

**IN THE MATTER OF THE *INSURANCE ACT*,
R.S.O. 1990 c. I. 8, AS AMENDED, SECTION 68 and REGULATION 283/95**

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

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

ECHELON GENERAL INSURANCE COMPANY

Applicant

- and -

WAWANESA INSURANCE COMPANY and
WAWANESA MUTUAL INSURANCE COMPANY

Respondent

AWARD

COUNSEL

Jamie R. Pollack & Stacey A. Morrow
Counsel for the Applicant, Echeon General Insurance Company

Gregory R. Birston
Counsel for the Respondent, Wawanesa Insurance Company and Wawanesa Mutual
Insurance Company

ISSUE

This Arbitration involves a priority dispute between insurers, with the primary issue being that of "dependency". More specifically, was Justin Sprock principally dependent for financial support on his father, Anthony Sprock, at the time of the June 1, 2005 motor vehicle accident?

FACTS

Echelon General Insurance Company (hereinafter referred to as "Echelon") is the insurer of Anthony Sprock, father to Justin Sprock.

On or about June 1, 2005, at approximately 5:25 a.m., Justin Sprock was the front seat passenger in a vehicle insured by Wawanesa Insurance Company and Wawanesa Mutual Insurance Company (hereinafter referred to as "Wawanesa").

The driver of the Wawanesa vehicle was uninsured and unlicensed.

The Wawanesa vehicle was travelling at a high rate of speed northbound on Fort William Road near Harbour Expressway in Thunder Bay, Ontario, when it collided with a street sweeper that was travelling westbound on Harbour Expressway.

On or about July 15, 2005, an application was submitted on behalf of Justin Sprock for accident benefits to Echelon.

This application for accident benefits indicated that Justin Sprock was applying for accident benefits as a dependant of Anthony Sprock, his father, a named insured on a policy of automobile insurance with Echelon.

Echelon commenced payment of statutory accident benefits in accordance with the application submitted on behalf of Justin Sprock.

Echelon continues to pay accident benefits to or on behalf of Justin Sprock.

On or about August 8, 2005, Echelon delivered a Notice to Applicant of Dispute Between Insurers to Wawanesa indicating that Justin Sprock was not a dependant upon his father, Anthony Sprock, at the time of the motor vehicle accident of June 1, 2005.

Justin Sprock was born on October 5, 1986. He was 18 years of age at the time of the subject motor vehicle accident. He had lived with both parents and his brother until his parents separated in or about 1993. He then lived with his mother in Peterborough. In 2000, he returned to live with his father. His father, Anthony Sprock, obtained formal custody of Justin by way of court Order in 2000.

Justin Sprock had but a grade 8 education. The evidence would indicate that he was pushed through school and that he is functionally illiterate. He had a poor work history. He worked as a dishwasher for about a month in 2003. He worked briefly in 2004 as a telemarketer but could not continue by reason of literacy issues. He also worked for approximately one week at a gas bar, but did not like it. His father testified that he did not believe the Plaintiff to be emotionally capable of work due to a drug/alcohol dependency and a lack of ambition.

In or about October 2004, Justin Sprock left his father's home. He was simply not obeying the rules of the house. He was not kicked out of the house. He simply wished to live on his own. The evidence suggests that he initially lived briefly with friends, then a short stay at the John Howard Society, then a short stay with his girlfriend before moving in with his uncle, Sean O'Callohan, in or about January or February 2005. By that time, he was receiving benefits from Ontario Works. He was receiving \$585 per month in social assistance from the City of Thunder Bay from approximately January 1, 2005 until the date of this accident. He would use \$295 of this money to pay his uncle his share of the rent and hydro expenses and use the remainder for clothing, food and other expenses.

There is no evidence that Justin Sprock had any other source of employment income at the time of the accident. There was evidence of some minimal support from his mother and some general evidence that there may have been additional monies from stealing. There was no specific evidence with regard to the latter. There was considerable evidence of ongoing support from his father, Anthony Sprock.

While on social assistance, the available evidence would suggest that Justin Sprock would frequently visit his father for dinner and was given access to food and laundry facilities. His

father helped him with day to day expenses. Evidence as to what was provided by the father comes from a statement of the father, dated September 2, 2005, a subsequent statement dated September 26, 2007 and his oral evidence presented at the Arbitration of this matter in Thunder Bay on May 2, 2008.

On the basis of the initial statement provided by the father, Echelon retained an accountant to deal with the dependency issue. They retained Norm McCully of McCully & Associates Inc.. In McCully's first report of July 24, 2007, McCully expressed the opinion that Justin Sprock was 51.5% financially dependant on social assistance and 48.5% dependant on his father. Wawanesa then retained an economist, Dr. Moazzami, to critique the calculations completed by McCully. The critique was prepared using the same time frame that had been used in the McCully report. Dr. Moazzami found that he was primarily dependant on his father rather than social assistance. In response to the report of Dr. Moazzami, Echelon proceeded to obtain a further report from McCully. The revised report from McCully indicated that Justin Sprock had been even more dependant on social assistance to the point of being 65.2% responsible for Justin Sprock's cost of living.

Four or five days prior to the subject motor vehicle accident, Justin Sprock returned to live with his father and brother, Kyle Sprock. His father testified that he had to move back. Hydro at the rented apartment that he had shared with his uncle was going to be cut off. They were not going to be able to pay the rent. They were going to be evicted. Evidence was adduced by Justin's father and brother indicating that he was not happy living away from home. Personal belongings were disappearing. The place was untidy and there was simply not enough money and he wanted to come home.

LAW

A priority dispute arises when there are multiple motor vehicle liability policies applicable to a motor vehicle accident. Section 268 (2) of the Insurance Act sets out the priority rules to be applied to be determined which insurer is liable to pay statutory accident benefits.

As Justin Sprock was a passenger in the Wawanesa vehicle, the following rules with respect to priority of payment apply:

1. The occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured;
2. If recovery is unavailable under (1), the occupant has recourse against the insurer of the automobile in which he or she was an occupant;
3. If recovery is unavailable under (1) or (2), the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose;
4. If recovery is unavailable under (1), (2) or (3), the occupant has recourse against the Motor Vehicle Accident Claims Fund.

Section 2 (1) of the Statutory Accident Benefits Schedule – Accidents On or After November 1, 1996, Ontario Regulation 403/96, as amended, defines an “insured person” as follows:

- (a) “The named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured, and any dependant or named insured or spouse if the named insured, specifically driver, spouse or dependant,
- (i) is involved in an accident in or outside of Ontario that involves the insured automobile or another automobile.”

Section 2 (6) of the Statutory Accident Benefits Schedule – Accidents On or After November 1, 1996, Ontario Regulation 403/96, as amended, reads as follows:

“For the purposes of this regulation, a person is a dependant of another person if the person is principally dependant for financial support or care of the other person or the other person’s spouse.”

I have reviewed the caselaw provided to me by both counsel. I accept the principles as set out in the Singh v. State Farm Mutual Automobile Insurance Company (Arbitrator Naylor, June 4, 1993) decision. I am satisfied that for someone to be “principally dependant” for financial support or care on the other person, he must chiefly, or for the most part, derive his support from the other person. The common test used in determining “principal dependence” is the 50% plus 1% test.

I accept the principles as set out in Miller v. Safeco (1984) 48 O.R. (2d) 451, as slightly modified by the Ontario Court of Appeal. I accept the fact that consideration must be given to:

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.

I also accept the principles as set out in Federation Insurance Company of Canada v. Liberty Mutual Insurance Company (Arbitrator Samis, May 7, 1999). The decision highlights the importance of selecting an appropriate time frame for the analysis of financial dependency. Relationships change from time to time, perhaps suddenly. Transient changes may alter matters for a short period, but not change the general nature of the relationship. A momentary snapshot would not yield any useful information about these time dependent relationships. It is the general nature of the relationship that must be viewed based on the analysis provided by Arbitrator Samis. Arbitrator Samis also deals with the issue of earning capacity as opposed to actual earnings. I accept the proposition that the ability to be self-supporting must be taken into account in measuring dependency. An intelligent, able-bodied individual fully capable of employment, who chooses to live at home with his parents ought not to be considered dependent upon them. I also accept the proposition that “dependency” implies something more than receipt of financial benefit. It requires some kind of need on the part of the person alleged to be dependent. A very wealthy person might receive food, shelter and other financial benefits from family, but this would not support a conclusion that the person is principally dependent upon the family structure.

ANALYSIS & FINDINGS

I find that Justin Sprock was principally dependant for financial support on his father, Anthony Sprock, at the time of the June 1, 2005 motor vehicle accident.

I find that Justin Sprock's attempt to live independently on social assistance was a short-lived effort to succeed against odds. I do not find that the January 1, 2005 to May 26, 2005 time frame chosen by Echelon's accountant to be an appropriate time frame for financial analysis in the particular circumstances of this case. The time frame used by Echelon's accountant does not take into account the fact that he was living with his father for the four to five day period prior to the subject accident. It ignores the fact that Justin Sprock had been evicted from his apartment or was about to be evicted from his apartment. It ignores the "bigger picture" as to whether Justin Sprock was likely to continue on social assistance in the long term, or whether he was likely to return to live with his father.

I found the father, Anthony Sprock, the brother, Kyle Sprock and the uncle, Alfred Sprock, to be excellent witnesses who presented their evidence in a convincing, straightforward fashion. I find on the basis of their evidence that Justin Sprock would not have been able to survive on social assistance and was destined to return to his father's home, regardless of how difficult that might be given his father's voiced "house rules". The father testified that when Justin returned to his home four or five days prior to this accident, Justin had just broken up with his girlfriend and was depressed. He had slash marks on his wrist. He testified that Justin didn't like the place where he had been living. There were too many bugs. It was dirty. He did not have enough to eat. He had already started returning some of his belongings. He was not happy there. It was clear from the evidence of Anthony Sprock that he would have been happy to have his son at home.

The brother, Kyle Sprock, testified that his brother had told him that he wanted to come home. Things were disappearing while living with Sean. Things were not tidy. It was an unhealthy environment. It wasn't good. Everything but his room was a disaster. He had already started returning bags of clothes. Justin had told him that he wasn't happy on social assistance. Kyle Sprock testified that the reason Justin left the family home was to get his freedom, but he was not successful. He had more freedom in the family home. Justin did not expect that living on social assistance was going to be the way it turned out.

The uncle, Alfred Sprock, also testified at this proceeding. He testified that Justin wanted to move back home to his dad and had already starting returning some personal belongings. He testified that Justin could not live on his own without help from his father. The alternatives, in his view, were returning home or living on the street or in jail. He did not believe that Justin could obtain or hold down a regular job given his problems. He was incapable of managing his money. He could not even figure out how to fill out his welfare cards.

I cannot emphasize strongly enough how powerful the evidence of Anthony Sprock, Kyle Sprock and Alfred Sprock was with respect to the father's willingness in having his son back and their combined evidence that his attempt at independence had simply not worked out.

It is clear from the caselaw that the "big picture" or general nature of the relationship must be considered and not simply the snapshot of time that existed on the date of the accident or in the short period of time preceding the accident.

In Miller v. Safeco (1984) 48 O.R. (2d) 451, the Plaintiff was a 23 year-old man who lived with his parents. He did not pay for room and board. He was injured in a motorcycle accident and claimed accident benefits under his father's automobile insurance policy as a "dependant relative". At the time of the accident, the Plaintiff had been employed full-time for three months, earning about \$2,500, but during the preceding 11 month period, had only been employed on two separate occasions for a total of seven weeks, earning about \$880. Justice O'Brien found that the Plaintiff was a dependant relative despite having worked full-time for a period of three months leading up to the motor vehicle accident. He obviously looked at the "big picture". He certainly did not restrict his analysis to the situation existing on the date of loss or the three month period immediately preceding the date of loss. Justice O'Brien also stated:

"In my view, it would be preferable to approach the question of this interpretation on the basis the legislation was of a remedial nature, intended to broaden insurance coverage to include members of family units as persons insured under the policy."

With slight modification, the Ontario Court of Appeal upheld the decision of Justice O'Brien and agreed with the criteria that he set out, with the exception of "the general standard of living within the family unit".

A similar "big picture" approach was used in the John R. Palmer v. Pilot Insurance Company (Arbitrator Makepeace, January 13, 1995). The issue in that case was whether or not the Applicant's son was a "dependant" of his father such that the father qualified for a death benefit. The Applicant testified that he often gave his son money for cigarettes, clothes or other needs. His son did not have a car of his own. The Applicant deposed that his son relied upon him for transportation. The evidence indicated that the son had been released from a residential drug rehabilitation program one week before the accident. He also spent one night in jail that week before coming to his father's house. The Applicant admitted that his son spent some days with him that week, but did not stay with him all week. In the eight years between the time of John Palmer's first application for welfare benefits in May 2005 and his death in June 1993, he received welfare benefits for some three years in total. He was incarcerated for about a year, over several periods. He held a number of casual short term jobs. Arbitrator Makepeace accepted that the Applicant supported his son with money, as well as goods and services in the months before his death. She was not satisfied that John Palmer was "principally dependant for financial support" on his father. She found that John Palmer was "chiefly", "mainly", "primarily", or "principally" dependant for financial support on his welfare benefits and employment income, and he also received significant financial support from the Province of Ontario during his residential rehabilitation program in his various periods of incarceration. He was also supported by friends and members of his family other than his father. He sought support from his father when other sources of income ran out, or when he had no place to stay. His father was his last resort. Arbitrator Makepeace clearly looked at the "big picture".

Applying the "big picture" or general nature of the relationship test to the present facts situation, I conclude that this young man had always lived at home with but one parent or another and that his five month attempt at independence had failed miserably. I would have reached a different result if I had formed the opinion that his return home over the four or five days preceding this accident was only going to be short-lived and that he would have been soon out elsewhere on social assistance in the absence of the accident.

Even if one were to take the “snapshot” view of this case, the result would be the same. On the date of the accident, Justin Sprock was living at home. Technically, he was no longer entitled to social assistance. Nowell Sleep testified at this Arbitration. She is a case worker with the District of Thunder Bay Social Services department. She testified that pursuant to Directive 20.0, Section 11 (3), Justin Sprock would not have been eligible for social assistance if living with his parents. I find both on the “big picture” analysis or the “snapshot” analysis that Justin Sprock was dependant on his father.

The Applicant raises the issue of the social assistance benefit being sufficient to provide for Justin Sprock’s basic needs. With many individuals that may well be the case. I do not find that to be the case with Justin Sprock. I find that he was incapable of managing his money sufficiently to survive with the minimal social assistance income available. I am of the view that there were special circumstances in this case. There was evidence that Justin Sprock had a drug/alcohol dependency. I find that these special circumstances affected his ability to appropriately manage his money and that he was probably spending his money inappropriately on drugs and alcohol, but that such expenditures were beyond his control.

With respect to the issue of being able to be self-supporting, I find that he was competitively unemployable by reason of his limited education, his illiteracy, his lack of social skills and his problems with alcohol and drugs. His limited work history as outlined aforesaid is strong evidence as to his actual employability. On the evidence available, I am of the view that until such time as he upgraded his education, matured socially and overcame his alcohol and drug problems, he was destined to be dependant upon his father.

It should be noted that there was considerable evidence from experts with respect to the father’s financial contributions during the period January 1, 2005 through to May 26, 2005. The Applicant Echelon relied on the evidence of the accountant, Norm McCully. The Respondent Wawanesa relied upon the evidence of an economist, Dr. Moazzami. I find that both were appropriate experts to provide assistance with respect to the issue of financial dependency. I find that both did their best within their respective areas of expertise. An issue was raised as to whether statistics could be relied upon in calculating financial dependency and whether the “opportunity cost” concept could be used in calculating financial dependency. I am of the view that the “actual cost” concept for the most part is most appropriate for such calculations. However, there could well be circumstances and hard, actual cost information is unavailable and that statistics would be helpful. Similarly, there may well be times where there is inadequate available evidence of actual cost and “opportunity cost” or the use of statistics would be an appropriate consideration. Much depends on the extent of the available evidence with regard to each component of the alleged financial contribution.

The Applicant Echelon took the position that the January 1, 2005 through to May 26, 2005 timeframe was the most appropriate for the analysis of financial contribution. As I have indicated earlier, I am of the view that a much larger timeframe is appropriate in the present circumstances. However, I further find that even if I were to have used the timeframe used by Echelon’s accountant to analyze financial dependency, the result would also have been the same. Echelon’s accountant, Norm McCully, analyzed financial dependency for the period January 1, 2005 through to May 26, 2005. Social assistance for this period was calculated to total \$2,818. Contributions made by the father during this time frame were calculated according to a statement that the father had provided Echelon on September 2, 2005. McCully calculated the father’s contributions as follows:

Food	\$ 650
Movies	120
Clothes	450
Bus passes	90
Taxis	375
Haircuts	100
Food eaten at father's home	625
Value of laundry facilities	<u>240</u>
GRAND TOTAL	<u>\$2,650</u>
Social assistance	<u>\$2,818</u>

On this analysis, Echelon's accountant found the Applicant only 48.5% dependant on his father.

In response, Wawanesa retained an economist, Dr. Moazzami, who prepared a report dated February 2008 critiquing the analysis of Norm McCully. For the most part, Dr. Moazzami agreed with McCully's calculations. Dr. Moazzami differed on the issue of food costs. He concluded that the father's contribution to food eaten at the father's home was higher than that calculated by McCully. He calculated food costs for that period at \$803.75, rather than McCully's \$625. Dr. Moazzami also calculated the cost of laundry to be higher than McCully. He thought it was \$540 rather than the \$240 calculated by McCully. However, Dr. Moazzami went on to add additional items not considered by McCully. He was of the opinion that the transportation services provided by Anthony Sprock to his son should also be considered. He believed that Mr. Sprock's time spent during these transportation services should also be included. He included the medical insurance benefit derived from the employment package that he had with his employer. He also valued the entertainment that was available at his father's residence. He also thought there should be a value placed on the safety net provided by his father.

In total, Dr. Moazzami's calculations revealed the following:

Food	\$ 650.00
Movies	120.00
Clothes	450.00
Bus passes	90.00
Taxis	375.00
Haircuts	100.00
Food eaten at father's home	803.75
Value of laundry facilities	540.00
Transportation services	594.00
Value of Mr. Sprock's time	1,144.00
Medical insurance benefit	1,579.84
Value of entertainment	937.50
Value of safety net	<u>145.00</u>
GRAND TOTAL	<u>\$ 7,529.09</u>
Social assistance	<u>\$ 2,818.00</u>

On this analysis, Wawanesa's economist found the dependency on Justin's father to be 72.76%.

Echelon then obtained a responding report from McCully, dated April 4, 2008. In the responding analysis, McCully reduced some of his calculations. He made no allowance whatsoever for the additional heads of contribution raised by Dr. Moazzami. On McCully's revised calculations, Justin Sprock's dependency on social assistance rose to 65.2%.

McCully's revised calculations were as follows:

Food	\$ 325.00
Movies	0.00
Clothes	450.00
Bus passes	90.00
Taxis	0.00
Haircuts	100.00
Food eaten at father's home	500.00
Value of laundry facilities	40.00
Transportation services	0.00
Value of Mr. Sprock's time	0.00
Medical insurance benefit	0.00
Value of entertainment	0.00
Value of safety net	<u>0.00</u>

GRAND TOTAL **\$ 1,505.00**

Social assistance **\$ 2,818.00**

I find that the reductions made by McCully in his second report inappropriate and not supported by the evidence. I find his calculations in his first report to be a more realistic analysis. I find that consideration ought to have been given to at least two of the additional heads of financial contribution raised by Dr. Moazzami. I find that the calculations ought to have included an amount for transportation and a nominal amount for entertainment based on the evidence adduced in this proceeding.

I will deal with the heads of financial contribution on an individual basis. I accept the fact that Anthony Sprock contributed \$650 for food purchases during the relevant time frame. In his second report, McCully reduced his initial \$650 figure down to \$325, based on the fact that only 50% of the food purchased by Justin would have been consumed by him. There is simply insufficient evidence available to suggest that that was the case. There was evidence that Sean O'Callaghan did work from time to time and it is more likely that he provided an equal amount of food. Furthermore, Anthony Sprock testified at the Arbitration that he provided food valued at \$900 during that time frame, as opposed to what he said in his initial written statement where he indicated the contribution to have been \$650. On the evidence overall, I find the contribution of \$650 to be appropriate. I am of the view that to the extent that Sean O'Callaghan consumed some of the food provided by Anthony Sprock, is offset by the evidence of Anthony Sprock at the Arbitration hearing that he provided more than \$650.

In Anthony Sprock's initial written statement, he indicated that he contributed \$120 to his son during that time frame so that he could see the occasional movie. Though allowing this \$120 contribution in his initial report, McCully chose to delete it from his second report on the basis

that it was not a necessary cost of living. I am of the view that contribution to basic, non-extravagant entertainment is an appropriate component of the father's financial support.

Both experts agreed on the \$450 contribution to clothes, the \$90 contribution to bus passes and the \$100 contribution to haircuts.

Although McCully allowed \$375 for taxis in his initial report, he eliminated this item in his second report. It was eliminated on the basis that this was not a necessary cost of living. Given the special circumstances of this case, I find that the father's contribution toward taxis was an appropriate one for consideration. Given Justin Sprock's lifestyle, his difficulties with drugs and alcohol, public transportation may not have been the most appropriate mode of transportation and may not have been available at the times needed.

There was competing evidence as to the value of the food eaten by Justin at his father's home. McCully originally used the figure of \$5 per day for the days Justin Sprock ate at his father's home as an estimate and reduced it to \$4 per day in his second report, on the assumption that Justin primarily ate inexpensive food such as sausages and pizza. The evidence adduced at this proceeding suggested otherwise. Both Anthony Sprock and Alfred Sprock testified that Justin would at times eat three course meals of pork chops, lasagne, etc.. Anthony Sprock testified that there was always a variety of foods available. Justin could go to the fridge and help himself to anything he wanted. There was everything for sandwiches. There were cereals. There was always lots of milk, smokies, hamburgers, pork chops or steaks. There were desserts floating around. They would always go fast. If Justin needed something, it was there. I prefer the evidence of Dr. Moazzami to that of Mr. McCully. I find that Dr. Moazzami's calculation of \$803.75 during the appropriate time frame is preferable to McCully's \$500 calculation. In light of the oral evidence adduced at the Arbitration, I am of the view that Dr. Moazzami's calculation may well have been an underestimation of the food that the 18 year-old Justin Sprock was consuming on his visits to the family home. Dr. Moazzami did not have this evidence available at the time of the preparation of his report wherein he used a modest \$6.43 per meal figure for his calculations. Dr. Moazzami chose \$6.43 on the basis that that would have been the cost of a simple meal at McDonald's, including a sandwich, French fries and a soft drink. I am of the view that the actual consumption by Justin Sprock may well have been far in excess of the modest calculations by Dr. Moazzami.

There was also a difference of opinion with respect to the value of laundry facilities. McCully's initial report attached a value of \$240 during the appropriate period, but reduced it to \$40 in his second report. This reduction was based on a conversation that he had with his wife who suggested that the cost per load of laundry was about 50¢. Dr. Moazzami calculated laundry costs on the basis of that which it would have cost if Justin had gone to a laundromat. He calculated the cost at \$540. I am of the view that the appropriate amount for laundry contributions ought to be \$270. On a simple analysis, this would be the cost of doing the laundry at a laundromat, less an arbitrary amount for the profit incorporated in those costs. Again, I find \$270 the appropriate amount.

In neither report did McCully allow anything for the transportation services provided by Anthony Sprock. There was evidence that Anthony Sprock used his personal vehicle to drive Justin to various places, such as haircuts, lunches, job hunting and literacy classes. Dr. Moazzami calculated the contribution to transportation services using a 40¢ per kilometre figure. I am of the view that the appropriate amount ought to be \$300, on the basis that some of the trips may not have been necessary and the bus pass ought to have sufficed. However,

many of the trips probably were necessary as Justin would not have attended literacy classes, attended the welfare office, or completed job hunting if Anthony Sprock did not make it easy for him.

Dr. Moazzami has included a component for the value of Anthony Sprock's time completing the approximately 143 hours of transportation services. I do not believe the value of the father's time is a necessary consideration. I may have been of a different view if the father was taking time off work in order to provide this service and there was an actual financial loss to him. There was no such evidence of that here. I find that the time spent was more in the nature of care as opposed to financial contribution.

Dr. Moazzami also included an amount representing the value of the medical insurance benefits available to Justin through his father's employment. On the facts of this case, I do not believe this is an appropriate component to the calculation. I am of the view that Justin's basic needs were provided through OHIP services. I may have come to a different conclusion if Justin had special medical needs which were provided for by his father's medical plan and not otherwise available through OHIP. There was no evidence of any special medical needs. Furthermore, there was no evidence that Anthony Sprock's salary or income would have been higher if his son was not a dependent relative.

Dr. Moazzami also included in his calculations an amount of \$937.50 for the value of entertainment provided by the father. McCully allowed nothing for this. Dr. Moazzami made his calculations on the basis that on the 25 days per month that Justin would visit his father's house, he would spend three to four hours per day watching t.v., movies, playing video games and using the computer or internet services. Dr. Moazzami found this tantamount to paying \$7.50 to go see a movie. I am not satisfied that this is an appropriate method of calculating the father's financial contribution. I am of the view that only the additional costs of electricity and perhaps some nominal depreciation of those items ought to be considered. As there was no specific evidence on these points, I arbitrarily find that \$20 would be appropriate in the circumstances. Anthony Sprock had already purchased various entertainment devices. I am of the view that only the additional costs of electricity, perhaps some nominal depreciation ought to be considered. There was no specific evidence on these points. I arbitrarily find that \$20 would be appropriate in the circumstances.

Dr. Moazzami also included a component for the value of the safety net provided by the father. He valued this safety net as provided by the father for social and emotional support at \$1 per day. With respect to this head of financial contribution, I accept the Applicant's arguments that the analysis of financial dependency is much different than the analysis of the "dependency for care". I do not find the safety net concept is one that should be considered in assessing financial dependency.

Overall, I find the following contributions to have been made by the father:

Food	\$ 650.00
Movies	120.00
Clothes	450.00
Bus passes	90.00
Taxis	375.00
Haircuts	100.00
Food at father's home	803.75
Value of laundry	270.00

Transportation	300.00
Value of time	0
Medical insurance	0
Entertainment	20.00
Safety net	<u>0</u>

TOTAL **\$3,178.75**

Social assistance **\$2,818.00**

In addition to the aforesaid, there was evidence in this proceeding that Anthony Sprock also purchased numerous household items when Justin left the family home. Anthony Sprock purchased a television, a toaster, blankets, coffee maker, spoons, utensils, pots, pans and a microwave. If these items were included in the aforesaid financial dependency analysis, they would further tip the scales in favour of a financial dependency upon the father, as opposed to social assistance.

On the evidence adduced, I find that any small amounts that the mother may have contributed or any small amounts that Justin Sprock may have stolen, would not have been sufficient to make Justin Sprock less than 51% financial dependent on his father.

As indicated previously, I do not find this detailed financial analysis is necessary in this case. I merely included it to show that the conclusion that I have reached would have been the same even if this were found to be the appropriate time frame for analysis. Overall, I find that the general nature of the relationship was such that Justin Sprock was destined to live at home in the long run as he was incapable of living independently on the monies provided by social assistance. His attempt to live independently on social assistance was a short-lived effort to succeed against odds. He was incapable of managing his money sufficiently to survive with the minimal social assistance income available to him. He was competitively unemployable by reason of his limited education, his illiteracy, his lack of social skills and his problems with alcohol and drugs. Until such time as he upgraded his education, matured socially and overcame his alcohol and drug problems, he was destined to be dependant upon his father. He was principally dependant for financial support on his father, Anthony Sprock, at the time of the June 1, 2005 motor vehicle accident.

ORDER

On the basis of my finding that Justin Sprock was principally financially dependant upon his father, Anthony Sprock, at the time of the June 1, 2005 motor vehicle accident, I hereby Order that this Application be dismissed. I order that the Applicant pay to the Respondent its costs on a partial indemnity basis. I order that the Applicant pay the Arbitrator's costs.

DATED at TORONTO this 4th)

day of November, 2008.)

KENNETH J. BIALKOWSKI
Arbitrator