IN THE MATTER OF SECTION 275 OF THE *INSURANCE ACT*, R.S.O. 1990 c.I.8
AND IN THE MATTER OF THE *ARBITRATIONS ACT,* S.O. 1991, c. 17
AND IN THE MATTER OF AN ARBITRATION BETWEEN:

AVIVA CANADA INC./SCOTTISH YORK INSURANCE CO. LIMITED

APPLICANT

- and –

CONSERVATIVE MENNONITE AUTOMOBILE BROTHERHOOD ASSISTANCE PLAN

RESPONDENT

DECISION

COUNSEL

Noella Thompson and Andrew Smith, counsel for the Applicant, Aviva Insurance Company of Canada (hereinafter called "Aviva").

George Wray, counsel for the Respondent, Conservative Mennonite Automobile Brotherhood Assistance Plan (hereinafter called "the Plan").

INTRODUCTION

This matter comes before me pursuant to s. 275 of the *Insurance Act* and Regulation 664 as amended. This is a dispute with respect to a claim for loss transfer that arises out of an accident that occurred on August 18, 2022. By way of background, on August 18, 2022 the claimant was a passenger on a Honda motorcycle when she was rear-ended by a heavy commercial vehicle which was being operated by a member of the Mennonite Plan. The claimant was not a member of the Plan.

Aviva paid various statutory accident benefits to the claimant. They take the position that as the incident involved a heavy commercial vehicle that s. 275 of the *Insurance Act* is activated and accordingly Aviva is entitled to indemnification from the Plan.

The Plan's position is that they are not an insurer under s. 275 of the *Insurance Act* and accordingly the loss transfer provisions do not apply to them and therefore this arbitration should be dismissed.

PROCEEDINGS

The Plan filed an affidavit of Daniel Gerber and Mr. Gerber was cross-examined on that affidavit. The transcripts formed part of the written record. No other oral evidence was called. The parties did file written submissions, document briefs and various books of authority. The parties were also given an opportunity to make oral submissions. It should be noted that this matter was heard with a companion matter (Co-operators General Insurance Company and Conservative Mennonite Automobile Brotherhood Assistance Plan). That matter dealt with a similar issue but involved a priority dispute. While the matters were heard and argued together, the parties have requested separate decisions. However, the two decisions should be read together.

ISSUES IN DISPUTE

1. Is the Plan required to indemnify Aviva as if they were an insurer?
2. Does the loss transfer scheme under s. 275 of the *Insurance Act* apply to the Plan?

I note that essentially this requires a determination as to whether the Plan would be considered an insurer under s. 275 of the *Insurance Act*.

DECISION

The Plan is not an insurer and therefore the loss transfer scheme under s. 275 of the *Insurance Act* and Regulation 664 as amended does not apply to the Plan. The Plan is not required to indemnify Aviva.

FACTS

A. <u>Details of Accident</u>

On August 18, 2022, the claimant was a passenger on a Honda motorcycle. The motorcycle was insured by Aviva.

The motorcycle was rear-ended by a heavy commercial vehicle. Both the owner of the vehicle and the driver were covered under the Mennonite Plan.

Initially the Plan accepted liability and it paid two requests for indemnity. Thereafter it took the position that they are exempt from loss transfer as they do not meet the definition of insurer under s. 275 of the *Insurance Act*. Any issue flowing from the Plan accepting liability initially and paying indemnity is on hold while the preliminary issue of whether they meet the definition of an insurer under s. 275 of the *Insurance Act* is decided.

On August 25, 2023 Aviva sent a Notice of Loss Transfer to the Plan.

Four requests for indemnification were sent to the Plan dated August 29, 2023, December 18,

2023, April 8, 2024 and March 13, 2025.

The first request for indemnification from August 29, 2023 was in the amount of $59,643.88 and was paid in full as was the request for indemnification of December 15, 2023 in the amount of $5,728.95.

B. <u>Background of the Plan</u>

The Plan was created as a result of discussions between Conservative Mennonite church leaders and provincial politicians in the 1970s when it was decided that Ontario would move to impose compulsory automobile insurance. This ultimately resulted in the *Compulsory Automobile Insurance Act*.

Members of the Conservative Mennonite Churches of Ontario as a matter of conscience do not believe in insurance. The church believes that their members should voluntarily share losses amongst its members in accordance with the biblical principles of mutual aid rather than generating profit or transferring risk.

Prior to the implementation of the *Compulsory Automobile Insurance Act*, the Mennonite Church members used the Unsatisfied Judgment Fund as a substitute for motor vehicle insurance. With the implementation of the *Compulsory Automobile Insurance Act*, this would no longer be available to the church and therefore efforts were made to accommodate their conscientious objection to motor vehicle insurance while at the same time providing some way of ensuring protection to the members of the public who drove motor vehicles and might be injured in an accident with a member of the church.

The Hansard transcripts of the Legislative Assembly of Ontario for November 20, 1979 reflect the efforts made by the provincial government to meet the concerns of the Mennonite Church. According to Hansard, the committee reporting to the government strongly recommended that legislation be enacted that required every person who owns a licensed automobile to have a valid policy of automobile insurance which would include various coverages.

> "The principle on which compulsory automobile insurance is based is that every person who owns an automobile that is used on public roads has a moral obligation and ought to have a corresponding legal obligation to bear his fair share of the losses that are incurred on the roads, and should be entitled to benefit from the payment by other automobile operators of their fair share of such losses through their insurance premium."

However, the committee identified two particular groups that may need some special treatment. The first group was self-insurers. This involved large companies or government agencies that would deal with claims on their own on an annual basis and did not have insurance coverage for various fleets.

The second area which is relevant to this decision was what is described as a very small group of conscientious objectors from the Conservative Mennonite Churches of Ontario. The Hansard debate reflects the following:

> "For the matter of conscientious objectors, as members might wish to refer to that chapter, the objection is really that the purchase of insurance was something they felt was a constraint upon their traditional point of view. A bond or guarantee is the kind of thing that they have been able to accommodate in other branches of the group and in certain

> parts of the northern United States. Copies of that material were provided to the Superintendent's office with the hopes that some similar type of arrangement, on a clearly known basis with the names of those persons who would be particularly involved, could accommodate this small, perhaps 100 or 150 driver population who are of this particular opinion."

The committee's recommendation with respect to the Mennonite Church is set out below:

> "Exemption from the principle of compulsory automobile insurance should be granted to those religious groups able to demonstrate it is against their fundamental religious conviction to rely upon the automobile insurance system. This exemption is conditional upon the Applicant's establishing that the losses which they occasion will be paid as fully as though they were insured under all compulsory forms of insurance."

The *Compulsory Automobile Insurance Act* was then passed, but it included Regulation 95 which provided an exemption with conditions to the Mennonite Church. The regulation provides that a member in good standing of the Conservative Mennonite Church who is also a member of the Mennonite Plan or is operating a motor vehicle owned by someone who is in the Plan is exempt from the *Compulsory Automobile Insurance Act*. The conditions for the exemption include:

1. That the Mennonite Church shall establish a plan to provide for financial responsibility resulting from motor vehicle accidents for its members;

2. A member who is in good standing of one of the Conservative Mennonite churches of Ontario may, by written application, apply to his or her pastor for membership in the plan;

3. If the pastor approves the application, then that will be sent to the plan administrator who will keep a record of approved applications;

4. The plan administrator will issue to each member of the plan a complete identification card in a form approved by the Chief Executive Officer; and,

5. The plan administrator can cancel any membership by giving 30 days' written notice and that must be sent by registered mail, personal delivery, or prepaid courier.

The key condition for the purposes of this decision is set out in its entirety below:

> "Where the death of or personal injury to or loss of or damage to property of any person is occasioned in Ontario by a member of the Plan or a person operating a motor vehicle of a member of the Plan, the Plan shall pay claims to the persons who are not members of the Plan to the same extent as if the Plan were an insurer and as if the motor vehicle of the member were insured under a contract of automobile insurance but the liability of the Plan shall be limited to the minimum liability provided for in subsection 251(1) of the *Insurance Act*, in respect of any one accident."

C. <u>How the Mennonite Plan Operates</u>

Mr. Daniel Gerber is the current administrator of the Mennonite Plan. He also works as a chef at a family

buffet. According to his affidavit, if someone wants to apply to be a member of the Mennonite Plan then they must be a member in good standing of the Mennonite Church. They must seek approval of their pastor and if approved, the request will be forwarded on to the administrator. Once accepted, there is a fee that is paid by the member. It is a flat rate for personal vehicles regardless of the vehicle value or driver experience and another flat rate for trucks based on the number of axles.

There is no actuarial pricing and no risk-based adjustments for things such as age, type of vehicle, value of vehicle or how often you drive. These funds are then used to pay any claims that may be generated through automobile accidents. However, Mr. Gerber points out that members of the Mennonite Church refrain from seeking civil recovery for personal losses and they do not pursue legal recourse for damages or injuries sustained. This is part of the conscientious core objection to participate in automobile insurance in accordance with the Mennonite faith.

The Mennonite Plan pays out claims for damages in accordance with their obligation under Regulation 95. The annual fee that is charged for the vehicles is based on what money is available to the Mennonite Plan. If few claims have been paid, then the rate may decrease. If there is some sudden need, then the membership will be asked to provide further money to assist.

The administrator of the plan, as required under Regulation 95, will issue an identification card. The Mennonite Plan does not issue pink liability slips. The identification card shows the name and address of the member, the effective date and the vehicle that it covers. It specifically states in the top right-hand corner: "The member named on this card is exempt from the Compulsory Automobile Insurance Act, 1979, in accordance with the regulations made thereunder." This type of identification card ensures that if a member of the Mennonite Church is stopped while driving a vehicle and cannot produce a pink slip, they have evidence of their exemption in accordance with Regulation 95.

The Mennonite Plan contemplates that if its members are injured in an automobile accident, that rather than take legal action, they will rely on brotherhood assistance through the Mennonite Plan and the church. This is consistent with their religious beliefs of shared faith and communal responsibility.

The Mennonite Plan does maintain a nominal operating fund which is based on the yearly contribution from its membership. However, the plan does not operate for profit. Even the interest earned on the funds is donated to Canadian charities.

Mr. Gerber noted the following activities that the Mennonite Plan does not do:

1. It does not market its products;

2. It is not profit-based;

3. It is not licensed under the *Insurance Act*;

4. It does not issue a pink insurance slip that has been approved by FSRA;

5. The Mennonite Plan does not offer optional coverages like collision, comprehensive or accident benefits for its members' vehicles nor does it provide underinsured or uninsured coverage;

6. The Mennonite Plan does not include statutory accident benefits;

7. Any claims are settled within the community based on goodwill and mutual aid and not on any contractual obligations;

8. It is not licensed by FSRA, does not file rates, underwriting rules or issue an Ontario Automobile Policy 1 form;

9. It does not have HCAI and does not belong to the Facility Association;

10. It has not filed the Power of Attorney and Undertaking (PAU);

11. It does not appear in the public registry of licensed insurers;

12. It does not have to apply to FSRA to file proposed rates or risk classification systems for approval; and

13. The Mennonite Plan does not have a written insurance contract with its members.

The latter item on the list (the absence of a formal contract) Mr. Gerber says is intentional and critical. It reflects the belief that genuine brotherhood assistance arises naturally from a community bound together by common convictions and not by legal obligation. He says in his affidavit that the Mennonite Plan is much more than a financial arrangement or a contractual obligation. It is rather an expression of shared faith and communal responsibility. It depends on mutual trust, shared faith and the collective commitment of its members to support each other in need, not based on any binding legal contract.

RELEVANT LEGISLATION

I will reference the relevant legislation in the context of reviewing the parties' submissions.

POSITION OF THE PARTIES

A. <u>The Mennonite Plan</u>

The position of the Plan is simple. It is not an "insurer" pursuant to Sec.275 of the *Insurance Act*. If it were to be found an insurer, and specifically an automobile insurer, then that would effectively eliminate the exemption that had been negotiated by the Mennonite Church under the compulsory automobile insurance plan in the face of their conscientious objections to having to purchase automobile insurance.

The Plan submits that if it is not an insurer, then the loss transfer cannot apply to it and there is no right for Aviva to pursue a claim against the Plan.

The Plan submits that Sec.275 of the *Insurance* Act only applies to licensed insurers. It does not apply to a faith-based mutual aid plan that operates under a statutory exemption.

The Plan points to the list set out in Mr. Gerber's affidavit of activities that an automobile insurer routinely undertakes and that the Plan never undertakes to support its position that not only is it not an insurer, but it does not even act like an insurer.

The Plan is not licensed, issues no insurance contracts, does not provide statutory accident benefits, does not maintain statutory reserves, does not charge premiums and does not issue pink slips.

The Plan submits that an insurance company under the *Insurance Act* is a "licensed, contract-issuing, risk-transferring, profit-oriented financial institution, subject to comprehensive regulatory oversight, statutory accident obligations, priority rules and loss transfer indemnification schemes." The Plan submits it meets none of these defining statutory requirements.

The Plan submits that its interpretation of the regulatory scheme is consistent with the legislative policy as shown by the Hansard discussions. The plan points out that the exemption mechanism set out in Regulation 95 was designed to preserve the integrity of the compulsory insurance framework but at the same time to avoid imposing compulsory automobile insurance contracts on those who object to them as a matter of conscience. The plan submits if I were to find it an insurer that that would fly in the face of this carefully drafted exemption mechanism.

The Plan submits that their position does not mean that insurers are left without remedies or that insureds are left without remedies. The legislature established the Motor Vehicle Accident Claims Fund for uninsured losses. Further, the Plan submits that the fact that insurers may not recover through loss transfer in every scenario does not mean that that is not the appropriate interpretation. The Plan submits I should ignore any unfairness argument and rather look at statutory structure.

The *Insurance Act* defines "insurance" as:

> "The undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance."

The *Insurance Act* defines an insurer as "an insurer licensed under this Act to undertake or carry on business".

The Plan submits that it is not an insurer licensed to carry out business under the *Insurance Act*. In fact, it is exactly the opposite.

The *Insurance Act* defines a contract as follows:

> "a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement."

The Plan submits it does not have a contract of insurance or any type of contract with its members. Its agreement is one of brotherhood commitment and community support.

Section 224(1) of the *Insurance Act* defines "contract" to mean:

> "a contract of automobile insurance that,
>
> (a) is undertaken by an insurer that is licensed to undertake automobile insurance in Ontario; or

> (b) is evidenced by a policy issued in another province or territory of Canada, the United States of America, or a jurisdiction designated in the *Statutory Accident Benefits Schedule* by an insurer that has filed an undertaking under section 226.1."

The Plan submits it is not licensed to undertake automobile insurance in Ontario nor would it qualify under Part (b) as it has not filed an undertaking. Nor does the Plan issue a contract of automobile insurance.

The Plan also references s. 40 and s. 50 of the *Insurance Act* noting that it requires every insurer who undertakes insurance in Ontario to hold a licence. In order to get such licence, they must file extensive documentation including instruments of incorporation, by-laws, balance sheets, auditor's reports, etc. The Plan does not file any of this documentation.

Section 275(1) of the *Insurance Act* provides as follows:

> "The insurer responsible under subsection 268(2) for the payment of statutory accident benefits to such classes of persons as may be named in the regulations is entitled, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed, to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulation involved in the incident from which the responsibility to pay the statutory accident benefits arose."

The Plan submits that for a claim for indemnification to be made against it, it must be an insurer of such class or classes of automobiles. It is not an insurer of any class of automobiles.

The Plan submits that the relevant regulation (9(1) of Regulation 664) provides that indemnification is only available between insurers of certain classes or classes of automobiles that are outlined in that regulation and there is a second insurer of the applicable class of automobile whose insured is at least partially responsible for the accident.

The Plan relies on the decision of the Court of Appeal in *State Farm Mutual Automobile Insurance Company v. Old Republic Insurance Company of Canada*, 2015 ONCA 699. The Plan submits that the court in that case explained that the loss transfer provisions are designed to shift the financial burden of first party statutory accident benefits to insurers of different classes of vehicle in certain defined circumstances. It is an internal cost allocation mechanism operating within the community of insurers. For example, the classes of vehicles involved include higher risk vehicles such as motorcycles or heavy commercial vehicles.

The Plan submits that s. 275 is only triggered when an insurer is found to be responsible to pay benefits under s. 268(2) of the Statutory Accident Benefits Schedule and in fact has paid those benefits.

The Plan points to s. 9(1) of the regulation which defines first party insurer as "the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits" and second party insurer is defined as an "insurer required under section 275 of the Act to indemnify the first party insurer." Both definitions require an "insurer." The Plan notes that the term "insurer" appears 72 times in s. 9(1) of the regulation.

The Plan submits that it simply does not fall within this insurer interrelated indemnification process and framework. It submits that the loss transfer provisions only apply to insurers who participate in Ontario's SABS statutory accident benefit regime.

The Plan's position is that the legislature, when it created the *Compulsory Automobile Insurance Act*, created two distinct pathways. The first was a compulsory insurance regime based on contracts issued by licensed insurers. The second is a limited exemption pathway under Regulation 95 which the Plan falls under. It notes that these pathways are parallel and intersect only to the extent expressly provided for in the regulation. The operative effect of Regulation 95 is to displace the *Compulsory Automobile Insurance Act* for exempt members. It does not operate to integrate the Mennonite Plan into a statutory system governing insurers under the *Insurance Act*.

Regulation 95 exempts the Plan members from statutory requirements to obtain automobile insurance. As a consequence, they do not enter the contractual framework through which the *Insurance Act* covers automobile insurance including any related insurer-to-insurer mechanisms such as priority disputes.

Position of Aviva

For the purpose of the arbitration, Aviva concedes that the Plan is not considered a licensed insurer in the province of Ontario.

Aviva's position is that whether the Plan is obliged to respond to a claim for loss transfer is primarily an exercise in statutory interpretation.

Aviva submits that in accordance with the Supreme Court of Canada in Rizzo & Rizzo Shoes Ltd. (Re) 1998 CanLII 837 (SCC), there is only one principle or approach to statutory interpretation:

> "The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament."

Aviva also argues that it is appropriate to look to the function of an entity rather than their formal designation when doing so furthers the legislative intent. Aviva references employment law where courts have classified independent contractors as employees based on the substance of their relationship. Aviva relies on the decision of the *Supreme Court of Canada in 671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59, where the court stated:

> "It is exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service any longer serves a useful purpose...

> The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned."

Aviva therefore submits that I should look at function as opposed to formal designation in determining whether the Plan, while not a licensed insurer, is still subject to the provisions of s. 275 of the *Insurance Act* as it is required to act "as if it" were an insurer.

On this point, Aviva submits that it does not matter if the Plan is or is not an insurer as s. 8(1) of Regulation 95 requires the Plan to respond to the loss transfer dispute as if it were an insurer that covered the class of vehicle that was involved in the accident. There is no dispute that the class of vehicle would qualify as a heavy commercial vehicle under Regulation 664.

Aviva submits that there are two conditions precedent to the requirement of the Plan to pay as if it were an insurer under s. 8(2). The first is that a personal injury must occur to a person. In this case the claimant suffered personal injury. The second precondition is the injury must be caused by a member of the Plan or a vehicle of a member of the Plan. Aviva submits in this case the owner of the heavy commercial vehicle and the vehicle itself were both covered by the Plan.

Therefore Aviva submits that that then triggers the requirement of the Plan to pay as if it were an insurer and as if the motor vehicle of the member was insured under a contract of automobile insurance which then attracts s. 275 and participation in the loss transfer scheme.

Aviva submits that as the Plan is required to respond as if there were an automobile liability policy, that therefore the Plan would be deemed to contain statutory accident benefits as s. 268 of the *Insurance Act* requires any contract evidenced by a motor vehicle liability policy to include statutory accident benefits. This argues Aviva means that under s. 275 that it would be found to be a first party insurer responsible for paying statutory accident benefits and the Plan would be found to be the second party insurer as it insures a heavy commercial vehicle.

Aviva also made submissions with respect to the Plan's position that there are many aspects of the Plan's administration that would not fall within the criteria that a licensed insurer would be subject to.

Aviva references the fact that the Plan says it is not subject to any oversight from the Financial Services Regulatory Authority. Aviva submits that in fact the Plan is. While the oversight might not be identical to that of a private commercial licenced insurer, Aviva submits Regulation 95 does place certain conditions on the Plan which require it to comply with certain FSRA requirements. This would include:

1. A new plan administrator must advise the chief executive officer of their name and address;

2. Any identification cards issued by the Plan must be a form approved by the chief

executive officer; and

3. The plan administrator, at the request of the chief executive officer, must provide proof that the Plan has established an irrevocable line of credit in the amount of at least $100,000 with an appropriate bank.

Aviva notes that the chief executive officer under s. 1 of the Insurance Act is defined as:

> "The chief executive officer appointed under subsection 10(2) of the *Financial Services Regulatory Authority of Ontario Act*."

Aviva submits that FSRA's oversight of the Plan, while different from that of licensed insurers, speaks to the proper interpretation of how this regulation was intended to require the Plan to respond to both priority and loss transfer disputes and claims for statutory accident benefits.

Aviva also pointed to evidence from Mr. Gerber that the Plan has in the past paid out claims to non-members including claims for statutory accident benefits, thus a recognition of their obligation to do so under s. 8 of Regulation 95.

Aviva argues that contrary to the Plan's position it does in fact insure risk and effectively enters into a contract to protect and indemnify its members from claims arising out of the use or operation of an automobile. Aviva submits it does not matter what use or words describe that function. What is determinative is what the Plan actually does, and that is to provide indemnity to its members.

Aviva also references the Hansard extracts, specifically noting that consistent with their submissions in the interpretation of this exemption:

> "This exemption is conditional upon the Applicants establishing that the losses which they occasion will be paid as fully as though they were insured under all compulsory forms of insurance."

Aviva submits that the application of the loss transfer scheme to the Plan is part and parcel of the obligation of the Plan to provide third party protection irrespective of their exemption.

Aviva submits that the exemption is a narrow one and was only for the purpose of exempting members of the Mennonite church from having to purchase coverage from private sector insurance companies. It was never intended to serve as a loophole for avoiding liability. It should not be used as a shield against statutory obligations. The exemption was intended to protect religious freedom, not allow the Plan to externalize the financial consequences of its members' at-fault accidents into the broader insurance pool.

The Plan's Reply

The Plan submits that Aviva seeks to treat the plan as functionally equivalent to an insurer. This argument relies on treating the "as if" language in s. 8 of Regulation 95 as if it were a deeming provision. The Plan submits that not only does the statute not do that, but to interpret it in such a way would result in statutory amendment.

If one accepted Aviva's submission, the result would be to collapse the distinction created by Regulation 95 and the exemption given to the Mennonite Church and to effectively render it meaningless. In other words, the exemption would cease to be an exemption. The Plan submits the legislature cannot have been taken to have intended such a contradictory result.

The Plan submits that the structure of Regulation 95 carves out a distinct compliance pathway by which eligible members of the Plan can lawfully operate motor vehicles without entering into automobile contracts with licensed insurers. This is a distinct non-insurance pathway in order to recognize the conscientious objection of the church and cannot be interpreted as a form of participation in the *Insurance Act* system.

The Plan replies that the priority and loss transfer schemes were designed to provide an efficient and predictable mechanism for allocating responsibilities for "insurers" within the system and to extend the regime beyond that defined limited scope would introduce uncertainty and undermine the coherent operation of the framework established by the legislature.

The loss transfer provisions are located entirely within the *Insurance Act* and operate exclusively within a scheme that assumes the participants are licensed insurers. Section 8 of Regulation 95 does not operate to integrate the Plan into the system governing those insurers under the *Insurance Act*.

With respect to Aviva's reliance on the wording "as if" from Regulation 95, s. 8, the Plan submits that this wording does not deem the Plan to be an insurer nor does it deem a motor vehicle liability policy to exist. Rather, the provision requires that certain claims be paid "as if" those conditions were present, but that that obligation is limited to the bodily injury payment requirements under s. 251(1) of the *Insurance Act*.

With respect to Aviva's argument that s. 8 of the regulation does not limit the payments to be made by the Plan to bodily injury claims, the Plan submits that there is no evidentiary basis for that statement and that it does not support the legislative background purpose and policy. As the Plan does not issue a contract of insurance, one cannot interpret the exemption to provide coverage in other areas that are not specified. The Plan points to the fact that it does not pay statutory accident benefits, it does not pay property damage, it does not pay for uninsured or underinsured coverage. The Plan submits that the requirement that it pay third party liability for bodily injury up to the limits in accordance with s. 258(1) is consistent with the protection of the public from uninsured vehicles. The section imposes a limited outcome-focused obligation to ensure that third parties are compensated to the same monetary extent as if insurance existed without altering the legal status and integrating the Plan into Ontario's insurance system.

The Plan submits that any payments it makes in any particular cases are payments made in response to an accident in accordance with the Mennonite Church's beliefs. It does not constitute a recognition of there being a motor vehicle liability policy with various duties and obligations and payments for certain benefits. It is not an intent to provide "indemnification" as suggested by Aviva.

The Plan suggests that the submissions of Aviva are based on concepts of "functional equivalence" or

"substance over form". The Plan submits that this does not accord with the statutory scheme. The scheme is one of statutory classification and not functional resemblance. The relevant statutes must be interpreted by the text, context, structure and policy of the legislation and not merely by analogy to insurer-like functions. The Plan submits that the *Insurance Act's* definition of insurer is clear and an approach based on a functional equivalence would effectively replace the statutory definition and leave one with an open-ended test based on resemblance or outcome.

ANALYSIS AND DECISION

I agree with the analysis provided by the Mennonite Plan and conclude that they are not an insurer as defined under the *Insurance Act* And accordingly the loss transfer set out under s. 275 of the *Insurance Act* and Regulation 664 does not apply to the Mennonite Plan.

The background with respect to the exemption to the *Compulsory Automobile Insurance Act* for the Mennonite Church is important in looking at statutory interpretation in this instance.

It is clear the Mennonite Churches in Ontario objected to automobile insurance on conscientious grounds. It is equally clear by reviewing the Hansard extracts from 1979 when the *Compulsory Automobile Insurance Act* was introduced to the legislature that there was concern with respect to classes of groups or individuals that might be affected inappropriately by this Act. One of these was the Mennonite Church based on their conscientious objection.

The discussion from the relevant committee indicates a recognition that the members of the Mennonite Church should not be subjected to having to purchase automobile insurance, which was contrary to their religious beliefs, but at the same time recognized that some protection needed to be provided to the motoring public which was indeed the main purpose of the *Compulsory Automobile Insurance Act*. The result was for the Mennonite Church to develop a plan to cover payments to non-church members who were injured by members of the plan. The format and structure of that assistance plan was left up to the Mennonite Church but there were some specific requirements as set out in condition 8 of Regulation 95.

Therefore, any interpretation of the exemption regulation and its conditions must be done with recognition that the Mennonite Church objects to automobile insurance but recognizes their obligations to care for non-members of their community when injured by members of their community who would otherwise have been covered through the *Compulsory Automobile Insurance Act*.

I have carefully reviewed the relevant legislation from the *Insurance Act* specifically with respect to the definition of contract, automobile insurance and insurer. There is no doubt in my mind that the Mennonite Plan does not meet the definition of insurer under the *Insurance Act*. It is simply not a person licensed under the Act to carry out insurance business. Further, I am satisfied that the Plan does not issue a contract of insurance. In fact, there is no contract at all. There is simply an agreement amongst its approved members to pay various rates depending on whether the vehicle is a flatbed or a personal vehicle and those monies go into a fund to pay for injuries sustained by members or injuries sustained by non-members as a result of injuries sustained in a collision with a member.

The Mennonite Plan does not issue pink slips. It issues identification documents solely for the purpose of its members having something to produce in the event that they are stopped and are required to produce evidence of insurance. This provides evidence of exemption from insurance.

The Plan is not profit-based. It does not market to the public. It does not have to submit to any government oversight other than the few minor requirements under Section 8 on Regulation 95. It is not licensed. I am satisfied on the evidence that the Mennonite Plan operates solely as a faith-based mutual aid association.

If the Plan is not an insurer as defined under the *Insurance Act*, then it is not an insurer for the purpose of s. 268 of the *Insurance Act* which sets out requirements of automobile insurance policies to provide statutory accident benefits and to participate in a priority scheme. If the Plan is not an insurer, there is no obligation for them to issue a policy for statutory accident benefits. They do not in fact issue any type of contract. Nor could it considered to be first party or second party insurer under Section 275 of the *Insurance Act.*

Not only do I find that the Plan is not an insurer, but I also agree with the Plan's submissions that s. 8 of Regulation 95 cannot be interpreted as deeming the plan to be an insurer. Section 8 of the regulation only requires the Plan to act like an insurer for the purpose of providing some limited payments where death or personal injury is occasioned in Ontario by a member of the Plan or someone operating a motor vehicle of a member of the Plan. This does not result in the Plan becoming an insurer. To make that finding would result in the exemption being completely ineffective and contrary to the careful legislative planning back in 1979.

I also find that the liability of the Plan is limited to the minimum liability provided for under subs. 251(1) of the *Insurance Act*. I find that it does not require the plan to pay statutory accident benefits although clearly based on the evidence of Mr. Gerber there are occasions where the Plan may choose to pay medical expenses similar in nature to those provided for under the Statutory Accident Benefits Schedule.

Section 8 states that the plan is to pay claims to persons who are not members of the Plan as if it were an insurer and as if the motor vehicle were insured under a contract of insurance. Immediately following those specific conditions, we see the wording that the liability of the plan shall be limited to the minimum liability under s. 251. I disagree with the submissions of Aviva that if the legislature had intended to exempt the plan under s. 8 from paying statutory accident benefits, that that provision would have specifically provided for that. The fact is that the Plan is not an insurer. Therefore, s. 8 had to direct what liability the Plan might have if condition 8 were activated and the Plan was obliged to make some payments which it otherwise would not have to make if it were completely exempt from the *Compulsory Automobile Insurance Act*.

Even if I am wrong in this interpretation and the limit of liability under s. 8 did not include statutory accident benefits, I find that that still does not change my interpretation of the regulation. The Mennonite Plan is still not an insurer and even if it is obliged to pay statutory accident benefits as if it were an insurer and as if it had a contract of automobile insurance, that still does not bring it within the definition of an insurer under Section 275 of the *Insurance Act*. In my view, the Plan remains a non-insurer with some obligations to make some payments but without it being an insurer and without it being subject to the loss transfer provisions.

It is also important to note that the scheme of loss transfer is one that is exclusively designed for intercompany indemnification for statutory accident benefits based on risk. This has nothing to

do with the payment of statutory accident benefits to an insured. It is simply a transfer of monies between various insurers, some of who undertake greater risk due to the nature of the vehicle they are insuring: a motorcycle or a heavy commercial vehicle for example. To that end, an interpretation of the *Insurance Act* and its regulations with consumer protection in mind is not appropriate. This is not a provision of the *Insurance Act* that deals with consumers and insurers. It is a scheme to transfer risk between two insurers. Section 275 is designed to balance the cost of no-fault benefits between different classes of vehicles under certain circumstances and depending on fault for the accident, to transfer those costs to the higher risk vehicles.

Much like Ontario's priority scheme, the Act and regulation sets up an insurer to insurer mechanism that is intended to apply to insurers who are licensed automobile insurers under the Act and who issue motor vehicle liability policies. I find that the Mennonite Plan is not such an insurer and therefore the loss transfer regime does not apply to it and accordingly Aviva's arbitration is dismissed.

COSTS

The Arbitration Agreement provides that the legal costs as well as the expenses of the arbitrator and the expenses of the arbitration are to be determined by the arbitrator considering the success of the parties, the conduct of the proceedings and principles generally applied in litigation before the Courts of Ontario.

As the Respondent was entirely successful in this matter, I find that it is entitled to its legal costs. Accordingly, I find that Aviva is to pay the legal costs of the Respondent on a partial indemnity scale. I also find that Aviva is responsible for paying the arbitration costs and expenses, if any.

I am not fixing costs, but if the parties cannot agree on costs they are to let me know and we will schedule a further hearing to deal with that.

DATED THIS 30th day of October, 2026 at Toronto.

Philippa G Samworth

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Arbitrator Philippa G. Samworth

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