

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-116**

PANEL: Ms Laura Diamond, Chairperson
Mr. Wilf DeGraves
Dr. F. Patrick Doyle

APPEARANCES: The Appellant [text deleted] appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Leanne Zabudsky.

HEARING DATE: March 11, 2010

ISSUE(S): Is the Appellant's entitlement to Income Replacement
Indemnity and Permanent Impairments reduced by his
conviction for the dangerous operation of a motor vehicle
and is there a recoverable payment of Income Replacement
Indemnity?

RELEVANT SECTIONS: Sections 161(1)(d), 161(3), 161(3.1), 189(1) and 189(2) of The
Manitoba Public Insurance Corporation Act ('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 injured in a motor vehicle accident on November 13, 2007. As a result of his injuries, he was in receipt of Personal Injury Protection Plan ("PIPP") benefits, including Income Replacement Indemnity ("IRI") benefits and a Permanent Impairment benefit.

The Appellant was then convicted, in connection with the motor vehicle accident, of dangerous operation of a motor vehicle under Section 249(1)(a) of the Criminal Code, and was found 100% responsible for the accident.

The Appellant's case manager wrote to him on June 9, 2009 regarding his conviction on March 30, 2009 for dangerous operation of a motor vehicle under Section 249(1)(a) of the Criminal Code. He had also been found 100% responsible for the accident. As a result, the Appellant's IRI and Permanent Impairment benefits would be reduced pursuant to Section 161(1)(d) and Section 161(3.1) of the MPIC Act. As a result, MPIC would be making arrangements for reimbursement of an overpayment of \$37,320.74 for IRI benefits, and he would not be entitled to receive any Permanent Impairment benefits.

The Appellant sought an Internal Review of this decision.

On August 17, 2009, an Internal Review Officer for MPIC reviewed the Appellant's claim, noting that his conviction under the Criminal Code for the dangerous operation of a motor vehicle resulted in a statutory reduction of his IRI, as per Section 161(1)(d) of the Act and that the Corporation was entitled to reimbursement for excess IRI payments in the amount of \$37,320.74, pursuant to Section 189 of the Act.

The Internal Review Officer also found that as the Appellant was 100% responsible for the accident, the Appellant's entitlement to Permanent Impairment benefits was reduced to zero, pursuant to Section 161(3.1) of the MPIC Act.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He described how the motor vehicle accident completely changed his life. Except for suffering nightmares, he cannot remember a thing about the motor vehicle accident that day. He has trouble riding in cars and has undergone care from a psychologist. He finds it impossible to believe that he could challenge two semi-vehicles, as has been alleged, and survived. He described the loss of his career, as he is no longer a certified professional in Manitoba as [text deleted].

The Appellant also described the physical injuries he suffered including scars over his face and lost teeth requiring dentures, a variety of scars, a bad ankle, a reconstructed knee, a steel plate and screw in his hip, a screw in his arm, and three broken vertebrae that still cause him pain from time to time. The Appellant did not recall drinking at the time of the motor vehicle accident and testified that he had never been drunk on the highway. He noted that he had been told he had a case of beer in the back of the van at the time of the accident that he didn't know of.

Upon cross-examination, the Appellant confirmed that on the advice of his lawyer, he had pled guilty and been convicted of the dangerous operation of a motor vehicle. Although he was found 100% responsible for the motor vehicle accident by MPIC, he stated that he disagreed with that opinion. He acknowledged that a statement of claim had been filed against him in the Manitoba Court of Queen's Bench in connection with the accident, but denied that an action had been filed in Ontario for damages resulting from the motor vehicle accident.

The Appellant submitted that he was offended by these "smear allegations". He could not remember anything from the motor vehicle accident but maintained that in his right mind he would never challenge anyone on a highway and that it was ridiculous to find him 100%

responsible for the accident. He submitted that the human side of the story was missing and that he had lost his career and his way of life as a result of the accident.

Evidence and Submission for MPIC:

Counsel for MPIC drew the Commission's attention to the Certificate of Conviction of the Appellant, dated March 30, 2009, for dangerous operation of a motor vehicle pursuant to Section 249(1) of the Criminal Code.

The case manager's decision, dated June 9, 2009 set out the relevant legislation and noted the Appellant's Criminal Code conviction as well as the finding that he was 100% responsible for the motor vehicle accident. She then reviewed the mandatory wording of Section 161.1 of the MPIC Act which provides that an indemnity to which a victim is entitled "shall be reduced" if the victim is convicted under Section 249 of the Criminal Code.

She also reviewed Section 161(3) of the Act which sets out a formula by which the IRI benefit would be reduced in such circumstances.

Then, she reviewed Section 189(1) of the Act which speaks to reimbursement for excess payments.

Counsel also reviewed Section 161(3.1) of the Act which deals with the reduction of Permanent Impairment benefits according to the percentage of responsibility attributed to the victim by the Corporation. In this, the reduction resulted in a zero lump sum indemnity.

Counsel submitted that the facts of a conviction under the Criminal Code and a finding of responsibility had been established and that the language of the legislation therefore operated in a mandatory fashion to establish the reductions set out in the case manager's decision and upheld by the Internal Review Officer. Accordingly, counsel submitted that the appeal should be dismissed.

Relevant Sections:

Reduction of indemnity where victim convicted under *Criminal Code*

[161\(1\)](#) An indemnity to which a victim is entitled under Division 2 or 4 shall be reduced if the victim is, in respect of the accident, convicted under any of the following provisions of the *Criminal Code* (Canada):

(d) clause 249(1)(a) or subsection 249(2) (dangerous operation of a motor vehicle), or subsection 249(3) (dangerous operation causing bodily harm) or subsection 249(4) (dangerous operation causing death);

Income replacement indemnity to be reduced

[161\(3\)](#) The corporation shall determine the extent to which the victim was responsible for the accident, and the indemnity otherwise payable to him or her under Division 2 in the first 12 months after the accident shall be reduced by the amount determined by the following formula:

$$\text{Reduction} = I \times D \times R/50\%$$

In this formula,

I

is the amount of the indemnity otherwise payable to the victim under Division 2 in the first 12 months after the accident;

D

is

- (a) 100% if the victim has no dependants when the indemnity becomes payable,
- (b) 80% if the victim has one dependant when the indemnity becomes payable,
- (c) 60% if the victim has two dependants when the indemnity becomes payable,

- (d) 40% if the victim has three dependants when the indemnity becomes payable, or
- (e) 20% if the victim has four or more dependants when the indemnity becomes payable; and

R

is the lesser of 50% and the percentage of responsibility attributed to the victim by the corporation.

Compensation for permanent impairment to be reduced

[161\(3.1\)](#) The corporation shall determine the extent to which the victim was responsible for the accident, and the lump sum indemnity otherwise payable to him or her under Division 4 shall be reduced by the amount determined by the following formula:

$$\text{Reduction} = I \times R/50\%$$

In this formula,

I

is the amount of the indemnity that would otherwise be payable to the victim under Division 4; and

R

is the lesser of 50% and the percentage of responsibility attributed to the victim by the corporation.

Corporation to be reimbursed for excess payment

[189\(1\)](#) Subject to sections 153 (payment before decision by corporation), 190 and 191, a person who receives an amount under this Part as an indemnity or a reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the corporation for the amount to which he or she is not entitled.

Time limitation for recovery of payment

[189\(2\)](#) The corporation may commence an action to recover an amount to which it is entitled to be reimbursed

(a) within two years after the day the amount is paid to the person; or

(b) where the amount is paid as a result of fraud, within two years after the day the fraud is first known or discovered by the corporation.

The onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officer was not correct in upholding the reductions in payments.

The panel has reviewed the evidence on the Appellant's indexed file as well as his testimony at the hearing and his submission, along with the submission of counsel for MPIC.

In our view, the evidence establishes that the Appellant was convicted under Section 249(1)(a) of the Criminal Code of operation of a motor vehicle accident. As well, the Appellant was determined to be 100% responsible for the motor vehicle accident.

As a result, the Commission finds that, by operation of Section 161(1) and (3) of the MPIC Act, the Appellant's IRI benefit shall be reduced and that the case manager and Internal Review Officer have correctly applied the formula set out in the MPIC Act to determine the amount of the reduction. Therefore, the Appellant has received an amount as an indemnity to which he is not entitled and pursuant to Section 189(1) of the Act, he shall reimburse the corporation for the amount to which he is not entitled.

As well, the panel finds that pursuant to Section 161(3.1) of the MPIC Act, the Appellant Permanent Impairment lump sum indemnity is to be reduced, and that the case manager and Internal Review officer have correctly applied the formula set out in that section to determine a reduction of his Permanent Impairment benefit to zero.

Accordingly, the Commission hereby confirms the decision of the Internal Review Officer dated August 17, 2009 and the Appellant's appeal is dismissed.

Dated at Winnipeg this 20th day of April, 2010.

LAURA DIAMOND

WILF DEGRAVES

DR. F. PATRICK DOYLE