IN THE MATTER OF the *Insurance Act,* R.S.O. 1990, c I.8, as amended

AND IN THE MATTER OF Ontario Regulation 283/95

AND IN THE MATTER OF the *Arbitration Act*, S.O. 1991, c. 17, as amended

AND IN THE MATTER OF an Arbitration

BETWEEN:

CO-OPERATORS INSURANCE COMPANY

Applicant

- and -

SECURITY NATIONAL INSURANCE COMPANY

Respondent

AWARD WITH RESPECT TO PRLIMINARY ISSUE

Counsel Appearing:

William M. Sproull: Counsel for Co-operators Insurance Company (hereinafter called Co-op)

Sirus Biniaz: Counsel for Security National Insurance Company (hereinafter called Security)

Introduction:

This matter comes before me pursuant to the *Arbitration* Act, 1991, to arbitrate a dispute as between two insurers with respect to a priority issue pursuant to section 268 of the *Insurance* Act and Regulation 283/95, as amended.

However, the parties advise that prior to proceeding with the actual priority dispute that there was a preliminary issue that need to be determined in advance.

The parties filed a signed Arbitration Agreement. However, it did not identify any specific issue for my consideration. I think the issue can be fairly framed as:

1. Did Co-op initiate the Arbitration within 1-year of serving the Notice to Applicant of Dispute Between Insurers?

Result: Co-op did not initiate the Arbitration within 1-year of serving the Notice to Applicant of Dispute Between Insurers in accordance with section 7(3) of Regulation 283/95. Accordingly, Co-op has lost its right to pursue a claim for priority against Security and this Arbitration is dismissed.

Proceedings:

The Hearing of the preliminary issue proceeded in writing. Each party submitted a Factum, Book of Documents, and Books of Authority. There were no oral submissions and no witnesses were called.

Relevant Facts:

On December 7, 2019, the Accident Benefit Claimant, MT (hereinafter called The Claimant), was involved in a motor vehicle accident in California.

The Claimant was a passenger in a Ford 150 insured by Security.

Co-op insured The Claimant's mother. The heart of the priority dispute is whether The Claimant is principally dependent for financial support on the mother.

The Claimant filed an application for Accident Benefits (OCF-1) with Co-op. The OCF-1 is dated March 3, 2020 and was received by Co-op on March 9, 2020.

Co-op took the position that they were not the priority insurer due to the dependency issue and commenced the process to put Security on Notice of the priority dispute based on The Claimant's occupancy of the Security vehicle.

A Notice to Applicant of Dispute Between Insurers dated June 2, 2020 was served on Security on June 3, 2020. By this time, COVID-19 had struck Ontario and businesses were closed and people were working from home. There is no dispute that the service of the Notice to Applicant of Dispute Between Insurers (hereinafter referred to as Notice of Dispute) was served within the 90-days subsequent to Co-op's receipt of the OCF-1.

By letter dated June 15, 2020, Security responded to Co-op's Notice of Dispute. They acknowledged receipt of it and noted that certain information was required before they could make a determination as to whether Security was priority for the claim. Included in the list of information requested was the following:

- Property damage documentation including photos
- Police report
- Information with respect to any possible priority insurer

Security went on to say that they expected to complete their investigation within the next 60-days at which time they would advise of their decision as to whether they would accept or deny priority.

Co-op responded to Security by letter dated August 13, 2020. In that letter they provided Security with the following:

1. A summary of the EUO that had been completed of The Claimant on May 28, 2020; and,
2. Confirmation that property damage documentation and photos were not available as Co-op did not insure the vehicle involved in the accident.

A review of the summary of the EUO indicates it provides very detailed evidence (6 typed pages) with respect to the background of The Claimant, the nature of the accident, and information relevant to dependency.

Security responded some 7 months later to Co-op by way of a letter dated March 2, 2021. This letter did not acknowledge the receipt of Co-op's letter of August 2020 and merely referenced a request for the identical information that Security had requested in their initial letter of June 15, 2020.

Co-op's next letter is dated September 24, 2021. In this letter they re-send the EUO summary as well as a copy of the OCF-1 and repeat their position as to the grounds that they say Security is the priority insurer. In this letter Co-op also states "at this time please accept this letter as our formal Demand for Arbitration. We hope it will not be necessary to pursue the Arbitration route, however, to preserve our rights to pursue this matter, we are now issuing our formal Demand for Arbitration in respect of this priority dispute".

The Notice of Commencement of Arbitration as between Co-op and Security is issued October 26, 2021. There does not appear to be any dispute that it was served that same day.

Pursuant to the Arbitration Notice from Co-op, I was appointed the Arbitrator and the first pre-hearing took place on April 14, 2022.

Insofar as the preliminary issue before me is concerned, the following are therefore the key dates:

1. Accident – December 7, 2019.
2. Application for Accident Benefits/OCF-1 – dated March 3, 2020.
3. Application for Accident Benefits/OCF-1 – received by Co-op March 9, 2020.
4. EUO of The Claimant – May 28, 2020.
5. Notice of Dispute – dated June 2, 2020.
6. Notice of Dispute – served on Security June 3, 2020.
7. Priority Arbitration commenced by Notice – October 26, 2021.

Clearly the priority dispute Arbitration was commenced more than 1 year after the Notice of Dispute was served. The Arbitration was commenced 16 months and 23 days after the Notice was served. The real question before me is what effect Ontario Regulation 73/20 also know as the *Emergency Management and Civil Protection Act,* R.S.O. 1990, c. E.9, had upon the circumstances of this case. This was the legislation that suspended limitation periods and notice periods during the early days of COVD-19.

Relevant Legislation:

Regulation 283/95

The relevant provisions with respect to notice periods and limitations for the commencement of Arbitration priority disputes are set out below.

> **Section 3. (1)**
>
> No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section.
>
> **Section 7. (1)**
>
> If the insurers cannot agree as to who is required to pay benefits, the dispute shall be resolved through an arbitration under the Arbitration Act, 1991 initiated by the insurer paying benefits under section 2 or 2.1 or any other insurer against whom the obligation to pay benefits is claimed.
>
> **Section 7. (3)**
>
> The arbitration may be initiated by an insurer or by the insured person no later than one year after the day the insurer paying benefits first gives notice under section 3.

The other relevant legislation is Ontario Regulation 73/20 also know as the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9. The relevant provisions are set out below:

> **Limitation periods**
>
> 1. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended, and the suspension shall be retroactive to Monday, March 16, 2020.

Period of time, steps in a proceeding

2. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended, and the suspension shall be retroactive to Monday, March 16, 2020.

Exercise of discretion

2.0.1 (1) For greater certainty, the discretion of a court or tribunal referred to in section 2 may be exercised by,

(a) the person or persons who have jurisdiction to make orders in the proceeding;..

(2) For greater certainty, the discretion of a decision-maker referred to in section 2 may be exercised in respect of any or all of the proceedings before the decision-maker.

The last relevant legislation to be considered is Regulation 457(20) that revoked Regulation 73/20. It is set out below:

Revocation

1. Ontario Regulation 73/20 is revoked.

Commencement

2. This Regulation comes into force on the later of September 14, 2020 and the day it is filed.

Position of the Parties:

Security

Security's position is that but for COVID-19 *Emergency Management and Civil Protection Act* that Co-op had 90-days from March 9, 2020 to put other insurers on notice of the priority dispute pursuant to section 3(1) of Ontario Regulation 283/95 and further then had 1 year from the date upon which that Notice was provided to initiate the Arbitration (section 7 of Regulation 283/95).

Security acknowledges that the *Emergency Management and Civil Protection Act* came into effect 6 days after Co-op receipt of The Claimant's OCF-1. Security also accepts that the effect of that *Act* was to suspend all limitation periods in Ontario from March 16 to September 14, 2020.

Security argues that the effect of the *Emergency Management and Civil Protection Act* was to give Co-op an additional 84 days from September 14, 2020 to December 5, 2020 to serve Security with the Notice of Dispute.

However, Security submits that the suspension of the Notice period was irrelevant and not required for Co-op as they had already served the Notice on June 3, 2020. Therefore, there was no need to suspend the time.

With respect to the 1 year limitation period to commence the priority Arbitration, Security submits that had there been no suspension of COVID-19 that Co-op would have had 1 year from June 3, 2020 to commence that Arbitration. That limitation period would expire June 3, 2021.

However, Security accepts that because of the *Emergency Management and Civil Protection Act* that there was an extension of that 1-year deadline. The commencement of that 1 year was suspended until September 14, 2020 in accordance with the *Act* and therefore Co-op had until September 14, 2021 to commence the Arbitration. Security submits that it was not commenced until October 26, 2021 and therefore Co-op is out of time and that an Arbitrator has no discretion to extend that time and must dismiss the Arbitration.

Both Security and Co-op agree that there is no case law as yet with respect to the effect of the *Emergency Management and Civil Protection Act* on the priority regulation: 283/95.

Security also accepts that the *Emergency Management and Civil Protection Act* distinguishes between a limitation period and a notice period. With respect to the limitation period, it was a mandatory suspension retroactive to March 16, 2020 and then lifted/revoked on September 14, 2020. There is no discretion with respect to the suspension of a limitation period.

However, with respect to a notice period or a specific time within which certain steps were to be taken, whether or not the suspension would be implemented is in the discretion of the court tribunal or other decision maker responsible for the proceeding. Security accepts that the Notice of Dispute would fall within the discretionary suspension but submits that is not relevant as there was no need to apply this section as Co-op served its notice of Dispute on June 3, 2020.

Co-op

There is no dispute from Co-op with respect to the facts. The dispute is over the effect of the *Emergency Management and Civil Protection Act* and my discretionary powers with respect to the suspension relating to the Notice of Dispute.

Co-op takes the position that the *Emergency Management and Civil Protection Act* by virtue of section 2, 2.0.1, and 6 gives me, as the Arbitrator in this matter, discretion to extend the deadline under Ontario Regulation 283/95 for the service of the Notice of Dispute to September 14, 2020.

In other words, the 90-days would only begin to run on September 14, 2020 irrespective of the fact that the Notice itself had already been served in June of 2020. If the 90-day time period commenced when the COVID-19 legislative suspension was lifted then the service of the Notice of Arbitration on October 26, 2021 would be within the 1-year limitation. That 1 year would run from December 13, 2020 to December 13, 2021.

Co-op submits that the service of their Notice on June 3, 2020 is irrelevant and that I have discretion under the *Emergency Management and Civil Protection Act* to start the time running for the 90-days on September 14, 2020.

Alternatively, Co-op submits that with the exercise of my discretion under the *Emergency Management and Civil Protection Act* that the 90 days should begin to run on August 3, 2020. Co-op submits that I have discretion to pick any day to suspend the running of the 90 days and that if August 3, 2020 was chosen to commence the running of the 90 days then the service of Co-op's Notice to Submit to Arbitration would fall within the appropriate 1-year timeframe. Co-op submits that I should exercise that discretion taking into consideration the following criteria:

- The reasonableness of the extension of the time period sought by Co-op
- That this would meet the objective of an expeditious resolution of the priority dispute issues
- That there is no prejudice that would be suffered by Security should the extension of time be granted.

Co-op argues that as an Arbitrator I qualify as a decision maker under section 2 of the *Emergency Management and Civil Protection Act* and as a decision maker I am therefore granted wide discretion with respect to the issue of suspension of notice periods.

Co-op submitted a number of cases to support their positon on this discretionary extension. Notably:

- *Tyler Soeda v Doc Lock Inc., operating as Action Security Locksmiths* 2021 CanLII 38487 (ON LRB)
- *10198447 Canada Inc. v Municipal Property Assessments Corporation*, Region 03, 2009 CanLII 30186 (ON ARB)
- *Dominion of Canada General Insurance Company v. Certas Direct Insurance Company*, 2009 CanLII 37348 (ON SC)
- *Cerberus Business Financial, LLC v. B&W Heat Treating Canada, ULC*, 2020 ONSC 3781 (CanLII), 020 ONSC 3781 (CanLII)
- *2092317 Ontario Inc. (Grabba Pizza) v Jaswant Raj*, 2020 CanLII 73264 9ON LRB)

Lastly, Co-op submits that this is a unique factual situation that has risen in this arbitral proceeding and that case law referred to by Security that suggests that there is little room for creative interpretation for carving out judicial exceptions when looking at priority disputes (see

Kingsway General Insurance Company v West Wawanosh Company (2002), 58 OR 3D251, [2002] O.J. 528 (CA)) should not be interpreted as meaning that there is no room for creative interpretation. Co-op submits that in the circumstances of this case and considering the unusual situation that existed in 2020 (COVID-19) that carving out an exception coupled with my discretion under the *Emergency Management and Civil Protection Act* is appropriate.

Analysis and Decision:

The key fact in this case that has directed my decision is the service by Co-op of the Notice of Dispute to Applicant dated June 2, 2020 on Security June 3, 2020. Had Co-op not served a Notice of Dispute and as a result missed the 90-day period pursuant to 3(1) of Regulation 283/95 and therefore were seeking my discretion to permit service of the notice outside of the actual 90-day period this would be a different case.

However, I agree with Security that the service of the Notice of Dispute on June 3, 2020 but for the *Emergency Management and Civil Protection Act* would have commenced the 90-day period to run. I struggle to find to find any merit to the suggestion by Co-op that I should ignore that the document was served and extend the time for the running of 90 days until the suspension legislation was lifted on September 14, 2020 and then commence the full 90 days running thereafter.

As I read Regulation 73/20 and particularly section 2, a decision maker was given authority to suspend any period of time within which certain steps or notices should be given or not to suspend it. I do not see any reason that section 2 of the Regulation would be activated to suspend the running of the 90 days until September 14, 2020 when in fact the notice was actually served on June 3, 2020. If the notice had been served, for example, on October 14 I would have had the discretion under section 2 to suspend the 90 days between March 16, 2020 and September 14, 2020 and to have the 90 days start running on September 14, 2020. However, that is not what occurred here.

Co-op argues that I have a broader discretion under section 2 to suspend or extend the 90-day period even when notice has been served. To that end, it is important to review the case law submitted by Co-op in support of that positon. At the outset I note that I did not find any of the cases to be exactly on point and nor did I find the cases support Co-op's interpretation of the discretion under section 2.

The case of *Tyler Soeda v Doc Lock Inc.* (Supra) involved an application filed by the Director of Employment Standards seeking a reconsideration of the decision by the Board dated December 5, 2021. The Board had originally dismissed the application on the grounds that the underlying complaint had not been filed with the Ministry of Labour within the 2-year limitation period set out under section 96(3).

The submission before the Vice Chair was that the Board erred because it did not consider the application of Ontario Regulation 73/20 and its suspension with respect to limitation periods.

The Ontario Labour Relations Board agreed with the Director of Employment Standards and concluded that the effect of subsection 1 of Ontario Regulation 73/20 is that the limitation period was suspended on March 16, 2020 and only resumed running when the regulation expired on September 14, 2020. Therefore the period of suspension does not count for purposes of calculating the limitation period. As the period of suspension under the regulation was an addition 182 days then the limitation period was extended by the same amount of time.

I did not find this case to be particularly helpful as it dealt with section 1 dealing with the limitation period and in circumstances where the notice had not been filed within time. The case before me involves a step in a proceeding/a notice and whether or not it should be suspended and not a limitation period.

The second decision is *10198447 Canada Inc. v. Municipal Property Assessment Corporation, Region 03* (Supra). This case involved an appeal by the Corporation of the City of Ottawa with respect to various taxation years. There were a number of issues before the Tribunal, but one of them was whether the owners appeal for the 2020 taxation year was filed on time.

The chronology was that on January 29, 2020 the municipality mailed to the owner an amended property tax assessment for the 2020 tax year. According to the relevant legislation, the owner had 120 days from the date printed on the amended property assessment notice issued under section 32 to file an appeal. That would take the owner to May 28, 2020.

On November 11, 2020 the owner's legal representative emailed the Board's Registrar to advise that the owner had on that date attempted to e-file the appeal and had received a notice that filing deadline had past. The owner took the position that while the attempted filing was past the May 28, 2020 deadline that there was a suspension of filing deadlines based on Regulation 73/20 and the limitation period was therefore suspended.

The owner pointed out that 46 days of the 120-day period he had to file his materials expired March 16, 2020 and that therefore once the suspension lifted on September 14, 2020 the owner had a remaining 74 days (120-46=74) in which to file its appeal. This resulted in the deadline being extended to November 27, 2020.

The Board agreed with the owner and concluded that the owner had followed Regulation 73/20 and that the appeal for the 2020 taxation year had been filed within the due date as adjusted by the application of Regulation 73/20.

This case again dealt with a limitation period where the suspension was mandatory. This case also dealt with an owner who had technically filed out of time absent Regulation 73/20. I do not find this case to be of assistance to Co-op.

The next decision relied upon by Co-op on this issue is *Cerberus Business Financial, LLC v. B&W Heat Treating Canada, ULC* (Supra). This case came before the Superior Court of Justice: Justice McEwen. It involved a bankruptcy issue.

A Farber & Partners Inc. had been appointed as Trustee of the bankrupt of B&W Heat Treating Canada, which was located at 60 Steckle Place in Kitchener. The assignment of bankruptcy was filed on March 31, 2020 and appointed A. Farber & Partners Inc. as the Trustee. On March 31, 2020, counsel for A. Farber & Partners Inc. wrote the bankrupt's landlord advising the receiver would no longer be occupying the premises or paying rent. They also advised the landlord that the first meeting of creditors would be held on April 21, 2020 and at that meeting the trustee was instructed not to occupy the premises.

Thereafter, the Trustee through its real estate agent sought to assign the lease to a new tenant. In order to do that the Trustee sought access to premises but the landlord refused the Trustee access. The landlord took the position that A. Farber & Partners Inc. had in essence surrendered possession of the premises and the lease on March 31, 2020.

Again, there were a number of issues brought forward, but one of them was whether or not the court had jurisdiction to grant an extension sought by the Trustee.

The Commercial Tenancies Act, R.S.O. 1990, c. L.7, provided for a 3 month limitation period under section 38(2) during which the Trustee must elect to disclaim, retain, or assign the lease. That is to be done within the 90-day period.

The Trustee took the position that they had not formally either disclaimed, retained, or assigned the lease within that time period. There was clearly some confusion with respect to that. The court did not accept the landlord's argument that A. Farber & Partners Inc. had surrendered possession.

Technically the 90-day period expired on June 29, 2020. The Trustee sought extension of that time in order to allow it to continue to market the lease for a further 3 month period from the date of the order. Alternatively, the Trustee argued that the 3 month period during which the Trustee made an election was suspended for the duration of the emergency by virtue of Regulation 73/20.

The court accepted the Trustee's argument that section 2 of the Suspension Order provides the court with jurisdiction to extend the time period set out under section 38(2) of the CTA. The court exercised its discretion and provided a 90-day extension of the time period so that the Trustee could attempt to market the lease for a further 90 days. The court declined to make an order as requested by the Trustee to suspend the entire 3 month period indefinitely during the emergency. This case was heard on June 11, 2020 before revocation of Regulation 73/20.

This case is of some assistance in dealing with the difference between section 1 and section 2 of Regulation 73/20. It does provide an example of when the discretion can be exercised. Again, this allowed the time to be extended so that the lessor could elect whether to disclaim, retain, or assign a lease as it had not yet done so. This is distinguishable from the circumstances of the case before me where the notice had already been served.

The last decision is *2092317 Ontario Inc. (Grabba Pizza) v Jaswant Raj* (Supra). I found this case helpful again on the nature of the suspension referred to under section 2 of Regulation 73/20.

This involved an application for review pursuant to section 116 of the *Employment Standards Act*, S.O. 2000, c. 41. The application for review was received by the Board on June 17, 2020 and it was accepted that the application was filed beyond the 30-day period permitted under the enabling *Act*. The applicant argued that Regulation 73/20 provided an extension of time for filing the application. The Board sent out a Notice to the Community on March 23, 2020. This advised that the Board was taking a position as to whether it would or would not exercise its discretion to extend the time period under the *Act* for taking various steps pursuant to that *Act* including the 30-day period set out in section 116. The notice specifically said that The Board would not exercise that discretion. Therefore, the "Community" should have been aware that the Board had chosen not to suspend those time periods under the *Act* although it acknowledged it had discretion to do so.

Therefore, the decision before the Board was whether they should now exercise its discretion under section 2 of Ontario Regulation 73/20 to actually extend the time having previously provided notice that it did not intend to provide a blanket exercise of that discretion and suspend all steps and notice periods.

In the circumstances of the case before them, the Board decided that it would exercise its discretion to grant an extension of time. The Board made reference to other decisions where a court had addressed requests of a Plaintiff to exercise its discretion under Ontario Regulation 73/20. One of these cases was *Elson v Polyethics Industries Inc.* 2020 ON SC 4335 where the court declined to suspend the time for serving an Affidavit of Documents and ordered the Defendant to serve it in accordance with the *Rules*. The following quote from that case was referenced by the Board:

> "These are challenging times, and we are all adapting to our new normal. …. While access to our courts has been circumscribed, the wheels of justice have not ground to a halt. Litigation is not "on hold," and litigants are expected to move their matters forward, ideally in the spirit of cooperation…"

The Board adopted the reasoning in *Elson* and noted that the pandemic does not in fact bring the wheels of justice to a halt. These principles were reflected in the Board's Notice to the Community. However, they accepted that the exercise of discretion was still one that must be weighed in the circumstances of each case. The Board stated:

"**Section 2 of Ontario Regulation 73/20 does not provide a blanket extension of time"**

All these cases confirm that section 2 offers an Arbitrator such as myself the right to exercise a discretion to extend the time. I do however not see this as a case where that discretion should be exercised. Co-op issued its Notice to Applicant of Dispute on June 3, 2020 in the middle of the pandemic and in the middle of the suspension period under Regulation 73/20. That suspension was not a blanket suspension to any notice period. Section 2 of Regulation 73/20 was discretionary while section 1 relating to limitation periods was absolute. With respect, Co-op should not have assumed that there was any extension of the time particularly in circumstances where they had actually chosen to serve their Notice of Dispute.

I accept Security and Co-op's positon that even though there was technically no mandatory suspension of the notice period that both parties have agreed that Regulation 73/20 operated to suspend the running of the 90 days from June 3, 2020 to September 14, 2020 even though that suspension is discretionary.

It is important to note that 7(3) of Regulation 283/95 provides that the priority dispute Arbitration must be initiated by the insurer "1 year after the day the insurer paying benefits first gives Notice under section 3". The running of the limitation period is therefore clearly tied to the date of the Notice. In this case the date of the Notice would have been June 3, 2020 but for the operation of Regulation 73/20, which suspended the running of the limitation period under section 1 of that Regulation until September 14, 2020. At that point, section 7(3) of Regulation 283/95 is re-established and the 1 year begins to run requiring that the Arbitration in this matter be commenced no later than September 14, 2021, per the agreement of the parties. Technically, I could find that as the suspension of the notice period is discretionary that I am not bound by the agreement of the parties that at least under one scenario Regulation 73/20 suspends the running of the 90-day period from June 3, 2020 to September 14, 2020. However, as any finding on that would not change the results in this case, I see no reason to comment on whether I should or should not execise that discretion. Unlike the decision in *Grabba Pizza* (Supra) no notice was sent out by Fisra suggesting that in priority disputes that there would be no suspension of the notice period under regulation 283/95. Therefore it was not unreasonable for both Co-op and Security to assume that at the very least Regulation 73/20 operated to suspend the running of the 90 days as indeed they agreed upon from June 3, 2020 to September 14, 2020. Unfortunately, that does not help Co-op in terms of the 1-year limitation period.

The Arbitration was not commenced until October 26, 2021, and, therefore, I find that Co-op is out of time.

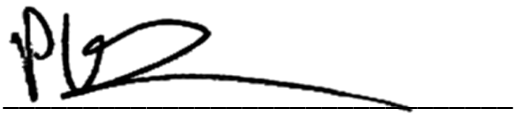
In the case of *Security National Insurance Company and Unica Insurance Company Inc.* (Arbitrator Philippa Samworth October 31, 2016) I concluded that section 7 of Regulation 283/95 creates an absolute limitation. Once the required notice has been served, there are no saving provisions under section 7. Once a company misses that 1-year period, the only consequence that flows is

that it cannot proceed to Arbitration. Even if there are equitable circumstances that might warrant an extension, it remains my view that the Court of Appeal in *Kingsway and West Wawanosh* (Supra) applies even to the unique circumstances of this case and that Arbitrator's should not look at creative interpretations, carve out judicial exceptions, or look at the equities of particular cases. I am therefore obliged to conclude that Co-op has lost its right to proceed with its priority dispute against Security and I so find.

Order:

I therefore Order that this Arbitration be dismissed. With respect Costs, I find Costs are payable on a partial indemnity basis by Co-op to Security. If the parties cannot agree on the Costs Order and/or the quantum of Costs, they can contact me to schedule a Costs Hearing.

DATED THIS 7th day February 2023 at Toronto.



Arbitrator Philippa G. Samworth
DUTTON BROCK LLP