

IN THE MATTER of the *Insurance Act*, R.S.O.1991, c. 1;

Sec 268 and **IN THE MATTER** of the *Arbitration Act* S.O. 1991.C17

AND IN THE MATTER of an arbitration;

B E T W E E N:

THE CITY OF OTTAWA

Applicant

- and -

COMMONWELL Mutual INSURANCE COMPANY

Respondent

DECISION

COUNSEL

Amanda M. Lennox, counsel for the Applicant, City of Ottawa (hereinafter called "the City").

Dylan Crosby, counsel for the Respondent, The Commonwell Mutual Insurance Company (hereinafter called "Commonwell").

BACKGROUND

This matter comes before me pursuant to s. 268 of the *Insurance Act*, Regulation 283/95 as amended and the *Arbitrations Act* 1991.

The parties on consent have chosen me as their arbitrator to determine a priority dispute between two insurers as to which insurer is liable to pay statutory accident benefits to the claimant arising out of an accident that occurred on May 14, 2024.

On May that day the claimant was a pedestrian that was struck by an OC Transpo bus in the City of Ottawa. The City of Ottawa insures the bus together with Northbridge General Insurance Company.

The claimant sustained various injuries and submitted an OCF-1 to the City of Ottawa. Commonwell insures the claimant's mother. The City takes the position that the claimant was principally dependent for financial support on his mother on the date of loss and accordingly Commonwell should be the priority insurer with respect to the payment of statutory accident benefits arising out of this accident.

PROCEEDINGS

This was a written hearing. The parties submitted detailed Factums and Books of Authorities. They also submitted a Joint Book which included the following documents:

1. Agreed Statement of Facts;
2. Motor Vehicle Collision Report May 14, 2024;
3. OCF-1 dated June 6, 2024;
4. Driver's licence of the claimant;
5. Statutory Declaration of the claimant dated July 18, 2024;
6. OC Transpo Collision Report May 15, 2024;
7. Transcript of the examination under oath of the claimant's mother dated June 26, 2025;
8. Transcript of the examination under oath of the claimant dated June 26, 2025;
9. T4 statement of remuneration for 2023; and
10. Paystubs from McDonald's covering the time period December 25, 2023 to April 28, 2024.

In addition, Commonwell submitted an Accounting Report from Gary W. Phelps of Davis Martindale Chartered Professional Accountants dated December 11, 2025.

The parties also submitted an Arbitration Agreement signed March 6, 2026.

No witnesses were called and the parties relied on the written record only.

ISSUE

The Arbitration Agreement identifies the issue for my determination as follows:

"Was the claimant a 'dependant' of his mother at the time of the pedestrian-motor vehicle accident of May 14, 2024?"

DECISION

I conclude, for reasons outlined below, that the claimant was a dependant of his mother on the date of loss. Accordingly, Commonwell is the priority insurer in accordance with s. 268 of the *Insurance Act*.

FACTS

The facts are primarily drawn from the Agreed Statement of Facts but there are also other relevant facts which I will outline below from the evidence submitted in the Joint Brief, and in particular the transcripts, as well as Commonwell's Accounting Report.

At the time of this accident, the claimant was 17 years of age. His date of birth is July 22, 2006. While he had a G2 driver's licence, he was not a named insured or a listed driver under any other policy of insurance. He was not married.

His mother was insured by Commonwell with a valid policy on the date of loss bearing policy number A00001771297.

On May 14, 2024, while crossing Walkley Road in Ottawa, the claimant was struck by an OC Transpo bus that was proceeding in a northbound direction on Baycrest and making a left turn to travel eastbound onto Walkley Road.

The OC Transpo bus is insured with the City of Ottawa and Northbridge General Insurance Corporation under policy number CBZ0674401.

At the time the accident occurred the claimant was residing with his mother and two sisters on Walkley Road in Ottawa.

The claimant and his family were immigrants to Canada, having come from Lebanon in 2022. For some time after arriving from Lebanon, the claimant lived with his uncle at Heron Road in Ottawa. The claimant's father was in Lebanon at the time of the accident.

However, the claimant moved in with his mother and sisters in or around November of 2023.

When the family arrived in Canada both the claimant's mother and sisters lived with the uncle. However, in November of 2022 the mother and two daughters moved to the apartment on Walkley Road. The claimant did not have a bed in that apartment so he continued to live with his uncle until November of 2023 when accommodation could be provided for him in his mother's home. The claimant lived with his mother from November of 2023 continuously until the accident on May 14, 2024.

At the time of the accident the claimant was in grade 12. He was a full-time student at Franco-Cité Catholic High School.

He planned to attend Algonquin College in September of 2024 in an electromechanical program.

The claimant did have some employment history. He started working at McDonald's on August 2, 2022. He would work part-time hours while in school and full-time hours in the summer. He was paid minimum wage.

The claimant's evidence was that his mother was the only person working in the home and providing for the family. Accordingly, she would not be able to assist with any tuition costs he would have at Algonquin.

The claimant therefore planned on paying for his schooling and tuition at Algonquin College through the monies he earned at McDonald's as well as applying for a loan at OSAP.

His mother paid for all the household expenses including groceries, rent and utilities. The claimant would pay for his own cell phone. With respect to clothing and personal care sometimes his mother might pay for that, sometimes he might.

In terms of transportation he did not have a car or a company vehicle. He would use the city bus or get a ride from his mother. He paid for his own monthly city bus pass.

Post-accident the claimant began the Electromechanical Engineering Technician program at Algonquin College and received OSAP payments to assist him with the cost of tuition and textbooks.

At the time of the accident the claimant did not make any contribution to groceries, household expenses, rent or utilities.

Both the claimant and his mother testified that he intended to live at home while going to college and he currently lives at home today.

The claimant's evidence was that he did not receive any financial support from his father, his uncle or any other external third parties.

The claimant's mother's evidence was that the purpose of her son working for McDonald's was to put aside money to pay for his education. He was not expected to contribute financially to the household while he was at school.

The T4 statement of remuneration for 2023 showed that the claimant earned \$18,626.41 from a combination of the part-time and full-time summer employment with McDonald's.

For the time period December 25, 2023 to April 28, 2024 the claimant submitted his paystubs which showed a varied income from each month but the total net pay was \$5,693.86 and the gross was \$5,893.74.

According to the claimant's OCF-1 on the date of loss he was employed and working as well as attending grade 12. His projected completion date for studies was noted to be June 28, 2024. His employment was noted to be from 2022 to 2024 part-time at McDonald's.

In her examination under oath the claimant's mother made the following statement:

"He was just - still a teenager. Yeah. He is of course, planning to go to college, which he applied and as you know, he got accepted before the accident. And he did apply to university also. We got the papers. ... And he was playing - he was planning on going in summertime to try out for a basketball team ... a national team ... during the summer, going back home."

The claimant's mother also gave the following evidence:

"Like, they're kids. They pay - part-timers and he was trying to save money for his college. So you know - and you know, part-timers barely make any money so."

The mother goes on to say that therefore she did not expect her son to help with groceries or food. He did not have any loans or credit cards before the accident as he was under the age of

18.

The claimant's evidence with respect to the summer (had that accident not occurred) was that he planned to try out for the Lebanon national basketball team. This would require him going home to Lebanon.

The claimant's mother at the time of the accident worked at Agricultural & Agri-Food Canada and had been so employed since July of 2023.

The oldest sister of the claimant was 22. She was also a student and worked part-time at McDonald's and made no contribution to the family expenses. The youngest sister was only 13 at the time of the accident.

I now turn to the report of the accountant retained by Commonwell: Mr. Gary Phelps dated December 15, 2025. Mr. Phelps noted that the documents provided to him indicated that the claimant at the time of the accident was earning \$15.85 per hour from McDonald's. He noted from the financial information provided relating to the claimant's employment that for the 12 months prior to the accident his net earnings would be \$17,335.18.

Mr. Phelps then applied the test for financial dependency relying on the 2023 LICO statistics and the 2020 MBM statistics.

With respect to LICO Mr. Phelps used the 2023 statistics for a population over 500,000 persons. He then looked at the expenses statistically for the average of a one-person home in the areas within that population. For 2023 that came to \$25,597.

Mr. Phelps then adjusted this for inflation and determined that the appropriate LICO statistics for 2024 would be \$25,904. This he deemed to be the claimant's value of his financial needs for the year of the accident.

He then looked at the claimant's earnings for the 12-month period at \$17,353.18 and determined that the claimant's income represented 67% of that amount. Therefore, he would not be considered to be dependent as he could provide for more than 51% of his needs.

Mr. Phelps then did the same for the 2020 MBM statistics. He looked at the needs for a person in a non-economic family in the Ottawa region. For 2020 that was \$24,408. He then adjusted that for inflation up to the year 2024 which came to \$28,677. Applying the claimant's income for the 12 months prior to the accident meant that he would be able to cover 60.5% of that amount and therefore he would not be considered to be dependent on that analysis.

RELEVANT STATUTORY PROVISIONS

Section 268 of the *Insurance Act* is the key provision in dealing with priority. It sets out a hierarchy relating to priority to determine which insurance policy is to respond to an individual applying for statutory accident benefits. Both parties agree with respect to the interpretation and application of that provision of the *Insurance Act* and I will not go into any further detail.

The key statutory provision with respect to this priority dispute is s. 3(7)(b) of the Statutory Accident Benefits Schedule which provides a definition of "dependency". That section is set out below:

"A person is a dependant of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse."

In this case, the issue is with respect to financial support only.

POSITION OF THE PARTIES

SUBMISSIONS OF THE CITY

The City acknowledges that on a strict application of the statistical analysis using the LICO and MBM dependency approach that the claimant would not be considered financially dependent on his mother. However, the City submits that the statistical analysis should not be used in this case as it does not accurately reflect the reality of the claimant's level of independence. The City submits that the "big picture" must be considered and that it in fact reflects the real picture, which is one of dependency.

Both parties agree that the starting point in any dependency analysis is the decision of the Court of Appeal in *Miller v. Safeco Insurance Company of America* 1984 Carswell Ont. 679 upheld on appeal *Miller v. Safeco Insurance Company of America* 1985 Carswell Ont. 787.

The Court of Appeal in that case set out the four criteria that are to be relied upon in determining dependency:

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

With respect to the timeframe for dependency the City submits that the proper timeframe is either from November 2023 when he moved in with his mother and his two siblings to their apartment or when the whole family came from Lebanon in 2022. The City submits it does not really matter which timeframe you use as the result will always be the same, and that is that the claimant was not independent and was principally dependent for financial support on his mother.

The City notes that the claimant was a 17-year-old boy at the time of the accident. He was a minor in full-time high school. He lived at home with his mother and sisters. He had never lived independently prior to the accident.

He made no contribution for any of his day-to-day living expenses other than for some clothing, some personal care, and paying his mother back for his cell phone expenses.

The City acknowledges that while he was working both part-time and full-time in the summer,

this was solely for the purpose of saving for college. His mother could not afford to pay for her son to go to college because she was the only working person in the household.

The City points out to the fact that the claimant's mother provided the apartment where they lived, provided the furniture, paid for all the household expenses including groceries, and would contribute to the cost of some of his clothing and personal care.

The evidence of the mother was clear that there was no expectation that there would be any financial contribution to the family home. Rather, the whole purpose of the claimant's employment was to make money and put it aside for his education. Even with that the City notes that the claimant was going to have to take out an OSAP loan.

The City submits that based on these facts the big picture approach should be applied and not a statistical analysis. The statistical analysis assumes that the income received by the claimant from McDonald's was being used for his daily financial needs. The evidence is clear that it was not. He did not pay for a single necessity of daily living other than perhaps the necessary cell phone for a 17-year-old.

The City submitted a series of cases from various arbitrators and judges which they submit confirms that the big picture approach should be used for young claimants who are in transition and have not yet established a path in life.

The City submits that this claimant had not even reached transition. He was still just a 17-year-old boy living at home with his mother and sisters working part-time to save for college. He had never established himself with any independent life outside of his mother's home. He had never moved out or tried to live independently.

The City submits that to rely solely on the statistical analysis ignores the factors set out by the Court of Appeal in *Miller v. Safeco*. The City submits that those factors cannot be ignored in favour of drawing a "magical mathematical line" (*Allstate Insurance Company of Canada v. ING Insurance Company of Canada and Aviva Canada Inc.* 2015 ONSC 4020).

The City also relies on the decision of Justice Perell in *Dominion v. Intact and Unifund* 2015 ONSC 3689. In that case, the issue was whether a young claimant who worked part-time at Walmart was principally dependent on the respondent's insureds. Arbitrator Novick, who heard the case at first instance, noted:

"The issue of determining whether a teenager or young adult whose life is in transition is principally dependent for financial support upon someone else is always challenging. It is often an exercise in 'crystal ball gazing' and arbitrators and courts are in no better position than anyone else to predict how a claimant's life would have unfolded if the accident had not happened. It is trite to say, but true, that each case must be decided on the basis of the evidence presented, applying logic and common sense."

Arbitrator Novick's decision was upheld by Justice Perell where he noted that the evidence established that the actuality was that the claimant in that case had never supported himself financially and had never been financially independent. At the time of the accident he was dependent on family and friends for clothing, food, shelter and lifestyle. The arbitrator noted that the claimant in that case was in a state of transition and he was as likely to go back to school or to do something else with his life as to continue working at Walmart. The City therefore submits that one must look at the actuality of whether someone is self-supporting, not whether statistically they could be self-supporting, particularly in the case of someone in transition.

The City also relied on a very thoughtful decision from Arbitrator Densem in *Chubb Insurance Company of Canada v. The Co-operators General Insurance Company* (2024). In that case, which also involved a young claimant, Arbitrator Densem noted the following:

"There is a line of authority which recognizes that a strict mathematical analysis of financial dependency is not necessarily appropriate for claimants in transition - especially young claimants, such as students and claimants in special circumstances, who have not settled on a path in life. In such cases arbitrators and courts have employed what has been termed a 'big picture' approach to the dependency analysis."

The City also referenced another decision of Arbitrator Densem: *The Dominion of Canada General Insurance Company v. Gore Mutual Insurance Company and Certas Home & Auto Insurance Company*. In that case Arbitrator Densem found that a 17-year-old claimant was principally dependent for financial support on her parents at the time of the accident despite the fact that she was working at McDonald's on a part-time basis earning minimum wage while attending school. Similar to this case, the claimant there paid her cell phone but relied on her family for her financial needs. In his decision, Arbitrator Densem commented that the evidence showed that the claimant used little of her earnings from McDonald's to service her needs. She was in transition planning to attend college after the accident. He noted the importance of looking at "the reality of the claimant's circumstances".

SUBMISSIONS OF COMMONWELL

Commonwell's position is that the evidence is crystal clear based on a statistical analysis using either the MBM or LICO that the claimant was not principally dependent for financial support on his mother on the date of loss.

Commonwell notes that the claimant was 17 years, 9 months and 22 days old when the accident occurred. The accident occurred about 1.5 months before he was expected to graduate from high school and 3.5 months before he expected to start his post-secondary education in Ottawa.

He had significant earnings in the 12 months prior to the accident of \$17,353.18. Commonwell relies on their Accountant's Report that establishes that that sum equals 67% of his needs according to the LICO measure and 60.5% of his needs according to MBM measure.

Commonwell submits that the law remains clear that if a person has enough resources to fund more than half of their needs (the 51% principle) then they are not principally dependent for financial support on another person.

Commonwell submits that you cannot simply ignore the claimant's earnings and look at some nebulous big picture rather than the evidence.

Commonwell argues that the big picture approach has overall been found to be used in cases where there is insufficient evidence to apply the 50%+1 analysis on either a mathematical or statistical basis. Commonwell points to the decision of Arbitrator Samis in *State Farm Mutual Automobile Insurance Company v. Aviva Insurance Company and Certas Direct Insurance Company* (Samis, April 20, 2018) where he notes that the big picture approach is simply a way of saying that there is a lack of confidence or low confidence in the evidence that a mathematical approach is based on. Similar findings were made by Justice McLeod in *Economical Insurance Group v. Desjardins Insurance* 2020 ONSC 1363 where Justice McLeod commented:

"The big picture approach derived some cases in which either there was insufficient evidence to apply a 50% plus analysis or in which it simply appeared to be too arbitrary and nuanced to cut off when viewed against the overall circumstances of the big picture."

Commonwell also points to my decision in *Co-operators Insurance Company and the Dominion of Canada Insurance Company* (Samworth, August 25, 2025) where I noted that the big picture approach is recommended where there is insufficient evidence, particularly documentary evidence, to establish clear information about needs or income.

Commonwell submits that that is simply not the case here. There is clear evidence of both the claimant's needs through the statistical analysis which has long been accepted by arbitrators and courts as an appropriate approach. In addition there is clear evidence with respect to the claimant's earnings through his payslips and his T4 slips. In addition, Commonwell points out the City concedes that on the statistical approach the claimant would be found to be not dependent on his mother.

Commonwell submits that to apply the big picture approach in this case would be to ignore uncontroversial facts about the amount that the claimant earned (over \$17,000) in the year prior to the accident and would require the arbitrator to instead make a "gut decision" simply based on the fact that the claimant was 17 years of age.

With respect to the factors set out in *Miller v. Safeco*, Commonwell made the following submissions.

In terms of the amount of the dependency Commonwell relied on their accountant's report which established the claimant's ability to provide for either 60.5% of his financial needs or 67% of his financial needs.

In terms of the duration of the dependency, Commonwell submits whether you use the timeframe for when he immigrated from Lebanon in 2022 or when he moved in with his mother in November 2023 that the result is still the same. He would not be principally dependent on any money as he had started working at McDonald's in 2022. Prior to that time he may have been dependent on his uncle but that was not in dispute here.

With respect to the financial needs of the person, Commonwell relied on the statistical approach establishing his financial needs based on LICO for 2024 at \$25,900 and with respect to the MBM statistics for 2024, it was \$28,677.

Commonwell also addressed the ability of the claimant to be self-supporting. They pointed to his net income of 12 months of \$17,353.18. There was no evidence that the claimant had any job losses, academic problems, health issues or addiction problems. They point out to the fact he had not been in jail, he did not appear to have any disabilities and his life appeared to be relatively stable. He was on track to graduate from high school and there was no evidence of any poor financial decisions. He had held a steady job with McDonald's for some considerable time. Therefore, he had the ability to be self-supporting as evidenced by the \$17,000 he earned in the 12 months prior.

Commonwell submits that the fact that the claimant chose to put his money away to save for education is irrelevant and is not the test that an arbitrator should consider.

Lastly, Commonwell submits that this case is distinguishable from the young people in transition cases that were relied upon by the City. Specifically in this case the claimant was close to completing high school and starting college in Ottawa when the accident occurred and he was in fact not in a transition period. Any changes that were foreseeable at the time of the accident only related to which educational institution he would attend. That did not impact his home or employment. His life was stable and his future was predictable. There was evidence of over one year of earnings and no evidence that that was unlikely to continue.

REPLY OF THE CITY

The City submits in response to the issues raised by the Respondent about the big picture approach that not only should the big picture approach be used when there is a lack of clear evidence in terms of needs and earnings, but it should also be used where the strictly mathematical approach does not accurately reflect the true nature of the relationship.

The City refers to Justice Corbett's comments in *State Farm v. Bunyan* 2013 ONSC 6670 as well as that of Justice Myers in *Allstate Insurance Company of Canada v. ING Insurance Company of Canada* 2015 ONSC 4020. In those cases both judges commented that while math is an important factor, it is not the only factor. The analysis of dependants must be practical and functional. You must not just take money into account. You must apply logic and common sense to ensure the analysis of dependency relates to the true picture as of the date of loss and not some fine line drawn based on a mathematical analysis.

In reply the City also referenced the decision of Arbitrator Bialkowski in *Echelon General Insurance Company and Unifund Insurance* (July 24, 2018) which had been referenced by Commonwell. The City noted that in that case Arbitrator Bialkowski did consider "earning capacity" and also applied the big picture. In that case he found the claimant was still in the transitional stage of her life and had not achieved financial independence. She was a full-time student with exams approaching and a grad project to be completed who also did some part-time work. Arbitrator Bialkowski stated:

"She would in all likelihood remain dependent on her father until such time as she graduated from university and found employment, providing a regular income sufficient to provide more than half of her basic needs. That time had not yet come."

The City submits that the same is true for the claimant in this case. He had not achieved financial independence. He was still in high school, still a minor saving for university and completely reliant on his mother for all his living expenses.

The City submits that to focus solely on the math that indicates the claimant earned over \$17,000 in employment in the 12 months pre-accident due to his part-time work at McDonald's distorts the true nature of his circumstances. None of that income went to support himself for any of his essential daily needs and with agreement by the family, his money was set aside for school while his mother paid for all the daily essentials.

The City submits that Commonwell is focused entirely on income to the exclusion of everything else, and that does not reflect the true reality of the claimant's actual circumstances.

DECISION AND ANALYSIS

Having carefully considered the facts and the arguments of the parties, I conclude that I agree with the City that in this particular case the statistical analysis is not helpful and that I must look at the "big picture" in order to accurately assess whether or not the claimant was principally dependent on his mother on the date of loss.

In reaching this conclusion, I have carefully reviewed the four criteria set out by the Court of Appeal in *Miller v. Safeco (supra)* that ought to be relied upon in determining dependency. As has been pointed out by many arbitrators and judges, when looking at these four criteria one must recognize that the mathematical side of dependency is only part of the equation. You must also examine all the other factors to ensure that the mathematical analysis (if being relied upon) accurately reflects the claimant's circumstances on the date of loss.

While there is no doubt on the evidence that if one applies the statistical analysis as outlined by Mr. Phelps in his accounting report, the claimant earned enough money from his part-time and occasionally full-time job at McDonald's to cover more than 51% of his statistical LICO or MBM needs. However, there are a number of facts in this case that in my view do not mesh with this statistical analysis. While it is attractive in its simplicity, and indeed that is one of the reasons that

this has been used frequently by both arbitrators and the courts, it does not in this case represent the true circumstances of the claimant on the date of his accident.

I will outline the facts that I find direct me away from the statistical approach and instead lead me to adopt the big picture approach in order to accurately assess the claimant's dependency.

This young man was 17 years of age. He was an immigrant to Canada from Lebanon, having arrived only in 2022.

His family initially stayed with his uncle but as of November 2023 the claimant lived with his mother and two sisters. The claimant was in high school; he was in grade 12. He had never lived independently from his mother other than when he lived with his uncle.

His mother covered all the family expenses including rent, groceries, utilities and other household expenses. The claimant paid for his bus pass, his cell phone and perhaps occasional clothing and personal care items. He made no contribution to the family expenses and was not expected to.

The purpose of the claimant working at McDonald's was not to provide for himself, his family or to pay for his needs. It was to allow him to go to college in the fall of 2024. His mother could not afford tuition. The claimant's earnings were to cover the tuition and even then he was going to have to apply for OSAP and intended to continue to live with his mother. As the claimant's mother said in her evidence, this young man was "still a teenager". He could not even get a credit card.

In this case to simply accept the statistical analysis and the math completed by the accountant is to ignore the reality of this teenager's life and his clear dependency on his mother.

I note that a number of the learned arbitrators who also conduct priority arbitrations have reached similar conclusions in similar cases. Arbitrator Bialkowski, in *Echelon General Insurance Company and Unifund Assurance* (July 24, 2018), concluded that the big picture should be used in the circumstances of a full-time student who had a reasonable earning capacity but was approaching exams and was still in the transitional stage of her life. She had not achieved financial independence. She was at university. She was 23, had lived with her father and worked part-time through high school and university. Arbitrator Bialkowski noted Arbitrator Novick's decision in *Dominion of Canada General Insurance v. Intact Insurance (supra)* where Arbitrator Novick commented that it is challenging to try to determine dependency in cases where teenagers or young adults are in transition. She described it as an exercise in "crystal ball gazing". I agree wholeheartedly with Arbitrator Novick. In the case before her, the claimant was employed part-time at the time of the accident and was deciding whether he would join the military or look at other options. Arbitrator Novick found he was in the transitional state of his life and was still "trying to find his way".

Similarly, Arbitrator Samis in *Primum Insurance Company v. State Farm* (2000 Carswell Ont. 17189) determined that even a student who had actually graduated and had started working full-time and had begun transitioning out of his mother's household remained a dependant on the

date of loss as the transition had not yet been completed.

In this case the claimant had not even begun to transition. He was still in high school. He had not yet graduated. He had not yet started university. He had never lived independently.

I also found helpful the decision of Arbitrator Bialkowski in *Belair Direct and Allstate Insurance Company* (January 8, 2020). In that case, while Arbitrator Bialkowski found that the claimant was not principally dependent on her family on the date of loss, he made the following statement:

"I accept the proposition that the determination of dependency does not always solely turn on a mathematical or statistical analysis, particularly in the case of a student. I accept the proposition that when assessing capacity to earn income, consideration must be given to a claimant's status as a student where certain individuals are unable to work part-time and the same time perform well in school."

Also important to my consideration was Justice Myers' decision in *Allstate Insurance and ING (supra)*. In that case, Justice Myers stated as follows:

"In my view the math is just part of the test that has arisen out of the seminal decision of *Miller v. Safeco* 50 O.R. (2d) 797 (C.A.). I agree with the insightful comments of Corbett J. in *State Farm v. Bunyan* 2013 ONSC 6670 at paras 19 to 22 to the effect that while the math is an important factor it is not the only factor ... A change of \$8, while perhaps crossing a magical mathematical line, does not alter the 'big picture' on the facts in the context of this specific case as found by the arbitrator."

In this case, as Justice Myers points out the claimant appears to cross the magical mathematical line based on the statistical analysis but that is clearly not the only factor for my consideration. When I look at the duration of dependency, the financial needs of the dependant and the amount of the dependency, the inexorable conclusion is that this claimant is principally dependent for financial support on his mother.

The last case that I wanted to note was the decision of Arbitrator Scott Densem in *Chubb and Co-operators (supra)*. At the time of the accident that Arbitrator Densem was considering, the claimant had just started his first year of a program in undergraduate study at a university in Waterloo. He was living in a rented house with five housemates. He had worked while he was attending high school on a part-time basis working various hours. He had been unemployed in the months leading up to the accident due to COVID but did receive CERB. In fact, in the year of the accident he received \$14,000 from CERB. Arbitrator Densem commented that in cases such as this the circumstances do not readily fit into the application of a mathematical dependency formula. Situations involving young people who are in transitional stages of their lives, such as students, should be looked at through the proper application of the *Miller and Safeco* analysis. One should not simply determine whether the numerator of means divided by the denominator

of needs produces a "quotient greater or less than 50%".

Arbitrator Densem states:

"The case law clearly requires a consideration of the reality of the claimant's actual circumstances, not just an extrapolation of an income stream without considering whether it is likely to continue."

Particularly compelling is Arbitrator Densem's statement set out below:

"For example, a young person who has just finished high school and is working to earn enough money to pay some or all of their tuition costs in contemplation of a return to full-time post-secondary education likely does not have the same ability to be self-supporting as a person who has completed their schooling, moved from the family home to self-funded living arrangements, and has started work with the intention of continuing same indefinitely in a pursuit of a career."

Arbitrator Densem held in that case that the facts did not suggest the picture of someone who would reach the stage of being his own principal financial provider. I find that in this case the claimant similarly had not reached the stage of being his own principal financial provider and he was principally dependent for financial support on his mother.

In terms of the time period to determine dependency, I agree with both counsel that whatever time period you pick the claimant would be found to be dependent on his mother. For the purposes of this decision, I felt the time period that best reflected the circumstances of the claimant as of the date of loss was from when he moved in with his mother in November of 2023 up to the date of the accident.

AWARD

The claimant was a dependant on his mother at the time of the pedestrian motor vehicle accident of May 14, 2024 and accordingly the Respondent, Commonwell, is the priority insurer pursuant to s. 268 of the *Insurance Act*.

COSTS

As the City was entirely successful in this matter, I find that the costs of the arbitration are payable by Commonwell. I also find Commonwell responsible to pay for the legal costs and disbursements of the City on a partial indemnity scale.

I have not fixed the amount of costs but if the parties are not able to agree they should notify me and we will schedule a further pre-hearing.

DATED THIS 3rd day of June, 2026 at Toronto.

A handwritten signature in black ink, appearing to read 'PLG', with a long horizontal flourish extending to the right.

Arbitrator Philippa G. Samworth
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