent on someone else. He only becomes 'principally' dependent on another when that person provides for most of his needs."

In this case Economical alleges that the claimant was principally dependent for financial support on his parents. I do not agree with Economical's submissions.

At the time this accident occurred and taking into consideration the timeframe I have selected to look at the duration of the dependency, the claimant was not living with his parents. They do not appear to be providing him with any financial support whatsoever. He is managing a number of his own expenses independently. He has paid for Seneca on his own. His parents did not contribute to the cost of his schooling. They were not contributing to any rent at the Keele Street apartment. They were not contributing to food, utilities or clothing. Even the occasional payments the father had been making to the claimant of $50 or $100 when he needed it were no longer being made once the claimant started his part-time employment at SoftMoc.

There was **no** evidence before me that there was any financial support being provided by the claimant's parents on the date of loss.

Therefore, even if the claimant did not have the ability to be self-supporting there is no evidence that the parents picked up the slack. If anything it would appear that the claimant relied on his girlfriend and her family during the relevant time period.

Therefore, I conclude on all the evidence that the claimant was not principally dependent for financial support on his parents on June 14, 2022 and accordingly Economical is the priority insurer in accordance with Section 268 of the *Insurance Act*.

AWARD

"Economical is the insurer required to pay the claimant statutory accident benefits under Section 268 of the *Insurance Act*."

COSTS

Legal costs and the cost of the arbitration are to be determined by me taking into account the success of the parties, conduct of the proceedings, general principles with respect to litigation and any offers to settle.

As Wawanesa has been entirely successful in this arbitration I find that Economical should pay Wawanesa's legal costs. Economical will also pay the costs of this arbitration.

I am not fixing costs but if the parties cannot reach agreement a further pre-hearing can be scheduled to set a costs pre-hearing.

DATED THIS 10th day of February, 2026 at Toronto.

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Arbitrator Philippa G. Samworth
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