IN THE MATTER OF THE *INSURANCE ACT*, R.S.O. 1990, c. I. 8, as amended, Section 268 AND REGULATION 283/95 THEREUNDER

AND IN THE MATTER OF THE *ARBITRATION ACT*, S.O. 1991, c.17

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

AVIVA INSURANCE COMPANY OF CANADA

Applicant

- and –

ECHELON GENERAL INSURANCE COMPANY

Respondent

DECISION

COUNSEL

Tripta Sood – Zarek, Taylor, Grossman, Hanrahan LLP
Counsel for the Applicant, Aviva Insurance Company of Canada
(hereinafter referred to as “Aviva”)

Viktoria Anteby – Reisler Law PC
Counsel for the Respondent, Echelon General Insurance Company
(hereinafter referred to as “Echelon”)

ISSUE - VALIDITY OF NON-RENEWAL NOTICE

[1] In the context of a priority dispute pursuant to s.268 of the *Insurance Act*, R.S.O. 1990, c. I.8 and *Ontario Regulation* 283/95, the issue before me is to determine which insurer stands in priority to pay statutory accident benefits to or on behalf of the claimant Luis Jorge, with respect to personal injuries sustained in a motor vehicle accident which occurred on December 5, 2015. Such determination is dependent on a finding as to whether Echelon effected a proper non-renewal of its policy of automobile insurance number A71006326 prior to the date of the said accident, in accordance with s. 236 of the *Insurance Act*, in circumstances where the claimant denies receipt of the non-renewal notice and the evidence confirms that the notice purportedly sent was not sent by registered mail.

PROCEEDINGS

[2] The arbitration proceeding herein proceeded over two days on July 5, 2017 and July 17, 2018 in Toronto.

FACTS

[3] This priority dispute arises out of a motor vehicle accident which occurred on December 5, 2015. At the time of the accident, Mr. Jorge was operating a 2001 Harley-Davidson motorcycle which he owned.

[4] Following the accident, Mr. Jorge made an application for statutory accident benefits (OCF-1) to Aviva, as the insurer of an automobile owned by his spouse, Ms. Heather Jorge. The OCF-1 was prepared some ten days post-accident and signed by his wife, as the claimant was still in hospital and on a ventilator. Aviva immediately began adjusting the file as it was obliged to do under the priority regulation and has continued to do so.

[5] Shortly after receiving the OCF-1, Aviva delivered a Notice to Applicant of Dispute between Insurers to Echelon and Mr. Jorge on January 20, 2016, taking the position that the insurance policy on the motorcycle that he was operating was still in effect as either a non-renewal notice purportedly sent by Echelon was not sent or, if sent, was not sent by registered mail.

[6] Mr. Jorge first purchased the Echelon policy in December 2006. He purchased the policy through Riders Plus, an insurance brokerage for, *inter alia*, Echelon, over the telephone.

[7] Under the terms of the contract between Riders Plus and Echelon:

a. Echelon is responsible for sending annual renewal documents and pink slips to insureds.

b. Riders Plus is responsible for annual customer telephone calls regarding any policy or information changes.

c. Riders Plus is solely responsible for client service and speaking with insureds directly.

d. Riders Plus obtains the initial Ministry of Transportation driver's licence searches for new business, and Echelon obtains them for renewals.

e. Echelon is responsible for issuing non-renewal notices and has sole authority to cancel or not renew policies.

f. In the case of a cancellation for underwriting reasons such as in Mr. Jorge's case, Echelon is responsible for sending policy cancellation letters and notifying the insured.

[8] Echelon has produced among other documents, the following:

> 1) "Underwriting Memo" from Echelon to Riders Plus dated October 27, 2014, indicating that the 2014 renewal will not be offered to Mr. Jorge due to his conviction history;
>
> 2) "Notice of Non-Renewal—Automobile" from Echelon to Mr. Jorge dated October 28, 2014, advising that policy coverage would not be renewed as of December 10, 2014, because "the risk as a whole does not meet our normal acceptance requirements.

[9] Echelon has admitted that both of these letters were sent via **regular, not registered, mail**.

[10] Riders Plus received the underwriting memo, but Mr. Jorge claims that he did not receive the notice of non-renewal. Echelon has admitted that the company itself did not actually send out the non-renewal notices to Riders Plus or Mr. Jorge. When a decision is made not to renew a policy, an Echelon underwriter simply puts a code into the system to lapse the policy. The system then generates a broker memo and sends it to a print company (Pirel or Xerox). The print company is responsible for mailing the notice letter to the insured and the brokerage firm, in this case Riders Plus, advising that the policy is not being renewed.

Evidence of the insurer Echelon

[11] Evidence from Monica Manock, an underwriter with Echelon, indicated that Echelon found out about several of Mr. Jorge's traffic convictions on September 30, 2014, when it ran a motor vehicle search, about 72 days prior to the renewal date of December 10, 2014, in accordance with Echelon's normal procedure. The actual decision to not renew Mr. Jorge's policy was made by Echelon's underwriter, Lesley Comek, who reviewed the motor vehicle report and the underwriting rules (rule 23L) and put a code into the system to lapse the policy. Here, the code was put in the system on October 27, 2014. As I have indicated, once a code is put in, a letter gets generated by the system and gets sent to the insured by the print company advising that the policy is not being renewed; a broker memo advising of the non-renewal is also generated by the system and a computerized request is made to the print company to send it to the broker, Riders Plus. The subject non-renewal notice was addressed to the insured and dated October 28, 2014. When the notice letter and broker memo is generated by the system, it goes electronically to the print company on the same day. The print company then prints it in an overnight process and mails it. That is the standard procedure.

[12] The notice letter to Riders Plus was sent by the print company by regular mail. The notice of non-renewal letter to the insured was sent to the insured's address at 330 Vaughan Road by regular mail. The evidence indicated that Echelon's normal procedure if a letter gets returned, is to document the file and to notify the broker. The non-renewal letter to Mr. Jorge was never returned. There was no entry contained in the client file to indicate that the letter to

Mr. Jorge was ever returned. Riders Plus did receive the broker memo generated by the system and mailed by the print company.

Evidence of the broker Riders Plus

[13] Sarah McCallum, a broker with Riders Plus, provided oral evidence at the hearing on both hearing dates. She testified that the brokerage firm only sold motorcycle insurance. They wrote business on behalf of Echelon and Intact. Mr. Jorge insured his motorcycle through them since 2006. She produced the last pink slip evidencing Echelon coverage for the period December 10, 2013 to December 10, 2014. The subject accident occurred on December 5, 2015. She also produced the log notes with respect to the client file of Mr. Jorge which was said to contain a record of all contact with the insured and with the insurer.

[14] Ms. McCallum indicated that she received Echelon's non-renewal memo dated October 27, 2014 on October 29, 2014. At the time she was responsible for non-renewals. The process at Riders Plus was to call the client to advise that the policy was not to be renewed and also send a letter indicating same. She testified that she called Mr. Jorge on November 3, 2014 and so advised. There was a log note to confirm that discussed which included a reference to her belief that Mr. Jorge understood that it would be necessary to place insurance through another broker. On that same date, November 3, 2014, Ms. McCallum sent a letter to Mr. Jorge's last known address confirming that the policy would not be renewed and that it would be necessary for him to arrange coverage through another broker. The non-renewal letter, like the letter sent to Mr. Jorge by Echelon, was **sent by ordinary mail**. The broker's file contained a copy of the letter and a notation indicating that the letter was sent. The letter was not returned.

[15] Ms. McCallum testified that two days after speaking with Mr. Jorge by phone and sending the non-renewal notice, Mr. Jorge called and asked that she speak with his wife. The log note indicates that on November 5, 2014, Ms. McCallum spoke with Ms. Jorge indicating that the two insurers they placed coverage with would not insure her husband given his driving convictions. Riders Plus never heard from either Mr. Jorge or Ms. Jorge thereafter.

Evidence of Luis and Heather Jorge

[16] The evidence of these individuals was provided by way of EUO transcript. They were not called to provide oral evidence at the hearing.

[17] At the time of the accident, Mr. Jorge testified that he believed that his motorcycle was insured under a valid policy of automobile insurance issued by Echelon, even though he did not get pink slips to renew his policy in 2014 and premium payments were not taken out of his bank account for almost a year prior to the date of his accident. He claimed that he was unaware that Echelon had attempted to effect a non-renewal of the policy.

[18] Ms. Jorge found a pink slip in her husband's wallet, which was among his personal effects, which she was given at Sunnybrook Hospital after his admission.

[19] Mr. Jorge has lived with his wife and children at 24 Crowsnest Crescent in Brampton since approximately 1996, including in 2014 and 2015, even though the address provided to Echelon was 330 Vaughan Road, Toronto. Before moving to Crowsnest Crescent, Mr. Jorge did live at 330 Vaughan Road, Toronto, Ontario, with his parents, who still reside at that address.

[20] The address on Mr. Jorge's driver's licence was always his parents' address and all of his mail relating to his motorcycle insurance came to his parents' address.

[21] Mr. Jorge testified that he attended his parents' home regularly, a few days per month, and would pick up any mail which was sent to that address.

[22] From December 2006 through late 2014, communication from Riders Plus/Echelon to Mr. Jorge was limited to one letter per year, enclosing the updated policy, premium information, and the pink slip. The only other contact was a telephone conversation with either Riders Plus or Echelon regarding an increase in his premiums several years earlier.

[23] Mr. Jorge does not recall receiving any correspondence from Echelon in 2014 or 2015.

[24] The only contact Mr. Jorge recalls having with Riders Plus about his Echelon policy was in October or November 2014, when someone from Riders Plus called him while he was driving, advising him that his policy would "have to change or something, because I'd gotten a ticket". Riders Plus was supposed to speak with Mr. Jorge again but Mr. Jorge does not recall any further communication from Riders Plus. This was contemporaneous with a log note contained in the broker's file indicating that the broker Sarah McCallum spoke with Mr. Jorge on November 3, 2014, advising of the reason for non-renewal and that Mr. Jorge understood that it was necessary for him to place coverage through another broker as of December 10. 2014.

[25] Between December 2006 and December 2014, all premium payments for the Echelon policy were withdrawn directly from Mr. Jorge's bank account. Payments were made roughly three to four times a year, at a cost of approximately $1,000 per year. Although he looked at his bank account periodically, Mr. Jorge claimed that he did not specifically look to see whether the premiums were coming out after December 10, 2014.

[26] Mr. Jorge does not recall receiving an envelope from Echelon in or around October 28, 2014. He does not recall seeing any letter from Echelon dated October 28, 2014. Mr. Jorge does not recall seeing any letter from Riders Plus dated November 3, 2014.

[27] Mr. Jorge claims that he never received any telephone calls, letters, e-mails or faxes, or any contact from Echelon advising that the Echelon policy was being cancelled.

[28] Mr. Jorge never called Echelon regarding his policy.

[29] Mr. Jorge's wife, Heather Jorge, claims that she did not have anything to do with Mr. Jorge's motorcycle insurance, even though the broker Sarah McCallum claims that Heather phoned her on November 5, 2014 (just two days following the non-renewal letter sent to Mr. Jorge by the broker Riders Plus) and Heather Jorge was advised that the two other carriers that Riders Plus placed coverage with would not insure Mr. Jorge with his driving convictions. Heather was advised by the broker according to the note on the file that there were other options. Ms. Jorge denied ever having any telephone contact with anyone regarding Mr. Jorge's motorcycle insurance.

[30] Ms. Jorge claimed to have had no knowledge of the letters allegedly sent by Riders Plus on November 3, 2014 and by Echelon on October 28, 2014.

[31] Mr. Jorge stated that he did not make any inquiries regarding obtaining alternative motorcycle insurance after December 20, 2014, nor did he ever discuss this with his wife.

[32] Ms. Jorge claimed that she never made any inquiries to any other insurer or broker about obtaining coverage for Mr. Jorge's motorcycle after December 2014.

ANALYSIS AND FINDINGS

[33] A priority dispute arises when there are multiple motor vehicle liability policies which might respond to a statutory accident benefits claim made by an individual involved in a motor vehicle accident. Section 268 (2) of the *Insurance Act* sets out the priority rules or hierarchy of priority to be applied to determine which insurer is liable to pay statutory accident benefits.

[34] Since the claimant Luis Jorge was an occupant of a vehicle at the time of the accident, the following rules with respect to priority of payment apply:

> *(i) The occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured;*
>
> *(ii) If recovery is unavailable under (1), the occupant has recourse against the insurer of the automobile in which he or she was an occupant;*
>
> *(iii) If recovery is unavailable under (1) or (2), the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose;*
>
> (iv) *If recovery is unavailable under (1), (2) or (3), the occupant has recourse against the Motor Vehicle Accident Claims Fund.*
>
> [emphasis mine]

[35] Section 3(1) of the Statutory Accident Benefits Schedule – Accidents On or After September 1, 2010, Ontario Regulation 34/10 defines an "insured person" as follows:

> (a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependent of the named insured or of his or her spouse
>
> [emphasis mine]

[36] If the Echelon policy non-renewal was not effective, then Luis Jorge would be an "insured person" as named insured under the Echelon policy and "an insured person" as spouse

of Heather Jorge, who was insured with Aviva. However, there is a tie-breaking mechanism as set out in s. 268 of the *Insurance Act*:

> *(4) Choice of insurer – If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of statutory accident benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits.*
>
> *(5) Same – Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant as defined in the Statutory Accident Benefits Schedule, of a named insured, the person shall claim statutory accident benefits against the insurer under that policy.*
>
> *(5.1) Same – Subject to subsection (5.2), if there is more than one insurer against which a person may claim benefits under subsection (5), the person, in his or her own discretion, may decide the insurer from which he or she will claim the benefits.*
>
> *(5.2) Same – If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, at the time of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant.*
>
> [emphasis mine]

[37] On the basis of the aforesaid legislation, Echelon would stand in priority pursuant to s. 268(2)(i) and the application of the tie-breaking mechanism set out in s. 268(5.2), if found that the non-renewal of Luis Jorge's policy was found to be ineffective.

[38] Therefore the central issues in this dispute are as follows:

1. In the case of a non-renewal of a policy, (versus a cancellation), is an insurer required to send the notice of non-renewal via registered mail (as per Statutory Condition 12, O. Reg. 777/93)? In other words, does Statutory Condition 12 apply in cases of non-renewal?

2. If there is no requirement that a notice of non-renewal be sent via registered mail, does the evidence support a finding that notice of non-renewal was sent, given that Mr. Jorge's EUO evidence was that he was not notified of the non-renewal and did not receive the notices allegedly sent by Echelon and Riders Plus?

Termination or Non-Renewal of a Contract of Insurance: General Principles

[39] Prior to the attempted non-renewal, the Echelon policy had been in effect for more than 60 days (in fact, it had been in effect, including several renewals, for eight years). In cases

where a policy has been in effect for more than 60 days, the *Compulsory Insurance Act,* R.S.O. 1990 c. 25 at section 12, states that the insurer may only terminate the contract in the following circumstances:

a) Non-payment of premiums;

b) If the insured has given false particulars of the automobile;

c) If the insured has "knowingly misrepresented or failed to disclose" in the application for insurance "any fact required to be stated therein"; or

d) If there has been a "material change of risk".

[40] Termination of a contract is different than non-renewal. If an insurer does not intend to renew a contract, section 236 of the *Insurance Act* applies. The section reads as follows:

> (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.
>
> (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.
>
> (3) Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal.
>
> (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

[41] Section 236(1)(5) of the *Insurance Act* provides that a contract of insurance remains in force until the insurer has complied with subsections (1), (2) and (3).

[42] In order to terminate a contract of insurance, as opposed to not renewing a policy, an insurer must give notice of termination by registered mail or personal delivery, as per Statutory Condition 11 of the *Statutory Conditions—Automobile Insurance* regulation, which reads as follows:

> Termination

> 11. (1) Subject to section 12 of the *Compulsory Automobile Insurance Act* and sections 237 and 238 of the *Insurance Act*, the insurer may, by registered mail or personal delivery, give to the insured a notice of termination of the contract.

[43] Statutory Condition 12 as set out in O.Reg 777/93 provides additional details as to how such notice to a named insured may be given:

> Notice
>
> (…) Written notice may be given to the insured named in this contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression,

[44] Aviva does not dispute that the files from Riders Plus and Echelon contain letters which, *if sent*, were sent within the required timelines under section 236 of the *Insurance Act*.

[45] I will deal with the second issue as to whether notice of non-renewal was sent to Mr. Jorge first. This is a finding of fact I have to make in the face of conflicting evidence. Mr. Jorge claims that he never received notice of non-renewal, while both the insurer Echelon and the broker claim that notice was sent by each of them. On the evidence as a whole, I am satisfied that on the balance of probabilities, notice of non-renewal was sent by both Echelon and Riders Plus to Mr. Jorge at his last known address.

[46] I reach this conclusion for several reasons. Firstly, I found the oral testimony of the broker Sarah McCallum of Riders Plus that she did send notice to be straightforward and convincing. The broker's file documents fully support the evidence adduced by her. It confirms that the underwriting memo from Echelon dated October 27, 2014 with respect to non-renewal was received even though generated through a third party print company. It confirms that the broker spoke with Mr. Jorge on November 3, 2014, explaining that his policy would not be renewed. It confirms that a non-renewal notice letter was sent by the broker to Mr. Jorge on that same date. The broker's file makes no reference to the non-renewal notice letter ever having been returned. It confirms a telephone conversation the broker had with Ms. Jorge just two days after speaking with Mr. Jorge, explaining that neither insurance company with which Riders Plus placed insurance would issue a policy given Mr. Jorge's driving convictions and that he would have to go to another broker. There was absolutely nothing to suggest that the broker's file was fabricated or altered to support the position of the broker and insurer. I fully accept the evidence of Ms. McCallum.

[47] In support of my evidentiary finding that notice was sent by regular mail to Mr. Jorge, is the fact that possible motivation for claiming that he did not receive notice exists, in that a lawsuit for personal injuries has been commenced against him arising out of the motor vehicle accident of December 5, 2015 and there may not be insurance to cover such third party liability claim if the non-renewal was valid. Furthermore, would the fact of not having received a pink slip for the period December 10, 2014 to December 10, 2015 not have raised concerns? Would Mr. Jorge not have noticed that premiums were not being taken out of his bank account as they had been in previous years? Furthermore, if the Jorges thought that they had valid insurance with Echelon on the policy where Mr. Jorge was the named insured, why would they have claimed benefits from the Aviva policy where Ms. Jorge was the named insured? I cannot help but find that Mr. Jorge was aware that his policy had not been renewed and drove his motorcycle regardless at his own peril.

[48] The more difficult issue to be decided is whether notice of non-renewal is valid if not sent by registered mail. Aviva has taken the position that Statutory Condition 12 applies to all policies of motor vehicle liability insurance and requires that any notice with respect to the policy must be given by personal delivery or registered mail. Aviva claims that since the notice letters from the insurer and the broker were only sent by ordinary mail, then the non-renewal was invalid and the Echelon policy continued to exist at the time of Mr. Jorge's motor vehicle accident.

[49] Aviva claimed that when insurance policies and insurance legislation is being interpreted, it ought to be interpreted in a fashion to expand coverage rather than restrict. They claimed that basic consumer protection ought to require more than a letter sent by ordinary mail.

[50] Aviva claims The Court of Appeal has confirmed in *Chenier v. Stephens*, OSCJ 2000 CarswellOnt 2575, as affirmed 2001 CarswellOnt 1121 (C.A.), that Statutory Condition 12 requiring personal delivery or registered mail applies to notices of non-renewal. Aviva claims that when an insured person does not receive a notice of non-renewal and such notice of non-renewal was not delivered by registered mail in accordance with Statutory Condition 12 and not received by the named insured, the policy of insurance continues in full force and effect.

[51] Although the facts in *Chenier* are similar to the facts before me, there are differences. In *Chenier*, the Plaintiff Chenier sought the recovery of damages for personal injury from the Defendant Stephens. It was claimed that the Defendant had valid and existing insurance coverage through Kingsway, even though the broker had provided a notice of non-renewal to Stephens prior to the date of loss. The notice was delivered by ordinary mail. One of the issues raised was whether notice of non-renewal was valid if not sent by registered mail as allegedly required by Statutory Condition 12. At first instance, Justice Jenkins held that the non-renewal notice was not delivered in accordance with Statutory Condition 12 as it was not received by Stephens. However, Justice Jenkins made it clear in paragraph 11 of his decision that it was not necessary for him to decide whether notice by ordinary mail was effective, as he simply relied on the Agreed Statement of Facts which stated that "according to the Defendant Stephens, he did not receive the non-renewal notice". Justice Jenkins appears to have simply rendered his decision by accepting the evidence of Stephens as set out in the Agreed Statement of Facts. He simply accepted the fact that Stephens did not receive the non-renewal notice as set out in the Agreed Statement of Facts and never had to deal with the issue of whether non-renewal notices had to be personally delivered or sent by registered mail.

[52] The facts before me are different. There was no Agreed Statement of Facts. Contrary to the factual finding of Justice Jenkins that the Defendant did not receive the non-renewal notice, I have found that Mr. Jorge, on the balance of probabilities, did receive the non-renewal notices sent to him by regular mail. This leaves the issue as to whether service of the non-renewal notice by ordinary mail, as opposed to registered mail, is valid in light of Statutory Condition 12 as contained in the standard auto policy OAP-1, which once again reads:

> Notice
>
> (…) Written notice may be given to the insured named in this contract by letter personally delivered to the insured or by registered mail addressed to the insured at the insured's latest post office address as notified to the insurer. In this condition, the expression,

[53] On careful review, the standard auto policy makes no reference to non-renewal. It does make reference in Statutory Condition 11 to termination of the policy, which is followed by Statutory Condition 12 as set out above. I am satisfied that Statutory Condition 12 outlines the

method of service required with respect to any notice required by the policy wording. It provides the insurer with two options with respect to the method of service, namely personally delivered to the insured or by registered mail. However, the standard auto policy sets out no required notice in the case of non-renewal. The obligations of insurers for non-renewal is set out in a separate section of the *Insurance Act*, namely s. 236. The section outlines the time requirements for notice but simply states that the notice "shall be in writing". There is nothing about the notice having to be served by personal delivery or registered mail. If the legislature thought that non-renewal notices were required to be personally delivered or sent by registered mail, they could have easily included such wording. They did not. The evidence clearly demonstrates that both the insurer and broker, as a standard practice, sent such non-renewal notices by regular mail in accordance with s. 236 of the *Insurance Act*.

[54] I find that the termination of an auto policy is different that the non-renewal of an auto policy. The non-renewal requirements are set out in s. 236 of the *Insurance Act*. The notice requirements set out in Statutory Condition 12 only apply to notices required under the policy wording. As I have indicated, there is no reference to non-renewal in the standard auto policy. Accordingly, I find that the notice of non-renewal need only be sent in writing with no requirement that it be sent by registered mail or personally delivered. In reaching this conclusion, I have considered the submissions with respect to consumer protection advanced by Aviva. There is no doubt that the consumer would be better protected if non-renewal notices were required to be personally delivered or sent by registered mail, but the current requirements appear to have sufficient safeguards built in to satisfy the legislators. Firstly, written notice, as opposed to oral notice, must be sent. The notice must be sent by both the insurer and the broker. The insured would be aware of the non-renewal when updated pink slips were not received. The insured would be aware of the non-renewal when premiums were not being taken from his or her bank account. On whole, the insured would likely be aware that his policy was not being renewed.

[55] There was no evidence adduced in the arbitration before me as to the industry standard with respect to non-renewal notices. There was no evidence introduced in the arbitration before me as to whether Aviva sent their non-renewal notices by registered or ordinary mail. There may be many insurers who rely on what they believe to be the notice requirements set out in s. 236 of the *Insurance Act* and have been sending non-renewal notices by ordinary mail. In the recent case of *Echelon General Insurance Company v. Her Majesty the Queen* 2016 ONSC 5019, it was held that in the absence of compliance with the non-renewal requirements of s. 236 of the *Insurance Act*, an automobile insurance contract will extend into perpetuity or until such time as valid notice is sent. For those companies sending non-renewal notices by ordinary mail, on the belief that they were complying with the requirements of s. 236, a finding that such notice must be personally delivered or sent by registered mail might prove to be an underwriting nightmare with unanticipated claims exposure in perpetuity for the innumerable policies that they had not renewed over the years.

[56] In the final analysis, I find on the facts before me that there was an effective non-renewal of the Echelon policy in accordance with s. 236 of the *Insurance Act* and the Echelon policy was not in effect at the time of Mr. Jorge's accident of December 5, 2015.

ORDER

[57] On the basis of the findings aforesaid I hereby order that:

1. Aviva is the priority insurer;

2. Aviva pay the legal costs of Echelon with respect to this file on a partial indemnity basis;

3. Aviva pay the Arbitrator's account.

DATED at TORONTO this 28th)

day of July, 2018.)

KENNETH J. BIALKOWSKI
Arbitrator