IN THE MATTER of the *Insurance Act*, RSO 1990, c.I.8. as amended,
AND *Regulation 283/95*, as amended by *Regulation 38/10*

AND IN THE MATTER of the *Arbitration Act, 1991, SO 1991, c. 17 as amended*

AND IN THE MATTER of an Arbitration

B E T W E E N:

BELAIR DIRECT

Applicant

- and -

WAWANESA MUTUAL INSURANCE COMPANY and COSECO INSURANCE COMPANY

Respondents

DECISION

COUNSEL

Marie Hynes – Carroll, Heyd, Chown LLP
Counsel for the Applicant Belair Direct
(hereinafter referred to as "Belair")

Kathleen Commisso – Buset & Partners LLP
Counsel for the Respondent Wawanesa Mutual Insurance Company
(hereinafter referred to as "Wawanesa")

ISSUE

In the context of a priority dispute pursuant to s.268 of the *Insurance Act*, R.S.O. 1990, c. I.8, to determine which insurer is responsible for payment of statutory accident benefits to Lindsey McQueen, as a result of personal injuries sustained in a motor vehicle accident on January 18, 2014, the issue before me is whether the Wawanesa policy issued to Lindsey McQueen was at the time of the accident properly and effectively reduced to comprehensive coverage only where an OPCF 16 was not used for the coverage change.

PROCEEDINGS

The matter proceeded on the basis of an Agreed Statement of Facts, Joint Document brief, Books of Authority and oral submissions on September 7, 2017.

APPLICABLE LEGISLATION

Section 227 of the *Insurance Act* provides as follows:

> "(1) An insurer shall not use a form of any of the following documents in respect of automobile insurance unless the form has been approved by the Superintendent;
> 1. An application for insurance
> 2. A policy, endorsement or renewal
> 3. A claims form
> 4. A Continuation Certificate"

AGREED FACTS

The parties in this matter have agreed to the following facts:

1. Lindsey McQueen obtained a motor vehicle liability policy of insurance from Wawanesa, for the policy period June 3, 2013 to June 3, 2014 ("the Wawanesa policy"). The Wawanesa policy number was 3503183.

2. The described automobile was a 2013 Volkswagen ("the VW").

3. Ms. McQueen was involved in a motor vehicle accident on January 16, 2014 while driving the VW. The VW was appraised to be total loss as a result of this accident on January 20, 2014.

4. On March 11, 2014, John Shaw of Dewhurst Insurance Ltd. sent an e-mail to ckemp@wawanesa.com with the subject line "CHG – Amend Coverage Comp Only 2013 Volkswagen." In the e-mail, it indicates that the amended coverage was to be effective February 23, 2014.

5. An OPCF 16 was not used by Wawanesa.

6. A new Certificate of Insurance (the "New Certificate") under the Wawanesa policy was generated by way of an amended declaration effective February 23, 2014, which listed the VW and indicated a new premium of $94.00 per year. The previous premium was indicated to be $1,715.00. Ms. McQueen received a refund of $302.90. It was still the same policy, bearing the same policy number. The reason for the amended declaration is indicated on the new Certificate of Insurance to be "DELETE COVERAGE(S)."

7. On March 18, 2014, Ms. McQueen was involved in another motor vehicle accident. It was a single vehicle accident and she was the driver and sole occupant of a vehicle insured by Belair.

8. The Belair policy number was 654-8060 and the insured was Ms. McQueen's boyfriend.

9. Ms. McQueen cancelled the Wawanesa policy April 11, 2014. Premiums had been paid until that date in accordance with the New Certificate.

10. Ms. McQueen applied only to Belair for accident benefits.

11. Belair has continued to adjust Ms. McQueen's claim and commenced the within priority dispute arbitration against Wawanesa.

ANALYSIS AND FINDINGS

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 to be applied to determine which insurer is liable to pay statutory accident benefits.

Since the claimant was an occupant of a vehicle at the time of the accident, the following rules 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.*
>
> [emphasis mine]

Section 268(5) of the *Insurance Act* reads:

> (5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant, as defined in the *Statutory Accident Benefits Schedule*, of a named insured , the person shall claim statutory accident benefits against the insurer under that policy. [emphasis mine]

On the basis of this hierarchy of priority, Wawanesa would be the priority insurer and responsible for payment of statutory accident benefits if it is established that Lindsey McQueen was an insured under a Wawanesa policy of "motor vehicle liability insurance" at the time of the accident. A motor vehicle policy properly reduced to comprehensive only would no longer be a motor vehicle liability policy.

Belair's position was that the Wawanesa policy was not properly reduced to comprehensive coverage only. They claim that Wawanesa was required and obligated to use the OPCF-16 as outlined below. Wawanesa did not use this change form and in fact, there is no evidence before me that it was even offered to the claimant Lindsey McQueen.

OPCF 16

Suspension of Coverage

Issued to	Policy Number	Effective Date of Change Year Month Day

☐ This change applies only to automobile(s) number _____ indicated on your Certificate of Automobile Insurance. The refund for this change is $ _____.

☐ See your Certificate of Automobile Insurance for which automobile(s) this change applies to. The refund for this change is

$ _____.

Please sign and return this form. Keep a copy for your records.

1. Purpose of This Change

This change is part of your policy. It cancels coverage for the use or operation of the described automobile until coverage is reinstated.

2. What you Agree to

2.1 In return for the refund, you agree that the described automobile will continuously taken out of use and not operated as of the effective date of this change.

2.2 You agree that the following coverages will be cancelled for the use or operation of the described automobile, a newly acquired automobile, and a temporary substitute automobile:

- **Section 3, "Liability Coverage,"**
- **Section 4, "Accident Benefits Coverage,"**
- **Section 5, "Uninsured Automobile Coverage," and**
- **Section 6, "Direct Compensation – Property Damage Coverage."**

2.3 You also agree that the following coverages will be cancelled for the described automobile, newly acquired automobile and temporary substitute automobile:

- Section 7, "Loss or Damage Coverages (Optional)"
  - All Perils, but only for loss or damage caused by Collision or Upset, and
  - Collision or Upset.

2.4 We may choose to refund a portion of your premium when you sign this change or when we reinstate your coverages.

2.5 We will not pay a refund if you suspend your coverage for less than 45 consecutive days.

3. Period of Suspension

This cancellation will be in effect from the effective date of this change until coverage is reinstated by OPCF 17, "Reinstatement of Coverage."

All other terms and conditions of your policy remain the same.

Signature of Insured	Date

It is clear from the highlighted s. 2.2 that with use of the OPCF-16, certain residual insurance coverages continue. Although in this case we are dealing with residual accident benefits coverage only, the OPCF-16 set out above also provides residual liability coverage when driving another automobile and uninsured motorist coverage. This would provide protection for the insured if the limits of insurance on the vehicle being operated by the insured (other than the described automobile, a newly acquired automobile, and a temporary substitute automobile) were insufficient to satisfy a judgment. It would also provide residual uninsured motorist coverage so, for example, if struck by an uninsured motorist while driving in the United States where the Fund would not be available to provide coverage, the insured would still have funding for any personal injury claim to the limit of the uninsured coverage. The extended residual accident benefits coverage would be most important in situations where the optional benefits were purchased. Clearly the residual insurance coverages with use of the OPCF-16 go beyond simple extended accident benefits coverage.

Under section 268(1) of the *Insurance Act*, every motor vehicle liability policy is deemed to provide statutory accident benefits coverage. This section reads:

> 268 (1) Every contract evidenced by a motor vehicle liability policy including every such contract in form 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 Wawanesa policy therefore initially provided statutory accident benefits coverage.

According to Applicant Belair, the proper way to reduce coverage is to use an OPCF-16 for such change. Belair maintained that Section 227 of the *Insurance Act* clearly requires the use of an approved form to make any changes to policies. The point of the forms is to make clear what changes are being made. Section 227 makes the use of approved forms mandatory, given that insurers "shall not" use a form that is not approved.

Belair maintained that the Superintendent of Financial Services has approved a form of endorsement that specifically addresses the reduction of coverage to comprehensive. As indicated, this form for reducing coverage to comprehensive is the OPCF-16. This approved endorsement, while it removes liability and accident benefits coverage for the described automobile, a newly acquired vehicle and a temporary substitute vehicle, does not eliminate liability or accident benefits coverage completely. Liability and accident benefits coverage continue when some other vehicle is involved other than those set out.

The position of Belair is supported by the appeal decision of Justice Perell in *Dominion of Canada General Insurance Co. v. Optimum Insurance Co*. 2016 ONSC 985 (hereinafter "*Dominion*"). The decision arose from two arbitration decisions which had held essentially that a reduction of a motor vehicle policy of insurance to comprehensive must use an OPCF-16 endorsement as approved by the Superintendent of Insurance and failure to use such form results in a situation where the coverage continuing would be that which the endorsement would have provided, including accident benefits coverage in certain circumstances. In reaching his decision, Justice Perell agreed with the arbitrator that automobile insurance is highly regulated and the legislature often restricts the choices available to insureds. Most importantly, he noted that there were public policy reasons that would justify requiring continuance of some liability insurance mid-term when the insured otherwise reduces his or her coverage to comprehensive. Justice Perell pointed out that the insured always had the alternative of terminating his or her policy mid-term and starting afresh by purchasing just comprehensive insurance. This would no longer be a motor vehicle "liability" policy. At p.13 of his decision Justice Perell writes:

> *"the public policy advantages supporting use of OPCF-16 mid-term or the alternative of starting afresh with a genuinely new policy is that it sustains the purpose of a non-fault insurance regime where more than one insurer may be liable for paying SABS unless they have clearly limited their exposure and makes it more likely that the insured, as a consumer, understands whet insurance coverage he or she has."*

In the final analysis, the insured was provided the accident benefits coverage the OPCF-16 would have provided had the endorsement been used.

In response, it was the position of Wawanesa that the Wawanesa policy at issue in the case before me was properly reduced to comprehensive coverage prior to the accident giving rise to Ms. McQueen's claim for statutory accident benefits on March 18, 2014 (the "MVA"). On this basis, the policy was no longer a "motor vehicle liability policy" and Belair is the priority insurer. They claimed that the reduction to comprehensive coverage alone was in effect at the time of the motor vehicle accident, even if an OPCF-16 was not used. This position, Wawanesa claims, is supported by the Ontario Court of Appeal's recent decision in *Royal &*

Sun Alliance Insurance Co. v Intact Insurance Co., 2017 ONCA 381 (hereinafter "*Royal*"), which held that the use of a compliant form was not required in certain circumstances to effect a valid change in coverage which was otherwise consistent with the law of contract and the objectives of the *Insurance Act*.

In *Royal*, the Ontario Court of Appeal decision relied upon by the Respondent Wawanesa, Justice Juriansz noted that s.227(1) was silent on the effect of using a form which had not been pre-approved. On this basis, it was concluded that it was not the role of the Court, while applying the law of contract, to read into s.227 that a non-compliant form is necessarily void as a matter of contract law.

It was held that the Ontario Legislature "did not intend for the courts, while engaged in adjudicating a contractual dispute, to consider a contractual provision void merely because its form fails to strictly comply with section 227(1) of the *Insurance Act ".*

The *Royal* decision concerned an excluded driver endorsement OPCF-28A which, like the OPCF-16, is a form approved by the Superintendent. The court held that the mere departure from the approved form did not, in itself, negate the validity of an otherwise clear agreement. It is only if the departure from the approved form makes it unclear as to what the person signing it is agreeing to; in other words, if it is unfair or deceptive, will that departure impact upon the contractual issue as to whether it is binding.

The analysis here must therefore consider whether it was unclear to the person agreeing to the change as to what was being agreed to and whether it was unfair or deceptive. The analysis must consider the legal principle established by Justice Perell in *Dominion* that an OPCF-16 must be used to change coverages to comprehensive only and the exception to that rule outlined by Justice Jurianz in *Royal.*

In *Royal*, W and her husband met with her insurance broker on February 29, 2012 because her driver's licence had been suspended for unpaid fines and her insurance was being cancelled. She wished to maintain insurance coverage on the car so her husband could drive it. Insurance was arranged with Intact on the basis that W would be an excluded driver. W executed an Excluded Driver Endorsement. Unlike the case before me, there was oral evidence adduced by the insured as to the dealings between she and the broker. The trial judge found that when W completed the form the broker explained to her and she clearly understood that, even if her the licence was reinstated, Intact still would not insure her and the Excluded Driver Endorsement would continue to apply. W's licence was reinstated, she drove the vehicle and had an accident injuring individuals whose vehicle was insured by Royal and included uninsured motorist coverage. Those injured commenced a personal injury action against W. It was held on appeal that the Royal policy (the injured parties uninsured motor vehicle insurer) must respond to the loss as W remained an excluded driver under the Intact policy as of the date of loss.

It is important to note that it appears from a review of the decision, that the proper Excluded Driver Endorsement form was used (OPCF-28A) but that it was simply not filled in correctly.

At paragraph 23 of *Royal*, Justice Juraianz described it essentially as “a failure to strictly comply with the form”. At paragraph 25 of the *Royal* decision, the form that was used was also referred to as an “alleged deviation from the pre-approved form”. In my view, this is quite different than a pre-approved form not being used at all as in the case before me. On the OPCF-28A form that W executed in *Royal*, there were boxes to be filled out describing the vehicle and serial number of the vehicle to which policy changes were being made that were not filled out, but rather the words “See your Certificate of Automobile Insurance for which automobile(s) this change applies to” were written across these boxes. The Certificate of Insurance, a separate document, set out these identifying details of the vehicle. It was more of a case of imperfect compliance, rather than non-compliance and without a change in substance, thereby providing the court with every reason to create a narrow exception to the rule established in *Dominion*.

The Excluded Driver Endorsement OPCF-28A, like the OPCF-16, provides an explanation of the impact on insurance coverages and requires the signature of the insured.

It would therefore appear that the proper endorsement form was used in *Royal*, but simply the required information did not appear on the face of the executed endorsement but rather a reference to where that information was contained, namely the Certificate of Insurance. Most importantly, as the trial judge found, that when W completed the form, the broker explained it to her and she clearly understood that, even if her the licence was reinstated, Intact still would not insure her and the Excluded Driver Endorsement would continue to apply. Given W’s clear understanding of the situation, consumer protection did not appear to be an issue in that case. I therefore find the case clearly distinguishable. In *Royal*, the findings of the trial judge support that there was a contract between insured and insurer as to the coverage to be provided. There was a clear understanding between them. In the case before me, no attempt whatsoever was made to use an OPCF-16 to reduce coverage to comprehensive only. There is no evidence before me that there was any communication between McQueen and the broker explaining the residual accident benefits coverage that would continue if an OPCF-16 was used, or the alternative method available to the insured of terminating the policy and issuing a new policy providing comprehensive coverage only, without access to residual accident benefits coverage. At least in *Royal*, the insured had the endorsement in front of her and actually executed it, presumably having read it and understanding its consequences. In the case before me, the form (OPCF-16) was never presented to the insured. Unlike in *Royal*, I am unable to find in the case before me that there was a contract clearly understood between insured and insurer. There is nothing in the Agreed Statement of Facts to support such a finding. There is some evidence as contained in the Joint Document Brief to support some kind of understanding between insured and insurer. For example, the Amended Certificate of Insurance only includes a premium for Comprehensive. The Amended Declaration to the Certificate of Insurance indicates as to the status of coverage:

- It states “<u>Amended Declaration</u> effective Feb 23, 2014 supersedes any previous declaration bearing the same number for this policy period. Reason – DELETE COVERAGE(S)” [emphasis mine]

- It also states “Insurance is provided only where a Premium is shown for the Coverage.”
- Under “Insurance Coverages” only one is listed: “Subsection 3 – Comprehensive (Excluding Collision or Upset” with a $94 premium (including two listed policy change forms)
- The new total policy premium is listed as $94, as compared to the old premium of $1,715
- The Insured is stated to be receiving a refund of $302.90.

Arguably, there is further documentary support for a finding that there was some understanding between the claimant and insurer in that the claimant only made claim for accident benefits to Belair and not Wawanesa. It may be inferred from that that she understood there would be no residual accident benefits coverage as it was a Comprehensive policy only, but there is no evidence from the claimant before me, either by way of oral testimony or Examination Under Oath transcript, as to what exactly transpired between she and the broker. There is no evidence from the broker before me, either by way of oral testimony or Examination Under Oath transcript, as to what exactly transpired. There is a complete absence of evidence as to whether she was ever given the option of reducing her coverage to Comprehensive with residual coverages. I find this insufficient to support a finding that there was a clear understanding as between insured an insurer and that the fashion in which the changes were made were fair.

As indicated by the Court of Appeal in *Royal*:

> “It is only if the departure from the approved form makes it unclear as to what the person signing it is agreeing to, in other words, if it is unfair or deceptive, will that departure impact upon the contractual issue as to whether it is binding.” [emphasis mine]

As I have indicated, I find it most important In the case before me there was no evidence from Lindsey McQueen as to what she understood when the changes were being made with the broker in contrast to the oral evidence at trial in Royal, presumably tested by cross-examination, where the insured testified that when the form was completed by W it was explained to her and she clearly understood the consequences of executing the form. The Amended Certificate of Insurance is some evidence of an understanding but in the ordinary course, the policy change would be accomplished by either use of an Endorsement or by a clear contractual understanding as to the arrangement between insured and insurer as per the *Royal* rationale. In the case before me, I find that not only was there a lack of evidence of a clear understanding as to the impact of the changes, but it would be unfair for an insured to proceed with a reduction to comprehensive only without an explanation of residual accident benefits and other residual coverages that could be available and clearly set out in printed form if the OPCF-16 were used. Without this, it would be unclear in my view to the insured as to what coverages would remain. In my view, consumer protection is ever so important given

the complexities of automobile insurance today. Lindsey McQueen was entitled to see the OPCF-16 form in order to make her decision and would be an unprotected consumer if not done. In the absence of a clear understanding as was found in *Royal*, that would, in my view, be unfair. I am satisfied that the evidence before me does not support a factual finding that there was a clear understanding between McQueen and Wawanesa. Again, as I have indicated, we have no direct evidence as to what was in the minds of the claimant and broker when the changes were being made. At least in *Royal* the insured had the OPCF-28A before her, whereas here the evidence indicates that the OPCF-16 form was not used at all.

Wawanesa also took the position a new Certificate of Automobile Insurance, as was used by Wawanesa in this case to amend a policy in accordance with the *Insurance Act,* was an approved Form. Section 232(5) provides that if an insurer adopts a standard policy approved under subsection 227(5), it may, instead of issuing the policy, issue a certificate in the form approved by the Superintendent. Wawanesa maintained that to say that the policy cannot be amended by issuing an Amended Certificate is akin to saying that contract cannot be amended by amending the contract. Such would confer a legal disability on parties (insurer and insured) who do not wish to receive the specific result contemplated by the OPCF-16 and also do not wish to terminate the policy completely. Section 232(5.1) of the *Insurance Act* reads:

> "(5.1) Effect of Certificate – A certificate issued under subsection 5 is of the same force and effect as if it were the standard policy, subject to the limits and coverages shown by the insurer on the certificate and any endorsements issued with or subsequent to the certificate."

The original policy issued by Wawanesa was a standard motor vehicle liability policy known as an OAP-1 - Ontario Automobile Policy which form is approved by the Superintendent. The policy after the change was for comprehensive only and not a motor vehicle liability policy. This is a significant change and not reflected by the wording of the OAP-1. Here the policy number was the same and the vehicle being insured was the same. It was an amendment to the existing policy which would be accomplished with use of an Endorsement appropriate for the circumstances. In this case it would be the OPCF-16. The new Certificate issued by Wawanesa as set out at page nine of this decision refers to an "Amended Declaration" as to the basis for the policy coverage change which would, in my view, be the equivalent of an Endorsement which is described as an approved form in s. 227(1) of the *Insurance Act*. The problem is that the Amended Declaration or Endorsement used by Wawanesa was not an OPCF-16. Justice Perell held in Dominion that a reduction of a motor vehicle policy of insurance to comprehensive only must use an OPCF-16 endorsement and failure to use such form results in a situation where the coverage continuing would be that which the OPCF-16 endorsement would have provided, including residual accident benefits coverage in certain situations. All that the *Royal* decision has done in my view is to create an exception to the findings in *Dominion* where there was some deviation, as opposed to the non-use, from the approved form with no effect on substance and with the insured and insurer having a clear understanding as to the nature and effect of the changes.

Wawanesa has also submitted that the Superintendent of Insurance does not have the power to make law and that the proposition that the use of an OPCF-16, as a form prescribed by the Superintendent and not by law, is the only valid option to reduce coverage under a policy of automobile insurance mid-term at law is tantamount to granting the Superintendent the ability to make law. Wawanesa maintains that the Superintendent does not have this power. I cannot accept this proposition. I am not satisfied the required use of the approved forms as set out in s. 227 of the *Insurance Act* is tantamount to making law, particularly in a situation where an alternative was available, namely the issuance of a new comprehensive only policy.

Wawanesa has also referred me to the decision of *State Farm v. TD General Insurance Co.* (Arbitrator Scott) in support of its position. The findings of Arbitrator Scott were considered on appeal by Justice Perell in *Dominion* and rejected largely on the basis that s.227 of the *Insurance Act* and consumer protection required the use of approved forms.

Wawanesa also advanced the argument that Section 439 of the *Insurance Act* provides that "[n]o person shall engage in any unfair or deceptive practice." "unfair or deceptive acts or practices" are prescribed by O.Reg. 7/00. Item 12 of O. Reg. 7/00 prescribes as an unfair or deceptive act or practice "[t]he use of a document in place of a form approved for use by the Superintendent, *unless none of the deviations in the documents from the approved form affects the substance or is calculated to mislead"* [emphasis added]. Wawanesa maintained that in the matter at hand, Ms. McQueen understood the new scope of her coverage and the nature of her agreement with Wawanesa; no deviation from an approved form affected the substance of that agreement or was deceptive to the Insured. If this had been the case, she would have likely made a claim for accident benefits to Wawanesa before learning of Wawanesa's position that she was not entitled to do so. I am not prepared to accept this position advanced by Wawanesa. In the case before me, there were no deviations in the document (OPCF-16) as the document was simply not used. The substance was affected. If Lindsey McQueen had have been presented with the OPCF-16, which would have required her signature, she would have had an opportunity to determine what residual coverages continued and be in a position to make inquiries of the broker to determine whether the OPCF-16, or issuance of a new comprehensive only, best met her needs. The consumer would have been protected. In my view, there is good reason why pre-approved forms ought be used and why s.227(1) of the *Insurance Act* exists.

In the final analysis, I am of the view that the findings of Justice Perell and his emphasis on consumer protection as set out in *Dominion* is the law that ought apply and that the *Royal* decision is distinguishable from the facts here for the reasons set out above. Consumer protection requires that such residual coverages ought be considered and the use of an OPCF-16 would have outlined the residual benefits available with use of such form. I find that s.227 required the use of an approved form to modify existing coverages mid-term to an existing policy in the absence of probative evidence of clear understanding as between insured and insurer as was the case in *Roya*l. In my view, the narrow exception to the requirement of the use of approved forms as set out in s.227 of the *Insurance Act* created by

the court in *Royal* on the basic principles of contract law is limited to those situations where there has been imperfect compliance, as opposed to non-compliance, and where the consumer has been at least been provided with the option of the potential benefits of comprehensive coverage with the residual benefits associated with the approved forms. That was not in the case before me where there was no evidence that the OPCF-16 form was used or the option ever presented to Ms. McQueen. As a result, I find that there has been a breach of the requirements of s.227 of the *Insurance Act* and as a result, Lindsey McQueen continued to have accident benefits coverage under the Wawanesa policy as if an OPCF-16 had been used. Wawanesa is therefore the priority insurer.

ORDER

I hereby order:

1. That Wawanesa is the priority insurer;

2. That Wawanesa indemnify Belair for those payments made to or on behalf of Lindsay McQueen, together with interest pursuant to the *Courts of Justice Act;*

3. That Wawanesa pay the costs of Belair with respect to this arbitration on a partial indemnity basis;

4. That Wawanesa pay the costs of the Arbitrator.

DATED at TORONTO this 12th)

day of September, 2017.)

KENNETH J. BIALKOWSKI
Arbitrator