

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-90**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('MPIC') represented
by
Ms Joan McKelvey
the Appellant, [text deleted], represented by [Appellant's
counsel]

HEARING DATE: April 15th and August 17th, 1998

ISSUE: Residence of Appellant at date of loss.

RELEVANT SECTIONS: Section 74(1) of the MPIC Act, Section 1 of Manitoba
Regulation No. 37/94 and Section 8 of the Domicile and
Habitual Residence 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 only issue before us is whether, at the time of his pedestrian/vehicle accident, that took place in [text deleted], Ontario, on April 25th, 1996, [the Appellant] was a resident of Manitoba within the meaning of the MPIC Act. The question of any benefits that may or may not flow to [the

Appellant] as a result of our decision on that point is not one that we have been asked to decide. Since the issue, here is governed by the MPIC Act and the Domicile and Habitual Residence Act, copies of the relevant sections of those Acts and of Regulation 37/94 are attached to these Reasons.

What should, in the ordinary course, have been a very simple and clear cut set of facts have become needlessly clouded, partly at least due to problems of [the Appellant's] own creation.

[The Appellant] testified that, at the date of his accident, his residence was at [text deleted] in [Manitoba] where, he says, he was resident with his wife. In response to an inquiry directly from this Commission, the rental agent managing that apartment block on behalf of the landlord sent us copies of two Leases, the one for the period from May 1st to August 31st, 1995 and the other from September 1st, 1995 to August 31st, 1996. Both those Leases show the tenants as [text deleted] and [text deleted]. The management company, in its covering letter to us, says in part:

If [the Appellant] and [Appellant's wife] lived in this suite, we had no idea. I must tell you though, that I had a lot of trouble with [text deleted], not paying rent and so forth. He was very difficult to serve, as no one was ever home. Which leads me to believe that no one else lived in the suite with him other than [text deleted].

[Text deleted] moved to [Ontario], whether he is still there or not I do not know.

I personally have never heard of [the Appellant], or [Appellant's wife].

[The Appellant] explains that discrepancy in two ways. When he first testified on April 15th, 1998, he told us that his credit rating was so bad that he had been obliged to ask his friends or his cousins, [text deleted] and [text deleted], either to sign the Lease for him and his wife or, at least, to allow the Appellant and his wife to use their names. On the resumption of the hearing of his appeal on August 17th, he told us that the real reason was more simple, since he merely took over the Lease from his cousin who was moving to Ontario.

There is no question that, on April 25th of 1996, [the Appellant] was walking across [text deleted] in [Ontario] when he was in collision with a west bound taxi. His own description of that accident, as related to MPIC's Adjuster in [Ontario], is at odds with the police report and, in particular, with the evidence of the passenger in the taxi with which [the Appellant] collided. That, by itself, would be of minimal consequence, particularly since we are not here concerned with attributing fault. When taken with the other evidence it tended to raise doubts about [the Appellant's] credibility.

It also seems clear that, at the time of his accident, [the Appellant] was in possession of a one-way ticket from [Ontario] to [Manitoba], which gives rise to the question whether he was returning to his home in [Manitoba], as he testified, or whether he was already resident in [Ontario] and merely returning to [Manitoba] for a visit - he said that he had had another, open-ended ticket that had allowed him to travel to [Ontario] in the first instance.

[The Appellant], by his own testimony and although he claims to have been knocked unconscious "for a few minutes" was able to get up and walk back to the north curb of [text deleted], apparently unaided, although someone called an ambulance and he was taken to [hospital] where he was detained for three or four hours. He appears to have been thoroughly examined, including X-rays. He had no fractures although, since he complained of a sore ankle, the hospital apparently taped up that ankle, loaned him some crutches and discharged him. Despite the fact that [the Appellant] appears to have been seen by a number of medical specialists, including orthopaedic, physiotherapist, psychological and general practitioners, amongst others, and although the Ontario physician whom he first consulted, [text deleted], gave him a handwritten note to the effect that he had suffered "serious injuries", none of the medical evidence that we have seen so far appears to support that description. That, perhaps, may be attributable to the fact that the seriousness of an injury is, like beauty, in the eye of the beholder. [the Appellant] was apparently prescribed a cervical collar, the need for which does not seem to have extended beyond a couple of weeks and, apart from physiotherapy, the extent of his medical treatment seems to have consisted of Tylenol No. 3.

While it is not primarily the extent or nature of [the Appellant's] injuries that are before this Commission, our concern is that his injuries do not seem to have been remotely severe enough to prevent his return to [Manitoba], and yet he has never been back to [Manitoba] since April 25th, 1996.

We are told by [the Appellant] and his counsel that he stayed in [Ontario] for two reasons: first,

to be near his doctor in order to obtain proper medical treatment; second, to be available for his lawyers until his claim had been settled.

We have to say that each of those reasons appears to us to be quite specious: [the Appellant] was patently not disabled to a point that would have precluded his return to [Manitoba] where, presumably, not only was his family doctor available but the expertise of any specialists whose services might have been required. The medical care available in Manitoba is of an extremely high quality and the claimant himself acknowledges that no practitioner in [Ontario] advised him against a return to Manitoba. There seems, therefore, to have been no medical reason at all for his remaining in [Ontario]. By the same token, the suggestion proffered by [the Appellant] and his counsel that [the Appellant] was advised to remain in [Ontario] pending the outcome of his claim seems, on the face of it, to be equally lacking in credibility. [The Appellant] was a man who, from his own evidence, had earned reasonably good money while working in [Manitoba] during the months prior to his accident, whose wife was enrolled in a course at the [text deleted] and who claims to have had his home in [Manitoba], yet elects (primarily on the advice of his lawyer) to remain in [Ontario] indefinitely by reason of what, by any normal standards of comparison, was a fairly minor set of injuries. We do not know how long a civil lawsuit might have been expected to take before being brought before a Judge in Ontario but, if the speed with which litigation progresses in Manitoba is any guideline, [the Appellant] was looking at a minimum of a couple of years were his claim to have been denied (as it was) by any potential Ontario defendant.

At the resumption of his hearing, on August 17th, [the Appellant] advanced a further reason for his decision to remain in Ontario, pointing out that his wife was in the middle of writing university exams and would be too busy to give him the personal care that, he felt, he needed. He therefore decided to remain in [Ontario] and stay with cousins. It is noteworthy that, on May 8th, 1996, approximately two weeks after his accident, [the Appellant's] wife, [text deleted], moved to [Ontario] permanently, with all of their household contents.

[The Appellant] had allowed his Manitoba Health insurance coverage to lapse and, although it was subsequently reinstated, that reinstatement took place some time after his motor vehicle accident and upon the strength of his misrepresentation that he intended to return to Manitoba by March of 1997. He acknowledges that this was, indeed, a misrepresentation, but explains it rather glibly by saying that he was told that he had to put some intended return date on the form of application for reinstatement if he wanted that application to succeed.

There also appears to be no doubt that [the Appellant] was on his way to [text deleted] Airport in [Ontario] at the time of his motor vehicle accident. He had just alighted from one vehicle in order to cross [text deleted] to enter a second vehicle that was to have transported him to the airport. We inquired of his travel agent, [text deleted], why he only had a one-way ticket from [Ontario] to [Manitoba], issued by the airline rather than by the travel agency itself. Her initial response was that [the Appellant] had ordered that ticket by telephone from [Ontario]. We made further inquiries of the travel agent following the initial hearing of the appeal on April 15th, and found her to be so evasive that she was served with a Subpoena to appear at the continuance of

the hearing on August 17th. On the latter date, having earlier told us that she was too busy to look up the records of [the Appellant's] travel arrangements, she now purported to have destroyed those travel records and to be unable to remember much of what she had told us informally when a representative of this Commission met with her in her office. Her evidence may not have any major significance, but her lack of candour and the acknowledged fact that she was well acquainted with [the Appellant] and [Appellant's wife] do leave a certain cloud of uncertainty about the reliability of her evidence. [The Appellant] had testified that he flew from [Manitoba] to [Ontario] on the 20th of April, yet [Appellant's travel agent] had told us in her office that he had telephoned to her from [Ontario] on April 19th. However, she corrected herself on August 17th by saying that she had merely assumed that the April 19th phone call came from [Ontario], since that was to have been the originating airport. It might be noted, in passing, that when served with the Subpoena [Appellant's travel agent] made the further comment that, if she was obliged to appear in response to that Subpoena, "I shall just say that I don't remember anything" - a prediction that proved to be, for the most part, accurate.

On the positive side of the ledger for [the Appellant], there is the fact that his wife appears to have used [text deleted] in [Manitoba] as her address when registering at the [text deleted], and in her dealings with the moving company when having her household goods shipped to Ontario in May of 1996. [The Appellant's] Manitoba driver's licence, which had been suspended and subsequently reinstated, and his records at the [text deleted] up to and including the date of his accident also reflect the [text deleted] address. Further, he explains the lapse of his Manitoba Health Services coverage by pointing out, correctly, in our view, that this had only occurred

because he had failed to notify Manitoba Health Services of his removal from one address in [Manitoba] to the [text deleted] address, and that notices addressed to him by MHSC had therefore been returned, marked "moved, address unknown". While we are still disturbed by the fact that he arranged for reinstatement of that coverage by making a statement that he knew to be untrue, that is a long way from establishing that his health coverage lapsed because he had left the province.

Perhaps of greatest probative value for [the Appellant] is the fact that, upon being admitted for examination at [hospital] in [Ontario] at a time when he was unlikely to have felt the need to manufacture a false address, he gave the Admitting Clerk his [text deleted] address.

We have therefore concluded, although (as will be apparent from the foregoing comments) not without some hesitation, that on a balance of probabilities [the Appellant] was, in fact, still a resident of Manitoba at the time of his accident. He may well have made the decision to become an Ontario resident within a matter of hours after that accident, but we are not persuaded that he had made that decision beforehand nor moved to Ontario with the prior intention of remaining there.

Dated at [Manitoba] this 25th day of August 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED