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Indexed as:  
D.A.S. (Re)

IN THE MATTER OF an appeal by D.A.S.  
AICAC File No.: AC-98-21

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[1999] M.A.I.C.A.C.D. No. 11

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Manitoba Automobile Injury Compensation Appeal Commission  
J.F.R. Taylor, Q.C. (Chairperson), C.T. Birt, Q.C., and  
L. Goodspeed  
Heard: April 6, 1999.  
Decision: April 14, 1999.  
(5 paras.)

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Issue:

Whether bodily injury caused by an automobile.

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Relevant Section:

Manitoba Public Insurance Corporation Act, S.M. 1993,  
c. 36 ('the Act'), s. 70(1).

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Appearances:

Manitoba Public Insurance Corporation ('MPIC') represented by  
Tom Strutt.

D.A.S., appeared on his own behalf.

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MAIC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE  
PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING  
PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

#### REASONS FOR DECISION

[para1] On January 19, 1996, the appellant was leaving his  
place of employment, [text deleted], when a co-worker, L.J.,  
asked him to assist with moving L.J.'s Ford Bronco, which had  
not been plugged in all day and would not start. D.A.S. was  
asked to help push the vehicle across the parking lot in order  
to plug the car into a serviced electrical outlet. D.A.S.  
testified that he was pushing hard, trying to move the  
vehicle, when he felt a sudden, sharp pain (later diagnosed as  
a strained hamstring), causing his right leg to give way so  
that he could no longer assist in pushing. L.J. had

apparently left the Bronco in gear, making it practically impossible to move. D.A.S. stated that had the vehicle not been in gear it would have easily rolled with their efforts.

[para2] When D.A.S. was examined by Dr. Gregory Storoschuk at the Pan Am Clinic on January 22, 1996, he was found to have a less than full function due to symptoms and the capacity to return to work but only with modified duties. D.A.S. did not file a claim with MPIC until September 22, 1996. The reasons for that hiatus are not relevant here: it is enough to say that the insurer did not advance that delay as a reason for refusing to accept D.A.S.'s claim. On November 3, 1997 Mr. L. Smith, the appellant's adjuster, notified him that the situation was not covered under the Act because the bodily injury was not caused by an automobile or the use of an automobile. That decision was upheld by MPIC's Internal Review Officer on January 30, 1998.

#### THE ISSUE:

The issue before us is simply stated: did the Appellant sustain bodily injury caused by an automobile or by the use of an automobile within the meaning of Section 70(1) of the Act? If so, the appellant is entitled to the benefits that he claims, being reimbursement for his physiotherapy treatments, medication and any future therapy he may need to restore him to full function.

[para3] D.A.S.'s submission is that his injury was caused by the vehicle. He bases that proposition upon Newton's third law of physics, namely that for every action there is an equal and opposite reaction. He argues that, since he was pushing against the vehicle and the vehicle would not move, the vehicle must have been pushing back with the same amount of force. Ergo, he submits, the vehicle caused his injury.

[para4] D.A.S.'s theory is certainly a novel and interesting one but not one that this Commission can accept as rational. Patently, D.A.S.'s injury was the direct result of his own exertion as a good Samaritan, and of the body mechanics used in the course of that exertion. The vehicle might almost be called an 'innocent bystander'; neither it, nor its use, caused the injury.

#### DISPOSITION:

[para5] The Acting Review Officer's decision of January 30, 1998 is therefore confirmed.

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