Automobile Injury Compensation Appeal Commission

IN THE MATTER OF AN APPEAL BY [the Appellant]
AICAC File No.: AC-96-15

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., (Chairperson)** **Mrs. Lila Goodspeed** **Mr. F. Leslie Cox**
APPEARANCES:	**The Appellant was represented by his father, [text deleted];** **Manitoba Public Insurance Corporation ('M.P.I.C.'), represented by Mr. Keith Addison**
HEARING DATE:	**JULY 8, 1996**
ISSUE:	**Computation of income replacement indemnity ('I.R.I.') - deduction of hypothetical tax.**
RELEVANT SECTIONS:	**Sections 70(1), 111(1) and 112(1) of the Act, and Regulation 39/94, Sections 2, 10(2) and 10(3).**

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 THE DECISION

THE FACTS:

The appellant, [text deleted], was involved in an accident on the 21st day of April, 1995, in [text deleted], when the vehicle he was driving was stopped at an intersection and was rear-ended by another vehicle. As a result, the appellant suffered soft tissue injuries to his

neck and back. The appellant, aged [text deleted] at the time of the accident, had completed his first year of university studies and was about to commence summer employment with the [text deleted] at an hourly rate of $9.50; his employment was due to start on April 24th and to finish on September 1, 1995. He also planned to continue his part-time employment with [text deleted], working one shift per week and increasing those hours, to the extent that work became available and studies permitted, after September 1st.

The appellant did, in fact, attempt to commence his work for [text deleted] on April 24th, but the disability resulting from his accident obliged him to quit work after two days since that work entailed some heavy lifting.

M.P.I.C. agreed that the appellant was entitled to Income Replacement Indemnity, classified him as a "non-earner" within the meaning of Section 70(1) of the Act and calculated his gross yearly employment income by taking the wages that he would have earned from both employers, divided by the number of days he would have held that employment and multiplying the result by 365, in order to arrive at an 'annualized' income.

M.P.I.C., as required by Section 10(3) of Regulation 39/94, (see attached), then deducted, from the gross yearly employment income thus calculated, the income tax, Canada Pension Plan contributions and Unemployment Insurance premiums that would have been payable by the appellant on that annual income, and paid him a bi-weekly income replacement of $588.71 for the period commencing one week following his accident and terminating on September 1, 1995.

THE ISSUE:

The appellant says that, since the actual money he would have earned during 1995, had there been no accident, would only have been $9,496.00, and since he would also have been entitle to deduct, from taxable income, tuition and education expenses totalling $2,740.00 (resulting in a non-taxable, net income), M.P.I.C. was in error in having deducted any income tax from the annual income that he was deemed to have earned.

THE LAW:

In order to ascertain the amount of income replacement indemnity ('I.R.I**.')** to which a victim is entitled, we must first refer to Section 111(1) of the Act, which reads as follows:

> "The income replacement indemnity of a victim under this Division is equal to 90% of his or her net income computed on a yearly basis."

The definition of "net income" is found in Section 112(1) of the Act, namely:

> "A victim's net income is his or her gross yearly employment income..... less an amount *determined, in accordance with the regulations,* for income tax under The Income Tax Act and the Income Tax Act (Canada), premiums under the Unemployment Insurance Act (Canada) and contributions under the Canada Pension Plan." (Our italics).

We note, in passing, that M.P.I.C. elected to treat the appellant as a non-earner, although it is certainly arguable that he could have been classified as a student within the

meaning of Section 70(1) of the Act, as expanded by Section 87(2), since he had been admitted by the University of [text deleted] as a full-time student and had neither completed nor abandoned, nor been expelled from, his current studies. However, since M.P.I.C.'s decision to treat him as a non-earner works to the appellant's advantage and since the point was not raised in argument before us, we refrain from dealing with it now.

In order to determine gross yearly employment income, we must have reference to Regulation 39/94 and, specifically, to Section 2(c) of that Regulation, which reads as follows:

> "2. Subject to this regulation, the victim's gross yearly employment income not derived from self-employment at the time of the accident is the sum of the following amounts: .....
>
> > (c) In the case of a non-earner, the salary or wages from an employment that the non-earner would have held, if the accident had not occurred, during the first 180 days following the date of the accident divided by the number of days the employment would have been held, and then multiplied by 365; ....."

M.P.I.C. projected the appellant's income on an annual basis, as it was required to do under the foregoing provisions of Section 2(c) of the Regulation, and added an additional 4% for vacation pay. The result was a gross yearly employment income of $22,587.81.

Next, it becomes necessary to make deductions for Income Tax, Canada Pension Plan, and Unemployment Insurance contributions, as required by Section 112(1) of the Act, cited above. For that calculation, we must look to Section 10(1) and 10(2) of that same Regulation, number 39/94. The quantum of Unemployment Insurance premiums and Canada Pension Plan contributions is not disputed by the appellant, so M.P.I.C.'s calculations in that regard are taken

as correct. It is only the amount of income tax that M.P.I.C. deducted in its calculation of net income that the appellant disputes. The appellant believes that M.P.I.C., when calculating his tax, should have allowed him to deduct the tuition and education expenses referred to above. However, an examination of Subsections (2) and (3) of Section 10 of Regulation 39/94 discloses no allowance for education and tuition credits. The credits that are allowed for the limited purposes of the M.P.I.C. Act are spelled out in Subsections (2) and (3) of Section 10. Copies of those Subsections, as well as of all other Statutory Provisions referred to above, are annexed to and form part of these reasons.

It may be of some small consolation to the appellant if we note that, by our calculation at least, if the insurer had calculated the appellant's net income upon the only logical basis that could have produced a non-taxable result, (albeit a basis that would not comply with the Act), his income replacement indemnity would have been less than $325.00 bi-weekly, rather than the $588.71 that he did, in fact, receive during the period of his inability to work.

We conclude, therefore, that M.P.I.C.'s calculations were correct and that the present appeal must fail.

Dated at Winnipeg this July 16, 1996.

J. F. REEH TAYLOR, Q.C. (CHAIRPERSON) **LILA GOODSPEED** **F. LESLIE COX**