Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-53

PANEL:	**Mr. Mel Myers, Q.C., Chairperson** **Ms. Yvonne Tavares** **Mr. Wilson MacLennan**
APPEARANCES:	**The Appellant, [text deleted], was represented by [Appellant's representative];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.**
HEARING DATES:	**May 23, 2002, September 27, 2002, December 2, 2002, March 21, 2003, April 22, 2003, June 4, 2003 and July 15, 2003**
ISSUE(S):	**Entitlement to an Adjournment.**
RELEVANT SECTIONS:	**Section 182(1), 182(2) and 182(3) of The Manitoba Public Insurance Corporation Act (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

The Appellant, [text deleted] appealed three Internal Review Office decisions relating to two separate accidents which occurred on June 7, 1997 and October 20, 2000 and related to the following matters;

1. the Appellant's entitlement to Income Replacement Indemnity ("IRI") benefits during the first 180 days after the motor vehicle accident which occurred on June 7, 1997;

2. the Appellant's entitlement to a Care Giver Weekly Indemnity ("CGWI") pursuant to Section 132 of the MPIC Act, from October 20, 2000 to the 180th day post-accident;

3. the Appellant's entitlement to IRI benefits starting on the 181st day after an accident which occurred on October 20, 2000; and

4. the Appellant's entitlement to reimbursement by MPIC in respect of chiropractic treatments relating to the motor vehicle accident of October 20, 2000.

The Appellant subsequently withdrew her appeal in respect of chiropractic treatment payments.

On July 15, 2003 the Commission refused to grant the Appellant a further adjournment in respect to these appeals. In order to fully understand the Commission's reasons in refusing to grant a further adjournment on July 15, 2003, a history of the proceedings before the Commission since January 16, 2002 is set out herein.

1. MAY 23, 2002 - HEARING
Entitlement to IRI during the first 180 days after the motor vehicle accident of June 7, 1997

At the hearing of this matter on May 23, 2002, an adjournment was granted to the Appellant to allow her additional time to gather evidence and summon witnesses on the issue of whether she would have held employment during the first 180 days after the motor vehicle accident of June 7, 1997. The Commission determined that a hearing with regard to this issue would reconvene at a time and date to be confirmed.

2. SEPTEMBER 27, 2002 - HEARING

The appeal hearing reconvened on September 27, 2002 to deal with the issue relating to IRI benefits arising out of the June 7, 1997 motor vehicle accident. The Appellant was represented by [Appellant's representative], and Mr. Strutt appeared on behalf of MPIC.

At the commencement of the hearing [Appellant's representative] informed the Commission that he was unable to proceed with the appeal in this matter because a witness he intended to call at the hearing had been admitted to the [hospital] several days prior to the hearing and presently was undergoing medical tests to determine if the witness required heart surgery.

Mr. Strutt, in response to [Appellant's representative's] submission, indicated he had no objection, in the circumstances, to an adjournment of the appeal proceedings but wished a subsequent hearing of the appeal to deal with all outstanding issues including the appeals arising out of the October 20, 2000 accident. The Commission agreed and advised both parties that all outstanding issues would be heard at the same hearing and in the presence of the parties adjourned the appeal in respect of the three issues in appeal to November 29, 2002.

The Commission wrote a letter to the Appellant and [Appellant's representative], and Mr. Strutt, dated September 30, 2002 confirming these arrangements and indicated:

> The Commission informed [Appellant's representative] that at the hearing on November 29, 2002, the Appellant will be required to proceed with the appeal by

> calling all of her witnesses and filing all written material in respect to the above-mentioned issues. The Commission further informed [Appellant's representative] that the time and date of the appeal hearing on November 29, 2002, are firm, and postponements will only be granted, on reasonable notice, under unusual circumstances of a compelling nature.

(Attached hereto as Schedule 1 is the Commission's letter to the Appellant and [Appellant's representative], and Mr. Strutt, dated September 30, 2002.)

3. NOVEMBER 29, 2002 - HEARING

The Commission, due to unforeseen circumstances, was required to adjourn the November 29th, 2002 hearing and, as a result, advised both parties that the hearing would be rescheduled to December 2, 2002. Telephone messages were left for the Appellant on October 30th and November 1st advising as to the change of date of the hearing. The Notice of Hearing for December 2, 2002 was sent to the Appellant via Xpresspost and regular mail and was received by the Appellant on November 8th, 2002.

4. DECEMBER 2, 2002 - HEARING

On November 19, 2002 [Appellant's representative] called the Commission and advised that both he and the Appellant were unable to attend the appeal hearing on December 2, 2002 because he had an appointment with a cardiologist that day and did not realize there was a conflict until November 19, 2002 when he read the Commission's correspondence in respect of the December 2, 2002 hearing.

The Commission subsequently considered the request of the Appellant for an adjournment and MPIC's objection to the adjournment and decided, in the circumstances, to grant the adjournment.

The Commission rescheduled the hearing for March 21, 2003. On December 5, 2002 the Commission sent a letter to the Appellant via Xpresspost and regular mail advising that the date of the hearing for the appeal had been rescheduled for March 21, 2003. (Attached hereto and marked as Schedule 2 is a true copy of a letter from the Commission to the Appellant and MPIC's legal counsel). On January 31, 2003 the Post Office returned the Xpresspost envelope marked unclaimed.

On February 6, 2003 the Commission's Secretary, [text deleted], was able to reach [Appellant's representative] by telephone in order to confirm whether the Appellant had received the regular mail notification of the March 21, 2003 appeal hearing. In reply [Appellant's representative] informed [Commission's Secretary] that someone was stealing mail from his mailbox and he did not recall receiving the notification of the Xpresspost letter or the regular mail letter. During the course of this telephone conversation [Commission's Secretary] advised [Appellant's representative] that the appeal hearing was scheduled for March 21, 2003 at 10:30 a.m.

On February 28, 2003 the Commission forwarded a letter to the Appellant confirming [Commission's Secretary's] telephone discussion with [Appellant's representative] on February 6, 2003 when she informed him as to the date of the rescheduled appeal hearing on

March 21, 2003. (Attached hereto and marked as Schedule 3 is a true copy of the February 28, 2003 letter). The Commission subsequently received a receipt from the Post Office signed by the Appellant indicating that she had received the February 28, 2003 letter.

The Commission retained the services of [text deleted], a Process Server, in order to serve the Appellant with a letter from the Commission dated March 12, 2003. [Process Server] provided an Affidavit of Service to the Commission dated March 14, 2003 which indicates that he attempted to serve both the Appellant and [Appellant's representative] on March 12, 2003 and they refused service of the documents. (Attached hereto and marked as Schedule 4 is a true copy of [Process Server's] Affidavit of Service, the Commission's letter dated March 12, 2003, [Process Server's] Memo to File dated March 14, 2003 and [Process Server's] Memo to [Commission's Secretary] dated March 14, 2003).

5. MARCH 21, 2003 - HEARING

At the appeal hearing on March 21, 2003, [Appellant's representative] appeared on behalf of the Appellant and indicated that the Appellant would not be attending the hearing. Mr. Strutt appeared on behalf of MPIC.

The hearing commenced at 10:00 a.m. and at that time [Appellant's representative] requested an adjournment on the grounds that he did not receive reasonable notice and, therefore, was unable to obtain the evidence needed to establish his claim. Mr. Strutt, MPIC's legal

counsel. Opposed the appeal on the grounds that reasonable notice had been given to the Appellant.

In respect to the issue as to whether or not reasonable notice had been given to the Appellant, [Process Server], an employee of [text deleted], testified at the Commission hearing as to his attempts to serve the Appellant and [Appellant's representative] in respect of the Notice of Hearing, and in his testimony he confirmed the contents of the Affidavit of Service, his Memorandum to [Commission's Secretary], and his Memo to File as set out in Schedule 3 herein.

[Commission's Secretary] testified at the Commission hearing and confirmed her letter to the Appellant dated February 28, 2003 (Schedule 3). [Text deleted], the Commission's Director of Appeals, also testified that she sent a letter to the Appellant dated March 12, 2003 (Schedule 4) together with a copy of a log summary from the Commission's files dated March 11, 2003 (attached hereto and marked as Schedule 5). [Appellant's representative] and MPIC's legal counsel had an opportunity of cross-examining [Process Server], [Commission's Secretary] and [Commission's Director of Appeals] in respect to their testimony before the Commission.

At the completion of the testimony both [Appellant's representative] and Mr. Strutt made submissions on the issue as to whether or not an adjournment should be granted. At the conclusion of these submissions, the Commission recessed the hearing in order to consider the evidence and the submissions of both parties.

The Commission reconvened the hearing prior to 12 noon and advised both [Appellant's representative] and Mr. Strutt that the Commission had decided that:

1. in respect of the appeal relating to the June 7, 1997 motor vehicle accident that, pursuant to Section 182(2) of the Act, reasonable notice had been given to [Appellant's representative] and the Appellant in order to permit them to prepare for the hearing on March 21st and that sufficient time had been given in order for [Appellant's representative] to obtain the witnesses he needed for the appeal hearing;

2. in respect of this appeal the Commission indicated that it would adjourn the proceedings to 2:30 p.m. on the afternoon of March 21, 2003 and at that time would proceed to hear any evidence [Appellant's representative] wished to produce in support of the Appellant's claim relating to the matter set out in paragraph numbered 1 herein.

3. in respect of the appeals relating to the motor vehicle accident on October 20, 2000 an adjournment would be granted until April 22, 2003 at 10:00 a.m., for the entire day, and directed [Appellant's representative] to note that date in his notebook, which he proceeded to do.

Upon receipt of the Commission's decision, [Appellant's representative] indicated that he was experiencing chest pains and, as a result, he was immediately going to the hospital. [Appellant's representative] proceeded to gather his documents in order to leave the hearing room. The Commission asked [Appellant's representative] whether he required an ambulance and [Appellant's representative] indicated that he did not wish an ambulance. The Commission then asked [Appellant's representative] which hospital he was going to and [Appellant's representative] refused to provide that information to the Commission. [Appellant's representative] then left the appeal hearing.

The Commission indicated to Mr. Strutt that the Commission would recess over the noon hour and reconvene at 2:30 p.m. that afternoon.

At 2:30 p.m., the Commission reconvene the hearing. Mr. Strutt was in attendance and [Appellant's representative] did not return to the hearing. After a short recess the Commission convened and informed Mr. Strutt that:

1. [Appellant's representative] had not produced any evidence in respect of the appeal issues relating to the Appellant's IRI benefits during the first 180 days after the June 7, 1997 motor vehicle accident.

2. the appeal hearing in respect of the October 20, 2000 motor vehicle accident was adjourned until April 22, 2003 at 10:00 a.m.

3. if [Appellant's representative], prior to April 22, 2003, provided the Commission with satisfactory evidence that he was medically unable to continue with the appeal hearing on March 21, 2003 the Commission would give [Appellant's representative] a further opportunity to adduce evidence in respect of the merits of the Appellant's appeal in respect of the motor vehicle accident of June 7, 1997; and

4. the Commission further determined that if [Appellant's representative] fails, prior to April 22, 2003, to provide satisfactory evidence as indicated above, the Commission would dismiss the Appellant's appeal in respect to the motor vehicle accident of June 7, 1997.

6. APRIL 22, 2003 - HEARING

On April 22, 2003 the appeal hearing reconvened and Mr. Strutt appeared on behalf of MPIC. Neither the Appellant, [Appellant's representative] or any other representative appeared on behalf of the Appellant. The Commission received the following documents at the commencement of the hearing:

Exhibit 1 – a Certificate of Service by RCMP Constable [text deleted] which indicates that Constable [text deleted] served the Commission's letter dated March 28, 2003 upon the Appellant and [Appellant's representative] on April 5, 2003; (Attached hereto and marked as Schedule 6)

Exhibit 2 - a Memorandum of telephone discussions between [text deleted], Director of Appeals, and [Appellant's representative] on April 22, 2003; (Attached hereto and marked as Schedule 7)

Exhibit 3 - a series of five documents faxed by [Appellant's representative] to the Commission on April 22, 2003 at 10:19 a.m.; (Attached hereto and marked as Schedule 8)

Exhibit 4 - Exhibit 3, which was refaxed by [Appellant's representative] to the Commission at 10:35 a.m. on April 22, 2003. (Attached hereto and marked as Schedule 9)

The Commission adjourned the proceedings for a short period of time in order to permit Mr. Strutt to review these Exhibits. When the Commission reconvened the hearing Mr. Strutt made a verbal submission requesting that the Appellant's appeal in respect of IRI benefits during the first 180 days after the motor vehicle accident of June 7, 1997 be dismissed on the grounds that [Appellant's representative], prior to April 22, 2003, had not provided the Commission with satisfactory evidence that he was medically unable to continue with the appeal hearing.

The Commission, after considering Mr. Strutt's submission, found that [Appellant's representative] had not provided the Commission with satisfactory evidence that he was medically unable to continue with the appeal hearing on March 21, 2003.

Notwithstanding this decision the Commission decided to grant the Appellant a further opportunity to present her evidence on June 4, 2003 under certain conditions as set out in a letter to the Appellant dated May 1, 2003, a copy of which was provided to the Appellant and [Appellant's representative] (Attached hereto and marked as Schedule 10 is a true copy of the Commission's letter to the Appellant dated May 1, 2003, which included:

(1) a copy of the four Exhibits filed in the appeal proceedings on April 22, 2003,
(2) a copy of the three Medical Authorizations filed in the proceedings; and
(3) a copy of Mr. Strutt's letter to the Commission dated April 23, 2003.

The Commission also forwarded a letter to [Appellant's representative] dated May 1, 2003. (Attached hereto and marked as Schedule 11 is a true copy of this letter.)

During the appeal hearing of April 22, 2003, the Commission rejected the amended Medical Authorizations that had been executed by [Appellant's representative]. On May 26, 2003 the Director of Appeals wrote to the Appellant and [Appellant's representative] advising him that the three Medical Authorizations signed by [Appellant's representative] were not satisfactory for the reasons as set out in this letter. (Attached hereto and marked as Schedule 12 is a true copy of this letter.)

7. JUNE 4, 2003 - HEARING

The Appeal hearing reconvened on June 4, 2003 and [text deleted] attended the hearing as legal counsel on behalf of the Appellant, together with [Appellant's representative]. [Appellant's legal counsel], at the commencement of the hearing, requested an adjournment

because he had been unable to meet with the Appellant due to the recent death of [Appellant's representative's] father and, as a result, was unable to obtain instructions from the Appellant in order to prepare for the appeal hearing.

Mr. Strutt, on behalf of MPIC, objected to the adjournment on the grounds that [Appellant's representative], as representative, had a number of adjournments in the past and that the Commission had previously indicated the appeal hearing on June 4, 2003 would proceed without further adjournment.

At the conclusion of the submissions, the Commission adjourned the proceedings to consider these submissions. The Commission reconvened the hearing and granted [Appellant's legal counsel's] request for an adjournment on the following grounds:

1. The hearing was adjourned to July 15, 2003 at 10:00 a.m. and no further adjournments would be granted. Prior to fixing the date of July 15, 2003, [Appellant's legal counsel] indicated he would be available to attend the appeal hearing on that date and that he would have sufficient time in order to prepare for the hearing. Mr. Strutt also indicated he would be available to attend the hearing on that date.

2. The issues at the hearing on July 15, 2003 would be the same issues as set out in [Commission's Director of Appeals'] letter to [the Appellant] dated May 26, 2003, (Schedule 12) a copy of which letter was forwarded to [Appellant's legal counsel] and Mr. Strutt.

3. If [the Appellant] decided not to have [Appellant's legal counsel] represent her at the hearing on July 15, 2003, the hearing would proceed on that date, even if [the Appellant] did not have any representation at that hearing.

4. At [Appellant's legal counsel's] request, the Commission would provide him with copies of all of the written material which had been filed in these proceedings, copies of which have been provided in the past to [the Appellant].

5. The Commission informed [Appellant's legal counsel] that if he required additional medical reports, that he should obtain those reports as quickly as possible and provide them to Mr. Strutt and the Commission on a timely basis before the hearing. If he was unable to do so, these reports may not be permitted to be filed in evidence at the hearing and he will not be granted an adjournment for that purpose.

6. With respect to the information which Mr. Strutt previously requested from the Appellant and [Appellant's representative] in respect of the issue relating to *Care Giver Weekly Indemnity Benefits,* the Commission indicated to [Appellant's legal counsel] that his client had an obligation to provide relevant information in respect of this issue to Mr. Strutt in a timely fashion. However, if this information was not provided to Mr. Strutt in a timely fashion, the Commission would consider a motion from Mr. Strutt to not permit [Appellant's legal counsel] to adduce evidence from his client or any other witness in respect of this issue.

7. [Appellant's legal counsel] undertook to communicate the above mentioned conditions of this adjournment to [the Appellant].

8. JULY 15, 2003 - HEARING

On July 15, 2003 [Appellant's legal counsel] appeared at the hearing together with the Appellant and [Appellant's representative]. At the commencement of the hearing [Appellant's legal counsel] requested that he be permitted to withdraw from representing the Appellant on the grounds he had not been retained by the Appellant and did not have an opportunity of meeting with the Appellant to obtain instructions and to prepare for the hearing. [Appellant's legal counsel] submitted that:

1. he met with the Appellant and [Appellant's representative] on June 9, 2003 for one hour.

2. on June 10, 2003 he had written to the Appellant indicating that having regard to the nature of the file and the volume of the material, he required a certain retainer by June 13 , 2003.

3. No response was received from the Appellant by June 13th, and on June 18th [Appellant's legal counsel] left a telephone voice mail message for the Appellant and [Appellant's representative]. He received no response to his voice mail message.

4. On June 27th he had written another letter to the Appellant in respect of the appeal and in response thereto had received a voice mail message from [Appellant's representative] asking whether the Commission would cover legal costs.

The Commission reminded [Appellant's legal counsel] that in the hearing on June 4, 2003 the same request had been made by [Appellant's representative] in the presence of [Appellant's legal counsel] and the Commission had informed [Appellant's legal counsel] that the Commission had no authority under the Act, or under any other legislation, to fund the Appellant's legal counsel.

[Appellant's legal counsel] further submitted that:

1. Friday, July 4, 2003, [Appellant's representative] left another message at 4:25 p.m. but he was not in his office at that time.

2. July 8 or 9, 2003 the [Appellant's representative] had unexpectedly attended at his law office and arranged for a meeting for July 11.

3. [Appellant's representative] cancelled the meeting of July 11th and advised [Appellant's legal counsel] that the Appellant could not attend this meeting and arranged for another meeting for Monday, July 14th at 4:30 p.m.

4. unfortunately, due to an emergency matter, he had to cancel this meeting and arranged for another meeting with the Appellant and [Appellant's representative] at 8:00 a.m. on July 15th which was the morning of the hearing.

5. [Appellant's representative] subsequently advised [Appellant's legal counsel] that the July 15, morning meeting, had to be cancelled because the Appellant

> was unable to leave work to attend a meeting [Appellant's legal counsel] at 8:00 a.m. on the morning of the hearing.

Mr. Strutt, in reply, indicated that:

1. in the Commission's letter to [Appellant's legal counsel] dated June 4, 2003 the Commission indicated in paragraph 3 thereof that if the Appellant decided not to have [Appellant's legal counsel] represent her at the hearing on July 15th the hearing would proceed on that date even if the Appellant did not have any representation.

2. the Appellant had not made arrangements to retain [Appellant's legal counsel] and, as a result, did not have a legal representative at the July 15th hearing.

3. in the circumstances, the Commission should proceed with the hearing in the absence of [Appellant's legal counsel].

In reply, [Appellant's representative] submitted that he believed that the Appellant had arranged for legal counsel for the appeal hearing but it was not until the morning of July 15, 2003, shortly before the hearing, that [Appellant's legal counsel] had informed both [Appellant's representative] and the Appellant he would not be representing them at the hearing.

The Commission adjourned the hearing for a short period of time. After reconvening the hearing the Commission informed the Appellant and [Appellant's representative] that the Appellant had not made arrangements to retain [Appellant's legal counsel], that as a result [Appellant's legal counsel] had not been given an opportunity to prepare for the hearing. The Commission informed the Appellant and [Appellant's representative] that in these circumstances [Appellant's legal counsel] was entitled to withdraw as the Appellant's legal representative. [Appellant's legal counsel] at that time withdrew from the hearing.

The Commission then requested the Appellant to proceed in calling any evidence she wished in respect of the October 20, 2000 accident and to make whatever submissions she wished in respect of the issue relating to the June 7, 1997 accident. The Appellant, at that time, indicated she believed that as of the morning of July 15, 2003 she had retained [Appellant's legal counsel] to represent her and was unable to proceed without legal counsel.

The Commission informed the Appellant and [Appellant's representative] that:

1. in its letter to [Appellant's legal counsel] dated June 4, 2003 (Schedule 13), the Commission had indicated that the hearing was adjourned to July 15, 2003 and that no further adjournments would be granted to the Appellant.

2. in this letter [Appellant's legal counsel] was also advised that if the Appellant decided not to have [Appellant's legal counsel] represent her at the hearing of July 15, 2003 the hearing would proceed on that date even if the Appellant did not have any representation at that hearing.

The Commission also informed the Appellant and [Appellant's representative] of:

1. a brief history of the proceedings that had taken place since the initial hearing on January 16, 2002, approximately 18 months earlier, and the Commission referred to the numerous adjournments that had been granted to the Appellant, several of which the Appellant or [Appellant's representative] had not provided satisfactory explanations for.

2. the lack of co-operation by the Appellant and [Appellant's representative] in assisting the Commission to proceed in a timely fashion which resulted in a number of unjustified delays in the appeal process.

3. the failure of the Appellant or [Appellant's representative] to make timely and appropriate arrangements to retain legal counsel.

4. the fact that the Appellant had more than ample opportunity to retain legal counsel and prepare for the appeal hearing but failed to do so.

The Commission indicated to the Appellant and [Appellant's representative] that for the above mentioned reasons the Commission determined that no further adjournment would be granted and the Appellant would be required to proceed with the three appeals at that time without legal counsel.

The Commission further informed the Appellant that she was entitled at that time to testify as to the issues surrounding her appeal in respect of the October 20, 2000 accident, to make whatever submissions she wished in respect to the June 7, 1997 appeal issue, and the appeals relating to the October 20, 2000 accident. The Appellant refused to proceed with the calling of evidence or making any submissions and withdrew from the proceedings together with [Appellant's representative].

After the Appellant and [Appellant's representative] left the hearing the Commission informed Mr. Strutt that they would hear from him in respect of the issues at appeal. Mr. Strutt made a brief submission indicating that the Appellant had not supplied any relevant evidence to establish, on the balance of probabilities, her claim in respect to the three appeal issues and requested that the Commission dismiss the three appeals and affirm the decisions of the Internal Review Officers.

The Commission then adjourned the hearing and indicated to Mr. Strutt that in due course the Commission would issue its decision in respect of the three appeals.

Discussion

An examination of the appeal proceedings indicates that a period of seventeen months elapsed between the initial hearing on January 16, 2002 and the final hearing on July 15, 2003. During this period of time the Appellant obtained six adjournments. The adjournment in respect of the hearing on September 27, 2002 was obtained by the Appellant on valid grounds. The adjournment which occurred on November 29, 2002 was caused by the Commission and was rescheduled from November 29, 2002 to December 2, 2002, (a period of five days). In respect of the balance of the adjournments which occurred on:

1. May 23, 2002
2. December 2, 2002
3. March 21, 2003
4. April 22, 2003
5. June 4, 2003

were all attributable to the actions of the Appellant and her representative, [text deleted]. The Commission on several occasions advised the Appellant and her representative, [text deleted], that the hearing would proceed without any further adjournments. However, the Appellant and her representative, [text deleted], ignored these warnings and sought further adjournments without valid reasons. On several occasions the adjournments were granted to the Appellant's representative, [text deleted], on the basis that [Appellant's representative] would provide medical confirmation to justify these adjournments but, subsequently, [Appellant's representative] refused to provide the medical confirmation.

The Appellant and her representative, [text deleted], frustrated the appeal process on several occasions by refusing to accept Commission mail which set out notices of the hearing, and by failing to reply on several occasions to telephone messages left by the Commission's officers

which required a response from the Appellant. As a result, the Commission was forced to retain the services of [text deleted], a Bailiff, and an RCMP Officer in order to personally serve Notices of Hearing upon the Appellant and her representative, [text deleted].

The Commission finds that the Appellant and her representative, [text deleted], unnecessarily delayed the hearing process for a period in excess of one year by seeking to obtain adjournments without valid reasons, failing to co-operate with the Commission officers in expediting the hearing process, and finally by failing to take the appropriate steps to retain legal counsel to represent the Appellant when they had the opportunity to do so.

It should be noted that the Commission, on March 10, 2003, April 2, 2003 and June 4, 2003 advised the Appellant and her representative, [text deleted], either verbally or in writing that the hearing dates were fixed and no further adjournments would be provided but the Appellant and her representative, [text deleted], chose to ignore these warnings. The Commission notes that the Appellant was informed on June 4, 2003 that the hearing on July 15, 2003 was fixed and would not be adjourned if the Appellant was unable to retain legal counsel to represent her on July 15, 2003. However, the Appellant and her representative, [text deleted], chose not to proceed with the hearing on July 15, 2003 and voluntarily withdrew from the appeal proceedings.

The right of the Commission to refuse to grant an adjournment is governed by the provisions of Section 182(1), (2) and (3) of the Act and the jurisprudence relating to the right of an administrative tribunal to grant or refuse an adjournment.

Section 182(1), (2) and (3) of the Act provide:

> **Hearing of appeal by commission**
> **182(1)** The commission shall conduct a hearing in respect of an appeal filed under this Part.
>
> **Commission to give notice of hearing**
> **182(2)** The commission shall give reasonable notice of the hearing to the appellant and the corporation and shall, in the notice, identify the issues to be considered at the hearing.
>
> **Commission to determine its practice and procedure**
> **182(3)** The commission shall determine its own practice and procedure and shall give full opportunity to the appellant and the corporation to present evidence and make submissions. (underlining added)

The Commission has, pursuant to Section 182(3) of the Act, the discretionary power to grant or refuse an adjournment. Pursuant to Section 182 the Commission conducted a hearing in respect of the Appellant's appeal, gave reasonable notice to the Appellant and her representative in respect of the hearing on July 15, 2003 and gave a full opportunity to both the Appellant, the Appellant's representative and MPIC to present evidence and make submissions to the Commission at that time. The Commission conducted a full hearing into the reason why the Appellant desired an adjournment on July 15, 2003 and concluded after hearing submissions from both parties that the Appellant has not established that the Appellant had a valid reason for the adjournment. The Commission complied with the provisions in Section 182(3) of the Act when it exercised its discretion not to grant a further adjournment to the Appellant on July 15, 2003

There is considerable jurisprudence in respect of an Administrative Tribunal's discretionary power to grant or refuse an adjournment. The leading authority is the decision of the Supreme Court of Canada in *Prassad v. Canada (Minister of Employment & Immigration) (1989), 57 D.L.R. (4th) 663* where the Supreme Court determined that Administrative Tribunals have the discretionary power to grant or refuse an adjournment. In arriving at its decision, the Supreme Court stated that these Tribunals must consider all relevant circumstances and act fairly in arriving at its conclusion.

Mr. Justice Sopinka, on behalf of the majority, stated at p. 680:

> We are dealing with the powers of an administrative tribunal in relation to its procedures. As a general rule, these tribunals are considered to be masters in their own house. In the absence of specific rules laid down by statute or regulation, they control their own procedures subject to the proviso that they comply with the rules of fairness [page 680] and, where they exercise judicial or quasi-judicial functions, the rules of natural justice. Adjournment of their proceedings is very much in their discretion.

Mr. Justice Sopinka cited, with approval,

(a) the comments of Mr. Justice Arnup of the Ontario Court of Appeal in Cedarvale Tree Services Ltd. and Labourers' Int'l Union of North America, Local 183 (1971), 22 D.L.R. (3d) 40, [1971] 3 O.R. 832, 71 C.L.L.C. Mr. Justice Arnup stated at p. 50:

> ". . . it is for the Board itself to decide how it shall proceed. If procedural guide lines of a mandatory nature are to be laid down, they should come from the Legislature and not from the Court."

(b) the comments of Jackett C.J., in Pierre v. Minister of Manpower & Immigration [1978] 2 F.C. 849 at p. 851, 21 N.R. 91, who stated:

> "In considering a complaint that a tribunal has refused to grant an adjournment, it must be remembered that, in the absence of some specific rule governing the manner in which the particular tribunal should exercise its discretion to grant an adjournment, the question as to whether an adjournment should be granted is a discretionary matter for the tribunal itself and that a supervisory tribunal has no jurisdiction to review the tribunal's decision to refuse an adjournment unless the refusal results in the decision made by the tribunal at the termination of the hearing being voidable as having been made without complying with the requirements of natural justice."

The Commission finds that pursuant to Section 182 of the Act, and the legal principles set out in the *Prassad* case, the Commission exercises jurisdiction to refuse an adjournment after conducting a full inquiry into the reasons why the Appellant desired an adjournment of the hearing on July 15, 2003. The Commission concluded that having regard to the conduct of the Appellant and her representative, [text deleted], that they did not wish to proceed expeditiously with a hearing but to delay the hearing interminably.

In the *Prassad* case, the Supreme Court in arriving in its conclusion, recognized the twin obligation of an Administrative Tribunal not only to conduct a full and proper inquiry but also to carry out the inquiry expeditiously and without delay. Mr. Justice Sopinka stated that the adjudicator must be cognizant that a "full and proper inquiry" be held and that the adjudicator must also ensure that the statutory duty to hold an inquiry is fulfilled. Mr. Justice Sopinka quotes with approval the comment of C.J. Wydrzynski, in Canadian Immigration Law and Procedure (Aurora, Ontario: Canada Law Book Inc., Ltd. 1983), at p. 266:

> "Above all, there is a need to proceed expeditiously, and adjournments should not be viewed as a method to interminably delay the inquiry."

The need for speedy expeditious hearings without delay is illustrated in Flamboro Downs Holdings Ltd. and Teamsters Local 879, 99 D.L.R. (3d) 165, Robins J. on behalf of the Ontario High Court of Justice Divisional Court indicated that it was for the Labour Board to determine whether or not to grant an adjournment having regard to the following criteria:

> ". . . the obvious desirability of speedy expeditious proceedings . . . the background of the particular case, the issues involved, the reason for the request and other like factors."

In determining whether or not to grant an adjournment, an Administrative Tribunal must consider whether the reason for the adjournment was attributable to the Appellant's actions. In this hearing the Commission determined that the reason the Appellant wished an adjournment was that she did not have a lawyer to represent her at the hearing. The Commission concluded that the Appellant had ample notice that the hearing would proceed

whether or not the Appellant had obtained legal counsel and that the Appellant had ample opportunity to retain [Appellant's legal counsel] or some other lawyer to represent her at the hearing and she failed to do so. The Commission determined that the Appellant did not have a valid reason for obtaining a further adjournment on July 15, 2003.

In Piggott Construction Ltd. and United Brotherhood of Carpenters & Joiners of America, Local 1990, 39 D.L.R. (3d) 311, the Saskatchewan Court of Appeal dealt with a decision of the Saskatchewan Labour Relations Board who refused to grant an adjournment of a certification proceeding. The headnote of this case states:

> "Where the Labour Relations Board wrongfully refused to grant an adjournment of a certification hearing resulting in the denial of natural justice, certiorari may lie to quash the decision of the Board. However, where an applicant for certiorari alleges a wrongful refusal to adjourn he must show a good reason for the adjournment not attributable to his actions. Accordingly, where it is shown that the Board on March 9th advised the respondent company of an application for certification and that the hearing would be held on April 4th, 1972, and that the respondent, although it knew at the time that April 4th as not suitable nevertheless, neither personally nor through its solicitors, advised the Board of this until the morning of the hearing at which time it sought, through its solicitor, an adjournment, a decision by the chairman of the Board to decline the adjournment and set the matter down for hearing that afternoon will not be held to be a wrongful exercise of the discretion vested in the Board."

Chief Justice Culliton, in arriving at the Court's decision stated at p. 313:

> "Where an applicant alleges there has been a wrongful refusal to grant an adjournment, it is, as a general rule, for the applicant to show a good reason for the adjournment not attributable to his actions. In R. v. Medical Appeal Tribunal (Midland Region), Ex. P. Carrarini, Lord Parker, C.J., expressed this principle at p. 888 as follows:
>
> > I understand that point very well; it is in general always for an applicant to show good reason not attributable to his fault for obtaining an adjournment . . .
>
> Support, too is found for this View in the judgment of Laskin, J.A. (as he then was), in R. v. Botting (1966), 56 D.L.R. (2nd) 25, [1966] 3 C.C.C. 378 [1966] 2 O.R. 121."

The Commission finds that the Appellant failed to take the appropriate steps to retain legal counsel for the hearing on July 15, 2003 and as a result the Appellant did not have a lawyer to represent her at this hearing. In the circumstances, the Commission concluded that the unavailability of a lawyer was not a ground to grant a further adjournment to the Appellant. The Appellant had ample opportunity to retain a lawyer of her choice but failed to do so. As a result the Appellant failed to demonstrate to the Commission that she had good reason not attributable to her conduct for obtaining an adjournment.

A similar approach to *Piggott Construction Ltd. etal* is taken by the Ontario Judicial Court in Stolove v. College of Physicians and Surgeons of Ontario, [1988] O.J. No. 1426. In that case, the Court was considering an application for judicial review to quash a decision of the Discipline Committee of the College of Physicians and Surgeons of Ontario on the grounds

of denial of natural justice pertaining to granting an adjournment to the Appellant. The Court stated:

> ". . . The unavailability of a lawyer of choice is not grounds for an adjournment. (See Regina v. Ontario Labour Relations Board, Ex. parte Nick Masney Hotels Ltd., [1970] 3 O.R. 461, and Re Gill Lumber Chipman (1973) Ltd. and United Brotherhood of Carpenters & Joiners of America, Local Union 2142, [1973], 42 D.L.R. (3d) 271.) In considering an adjournment, the concerns of both parties and the public interest must be considered. (See Re Flamboro Downs Holdings Ltd. and Teamsters Local 879 (1979), 24 O.R. (2d) 400 at 404.)"

The Court concluded that the applicant had delayed the hearing process by changing lawyers and requesting several adjournments. The Administrative Tribunal had dismissed his request for an adjournment on the grounds that the appellant had sufficient time to retain and instruct his counsel. The appellant had been told in advance that the matter would be proceeding peremptory. The request for an adjournment appeared to be for the convenience of the third counsel that the appellant had retained and was not related to the preparation for the hearing.

The Court found that there was not sufficient evidence for the Administrative Tribunal to conclude that the appellant was unable to retain legal counsel. The appellant knew in April that the hearing was peremptory and on September 15th, he knew the Committee would not adjourn the hearing. The Appellant had ample time to retain other legal counsel to represent him and did not do so. The Court concluded that the Discipline Committee had acted

properly in refusing an adjournment and there was not a denial of natural justice, dismissed the appellant's application to quash the decision of the Committee.

The failure of the applicant to obtain legal counsel in a timely fashion was not grounds for an adjournment in Pierre v. Minister of Manpower and Immigration, [1978] 2 F.C. 849. In that case, the Federal Court of Appeal considered whether a refusal to grant an adjournment by Special Inquiry Officer was reasonable, under the circumstances.

Jackett C.J., for the majority, notes at para. 13 that:

> "When the whole course of proceedings in this inquiry is considered, as it seems to me, there can be no question that, from January 21, 1976, when the direction was given for the inquiry, until November, 1977, the Special Inquiry Officer acceded to all requests for adjournments made on behalf of the applicant with the result that there was a protracted, incomplete inquiry of an unusually long duration."

In the concurring judgment Kelly D.J. found that the appellant had ample opportunity to produce competent counsel to represent him and the appellant failed to do so. At para. 90 he notes:

> "In light of the circumstances, so particularly set out in the reasons for judgment of the Chief Justice and Mr. Justice Collier, I am of the opinion that the applicant herein was well aware of his right to counsel and his obligation with respect to producing counsel; that he had amply opportunity to produce before the Court competent counsel to represent him and failed to do so - - accordingly, the action of the Special

> Inquiry Officer on the 19th day of December in proceeding in the presence of the applicant unrepresented by counsel, after the counsel had withdrawn his representation, did not constitute any violation of any of the principles of natural justice."

In that case the majority held that the refusal to grant an adjournment was not a denial of natural justice.

In granting adjournments, the Courts in Manitoba have adopted a similar approach as set out in the decisions of the Saskatchewan Court of Appeal in Piggott Construction Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 1990,[1] the Ontario Judicial Court in Stolove v. College of Physicians and Surgeons of Ontario,[2] and the Federal Court of Appeal in Pierre v. Minister of Manpower & Immigration.[3]

In Ahluwalia v. The College of Physicians and Surgeons of Manitoba, [1998] M.J. No. 355, the appellant was a doctor charged with professional misconduct and unfitness to practice medicine stemming from an allegation that he had submitted rewritten patient charts to the College claiming that they were the originals. The inquiry found Ahluwalia guilty and determined his penalty to be erasure from the College register and costs. At the inquiry the appellant had changed counsel twice and, on both occasions, had sought adjournments. Both adjournment requests had been refused.

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[1] *Re: Piggott Construction Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 1990* (1973), 39 D.L.R. (3d) 311.
[2] *Stolove v. College of Physicians and Surgeons of Ontario,* [1988] O.J. No. 1426.

An application for judicial review is made to the Court of Queen's Bench. The appellant argued that the inquiry's refusal to adjourn on July 30, 1996 (his second adjournment request) was contrary to the rules of natural justice. In her decision, Krindle J. notes that on both occasions where the appellant changed counsel and requested adjournments. The appellant argued that he was unfamiliar with the documentation that had been supplied to each of his counsel. Krindle J. stated that "where full disclosure had been made to counsel for a party, it cannot be argued that disclosure has not been made to a party" (Para. 31). Krindle J. also noted that the appellant dismissed his second lawyer, Mr. Deeley, on the morning of July 30, 1996 hearing. Krindle J. stated that "the right of representation by counsel is not an absolute one, even in circumstances where that right is accorded by the Charter of Rights and Freedoms and an individual liberty is at stake" (at Para. 35).

Dr. Ahluwalia appealed to the Manitoba Court of Appeal (Ahluwalia v. College of Physicians and Surgeons [1999] M.J. No. 55) and Madam Justice Helper J.A. on behalf of the Manitoba Court of Appeal dismissed this appeal. At Para. 13 of the decision, one of the grounds of appeal was the refusal of the adjournment by the panel. In Para. 14 of the decision, Madam Justice Helper J.A. on behalf of the Court of Appeal stated "In my view, on the arguments presented to her, Krindle J. made no error whatsoever in reviewing the panel's process or decision".

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[3] *Pierre v. Minister of Manpower & Immigration*, [1978] 2 F.C. 849.

The Commission finds that pursuant to Section 182 of the Act, and having regard to the jurisprudence relating to the Commission's power to refuse an adjournment, the Commission considered all the relevant circumstances, concluded that the Appellant had no valid grounds to obtain an adjournment and as a result refused to grant the Appellant an adjournment at the hearing on July 15, 2003.

Dated at Winnipeg this 24th day of September, 2003.

MEL MYERS, Q.C.

YVONNE TAVARES

WILSON MACLENNAN