

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-14-152**

PANEL: Ms Laura Diamond, Chairperson
Mr. Brian Hunt
Ms Nikki Kagan

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Paul Simms of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: July 28, 2015

ISSUE(S): Whether the Commission has jurisdiction to hear the Appellant's appeal.

RELEVANT SECTIONS: Sections 71(1), 150 and 175 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

On November 21, 1993, the Appellant was a pedestrian struck by a motor vehicle. On September 18, 2002 the Appellant contacted MPIC, inquiring as to whether she was eligible for a settlement in regard to this loss, which caused injuries to her shoulder and spleen.

A senior case manager for MPIC wrote to the Appellant on September 18, 2002 and stated:

“Further to our telephone conversation of September 18, 2002. You were enquiring as to whether you were eligible for a settlement in regards to this loss of November 21,

1993, where [text deleted] reversed his truck causing injuries to your shoulder and spleen.

I had indicated to you that the limitation period in the province of Manitoba for suing for injuries is two years from the date of the accident. As such you would have had to pursue this claim prior to November 21, 1995 to have the action continue.

As no notifications were filed with the courts to continue this action, we are unable to consider any claims advanced by you at this time.”

The Appellant inquired of MPIC again on September 26, 2014. The case manager from MPIC’s Rehabilitation Management Department wrote to her on September 26, 2014 and indicated:

“As explained a decision was made on claim [text deleted]. A decision letter was sent to you on September 18th, 2002 indicating that there was no coverage as the two years statute of limitation had passed.

As I indicated there are no appeal options.”

The Appellant wrote to the Commission on October 15, 2014, again seeking to make a claim in regard to the incident and explaining the reasons why she had been unable to make a claim in the past. She included her assertion that she did not get proper guidance from MPIC. She argued that the statute of limitation should not apply in her case, as her injuries are still ongoing.

The Appellant completed a Notice of Appeal form, filed with the Commission on October 15, 2014 in regard to the November 21, 1993 accident. She stated that justice had been denied and that MPIC had neglected her to date, even though she was disabled by the accident.

The Commission held a hearing to determine whether it has jurisdiction to hear the intended appeal.

Submission for the Appellant:

Counsel for the Appellant acknowledged that the motor vehicle accident had occurred in 1993, before the current “no-fault” provisions in the MPIC Act were enacted. However, he submitted that the Appellant’s initial contact with MPIC took place in 2002, when the provisions of the MPIC Act were in place. The MPIC Act included Section 150, which imposes a positive duty upon MPIC to treat claimants in a certain way. This section creates a fiduciary duty which was in place at the time of the Appellant’s interaction with MPIC in 2002.

Counsel submitted that MPIC failed in its duty to the Appellant, beginning with the case manager’s letter dated September 18, 2002. In that letter, the case manager inappropriately provided a legal opinion to the Appellant regarding the viability of her claim. She was informed that the limitation period for suing was two years from the date of the accident and that she would have needed to pursue her claim prior to November 21, 1995. Since no notifications were filed with the courts, MPIC was now unable to consider any claims. The Appellant relied upon this opinion, provided by someone in authority, who she considered to be an expert. She gave up hope of being made whole again.

However, counsel submitted that the advice given to the Appellant by the case manager was incorrect. He explained that the circumstances of the accident showed that the Appellant had been in an intimate relationship with the driver, who assaulted the Appellant by using a vehicle as a weapon. This clearly brought the events of November 21, 1993 within an exception under the Limitation of Actions Act, C.C.S.M. C.L150, as an action for assault. Counsel referred the Commission to Section 2.1(2)(b)(i) of the Limitation of Actions Act

2.1(2) An action for assault is not governed by a limitation period and may be commenced at any time if

...

- (b) at the time of the assault, the person commencing the action
 - (i) had an intimate relationship with the person or one of the persons alleged to have committed the assault, ...

Counsel noted that Section 2.1 was an amendment which came into force May 22, 2002, and given a retroactive effect by Section 2.1(3):

- 2.1(3) Subject to subsection (4), subsection (2) applies
 - (a) notwithstanding any other provision of this Act, including, for greater certainty, the ultimate limitation periods set out in subsections 7(5) and 14(4); and
 - (b) whether or not the person's right to commence the action was at any time governed by a limitation period under this or any other Act.

Therefore, through the effect of this legislation, the Appellant had a viable common law tort claim in September 2002, and still has a viable claim.

When MPIC was again contacted by the Appellant in September 2014, it was given an opportunity to right this wrong. However, once again, MPIC referred to the passing of the limitation period and advised that there were no appeal options. Nowhere in this response did the case manager indicate he had investigated the Appellant's claim, and once again, MPIC incorrectly restated the assertion that the Appellant's claim was statute barred. This was a perfunctory response and reinforced a grievous error.

Counsel noted that now, after 22 years, the Appellant is faced with a huge obstacle.

This violation of MPIC's fiduciary duty under Section 150 of the MPIC Act should now be rectified by the Commission, to allow the Appellant to pursue an appeal. Counsel submitted and relied upon case law to establish that the existence of this fiduciary duty was supported by the gross imbalance of power between the Appellant and MPIC. MPIC provided a legal opinion that

ultimately, and erroneously, interfered with the Appellant's legal interests and her potential tort claim. The incorrect legal advice delayed the Appellant's tort claim by 13 years and this delay profoundly prejudiced her ability to advance the claim, to MPIC's advantage. At no time did MPIC advise the Appellant that its interests were adverse to hers or that she should seek independent legal advice.

Therefore, based upon the Commission's decision regarding Section 150 of the MPIC Act, in AC-04-125, counsel argued that the Commission has the jurisdiction to deal with misconduct such as this, where Section 150 is at issue.

Submission for MPIC:

Counsel for MPIC took the position that the Commission does not have the authority or jurisdiction to deal with an appeal by this Appellant regarding the motor vehicle accident alleged to have occurred in 1993.

Counsel referred to Section 71(1) of the MPIC Act which establishes that Part 2 of the Act applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994. There was no question that the motor vehicle accident was alleged to have occurred in 1993.

Further, counsel referred to Section 175 of the MPIC Act which established the Commission as a specialized tribunal to hear appeals under Part 2 of the Act.

Counsel's conclusion was that this is not a proper appeal to be heard before the Commission, which does not have jurisdiction in this case. In investigating the background of this file,

counsel noted that in the claim file, the case manager had explained to the Appellant on September 26, 2014 that the Appellant's accident "was pre PIPP and was a tort file and as such there are no appeal options through PIPP, it would only be as a legal action". Counsel recommended that the only recourse the Appellant has in this situation is to seek legal advice and potentially bring action in court, should she determine that is how she wishes to proceed.

Should the Commission decide that it has jurisdiction to hear this appeal, MPIC would be willing to waive the requirement for an Internal Review decision and go straight to appeal, but counsel submitted that this matter was one for the courts and that the Commission had no jurisdiction under the MPIC Act regarding a motor vehicle accident which was alleged to have occurred in 1993.

Discussion:

The MPIC Act provides

Application of Part 2

71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

Corporation to advise and assist claimants

150 The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part.

Automobile Injury Compensation Appeal Commission established

175 The Automobile Injury Compensation Appeal Commission is established as a specialist tribunal to hear appeals under this Part.

The panel has reviewed and considered the submission of counsel for the Appellant that there was a fiduciary duty created between the Appellant and MPIC, both at common law and under

Section 150 of the MPIC Act. We recognize that the Appellant is alleging that MPIC's treatment of her in 2002 and 2014, when the Personal Injury Protection Plan ("PIPP") provisions had already been enacted, violated this duty. It was alleged that MPIC provided the Appellant with incorrect legal advice regarding the effects of the limitation period. The Appellant argued that this violation of MPIC's fiduciary duty began with its 2002 letter, which gave the Appellant erroneous legal advice and failed to advise her to seek independent legal advice. He submitted that this violated Section 150 of the MPIC Act, which was in place at the time.

However, the Commission does not have to decide whether such actions by MPIC violated a fiduciary duty. Section 150 of the MPIC Act entitles claimants to advice and assistance from MPIC, who shall endeavour to ensure that claimants are informed of and receive compensation to which they are entitled "under this part" (Part 2 of the Act).

The Commission is restricted in its jurisdiction under Section 175 of the MPIC Act to hear appeals under Part 2 of that Act and Section 71(1) of the MPIC Act is clear in establishing that Part 2 of the Act applies to bodily injuries suffered by victims in accidents occurring on or after March 1, 1994.

This scheme applies only where there is a motor vehicle accident after March 1, 1994 causing bodily injury. The Commission does not have jurisdiction under the MPIC Act to hear claims arising out of injuries from motor vehicle accidents that occurred before 1994. Section 150 of the MPIC Act cannot be applied to impose a statutory fiduciary duty upon MPIC regarding a motor vehicle accident to which Part 2 of the MPIC simply does not apply.

While the Appellant may have arguments which can be put before the courts regarding her right to civil action under the common law tort system, the Limitation of Actions Act, and MPIC's fiduciary duty to claimant's (sic) at common law, the Commission is not in a position to comment upon these matters. The Commission's jurisdiction is limited to claims regarding bodily injuries which occur as a result of motor vehicle accidents after March 1, 1994 and the incident in question, occurring on November 21, 1993 does not fall within our jurisdiction.

Accordingly, the Commission finds that it does not have jurisdiction to hear the Appellant's appeal dated October 15, 2014, and the appeal is accordingly dismissed.

Dated at Winnipeg this 11th day of September, 2015.

LAURA DIAMOND

BRIAN HUNT

NIKKI KAGAN