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All is Fair in Love and Insurance: When is a Spouse not a Spouse for the purposes of an Accident Benefits Claim?

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In *Royal & Sun Alliance v. Desjardins / Certas*, 2018 ONSC 4284, the Court ruled that a "spouse" in the context of a family law claim differs from a spouse in the context of an insurance accident benefits claim.

The (Romantic) Landscape

Helen Halliday was injured in a car accident while she was driving a car owned by her partner, David Zorony. Ms. Halliday and Mr. Zorony had been romantically involved on an exclusive basis since 2008, but had only been officially cohabiting for a year prior to the 2014 collision.

Ms. Halliday sought accident benefits from the insurer of Mr. Zorony as his spouse. It was agreed upon by the parties that only if recovery was unavailable against her own insurer (and by extension, her partner's insurer), does the *Insurance Act* provide for recovery against "the insurer of the automobile that struck the non-occupant."

The insurance company for the owner of the car driven by Ms. Halliday, Royal & Sun Alliance ("RSA") and the insurer of the car that hit Ms. Halliday ("Certas") each argued that the other was in a higher priority position with respect to paying the accident benefits claim of Ms. Halliday.

At issue in the arbitration was whether Ms. Halliday was legally considered a "spouse" of Mr. Zorony.

The Arbitrator determined that Ms. Halliday was in fact a "spouse", and therefore RSA (the insurer for Mr. Zorony) was obligated to pay accident benefits. The Arbitrator looked at the nature of the relationship between Ms. Halliday and Mr. Zorony, giving consideration to sociological factors such as lifestyle, social habits, and support for professional endeavours, in order to determine the meaning of "spouse" under the *Insurance Act*. In doing so, the Arbitrator used an interpretive approach more suitable for interpretation of the term "spouse" under the *Family Law Act*. In determining the meaning of the term "spouse" in the *Insurance Act*, the Arbitrator heavily utilized interpretations of the same word based on the *Family Law Act*. In adopting a family law approach, the Arbitrator found that Mr. Zorony and Ms. Halliday were "spouses", although then had only begun cohabiting for a year prior to the accident.

On appeal via judicial review to the Ontario Superior Court of Justice, RSA argued that the Arbitrator's decision inappropriately relied on sociological factors that are appropriate to the family law context when it comes to spousal support consideration, but not necessarily appropriate to the adjudication of insurance disputes. The Court indicated that the fact that both statutes cite the term "spouse" does not therefore mean that they carry the same contextualized and interpretive meaning. Justice E.M. Morgan found that the Arbitrator failed to articulate reasons why cases citing the *Family Law Act* should apply to the *Insurance Act*, aside from the similarity of the words used.

Ruling Implications

The *Insurance Act* provides automatic benefits to spouses, irrespective of need. Accordingly, it requires a context-specific approach of its own—*not* one borrowed from the family law context.

In the family law conceptualization of the term "spouse", dependency has a critical bearing on the determination of spousal support, as persons can "live together" while at the same time maintaining separate residences.

An analogously broad sociological foundation on which to consider the provision of benefits does not apply to the insurance law context, where people who "live together" can be considered spouses, but only in the ordinary sense of those words and for the requisite term.

While Justice Morgan left it open that there may be a reason to apply family law concepts to the adjudication of insurance disputes, in a manner more complex than coincidentally similar wording in legislation, she stated that the Arbitrator in making the determination did not provide a sufficient rationale for importing the holistic approach used in the family law context.

Insurers, adjusters, brokers, lawyers, vehicle owners and injured persons should be aware of this important decision and should bring it to the attention of arbitrators, courts and opposing parties who may seek to shift the burden of paying accident benefits onto another insurer when romantic partners living in conjugal relationships are not technically "spouses" for the purposes of the *Insurance Act*.

Relying on lifestyle, friends and social habits, careers and support of one for the other's career or education may be appropriate in the family law context but is not necessarily appropriate in the insurance context.

As societal norms continue to evolve, it will be interesting to see if the legislation in the *Insurance Act* catches up, or remains narrow.