IN THE MATTER OF THE *INSURANCE ACT*
R.S.O. 1990, C.I.8, AS AMENDED, SECTION 268 AND REGULATION 283/95
AND IN THE MATTER OF THE *ARBITRATION ACT*
S.O. 1991, C.17
AND IN THE MATTER OF AN ARBITRATION
BE TWEEN:

PEEL MUTUAL INSURANCE COMPANY

Applicant

- and -

MOTOR VEHICLE ACCIDENT CLAIMS FUND and INTACT INSURANCE

Respondents

AWARD

COUNSEL APPEARING

Sonya Katrycz, counsel for the Applicant, Peel Mutual Insurance Company (hereinafter referred to as "Peel").

Mahroze Khan, counsel for the Respondent, Intact Insurance (hereinafter referred to as "Intact").

Heather L. Kawaguchi, counsel for the Respondent, Motor Vehicle Accident Claims Fund (hereinafter referred to as "the Fund")

BACKGROUND

This matter comes before me by way of a priority dispute pursuant to s. 268 of the *Insurance Act*, R.S.O. 1990, c. I.8 as amended and Regulation 283/95 as amended.

This matter involves a motor vehicle accident that occurred on June 26, 2023. On that day, the claimant was involved in a single-car collision.

The vehicle that the claimant was in had been insured by Peel. Peel received the Application for Accident Benefits from the claimant. Peel takes the position that their policy was properly cancelled on June 10, 2023.

Intact insures the claimant's father and Peel takes the position that the claimant may have been principally dependent for financial support on her father. The issue of dependency is on the back-burner pending a determination as to whether the Peel policy was properly cancelled.

The Fund is involved in this arbitration as if the Peel policy is properly cancelled and the claimant is not principally dependent on her father, then neither the Peel nor the Intact policies would respond leaving the claimant's access for statutory accident benefits with the Fund.

The only issue before me in this arbitration is whether Peel properly cancelled their policy on June 10, 2023. Peel's position is they complied with the regulation and all the necessary requirements. Intact and MVACF dispute that the cancellation was proper.

PROCEEDINGS

This arbitration proceeded by way of written submissions. A Joint Document Brief was submitted which included the following:

- Transcripts of the EUO of the claimant, January 21, 2027;
- OCF-1 dated August 2, 2023;
- A copy of the Peel policy bearing number A1000036836DM;
- An AutoPlus report;
- Explanation of Benefits dated August 14, 2023;
- E-mail chain between AHA Insurance and Brenda Walker dated February 27, 2023 to November 22, 2024;
- Canada Post registered mail slips;
- Registered notice of non-payment of premium dated May 5, 2023;
- Voicemail transcript (and voicemail) from AHA Insurance brokers to Brenda Walker dated May 18, 2023;
- Proof of policy cancellation dated January 10, 2023;
- E-mails between AHA Insurance and Brenda Walker, June 29, 2023 to July 3, 2023.

The parties provided written submissions and as well submitted Books of Authority.

The parties also filed a signed Arbitration Agreement dated January 28, 2026.

ISSUE FOR DETERMINATION

The Arbitration Agreement identifies the issue for determination as:

> "Which insurer is required to pay benefits under s. 268 of the *Insurance Act* and under Ontario Regulation 283/95?"

However, that sets the issue out in very broad terms. The issue before me at this time is only:

> "Was the Peel policy bearing number A1000036836DM properly terminated prior

to the date of loss of June 26, 2023?"

DECISION

For the reasons set out below, I find that the Peel policy was not properly cancelled and therefore was in full force and effect on June 26, 2023.

FACTS

There is no dispute between the parties with respect to the facts but as is often the case in issues relating to cancellation, the dispute is what conclusions one draws from those facts.

On December 29, 2022 Peel issued a standard automobile policy to Brenda Walker through AHA Insurance Brokerage. At the time the policy was issued, Ms. Walker listed her address as 986 Robinson Street in Belle Ewart, Ontario.

On three occasions in February, March and April of 2023 Ms. Walker was notified that her premium, which was payable by electronic fund transfer, had been declined. On each occasion Ms. Walker was advised that Peel would attempt to take payment a second time and if that payment failed then her policy would be at risk of cancellation.

These emails came from a broker at AHA Insurance and were sent to Ms. Walker at the e-mail address walkerladies@hotmail.com.

With respect to the February and March 2023 premiums due, when efforts were made to retake the payment they were successful. However, with respect to the April payment, when it was resubmitted to her bank on May 2, 2023 it was rejected again.

On May 8, 2023 Peel sent Ms. Walker a registered notice of non-payment of premium by registered mail to her address at 986 Robinson Street. The letter was dated May 5, 2023.

The key parts of the letter of May 5, 2023 are set out below:

> "**REGISTERED NOTICE OF NON-PAYMENT OF PREMIUM**
>
> Our records indicate that the payment due on **April 20, 2023** for the above-noted policy has not been received and is outstanding. The following amount must be received in our office by **June 10, 2023**. If the outstanding amount payable is not received at the office of Peel Mutual Insurance Company by the date shown above, the policy will be terminated for non-payment in accordance with the statutory conditions, effective 12:01 a.m.
>
> | | | |
> |---|---|---|
> | The amount payable is as follows: | Payment amount: | $199.79 |
> | | Administrative fee: | $50.00 |
> | | **TOTAL AMOUNT PAYABLE:** | **$249.79** |

Payment may be made by one of the following methods:

1. Certified cheque or money order payable to Peel Mutual Insurance Company.

2. Pay your broker (please contact them for further information).

3. Pay online by credit card at www.peelmutual.com. Select the "make a payment" button on the right side. Once form is completed, scroll down to submit payment button.

4. online banking through your financial institution. Your account number is PMIC followed by your policy number."

The letter also notes that she should contact her broker if she has any questions. The letter is cc'd to Agent/Broker AHA Insurance (1051-1) 519-340-0100.

The letter is on Peel Insurance Mutual letterhead. At the bottom of the letter is the following address: 103 Queen Street West, Brampton, Ontario, L6Y 1M3 and then telephone, fax and toll-free numbers are provided.

On May 18, 2023 Nathan from AHA left Ms. Walker a voicemail. The voicemail advised her that her monthly payment had been declined and that she currently owed $249.79 which included an NSF fee. Nathan noted in the voicemail that there was a registered letter that she should have received in the mail and that he would e-mail her a copy as well. He noted if she did not call or e-mail back or make other payment arrangements then the policy would be cancelled for non-payment at 12:01 a.m. on June 10, 2023 if the payment was not received before that date. The phone number of AHA was also provided to Ms. Walker.

On May 18, 2023 Nathan sent Ms. Walker an e-mail at walkerladies@hotmail.com. The e-mail essentially repeated the information in the voicemail and noted:

> "Please make payment to Peel as directed in your registered cancellation for non-payment letter (attached)."

A copy of the May 5 cancellation letter was attached to the e-mail.

Ms. Walker's next monthly premium was due May 20, 2023 and Ms. Walker failed to make that premium payment as well.

On June 10, 2023 Peel sent Ms. Walker a document indicating that her policy had been cancelled effective June 10, 2023 at 12:01 a.m. This notice was also sent to 986 Robinson Street in Belle Ewart.

According to the notes of AHA Insurance, on June 29, 2023 Ms. Walker called the brokerage. There was no transcript with respect to this call but Wendy of AHA spoke to Ms. Walker and sent her a follow-up e-mail on that same day. The e-mail notes that Ms. Walker had called the AHA

offices that day. The e-mail states:

> "As per our conversation, your auto insurance policy with Peel is cancelled. It cancelled June 10, 2023. Your April payment installment did not clear your account.
>
> If payment was sent to reinstate your policy prior to June 10, 2023 please provide proof of payment as we will need to share with Peel Insurance for consideration of reinstatement. Otherwise, your policy will remain cancelled. Please note you are currently without coverage for your vehicle."

By the time this conversation took place, the accident of June 26, 2023 had occurred.

The notes from AHA brokerage also provide a summary from Wendy with respect to the call from Ms. Walker which took place at 10:05 a.m. The log note was created at 10:18 a.m. and the e-mail was sent to Ms. Walker at 10:21 a.m. According to the log note, at 10:05 a.m. Brenda called wanting to put a claim through. Wendy confirmed on the portal policy that it had been cancelled for non-payment. Brenda reported that she sent the payment but did not send it until June 10, 2023 which was too late to reinstate and therefore there was no coverage.

There is a further note from Wendy with respect to a call from Ms. Walker on July 3, 2023. The note indicates:

> "Brenda called back very upset that her policy will not be reinstated. She was cancelled for non-payment. Her proof is a chq she gave her daughter to mail out dated May 30th, 2023 but that did not get to Peel."

In a further call on July 13 Brenda advised that she was in the hospital and did not receive the letter. Wendy noted that Nathan had called on May 18, had left a voicemail and the registered letter had been sent. Therefore there was no option available to reinstate the coverage.

Later emails from Ms. Walker would suggest that she ultimately determined, "as I dug deeper," that the outstanding premium in fact was never paid. Ms. Walker advised that there were organizational issues at home that prevented her daughter from paying the outstanding premium as delegated. She acknowledged that the overdue payment had therefore "slide thru the cracks".

With respect to the accident of June 26, 2023 the claimant was a passenger in a 2017 Nissan Pathfinder that was owned and operated by her mother, Ms. Walker. This was the vehicle that had been insured under the Peel policy and is the subject matter of the cancellation.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

The *Compulsory Automobile Insurance Act*, R.S.O. 1990 s. 12(1) provides a contract of insurance that has been in effect for more than 60 days can only be terminated for one or more of the following reasons:

"12(1)1. Non-payment of, or any part of, the premium due under the contract or of any charge under any agreement ancillary to the contract."

Under the *Insurance Act*, R.S.O. 1990, c. I.8, Regulation 77/93 s. 11 sets out the requirements that an insurer must meet when choosing to terminate an automobile policy pursuant to s. 12 of the *Compulsory Automobile Insurance Act*. The relevant provisions of s. 11 are set out below:

"**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 give to the insured a notice of termination of the contract by,

(a) registered mail;

(b) personal delivery;

(c) prepaid courier if there is a record by the person who has delivered it that the notice has been delivered; or

(d) electronic means if the insured consents to delivery by electronic means.

...

(1.2) Subject to subcondition (1.7), if the insurer gives a notice of termination under subcondition (1) for the reason of non-payment of the whole or any part of the premium due under the contract or of any charge under any agreement ancillary to the contract, the notice of termination shall comply with subcondition (1.3) and shall specify a day for the termination of the contract that is no earlier than,

(a) the 30th day after the insurer gives the notice, if the insurer gives the notice by registered mail; or

(b) the 10th day after the insurer gives the notice, if the insurer gives the notice by personal delivery, prepaid courier or electronic means.

(1.3) A notice of termination mentioned in subcondition (1.2) shall,

(a) state the amount due under the contract as at the date of the notice; and

(b) state that the contract will terminate at 12:01 a.m. of the day specified for termination unless the full amount mentioned in clause (a), together with an administration fee not exceeding the amount approved under Part XV of the Act, payable in cash or by money order or certified cheque payable

> to the order of the insurer or as the notice otherwise directs, is delivered to the address in Ontario that the notice specifies, not later than 12:00 noon on the business day before the day specified for termination.
>
> ...
>
> (1.5) If the full amount payable under clause (b) of subcondition (1.3) is not paid by the time and in the manner that the notice specifies, the contract shall be deemed to be terminated, without any further action being required on the part of the insurer, as of 12:01 a.m. of the day specified for termination.
>
> (1.6) If the full amount payable under clause (b) of subcondition (1.3) is paid by the time and in the manner that the notice specifies, the contract shall not terminate on the day specified for termination and the notice shall have no further force or effect."

Having set out the relevant statutory and regulatory provisions, I now turn to the position of the parties.

POSITION OF THE PARTIES

POSITION OF PEEL

Peel's position is that they have complied with all the essential elements set out in s. 11 of the regulation in order to effect a proper termination of the Walker policy. Peel notes the following:

1. They provided the insured with a notice of termination by registered mail;

2. The termination date was no earlier than the 30th day that the insurer gave notice, noting that the notice of termination was dated May 8, 2023 which was 33 days before the termination date of June 10, 2023;

3. The letter identified the total amount sought in order to reinstate the policy and set out the amount due under the contract by way of premium and the amount due with respect to the administrative fee;

4. Its notice letter expressly stated that the termination would take effect at 12:01 a.m. on June 10, 2023. Peel also noted that this was reiterated to Ms. Walker in Nathan's voicemail and subsequent e-mail of May 18, 2023;

5. Peel gave Ms. Walker five ways that she could make the payment: credit card, cheque or money order, pay the broker, or online. Peel notes that Ms. Walker's prior history shows that her payments were made online and previously she reinstated policies through her online banking.

Peel acknowledges the decision from Arbitrator Bialkowski in *Economical Mutual Insurance*

Company and Wawanesa Mutual Insurance Company (February 8, 2011) where the arbitrator set out the essential elements of the legislative requirements under statutory condition 11. Arbitrator Bialkowski found that the essential elements were:

- The amount due together with any administrative fee being sought;
- The date on which the termination is to take place;
- That the insured can avoid termination by paying the amount outstanding and the specified administration fee by noon on the day before the date on which the termination is to take place.

Peel submits that it has complied with these three essential elements and to the extent where it may not have complied strictly with statutory condition 11, Peel submits that its compliance is not required to be perfect. While strict compliance of the essential elements is required, Peel submits the law recognizes a distinction between strict and perfect compliance. Every punctuation mark and capitalization in the notice of termination does not necessarily have to be correct.

Peel also relies on the decision of Justice Davies in *Allstate Insurance Company v. Her Majesty the Queen*, 2020 ONSC 830. In that case Justice Davies noted that the purpose of the statutory condition and those essential elements relating to the insurer's unilateral termination of a policy for non-payment is to make sure that the insured person has fair notice of what is going to happen and to protect them against unfair treatment from the insurance company. The purpose of statutory condition 11 is to give an insured person time and opportunity to rectify the non-payment and to avoid termination or to arrange alternate coverage before the termination takes place.

Peel submits that not only has it complied with the statutory condition and the essential elements in its letter of May 5, 2023 but it has also complied with the spirit and purpose of those requirements. Peel relies heavily on the e-mails and voicemails and letters sent by AHA Insurance/Peel in order to draw attention to Ms. Walker of the fact that her policy was in a non-payment position and that termination was pending. Peel points out that on each of these occasions it was brought to Ms. Walker's attention how termination could be avoided by paying the amount in full and gave her more than enough opportunity to respond and take corrective action.

Further, Peel submits, it is relevant that the evidence establishes that Ms. Walker knew that her policy may be terminating. Further, the evidence establishes that she could have taken the steps to rectify the issue within the relevant time period. The evidence is that Ms. Walker delegated the payment to her daughter and said that her daughter missed it. Ms. Walker says she wrote a cheque on May 30, 2023 which, if it had been sent that day, would have been received by Peel well ahead of the termination deadline.

Peel therefore submits that both the insurer and broker acted with the utmost good faith towards

its insured. Therefore, Peel submits I should find that the policy was properly cancelled.

SUBMISSIONS OF THE FUND

The Fund submits that Peel failed to meet the following essential elements:

1. Peel failed to specify an effective date for the policy termination;

2. Peel failed to properly indicate termination could be avoided by paying "by noon on the day before the termination will take effect";

3. The essential element of providing an address for payment delivery was not met;

4. Peel failed to identify that the payment could be made in cash.

The Fund relies on the broad principle established by the Supreme Court of Canada in *Smith v. Co-operators General Insurance Company*, 2002 SCC 30 that the applicable legislation is consumer protectionist in nature.

The Fund also relies on *Merino v. ING Insurance Company of Canada*, 2019 ONCA 326 with respect to the principle that the *Insurance Act* and its regulations require strict compliance and are meant to provide structured and consistent outcomes for compliance and non-compliance concerning the respective rights and obligations of an insured and insurer under the provisions relating to automobile insurance.

1. Peel failing to specify an effective date for policy termination.

The Fund relies on Arbitrator Bialkowski's decision in *Economical v. Wawanesa* (*supra*) in taking the position that it is an essential element of a proper notice of termination to set out the effective date for the policy termination.

Statutory condition 11 requires that the notice "specify a day for the termination of the contract" and must require that the contract will terminate at "12:01 a.m. of the day specified for termination".

The Fund submits that Peel's termination letter makes no mention of this essential evidence. There is no date specified in the letter on which the termination is to take place. While June 10, 2023 is mentioned in the letter, it is the date specified for when the payment must be received. Nowhere in the letter does it specify that that is also the date that the contract will terminate. Further, the Fund submits in reviewing the letter, you will note that while the time 12:01 a.m. appears in the letter, that there is no accompanying statement with the time as to what the actual termination date is.

The Fund submits that for this reason alone, as this an essential element, the termination is not valid.

2. The letter did not indicate that the termination could be avoided by paying the amount "by noon on the business day before the termination will take effect".

The Fund submits that statutory condition 11(1.3)(b) requires the termination notice to include that the insured can avoid termination by paying the amount outstanding and the specified administration fee "by noon on the business day before the date on which the termination is to take place".

The Fund submits, in reviewing the letter, that there is no mention of "the full amount" nor is there any indication that that full amount should be paid by "noon on June 9, 2023" or even just mentioning June 9, 2023. Nor does the letter indicate that the payment should be made no later than noon on the business day before the day specified for the termination.

The letter, the Fund submits, is ambiguous as to when the payment was due and what exactly the reference to June 10, 2023 means. Further, the Fund submits June 10, 2023 was in fact a Saturday and therefore is not a business day. It would therefore have been impossible for Ms. Walker to provide a payment to the offices of Peel on June 10, 2023 as their hours of operation, according to information online, confirms their offices are closed Saturday.

The Fund points to the final sentence of regulation 1.3(b) which states "not later than 12:00 noon on the business day before the day specified for termination". The Fund submits that therefore Peel is non-compliant with this essential element and for that reason alone the policy would not be considered to be properly cancelled.

3. The letter did not include the address.

The Fund points again to statutory condition 11(1.3)(b) where it states that the notice must include an "address in Ontario". The regulation requires that the termination letter tells the insured where they can send or deliver their cheque or cash or money order. The notice must tell them to what address in Ontario they can make their payment.

The Fund submits that the failure to include a payment delivery address in the notice of cancellation is again fatal to Peel's position.

The Fund relies on the decision of Arbitrator Sampliner in *CAA Insurance Company v. The Personal Insurance Company and Allstate Insurance* (November 5, 2020). In that case Arbitrator Sampliner found that where an insurer included a return envelope for the insured to send their money in, that that did not comply with the requirement to provide an address and therefore the notice of termination was not effective.

The Fund also relies on my decision in *Co-operators General Insurance Company v. Aviva Insurance Company of Canada* (December 14, 2021) (Arbitrator Samworth), where I concluded that provision of an address in Ontario should be considered a fourth essential element and that that would be consistent with the plain language and the intention of the legislation.

The Fund submits that Peel's letter does not specify an address in Ontario for the delivery of the

amount payable. The notice simply states "the following amount must be received in our office". The letter does not specify the address for Peel's office designated for the purpose of delivering the payment of the outstanding amount. While at the bottom of the letter there is an address, there is nothing in the letter to indicate that that is actually the office of Peel Mutual Insurance Company.

The termination letter did indicate that Ms. Walker could "pay your broker" but Peel did not provide an address for the broker either. Therefore, the instructions in the termination letter as to where the claimant might make her payment were not clear and did not provide a proper address and therefore the policy was not properly terminated.

The Fund also submits that it is important to note in these cases how an insured generally was accustomed to paying their premium. In this case, the insurer was paid with a direct withdrawal from her bank account and therefore payment by any other method would be a new circumstance for her, thus stressing the importance of providing an address.

4. The letter failed to indicate the payments could be made in cash.

Statutory condition 11 clearly indicates that the letter is to include the words "payable in cash or by money order or certified cheque". There is no doubt that the Peel letter does not include an option to pay by cash and the Fund submits that that is fatal to an attempt to terminate the policy and it is also another essential element.

With respect to Peel's position that their efforts to contact Ms. Walker by e-mail and voicemail should be considered in determining whether the termination is effective or not, the Fund submits that it is not relevant. The Fund submits that any attempts to inform Ms. Walker about her policy being cancelled and information on how to correct that are simply acts of customer service and do not constitute proper notice of termination in accordance with the legislation. The Fund submits that none of the e-mail correspondence, voicemails or telephone discussions complied with the regulation which requires that written notice be delivered by registered mail. The Fund submits that good customer service does not negate the requirement that an insurer must comply with statutory condition 11.

The same is true as to whether Ms. Walker knew or did not know prior to the accident whether her policy was cancelled. The Fund submits in fact that Ms. Walker only was aware after she was involved in the accident that her policy was cancelled. In one of her e-mails after the accident she notes "I am embarrassed and shocked. I've been driving these past few weeks uninsured without my knowledge." In any event, whether she did or did not know of the termination does not matter. What matters is whether the policy was properly cancelled by Peel.

POSITION OF INTACT

Intact's submissions are similar to those of the Fund. Intact notes that the Peel letter did not provide Ms. Walker with an option to pay the outstanding premium owing in cash. Intact relies on the decision of *ACE INA Insurance v. State Farm Mutual Automobile Insurance* (Arbitrator

Bialkowski, May 24, 2017). In that case the insurer, relying on the cancellation notice, tried to argue that their failure to include the option to pay by cash was not fatal and that that was not an essential element under statutory condition 11. Arbitrator Bialkowski concluded that the choice of payment methods should have been included in the notice of termination and the failure to do so was fatal. Arbitrator Bialkowski noted that not every insured person has a bank account and in all likelihood it was a consumer protection requirement for rationale behind the requirement that the various methods of payment be set out in the notice of cancellation.

Intact also submitted that an address for the cash payment was not listed. Intact also noted that the letter advised that the payment could be made on June 10, 2023 and noted that that was a Saturday, not a business day. This was misleading as the policy itself was allegedly to terminate at 12:01 on that day. This failed to comply with the statutory requirements.

Therefore Intact submits that the Peel notice is defective and its failure to comply with s. 11 results in the termination being invalid.

REPLY OF PEEL

With respect to the failure to advise of cash as a method of payment, Peel submits that it is important to note that Ms. Walker elected to pay her premiums to Peel via electronic funds transfer (EFT). Ms. Walker paid her premiums by EFT and in February when she failed to make a payment on time, she paid late through EFT. The same was true in March of 2023.

Further, once Ms. Walker discovered that her payment through EFT had been missed, she suggested that she was going to pay by cheque. There was never any mention of cash. Peel submits that it in the modern day payment by cash is an anachronism. Peel submits that the failure to note payment of cash in the termination letter in these circumstances should not be relied upon as there is no relevance to the insured and there was no question that the fact of the cancellation was otherwise properly communicated.

With respect to the failure of Peel to specify an effective date for the policy termination, Peel submits that its letter clearly sets out that June 10, 2023 is the date that the policy will terminate. Further, that date was reiterated to the claimant in a voicemail and an e-mail on May 18, 2023. Peel submits it was clear to Ms. Walker what the termination date would be.

With respect to the time of the policy termination, Peel submits it cannot be held to a standard of perfect compliance. Peel submits its communication was clear and unambiguous and the Fund and Intact arguments go against the legal principle that strict compliance does not mean perfection.

Peel addresses the same argument with respect to how it displayed its address in the letter of May 5, 2023. The fact that the address is at the bottom of the page and not clearly identified as Peel's address Peel submits "ventures well in the territory of perfect compliance which is impractical and impossible to govern".

DECISION AND ANALYSIS

For the reasons that follow, I have concluded that in a number of respects the Peel policy was not properly terminated in accordance with statutory condition 11. I will deal with each of those findings separately.

1. Failure to provide the option to make the payment of the amount owing in cash.

A review of the letter of May 5, 2023 clearly confirms that it did not include as an option to reinstate the policy by making a payment in cash. The only options offered were certified cheque, money order, pay the broker, pay online by credit card or through online banking.

Peel, in their submissions, acknowledges that the letter did not include the option of payment by cash, but suggests that in the circumstances of this case, and taking into consideration that in today's world cash is no longer king, that that requirement not be considered an essential element and failure to include that is merely a lack of perfection and not a failure of strict compliance.

I agree with Intact and the Fund that it is essential to include in a letter of termination the option to pay by cash. Statutory condition 11 specifically provides that the letter is to state that in order to rectify a pending notice of termination, that the individual must be told that they can "pay in cash or by money order or certified cheque". The regulation does not offer an option to pay electronically. That may be an amendment we will see in the future. However, as this regulation presently stands, the letter must reference payment by cash. Peel's letter did not.

As I have found in a previous case, it is my view that this is an essential element of the notice of termination.

In reaching this conclusion I am mindful of Arbitrator Kenneth Bialkowski's decision in *Economical and Wawanesa* that set out three essential elements to statutory condition 11 and that cash was not specifically included in his list.

I also note the decision of Arbitrator Samis in *Economical Insurance Group and Wawanesa* (May 17, 2014). In that case, Arbitrator Samis noted that the issue of the adequacy of a unilateral termination for automobile insurance has been before courts and arbitrators many times over the years. Since Arbitrator Samis made that decision, even more cases have been generated.

Arbitrator Samis correctly noted that the right to unilaterally terminate a contract of insurance midterm is an unusual right and it must be treated as such. Such a right has to be exercised in accordance with the statutory conditions that accompany it. He noted that the courts and arbitrators have consistently held that an insurer who seeks to rely on such a unilateral cancellation must be in compliance with the statutory condition although he did acknowledge that the case law also recognizes that there can be minor imperfections and inadequacies.

I am also mindful of the decision of Justice Davies in *Allstate and HMQ* (*supra*) relied on by Peel with respect to the standard of perfection. In that case, the issue was whether the notice of

termination was invalid as it did not include the address where the insured person should deliver the monies in order to reinstate their policy. Justice Davies held that the plain language of the regulation requires that the termination notice include the address to which the insured person must deliver the money owing in order to avoid the termination of the policy.

Justice Davies noted that "While a standard of perfection is not required in the notice of termination this is not a case of a minor typographical error in the address provided."

In my view, the failure to include the option to pay by cash, as clearly set out in statutory condition 11, is not a minor typographical error and is fatal to Peel's position.

I note that this is consistent with the decision of Arbitrator Bialkowski in *Gore Mutual Insurance Company and Lombard General Insurance Company of Canada and Motor Vehicle Accident Claims Fund* (decision June 21, 2010).

That case involved a loss transfer claim in which Gore resisted a claim for loss transfer on the basis that they had terminated their policy prior to the date of loss. The issue before Arbitrator Bialkowski was whether the policy was properly terminated as the letter did not specifically make reference to the insured being able to pay in cash, money order or by certified cheque. While there were many deficiencies in Gore's letter, Arbitrator Bialkowski makes reference to the letter being defective as it does not contain "words that would advise the insured that he had the right to avoid the termination by making payment in the form set out in statutory condition 11". Arbitrator Bialkowski referenced this as being one of the missing essential elements.

Arbitrator Bialkowski made a similar conclusion in *ACE INA Insurance v. State Farm Mutual* (*supra*). In that case, one of the issues is whether the State Farm policy had been properly cancelled. State Farm's termination letter did not give a cash option to pay the balance. State Farm argued that the option to pay cash was not an essential element.

Arbitrator Bialkowski concluded that the failure of State Farm to include the methods of payment required in the regulation is fatal. He noted that while the "payment method option" had not been listed as an essential element in his decision of *Economical and Wawanesa*, that was only because the method of payment to reinstate had not been an issue raised in that proceeding. It is raised in this proceeding and Arbitrator Bialkowski held that that was another essential element noting that his previous decision in *Economical and Wawanesa* should not be held to set out an exhaustive list of essential elements, but only those that were relevant for that specific fact situation.

Finally, I also note that my decision is consistent with Arbitrator Sampliner's decision in *CAA, The Personal and Allstate* (*supra*). This decision was from 2020 and in that case it was alleged that the issue was whether the notice contained an address for payment and whether that was an essential element. Allstate argued that putting in a physical payment address is inconsistent with modern business practice, a similar argument that is being made by Peel here.

Arbitrator Sampliner rejected that argument and noted:

> "I use arbitral discretion to recognize common knowledge that many people regularly pay in cash or deliver certified funds to an office address, especially in last-minute emergencies. I can reasonably foresee the consequences of allowing insurers to avoid this requirement as undermining the specific payment mechanism that the regulation seeks to guarantee available. Strict application of the legislature's policy overrides insurer financial expediency."

While Arbitrator Sampliner's decision deals with an address, his comments also reflect on the payment delivery option with respect to cash and the importance of strict application of the legislative policy in that regard.

Finally, I note the decision of Arbitrator Shari Novick in *Pafco Insurance Company and Gore Mutual Insurance Company, Intact Insurance Company and Jevco Insurance Company* (July 13, 2023). In that case, the cancellation notices sent out by Intact and Jevco did not include the option of a cash payment for arrears owing. Arbitrator Novick concluded that s. 11(1.3) provides that in addition to stating the amount due under the policy that the notice of termination must also state "payable in cash or by money order or certified cheque". Arbitrator Novick notes an earlier decision in which she also reached the same conclusion that the failure to provide those three payment options will result in the notice being found invalid.

I therefore conclude on issue 1 that Peel's failure to include in their notice of termination the right of the insured to make payment by cash is fatal and that their notice of termination is invalid.

2. <u>Failure to specify an address in Ontario for the delivery of the amount payable.</u>

On this issue I find in favour of Peel. While the letter may lack perfection on this point, it does indicate an address that a reasonable person reviewing the letter will conclude is the proper address for payment. The top left-hand side of the letter identifies the sender as Peel Mutual Insurance Company. The letter requires that any amount to be paid is to be received at the offices of "Peel Mutual Insurance Company". The letter is noted to be signed by the Finance Department of Peel Mutual Insurance Company. At the bottom of the letter we then see the address 103 Queen Street West, Brampton, Ontario with a postal code. There is a phone number, a fax number and a toll-free number. Below that address is the following: www.peelmutual.com. In my view, clearly, the letter sets out Peel Mutual's address although it may not have that specifically within the body of the letter, I find that that is sufficient to meet that requirement.

I find the facts of this case are distinguishable from my decision in *Co-operators and Aviva* (*supra*). In that case I concluded that the termination letter was deficient due to the failure to provide clear information as to where a cheque or money should be sent and providing an address. In that case, while the letter was from the Applicant Co-operators, there was no address given for Co-operators anywhere in the letter. There was an address for the broker, but no suggestion that one should send the money to the broker. In fact, there was no reference as to where the money should be sent at all. In this case, Peel clearly indicates in the letter that the amount payable must be received at the office of Peel Mutual. The money order is to be payable to Peel Mutual. Peel Mutual's address is provided at the bottom of the letter in a manner that, in my view, is clear

enough to distinguish it from the Co-operators decision.

I therefore find that the failure to provide an address within the body of the letter is not fatal to Peel's termination notice.

3. Failure to specify the date of the termination of the contract.

On this issue I agree with Intact and MVACF and find that the termination letter fails to meet this essential element. The regulation requires that the notice "specifies a day for the termination of the contract". A careful review of Peel's letter confirms that they fail to do that.

The body of the letter confirms that the payment in issue was the April 2023 payment. The letter notes that the amount of $249.79 must "be received in our office by June 10, 2023". The June 10, 2023 date is not referenced anywhere else in the letter and in my view the letter only indicates that that is the date upon which the outstanding amount must be received.

The letter goes on to say that if the amount payable is not received "by the date shown above", the policy will be terminated effective 12:01 a.m. It is not clear by what date above they are referencing. There are three dates above. There is the April 2023 date, the June 10, 2023 date and then the date of the letter, May 5, 2023. Further, the letter suggests that the "date shown above" is relevant only with respect to whether the money is received or not. The letter goes on to say "the policy will be terminated for non-payment in accordance with the statutory conditions effective 12:01 a.m." It does not say on what date it will be terminated at 12:01 a.m. The letter should have clearly indicated that not only was the money to be received by the Peel office on June 10, 2023, but if not received that the policy will be terminated on that date, June 10, 2023 effective at 12:01 a.m.

There is no doubt, and Peel in fact recognizes, that the date of the termination of the contract is an essential element to be put in the termination letter. Peel argues that reading through the letter will indicate the date is June 10, 2023 and I do not agree with Peel's analysis.

I find that the letter does not state the date of termination as required under the regulation and for that reason Peel's termination notice is flawed and not in compliance with the regulation.

4. Failure to indicate that the applicable payment must be delivered not later than 12:00 noon on the business day before the day specified for termination.

On this issue I also agree with Intact and MVACF. I find that the Peel letter of May 5, 2023 makes no reference to the requirement that the payment must be delivered no later than 12;00 noon on the business day before the day specified for the termination.

The Peel letter simply states that the amount must be received by June 10, 2023. I have already commented on the fact that the letter fails to provide the date specified for the date of termination. An insured person would clearly not be aware from Peel's letter that the date of termination was in fact June 10, 2023 and that they were obliged to have their payment delivered by noon on the business day prior to June 10, 2023. The letter in fact suggests that the monies

are to be received by June 10, 2023 so if that is one business day prior to the termination date, then arguably the termination date must be June 11.

We then add into the mix that June 10 is a Saturday and therefore could not be considered the business day before which the monies were to be received. That would have to be June 9 and June 9 is not referenced at all in the letter.

As MVACF points out, the unintended consequence of Peel's failure to comply with the statutory condition means that June 10 is both the payment date and the termination effective date. The claimant would not be given any understanding that in fact her payment was due on June 9 at 12:00 noon.

Peel does not disagree that this requirement is an essential element. Accordingly, the failure to provide this information is again fatal to Peel's position and the termination notice is deficient.

Having dealt with the four issues arising out of statutory condition 11, I now turn briefly to Peel's argument that I should consider the efforts of Peel and the broker to advise Ms. Walker by e-mail and voicemail with respect to the fact that her policy would be terminating and the terms and conditions for making her payment. As well, Peel asked me to take into consideration what occurred between Peel/the broker and Ms. Walker after the motor vehicle accident.

On this issue I find whatever happened extraneous to the notice of termination and the subsequent events is simply not relevant to a consideration as to whether the notice of termination of Peel meets the requirements of the statutory condition.

I agree with MVACF that while it is laudable that Peel and the broker made such Herculean efforts to inform Ms. Walker about the pending termination of her policy by both voicemail and e-mail, that that does not have any bearing on whether the actual notice of termination meets the legislative requirements. As MVACF noted, this is excellent customer service but not relevant to the issue before me.

The same is true with respect to whether Ms. Walker knew or did not know at the time of the accident whether her insurance policy had been cancelled. The evidence seems to suggest she was not aware as she believed that her daughter had sent in a cheque to cover that. However, whether she knew that her policy had or had not been terminated is irrelevant. The question is whether the termination notice was proper, and I have concluded in a number of respects it was not.

ORDERS REQUESTED

MVACF requests that if I find that the Peel notice was improper and that the policy remains in full force and effect, that the arbitration be dismissed as against MVACF as it is only the insurer of last resort. I agree that that is the appropriate result and I order that the arbitration be dismissed as against the Respondent, the Motor Vehicle Accident Claims Fund.

However, the arbitration is not dismissed as against the Respondent, Intact. Intact insured the

claimant's father and there remains an argument that the claimant may have been principally dependent for financial support on her father. If that is the case she would be an insured person under the father's policy and it might rank in priority to Peel. Therefore this arbitration will continue as between Peel and Intact subject to any appeals.

COSTS

The Arbitration Agreement provides that the cost of the arbitration, including the arbitrator's fees and expenses, shall be left to the discretion of the arbitrator but it is the general expectation that the costs shall be borne by the unsuccessful party.

I therefore find that as Peel was unsuccessful in this matter, that Peel is responsible for paying the costs of the arbitrator and any related disbursements.

With respect to the legal costs of the parties, paragraph 10 of the Arbitration Agreement provides that the successful party or parties shall be awarded partial indemnity costs of the arbitration to be assessed by the arbitrator.

I note that the Fund sought costs on a substantial indemnity basis and not on a partial indemnity basis as set out in the Arbitration Agreement. Intact simply sought their costs. There were no submissions made with respect to costs.

I find that the costs of Intact and the Fund are payable by Peel on a partial indemnity basis. If the parties cannot agree on the quantum of costs, then we will set up a costs hearing to allow submissions.

DATED THIS 7th day of May, 2026 at Toronto.

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Arbitrator Philippa G. Samworth
DUTTON BROCK LLP
Barristers and Solicitors

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