

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: APPLYING ADMINISTRATIVE LAW PRINCIPLES ONTARIO COURT OF APPEAL CONFIRMED INSURANCE ARBITRATOR'S DECISION WAS UNREASONABLE

Administrative law – Judicial review – Administrative decisions – Arbitration and award – Unreasonableness – Appeals – Standard of review – Correctness – Reasonableness simpliciter – Evidence

Intact insurance Co. v. Allstate Insurance Co. of Canada

The appeal centred on which insurance company was responsible for statutory accident benefits owed to individuals injured in a motor vehicle accident. The main issue on appeal centred on the question of dependency.

[2016] O.J. No. 4113

2016 ONCA 609

Ontario Court of Appeal

August 4, 2016

R.J. Sharpe, H.S. LaForme and K.M. van Rensburg J.J.A.

Paula Chartrand (Paula) and her two daughters (collectively the “Claimants”) were injured in a car accident on August 21, 2010. They applied for and received accident benefits from Intact, the insurer of the vehicle they were riding in at the time of the accident. However, Intact argued that Allstate, who insured two vehicles owned by Paula’s boyfriend, Kyle Houghton (“Kyle”), should pay those benefits on the basis that the Claimants were dependent on Kyle at the time of the accident and, consequently, they were insurers under Allstate’s policies with Kyle.

The relationship between Paula and her boyfriend Kyle forms the factual background in this dispute.

By way of background, in January or February 2010, Paula spent three weeks of each month in Sarnia working. At around the same time, she began dating Kyle. She would spend the remaining week in Sudbury with her daughters and husband, Yvan Restoule (“Yvan”).

In June 2010, Paula left Yvan and moved to Sarnia with her daughters. In July 2010, the Claimants moved into Kyle’s house. Kyle was responsible for most of the Claimant’s expenses. The evidence indicated that the move was intended to be a permanent one. The accident occurred on August 21, 2010; therefore, the Claimants had only been living with Kyle for seven weeks pre-accident.

The insurance arbitrator found that the Claimants were not principally dependent for financial support on Kyle at the time of the accident. This was largely based on looking at a year-long period before the accident. As a result, the arbitrator ruled that Intact was responsible for the accident benefits.

Intact appealed and the appeal was allowed. The appeal judge reviewed the arbitrator's decision on a correctness standard and concluded that Allstate was responsible for paying the Claimant's accident benefits. The appeal judge concluded that the arbitrator committed an error of law by importing a permanency requirement into the analysis and an error in principle by speculating about future events. The appeal judge reviewed the arbitrator's decision on a correctness standard, set aside his decision and concluded that Allstate was responsible for paying the accident benefits owed to the Claimants.

Allstate appealed, arguing that the appeal judge erred by reviewing the arbitrator's decision on a correctness standard and that the arbitrator's decision should be restored because it was reasonable. The appeal was dismissed.

The Ontario Court of Appeal first focused on which framework applied for the standard of review, noting the appellate framework articulated in *Housen v. Nikolaisen*, 2002 SCC 33, and the administrative law framework associated with *Dunsmuir v. New Brunswick*, 2008 SCC 9. The Court found that the applicable standard of review in this case must be determined by applying administrative law principles. In making this decision the Court noted that insurance arbitrations, unlike court proceedings, are adjudicated by arbitrators with relevant experience and the limited rights of appeal that apply in arbitrations are similar to a privative clause.

The question before the Court was whether the appeal judge identified the correct standard of review and whether it was applied properly. The Ontario Court of Appeal found the appeal judge erred by reviewing the arbitrator's decision on a correctness standard. Therefore it set out to review the arbitrator's decision under a reasonableness standard.

The Ontario Court of Appeal found that the arbitrator correctly identified the following applicable legal principles, that:

- (i) the 51% principle dependency should be applied (i.e., if the Claimants had sufficient resources to fund 51% of their financial needs, then the person could not be principally dependent upon others),
- (ii) the time frame to be looked at may encompass days, weeks or even years,
- (iii) the *Miller v. Safeco* factors should be considered (including the duration of dependence, amount of dependency, financial or other needs of the alleged dependent and ability of the alleged dependent to be self-supporting should be considered,
- (iv) each case must be factually driven, and
- (v) the ability to be self-supporting must be taken into account when measuring dependency.

Notwithstanding the above, the Court found that the arbitrator's decision was unreasonable for two reasons. First, the arbitrator failed to conduct the requisite analysis and that his "permanence" requirement was incompatible with the applicable legal principles. Second, the arbitrator's decision was found to be inconsistent with the evidence and the result of indefensible speculation.

It was held that the seven-week period preceding the accident was the proper approach that appropriately represented the true nature of the relationship between Kyle and the Claimants at the time of the accident; "a nascent but real relationship wherein the Claimants were principally dependent on Kyle for financial support."

In light of the above, even though it was found that the appeal judge erred in the standard of review, it was found that he did not err by setting aside the arbitrator's decision which was found to be unreasonable. Therefore, the appeal was dismissed with costs.

This case was digested by [Lindsay R. Johnston](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact her directly at ljohnston@harpergrey.com or review her biography at <http://www.harpergrey.com>.