

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-02-02

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. Wilson MacLennan

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jim Shaw.

HEARING DATE: May 6, 2002

ISSUE(S):

- 1. Calculation of Gross Yearly Employment Income ('GYEI') for Income Replacement Indemnity (IRI) benefits for full-time earner;**
- 2. Whether Appellant correctly classified as Level 2 Plasterer; and**
- 3. Whether GYEI should have been increased to take into consideration lost contracts.**

RELEVANT SECTIONS: Section 81(1)(a) and (2)(a)(ii) of The Manitoba Public Insurance Corporation Act ('the Act') and Section 3(2), Schedule C, subsection 1 and Section 18 Table of Classifications of Employment of Manitoba Regulation 39/94.

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 essential facts of this matter were succinctly set out in the decision of the Internal Review

Officer dated December 21, 2001. They are as follows:

1. On May 14, 2001, you were travelling at highway speed on the Trans-Canada Highway near [text deleted], MB when a third party entered from

a side road and collided with the driver's side of your van, causing the van to spin around, then flip over ("the accident").

2. You sustained bilateral pelvic fractures, as well as multiple contusions and abrasions. Although you returned to part-time work a few months after the accident, your rehabilitation continues and an intensive program is likely to be starting shortly.
3. At the time of the accident, you had been a self-employed stucco contractor for six years. You had worked for a variety of stucco companies (as an employee) every year from 1988 to 1995, and had started your own company in April, 1995.
4. In addition to your stucco work (which was usually done between April/May and October/November in each calendar year), you also worked as a labourer for [Text deleted]. In 1998, you earned \$766.00 from this extra employment. You earned approximately \$3,600.00 in 1999 and again in 2000. Because of the injuries you sustained in the accident, you did not do this work in 2001, but the letter you provided indicates that the work was available for you.

The case manager, in his decision dated June 19, 2001, determined the entitlement of the Appellant's Income Replacement Indemnity on the following basis:

For IRI purposes, you are considered a self employed, full time earner, working 40 hours per week. Your entitlement to IRI starts 7 days following the day of the accident on May 22, 2001.

The IRI payment which I will outline below has been based on the information you have submitted. The IRI is based on the following options and the highest Gross Yearly Employment Income (GYEI). In your case, option #5 would derive the highest GYEI. The option list is as follows:

1. Business income earned in the 52 weeks before the date of the accident; or;
2. Business income for 52 weeks before the fiscal year end immediately preceding the date of the accident; or;
3. Business income earned for 104 weeks before the fiscal year end immediately preceding the date of the accident, divided by 2; or;
4. Business income earned in the 156 weeks before the fiscal year end immediately preceding the date of the accident, divided by 3; or;
5. The average gross income for the class of employment by the Manitoba Regulations 39/94, Schedule C.

Schedule C is a table of classes of employment where gross employment income is listed based on the National Occupation Classifications. The level of experience an individual has in the class of employment determines the GYEI.

Your classification would be that of a plasterer. You have indicated your level of experience in this field is approximately 94 months. This experience would place you at a Level 2 category i.e. more than 36 months for Level 1 and less than 120 months for Level 3.

Your GYEI at Level 2 is \$30,523.00 or a bi weekly income of \$867.88. This income level is net of expenses related to the business income allowable under the income tax act and prior to the deduction of tax.

The Appellant applied to have the case manager's decision reviewed by an Internal Review Officer. The Internal Review Officer rejected the Application for Review and confirmed the decision of the case manager, with the exception of including in the calculation of IRI the income that the Appellant earned while employed on a part-time basis with [Text deleted].

In arriving at his decision, the Internal Review Officer rejected the position asserted by the Appellant that three identified jobs/contracts which the Appellant was unable to do because of the motor vehicle accident had resulted in a loss of potential income from these sources which should have been included in the GYEI used to calculate IRI. The Internal Review Officer concluded that because Schedule C, rather than the actual reported business earnings, was used by the case manager to calculate the Appellant's IRI, there was no basis in the legislation for augmenting the GYEI on account of the specific lost contracts.

Pursuant to Section 3(2) of Manitoba Regulation 39/94, the Internal Review Officer confirmed the Appellant's classification as a Level 2 plasterer and stated:

Sections 1 and 2 of Schedule C (copies enclosed) stipulate that the "Levels" are determined based on months of experience, and that any period of work during a particular calendar month is considered to be a complete month.

Even if I assume you worked as a plasterer for eight months per year from 1988 to 2000, both inclusive, your total months of experience is still well short of the 120 months required for Level 3 status.

I have concluded, therefore, that you were properly classified as a Level 2 plasterer for IRI purposes.

Grounds of Appeal

The Appellant has appealed the decision of the Internal Review Officer dated December 21, 2001, and the issues for determination on this appeal are as follows:

1. Whether GYEI should have been increased to take lost contracts into consideration;
2. Calculation of GYEI for IRI benefits for full-time earner; and
3. Whether Appellant correctly classified as Level 2 plasterer.

The relevant provisions of the Act and Regulations governing this appeal are as follows:

Section 81(1)(a) of the Act:

Entitlement to I.R.I.

81(1) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;

Section 81(2)(a)(ii):

Determination of I.R.I. for full-time earner

81(2) The corporation shall determine the income replacement indemnity for a full-time earner on the following basis:

- (a) under clauses (1)(a) and (b), if at the time of the accident
 - (ii) the full-time earner is self-employed, on the basis of the gross income determined in accordance with the regulations for an employment of the same class, or the gross income the full-time earner earned from his or her employment, whichever is the greater,

Section 3(2) of Manitoba Regulation 39/94:

GYEI from self-employment

3(2) Subject to section 5, a victim’s gross yearly employment income derived from self-employment that was carried on at the time of the accident is the greatest amount of business income that the victim received or to which the victim was entitled within the following periods of time:

- (a) for the 52 weeks before the date of the accident;
- (b) for the 52 weeks before the fiscal year end immediately preceding the date of the accident;
- (c) where the victim has operated the business for not less than two fiscal years before the date of the accident, for the 104 weeks before the fiscal year end immediately preceding the date of the accident divided by two;
- (d) where the victim has operated the business for not less than three fiscal years before the date of the accident, for the 156 weeks before the fiscal year end immediately preceding the date of the accident divided by three;

or according to Schedule C.

Section 1 of Schedule C of Manitoba Regulation 39/94:

Determination of level of experience

1 For the purpose of the following Table, the corporation shall determine the level of experience that the victim has in the class of employment determined for the victim, in accordance with the following:

- (a) “**Level 1**” means less than 36 months of experience;
- (b) “**Level 2**” means 36 months or more but less than 120 months of experience;
- (c) “**Level 3**” means 120 months or more of experience.

TABLE OF CLASSES OF EMPLOYMENT (SCHEDULE C)

Employment Income by Occupation

18. CONSTRUCTION TRADES OCCUPATION

Other Construction Trades Occupations

.....

Occupations in Labouring and Other Elementary Work:

Other Construction Trades	\$15,760	\$30,523	\$39,351
	(Level 1)	(Level 2)	(Level 3)

1. Whether GYEI should have been increased to take lost contracts into consideration

The Commission rejects the Appellant's appeal in respect of this issue. The Commission finds that the Internal Review Officer was correct in concluding that because Schedule C, rather than the actual reported business earnings, was used by the case manager to calculate the Appellant's IRI, there is no basis in the legislation for augmenting the GYEI on account of the specific lost contracts.

2. Calculation of GYEI for IRI benefits for full-time earner; and

3. Whether Appellant correctly classified as Level 2 plasterer

In his appeal, the Appellant challenged the Internal Review Officer's decision that he was properly classified as a Level 2 plasterer, having obtained fewer than 120 months of experience for Level 3, pursuant to Section 1 of Schedule C of Manitoba Regulation 39/94. The Appellant asserted that having regard to his total experience as an employee working for a plastering/stuccoing firm from 1998 to 1994, and as a self-employed plasterer/stuccoer operating his own business from 1995 to May 14, 2001, his level of experience within the meaning of Section 1, Schedule C was in excess of 120 months. As a result, he submitted that he should have been classified as a Level 3 plasterer for the purpose of IRI.

Work Activity: from 1988 to 1994

Position of Helper

At the appeal hearing, legal counsel for MPIC submitted that since the Appellant was employed for several years as a plasterer/stuccoer helper, this period of employment should not be considered to be employment in the plastering/stuccoing trades occupation and, therefore, this period of time could not be used to compute the level of experience pursuant to Section 1 of Schedule C of Manitoba Regulation 39/94.

In reply, the Appellant asserted that his employment as a helper plasterer/stuccoer was essential in his obtaining the status in the trades occupation plasterer/stuccoer. As a result, the Appellant asserted that his work experience as a helper plasterer/stuccoer should be used in order to compute the level of experience he obtained in the trades occupation pursuant to Section 1 of Schedule C of Manitoba Regulation 39/94.

The Commission notes that the case manager, in his decision dated June 19, 2001, stated:

Schedule C is a table of classes of employment where gross employment income is listed based on the National Occupation Classifications. The level of experience an individual has in the class of employment determines the GYEI.

The Commission notes that the classification of the trades occupation of a plasterer/stuccoer falls within paragraph 18 of Schedule C under the sub-heading of “Other Construction Trades Occupations” and includes the occupations in labouring and other elementary work.

In the material filed with the Commission (Tab 24 – Book of documents), MPIC provided the following table from the National Occupational Classification (NOC):

Level 3	Level 2	Level 1	PIPP Years	Sched C UNIT GRP	80 SOC CODE	80 SOC MIN GRP	90 SOC MIN GRP	NOC CODE
\$39,351	\$30,523	\$15,760	2001	Occupations in Labouring and Other Elemental Work: Other Construction Trades	8798	Occupations in Labouring and Other Elemental Work Other Construction Trades	Construction Trades Helpers and Labourers	7611

It should be noted that this NOC table is not part of the Act or Manitoba Regulation 39/94. However, MPIC, in Schedule C of Regulation 39/94, has included a Table of Classes of Employment where gross employment income is listed, based on the National Occupational Classifications. This table, which is set out above, specifically includes construction trades

helpers and labourers as part of the classification of a trades occupation. The National Occupational Classification, on which Schedule C is based, therefore appears to recognize that employment to be a tradesman helper in a specific construction trades occupation such as a plasterer/stuccoer, constitutes work experience within that trades occupation.

Decision

Having regard to the totality of the evidence before the Commission, the Commission, therefore, determines that, on the balance of probabilities, in order to be recognized as having attained the status in the trades occupation of a plasterer/stuccoer, a person may be required to be employed as a helper in that trades occupation in order to achieve that status. In the Commission's view, employment as a plasterer/stuccoer helper would constitute a work experience within the meaning of Schedule C, Section 1, in order to determine the status of the level of experience needed to establish the entitlement to a specific amount of IRI. The Commission, therefore, rejects the argument submitted by the legal counsel for MPIC in respect of this matter.

Seasonal Nature of Trades Occupation

In respect of the number of months that the Appellant was an employee from 1988 to 1994, MPIC found that in regard to the seasonal nature of the Appellant's work, he was employed for a total of 8 months in each year during that period of time.

In reply, the Appellant submitted that during the years 1988 to 1994 he was employed by a firm for several years as a labourer/plasterer helper, and subsequently as a plasterer/stuccoer, and worked between 8 and 9 months each year during this period of time. The Appellant testified that the plastering/stuccoing business where he had been employed no longer exists, and he has no records of the exact number of months he worked in each of the years from 1988 to 1994.

In response, legal counsel for MPIC did not challenge the Appellant's submission in this respect but submitted, however, that the Commission should affirm the decision of the Internal Review Officer that the Appellant was employed for no more than 8 months per year from 1988 to 1994.

Decision

The Commission finds that the Appellant made his submissions in respect of this issue in a direct and straightforward manner and accepts his position in respect to this matter. Accordingly, the Commission finds, on the balance of probabilities, that during the 7 years from 1988 to 1994 (both years inclusive) the Appellant worked, on average, 8.5 months per year, initially as a plasterer/stuccoer helper and subsequently as a plasterer/tradesman, for a total of 59.5 months of work experience.

Work Activity: from April 1995 to May 14, 2001

MPIC's legal counsel submitted that the work of a plasterer/stuccoer was seasonal in nature and that while the Appellant was self-employed, he could not have worked for more than 8 months per year from the year 1995 to the date of the motor vehicle accident on May 14, 2001. In addition, legal counsel for MPIC asserted that during this period of time, the Appellant's work for [Text deleted] should also be deducted from the months of work experience that the Appellant worked as a plasterer from April 1995 to May 14, 2001.

The Appellant acknowledged that he worked for [Text deleted] as follows:

1997:	2 weeks
1998:	7 weeks
1999:	<u>7 weeks</u>
Total:	<u>16 weeks</u>

The Appellant agreed that the total period of 16 weeks during which he was employed by [Text deleted] during the years 1997, 1998 and 1999 should be deducted from the computation of the level of the work experience pursuant to Section 1, Schedule C.

MPIC's legal counsel further submitted that in respect of the months of work experience that the Appellant had attained under Schedule C, Section 1, of Manitoba Regulation 39/94, the meaning of work experience within this section is the actual work experience that the Appellant obtained while physically working as a plasterer/stuccoer. The time spent by the Appellant solely in administering and operating his business from April 1995 to May 14, 2001, should not be included within the calculation of the number of months of work experience needed to attain Level 1 or Level 2 or Level 3.

During the course of the appeal hearing in this matter, held on Monday, May 6, 2002, the Commission requested legal counsel for MPIC to determine whether MPIC had any policy or directives on the issue of the meaning of the word "experience" referred to in Section 1, Schedule C, of Manitoba Regulation 39/94. In addition, legal counsel for MPIC was invited to make any further written submissions he wished in respect to this issue.

On May 27, 2002, the Commission received a letter from legal counsel for MPIC enclosing a copy of an MPI Claims Coverage Decision, number 113-94. In this letter, MPIC's legal counsel further advised the Commission that:

- (a) there were no other internal MPIC decisions, directives or policies interpreting experience in respect of the issue under consideration, nor was he aware of any other relevant Commission decisions; and
- (b) "We remain of the view that the word "experience" means actual experience as a

plasterer consistent with the main duties of a plasterer as set forth in the NOC System (Book of Documents, Tab 24). It is clear that Schedule C determines level of experience based on months matched with a specific occupation under 23 separate classes of employment set forth in the Table. The process is obviously geared to a distinct, definable skill level pertaining to a particular occupation being acquired over relatively small increments of time. It inherently speaks to “experience” as meaning the core competencies of a particular occupation, as opposed to administrative detail in furtherance thereof, and, in order to further “fine tune” the appropriate level of classification, Section 2 stipulates that “a month in which an employment begins or ends is deemed to be a complete month of experience.”

Webster’s New Collegiate Dictionary (copyright 1977) offers the following definition of “experience” which we submit supports our interpretation:

2c: “knowledge, skill, or practice derived from direct observation of or participation in events.””

A copy of this letter was provided by MPIC to the Appellant.

At the appeal hearing on May 6, 2002, the Appellant submitted that from April 1995 to May 14, 2001, he was self-employed in the plastering/stuccoing business on a full-time basis, on a year-round basis. He further submitted that with the exception of the 16 weeks that he was employed by [Text deleted], the balance of this period of time should be included in computing the level of experience under Section 1 of Schedule C. The Appellant, therefore, asserted that in the period of time he was self-employed from April 1995 to May 14, 2001, the total number of months he worked in the plaster/stucco trades occupation was 72 months, computed as follows:

<u>Year</u>	<u>Number of Months</u>
1995	9 months
1996	12 months
1997	12 months
1998	11 months
1999	11 months
2000	12 months
2001	<u>5 months</u>
Total:	<u>72 months</u>

(Section 2 of Schedule C of Manitoba Regulation 39/94 provides that a month in which an employment begins or ends is deemed to be a complete month of experience.)

The Appellant, therefore, submitted that having regard to the 59.5 months of work experience which he accumulated as an employee in the plastering/stuccoing occupation and the 72 months of work experience he accumulated as a self-employed plasterer/stuccoer tradesman, his total work experience, pursuant to Section 1 of Schedule C, amounted to 131.5 months. The Appellant, therefore, further submitted that since his work experience exceeded 120 months, he had obtained a Level 3 status, pursuant to Section 1, Schedule C of Manitoba Regulation 39/94.

Decision

The Commission rejects the submissions made by MPIC in respect to the limited meaning to be given to the word “experience” under Schedule C of Manitoba Regulation 39/94.

In order to determine the entitlement to IRI, both the Act and Regulation provide different provisions between a full-time earner who is salaried in a trades occupation and a full-time earner who is self-employed in a trades occupation.

Section 81(2)(a)(i) and (ii) state:

Determination of I.R.I. for full-time earner

81(2) The corporation shall determine the income replacement indemnity for a full-time earner on the following basis:

- (a) under clauses (1)(a) and (b), if at the time of the accident
 - (i) the full-time earner holds an employment as a salaried worker, on the basis of the gross income the full-time earner earned from the employment,
 - (ii) the full-time earner is self-employed, on the basis of the gross income determined in accordance with the regulations for an employment of the same class, or the gross income the full-time earner earned from his or her employment, whichever is the greater,

Section 2(a) of Manitoba Regulation 39/94 provides that the GYEI of a salaried full-time earner is determined by the salary or wages received for the pay period in which the accident occurred, divided by the number of weeks in the pay period and then multiplied by 52. In addition, under subsection 2(d) of this Regulation, there are specific provisions in respect of employee benefits to which a salaried full-time worker may be entitled but for the motor vehicle accident. Section 2 specifically excludes from this calculation any income earned by a salaried employee from self-employment.

In respect of a self-employed earner, the determination of the GYEI is governed by Section 3(2) and Schedule C of the Regulation. As indicated earlier in this award, the Internal Review Officer, in his decision dated June 19, 2001, affirmed the case manager's finding as to the entitlement of the Appellant's IRI on the following basis:

For IRI purposes, you are considered a self employed, full time earner, working 40 hours per week. Your entitlement to IRI starts 7 days following the day of the accident on May 22, 2001. [*underline added*]

The IRI payment which I will outline below has been based on the information you have submitted. The IRI is based on the following options and the highest Gross Yearly Employment Income (GYEI). In your case, option #5 would derive the highest GYEI. The option list is as follows:

1. Business income earned in the 52 weeks before the date of the accident; or;
2. Business income for 52 weeks before the fiscal year end immediately preceding the date of the accident; or;
3. Business income earned for 104 weeks before the fiscal year end immediately preceding the date of the accident, divided by 2; or;
4. Business income earned in the 156 weeks before the fiscal year end immediately preceding the date of the accident, divided by 3; or;
5. The average gross income for the class of employment by the Manitoba Regulations 39/94, Schedule C.

Schedule C is a table of classes of employment where gross employment income is listed based on the National Occupation Classifications. The level of experience an individual has in the class of employment determines the GYEI.

Your classification would be that of a plasterer. You have indicated your level of experience in this field is approximately 94 months. This experience would place you at a Level 2 category i.e. more than 36 months for Level 1 and less than 120 months for Level 3.

Your GYEI at Level 2 is \$30,523.00 or a bi weekly income of \$867.88. This income level is net of expenses related to the business income allowable under the income tax act and prior to the deduction of tax.

It is clear from these comments that MPIC considered the Appellant to be a self-employed plasterer operating his own business and not a person employed by a plastering firm on a salaried basis. As a result, MPIC was required to apply the provisions in the Act and Regulations relating to a self-employed earner, rather than the provisions relating to a salaried earner, in order to determine the entitlement to IRI by the Appellant, and MPIC failed to do so.

The Commission finds that the word “experience”, as set out in Levels 1, 2 and 3 of Section 1 of Schedule C of the Regulation as it relates to the Appellant, refers to the work experience of the Appellant in the operation of his business. As a result, in determining the Appellant’s entitlement to IRI, MPIC was required to consider the entire work experience of the Appellant as a small business owner in the operation of his business, and not just his actual work experience as a plasterer in the trade, and MPIC failed to do so.

MPIC’s legal counsel, in his written submission, asserts that the word “experience” means actual experience as a plasterer consistent with the main duties of a plasterer as set forth in the NOC System (Tab 24 – Book of documents).

The Commission rejects this submission.

The Commission is governed by the provisions of Section 81 of the Act and by Sections 1, 2 and 3 of Manitoba Regulation 39/94, as well as Classification No. 18 of the Table of Classes of Employment as set out in Schedule C of said Regulation, and not by the NOC documents (Tab 24 – Book of documents). The Act and Regulations do not define the duties of either a self-employed plasterer or a salaried plasterer.

In the Commission's decision in [text deleted] AC-99-36 [2000] M.A.I.C.A.C.D. No. 28 dated August 21, 2000, the Commission dealt with a different legal issue, but the Commission's analysis of the work experience in that case is helpful to the Commission in dealing with the legal issues in this case.

In [text deleted] AC-99-36, the Commission was required to determine whether the Appellant, who was a professional musician, was a full-time or part-time/temporary earner for the purpose of establishing the Appellant's entitlement to IRI. MPIC determined the Appellant's IRI on the basis that he was a part-time earner.

The Commission disagreed and stated:

We have no hesitation in finding that [text deleted] was a full-time musician immediately prior to his accident. Section 4 of Manitoba Regulation No. 37/94 reads as follows:

Meaning of Full-time Employment

4. A person holds regular employment on a full-time basis in the following circumstances:

- (a) The person is employed at one employment for not less than 28 hours, not including overtime hours, in each week of the year preceding the day of the accident; or

- (b) The person is employed at one employment
 - (i) for at least 28 hours per week, not including overtime hours, and
 - (ii) for not less than two years, for successive or intermittent periods of not less than eight months and with intervals of not more than four months.

The work of a professional musician does not consist merely of standing on a stage and entertaining an audience. That, indeed, is the smallest part of the job in terms of the time involved. In [text deleted's] case, in particular, as leader of his band, his work as a professional musician included the gathering of material, composition, solo practice of two hours daily as a bare minimum, rehearsals with the other members of his band, marketing and publicity, arranging dates and places for performances, travelling from one performance location to the next—all of the factors that, in effect, add up to the career of a professional musician whose group was, at the time, at the lower end of the popular music market. [Text deleted] testified that he not only played lead guitar but did many of the vocals and quite a lot of the writing or arranging of the music. He had no other source of income and, as we have noted earlier in these Reasons, the extremely modest income reported by [text deleted] is not necessarily indicative, in his case, of anything less than a full-time occupation. Angela Cheng, Yo-Yo Ma and Oscar Peterson probably spend no more than three to five hours per week performing before audiences, but no one would suggest that they are anything other than full-time musicians. Why should it be any less for [text deleted], merely because he is at the other end of the earnings scale?

It follows that a 180-day determination under Section 84(1) was not appropriate, since that only applies when the claimant is a part-time or temporary earner.

The Commission finds that:

- a) The Internal Review Officer erred when he decided that the Appellant had obtained a Level 2 status on the basis that while the Appellant was self-employed from April 1995 to the date of the motor vehicle accident on May 14, 2001, he was employed seasonally as a plasterer for 8 months per year and not 12 months per year.
- b) The Internal Review Officer ignored the Appellant's occupation and total work experience as a self-employed plasterer/stuccoer in determining that the Appellant had attained a Level 2 status while self-employed.
- c) The occupation the Appellant was carrying out from 1988 to 1994 as a salaried employee

of a plastering/stuccoing firm and the work experience he obtained during that period of time were different in nature than the work experience and occupation as a self-employed plasterer/stuccoer that the Appellant was carrying out from April 1995 to May 14, 2001.

As an employee, the Appellant did not perform any of the following business activities:

- (i) As a self-employed plasterer/stuccoer, the Appellant was required to buy his own supplies and equipment, maintain his own office, repair his own equipment, collect his own accounts receivable, pay his accounts payable and appropriate federal, provincial, and municipal taxes and licences, maintain an appropriate set of financial records, and service his customers on a 12-month basis and not on an 8-month basis.
 - (ii) As a vital part of the Appellant's business, he was required to provide job estimates to contractors on site in order to obtain work from them. The Commission determines that this activity constituted a great deal of the Appellant's time, not only during the plastering and stuccoing season, but during the entire calendar year.
- d) The Appellant, as a self-employed plasterer/stuccoer from April 1995 to May 14, 2001, operated his business on a year-round basis and not on an 8-month basis.

In summary, the Commission concludes that the work experience in the Appellant's trades occupation includes both the main duties of a plasterer, as set out in the National Occupational Classification document (Tab 24 – Book of documents), and the duties of operating his own plastering/stuccoing business. The Commission finds that as a salaried earner employed by a plastering/stuccoing firm, the Appellant in his trades occupation worked 8.5 months per year, but as a self-employed plasterer/stuccoer operating his own business, the Appellant in his trades occupation worked 12 months each year, with the exception of the time he was employed by a

[Text deleted] company.

The Commission determines that the number of months of work experience that the Appellant had obtained in his trades occupation from March 1994 to May 14, 2001, amounted to 131.5 months, computed as follows:

Work Activity:

From 1988 to 1994:	59.5 months
From April 1995 to May 14, 2001:	<u>72 months</u>
Total:	<u>131.5 months</u>

The Commission, therefore, finds that as the Appellant exceeded the 120-month requirement, he should have been classified as a Level 3 plasterer for the purpose of determining his entitlement to IRI pursuant to Section 1, Schedule C, of Manitoba Regulation 39/94.

The Commission, therefore, directs that the Appellant be paid IRI on the basis of the classification of a Level 3 plasterer, pursuant to Section 1, Schedule C, of Manitoba Regulation 39/94.

Dated at Winnipeg this 2nd day of July, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MacLENNAN