Dispute Resolution Services

Services de règlement des différends

Ontario

A13-015345

BETWEEN:

CELIA YANG

Applicant

and

CO-OPERATORS GENERAL INSURANCE COMPANY

Insurer

Before: Arbitrator Isabel Stramwasser

Heard: Oral hearing on January 20, 2020, by teleconference

Appearances: Joseph Campisi Jr, Sylvia Guirguis and Peter Murray for Celia Yang
Philippa Samworth for Co-operators General Insurance Company

ISSUES:

Procedural background

The Applicant, Ms. Celia Yang, was injured in an automobile accident on December 29, 2011 and sought benefits pursuant to the *Statutory Accident Benefits Schedule*,[1] which Co-operators General Insurance Company denied. The parties were unable to resolve their dispute through mediation. Consequently, Ms. Yang applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*.[2] Subsequently, the Financial Services Commission of Ontario changed its name to Dispute Resolution Services.

[1] *The Statutory Accident Benefits Schedule — Effective September 1, 2010*, Ontario Regulation 34/10, as amended.

[2] R.S.O. 1990, c. 1.8, as it read immediately before being amended by Schedule 3 of the *Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014*.

On November 19, 2019, the parties had a pre-hearing discussion before me in which they advised that they had been waiting for an outstanding decision by Arbitrator Alan Mervin. They were unaware that Arbitrator Mervin had passed away in summer 2019 until I so advised at the pre-hearing conference. The parties advised me at that pre-hearing discussion that the issue before Arbitrator Mervin regarded the manner in which the Applicant could contact providers of insurer examinations.

At the pre-hearing conference and by reporting letter of November 19, 2019, I advised the parties that I would review their written submissions on that motion and possibly contact their administrative staff to confirm that I had all the material necessary to hear the matter and make a decision.

On November 27, 2019, I wrote to the parties to advise that I had reviewed the file and was confused about the issues and relevant material, for the following reasons:

1. Arbitrator Mervin's pre-hearing letter of July 16, 2018 set out the issues and timelines for a motion on the record.

2. In a letter of July 18, 2018, Ms. Samworth set out the issues in the motion and referred to supporting material.

3. Mr. Campisi filed his submissions in response on August 31, 2018.

4. Ms. Samworth filed reply submissions on September 19, 2018 wherein she advised that the issues in the motion had changed.

5. Mr. Campisi filed a motion to strike Ms. Samworth's motion on October 25, 2018.

6. Letters from each counsel on February 13 and 19, 2019, respectively, referred to an oral hearing set in this matter for February 21, 2019 at 2 p.m.

7. Mr. Campisi sent Arbitrator Mervin three emails on February 21, 2019 with electronic material that Arbitrator Mervin had been unable to locate.

Like Arbitrator Mervin, I was unable to locate much of the material that the parties referred to. I also found their references to the material confusing.

Consequently, I requested that the parties provide me with the following:

1. **The issue I must decide:** Is there just one issue, as the parties stated at our pre-hearing conference of November 19, 2019, regarding the manner in which the Applicant may contact providers of insurer examinations?

2. **The material on which they rely**: I asked the parties to please provide one brief letter each setting out the material on which they were relying and electronic copies of that material, including any transcripts.

By letter of December 4, 2019, counsel for Ms. Yang provided a CD Rom with what I suspected was partial material as it did not contain much material on behalf of Ms. Yang.

On December 17, 2019, I decided with the parties to hold an oral hearing of this motion in January 2020. While not a rehearing, it would serve in the event that I required clarification.

I also wrote to the parties that day and asked them to agree privately between the two of them on the list of material for this motion and provide me with an electronic version of all the material as soon as possible.

On December 18, 2019, Co-operators confirmed that the letter provided by Ms. Yang on December 4, 2019 included all of the insurer's material for the motion.

On January 6, 2020, I asked the parties to provide written submissions on three essential legal matters in advance of the hearing of the motion:

1. The basic principle of evidence that there is no property in a witness;

2. The fact that there is no pre-hearing discovery at our tribunal; and,

3. The statutory jurisdiction of an arbitrator to provide the relief sought, namely, to control the nature or extent of communications between counsel and any individual, in advance of a hearing.

Alternately, I requested that they please advise our offices as soon as possible if they chose to withdraw the motion.

On January 16, 2020, I received legal submissions on these three points and a supplementary affidavit from Co-Operators.

On January 17, 2020, at the request of Ms. Yang, I directed that no new evidence would be considered at the hearing, only legal argument. Co-operators subsequently agreed to exclude the new affidavit and delete those paragraphs of its factum that referred to it.

On January 20, 2020, I received legal submissions on these three issues from Ms. Yang.

The motion went forward on January 20, 2020 by teleconference. I confirmed that it was an interim motion, held under the authority of the *Insurance Act* and brought by Co-operators. I advised that I had narrowed the first issue to a matter of jurisdiction and, at the hearing, amended the wording of that issue statement to reflect the parties' understanding and preferences for wording. I explained that, if the jurisdictional issue was decided in the affirmative, I would move on to consider a remedy.

At the hearing of the motion, the parties pointed me to Co-operators' Notice of Motion dated September 6, 2017 setting out the five following issues:

1. An order that the Arbitration hearing is stayed pending the Insurer's completion of an IE CAT determination paper review by Dr. Hines;

2. An order limiting and/or restricting the type of contact between the Applicant and/or her counsel and the Insurer's expert witnesses participating in the Arbitration hearing;

3. An order limiting the number of witnesses to be made available for cross-examination by the Applicant, and quashing the summons to witness served on Mr. Wessling, CEO of the Insurer, Dr. Schwartz, Dr. Mayer, Dr. Eisen, Ms. Romas, Mr. Livadas and Dr. Somerville;

4. Costs of this motion pursuant to the *Dispute Resolution Practice Code*; and,

5. Such further and other relief as counsel may advise and the Arbitrator may see fit to grant.

At the hearing, the parties also confirmed that only three of the five issues in that Notice of Motion were before me:

1. Issue one of the above Notice of Motion had settled and was not before me;

2. Issue two was before me;

3. Issue three was adjourned to the arbitration hearing;

4. Issue four was before me; and,

5. Issue five was before me.

At the January 20, 2020 hearing, I gave the parties my decision on all the issues before me, with written reasons to follow. These are my written reasons.

ISSUES:

1. Does an Arbitrator at Dispute Resolution Services have the jurisdiction at a pre-hearing motion to restrict communications of a party or its representative with a person on an expert witness list for a pending arbitration?

2. If an Arbitrator has that jurisdiction, then what is the remedy?

3. Is a party liable to pay another party's expenses of this motion under section 282(11) of the *Insurance Act*?

RESULT:

1. No, an Arbitrator at Dispute Resolution Services does not have the jurisdiction at a pre-hearing motion to restrict communications of a party or its representative with a person on an expert witness list for a pending arbitration.

2. Yes, Co-operators is liable to pay Ms. Yang's expenses of this motion, forthwith and in any event of the cause, as those expenses relate to argument and evidence that cannot be heard at the pending arbitration. If the parties are unable to agree on quantum of expenses within seven days of January 20, 2020, they may request that an Arbitrator at Dispute Resolution Services decide the issue.

REASONS

ISSUE 1: JURISDICTION

Positions of the parties

The case for Co-operators is that an Arbitrator has the jurisdiction to control communications between a party and an expert witness before the hearing, pursuant to Rules 29.1, 39.3, 41.1 and 41.3 of the *Dispute Resolution Practice Code* (4th Edition, updated January 2014) and sections 2, 5.3(3), 5.4(1), 15 and 23(1) of the *Statutory Powers Procedure Act* (RSO 1990, c.S.22).

The case for Ms. Yang is that those sections do not confer any such jurisdiction on an arbitrator.

Analysis

It is a general principle of administrative law that the jurisdiction of an administrative decision-maker arises from statute. Arbitrators at Dispute Resolution Services are administrative decision-makers. Therefore, absent a clear direction in a statute that an arbitrator at Dispute Resolution Services has the jurisdiction to control communications between a party and a potential witness, I decline to assume it.

Co-operators provides no reason that section 5.3(3) of the *SPPA* gives an arbitrator that jurisdiction. That section reads:

A member who presides at a pre-hearing conference may make such orders as he or she considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

Cooperators merely states that "this extends to pre-arbitration contact between counsel and expert witnesses." Co-operators does not provide any argument in support of that interpretation. I decline to read into section 5.3(3) an authority to control the manner in which a party gathers evidence before a hearing. The section confers jurisdiction on arbitrators to make orders "with

respect to the conduct of the proceeding," but I am not convinced that pre-hearing communications between counsel and a witness constitute a "proceeding" for the purposes of the *SPPA*. There is no pre-arbitration proceeding at Dispute Resolution Services akin to an examination for discovery. Our tribunal was created with the express intention that arbitrators not invest resources adjudicating the manner in which evidence is gathered before an arbitration.

Similarly, Co-operators provides no reason for its argument that section 5.4(1) of the *SPPA* confers that jurisdiction. That section provides that a tribunal can make orders with respect to the exchange of documents, oral or written examinations, exchange of witness statements and expert reports, particulars or "any other form of disclosure." That section reads:

If the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for,
(a) the exchange of documents;
(b) the oral or written examination of a party;
(c) the exchange of witness statements and reports of expert witnesses;
(d) the provision of particulars;
(e) any other form of disclosure.

I fail to see any connection between these *SPPA* powers to order disclosure and a power to restrict communications between counsel and a potential witness. As above, I note that there are no examinations for discovery at our tribunal. Therefore, I also decline to read into section 5.4(1) the jurisdiction to restrict communications with witnesses before the hearing.

I also disagree with Co-operators' argument on the relevance of section 2 of the *SPPA*. That section provides that the *SPPA* and any rule made by a tribunal under the *SPPA* "shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits." Here again, Co-operators simply makes a bald statement that the section is relevant, without providing any supporting reasons.
It is trite law that the overriding mandate of Dispute Resolution Services is to resolve disputes fairly, quickly and cost-efficiently. If I were to "liberally construe" the *SPPA* or the *Code* as Co-operators submits, this would have the effect of increasing the costs of litigation, as I explain below, contrary to the purpose of that very section to "secure the just, most expeditious and cost

effective determination of every proceeding on its merits." Such a "liberal construction" of the *SPPA* would also be contrary to Rule 1.1 of the *Code*, which provides that "[t]hese Rules will be broadly interpreted to produce the most just, quickest and least expensive resolution of the dispute."

In my view, the most expeditious approach to the subject matter of this motion is to consider it at the arbitration proper as a matter of admissibility of evidence. I consider that the ultimate purpose - and the pragmatic purpose - of this motion to control a party's communications with a witness before a hearing is to protect the integrity of the evidence. I am satisfied that an arbitrator has broad jurisdiction to properly assess the integrity of the evidence at an arbitration and determine at that time whether to exclude evidence on the basis that it is tainted by communications with a party or its counsel.

For the above reasons, I also disagree with Co-operators' interpretation of section 15 of the *SPPA*. Co-operators points to the broad jurisdiction that this section confers on an arbitrator to rule on the inadmissibility of evidence at a hearing. That is subsection 15(2) and it reads as follows:

Nothing is admissible in evidence at a hearing,
(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or
(b) that is inadmissible by the statute under which the proceeding arises or any other statute.

Here again, Co-operators provides no reason in support of its argument that this section applies before the hearing. Co-operators merely states that "this broad right extends to ensuring that the evidence is not tainted by inappropriate contact between an expert witness and counsel for the applicant." As before, I do not see how the jurisdiction to rule on evidence at an arbitration can justify asserting jurisdiction to control communications with witnesses before an arbitration begins.

Similarly, Co-operators provides no argument for its interpretation that section 23(1) of the *SPPA* confers this jurisdiction. That section reads as follows:

A tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

As above, I am not convinced that pre-hearing communications between counsel and a witness constitute a "proceeding" for the purposes of the *SPPA.* It follows that I have no jurisdiction over such communications. As above, I am also satisfied, however, that this lack of jurisdiction does not significantly affect the administration of justice. An arbitrator has broad powers at the arbitration proper, including powers to prevent an abuse of process.

Similarly, I decline to extend the provisions of Rule 39.3 of the *Code* to pre-arbitration communications with witnesses. That rule regards the relevance, materiality and admissibility of evidence at the hearing. It reads as follows:

39.3 The hearing arbitrator will determine the relevance, materiality, and admissibility of evidence submitted at the hearing, but will not admit evidence at a hearing that:

(a) would not be admissible in a court by reason of any privilege under the law of evidence; or

(b) is not admissible under the Insurance Act; or

(c) was not served on the opposing party in accordance with Rules 39.1 and 39.2, unless the hearing arbitrator is satisfied that extraordinary circumstances exist to justify an exception.

As above, I do not see how jurisdiction at the hearing extends to jurisdiction before the hearing. I also do not see how jurisdiction over relevance, materiality and admissibility of evidence extends to jurisdiction to prevent the causation of irrelevance, immateriality or inadmissibility of evidence. Co-operators does not provide any explanation for either interpretation of the statute. Indeed, Co-operators does not even put forward those two interpretations of the statute; they are hypotheticals that I have explored.

Co-operators does, however, provide one reason in support of its argument about the relevance of Rule 39.3 of the *Code* – cost-efficiency. Specifically, Co-operators submits that "[i]f an Order is not made limiting the manner of Ms. Yang's counsel's contact with the Section 44 assessors and/or expert witnesses, then the question with respect to the extent to which the expert

witnesses' evidence was interfered with will have to be the subject matter of lengthy cross-examination and result in a less cost efficient process." Co-operators provides no further reasons and does not explain its conclusion that cross-examination at the hearing would be less cost-efficient than the present motion.

For the reasons above, and as I explain further below, I disagree with Co-operators' submission that determining admissibility of evidence at an arbitration is more costly than controlling communications with witnesses before the arbitration. The nature of a motion to control communications with a witness requires findings of fact. Evidence of out-of-court communications has to be produced, entered and tested. It is likely that not all of those out-of-court communications are relevant to the ultimate purpose of the motion, namely, to prevent corruption of evidence necessary for arbitration. In contrast, an assessment of the reliability of evidence at an arbitration will focus only on communications that are directly relevant to a finding of admissibility.

I note that the parties have already spent significant time and resources over the last year and a half - their own and that of this tribunal – litigating this motion. I also note that this interim motion has not even begun to address any findings of fact regarding the nature of communications between counsel and any witnesses. To be clear, I did not consider any evidence regarding whether Ms. Yang or her counsel communicated improperly with witnesses so as to damage the evidence they may give at arbitration.

Further, it cannot be ignored that the vast majority of cases before our tribunal settle. As a result, the vast majority of matters that are left to arbitration are never heard. It follows that it is more cost-efficient to leave matters to arbitration than to deal with them on interim motions.

I presume that Co-operators made a typo in its written submission that "[u]nder Rule 29.1, an arbitrator is given broad powers with respect to determining the relevance, materiality and admissibility of evidence at the hearing." Rule 29.1 of the *Code* is not relevant to these proceedings as it regards the procedures for replying to an application for arbitration. Rule 29.1 reads as follows:

Within 10 days of being served with the Response by Insurer, the applicant must reply to any new issues raised by:
(a) serving a Reply by the Applicant for Arbitration in FORM G on the insurer and any other parties; and
(b) filing a copy of the Reply together with a Statement of Service in FORM F.

In its oral submissions at the hearing, Co-operators did not raise the matter of procedure for replying to an application. Consequently, I disregard Co-operators written submissions on Rule 29.1.

Lastly, I disagree with Co-operators' argument that Rules 41.1 and 41.3 of the *Code* confer jurisdiction to control pre-hearing communications with witnesses. Those sections deal with an arbitrator's ability to make orders with respect to witnesses at the hearing:

41.1 Each party must provide the other parties with the names of witnesses that the party intends to call and the names of persons the party requires to attend for cross-examination on a report, at least 30 days before the first day of the hearing

41.3 An arbitrator may:
(a) excuse a witness from attending at the hearing, if the witness was not identified at the pre-hearing under Rule 33, or notified at least 30 days before the first day of hearing under Rule 41.2; or
(b) make such other order as the arbitrator considers just.

Here again, Co-operators gives no reason for extending an arbitrator's jurisdiction beyond the confines of the arbitration hearing. As above, I see no reason to do so.

For all these reasons, I conclude that an arbitrator does not have the jurisdiction at a pre-hearing motion to restrict communications of a party or its representative with a person on an expert witness list for a pending arbitration.

ISSUE 2: EXPENSES

Positions of the parties

The case for Co-operators was that Ms. Yang left it no choice but to proceed with the motion. Counsel for Co-operators advised that she had asked Ms. Yang's counsel to agree to her withdrawing the motion with the ability to bring it forward without prejudice at the arbitration, but he refused. Furthermore, insurance counsel argued that all the material could be re-used at the arbitration hearing when she would raise it to test the reliability of expert evidence in view of the experts' communications with counsel.

In the event that costs were awarded against Co-operators, counsel argued that quantum should be no greater than $500 and that costs should not be payable forthwith, although she provided no reasons for those arguments.

The case for Ms. Yang was that there were costs thrown away even if the issue is raised later, in another form, at the arbitration. In particular, counsel submitted that there is a difference between the issue before me now to restrict communications with experts before a hearing and the issue it becomes at the arbitration to test the reliability of expert evidence. Each issue incurs distinct costs.

With regard to quantum, applicant's counsel submitted that he had made an offer to settle for $1,000 plus disbursements before he incurred the additional costs of the January 20, 2020 written submissions and attendance at the motion. Counsel advised that he could calculate those additional costs after the hearing and provide them to his friend for review.

With regard to whether the costs should be payable forthwith, counsel submitted that they should, because the applicant was impecunious and his firm was carrying costs of disbursements. Counsel for Ms. Yang submitted that this is a "David and Goliath issue."

Law

Rule 33.1(d) of the *Code* gives an arbitrator authority to award interim expenses.

33.1 One or more pre-hearing discussions may be held before an arbitrator who will attempt to resolve the dispute, and will assist the parties to prepare for the arbitration by:

…

(d) dealing with procedural and preliminary issues, and requests for interim relief or interim expenses;

Subsection 282(11) of the *Insurance Act* provides that an arbitrator may award all or part of the expenses incurred in respect of an arbitration proceeding, according to the criteria prescribed by the *Expense Regulation* (*Automobile Insurance*, RRO 1990, Reg. 664, subsection 12), to the maximum set out in the regulations. (Section F and Rule 75 of the *Code* reiterate this legislation).

According to *Pinto and General Accident Assurance Co. of Canada* (FSCO, P97-00031, November 26, 1997 Appeal, at 9), the *Expense Regulation* that applies is the regulation in effect at the time the Application for Arbitration was commenced. Ms. Yang's Application for Arbitration was commenced on December 19, 2013. Accordingly, I have referred to the past version of the *Expense Regulation* that was in force between September 1, 2010 and July 23, 2015.

It follows that I am bound by statute to consider only the seven following criteria in awarding expenses:

1. Each party's degree of success in the outcome of the proceeding.

2. Any written offers to settle made in accordance with subsection (3).

3. Whether novel issues are raised in the proceeding.

4. The conduct of a party or a party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings and orders.

5. Whether any aspect of the proceeding was improper, vexatious or unnecessary.

6. Whether the insured person refused or failed to submit to an examination as required under section 42 of *Ontario Regulation 403/96* (*Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*) made under the *Act* or refused or failed to provide any material required to be provided by subsection 42 (10) of that regulation.

7. Whether the insured person refused or failed to submit to an examination as required under section 44 of *Ontario Regulation 34/10* (*Statutory Accident Benefits Schedule — Effective September 1, 2010*), made under the *Act*, or refused or failed to provide any material required to be provided under subsection 44 (9) of that regulation.

Analysis

I consider each of the applicable criteria, in turn.

1. Each party's degree of success in the outcome of the proceeding.

Ms. Yang was completely successful in the outcome of this motion.

Accordingly, this factor supports an award of expenses to Ms. Yang.

2. Any written offers to settle made in accordance with subsection (3).

I find that Co-operators declined Ms. Yang's offer to settle. Ms. Yang submitted this evidence orally and Co-operators did not dispute it.

As a result, this factor weighs in favour of an award of expenses to Ms. Yang.

3. Whether novel issues are raised in the proceeding.

I find as fact that Co-operators raised a novel issue in this motion regarding whether an arbitrator has jurisdiction to control the communication of a party with witnesses before an arbitration.

Therefore, this factor supports an award of expenses.

4. The conduct of a party or a party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings and orders.

I find that the conduct of neither party prolonged, obstructed or hindered the progress of the proceeding.

It follows that this factor is neutral to an award of expenses.

5. Whether any aspect of the proceeding was improper, vexatious or unnecessary.

I find that the motion was unnecessary because Co-operators did not provide any reasons to support its argument about jurisdiction except a bald statement that it was cost-efficient. This statement about cost-efficiency was not linked to any evidence or argument or any relevant statutory provision.

Contrary to the argument put forward by Co-operators, I find that Ms. Yang had no power to decide whether Co-operators withdrew its motion. Rather, it is the moving party who decides whether to proceed. At the very least, Co-operators could have conceded the issue of jurisdiction and saved the parties and the tribunal the associated costs of argument and a decision on that issue.

I find as fact that there were costs associated with this motion. I agree with Ms. Yang that it would be impossible for Co-operators to bring forward the issue of this motion at the arbitration because, by the time the arbitration begins, the matter of controlling pre-arbitration communications is moot. I accept Ms. Yang’s submission that there is a difference between the issue on this motion to restrict communications with a witness before

arbitration and the issue it becomes at arbitration to test reliability of evidence and that each issue incurs distinct costs.

However, I also find that much of the evidence and argument on this motion could be heard again at an arbitration to test the reliability of expert opinion. It follows that Ms. Yang is only entitled to those expenses of this motion that cannot be heard at an arbitration.

I conclude that this factor supports an award of expenses to Ms. Yang to the extent that those expenses are related to evidence and argument that cannot be duplicated at arbitration.

6. **Whether the insured person refused or failed to submit to an examination as required under section 42 of *Ontario Regulation 403/96* (*Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*) made under the *Act* or refused or failed to provide any material required to be provided by subsection 42 (10) of that regulation.**

7. **Whether the insured person refused or failed to submit to an examination as required under section 44 of *Ontario Regulation 34/10* (*Statutory Accident Benefits Schedule — Effective September 1, 2010*), made under the *Act*, or refused or failed to provide any material required to be provided under subsection 44 (9) of that regulation.**

Considering factors 6 and 7 together, I find that these criteria are not applicable to this motion.

Accordingly, they are neutral to my assessment.

Having regard to the above criteria, I have found that the first, second, third and fifth criteria support an award of expenses.

Consequently, I order Co-operators to pay Ms. Yang her expenses of this motion, forthwith and in any event of the cause, as those costs relate to argument and evidence that cannot be heard at the pending arbitration.

If the parties are unable to agree on quantum of expenses within seven working days of January 20, 2020, they may request that an Arbitrator at Dispute Resolution Services decide the issue.

CONCLUSION:

I conclude that an Arbitrator at Dispute Resolution Services does not have the jurisdiction at a pre-hearing motion to restrict communications of a party or its representative with a person on an expert witness list for a pending arbitration. Accordingly, I dismiss Co-operator's motion.

I also conclude that Ms. Yang is entitled to her expenses of this motion, payable forthwith and in any event of the cause, as those expenses relate to argument and evidence that cannot be heard at the pending arbitration.

If the parties are unable to agree on quantum of expenses within seven working days of January 20, 2020, they may request that an Arbitrator at Dispute Resolution Services decide that issue.

Isabel Stramwasser Arbitrator	January 27, 2020 Date

Dispute Resolution Services

Services de règlement des différends

Ontario

A13-015345

BETWEEN:

CELIA YANG

Applicant

and

CO-OPERATORS GENERAL INSURANCE COMPANY

Insurer

INTERIM ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as it read immediately before being amended by Schedule 3 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act, 2014*, and Regulation 664, R.R.O. 1990, as amended, it is ordered that:

1. The motion of Co-operators General Insurance Company to restrict communications of a party or its representative with a person on an expert witness list for a pending arbitration is hereby dismissed; and,

2. Co-operators General Insurance Company is liable to pay Celia Yang's expenses of this motion, forthwith and in any event of the cause, as those expenses relate to argument and evidence that cannot be heard at the pending arbitration.

3. If the parties are unable to agree on quantum of expenses within seven days of January 20, 2020, they may request that an Arbitrator at Dispute Resolution Services decide the issue.

Isabel Stramwasser Arbitrator	January 27, 2020 Date