

# Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]**  
**AICAC File No.: AC-97-30**

**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 G. McKelvey  
[Text deleted], the Appellant, appeared in person

**HEARING DATE:** March 3rd, 1998

**ISSUE(S):** Sundry claims for permanent impairments.

**RELEVANT SECTIONS:** Sections 126, 127, 129(1) and 130 of the MPIC Act, and Sections  
4(a)(iv) and 4(b) of Division 7 of Schedule A to Regulation 41/94.

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.**

## REASONS FOR DECISION

The Appellant, [text deleted], was the victim of a motor vehicle accident when, on October 20th, 1994, the bicycle that she was riding was in collision with a car, resulting in her left ankle being pinned under one of the car's tires.

There is no question that [the Appellant] sustained some injuries, including some scarring and recurring bouts of edema. She was awarded \$8,000.00 for scarring to her lower limb

and a further \$1,000.00 for what the internal review officer refers to as 'damaged lymphatics'.

At the commencement of the hearing of her appeal, [the Appellant] advised this Commission that she was seeking:

- (a) an award for a permanent impairment in the form of bursitis of her left hip;
- (b) an award for muscular atrophy of the left leg;
- (c) an additional award for scarring to the left buttock; and
- (d) an increased award for her edema problem.

The Commission has carefully examined numerous medical reports, including those of: [text deleted], the physician who first examined [the Appellant] when she was admitted to [hospital] immediately after the accident; [text deleted], a specialist in internal medicine and endocrinology at [text deleted] Medical Centre who has been acting as [the Appellant's] general practitioner since the accident; [text deleted], a specialist in vascular surgery at the [text deleted] Clinic who examined [the Appellant] on a reference from [text deleted], a physiotherapist at [text deleted] Physiotherapy and Sports Fitness Clinic who worked with [the Appellant] in July of 1996 on a reference from [Appellant's doctor #3] ; [Appellant's doctor #3] himself, a physician with the [text deleted] Clinic; [text deleted], a chiropractor who had been treating [the Appellant] sporadically in 1985, 1990 and 1991 and, more frequently, from January through August of 1995 and on a number of occasions thereafter. As well, we have had the benefit of a careful and detailed analysis of [the Appellant's] post-accident medical history prepared by [text deleted], the medical coordinator of Claims Services for MPIC, the oral testimony of [Appellant's chiropractor] and, of course, that of the Appellant herself.

It must be emphasized that we are not concerned, in this appeal, with any claim for income replacement. Rather, each aspect of [the Appellant's] claim is based upon an alleged, permanent impairment which, by definition, includes a permanent anatomicophysiological deficit and a permanent disfigurement.

Turning, then, to the several bases of [the Appellant's] claims, we find the following:

#### The Bursitis

In this context, we note, firstly, that the question of bursitis was not addressed at any internal review and, absent a decision of an internal review officer on the point, this Commission has no mandate to deal with it. However, there are two other aspects to this part of [the Appellant's] claim that we should note. Firstly, [Appellant's chiropractor], upon whose evidence [the Appellant] places much reliance, has expressed the opinion that any bursitis suffered by [the Appellant] secondary to her accident has now been completely healed. [Appellant's chiropractor], with whose evidence, we might add, we were strongly impressed, added that, in his opinion, the problem that she was experiencing with her hip would more properly be described as capsulitis, or an inflammation of the tissues surrounding the head of the femur. Secondly, whether the problem is properly designated as bursitis or capsulitis, the fact is that it does not constitute a 'permanent anatomicophysiological deficit' and would not, in any event, qualify for an award for permanent impairment.

### Muscular Atrophy

While there was, at one point, some evidence of a very slight atrophy resulting from lack of full use of [the Appellant's] left leg, the more recent evidence is that that problem has also been overcome, now. Even if it can be validly claimed that [the Appellant's] left leg is only 90% restored to its former muscular bulk and strength, all of the medical evidence points to the fact that such a deficit, even if it exists today, is far from permanent and can be overcome with continued exercise.

### Scarring

[The Appellant] suffered four major scars. She has an 11 centimetre dark blue scar on her left knee; she has two scars on her ankle, one of which is 1 centimetre long and the other is 5 centimetres long; the Regulations under the Manitoba Public Insurance Corporation Act provide a maximum award for scarring to any one lower limb of 8% of the maximum which, at the time of [the Appellant's] accident, was \$100,000.00. Since the scars referred to above covered approximately 13 square centimetres, [the Appellant] was entitled to the maximum award, namely \$8,000.00.

In addition to the scars described above, [the Appellant] also sustained a scar on her lower left buttock. MPIC takes the position that the buttock forms part of the lower limb and that, since [the Appellant] has already been paid the maximum allowable for scarring to a lower limb, she is not entitled to any further compensation in that context. [The Appellant] argues that the buttock

forms part of the trunk and that, therefore, she is entitled to an additional award for 'conspicuous cicatricial impairment' calculated as a percentage of \$100,000.00, at a rate of 0.5% for each square centimetre of scarring. The issue, then, boils down to whether the buttock forms part of the trunk or part of the lower limb.

We were provided, by counsel for MPIC, with an extract from Dr. Richard S. Snell's text on Clinical Anatomy for Medical Students, which makes it clear that, in the view of that author at least, the lower limb includes the buttock. However, [the Appellant] takes issue with the fact that she had not been made aware of that definition, despite seeking one from the insurer, before the hearing of her appeal, and felt that we should disregard the material provided by counsel for the insurer. It would not, however, be necessary for us to adopt the position urged upon us by [the Appellant], since our own reading of several medical texts convinces us that the buttock or nates are properly described as the prominence formed by the gluteal muscles on either side and, of necessity, form part of the lower limb. That being so, we find that this part of [the Appellant's] claim must also fail.

### Edema

It is clear that, since her motor vehicle accident, [the Appellant] has suffered from recurring bouts of edema, particularly if she is required to sit in one place for any extended period or if she undertakes one of her favourite pastimes of gardening. [Appellant's chiropractor] was at pains to point out that he had not noticed any swelling resulting from edema on every occasion that

he treated [the Appellant] but, rather, from time to time.

[Appellant's vascular surgeon] , in a report to [Appellant's doctor #2] of July 4th, 1995 after examining the results of a venogram, notes that there were 'incompetent perforators', but that there was no deep venous thrombosis nor any clinical varicose veins. [Appellant's vascular surgeon] concludes with the comment "I guess the injury has disrupted a few more lymphatics and given her a slightly greater tendency to swell on the left than the right. I reassured her that this is not serious and I gave her a prescription for a below-knee Sigvaris support stocking.....Unfortunately, I have nothing else to offer her".

[Appellant's doctor #2], in a letter to the insurer of June 13th, 1996, says that "The left leg again was larger than the right and this degree of edema may have been caused by the disruption of lymphatics". In his subsequent letter of August 19th, 1996, [Appellant's doctor #2] says of his patient that "The swelling she experiences is permanent. In a further letter of March 9th, 1997, [Appellant's doctor #2] refers to the venogram and adds that the lymphatics supply, while of lesser importance than the deep venous system of the calf, "may be a cause for some swelling". He notes that he has followed [the Appellant] since her motor vehicle accident and has seen her on a number of occasions. The leg has improved somewhat, he says, but there continues to be leg swelling that may have been created by the accident. He examined her leg on a number of occasions and found definite swelling. In another letter of February 14th, 1996, [Appellant's doctor #2] makes the comment that "There is significant damage to the left leg in that the drainage through the lymphatics and possibly the venous system has been compromised".

As noted above, the Corporation has awarded [the Appellant] compensation of 1%, or \$1,000.00, for what (despite its reference to 'damaged lymphatics') the Corporation obviously views as superficial venous insufficiency. However, based in part upon the reports of [Appellant's vascular surgeon] and [Appellant's doctor #2], and in part upon the oral testimony of [Appellant's chiropractor], we are persuaded that, on a balance of probabilities, the problem from which [the Appellant] appears to suffer is more properly described as a lymphatic insufficiency of a minor nature, reasonably well controlled by standard medical or, in this case, chiropractic, treatment. We therefore find that [the Appellant] is entitled to an award of 3% for that impairment, rather than the 1% for which she has already been compensated. The matter is therefore referred back to MPIC's claims supervisor, [text deleted], for the appropriate adjustment.

### Miscellany

Despite her statement at the beginning of the hearing of her appeal, wherein she limited her grounds of appeal to the four that we have noted above, in the course of the hearing it became apparent that [the Appellant] wished us to consider two other areas of concern. The first of these was an alleged shortening of her left leg. No evidence of any kind was adduced, nor was any apparent from the file, to indicate that her left leg was measurably shorter than the right. Secondly, [the Appellant] claimed that she had sustained neurological damage. She based that claim upon the belief that we should view the entire body as one whole, that every part of her body is connected, in one way or another, to her nervous system, and that damage to any one part of the body must, necessarily, entail a measure of neurological damage. In response to that claim, we content ourselves

with the comment that on the facts available to us that relate to those aspects of [the Appellant's] appeal in which we have jurisdiction, we find no evidence of any permanent impairment except to the extent referred to above.

[MPIC's doctor], in his analysis of the reports of all of the other medical and paramedical caregivers of [the Appellant], refers to the report of [text deleted], the physiotherapist. [Appellant's physiotherapist #2] documents a limitation in the range of motion of [the Appellant's] left ankle - a mild limitation at the subtalar and tibiotalar joints. [MPIC's doctor] recommends an additional 2% for each of those joints, for a total of 4%. We may say that we concur but that, since this matter was not dealt with at an internal review level, we are without jurisdiction to deal with it. It is our understanding that [MPIC's doctor's] recommendation has been referred back to the adjusting team for their decision.

Dated at Winnipeg this 5th day of March 1998.

**J. F. REEH TAYLOR, Q.C.**

**CHARLES T. BIRT, Q.C.**

**LILA GOODSPEED**