Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-113

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey;** **the Appellant, [text deleted], was represented by [Appellant's counsel]**
HEARING DATE:	**May 12th, 1999**
ISSUE(S):	**(i) impairment benefits – effective date for calculation - whether date of MVA or date of payment;** **(ii) lump sum indemnity - method of calculation;** **(iii) 180-day determination of deemed employment;** **(iv) entitlement to interest on monies payable;** **(v) 60-day limitation date - expiry of time for seeking review;** **(vi) Charter rights - whether Commission authorized to decide.**
RELEVANT SECTIONS:	**Sections 85(1), 86(1), 106, 127, 130, 163, 165(3), 166(1), 172 and 184(1) of the Act, Sections 7 and 8 and Schedule C of Manitoba Regulation No. 39/94, and Manitoba Regulation No. 41/94.**

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 Appellant], a resident of the [text deleted] First Nations Reserve from the Fall until the Spring and of [text deleted] during the remainder of the year, was injured in a motor vehicle accident on September 4th, 1994. Arising out of that accident and related to the benefits to which she became entitled, there are six matters forming part of this appeal that need to be addressed:

Effective Date for Calculation of Impairment Benefits

[The Appellant] sustained some permanent impairments, as a result of which she became entitled to a lump sum indemnity under Section 127 of the MPIC Act ('the Act') and under Regulation 41/94. The amount of that indemnity is not material for the purpose of these reasons. The relevant sections of the statute, as originally enacted in 1994, read as follows:

> Lump sum indemnity for permanent impairment
>
> 127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than $500. and not more than $100,000. for the permanent impairment.
>
> Computation of lump sum indemnity
>
> 130 The lump sum indemnity payable under this Division for a permanent impairment is an amount equal to the product obtained by multiplying the maximum amount applicable under section 127 *on the day of the accident* by the percentage determined for the permanent impairment.
>
> Adjustment of other amounts on March 1
>
> 165(3) An amount of money referred to in dollar amounts
>
> (a) in this Part other than under section 114 (maximum yearly insurable earnings); and (b) and in Schedule 3
>
> shall be adjusted on March 1 of each year.
>
> Adjustment is based on C.P.I.
>
> 166(1) Subject to section 167 (cap on adjustment), an adjustment is made by multiplying the amount to be adjusted by the ratio between the consumer price index for the current

> year and the consumer price index for the preceding year.

In [the Appellant's] case, the amount to be adjusted was $100,000.00. As a result of that adjustment, by the time in May of 1997 that [the Appellant] was paid her lump sum indemnity for her permanent impairments, the $100,000.00 provided for in Section 127 had been adjusted upwards three times, so that by 1997 the maximum had become approximately $108,000.00.

Counsel for [the Appellant] argues that her lump sum indemnity should be calculated as a percentage of the latter figure rather than as a percentage of $100,000.00. That is to say, he submits that it is the year in which the indemnity is paid that should govern the amount of the indemnity, rather than the year in which the accident took place.

A simple reading of the italicized portion of Section 130 renders that argument void and it must fail.

Calculation of Lump Sum Indemnity

This facet of [the Appellant's] appeal has its genesis in a letter bearing date May 6th, 1995 and written by [the Appellant's] surgeon, [text deleted]. In that letter, which is addressed to [the Appellant's] adjuster at MPIC, [Appellant's surgeon] briefly describes the nature of the surgery that he had performed for [the Appellant], notes that the prognosis for her injury would not be available until one year following injury, suggests a functional capacity evaluation to be performed some time after September 1995, and concludes:

> I think that ([the Appellant]) will experience a partial permanent functional deficit which may be calculated at 25%.

The quoted portion of that letter was, of course, a medical estimate of the extent to which [the Appellant] might ultimately find herself functionally impaired; [Appellant's surgeon] was in no way attempting to apply the relevant provisions of Section 127 and of Manitoba Regulation No. 41/94; there is nothing on [the Appellant's] file to indicate that [Appellant's surgeon] was even aware of those provisions. Simply put, and in the context of [the Appellant's] injuries, provision is made in Regulation 41/94 for specific amounts to be paid by way of lump sum indemnity to a victim, for each permanent impairment to her thoracic spine, lumbar spine and peripheral nervous system, as well as for disfigurement (in this case, scarring). Each award is calculated as a given percentage of $100,000.00. Based upon the medical information available, MPIC calculated [the Appellant's] lump sum indemnity as follows:

Thoracic spine	
For ankylosis of vertebrae, from T7 to T12 both inclusive, at 3% for each space	15%
Lumbar spine	
For ankylosis of vertebrae, from T12 to L2, both inclusive, at 4% for each space	8%
	23%
* Applying successive remainder per Schedule B, the foregoing 23% becomes	22%
Peripheral nervous system	
Motor and sensory impairments L3	1%
Disfigurement	
Scarring, 36 cm. x 2 mm X 0.5	3.6%

26.6% x $100,000.00 = $26,600.00

* Copy of Schedule B (2 pages) is annexed hereto.

Counsel for [the Appellant] does not argue that any of the foregoing calculations was necessarily inaccurate, nor does he suggest that the insurer was not following the provisions of the Act and the Regulations referred to above. Rather, he seems to be arguing that this Commission should ignore the Act and the Regulations with respect to the injuries to [the Appellant's] thoracic spine, lumbar spine and peripheral nervous system, and that we should substitute for those statutory requirements the extra-statutory estimate of [Appellant's surgeon], being 25%. It is somewhat ironic that counsel wishes us to adhere to the statute and the Regulations when it comes to calculating the indemnity payable to [the Appellant] for her scarring. That is to say, we are asked to apply [Appellant's surgeon's] estimate of 25% to the first three impairments noted above, but to apply the law to the fourth. We are constrained to say that this submission borders on the ludicrous. It, too, must fail.

180 Day Determination

[the Appellant] was unemployed and a recipient of social assistance from the [text deleted] at the time of her accident. She was, therefore, a 'non-earner' within the meaning of the Act. The Act says that a non-earner is not entitled to income replacement during the first 180 days following her accident, unless the accident prevented her from holding an employment that she would otherwise have held. After the first 180 days, Section 86(1) of the Act requires the Corporation to "determine an employment for the non-earner in accordance with Section 106" and, if the accident continues to render her unable to hold the employment thus determined, she becomes

entitled to income replacement indemnity.

Since [the Appellant] had not been gainfully employed with any consistency during the five years immediately prior to her accident, since she had a Grade [text deleted] education and her only training was the temporary training program referred to in the next paragraph of these Reasons, MPIC had determined an employment for her as 'light cleaning'. Using that occupation as a wage base, the insurer had fixed her income replacement indemnity at the minimum wage level. The Regulation that is applicable in this case is Manitoba Regulation No. 39/94 and, in particular, Sections 7(1), 7(2), 7(3) and Section 8 of that Regulation, together with Sections 1 through 4 of Schedule C to that Regulation, and the personal service occupations listed under that same Schedule. (Copies of the foregoing Sections and Schedule are also annexed to these Reasons and intended to form part of them.)

Counsel for [the Appellant] argues that, because [the Appellant] had been maintaining her own home for several years prior to her motor vehicle accident, sometimes on the [text deleted] and sometimes in one or another of the several apartments where she lived in [text deleted] (sometimes with her former partner and, at other times, alone), she should be classified as a housekeeper or cleaner, Level 3, under Schedule C to the Regulation noted above. In support of that, [the Appellant's] counsel points to the fact that, in 1990, [the Appellant] had been involved in a temporary training program under the auspices of [the Appellant] that hires people on social assistance to provide housecleaning or yard work for senior citizens and disabled persons in the community. The [the Appellant] indicate that people working in that capacity usually started off receiving a training wage of $280.00 bi-weekly (with no deductions) and then, after two or three

months, were raised to $5.00 per hour with deductions. The evidence is that [the Appellant] was employed sporadically under that program from May until some time in November of 1990.

While this Commission appreciates the fact that any person, male or female, who manages a home with all the work that that normally entails could certainly be said to be part of the 'labour force', given the broadest possible interpretation of that phrase, but we are of the view that the list of occupations attached to Schedule C to the Regulation is intended to refer only to those who are gainfully employed in the service of others, whether paid a salary or an hourly wage. Indeed, Schedule C is headed "Classes of Employment" which, in our respectful view, can only mean gainful employment in the context of this statute and Regulation. MPIC determined [the Appellant's] employment, as of the 181st day following her accident, to be that of 'light duty cleaner' although, it must be said, the schedule under the above Regulation does not distinguish between "cleaners" and "light duty cleaners". The dispute between [the Appellant's] counsel and MPIC about the nature or description of her determined employment therefore becomes academic: they seem to be agreed that "cleaner" is the correct occupation. However, we now have to look at Section 7(1) of Regulation 39/94, which reads as follows:

> 7(1) The gross yearly employment income of a victim who, at the time of the accident, does not hold the employment determined for ……her by the Corporation but who, in the five calendar years preceding the date of the accident, held such employment, is the greatest gross yearly employment income earned by the victim from the employment in any of those calendar years as determined under Section 2 or 3, indexed under Schedule B and then adjusted under Schedule A.

As a result, on May 23rd, 1997 MPIC's case manager wrote to [the Appellant], in care of her solicitor, and that letter reads, in part, as follows:

> The [the Appellant], confirmed you were earning $280.00 bi-weekly while you

> participated in the training program, and therefore, your full-time potential in this position is calculated as follows:
>
> $280 bi-weekly x 26 payment periods = $7,280.00 in 1991 dollars. We then apply an indexation factor in order to pro-rate the 1991 figure to a 1995 figure. In 1995 dollars this would equal $7,853.28.
>
> We then apply an adjustment factor to take into account your presence in the work force over the last five years, and this adjustment factor is 36.5%, leaving your determined income at $4,986.83.
>
> As the gross yearly determined income following the 180th day cannot be less then minimum wage, your income replacement indemnity benefits are calculated based on gross yearly employment earnings of $10,400.00 between February 1st and June 30th, 1995. As there was a minimum wage increase on July 1, 1995, your gross yearly employment income was adjusted to $10,920.00 between July 1, 1995 and December 31, 1995. A further adjustment to minimum wage took place on January 1, 1996 to increase the gross yearly employment earnings to $11,232.00, which was subject to indexation as of February 1, 1997, increasing the minimum wage gross yearly employment earnings to $11,232.00.
>
> The net income replacement indemnity benefits payable on a bi-weekly basis between February 1, 1995 and February 1, 1997 are as follows:
> $342.65 bi-weekly between February 1, 1995 and June 30, 1995
> $359.63 bi-weekly between July 1, 1995 and December 31, 1995
> $369.82 bi-weekly between January 1, 1996 and January 31, 1997
> Effective February 1, 1997 $369.84 bi-weekly.
> We have forwarded a cheque in the amount of $22,028.51 representing benefits payable between February 1, 1995 and May 30, 1997.

It will be apparent from the foregoing that the income replacement indemnity paid to [the Appellant] by MPIC was based upon the statutory minimum wage during her period of entitlement. We are of the view that this was the correct computation. The income levels listed in Schedule C are rendered inapplicable by the language of Section 7(a) quoted above. There is a further irony in the fact that, had [the Appellant] not been employed to any extent as a cleaner in 1991, and had she nevertheless been classified as a 'cleaner' (not an illogical classification) her deemed income would have been $11,789.00. Her short spell of occasional employment reduced that figure to a maximum of $11,232.00.

Entitlement to Interest

Section 163 of the Act provides that, where a person's application **for a review or appeal** is successful, the Corporation shall pay interest to that person on any indemnity or expense to which the person is found to have been entitled before the review or appeal. The rate of interest is determined under Section 79 of the Court of Queen's Bench Act and is computed from the day on which the person became entitled to that indemnity or expense.

It is clear, from the portions of MPIC's letter of May 23rd, 1997 quoted above, that it was from MPIC's Case Manager that the cheque for $22,028.51 was forwarded to [the Appellant], in care of her solicitor. She was not successful in having that figure increased by the Internal Review Officer, nor by this Commission. However, [the Appellant's] solicitor, [text deleted], did receive a letter from a Case Manager at MPIC under date June 13th, 1996, stating in part "…..Your client would not be eligible for 180-day determination as she was incapable of holding employment prior to this motor vehicle accident". An application for an internal review of that decision was filed by [Appellant's counsel] and after a further exchange of correspondence and the submission of an additional medical report, the Internal Review Officer did refer the matter back to the Adjuster to obtain updated medical reports. It was as a result of that referral, although without any further intervention by the Internal Review Officer that [the Appellant's] new Case Manager at MPIC wrote the letter of May 23rd, 1997 quoted earlier in these Reasons. Since it is fair to say that the May 23rd, 1997 letter would not have been written, had the Internal Review Officer not referred the question of her entitlement to IRI back to the adjusting team, it follows that her review application was successful; we are of the view that [the Appellant] is, in fact, entitled to

interest at the statutory rate, calculated upon her IRI benefits from the dates when they respectively became payable up to the date when that interest is actually paid to her.

We note, in passing, that [Appellant's counsel], in preparing his Notice of Appeal, indicated an intention to argue that the withholding of interest from the Appellant was, in some fashion never rationally explained, a denial of [the Appellant's] rights under the Canadian Charter of Rights and Freedoms. That argument was abandoned by her counsel, [text deleted], at the hearing of her appeal.

Applicability of Limitation Date

Section 172 of the Act, as it existed at relevant times, reads as follows:

> 172(1) A claimant may, within 60 days after receiving notice of a decision under this part, apply in writing to the Corporation for a review of the decision.
>
> 172(2) The Corporation may extend the time set out in Subsection 1 if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

On June 19th, 1997 MPIC's Case Manager wrote to [the Appellant], in care of [Appellant's counsel], to advise her that the insurer was terminating any further benefits due to her failure, without valid reason, to follow or participate in a rehabilitation program made available to her by the Corporation.

It was not until December 30th, 1997 that [Appellant's counsel] filed an application for review of that decision.

MPIC's Internal Review Officer wrote to [Appellant's counsel] on February 3rd, 1998, pointing out that the application for review was not made within the 60-day time limit and was, consequently, out-of-time. The Case Manager's letter of June 19th, 1997 had stated, quite clearly, that the option to apply for a review of his decision had to be made in writing within 60 days of receipt of that letter. This was an option of which [Appellant's counsel] was well aware.

It has been submitted on [the Appellant's] behalf that this Commission should exercise its power to extend that time for applying for an internal review, and remit the matter back to the Internal Review Officer for a decision. The ground advanced for that submission is that [Appellant's counsel] had not found it possible to contact [the Appellant] during the six months between the Case Manager's decision and the actual filing of the review application. It must be said that this submission lacks credibility. It is true that, from [the Appellant's] own evidence, she did stay in more than one address in the City, but [Appellant's counsel] was aware that the Appellant's husband worked for [the Appellant] and it would not have been difficult to contact her through that source. [the Appellant] agreed that a letter addressed to her at the [the Appellant] Reserve would have been forwarded on to her; indeed, she was resident on the Reserve for at least part of the time in question. Even more to the point, however, is that [Appellant's counsel] held [the Appellant's] written authorization, bearing date May 29th, 1997, "to appeal any decision of Manitoba Public Insurance to the Review Office, Automobile Insurance Compensation Appeal Board, Court of Appeal, insofar as the appeal affects my rights under the Manitoba Public Insurance Act". That form of authorization also directed the insurer to pay to [Appellant's counsel] any money to which [the Appellant] might be entitled.

It is also argued on [Appellant's counsel]'s part that, as his Notice of Appeal puts it, "Claimant should have been served with decision of June 19th, 1997 directly". We are of the view that, when an Appellant retains a solicitor to act for her, it is entirely proper for any notice called for by the statute to be served upon that solicitor rather than upon the Appellant herself. Indeed, an argument could be made for the proposition that it would have been unethical for MPIC to send its decision directly to the Appellant, knowing that she was represented by a solicitor.

We are therefore of the view that no case can be made for a finding that [Appellant's counsel] had any reasonable excuse for failing to apply for a review of MPIC's decision within 60 days following his receipt of it. He had his client's written authority to file an application for review and, indeed, that is just what he did; the only problem is that he was four months too late in doing so. By the same token, there is little, if anything, in the material made available to us to indicate that there might have been strong grounds for overturning the Case Manager's decision on the point in question. Had there been an appearance of such grounds, then we might have been prepared to extend the 60-day time limit in the interests of avoiding a patent inequity, but that is not the case here. [The Appellant's] remedy, if she has one, can only be found with [Appellant's counsel].

We should, perhaps, add that [Appellant's counsel] also sought to raise the much belaboured subject of the Charter of Rights and Freedoms under this head, as well. He submitted that "the 60-day limitation period is a violation of the equality rights in Section 15 of the Charter of Rights because there are no limitation dates whatsoever imposed on MPI. The latter can take years to make a decision, while the claimant only has 60 days to apply for a review". However, in

response to certain questions posed by this Commission at the hearing of [the Appellant's] appeal, her counsel decided (wisely, in our respectful opinion) to abandon that particular line of reasoning. This is not to say that we approve the not infrequent delays that we have observed on the part of the insurer in arriving at decisions to pay claims; that fact has no bearing on the 60-day limitation.

Is the imposition of a 180-day waiting period void, as contrary to the Charter of Rights and Freedoms? Whether Commission has right to decide.

Simply put, the position advanced on behalf of [the Appellant] by [Appellant's counsel] and his counsel may be stated this way: if someone is unemployed (i.e. a "non-earner" under the Act) at the time of a motor vehicle accident, that person must normally wait for 180 days before becoming entitled to income replacement indemnity - there are exceptions to that rule, but they do not apply to [the Appellant]. Section 15 of the Charter of Rights and Freedoms provides, in effect, that every individual has the right to equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin. It is a violation of [the Appellant's] rights under that Charter to impose a 180-day hiatus, since the estimated unemployment rate for Indian Reserves in Manitoba is over 50%, while the unemployment rate in the rest of Manitoba is under 6%. Thus, a person residing on an Indian Reserve is more likely to be unemployed and is therefore more likely to have that 180-day waiting period imposed upon her. Therefore, it is argued, this is a form of systemic discrimination, contrary to Section 15 of the Charter. Any imputed loss of income, it is submitted, should be paid from the date of the motor vehicle accident regardless of previous employment history and of the fact that the victim was unemployed at the time of the accident.

That argument on behalf of the Appellant begs the question whether this Commission has the right to deal with Charter questions in the first place. The Constitutional Questions Act, being Chapter 180 of the Continuing Consolidated Statutes of Manitoba, requires any person intending to raise a constitutional question of this kind to serve notice upon the Attorneys General of Canada and Manitoba, in the form spelled out in Section 7 of that Act. It is apparent that [Appellant's counsel] did arrange to serve both levels of government appropriately; the Federal Department of Justice advised him in writing that there would be no intervention by the Attorney General of Canada 'at this stage of proceedings'; the Minister of Justice for Manitoba appears to have made the same election.

The Supreme Court of Canada has set down a series of principles that address the question whether administrative tribunals have authority to deal with Charter issues. In *Cuddy Chicks v. Ontario (Labour Relations Board) [1991] 2 S.C.R. 5*, the Supreme Court held that the Ontario Labour Relations Board had jurisdiction to deal with the Charter issues because its governing statute grants to that board exclusive jurisdiction "to determine all questions of fact or law that arise in any matter before it". La Forest, J., said in that case "An administrative tribunal which has been given the power to interpret law holds a concomitant power to determine whether that law is constitutionally valid". Similarly, in the previous case of *Douglas/Kwantlen Faculty Association v. Douglas College [1990] 3 S.C.R. at 570*, the Supreme Court made a similar ruling, to the effect that where the enabling legislation of an administrative tribunal gives it express authority to interpret and apply statutes, the tribunal may apply the Charter of Rights and Freedoms when determining the validity of those laws it is authorized to interpret and apply.

However, there are two other decisions of the Supreme Court of Canada that place certain limitations on the right of a quasi-judicial tribunal to decide whether Charter rights have been infringed.

In *Tetrault-Gadoury v. Canada (Employment and Immigration Commission) [1991] 2 S.C.R. 22*, the Court was faced with the question whether an administrative tribunal that has not expressly been provided with the power to consider all relevant law may, nonetheless, apply the Charter. The Supreme Court emphasized that "the express mandate given to a particular tribunal by the Legislature will normally be the most important factor in determining whether the tribunal has the power to find a legislative provision to be inconsistent with the Charter". One of the questions before the Court in *Tetrault-Gadoury* was whether a Board of Referees under the Unemployment Insurance Act had Charter jurisdiction to deal with a challenge to the denial of unemployment insurance benefits to claimants 65 years or older. The Unemployment Insurance Act was silent on the question of Charter jurisdiction and simply provided that an applicant could appeal a decision of the Commission to a Board of Referees, with a further appeal to an Umpire. The Court noted that the Umpire was given express authority under the statute to decide "any question of fact or law" raised by an appeal; that express authority was not given to the Board of Referees. The Court took the view that, had Parliament intended to empower the Board of Referees to consider and decide upon all relevant questions of law, it would have said so. The Legislature, by expressly providing that "an Umpire may decide any question of law or fact that is necessary for the disposition of any appeal…..and may dismiss the appeal, give the decision that the Board of Referees should have given…..confirm, rescind or vary the decision of the Board of Referees in whole or in part…." by necessary implication intended to limit the powers

of the Board of Referees. As La Forest, J., put it, in expressing the Court's decision,

> It is significant that the Umpire has been expressly provided with this power, while the Board of Referees has not…..It is unlikely, therefore, that the failure to provide the Board of Referees with a power similar to that given to the Umpire was merely a Legislative oversight."

The powers vested in this Commission under the Manitoba Public Insurance Corporation Act are contained in Section 184(1) which reads as *follows:*

> Powers of Commission on Appeal
>
> 184(1) After conducting a hearing, the Commission may
>
> (a) confirm, vary or rescind the review decision of the Corporation; or
>
> (b) make any decision that the Corporation could have made.

Section 187 of the Act gives any Appellant the right to appeal a decision of this Commission to the Court of Appeal for Manitoba, on a question of jurisdiction or of law, provided that leave to do so has first been obtained from a Judge of that Court. Following the reasoning of the Court of Appeal in *Tetrault-Gadoury*, we are of the view that this Commission is in a position akin to that of the Board of Referees, with the Manitoba Court of Appeal having the jurisdiction of the Umpire, at least in the limited context of the right to apply Charter principles.

We note, also, that this Commission consists of three full-time and two part-time Commissioners. Although, in fact, two of the full-time Commissioners and one part-time Commissioner are members of the legal profession, there is no statutory requirement that any Commissioner be legally trained and it is entirely possible that any given panel could consist of

one lawyer and two lay-members. A decision of a majority of the Commissioners of a panel is a decision of the Commission. In our respectful view, it could not have been the intent of the Legislature to have questions alleging breaches of Charter rights decided by panels thus constituted. While this Commission undoubtedly has the power to interpret and apply its own enabling statute, it does not follow that we therefore have jurisdiction to address general questions of law. This latter principle was further emphasized by the Supreme Court of Canada in its decision in *Cooper v. Canada (Human Rights Commission*), (1996) 3 S.C.R. 854.

Therefore, although it might well be more convenient, less time consuming, less expensive and, therefore, more in keeping with the overall purpose of establishing this Commission in the first place, were we to have the power to decide Charter issues, we find that we do not have that power and, therefore, cannot deal with this aspect of the Appellant's argument on its merits.

Were we empowered to make a decision we would not, in any event, have found that the waiting period of 180 days prescribed by Section 85(1) of the MPIC Act constituted an infringement of the Appellant's Charter rights. While no evidence was adduced to support the unemployment statistics advanced on behalf of the Appellant, what we are really being asked to do is to find that, wherever in Manitoba there are pockets of unemployment at a rate higher than that prevailing in other parts of the province, accident victims living in those pockets should be entitled to income replacement from the 8th day following their accident, whereas victims who live in areas where unemployment is lower must wait that 180 days before becoming entitled. The MPIC Act is an insurance policy embodied within a statute; it is applicable to all persons within Manitoba. It is not every First Nations Reserve that has the high rate of unemployment

that prevails at [text deleted]; by the same token, First Nations Reserves are not the only communities in Manitoba where the rate of unemployment is higher than the norm. Were we deciding this question on the merits, therefore, we would be unable to find any discrimination that offends the Charter of Rights and Freedoms in Section 85 of the Act.

In sum, then, we find that [the Appellant] is entitled to interest on the $22,028.51 sent to her on May 23rd, 1997, calculated in the manner noted above, that we have no power to decide whether Section 85 infringes her rights under the Charter of Rights and Freedoms, and that the remainder of her appeal must be dismissed.

Dated at Winnipeg this 17th day of May, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED