

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-05**

PANEL: Mr. Mel Myers, Chairperson
Mr. Neil Cohen
The Honourable Mr. Wilfred De Graves

APPEARANCES: The Appellant, [text deleted], was represented by [Text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: October 16, 2008 (in [Text deleted], Manitoba)

ISSUE(S): Whether the Appellant was a resident of Manitoba at the time of the loss and therefore entitled to Personal Injury Protection Plan benefits in relation to the motor vehicle accident

RELEVANT SECTIONS: Sections 74(1) and 75(1)(b) of The Manitoba Public Insurance Corporation Act ('MPIC Act'), Section 1 of Manitoba Regulation 37/94, Sections 2, 4, 5 and 8 of The Domicile and Habitual Residence Act

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

[The Appellant] [Text deleted] was involved in a motor vehicle accident on July 14, 2007. The Appellant was a pedestrian walking along the side of a road and was hit by a motor vehicle and, as a result of the accident, he suffered fractured ribs, swollen and painful left foot, lower back pain, tingly and numb thigh and lacerations to his left hand and elbow. At the time of the

accident the Appellant was a full time employee of [Text deleted], of [Text deleted], Manitoba and was providing consulting services to [Text deleted].

The Appellant's Application for Compensation was denied by MPIC's case manager on the grounds that the Appellant was not a resident in Manitoba at the time of the accident and was one hundred percent (100%) liable for the injuries he sustained in the motor vehicle accident. As a result, the Appellant's solicitor, [Text deleted], made an Application for Review to the Internal Review Officer.

Internal Review Officer's Decision

The Internal Review Officer issued a decision on December 27, 2007 confirming the decision of the case manager and dismissing the Appellant's Application for Review on the following grounds.

As a result of the above, Manitoba Public Insurance found your client to be 100% liable for the accident.

The evidence on your client's file with respect to residency can be summarized as follows:

1. An Income Tax Return for 2006 indicates that your client's mailing address is in [Text deleted] and he also declared on the official document that as of December 31, 2006, he was a resident in Ontario.
2. Your client did not change his driver's license, vehicle registration, auto insurance or provincial health insurance prior to the motor vehicle accident. Your client paid an additional premium on his insurance as this vehicle was out of province.
3. Your client did not make any government office aware of his change of address.
4. Your client did not bring any furnishings with him from Ontario.
5. Your client's residence lease was month to month.
6. Your client's pay is direct deposited to a bank account in Ontario.

7. At the time of the accident, your client had been working in Manitoba for approximately one year.

The Internal Review Officer also reviewed the Statutory Declarations of [the Appellant], [Appellant's girlfriend] and [Appellant's co-worker] who had declared that the Appellant was a Manitoba resident at the time of the motor vehicle accident and that he has/had no residence in Ontario. However, the Internal Review Officer stated:

Section 74(1) of the Act provides that a victim who is resident in Manitoba at the time of an accident is entitled to compensation under Part 2 of the Act.

The evidence that I find most compelling on your client's file is the declaration that he made on his Income Tax Return indicating that he was an Ontario resident as of December 31, 2006. On that return your client certified that "The information given on this return and any documents attached is correct, complete, and fully discloses all my Income." Under the signature line it is indicated "It is a serious offence to make a false return."

Given that your client declared on this legal document that he was a resident of Ontario, along with the evidence indicating that his insurance, license and provincial health insurance had remained in Ontario, I must uphold the case manager's decision that your client was not resident in Manitoba at the time of his accident.

I also agree with the finding that your client was 100% liable for the accident and therefore, he is not entitled to PIPP benefits in relation to the injuries he sustained as a result.

Notice of Appeal

On January 7, 2008 the Appellant filed a Notice of Appeal with the Commission and stated:

1. I am resident of [Text deleted], Manitoba and have been so resident since August of 2006.
2. I have no other residence nor have I had any other resident (sic) since August of 2006
3. It is my intention to continue to reside in [Text deleted], Manitoba for the foreseeable future.

Appeal

Relevant provisions in respect of this appeal are:

Victim resident in Manitoba entitled to compensation

74(1) Subject to this Part, a victim who is resident in Manitoba at the time of the accident, and any dependant of the victim, is entitled to compensation under this Part if the accident occurs in Canada or the United States.

Entitlement of non-resident re accident in Manitoba

75(1) Notwithstanding section 73, a victim, or a dependant of a victim, of an accident that occurs in Manitoba who is not resident in Manitoba is entitled to compensation under this Part

...

(b) if no agreement exists, to the extent that the corporation determines the victim is not responsible for the accident.

Manitoba Regulation 37/94

Definitions

1 in this regulation

“**person resident in Manitoba**” means, subject to this regulation, a person whose domicile or habitual residence is in Manitoba, as determined under *The Domicile and Habitual Residence Act*;

The Domicile and Habitual Residence Act

Determination of domicile and habitual residence

2 For all purposes of the law of Manitoba, the domicile and habitual residence of every person shall be determined under this Act to the exclusion of the laws of any other state or subdivision of a state.

Requirement of domicile and habitual residence

4 Every person has a domicile and an habitual residence.

Only one domicile and habitual residence

5 No person has more than one domicile and one habitual residence at any time.

Continuance of domicile and habitual residence

6 The domicile and habitual residence of a person continue until a person acquires a new domicile and habitual residence.

Basis of domicile and habitual residence

8(1) The domicile and habitual residence of each person is in the state and a subdivision thereof in which that person’s principal home is situated and in which that person intends to reside.

Presumption of intent to reside

8(2) For the purposes of subsection (1), unless a contrary intention is shown, a person is presumed to intend to reside indefinitely in the state and subdivision thereof in which that person’s principal home is situated.

[Appellant's supervisor], who has been employed with [Text deleted] since 1987 and was the [Text deleted], testified that:

1. the Appellant commenced working under his supervision on June 12, 2006 as a Project Scheduler.
2. the Appellant was employed directly by [Text deleted] to provide services as a Project Scheduler at [Text deleted].
3. the Appellant continued to be employed in that capacity up to the time of the accident and subsequently continued to be employed at [Text deleted].

[Appellant's co-worker], who had provided a Statutory Declaration which was filed in evidence in these proceedings, testified at the appeal hearing. [Appellant's co-worker] testified that:

1. he is a ventilation technician and has been employed in that capacity by [Text deleted] since February 2002.
2. he met the Appellant at [text deleted] in late June 2006 and has seen the Appellant regularly at work and almost every Tuesday where he attends a [Text deleted] meeting at 7:30 a.m.
3. in July 2006 the Appellant was having difficulty obtaining an apartment due to the shortage of apartment accommodations in [Text deleted].
4. the Appellant approached him and that he was prepared to rent the Appellant space in his home in [Text deleted] until the Appellant was able to find an apartment.
5. as a result, the Appellant moved his personal belongings into his home in July 2006.
6. shortly thereafter the Appellant was successful in finding an apartment on [Text deleted], in which apartment the Appellant still resides.

[Appellant's co-worker] further testified that:

1. for a number of years he played in a [text deleted] league, which meets Wednesday nights between September and late May to early June at [Text deleted] located in the City of [Text deleted].
2. he had invited the Appellant and his girlfriend, [text deleted], to join the league as spares when regular players do not show up.
3. the Appellant and [Appellant's girlfriend] attended the league regularly during the fall league of 2006.
4. the Appellant and [Appellant's girlfriend] attended regularly during the fall league and as well during the winter league, which commenced in mid-January 2007 and continued weekly until early June 2007.
5. attached to his Statutory Declaration as an Exhibit was a statement setting out the final standings of the league competition, which demonstrated that the Appellant played 39 of 80 games between the fall league of 2006 and early in the month of June 2007.

[Appellant's girlfriend], who had provided a Statutory Declaration, which was filed in these proceedings, testified at the appeal hearing. In her testimony she stated that:

1. she had been a resident of [Text deleted], Manitoba, since October 1989 and was employed in the [Text deleted] dining room located in the [Text deleted] in [Text deleted].
2. she met the Appellant in late August or early September of 2006 and that by October 2006 she and the Appellant were and remain in a committed relationship.
3. the Appellant resided in [Text deleted], in [Text deleted], and was employed by [Text deleted]., and that she resided at [Text deleted], in [Text deleted].

4. she sees the Appellant virtually every day, and that he eats most of his meals at her residence and often sleeps with her at her residence.
5. the Appellant had returned to Ontario only four (4) times for a period of one (1) week each time for the purpose of visiting his elderly father.
6. the Appellant has been a resident of [Text deleted] since at least September 2006 and she is not aware that he has any other residence in any other Province.

The Appellant also provided a Statutory Declaration which was filed in evidence in the proceedings. In his testimony he stated that:

1. he was a resident of [Text deleted], in the Province of Manitoba, since June of 2006 at [Text deleted].
2. he identified his Residential Tenancy Agreement (attached to his Statutory Declaration), which indicated that he had commenced residing at his apartment on August 1, 2006 and continued to rent this apartment since that time on a month-to-month basis.
3. the practice of the rental agent of the apartment block where he resides only rents apartments on a month-to-month basis and does not rent these apartments on an annual basis.

He further testified that:

1. he commenced employment in [Text deleted], in [Text deleted], Manitoba, on June 12, 2006.
2. he was employed by [Text deleted] to work as a Senior Project Planner at [Text deleted].

3. attached to his Statutory Declaration was a copy of a letter from [Text deleted] verifying the terms of his employment.
4. when arriving in [Text deleted] he resided initially at the [Text deleted] and subsequently at the residence of [Appellant's co-worker], until he obtained his apartment in 2006.
5. in August or early September he met his girlfriend, [text deleted], and by October 2006 they had formed a committed relationship.
6. he continued to reside in [Text deleted] in June 2006 and returned only six (6) times to Ontario for the purpose of visiting his ailing father.

He also testified that:

1. in July of 2007, [Text deleted] terminated their contract with [Text deleted] and contracted with the Appellant directly and since that time he has been employed directly by [Text deleted].
2. attached to his Statutory Declaration were his time sheets for 2006 and 2007 verifying his attendance at work in [Text deleted], Manitoba.
3. he intended to continue to remain in [Text deleted] so long as there was work available for him to do.
4. he had made a new life in [Text deleted], established a number of friendships and a relationship with [Appellant's girlfriend], and they had a child.
5. he had consolidated his debts through a loan with the [Text deleted] in [Text deleted].
6. attached to his Statutory Declaration was a statement of the loan agreement with this bank.

He further testified that:

1. subsequent to the motor vehicle accident he became aware that he was not registered for Manitoba Health and subsequently did register with Manitoba Health and was granted coverage dating back to October 10, 2006.
2. the reason he had not registered initially with Manitoba Health is because he never thought about it and only did so when he needed the services of Manitoba Health as a result of the injuries he sustained in the motor vehicle accident.
3. his vehicle had been registered in the Province of Ontario prior to the motor vehicle accident because he had determined there was no need to change the vehicle registration until he began to reside in the Province of Manitoba.

He further testified that:

1. his driver's license was also registered in the Province of Ontario and that the reason he did not change his driver's license was because in the Province of Ontario licenses were granted for a period of five (5) years and his license had not expired at the time of the motor vehicle accident.
2. his driver's license had been suspended in Ontario because he had not paid his fine and upon payment of the fine a new license had been sent to him.
3. having regard to his bad driving record he was uncertain that if he had tried to obtain a Manitoba license that the Manitoba licensing authority might refuse his request for this license.
4. he had consulted with an insurance agent in the Province of Manitoba and, as a result, he had concluded that the cost of obtaining Manitoba vehicle insurance was no greater than the significant premium he was required to pay for his Ontario vehicle insurance.

As a result, he paid the premium which permitted him to obtain Ontario vehicle insurance and an Ontario driving license.

He further testified that:

1. prior to leaving Ontario he had separated from his wife, had only retained some antique furniture which he had left at his mother's residence in Ontario, and he did not bring any furniture with him to Manitoba.
2. the only time he returned to Ontario was only for the purpose of visiting his elderly ailing father and not for the purpose of residing in Ontario.
3. he had lost his job in Ontario, had some difficulty in finding employment in that Province, and was very happy to find employment in the Province of Manitoba and intended to remain in Manitoba as a resident so long as he had employment here.

He further testified that in respect of his income tax return:

1. the return was prepared by his accountant in Ontario.
2. the accountant had erred in indicating that his mailing address in Ontario was [Text deleted], Ontario, which was his mother's mailing address.
3. the return correctly indicated that he had been self-employed in the Province of Manitoba in 2006.
4. the accountant had erred in indicating that his residence on December 31, 2006 was the Province of Ontario.

Submissions

MPIC's legal counsel submitted that the Appellant had failed to establish, on a balance of probabilities, that at the time of the motor vehicle accident he was a resident in the Province of

Manitoba and, as a result, the appeal should be dismissed and the decision of the Internal Review Officer confirmed.

MPIC's legal counsel reviewed the testimony of the witnesses and the documentary evidence and submitted that:

1. the Appellant's 2006 income tax return indicated the Appellant's mailing address was [Text deleted], Ontario, and that he had also declared on this official document that he was a resident in the Province of Ontario as of December 31, 2006.
2. at the time of the motor vehicle accident the Appellant's driver's license, vehicle registration and auto insurance were from Ontario and that he did not obtain a change in registration of his driver's license, vehicle registration and auto insurance until after the motor vehicle accident had occurred.
3. he had paid a premium of \$5,000 in respect of his auto insurance in the Province of Ontario since the vehicle was being driven outside of that Province.
4. the Appellant's apartment lease was only on a month-to-month basis.
5. the Appellant's salary was directed to be deposited into a bank in Ontario, and not Manitoba.
6. in respect of his 2006 income tax return, the Appellant claimed a Northern residence deduction on the grounds that he was a resident of Ontario and, as a result, was able to claim a significant deduction from his income tax in respect of his rent and meals from the Province of Ontario.
7. the Appellant could not have made a claim for such deductions had he been a resident of the Province of Manitoba.

In response, the Appellant's legal counsel submitted that the Appellant had provided a reasonable explanation in his testimony as to the reasons why:

1. his health and vehicle insurance, driver's license and vehicle registration were registered in Ontario prior to the motor vehicle accident.
2. he was paying a significant premium in order to obtain his vehicle insurance in the Province of Ontario.

The Appellant's legal counsel further submitted in respect of the Appellant's income tax return that:

1. the Appellant's accountant erred in indicating that the Appellant's residence was in the Province of Ontario and not in the Province of Manitoba and that the Appellant was not responsible for this error.
2. the accountant entered on the tax return that the Appellant's Ontario mailing address was [Text deleted], Ontario, which was the Appellant's mailing address only when he visited his father in the Province of Ontario.
3. in the income tax return referring to the [Text deleted] deductions, the form clearly indicated that the Appellant had been a resident in [Text deleted], Manitoba, for the period June 12, 2006 through December 31, 2006, and prior to that time from January 1, 2006 to June 11, 2006 he had been a resident in the Province of Ontario.
4. the portion of the return referring to the [Text deleted] deductions clearly indicated that the Appellant had entered on the income tax return that [Text deleted], Manitoba, was his permanent residence for a period of 203 days, which was the period of time between June 12, 2006 and December 31, 2006.

The Appellant's legal counsel further submitted that he did not condone the Appellant listing his residence in Ontario on his 2006 income tax return in order to claim a significant deduction from his income tax having regard to the costs he incurred for the payment of his rent and meals in the Province of Manitoba.

Discussion

Both counsel pointed out that:

1. pursuant to the MPIC Act and Regulations, and to *The Domicile and Habitual Residence Act*, a person cannot have more than one domicile and habitual residence at any time.
2. the domicile and habitual residence of a person continues until a new one is acquired, and that he/she is presumed to intend to reside indefinitely in the state of his/her principal home unless a contrary intention is shown.

The Commission notes that a person's domicile and habitual residence is located in the Province in which the person's "principal home is situated and in which that person intends to reside." The Commission recognizes that the onus is on the Appellant to show, on a balance of probabilities, the intended did establish a new domicile and habitual residence in Manitoba.

MPIC's legal counsel submitted that the failure of the Appellant to ensure that his vehicle registration, driver's license, his health and vehicle insurance, was not registered in Manitoba until after the motor vehicle accident. MPIC's legal counsel further submitted that the Appellant's payment of an additional premium of \$5,000 in order to obtain Ontario vehicle insurance also demonstrated his intent was not to reside in the Province of Manitoba. MPIC's legal counsel also submitted that the Appellant's intention not to reside in Manitoba was

corroborated by his failure to bring any furnishings from Ontario to Manitoba and that his lease was on a month-to-month basis. In summary, MPIC's legal counsel submitted that there was evidence to establish that the Appellant did not intend to obtain a domicile and habitual residence in Manitoba.

The Commission does find that the Appellant, in conducting his personal affairs, appeared to demonstrate a very cavalier attitude towards obtaining the appropriate registration in respect of his vehicle and health insurance and driver's license. However, the Commission also accepts the Appellant's explanation that he did not obtain a registration of his health insurance in the Province of Manitoba because he never thought of changing his health insurance registration until he had a need to attend the hospital in respect of the injuries sustained in the motor vehicle accident. Accordingly, the failure to register his health insurance in the Province of Manitoba until after the motor vehicle accident does not indicate that he did not have intention to establish a new domicile and habitual residence in Manitoba.

The Commission also notes that the Appellant's reason for avoiding registration of his vehicle insurance and vehicle registration in the Province of Manitoba was motivated primarily by the bad driving record he had in the Province of Ontario and his belief that, due to his driving record, he might not be able to obtain insurance coverage in the Province of Manitoba and, as a result, he was prepared to pay a substantial premium of \$5,000 to maintain his vehicle insurance in the Province of Ontario. The Commission does not condone the Appellant's conduct in this respect but finds that his explanation is not inconsistent with his intention to establish a new domicile and habitual residence in Manitoba.

The Commission also accepts the Appellant's explanation that on the payment of a fine in the Province of Ontario in respect of a driving offense, he could renew his Ontario vehicle license and, as a result, avoid the need to obtain a Manitoba vehicle license. This explanation is consistent with his fear of failing to obtain a Manitoba vehicle license due to his bad Ontario driving record. The Commission therefore concludes that his failure to obtain a Manitoba vehicle license is not inconsistent with his intention to establish a new domicile and habitual residence in Manitoba.

In respect of the Appellant's rental arrangement relating to his apartment on a month-to-month basis or an annual basis, the Appellant testified that there was a shortage of vacant apartments in [Text deleted], Manitoba and that he could only obtain the rental of the apartment he was residing in on a month-to-month basis and not on an annual basis. The Appellant's testimony of a tight rental market for apartments in [Text deleted], and the practice of rental agencies to rent only on a month-to-month rather than annual basis, was corroborated by the testimony of [Appellant's co-worker] and [Appellant's girlfriend], who are [Text deleted] residents. The Commission therefore finds that the rental of the Appellant on a month-to-month basis does not indicate a failure on the part of the Appellant that he did not intend to acquire a new domicile and habitual residence in Manitoba at the time of the motor vehicle accident.

An examination of the Appellant's income tax return indicates a series of conflicting statements. The Appellant testified that the accountant erred in indicating that his mailing address was his mother's address in [Text deleted], Ontario, when the Appellant was visiting his ailing father. In support of that position, the portion of the return dealing with the Northern resident deduction clearly indicates that the Appellant resided in the Province of Manitoba between June 12, 2006 and December 31, 2006, a period of approximately 203 days.

MPIC's legal counsel attacked the Appellant's credibility by indicating that the Appellant improperly claimed a reduction from his income for meals and rent while working in Manitoba and at the same time being a resident in the Province of Ontario. MPIC's legal counsel further submitted that by seeking a Northern resident deduction, the Appellant was clearly claiming that he was a resident of the Province of Ontario and not Manitoba.

The Commission, however, finds that the Appellant, after arriving in the Province of Manitoba in June 2006, has made a new life for himself. The Appellant found steady employment in [Text deleted] and now has permanent employment at [Text deleted]. He has formed a committed relationship with [Appellant's girlfriend], and is the father of a newborn child as a result of that relationship. The Appellant has also acquired several new friends in [Text deleted], Manitoba.

The Commission was also very impressed with the testimony of [Appellant's supervisor] [Appellant's girlfriend] and [Appellant's co-worker], who all testified in a direct fashion without equivocation. The Commission accepts their testimony that the Appellant had resided in [Text deleted], Manitoba between June 12, 2006 and the time of the motor vehicle accident. Their testimony does corroborate the Appellant's testimony that he moved to Manitoba on June 12, 2006 and that he intended to reside in Manitoba while he has employment in [Text deleted]. As well, [Appellant's co-worker's] statutory declaration, which contained as an exhibit a statement setting out the final standings of the [text deleted] league competition, established that the Appellant had participated in thirty-nine (39) of eighty (80) games between the fall of 2006 and early in the month of June 2007, corroborates the Appellant's residence in the Province of Manitoba during that period of time.

The Appellant's claim that he was an Ontario resident when filing his income tax return and continuing to obtain a Ontario driver's license and Ontario vehicle insurance, is in conflict with the Appellant's testimony that he was a resident in Manitoba. However, the Commission accepts the Appellant's explanation as to why he conducted himself in this fashion and his explanation is not inconsistent with his intent to be a resident of Manitoba. The Commission finds that the testimony of [Appellant's supervisor], [Appellant's girlfriend] and [Appellant's co-worker] corroborates the testimony of the Appellant that he was a resident in Manitoba between June 12, 2006 and the time of the motor vehicle accident.

The Commission finds, on a balance of probabilities, having regard to the documentary evidence and the testimony of the Appellant and the other witnesses, the Appellant had acquired a new domicile and habitual residence in Manitoba at the time of the motor vehicle accident.

The decision of MPIC's Internal Review Officer, dated December 27, 2007, is therefore rescinded. The Appellant's entitlement to Personal Injury Protection Plan benefits shall be referred back to the case manager for determination of the benefits in accordance with the status of a Manitoba resident pursuant to Section 74(1) of the MPIC Act. Interest in accordance with Section 167 of the MPIC Act shall be added to the amount of these benefits.

Dated at Winnipeg this 8th day of December, 2008.

MEL MYERS, Q.C.

NEIL COHEN

HONOURABLE WILF DE GRAVES