IN THE MATTER OF the *Insurance Act* R.S.O 1990, c. I.8, as amended: section 275
AND IN THE MATTER OF the *Arbitration Act, S.O.1991, c.17,* as amended
AND IN THE MATTER OF an Arbitration

BETWEEN:

ECHELON INSURANCE COMPANY Applicant

- and -

AVIVA INSURANCE COMPANY OF CANADA Respondent

AWARD

COUNSEL

Dan Strigberger, counsel for the Applicant, Echelon Insurance Company (hereinafter called Echelon).

Andy Smith, counsel for the Respondent, Aviva Insurance Company of Canada (hereinafter called Aviva).

BACKGROUND

This matter comes before me pursuant to s. 275 of the *Insurance Act* and Ontario Regulation 664, s. 9. This is a loss transfer matter and the parties on consent have appointed me as a private arbitrator to determine the issue in dispute.

The loss transfer claim arises out of an accident that occurred on September 3, 2021. The claimant was riding his motorcycle, insured by Echelon under an Ontario policy, in Alberta when it was involved in a motor vehicle accident.

The other vehicle involved in the accident was a 2001 Chevrolet Silverado which was insured by Aviva. The Aviva policy was an Alberta policy.

As the accident involved a motorcycle, Echelon takes the position that s. 275 of the *Insurance Act* applies and it is entitled to be indemnified for statutory accident benefits paid to the claimant as a result of the accident from the at fault vehicle insured by Aviva. Aviva disputes that in the circumstances of this case it is subject to the Ontario loss transfer regime as the accident occurred in Alberta and as the Aviva policy was an Alberta policy.

PROCEEDINGS

The parties filed an Arbitration Agreement dated October 5, 2023. In addition, each party filed Written Submissions and Books of Authority. A Joint Document Brief was also filed. Counsel also made oral submissions on November 23, 2023. There were no witnesses called.

ISSUES

The Arbitration Agreement identifies the following issues to be determined by the arbitrator:

(a) Does Ontario's loss transfer scheme apply to Aviva in the circumstances of this matter?

(b) If Ontario's loss transfer scheme applies to Aviva, what is the respective degree of fault of each insurer's insured?

(c) If it is determined that the Aviva insured is partially or completely at fault for the accident, what is the amount of loss transfer indemnification payable by Aviva to Echelon?

Both parties agree that this decision will only address the first question as to whether or not the loss transfer scheme applies to Aviva in the circumstances of this case.

FACTS

There were no facts in dispute.

It is accepted that Aviva is a federally incorporated Canadian business that is a wholly owned subsidiary of "Aviva Canada Inc." which is a wholly owned subsidiary of "Aviva PLC", a UK-based company. It is also agreed that Aviva is licensed to carry on automobile insurance in the provinces of Ontario and Alberta. Aviva has its head office at 10 Aviva Way in Markham, Ontario.

Echelon is an insurer licensed to carry on business in the province of Ontario with a head office in Mississauga, Ontario.

On September 3, 2021 Echelon insured the claimant's motorcycle under Ontario policy number 323087588.

Aviva insured Reinhart Developments Ltd. Owner of a Chevrolet Silverado under an Alberta policy bearing number 6141213609. It is agreed that this insurance contract was made and enacted in Alberta and was in accordance with Alberta legislation.

On September 3, 2021 the claimant was riding his motorcycle in Alberta. He was involved in an accident with the 2001 Chevrolet Silverado.

The claimant applied to Echelon for Ontario statutory accident benefits under his Ontario policy.

Echelon made various payments to the claimant. Echelon claimed loss transfer indemnification from Aviva pursuant to s. 275 of the *Insurance Act*.

Aviva declined the loss transfer request on the basis that s. 275 of the *Insurance Act* does not apply to it and that in the circumstances of this case, Aviva claims it is not subject to pay Ontario loss transfer where the accident occurred in Alberta with an Alberta licensed vehicle and a vehicle insured by an Alberta automobile policy.

RELEVANT LEGISLATION

Section 275 of the *Insurance Act* provides limited indemnification for statutory accident benefits paid where certain classes of vehicles are involved. The relevant portions of s. 275 are set out below:

> "275 (1) 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 regulations involved in the incident from which the responsibility to pay the statutory accident benefits arose."

The relevant regulation is Ontario automobile insurance Regulation 664, s. 9 and the relevant provisions are set out below:

> "9. (1) In this section,
>
> 'first party insurer; means the insurer responsible under subsection 268 (2) of the Act for the payment of statutory accident benefits; …
>
> 'second party insurer' means an insurer required under section 275 of the Act to indemnify the first party insurer.
>
> (2) A second party insurer under a policy insuring any class of automobile other than motorcycles, off-road vehicles and motorized snow vehicles is obligated under section 275 the Act to indemnify a first party insurer."

Also relevant to the issues in this dispute are the definition of insurer under the *Insurance Act* and the definition of a contract of automobile insurance. Those definitions are set out below:

1. "Insurer" means the person who undertakes or agrees or offers to undertake a contract.

2. Section 22 (1): In this part, "contract" means 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 Benefit Schedule by an insurer that has filed an undertaking under s. 226.1.

POSITION OF THE PARTIES

Echelon

Echelons prime submission is that I am bound to follow the Court of Appeal's decision in *Primmum Insurance Company v. Allstate Insurance Company*, 2010 ONCA 576 CanLII). Echelon submits that this case is on all fours with the matter before me and that there is no other case law developed subsequent to this decision that has modified or changed its application and accordingly if I follow *Primmum v. Allstate* as I am bound to do, I must conclude that loss transfer applies in the circumstances of this case.

In the *Primmum* case, an individual who was a resident of Ontario was involved in a car accident in North Carolina when operating his motorcycle. Primmum insured the injured person and paid statutory accident benefits as required by their standard Ontario automobile insurance policy.

The driver of the other car who was at fault was insured by Allstate. The Allstate policy was issued in North Carolina. Primmum claimed loss transfer against Allstate. Allstate refused to participate in the process taking the position that Ontario's loss transfer scheme was not applicable to Allstate.

The issue of the applicability of the loss transfer scheme arose in that case when Primmum brought an application to have an arbitrator appointed to hear the loss transfer matter. Allstate claimed there was no jurisdiction but the judge at first instance found that Allstate was bound by the Ontario loss transfer scheme. The judge concluded that Allstate was "an insurer" under the definition provision of the Ontario *Insurance Act*, that it issued a "contract" as defined under the Ontario *Insurance Act* and also concluded that Allstate was licensed to sell insurance in Ontario under s. 224(1)(a). The judge concluded that this was not a case of impermissible extraterritorial exercise of Ontario jurisdiction. Rather, it was a case of an enforced arbitration of a statutory cause of action between two Ontario insurers.

The matter went up to the Court of Appeal which agreed with the conclusions of the judge hearing the motion. The Court of Appeal concluded that the Supreme Court of Canada's decision in *Unifund Assurance Company of Canada v. The Insurance Corporation of British Columbia*, 2003 SCC 40 (CanLII), [2003] 2 S.C.R. 63 was definitive. The court referenced Justice Binnie's comments at paragraph 12 which I set out below:

"Section 275(4) of the Ontario Act provides that disputes about indemnification

> are to be resolved by arbitration, pursuant to the Ontario Arbitration Act 1991, S.O. 1991, c. 17. There is no doubt that if the appellant were an Ontario insurer, it would be required to arbitrate Unifund's claim."

As will be discussed later, notably the *Unifund v. ICBC* claim involves an accident in British Columbia.

Echelon points out that in the *Primmum* case, leave was sought to the Supreme Court of Canada and leave was dismissed.

Echelon also submits that one must distinguish between loss transfer disputes and priority disputes. Aviva raises in its submissions that the decision of the Court of Appeal in *Travelers Insurance Company of Canada v. CAA Insurance Company*, 2020 ONCA 382 provides clarity as to what an Ontario insurer is with the result that the *Primmum* decision has been reversed and that in these circumstances Aviva would not be considered to be a "Ontario insurer".

In response, Echelon notes that the Travelers decision deals with priority and not with loss transfer. Echelon submits that loss transfer does not create any obligation for the paying insurer under their contract, nor does it create any obligation or relationship between the paying insurer and the injured claimant. Loss transfer does not look at issues relating to coverage under a policy or having one insurer take over the handling of one claim from another.

The loss transfer scheme is a purely statutory scheme that simply requires one insurance company to indemnify another insurance company in limited circumstances. Therefore, cases analysing jurisdictional issues relating to priority disputes do not have any bearing and are not relevant to questions relating to loss transfer.

Echelon submits that the *Travelers v. CAA* case dealt solely with the unique complexities of coverage in the context of a priority dispute. Echelon also submits that the Court of Appeal in that case rejected CAA's argument that Primmum and Allstate applied to the priority dispute before them. Echelon notes the following reference from paragraph 55:

> "I conclude that *Primmum* is of no assistance in this case. It does not touch the earlier determination that the arbitrator in this case erred in his interpretation of s. 268 of the Ontario *Insurance Act*, which was not at issue in that case. *Primmum* dealt only with the application of s. 275 of the Ontario *Insurance Act*, the underlying purpose of which is distinct from the purpose underlying the priority rules in s. 268."

Echelon also relies on the decision of Justice Corthorn in *Primmum Insurance Company v. L'Unique Assurances Générales Inc.*, 2017 ONSC 5235 (CanLII). In that case, Justice Corthorn identified the following broad differences between loss transfer and priority:

1. The two schemes are intended to serve different purposes.

2. An insured person's interests are significant in a priority dispute but not in a loss transfer indemnity dispute.

3. The schemes operate differently.

4. The obligations owed to an insured by the involved insurers are significantly different.

Echelon's position is that *Primmum v. Allstate* is still good law. The factual basis of *Primmum* is indistinguishable from the factual basis here and accordingly I am bound to conclude that loss transfer applies to Aviva.

Aviva's Position

Aviva acknowledges the relevance of the *Primmum v. Allstate* case but takes the position that courts subsequent to that decision have provided greater clarity with respect to the meaning and scope of what is an "Ontario insurer". This is important because it is the comments of Justice Binnie in the *Unifund v. ICBC* case with respect to "an Ontario insurer" that directed and informed the Court of Appeal in the *Primmum v. Allstate* decision to reach their conclusion with respect to the applicability of the loss transfer scheme in North Carolina.

Aviva points out quite rightly that the words "Ontario insurer" are not in fact a defined term anywhere in the relevant provisions for loss transfer. Justice Binnie in the *Unifund v. ICBC* case commented that if the appellant in that case had been an Ontario insurer (that is, ICBC), there would have been no doubt that it would have been required to arbitrate Unifund's claim.

The judge at first instance and the Court of Appeal in the *Primmum v. Allstate* case accepted that Allstate was "an Ontario insurer". Aviva submits there was no real analysis as to what is needed in order to qualify as an Ontario insurer. In that case Allstate, much like Aviva here, operated in Ontario and issued policies in Ontario. However, the accident occurred in North Carolina and the policy was a North Carolina auto policy, not an Ontario policy.

Aviva submits that if you look at the decision of the Court of Appeal in *Travelers v. CAA* and apply their analysis of what constitutes "an Ontario insurer", albeit within a priority dispute context, the conclusion one would reach is that Aviva would not be an Ontario insurer and that therefore *Primmum v. Allstate* would no longer be considered to be good law.

In the *Travelers v. CAA* case, a claimant was injured in an accident in Nunavut. She was temporarily employed there. She was driving a Nunavut-plated vehicle, owned by the government of Nunavut and covered under a Nunavut motor vehicle liability policy that had been issued by Travelers to the Government of Nunavut. Under that policy, she was entitled to Nunavut statutory accident benefits. However, the claimant was ordinarily resident in Ontario and owned a car plated in Ontario and insured by CAA. Under the terms of her Ontario policy, she was obliged to claim statutory accident benefits from CAA.

She applied to CAA for accident benefits and CAA took the position that Travelers was the priority insurer. The arbitrator agreed and held that Travelers was an Ontario insurer and therefore required to arbitrate a priority dispute with CAA under s. 268 of the *Insurance Act*. Travelers appealed this decision and the arbitrator's decision was upheld. It then went up to the Court of Appeal which concluded that Travelers was not "an Ontario insurer for the purposes of the priority provisions of the Ontario *Insurance Act*."

Aviva points out two comments in the *Travelers* decision dealing with the extraterritorial jurisdiction of the Ontario *Insurance Act*. Aviva points out that the Court of Appeal in *Travelers* as did the Supreme Court of Canada in *Unifund* specifically held that Ontario's insurance laws do not have extraterritorial effect. (See paragraphs 50 to 51 set out below):

> "It is well established that a province has no legislative competence to legislate extraterritorially. If the Ontario Act purported to regulate civil rights in British Columbia arising out of an accident in that province, this would be an impermissible extraterritorial application of provincial legislation.
>
> This territorial restriction is fundamental to our system of federalism in which each province is obliged to respect the sovereignty of the other provinces within their respective legislative spheres, and expects the same in return. This flows from the opening words of s. 92 of the *Constitution Act* 1867, which limit the territorial reach of provincial legislation: 'In each province the legislature may exclusively make Laws in relation to' the enumerated heads of power."

Aviva relies on both *Travelers* and *Unifund* to support its position that to find that Aviva is bound by the loss transfer scheme in Ontario would result in impermissible extraterritorial application of provincial legislation.

Aviva also relies on the Court of Appeal's analysis in the *Travelers* case with respect to Justice Binnie's comments about an Ontario insurer. At paragraph 24 the court points out that Justice Binnie did not explain what he meant by the term "Ontario insurer". The court points out this is not a term of art or a technical legal term. The court suggests that one cannot simply assume because an insurance company is an Ontario insurer (that it is licensed to undertake auto insurance in Ontario under s. 224(1) and has offices in Ontario), that that means it is an Ontario insurer.

The court suggests, Aviva points out, that the correct approach is not so simple. The Court of Appeal notes that Travelers, like many of Canada's car insurers, is licensed to write insurance here and elsewhere in Canada. However, the "mere licensing or the presence of an office, does not convert these insurers into Ontario insurers for all purposes, nor does it make the Ontario *Insurance Act* the governing legislation for all of the automobile insurance policies they underwrite. Treating mere Ontario licensing as the sole reason to constitute an insurer as an 'Ontario insurer' would give Ontario insurance legislation extraterritorial effect, which would be

contrary to the essential holding in *Unifund*".

Lastly, Aviva relies on paragraph 56 of the decision of the Court of Appeal in *Travelers*. While it acknowledges that the court noted that *Primmum* was of no assistance as it applied to a loss transfer case, the court also made the following comment with respect to *Primmum*:

> "Moreover, neither the *Primmum* application judge nor this court explored what Binnie J. meant by 'Ontario insurer', which, as noted earlier, is not a defined term. That exploration remains open to the court and has been undertaken in this case."

Therefore, while the court overall concludes that *Primmum* is not applicable as it relates to a loss transfer claim, Aviva submits that the court clearly concluded that *Primmum* was also not applicable due to the failure of the court to examine what was meant by an Ontario insurer.

Therefore, Aviva submits the Court of Appeal in *Travelers v. CAA* in essence distinguished or overturned *Primmum v. Allstate*. Aviva submits I am not bound by the *Primmum* decision and that I should follow the Court of Appeal in *Travelers v. CAA* and conclude that Aviva is not an "Ontario insurer" even though it has head offices in Ontario and issues policies in Ontario. As in the *Travelers* case, Aviva submits that the accident occurred in Alberta and the relevant policy was an Alberta policy. Therefore, for the loss transfer case Aviva would not be considered an Ontario insurer as required by both Justice Binnie and the Court of Appeal in *Primmum v. Allstate*.

DECISION AND ANALYSIS

I commend both counsel for the exceptional job they did in setting out the issues, and analysing the case law in both their written and oral submissions.

However, despite the able and innovative submissions of counsel for Aviva, I find that I am bound by the decision in *Primmum v. Allstate*.

As always, the starting place in analysing a case such as this is to look closely at the legislative background.

Loss transfer is a creature of statute and is not available at common law. There are some considerable differences between a priority claim and a loss transfer claim.

I agree with Echelon that a priority dispute looks at the contract between the insured and the insurer. In a priority dispute, the question is which of two contracts of insurance relative to that insured stand in priority under s. 268 of the *Insurance Act*.

Loss transfer is merely a statutory scheme to transfer risk between two automobile insurers taking into consideration the risk associated with driving motorcycles or heavy commercial vehicles.

Section 275(1) of the *Insurance Act* does not make reference to "an Ontario insurer". Section

275, to be activated, requires an insurer to be responsible under s. 268(2) of the *Insurance Act* to pay statutory accident benefits. The insurer making the claim for loss transfer must therefore be an Ontario insurer. In order to be an insurer under s. 268(2) of the *Insurance Act*, one must be an Ontario insurer. The Court of Appeal in the *Travelers* case made that clear.

Section 275 goes on to permit an insurer who is paying benefits under s. 268(2) to seek indemnification to "the insurers of such class or classes of automobiles as may be named in the regulations" who were involved in the incident which resulted in the claim for statutory accident benefits.

There is no reference to that insurer being an insurer under s. 268 of the *Insurance Act*. If this were a priority dispute, in order for a priority argument to be made, that insurer must fall within one of the various categories of insurance under s. 268 of the *Insurance Act*. For example, an insurer of the vehicle that the claimant was an occupant of, you insurer of the claimant's spouse, the claimant is a dependant on the name insured.

There is no such requirement under s. 275. All that is required for loss transfer is that "the insurer" insured the specified class of vehicle that was involved in the incident.

This is consistent with s. 9(1) of Ontario Regulation 664 and the definition provided of "first party insurer" and "second party insurer". Again, a first party insurer is the insurer responsible for paying accident benefits under s. 268(2). We know that must be an Ontario insurer as found by the Court of Appeal in *Travelers v. CAA*.

However, the second party insurer is "an insurer" required under s. 275 of the Act to indemnify the first party insurer. All s. 275 requires is that there be an insurer that insured the class of vehicles that qualify.

This then takes us to the definition of insurer under the *Insurance Act*, s. 1. An insurer means "the person who undertakes or agrees or offers to undertake a contract". This is a very broad definition.

I see nothing in the *Insurance Act* and specifically s. 275 or its regulations that require that the second party insurer be an Ontario insurer under s. 268 of the *Insurance Act* for the purposes of statutory accident benefits as defined by the Court of Appeal in *Travelers v. CAA*.

This then brings us to s. 224(1) of the *Insurance Act* and the definition of a contract of automobile insurance. It is defined as "that is undertaken by an insurer that is licensed to undertake automobile insurance in Ontario."

It is this provision that I believe Justice Binnie was referring to when he referenced "an Ontario insurer" in the *Unifund v. ICBC* decision. Justice Binnie was not looking at a priority dispute in the *Unifund* case, but was looking at whether Unifund, an Ontario insurer paying statutory accident benefits to an Ontario insured, had the right to advance a claim for loss transfer against the ICBC

which did not issue policies of insurance in Ontario nor have an office in Ontario and where the accident had occurred in British Columbia. In that case, the claimants were Ontario residents and were injured when their rented car was struck by a tractor-trailer in British Columbia. All the vehicles involved in that accident were registered in British Columbia and all the vehicles were insured by the ICBC. However, the claimants returned to Ontario and advanced a claim for statutory accident benefits under their Ontario policy from the Ontario insurer, Unifund. It was specifically noted in that case that ICBC was not authorized to sell insurance in Ontario and does not do so. The vehicles insured by ICBC and did not venture into Ontario. Therefore, there was no statutory cause of action available to Unifund to seek loss transfer in Ontario or in British Columbia.

While Justice Binnie may not have specifically explained what he meant by Ontario insurer, it seems to be implicit when reviewing the decision that an Ontario insurer would be one that was authorized to sell insurance in Ontario and sold insurance in Ontario.

That then brings me to the decision of the Court of Appeal in *Primmum v. Allstate*. I agree with Echelon that the facts are on all fours with the case before me. We have an out of province accident in Alberta. We have a claimant who is involved in an accident in Alberta that seeks statutory accident benefits from its Ontario insurer, Echelon, who was obliged to pay statutory accident benefits in accordance with s. 268 of the *Insurance Act*. In the *Primmum* case, the insured had an accident in North Carolina and sought benefits from Primmum who was the insurer obliged to pay its statutory accident benefits under s. 268 of the *Insurance Act*.

Allstate was an insurance company licensed in Ontario to undertake and sell automobile insurance. Its headquarters are in Markham. Aviva is licensed in Ontario to undertake and sell automobile insurance and its headquarters are also in Markham. There is no question that Echelon is the insurer required under s. 268 of the *Insurance Act* to pay statutory accident benefits.

Justice Cameron, who heard the *Primmum v. Allstate* matter, concluded that where both insurers are registered in and carry on business in Ontario, they may claim loss transfer even if the accident occurred in a non-loss transfer jurisdiction. Justice Cameron made reference to two other decisions that had reached similar conclusions: *Royal & Sun Alliance Insurance v. Wawanesa Mutual Insurance* (2006), 88 O.R. (3d) and *CAA v. American Home*, unreported, January 7, 2007, Arbitrator Jones. In the latter case, loss transfer was found to apply even though the accident occurred in Nova Scotia.

Allstate argued before Justice Cameron that loss transfer is limited to situations where either the accident occurs in Ontario or both policies are issued in Ontario. Allstate argued that where one policy is issued out of Ontario and covers a vehicle licensed and registered outside of Ontario, loss transfer should not apply.

Justice Cameron specifically found that Allstate was an Ontario insurer as it was licensed to sell insurance in Ontario. He concluded "In the *Insurance Act*, Allstate is an 'insurer' under s. 1 and it

issues 'contracts' because it is licensed to sell insurance in Ontario under s. 224(1)(a)."

Justice Cameron concluded that the statutory cause of action of loss transfer in Ontario was applicable to Allstate even though the accident occurred in North Carolina, and felt it was not an impermissible extraterritorial exercise of jurisdiction.

The Court of Appeal agreed with Justice Cameron. The court concluded that Allstate was an Ontario insurer. It did not matter that the accident occurred outside of Ontario. The court agreed that the issue was resolved by the *Unifund v. ICBC* decision.

I also reviewed the decision of Arbitrator Guy Jones in *CAA Insurance v. American Home* from January of 2007 that was referenced by Justice Cameron. That case is also on all fours factually with the matter before me.

In that case, the accident occurred in Nova Scotia. The claimant sustained injuries when her car was struck by a heavy commercial vehicle. The heavy commercial vehicle was insured by American Home. The claimant's vehicle was insured by CAA. The CAA policy was an Ontario policy. The claimant had been living in Nova Scotia for some time and was working there at the time of the accident. The owner of the heavy commercial vehicle had its head office in Nova Scotia. The truck driver lived in Nova Scotia. The policy of the heavy commercial vehicle of American Home was a Nova Scotia policy.

Arbitrator Jones was asked to find that the loss transfer scheme did not apply to American Home. He concluded that American Home was authorized to and did sell insurance in Ontario. It had a head office in Ontario. He applied the test set out by Justice Binnie in Unifund and noted, "The key point is that American Home is licensed and does carry on business of selling automobile insurance in Ontario. As such, it is subject to loss transfer and accordingly on the facts of this case CAA may pursue its claim pursuant to s. 275 of the *Insurance Act* against American Home."

There was no case put before me that suggested that loss transfer was not applicable in the circumstances of this case. Aviva's argument was based almost exclusively on the comments of the Court of Appeal in *Travelers v. CAA* which I find are distinguishable as it involved a priority dispute and the issue of who is an Ontario insurer was being determined under s. 268 of the *Insurance Act* and not under s. 275 of the *Insurance Act*.

Therefore, I find that Aviva is an insurer pursuant to s. 275 of the *Insurance Act* and accordingly the loss transfer scheme is applicable to Aviva on the basis that I have outlined above.

AWARD

In answer to question 1(a) as set out in the Arbitration Agreement, I conclude that Ontario's loss transfer scheme applies to Aviva in the circumstances of this matter.

COSTS

According to paragraph 3 of the Arbitration Agreement, the costs of the arbitration are to be borne equally up to the arbitration hearing and thereafter subject to reassessment in accordance as a result of the hearing. Under s. 4 of the agreement, the arbitrator is given authority to determine who pays the expenses of the arbitrator and the expenses of the arbitration taking into consideration the success of the parties, offer to settle, the conduct of the proceedings and the principles generally applied in litigation before the courts of Ontario. I have not been made aware of any offer to settle and therefore, as Echelon was entirely successful in this matter, I that Aviva pay the expenses of the arbitrator and the expenses of the arbitration.

ORDER

I am also asked under paragraph 2 of the Arbitration Agreement to deal with legal costs in a similar manner. For the same reasons, as outlined above I order that Aviva pay Echelon's legal costs. If the costs cannot be agreed upon, counsel can advise and we will set up a further pre-hearing

DATED THIS 8th day of March, 2024 at Toronto.

_____

Arbitrator Philippa G. Samworth
DUTTON BROCK LLP
Barristers and Solicitors
1700 – 438 University Avenue
TORONTO ON M5G 2L9