

**CITATION:** Echelon Insurance v. Zenith Insurance Company, 2026 ONSC 1214  
**COURT FILE NO.:** CV-24-00001401-0000  
**DATE:** 2026-02-27

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
IN THE MATTER OF AN ARBITRATION UNDER THE *ARBITRATION ACT*,  
S.O. 1991, c-17**

**AND IN THE MATTER OF SECTION 268 OF THE *INSURANCE ACT*, R.S.O.  
1990 C. I.8, as amended AND ONTARIO REGULATION 283/95, as amended**

**AND IN THE MATTER OF AN ARBITRATION RESPECTING PRIORITY  
DISPUTE FOR PAYMENT OF STATUTORY ACCIDENT BENEFITS**

**B E T W E E N:** )  
)  
ECHELON INSURANCE COMANY ) S. Bodrov, for the Appellant  
)  
Applicant/Appellant in Appeal )  
)  
**- and -** )  
)  
)  
ZENITH INSURANCE COMPANY ) M. Barber, for the Respondent  
)  
Respondent/Respondent in Appeal )  
)  
) **HEARD:** June 16, 2025

**APPEAL FROM ARBITRATION**

**L. Shaw J.**

**Overview**

[1] This is an appeal by Echelon Insurance Company of a preliminary issue decision dated February 15, 2024 rendered by Arbitrator Bialkowski who was

retained to hear a priority dispute between Echelon and Zenith Insurance Company pursuant to s. 268 of the *Insurance Act*, R.S.O. 1990 c. I. 8 and *Disputes Between Insurers*, O. Reg. 283/05 (the “*Priority Dispute Regulation*”).

[2] After receiving an application for accident benefits from a party injured in a motor vehicle accident, Echelon determined that another insurer, Zenith, had priority to pay accident benefits and put Zenith on notice of the dispute. According to s. 3 of the *Priority Dispute Regulation*, Echelon had 90 days from receipt of a completed application to put Zenith on notice. According to s. 7 of the *Priority Dispute Regulation*, if a dispute cannot be resolved, an arbitration under the *Arbitration Act, 1991* S.O. 1991 c. 17, must be initiated within one year after the day the insurer paying benefits first gives notice of the dispute.

[3] The core of this appeal is whether this 90-day notice period in the *Priority Dispute Regulation* is a limitation period or a step in the proceeding. If it is a limitation period, then it was automatically suspended for six months during the COVID-19 pandemic when the Ontario government passed the *Limitation Periods*, O. Reg. 73/20 on March 20, 2020, formerly under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9 (the “*Covid Limitation Regulation*”). If it is a step in a proceeding, however, then it was not automatically suspended as the regulation provided that a decision-maker could exercise their discretion and find that the time to complete that step was not suspended.

[4] The arbitrator found that the 90-day notice period was a step in the proceeding and not a limitation period that was automatically suspended. He therefore exercised his discretion and found that the notice period should not be suspended. As Echelon did not put Zenith on notice of the priority dispute within those 90 days, its priority dispute claim was dismissed. Echelon appeals that dismissal.

[5] For the reasons set out below, the appeal is granted.

### **Background**

[6] On July 9, 2020, the claimant, Ms. Opeloyeru, was injured in a motor vehicle accident. On August 18, 2020, she submitted a claim for accident benefits (OCF-1) to Echelon who insured the vehicle in which she was a passenger. The adjusting company retained by Echelon, Crawford & Company, requested further information from her and a new OCF-1 was submitted by Ms. Opeloyeru on September 2, 2020.

[7] In the application, the claimant indicated she was 19 years of age, attending college, and had not been employed in the 52 weeks prior to the accident.

[8] There was no evidence before the arbitrator that Echelon attempted to obtain a signed statement from the claimant or information from her lawyer with respect to her financial dependency after it received the application for accident benefits, which could have impacted the priority issues.

[9] On September 21, 2020, Crawford advised Echelon that the claimant appeared dependent on a parent or guardian and requested authority to conduct an examination under oath. Those instructions were provided by Echelon on October 16, 2020.

[10] The examination under oath of the claimant was conducted on December 3, 2020. At that examination, the claimant testified that she was financially dependent on her mother. Her lawyer also provided insurance particulars for the claimant's mother. An Autoplus Gold report was also requested to determine if the claimant's mother had an automobile policy at the time of the accident. The report received the next day confirmed that the mother was insured by Zurich.

[11] On December 8, 2020, Crawford, on behalf of Echelon, delivered a Notice of Priority Dispute to Zenith via fax. Crawford advised that based on its investigation, the claimant was not employed, did not have her own insurance policy, was attending school, and appeared to be primarily dependent on her mother, who had an automobile insurance policy with Zenith. Echelon's position was that Zenith therefore had priority to pay accident benefits to her.

[12] The 90-day notice period expired on either November 15, 2020, or December 1, 2020, depending on whether the completed application for accident benefits was received by Echelon on August 18, 2020 or on September 2, 2020. The issue about when the application was received does not have to be resolved, however, as regardless of which date is used, the Notice of Dispute was not served

until December 8, 2020, which was beyond the 90-day notice period from either date.

[13] Zenith advised Echelon of its position that Echelon was out of time to initiate an arbitration.

[14] On July 21, 2021, Echelon delivered to Zurich a Notice to Participate and Demand for Arbitration in accordance with the *Priority Dispute Regulation* and s. 268 of the *Insurance Act*.

[15] On January 27, 2023, Echelon retained Arbitrator Bialkowski to hear this dispute. Zenith then moved to have the arbitration proceeding dismissed on the basis that it was not provided notice within 90 days of Echelon receiving the application and for failing to complete the arbitration within two years of the commencement of the arbitration process as required by s. 8(2) of the *Priority Dispute Regulation*.

[16] Echelon argued that pursuant to s. 1 of the *Covid Limitation Regulation*, in March 2020, the Ontario government paused all limitation periods for six months due to the COVID-19 pandemic. The regulation was revoked on September 14, 2020. As a result of the suspension of limitation periods, Echelon's position was that the 90-day notice period did not begin to run until September 14, 2020. Therefore, Echelon had until December 14, 2020 to give notice of a priority dispute

to Zenith. As it gave notice of the dispute on December 8, 2020, Echelon's position was that it satisfied the 90-day notice requirement.

[17] Arbitrator Bialkowski heard the preliminary issue dispute on January 29, 2024. In a decision dated February 15, 2024, Arbitrator Bialkowski found that the 90-day notice provision was not a limitation period and therefore s. 1 of the *Covid Limitation Regulation* that suspended limitation periods did not apply to automatically extend the 90-day notice provision. He found that this notice provision was a step in a proceeding and that according to s. 2 of the *Covid Limitation Regulation*, he could exercise his discretion to determine if the 90-day notice provision should be extended. Based on his review of Echelon's handling of the priority dispute, he found that the 90-day notice period should not be suspended and therefore Echelon could not pursue the priority dispute and its claim was dismissed.

[18] Arbitrator Bialkowski rejected Zenith's argument that the arbitration should be dismissed as it was not completed within two years of the commencement of the arbitration. Zenith did not appeal that finding. While it made submissions about that issue in its factum on this appeal, those arguments will not be addressed as the finding was not appealed.

## The Relevant Legislation

[19] The *Priority Dispute Regulation* is a statutory scheme that governs how disputes between insurers are resolved when one or more insurers may be liable to pay accident benefits to an injured person. Pursuant to s.2(1) of the *Regulation*, an insurer must pay accident benefits to a claimant when it receives a completed application, even if the insurer believes there is another insurer that has higher priority than it to pay those benefits. As a result, claimants are protected as they are paid accident benefits while there is an ongoing dispute amongst insurers about who should pay.

[20] The goal of the *Priority Dispute Regulation* is to have these disputes amongst insurers resolved expeditiously.

[21] Section 3 of the *Priority Dispute Regulation* sets out the requirement for giving written notice within 90 days and when notice may be given after 90 days.

It states as follows:

3. (1) No insurer may dispute its obligation to pay benefits under section 268 of the Act unless it gives written notice within 90 days of receipt of a completed application for benefits to every insurer who it claims is required to pay under that section.

(2) An insurer may give notice after the 90-day period if,

(a) 90 days was not a sufficient period of time to make a determination that another insurer or insurers is liable under section 268 of the Act; and

(b) the insurer made the reasonable investigations necessary to determine if another insurer was liable within the 90-day period.

[22] After written notice is given, if the insurers cannot agree on who should pay accident benefits, the dispute proceeds to arbitration under the *Arbitration Act*. Pursuant to s. 7(3) of the *Priority Dispute Regulation*, the arbitration must be commenced no later than one year after the day the insurer paying benefits first gives notice.

[23] In *Kingsway General v. West Wawanosh Insurance Co.*, 2002 CanLII 14202 (Ont. C.A.), at para. 10, the Court of Appeal made the following comments about the priority dispute scheme:

The Regulation sets out in precise and specific terms a scheme for resolving disputes between insurers. Insurers are entitled to assume and rely upon the requirement for compliance with those provisions. Insurers subject to this Regulation are sophisticated litigants who deal with these disputes on a daily basis. The scheme applies to a specific type of dispute involving a limited number of parties who find themselves regularly involved in disputes with each other. In this context, it seems to me that clarity and certainty of application are of primary concern. Insurers need to make appropriate decisions with respect to conducting investigations, establishing reserves and maintaining records. Given this regulatory setting, there is little room for creative interpretations or for carving out judicial exceptions designed to deal with the equities of particular cases.

[24] During the historical world-wide pandemic, the Ontario government passed the *Covid Limitation Regulation* that suspended the operation of limitation periods.

[25] The legislation has six provisions. The relevant provisions are as follows:

1. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any limitation period shall be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.
2. Any provision of any statute, regulation, rule, by-law or order of the Government of Ontario establishing any period of time within which any step must be taken in any proceeding in Ontario, including any intended proceeding, shall, subject to the discretion of the court, tribunal or other decision-maker responsible for the proceeding, be suspended for the duration of the emergency, and the suspension shall be retroactive to Monday, March 16, 2020.

### **Jurisdiction and Standard of Review**

[26] Pursuant to s. 45(1) of the *Arbitration Act*, if the arbitration agreement does not deal with appeals on questions of law, a party may appeal an arbitration award on a question of law with leave of the court. Pursuant to s. 45(2), if the arbitration agreement provides, a party may appeal an award to the court on a question of law. Pursuant to s. 45(3) of the *Arbitration Act*, if the arbitration agreement provides, a party may appeal an award to the court on a question of fact or on a question of mixed fact and law.

[27] There is no dispute that clause 9 of the Arbitration Agreement dated February 7, 2024 that was executed by the parties provides for an appeal by either party to this court without leave on a point of law or mixed fact and law.

[28] Questions of law are questions about the correct legal test. Questions of fact are questions about what occurred between the parties. Questions of mixed fact and law are questions about whether the facts satisfy the legal test.

[29] The standard of review for questions of law is correctness. Echelon argues that this appeal raises a question of law only being whether the 90-day notice period in s. 3 of the *Priority Dispute Regulation* is a limitation period or notice period and whether the temporary suspension of limitation periods automatically applies to it. Echelon argues that it is a question of law if the arbitrator correctly interpreted ss. 1 and 2 of the *Covid Limitation Regulation*.

[30] Zenith argues that the appeal raises issues of mixed fact and law and that the standard of review to apply is palpable and overriding error. Zenith argues that Arbitrator Bialkowski's interpretation of the phrase "limitation period" as set out in the *Covid Limitation Regulation* involves a consideration of the unique circumstances of a global pandemic which is fact dependent and not strictly a legal exercise in statutory interpretation.

[31] Zenith also argues that when considering the exercise of his discretion pursuant to s. 2 of the *Covid Limitation Regulation*, the arbitrator was required to decide on the test to be applied and then make findings of fact regarding Echelon's conduct during the 90-day notice period.

### **Review of Decision of Arbitrator Bialkowski**

[32] I will only review the portion of the arbitrator's decision that deals with whether the 90-day notice requirement is a limitation period or a step in a proceeding and the application of the *Covid Limitation Regulation*.

[33] The arbitrator noted, at para. 9 of his decision, that arbitrators and judges have consistently and strictly enforced the 90-day notice period as it is meant to encourage insurers to properly investigate priority disputes in an expedient manner and to be proactive about resolving these disputes. The 90-day rule also allows an insurer who determines that it does have priority to take carriage of the accident benefits earlier rather than later. He also noted that s. 3(2) of the *Priority Dispute Regulation* is a saving provision if the 90-day notice requirement is not met. He

then quoted extensively from the decision of Perell J. in *Liberty Mutual Insurance Company v. Zurich Insurance Company*, 88 O.R. (3d) 629 (S.C.), which set out several general principles about how s. 3(2) operates.

[34] Echelon acknowledged that there were no court decisions that directly found that the 90-day notice period was a limitation period. Rather, Echelon relied on 16 decisions from both arbitrators and the courts which referred to or described the 90-day notice period as a limitation period. The arbitrator reviewed and considered each of those decisions.

[35] The arbitrator found that the only decision that dealt directly with this issue was his prior decision in *Echelon Insurance v. Pafco Insurance Company* – May 15, 2023. That matter was also a priority dispute where it was claimed that the 90-day notice period was suspended by reason of the *Covid Limitation Regulation*. In that decision, Arbitrator Bialkowski found that the 90-day notice requirement was not a limitation period that was automatically suspended. Rather, he found that it was a step in the proceeding and, as such, was governed by s. 2 of the *Covid Limitation Regulation* which required that he exercise his discretion about whether it should be suspended. Based on the facts of that case, the arbitrator found that no steps were taken to investigate the priority dispute issue during the 90 days nor was there any evidence showing that any priority investigation was impacted by COVID-19. The arbitrator dismissed the priority dispute claim.

[36] The arbitrator also referred to another arbitration decision of Arbitrator Samworth in *Co-operators Insurance Company v. Security National Insurance Company* – February 7, 2023. That was also a priority dispute arbitration. In that matter, the insurers agreed that the 90-day notice period was a step in a proceeding governed by s. 2 of the *Covid Limitation Regulation* and the issue was whether the arbitrator should exercise her discretion and suspend the 90-day notice period. I note that the issue of whether the notice period was a limitation period was therefore not addressed in her decision as it was not raised as an issue.

[37] Arbitrator Bialkowski also relied on the decision of *State Farm Mutual Automobile Insurance Co. v. Ontario (Minister of Finance)* (2001), 53 O.R. (3d) 436, where Nordheimer J. stated, in *obiter*, that “the 90-day notice period would be more accurately described as a notice period and not as a limitation period.”

[38] The arbitrator then reached the following conclusion, at paras. 39-42:

[39] On the evidence and submissions advanced in this proceeding, I find that the 90-day notice requirement set out in s. 3 of O. Reg. 283/95 was not a "limitation period" but rather a "step in the proceeding". As a result, the suspension of time is not mandatory but discretionary. In my view, a "limitation period" is the period of time within which an action or proceeding must be commenced. *The Limitations Act 2002*, S. O. 2002, applicable to court proceedings, makes no reference to notice requirements in statutes but simply the time within which an action must be commenced. I am satisfied that the reference to "limitation periods" in the jurisprudence advanced by Echelon in paragraphs 18 through 34 above are references to a limitation period for the provision of notice as opposed to the time within which the claim must be initiated.

[40] I have considered the submission of Echelon that the COVID Limitation Regulation is remedial and should be given a fair, large and liberal interpretation, but that must be weighed against the basic principle of statutory interpretation that words in a statute must be given their ordinary and natural meaning. In this case and in my view, the ordinary meaning of "limitation period" is the time within which an action or proceeding must be commenced. Furthermore, I do not see the 90-day notice period set out in s. 3(1) as a limitation period as there exists the savings provision of s. 3(2) which extends the notice

requirement beyond 90 days where it can be demonstrated that 90 days was not sufficient to identify another insurer that might stand in priority and that reasonable investigations were conducted during the 90-day period. Simply not providing notice within 90 days is not necessarily fatal to the claim providing that the requirements of the savings provision are met.

[41] I find support for my finding in the only other priority decision that I am aware of dealing with the impact of *O. Reg. 73/20* on the timelines set out in *O. Reg. 283/95*, namely *Co-operators Insurance Company v. Security National Insurance Company (Arbitrator Samworth February 7, 2023)*. In that proceeding, each insurer accepted that *O. Reg. 73/20* distinguished between a limitation period and a notice period and that the Notice of Dispute would fall within the discretionary suspension. Arbitrator Samworth writes:

"As I read Regulation 73/20 and particularly section 2, a decision maker was given authority to suspend any period of time within which certain steps or notices should be given or not to suspend it."

[42] I find that the 90-day notice of s. 3 of *O. Reg. 283/95* was not a "limitation period" but rather a "step in the proceeding" therefore governed by discretionary provisions of s. 1(2) of the Covid Limitation Regulation, *O.Reg. 73/20*.

[39] After making this finding, Arbitrator Bialkowski then considered whether he should exercise his discretion pursuant to s. 2 of the *Covid Limitation Regulation* to suspend the operation of the notice period. He concluded that based on a review of the facts, there was an absence of evidence that COVID-19 impacted the ability of Echelon to identify a priority issue and provide notice within 90 days and, as such, notice was not provided in a timely fashion in accordance with the *Priority Dispute Regulation*. He therefore dismissed Echelon's claim.

### **Position of the Parties**

[40] According to its Notice of Appeal, Echelon argues that the arbitrator made the following errors:

(a) The arbitrator failed to interpret s.1 of *O. Reg. 73/20* and s.3 of *O. Reg. 283/95* as being remedial and failed to give these provisions a fair, large, and liberal interpretation, as required by s.64 of the Legislation Act, 2006.

(b) The arbitrator's decision is contrary to the purpose, intent, and context of the Covid suspension of limitation periods prescribed in O. Reg. 73/20.

(c) The arbitrator held that s.1 of O. Reg. 73/20 did not suspend the limitation period contained in s.3(1) of O. Reg. 283/95.

(d) The arbitrator held that s.3(1) of O. Reg. 283/95 is not a "limitation period" in the context of s. 1 of O. Reg. 73/20.

(e) The arbitrator incorrectly defined the phrase "limitation period" in the context of s. 1 of O. Reg. 73/20 and s.3 of O. Reg. 283/95.

(f) The arbitrator incorrectly concluded that the existence of a "saving provision" in s.3(2) supports the finding that the 90-day notice period of s.3(1) is not a "limitation period".

(g) The arbitrator failed to consider and apply the clarity and certainty policy objectives of the priority dispute scheme and the Covid suspension of limitation periods.

(h) The arbitrator failed to consider the strict nature of s.3(1) of O. Reg. 283/95 when determining whether the section prescribes a "limitation period".

(i) The arbitrator erred in finding that the 90-day notice deadline in s.3(1) of O. Reg. 283/95 was a "step in the proceeding" in the context of s.2 of O. Reg. 73/20.

(j) The arbitrator erred in finding that he had discretion under s.2 of O. Reg. 73/20 over whether to suspend the 90-day notice period in section s.3(1) of O. Reg. 283/95. Alternatively, the arbitrator failed to exercise his discretion under s.2 of O. Reg. 73/20 and suspend the 90-day notice period in the circumstances.

(k) The arbitrator's decision is contrary to the purpose, intent and context of Ontario's accident benefits and priority dispute scheme.

(l) The arbitrator's decision is incorrect and unreasonable.

(m) The arbitrator's decision is contrary to the weight of evidence and law.

[41] Zenith's position is that there were no errors in the arbitrator's decision and the appeal ought to be dismissed.

## Analysis

[42] I will start first with the standard of review.

[43] Questions of law include whether the correct test was used. I am satisfied that the appeal of whether the arbitrator erred in finding that the 90-day notice period in in the *Priority Dispute Regulation* is not a limitation period pursuant to s. 1 of the *Covid Limitation Regulation* is a question of law to which the standard of review is one of correctness. His finding was based upon statutory interpretation which is a question of law.

[44] I reject Zenith's argument that the arbitrator had to make findings of fact when dealing with the purpose or legislative intent of the *Covid Limitation Regulation*. Statutory interpretation involves a consideration of the objectives of the legislation. Those considerations are not findings of fact that invoke the more stringent standard of review on appeal.

[45] The second part of the arbitrator's decision, after finding that the notice period was a step in the proceeding, involved the exercise of his discretion in determining if the notice period should be suspended. The issue of whether the arbitrator erred in the exercise of that discretion pursuant to s. 2 of the *Covid Limitation Regulation* required the arbitrator to review evidence of the steps Echelon took prior to serving Zenith with a Notice of Dispute. This engaged a

consideration of the facts as applied to the law to which the standard of review is the higher standard of palpable and overriding error.

[46] I will start with whether the arbitrator erred in his finding that the 90-day notice period in s. 3 of the *Priority Dispute Regulation* is not a limitation period and therefore not automatically suspended through the operation of s. 1 of the *Covid Limitation Regulation*.

[47] As neither the term “limitation period” nor “step in the proceeding” was defined in the *Covid Limitation Regulation*, the principles of statutory interpretation are engaged.

[48] When interpreting a statute, the words of an Act are to be read in their entire context and in their grammatical and ordinary meaning harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament: Elmer A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983), at p. 87. This principle was endorsed by the Supreme Court of Canada in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.

[49] While the starting point is to determine the ordinary meaning of the text, the words of the statute must be read in their entire context having regard to the scheme of the Act and the object or intention of the legislature: *Rizzo*, at para. 23.

[50] In his decision in this case, the arbitrator considered Echelon’s submission that the *Covid Limitation Regulation* is remedial and should be given a fair, large

and liberal interpretation. He found that principle must be weighed against the basic principle of statutory interpretation that words in a statute must be given their ordinary and natural meaning. He found that the ordinary meaning of the term “limitation period” is the time within which an action or proceeding must be commenced. He also found that the notice period in s. 3(1) of the *Priority Dispute Regulation* had a saving provision in s. 3(2) which extends the notice period in certain situations. This was a factor he considered in finding that the notice provision was not a limitation period.

[51] I find that the arbitrator erred in failing to consider or give sufficient weight to the objective of the *Covid Limitation Regulation* when determining the meaning of the term “limitation period” and whether the notice provision should be considered a limitation period for the purposes of that legislation.

[52] With that in mind, I now turn to the *Covid Limitation Regulation*.

[53] In Ontario in March 2020, the Ontario Court of Justice, the Superior Court of Justice and the Ontario Court of Appeal suspended all regular operations, other than urgent and emergency matters, which would be heard remotely, in response to the uncertainty and unknown risks associated with the historical worldwide COVID-19 pandemic. That same month, on March 20, 2020, the Ontario government passed the *Covid Limitation Regulation*. The regulation automatically suspended all limitation periods. It also suspended the time within which any step in a proceeding, or an intended proceeding, must be taken but left a residual

discretion to decision-makers to decide not to suspend the time for those steps. The purpose of the regulation was to prevent parties from losing substantive rights as the impact of COVID-19 made timely litigation impractical if not impossible. At the time, in addition to courthouses suspending operations, businesses, including law offices, closed or operated on a very limited basis. The effect was, in essence, a lock-down of not only the justice system but of essentially all aspects of society, other than emergency operations. The government's intention was to minimize the number of people contracting the disease, when it was unknown or uncertain how it spread, to keep the public safe and minimize the number of deaths.

[54] We cannot forget the fear that gripped the world as we were ordered by the government to stay home.

[55] This in the context in which this regulation was passed.

[56] We should also remember that in the early days of the pandemic, the use of virtual technology, such as Zoom and Teams, which are now ubiquitous, was unheard of by most and not used in the justice system where all matters were conducted in person. The pandemic had a significant impact on how the justice system operated as we eventually pivoted away from paper to electronic documents and embraced the use of virtual technology as part of regular court proceedings. Virtual technology is now also used by lawyers for meetings and in conducting questionings out of court. This was unheard of prior to the pandemic.

[57] We must be mindful of the permanent and significant changes made to all aspects of the justice system as a result of COVID-19.

[58] The monumental shift in the justice system impacted all participants including lawyers and litigants. The core intent of the emergency legislation passed by the government was to ensure that the substantive rights of litigants were not lost in the early emergency days of the pandemic as the operation of the justice system contracted, with limited or no access to courts or tribunals. There were practical barriers faced by lawyers and litigants in commencing or pursuing proceedings as access to the justice system in general was disrupted through the lockdowns ordered by the government in order to keep people safe.

[59] Within this suddenly new and unprecedented legal environment, the *Covid Limitation Regulation* was enacted to ensure that parties were not time-barred from commencing proceedings due to the impact of the pandemic on the justice system. The issue therefore is whether the COVID-19 emergency legislation, properly interpreted considering its purpose and context, automatically suspended not only limitation periods but also statutory notice periods that operate as mandatory preconditions to commencing claims.

[60] The *Covid Limitation Regulation* was broken down into two separate categories - limitation periods and steps in a proceeding. While those terms were not defined, there was a different test applied to each. Limitation periods resulted in an automatic suspension of time whereas steps in a proceeding retained

residual discretion of decision-makers to decide not to suspend the time for the step in the dispute.

[61] In my view, the second category involved what I consider to be procedural deadlines such as the date to file an Affidavit of Documents or the date on which an appeal was to be filed. Support for that can be found in the cases the arbitrator referred to in his decision when addressing whether he should exercise his discretion and not suspend the notice period.

[62] He referred to five decisions: two from the Superior Court of Justice, one from the Court of Appeal, and two from tribunals.

[63] In *Elson v. Polyethics Industries Inc.*, 2020 ONSC 4335, the issue was whether a party should be given an extension of time to deliver its Affidavit of Documents and Schedule A productions. Casullo J. found that there was insufficient evidence to demonstrate that COVID-19 prevented the party from gathering documents and preparing its Affidavit of Documents. She therefore declined to grant an extension to the defendant.

[64] In *Bock v. Madani*, 2020 ONSC 3756, the plaintiff sought an order for the defendant to deliver their Statement of Defence in connection with a mortgage enforcement proceeding. Bale J. considered the impact of s. 2 of the *Covid Limitation Regulation*. In that case, the defendants did not file a response to the motion and the court found there was no evidence of any connection between

COVID-19 and the defendants' default under the mortgage and no evidence of any detriment if an order was made that a Statement of Defence must be delivered.

[65] In *Jonas v. Elliot*, 2020 ONCA 542, 152 O.R. (3d) 367, the issue was whether there should be an extension of the time within which to perfect an appeal. Pepall J.A. found that the communication issues between co-counsel due to challenges associated with the pandemic, limited cellular capacity and Wi-Fi was evidence of a relationship between the delay and the impact of COVID-19 and granted the time extension.

[66] In *2092317 Ontario Inc. (Grabba Pizza) v. Jaswant Raj*, 2020 CanLII 73264 (Ont. L.R.B.), the tribunal relied on s. 2 of the *Covid Limitation Regulation* to extend the time limit for the party to apply for a review a decision of an Employment Standards Officer pursuant to s. 226 of the *Employment Standards Act*, S.O. 2000, c. 41.

[67] In *Bandhu v. Ontario (Solicitor General)*, 2021 HRTO 274, the issue before the Human Rights Tribunal was whether an extension should be granted to a party to amend an application filed with the tribunal.

[68] These five decisions are examples of the sort of procedural steps, as opposed to substantive steps, for which residual discretion was permitted to determine if the time for that step should be suspended. The substantive right of a party to commence a proceeding was not at issue in any of these cases.

[69] This differs from s.1 of the *Covid Limitation Regulation* where the government chose not to permit any residual discretion. Rather, all limitation periods were automatically suspended.

[70] Limitation periods have a substantive impact on a party's ability to seek a remedy. In the context of legislation enacted to ensure substantive rights were protected when there were unprecedented restrictions in the entire justice system, failure to comply with a notice period would have a similar substantive impact. When I consider the objective of the emergency regulation, to ensure substantive rights were protected, notice periods are more aligned with limitation periods than with procedural steps in a proceeding as both operate to bar proceedings if missed.

[71] While the 90-day notice requirement is described as a notice provision, the functional effect is the same as a limitation period as non-compliance will bar the claim. It is that functional effect that makes the notice provision akin to a limitation period for the purpose of the *Covid Limitation Regulation* when considering the objective of the regulation.

[72] The arbitrator considered the 16 decisions relied on by Echelon wherein the 90-day notice provision in the *Priority Dispute Regulation* was referred to as a limitation period. I agree with his finding that those decisions have little persuasive value as there was no analysis in those decisions of what is meant by a notice provision but only a general reference to or a description of the 90-days as a limitation period.

[73] Just as the courts suspended operations for several months during the pandemic, other than emergency matters, I find that the arbitrator ought to have considered that there were likely significant restrictions in how insurers were able to conduct their operations, including the timely investigations of claims, staffing restrictions and initial restrictions on the questioning of insureds until remote technology was introduced. While there was no direct evidence from Echelon before the arbitrator about the impact of COVID-19 on its operations during this time period, in my view, when considering the objectives of the *Covid Limitation Regulation* and the context within which the regulation was passed, the arbitrator ought to have considered that there were likely such restrictions in his assessment of whether the 90-day notice provision was a limitation period, for the purpose of the emergency legislation.

[74] I recognize that in the jurisprudence, statutory notice requirements are often treated analytically as being distinct from limitation periods. However, the COVID-19 emergency legislation was enacted during historical circumstances to preserve access to justice during a period in which compliance with statutory time requirements, regardless of the label used, was rendered impracticable or impossible. Regardless of the label, statutory notice provisions share a functional characteristic with limitation periods as failure to comply with either a limitation period or notice provision in the prescribed time can permanently bar a party from pursuing an otherwise valid claim.

[75] As noted above, the arbitrator quoted extensively from *Liberty Mutual* where Perell J described the reasoning behind the generally strict approach taken to the 90-day notice provisions. Perell J. noted that there is little room for creative interpretations or carving out exceptions to the notice provision.

[76] In my view, the historical impact of COVID-19 was a basis to carve out such an exception. This strict enforcement of the 90-day notice provision, which promotes certainty and efficiency in the accident benefit system of priority disputes presumes, however, a functioning system including the ability to timely investigate claims. The impact of the world-wide pandemic and the shuttering of almost every aspect of our society at the time prevented such a functioning system.

[77] There is also jurisprudence which describes the close connection between notice period and limitation periods. While many of the cases deal with notice periods found in other legislation, such as the *Municipal Act, 2001*, S.O. 2001, c. 25, I find that the principles are applicable to the notice periods found in the *Priority Dispute Regulation*.

[78] As noted above, the arbitrator relied upon *State Farm* which addressed the 90-day notice period in accident benefit priority disputes. State Farm was an appeal from two arbitration decisions that dealt with the interpretation of s. 3 of the *Priority Dispute Regulation*. The issue in the first appeal was whether a letter from one insurer to another constituted notice under s. 3. The issue in the second appeal was whether the notice provision in s. 3 was complied with and whether s. 3(2)

could be relied upon to extend the 90-day notice period. The court was not asked to address whether the 90-day notice provision was a limitation period. Nonetheless, Nordheimer J. commented that the 90-day notice provision would be more accurately described as a notice period than as a limitation period. The arbitrator relied on this decision as support for his finding that the 90-day notice provision was not a limitation period for the purpose of the *Covid Limitation Regulation*.

[79] I find that *State Farm* is of limited assistance for two reasons. First, the comment was *obiter* as whether the notice provision was a limitation period was not an issue for the court to determine as it was not raised in either appeal. Second, while Nordheimer J. relied on the decision of *Bannon v. Thunder Bay (City)*, 48 O.R. (3d) 1 (C.A.), in support of his comment that the 90-day notice provision was not a limitation period, he did not consider the entirety of *Bannon* as it relates to notice provisions.

[80] In his decision, Nordheimer J. referred to para 22 of *Bannon* in which Doherty J.A. commented on the interplay between notice provisions and limitation periods as follows:

The notice requirement in s. 284(5) is not, strictly speaking, a limitation period. The limitation period (three months) is found in s. 284(2) of the *Act*. The notice requirement is, however, akin to a limitation period in that failure to comply with the section constitutes a bar to the action just as failure to commence the action within the limitation period constitutes a bar. The notice requirement also promotes the same interests served by limitation periods. It prompts the plaintiff to pursue the claim diligently, affords the defendant an opportunity to make timely investigation of the incident giving rise to the action and allows the defendant to proceed with its affairs secure in the knowledge that it will not face claims for which notice was not given as

required by the statute: see *Peixeiro v. Haberman*, [1997] 3 S.C.R. 549 (S.C.C.) at 562-64. A statutory provision requiring notice of a claim has been aptly described as “a limitation period within a limitation period.”

[81] *Bannon* was a claim for personal injuries arising from a slip and fall on a snow-covered sidewalk that required the plaintiff to give the city seven days written notice of the claim before the action was commenced as required under s. 284(5) of the *Municipal Act*, R.S.O. 1990, c. M. 45. According to s. 284(2), the action had to be commenced within three months. (The *Municipal Act, 2001*, is the successor to the legislation the court considered in *Bannon*. It changed the notice period to ten-days and eliminated the three-month limitation period to commence the action.) While the plaintiff in *Bannon* commenced the action within three months, she gave notice 17 days after she fell, 10 days past the notice period.

[82] In *Bannon*, at para. 23, Doherty J.A. found that based on the statutory framework, the limitation period found in s. 284(2) and the notice provision in s. 284(5) should be read together as “constituting the applicable limitation period”. The court found that read together, they establish the period within which the plaintiff had to commence her action. The first step was the notice step (seven days) and the second was the commencement of the action (three months). The court found that, “[i]n effect, s. 284(5) of the Act imposed a seven-day limitation on the commencement of Ms. Bannon’s action” (emphasis added): *Bannon*, at para. 23.

[83] At para. 27, the court found that the notice requirement in s. 284(5) is a prerequisite to the commencement of the action and its effect was to impose a limitation on the period within which an action can be commenced.

[84] There was a saving provision to the seven-day notice period found in s. 284(5) that was restrictive as it did not apply to situations where the injury was caused by snow or ice on a sidewalk. In all other situations, late notice was not a bar to pursuing an action if there was a reasonable excuse for the late notice and the defence was not prejudiced by the late notice.

[85] The court therefore found that s. 47 of the *Limitations Act*, R.S.O. 1990 c. L.15, (since replaced by the *Limitations Act, 2022*, S.O. 2002, C. 24, Sched. B) applied not only to the limitation period found in the *Municipal Act*, but also to the notice provision. Pursuant to s. 47, a limitation period could be extended if the person was a “minor, mental defective, mental incompetent or of unsound mind”. Applying s. 47, the Court of Appeal overturned the trial judge’s finding that the plaintiff lacked capacity and therefore extended the notice period. The Court of Appeal found that the plaintiff failed to discharge her onus of demonstrating she was incapable of giving the requisite notice due to her mental condition. The court found, with reluctance, that her action was barred.

[86] This decision was overturned by the Supreme Court of Canada in very brief reasons (four paragraphs) in *Bannon v. Thunder Bay (City)*, 2002 SCC 20. While the Supreme Court agreed that s. 47 of the *Limitations Act* applied to the notice

provision, it found that based on a standard of review of palpable and overriding error, the Court of Appeal ought not to have overturned the trial judge's finding that the plaintiff was incapable during the seven days that she was required to give notice.

[87] The Supreme Court did not address the finding that the notice requirement was a prerequisite to the commencement of the action, and that its effect was to impose a limitation on the period within which an action could be commenced.

[88] There have been several cases following *Bannon* that describe the notice period in the *Municipal Act* as akin to a limitation period or a "limitation period within a limitation period": see, e.g., *Crinson v. Toronto (City)*, 2010 ONCA 44, 100 O.R. (3d) 366; *Delahaye v. City of Toronto*, 2011 ONSC 5031.

[89] While there are other cases which state that the notice provision in the *Municipal Act, 2001* is not a limitation period, (see *Bourassa v. Temiskaming Shores (City)*, 2016 ONSC 1211 and *Patrick v. The Corporation of the Municipality of Southwest Middlesex et al.*, 2017 ONSC 17) I find the decision from the Court of Appeal in *Bannon* which describes the effect of a notice provision to be like a limitation period to be persuasive. It is this functional impact of the notice provision on the substantive rights of a party which, for the purpose of the *Covid Limitation Regulation*, leads me to conclude that s. 1 includes notice provisions and that such provisions were automatically stayed.

[90] The arbitrator also considered the saving provision found in s. 3(2) of the *Priority Dispute Regulation*, which acts to extend the notice provision, as a factor in deciding that the 90-day notice provision was not a limitation period for the purpose of s. 1 of the *Covid Limitation Regulation*. There is arguably, however, a saving provision for limitation periods which are governed by the doctrine of discoverability. While a limitation presumptively runs from the date the cause of action arose, in certain circumstances, the limitation period may run from a later date – when it was discovered or ought to have been discovered. Thus, the saving provision in s.3(2) has little impact in determining if “limitation period” is s. 1 includes a notice provision.

[91] I find that the *Covid Limitation Regulation* should be interpreted in a remedial and purposive manner. Furthermore, interpreting the regulation to suspend notice requirements during the emergency would not unsettle the limitation doctrine generally. I reject Zenith’s argument that a finding that a notice provision is a limitation period would open the floodgate to litigation. My finding is limited to the *Covid Limitation Regulation* that was temporary legislation as it only remained in force until September 14, 2020. My finding would not convert all notice provisions into limitation periods for any other legislation or for any period beyond the unique operation of the *Covid Limitation Regulation*. I find that a purposive interpretation of the regulation supports the conclusion that the 90-day notice provision in the *Priority Dispute Regulation* should have been suspended during the time-period

that the emergency legislation was in effect, even though it is not a limitation period in the technical sense.

[92] Applying the standard of correctness, I find that the arbitrator erred when he found that the 90-day notice provision in the *Priority Dispute Regulation* was not automatically stayed by the operation of s. 1 of the *Covid Limitation Regulation*. The appeal is therefore granted.

[93] If I am incorrect and the arbitrator correctly found that the notice provision was a step in the proceeding and not a limitation period, for completeness, I will address the appeal from the arbitrator's finding that pursuant to s. 2 of the *Covid Limitation Regulation*, the 90-day notice period should not be suspended and that Echelon failed to give notice within that notice period and therefore its priority dispute claim is dismissed.

[94] As this involves an application of the facts to the legal test, it is a review of a finding of mixed fact and law; the standard of review is of palpable and overriding error.

[95] I do not find the standard of review is met; there is no basis to overturn the arbitrator's findings in that regard. Furthermore, the exercise of a decision-maker's discretion, which was required pursuant to s. 2, is owed great deference by a reviewing court. As noted in para. 17 of *Damond v. Bergmanis*, 2025 ONSC 4430:

The arbitral tribunal has broad discretion to "determine the procedure to be followed in the arbitration in accordance with [the] Act": *Arbitration Act, 1991*, S.O. 1991, c. 17, at s. 20(1). In my opinion, her decision on the solicitor-client privilege issue was well within her scope of discretion in the private arbitration. Arbitrators must be afforded significant deference and judicial intervention in arbitrations is constrained. As stated by Doherty J.A. in *Popack v. Lipszyc*, 2016 ONCA 135, 262 A.C.W.S. (3d) 841, at para. 26, the private consensual nature of the arbitration is linked to the need for judicial deference to the result of that arbitration in the sense that the "parties' selection of their forum implies both a preference for the outcome arrived at in that forum and a limited role for judicial oversight of the award made in the arbitral forum." The same principle applies to the procedures determined by the arbitrator.

[96] The arbitrator found that Echelon immediately identified a priority dispute as in the OCF-1, the claimant said she was a student who did not work in the past 52 weeks. Accordingly, her financial dependency was an obvious issue. There was no evidence that Echelon took any steps to further investigate the issue until it scheduled an examination under oath of the claimant on December 3, 2020. According to the arbitrator, it appeared that Echelon proceeded under the assumption that the *Covid Limitation Regulation* automatically extended the time for the 90-day notice to 90 days beyond September 14, 2020, the day the regulation was revoked.

[97] At para. 43 of his decision, the arbitrator noted that there were several judicial and arbitral decisions that found that the time for a step in a proceeding should only be extended based on the *Covid Limitation Regulation* if it could be demonstrated that COVID-19 impacted the parties' abilities to complete the step in the proceeding in a timely fashion. He summarized the findings of the five decisions, described above, that found a connection, or not, between COVID-19 and the delay.

[98] Arbitrator Bialkowski applied this test to the facts and found that in the absence of evidence that COVID-19 impacted Echelon's ability to identify a priority dispute and provide notice within 90 days, notice was not provided in a timely fashion. He also noted that arbitrators and judges consistently and strictly enforce the 90-day rule, even where there are unique circumstances. He found that 90 days was sufficient time for Echelon to identify another insurer that might stand in priority and that it was unreasonable for Echelon not to have taken steps to gather information regarding the claimant's financial dependency or complete her examination under oath in that time frame. Accordingly, he found that Echelon did not meet the test for the saving provision in s. 3(2) of the *Priority Dispute Regulation* and the breach of the 90-day notice requirement led to a dismissal of the priority dispute claim.

[99] I see no basis to interfere with the factual findings made by the arbitrator regarding the steps taken, or not, by Echelon during the 90 days. There was no palpable and overriding error to attract appellate intervention. Furthermore, as the arbitrator was authorized by the regulation to exercise his discretion, it is owed deference by this court.

[100] To be clear, based on my finding that the notice period was a limitation period for the purpose of s. 1 of the *Covid Limitation Regulation*, the appeal is granted. In the event I am incorrect in that finding, however, I find that the arbitrator

did not err in his interpretation and application of s. 2 and on that basis the appeal would have been dismissed.

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L. Shaw J.

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**COURT FILE NO.:** CV-24-00001401-0000  
**DATE:** 2026-02-27

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

ECHELON INSURANCE COMANY

Applicant/Appellant in Appeal

**- and -**

ZENITH INSURANCE COMPANY

Respondent/Respondent in Appeal

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**APPEAL FROM ARBITRATION**

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L. Shaw J.

**Released:** February 27, 2026