IN THE MATTER OF SECTION 268 OF THE *INSURANCE ACT*, R.S.O. 1990 C.I.8
AND ONTARIO REGULATION 283/95
AND IN THE MATTER OF THE *ARBITRATIONS ACT,* S.O. 1991, c. 17
AND IN THE MATTER OF AN ARBITRATION BETWEEN:

CO-OPERATORS GENERAL INSURANCE COMPANY

APPLICANT

- and –

CONSERVATIVE MENNONITE AUTOMOBILE
BROTHERHOOD ASSISTANCE
PLAN

RESPONDENT

DECISION

COUNSEL

Daniel Strigberger, counsel for Co-operators General Insurance Company (hereinafter called "Co-operators").

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

INTRODUCTION

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

This claim arises out of a motor vehicle accident that occurred on November 23, 2022. On that day, the claimant was operating a 2003 Volkswagen motor vehicle owned by a member of the Mennonite Plan. The claimant was not a member of the plan.

The claimant applied to Co-operators for statutory accident benefits. Co-operators insured the claimant.

Co-operators investigated priority and determined that at the time of the accident the claimant may have been using the owner's vehicle for business purposes and thus was available to him for his regular use. Arguably, that made the claimant a deemed named insured under any policy insuring the 2003 Volkswagen.

As the 2003 Volkswagen was covered under the Plan, Co-operators gave them a priority dispute notice asserting that the claimant had recourse against the Plan first. The Plan's position is that they are not an insurer under s. 268 of the *Insurance Act* and accordingly the priority provisions do not apply to them which resulted in the within arbitration and this decision.

PROCEEDINGS

The Mennonite Plan filed an affidavit of Daniel Gerber, and Mr. Gerber was cross-examined on that affidavit. The transcripts form part of the arbitration record. No other oral evidence was called. The parties filed Written Submissions, Document Briefs, and various Books of Authority. The parties also had an opportunity to make oral submissions.

It should be noted that this matter was heard with a companion matter (*Aviva Insurance Company of Canada and The Conservative Mennonite Automobile Brotherhood Assistance Plan*). That matter, while dealing with a similar issue, involved a loss transfer claim and the parties requested a separate decision. However, the two decisions should be read together.

ISSUE IN DISPUTE

Does the priority dispute scheme under s. 268(2) 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".

While the parties both set out the issues somewhat differently, and the issue was not specifically identified in their signed Arbitration Agreement, I believe the above captures the essence of this dispute.

DECISION

The Mennonite Plan is not an insurer and therefore the priority dispute scheme under s. 268(2) of the *Insurance Act* and Regulation 283/95 does not apply to the Plan.

FACTS

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

This accident occurred on November 23, 2022. It is acknowledged that the claimant was <u>not</u> a member of the Plan.

He was operating a 2003 Volkswagen which was owned by a member of the Plan. As will be seen further in this decision, being a member of the Plan permitted the owner of the vehicle and others to operate the vehicle in accordance with the *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25 despite being technically uninsured.

Co-operators insured the claimant. The claimant applied to Co-operators for statutory accident benefits. Co-operators initiated this priority dispute as against The Plan on the basis that the claimant may have had regular use of the vehicle that he was occupying and therefore was a deemed named insured under the Plan.

B. Background of the Plan

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. How the Mennonite Plan Operates

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 the *Insurance Act*, the *Compulsory Automobile Insurance Act* or Regulation 283/95. 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 priority dispute scheme cannot apply to it and there is no right for Co-operators to pursue a claim against the Plan.

The Plan submits that the statutory schemes that are being relied upon by Co-operators only apply between 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 priority 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 268(1) of the *Insurance Act* provides as follows:

> "Every contract evidenced by a motor vehicle liability policy, including every such contract in force when the *Statutory Accident Benefits Schedule* is made or amended, shall be deemed to provide for the statutory accident benefits set out in the *Schedule* and any amendments to the *Schedule*, subject to the terms, conditions, provisions, exclusions, and limits set out in that *Schedule*."

The Plan submits that it does not issue a contract that is evidenced by a motor vehicle liability policy and therefore its agreement with its members implicitly is not deemed to provide for statutory accident benefits.

The Plan notes that s. 268 of the *Insurance Act*, which sets out the priority provisions relating to the payment of statutory accident benefits, requires that there be an insurer against whom a person has recourse for statutory accident benefits before the priority scheme is applicable. The Fund points to the decision of the Court of Appeal in *Travelers Insurance Company of Canada v. CAA Insurance Company*, 2020 ONCA 382 where the court held that the purpose of s. 268 is "to permit two or more insurers who might have responsibility for paying Ontario statutory accident benefits to determine responsibility on a set of prescribed priority rules."

The Plan submits that this regime presupposes multiple insurers operating within a regulated insurance system and does not apply to the Plan. The regime does not operate outside a contractual relationship between an insured and an insurer.

Ontario Regulation 283/95 (Disputes Between Insurers) provides a detailed and comprehensive regulatory scheme for resolving priority disputes under s. 268 of the *Insurance Act*. The Mennonite Plan submits that the regulation only applies to "an insurer". It points out that the regulation refers to the term insurer at least 65 times in 11 sections and its title is also notable, "Disputes Between Insurers". The Plan submits there is nothing in the regulation that contemplates extension to non-insurers or assistance plans like the Mennonite Plan.

The Plan also refers to the decision of the Court of Appeal in *Kingsway General Insurance Company v. West Wawanosh Insurance*, 2002 CanLII 14202. This is the often-quoted decision of the court describing the nature of Regulation 283/95. The court noted "that it sets out in precise and specific terms a scheme for resolving disputes between insurers." The court notes that insurers are sophisticated and within the regulatory environment that they operate should be entitled to assume and rely upon compliance with the provisions of the regulation. The court

stated, "There is little room for creative interpretations or carving out judicial exemptions designed to deal with the equities of particular cases."

The Plan submits that their interpretation of the priority regime under s. 268 is consistent with the Court of Appeal's comments. It only applies where both parties are insurers subject to the *Insurance Act*. Entities that do not issue motor vehicle liability policies such as the Plan are not within the statutory class to which s. 268 or Regulation 283/95 would apply.

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.

B. <u>Co-operators</u>

Co-operators' submissions are focused primarily around the interpretation of Regulation 95, s. 2(2), condition 8. The key provision relied upon by Co-operators is set out below.

> "The plan shall pay claims to persons who are not members of the plan to the same extent <u>as if the plan were an insurer and as if the motor vehicle of the member were insured under a contract of automobile insurance</u>. 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."

Co-operators' position is that a member's claim is to be addressed <u>as if the member's vehicle was insured under a contract of automobile insurance and therefore any such claim must be treated as if a compliant automobile insurance policy was in force</u>. This not only results in carrying a requirement that the Plan pays statutory accident benefits, but also the application of the priority dispute scheme under s. 268(2) of the *Insurance Act* and Regulation 283/95. Co-operators submits that if a claimant has recourse to the payment of statutory accident benefits to an entity (such as the Plan), then that entity cannot avoid the framework that allocates responsibility for the payments of those benefits and is therefore subject to the priority scheme.

Co-operators acknowledges that Regulation 95 to the *Compulsory Automobile Insurance Act* acts to exempt certain prescribed parties subject to the various conditions listed in s. 2(2).

Co-operators submits that the exemption under Regulation 95 is conditional in that when a Plan member's vehicle causes injury to a non-member, that condition 8 requires the plan to respond to the claim as if it were an insurer and as if the vehicle were insured under a contract of automobile insurance. This, Co-operators submits, is designed to preserve for non-members the protection otherwise afforded by the compulsory insurance regime.

Co-operators submits that the responsibility of the plan to pay claims to persons who are not members of the plan is not limited to payments that would fall under s. 251 of the *Insurance Act*. Section 251 provides as follows:

> "Every contract evidenced by a motor vehicle liability policy insures, in respect of any one accident, to the limit of at least $200,000, exclusive of interest and costs, against liability resulting from bodily injury to or the death of one or more persons and loss of or damage to property."

Co-operators submits that the provision under condition 8 limiting the liability of the Plan to the minimum liability limits provided for under s. 251(1) of the *Insurance Act* cannot be interpreted as eliminating a requirement of the Plan to provide for other aspects of automobile insurance such as statutory accident benefits. Otherwise, the members of the public who are to be protected through Regulation 95 from otherwise uninsured members of the Mennonite Church would only be protected up to the statutory minimum of $200,000 for bodily injury and not be protected for any other automobile insurance such as uninsured coverage or statutory accident benefits.

Co-operators submits that the purpose of the reference to s. 251 under condition 8 is to ensure that the Plan is not exposed to anything more than the statutory limits and that it does not otherwise purport to exclude or modify the other components of automobile insurance such as statutory accident benefits. If the legislature had intended to displace those components as part of the exemption, then it would have done so expressly and it did not.

Therefore, Co-operators submits that as the claimant was a non-member of the Plan who sustained personal injuries in Ontario while operating a Plan member's vehicle, that the Plan is therefore required to pay claims to the claimant to the same extent as if it were an insurer and as if the vehicle were insured under a contract of insurance. This means that the claimant will be entitled to statutory accident benefits. What flows from this is that the Plan is therefore subject to Regulation 283/95 which provides the regulatory framework for statutory accident benefit payments, procedures and priority.

In this regard, Co-operators relies on the decision of *Coseco v. Liberty*, 2019 ONSC 491 CanLII. In that case the Superior Court confirmed that where an entity is required to provide statutory accident benefits in Ontario (in that case an out-of-province insurer), that it is then also bound by the accident benefit regime as a whole including Ontario Regulation 283/95.

Co-operators submits that it would be inconsistent with the statutory scheme to require an entity such as the Plan to respond to a claim for statutory accident benefits as if insurance were in force yet permitting it to avoid the mechanisms that determine which insurer is responsible for paying those benefits.

Therefore, Co-operators submits as s. 8 of the regulation is engaged in the circumstances of this case as it involves a vehicle covered by the Mennonite Plan, that the claim must be treated as if there were an automobile policy in force including not only the entitlement to statutory accident benefits, if applicable, but the entire scheme for determining which insurer has the responsibility for paying.

C. <u>The Plan's Reply</u>

The plan submits that Co-operators 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 Co-operators' 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 priority 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 Co-operators' 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 Co-operators' 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.

The Plan suggests that the submissions of Co-operators 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 priority scheme set out under s. 268(2) of the *Insurance Act* and Regulation 283/95 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. 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.

If there is no obligation for the Plan to provide a contract for statutory accident benefits then similarly, as they are not an insurer, Regulation 283/95 does not apply. The parties here agree that the Mennonite Plan must be an insurer or deemed to be an insurer in order for Regulation 283/95 to apply.

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 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 Co-operators 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 were 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 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 Regulation 283/95 and the priority provisions.

I conclude that Ontario's priority dispute regime is a statutory insurer-to-insurer mechanism that only applies to insurers who are licensed automobile insurers who issue motor vehicle liability policies and fall within the provisions of the *Insurance Act*. Regulation 283/95 only applies to an entity that is an "insurer" within the meaning of the *Insurance Act*. The Mennonite Plan is not such an insurer. The priority dispute regime does not apply to it and accordingly Co-operators' 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 Co-operators is to pay the legal costs of the Respondent on a partial indemnity scale. I also find that Co-operators 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 26h day of October, 2026 at Toronto.



Arbitrator Philippa G. Samworth

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