

**IN THE MATTER OF AN ARBITRATION PURSUANT
TO S. 148.2(1) OF THE REVISED REGULATION 1984
UNDER THE INSURANCE (VEHICLE) ACT, B.C. REG 447/83**

BETWEEN:

LH, WH,
CG AND SC

CLAIMANTS

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA
and ECONOMICAL MUTUAL INSURANCE CO.

RESPONDENTS

ARBITRATION AWARD

Counsel for the Claimants LH
And WH

Christopher Considine, QC
& Janice Hansen

Counsel for the Claimants CG
and SC

James Main

Counsel for the Respondent, Insurance
Corporation of British Columbia

Mary-Helen Wright
& Jaron Fergusson

Counsel for the Respondent, Economical
Mutual Insurance Co.

Janis McAfee

Date of Hearing:

May 20, 2020

Place of Hearing:

Vancouver, BC

Arbitration Brief of LH and WH

April 29, 2020

Submissions of Insurance Corporation of BC

April 29, 2020

Submissions of Economical Mutual Insurance Co.

April 29, 2020

Response Submissions of LH and WH

May 13 and 28, 2020

Response Submissions of ICBC

May 13 and 26, 2020

Reply Submissions of Economical Mutual Ins. Co.

May 13 and 28, 2020

Arbitrator:

Dennis C. Quinlan, QC

Date of Award:

June 24, 2020

I. INTRODUCTION

1. This is an Underinsured Motorist Protection (“UMP”) arbitration conducted pursuant to section 148.2 of Part 10 of the **Insurance (Vehicle) Regulation B.C. Reg. 447/83** to the **Insurance (Vehicle) Act RSBC 1996, c. 231**.
2. On July 21, 2017 a vehicle driven by SP crossed the centre line and collided head on with a vehicle driven and owned by CG (the “Accident”). CG and his three passengers were all injured (collectively the “Claimants”) including LH who was seriously injured and rendered a quadriplegic.
3. CG as the owner of his vehicle had purchased an optional insurance contract through Economical Mutual Insurance Co. (“Economical Policy”) which included extended UMP coverage to a stated limit.
4. LH as a co-owner of a motor vehicle with her husband had purchased an optional insurance contract from the Insurance Corporation of British Columbia (“ICBC Policy”) which included extended UMP coverage to a stated limit.
5. LH was an insured under both the Economical Policy and ICBC Policy.
6. This arbitration requires me to interpret statutory and contractual provisions and their interaction in order to answer questions of coverage and priority that arise when an UMP claimant is an insured under two optional insurance contracts.

II. BACKGROUND FACTS

7. The arbitration was conducted by way of an Agreed Statement of Facts which included five appendices, together with three other documents, one of which was ICBC marketing material about which there was an issue as to what use I could make of that material.

8. The Claimants filed proceedings in the Supreme Court of B.C. claiming damages for personal injury. They subsequently agreed to cap damages with respect to their combined tort claims to SP's third party liability policy limit of \$2,000,000 (less certain other claims not material to this arbitration) in exchange for an admission by SP that he was 100% at fault with respect to each of the Claimants.
9. The Claimants are entitled to a pro-rata share of SP's remaining policy limits.
10. No determination has been made or agreement reached as to the quantum of damages payable to any of the Claimants. However for the purpose of this arbitration it is agreed that LH's entitlement to damages will exceed her pro-rata share of SP's third party policy.
11. Economical and ICBC agree that SP was underinsured and have consented to the Claimants proceeding to UMP.
12. At the time of the Accident, ICBC had issued to CG an owner's certificate of insurance which provided basic third party liability coverage of \$200,000 and UMP coverage of \$1,000,000.
13. CG had also purchased optional insurance through the Economical Policy which provided inter alia UMP coverage described as "*\$2,000,000 reduced by and in excess of the ICBC primary limit of \$1,000,000*".
14. At the time of the Accident, ICBC had issued to LH an owner's certificate of insurance which provided basic third party liability coverage of \$200,000 and UMP coverage of \$1,000,000.
15. LH had also purchased optional insurance through the ICBC Policy which provided inter alia UMP coverage described as "*Total Underinsured Motorist*".

Protection Limit \$5,000,000 Includes Basic Underinsured Motorist Protection Limit of \$1,000,000”

16. LH as an occupant of a motor vehicle described in an owner’s certificate (the CG Vehicle) and the person named as the owner in an owner’s certificate (the LH vehicle), was an insured for the purpose of her UMP claim under both the Economical Policy and the ICBC Policy.

III. ISSUES TO BE DETERMINED

17. As the wording of the issues to be determined is agreed to by the parties and my determination is sought on that limited basis, I will set out those issues in their exact form:

- (1) Does the UMP coverage provided by CG’s Economical policy add to the UMP coverage of \$5,000,000 provided by the LH optional insurance policy with ICBC?

- (2) Does the \$2,000,000 UMP coverage declared on the Economical declaration issued to CG mean that Economical is obligated to pay \$2,000,000?

- (3) Assuming the defendant SP is an underinsured motorist and there are damages owing to the plaintiff, LH, after factoring in the underlying statutory UMP limit of \$1M (the “Excess Damages”), are the Excess Damages payable by:

- a. The excess UMP policy provided by CG’s owner’s policy of insurance; or
- b. The excess UMP policy held by LH pursuant to her owner’s policy of insurance; or

- c. Both of the excess UMP policies.

(4) If both excess UMP policies are required to respond, then what is the priority of coverage? Specifically:

- a. Which policy is the primary excess UMP policy; or
- b. Are the insurers co-insurers with respect to UMP, and if so,
- c. What is the priority between them?

IV. STATUTORY AUTOMOBILE INSURANCE SCHEME

- 18. In British Columbia there is a statutory automobile insurance scheme that is both compulsory and optional. The statutory provisions and their interaction are complex.
- 19. In ***Ocean Park Ford Sales Ltd. v Insurance Corporation of British Columbia***, 2016 BCCA 337, Mr. Justice Willcock speaking for the Court at para 20 referred to the “...*labyrinthine statutory contract* embodied in the Motor Vehicle Act, R.S.B.C. 1996, c.318; the Motor Vehicle Act Regulations, B.C. Reg. 26/58; the Insurance (Vehicle) Act and the Insurance (Vehicle) Regulation....”
- 20. The statutory scheme set out in the ***Insurance (Vehicle) Act*** and ***Insurance (Vehicle) Regulation*** is divided into two constituent parts, namely basic insurance coverage provided through a plan of universal compulsory vehicle insurance, and optional insurance which can be purchased through an optional insurance policy.
- 21. In order to interpret the material statutory provisions, it is necessary to review the underlying structure of the legislation.

22. I am guided by the principle of statutory interpretation that the sections of legislation are presumed to fit together to form a rational and internally consistent framework. ***Sullivan on the Construction of Statutes, 5th ed. (Markham, Ont.: LexisNexis, 2014)*** at page 223, stated the principle as follows:

It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something towards accomplishing the intended goal.

(1) UNIVERSAL COMPULSORY VEHICLE INSURANCE

23. Part 1 of the ***Insurance (Vehicle) Act*** is entitled Universal Compulsory Vehicle Insurance and applies to basic mandatory coverage that can be purchased only from ICBC.
24. The public policy interest underlying the legislative scheme was identified by Madam Justice Garson in ***Niedermeyer v Charlton***, 2014 BCCA 165 at para 90:

The public policy embraced by the legislative scheme is to provide a universal, compulsory insurance program as part of the legislature's efforts to ensure safety on the roads and access to compensation for those who suffer losses when those measures fail.

25. Section 2 of the ***Insurance (Vehicle) Act*** authorizes ICBC to operate the plan of universal compulsory vehicle insurance:

Corporation to provide universal compulsory vehicle insurance

2 If under the ***Insurance Corporation Act***, the Lieutenant Governor in Council authorizes the corporation to operate the plan

of universal compulsory vehicle insurance, the corporation must operate the plan of universal compulsory vehicle insurance in accordance with this Act and the regulations. *

*All underlining hereinafter added for emphasis unless otherwise noted

26. The term “plan” is used throughout the ***Insurance (Vehicle) Act*** and ***Insurance (Vehicle) Regulation*** and is specific to universal compulsory vehicle insurance. It is defined in section 1 of the ***Insurance (Vehicle) Act*** as follows:

“**plan**” means the plan of universal compulsory vehicle insurance referred to in section 2 and operated by the corporation under Part 1 and the regulations under that Part.

27. The coverage provided by the plan is set forth in section 1.1 of the ***Insurance (Vehicle) Regulation***:

Universal compulsory vehicle insurance

1.1 The plan provides insurance coverage as follows:

(a) coverage under Parts 6, 7 and 10

28. Parts 6 and 7 of the ***Insurance (Vehicle) Regulation*** refer to third party liability insurance and accident benefits respectively. Part 10 is entitled First Party Coverage and Division 2 of Part 10 deals specifically with UMP coverage.
29. As part of the plan, Section 36 of the ***Insurance (Vehicle) Act*** provides for the issuance of “certificates” which are defined in section 1:

“**certificate**” means a certificate of universal compulsory vehicle insurance issued under Part 1 or the regulations under that Part

“**driver’s certificate**” means a class of certificate issued under the plan to a person who may, under the ***Motor Vehicle Act***, obtain a driver’s license

“**owner’s certificate**” means a class of certificate issued under the plan to an owner

30. Part 2 of the ***Insurance (Vehicle) Regulation*** governs the issuance of an owner’s certificate. The coverage provided to a person having an owner’s certificate is set out in section 10 of Part 2 and includes UMP coverage under Division 2 of Part 10:

Effect of owner’s certificate

10 (1) An owner’s certificate validated by the corporation evidences that an insured, as defined in sections 63, 78, 147, 148 and 148.1, has coverage under Part 6, Part 7,and Division 2 of Part 10 respectively.

31. Part 4 of the ***Insurance (Vehicle) Regulation*** governs the issuance of a driver’s certificate.
32. Section 43 states that a driver’s certificate is deemed to be incorporated into every valid driver’s license. The coverage provided to a person named on a driver’s certificate includes indemnity for liability arising from the use or operation of a vehicle as stated in section 49 and other coverage provided in section 49.3 including UMP coverage under Division 2 of Part 10:

Other coverage

49.3 (1) In addition to indemnity under section 49, a driver’s certificate evidences that an insured who is not in default of premium payable under section 45 has

- (a) coverage under Part 7

- (b) coverage under section 148
- (c) coverage under Division 2 of Part 10.

33. The limit of UMP coverage for the purpose of Division 2 of Part 10 is \$1,000,000 per insured person.

(2) OPTIONAL INSURANCE

34. Prior to June 1, 2007, basic and optional insurance coverage provided by ICBC were governed by the ***Insurance (Motor Vehicle) Act, R.S.B.C. 231.*** Optional insurance sold by a private insurer was regulated by Part 6 of the ***Insurance Act, R.S.B.C. 1996, c. 226.***

35. That distinction disappeared however when the legislation underwent a significant rewrite leading to the enactment of the ***Insurance (Vehicle) Act*** on June 1, 2007. Thereafter optional insurance contracts sold by ICBC or a private insurer were both regulated by the ***Insurance (Vehicle) Act.***

36. Part 4 of the ***Insurance (Vehicle) Act*** applies specifically to optional coverage and optional insurance contracts.

37. An optional insurance contract is defined in section 1 of the ***Insurance (Vehicle) Act*** as a contract of vehicle insurance other than vehicle insurance provided under the plan.

38. The instrument evidencing the optional insurance coverage is defined in section 1 of the ***Insurance (Vehicle) Act*** to be a “policy”:

“**policy**” means the instrument evidencing an optional insurance contract and includes an interim receipt, a renewal receipt or a binder, or writing evidencing the contract, whether sealed or not

39. Section 61 of the **Insurance (Vehicle) Act** expressly sets out the type of coverage that may be provided by an optional insurance contract:

Coverage of optional insurance contracts

61 (1) An optional insurance contract may only

(a) extend coverage that is specified in a certificate or a policy to a limit that is in excess of that provided by the certificate or policy for every insured, and, except as provided under subsection (1.1), on the same terms and conditions, or

(b) provide coverage that is not specified in a certificate or in a policy that extends the coverage that is specified in a certificate

40. Part 13 of the **Insurance (Vehicle) Regulation** applies specifically to optional insurance contracts. Section 170 requires that the following notice must be printed on every extension policy:

Coverage provided by this contract that extends the limit of coverage that is specified in a certificate or a policy is provided on the same terms and conditions of the coverage that is extended....”

41. Part 5 of the **Insurance (Vehicle) Act** sets out conditions that apply to insurance provided under both the plan and optional insurance contracts.
42. Section 80 of Part 5 addresses the involvement of other vehicle insurance that is not excess to the other, including insurance under the plan or another optional insurance contract:

Other Insurance

80 (1) If there is an optional insurance contract and any other vehicle insurance, including insurance under the plan or another optional insurance contract, none of which is excess to the other, that insures against the same loss or liability, an insurer is only liable for its rateable proportion of any loss, liability or damage.

(3) UNDERINSURED MOTORIST PROTECTION (UMP)

43. UMP is a statutory form of first party insurance which provides compensation to an insured person in the event that an at-fault motorist has insufficient or no liability insurance or other assets with which to pay a judgment.
44. Effective February 1, 1992, UMP coverage became part of the basic compulsory insurance and was included on every owner's certificate and extended to all driver's certificates. The UMP limit became \$2,000,000 for insured persons less various defined deductible amounts.
45. Effective November 27, 1992, the limit of basic compulsory UMP coverage was reduced from \$2,000,000 to \$1,000,000 per insured person. As of that date, it also became possible to purchase an additional \$1,000,000 of UMP through a separate excess policy: *Mann v BCAA* 2004 BCSC 139 at paras. 12 to 17.
46. With the enactment of the *Insurance (Vehicle) Act* on June 1, 2007, excess UMP was available as optional coverage through the purchase of an optional insurance contract from either ICBC or a private insurer. Since 2017, extended UMP (also referred to as extension UMP) has been available in \$1,000,000 increments to a maximum of \$5,000,000.
47. Division 2 of Part 10 to the *Insurance (Vehicle) Regulation* is entitled Underinsured Motorist Protection. Section 148.1 (5) provides that the liability of

the corporation (ICBC) under Division 2 for payment under an owner's certificate or driver's certificate shall not exceed \$1,000,000 as set out in section 13 of Schedule 3 minus the defined deductible amounts:

UMP coverage

13 For the purpose of Division 2 of Part 10, the limit of coverage for underinsured motorist protection is \$1 million per insured person.

48. Deductible amounts are defined in section 148.1 (1) and include:

(h) paid or payable under vehicle insurance, wherever issued and in effect, providing underinsured motorist protection for the same occurrence for which underinsured motorist protection is provided under this section.

49. Sections 148.1 (7) and (8) deal with the situation of there being more than one certificate providing UMP to an insured, or in the event of a claim, the insured has access to UMP under both an owner's certificate and a driver's certificate:

(7) Where more than one certificate provides underinsured motorist protection to an insured, the insured shall be compensated only under one such certificate.

(8) Where, in the event of a claim, an insured has access to underinsured motorist protection coverage under both an owner's certificate and a driver's certificate, the insured shall be compensated under the owner's certificate.

50. There is no mention of excess UMP or extended UMP in Division 2 of Part 10.

51. However the term "extended underinsured motorist protection" is found in section 171 of Part 13 to the ***Insurance (Vehicle) Regulation***:

Extended underinsured motorist protection

171 (1) If an insured covered by extended underinsured motorist protection commences an action in British Columbia against a person who may be an underinsured motorist, the insurer may apply to the court to be added as a party to that action.

52. “Insurer” is defined in section 1 of the ***Insurance (Vehicle) Act*** as meaning “...the corporationor the person who undertakes, agrees or offers to provide insurance under an optional insurance contract.”

53. A near identical provision to section 171 is set out in section 148.1 (11) of Division 2 of Part 10 of the ***Insurance (Vehicle) Regulation*** except that “insurer” is replaced by “corporation”:

(11) If an insured commences an action in British Columbia against a person who may be an underinsured motorist, the corporation may apply to the court to be added as a party to that action.

54. It is apparent the legislative scheme is to provide basic mandatory UMP coverage under Division 2 of Part 10 and extended UMP through the purchase of an optional insurance contract which must be on the same terms and conditions as the basic mandatory UMP.

V. POSITION OF THE PARTIES

(1) LH

55. LH has two positions.

56. First she submits she is entitled to access the UMP policy limits of \$2,000,000 provided by the Economical Policy and the \$5,000,000 provided by the ICBC Policy for a total of \$7,000,000. She asserts that the two policies can be “stacked”.

57. In support of this position, LH relies upon the definition of “certificate” as set out in section 1 of the ***Insurance (Vehicle) Act*** and section 148.1 (7) of the ***Insurance (Vehicle) Regulation***.
58. LH argues that neither the Economical Policy nor the ICBC Policy satisfy the definition of certificate because they both provide extended UMP through an optional insurance contract rather than basic UMP provided under a certificate.
59. As she can only access one certificate for the purpose of her basic UMP coverage, Mr. Considine on behalf of LH says it is only “logical” that her owner’s certificate will respond since she paid a premium for that insurance and it is through that owner’s certificate that she has access to the ICBC Policy which provides her extended UMP to a limit of \$5,000,000.
60. Since the Economical Policy does not meet the definition of certificate, Section 148.1 (7) does not restrict her ability to access the Economical Policy with its extended UMP coverage of \$2,000,000. The ICBC Policy and the Economical Policy therefore stack.
61. Second LH puts forward a number of arguments to support her position that the Economical Policy must pay \$2,000,000 UMP coverage over and above any basic UMP that might be payable under the plan of universal compulsory vehicle insurance.
62. She submits that the Economical Policy is written and formatted in an ambiguous manner such that the average person applying for insurance would understand that the \$2,000,000 UMP limit was in excess of the basic UMP coverage provided by the plan of universal compulsory vehicle insurance.

63. The wording that LH argues is ambiguous is set forth in the Economical Automobile Insurance Protection Application and Declaration (the “Declaration”) evidencing the coverage. It reads as follow:

Underinsured Motorist Protection: \$2,000,000

Reduced by and in excess of the I.C.B.C. primary limit of \$1,000,000

64. LH says further that because it is only her owner’s certificate which provides coverage, the CG owner’s certificate is “not in play” and therefore is not available to reduce Economical’s declared coverage of \$2,000,000.
65. LH then references section 61 of the ***Insurance (Vehicle) Act*** and section 170 of the ***Insurance (Vehicle) Regulation*** which provide that an optional insurance contract may only extend the limits of coverage which are specified in a certificate. As the CG owner’s certificate does not refer to UMP coverage or specify a limit of coverage that is being extended, Economical has not complied with the statute and is thereby bound to pay the \$2,000,000.
66. Finally it is submitted by LH that if as a result of the deductible amounts specified in section 148.1 (1) of the ***Insurance (Vehicle) Regulation***, ICBC itself pays nothing by way of UMP directly, then there is nothing to be deducted in respect to the ICBC primary limit of \$1,000,000 and Economical must pay its stated limit of \$2,000,000.

(2) INSURANCE CORPORATION OF BRITISH COLUMBIA

67. ICBC’s position is that as extended UMP coverage is provided under both the Economical Policy and ICBC Policy, and LH is an insured under those policies, then both policies must respond to the claim for UMP compensation.

68. ICBC argues that the starting point for determining issues concerning insurance policies, including matters of priority, are the terms of the respective insurance policies.
69. ICBC submits that based upon the terms of the respective Economical and ICBC Policies, the order of priority is first, the basic mandatory UMP coverage of \$1,000,000, followed by the Economical Policy of \$2,000,000 and then the ICBC Policy which would top up to the stated limit of \$5,000,000.
70. ICBC's position if accepted, would see it paying a maximum of \$2,000,000 for extended UMP under its Policy.
71. ICBC refers to the wording of the Economical Policy in support of its position that Economical's Policy was predicated upon being excess only to the basic UMP coverage provided under the plan of universal compulsory vehicle insurance.
72. ICBC compares the wording in the Economical Policy to the wording of its own policy which it argues shows that the ICBC Policy was to be excess to all other certificates or plans providing UMP coverage, including the Economical Policy.
73. ICBC takes the position that it makes no difference for the purpose of the arbitration whether the basic UMP coverage is attributable to CG's owner's certificate or LH's owner's certificate.
74. ICBC argues that section 179 of the ***Insurance (Vehicle) Regulation*** supports the priority of coverage as set out by the terms of the two policies, because LH's claim relates to liability arising from the use or operation of CG's vehicle. As such it is the Economical Policy which is primary and any other vehicle liability policy is excess.

75. ICBC also submits that as a result of section 148.1(7) of the ***Insurance (Vehicle) Regulation***, the respective limits of UMP coverage under the Economical Policy and ICBC Policy do not stack and LH's UMP coverage is limited to \$5,000,000 in accordance with the terms set forth in the ICBC Policy.
76. Last ICBC supports LH's position that the Economical Policy limit of \$2,000,000 is over and above the basic UMP limit of \$1,000,000.

(3) ECONOMICAL MUTUAL INSURANCE CO.

77. Economical relies upon section 148.1(7) of the ***Insurance (Vehicle) Regulation*** and the statutory interpretation principle of implied exclusion to argue that LH can recover her UMP compensation, both basic and extended, from only one certificate, being either CG's owner's certificate or LH's owner's certificate. Economical argues that Division 2 of Part 10 does not differentiate between basic UMP and extended UMP and therefore section 148.1(7) applies to both.
78. Economical points out while section 148.1(8) of the ***Insurance (Vehicle) Regulation*** addresses the situation where an insured has access to UMP under both an owner's certificate and a driver's certificate, it is silent as to what will occur if there are two owner's certificates providing UMP coverage.
79. Economical also submits that the terms of the Economical Policy and ICBC Policy are themselves silent as to priority of coverage where there is extended UMP entitlement pursuant to two owner's certificates.
80. Since LH will maximize her entitlement to UMP coverage through the ICBC Policy for which she paid a premium, Economical submits it is that policy based upon LH's owner's certificate which must compensate her. Economical says it would be unfair to LH for her to be limited to \$2,000,000 UMP coverage, which is all she would receive under the Economical Policy.

81. Economical's position if accepted, would see it paying nothing under its Policy for extended UMP.
82. Economical says that ICBC's own marketing materials support such a conclusion.
83. Economical submits that it cannot be a co-insurer with ICBC because section 148.1 (7) restricts entitlement to one certificate. Furthermore section 80 of the **Insurance (Vehicle) Act** does not apply because the Economical Policy and the ICBC Policy do not cover the same loss.
84. Economical submits that the Economical Policy and ICBC Policy do not stack as a result of section 148.1(7) and it is the ICBC Policy that will compensate LH.
85. Last Economical, in response to the argument that the wording of the Economical Declaration page is ambiguous, refers to the Economical Policy generally and submits it is clear that the \$2,000,000 UMP limit is reduced by the basic UMP limit provided by the plan of universal compulsory vehicle insurance. Economical also relies upon section 148.1(h).

VI. ANALYSIS

86. As stated at the outset, the issues identified by the parties in this arbitration require statutory and contractual interpretation.
87. The general approach to statutory interpretation is that stated by Professor Driedger in **Construction of Statutes**, 2d. (Toronto, Butterworths, 1983) at 87:

Today there is only one principle or approach, namely the words of an Act are to be read in their entire context and in their grammatical

and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

88. In addition the presumption against tautology presumes that the legislature avoids superfluous or meaningless words and every word in a statute has a specific role in advancing the purpose of the legislation: ***SCK Motor Company Limited v Insurance Corporation of British Columbia*** 2015 BCSC 1037 at para 33.

89. I will deal with the issues in the order set out in paragraph 17 herein.

(1) Does the UMP coverage provided by the Economical Policy add to the UMP coverage provided by the ICBC Policy?

90. The answer to this issue is found in section 148.1 (7) of the ***Insurance (Vehicle) Act***.

(7) Where more than one certificate provides underinsured motorist protection to an insured, the insured shall be compensated only under one such certificate.

91. Section 148.1 (7) is clear. The insured shall be compensated only under one such certificate. It is my view that the limit of UMP coverage extended by the Economical Policy does not add to the limit of UMP coverage extended by the ICBC Policy.

92. I disagree with LH's submission that section 148.1(7) of the ***Insurance (Vehicle) Regulation*** does not restrict her ability to be compensated by the cumulative limits of both the Economical and the ICBC Policies.

93. It is correct that the Economical and ICBC Policies are not certificates. They are by definition optional insurance contracts. However in my view, LH's argument does not take into account the nature of the coverage being provided by the

respective optional insurance contracts, in accordance with the statutory framework the legislature has enacted.

94. I consider there to be a fundamental difference between “providing” coverage and “extending” coverage. This difference is found in section 61(1) of the ***Insurance (Vehicle) Act*** which sets out the nature of the coverage that can be provided by an optional insurance contract. Subsection (a) deals with extending coverage, whereas subsection (b) speaks of providing coverage.
95. The word “extend” is to be read in its grammatical and ordinary sense, namely to expand, to enlarge, to increase, to continue. The word ‘extension’ ordinarily implies the existence of something to be extended: ***Manulife Bank of Canada v Conlin*** [1996] 3 S.C.R. 415 at para 29.
96. The coverage is provided by the certificate. The limit of that coverage is then extended by the optional insurance contract.
97. Section 10 (1) of the ***Insurance (Vehicle) Regulation*** states that an owner’s certificate evidences that an insured has UMP coverage which pursuant to section 1.1 of the ***Insurance (Vehicle) Regulation***, is “provided” by the plan of universal compulsory vehicle insurance.
98. As such the basic UMP coverage is provided by the respective owner’s certificates of CG and LH. The Economical and ICBC Policies as optional insurance contracts operate to “extend the limit of UMP coverage” provided by the certificates.
99. Such extension must be on the same terms and conditions as the coverage that is being extended. As such the extended UMP coverage provided by the Economical Policy and the ICBC Policy is the same as the basic UMP coverage provided under the respective owner’s certificates, save and except for the

increased or “extended” limit of coverage. The terms of the UMP coverage, be it basic or extended are set out in Division 2, Part 10 of the ***Insurance (Vehicle) Regulation***.

100. As further indication of the concept of “extended”, section 61(5) of the ***Insurance (Vehicle) Act*** states that the optional insurance contract terminates if the coverage provided by the underlying certificate terminates.

101. Both the Economical and ICBC Policies contain the statutory notice required by section 170 of the ***Insurance (Vehicle) Regulation*** stating that the extended coverage is provided on the same terms and conditions as the underlying basic UMP coverage.

102. In summary the limit of coverage applicable to the Economical Policy arising through the extension of basic UMP coverage provided by CG’s owner’s certificate is \$2 million. The limit of coverage applicable to the ICBC Policy arising through the extension of basic UMP coverage provided by LH’s owner’s certificate is \$5 million. Section 148.1(7) states that LH shall be compensated only under one such certificate.

103. I thereby find that LH is only entitled to be compensated under one owner’s certificate. The limit of UMP coverage available under her owner’s certificate is \$5,000,000 as extended by the ICBC Policy. The ICBC Policy and the Economical Policy do not stack.

(2) Does the \$2,000,000 UMP coverage declared on the Economical declaration issued to CG mean that Economical is obligated to pay \$2,000,000?

104. The position advanced by LH and supported by ICBC, is that the Economical Policy is obligated to pay LH \$2,000,000 without deduction of the basic UMP

coverage of \$1,000,000 specified in section 13 of Schedule 3 to the **Insurance (Vehicle) Regulation**.

105. The Coverages and Limits of Insurance section of the Declaration pertaining to the Economical Policy attached as Appendix A to the Agreed Statement of Facts reads inter alia:

EXTENSIONS OF COVERAGE

Underinsured Motorist Protection: \$2,000,000

Reduced by and in excess of the I.C.B.C primary limit of \$1,000,000

106. The Autocover Policy Wording (“Policy Wording”) for the Economical Policy set forth in Appendix B to the Agreed Statement of Facts states inter alia:

SECTION D – EXCESS UNDERINSURED MOTORIST PROTECTION

The people insured under this section are the same as those under the Insured’s ICBC compulsory Basic Insurance Underinsured Motorist Protection.

Coverage provided by this contract that extends the limit of coverage that is specified in a certificate or a policy is provided on the same terms and conditions of the contract that is extended, except in respect of a prohibition, exclusion, or different limit of coverage that is permitted by the Insurance (Vehicle) Act

.....

Section D – Excess Underinsured Motorist Protection applies only as excess to valid enforceable ICBC Underinsured Motorist Protection under an Owner’s Certificate respecting the Automobile, and is subject to all the limits and conditions contained in this policy.

SPECIAL PROVISIONS – SECTION D

1. The Excess Insurer's liability shall not exceed the limit per insured person stated in the Declaration and is reduced by and in excess of the limit per insured person of the first loss underinsured motorist protection insurance that is provided by the first loss Underinsured Motorist Protection Insurer, ICBC

107. CG's Owner's Certificate of Insurance and Vehicle Licence issued by ICBC describes the following:

Coverages

Basic

As per Insurance (Vehicle) Act and Regulation

108. I have considered the various arguments advanced by LH and do not find they support the position being advanced.

109. LH as a passenger in the CG vehicle, is an unnamed insured under CG's owner's certificate. Pursuant to section 81 of the **Insurance (Vehicle) Act**, she has the same rights and obligations as if she was a named insured under the certificate or policy.

110. As provided for in Section D of the Policy Wording, LH is also an insured under the Economical Policy. It is the Economical Policy which operates to extend the limit of basic UMP coverage provided under CG's owner's certificate, from \$1,000,000 to \$2,000,000.

111. While LH is an insured under the Economical Policy, the direct relationship is a matter of contract between CG and Economical. There is no evidence before me as to the circumstances surrounding the entering into the contract between CG and Economical, and the issues I have been asked to rule upon do not require any determination in that regard.

112. LH first submits that the wording and formatting in the Declaration and the Policy Wording is ambiguous to the average person purchasing insurance.
113. With respect I do not agree. The Declaration clearly speaks of the extended UMP coverage of \$2,000,000 being reduced by the ICBC primary limit of \$1,000,000. Further Special Provision 1 on page 16 of the Policy Wording states the insurer's liability is reduced by and in excess of the first loss underinsured motorist protection insurance that is provided by ICBC.
114. The policy wording must be read as a whole and an ambiguity cannot be created by carving out the two words "in excess". One should not search for ambiguities where none exist: ***Corbould v BCAA Insurance Corporation*** 2010 BCSC 1536 at para. 36.
115. I agree with Ms. McAfee, counsel for Economical, that no equally reasonable contradictory interpretation has been put forward whereby the Economical Policy might pay \$2,000,000 but without any deduction for the basic UMP coverage of \$1,000,000. The mere articulation of a differing interpretation does not always establish the reasonableness of that interpretation and does not necessarily create ambiguity: ***Sabean v Portage La Prairie Mutual Insurance Co.*** 2017 SCC 7, [2017] 1 S.C.R.121 at para. 42
116. LH further submits that because she is to be compensated under her owner's certificate, the CG owner's certificate is "not in play", and thus there is no basic UMP coverage to deduct. This submission is in my view answered by section 148.1(h) of the ***Insurance (Vehicle) Regulation*** which provides for the deduction of an amount paid or payable "...under vehicle insurance, wherever issued and in effect, providing underinsured motorist protection for the same occurrence...."

117. As already noted, the contractual terms set out in Section D of the Special Provisions to the Economical Policy expressly provide for such deduction.
118. I agree with Ms. McAfee that whichever certificate responds to Mrs. LH's claim, the extended UMP limit is reduced by the basic UMP provided by the plan of universal compulsory vehicle insurance.
119. LH then argues that as the owner's certificate for CG does not specify UMP coverage or the limit of UMP coverage, the Economical Policy is in contravention of sections 61 of the **Insurance (Vehicle) Act** and 170 of the **Insurance (Vehicle) Regulation**. As such she says that Economical does not receive the benefit of the basic UMP deduction.
120. I first note that CG's owner's certificate (properly described as Owner's Certificate of Insurance and Vehicle Licence) is issued by ICBC in accordance with section 2 of the **Insurance (Vehicle) Act** which authorizes ICBC to operate the plan of universal compulsory vehicle insurance. Economical presumably had nothing to do with the format or preparation of CG's owner's certificate.
121. CG's owner's certificate describes the coverage as "*Basic, as per Insurance (Vehicle) Act and Regulation*". I have already described in detail how the plan of universal compulsory vehicle insurance provides coverage through an owner's certificate which includes inter alia basic UMP to a limit of \$1,000,000 prescribed by Section 13 of Schedule 3 to the **Insurance (Vehicle) Regulation**.
122. Economical met its section 170 statutory obligation by printing the following notice on its policy wording set out in Section D - Excess Underinsured Motorist Protection:

Coverage provided by this contract that extends the limit of coverage that is specified in a certificate or a policy is provided on the same terms and conditions of the contract that is extended,

except in respect of a prohibition, exclusion, or different limit of coverage that is permitted by the Insurance (Vehicle) Act.

123. Last it is submitted by LH that deductible amounts as defined in section 148.1(1) of the **Insurance (Vehicle) Regulation**, will reduce the liability of ICBC to pay basic UMP. To the extent ICBC's liability to pay basic UMP is reduced by deductible amounts, it is argued that Economical's ability to deduct under its Policy, is equally reduced because Economical can only deduct the amount actually paid by ICBC as UMP.
124. I cannot agree with that interpretation. The statutory scheme behind UMP is that it is a coverage of last resort. In respect to the basic UMP provided under the plan of universal compulsory vehicle insurance, section 148.1(5) of the **Insurance (Vehicle) Regulation** states that the liability of ICBC is limited to "*the applicable amount set out in section 13 of Schedule 3....minus the sum of applicable deductible amounts.*"
125. If this argument were to be accepted, it would mean that in the circumstance where ICBC was to compensate an insured \$1,000,000 for basic UMP, Economical would be able to deduct that amount from its extended limit of UMP coverage, but if the section 148.1(1) deductible amounts were \$1,000,000 resulting in ICBC paying nothing as UMP, Economical would not be able to deduct any amount from its extended limit of UMP coverage.
126. Such interpretation would not be in accordance with the statutory automobile insurance scheme set out in the **Insurance (Vehicle) Act** and **Insurance (Vehicle) Regulation** and the "...internally consistent framework..." created between the plan of universal compulsory vehicle insurance and optional insurance contracts.
127. In answer to the issue posed, I conclude that Economical is not obligated to pay \$2,000,000. The basic UMP coverage of \$1,000,000 pursuant to CG's owner's

certificate, can be deducted, whether the \$1,000,000 is satisfied by ICBC as UMP compensation, or a deductible amount as defined in section 148.1(1).

(3) Are the Excess Damages payable by the Economical Policy or the ICBC Policy, and if both, what is the priority of coverage?

128. This issue arises from the fact that for the purpose of LH's UMP claim, she is an insured under two owner's certificates, namely CG's in whose vehicle she was a occupant and her own as the person named in an owner's certificate
129. LH also meets the definition of insured as a person named in a driver's certificate. However section 148.1(8) provides that where an insured has access to UMP under both an owner's certificate and a driver's certificate, the insured shall be compensated under the owner's certificate. Therefore it is not necessary to discuss this aspect of coverage.
130. Absent optional coverage, LH would be entitled to basic UMP coverage to a limit of \$1,000,000 (less defined deductible amounts) under one or the other owner's certificates, but not both.
131. In that basic UMP is provided under the plan of universal compulsory vehicle insurance, there is no conflict between insurers because it is only ICBC that provides the coverage under the plan. That changes when optional coverage is purchased from different insurers as has occurred here.
132. The limit of UMP coverage under CG's owner's certificate was extended to \$2,000,000 by the optional insurance contract evidenced by the Economical Policy.
133. The limit of UMP coverage under LH's owner's certificate was extended to \$5,000,000 by the optional insurance contract evidenced by the ICBC Policy.

134. I have already determined that pursuant to section 148.1(7) of the ***Insurance (Vehicle) Regulation***, LH can only be compensated under one certificate such that the limit of her UMP coverage is \$5,000,000 as extended by the ICBC Policy.
135. It bears repeating at this point the respective submissions made on behalf of Economical and ICBC.
136. As Ms. McAfee concisely put it, the “heart and soul” of Economical’s position is that LH is limited by section 148.1(7) to being compensated under one certificate, which will be her own owner’s certificate for which she paid a premium and through which the ICBC Policy provides her extended UMP coverage to a limit of \$5,000,000. LH cannot collect under two certificates and thus she is not entitled to UMP compensation from the Economical Policy.
137. Mr. Ferguson, counsel for ICBC focuses upon the terms of the respective Economical and ICBC Policies in submitting that the Economical Policy is predicated on being excess only to the basic UMP coverage provided under the plan and coverage arising from the owner’s certificate, whereas the ICBC Policy provides it is to be excess to all other certificates or policies providing UMP coverage, necessarily including the Economical Policy.
138. Mr. Ferguson also submits that the Economical Policy must be primary because it was the CG vehicle which was involved in the accident, consistent with the expectations of insurers when forming the relevant contracts.
139. I agree with Ms. McAfee that section 148.1(7) means LH can only be compensated under one certificate. However where I differ is that I do not agree section 148.1(7) requires the insurer providing the optional UMP coverage extending the limit of coverage under a particular owner’s certificate to necessarily pay the entire amount of the extended UMP coverage. In my view, section 148.1(7) is simply not instructive on that issue.

140. Section 148.1(7) states that as a general and overriding rule, only one certificate will compensate an insured. The intention of the legislature in enacting section 148.1(7) was to prevent the stacking of coverage in circumstances where more than one certificate provided UMP to an insured. The section does not address questions of priority as between competing policies of insurance.
141. A review of section 148.1(8) in light of section 148.1(7) provides support for this conclusion.
142. Whereas section 148.1(7) simply addresses the general situation of more than one certificate providing UMP to an insured, section 148.1(8) deals with the specific circumstance of how an insured will be compensated where “...in the event of a claim, an insured has access to underinsured motorist protection coverage under both an owners certificate and a driver’s certificate....”
143. The legislature in section 148.1(8) answered that specific situation by stating that “...the insured shall be compensated under the owner’s certificate.”
144. The general and overriding ambit of section 148.1(7) is also reflected in the fact that there is no reference to an insured having “access” to UMP coverage, as that wording is used in section 148.1(8).
145. Thus the legislature chose to address directly the situation of an insured making a claim and having access to UMP under both an owner’s certificate and a driver’s certificate. It is significant however that there is no similar section dealing with the insured making a claim and having access to UMP under two owner’s certificates. The legislation is silent as to how an insured is to be compensated in that situation.

146. It is notable that the legislature did address the almost identical situation in the case of third party liability insurance coverage. Section 77 of the **Insurance (Vehicle) Regulation** provides that if there is insurance coverage evidenced by an owner's certificate in respect of a vehicle involved in an accident and also insurance coverage evidenced by a certificate of a vehicle not involved in the accident, the "...insurance coverage in respect of the vehicle involved in the accident is primary insurance...."
147. Silence on the part of the legislature in not addressing the situation of an insured having access to UMP under two owner's certificate must be taken to be intentional. Had the legislature intended to address that scenario it would have done so, as it did in section 77 of the **Insurance (Vehicle) Regulation**
148. In the absence of legislative direction, I am of the view that issues as to priority of coverage between insurers in circumstances where the insured has access to UMP under two owner's certificates, are to be resolved by determining the intentions of the insurers through the words chosen in their particular policies of insurance *vis a vis* the insured.
149. This issue was discussed in **Family Insurance Corporation v Lombard Canada Ltd.**, [2002] 2 S.C.R. 695, 2002 SCC 48. At paras 17 to 19, Bastarache, J. speaking for the Court stated the following:

In accordance with the general principles of contract interpretation, the exercise is properly one of determining the parties' intentions.

.....

The intention which the court seeks to determine is found by looking at the means by and extent to which each insurer has sought to limit its liability to the insured when the insured has purchased other policies covering the same risk. Thus the interpretation is concerned with determining the intentions of the insurers *vis-a-vis* the insured.

.....

Thus while it remains true that the intentions of the insurers prevail, the inquiry is of necessity limited to the insurers' intentions vis-a-vis the insured. In the case of an insurance contract, the entire agreement between the insurer and the insured is contained within the policy itself and evidence of the parties' intentions must be sought in the words they chose.

150. I recognize that LH did not purchase the Economical Policy. However as already mentioned, section 81 of the ***Insurance (Vehicle) Act*** places LH in the same position as if she was a named insured under the Economical Policy.

151. I agree with Mr. Ferguson that Special Provisions – Section D of the Economical Policy Wording make it clear that the Economical Policy is predicated upon being excess only to the basic UMP coverage provided pursuant to the plan of universal compulsory vehicle insurance.

SPECIAL PROVISIONS – SECTION D

2. The Excess Insurer's liability to compensate an Insured under this section of the policy shall attach AFTER the applicable circumstance as described in the following subsections:
 - a) When ICBC – the first loss underinsured motorist insurer shall have paid to the insured the limit of the first loss underinsured motorist protection insurer's liability to that insured under the first loss policy; or
 - b) When there are "deductible amounts" applicable under Regulation Section 148.1(1), after ICBC has deducted all such "deductible amounts" resulting in a payment of the balance of the first loss underinsured motorist protection insurer's liability to that insured under the first loss policy; or
 - c) When ICBC – the first loss underinsured motorist insurer having deducted all "deductible amounts" as prescribed in Section 148.1(1) of the Insurance (Vehicle) regulation and the total of those deductibles exactly equal ICBC's obligation under Schedule 3 of the Insurance

(Vehicle) Regulation before the deductible(s) were applied resulting in a payment due to the Insured by ICBC of zero; or

d) When ICBC – the first loss underinsured motorist insurer having deducted the “deductible amounts” as prescribed in Section 148.1(1) of the Insurance (Vehicle) Regulation, that equal ICBC’s obligation under Schedule 3 of the Insurance (Vehicle) Regulation resulting in a payment due to the Insured by ICBC of zero but additional deductible amounts remain, this section of the policy shall attach subject to the deduction of the sum of such additional deductibles.

152. I also note that the Economical Policy specifically contemplates the possibility of there being other insurance policies providing optional UMP coverage because it references such policies in Special Provisions – Section D:

Section 80 “**Other Insurance**” of the Act requires that if an insured places optional Excess Underinsured Motorist Protection insurance coverage none of which is excess to the others, with more than one insurer, the insured is only covered up to the highest limit with any one insurer.

153. However Economical does not state its coverage is always excess to any other UMP policy or otherwise indicate an intention to pay last and after other excess insurers had paid.

154. The applicable section contained in the ICBC Policy found at Appendix E to the Agreed Statement of Facts reads as follows:

...the Corporation agrees:

2. if any person is entitled to UMP coverage from the Corporation or another insurer with respect to an accident under another certificate or a policy, to pay excess or extended UMP compensation under this to or in respect of the person, to the limit shown on the owner’s certificate, but only to the extent that limit exceeds the sum of the limits of coverage under the other certificates and policies.

155. In my view, the intentions of the respective insurers *vis a vis* their insureds as expressed in the policy words chosen are clear. The Economical Policy was to be excess to the basic UMP coverage as set forth in Division 2 of Part 10 of the ***Insurance (Vehicle) Regulation***. The ICBC Policy was to be excess to both the basic UMP coverage and any other certificate or policy providing UMP coverage.

156. The following statement from ***Family Insurance Corp.*** at para. 34 is applicable:

What must be kept in mind is that policies of insurance are not written in a vacuum. Insurers are most certainly aware that the insured may obtain coverage for the same risk elsewhere and that, in such a case, the law of equitable contribution will necessarily arise.

157. I should note here that ICBC, and at least initially Economical, relied on differing interpretations of section 179 of the ***Insurance (Vehicle) Regulation*** in support of their respective positions. Section 179 reads as follows:

Other Priorities

179 Subject to section 175 [nuclear energy hazards], insurance coverage under an optional insurance contract evidenced by an owner's policy of the kind referred to in section 57.1 of the Act, is, in respect of liability arising from or occurring in connection with the ownership, use or operation of a vehicle owned by the insured named in the optional insurance contract and within the description or definition of the vehicle in the policy, primary insurance, and insurance under any other vehicle liability policy is excess insurance only.

158. An owner's policy of the kind referred to in section 57.1 of the ***Insurance (Vehicle) Act*** means a vehicle liability policy, which as defined in section 1 means a certificate or policy evidencing insurance against liability arising out of bodily injury caused by the use or operation of a vehicle.

159. I do not agree that section 179 has application to the issue before me, because that section is clearly addressing vehicle liability policies providing insurance against liability arising out of bodily injury. UMP coverage on the other hand is first party insurance against loss arising from bodily injury as per the definition of “vehicle insurance” in section 1(1) of the ***Insurance (Vehicle) Act***.
160. The cases relied upon by ICBC are distinguishable on the same basis.
161. Economical makes several additional arguments in support of its position. First the submission is made that ICBC marketing materials can be taken into account for the limited purpose of understanding how ICBC itself viewed UMP coverage.
162. I do not find the material to be of assistance in resolving the issue before me. The proper instrument to determine intention is the policy itself and the words chosen in that policy. While the consideration of surrounding circumstances and the subjective views of the insurer may be relevant in a dispute between an insurer and insured, such consideration is simply not relevant in a contest between insurers: ***Family Insurance Corp.*** at para 19.
163. Should I be wrong in that conclusion, I have reviewed the marketing material and do not find it is of assistance in any event. Contrary to what is asserted by Economical, LH is not at risk of losing the benefit of the \$5,000,000 UMP coverage available under the ICBC Policy by following the approach I have set out. I do not view ICBC’s marketing material to be inconsistent with that approach.
164. Economical submits that the ICBC Policy clause 2 reproduced in paragraph 154 herein, contradicts section 148.1(7) of the ***Insurance (Vehicle) Regulation*** stating that a party can only be compensated under one certificate.

165. I have concluded that clause 2 does not contradict section 148.1(7). Given my finding that the extended UMP coverage provided by the Economical Policy does not add to the extended UMP coverage provided by the ICBC Policy, LH is necessarily only being compensated under one certificate. It is a separate question however as to whether more than one insurer is liable for that extended compensation.
166. Economical argues that LH should be entitled to coverage under her owner's certificate to the exclusion of the Economical Policy, so as to allow her to maximize her indemnity for the injuries suffered and receive the contractual benefit for which she paid premiums. Economical relies upon the decision of ***Johnson v I.C.B.C*** 1987 CanLii 2751 for the proposition that an insured must be given the "fullest extent of UMP coverage for which they had bargained..."
167. I agree that an insured must be given the fullest extent of UMP coverage for which they bargain. As expressed above, LH receives what she paid a premium for, namely \$5,000,000 of extended UMP coverage.
168. The ultimate difficulty in Economical's approach is illustrated by the following example where the limits of coverage are reversed as between the Economical Policy and ICBC Policy.
169. Economical in addressing that potential scenario, took the position that LH should still be compensated under her owner's certificate and the ICBC Policy, to the exclusion of the Economical Policy. This would result in LH only receiving \$2,000,000, notwithstanding that as an insured under the Economical Policy, she would be entitled to extended UMP coverage of \$5,000,000. On Economical's approach, such result would be contrary to section 81 of the ***Insurance (Vehicle) Act*** and the principle set forth in ***Johnson v I.C.B.C.***

170. It is important that there be harmony in the outcome notwithstanding how the particular facts might change for each case.

171. Both Economical and ICBC agree they are not co-insurers as provided for in section 80 of the Insurance (Vehicle) Act and I will not address that further.

172. I conclude by stating that for the purpose of LH's UMP claim, she is an insured under both CG's owner's certificate and her own owner's certificate. The basic coverage provided under each owner's certificate is extended by the Economical and ICBC Policies on the same terms and conditions as provided for in Division 2 of Part 10 of the ***Insurance (Vehicle) Regulation***. LH is only entitled to be compensated under one certificate, albeit a certificate wherein the limit of UMP coverage is extended. The question I have answered is how that extended limit of coverage is to be paid as between the two insurers.

VII. CONCLUSION

173. I find as follows:

(1) The UMP coverage provided by the Economical Policy does not add to the UMP coverage provided by the ICBC Policy. The limit of UMP coverage available to LH is \$5,000,000 as extended by the ICBC Policy.

(2) Economical is not obligated to pay \$2,000,000. The Economical UMP limit of \$2,000,000 is inclusive of the basic mandatory UMP limit of \$1,000,000 provided by ICBC under the plan of universal compulsory vehicle insurance.

(3) The Excess Damages as defined in paragraph 17(3) herein are payable by both the Economical Policy and the ICBC Policy. LH is entitled to be compensated first from the basic UMP coverage to the limit of \$1,000,000, followed by the Economical Policy to the limit of \$2,000,000 (inclusive of basic UMP), followed by the ICBC Policy to the limit of \$5,000,000 (inclusive of basic UMP and the Economical payment).

174. My preliminary view is that there has been divided success on the various issues, and therefor I would make no order as to costs. However given the complexity of the issues and matters which I may not be aware of, and if agreement cannot be reached on costs, the parties have liberty to make written submissions, to be made within ten days of this award, and any reply to be made within three days following.

Dated: June 24, 2020

Arbitrator – Dennis C. Quinlan, QC