

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of July 19 – 23, 2010

Student “dependant” where father promised to repay loans.

Trista Poutney and Economical Mutual Insurance Company; FSCO A09-000008; June 7, 2010; Arbitrator R. Muzzi

Insured’s daughter applied for a death benefit as a dependant.¹ Applicant was a full-time student. Arbitrator concluded circumstances demonstrated dependency: applicant could only pay one third of expenses; father was responsible for most expenses which he paid directly, or intended to pay by reimbursing OSAP.

Arbitrator confirmed approach taken in *Miller v. Safeco Insurance Co. of America*: each case must be approached on its facts, considering the amount and duration of dependency, the applicant’s needs and the ability to be self-supporting. Arbitrator listed nuances to *Miller* derived by other decision makers:

- Financial support must primarily come from person, not other sources;
- Dependence must be financial;
- Financial support includes “money’s worth” or reasonable value of goods and services provided and exchanged;
- Must assess all particular circumstances at the time of collision, not a single snapshot, to determine nature and degree of dependence;
- Ability to be self supporting is relevant, but does not need to be measured with reference to living at a subsistence-level;
- Can applicant meet 51% of own needs with money already available; and
- Overriding principle: benefits legislation is remedial and should be accorded a broad and liberal interpretation that best meets its objectives.

Arbitrator rejected argument that OSAP brought applicant’s contribution to own expenses over 50%. OSAP is not income in applicant’s contribution to her expenses. If father had directly paid tuition, would not have been attributed to applicant and would have been a factor demonstrating dependence. Arbitrator quoted *The Personal Insurance Company v. Allstate Insurance Company* which considered a student’s scholarship:

¹ An insurer is required to pay a death benefit if an insured dies as a result of an accident to each of the insured person’s dependants (s. 25(1),(2)). A person is a dependant of another person if he or she is principally dependent for financial support or care on the other person or other person’s spouse (s. 2(6)).

The analysis is not based simply on cash flow. Including a scholarship, or, indeed, student loans as in one case mentioned, effectively eliminates all university students from their parents' insurance coverage. This would be contrary to the principles enunciated by Miller. The legislative intent was to broaden insurance coverage, not restrict it to the named insured.

Factors demonstrated father substantially contributed to applicant's expenses, allowing her to focus on studies and prepare for career.

Implications:

An "insured person" is entitled to various accident benefits. Dependents of a named insured, involved in an accident, or suffering psychological or mental injury in certain circumstances, are "insured persons".

The arbitrator commented that her father's participation in her studies and career mirrored that of many parents. Importantly, the issue is not merely one of cash-flow, or a mathematical calculation of the shortfall between income and expenses. Determining whether a student is principally dependant for financial support is a factual question. A full-time student, working a part-time job, living on her own, receiving OSAP and scholarships, may still be a "dependant." While there are particular factors to consider, each case requires an examination of its particular circumstances.

Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>. Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.

If you have questions or comments about this edition of the newsletter, contact Carrie Lynn Simmons at Legate & Associates: csimmons@legate.ca.