

**IN THE MATTER OF THE *INSURANCE ACT*,  
R.S.O. 1990 c. I. 8, Section 268 AND REGULATION 283/95**

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

**AND IN THE MATTER OF AN ARBITRATION**

B E T W E E N :

INTACT INSURANCE

Applicant

- and -

JEVCO INSURANCE COMPANY

Respondent

**DECISION**

**COUNSEL**

Douglas A. Wallace  
Counsel for the Applicant, Intact Insurance

Joseph Griffiths  
Counsel for the Respondent, Jevco Insurance Company

**ISSUE**

This Arbitration, pursuant to Ontario Regulation 283/95 and the Arbitration Act, 1991, seeks a determination of which insurer is responsible to pay statutory accident benefits to Susan Bechard, arising out of injuries she sustained in a motor vehicle accident on August 4, 2008. At the time, the claimant, Susan Bechard, was a passenger on a motorcycle owned and operated by Giorgio Gardina. The motorcycle was insured by Jevco Insurance Company (hereinafter referred to as "Jevco"). At the time of the motor vehicle accident, the claimant Susan Bechard also owned an automobile that was insured with Intact Insurance (hereinafter referred to as "Intact").

The issue for determination is whether or not Susan Bechard and Giorgio Gardina were "spouses" of one another at the time of the accident.

If they were "spouses" of one another, Jevco is liable to pay statutory accident benefits pursuant to Section 268(5.2) of the Insurance Act, R.S.O. 1990, c.I.8. If they were not, Intact is liable to pay benefits pursuant to Section 268(2)(1.i).

**PROCEEDINGS**

This Arbitration proceeded on the basis of oral evidence heard in Chatham, Ontario, on May 20, 2011, Examination Under Oath evidence taken in Chatham, Ontario, on July 20, 2010, a joint document brief and written submissions. The parties have agreed to resolve the procedural and evidentiary problems created by Ms. Bechard's sudden and unexpected departure from the Arbitration on May 20, 2011, by tendering her Examination Under Oath transcript, dated July 20, 2010, as evidence.

## LAW

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

The relevant portions of Section 268 of the Insurance Act are set out as follows:

(2) The following rules apply for determining who is liable to pay statutory accident benefits:

1. In respect of an occupant of an automobile,

i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,

ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,

iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

(5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant, as defined in the Statutory Accident Benefits Schedule, of a named insured, the person shall claim statutory accident benefits against the insurer under that policy.

(5.2) If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, at the time of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant. [emphasis added]

**Reference:** *Ontario Insurance Act*, R.S.O. 1990, R.S.O. c.1.8, S.268.

In the present case, Susan Bechard had accident benefits coverage available to her from Intact as she was a named insured under the policy issued by Intact with respect to the automobile that she owned. However, if found to be a “spouse” of Giorgio Gardina, she would also have accident benefits coverage available to her through Giorgio Gardina’s policy with Jevco. Section 268(5.2) would be determinative of which of the two policies would stand in priority. The policy of the vehicle in which she was an occupant (the vehicle insured by Jevco) would stand in priority.

“Spouse” means either of two persons who:

(a) are married to each other;

(b) have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under this *Act*; or

(c) have lived together in a conjugal relationship outside marriage;

- (i) continuously for a period of not less than three years; or
- (ii) in a relationship of some permanence, if they are the natural or adoptive parents of a child.

**Reference:** *Ontario Insurance Act*, R.S.O. 1990, R.S.O. c.I.8, S.224(1).

It is clear from this definition that the ultimate finding of priority in this priority dispute will be dependent on my finding as to whether or not Ms. Bechard and Mr. Gardina “lived together” in a conjugal relationship outside of marriage, continuously for a period of not less than three years.

It is common ground that Ms. Bechard and Mr. Gardina had lived together continuously for a period of approximately 8 or 9 years at the time of the accident and continued to the date of the motor vehicle accident. The substantive issue involves assessing the nature of that relationship and determining whether or not they “lived together in a conjugal relationship outside marriage.” This is ultimately a question of fact.

Jurisprudence has evolved identifying the criteria to be considered when determining whether or not a “spousal” or “conjugal” relationship existed in a particular case.

In *M. v. H.*, [1999] 2 S.C.R. 3 at paragraph 59, the Supreme Court of Canada held that the leading authority on the “generally accepted characteristics of a conjugal relationship” is *Molodowich v. Penttinen* (1980), 17 RFL (2d) 376 (Ont. Dist. Ct.). In *Molodowich*, Kurisko J. enumerated the following questions:

**(1) SHELTER:**

- (a) Did the parties live under the same roof?
- (b) What were the sleeping arrangements?
- (c) Did anyone else occupy or share the available accommodation?

**(2) SEXUAL AND PERSONAL BEHAVIOUR:**

- (a) Did the parties have sexual relations? If not, why not?
- (b) Did they maintain an attitude of fidelity to each other?
- (c) What were their feelings toward each other?
- (d) Did they communicate on a personal level?
- (e) Did they eat their meals together?
- (f) What, if anything, did they do to assist each other with problems or during illness?
- (g) Did they buy gifts for each other on special occasions?

**(3) SERVICES:**

What was the conduct and habit of the parties in relation to:

- (a) Preparation of meals;
- (b) Washing and mending clothes;
- (c) Shopping;
- (d) Household maintenance;
- (e) Any other domestic services?

**(4) SOCIAL:**

- (a) Did they participate together or separately in neighbourhood and community

activities?

(b) What was the relationship and conduct of each of them towards members of their respective families and how did such families behave towards the parties?

**(5) SOCIETAL:**

What was the attitude and conduct of the community towards each of them and as a couple?

**(6) SUPPORT (ECONOMIC):**

(a) What were the financial arrangements between the parties regarding the provision of or contribution towards the necessities of life (food, clothing, shelter, recreation, etc.)?

(b) What were the arrangements concerning the acquisition and ownership of property?

(c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship?

**(7) CHILDREN:**

What was the attitude and conduct of the parties concerning children?

Arbitrator Guy Jones in Wawanesa Mutual Insurance Company v. Kingsway General Insurance Company (April 2005), identified the criteria to be considered as including the following:

- (a) duration of relationship;
- (b) existence of children;
- (c) stability of the relationship;
- (d) interdependence of the parties;
- (e) cohabitation;
- (f) conjugal relationship;
- (g) personal relations;
- (h) responsibility for household services;
- (i) interaction in a family and social context;
- (j) financial arrangements and support;
- (k) responsibility towards children;
- (l) temporary interruptions in physical living arrangements;
- (m) the expectation of the parties; and
- (n) the intention of the parties.

Arbitrator Guy Jones found in the aforesaid decision that not all of the components had to exist in order for there to be a spousal relationship and some individual components may be more important than others. Each case must be determined on its own facts. I agree with this proposition and the criteria established in the two aforesaid decisions.

### **ANALYSIS AND FINDINGS**

As a backdrop to my analysis, it must be kept in mind that the evidence under oath of both Susan Bechard and Giorgio Gardina was that they did not consider themselves married, nor common-law spouses of one another. I conclude that there is no single, static model of a conjugal relationship. Rather, there are a cluster of factors which reflect the diversity of conjugal and marriage relationships that exist in modern Canadian society. Each case must be examined in

light of its own unique, objective facts. I conclude from the Supreme Court of Canada comments in Molodowich (supra) that the seven factors are meant to provide the court with a flexible, yet objective tool for examining the nature of relationships on a case by case basis. The emphasis should not be on the party's subjective intention as provided in their viva voce evidence, but upon the objective facts that are indicia of both a conjugal/spousal relationship and the party's objective intentions.

### **Duration of the Relationship / Shelter**

In 1990, Ms. Bechard had a young son, Adam, from a prior marriage to Terry Kucera. Adam is now 21 years of age. Ms. Bechard and Mr. Kucera were divorced when Adam was very young. Mr. Kucera did not provide any financial support (Bechard EUO transcript, page 33, questions 295-296).

In the mid-1990s Ms. Bechard worked for a company delivering auto parts. Mr. Gardina owned an auto repair shop known as Triple G Auto. Approximately 15 years ago, they met and started dating a short time thereafter.

After dating for a few years, Ms. Bechard and Mr. Gardina started living together. Ms. Bechard and her son moved into Mr. Gardina's house at 9449 Longwoods Road in Chatham. They have continued to live together ever since and intend to continue to do so for the foreseeable future. They have no plans to live separately. They have never talked about ending the relationship (Bechard EUO transcript, page 26, question 230).

Their relationship has therefore been ongoing for 15 years, 11 of which they have lived together. By any standard, this is a longstanding relationship. This is one indicia supportive of a finding that a conjugal relationship existed.

### **Social and Societal**

In the period prior to the accident, Ms. Bechard and Mr. Gardina hosted get-togethers. They enjoyed camping, canoeing and attending parties together. They hosted an annual Christmas party. They also attended funerals and weddings together.

Mr. Gardina owned a Suzuki motorcycle and a Yamaha scooter. Ms. Bechard also had her motorcycle license and drove Mr. Gardina's scooter. They would go motorcycling together; sometimes just the two of them and sometimes in groups. They participated in the annual Friday the 13th motorcycle ride to Port Dover with friends.

At the time of the accident, Mr. Gardina was driving and Ms. Bechard was a passenger on his Suzuki motorcycle. That day, they had gone together on a 6 or 7 hour ride with friends.

They went on trips together, sometimes to Mr. Gardina's cottage. They also flew to Las Vegas on a trip.

Ms. Bechard was friends with Mr. Gardina's family and they viewed her as a friend (Bechard EUO transcript, page 39, questions 346-348). She was also friends with Mr. Gardina's friends (Bechard EUO transcript, page 40, question 354).

The manner in which a person represents another to others is some evidence of a conjugal relationship. In this regard, Ms. Bechard described Mr. Gardina as her husband, common-law partner and spouse to several people and that representation appears in writing. These are referenced in the Joint Document Brief (Exhibit 1) as follows:

Tab 9 – Report of Dr. Merino dated July 6, 2010

“She stated that her spouse, George, brings work home for her as she prefers to work there. If going in to do some work, her husband will drive her.”

“On August 4, 2008, she was riding on the back of a Suzuki touring motorcycle driven by her husband.”

“She stated that she lost consciousness and her husband was calling her trying to find her.”

“Currently, Ms. Bechard has been in a common-law relationship for the past 15 years. Her spouse is 43 years of age.”

“Her spouse is a mechanic who owns his own shop.”

Ms. Bechard resides in a house that they own in Chatham with her husband and also her son when he is home from school.”

“She described her relationship with her husband to be ‘good’ and ‘supportive’.”

“She informed that her son has continued to assist her spouse with the outdoor maintenance tasks.”

“...she recalls being on the motorcycle with her husband.”

“Ms. Bechard expressed that she remains emotionally connected to those who are close to her although she described at times feeling angry with her spouse when she should not be.”

“Socially, prior to the accident, Ms. Bechard reported that she and her spouse would host ‘get togethers’, they enjoyed camping, canoeing, attending parties and hosting an annual Christmas party. They would also participate in the annual Friday the 13th motorcycle ride to Port Dover.”

Tab 4 - Statement of Susan Bechard dated October 14, 2008

“George Gardina is my common-law. We have been common-law about 10 years”.

Tab 8 – Report of Joan Brisley, R.N. dated April 7, 2010

“Susan is a 41-year old female who currently lives with her common-law partner, George (past 15 years.)”

“She has known her current common-law partner for approximately 15 years and reports that the relationship is good.”

Ontario Application for Automobile Insurance dated May 26, 2006 Marital or Same Sex Partner Status – “CLM” [common-law married]

At the arbitration hearing and in her Examination under Oath, Ms. Bechard attempted to disavow the relationship as being common-law, despite the aforesaid references. She denied that she referred to Mr. Gardina as her husband or spouse and that they simply must have assumed that to be the case because they were living together. I do not accept this explanation. I find as a fact

that she probably did tell the various medical assessors that she was the spouse or common-law partner of Mr. Gardina.

For his part, Mr. Gardina represented his relationship with Ms. Bechard to others as follows in the records contained within the Joint Document Brief:

Tab 6 – Automobile Notice of Loss “Passenger C.L. wife – Susan Bechard”

Tab 10 - Application for Accident Benefits (OCF-1) Marital Status box checked as “common-law”

Tab 11 – Report of Ms. Kreiger, OT, dated October 7, 2008 “The client’s common-in-law wife was present.”

“Marital Status: Common-in-law”

“Mr. Georgio is a 42-year old Common-in-law male”

Tab 12 – Report of Ms. Krieger, OT, dated November 20, 2008  
“The client reported receiving assistance from his girlfriend”

Tab 13 – Report of Ms. Krieger, OT, dated March 27, 2008

“Mr. Gardina’s common-in-law wife was present in the home at the time of the assessment”

Tab 14 – Report of Dr. Winger dated August 10, 2009 ““has lived with his girlfriend for 14 years.”

Tab 15 – Report of Dr. Ramiochan dated August 15, 2009 “The claimant reports that he currently lives with his girlfriend.”

Tab 16 – Report of Dr. Kanalec dated September 3, 2009 “He lives.. .with his girlfriend.”

Tab 17 – Report of Dr. Ilacqua dated September 11, 2009:

“Mr. Gardina is single, but is living in a common-law relationship. He has no children of his own, but his girlfriend has a son who is presently attending university. He presently resides in a house with his girlfriend.”

In contrast to the documentary evidence, during the arbitration hearing Mr. Gardina described his relationship with Ms. Bechard as no more than “friends, roommates”. Under cross-examination, he eventually agreed that he referred to Ms. Bechard as his girlfriend (Gardina Arb transcript, page 28). He denied that his relationship with Ms. Bechard was exclusive, however, and claimed to have “a lot of girlfriends.”

When presented with references in several written reports that described the relationship as “common-law”, Mr. Gardina described it as “fraudulent.” In his view, another written record that simply indicated that “he resides with his girlfriend and stepson” was also “fraudulent.” (Gardina Arb transcript, pages 29 & 30).

Some light was shed on Mr. Gardina’s intentions during the following exchange (Gardina Arb transcript, pages 34, 35 & 49):

Q. Let's talk about that for a moment then. You're saying that because of the cohabitation agreement that she – you can't be in a common-law relationship? Is that your understanding?

A. Correct.

Q. Okay. Let's look...

A. As far I know that's the law.

Q. And the purpose of the agreement was so that you wouldn't be considered legally married so you wouldn't have to divide assets in the event that your relationship broke down, correct?

A. Legally married, cohabitating, anything.

A. No relationship.

Q. What was your intention in asking the lawyer to draft up the cohabitation agreement?

A. I just wanted to make sure that I was legally separate. I'm legally single, not common-law. There no tying bonds. There's nothing. To protect my own assets and everything else.

It was readily apparent that Mr. Gardina did not want to acknowledge the relationship as being a "common-law relationship". I am satisfied that this was simply based on his fear that any such acknowledgement might affect him financially. From the outset, he did not want his relationship with Ms. Bechard to affect him financially. It was probably for that reason that he entered into the cohabitation agreement at the outset of the relationship. Mr. Gardina came across in his evidence as a simple, hard working individual who wanted to protect the assets that he had accumulated over his working life.

### **Services & Economic Relationship**

The evidence with respect to shared services and the economic relationship is somewhat less controversial. Prior to the accident, Ms. Bechard and Mr. Gardina shared the household tasks. She was primarily responsible for the cleaning, cooking, laundry and grocery shopping. He performed the majority of the outside tasks such as grass cutting and snow shovelling. This is consistent with how many married couples divide housework.

They did not eat meals together. She would eat around 5:30 p.m. and he would usually eat around 8 p.m. or whenever he got home from work. She had a routine schedule and there was no regularity to his.

Prior to the accident, Ms. Bechard worked full-time as a service advisor for Honda House. She earned \$12.50 per hour. She used the money she earned to buy household items such as groceries, clothing, toiletries and the internet. She also contributed approximately \$450 per month to Mr. Gardina to pay for the mortgage and other bills. In my view, this is merely typical of spouses sharing expenses when both work for remuneration outside of the home.

Ms. Bechard owned a 2001 Honda Civic. Mr. Gardina performed oil changes and regular maintenance for it.

Ms. Bechard listed Mr. Gardina as a driver on her Application for Automobile Insurance (Exhibit 1, Tab 2).

As evidenced by Ms. Bechard's Autoplus Gold Report (Exhibit C), Mr. Gardina was listed on several of Ms. Bechard's automobile policies:

Economical – April 1996 – April 2010;  
 Intact – May 2006 to May 2009 (both are named insureds);  
 Pilot – July 2003 to July 2006;  
 Intact – July 2005 to July 2006.

As evidenced by Mr. Gardina's Autoplus Gold Report (Exhibit D), Ms. Bechard was listed on two of Mr. Gardina's automobile policies:

Economical – April 1996 to April 2010;  
 Intact – May 2006 to May 2009 (both are named insureds).

I am of the view that this merely establishes the fact that from time to time, each had access to the other's motor vehicle.

Mr. Bechard believed that he had access to medical coverage under Ms. Bechard's policy with Assure (Exhibit 1, Tabs 5 & 10). It can reasonably be inferred from this that he believed he was listed as a "spouse" on her policy.

According to their oral testimony, they had separate bank accounts. No documentary evidence was presented to corroborate this.

Prior to living together and at Mr. Gardina's request, they signed a Cohabitation Agreement. The purpose of the agreement is stated on page 3, paragraph 3 (Exhibit 1, Tab 1). The fact that Mr. Gardina wanted to protect his assets does not change the nature of their relationship. Many common-law spouses have co-habitation agreements. Many married couples have prenuptial agreements. The overall nature of the relationship is still governed by the various indicia set out in the case law aforesaid.

### **Sexual & Personal Behaviour**

At the Arbitration hearing, Ms. Bechard initially refused to acknowledge any sexual relationship with Mr. Gardina. She finally conceded "Yes, so we've had a couple of booty calls" (Bechard Arb transcript, page 14).

In contrast, during her Examination Under Oath in July 2010, Ms. Bechard acknowledged that since she started dating Mr. Gardina, she was continuously in an intimate relationship with him up to that date (Bechard EUO transcript, pages 5 to 8, questions 49 to 69).

The existence of this ongoing intimate relationship is confirmed in the documentary evidence. For example, Dr. Marino's report dated July 6, 2010 (Exhibit 1, Tab 9, page 8) states:

"She reported a decreased libido since the accident, and while she remains physically intimate with her husband, she informed that there are days where she has no interest, therefore intimacy does not occur as often."

This is also consistent with Dr. Svec's report dated December 8, 2008 (Exhibit 1, Tab 7, page 5) wherein he stated:

“Ms. Bechard reported that the symptoms... that she has been experiencing since the accident have had a negative impact upon her relationship with her partner. She feels that her personality has changed, they argue more frequently, and that they are less intimate. She reports that he is very understanding but that her present circumstances have made things more difficult for both of them.”

Ms. Bechard maintained an attitude of fidelity toward Mr. Gardina and has never dated or had sex with anyone else during their relationship (Bechard EUO transcript, pages 26-37, question 329; Bechard Arb transcript pages 18 & 19).

Ms. Bechard estimated that she and Mr. Gardina started sleeping in separate bedrooms about a year or two before the accident. (Bechard EUO transcript, page 18, question 166). She testified that they “drifted apart.” This evidence is, however, inconsistent with the documentary evidence. For example, according to Dr. Marino, “she described her relationship with her husband to be ‘good’ and ‘supportive’.” She further told him that she was “emotionally connected” to her spouse and remained intimate with him. In July 2010, she also agreed that their relationship was “good” and that “we get along well” (EUO transcript, pages 18 & 19, questions 167-172). All of this evidence casts doubt on her story that they drifted apart to an extent that one would conclude that a previous conjugal relationship had come to an end.

Mr. Gardina’s evidence with respect to his intimate relationship with Ms. Bechard was simply not credible. Contrary to Ms. Bechard’s evidence, he testified that it ended “many, many years” before the accident. He denied having any sexual relations with her in the 3 years prior to the accident.

When it was put to him that Ms. Bechard acknowledged the ongoing sexual relationship his response was to disparage her. He stated: “I have a feeling that she -- she’s under a lot of medications. She’s so crazy right now. ... She’s taking a lot of drugs” (Gardina, Arb transcript, pages 25 & 26).

I find as a fact that although they may have slept in separate bedrooms, Ms. Bechard and Mr. Gardina continued to have occasional sexual relations up to the date of the subject motor vehicle accident. The frequency of their sexual relations may have been vastly reduced from the frequency that existed when they were sleeping in the same bed, but did continue to some extent. In my view, this is yet another indicia of a conjugal relationship.

### **Children**

Ms. Bechard and Mr. Gardina have no children together. Ms. Bechard described Mr. Gardina’s relationship with her son, Adam, as friends.

### **APPLYING PRESENT FACTS TO CONJUGAL RELATIONSHIP CRITERIA**

I find on the balance of probabilities, that the evidence when taken as a whole demonstrates that Susan Bechard and Giorgio Gardina “lived together in a conjugal relationship outside of marriage” and were therefore “spouses” at the time of the accident for the purposes of this priority dispute. I realize that their viva voce evidence was clearly that they were not “common-law spouses”, but the evidence is overwhelming that the various objective indicia suggest otherwise. I have considered the impact of the co-habitation agreement executed by them. I have considered that he believed her only to be his girl friend and that he had a lot of girl friends. I have considered that she paid rent and that they were financially independent. I have considered that their sex life may have been meagre at the time of the accident. I have considered that he may have dated others. However, I find that the objective indicia of a “conjugal relationship” far exceeds the indicia that

they were not involved in such a relationship. Their relationship was long-standing, having lasted eight or nine years. They had ongoing sexual relations. They went out together socially on a regular basis. They motorcycled together. They travelled together. They hosted social get-togethers. They enjoyed camping and canoeing together. They shared housekeeping duties. They had no intention of living separately as of the date of the accident. There is overwhelming evidence that they represented their relationship as being conjugal to others. This is found in the contents of medical reports authored by various doctors who had assessed Susan Bechard and Giorgio Gardina in the aftermath of this motor vehicle accident. They represented themselves as being in a conjugal relationship in statements initially provided to the insurance adjusters and in various insurance forms. They had not lived separate and apart. Overall, the indicia of a “conjugal relationship” far outweighs the indicia that it was not a “conjugal relationship”. On the basis of the objective indicia, a third party would view them as “a couple” and their relationship would be best characterized as a less than perfect conjugal relationship, as opposed to being simple “roommates”.

The facts of the case before me are strikingly similar to those in MacMillan-Dekker v. Dekker [2000] O.J. No.2957 (S.C.J.). This was an appeal from a finding by a trial judge that a common-law relationship did not exist and therefore no spousal supports were payable. The evidence in that case indicated that MacMillan and Dekker were in a conjugal relationship from 1988 to 1989. However, Dekker stated that thereafter, they resided together only as close friends. They continued to reside together until their separation in 1996. In 1994, Dekker referred to MacMillan as his wife on a lease. The parties had separate bedrooms after 1989. Throughout the relationship, the parties engaged in occasional sexual relations. During the co-habitation, each party had been involved in a short relationship with another person. The parties had joint accounts. They shared household duties. They socialized together. On appeal, Justice Wilson considered the Molodowich criteria and concluded that the relationship was more consistent with what may have been an unhappy marriage in difficulty, rather than a friendship or a relationship of brother and sister. Justice Wilson concluded that a conjugal relationship resembling marriage did exist at the time of the parties’ separation in 1996.

Applying the Molodowich criteria to the case before me, there are far more indicia supportive of a conjugal relationship than not. I find that they were in a conjugal relationship outside of marriage, meeting the definition of “spouse” as contained in Section 224(1) of the Insurance Act, R.S.O. 1990, c.I.8. Jevco therefore stands in priority by reason of Section 268(5.2) of the Insurance Act, R.S.O. 1990, c.I.8.

Jevco insured the automobile in which Susan Bechard was an occupant at the time of the accident. As a result, Jevco is liable to pay accident benefits to Susan Bechard under Section 268(5.2) of the Insurance Act.

## **ORDER**

I hereby order that:

- (a) Jevco is liable to pay accident benefits to Susan Bechard arising out of injuries she sustained in a motor vehicle accident on August 4, 2008;
- (b) Jevco reimburse Intact for the accident benefits paid to or on behalf of Susan Bechard;

- (c) Jevco pay to Intact its costs on a partial indemnity basis, as agreed upon or as assessed in accordance with the Arbitration Agreement; and
- (d) Jevco pay the costs of the Arbitrator.

DATED at TORONTO this 13<sup>th</sup> )  
day of October, 2011. )

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KENNETH J. BIALKOWSKI  
Arbitrator