**IN THE MATTER OF AN ARBITRATION UNDER THE *ARBITRATION ACT,* S.O. 1991, c.17, AS AMENDED;**

**AND IN THE MATTER OF SECTION 268(2) OF THE *INSURANCE ACT,* R.S.O. 1990, AND *ONTARIO REGULATION 283/95***

**AND IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**THE DOMINION OF CANADA GENERAL INSURANCE COMPANY**

**Applicant**

- and -

**BELAIR DIRECT INSURANCE and ALLSTATE INSURANCE COMPANY**

**Respondents**

# DECISION ON A PRELIMINARY ISSUE

**COUNSEL:**

Michelle Mainprize for the Applicant

Antonietta Alfano for the Respondent, Belair
Peter Yoo for the Respondent, Allstate

**ISSUE:**

1. Was the Notice of Cancellation sent by Dominion to Ms. Martin valid, despite the fact that it did not specify that the premiums owing could be paid by way of a cash payment or money order ?

**RESULT:**

1. No, the failure to offer the option of paying the outstanding arrears by cash or money order renders the Notice of Cancellation sent invalid. Dominion's policy therefore remained in effect at the time of the accident.

**BACKGROUND:**

1. Karren Martin was injured when she was involved in an accident while driving a Ford Mustang on May 6, 2016. Her car initially struck a vehicle insured by Belair Direct Insurance ("Belair") and then struck another vehicle insured by Allstate Insurance Company ("Allstate"). Ms. Martin applied to Dominion/ Travelers (hereafter called "Dominion") for payment of accident benefits under the *Schedule* and they have paid benefits to her and on her behalf.

2. Dominion had issued an auto policy to the Claimant with a policy term of one year. The first payment was due in early February 2016. After being advised by her bank that there were insufficient funds in her account to cover the payment, Dominion sent a registered letter to Ms. Martin, advising that unless a certified cheque or completed credit card authorization form was provided to satisfy the outstanding amount by March 14, 2016, the policy would be cancelled.

3. No payment was received from Ms. Martin. Dominion contends that its policy was consequently cancelled on March 14, 2016, and was therefore not in effect on May 6, 2016, the date of the accident. It states that either Belair or Allstate, as the insurers of the

other vehicles involved in the accident, would be in higher priority to pay Ms. Martin's claim in accordance with section 268(2)1(iii) of the *Act.*

4. Various issues have been raised in this case regarding whether the Notice of Cancellation sent by Dominion was received by Ms. Martin. The Respondents also contend that the notice was deficient because it failed to provide Ms. Martin with the option of paying the amount owing by way of cash or money order, as specified in the Statutory Conditions set out in section 11 of *Ontario Regulation 777/93*. The parties agreed to bifurcate the issues and exchange written submissions focused solely on this latter question, in advance of an oral hearing scheduled to hear evidence related to the other issues raised.

**EVIDENCE:**

5. The parties agree on the facts underlying this discrete issue. Along with their written submissions, the parties filed documents related to the Dominion policy, as well as the registered letter sent by Dominion purporting to cancel the policy. Excerpts from the transcript of the Claimant's Examination Under Oath were also filed. These set out the following facts:

6. The policy in question was underwritten by Dominion and issued to Ms. Martin through a broker. Coverage was to be effective from December 17, 2015, for a policy period of one year. The first payment of $1,018.51 was due on February 4, 2016, and Ms. Martin had arranged for that amount to be directly withdrawn from her bank account. When the bank reported that there were insufficient funds in the account to cover the payment, Dominion forwarded the following letter to her –

TRAVELERS

**The Dominion of Canada General Insurance Company - *the Insurer***
165 University Avenue, Toronto, ON M5H 3B9
P. 416.362.7231 | 1.800.268.8447
F. 416.362.9918
travelerscanada.ca

The Dominion of Canada General Insurance Company, St. Paul Fire and Marine Insurance Company and Travelers Insurance Company of Canada are the Canadian licensed insurers known as Travelers Canada

February 9, 2016

000001

Karren Martin
267 Royal Wood Dr Apt 503
North York ON M3A 2E6

**Registered**

Broker copy

**Policy information**

| | |
|---|---|
| Named insured: | Karren Martin |
| Account number: | A001887977 |
| Payment plan: | Direct Monthly |
| Policy type: | Automobile |
| Policy number: | APP2727740 |
| Statement date: | Feb 9 '16 |
| Cancellation date: | Mar 14 '16 |

**Broker information**

First Durham Insurance & Financial
1920 Bayly Street
Pickering ON L1W 3R6
Broker No: 6752131
Phone: 905-427-5888
Fax: 905-427-4615
Website: www.firstdurham.com

**Cancellation for non-payment**

The Dominion of Canada General Insurance Company in accordance with the Statutory Conditions, hereby gives you notice of cancellation of the above-mentioned policy effective 12:01 a.m. Mar 14 '16, after which you have no coverage.

Your payment in the amount of $1,018.51 was returned by your bank due to nsf (insufficient funds). In order to continue your policy, please forward a certified cheque payable to The Dominion of Canada General Insurance Company or completed credit card authorization form. Payment for the outstanding premium stated below must be received by 12:01 a.m. Mar 14 '16.

| | Amount | NSF fee | Total |
|---|---|---|---|
| The amount due on Feb 4 '16 | $1,018.51 | $50.00 | $1,068.51 |

If you do not wish to continue this policy, your policy will be cancelled effective 12:01 a.m. on Mar 14 '16.

If you have any questions regarding your insurance policy, please contact your broker.

No payment was made by Ms. Martin by the date required.

7. Ms. Martin claims not to have received the above letter, and states that she was not aware that her policy had been cancelled. The Respondents question whether the letter was properly sent, but as noted above, the parties have agreed that any arguments relating to the receipt or sufficiency of the notice will be held in abeyance pending my ruling on this issue.

**RELEVANT PROVISIONS:**

The following provisions are relevant to my determination of this matter:

***Insurance Act***

> ***268(2)*** *The following rules apply for determining who is liable to pay statutory accident benefits:*
>
> *1. In respect of an occupant of an automobile,*
>
> > *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 subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,*
> >
> > *iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose,*

***Statutory Conditions – Automobile Insurance, Ontario Regulation 777/93***

> *11. (1) Subject to section 12 of the Compulsory Automobile Insurance Act and sections 237 and 238 of the Insurance Act, the insurer may, by registered mail or personal delivery, give to the insured a notice of termination of the contract.*
>
> *(1.2) Subject to subcondition (1.7), if the insurer gives a notice of termination under subcondition (1) for the reason of non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract, the notice of termination shall comply with subcondition (1.3) and shall specify a day for the termination of the contract that is no earlier than,*
>
> > *(a) the 30th day after the insurer gives the notice, if the insurer gives the notice by registered mail; or*
> >
> > *(b) the 10th day after the insurer gives the notice, if the insurer gives the notice by personal delivery.*
>
> *(1.3) A notice of termination mentioned in subcondition (1.2) shall,*

> *(a) state the amount due under the contract as at the date of the notice; and*
>
> *(b) state that the contract will terminate at 12:01 a.m. of the day specified for termination unless the full amount mentioned in clause (a), together with an administration fee not exceeding the amount approved under Part XV of the Act,* ***payable in cash or by money order or certified cheque payable to the order of the insurer*** *or as the notice otherwise directs, is delivered to the address in Ontario that the notice specifies, not later than 12:00 noon on the business day before the day specified for termination.*

**PARTIES' ARGUMENTS:**

*Respondents' arguments*

8. The Respondents contend that the Notice of Cancellation sent by Dominion is invalid, as it provided that Mr. Martin could only "continue" her policy by sending a certified cheque or credit card authorisation for the arrears owing, and failed to offer her the option of paying that amount by cash or money order. They submit that the policy therefore remained in force at the time of the accident, and that Dominion would be in priority to pay the claim. Allstate and Belair filed a joint submission in support of this position.

9. Counsel submitted that section 11(1.3)(b) of *Regulation 777/93* explicitly requires insurers to offer an insured the option of paying the amount owing to restore the policy by cash or money order before the insurer is entitled to cancel a policy for non-payment of premiums owed. They state that Dominion's failure to include those payment options in its notice is fatal, and that the purported cancellation is therefore invalid.

10. The Respondents argue that the courts have historically made it clear that an insurer's power to cancel a policy must be strictly exercised, and that the stated conditions for cancellation must be exactly complied with (*London & Lancashire Fire Insurance Co. v. Veltre* (1918) 56 S.C.R. 588, *Lumbermens Mutual Casualty Co. v Stone* [1955] S.C.R. 627). They note that more recent case law has also supported this view, citing Arbitrator Bialkowski's decisions in *Gore Mutal v. Lombard General Insurance*

*Company and Motor Vehicle Accident Claims Fund* (June 21, 2010) and *ACE INA Insurance v. State Farm Mutual Automobile Insurance* (May 24, 2017). Arbitrator Bialkowski determined in those decisions that in order for a notice of cancellation of a policy to be effective, there must be strict compliance with the essential elements contained in section 11 of the regulation.

11. Counsel pointed out that the cancellation notice issue in *ACE v State Farm, supra,* did not provide the option of paying the premiums owing by cash, and that Arbitrator Bialkowski found that State Farm's failure to include the methods of payment set out in the regulation was fatal, as "not every insured has a bank account". The Respondents contend that given the similar facts in this case, that analysis should be adopted here. They noted Ms. Martin's statement at her Examination Under Oath that she often paid cash when purchasing things, including the car that she was driving at the time of the accident. She also stated that she had paid her cell phone bills by walking into a provider's store and paying the amount owing in cash.

12. The Respondents also submitted that the legislature's intent in providing the option of a cash payment to pay arrears owing was to broaden consumers' access to insurance, and that this is consistent with the goal of consumer protection cited by the Supreme Court of Canada in *Smith v Co-operators General Insurance* [2002] 2 S.C.R.

*Applicant's arguments*

13. Dominion submits that an insurer is not required to set out the exact wording contained in section 11(1.3) of the regulation in a Notice of Cancellation in order for it to be valid, and disputes that the failure to explicitly state that the arrears can be paid in cash is fatal. Counsel noted that Arbitrator Bialkowski rejected the argument that strict compliance with every word in the regulation is required in *Gore v Lombard, supra* and that he determined that only the "essential elements" of the provision need to be complied with.

14. Counsel for Dominion pointed out that the three "essential elements" that Arbitrator Bialkowski determined should be contained in a notice are – the amount due (including any administrative fee being sought), the date on which the termination is to take place, and that the insured has the right to avoid termination by paying the amount outstanding by noon on the day before the date on which the termination is to take place. Counsel contended that it can be concluded that listing all of the payment options referenced in the regulation is not an "essential element", and that a failure to do so does not invalidate a notice.

15. Counsel noted that Arbitrator Bialkowski determined in *Economical Mutual Insurance v Wawanesa Mutual Insurance et.al* (February 8, 2011) that Wawanesa's policy had been properly terminated, despite the fact that the notice it sent did not specify that payment could be made by cash, money order or cheque, but rather stated that the insured could contact the broker for payment options. She also noted that Arbitrator Cooper determined in *Intact Insurance Company v. Wawanesa Mutual Insurance Company* (January 5, 2016) that a cancellation notice sent by Intact was valid, despite the fact that it did not include the option to pay the arrears in cash. She contended that these decisions confirm that while the "essential elements" in section 11(1.3) of the regulation must be contained in a notice in order for it to be effective, all forms of payment referenced in that provision need not be specified.

16. Counsel also noted that while section 11(1.3)(b) specifies that arrears may be "payable in cash or by money order or certified cheque payable to the order of the insurer", that phrase is followed by "or as the notice otherwise directs". She suggested that this phrase cannot be ignored, and clearly permits insurers to choose the methods of payment that they will accept.

17. Counsel for Dominion disputed the suggestion made by the Respondents that the Claimant would likely have paid the premiums for her policy in cash, noting that she stated at her EUO that she had arranged for the premiums to be automatically withdrawn from her bank account.

18. Finally, counsel also noted that Ms. Martin testified that she had not seen the letter purporting to cancel her policy and was not aware that the policy had been cancelled before the accident. She argued that in these circumstances, the fact that the notice did not include a particular mode of payment, where its inclusion would clearly not have resulted in payment, should not invalidate the cancellation.

*Reply submissions*

19. The Respondents submitted in reply that compliance with section 11(1.3) of the regulation is not onerous, and that any notice that does not comply with its terms must be found to be invalid, given the potentially severe consequences of a cancelled policy to an insured.

20. Counsel contended that Arbitrator Cooper's decision in *Intact v Wawanesa, supra,* is distinguishable, as his findings were based on the wording of a notice letter that differs from the letter in issue in this case, and also hinged on his determination that the insured's evidence lacked credibility. Counsel also submitted that this decision does not acknowledge the importance of consumer protection in addressing deficiencies in insurers' cancellation notices, and is not binding upon me.

21. Finally, counsel disputed that the phrase "or as the notice otherwise directs" provides insurers with the flexibility to choose how payment for arrears owing is to be made, as argued by Dominion. They submitted that a straight reading of the entire sentence in issue makes it clear that that phrase relates only to whom the money order or certified cheque should be directed, rather than providing insurers with the right to provide the payment options they may choose.

**REVIEW OF CASE LAW:**

22. I have not to date been asked to interpret the Statutory Condition governing insurers obligations on unilaterally terminating a policy issued before its terms expires. Some of my colleagues have addressed this issue, however, and counsel cited those private arbitration decisions in their submissions, as well as one FSCO arbitration award.

None of these decisions have been appealed, so no judicial guidance has yet been provided on this question in this particular context. While the facts underlying these other cases differ from those before me, I will summarise these decisions in order to set out the principles that have been applied by other arbitrators in analysing this issue.

***Gore Mutual v Lombard & MVACF (Bialkowski – June 2010)***

23. The question of whether Gore Mutual's purported cancellation notice was valid arose as a preliminary issue in a Loss Transfer dispute. The letter in question seems to have been appended to Arbitrator Bialkowski's decision, but was not provided in the copy of the case filed with me. Gore argued that its notice was valid, as it provided the amount outstanding, and implied that the policy may be reinstated with the insurer's consent. It is clear from the arguments outlined in the decision, however, that the notice did not state that the insured could pay the amounts outstanding by noon on the day before the date on which the policy was specified to terminate in order to rectify the non-payment. Gore contended that strict compliance with the Statutory Conditions is not required for an insurer to terminate a policy, and that its letter constituted "effective compliance" with Statutory Condition 11.

24. Arbitrator Bialkowski stated that in order for a notice that purports to cancel a policy to be effective, there must be "strict compliance to the extent that the essential elements of the legislative requirements" must be contained in the notice. He listed the essential elements in Statutory Condition 11 to be:

1. *The amount due, together with any administration fee being sought;*
2. *The date on which the termination is to take place; and*
3. *that the insured has the right to avoid termination by paying the amount outstanding and the specified administration fee by noon on the day before the date on which the termination is to take place.*

25. He noted that the letter did not advise the insured that termination of the policy could be avoided by making a payment in the form set out in Statutory Condition

11(1.3)(b), and only indicated that termination could be avoided with the consent of the insurer. Arbitrator Bialkowski suggested that Gore had likely not amended its standard notice letters to reflect "the consumer protection initiatives embodied in the amendments to Statutory Condition 11" that came into effect in June 2005. He stated that while the notice may have resulted in an effective termination of the policy under the earlier scheme, it fell far short of meeting the more stringent obligations under the post June 2005 scheme, which permit an insured to avoid termination without the consent of the insurer, by paying the amounts outstanding. He accordingly found that the purported cancellation of the Gore policy was ineffective.

***Economical Mutual v Wawanesa Mutual et. al (Bialkowski – February 8, 2011)***

26. Arbitrator Bialkowski revisited the issue in this case, in which three different insurers' cancellation notices – sent by Economical, Wawanesa and Unifund - were considered in order to determine whether they complied with the Statutory Conditions set out in section 11(1.3)(b) of the regulation.

27. He determined that the notice sent by Economical was valid, as it contained all of the essential elements required by the statutory condition. The notice itself is not produced in the decision, but Arbitrator Bialkowski stated that it was sent by registered mail, as required, and stipulated the time at which the policy would be cancelled if the outstanding premiums were not paid. It also set out the amount due in order to avoid cancellation, and "provided instruction" to the insured regarding payment. The details of these instructions are not set out in the decision.

28. Arbitrator Bialkowski also determined that the Wawanesa notice of cancellation was valid, as it contained the essential elements noted above. Again, the text of the letter is not set out in the decision. Arbitrator Bialkowski noted that the wording in the letter relating to the third essential element was not as clear as it could have been, but that it provided the name and address of the broker, the amount due, and the date and time by which payment needed to be made in order for the policy to be reinstated. He stated that

"an insured reading the notice of cancellation would reasonably have concluded that the policy would be reinstated by contacting the broker for payment options".

29. Finally, the Arbitrator found that he could not conclude that the Unifund notice contained all of the essential elements required to be communicated to the insured, as Unifund was unable to produce a copy of the notice it purported to have sent.

***Intact Insurance v Wawanesa Mutual Insurance (Cooper – January 5, 2016)***

30. Arbitrator Cooper was asked to determine whether Intact's purported cancellation of a policy issued to the Claimant's spouse about one month before the accident was valid. The policy provided for payment in three equal instalments. Various changes were made to the policy after its issuance, including the addition of drivers and vehicles, that resulted in different amounts being owed. Some payments were missed, and a notice was sent to the insured. Partial payment was received by Intact, and a letter was then forwarded to the insured acknowledging the payment and seeking the balance owing.

31. When no further payment was received, a registered letter was sent to the insured on February 5, 2013 advising that the policy would be cancelled at midnight on March 11, 2013 due to non-payment of premiums. The letter provided two options – payment of the outstanding amount of $1968 by noon on the day before March 11 in order to prevent cancellation of the policy, or, if the insured chose not to continue the coverage, a payment of $87 to cover the difference between the amounts already paid and the premiums owing. The last line of the letter states - "payment can be made by money order, certified check or approved credit card".

32. The insured denied receiving this letter, and claimed that he had not been aware that Intact had advised that the policy would be cancelled. He testified that he had sent a cheque for $1968 to Intact on or about February 18, 2013, by regular mail. The cheque was not certified. Intact denied receiving any payment by March 11, 2013, and proceeded to cancel the policy.

33. Arbitrator Cooper framed the question to be determined as whether it was more likely than not that the insured had posted the cheque as claimed, and if he had, whether an uncertified cheque satisfies the terms stipulated by the insurer in the notice letter sent. He reviewed the evidence of both parties and found the insured's evidence not to be credible. He therefore determined that a cheque was not sent to Intact before the termination date specified, and that the policy was properly cancelled.

34. Arbitrator Cooper then went on to consider whether the delivery of an uncertified cheque would have avoided cancellation of the policy, in the event that his factual findings outlined above were incorrect, and the cheque had been sent and was misplaced by Intact. He noted that subsection 1.3(b) of Statutory Condition 11 provides that payment shall be "payable in cash or by money order or certified cheque" and that the insurer in this case chose to delete the option of payment in cash but had added the option of payment by approved credit card. He determined that the letter sent by Intact was clear and unambiguous in stipulating the form of acceptable payments, and that it was within its rights to do so.

35. In the course of arriving at his decision, Arbitrator Cooper endorsed the following points:

(a) Courts and arbitrators have tended to observe the requirements of the insurer's notice of termination very closely and construe them strictly against the insurer.

(b) Where an insurer purports to terminate an automobile insurance policy, the onus is on the insurer to prove that its purported termination complied with the applicable Statutory Conditions.

(c) Statutory Condition 11 (1.3)(b) is a consumer oriented provision that gives the insured the opportunity to continue coverage, regardless of the insurer's intention.

(d) Several "essential elements" have been identified which must be included in the termination notice in order for an insurer to satisfy Statutory Condition 11.

***Doran v. RBC General Insurance (FSCO Arbitrator Matheson – June 2016)***

36. RBC took the position that Mr. Doran was not entitled to Non-Earner Benefits in accordance with section 31(1)a of the *SABS,* as he knew or ought to have known that he was operating a vehicle without insurance. The question of the validity of a Notice of Cancellation sent by RBC was therefore raised as a preliminary issue before a FSCO Arbitrator. There were many disputed facts related to the information communicated by RBC about the timing of the withdrawal of payments, as well as other issues. A letter purporting to cancel the policy was sent on two occasions to the wrong address, one of which was sent via regular mail.

37. Ultimately, a registered letter was sent to Mr. Doran's correct address stating that in order to ensure the continuation of insurance coverage, "payment can be made by money order or certified cheque". The option of a cash payment was not provided. Arbitrator Matheson agreed with the Applicant's argument that the letter was defective, as it did not reference the option of paying the amounts owing in cash, as stipulated by section 11(1.3) of *Regulation 777/93*. He found that this omission was a "fatal error" on the part of the insurer, in light of the Supreme Court of Canada's finding in *Smith v Co-operators, supra,* that insurance legislation is "consumer protectionist in nature". He stated that because the consequences of cancellation of a policy are so severe, all components of section 11(1.3) must be adhered to in their strictest terms.

***ACE INA Insurance v State Farm Mutual (Bialkowski- May 2017)***

38. ACE took issue in this priority dispute with the cancellation notice sent by State Farm, arguing that the letter was not personally delivered or sent by registered mail, and did not provide the insured with the option to pay cash for the outstanding arrears.

39. Arbitrator Bialkowski determined that the letter had been sent by registered mail, as required. In addressing whether the essential elements of Statutory Condition 11 were complied with, he noted that the amount due, and the date and time at which the policy would be cancelled if no payment was received were provided on the notice. The notice provided that if payment was received prior to the time noted for cancellation, the policy would be reinstated, and stated "please return this portion with your cheque made payable

to State Farm". It did not provide the option of paying the arrears by cash or money order, as referenced in the regulation.

40. Arbitrator Bialkowski stated that the jurisprudence makes it clear that the power of cancellation by an insurer must be strictly exercised. He found that State Farm's failure to include all of the payment options referenced in the regulation was fatal "as per the reasoning of Arbitrator Matheson in *Doran v RBC, supra*." He noted that "not every insured has a bank account", and commented that "in all likelihood, it was consumer protection that was the basis for requiring the various methods of payment be set out in the Notice of Cancellation".

41. Arbitrator Bialkowski acknowledged that he had not included the "payment method option" in his list of essential elements in his earlier decision in *Economical v Wawanesa, supra,* case, but stated that that was because that issue had not specifically been raised in that case, and that the list provided was not meant to be exhaustive.

**ANALYSIS & REASONS:**

42. Statutory Condition 11 of *Regulation 777/93* provides both parties with the right to terminate an automobile policy that has been issued, prior to the expiry of its term. The provision permits an insured to terminate the policy "at any time on request". The Superior Court has confirmed that while an insured may effect a termination by making a request at any time either orally or in writing[1], the rules that apply to an insurer that unilaterally terminates a policy are much more detailed and onerous.

43. Subsection (1) of Statutory Condition 11 requires a notice to either be personally delivered to the insured, or sent by registered mail. Subsection (1.2) provides that if the reason for termination is the non-payment of premiums, certain timelines must be adhered to, and the notice "shall comply with subcondition (1.3)". Subsection (1.3) provides that the notice must state the amount due under the contract as of the date of the notice, and must also -

[1] See *Echelon General Insurance Company v. Ontario (Minister of Finance)* 2018 ONSC 5029

> *(b) state that the contract will terminate at 12:01 a.m. of the day specified for termination unless the full amount mentioned in clause (a), together with an administration fee not exceeding the amount approved under Part XV of the Act,* ***payable in cash or by money order or certified cheque payable to the order of the insurer*** *or as the notice otherwise directs, is delivered to the address in Ontario that the notice specifies, not later than 12:00 noon on the business day before the day specified for termination.*

44. The relevant part of the Notice of Cancellation sent by Dominion in this case states :

> *Your payment in the amount of $1,018.51 was returned by your bank due to nsf (insufficient funds). In order to continue your policy,* ***please forward a certified cheque payable to the The Dominion of Canada General Insurance Company or completed credit card authorization form.*** *Payment for the outstanding premium state below must be received by 12:01 a.m. Mar 14 '16.*

45. As can be seen, the notice sent by Dominion provided the Claimant with the option to pay the outstanding amount by certified cheque, as noted in Statutory Condition 11, or by a "completed credit card authorization form". It did not, however, provide the option of payment in cash or money order, as referenced in the regulation. The question before me is whether Dominion's failure to specify these two payment options invalidate its attempt to cancel the policy.

46. As with any statutory interpretation exercise, I must consider the legislators' intentions and keep the overall context of the provisions in mind (*Re Rizzo & Rizzo Shoes Ltd.* [1998] 1 S.C.R. 27). In *Schneider v Maahs Estate* (2001) 56 O.R. (3d) 321, the Ontario Court of Appeal stated that as a general rule, "clauses in an insurance policy providing coverage are to be interpreted liberally or broadly in favour of the insured; conversely, clauses excluding coverage are interpreted strictly against the insurer" (at para. 22). The Supreme Court of Canada stated in *Smith v Co-operators, supra*, that "one of the main objectives of insurance law is consumer protection, particularly in the field of automobile and home insurance". Given these clear directions from our higher courts, I

have no trouble agreeing with my colleagues in the decisions noted above that a rigorous standard must be imposed on insurers that attempt to cancel policies for non-payment of premiums.

47. The arbitration awards cited above arise in different contexts. That may explain why they are not quite consistent on the question of whether the method of payment constitutes an essential element of the provision in the regulation, and whether the failure to explicitly mention a cash payment or money order as options for payment is fatal to an insurer's cancellation notice. Whether or not the form of payment offered is an "essential element" of Statutory Condition 11, the drafters of the regulation have clearly signalled that flexibility in the form of payment offered to an insured to address outstanding premiums owing is important.

48. In my view, given the principles expressed in the high court decisions cited and the language used in the regulation, an insurer must make it clear to an insured who is in jeopardy of having their policy cancelled that this can be avoided by paying the required amount in cash, by money order, or by certified cheque. While payment by certified cheque or credit card may be administratively more convenient for an insurer whose policies are issued through brokers, as is the case here, that is not what the regulation provides. Section 11(1.3)b explicitly requires that a notice provide that the amounts owing can be paid in cash or by money order. I find that a failure to do so results in any notice sent not being in compliance with the requirements set out.

49. There is some evidence to suggest that while Ms. Martin had made arrangements to have her policy premiums withdrawn from her bank account, she had paid some of her other bills in cash. Given this evidence, my finding that the Claimant should have been advised that she could pay the premiums owing in cash moves this from the purely theoretical to a likely possibility that Ms. Martin would have chosen this as her method of payment for the arrears owing.

50. Counsel for Dominion suggested that the phrase "or as the notice otherwise directs" that follows the reference to payments being made by cash or money order in section 11(1.3)(b) should be read as giving the insurer the choice to specify other forms of payment. I do not accept this proposition. If this phrase followed directly after the words "payable in cash or money order or certified cheque", I would agree, but the fact that it follows the words "payable to the order of the insurer" leads me to conclude that this phrase relates only to who the money order or cheque, if either of those forms of payment are chosen by an insured, should be made out to.

51. Finally, counsel for Dominion pointed out that Arbitrator Bialkowski determined that Wawanesa's notice was valid despite the lack of reference to cash and money order as options for payment in his decision in *Economical v Wawanesa, supra*, because the letter specified that the insured could contact the broker regarding payment details. I do not necessarily agree with this finding. However, I note that in any event, the reference to contacting the broker in Dominion's letter in the instance case is phrased in a general way at the very end of the letter, and simply states "if you have any questions regarding your insurance policy, please contact your broker". In my view, this leaves a different impression than a specific mention – as seemed to be the case in Wawanesa's letter in the above-referenced case - that payment options may be discussed with the broker.

52. For all of the reasons stated above, I find that the Notice sent by Dominion to Ms. Martin on February 9, 2016 is invalid and that the policy therefore remained in effect at the time of the accident. Dominion is accordingly the priority insurer for the payment of Ms. Martin's claim, pursuant to section 268(2)1(i) of the Act.

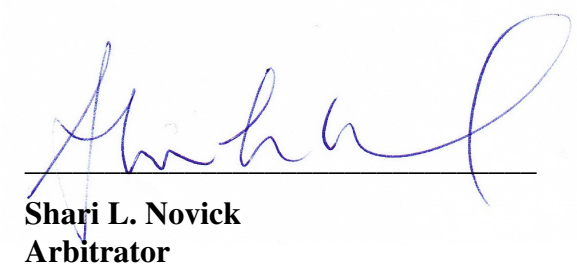
**ORDER:**

Given my findings, the parties' other arguments become moot. I hereby order that Dominion's application for arbitration is dismissed.

**COSTS:**

Given the result, the Respondents are entitled to their legal costs on a partial indemnity basis. If the parties are not able to agree on the quantum of costs to be paid, I invite counsel to contact me so that a process can be determined in order to resolve this issue.

**DATED at TORONTO, ONTARIO this ___16th __DAY OF SEPTEMBER, 2019**



**Shari L. Novick**
**Arbitrator**