

## INSURANCE LAW BULLETIN

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### ***Echelon General Insurance Co. v. Ontario (Minister of Finance)***

### **Guidance with Respect to Notice Requirements for Non-Renewal of a Policy**

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Section 236 of the *Insurance Act* places certain notice obligations on insurers regarding the renewal or non-renewal of a contract of insurance, and provides that the contract of insurance remains in force until the insurer has complied with its notice obligations.

#### ***Relevant Provisions***

##### *Notice of expiry or variation*

236. (1) If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall,
- (a) give the named insured not less than thirty days notice in writing of the insurer's intention or proposal; or
  - (b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer's intention or proposal. R.S.O. 1990, c. I.8, s. 236 (1).

##### *Idem*

- (2) Subject to subsection (4), a broker to whom an insurer has given notice under clause (1) (b) shall give the named insured under the contract not less than thirty days notice in writing of the insurer's intention or proposal. R.S.O. 1990, c. I.8, s. 236 (2).

##### *Reasons*

- (3) Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal. R.S.O. 1990, c. I.8, s. 236 (3).

*Exception*

- (4) Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2). R.S.O. 1990, c. I.8, s. 236 (4).

*Effect of failure to comply*

- (5) A contract of insurance is in force until there is compliance with subsections (1), (2) and (3). R.S.O. 1990, c. I.8, s. 236 (5).

***Echelon General Insurance Co. v. Ontario (Minister of Finance) 2016 ONSC 5019*****Background and Facts**

This was an appeal of a preliminary award in which the Arbitrator determined that an insurer's policy had expired prior to the collision in question, despite the provisions of section 236. The Minister of Finance appealed from the Arbitrator's decision, submitting that the Arbitrator erred in law in her interpretation and application of section 236. The issue on appeal was whether an improperly cancelled policy remained valid.

On May 15, 2010, the claimant, Mr. Farah, was struck as a pedestrian. Echelon General Insurance ("Echelon") insured the driver, Mr. Omer. The Echelon policy was initially purchased for the period commencing November 29, 2008, and it had a six-month term. On December 9, 2008, about ten days after the policy commenced, Echelon sent Mr. Omer a letter that purported to cancel the Echelon policy due to non-payment of a premium. The parties agreed for the purpose of the proceeding that Echelon's attempt to cancel the policy was invalid. Echelon received no response to its December 9, 2008 letter, and there was no further communication between Echelon and Mr. Omer.

The accident at issue took place on May 15, 2010, about one year after the six-month term of the policy elapsed. At that time, Echelon received an application for accident benefits from Mr. Farah. There was no other available policy of insurance. In the Arbitration, Echelon sought reimbursement from the Motor Vehicle Accident Claims Fund ("the Fund"), administered by the Minister of Finance, for the amounts it paid to the claimant.

**Arbitrator's Decision**

At the hearing, the Arbitrator concluded that the Echelon policy expired at the end of the six month period, and was therefore not in force at the time of the collision, despite Echelon's non-compliance with the notice requirements under section 236. She therefore found that the Fund was obliged to reimburse Echelon.

The Arbitrator acknowledged that the legislative intention of section 236 was for insurers to bear the risk of an improperly cancelled contract, but she did not accept that this was expected to continue into perpetuity with no offer and acceptance, or premiums being paid.

## Analysis

Justice Matheson identified the standard of review as one of correctness, as this was a pure question of law. Justice Matheson reviewed section 236(5), which stipulates that a contract of insurance remains in force until there is compliance with subsections 1-3. Amongst the requirements, the insurer is required to give the named insured not less than 30 days written notice of the intention to cancel the policy. Echelon did not provide the insured with the proper notice as required by this section. Justice Matheson found that the meaning of section 236 was clear, and that the Echelon policy remained in force at the time of the collision.

Her Honour elaborated on this finding, stating that section 236 imposes mandatory notice obligations on insurers which are not capable of ambiguity. Justice Matheson stated that under Echelon's interpretation, all an insurance company would need to do is wait until after the term of the policy and it could entirely avoid the obligations and consequences of section 236. It could avoid the obligation to give notice of non-renewal, and avoid the consequences of a failure to do so. This defeated the statutory requirement that an insurance company take steps (beyond the terms of the contract itself) to draw to the attention of an insured that an insurance policy is not being renewed. The insurer cannot simply rely on the policyholder having entered into the contract and therefore agreed to its term. The notice obligations required by section 236 make it clear that it is not sufficient to simply rely on the term of the policy itself and termination under ordinary contract law. If that was sufficient, the legislatively-required notice of non-renewal would not be necessary.

Justice Matheson further noted that the consequence of a failure to give notice is expressly prescribed by the legislation in section 236(5). The contract is in force until notice is given. Section 236(5) ousts the common law of contract under which an insurance policy may otherwise expire on its own terms.

As a result, Justice Matheson granted the appeal and awarded costs in the amount of \$5,000.

## Commentary

The decision of Justice Matheson confirms that the onus is on the insurer to provide its insureds with a clear and proper notice of renewal or non-renewal as required by section 236 of the *Insurance Act*. The risk of non-compliance falls expressly on the insurer, and it is the insurer that bears the risk if it makes a mistake in the notice process.

As a result, it is up to the insurer to make certain that proper notice is always given. Fortunately, the obligations expressed by section 236 are not very onerous. Processes should be put in place by every insurer to minimize mistakes, and thus mitigate their risk. This could include drafting and using standard letters that set out the notice of renewal or non-renewal in clear language, along with clear reasons for the decision. The insurer could also put in place diary systems that would ensure that these letters are sent to the insured within the required timeframe. These processes would help avoid situations such as this one, and ultimately avoid unnecessary expenses on the part of the insurer.