

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by H.M. (L.) I.

AICAC File No.: AC-97-90

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C. Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented by
Ms Joan McKelvey
the Appellant, H.M.I., represented by Mr. Daniel Daly (of the
Ontario Bar)

HEARING DATE: April 15th and August 17th, 1998

ISSUE: Residence of Appellant at date of loss.

RELEVANT SECTIONS: Section 74(1) of the MPIC Act, Section 1 of Manitoba Regulation
No. 37/94 and Section 8 of the Domicile and Habitual Residence
Act

**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

The only issue before us is whether, at the time of his pedestrian/vehicle accident, that took place in Toronto, Ontario, on April 25th, 1996, H.M.I. was a resident of Manitoba within the meaning of the MPIC Act. The question of any benefits that may or may not flow to H.M.I. as a result of our decision on that point is not one that we have been asked to decide. Since the issue, here is governed by the MPIC Act and the Domicile and Habitual Residence Act, copies of the relevant sections of those Acts and of Regulation 37/94 are attached to these Reasons.

What should, in the ordinary course, have been a very simple and clear cut set of facts have become

needlessly clouded, partly at least due to problems of H.M.I.'s own creation.

H.M.I. testified that, at the date of his accident, his residence was at Suite [text deleted], [text deleted] in Winnipeg where, he says, he was resident with his wife. In response to an inquiry directly from this Commission, the rental agent managing that apartment block on behalf of the landlord sent us copies of two Leases, the one for the period from May 1st to August 31st, 1995 and the other from September 1st, 1995 to August 31st, 1996. Both those Leases show the tenants as 'J.C. and M.I.C.'.

The management company, in its covering letter to us, says in part:

If [H.M.I.] and [Mrs. M.] lived in this suite, we had no idea. I must tell you though, that I had a lot of trouble with [J.C.], not paying rent and so forth. He was very difficult to serve, as no one was ever home. Which leads me to believe that no one else lived in the suite with him other than [M.I.C.].

[J.C.] moved to Toronto, whether he is still there or not I do not know. I personally have never heard of [H.M.I.], or [Mrs. M.].

H.M.I. explains that discrepancy in two ways. When he first testified on April 15th, 1998, he told us that his credit rating was so bad that he had been obliged to ask his friends or his cousins, J.C. and M.I.C., either to sign the Lease for him and his wife or, at least, to allow the Appellant and his wife to use their names. On the resumption of the hearing of his appeal on August 17th, he told us that the real reason was more simple, since he merely took over the Lease from his cousin who was moving to Ontario.

There is no question that, on April 25th of 1996, H.M.I. was walking across Dundas Street in

Toronto when he was in collision with a west bound taxi. His own description of that accident, as related to MPIC's Adjuster in Toronto, is at odds with the police report and, in particular, with the evidence of the passenger in the taxi with which H.M.I. collided. That, by itself, would be of minimal consequence, particularly since we are not here concerned with attributing fault. When taken with the other evidence it tended to raise doubts about H.M.I.'s credibility.

It also seems clear that, at the time of his accident, H.M.I. was in possession of a one-way ticket from Toronto to Winnipeg, which gives rise to the question whether he was returning to his home in Winnipeg, as he testified, or whether he was already resident in Toronto and merely returning to Winnipeg for a visit - he said that he had had another, open-ended ticket that had allowed him to travel to Toronto in the first instance.

H.M.I., by his own testimony and although he claims to have been knocked unconscious "for a few minutes" was able to get up and walk back to the north curb of Dundas, apparently unaided, although someone called an ambulance and he was taken to St. Michael's Hospital where he was detained for three or four hours. He appears to have been thoroughly examined, including X-rays. He had no fractures although, since he complained of a sore ankle, the hospital apparently taped up that ankle, loaned him some crutches and discharged him. Despite the fact that H.M.I. appears to have been seen by a number of medical specialists, including orthopaedic, physiotherapist, psychological and general practitioners, amongst others, and although the Ontario physician whom he first consulted, Dr. Weinstock, gave him a handwritten note to the effect that he had suffered "serious injuries", none of the medical evidence that we have seen so far appears to support that description. That, perhaps,

may be attributable to the fact that the seriousness of an injury is, like beauty, in the eye of the beholder. H.M.I. was apparently prescribed a cervical collar, the need for which does not seem to have extended beyond a couple of weeks and, apart from physiotherapy, the extent of his medical treatment seems to have consisted of Tylenol No. 3.

While it is not primarily the extent or nature of H.M.I.'s injuries that are before this Commission, our concern is that his injuries do not seem to have been remotely severe enough to prevent his return to Winnipeg, and yet he has never been back to Winnipeg since April 25th, 1996.

We are told by H.M.I. and his counsel that he stayed in Toronto for two reasons: first, to be near his doctor in order to obtain proper medical treatment; second, to be available for his lawyers until his claim had been settled.

We have to say that each of those reasons appears to us to be quite specious: H.M.I. was patently not disabled to a point that would have precluded his return to Winnipeg where, presumably, not only was his family doctor available but the expertise of any specialists whose services might have been required. The medical care available in Manitoba is of an extremely high quality and the claimant himself acknowledges that no practitioner in Toronto or North York advised him against a return to Manitoba. There seems, therefore, to have been no medical reason at all for his remaining in Toronto. By the same token, the suggestion proffered by H.M.I. and his counsel that H.M.I. was advised to remain in Toronto pending the outcome of his claim seems, on the face of it, to be equally lacking in credibility. H.M.I. was a man who, from his own evidence, had earned reasonably good

money while working in Winnipeg during the months prior to his accident, whose wife was enrolled in a course at the University of Manitoba and who claims to have had his home in Winnipeg, yet elects (primarily on the advice of his lawyer) to remain in Toronto indefinitely by reason of what, by any normal standards of comparison, was a fairly minor set of injuries. We do not know how long a civil lawsuit might have been expected to take before being brought before a Judge in Ontario but, if the speed with which litigation progresses in Manitoba is any guideline, H.M.I. was looking at a minimum of a couple of years were his claim to have been denied (as it was) by any potential Ontario defendant.

At the resumption of his hearing, on August 17th, H.M.I. advanced a further reason for his decision to remain in Ontario, pointing out that his wife was in the middle of writing university exams and would be too busy to give him the personal care that, he felt, he needed. He therefore decided to remain in Toronto and stay with cousins. It is noteworthy that, on May 8th, 1996, approximately two weeks after his accident, H.M.I.'s wife, K.H.M., moved to Toronto permanently, with all of their household contents.

H.M.I. had allowed his Manitoba Health insurance coverage to lapse and, although it was subsequently reinstated, that reinstatement took place some time after his motor vehicle accident and upon the strength of his misrepresentation that he intended to return to Manitoba by March of 1997. He acknowledges that this was, indeed, a misrepresentation, but explains it rather glibly by saying that he was told that he had to put some intended return date on the form of application for reinstatement if he wanted that application to succeed.

There also appears to be no doubt that H.M.I. was on his way to Pearson International Airport in Toronto at the time of his motor vehicle accident. He had just alighted from one vehicle in order to cross Dundas to enter a second vehicle that was to have transported him to the airport. We inquired of his travel agent, W.T., why he only had a one-way ticket from Toronto to Winnipeg, issued by the airline rather than by the travel agency itself. Her initial response was that H.M.I. had ordered that ticket by telephone from Toronto. We made further inquiries of the travel agent following the initial hearing of the appeal on April 15th, and found her to be so evasive that she was served with a Subpoena to appear at the continuance of the hearing on August 17th. On the latter date, having earlier told us that she was too busy to look up the records of H.M.I.'s travel arrangements, she now purported to have destroyed those travel records and to be unable to remember much of what she had told us informally when a representative of this Commission met with her in her office. Her evidence may not have any major significance, but her lack of candour and the acknowledged fact that she was well acquainted with H.M.I. and Mrs. I. do leave a certain cloud of uncertainty about the reliability of her evidence. H.M.I. had testified that he flew from Winnipeg to Toronto on the 20th of April, yet W.T. had told us in her office that he had telephoned to her from Toronto on April 19th. However, she corrected herself on August 17th by saying that she had merely assumed that the April 19th phone call came from Toronto, since that was to have been the originating airport. It might be noted, in passing, that when served with the Subpoena W.T. made the further comment that, if she was obliged to appear in response to that Subpoena, "I shall just say that I don't remember anything" - a prediction that proved to be, for the most part, accurate.

On the positive side of the ledger for H.M.I., there is the fact that his wife appears to have used Suite [text deleted] at [text deleted] in Winnipeg as her address when registering at the University of Manitoba, and in her dealings with the moving company when having her household goods shipped to Ontario in May of 1996. H.M.I.'s Manitoba driver's licence, which had been suspended and subsequently reinstated, and his records at the [text deleted] up to and including the date of his accident also reflect the [text deleted] address. Further, he explains the lapse of his Manitoba Health Services coverage by pointing out, correctly, in our view, that this had only occurred because he had failed to notify Manitoba Health Services of his removal from one address in Winnipeg to the [text deleted] address, and that notices addressed to him by MHSC had therefore been returned, marked "moved, address unknown". While we are still disturbed by the fact that he arranged for reinstatement of that coverage by making a statement that he knew to be untrue, that is a long way from establishing that his health coverage lapsed because he had left the province.

Perhaps of greatest probative value for H.M.I. is the fact that, upon being admitted for examination at St. Michael's Hospital in Toronto at a time when he was unlikely to have felt the need to manufacture a false address, he gave the Admitting Clerk his [text deleted] address.

We have therefore concluded, although (as will be apparent from the foregoing comments) not without some hesitation, that on a balance of probabilities H.M.I. was, in fact, still a resident of Manitoba at the time of his accident. He may well have made the decision to become an Ontario resident within a matter of hours after that accident, but we are not persuaded that he had made that decision beforehand nor moved to Ontario with the prior intention of remaining there.

Dated at Winnipeg this 25th day of August 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED