

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-21**

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 Mr. Tom Strutt;
[The Appellant], appeared on his own behalf

HEARING DATE: April 6, 1999

ISSUE: Whether bodily injury caused by an automobile

RELEVANT SECTION: Section 70 (1) of the Manitoba Public Insurance Corporation
(The Act)

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 FACTS:

On January 19, 1996, the appellant was leaving his place of employment, [text deleted], when a co-worker, [text deleted], asked him to assist with moving [text deleted's] [vehicle], which had not been plugged in all day and would not start. [The Appellant] was asked to help push the vehicle across the parking lot in order to plug the car into a serviced electrical outlet. [The Appellant] 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. [Appellant's co-worker] had apparently left the [vehicle] in gear, making it practically impossible to move. [The Appellant] stated that had the vehicle not been in gear it would have easily rolled with their efforts.

When [the Appellant] was examined by [Appellant's doctor] at the [text deleted] 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. [The Appellant] 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 [the Appellant's] claim. On November 3, 1997 [text deleted], 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.

[The Appellant'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.

[The Appellant's] theory is certainly a novel and interesting one but not one that this Commission can accept as rational. Patently, [the Appellant'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:

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

Dated at Winnipeg this 14th day of April 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT Q.C.

LILA J. GOODSPEED