

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by M.R.B.

AICAC File No.: AC-99-07

- PANEL:** Mr. J. F. Reeh Taylor, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Colon C. Settle, Q.C.
- APPEARANCES:** Mr. Lyle Smordin appeared for the Appellant;
Mr. Keith Addison appeared for the Manitoba Public
Insurance Corporation ('MPIC').
- HEARING DATE:** December 5, 2000
- ISSUE(S):**
- (1) Whether Appellant was non-earner, temporary earner or full-time earner at the time of each of four accidents;
 - (2) Causation - whether one or more accidents resulted in disability;
 - (3) Whether Appellant entitled to Income Replacement Indemnity (IRI) and, if so, during what period(s).
- RELEVANT SECTIONS:** Sections 81(2)(a)(ii), 85(1)(a), 86(1), 106 and 110(1) of the MPIC Act, Section 8 of Manitoba Regulation 37/94, Section 3 and Schedule A of Mb. Regulation 39/94, copies of each being annexed to these Reasons.

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

M.R.B. has an unfortunate history of motor vehicle accidents (MVAs). She apparently sustained MVA-related Whiplash Associated Disorders (WADs) in 1977, on December 17th, 1980, on May 14th, 1984, in November 1985, on July 9th and on October 10th, 1987; she was involved in a further collision on March 26th, 1991, and another on August 26th, 1993. From the injuries sustained in each of those accidents, M.R.B. appears to have recovered to the point of being able to either resume a former occupation or adopt a new one, whether as real estate agent, university

student, real estate developer or trainee in the life insurance industry. That is not to say that she was symptom-free by November of 1997, but she was by then self-employed on a full-time basis.

That history was fated to repeat itself, in the form of four more MVAs that are the subject of the present appeal. They took place on November 18th, 1997, December 11th, 1997, January 26th, 1999, and September 2nd, 1999, respectively.

Appellant's Business Background

The Appellant, who was born on February 18th, 1954, became licensed as a real estate agent in Saskatchewan in 1977. She worked in that field until 1983, when she started a used fur business, which she ran for five years before selling out to her sister. Some time during that same period she appears to have started a children's clothing company which she also sold.

In 1986 she started a business called [text deleted], a real estate development and general contracting company. She testified that in the period 1986 to 1987 she had had primary responsibility for the building of 12 residences and 11 duplexes, continuing in that field until the fall of 1991. She then joined the [text deleted] for management training, and worked for that company until 1993 when she moved to Winnipeg, enrolled as a part-time student at the [text deleted] and obtained part-time employment in sales with a company called [text deleted].

All of the foregoing were, of course, interrupted from time to time by the effects of her several motor vehicle accidents.

In 1995, she decided to return to the field of real estate sales, obtained her agent's licence and, from early 1995 until October of 1996, she worked in the sale of new homes, first for [text deleted] and, from January 1996 until October of that year, for [text deleted].

In October of 1996, she started working as a project manager in the building of new homes in [text deleted], Manitoba, for [text deleted]. She testified that her work was really akin to that of a general contractor, from obtaining building permits, obtaining quotations from three different sub-trades in every aspect of construction, estimating materials needed and taking off prices. M.R.B. further testified that she had to supervise and inspect the work of each sub-trade and, on occasion, actually become physically involved in helping some of the sub-trades to complete their work. She had no particular training in any of the mechanical sub-trades but had learned by experience and observation. Concurrently with her work for [text deleted], M.R.B. was also doing similar work "on the side" for several individual lot owners. She was close to finishing her work for [text deleted] when the first of her MVAs now under review occurred.

We find that, despite some inaccuracies and a tendency to exaggerate, M.R.B.'s evidence was, for the most part, credible. Her history reflects a woman who demands much (sometimes, perhaps, too much) of herself. She is not a person given to voluntary inactivity, although she may, at times, have become caregiver-dependent.

MVA of November 18th, 1997

M.R.B.'s evidence was that she was stopped at a red light behind five other vehicles; the light had turned green, the traffic had proceeded forward, she had turned her head to the right side (doing so, as later emerged, to respond to a call on her cellular phone) without noticing that the vehicle immediately in front of her had stopped. By the time she had realized it, the front of her

vehicle had hit the rear of the other car. The file discloses that there was no damage of any consequence to M.R.B.'s vehicle and \$238 of damage to the other vehicle. However, M.R.B. reported injuries to her neck and mid-back, headaches, numbness in both hands, dizziness and disorientation. She reported to MPIC's adjuster that, as a result of her accident, she could not vacuum in her home and could no longer put in the hours of work to which she had been accustomed.

The information given by M.R.B. to MPIC recorded that, in the period from October of 1996 to October of 1997, she had been in charge of constructing 10 residences in [text deleted] for [text deleted], plus another four under private contracts. The last two of the [text deleted] houses were apparently a few weeks short of completion. The Appellant testified that her injuries from this accident caused her to abandon two of the private contracts, although she was able to continue some of her work by telephone.

M.R.B., then as now a single mother with two children at school, testified that during the months prior to her November 18th accident, she was commuting on an almost daily basis between her home in Winnipeg and her work in Brandon, working about 76 hours per week. She was, at the same time, in the throes of divorce proceedings and suffering from endometriosis. In a letter to the Manitoba College of Physicians & Surgeons, she later described herself as having been "near the end of my rope" from the accumulated stresses, just prior to this first MVA. She attended upon her chiropractor, Dr. Gerald Bohemier, on November 20th; his report of November 25th to MPIC suggested that she was "presently unable to drive long distance which is required of her present job. No other category applies". The reference to "other category" refers to the question posed in the form of health care report, asking whether the patient was able to work full duties, work modified duties, work supernumerary or unable to work at any job. Dr. Bohemier also

diagnosed a Grade 3a Whiplash Associated Disorder, although we do not find any neurological deficit that might be expected to form a basis for such a diagnosis.

M.R.B. apparently told her case manager at MPIC that, following this first accident, she was using the phone to conduct most of the business of which she was capable, since her daily attendance in Brandon was no longer necessary. She did, however, make the trip to Brandon on three more occasions in December, 1997, despite complaints of dizziness, headaches and nausea; she was obliged to take a passenger with her for safety's sake and, even then, had to stop on occasion due to the nausea. She is supported in that testimony by an unsworn, written statement of her passenger.

The insurer then referred M.R.B. for independent examinations by Dr. Brian Lecker, chiropractor, and by Dr. F. S. Dominique, neurologist.

Dr. Lecker examined M.R.B. on December 8th, 1997. She described herself as a self-employed project manager, engaged in both construction and marketing. She told Dr. Lecker, and confirmed during her testimony to this Commission, that her work in Brandon was scheduled to end at the end of December and that, thereafter, she would have been working in Winnipeg. Dr. Lecker's detailed report of December 10th, 1997, while noting a large number of limitations and symptoms of which M.R.B. was complaining at the time, suggests that she had sustained an apparent soft-tissue strain type of injury, likely consistent with a Grade 2 Whiplash Associated Disorder. Her right upper limb sensory symptoms were non-dermatomal and were not nerve-root related. "Her limitation of glenohumeral movements symmetrically, both actively and passively, with the pain being in the mid-dorsal spine, as opposed to the shoulder, is somewhat difficult to explain. She has an apparent high level of anxiety which could very well be factors

[sic] in her symptom complex....In spite of her numerous symptoms, no hard neurological signs were identified”.

Dr. Lecker recommended continuance of exercising with increased frequency, a referral to M.R.B.’s physician respecting her symptoms of anxiety, depression and sleep disturbance, and intermittent chiropractic care over the ensuing three to six months to resolve any soft-tissue injuries from her accident. He offered the opinion that the Appellant would be “able to function in some capacity in her workplace”, although he advised against the lifting of drywall or other activities involving extensive labour. She should restrict her hours of work to a 40-hour work week over the next few weeks, said Dr. Lecker; her ability to drive on the highway should be addressed by a neurologist. It should be noted that commuting between Winnipeg and Brandon requires between five and six hours of driving per day, rendering a 40-hour week somewhat impracticable for the Appellant at this stage.

M.R.B. was examined by Dr. Dominique on December 9th. He reports “she said it was ‘not much of an accident’”. M.R.B. is reported to have told him that, at the time of her accident, she “never thought too much of it”. She had apparently paid some bills and driven on to Brandon that same day, but said that, by the time she reached Brandon, her whole right upper limb was numb and she had a headache.

The essence of Dr. Dominique’s report is that he could find no evidence of any neurological nor any organic disorder to account for M.R.B.’s complaints.

Whereas I cannot describe the nature and extent of injuries received at the time of the accident, I can say quite definitely that on the date she was seen, December 9, 1997, there was no evidence whatsoever of any injuries or any residual defect or disorder resulting from the accident or, for that matter, any previous accidents.

Dr. Dominique did not feel that M.R.B. required any form of treatment at all. “She is completely normal and fully fit to return to whatever work or employment she did before.” He also expressed the view the Appellant was able to drive back and forth every day to and from Brandon or any point beyond. Dr. Dominique went further, to say that he had reviewed all of the documentation from chiropractors, family physicians, physiotherapists and pain specialists that had been provided to him by MPIC, related to M.R.B.’s prior history, and he could not find “one single line of objective evidence suggesting that this woman ever had an organic neurological disorder of any kind”.

On December 17th, 1997, M.R.B.’s case manager at MPIC noted that, in a telephone discussion she had held with the Appellant that day, M.R.B. had said that she had only planned to work up to the end of December of 1997 and had planned to be off work for January and February of 1998. She was looking for something in Winnipeg but her accident had made her scared to drive; despite Dr. Dominique’s critique, M.R.B. was still complaining of dizziness, imbalance and disorientation.

MVA of December 11th, 1997

Although the insurer has questioned whether this particular occurrence ever took place, we find as a fact that, on December 11th, 1997, with her young son as a passenger in her vehicle, M.R.B. caused her car to collide with a cautionary traffic sign. She testified that she has no clear recollection of just what happened, although she believes that she was in the process of shoulder-checking. She thinks she may have had a dizzy spell. She was wearing a 3-point seatbelt and remembers being able to leave the vehicle. She did not attend upon her physician or at any hospital but, rather, went home and, according to her statement to Dr. Lecker, she stayed in bed for about four days. On December 15th, 1997, she attended upon Dr. Bohemier. She told

Dr. Lecker that she had not reported the December 11th accident to Dr. Bohemier, nor to her family physician, Dr. Blight, as she was afraid of losing her licence. It is clear from the file that she did not tell her case manager at MPIC either. M.R.B.'s statement to Dr. Lecker conflicts to that extent with her evidence before this Commission. She testified that not only had she told Dr. Bohemier of the December 11th incident when she saw him on the 18th, but had begged him to say nothing to MPIC about it. She had told her case manager on December 18th, merely, that she was "scared to be on the road". It was not until March 5th, 1998, that M.R.B. told her case manager of the December 11th incident but then, as now, no evidence has been furnished to MPIC nor to this Commission to indicate the true nature and extent of any new injury, or of an exacerbation of a prior injury, resulting from this second accident. About a year later, repair costs for the Appellant's car of some \$1,600 are reported, but it is difficult to relate these costs to her December 11th, 1997 MVA (except a comment apparently made by M.R.B. to Internal Review Officer Mr. Terry Kumka in October of 1998 that the impact had resulted in "a small amount of damage to the front of her bumper").

Dr. Bohemier completed a progress report following his examination of M.R.B. on February 26th, 1998. In that report, Dr. Bohemier notes that the Appellant was having no more dizziness, although she continued to complain of recurrent neck pains, headaches, numbness in the right hand, throbbing in her left leg, and increased menstrual cramping, bleeding and duration since her November 18th MVA. Dr. Bohemier diagnosed "ongoing spinal joint and soft-tissue dysfunction. Right brachial neuro." He prescribed regular spinal adjustments, daily stretching, daily walking and strengthening once to three times per week, with an estimated discharge in the spring of 1999. Dr. Bohemier also reported that M.R.B. was at work although, he said, with less than full function due to symptoms in the form of headaches. He opined that she was able to work modified duties.

Appellant's Activities, January 1998 to January 1999

M.R.B. testified that Drs. Bohemier and Blight had each told her to increase her activities gradually. She said "I was certainly unable to go back to the Brandon work, so I started a newsletter". We have some difficulty with that comment, since M.R.B. had already testified that her work in Brandon was to have finished at the end of 1997 in any event, and she is reported to have told Dr. Lecker on December 10th, 1997, that she would have been able to handle the job had it been in Winnipeg. It was never made clear to us why, in that event, M.R.B. did not follow her pre-accident occupation in Winnipeg after her Brandon activities had come to an end.

In the interim, M.R.B.'s case manager at MPIC had written to her on March 17th, 1998, to tell her that she was classified as a self-employed temporary earner with a gross yearly employment income (GYEI) of \$[text deleted] and was therefore entitled to bi-weekly Income Replacement Indemnity of \$[text deleted]. IRI, starting on the eighth day immediately following her November 18th accident, was paid up to and including December 9th, 1997, at which date MPIC determined that M.R.B. was "capable of returning to your regular work duties". M.R.B. appealed from that decision to MPIC's Internal Review Officer who, while confirming a termination date of December 9th, 1997, also decided that M.R.B. should be classified as a real estate salesperson at Level 2 (that is to say, one who has worked in that occupation for at least 36 months but less than 120 months), entitling her to an IRI based upon a deemed GYEI of \$[text deleted]. M.R.B. appeals from that decision to this Commission with respect to both the quantum and duration of her IRI entitlement.

The Appellant's testimony was that she had started contacting potential advertisers for the newsletter in the Spring of 1998, the concept being that each customer would pay \$100 to place

an advertisement in the newsletter. She would retain \$35 from each such subscription, and the advertiser would offer a discount or special promotion. The newsletter would be placed at convenience stores. She added “The newsletter was not, in itself, expected to make money for me. It was really a vehicle for me to advertise my own, other services, such as [text deleted]. The newsletter never did get published, although I had intended to do so.” M.R.B. testified that, throughout most of 1998, she frequently and regularly suffered from what she called “pinched nerve headaches”, lasting three to four days at a time.

In November, 1998, M.R.B. started organizing a “[text deleted]” for which, as for the newsletter, she was actually working as an independent contractor for C.P., who operated under the business name “[text deleted]”. The [text deleted] contemplated obtaining contracts with a number of wholesalers who would agree to sell to club members at wholesale prices. M.R.B. would then sell memberships in the club for \$100 each, members would place their orders through her, she would pick up the orders and assemble them at her own home and at other depots, where members could pick up their merchandise upon paying the wholesale price plus 10% that M.R.B. would retain for handling and delivery. (It was never made clear what profit lay in this for C.P.) M.R.B. testified she had everything arranged with the wholesalers and had contacted a number of people who were going to join the club in January of 1999. She had been working about 35 hours per week during the last few months of 1998, “not necessarily 9 to 5, but even midnight to 5 a.m. if that’s when I felt good”. Unfortunately, M.R.B. was unable to fulfill the demands of the [text deleted], she said, because she was not able to fill customers’ orders due to her headaches. They were so bad that she could not drive, did not do much housework and even had to cancel some medical and other appointments. By November of 1998 at the latest, said M.R.B., she was feeling well enough to start planning the recommencement of her construction

business the following Spring; she was “on the road to” putting out her newsletter, completing the organization of the [text deleted] and recommencing her general contracting.

In early January of 1999, M.R.B. testified, she started working for a group called [text deleted], to raise money for an anti-drug program for young people. She had tentatively planned a Spring social, a September golf tournament and a fundraiser to be held in November of 1999 at [text deleted]. Later in her evidence, however, M.R.B. acknowledged that with respect to the fundraising group, “I met them in November 1998, but did not actually start until March and April. I was not able to accomplish much.”

Medical History from February 26th, 1998, to January 1999

Dr. Bohemier provided a further progress report to MPIC as a result of his examination of the Appellant on June 18th, 1998. This report reflects complaints by M.R.B. of recurrent headaches, neck and shoulder pain and stiffness, occasional balance and vertigo problems, with reduced left arm and hand strength. (We note, in passing, that his earlier reports speak of problems with the right hand.) Dr. Bohemier reports reduced range of motion of the Appellant’s cervical and dorsal spine with “fixation subluxation complex” at several points in the cervical and thoracic regions of the spine. He diagnosed “ongoing spinal joint and soft-tissue dysfunction, fixation subluxation complexes”. He recommends chiropractic treatments twice weekly for the following 8 to 12 weeks, once a week for the subsequent 8 to 12 weeks, and twice monthly for a further three to four months, finishing with monthly treatments for a further four to six months. He anticipated a discharge from care by the summer of 1999, rather than the Spring, 1999, discharge he had forecast in February 1998. He reported that the Appellant was at work and that he could identify no risk factors for chronic pain or delayed recovery.

Dr. Blight referred M.R.B. to Dr. Arneja, physiatrist, who saw her on July 31st, 1998. She complained of neck pain, left-sided posterior cervical and occipital headaches, weakness in the left forearm and hand grip, and numbness of the left fourth and fifth fingers since November 18th, 1997. She had told Dr. Arneja that her symptoms were persistent and had not improved, other than the dizziness which had gradually subsided by the end of February, 1998. She had received chiropractic manipulations until July 1st, 1998, at an average frequency of four or five per month. M.R.B. was, at the time of her first meeting with Dr. Arneja, scheduled for a hysterectomy on August 6th of that year for endometriosis and excessive bleeding. Dr. Arneja diagnosed

.....cervical spine strain manifested by interspinous ligamentous tenderness, regional myofascial trigger points and restriction of the movements of the neck. She may have suffered a vertebrobasilar insufficiency manifested by dizziness and trigeminal nerve paresthesias.

Dr. Arneja had recommended gentle range-of-motion and stretching exercises of the neck, preceded by the application of local moist hot packs. He gave her home stretching exercises to do twice daily and started her on a regimen of Cyclobenzaprine, 10 mg daily. He advised her to discontinue aggressive chiropractic manipulations. While recording her statement that she only felt able to work three to four hours per day, Dr. Arneja does not suggest a substantial inability on M.R.B.'s part to perform the essential duties of her occupation by the date of his examination.

M.R.B. was also referred by Dr. Blight to Dr. Norman Hill, professor of neurosurgery at the Faculty of Medicine, University of Manitoba. His neurologic examination of M.R.B. on July 7th, 1998, revealed that

....neck movements are restricted by pain but she does not specifically have pain on extension and rotation of the neck. There is no evidence of weakness of the arm. There appears to be diminished pinprick in the middle and ring fingers of the left hand extending up into the palm. The left biceps reflex is absent.

Dr. Hill had ordered a CT scan of the Appellant's cervical region from which, he reported on October 7th, 1998, "there is absolutely nothing on the CT scan to suggest problems at the level of the spinal cord and cervical nerve roots. This would seem to rule out most serious disease in the nervous system. Unless new symptoms develop, I do not think further neurologic investigation is needed."

On August 6th, 1998, M.R.B. underwent a subtotal abdominal hysterectomy and left salpingo-oophorectomy.

On October 27th, 1998, Dr. Blight advised MPIC's Internal Review Officer that M.R.B. "had an interspinous ligament strain, which is taking some time to settle. She has been given shots by Dr. Arneja which seem to be helping, but it is going to be some further months yet before healing has taken place. She may always have some weakness of this ligament for the rest of her life."

On October 30th, 1998, M.R.B. was again reviewed by Dr. Arneja. She told him that, following the injections he had given her on September 4th, she had noted good pain relief in the left side of the neck. She had been sleeping well and her functional level had improved, although she had not been able to increase her working hours more than four hours per day. (It is unclear to us whether this means "by" or "to" more than four hours.) She continued to experience pain in the right side of the neck which was most of the time mild and intermittent in nature. Dr. Arneja noted that a CT scan of M.R.B.'s cervical spine had revealed no evidence of disc herniation, fracture, subluxation or stenosis of the cervical spine, contrary to reports of Dr. Bohemier. However, Dr. Arneja felt that the Appellant had not completely recovered from her injuries and still had residual trigger points and mechanical neck pain with reduced functional capabilities. He felt that the prognosis for her recovery was good to excellent and that, over the following six

to eight weeks, she would make significant recovery and be able to return to a full-time job with or without some restrictions.

MVA of January 26th, 1999

On this date, M.R.B. was apparently driving her car east on Portage Avenue when the vehicle in front of her stopped suddenly. She was able to stop but the car behind her did not; as a result, she was rear-ended. While her car was pushed forward, it apparently did not collide with the car in front of her. The estimated amount of damage to her car was \$363.43.

When examined by Dr. Arneja on February 10th, 1999, M.R.B. told him that she had been doing very well and was 80 to 90% better in her pain and functional levels and was almost back to work on a full-time basis when the January 26th accident occurred. Dr. Arneja opined that she had sustained

.....soft-tissue injuries of the neck and back manifested by interspinous ligamentous strain and active trigger points of several and neck and back muscles. Clinically, there was no evidence of disc herniation causing radiculitis or radiculopathy.

In his report of March 14th, 1999, to MPIC's case manager, Dr. Arneja added that the January 26th MVA had caused recurrence of soft-tissue pain syndrome, that M.R.B. had developed exacerbation of her neck pain and had also developed back pain with headaches with reduced functional capabilities. He believed that on completion of treatments and resolution of the soft-tissue pain syndrome, M.R.B. would be able to return to her work for the [text deleted]; he was hopeful that, over the ensuing two to three months, she would make a good recovery and be able to return to her work.

MPIC then referred M.R.B. for independent assessments by three different specialists: Dr. Tom Lesiuk, physiatrist; Dr. Christopher Bourque, neurologist; and Dr. Brian Lecker, chiropractor.

M.R.B. was examined by Dr. Bourque on April 16th, 1999. His report, dated April 21st, 1999, contains a brief history of M.R.B.'s 1997 accidents and a précis of her medical history up to and including the accident of January 26th, 1999. Referring to the latter, Dr. Bourque says that "in the first week after the accident she noticed increasing stiffness of her back and neck. She returned to Dr. Arneja with a frozen neck and increased headache (January or February 1999). Over the passage of time, she has improved and has just received another injection from Dr. Arneja.....She was off work from February 7th until March 26th and has subsequently been working three days per week (24 hours per week)." Dr. Bourque's report then notes that M.R.B. was complaining of numbness of her hands, particularly at night, a weakness of grip, a sense of soreness and aching in the shoulders and chronic discomfort of the neck and back. The Appellant also complained of headaches that seemed to stem from her neck pain which, in turn, radiated from the neck into the occipital region. "With these headaches, she tends to have some tearing of the left eye as well as some squinting or dropping of the left eye. Both eyes are bloodshot." This latter statement appears to be a recital of what was said by M.R.B. to Dr. Bourque, rather than his own, clinical observation, in light of the remainder of Dr. Bourque's report which may be summarized this way:

- His neurological examination of M.R.B. was unremarkable.
- As to any myofascial pain syndrome, he could only comment that her neck and shoulder musculature was mildly tender to palpation (a subjective complaint), and there were no objective physical findings to confirm any neurological process.
- He believed that the Appellant had sustained a soft-tissue injury without any significant neurological injury, although it was conceivable that she had experienced some subtle labyrinthine pathology as a result of her initial accident which contributed to her sense of

dizziness. It was also possible that her neck discomfort, presumably reflecting underlying soft-tissue pathology, might have been cause for dizziness.

- CT scans of M.R.B.'s brain as well as of her cervical spine had found no significant abnormalities.
- He did not feel that M.R.B. required any particular treatment that would be suggested by the discipline of neurology, and felt that the parallel disciplines of sports medicine and physical medicine and rehabilitation would be more appropriate in that context.
- He was of the opinion that M.R.B. was capable of resuming her occupation, which both M.R.B. and MPIC had described, simply, as an "entrepreneur". He felt that the Appellant was well motivated but, while sympathetic to her condition, it appeared that her symptoms had been quite protracted and he was not convinced that the insurer should assume full responsibility for the entire period of her disability.

M.R.B. was examined by Dr. Brian Lecker in the context of her January 26th, 1999, accident, on April 21st, 1999. She described herself to him as being self-employed with the [text deleted] and also as campaign manager for the fundraising organization referred to above. She planned on returning to her job as a project manager in June or July, 1999.

She told Dr. Lecker that she had told neither Dr. Bohemier nor Dr. Blight of the December 11th, 1997, accident, being afraid of losing her licence. Dr. Lecker's report contains a fairly detailed medical history given him by the Appellant, who reported that, at the time of his examination, she was 70% improved. Her neck was aggravated by sitting at the computer for long periods, extending her neck back, and by normal stress. However, she was no longer having adjustments in the neck region. Her headaches had decreased both in frequency and intensity, and were now

limited to about once weekly. She had been numb in her right second and third fingers after her accident in January, 1999, but that had resolved with Dr. Arneja's injections. Her lower back had not been specifically injured in that accident. She was working 24 hours per week and planned to return to full duties within a month. She was able to perform all of her duties but had changed those duties so that she does not have to do heavy lifting. She was able to perform all domestic duties although vacuuming and cleaning her bathtub produced soreness. She had started dancing again. She was "definitely getting better".

After detailing the results of his physical examination of the Appellant, Dr. Lecker reported that:

- In the absence of clinical notes from either Dr. Bohemier or Dr. Blight respecting the accident of December 11th, 1997, Dr. Lecker felt unable to relate any injuries to that accident.
- The MVA of January 26th, 1999, resulted in soft-tissue strain type injury, primarily to the cervical dorsal spine, consistent with a Grade 2 Whiplash Associated Disorder.
- M.R.B. had resolving soft-tissue injuries of primarily a myofascial nature, with no nerve-root signs. While she had symptoms suggestive of right shoulder subacromial bursitis, that latter finding was not consistent with the mechanism of injury.
- He suggested introducing some additional forms of exercise, aimed at scapular extension and stabilization, as well as a regular activity such as swimming or 'aqua fitness'. He also felt that with continued exercise, chiropractic care diminishing from weekly to once every two weeks for the mid-dorsal area, along with the treatment she was having from Dr. Arneja, she should be able to self-manage within about three months.
- "As for work, I would recommend a return to full duties by May 1st, 1999. If this is not achievable, then an occupational therapy work assessment should be undertaken."

Dr. Lesiuk performed an independent medical examination of the Appellant on April 30th, 1999. He provided a lengthy report, bearing date June 4th of that year. M.R.B. reportedly described herself to him as the sole employee of a marketing and promotions company. She listed the physical demands of her job as being light in nature, including the lifting of less than 30 pounds, a lot of computer work and a lot of telephone work; sitting at her desk and computer for more than half an hour at a time would aggravate her back and neck symptoms. She had increased her work time to 32 hours per week, four days per week, and felt that she was almost back to her pre-January 26th, 1999, base line. Her goal was to work about 40 to 50 hours per week.

Dr. Lesiuk's report goes on to detail the results of his physical examination of the Appellant and contains the following conclusions:

- There were no objective findings present, but the subjective symptoms elicited suggested
 - (i) a mild myofascial pain syndrome in the region of the left trapezius;
 - (ii) the likely presence of mild cervical spondylosis;
 - (iii) the subjective report of decreased sensation in the fourth and fifth fingers of the left hand, of uncertain significance, might be related to some ulnar nerve involvement; and
 - (iv) a possible right carpal tunnel syndrome.
- Given the number of accidents in which the Appellant had been involved, it was difficult to state with complete certainty whether there was any relationship between her accidents of December 11th, 1997, and January 26th, 1999, and her current symptoms. Soft-tissue and/or muscle injuries, although probably re-aggravated by each consecutive accident, should have healed with aggressive, proper treatment and with time, without residual impairment. Dr. Lesiuk felt that M.R.B. was currently at her pre-January 26th, 1999, base line with respect to her symptoms.
- M.R.B.'s prognosis for complete resolution of pain complaints was fair. She was close to but had not reached her maximum medical improvement from a physical point of view. It was

probable that she would achieve further symptomatic reduction with other rehabilitative efforts.

- M.R.B.'s prognosis for complete restoration of function was good. Dr. Lesiuk was of the view that, in her then present condition, she was capable of resuming her pre-accident occupation which she was then engaged in, with minor modifications.
- M.R.B. had no permanent impairment, nor any disability with regard to activities of daily living.
- Dr. Lesiuk recommended limited "judicious needling treatment" of the left trapezius, a general fitness program with emphasis on the neck and shoulder muscles, and a strengthening program directed to the bilateral anterior and exterior rotator muscles. He also suggested the possible benefit of an evaluation of her work station, to maximize her productivity and decrease movements in that work area that might aggravate her painful neck and back.
- Dr. Lesiuk was of the view that M.R.B. was physically capable of resuming her then present occupation as an entrepreneur.

On May 7th, 1999, M.R.B. was again reviewed by Dr. Arneja, complaining that the aggressive movement testing of her neck and shoulders conducted by Dr. Lesiuk had triggered a regression, producing more pain in those areas and reducing her working tolerance to only three to four hours per day. She was back, she felt, to only about 50% of her normal level of functional capacity. Dr. Arneja, noting trigger points in the left sternocleidomastoid and trapezius muscles bilaterally, with a 15% reduction in range of motion of the neck in all planes, injected the trigger points with Depo-Medrol, following that up with stretching exercises and the application of moist hot packs. M.R.B. was instructed in daily home stretching exercises. On June 25th, at a further review by Dr. Arneja, the Appellant reported good pain relief but low tolerance; she was

able to work three days per week from 24 to 32 hours per week and was planning to start work as a commercial real estate agent. Dr. Arneja recommended a four-week, supervised reconditioning exercise program, followed by a Functional Capacity Evaluation.

July-September 1999

Following Dr. Lesiuk's recommendation, M.R.B.'s case manager at MPIC arranged for an ergonomic assessment at M.R.B.'s home computer work station. The report of Ms. Lorraine Mischuk, occupational therapist, notes that some temporary modifications of the work station had been made but recommended the provision of an ObusForme back cushion, a monitor stand and a foot stool. MPIC approved those recommendations and agreed that the equipment would be supplied at its expense, as well as payment for the fitness program that Dr. Lesiuk had recommended.

On July 13th, 1999, M.R.B. advised MPIC that she no longer required any further treatments from Dr. Arneja. That decision was effectively confirmed by a letter from Dr. Arneja to this Commission bearing date August 8th, 1999.

Also in July of that year, M.R.B. applied for a salaried position at [text deleted], at a monthly salary of \$[text deleted]. The duties of that position involved the overall management or supervision of some leased properties that [text deleted] owned.

On August 3rd, 1999, the case manager wrote to M.R.B. to tell her that, at the date of her January 26th, 1999, MVA she was classified as a non-earner and, since that MVA had not rendered her unable to hold an employment that she would have held had the accident not occurred, she was not entitled to Income Replacement Indemnity during the first 180 days following that accident.

On November 29th, 1999, MPIC's Internal Review Officer rendered a decision, confirming the August 3rd, 1999, decision of the case manager to the effect that M.R.B. was a non-earner at the time of her January 26th, 1999, MVA, and was therefore not entitled to IRI during the first 180 days post-accident. The Internal Review Officer also confirmed the case manager's decision that, since M.R.B. appeared able to perform the essential duties of her entrepreneurial enterprise well within those first 180 days, she was not entitled to IRI upon the expiry of that period.

MVA of September 2nd, 1999

On this date, M.R.B. was travelling eastbound on Selkirk Avenue in the second lane from the curb. The right-hand curb lane was largely occupied by parked vehicles. She had just passed the intersection of Selkirk Avenue and Salter Street, travelling at about 40 to 50 km. per hour, when the driver of a Chevrolet pick-up truck that had been parked in the right-hand lane suddenly caused his vehicle to pull out, immediately in front of M.R.B.'s vehicle. She was unable to avoid the collision and the front passenger's side of her vehicle struck the front driver's side of the truck. Her airbag deployed, she reported injuries to her arm, chest, face, throat, tongue, neck and back, as well as aggravation of her previous injuries to her neck, shoulders and upper back. Her car was written off.

At the time of this fourth accident, M.R.B. had been offered employment by [text deleted] earlier that same day. [text deleted] had given her a cheque for \$[text deleted] to enable her to apply for her real estate agent's licence. While her employment was subject to her ability to pass the standard examination and obtain her licence, it is clear from her previous experience in Saskatchewan and in Manitoba that this would have presented no difficulty to her.

On November 19th, 1999, the case manager wrote to M.R.B. in the context of the September 2nd MVA, to tell her that the insurer had determined that M.R.B. was a non-earner at the time of her September 2nd accident, that she had not been rendered, by that accident unable to hold an employment that she would otherwise have held during the first 180 days post-accident, and that she was therefore not entitled to any IRI. She sought and obtained an Internal Review of that decision, which was confirmed.

Events after MVA of September 2nd, 1999

By letter of December 23rd, 1999, MPIC's Internal Review Officer dealt with claims that had been filed by M.R.B. arising from her MVAs of December 11th, 1997, and September 2nd, 1999. With respect to the former, the Internal Review Officer apparently felt unable to conclude that the December 11th, 1997, accident had ever taken place or, if it had, that there were any resultant injuries. For some reason, the Internal Review Officer does not seem to have been provided with a copy of a letter, dated November 4th, 1999, and obtained by the Appellant from the City of Winnipeg Public Works Department, clearly indicating that a "hazard marker" sign had been damaged at the very location where M.R.B. claimed her vehicle had collided with just such a sign.

Despite that, the City of Winnipeg wrote to MPIC on December 20th, 1999, to say that it had no knowledge of any accident happening at the intersection and that the post had been changed "as a matter of maintenance. There is nothing that indicates it's [*sic*] state of repair was caused by an accident and there is no record as to who, or if someone notified them, as to the condition of the sign." The City of Winnipeg had also written to MPIC on June 15th, 1999, denying that there had been any losses, in the form of damage to signs, at that particular location at any time either

on December 11th, 1997, or within 15 days on either side of that date. Yet, the November 4th, 1999, letter from the City to M.R.B. clearly says that the sign was repaired on December 17th, 1997 - a clear case of a bureaucracy's left hand being unaware of its right hand's activities. Ironically, it seems to have taken the City's Traffic Services Department three hours to complete the repair of the sign and 2 hours to locate the resultant work sheet.

We are satisfied that, for the purposes of her claim under the Personal Injury Protection Plan, M.R.B. has established the fact of the collision of her vehicle with that hazard marker sign on December 11th, 1997. What is less clear, due to the absence of clinical evidence on the point, is the physical effect of that collision upon M.R.B.

With respect to the September 2nd, 1999, MVA, the Internal Review Officer dealt with the question whether M.R.B. was properly classified as a "non-earner" at the time of that accident. He agreed with that classification.

The Internal Review Officer also went on, however, to point out that the adjuster's notes clearly raised the question of M.R.B.'s possible entitlement to IRI under the provisions of Section 85(1)(a) of the MPIC Act. That subsection entitles a non-earner to IRI if it can be established that the claimant was prevented by the MVA from holding employment during the first 180 days after the accident. After touching upon the available evidence, the Internal Review Officer said

A fairly high standard of proof is required to establish an entitlement to IRI pursuant to Section 85(1)(a) of the Act, and I simply cannot conclude on the basis of the material before me that the standard has been met in this case.

M.R.B. testified that, following her accident of September 2nd, 1999, many of her earlier symptoms reappeared or were exacerbated. She had established a series of chiropractic and physiotherapy programs for herself; MPIC paid for the physiotherapy but not the chiropractic

treatments. In that 4th collision, she testified, the airbag in her vehicle had exploded in her face, leaving her with headaches, a stiff back, temporomandibular joint problems, neck pain and major limitations in the range of motion of her cervical, dorsal, lumbar and pelvic regions. Dr. Bohemier, on October 2nd, 2000, was still recommending daily chiropractic manipulations for problems related to her September 2nd, 1999, MVA which, he opined, would need another 12 to 18 months or more of regular treatments. He felt she would be able to return to work in “May of 2000” (he obviously means 2001). It should be noted that, although this last report of Dr. Bohemier purports to relate to M.R.B.’s accident of September 2nd, 1999, she had in fact sustained yet another motor vehicle accident on January 5th, 2000, which, although not relevant to this present appeal, may account for some facets of Dr. Bohemier’s October 2nd report.

M.R.B. testified that, during the year 2000, on days when she felt reasonably well “I felt I could move mountains”. However, her eyesight deteriorated seriously - a fact of which we have no medical evidence nor anything to relate it to any of her MVAs.

By March of 2000 she had started to feel better; she had taken physiotherapy, chiropractic adjustments, and Dr. Arneja’s injections, and was feeling better than she had felt in the previous three years; she was planning her return to general contracting. She started general contracting or project management in April of 2000 and received her first earned income from those endeavours in July, in the amount of \$1,500. She had earned \$[text deleted] in 2000 up to the date when her appeal was heard.

M.R.B. further testified that she believed herself capable of gainful employment by May of 2000; April had been the pre-planning stage of her renewed enterprise. She has three house constructions lined up for the year 2001. She seeks the following remedies:

- (i) payment of Income Replacement Indemnity for the year 1998, based upon Gross Yearly Employment Income of \$[text deleted] as disclosed in her 1997 income tax return;
- (ii) to be classified either as a temporary earner or as a part-time earner for 1999, rather than as a non-earner, since she was in the course of building the business of the [text deleted] and the newsletter;
- (iii) payment of IRI for the year 1999, based upon what her counsel submits should be “her level of income during her last successful year”; and
- (iv) the continuance of her IRI, upon the foregoing basis, through until the beginning of May, 2000.

Evidence of Dr. Gerald Francis Joseph Bohemier

Dr. Bohemier testified that he had known M.R.B. as a patient since some time in 1993. When he had first seen her two days after her accident of November 18th, 1997, she had complained of acute neck pain, headaches, dizziness, vertigo, fatigue, lack of concentration, a flare-up of past shingles problems, pain in her left posterior thigh, low back pain, mid back pain, bilateral shoulder pain and right scapula pain. His primary concerns at the time had been the acute neck pain, dizziness and vertigo of which the Appellant had complained, although, even then, he had felt that a likely date for her return to work would have been in January of 1998. He had treated M.R.B. from November 20th, 1997, until some time in June of 1998, 43 times. Treatment had then been suspended because neurological problems were not resolving fast enough and MPIC wanted the Appellant to try some other treatment modalities. M.R.B. had told him of her December 11th, 1997, MVA on or about December 15th of that year, but had begged him not to tell MPIC. He had made no note of that second accident in his clinical records. He had not seen M.R.B. between June 25th, 1998, and January 22nd, 1999; he had given her a further 34 adjustments between the latter date and August 16th, 2000.

Dr. Bohemier said that, to the best of his knowledge, M.R.B. had always been involved in real estate sales.

Dr. Bohemier's further evidence was that, when he had examined the Appellant on February 2nd, 1999, following her MVA of January 26th of that year, her symptoms had been substantially the same as those resulting from her 1997 accidents. Signs included dizziness upon cervical extension, which he took to be an indication that the MVA of January 26th, 1999, had caused a recurrence of her old problem. Almost all of M.R.B.'s symptoms were from exacerbations of former MVA-related problems. His examination of the Appellant on October 2nd, 2000, reflected injuries or problems arising from MVA of September 2nd, 1999. Here, too, she had presented much the same symptoms as before, plus some additional injuries from the deployment of her vehicle's airbag.

Dr. Bohemier testified that any time someone sustained an injury to soft or connective tissue, repair with normal tissue was not possible. Instead, repair took the form of scar tissue which, while strong, lacked the elasticity of normal tissue. M.R.B. would never recover fully; she would always have recurrent problems, he thought. The damage to her joints and around her nerve roots that he believed had caused her vertigo would attract calcium deposits and would bring about arthritic degenerative process; that would never get better. Multiple traumas would merely have hastened the foregoing process.

Discussion

We must turn, first, to the Appellant's accident of November 18th, 1997, since several queries arise from it. The first query is whether she was properly classified and given the correct

occupation by MPIC for purposes of determining her Income Replacement Indemnity. We do not believe that she could properly be classified as a real estate salesperson since, so far as we can tell from the evidence, her involvement in sales during the year immediately preceding this first accident was minimal. Rather, she was properly classified as a project manager.

Was she classified as a ‘temporary’ earner - that is, one who has been employed for at least 28 hours per week but for less than one year before the day of the accident? The evidence satisfies us that M.R.B. had been a project manager since October or November of 1996 and so had pursued that occupation for one full year before her November 18th accident. Therefore, by virtue of Section 81(2)(a)(ii) of the MPIC Act, she became entitled, as a full-time self-employed earner, to Income Replacement Indemnity

determined in accordance with the regulations for an employment of the same class, or the gross income the full-time earner earned from her employment, whichever is the greater

That finding, in turn, gives rise to another query, since there is no specific classification of “project manager” in Schedule C to Regulation 39/94. None of the categories listed under construction trades occupations is in any way applicable to M.R.B.’s former occupation, yet we are not prepared to find that Category No. 1145 - “Management Occupations, Construction Operations” - is entirely suitable, either. In our view, this latter classification contemplates the hands-on kind of general contractor who hires all his own sub-trades (M.R.B. testified that her clients made the selection of sub-trades from quotations that she obtained), hires his or her carpenters, labourers and non-mechanical trades, and maintains a payroll. M.R.B. had no employees and at no point that we are aware of did she come close to earning the income that Schedule A to Regulation No. 39/94 provides as a deemed employment income for a Level 2 person in that category. We find that a more appropriate classification for M.R.B. would fall

under the head of “Other Managers and Administrators, Not Elsewhere Classified”, at Level 2, adjusted for 1997.

The next question arising with respect to the Appellant’s MVA of November 18th, 1997, is whether she was, in fact, able to resume her occupation as a full-time, self-employed project manager on December 9th of that same year. We have concluded, although not without some hesitation, that she was not. Dr. Lecker, as well as MPIC’s medical consultant, Dr. Michael MacKay, both speak of her working reduced hours, but we have already noted that this was impracticable, at least on a daily basis, until December 31st when her Brandon work was scheduled to have been completed. She was able to visit Brandon on three occasions between November 18th and December 11th, 1997, and was also able to contact some of her clients and the sub-trades by telephone but this did not, in our respectful view, amount to an ability to ‘perform substantially all the essential duties of her work’ nor, so far as we can tell, did her activities between November 18th and December 11th produce any income except, perhaps, to consolidate her entitlement to monies she had earned earlier in the year.

That takes us to the second accident on December 11th, 1997. Here, the Commission is greatly hampered by the absence of any physical evidence that sheds much light on the damage caused by the second accident either to M.R.B. or to her vehicle. We have no report of any inspection of that vehicle, nor any claim for vehicular damage, until much later in 1998 and, even then, no evidence that the damage then reported was caused by the MVA of December 11th, 1997.

More to the point, since it is M.R.B.’s injuries rather than those of her vehicle that are at issue here, all that we have by way of medical or para-medical evidence between November 18th, 1997, and October 30th, 1998, are two reports from Dr. Bohemier. In his examinations of the

Appellant on February 26th, 1998, and, again, on June 18th of that year, he shows M.R.B. as being back at work. In his February report, Dr. Bohemier describes “less than full function due to symptoms and/or functional deficits (headaches)”; he describes her as a builder and says she is able to “work modified duties”. This contradicts the evidence of M.R.B. herself. By the time of Dr. Bohemier’s examination of the Appellant on June 18th, 1998, she does not seem to have improved much since February although, when asked to identify any risk factors for chronic pain or delayed recovery, Dr. Bohemier notes “none”. This seems to contradict the evidence that he gave us orally, when he spoke of the cumulative effect of the multiple traumas to which her body had been subjected over the years. Dr. Bohemier is still describing his patient as a “builder” in a further report in September of 1998.

M.R.B. herself, although testifying that she had several areas of pain through 1998, also testified that **the** debilitating factor throughout most of that year was her headaches.

Although M.R.B. takes great issue with the report of Dr. Dominique, arising from his examination of the Appellant on December 9th, 1997, the fact is that Dr. Dominique’s conclusions seem to be corroborated by the subsequent report of Dr. Norman Hill.

Another troublesome aspect of this entire series of claims is that, although M.R.B. was apparently fully functional and, indeed, working very long hours under extremely stressful circumstances prior to her November and December accidents in 1997, she is at pains to emphasize, in a letter of December 15th, 1998, to the Internal Review Officer, that she had major residual problems from all of her previous accidents. She speaks of having been refused life insurance in 1991 “due to what they [a life insurance company] thought was a heart condition”, although she says that subsequent tests confirmed that her problem was due to “muscle spasms in

my back that came around into the chest cavity”. She had gone to a walk-in clinic with severe chest pains although here, too, her care-givers apparently decided that the real problem was with her back rather than her heart. “I have had an ongoing problem and have learned to manage the pain and problems associated with them. However, every time the neck area is jarred (as in these two MVAs) it further exasperates [*sic*] the problem.” The further question that these facts raise, therefore, is whether, and at what point, M.R.B. was restored to her pre-November 18th, 1997, condition, in the context of her functional capacity. In fact, there is ample evidence that any dizziness that might, possibly, have been caused by one or the other of her first two accidents had gone by February 26th, 1998. Other than the reports of Dr. Bohemier of February 26th and June 18th, 1998, referred to earlier, there is precious little by way of medical evidence until we get to Dr. Arneja’s report of October 30th, 1998. M.R.B. testified that she had started work on February 10th, 1998, trying to organize the newsletter for C.P. - she described her new career to her case manager as that of a ‘consultant’ but, from her own evidence and that of C.P., it seems clear that M.R.B. had not reached a condition that would have allowed her to return to the project manager’s occupation that she had previously enjoyed.

We must then have recourse to the report of Dr. Arneja bearing date October 30th, 1998. He had seen M.R.B. first on July 31st, 1998, when he diagnosed “cervical spine strain manifested by interspinus ligamentous tenderness, regional myofascial trigger points and restriction of the movements of the neck”. On September 4th, 1998, he again saw M.R.B. who had, on August 6th, 1998, undergone her hysterectomy as noted above. His diagnosis was unchanged and, with a treatment involving needling of her trigger points along with gentle range-of-motion and stretching exercises, she improved well. By October 30th, 1998, she had shown continued improvement and Dr. Arneja opined that, over the following six to eight weeks, she would be able to return to a full-time job “with or without some restrictions”.

We are conscious of the fact that, at the times of Dr. Arneja's examinations of M.R.B. in September and October of 1998, she was still recuperating from her major surgery that was unconnected with any of her motor vehicle accidents. It is clear that, from the enforced inactivity brought about by that surgery, M.R.B. became even more deconditioned than had been the case before the surgery. We find that, although she may well have continued to require treatments from Dr. Arneja, M.R.B. had attained an ability to perform the essential duties of her full-time self-employment as a project manager by August 5th, 1998, immediately prior to her surgery. We draw that conclusion from a careful reading of Dr. Arneja's reports of July 31st and October 30th, and from her own testimony. She will therefore be entitled to IRI from November 26th, 1997, (seven days post-accident) to August 5th, 1998, both inclusive, by applying Section 81(2)(a)(ii) as noted above, and by classifying her at Level 2 under "Other Managers and Administrators, Not Elsewhere Classified".

At the time of her third accident, on January 26th, 1999, M.R.B. had unfortunately become obliged to rely upon social assistance and was, therefore, a non-earner within the meaning of the MPIC Act and Regulations. Section 85(1)(a) would not have been applicable, since she was not deprived of any employment that, but for this third accident, she would have held during the first 180 days thereafter.

After the first 180 days following her January 26th, 1999, accident (i.e., after August 1st of that year), we adopt the view of MPIC's Internal Review Officer at page 5 of his decision bearing date November 29th, 1999:

The independent reports from Drs. Lecker, Bourque and Lesiuk all confirm an ability to perform the essential functions of your entrepreneurial enterprise well within the first 180 days. There is nothing in these reports to suggest that the respective writers did not have

a good understanding of the types of physical activities required by your business enterprises. The conclusions in these reports are consistent with the remarks and prognostications set out in the two most recent reports from your treating physicians (the March 11th, 1999, report from Dr. Blight and the March 14th, 1999, report from Dr. Arneja).

We therefore find that M.R.B. is not entitled to any income replacement benefits arising from her accident of January 26th, 1999.

At the time of her fourth accident, on September 2nd, 1999, M.R.B. was also a non-earner but, quite clearly, would have held an employment shortly thereafter. True, that employment was contingent upon her passing her real estate agent's examinations, but she had already done that in both Saskatchewan and Manitoba. She had allowed her Manitoba licence to lapse, but would clearly have requalified here. Her evidence was that she had been hired by Mr. R. at 5 p.m. on September 2nd, 1999, subject only to her ability to obtain her licence from the Manitoba Securities Commission and become a member of the Winnipeg Real Estate Board. Section 85(1)(a) therefore applies. We understood her testimony to be that she was to have been employed by Mr. R. to manage his leased properties for a flat fee of \$[text deleted] per month and, as well, would have been able to make sales of properties for which she either had obtained the listings herself or of which listings were available to her through the multiple listing service of the Winnipeg Real Estate Board or 'in house'. Mr. R. gives a somewhat different version: his letter tells us that M.R.B. was to be paid on commission but that he offered her a \$[text deleted] per month draw against commissions to be earned.

From an analysis of M.R.B.'s own testimony and of Dr. Arneja's clinical notes spanning the period from September 24th, 1999, to March 3rd, 2000, we find that, by the latter date at the very latest, M.R.B. was capable of holding the employment offered to her by Mr. R. - an employment that, he said on November 5th, 1999, was still available to her - as a real estate

agent and, perhaps, property manager. Section 110(1)(c) will therefore apply to terminate on March 3rd, 2000, the IRI to which, we find, she was entitled from September 2nd, 1999, but subject to the deductions noted below. This portion of M.R.B.'s claim will therefore be referred back to MPIC's case manager, for calculation of the amount of IRI to which she is entitled for the foregoing period. MPIC's case manager may need to consult Mr. R. for assistance in determining the income that M.R.B. might reasonably have been expected to earn during the period of entitlement.

Summary

1. Although Drs. Dominique and Hill found no neurological abnormalities upon their examinations of M.R.B., we find that her history of multiple MVAs combined with the physical and emotional stresses to which she was exposed during 1997, left her much more vulnerable to what, in most other drivers, would have been the comparatively minor trauma of her MVA of November 18th, 1997. In consequence, she had not recovered to the point of being able to return to work on a full-time basis by the date of her second MVA on December 11th, 1997.
2. We accept the Appellant's evidence that the December 11th MVA did occur and that, in consequence, she continued to be substantially unable to perform the essential duties of her former employment until August 5th, 1998. From that period, however, the months of January and February 1998 must be omitted, since the evidence indicates that M.R.B. had planned to be off work for those two months in any event and was therefore not deprived of income that she might otherwise have earned during those months. There will also need to be deducted, from the IRI to which M.R.B. is entitled for the year 1998, any monies that she earned while working as a consultant for C.P. of [text deleted], since C.P. indicates earnings of about \$[text deleted] per month. She was, on November 18th, 1997, a full-time, self-

employed project manager under Category 1149, Level 2 of Schedule C to Manitoba Regulation No. 39/94. Her GYEI will therefore be calculated according to the provisions of Section 81(2)(a)(ii), from November 26th, 1997.

3. On January 26th, 1999, the date of her third MVA, M.R.B. was a non-earner. She had no entitlement to IRI for the succeeding 180 days, nor for any time thereafter related to this accident.
4. On September 2nd, 1999, although a non-earner, M.R.B. was deprived by that fourth MVA of employment that she would have held had the accident not occurred.
5. The file will therefore be referred back to MPIC's claims manager for the recalculation of the IRI to which M.R.B. has been found entitled during the periods noted above.

MPIC's case manager may need to consult Mr. R. in order to determine the income that M.R.B. might reasonably have been expected to earn during the period of entitlement.

Dated at Winnipeg this 29th day of January, 2001.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.