

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an appeal by [the Appellant]  
AICAC File No.: AC-98-42**

**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. Keith Addison  
the Appellant, [text deleted], was represented by [Appellant's  
representative]

**HEARING DATE:** August 24th, 1998

**ISSUE:** Jurisdiction - whether election to seek WCB benefits, when  
unsuccessful, precludes claim against MPIC.

**RELEVANT SECTION:** Section 195 of the MPIC 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 Appellant] was involved in a motor vehicle accident on January 16th, 1998 when the [text deleted] Transit bus that she was driving was rear-ended by a car. She filed a claim under the Workers Compensation Act. That claim was, initially, accepted by the Workers Compensation Board ('WCB'), which started paying her some income replacement.

On appeal by the [text deleted], that decision was reversed and only certain minimal medical expenses were allowed. The WCB in fact demanded repayment of the funds that it had already advanced, save only for those medical expenses. [The Appellant] then filed her claim with MPIC, whose Internal Review Officer denied her claim on the basis of Section 195 of the MPIC Act, which reads as follows:

**Election of compensation under this Part or Workers Compensation Act**

195(1) Where, as a result of an accident, a person is entitled to compensation under this Part and The Workers Compensation Act or any another Act that relates to the compensation of persons who are victims of accidents arising out of and in the course of employment, and that is in force in or outside Manitoba, the person may elect the compensation under this Part or under the other Act.

**Effect of election of compensation under W.C. Act**

195(2) Where the person elects compensation under The Workers Compensation Act or any other Act that is in force in or outside Manitoba and that relates to the compensation of a person who is a victim of an accident arising out of and in the course of that employment

- (a) the person is no longer entitled to compensation under this Part in respect of the bodily injury; and
- (b) notwithstanding subsections 9(1), (7) and (7.1) of The Workers Compensation Act and subject to section 78 of this Act, the compensation provided to the person or the person's dependents in respect of the bodily injury under The Workers Compensation Act, stands in lieu of all rights and remedies to which the person or the person's dependants are or might be entitled in respect of the bodily injury, and no action in that respect may be admitted before any court.

**Effect of election under this Part**

195(3) A person who elects compensation under this Part is no longer entitled to compensation under The Workers Compensation Act in respect of bodily injury.

When [the Appellant's] appeal came before the Commission we, also, felt that the effect of Section 195 of the MPIC Act had to be dealt with as a preliminary but vital question, before embarking upon the merits of [the Appellant's] claim to have been injured in the course of a motor vehicle accident to the extent alleged.

[Text deleted], [the Appellant's] union representative, advances an interesting and ingenious argument on her behalf. He submits that Section 195(1) is only applicable where a victim of a motor vehicle accident "is entitled to compensation" under both the MPIC Act and the Workers Compensation Act. But, he points out, the Workers Compensation Board has already ruled that [the Appellant] is not entitled to compensation under the WCB Act and, therefore, Section 195 is inapplicable to her situation.

We are of the view that this interpretation, while at least possible from a mere reading of the language of Section 195(1), would be contrary to the spirit and intent of the entire section. That argument would, in our view, succeed only if the Workers Compensation Board had held, for example, that [the Appellant] had no standing to file a claim with the WCB because, at the time of the accident, she was not driving in the course of her employment. In that latter event, she would have had no right to file that claim in the first place, but would clearly have been entitled to claim against MPIC, although with what outcome we could only speculate.

If the argument advanced on [the Appellant's] behalf were to prevail, every person claiming to have been injured while driving in the course of his employment would be at liberty to file a claim against

the WCB or MPIC and, if unsuccessful on the merits, to file another claim against the other institution. In our respectful view, the patent intent of the two statutes is to require a claimant to elect a forum of complaint and, having made that election, to stick with it rather than oscillating between the two. In [the Appellant's] case, the WCB Appeal Board has determined that her present injuries could not rationally be explained by an accident of the type in which she was involved. We cannot be placed in the position of a kind of appellate tribunal to which one can appeal from a decision of the WCB Appeal Board.

[the Appellant] is caught on the barbed wire of Subsection (2). She elected compensation under the WCB Act. While, in fact, she netted only some minimal medical expenses, the fact is that she is no longer entitled to claim compensation under Part II of the MPIC Act.

It is noteworthy, also, that on November 9th, 1995 [the Appellant] signed a Notice of Election to Claim Benefits, addressed both to the Workers Compensation Board and Manitoba Public Insurance.

After a brief description of the accident of November 4th, 1995, that notice goes on to say, over her signature:

I understand that I must choose the Workers Compensation Board OR Personal Injury Protection Plan (MPI/Autopac). I understand that I cannot change this choice at a later date.

I choose to claim compensation for my injuries under.....the Workers Compensation Board of Manitoba.....

It may be that the language of the legislation should be made more clear by amending Subsection 195(1) to read "Where.....a person is entitled to *seek* compensation.....", and by adding the words

"*to seek*" immediately before the word "compensation" in the first lines of Subsection 195(2) and 195(2)(a) and 195(3). Similarly, the language of Subsection 195(2)(b) could be clarified by adding, at the end of the third line, the words "...the *award or denial of* compensation to the person or the person's dependants.....etc.". But we must interpret the language as we find it, ambiguous though it may be, and we are satisfied that the intent of the Legislative Assembly was to preclude 'forum shopping' once the initial election has been made.

In consequence, we are obliged to deny [the Appellant's] claim and to confirm the decision of MPIC's Internal Review Officer.

Dated at Winnipeg this 26th day of August, 1998.

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

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

**LILA GOODSPEED**