Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-95-6

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('M.P.I.C.') represented by Ms Joan McKelvey** **[Text deleted], the Appellant, appeared in person**
HEARING DATE:	**September 7th, 1995**
ISSUE:	**Qualification for lump sum student indemnity.**
RELEVANT SECTIONS:	**Sections 70(1), 87(2), 88(1) and (2) and 138 of the M.P.I.C. Act, and Section 10(1)(e) of Regulation 40/94.**

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 FACTS

[The Appellant], who owns and operates his own [text deleted] store in [text deleted], was, at the time of the accident giving rise to the present appeal, also enrolled as a student in the [text deleted] course administered by the [text deleted]. He had reached the third tri-mester

of the second year of that course, and was scheduled to write an examination on or about the 15th of June of 1994. The accident giving rise to the present appeal occurred on June 3rd, 1994. It appears to have involved a head-on collision and to have resulted in the total writeoff of [the Appellant's] vehicle; it left him with soft tissue injuries which, although not seriously debilitating, did create sufficient pain and severe headaches to mar his ability to concentrate upon his studies as he came down the home stretch towards the scheduled examination date. Therefore, a few days before that date, he advised the [text deleted] of his inability to write the examination and, upon paying a deferral fee of $95.00, was able to arrange to write the exam in December of that year. This gave him time to recover from the more severe effects of his accident and to resume his studies in a normal way.

Concurrently with the resumption of those studies, he also embarked upon the first trimester of his third year of study.

Unfortunately, and despite the intervening six months, when [the Appellant] came to write the deferred examinations in December, he failed the law portion. He was allowed to repeat the law exam in June of 1995, but only upon paying an additional fee of $245.00 for the privilege of repeating that portion of the course.

[Rhe Appellant] has now not only completed the ten assignments required of him during each trimester but, as well, has successfully passed all of the examinations that he has written to date, including the deferred law exam that he wrote in June of this year.

[The Appellant] has claimed payment of a lump sum indemnity of $6,300.00, pursuant to the provisions of Section 88 of the Manitoba Public Insurance Corporation Act ('the Act'), which reads as follows:

> "88(1) The student is entitled to an indemnity for the time that he or she is unable because of the accident to begin or to continue his or her current studies and the entitlement ceases on the day that is scheduled, at the time of the accident, for the completion of the current studies.
>
> "88(2) The indemnity referred to in Subsection (1) is.....
>
> (b) $6,300.00 for each term not completed at the post-secondary level, to a maximum of $12,600.00 per year."

THE LAW

It is submitted on behalf of M.P.I.C., firstly, that [the Appellant] is not a "student" within the meaning of Section 70(1) of the Act, which defines a "student" to mean

> "a victim who is 16 years of age or older and attending a secondary or post-secondary educational institution on a full-time basis at the time of the accident".

It is argued that, because [the Appellant] was also carrying on the business of a [text deleted] store and was, to a very large extent, carrying on his studies at home and with minimal, physical attendance at the premises of the [text deleted], he would not qualify as a "student". Section 87(2) of the Act which reads as follows:

> "87(2) For the purpose of Section 87 to 92 (students), a student is considered to be attending a secondary or post-secondary educational institution on a full-time basis from the day the student is admitted by the educational institution as a full-time student in a program of that level until the day the student completes, abandons or is expelled from his or her current studies, or no longer meets the requirements of the educational institution."

The [text deleted] has confirmed, by verification bearing date the 24th of January 1995, that [the Appellant] was, in fact, enrolled as a regular student in a post-secondary program on a full-time basis. That fact was also accepted by Revenue Canada for income tax purposes. If the definition of a full-time student depended upon physical attendance at a series of lectures or classes, there are a great number of active and successful students who would not qualify! Evidence was given to us that the [text deleted] expects that its full-time students will have to devote a minimum of fifteen to twenty hours per week to their studies. [The Appellant's] evidence was that, when the demands of his accounting course required it, he would hire someone else to look after the store and would limit his own retail activities to checking the cash and doing the book-keeping.

It is our view that 'full-time' does not preclude engaging in some other occupation or activity, nor require all waking hours to be devoted to the studies in question, provided that the student is fulfilling the institution's requirements for full-time participation in the course and is, in fact, devoting a reasonable amount of time and effort to that end. The number of hours spent by any individual student is not necessarily the appropriate yardstick; that will obviously vary from

one student to another, depending upon a variety of factors.

We find that [the Appellant] was attending a post-secondary institution on a full-time basis at the time of the accident, and has been doing so from that date up to the present time. He therefore qualifies as a 'student' for the purposes of the Act.

It is also argued on behalf of M.P.I.C. that [the Appellant] does not qualify for the lump sum student indemnity referred to in Section 88, because the accident did not preclude the completion of his school year nor the continuance of his studies. With that contention, we agree.

There seems to be little question that the accident, occurring as it did some ten days prior to the scheduled examination, effectively prevented [the Appellant] from writing the examination in June of 1994. To have sat the exam then would have been an unwise risk for him to take, since the most severe effects of the accident prevailed during those very days when he would have been most deeply immersed in his studies. He arranged - wisely, in our view - to defer the writing of that examination for six months. That deferment cost him $95.00. But can it be said that his failure to reach a passing grade in that same examination in December was a direct, or even an indirect, result of the accident? We think not. It should be noted that the law portion of the examination was the only subject that he failed in December, and it obviously needed a few more months of study before he was able to pass it in June of 1995. His academic career has not, therefore, been retarded in any way by the accident, nor was the additional expenditure of $245.00 made necessary by the accident - he had, after all, had an additional six months in which to

prepare himself for the December test.

With respect to the lump sum indemnity claimed by [the Appellant], therefore, the decision of the Internal Review Officer declining that claim is affirmed.

However, Section 138 of the Act reads as follows:

> "138 Subject to the regulations, the Corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market."

Further, Section 10(1)(e) of Regulation 40/94 reads as follows:

> "10(1)(e) Where the Corporation considers it necessary or advisable for the rehabilitation of a victim, the Corporation may provide the victim with any one or more of the following:....
>
> (e) funds for occupational, <u>educational</u> or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence."

We take the view that, in the absence of bad faith on the part of an insured, the provisions of the Act and of the Regulations should be interpreted liberally for the benefit of the insured and in keeping with the declared intent of the Corporation's Personal Injury Protection Plan which is

based, in part, upon ‘compensation for real economic losses.....resulting from accidental injuries in automobile collisions...’. (Vide the Corporation’s own brochure of 1994.)

We are of the view that the $95.00 disbursement necessarily paid by [the Appellant] for the privilege of deferring his examination was a direct result of the accident and falls within one or both of Section 138 of the Act or Section 10(1)(e) of the Regulation cited above, and we therefore find that he is entitled to be reimbursed by the Corporation to that extent. The $245.00 fee that he had to pay in order to repeat the course after failing the law exam in December was not, in our view, related in any material way to the accident, and any claim for its reimbursement must fail.

Dated at Winnipeg this 8th day of September 1995.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED