# Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]**
**AICAC File No.: AC-96-43**

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| **PANEL:** | **Mr. J. F. Reeh Taylor, Q.C. (Chairperson)**<br>**Mr. Charles T. Birt, Q.C.**<br>**Mrs. Lila Goodspeed** |
| **APPEARANCES:** | **Manitoba Public Insurance Corporation ('M.P.I.C.')** |
| **represented** | **by Ms Joan McKelvey**<br>**[Text deleted] appeared as counsel for the Appellant by telephone** |
| **HEARING DATE:** | **November 7th, 1996** |
| **ISSUE:** | **Termination of benefits for non-compliance** |
| **RELEVANT SECTIONS:** | **Subsections (e) and (g) of Section 160 of the M.P.I.C. 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 FACTS**:

[The Appellant] was injured in an automobile accident on December 7th, 1994. At the time of the accident, he was employed as a [text deleted] Operator by [text deleted], a company owned and operated by [the Appellant's] parents. He returned to work and continued doing so sporadically following the accident, up to the 6th of January 1995, when he was laid off. [Text deleted], the Appellant's mother who was bookkeeper for [text deleted], supplied the

Unemployment Insurance Commission with a record of employment indicating that [the Appellant] had been laid off due to shortage of work; she advised M.P.I.C., however, that her son had been laid off due to his injuries.

[The Appellant] collected unemployment insurance benefits from January 8th to March 31st of 1995. M.P.I.C., despite some understandable doubts about the bonafides of his claim, nevertheless agreed to pay him the difference between his unemployment insurance benefits and the total income replacement indemnity to which he was entitled, assuming his claim to be well-founded.

It is not necessary, for the purposes of these Reasons, to spell out the entire history of [the Appellant's] dealings with M.P.I.C. It is enough, in our view, to say that the Corporation appears to have made every effort to rehabilitate [the Appellant], during the period between February 15th of 1995, when he first filed his Application for Compensation, and the 6th of February 1996, when his benefits under the M.P.I.C. Act were terminated. [The Appellant] appears to have an attitudinal problem which, to put matters as kindly as we can, appears to inhibit his cooperation with the medical and physiotherapy specialists whose expertise was retained for his benefit. His frequent failures to attend for physiotherapy, offering either some lame excuse or no excuse at all, appears to have caused his therapists both in [text deleted] and in [text deleted] to voice a high level of frustration and to indicate that, in the absence of a change of attitude on [the Appellant's] part, there was little that they could do to help him.

However, when [the Appellant] met with his senior adjuster, [text deleted], on January 9th, 1996, they agreed that the Appellant would commence a so-called 'Fast-Track'

program of physiotherapy at [rehab clinic #1] in [text deleted] on January 16th, 1996, followed by a work-hardening/conditioning program which, when completed, was expected to return him to maximum potential condition. By agreement with his adjuster and physiotherapist, [the Appellant] interrupted his physiotherapy program for the week of January 29th, to February 2nd, 1996, to allow him to attend the funeral of a cousin.

It was during this last, permitted absence from his rehabilitation program that events occurred which caused M.P.I.C. to terminate all further benefits for [the Appellant]. Those events may be summarized this way:

(a) having previously warned [the Appellant] orally that no more unauthorized absences from the program - no more appointments missed without good reason - would be tolerated, his adjuster, [text deleted], reiterated that warning by way of a letter dated February 1st;

(b) [the Appellant's] next appointment at [rehab clinic #1] in [text deleted] had been rescheduled for Monday, February 5th, 1996 at 4:40 P.M., with a further appointment for the morning of February 8th;

(c) [Appellant's MPIC senior adjuster's] letter of February 1st, addressed to the Appellant in [Appellant's MPIC senior adjuster's], had not reached [the Appellant] when, on February 4th, he had been arrested and placed in custody in [Appellant's MPIC senior adjuster's]. He was able to post bail on the following Tuesday, February 6th, by which time, of course, he was unable to reach [Appellant's MPIC senior adjuster's] for his 4:40 P.M. appointment;

(d) [The Appellant] had attempted to reach [Appellant's MPIC senior adjuster] by phone from jail in order to explain his absence and protest his innocence but, since [Appellant's MPIC senior adjuster] was sick and away from his office, was unable to do so until the morning of

Wednesday, February 7th (wrongly referred to in the adjuster's notes as February 6th). He expressed a desire to drive into [Appellant's MPIC senior adjuster's] that day, so that he could attend his physiotherapy treatment the following morning but, after an intra-departmental discussion, was told that all further benefits had been cut off by reason of the appointment that he had missed on February 6th;

(e) on March 19th, 1996, [the Appellant] was acquitted of all charges then pending against him the Crown's primary witness having refused to testify;

(f) in the meantime, [Appellant's MPIC senior adjuster] had written a confirmatory letter to [the Appellant], under date of February 19th, citing the relevant portions of Section 160 of the M.P.I.C. Act, referring to [Appellant's MPIC senior adjuster's] warning of February 1st, noting [the Appellant's] failure to recommence his physiotherapy program on February 5th and advising him that, because of this last, broken promise, M.P.I.C. had exercised its discretion under Section 160 of the M.P.I.C. Act and had terminated all benefits for [the Appellant], effective February 6th.

It is from that decision that [the Appellant] now appeals, claiming that his income replacement indemnity and physiotherapy program were terminated unfairly and without warning. He seeks the reinstatement of his I.R.I., effective from the date when it was terminated on February 6th of 1996.

There is no question in the minds of the Commission that [the Appellant] has been uncooperative, non-compliant and not entirely wedded to the truth. At the same time, the fact is that on February 1st, 1996 M.P.I.C. had not discontinued his benefits but, rather, had warned him that any further lack of cooperation would result in discontinuance. We do not place too much emphasis upon the fact that [Appellant's MPIC senior adjuster's] letter had not reached [the

Appellant], since there is at least some evidence that [the Appellant] had been given the same warning by telephone. That warning said, in effect "If you again fail to cooperate with us, then we shall have no option but to discontinue your benefits".

The question then arises, does his arrest amount to 'non-cooperation', or willful or negligent non-compliance? M.P.I.C. argues that, whatever may have been the cause, it was obviously [the Appellant's] conduct that landed him in jail and that, of itself, amounts to non-compliance. We are of the view, however, that [the Appellant's] subsequent acquittal must be accepted by this Commission as evidence of his innocence, from which it follows that we cannot properly view his arrest and incarceration as his fault. Although the Corporation may harbour suspicions that it was fear of reprisal that caused the Crown's principal witness to refuse to testify, there are more reasons than one for such a refusal: a realization that the intended testimony would, in fact, amount to perjury is one such reason.

That being so, we are obliged to find that [the Appellant's] failure to attend for his appointment on February 5th cannot properly be viewed as any willful or negligent non-compliance on his part, and his failure to attend at the subsequent appointment for the morning of February 8th was the result of his being told, on February 7th, that his benefits had already been terminated.

If his benefits, including rehabilitation therapy, were improperly terminated as of February 6th, it follows that, if his resumption of some gainful employment (not necessarily as a [text deleted] Operator) has been precluded because of the injuries that he sustained in his accident on December 7th, 1994, he is entitled to the reinstatement of his income replacement indemnity for

the period from February 6th, 1996 until the date in July of this year when his benefits were, in fact, reinstated by M.P.I.C.

It is our understanding that [the Appellant] has now completed a rehabilitation program at the [rehab clinic #2] and that the Corporation has offered to pay for him to take a driver training course. His driver's licence is apparently suspended, but the Corporation has indicated a willingness to support his application for its reinstatement in order that he may take that course.

Needless to say, any further non-compliance on [the Appellant's] part would give rise to a right on the part of the Corporation to suspend any further benefits immediately.

Dated at Winnipeg this 26th day of November 1996.

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

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

**LILA GOODSPEED**