IN THE MATTER of the *Insurance Act*, R.S.O. 1990, c I.8, as amended,
Section 268 and Regulation 283/95 made under the Insurance Act;
AND IN THE MATTER of the *Arbitration Act*, S.O. 1991, c.I.7, as amended;

B E T W E E N:

AVIVA INSURANCE COMPANY OF CANADA

Applicant

and

SECURITY NATIONAL

Respondent

DECISION

COUNSEL

Joy E. Stothers - Schultz, Frost LLP
Counsel for the Applicant, Aviva Insurance Company of Canada
(hereinafter referred to as "Aviva")

Benjamin Lee and Joseph Evans - TD Insurance Staff Legal
Counsel for the Respondent, Security National
(hereinafter referred to as "Security National")

ISSUES

[1] In the context of a priority dispute pursuant to s.268 of the *Insurance Act*, the issue before me is whether the claimant Bashir Ali was the "spouse" of Sirad Abdi Shire at the time of a motor vehicle accident which occurred on January 31, 2013. If a "spouse", the insurer of the Shire automobile, Security National, would stand in priority, otherwise Aviva, as insurer of the vehicle in which the claimant was a passenger, would stand in priority.

[2] In addition, Security National claims Aviva is precluded from disputing priority on the basis that they have failed to properly serve a Notice of Dispute on the claimant Bashir Ali as required by s.4 of Ontario Regulation 283/95.

PROCEEDINGS

[3] This arbitration proceeded on the basis of Written Submissions, Affidavit/Documentary Evidence and Books of Authority. No oral evidence was presented.

APPLICABLE LEGISLATION

[4] A priority dispute arises when there are multiple motor vehicle liability policies which might respond to a statutory accident benefits claim made by an individual involved in a motor vehicle accident. Section 268(2) of the *Insurance Act* sets out the priority rules or hierarchy to be applied to determine which insurer is liable to pay statutory accident benefits.

[5[As Bashir Ali was an occupant of a vehicle at the time of the accident, the following rules or hierarchy with respect to priority of payment apply:

> *(i)* *The occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured;*
>
> *(ii)* *If recovery is unavailable under (1), the occupant has recourse against the insurer of the automobile in which he or she was an occupant;*
>
> *(iii)* *If recovery is unavailable under (1) or (2), the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose;*
>
> (iv) *If recovery is unavailable under (1), (2) or (3), the occupant has recourse against the Motor Vehicle Accident Claims Fund.*

[6] According to section 268(5) of the *Insurance Act*, if a person is a named insured under contract evidenced by a motor vehicle liability policy, or the person is the spouse or a dependant, as defined in the *SABS*, of a named insured, the person shall claim statutory accident benefits against the insurer under that policy.

[7] Section 3(1) of the *SABS* includes in the definition of an "insured person":

> (a) The named insured, any person specified in the policy as a driver of the insured automobile and , if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse.

[8] Per the *SABS*, “spouse” is to be interpreted pursuant to Part VI of the *Insurance Act*. Section 224(1) of the *Insurance Act* states that “spouse” means either of two persons who:

> (a) Are married to each other,
>
> (b) Have together entered into a marriage that is voidable or void, in good faith on the part of the person asserting a right under [the *Insurance Act*], or
>
> (c) Have lived together in a conjugal relationship outside marriage,
>
> (i) Continuously for a period of not less than three years, or
>
> In a relationship of some permanence, if they are the natural or adoptive parents of a child.

[9] A review of the *Marriage Act*, R.S.O. 1990, c.M.3, indicates that:

> (a) no marriage may be solemnized except under the authority of a license issued in accordance with the *Marriage Act* or the publication of banns;
>
> (b) no person shall solemnize a marriage unless he or she is authorized to do so under the *Marriage Act*;
>
> (c) every person shall immediately after he or she has solemnized a marriage shall enter the marriage in a register;

[10] Section 31 of the *Marriage Act* states:

> Marriages solemnized in good faith
>
> "If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as a married couple, such marriage shall be deemed a valid marriage, although the person who solemnized the marriage was not authorized to solemnize marriage, and despite the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence."

[11] The disputed issue is whether Mr. Ali was a “spouse” of Ms. Shire at the time of the accident and therefore an “insured person” under the Security National policy for the purposes of the *SABS* and *O.Reg 283/95*.

FACTS

[12] The claimant Mr. Ali was involved in a single motor vehicle accident as a passenger on January 31, 2013. The vehicle was being driven by Aviva's insured, Ms. Said Asha Yusuf, who allegedly lost control while accessing the 401 East on-ramp at Dixon Road in Toronto, Ontario.

[13] Mr. Ali submitted an Application for Accident Benefits (OCF 1) to Aviva. The application indicates the claimant's address as 1815-340 Dixon Road, Toronto. As for marital status he indicates "single" when he could have checked off a box indicating "divorced" or "separated".

[14] Shortly after Mr. Ali submitted a completed OCF-1, Aviva investigated the issue of priority. Following the investigation, Aviva obtained information which suggested that Mr. Ali's purported wife was insured with Security National under Policy No. 71294959 and that he may have been a listed driver on her policy of motor vehicle liability insurance. It appears that this information came from an Autoplus report dated May 8, 2013. Autoplus reports are generated by a private company that provides claims information from a database that it maintains with information provided by participating insurance companies. The report would suggest that the claimant may have been a listed driver on the policy issued by Security National. The report on its face is difficult to decipher and no coding explanation was provided to me. On the basis of this, Aviva sent Security National a Notice of Dispute Between Insurers on June 21, 2013.

[15] Despite the information in the Autoplus report, the underwriting file of Security National contains Certificates of Insurance from 2007 through May of 2013 showing Sirad Abdi Shire as the named insured and sole driver of the vehicles insured under policy 7124959. There is no reference to Mr. Ali anywhere in the file. There is no indication that he was a listed driver. On all policy documents Ms. Shire is shown as being single. At paragraph 29 of its Factum, Aviva concedes that Mr. Ali was not a named insured or listed driver on Ms. Shire's policy with Security National.

[16] In a signed statement dated July 31, 2013 given to Crawford & Company ("Crawford"), the adjusting firm retained by Aviva, Mr. Ali indicated that his address was 2006 – 340 Dixon Road, Toronto, Ontario on the date of loss, but living at apt.1805 in the same building at the time the statement was taken. He was living away from his children and wife and that he was "*married, but separated in 1999*." He also stated that he had six children with

Ms. Shire and went on to list their names and respective ages: Keynadiid (10); Keynan (16); Koosa (18); Kamal (23); Kafi (25); and Keysar (27).

[17] On August 2, 2013, Aviva sent Security National the Autoplus report referred to above. Aviva requested that Security National assume priority for Mr. Ali's accident benefits claim. On August 26, 2013, Aviva sent a second request to Security National asking that they assume priority.

[18] On September 5, 2013, Security National advised Aviva that Ms. Shire reported that she had been legally divorced for over ten years and requested from Aviva a copy of the marriage certificate. On September 10, 2013, Mr. Ali's counsel at the time contacted Aviva by letter and explained that Mr. Ali had undergone a religious marriage ceremony in his country of origin, and did not have any documentation confirming it.

[19] An ISB search conducted on October 4, 2013 confirmed that there was no registered divorce in Ontario between Mr. Ali and Ms. Shire. There had never been any documentation produced that confirmed that the marriage had been registered.

[20] Surveillance conducted in November and December 2013 (about a year post-accident) on behalf of Aviva showed that Mr. Ali or an individual purported to be Mr. Ali was present at Ms. Shire's 63 Scarlettwood Court, Etobicoke residence. Mr. Ali was also observed at one point as a passenger in a grey Nissan Altima with the licence plate BKKZ-585 with a young male believed to be his son. It was confirmed by the investigator that this car was registered to Ms. Shire. On one occasion, the claimant was said to be driving the vehicle but there are no photographs to identify the claimant that day. The photographs contained in the report are from a distance which makes it impossible to identify the individual being photographed. At the subsequent EUO of the claimant, the photos and surveillance information was never presented to the claimant to confirm that the individual observed was the claimant.

[21] Mr. Ali's tax return for 2012 (the year before the subject accident) shows that he was "single" as opposed to checking off boxes that would have indicated "separated" or "divorced".

[22] Aviva conducted an Examination under Oath ("EUO") of Mr. Ali on January 13, 2014. Mr. Ali's evidence was adduced through a Somalian interpreter. No representative of

Security National was present. Although Security National had been served with a Notice of Dispute Between Insurers, it was only served with a Notice demanding Arbitration in June of 2014.

[23] In his EUO evidence Mr. Ali maintained that he had been separated but not divorced from his wife since 1998 or 1999. They had not lived together since. Mr. Ali stated that when he and Ms. Shire separated, there was legal and religious documentation of some kind evidencing the separation. No such documentation has been produced. After parting ways, Mr. Ali and Ms. Shire were civil to one another. Mr. Ali also visited Ms. Shire's home as she is the mother of his children, however, he did not stay overnight. Mr. Ali would often ride in Ms. Shire's vehicle with his son, either because he needed a ride, or because he was accompanying his son. The evidence of Mr. Ali would suggest that he visited Ms. Shire’s house regularly but did not live there.

[24] On his EUO Mr. Ali repeated that he has six children with Ms. Shire, and listed the same six names and their respective ages: Keysar (26); Kafi (25); Kmal (23); Koos (19); Keynan (16); and Keynadiid (12). He explained that Keynadiid was born sometime around 2002 despite maintaining that he was separated from his wife at that time.

[25] On his EUO he further testified that at the time of the accident, Mr. Ali was living with Mr. Ibad Mohamed, a roommate, at an apartment located at unit 1815, 340 Dixon Road, in the City of Toronto. He has been residing at 340 Dixon Road since 1999, but in different units. Ms. Shire was living at 63 Scarlettwood Court in the City of Toronto at the time of the accident. This home is rented solely by Ms. Shire. Mr. Ali did not sign his name on the lease.

[26] On January 30, 2014, Aviva sent a letter to Mr. Ali requesting productions pursuant to section 33 of *Ontario Regulation 34/10 – Statutory Accident Benefits Schedule*. In the letter to Mr. Ali, Aviva asked for documents relating to Mr. Ali and Ms. Shire’s separation, authorizations to obtain Mr. Ali’s previous accident benefits claims, as well as a copy of the lease agreement of his listed residence. Aviva has not received this information to date. Mr. Ali has not co-operated in satisfying the undertakings provided at his EUO.

[27] On April 7, 2014, Aviva sent counsel for Security National a copy of Mr. Ali's EUO transcript, a copy of the ISB search indicating that no divorce records existed, and a copy of Mr. Ali's statement dated July 31, 2013 indicating that he was married to Ms. Shire**.**

[28] Also by way of post-accident investigation, Aviva has produced Facebook entries in a 2015 search of their respective Facebook accounts which include photographs of the two of them together. An October 26, 2015 Autoplus search revealed that Ms. Shire's vehicle was insured with Allstate with Mr. Ali listed as spouse. The Allstate underwriting file did not form part of the Document Brief provided to me.

ANALYSIS AND FINDINGS

[29] I will firstly deal with the issue of whether Aviva is precluded from proceeding with this loss transfer dispute on the basis that the claimant was not properly served with the Notice to Applicant of Dispute Between Insurers. Security National relies on the April 11, 2014 decision of Arbitrator Novick in *Belair Direct Insurance Company of Canada v. Security National Insurance Company* to support its position.

[30] There is affidavit evidence before me that such Notice was sent to the claimant. There was no cross-examination by Security National on the affidavit. There is no evidence before me that the claimant did not receive the Notice. When Aviva completed its Examination Under Oath of Mr. Ali, there was reference made to the dispute between insurers. The claimant's legal representative was present at the Examination Under Oath. The Notice indicates 1815340 Dixon Road, Toronto, Ontario, M9R 1T1 when Mr. Ali claims he was residing at 340 Dixon Road, unit 1815. I am satisfied that the Notice was sent to the claimant and that the claimant would have received the Notice despite the fact that there was no hyphen between the apartment number and street address. I am satisfied that postal delivery having the correct postal code would have been familiar with 340 Dixon Road and would have known that the first 4 digits would represent the apartment number. Furthermore, the evidence confirms that the latter was never returned to Aviva.

[31] Accordingly, I find that Aviva is not precluded from pursuing this priority dispute as I am satisfied on the balance of probabilities that the Notice to Applicant of Dispute Between Insurers was sent to the Applicant and received by him.

[32] I will now turn to the more significant issue as to whether Sirad Abdi Shire was the "spouse" of Bashir Ali at the time of the accident. The best evidence available to support a finding that they were spouses at the time of the subject accident is contained in the statement provided to Aviva's adjuster by the claimant and the evidence contained in Mr. Ali's EUO transcript. In both, Bashir Ali indicated that they were married but later separated in or about 1999. Also supportive of a finding that they were spouses are the number of children between them prior to the separation, a child born after the separation, the claimant's presence post-accident at Ms. Shire's residence as shown in the surveillance, the Facebook entries which show photographs of the two of them together and the fact that no registered divorce could be located. In addition, the documents filed with me include a letter from the claimant's legal representative indicating that the claimant had a religious marriage ceremony in his country of origin but that there were no documents available confirming same.

[33] On the basis of the aforesaid, Aviva takes the positon that the claimant and Security National's insured, Ms. Shire, were "spouses" at the time of the January 31, 2013 motor vehicle accident. If correct, Security National would stand in priority and be responsible for payment of statutory accident benefits to the claimant Bashir Ali as Mr. Ali would be an "insured person" under the Security National policy and would stand highest in priority by reason of s. 268(2)(i) of the *Insurance Act's* priority hierarchy.

[34] In response, Security National maintains that the two were not spouses as a valid marriage never took place. Security National submitted on the basis that there is an Ontario statute that governs marriage, namely the *Marriage Act,* R.S.O. c.M.3 ("*Marriage Act*"), it follows that "married" means legally married under the *Marriage Act*. Security National maintains that Aviva has not proven that the requirements of the Marriage Act have been met.

[35] A review of the *Marriage Act* R.S.O. 1990, c.M.3 indicates that:

(a) no marriage may be solemnized except under the authority of a license issued in accordance with the *Marriage Act* or the publication of banns;

(b) no person shall solemnize a marriage unless he or she is authorized to do so under the *Marriage Act*;

(c) every person shall immediately after he or she has solemnized a marriage shall enter the marriage in a register;

[36] Security National referred me to the finding of the Court of Appeal in *Debora v. Debora* [1999] D.L.R. (4th) 759 (Ont. C.A.) when it examined a provision in the *Family Law Act*, R.S.O. 1990, c.F.3 (the "*Family Law Act*") that was nearly identical to s.224 of the *Insurance Act* which will be dealt with in greater detail in the paragraphs to follow. Section 1(1) of the *Family Law Act* states:

> "spouse" means either of two persons who,
>
> (a) are married to each other, or
>
> (b) have together entered into a marriage that is voidable or void, in good faith on the part of a person relying on this clause to assert any right…"

[37] The Court of Appeal In *Debora* specifically found that a religious marriage performed outside of Ontario was not a legal marriage. In *Debora*, the couple were purportedly married in a Jewish religious ceremony and deliberately did not comply with the licencing and registration requirements of the *Marriage Act* so that the husband could continue to receive a widower's pension from a previous marriage. The words "good faith" were interpreted by the Ontario Court of Appeal as having demonstrated "an intention to comply with Ontario law". The case clearly stands for the proposition that the reference to "married" in the legislation can only refer to persons who are considered married under the laws of Ontario, namely the *Marriage Act*, as set out above and thereby, according to the Ontario Court of Appeal, does not introduce the myriad of uncertainties that would flow from a broader interpretation.

[38] In *Kanafani v. Abdalla,* 2010 ONSC 3651 (Ont. S.C.J.), it was further found that even a religious marriage performed within Ontario is not *prima facie* a legal marriage if it does not meet the requirements of the *Marriage Act*. In *Kanafani*, the couple were purportedly married in an Islamic religious ceremony in Toronto. It was performed under Muslim Sharia law by an Islamic religious leader. A marriage licence was never obtained. The marriage was never registered. There was no evidence adduced that the parties intended to comply with Ontario law and in particular the requirements of the *Marriage Act*. The court wrote at paragraphs 25 through 27:

> "In *Debora v. Debora*, the Ontario Court of Appeal considered the meaning of "spouse" under section 1(1) of the *FLA* in the case of a couple who had first entered into a Jewish religious **marriage** in 1987 and were subsequently married in a civil ceremony in 1994, pursuant to the provisions of the *Marriage Act*. Between the two dates, the husband acquired substantial assets and the issue that arose was whether the equalization date for the division of assets under the *FLA* should be 1987 or 1995. The court interpreted "**marriage**" in the definition of a spouse as meaning a **marriage** can only refer to "persons who are considered married under the laws of Ontario" (at para.11). With respect to section 1(1)(b), the court held that a "**marriage** that is void or voidable" refers to a statutory **marriage** under the *Marriage Act* which may, in particular circumstances, be void or voidable and that these words have no relevance to *a religious ceremony that is not a statutory **marriage*** (at para.11). Section 1(1)(b) also provides that the parties must have entered into a **marriage** that is void or voidable *in good faith*. The court also held that good faith refers to "an intention to comply with Ontario law" which means an intention to comply with the requirements of the *Marriage Act*. The court also confirmed that "good faith" does not refer to the state of mind of a party regarding the legality of the **marriage**. (at para.7)
>
> In Ontario it is a settled rule of conflict of laws that the formal validity of a **marriage** is determined by the law of the place where the **marriage** was performed (*lex loci celebrationis*) or equivalently, the law of the place where the contract is executed (*lex loci contractus*). Accordingly, the law of Ontario applies to determine whether or not the parties were legally married in Toronto.
>
> On the undisputed facts there can be no doubt that the religious **marriage** the parties entered into in Toronto on August 28, 2004, was not a **marriage** in accordance with the *Marriage Act*. There is no evidence that the parties intended to comply with Ontario law and in particular the requirements of the *Marriage Act*. This case is on all fours with the facts of the *Debora* case save that I could not find on the evidence before me that the parties entered into this religious **marriage** and *deliberately* did not conduct it in accordance with the laws of Ontario. That, however, is not material and in my view there is no genuine issue that the **religious ceremony** is not a statutory **marriage** under the *Marriage Act*."

[39] I am persuaded and bound by the findings in *Debora* and *Kanafani*. I am satisfied on the evidence before me that the religious ceremony in the case before me was not one in accordance with the *Marriage Act* and therefore Bashir Ali and Sirad Abdi Shire were not spouses at the time of the subject collision unless able to come within one of the savings or curative provisions of the applicable legislation.

[40] Aviva has referred me to several cases relating to a "saving provision" in the *Insurance Act*. s.224(1)(b) of the *Insurance Act* for marriages that did not strictly conform to the solemnization requirements of a legal marriage in Ontario. Two persons can still be considered to be "spouses" for the purposes of the *Insurance Act* if they:

> (b) have together entered into a marriage that is voidable or void, <u>in good faith</u> on the part of the person asserting a right under [the *Insurance Act*]… (emphasis mine)

[41] Section 31 of the *Marriage Act* has a similar, but not identical, saving provision which states:

> "If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as a married couple, such marriage shall be deemed a valid marriage, although the person who solemnized the marriage was not authorized to solemnize marriage, and despite the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence." (emphasis mine)

[42] On a careful review of the evidence before me I do not believe that there is sufficient and probative evidence to demonstrate that these savings provisions would apply. There is no evidence whatsoever as to the manner in which the two of them were purportedly married. The only information about the purported marriage ceremony was that the marriage was a religious one and took place in Mr. Ali's country of origin. The only evidence as to his country of origin is the fact that he presented his evidence on his EUO through a Somalian interpreter. Mr. Ali testified on his EUO that he was Muslim. There is no evidence before me that Ms. Shire was Muslim. Aviva has provided me with an article on "The Nikaah : a Somali wedding tradition" but the supporting evidence that the ceremony was a Nikaah does not exist. There is simply no direct evidence before me of the nature of the ceremony performed, when it took place, under what civil or religious laws the ceremony was conducted, who officiated, how many people attended, what dress or garb was warn or in what venue the ceremony took place. The jurisprudence put forward by Aviva with respect to meeting the requirements of the saving provision are replete with direct evidence describing the ceremony in question. That does not exist here. I cannot help but find that Aviva has failed to meet the evidentiary burden in this regard.

[43] Furthermore, the saving provisions require that the purported marriage be in "good faith". The words "in good faith" according to the jurisprudence provided to me and in particular the Ontario Court of Appeal's decision in *Debora*, mean the good faith intention to comply with the *Marriage Act* even where the marriage ceremony did not strictly conform to the requirements therein. The case law does indicate that persons who have engaged in a marriage ceremony are not expected to know all of the requirements of the *Marriage Act*. However, the case law is clear that there must be evidence of a good faith intention to comply with the *Marriage Act* in order to successfully invoke this saving provision. Justice

Spies in *Kanafani* granted summary judgment finding that the couple were not legally married in part because no evidence was adduced as to the intentions of the purportedly married parties to meet the licensing and registration requirements of the *Marriage Act*. In *Debora,* the parties had a religious ceremony outside of Ontario, but waited years to perform a provincially-recognized civil ceremony. The Court of Appeal found that because the parties knew of some obligation to comply with Ontario marriage legislation but waited for personal reasons to perform the civil marriage, that in the years between, they were not "spouses".

[44] In the case at hand, there is absolutely no evidence as to why Mr. Ali and Ms. Shire never registered their purported marriage or took steps to have the purported marriage recognized in Ontario. Was it to maintain a previous widower's pension as in *Debora*? Was it to qualify for increased social assistance? We will never know as no such evidence as to why the *Marriage Act* licensing and registration requirements were not satisfied was introduced in this proceeding. As a result, as per *Kanafani*, Aviva has failed to adduce any evidence as to whether Mr. Ali and Ms. Shire acted in "good faith" as required by the saving provisions of the applicable legislation.

[45] It should be noted that Aviva cites the case of *Isse v. Said,* 2012 ONSC 1829 (Ont. S.C.J.), in support of its position. The case is distinguishable. At paragraph 18 of the decision, Justice Broad found that the individuals in question, having conducted a Sharia religious ceremony were "spouses", but specifically distinguishes *Kanafani* on the basis that: "It is noted however that in *Kanafani* there was a specific finding, at para.27, that there was no evidence that the parties intended to comply with Ontario law and in particular the requirements of the *Marriage Act*", whereas in *Isse* there was undisputed evidence of Ms. Said that there was an intention for the *Marriage Act* to be complied with. In each of the cases cited by Aviva (*Isse*, Alspector v. Alspector [1957] O.R. 454 and *Legebokoff v. Legebokoff* (1982) 136 D.L.R. (3d) 566), there was direct evidence as to the purportedly married couples' intentions and full details as to the relevant ceremony. Again, there was no such evidence before me. I believe this to be fatal to Aviva's contention that a valid marriage existed at the time of the subject accident. As I have indicated, Aviva has failed to meet the evidentiary burden upon it to satisfy the saving provision of s.224 of the *Insurance Act* or s.31 of the *Marriage Act*.

[46] In the final analysis, the case law clearly holds that that a religious marriage is not a *prima facie* legal marriage if it does not meet the requirements of the *Marriage Act*. There is no such evidence before me. To meet the saving provision of s.224 of the *Insurance Act* or s.31 of the *Marriage Act* requires proof that the couple entered into a marriage in "good faith". There is simply insufficient evidence before me to reach such conclusion. In the absence of such evidence I am bound by the findings in *Debora* and *Kanafani*. Aviva's failure to meet the evidentiary burden upon it may well be without fault of its own. Attempts were made in September of 2014 and July 2015 to conduct an EUO of Mr. Ali with respect to the issues in this priority dispute. On both occasions he failed to show and Certificates of Non-Attendance obtained. His lack of co-operation has placed Aviva in a difficult position in its attempts to satisfy the evidentiary burden required to satisfy the savings provisions aforesaid.

[47] In the circumstances and on the limited evidence before me, I am unable to find that Mr. Ali and Ms. Shire were spouses of one another at the time of the subject accident. Although the present analysis is done in the context of a priority dispute between insurers to determine which insurer is obligated to pay accident benefits to a claimant, the same analysis would apply to an individual seeking a finding that he or she was an "insured person" under a policy of motor vehicle liability insurance. In my view, it would be unfair to confer all the first party benefits, uninsured and underinsured coverages and third party liability coverages of Ontario's standard auto policy to an individual in a situation where there is the limited amount of evidence that there exists before me in this proceeding. Here there is simply insufficient evidence to satisfy me that the two were married according to the provisions of the *Marriage Act* or that the "good faith" requirements of any saving provision were satisfied.

ORDER

[48] I hereby order that Aviva is the priority insurer.

[49] I hereby order that Aviva pay the costs of Security National with respect to this priority dispute on a partial indemnity basis.

[50] I hereby order that Aviva pay the costs of the Arbitrator.

DATED at TORONTO this 4th)

day of January, 2016.)

KENNETH J. BIALKOWSKI
Arbitrator