

1996 CarswellOnt 1071
Ont. Insurance Comm.

Towsley v. Royal Insurance Co. of Canada

1996 CarswellOnt 1071, [1996] O.I.C.D. No. 25

**Donald Towsley and Linda Towsley, Applicants
v. Royal Insurance Company of Canada, Insurer**

Manji Arb.

Judgment: February 16, 1996
Docket: Doc. A-010196, A-010717

Subject: Insurance

Shermin Manji Arbitrator:

Decision

1

Issues:

2 On September 23, 1992, Steven Towsley died as a result of a motor cycle accident. His parents, Donald and Linda Towsley, applied for death benefits from Royal Insurance Company of Canada ("Royal"), payable under sections 11(1)(b) and 11(1)(c) of Ontario Regulation 672.¹ Royal denied benefits on the basis that neither Donald Towsley nor Linda Towsley was a "dependant" at the time of the accident.

3 The parties were unable to resolve their disputes through mediation and Donald and Linda Towsley applied for arbitration under the *Insurance Act*, R.S.O 1990, c.I.8, as amended.

4 The issue in this hearing is:

1. Are Donald and Linda Towsley entitled to death benefits of \$25,000 under section 11(1)(b) of the *Schedule* and \$10,000 each under section 11(1)(c) of the *Schedule*?

5 Donald and Linda Towsley also claim interest on any amounts owing, and their expenses incurred in the arbitration.

6 Royal claims an award in the amount of its assessment fee.

Result:

7

1. Donald and Linda Towsley are not entitled to death benefits under sections 11(1)(b) and 11(1)(c) of the *Schedule*.

2. Donald and Linda Towsley are entitled to their expenses incurred in the arbitration.

3. Royal is not entitled to an award.

Hearing:

8 The hearing was held in Hamilton, Ontario, on May 3 and 4, 1995, before me, Shemin Manji, arbitrator.

Present at the Hearing:

9

Applicants: Donald Towsley and Linda Towsley

10

Applicant's Representative: D. Robert Findlay

Barrister and Solicitor

11

Insurer's Representative: Nestor E. Kostyniuk

Barrister and Solicitor

Witnesses:

12

Mrs. Linda Towsley

Ms. Theresa Kindness

Mr. Sylvian Anderson

Mr. Donald Towsley

Mr. Scott Towsley

Ms. Karen Clay

Ms. Debra Young

Mr. Marco Disimoni

Ms. Rhonda Hemsall

13 The proceedings were recorded by Katy Weatherby of Court Reporting Enterprise Inc.

14 A list of exhibits and other documents on the record is attached as Schedule A. A list of authorities filed by the parties is attached as Schedule B.

Reasons for Decision:

A. Entitlement to death benefits

1. Issue:

15 Steven Towsley was 23 years old at the time of his death on September 23, 1992. His parents, Donald and Linda Towsley, applied for death benefits of \$25,000 under section 11(1)(b), and \$10,000, each, under section 11(1)(c) of the *Schedule*. These sections provide as follows:

112.-(1) If, as a result of an accident, an insured person dies within the benefit period set out in subsection (3), the insurer will pay with respect to the insured person, if Optional Benefit 1 has not been purchased,

.....

(b) \$25,000 to his or her dependants, if the deceased is survived by any dependant who was a dependant at the time of the accident and is not survived by a spouse who is entitled to a benefit under this section;

(c) \$10,000 to each of his or her surviving dependants who was a dependant at the time of the accident; ...

16 Royal denied Donald and Linda Towsley's claim on the basis that neither of them was a dependant of Steven Towsley at the time of the accident. "Dependant" is defined in section 3(2) of the *Schedule* as follows:

3.-(2) For the purposes of this Schedule, a person is a dependant of another person if the person is principally dependent for financial support on the other person or the other person's spouse.

17 In order to succeed, therefore, Donald and Linda Towsley must establish that at the time of the accident, they were "principally dependent for financial support" on Steven Towsley.

18 The word "dependant" in section 11 and the words "principally dependent for financial support" in section 3(2) of the *Schedule* have been considered in the arbitration decisions listed in Schedule B. Arbitrators have held as follows:

- the term "principally dependent for financial support" requires more than *some* financial dependence. It requires *principal* dependence. In order for an applicant to be found principally dependent for financial support on another person, the applicant must "chiefly" or "for the most part" derive his or her financial support from that person as opposed to other sources;²
- the dependence must be *financial*. Section 3(2) does not refer to other forms of dependence such as social dependence except to the extent that social factors pertain to financial dependence;³
- the term "financial support" in section 3(2) is broad enough to extend beyond money to include the concept of "money's worth" or the reasonable value of goods and services provided to the applicant;⁴
- section 3(2) requires an assessment of all of an applicant's circumstances to determine whether the applicant was in fact deriving his or her support from the other person. The actual circumstances must be looked at and not an imputed earning capacity;⁵
- section 11 requires an assessment of the applicant's circumstances in their entirety at the time of the accident. However, the applicant's position cannot be determined solely by a single snapshot of his or her circumstances at that date;⁶
- each case must be approached on its own facts but matters such as the amount and duration of the financial dependency, the financial or other means of the applicant, the ability of the applicant to be self-supporting are appropriate considerations for determining the question of financial dependency in the context of section 3(2);⁷ and
- an applicant can be "principally dependent for financial support" on public funds such as social assistance;⁸

19 I accept these interpretations of the word "dependant" in section 11 and the words "principally dependent for financial support" in section 3(2) of the *Schedule*.

2. Evidence and Findings

20 Donald Towsley is 51 years old and Linda Towsley is 48 years old. They have been married for 32 years and have three surviving children: Richard (age 31), Lori (age 29) and Scott (age 24) Steven was 23 years old when he died.

21 Steven Towsley and his girlfriend, Rhonda Hemsall, lived with his parents at the time of his death. Neither Donald nor Linda Towsley were working at the time of Steven's death.

22 Both Donald Towsley and Linda Towsley had worked full-time for Rygiel Home, a home for retarded children, in Hamilton. Linda Towsley was a member of the cleaning staff at the Home. It is not clear from the evidence when she started working there, but she stopped working after she injured her back at work, on August 18, 1981. As a result of this injury and other health problems, Linda Towsley has not worked since August 1981. Since then, she has been in receipt of a 25% permanent disability award from the Workers' Compensation Board ("the WCB"). In 1992, the monthly value of her award equalled \$287.94.⁹ Linda Towsley testified that at the time of Steven's death this was her only source of income.

23 Donald Towsley worked for Rygiel Home, first as a maintenance man and then as a maintenance supervisor, from 1975 to September 1989,¹⁰ when he was let go.¹¹ He moved to Florida with his wife and his youngest son, Scott, in November 1989 (Steven stayed behind and moved in with Rhonda Hemsall and her mother in their apartment). Donald Towsley has family in Florida, including his and Linda Towsley's two oldest children (Richard and Lori). In Florida, Donald and Linda Towsley bought a mobile home and Donald found employment. Donald and Linda Towsley lived in Florida until July 1990, when they sold their mobile home, and returned to Hamilton, because the climate in Florida was exacerbating Linda Towsley's health problems.

24 Donald Towsley testified that after he returned to Hamilton, he looked for work but was unsuccessful. There was not much around. He testified that he was also experiencing health problems. Donald Towsley has not worked since he returned from Florida.

25 When they returned to Hamilton, Donald and Linda Towsley stayed with Steven and Rhonda. At the time, Steven and Rhonda were living on their own in a one bedroom basement apartment on King Street West (they were no longer residing with Rhonda's mother). Steven and Rhonda paid the rent. Rhonda testified that, at some point, Donald and Linda Towsley moved upstairs, to another apartment and started paying their own rent. Steven and Rhonda stayed in the basement apartment until December 1990, when they moved to an apartment on Jerome Crescent, in Hamilton, which they shared with Rhonda's mother.¹²

26 Donald and Linda Towsley lived at King Street West until the end of June 1991, when Sylvian Anderson offered them a three bedroom detached house on Ray Street North for \$375 rent, plus utilities per month. Sylvian Anderson is a friend of Donald Towsley and the property manager for Fenestra Investments - a management company which oversees the rental of the house on Ray Street North.

27 Steven and Rhonda moved in with Donald and Linda Towsley sometime in 1991. Steven and Rhonda were living at Ray Street North at the time of Steven's death. The evidence about precisely when Steven and Rhonda moved into the house on Ray Street North and the reason for their move is somewhat conflicting. Donald Towsley testified that prior to accepting Sylvian Anderson's offer, he spoke to Steven about his (Donald's) financial inability to handle the house on his own. He testified that Steven said that when he (Donald Towsley) got the place, he (Steven) would move in with him and "help him with it". Donald Towsley testified that Steven and Rhonda moved in with him and Linda in August 1991.

28 Rhonda Hemsall testified that she and Steven moved to Ray Street North because they had been evicted from their apartment on Jerome Crescent and had nowhere else to go. They didn't have much money when they left Jerome Crescent. Rhonda indicated that the move to Ray Street North was of mutual benefit. In exchange for room and board, Steven agreed to "pitch in and pay to make it advantageous" for Donald and Linda Towsley. Rhonda testified that she and Steven moved to Ray Street North on October 1, 1991.

29 For the purposes of my decision, it does not matter whether Steven and Rhonda moved in with Donald and Linda in August or October. However, I accept Rhonda Hemsall's evidence that she and Steven moved to Ray Street North because they could not afford to live on their own and the move was financially beneficial for all four of them.

30 Steven Towsley had been employed with Rygiel Home prior to his parents' return to Hamilton. However he left this job in June 1990. He was unemployed and collecting unemployment insurance benefits during the time when his parents lived with him and Rhonda, at King Street West.¹³ Rhonda testified that Steven also received welfare for a while during this period.

31 After Steven and Rhonda moved to the apartment on Jerome Street, Steven obtained full-time employment, with the assistance of his brother Scott, at a Beaver Gas Bar (in January 1991). He worked as a gas station attendant and earned between \$180-\$200 per week. Steven worked at the Beaver Gas Bar until August 20, 1991, when he commenced employment as a service attendant with Discount Car & Truck Rentals.¹⁴ Steven made \$250 per week from August 20, 1991 to February 1, 1992, when his pay was increased to \$285.00 per week.¹⁵ The payroll records for Discount Car and Truck Rentals indicate that at the time of his death, Steven's net take home pay every two weeks was \$501.79 (approximately \$1,000 a month).¹⁶ The T-4s issued by Discount Car and Truck Rentals indicate that Steven's gross employment income from Discount Car and Truck Rentals in 1991 was \$4,783 and his gross employment income from Discount Car and Truck Rentals in 1992, \$11,415.03.¹⁷

32 Donald Towsley's evidence in regard to his income in 1990 was vague, inconsistent and confusing. At the hearing, he testified that after returning from Florida, he lived off some of the money left over from the sale of his mobile home in Florida. He testified that he sold the mobile home for between \$7,000 and \$8,000 Canadian. Donald testified that he also lived on unemployment insurance benefits. A computer printout from Revenue Canada, which contains information from Donald's income tax return for 1990, indicates that Donald received only \$182 in unemployment insurance benefits that year. It indicates that he received "other income" in the amount of \$22,847 and that his total income in 1990 was \$23,029.¹⁸ Further, records from the Municipality of Hamilton-Wentworth, Social Services Department, indicate that Donald may have also received social assistance payments (welfare) in 1990.¹⁹

33 At the hearing, Donald Towsley was unable to explain where the \$22,847 came from. He also could not say precisely when he applied for social assistance in 1990, only that it was when he and Linda were residing at the King Street West apartment because he had no money.

34 Donald Towsley's evidence about his 1991 income was also problematic. He testified that he received unemployment insurance benefits and a computer printout from Revenue Canada indicates that he received \$12,172 in unemployment insurance benefits that year. The computer printout indicates that he also received "RRSP Income" of \$2,138 that year.²⁰ In his examination-in-chief, at the hearing, Donald Towsley denied that he had any RRSPs at any time. On cross-examination, he stated that he had received this income from his pension plan through his former employer (Rygiel Home).

35 Donald Towsley also received social assistance in 1991. The records from the Regional Municipality of Hamilton-Wentworth, Department of Social Services, indicate that Donald Towsley applied for social assistance while living on Ray Street North, on August 22, 1991.²¹ These records indicate that he advised the Department of Social Services that he was separated from his wife and that he was not in receipt of any other income.²² At the hearing, Donald denied that he had misinformed the Department of Social Services. He testified that no information was elicited from him relating to his marital status. However, Donald signed a Statutory Declaration on August 23, 1991 in which he stated that all the statements contained in his Application for Assistance under the *General Welfare Assistance Act* (Form 1) of that date

were true and no information required to be given by him had been withheld or omitted. The Application for Assistance stated that he was separated.²³

36 Donald Towsley received a full shelter and basic needs allowance starting September 1991. However, because he was assessed as a single person, he received less social assistance than he would have received if he and Linda had been assessed as a family.²⁴ Donald Towsley received \$2,715 in social assistance in 1991. Thus, in 1991, Donald Towsley had an income of approximately \$17,000.

37 In 1992, Donald Towsley continued to receive a full shelter and basic needs allowance (social assistance payments). He received \$646.00 per month until July 1, 1992, when the amount of his monthly payment was increased to \$656.00.²⁵ Donald Towsley testified that he had no other source of income in 1992. Donald and Linda Towsley filed a joint income tax return in 1992. The computer printout from Revenue Canada, which contains the information from that return, indicates that their joint income in 1992 was \$11,267 (\$7,812 (social assistance payments) + \$3,455 (workers' compensation benefits)).²⁶

38 In determining the amount and duration of Donald and Linda's financial dependency, if any, and their ability to be self-supporting, I have considered their income and expenses from the date of their return to Hamilton from Florida up to the date of Steven's death. I have also considered Steven Towsley's income and expenses during this period. In my view, Steven's ability to financially support his parents, as well as the financial means of Donald and Linda and their ability to be self-supporting are appropriate considerations for determining financial dependency under section 3(2) of the *Schedule*.²⁷

39 I heard very little evidence on the issue of Donald and Linda's financial dependency before they moved to the house on Ray Street North, in July 1991. I heard evidence relating to Donald and Linda's income in 1990 and 1991 and I heard evidence that Steven and Rhonda paid rent and utilities during the time that Donald and Linda stayed with them in the basement apartment on King Street West (immediately following their return from Florida). However, no figures were provided indicating the amount of the rent or utilities paid. Further, I heard no other evidence about Donald and Linda's living expenses. I also heard no evidence of the extent of the financial contribution, if any, made by Steven to Donald and Linda for their expenses after they (Donald and Linda) moved to another unit in the same apartment building, and after Steven and Rhonda moved to Jerome Crescent.

40 Donald Towsley's income in 1990 and 1991 (before he moved to Ray Street North) was greater than Steven Towsley's. This and the fact that I heard very little evidence about Steven's financial contributions during this period indicates to me that Donald Towsley was self-supporting and not chiefly reliant on Steven's income. I find that Donald Towsley was not principally dependent on Steven Towsley before he and Linda moved to Ray Street North.

41 Linda Towsley's income in 1990 and 1991 indicates that she was not receiving enough income to be self-supporting (she was only receiving approximately \$270 per month from the WCB). However, I am not satisfied that before she and Donald moved to Ray Street North, Steven was her primary source of support. It appears more likely that Donald was her primary source of support. Aside from the fact that I heard very little about Steven's financial contributions, Steven's income during this period was less than Donald's. I find that Linda was not principally dependent on Steven Towsley before she and Donald moved to Ray Street North.

42 Most of the oral evidence that I heard focused on the financial assistance provided by Steven to Donald and Linda after he and Rhonda moved to the house on Ray Street North. As noted earlier, Donald testified that during this time he was on social assistance and received only \$626 to \$656 per month and Linda was only receiving approximately \$287.94 monthly from the WCB. Donald and Linda Towsley submit that Steven's financial assistance during this time was greater than the total of their income (\$914) and therefore they were each "principally dependent" on Steven during this period.

43 I accept that Steven financially assisted Donald and Linda Towsley in the months after he moved to the house on Ray Street North. It is clear from the evidence that he provided services to Donald and Linda Towsley which they would have otherwise had to pay for or do without. The house on Ray Street North was located on a large piece of land. With the assistance of his friends and his younger brother, Scott, Steven maintained the property: he cut the grass; he levelled the property using patio stones after Donald Towsley fell and broke his leg in August 1992; he installed patio lights; he put up a fence; he cleared the driveway and walkway to the house of snow in the winter; he painted the house (inside and out); he installed a ceiling fan in the living room; and he occasionally vacuumed. Scott Towsley testified that Steven spent between 10 and 15 hours a week working on the house. Steven also generally maintained Donald Towsley's car - a 1979 Pontiac (rotating tires, changing the oil, changing spark plugs etc.).

44 While I accept that Steven provided services to Donald and Linda Towsley which relieved them of expenses they would have otherwise incurred, I am not satisfied that the value to be attributed to these services is greater than the income that Donald received from social assistance. In any event, in my view, the value of these services was offset by the housekeeping and meal preparation services provided by Linda Towsley to Steven and Rhonda and the use that Steven made of Donald Towsley's car. Linda Towsley testified that she took care of the cooking and cleaning of the house on a daily basis. Both Donald and Scott Towsley testified that although the car was registered in Donald's name, Donald seldom drove the car. Steven used it more often.

45 I also accept that Steven supported Donald and Linda with money. Rhonda Hemsall, who appeared to have the most knowledge of Steven's finances during this period, testified that she and Steven gave Donald and Linda what they could. However, Rhonda was not able to give a specific figure. She could not say whether Steven paid more than 50% of the living expenses or that she and Steven even paid their share of the expenses. Rhonda testified that she and Steven did not enter into any formal or specific arrangement with Donald and Linda for payment of household expenses, including rent and utilities, when they moved in with them. She indicated that she and Steven pooled their incomes and took care of their own expenses first. Whatever was left over (and this would vary from paycheck to paycheck) would go to towards the household expenses. The money would go to pay whatever expense was outstanding at the time.

46 Linda Towsley also testified that there was no specific arrangement among Donald, Steven, Rhonda and her for the payment of household expenses. She testified that whenever something was due, whoever had the money paid. For example, when she received her monthly cheque from the WCB, it would be used to pay whatever expense was due at the time. It could be used to pay the rent or hydro or gas. Linda testified that, similarly, Donald's monthly social assistance cheque would be used to pay whatever expense was due at the time. Linda also testified that she and Donald used the income they received first, and asked Steven to cover anything that might be outstanding. Something was always outstanding.

47 Linda testified that Rhonda rarely contributed to household expenses but she and Donald regularly received contributions from Steven. Linda testified that she has suffered from a number of health problems for quite some time, including a heart problem. She must take three different kinds of heart pills for her heart problem. She testified that Steven generally paid for these pills, a bottle of which costs \$75. Linda also testified that Steven generally took her grocery shopping and paid for the groceries. He also gave her money for her personal hygiene items. He paid for the cable, because he liked watching television.

48 Donald's testimony regarding the payment of household expenses was different from that of Linda and Rhonda. Donald testified that Steven managed all the household expenses. He said Steven paid the rent to Sylvian Anderson. He also paid for utilities, food, other household expenses and Donald and Linda's clothing. Donald testified that every time he received his social assistance cheque, he would cash it and give the money to Steven. Steven would give him some money back for his own personal use (\$20.00-\$30.00). If Donald needed more money, he would ask Steven for it. Donald testified that Linda would only give the money she received from the WCB to Steven, if he was short.

49 Donald's testimony regarding the management of household expenses was not only inconsistent with Linda's and Rhonda's but also conflicted with Sylvian Anderson's testimony. Sylvian Anderson indicated in his testimony that he almost always collected the rent from Donald, whether or not Steven was home.

50 In the circumstances (given my earlier assessment of Donald's testimony), I prefer the testimony of Linda, Rhonda and Sylvian Anderson regarding the management of household expenses. However, whether or not Steven managed the household expenses, based on the evidence, I am unable to reasonably determine the amount of the monetary support that Donald and Linda received from Steven after he and Rhonda moved to Ray Street North. Linda, Donald and Rhonda's testimony about Steven's financial contributions to the family was general and vague. I did not receive sufficiently detailed evidence about the family's monthly expenses for utilities, food, basic household items, telephone, transportation, prescriptions, entertainment etc. to allow me to realistically evaluate their actual cost of living. Similarly, I am unable to reasonably determine to what extent these expenses were met by the social assistance payments received by Donald and the workers' compensation payment received by Linda, and how much Steven contributed.

51 The onus is on Donald and Linda Towsley to establish their financial dependency on Steven. Since I am unable, based on the evidence adduced at the hearing, to reasonably determine the amount of the financial support that they received from Steven after he and Rhonda moved to Ray Street North, I conclude that they have fallen short of establishing their financial dependency on Steven.

52 On the other hand, the evidence indicates that Steven's financial means were limited, that he had significant personal expenses and that it is unlikely that he paid more than 50% of Donald and Linda's living expenses. Rhonda testified that she and Steve had "a lot of bills to pay" Steven bought a motorcycle for \$3,000 after he and Rhonda moved to Ray Street. Steven's personal expenses likely included payments for the motorcycle, licence fees, automobile insurance and gas for the use of his father's car and his motorcycle. Steven drank quite a bit in the year prior to the accident. Steven's best friend and co-worker, Marco Disimoni, testified that Steven was spending between \$80 to \$90 a month on alcohol towards the end. Rhonda testified that Steven travelled to Florida in July/August 1992 and spent \$1,000.

53 In these circumstances, while I accept that Steven assisted Donald and Linda Towsley with money as well as services after he and Rhonda moved to Ray Street North, I am unable to conclude that the financial contribution made by Steven (both monetary and in kind) to them was greater than what Donald received from social assistance.

54 In conclusion, I am not satisfied that either Donald or Linda "chiefly" or "for the most part" derived their financial support from Steven at any time after they moved to Hamilton from Florida and before Steven's death. I find, therefore, that neither Donald Towsley or Linda Towsley were principally dependent on Steven Towsley at the time of his death.

B. Royal's claim for an award to be paid by Donald Towsley

55 Royal seeks an award against Donald Towsley, under section 282(11.2) of the *Act* Section 282(11.2) provides as follows:

If an insured person commences an arbitration that, in the opinion of the arbitrator, is frivolous, vexatious or an abuse of process, the arbitrator may award an amount to be paid by the insured person to the insurer that does not exceed the amount assessed against the insurer in respect of the arbitration under section 14.

56 The amount that was assessed against Royal in respect of this arbitration was \$2,000.00, under section 14 of the *Act* and Ontario Regulation 220/91.

57 Royal submits that it is entitled to the award because of Donald Towsley's failure to comply with certain production undertakings given at the pre-hearing discussion in this case held on December 22, 1994. Donald failed to produce his and Linda's bank records and his tax returns from 1989 to 1993. Royal submits that it is also entitled to the award because of Donald Towsley's lack of credibility and because his application for arbitration is without merit.

58 I understand Royal's concerns regarding Mr. Towsley's failure to produce relevant documents. However, I am not satisfied that his failure to produce these records prejudiced Royal in this hearing. The hearing of this arbitration was not delayed by the lack of production. In my view, Donald Towsley's failure to produce these records harmed his own case. Donald Towsley fell short of proving his case because he failed to provide reliable and credible documentation to support it.

59 Donald Towsley's evidence was vague, confusing and contradictory. It certainly caused me to question the merits of his claim. I conclude he was not totally candid about his income and assets. However, I am not convinced, based on all the evidence, that his application for arbitration was frivolous, vexatious or an abuse of process. For these reasons I do not find it appropriate to exercise my discretion to make the award requested by Royal under section 282(11.2) of the *Act*.

C. Expenses of the arbitration

60 Donald and Linda Towsley seek an award of the expenses they have incurred in this arbitration. Section 282(11) of the *Act* confers a discretion on me to award an applicant his or her expenses. The prescribed expenses and amounts are set out in Ontario Regulation 664, R.R.O. 1990.

61 Arbitrators have consistently granted expenses unless the claim was manifestly frivolous or vexatious, or the applicant's conduct unduly prolonged the proceedings. In this case, I am not convinced, based on all the evidence, that Donald and Linda's applications for arbitration were frivolous or vexatious or that either Donald or Linda unduly prolonged the proceedings. I conclude that I should exercise my discretion to award Donald and Linda their expenses. If the parties are unable to agree on the amount of the expenses, either party may apply for an assessment.

Order:

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1. Donald and Linda Towsley are not entitled to death benefits under sections 11(1)(b) and 11(1)(c) of the *Schedule*.
2. Royal shall pay Donald and Linda Towsley their expenses incurred in the arbitration.
3. Royal is not entitled to an award in the amount of its assessment fee.

Appendix A — The Record

Exhibits:

Exhibit 1 Letter dated July 28, 1994 from the Workers' Compensation Board

Exhibit 2 List of payments made by the Regional Municipality of Hamilton-Wentworth, Department of Social Services

Exhibit 3 Regional Municipality of Hamilton-Wentworth, Department of Social Services file pertaining to Donald and Linda Towsley

Intake Form dated August 22, 1991

Application for Assistance under the *General Welfare Assistance Act* (Form 1) of Donald Towsley dated August 23, 1991

Client Profile & Statement of Income and Eligibility of Donald Towsley - August 1991

Application for Assistance under the *General Welfare Assistance Act* (Form 1) of Donald and Linda Towsley dated January 13, 1993

Client Profile & Statement of Income and Eligibility of Donald and Linda Towsley - January 1993

Exhibit 4 Computer Printouts from Revenue Canada containing information from the 1989, 1990, 1991 and 1992 income tax returns for Donald Towsley

Exhibit 5 Receipt dated August 2, 1991 from Northgate Cable T.V. Limited

Receipt from Hamilton Hydro-Electric System - Invoice date October 20, 1992

Invoice from Union Gas from December 2, 1992 to January 2, 1993

Past Due Notice from Hamilton Hydro-Electric System (undated)

Exhibit 6 Personnel file of Steven Towsley from Discount Car & Truck Rentals

Exhibit 7 T4-1991 and T4-1992 of Steven Towsley from Discount Car & Rentals

Portion of Payroll record of Discount Car & Rentals pertaining to Steven Towsley

Exhibit 8 Letter dated October 21, 1992 from Royal Insurance to Ms. Rhonda Hemsall

Exhibit 9 Statement given to Royal by Ms. Rhonda Hemsall on October 1, 1992

Other documents before the Arbitrator, but not marked as exhibits:

Amended Report of Mediator dated July 27, 1994 (re: Donald Towsley)

Amended Report of Mediator dated July 27, 1994 (re: Linda Towsley)

Application for Appointment of Arbitrator dated July 5, 1994

Response by Insurer dated October 25, 1994

Pre-hearing letter dated December 30, 1994 (pre-hearing held December 22, 1994) by Arbitrator Nancy Makepeace

Appendix B — Authorities submitted by the parties:

1. *Bruce and Eleanor McDonald and State Farm Insurance Companies*, March 11, 1993, OIC File No. A-001347
2. *Adolf Crnkovic and Maria Crnkovic, parents of the late Dubravka (Debbie) Crnkovic and Simcoe & Erie General Insurance Company*, April 8, 1993, OIC File No. A-002228
3. *Maninder Singh and State Farm Mutual Automobile Company; Maninder Singh and Pilot Insurance Company*, June 4, 1993, OIC File No. A-001525
4. *Daniel Cattryse and The Westminster Mutual Fire Insurance Company; Daniel Cattryse and Anglo Canada General Insurance Company*, June 21, 1993, OIC File No. A-001618
5. *Peter Najem and Axa Insurance Company; Peter Najem and Economical Mutual Insurance Company*, July 27, 1993, OIC File No. A-003115
6. *Brenda M. Lautaoja and General Accident Indemnity Company*, May 10, 1994, OIC File No. A-007087

7. *Dani Tripone and Guardian Insurance Company of Canada and Liberty Mutual Fire Insurance Company*, May 16, 1994, OIC File No. A-004757
8. *Fathia Ahmed and Allstate Insurance Company of Canada*, May 18, 1994, OIC File No. A-003995
9. *Dianne Raffoul and State Farm Mutual Automobile Insurance Company*, September 21, 1994, OIC File No. A-004476
10. *Robert Oshana and Progressive Casualty Insurance Company and State Farm Mutual Automobile Insurance Company*, November 17, 1994, OIC File No. A-002167
11. *M.J.T. and Simcoe & Erie General Insurance Company and Pilot Insurance Company*, December 16, 1994, OIC File Nos. A-007417 and A-007645
12. *John R. Palmer and Pilot Insurance Company*, January 13, 1995, OIC File No A-009068
13. *Miller v. Safeco Insurance Co. of America* (1984), 48 O.R (2d) 451

Footnotes

- 1 Prior to January 1, 1994, Ontario Regulation 672 was called the *No-Fault Benefits Schedule*. After that date it became the *Statutory Accident Benefits Schedule — Accidents Before January 1, 1994*. In this decision, the term "Schedule" will be used to refer to Regulation 672.
- 2 *Bruce and Eleanor McDonald and State Farm Insurance Companies*, March 11, 1993, OIC File No. A-001347, *Adolf Crnkovic and Maria Crnkovic, parents of the late Dubravka (Debbie) Crnkovic and Simcoe & Erie General Insurance Company*, April 8, 1993, OIC File No. A-002228; *Maninder Singh and State Farm Mutual Automobile Company; Maninder Singh and Pilot Insurance Company*, June 4, 1993, OIC File No. A-001525; *Daniel Cattrysse and The Westminster Mutual Fire Insurance Company; Daniel Cattrysse and Anglo Canada General Insurance Company*, June 21, 1993, OIC File No. A-001618; *Brenda M. Lautaoja and General Accident Indemnity Company*, May 10, 1994, OIC File No A-007087; *Dani Tripone and Guardian Insurance Company of Canada and Liberty Mutual Fire Insurance Company*, May 16, 1994, OIC File No. A-004757; *Dianne Raffoul and State Farm Mutual Automobile Insurance Company*, September 21, 1994, OIC File No. A-004476 and *Robert Oshana and Progressive Casualty Insurance Company and State Farm Mutual Automobile Insurance Company*, November 17, 1994, OIC File No. A-002167. This interpretation was approved recently by Mr. Justice D.S. Ferguson in *Catherwood v. Young et al*, (unreported decision) November 20, 1995, Ontario Court of Justice (General Division), File No. 2265/91, at page 29
- 3 *Maninder Singh and State Farm Mutual Automobile Company; Maninder Singh and Pilot Insurance Company*, and *John R. Palmer and Pilot Insurance Company*, January 13, 1995, OIC File No. A-009068. This interpretation was also approved recently by Mr. Justice D.S. Ferguson in *Catherwood v. Young et al* (supra fn.2, at page 29)
- 4 *Peter Najem and Axa Insurance Company; Peter Najem and Economical Mutual Insurance Company*, July 27, 1993, OIC File No. A-003115. See also the recent decision of Senior Arbitrator Frederika Rotter in *Teresa Majda and Simcoe & Erie General Insurance Company and Farmers' Mutual Fire Insurance Company (Lindsay)*, November 21, 1995, OIC File Nos. A-010481 and A-010154. The reasoning in *Najem* that "financial support" can include the concept of "money's worth" was accepted recently by Mr. Justice Ferguson in *Catherwood v. Young et al*. (supra fn. 2 at page 32)
- 5 *Dianne Raffoul and State Farm Mutual Automobile Insurance Company*
- 6 *Dianne Raffoul and State Farm Mutual Automobile Insurance Company and John R. Palmer and Pilot Insurance Company*, January 13, 1995, OIC File No. A-009068
- 7 *Peter Najem and Axa Insurance Company; Peter Najem and Economical Mutual Insurance Company*

- 8 *John R. Palmer and Pilot Insurance Company*, January 13, 1995, OIC File No. A-009068
- 9 Exhibit 1
- 10 Exhibit 3
- 11 Testimony of Linda and Scott Towsley
- 12 Exhibit 9
- 13 Exhibit 9 and testimony of Rhonda Hempsall
- 14 Testimony of Scott Towsley
- 15 Exhibit 6
- 16 Exhibit 7
- 17 Ibid
- 18 Exhibit 4
- 19 Exhibit 3 - Intake Form August 1991, Client Profile August 1991 and Client Profile January 1993
- 20 Exhibit 4
- 21 Exhibit 2 and 3
- 22 Exhibit 3
- 23 Ibid.
- 24 Testimony of Theresa Kindness
- 25 Exhibit 2
- 26 Exhibit 4
- 27 Exhibit 4