Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-01

PANEL:	**Mr. J. F. Reeh Taylor, Q.C. (Chairperson)** **Mr. Charles T. Birt, Q.C.** **Mr. F. Les Cox**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by** **Mr. Keith Addison** **the Appellant, [text deleted], represented by [Appellant's representative]**
HEARING DATE:	**August 6th, 1998**
ISSUE:	**(a) Causation - whether motor vehicle accident ('mva') under review caused Appellant's ongoing disability;** **(b) whether Appellant entitled to claim difference between pre-accident and post-accident income; and** **(c) applicability of permanent impairment award.**
RELEVANT SECTIONS:	**Sections 85(1) and 86(1) of the 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

This appeal arises out of a motor vehicle accident in which [the Appellant] was involved on December 13th, 1994. Since the primary question before us is whether the physical problems of which [the Appellant] complains were caused by that accident, it becomes necessary to consider carefully his prior history and, as well, his activities in the years after that accident.

[The Appellant], who was apparently a fully qualified electrician in his native country, came to Canada in [text deleted]. He is not yet, properly speaking, a journeyman electrician, not having obtained his papers in Manitoba, and is therefore properly described as an apprentice electrician although, he testified, his several employers have actually given him work to which a qualified journeyman would normally be assigned.

He worked for [text deleted] in [text deleted] until the end of 1990, engaged in commercial and industrial electrical construction.

The earliest note that we have on file is an X-ray report of [the Appellant's] lumbosacral spine and sacroiliac joints, apparently taken on March 13th, 1990 at the request of [Appellant's doctor], who has been [the Appellant's] general physician throughout. The clinical data noted in that X-ray report show "pain in lower back after he twisted his back in a fall at work", and the report reads as follows:

> A fracture is not identified. L2 is a Limbus vertebra. Osteophyte formation is present at L1-L2 and L4. The disc spaces are normal in width. There is straightening of the lumbar lordosis.
>
> Impression:
>
> 1. acute muscular spasm;
>
> 2. there are early degenerative changes throughout the lumbar spine.

On January 2nd, 1991, just before the end of his Christmas vacation, he was involved in the first of four motor vehicle accidents. In that one, he testified, the front of his vehicle collided with the

side of another vehicle. He was transported to hospital where, despite considerable back and neck pain, he was released after a short period of observation. Some four months later, further examinations disclosed that he had suffered kidney damage in that first accident; one kidney had to be removed surgically. He continued to experience internal discomfort and severe headaches intermittently following his accident of January 2nd, 1991; the headaches have continued, sporadically, until the present time.

He testified that he was involved in a second motor vehicle accident on October 29th of 1991. Details of that accident are sparse but we do find, in a report of May 29th, 1998, prepared by [text deleted], a specialist in orthopedic and rehabilitative medicine, the following paragraph:

> I had an opportunity to previously examine and provide reports to MPIC at their request re: his two accidents in 1991. His symptomatology were (sic) totally related to the cervical spine, resulting in mechanical stiffness and occipital headaches. It was noted at that time that a cervical X-ray taken at the [text deleted] Clinic on November 25th, 1991 showed slight narrowing of the C4-5 intervertebral disc. My last examination in 1992 showed a vastly improved pain-free range of motion of his cervical spine but he had some lumbar stiffness and discomfort and diminution of movement that was not a factor on my initial examination and, thus, not attributable to the prior accidents.

[The Appellant] did tell us that, by October 29th of 1991 he had not returned to work since the accident of January 2nd. In the October accident, his car was apparently stationary at an intersection when it was hit on the left front by another vehicle.

By reason of those two accidents, it was not until April of 1993 that [the Appellant] felt able to return to work.

On July 17th, 1993, [the Appellant] had his third accident in which the car he was driving, being stopped at a red light, was apparently rear-ended by a taxi cab. In the ensuing weeks, he attended regularly upon [Appellant's doctor] who referred him for physiotherapy and prescribed analgesics and anti-inflammatory drugs. [The Appellant] returned to work for a brief period in mid-September of 1993, but only felt able to continue with that employment until the 28th of October. He was referred by MPIC to [vocational rehab consulting company] for an initial assessment of his level of disability and the development of a subsequent rehabilitation plan for him. In the interim, [the Appellant] was in receipt of approximately $1,400.00 per month from MPIC. Through [vocational rehab consulting company], [the Appellant] was then referred to the [rehab clinic] for a functional capacity evaluation on February 23rd and 24th, 1994. The [rehab clinic] furnished a lengthy and detailed report to [vocational rehab consulting company], culminating with the recommendation that [the Appellant] return to modified duties and restricted hours with his employer, [text deleted], who had kept his position open for him. The [rehab clinic] also recommended that, since [the Appellant] had already been off work longer than six months and was pain focussed, he undertake a comprehensive rehabilitation program. The [rehab clinic] noted, in their covering letter, that [the Appellant] had not given a maximal effort during his evaluation and, consequently, had not performed at a level which met the more strenuous elements of his job. He had exhibited some patterns of pain but it had been difficult to decide conclusively the exact nature of the pain pattern as it had been inconsistent in some of his test movements. While pattern 1 discogenic type pain had been evident in his cervical spine, [the Appellant] had

had decreased ranges of motion in his lumbar spine and right shoulder which, said the [rehab clinic], "appeared to be self-induced".

There followed a graduated return-to-work program and, concurrently, an active rehabilitation therapy program at the [rehab clinic]. By April 17th of 1994 [the Appellant's] employer had asked him to recommence working an eight hour day, to which [the Appellant] apparently agreed although he felt that this was about one week premature. [The Appellant] had reported to his vocational consultant at [vocational rehab consulting company] on May 17th that he was continuing to experience pain in his lower back and neck, that his lower back was swollen and that he could "barely work". [The Appellant] also told his advisor at [vocational rehab consulting company] that the combination of his program at [rehab clinic] and his increased hours at work made it impossible for him to do his exercises at home, as had been recommended.

While [the Appellant] took a vacation in July of 1994, he reported that, within two days of his return to work, he had a headache all day, originating at the base of his neck. That complaint was consistent throughout the ensuing months. Unfortunately, his combination of return to work and rehabilitation program did not achieve the desired results. He continued to complain of pain in his neck and lower back; [Appellant's doctor] continued to report restriction of his neck movement by 70%, with his back movements restricted on extension by 20% and on flexion by 60%; the headaches continued.

By September 15th of 1994 [rehab clinic] was reporting to [Appellant's doctor] that [the Appellant's] ranges of motion had decreased significantly since he had last attended the [rehab clinic] program and, on September 23rd, [rehab clinic] reported that [the Appellant's] documented abilities still fell substantially short of the demands of his job. They added that "[The Appellant] presently has other health problems that sometimes make it difficult for him to perform maximally throughout his program. He thinks that this program is very helpful; however, he is concerned that returning to his job will cause his back to get worse again. [The Appellant's] program is now focussed on strengthening." An almost identical report was rendered by [rehab clinic] on October 25th of 1994, and [the Appellant] indicated that [Appellant's doctor] had told him that he would be unable to return to his former employment. That, as [rehab clinic] put it, "creates a barrier as far as our goal of returning [the Appellant] to work is concerned." However, [rehab clinic] continued to work with [the Appellant] who continued to attend there until, on November 22nd, of 1994, he was discharged from the CBI program. The [rehab clinic's] discharge report noted that all of [the Appellant's] ranges of movement had become functional and that, although some measurements might be slightly decreased, he was not limited from performing tasks. The joint report of his physiotherapist and exercise therapist at [rehab clinic] concluded, in part:

> Ideally, I would have returned him to his job for partial hours as well as continue his treatment here. His hours at work would have gradually increased to full-time by approximately December 10th, 1994. This is not possible however, because [the Appellant's] position is currently not available. His employer stated that there would not be work until January or February of 1995. Because [the Appellant] no longer requires our constant guidance and education, it is recommended that he be discharged from the [rehab clinic] program.

At about 8:50 A.M. on December 13th, 1994, while unemployed, [the Appellant] was involved in yet another automobile accident when, once again, stopped at a red light his vehicle was

rear-ended by another car He immediately went to see [Appellant's doctor] whose report of that same date reflects that "he has not recovered yet from the injuries in an mva on 17th July 1993". The current diagnosis was shown to be "strain to neck and lower back; contusion to upper abdomen; post-traumatic headache". [Appellant's doctor] again prescribed analgesics and muscle relaxant, referring [the Appellant] back to the [rehab clinic]. His report says "he is unfit to do any lifting and recurrent bending" and notes that [the Appellant] was not capable of resuming his main occupation. The bruise on the abdomen was attributable to the seat-belt.

The Appellant then returned to the [rehab clinic], initially for four hours a day three times per week until March 14th, 1995, when he returned to work at [text deleted], starting with four hours, then six hours and finally eight hours per day.

[The Appellant] received income replacement indemnity from January 8th to February 25th, 1995. It was then discontinued because he commenced a course at [text deleted] by [text deleted], which he attended from February 26th to June 17th of 1995, at which point he discontinued his course and commenced working for [text deleted] - his former employer at [text deleted] having insufficient work for him. He continued working for [text deleted] until December 6th, 1995 when he attended upon [Appellant's doctor] complaining of pain in his neck and back, particularly when working. He also complained of numbness in both arms during the preceding month, which [Appellant's doctor] felt was "most likely due to pressure on nerve roots in the neck". [Appellant's doctor] reported that [the Appellant] also continued to complain of "post traumatic headache" which had become so severe that [the Appellant] had had to leave work. [Appellant's

doctor] prescribed Tylenol No. 3 and referred the Appellant to [text deleted], a specialist in rehabilitation medicine, and to [text deleted], a neurologist.

MPIC then reinstated [the Appellant's] income replacement indemnity, on December 8th, 1995, and continued paying it until June 29th of 1997.

[Appellant's neurologist's] report of December 11th, 1995 reflects that [the Appellant]

> reports about a four month history of intermittent numbness of the median innervated fingers bilaterally. He says this did precede him starting back to work in September. At that time he went back to heavy construction work and he found that the hands definitely got worse. They would be numb during the day while he was using them and also in the morning when he awakes. Sometimes the whole arm would feel numb on one or both sides.
>
> He has a long standing history of neck pain and low back pain, since a motor vehicle accident in 1991.....he had tried other jobs and usually had to stop because of the neck and back pain.

Objectively, [Appellant's neurologist] reported that [the Appellant] showed slightly decreased sensation in the median innervated finger bilaterally, but that otherwise strength, sensation, reflexes, and plantars were normal bilaterally. The neck had a reduced range of motion to about 50% of normal in all directions, as did [the Appellant's] back. [Appellant's neurologist's] diagnosis was a mild bilateral carpal tunnel syndrome which he did not feel was severe enough to warrant surgery. [Appellant's neurologist] also ordered a CT Scan of the Appellant's neck to ensure that there was not a concomitant cervical compression.

[Appellant's rehab specialist #1]'s report of December 18th, 1995 says, in part:

> He no longer attends physiotherapy. He recently has been seen by [Appellant's neurologist] who found a probable right carpal tunnel syndrome. I am not sure if the EMG was abnormal for the nerve roots but a CT Scan of the cervical spine has been ordered at the [hospital #1].
>
> Examination revealed very little. There is no serious tenderness in his neck or lumbar spine but reduced range of motion probably secondary to pain. His hips move well. There is no obvious signs of nerve root impingement in the arms or the legs.
>
> I reviewed an X-ray which the patient brought in from 1993 of the cervical spine. They do not show serious disc degeneration although a report from 1991 indicates some C4-C5 disc narrowing.

Subsequent reports from both [Appellant's rehab specialist #1] and [Appellant's neurologist] indicate that further tests had confirmed the existence of carpal tunnel syndrome of comparatively recent origin and probably work-related. The CT Scan had disclosed what [Appellant's neurologist] refers to as "significant cervical stenosis *(that is, a narrowing of the diameter of the spinal canal*) at the C5-6 level, due to a large posterior and left posterolateral ridge osteophyte (*a bony outgrowth or protuberance*) and associated disc protrusion". There is a suggestion on the file that [Appellant's neurologist] recommended surgery for the treatment of that condition, but that [the Appellant] elected not to undergo it.

A subsequent letter from [Appellant's neurologist] to MPIC of February 12th, 1996 says, in part:

> .....as you know, he has had several accidents in the past. He said he had pretty much recovered in terms of his neck pain prior to the December 13th, 1994 accident.....he suffered a whiplash type injury. He said his head rest actually bent backwards. He had increased neck pain and it started radiating down both arms to the wrist. This was the first time that he actually noticed radiation of the pain.
>
> When he returned to work as an electrician he began noticing numbness of the hands. Whenever he would extend the neck he would notice increase in the neck

> pain with radiation into the arms.
>
> .....in terms of treatment, we are considering surgery for severe cervical spinal stenosis.
>
> His current symptoms would indeed be related to the most recent accident of December 13th, 1994. The whiplash type injury likely was superimposed on an underlying chronic neck problem. However, symptomatically he had improved so his new symptoms relate to the new accident.
>
> In terms of returning to work, I think this first has to be resolved and surgery is likely the best option. Until then I do not think he could return to any physical work, especially in his job as an electrician.

[Appellant's neurologist] referred [the Appellant] to [Appellant's neurosurgeon] at the Neurosurgery Section of the Department of Surgery at the Health Sciences Centre. [Appellant's neurosurgeon]'s report of March 6th, 1996 notes that [the Appellant]

> "just returned home last week following a one week admission to the [hospital #2] because of his heart. He denies having had a heart attack.
>
> [The Appellant] has had neck problems since 1991.....(since his most recent mva) he finds that.....if he flexes his neck he gets a headache.....he also complains of back pain, although his neck pain is much more significant. Since he has been home for the last two months, there has been some improvement of his neck pain.....I could detect no neurologic abnormality.
>
> Further investigations would be required prior to pursuing any surgical intervention. In particular, I have recommended myelography. He is hesitant to proceed with that....he wishes to sort out his heart problems first. Therefore, I will arrange no further investigations at this time.....(as I understand it, he is possibly having a coronary angiogram in the near future).

On October 23rd of 1996, a report to [Appellant's doctor] from the [text deleted] Physiotherapy and Sports Injury Clinic notes

> "slow progress to date. [The Appellant] has also attended [hospital #2] Emergency Department on several occasions due to heart (?) problems. He has attended for further investigation. Recent exacerbation with increased lumbar spasm resolving slowly. Presently range of motion varies with degree of pain although half to three-quarters noted. Muscle strength improves slowly. A home program has been supplied....."

In early January of 1997, MPIC referred [the Appellant] back to [vocational rehab consulting company] for assistance in coordinating [the Appellant's] rehabilitation. By this time it had become apparent that [the Appellant] was not suffering from any ongoing cardiac condition; rather, his chest pains were, in the opinion of his cardiologist and of his general practitioner, stress related. [Vocational rehab consulting company] recommended a psychological assessment and intervention to assist [the Appellant] with promoting healthy pain and coping mechanisms. They also recommended that a functional assessment be carried out by an occupational therapist, but neither of these recommendations seems to have been adopted by MPIC - partly, it appears, due to some continuing concern on the part of [vocational rehab consulting company] that [the Appellant] should first concentrate on a complete resolution of any heart condition from which he might have been suffering.

[Appellant's doctor] referred [the Appellant] to [text deleted], a specialist in rehabilitation medicine at the University of Manitoba and at the Health Sciences Centre. [Appellant's rehab specialist #2] examined the Appellant on March 13th,1997. [Appellant's rehab specialist #2] reports that [the Appellant] was complaining of neck pain, back pain, numbness and weakness in

both legs, difficulty in ambulation, reduced functional capabilities and inability to return to his preinjury occupation. It is important to note, here, that [Appellant's rehab specialist #2's] report of October 17th, 1997, addressed to [the Appellant's] solicitor, speaks of a "disc herniation at C5-C6 level" and of "lumbosacral disc herniation at L4-L5 level with radiculitis". With great respect to [Appellant's rehab specialist #2], we are unable to find any evidence of disc herniation at all in [the Appellant's] medical history - disc protrusion, certainly, but no herniation. By the same token, we could find no evidence of radiculitis nor of nerve root compression in any of the earlier medical reports from [Appellant's doctor], [Appellant's neurologist], [Appellant's rehab specialist #1], [Appellant's orthopedic specialist] or [Appellant's neurosurgeon], and even [Appellant's rehab specialist #2's] report from his March 13th, 1997 examination of the Appellant speaks only of the "possibility of right C7 nerve root compression". [Appellant's rehab specialist #2] appears to have seen [the Appellant] for the first time on March 13th, 1997, two years and three months after his accident of December 13th, 1994. He saw him on several occasions thereafter, specifically on April 28th, May 8th, June 16th and August 28th of 1997, by which time he concluded that [the Appellant] had made "significant improvement in his radicular and mechanical spinal pain". [Appellant's rehab specialist #2] felt that the Appellant's functional level had improved but that he was not yet fit to return to his pre-accident occupation. [Appellant's rehab specialist #2] anticipated that his treatments of [the Appellant] would be concluded by the end of October, 1997, at which point it was expected he would be able to return to gainful employment, with or without restrictions. [Appellant's rehab specialist #2] had been treating [the Appellant] with analgesics, non-steroidal anti-inflammatory drugs, epidural corticosteroid injections and a cervical and dynamic lumbar stabilization exercise program. He anticipated, on August 28th,

1997, that with a further six to eight weeks of that exercise program, a conditioning and work-hardening program, [the Appellant] would make even further improvement in his radicular pain and functional level.

We were also provided, by counsel for the Appellant, with the report from [Appellant's orthopedic specialist] briefly referred to above. That report documents, amongst other matters, that [Appellant's orthopedic specialist] had examined and reported upon [the Appellant's] condition following his two accidents in 1991 and his accident in July of 1993. He did not see [the Appellant] again until January 29th, 1998, when the Appellant was again referred to him by [Appellant's doctor]. [Appellant's orthopedic specialist's] report expresses the opinion that [the Appellant] had "shown progressive degenerative disc changes in the cervical and lumbar areas and both clinical symptomatology and nerve root irritation secondary to spinal stenosis in both the cervical and lumbar spine areas". He felt that these progressive changes were the results of [the Appellant's] four previous automobile accidents and that the changes had been well advanced prior to the accident of December 1994. He did feel, however, that the most recent accident had "caused significant aggravation of the involved areas leading to some temporary neurological manifestation in both the lower and upper limbs", which had resolved by the time of [Appellant's orthopedic specialist's] examination of the Appellant. [Appellant's orthopedic specialist] also expressed the opinion that [the Appellant] had progressively deteriorated since his first accident in 1991. There had been a progression of degenerative changes and the resulting spinal stenosis. The Appellant's last accident of December 13th, 1994 had, in [Appellant's orthopedic specialist's] view, "significantly aggravated, and likely caused some increased progression of, his disc disease,

although the condition reflected by the CT Scan in 1996 "was not totally implicated in the accident of December 13th, 1994 but had an accelerating deteriorating effect on his pre-existing progressive condition.

The records of MPIC, with which [the Appellant] takes no issue, reflect that the Appellant received income replacement indemnity in the amount of $985.25 bi-weekly from January 8th to February 25th, 1995. From February 26th to June 17th, 1995, he was enrolled in a full-time electrical course at [text deleted], while also receiving employment insurance benefits. Those latter benefits continued until September 29th, 1995, when [the Appellant] secured employment with [text deleted]. He was laid off on December 8th, 1995, and coincidentally had been provided with a certificate by [Appellant's doctor] on December 7th to indicate that he was no longer fit for work. As a result, MPIC recommenced paying him IRI on December 8th, 1995, and that continued until June 29th, 1997.

In the meantime, MPIC had provided [the Appellant] with physiotherapy and with a work hardening program at the [rehab clinic] from which he withdrew on February 23rd, 1995. Physiotherapy was recommenced on June 3rd, 1996 at [text deleted] Physiotherapy and, as noted earlier in these Reasons, [vocational rehab consulting company] were retained at the beginning of 1997 for assessment purposes.

In March of 1997, having receiving an opinion from [text deleted], its medical consultant, MPIC decided that [the Appellant] had achieved maximum therapeutic benefit from any treatments for

which it might have been responsible, and that any ongoing problems from which he might be suffering were not attributable to the 1994 motor vehicle accident. MPIC therefore notified [the Appellant] that it would be terminating his income replacement as of June 29th, 1997.

He continued seeing [Appellant's rehab specialist #2] but remained off work until the 6th of April, 1998, when he obtained employment as an electrician working for [text deleted].

THE ISSUE:

[The Appellant] seeks the reinstatement of his income replacement indemnity from June 29th, 1997 to April 6th, 1998. Also, upon the basis that he is now earning $13.30 per hour compared to the $18.00 per hour that he says he was earning immediately prior to his accident of December, 1994, he claims payment of $4.70 per hour, presumably from the commencement of his current employment and for an indefinite period until he is again able to earn $18.00 per hour. Finally, he claims to have sustained a permanent disability from his 1994 accident, and seeks a lump sum payment for that.

Whether all or any of those several claims can be upheld must depend upon whether we are satisfied that any ongoing disability of which he complains was, in fact, caused by his accident of December 13th, 1994.

DISPOSITION:

We should state, at the outset, that the claim raised at the hearing of his appeal on behalf of [the Appellant] for the payment of a lump sum for permanent disability is not one raised in any earlier claim or review that we can find, leaving us without jurisdiction to deal with that matter in any event. By the same token, a claim for payment of his wage differential, not having been raised earlier, is also beyond our mandate. It may nevertheless be worth noting that, since we do not find any permanent disability flowing from the accident now under review, and since the Appellant appears now to be engaged in substantially the same form of employment that he performed before his 1994 accident, each such claim would, in any event, be unlikely to succeed.

[The Appellant's] claim for the restoration of his income replacement indemnity appears to be based upon three separate but concurrent physical problems which, he believes, either originated in or were substantially aggravated by the last of his four motor vehicle accidents described above:

Numbness of Extremities

It was not until some time in September of 1995 that [the Appellant] started to complain of a tingling sensation in his legs and numbness in his hands and arms. The neurologist and the neurosurgeon to whom his general practitioner referred him in that context both concluded that the occasional numbness in the upper extremities was a mild carpal tunnel syndrome, almost certainly attributable to the nature of his work. Complaints of numbness in the lower extremities do not

seem to have surfaced again and, in any event, there is no indication throughout his medical history that any such numbness created a functional deficiency.

Cervical Spine Problems

The CT Scan of [the Appellant's] cervical spine certainly showed significant spinal stenosis at the C5-C6 region, secondary to osteophyte formation and disc protrusion. However, X-rays from 1991 and 1993 indicate strongly that those changes in [the Appellant's] cervical spine had commenced long before his 1994 accident, and their existence following that accident were merely part of an ongoing, degenerative process. While it is probable that his 1994 accident exacerbated his symptoms - symptoms from which he had not fully recovered prior to that last accident - we are not able to find that the actual condition of his cervical spine was materially altered by that accident. We are strengthened in that view by the fact that [the Appellant] suffered no neurological consequences from his 1994 accident. [MPIC's doctor] expresses the view, supported by one of the radiologists at the [hospital #1] that "significant spinal stenosis as the result of the changes noted in [the Appellant's] CT Scan would in all probability develop over many years as compared to the 13 months between the collision and the date of the CT Scan".

Lower Back Problems

The CT Scan of [the Appellant's] lumbosacral spine revealed minor osteophytes involving the L4 superior endplate and mild facet arthropathy at the L3-4 and L4-5 levels. It also disclosed evidence of a disc protrusion at L4-L5. Despite that apparent disc protrusion, it is significant that no evidence was found of any nerve root compression. X-rays taken of [the Appellant's]

lumbosacral spine in July of 1993 showed certain degenerative changes that had already occurred, in the form of anterior syndesmophytes involving the lower lumbar vertebrae. (A syndesmophyte is an abnormal bony growth attached to a ligament.) The condition of his lumbosacral spine does not appear to have been altered in any material way by his 1994 accident. Any changes that may have occurred are, in our view, part of the progression that was well under way quite some time prior to December 13th, 1994.

The reasons given by [the Appellant] for discontinuing his attempts to return to the workforce following December 13th, 1994 are, for practical purposes, identical to those that kept him away from the workforce in 1993 and 1994: primarily pain and restricted range of motion of his neck, combined with increasing headaches and lower back discomfort. Their causes appear to be identical both before and after the accident of December, 1994.

We do not doubt the validity of the view, held by [Appellant's orthopedic specialist] and [Appellant's doctor], that [the Appellant] may well have sustained some level of functional impairment as a result of the progressive changes to his cervical spine and his lumbar spine. The fact that he is currently employed by [text deleted] as an electrician seems to militate against the concept that his level of impairment is great enough to disable him totally from performing his former work. He may need assistance from time to time with some of the more physically demanding aspects of that work, but that is a long way from total disability. More to the point, however, we are not persuaded that his level of impairment, whatever that may be, had its origin in his motor vehicle accident of December 13th, 1994. The fact is that he had felt obliged to quit

most, if not all, of his periods of employment since January 2nd, 1991, to due to pains in the neck and, to a lesser degree, the lower back. It has to be said that nothing much has changed in terms of his functional capabilities. One needs only to look, for example, at the reports from the [rehab clinic], addressed to [Appellant's doctor], of September 12th, 1994 (about three months prior to [the Appellant's] last accident) and of February 14th, 1995, a couple of months after that accident. Those reports reflect the following changes in recovery of movement by [the Appellant] between the two dates noted:

Recovery of Movement	September 12th, 1994		February 14th, 1995
Normal			
Lumbar flexion to120%	51%	55%	110
Lumbar extension to 40%	25%	19%	35
Straight leg raise (left)	34%	79%	80%
Straight leg raise (right)	24%	79%	80%
Cervical flexion	28%	47%	60%
Cervical extension	25%	54%	75%
Lateral side flexion (left)	19%	32%	45%
Lateral side flexion (right)	43%	31%	45%
Rotation (left)	27%	61%	80%
Rotation (right)	43%	63%	80%

As is apparent from the foregoing comparisons, [the Appellant] had actually achieved a marked improvement in his recovery of movement between September of 1994 and February 1995, in every area tested other than lumbar extension, in which there was a very slight decrease, and a right lateral side flexion, in which for some reason [the Appellant's] range of motion had declined

from a normal range to about 75% of normal. Those figures, particularly when read together with [Appellant's doctor's] comment on December 30th, 1994 that [the Appellant] "has not recovered yet from the injury in a mva on 17 July 1993" cast serious doubt upon the suggestion, advanced by [the Appellant] and, at a later date, by [Appellant's doctor] himself, that the Appellant was close to full health in December of 1995. That, patently, was not so. [Appellant's rehab specialist #2], a rehabilitation specialist of high repute, unfortunately did not have an opportunity to examine [the Appellant] until March 13th, 1997, some months after [the Appellant's] last accident, and was obliged to rely in large measure upon the patient's own history. It is no reflection upon the honesty of [the Appellant] to note that the history of his symptomatology that he gave to [Appellant's rehab specialist #2] and others differs from that which he gave to [Appellant's orthopedic specialist]. While the personal history offered by a victim must necessarily be an important factor in deciding upon diagnosis and treatment of injury or illness, that history can become warped when seen through the prism of pain, both present and recollected; the objective signs disclosed by well accepted tests, are almost always more reliable.

Not being persuaded that [the Appellant's] continuing problems were caused, nor even materially augmented for any appreciable length of time, by his fourth and last motor vehicle accident, we have to deny his claim for reinstatement of income replacement. It follows that the other aspects of his appeal would also fail, even it were within our mandate to deal with them.

Dated at Winnipeg this 7th day of September 1998.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

F. LES COX