

*Case Name:*  
**Laura Horne v. ING Insurance Company of Canada**

Cite as: Horne v. ING Insurance Company of Canada, 2004 NSSM 12

SCCH 218125  
Date: 20041008

Between

**Laura Horne, Claimant**

and

**ING Insurance Company of Canada, Defendant**

**Small Claims Court of Nova Scotia  
Adjudicator  
David T.R. Parker**

Heard: July 14, 2004  
Judgment: October 8, 2004

Counsel:

Kelly J. Powell, Counsel for the Claimant  
Kelly A. MacKay, Counsel for the Defendant

*Characteristics' of an offer and how long does it last in Contract law*

Decision: October 8, 2004

- 1 **Parker:-** The facts of this case are as follows:
- 2 The Claimant had a valid automobile insurance policy with the Defendant insurer.
- 3 On October 6, 1997, the Claimant was involved in a motor vehicle accident.

4 The Defendant insurer paid the Claimant expenses pursuant to Section "B" of the policy from the date of the accident until April 2002.

5 On May 16, 2002, the Defendant's agent made an offer to the Claimant's agent, a solicitor, to settle all Section "B" claims for a total of \$5,000.00.

6 In June of 2002 the Claimant moved to another law firm.

7 On June 3, 2003, the Claimant's new law firm accepted the Defendant's offer made to the Claimant's previous solicitor.

8 The Defendant has not paid the \$5000.00 and on October 15, 2003 the Defendant advised the Claimant that it was not prepared to make any further Section "B" payments.

9 The witness for the Defendant said, "We no longer felt the offer was valid due to the four year expiry date." Reference to the four-year expiry date from what I understand from Counsel is in reference to Schedule B, Part IV under the *Insurance Act*. That section refers to "All reasonable expenses incurred within four years from the date of the accident as a result of such injury..." the insurer agrees to pay. There are three problems with this line of argument. The first is that the offer was made outside the four-year limitation period, which the Defendant now relies on. Therefore the Defendant chose not to consider that limitation. Further there is no evidence that the offer of \$5,000.00 to settle all Section "B" claims does not relate to claims within the four year period and I can only assume it did or the offer would never have been made. The third problem is that Section "B" Part IV was repealed in 2003 and that causes some concern as to whether the Defendant can rely on something today that does not exist. However I do not have to "get into" that argument, as I do not see Schedule "B" being a limitation in this case.

10 The issue that is really before me is whether or not the offer died before acceptance. The offer was not accepted until slightly after a full year since it was put to the Claimant through her then new Counsel.

11 I agree with both Counsels, that when an offer has no time limit or no other legal condition impacts upon it, then the offer lasts for a reasonable period of time depending on the circumstances. I believe that to be correct statement of the law. However that statement does not in and of itself help in resolving a basic contract problem: What is the duration of an offer?

12 There are three ways in which this question can be considered. The first is that the offer has an implied term attached to it that will determine what is a reasonable time for it to be accepted and if it is not accepted within that implied time frame, it is then to be considered withdrawn by the offeror.

13 The second way of looking at this issue is that if the offeree does not accept it within a reasonable time it has been refused by the offeree.

14 The third way to look at this problem is that if the offeror does not revoke the offer then one must look at what is a reasonable time when it may be implied that the offer was revoked.

15 The problem with the first view is that the Court has to imply a term of the offer's duration, based on the circumstances surrounding the offer. Further that implied term logically has to exist right at the beginning, that is, when the offer was made. In accepting this view it is necessary to allow a third party's interpretation, which in essence takes away the fundamental aspect of bargaining, which is so essential to contract law. It also prejudices the rights of the offeror in law, who has the right to withdraw an offer before acceptance, unless it's under seal.

16 If you accept the second and third points of view then it becomes very subjective, because even if both the offeror and offeree accept the same set of facts, refusal of the offer or revocation of the offer is really determined through the eyes of the offeror or the offeree.

17 The only way to remain objective is to consider all three points of view, or to put in another way, to attack the problem considering the three points of view.

The first point of view, in implying a term, one must look at the subject matter that gives rise to the offer. Does the offer involve perishable items? What is the standard in the industry; these types of questions are fundamental. In this case the matter involves injuries incurred in a motor vehicle accident which if not subject to litigation have the potential to be litigated. The Defendant's file was voluminous; there were ongoing payments right up to April 2002 from an accident that happened in 1997. The process in most motor vehicle accident cases is normally lengthy and anything but expeditious in terms of healing if serious injuries are involved, as well as, in terms of court action or settlement. Therefore time frames in motor vehicle accident cases must be thought of in those terms.

18 The second area involves the conduct of the parties themselves. The offeror's conduct is most helpful here. On agent acting for the offeror made the offer and a second agent in effect said the offer had lapsed. The offeror, through either agent never told the offeree that if she did not accept the offer it would be withdrawn. The offeror never withdrew the offer before acceptance or even after acceptance for that matter.

19 Because the offeror has internal systems of closing out files that information is not know, nor was it ever made known to the offeree.

20 With respect to the conduct of the offeree, she did switch legal counsel a couple of days before her new counsel accepted the offer. Prior to that time and when the offer was received right up to the date of acceptance, there was no inquiry, no counter-offer or any action taken by the offeree that might lead the offeror to conclude the offeree had refused the offer. While silence never amounts to acceptance I believe the rule can also be extended to say, silence never automatically amounts to refusal.

21 The bargaining power of the contract should remain undisturbed. If the offeror wished to revoke the offer it could have done so and if the offeree wished to refuse the offer she could have done so. For this and all the reasons discussed the offer was still on the table at the time it was accepted by the Claimant.

22 I thank both Counsel for their arguments on this matter and bringing the facts forward for my consideration. While I may have alluded to the answer being determined by a roll of the dice the answer to the duration of an offer is much more than a chancy determination. It is based on the facts, the standards at the time, and the conduct of the parties.

Dated at Halifax, this 8 day of October, A.D., 2004.

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David T.R. Parker  
Adjudicator of the Small Claims Court of Nova Scotia