

**IN THE MATTER OF AN ARBITRATION PURSUANT TO S. 148.2
OF THE INSURANCE (VEHICLE) REGULATION,
B.C. Reg. 447/83 and the Arbitration Act [SBC 2020] c. 2**

BETWEEN:

SM

CLAIMANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

AWARD

Counsel for the Claimant,
SM

Wesley D. Mussio

Counsel for the Respondent,
Insurance Corporation of British Columbia

Robert D. Shaw

Notice of Application of the Claimant

April 13, 2023

Application Response of the Respondent

May 1, 2023

Cross examinations on Affidavits

May 11, 2023

Written Argument of the Claimant

May 17, 2023

Closing Submissions of the Respondent

May 18, 2023

Date of Hearing

May 18, 2023

Place of Hearing

Vancouver, B.C. by Zoom

Arbitrator:

Dennis C. Quinlan, K.C.

Date of Award:

June 19, 2023

I. INTRODUCTION

1. On December 7, 2019, SM (the “Claimant”) suffered serious injuries when she and three other persons were riding as passengers in a vehicle that left the roadway and went down an embankment while travelling near Oyama, B.C. (the “Accident”).
2. The driver of the vehicle in which the Claimant was a passenger was at fault for the Accident.
3. As the driver did not have third party liability insurance coverage, he was an uninsured motorist as defined in section 20 of the **Insurance (Vehicle) Act** [RSBC 1996] Chapter 231 (the “Act”).
4. The Claimant and Respondent subsequently entered into an agreement whereby the Respondent paid the Claimant the sum of \$50,000 in respect to her section 20 claim.
5. The Respondent consented to the Claimant proceeding to arbitration under the **Arbitration Act** [SBC 2020] Chapter 2 for a determination as to whether she was an insured for the purpose of underinsured motorist protection compensation pursuant to Part 10, Division 2 of the **Insurance (Vehicle) Regulation** B.C. Reg. 447/83 (the “Regulation”), and if so, how much (the “UMP Proceeding”).
6. At the time of the Accident the Claimant was not named as an owner or renter in an owner’s certificate, or a person issued a driver’s certificate, as those terms are defined in section 1 of the Act.
7. It is the Claimant’s position she met the definition of insured for the purpose of UMP, as a result of being a member of the household of a person named in an owner’s certificate and/or driver’s certificate.

8. The question of whether the Claimant was a member of the requisite household involves a critical assessment of the evidence surrounding the Claimant's living arrangement at the time of the Accident.
9. In particular a determination must be made as to what extent the proposed members shared the intimacy, stability and common purpose characteristic of a functioning family unit, and whether their living arrangement was reflective of a settled routine of life as to where they customarily resided, or a special, occasional or casual residence?
10. The specific question for consideration is whether the Claimant's parents and boyfriend who provided temporary emotional support to the Claimant for three months before the Accident, had become members of her household and ordinarily residing in her apartment as at the time of the Accident?

II. CLAIMANT'S NOTICE OF APPLICATION

11. The Claimant delivered a Notice of Application dated April 13, 2023 seeking a declaration that she was an insured at the time of the Accident as defined in section 148.1 (1) of the Regulation together with costs payable forthwith by the Respondent.
12. In support of the application were affidavits from the Claimant, the Claimant's mother ("SM"), the Claimant's father ("BM") and the Claimant's boyfriend ("SC").
13. The Respondent delivered its Application Response dated May 1, 2023 which was supported by an affidavit from a paralegal attaching 41 exhibits comprised of inter alia, various clinical records, social assistance records and insurance documentation.

14. In response to the Respondent's Application Response, the Claimant delivered a second affidavit dated May 8, 2011 and an affidavit from a paralegal.
15. The Claimant, her parents and boyfriend were each cross examined on their affidavits on May 11, 2023.
16. I pause to note that unfortunately the parties were unable to reach a document agreement such that there was uncertainty as to what use could be made of the clinical records attached to the paralegal's affidavit.
17. As both parties addressed certain of the records without objection, those records were admissible but only for the purpose of credibility and not for the truth of any statements contained therein.

III. EVIDENCE

A. CLAIMANT

18. The Claimant was 42 years old at the time of the Accident. After living in Surrey for about a year, she moved back to Vernon on April 27, 2018 and secured employment at Safeway as a grocery clerk.
19. The Claimant leased a one-bedroom apartment ("Vernon Apartment") with the assistance of her mother SM, who signed the lease as a guarantor. The Claimant was responsible for paying the monthly rent, together with the hydro and internet which were set up in SM's name.
20. Initially the Claimant was the only person living in the Vernon Apartment. Her parents resided in Vernon where they owned a house ("Vernon House").

21. The Claimant had three adult children including one son BR who was born May 10, 1997. In August, 2018, BR was diagnosed with T-cell leukemia and sadly passed away on July 27, 2019 at the age of 22.
22. Following the passing of BR, the Claimant deposed she was in a state of severe grief and depression. His death was very hard on her and she did not want to be on her own.
23. Shortly after the loss of her son, the Claimant went to stay with her other son in Surrey for a month, in order that they could have time to grieve together.
24. The Claimant returned to Vernon at the end of August or beginning of September, 2019. She deposed she was in a state of emotional upset and required constant mental support from her family and friends.
25. In the beginning of September, the Claimant's parents moved in with her to the Vernon Apartment, followed shortly thereafter by her boyfriend SC who she had met just prior to her son's passing. By October, 2019 she said SC had fully moved in and was spending almost every night at the Vernon Apartment.
26. The Claimant deposed that in the months leading up to the Accident, "there was not a single night when I slept alone at the Vernon Apartment". She stated that "as a unit", she and her parents and boyfriend "all contributed towards the functioning of the household" and payment of household expenses. Both her parents and SC contributed to the cooking and cleaning and kept their clothes and toiletries permanently in the Vernon Apartment.
27. The sleeping arrangements were that the Claimant and SC would be in the bedroom and her parents in the living room, with her father sleeping on the couch and her mother on an inflatable mattress that was never put away until her parents left in August, 2020.

28. The Claimant stated in her affidavit that she believed the Vernon Apartment was roughly 900 to 1000 square feet, with the bedroom and living room being especially large. On cross examination when asked if she had an estimate for the square footage of the Vernon Apartment, she testified that "I couldn't even tell you what a square foot is" and added she really had no idea as to the size of the apartment as that was not her area.
29. The Claimant agreed she was off work on a medical leave from May, 2019 to September, 2019 due to anxiety related to her son and a workplace harassment issue.
30. On September 16, 2019 she returned to her position at Safeway working four to five days a week, albeit fewer hours. At the time of the Accident, she had changed jobs and was working approximately 30 hours a week.
31. The Claimant did not dispute that once she returned to work she did not go to her doctor again until after the Accident.
32. The Claimant's evidence on cross examination as to the events leading up to the Accident was somewhat vague. She met up with her parents at the Legion on Friday night for the meat draw and to have a drink. At some point the Claimant left her parents and went to the Village Green Hotel where she had a couple of drinks with a friend of her father's whose name she could not remember. She then went to a strip bar where she had a couple of drinks, and then to another place in Vernon where she met some new people who asked if she wanted to go to their home in Oyama, which she did.
33. It was the next afternoon at approximately 4:30 p.m. when she was returning home from Oyama that the Accident occurred. She could not

remember if she had told SC she was going to Oyama but thought she would have.

34. Following the Accident, the Claimant was taken to Kelowna General Hospital. On cross examination she had very little recollection of her time there. Neither her parents or SC came to visit during the three days she was in the hospital, nor did SC come and pick her up to bring her home. She testified she had “no clue” why they did not visit her and as she put it “good question”.
35. For some months leading up to the Accident, the Claimant received social assistance benefits. In the three months September to November, 2019, the Claimant delivered reports to the Ministry indicating she was living alone.
36. There were also hospital clinical records immediately following the Accident which contained notations suggesting the Claimant was living alone.
37. The Claimant provided explanations for the social assistance reports and clinical record notes.

B. CLAIMANT’S MOTHER SM

38. SM was employed as an office administrator at a dental clinic working 32 hours a week. She deposed that at the time of the Accident she was living at the Vernon Apartment. Prior to moving in with the Claimant in September, 2019, she and her husband lived in their Vernon House.
39. Following the passing of the Claimant’s son, SM observed her daughter to be experiencing severe grief and depression and having a very difficult time. The Claimant initially went to Surrey to grieve with her other son, and after a month, SM convinced her to return to Vernon on

the understanding that SM and her husband would move into the Vernon Apartment “to give [the Claimant] full support”, which they did in mid September, 2019.

40. The Claimant’s boy friend SC soon joined them. In the beginning SC would stay only a few nights per week and the rest of the time he would stay at his own rental apartment. However by October, 2019, SC had “fully moved into the Vernon Apartment”.
41. SM deposed that because of her own work it was sometimes not practicable to stay over at the Vernon Apartment. Nevertheless she slept there at least three nights a week and often times more. Her husband slept over with her.
42. SM gave evidence that she slept in the living room at the Vernon Apartment on an air mattress. As she stated, “...the living room functioned as my permanent bedroom”. Her husband on the nights he stayed over, would sleep on the couch.
43. SM kept her work and casual clothes, together with toiletries at the Vernon Apartment. She observed her husband and SC permanently kept their clothes and toiletries there. Each of them contributed to the household by purchasing groceries, cooking and doing chores.
44. Following the Accident, SM assisted the Claimant in bathing, using the washroom, dressing and other personal hygiene. She was doing this while also working at the dental clinic and it was “...like having two full time jobs”. The responsibility for assisting her daughter fell squarely on SM.
45. SM deposed that caring for her daughter after the Accident was taxing and therefore she looked into medical coverages. Because of the

public health system, she learned that if the Claimant was living alone she would get better funding.

46. As stated by SM in her affidavit, “....that was the loophole we were told about by health care professionals trying to help out and hence [the Claimant] stated to health care authorities she was living alone with family support. That is true.”
47. In respect to the events leading up to the Accident, SM said she and her husband had been with their daughter on the Friday night when she met a friend. SM did not remember who that friend was.
48. At some point SM learned her daughter was in the hospital. SM never went to visit because her driver’s license was suspended. SM recalled that after two or three days, a male friend of the Claimant (not SC) brought her home to the Vernon House.

C. CLAIMANT’S FATHER BM

49. BM confirmed that the diagnosis of his grandson’s illness hit the family very hard. Following his death, BM observed the Claimant was going through severe grieving and depression, and in need of support because she did not want to be alone.
50. It was decided in September, 2019 that he and his wife would move into the Vernon Apartment and although it was not ideal, it was “what parents do for their children”.
51. Around this time, the Claimant’s boyfriend SC began spending time at the Vernon Apartment. BM deposed that by October, 2019, SC was spending most every night with them at the Vernon Apartment and he continued to do so until the Accident and thereafter.

52. BM stated he and his wife contributed to the household by buying groceries and helping with cooking and cleaning. He confirmed the evidence of his wife that they slept in the living room on the couch and air mattress, and the Claimant and SC were in the bedroom. BM kept his clothes and toiletries in the Vernon Apartment.
53. BM had his own health issues and was frequently in Vernon Hospital around the time of the Accident. When he was not in the hospital he was staying at the Vernon Apartment. BM deposed that he considered the Vernon Apartment to be his home in the time leading up to the Accident.
54. On cross examination, BM agreed that prior to the Accident, he and his wife were staying with the Claimant to help her get her feet back on the ground. He testified that he, his wife and SC were not residing at the Vernon Apartment all of the time, but they were working as a team, coming and going. The Claimant needed someone to watch over her and that was why they stayed with her at the Vernon Apartment.
55. BM testified that he and his wife never planned on living with the Claimant permanently. He also said the Claimant stayed at their house every once in a while.
56. BM confirmed that after the Accident, they spent more time with the Claimant because of her significant injuries.
57. BM deposed that at the time of the Accident, he was the named owner on an Owner's Certificate in respect to a 2007 Ford Focus.

D. CLAIMANT'S BOYFRIEND SC

58. SC described how he met the Claimant in a hair dressing studio in the summer of 2019 prior to her son passing. He did not hear from her for

a couple of weeks and eventually he learned the Claimant's son had died.

59. Once the Claimant returned to Vernon, SC observed that her parents had moved in with her at the Vernon Apartment in early September, 2019 to support her during her time of grief. He eventually moved in as their relationship had become serious and he was willing and able to provide her support.
60. Prior to moving in to the Vernon Apartment, SC stated he was living with his father in his own rental apartment in Vernon and working in Kelowna as a carpenter. Initially he was only spending a few nights at the Vernon Apartment but by October, 2019 he had fully moved in.
61. SC said he told his father at that time he would no longer be living in their rental apartment. He then considered the Vernon Apartment to be his home where he permanently kept his clothes and toiletries, and contributed to the household chores and cooking.
62. SC deposed that in his mind he was living with the Claimant at the time of the Accident and giving her emotional support for the loss of her son. He described their relationship as "generally being boyfriend and girlfriend".
63. On cross examination, SC agreed that at the time of the Accident, he did not know what the future held for the two of them as they were still in the honeymoon stage.
64. It was for this reason he did not change the primary address on his motor vehicle insurance to the Vernon Apartment when he renewed in January, 2020.

65. While the Claimant's parents moved out in August 2020 and returned to their Vernon House, he and the Claimant continued to live together and do so to the present time, although they now reside in Enderby.
66. In January 2021, SC changed his primary address to the Vernon Apartment and then in January, 2023 he changed it to the Enderby address.
67. SC stated the Vernon Apartment was a large one bedroom which he believed to be 900 to 1000 square feet.
68. As to the events leading up to the Accident, SC testified the Claimant had asked him to join she and her parents that evening at the Legion. He was tired however and decided not to go out. SC said the Claimant did not tell him she would be out all night or where she was.
69. The next morning when SC got up the Claimant was not there. He learned later from the Claimant's mother that she had been involved in an Accident and was in the hospital. He never went to visit the Claimant because he was busy with a friend that weekend.
70. SC could not recall how long the Claimant was in the hospital. The next time he saw her was when she returned to the Vernon Apartment.
71. SC deposed that at the time of the Accident, he was the named owner in an owner's certificate in respect to a 2013 Kia Sorento. He also held a valid driver's license.

IV. DEFINITION OF INSURED FOR PURPOSE OF UMP

72. The term "insured" is defined in section 148.1 (1) of Part 10 of the Regulation:

148.1 (1) In this section:

“insured” means

(a) an occupant of a motor vehicle described in the owner’s certificate,

(b) a person who is

(i) named as the owner or renter in the owner’s certificate if that person is an individual,

.....

(ii) a member of the household of a person described in subparagraph (i)...

(b.1) a person who is

(i) an insured as defined in section 42 and who is not in default of premium payable under section 45, or

(ii) a member of the household of an insured described in subparagraph (i)

Emphasis added

73. The term “household” is defined in section 1 of the Regulation as meaning “every person ordinarily residing in the same dwelling unit”.
74. Section 42 of the Regulation as referenced in subsection (b.1) refers to a resident named on a driver’s certificate, which by operation of section 43 is incorporated into every valid and subsisting driver’s license.
75. Simply put the person described in s. 148.1 (1)(b) is a person named as an owner in an owner’s certificate and the person described in s. 148.1 (1)(b.1) is a person named in a driver’s certificate through a driver’s licence.

76. A person will be an insured for the purpose of UMP if he or she is a member of the household of one of those persons described in sections 148.1 (1)(b) or (b.1).

V. POSITION OF THE PARTIES

A. CLAIMANT

77. The Claimant submits she was an insured for the purpose of UMP as she was a member of a household with her boyfriend SC and father BM who held contracts of insurance with the Respondent at the time of the Accident. SC also held a valid driver's license.
78. The Claimant submitted that at the time of the Accident, she and her parents and boyfriend all lived as a family unit, as evidenced by everyone contributing to the functioning of the household, including buying groceries, cooking and cleaning.
79. In short, the Claimant asserted that the intimacy, stability and common purpose characteristic of a functioning family were clearly established as at the time of the Accident and they were all ordinarily residing in the Vernon Apartment.
80. The Claimant submitted that to deny her UMP coverage would require a finding that she together with her parents and boyfriend, were "complete liars", given the extensive evidence supporting the household arrangement. She pointed out that the Respondent failed to refute any of the evidence, other than to "cherry pick" from declarations of address and notes in clinical records, which the Claimant said were all explained away.
81. The Claimant also submitted the Respondent's attempt to place her father and boyfriend outside the "ordinarily residing" definition was to

apply a narrow interpretation which was contrary to insurance law principles of a broad interpretation in favour of the insured.

82. As opposed to describing her father and boyfriend as “unusually, casually or intermittently” visiting the Vernon Apartment, as those words are found in the case law, it was submitted they both resided there full time.
83. The Claimant pointed out that SC did not return to his rental apartment after October, 2019, other than to check on his father. Given that SC was not residing in the rental apartment, he could only have been ordinarily residing in the Vernon Apartment.
84. The Claimant submitted that the permanency of their living arrangement is confirmed by the fact that they remain living together to the present time and would now meet the definition of common law spouse
85. The Claimant said the fact that the living arrangement at the time of the Accident was temporary was of no consequence because there was no case law requiring a need for permanency to the mode of living. If that was the case, it would be near impossible to meet the definition of insured, given very little is forever.
86. The Claimant also advanced the submission that the Respondent was making a “new argument” in now asserting the Claimant did not satisfy the definition of insured. The Claimant pointed out that the Respondent had previously paid Part 7 benefits, which was indicative of the Respondent accepting that she was an insured.

B. RESPONDENT

87. The Respondent submits the Claimant failed to establish that at the time of the Accident, SC and BM were members of her household and ordinarily resident with her, so as to meet the definition of insured. As such, the Claimant is not entitled to UMP and the arbitration proceeding should be dismissed with costs to the Respondent.
88. The Respondent's primary argument is that the Claimant's evidence and that of her supporting witnesses was neither credible nor reliable.
89. Principally the Respondent relies upon the social assistance and clinical records suggesting the Claimant was living alone in the three months leading up to the Accident, mailing and contact information provided by the parents and SC showing a residential address other than the Vernon Apartment, and inconsistencies and contradictions in the evidence given by the Claimant, her parents and boyfriend on cross examination as to the nature and extent of their living relationship leading up to the Accident.

VI. ANALYSIS

A. GENERAL PRINCIPLES OF INTERPRETATION

90. UMP is a statutory form of first party insurance which provides compensation to an insured person in the event that an at-fault motorist has insufficient or no liability insurance or other assets with which to pay a judgment.
91. The onus is on the Claimant to prove, on a balance of probabilities that she meets the definition of insured: *Chiu v. ICBC* (Arbitration Award, September 30, 2003 at para. 104, Arbitrator Orchard).

92. The UMP legislation is benefit-conferring and to be interpreted in a broad and generous manner in favour of the insured so as to best ensure the attainment of its objectives: ***K.P. On Her Own Behalf and As The Litigation Guardian N.P., An Infant v. ICBC*** (Arbitration Award, April 30, 2019 at para. 48, Arbitrator Yule).

93. In interpreting the UMP legislation, I am to be guided by the general approach to statutory interpretation as set out in ***Rizzo and Rizzo Shoes Ltd. (Re)*** (1998) 1 SCR 27, at paragraph 21:

“Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament”.

94. The first step in my consideration as to whether the Claimant meets the definition of insured so as to entitle her to UMP compensation, is to recognize the public policy interest underlying the legislative scheme of the Act and the Regulation.

95. Justice Garson in the decision of ***Niedermeyer v. Charlton***, 2014 BCCA 165 stated at para. 90:

The public policy embraced by the legislative scheme is to provide a universal, compulsory insurance program as part of the legislature’s efforts to ensure safety on the roads and access to compensation for those who suffer loss when those measures fail.

96. I pause here to say that subject to the Claimant being able to establish she meets the definition of an insured, she would be a person contemplated by the UMP legislation – that is a person who suffered

loss as a result of an at fault motorist who had no liability insurance or other assets with which to pay a judgement.

97. Having said that, the Claimant must establish she is a member of the household in accordance with settled jurisprudence: ***Ferro v. Weiner Estate***, 2019 ONCA 55 at para. 22.

B. MEANING OF HOUSEHOLD AND ORDINARILY RESIDING

98. Entitlement to UMP coverage under sections 148.1 (1)(b) or (b.1) requires the satisfaction of two elements: ***Unknown v. ICBC***, (Arbitration Award, September 30, 2016 at para. 2, Arbitrator Yule).
99. First the Claimant must establish she was a member of the household of the person named in an owner's certificate or driver's certificate.
100. Second the Claimant must establish that she and the person named in the owner's certificate or driver's certificate were ordinarily residing in the same dwelling unit.
101. The term "household" has been given liberal and flexible interpretation. Each individual case must be considered on its own facts and circumstances and there is no one concrete, concise definition that fits all scenarios: ***Jacobs v. ICBC***, 2000 BCSC 1267 at para. 12.
102. The meaning of "household" has developed over time to reflect changing values and standards. In ***Wawanesa Mutual Insurance Co. v. Bell***, [1957] S.C.R. 581 at p. 584, Rand J. stated:

The "household", in the broad sense of a family, is a collective group living in a home, acknowledging the authority of a head, the members of which, with few exceptions, are bound by marriage, blood, affinity or other bond, between whom there is an intimacy and

by whom there is felt a concern with and an interest in the life of all that gives it unity.

103. More recently, the Ontario Court of Appeal in **Ferro** at para 17 described “household” in this manner:

[17] A household is thus a type of community, most readily understood by analogy to a family unit. Although a household is not synonymous with a family, the existence of a household is evidenced by the extent to which its members share the intimacy, stability and common purpose characteristic of a functioning family unit.

104. The court noted that a household is constituted not only by the members’ pattern of living but also by their settled intention of identifying with the household.
105. The demands of intimacy, unity and permanence are not “slight” and mere co-residence is not sufficient to constitute membership in a household: (**Ferro** at paras. 18, 19).
106. The second element “of ordinarily residing” or its interchangeable term “ordinarily resident” (see **Mathieu v. Ins. Corp. of B.C.** 1984 CanLII 408 (BCCA)), was described in the leading case involving a tax statute of **Thomson v. Minister of National Revenue**, 1946 CanLII 1 (SCC), where Rand, J. and Estey J, respectively, focussed at pages 224, 231 and 232 on the contrast between the indicia of permanency and temporary:

The expression “ordinarily resident” carries a restricted signification, and although the first impression seems to be that of preponderance in time, the decisions on the English Act reject that view. It is held to mean residence in the course of the customary mode of life of the person concerned and it is contrasted with special or occasional

or casual residence. The general mode of life is, therefore, relevant to a question of its application.

.....

A reference to the dictionary and judicial comments upon the meaning of these terms indicates that one is “ordinarily resident” in the place where in the settled routine of his life, he regularly, normally or customarily lives. One “sojourns” at a place where he unusually, casually or intermittently visits or stays. In the former the element of permanence; in the latter that of the temporary predominates. The difference cannot be stated in precise and definite terms, but each case must be determined after all of the relevant factors are taken into consideration, but the foregoing indicates in a general way the essential difference.

Emphasis added

107. As is the case when considering whether a particular living arrangement constitutes a “household”, the determination of whether persons are “ordinarily residing” in the same dwelling unit is fact specific and involves consideration of the particular legislative framework and statutory purpose within which the term is found: ***Mathieu*** at para. 17.
108. Ordinary residence is the determining factor in ascertaining whether a person is a member of a household: ***Zamburek and Rule v. Western Union Insurance Company and Insurance Corporation of British Columbia***, (1988) 31 B.C.L.R. (2d) 342 at 348

C. CREDIBILITY OF THE CLAIMANT AND HER WITNESSES

109. The Respondent submits that little reliance can be placed on the evidence of the Claimant and her three witnesses in that it was (a) not in harmony with independent evidence, (b) rife with contradictions and

inconsistencies, (c) generally implausible and unlikely, and (d) adduced from witnesses who were prepared to embellish because they were closely connected and sympathetic to the Claimant.

110. I agree there were examples of inconsistent evidence as between the four witnesses, and at times embellishment. For example all four affiants deposed in their affidavits that the Vernon Apartment was approximately 900 to 1000 square. There was no specific basis given for that estimate, but more importantly the Claimant on cross examination testified she had no clue as to the size of the apartment as she had no idea what even a square foot was. Given this answer, it was evident the Claimant took little or no care when affirming to the truth of this assertion in her affidavit.
111. Evidence of this type which was on a relatively minor issue, casts doubt on other evidence and raises concerns such as were addressed by Justice Kent in *Widdowson v. Rockwell*, 2017 BCSC 385 at paras. 44, 45.
112. I recognize the Claimant's parents and her boyfriend were likely biased in the Claimant's favour. Such was to be expected given the family relationship. In observing the witnesses testify on cross examination, I was alive to that reality, and viewed their evidence with caution.
113. I should also say the fact there were some inconsistencies as amongst the four witnesses did not overly concern me as I would have been more wary had their evidence been identical, thereby suggestive of collaboration.
114. Overall, I found the evidence of the Claimant and her three supporting witnesses to be generally credible and reliable when they confined their evidence to purely factual matters. To the extent their affidavits ventured into the realm of after the fact conclusions, opinions, or argument, I found that evidence not to be helpful.

115. In particular I found the factual evidence on the important issue of their living arrangement in the three months leading up to the Accident, to be internally consistent and descriptive of what one might expect when faced with a daughter who had just lost her son to cancer.
116. The question becomes whether that arrangement rose to the level required to establish the Claimant was an insured.
117. I note there was evidence given on cross examination that was not helpful to the Claimant's position, which ironically can be indicative of a credible witness. I will discuss that evidence further in this award.
118. Last I do not agree with the assertion of the Respondent that the Claimant and her mother were "excessively combative and argumentative" in their cross examination.
119. They were emotional no doubt, but the circumstances of the Claimant's life events would have dictated such reaction. I also note that the day preceding the cross examinations was the anniversary of BR's birthday and I expect that memory weighed heavily on the minds of the Claimant and her parents.
120. Before leaving this issue, I should say I reject the Claimant's somewhat "absolute" submission, that to deny her UMP coverage, I would have to find she and her witnesses were lying in their evidence.
121. The issue before me is whether on all of the evidence and in accordance with the proper legal test, the Claimant has established she was the member of a household of a person named in an owner's certificate or driver's certificate.

D. PREVIOUS PAYMENT OF PART 7 BENEFITS

122. The Claimant suggested there was inconsistency in the Respondent's position of now denying she was an insured for the purpose of UMP, when it had earlier viewed her as an insured for the purpose of Part 7 benefits.

123. The answer to this submission is that the definition of insured under Part 7 is broader than the definition of insured under Part 10.

124. S. 78 defines "insured" for the purpose of Part 7 to mean, inter alia:

"insured" means

(a) a person named as an owner in an owner's certificate

(b) a member of the household of a person named
in an owner's certificate

(c.1) an insured as defined in section 42 who is not in
default of premium payable under section 45

(c.2) a member of the household of an insured
described in (c.1)

(f) a resident of the Province who is entitled to bring an
action for injury or death under section 20 or 24 of
the Act.

125. Thus for the purpose of Part 7 benefits, an insured includes a resident of the Province who is entitled to bring an action for injury under section 20 or 24 of the Act.

126. The definition of insured in section 148.1 (1) for the purpose of UMP does not include such resident.

127. Inclusion by the legislature for the purpose of Part 7 but exclusion for the purpose of Part 10 must be taken to be intentional.
128. The Claimant must therefore establish entitlement to UMP through sections 148.1 (1)(b) or (b.1) which is what she is seeking to do.

E. DISCUSSION

129. The evidence in my view establishes that the Claimant's parents and boyfriend stayed with her at the Vernon Apartment on a somewhat regular basis for the purpose of providing temporary support while she took time to grieve the loss of her son.
130. Such arrangement began in the middle of September, 2019 and continued through until the time of the Accident on December 7, 2019.
131. I accept that everyone pitched in at different times to assist with the cooking, cleaning, buying groceries and other activities characteristic of people living together. While not always there at the same time, they would come and go and work together as a team.
132. I also accept the Claimant's evidence that she was not left alone at night up until the time of the Accident.
133. The backdrop to this emotional support is that during the day the Claimant had returned to work in mid September and by the time of the Accident was working 30 hours a week in a new job that she found herself.
134. In summary the evidence establishes that there were family members (the Claimant and her parents) and persons having a bond or affinity (the Claimant and her boyfriend) who for a period of time until the

Accident stayed with the Claimant for the common purpose of supporting her in time of loss.

135. The inquiry however must go further.
136. As was stated in **Ferro**, the mere fact of co-residence is not enough to constitute membership in a household. A household is determined not only by its members' patterns of living with each other, but also "...by their settled intentions."
137. The Claimant must establish that SC or her father were ordinarily residing with her in the sense that the Vernon Apartment was the place "where in the settled routine of [their] life, [they] regularly, normally or customarily lived".
138. In my view the term "ordinarily residing" necessarily involves the consideration of a continuum stretching from commencement of the living arrangement through to some element of permanence. One cannot have entered a settled routine of life, until one has had time to become settled in mind and fact.
139. This concept was identified by Rand, J in **Thomson** at page 225:

But in the different situations of so-called "permanent residence", "temporary residence", "ordinary residence", "principal residence", and the like, the adjectives do not affect the fact that there is in all cases residence; and that quality is chiefly a matter of the degree to which a person in mind and fact settles into or maintains or centralizes his ordinary mode of living with its accessories in social relations, interests and conveniences at or in the place in question.

emphasis added

140. The evidence of the Claimant and her boyfriend specifically addresses where they were on that continuum at the time of the Accident.

141. The Claimant in her second affidavit provided the following explanation as to why she indicated in her social assistance reports that there was only one person living at the Vernon Apartment in the three months leading up to the Accident:

3. In response to paragraphs 4(a) and 14(a), I did not indicate that I had others living with me in my monthly social assistance reports after September 2019 because it was never intended to be a permanent living arrangement. The plan was for my parents BM and SM, and my boyfriend SC to stay with me until I was able to cope with the loss of my son on my own. I did not think I needed to indicate a non-permanent living arrangement on the monthly reports. Once SC and I moved to Enderby in June 2021, I updated my Shelter Form because it was an official, permanent living arrangement.

.....

8. In response to paragraph 14(e), my parents and SC had their own residences around the time of the Accident, they were just living with me to offer me support for however long I needed it. In my mind, I was still living on my own in a way since they had their own places that they were planning on moving back to once I was in a better spot mentally and physically.

142. SC gave similar evidence on his cross examination when in respect to why he did not change his address when renewing his insurance in January 2020 he testified “...we weren’t sure what was going on, like whether I was going to be there permanently or whether I was going to end up getting a new place. So to change my insurance over when my dad was still there, I left it there.”

143. The following statement by Rand, J. in **Thomson** at page 225 encapsulates this evidence from the Claimant and SC:

“Ordinary residence can best be appreciated by considering its antithesis, occasional or casual or deviatory residence. The latter would seem clearly to be not only temporary in time and exceptional in in circumstance, but also accompanied by a sense of transitoriness and of return.”

Emphasis added

144. I agree with the Claimant’s submission that permanence is not determinative in assessing ordinary residence. However it is informative.

145. The events immediately leading up to and following the Accident, add context in my view as to where on the continuum, the living arrangement was as between the Claimant and SC.

146. SC testified he did not receive a call on the Friday night from the Claimant saying she was going to be out for the whole evening. When he got up Saturday morning, she had not come home. SC wondered what was going on but nonetheless went off to help a “buddy”. There was no evidence of concern on the part of SC.

147. At some point SC received information from the Claimant’s mother saying the Claimant had been in an accident and was in the hospital. Even then he did not go to visit her “...because I was busy doing some stuff with a buddy of mine.”

148. Such reaction and lack of concern are not synonymous with persons sharing as was stated in **Ferro** at para. 17 “...the intimacy, stability and

common purpose characteristic of a functioning family unit....[that is] motivated by “an interest in the life of all that gives it a unity.”

149. The Claimant in her first affidavit saw the need to explain statements made by her to her doctor and treatment providers that she was living alone. It is notable that the Claimant offered her explanation before the statements were raised by the Respondent in its material.

150. At para. 46 she deposed that throughout the time when her parents and SC lived with her, she “...would tell my doctor and my treatment providers that I lived alone with some family support”.

151. The Claimant then provided the following explanation:

47. The reason for saying I lived alone is that I was avoiding the situation where the authorities would reduce or take away completely my outside care forcing my parents and boyfriend to be my full time nurse maid. Also, ICBC would expect my parents and boyfriend to be my full time care-givers in providing Part VII benefits. I could not rely on my parents for every single care need. There are limits to asking for help. It would not be fair to them.

152. Given the reference to Part 7 benefits, the Claimant must have been referring to statements made after the Accident.

153. I recognize the records can be used only for a limited purpose and there was no evidence from the makers of the notes as to the source of the information.

154. However I can take into account the fact that the information in the Kelowna Hospital records indicating she was living alone likely did not come from her parents or boyfriend because they for their own reasons never went to the hospital to visit her.

155. Whatever be the source of the information in the hospital records, the social assistance reports and statements to her doctor and treatment providers that she was living alone, are contrary to the position she now takes in this arbitration.
156. The most accurate description of her living arrangement is likely found in her second affidavit where she deposed “...in my mind I was still living on my own in a way since they had their own places that they were planning on moving back to once I was in a better spot mentally and physically”.
157. The decisions of **Zamburek** and **Gust v. ICBC**, 1996 CanLII 2809 dealt with issues involving “members of a household” and “ordinarily resident”.
158. In **Zamburek**, the continuum was described as “... Mr. Rule had passed from a stage when he had been an Alberta resident who had a relationship with a woman in Dawson Creek, through a stage where he resided simultaneously in Alberta and British Columbia, to a stage where he resided in British Columbia and was employed in Alberta.”
159. Preston Co. Ct. J. concluded “...the evidence disclosed a ripened intention to reside in British Columbia.”
160. In **Gust**, Justice Wilson came to an opposite conclusion on the evidence before him, but following upon **Zamburek**, he stated at para. 29:
29. In the terms of Preston Co. Ct. J., there was no “ripened intention”, but rather an intention which might have ripened some time after the motor vehicle accident.
161. I would apply Justice Wilson’s statement to the living arrangement of the Claimant and SC, with the refinement that the intention did ripen, but some time after the Accident.

VII. CONCLUSION

162. I recognize the legal principle that the Act and Regulation are benefit conferring so as to be construed broadly in favour of the insured or in this case the potential insured.
163. However such principle of interpretation does not in my view extend so far to as to require one to ignore the evidence adduced. The legislation must still be interpreted in accordance with settled jurisprudence: **Ferro**, at para. 22.
164. In summary the evidence does not support the conclusion that the Claimant and her boy friend SC, or the Claimant and her father, BM, were customarily or in the settled routine of life, ordinarily residing together.
165. As such, the Claimant was not a member of a household of a person named in an owner's certificate or driver's certificate.
166. The relationship between the Claimant and SC was in its early stages such that the purpose of their residing together was temporary so as to allow the Claimant time to recover from the loss of her son, at which time SC would return to his own residence.
167. While they may have resided together, it cannot be said they were ordinarily residing together.
168. The fact they subsequently had the settled intention to live together does not impact their status as at the date of the Accident.
169. Similarly the Claimant's father stayed with the Claimant on a temporary basis for the specific purpose of providing emotional support to her, on the mutual understanding that he would return to his permanent home once she was functioning better.

170. Had it been the intention of the legislature that an insured for the purpose of UMP was to include persons in the circumstances of the Claimant, wording such as found in section 78 in respect to Part 7 benefits would have been employed in sections 148.1 (1)(b) or b.1).
171. I thereby dismiss the Claimant's application for a declaration that she was an insured pursuant to section 148.1 (1).
172. In the circumstances, my preliminary view would be that each party bear its own costs. Should the Respondent wish to pursue costs, then it should deliver its written submission within ten days from delivery of this Award, with the Claimant having seven days to respond.

Dated: June 19, 2023

Dennis Quinlan

Arbitrator – Dennis C. Quinlan, K.C.

