Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-100

PANEL:	**Ms Yvonne Tavares, Chairperson** **Mr. Trevor Anderson** **Ms Mary Lynn Brooks**
APPEARANCES:	**[text deleted] and [text deleted], as Committee of [the Appellant], were represented by Mr. Barry Gorlick, Q.C.; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.**
HEARING DATE:	**April 4, 2012 and April 20, 2012**
ISSUE(S):	**Whether Income Replacement Indemnity benefits were properly determined.**
RELEVANT SECTIONS:	**Section 81 of The Manitoba Public Insurance Corporation Act ('MPIC 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] was involved in a serious motor vehicle accident on June 13, 2007. As a result of that accident, [the Appellant] suffered a severe brain injury. He requires continuous supervision in an institutional setting. As a result of the bodily injuries which [the Appellant] sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act.

Prior to the motor vehicle accident, [the Appellant] worked full-time as a self-employed carpenter. Needless to say, he has been unable to return to any form of employment since the motor vehicle accident and as a result he qualifies for income replacement indemnity ("IRI") benefits in accordance with Section 81 of the MPIC Act.

[Text deleted] and [text deleted] are [the Appellant's] parents. By Court Order dated July 16, 2008, [the Appellant's parents] were appointed committee of both property and personal care of [the Appellant]. [The Appellant's parents], as committee of [the Appellant], filed this appeal to the Commission from a decision of the Internal Review Officer dated July 18, 2008.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On January 30, 2008, MPIC's case manager issued a decision regarding [the Appellant's] entitlement to IRI benefits. The case manager found that at the time of the accident, [the Appellant] was a self-employed carpenter. He was classified as a full-time earner for IRI purposes as he had held his self-employment for more than one year and worked an average of at least 40 hours per week. As a self-employed earner, [the Appellant's] IRI benefit was calculated in accordance with Schedule C of Manitoba Regulation 39/94, as the income provided under Schedule C, Level 1, provided the greatest benefit. Schedule C provides a GYEI of $19,759, which resulted in a bi-weekly IRI payment of $541.04.
2. [The Appellant's parents] as committee for [the Appellant] disagreed with the IRI calculation and sought an Internal Review of the case manager's decision. [The Appellant's parents'] position is that at the time of the accident, [the Appellant] had begun a full-time position with the [text deleted] as the [text deleted] carpenter, working 40 hours per week at a rate of pay of $25.00 per hour. They claim that his IRI benefits should be calculated on the basis of the salary from this employment.

3. In a decision dated July 18, 2008, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the information on the file confirmed that at the time of the accident, [the Appellant] providing self-employed carpenter services to [text deleted]. The Internal Review Officer found that the latest information from [text deleted] confirmed that [the Appellant] was self-employed at the time of the accident. As a result, the Internal Review Officer found that [the Appellant's] IRI entitlement was properly determined.
4. As noted above, [the Appellant's parents] disagreed with the Internal Review decision and have appealed that decision to this Commission.
5. On November 18, 2009, MPIC's case manager advised [the Appellant's parents] that [the Appellant's] IRI benefits were being increased in accordance with recent amendments to the MPIC Act that enhanced benefits for those individuals catastrophically injured in motor vehicle accidents. As a result, the minimum income replacement indemnity was computed on the basis of a gross yearly employment income determined on the basis of the industrial average wage. Effective October 8, 2009, [the Appellant's] IRI benefits increased from $575.42 to $943.83 biweekly.

At the hearing of this matter, the Commission heard testimony from the following individuals. The Commission does not intend to recite all of the evidence adduced; however, it was considered in its entirety. A summary of the evidence is set forth below as follows:

[The Appellant's mother] – [text deleted]:

[The Appellant's mother] testified that at the time of the motor vehicle accident, [the Appellant] was living at home with his parents. She also testified that prior to the motor vehicle accident

she had occasion to speak with her son about his business. [The Appellant's mother] testified that:

- [The Appellant] was a carpenter at the time of the motor vehicle accident.
- He had his own business known as [text deleted].
- At the time of the motor vehicle accident, [the Appellant] had entered into a contract with [text deleted] for carpentry services.
- Also, just prior to the motor vehicle accident, [the Appellant] had found a full-time permanent position at [text deleted] for 40 hours per week at a salary of $25.00 per hour.
- To the best of her knowledge, there was a written contract signed with [text deleted] setting out the terms of [the Appellant's] employment with the [text deleted].
- Following the motor vehicle accident, she contacted [text deleted]; they had emptied [the Appellant's] desk but never found a copy of any contract.
- Following the motor vehicle accident, [the Appellant's] wallet was never found, nor any of his personal or business papers which he kept in his truck.
- When [the Appellant] advised that he was going to be on the payroll at [text deleted], the contract at [text deleted] would have been taken care of by his employee, [text deleted].
- [The Appellant's employee] was not going to do any work at [text deleted]. That was solely [the Appellant's] job.
- Following the motor vehicle accident, she contacted [text deleted] to get a T4 slip, but one was never provided. She found it extremely difficult to get answers and information from [text deleted] following the motor vehicle accident.
- In March 2007, [the Appellant] had done some projects for [text deleted] at the golf course. It was her understanding that they were satisfied with his work and he was hired as a [text deleted] carpenter sometime in May 2007.

- When he got the full-time position at [text deleted], his work schedule was more regular. He would leave the house by 9:00 a.m., as he had to put in at least eight hours per day at [text deleted].
- He wore his own clothes to the worksite. He used his own vehicle, his own cell phone and his own tools at the job sites at [text deleted].
- She does not agree that [the Appellant] was a self-employed carpenter as at the date of the accident. Her understanding was that [the Appellant] was employed full-time as the [text deleted] contractor for [text deleted] at the date of the accident.
- She does not feel that [the Appellant] is being adequately compensated at the current level of IRI benefits.

[The Appellant's father] – [text deleted]:

[The Appellant's father] testified that in 2007 (prior to the accident) he spoke with his son every day about his son's work. He testified that:

- His son had started his own company in July 2006 to provide carpentry services.
- [The Appellant] started working at [text deleted] in March 2007. [The Appellant] was repairing the driving range and he helped his son prepare the yardage markers for the driving range.
- [text deleted] was satisfied with [the Appellant's] work and had offered him the job of [text deleted] carpenter on a full-time basis. [The Appellant] had accepted the job. He was required to work 40 hours per work and he was going to be paid $25.00 per hour.
- The arrangement with [text deleted] was to begin at the end of May 2007, a couple of weeks before the motor vehicle accident.

- [The Appellant] would continue to supervise the work at [text deleted] and attend that job site on Saturdays.
- He did not know if the arrangement with [text deleted] was with [text deleted] or with [the Appellant] personally.
- He believes that [the Appellant's] future income would be higher than the IRI benefits he currently receives from MPIC.

[The Appellant's girlfriend] – [text deleted]:

[The Appellant's girlfriend] met [the Appellant] in 2006 and has been his girlfriend since. At the hearing, she testified that:

- She organized [the Appellant's] paperwork following the motor vehicle accident. She arranged for his 2007 Income Tax Return to be prepared.
- [The Appellant] had used [text deleted] in the previous year to prepare his Income Tax Return. She went to the same place to have his 2007 Income Tax Return prepared. They basically took the paperwork she had, prepared the 2007 Income Tax Return and didn't ask her any questions.
- [The Appellant] was a self-employed carpenter prior to the motor vehicle accident. He had started his own business.
- Shortly before the motor vehicle accident, he had also started working for [text deleted] on a full-time basis. He had done some small jobs for the [text deleted] before then. At the time of the motor vehicle accident he was regularly employed with [text deleted] and was expected to work 40 hours per week at a rate of $25.00 an hour.
- She believed there was a contract between [the Appellant] and [text deleted] for $1,000 per week.

- [The Appellant] also had the job at [text deleted], [the Appellant's employee] was going to take the lead at that job.
- [The Appellant] felt that he was going to have a steady income from his position with [text deleted], so he purchased a new truck.
- In June 2007, [the Appellant] was working personally for [text deleted], it wasn't through [text deleted].
- In June 2007, [the Appellant] had his own business and he was employed with [text deleted].

Chief [text deleted] - Chief of [text deleted]:

Chief [text deleted] was elected as Chief of [text deleted] in 2002 and he is now in his fifth term. He advised that as Chief of the [text deleted], he is the spokesperson for the [text deleted]. Chief [text deleted] testified that:

- He knew [the Appellant] through Councillor [text deleted], Councillor [text deleted] handled the housing and maintenance portfolio for [text deleted].
- There was always a demand for home renovation and carpentry services at the [text deleted].
- He was not aware of the specifics of [the Appellant's] employment arrangement with the [text deleted]. Councillor [text deleted] would know what employment arrangements were made with [the Appellant].
- There was no T4 slip issued for [the Appellant] by [text deleted] in 2007.
- He was not able to locate any documents to support that [the Appellant] was an employee of the [text deleted]. He was not sure if there was a contract with [the Appellant].

- There would certainly be enough work at [text deleted] to keep a carpenter busy for 40 hours per week.
- The [text deleted] would have liked to have a carpenter "in-house" because it would be cheaper than contracting out that work, they would have more control over an employee, the service would be faster and potentially there would be fewer hassles.

[The Appellant's employee] – [text deleted]:

[The Appellant's employee] testified that he had known [the Appellant] for 31 years. He also testified that:

- In 2007 he started working with [the Appellant] at [text deleted]. They were going to build bulkheads around a new sprinkler system for [text deleted].
- Prior to the accident, [the Appellant] told him that he was going to be the carpenter at [text deleted]. [The Appellant] was going to work at [text deleted] full time and he, [the Appellant's employee], would continue the job at [text deleted]. [text deleted] was [the Appellant's] job and [the Appellant] would check in on him at [text deleted] on the weekends.
- [The Appellant] was the boss, he was learning the trade. [The Appellant] took care of all of the business aspects of their work. They were going to grow the company together.
- [The Appellant] had been working for a couple of weeks for [text deleted] before the motor vehicle accident.

[text deleted] - Councillor [text deleted]:

[Text deleted] is a Councillor at [text deleted]. He testified that he held the housing and gaming portfolio for the [text deleted]. He testified that he met [the Appellant] in 1997/1998 at a [text deleted] in [text deleted], Manitoba. He also testified that:

- Prior to [the Appellant], the [text deleted] had a full-time carpenter, but he had left approximately two months prior to [the Appellant] being hired.
- The [text deleted] always required a carpenter to maintain homes on the [text deleted].
- The [text deleted] decided to hire [the Appellant]. They tried him on a trial basis. He built a deck and they were happy with his work, so they decided to hire him on a full-time basis. They had agreed to pay him $25.00 an hour for full-time hours (40 hours per week).
- Three weeks prior to the motor vehicle accident, [the Appellant] had begun working for the [text deleted] on a full-time basis.
- Due to difficulties with the previous carpenter, the [text deleted] wanted to enter into an employment agreement with [the Appellant] in order protect the [text deleted] from a potential wrongful dismissal claim and to ensure that [the Appellant] fulfilled his obligations. However, the contract had not been prepared and signed before the motor vehicle accident. Indeed, no paperwork was ever found after the motor vehicle accident with respect to [the Appellant].
- There was plenty of work to keep [the Appellant] busy for 40 hours a week.
- [The Appellant] should have gotten a T4 slip for 2007, however one was never issued.
- An employment contract was never signed by [the Appellant]. They were in the process of preparing the employment contract when [the Appellant] had the accident.

- [The Appellant] used his own truck and trailer for the work at the [text deleted]. They had not discussed whether [the Appellant] would have access to the [text deleted] gas account.
- They did not know who would be responsible for repairing [the Appellant's] tools.
- They were not hiring [text deleted]. The [text deleted] was hiring [the Appellant] personally as a carpenter.

[Text deleted] - Income Replacement Supervisor for MPIC:

[Text deleted] is employed by MPIC as an Income Replacement Supervisor. He testified that he oversees a staff of ten and ensures that income replacement indemnity calculations comply with the MPIC Act and Regulations. [The IRI Supervisor] testified that:

- Based upon his review of the file, [the Appellant] was an independent contractor as at the date of the motor vehicle accident.
- There was no indication of [the Appellant] being paid as an employee as at the date of the motor vehicle accident.
- A T4 slip was never produced for [the Appellant]. Additionally, there was no evidence of deductions for EI, CPP or Income Tax from any payments made to [the Appellant] or [text deleted].
- [The Appellant's] 2007 Income Tax Return did not report any employment income.
- Motor vehicle expenses and business expenses were claimed on the 2007 Income Tax return which was indicative of [the Appellant] working as an independent contractor and not as an employee.
- [The Appellant] provided and used his own tools and used his own vehicle. This was another indication that he worked as an independent contractor.

- All cheques were made out to [text deleted]. If [the Appellant] was personally employed, it would be expected that payments would have been made to [the Appellant] personally.
- He did not make any independent investigations into [the Appellant's] employment status, but rather relied upon the information on the file.

Appellant's Submission:

Counsel for the Appellant submits that the Appellant had two employments at the time of the motor vehicle accident. He was a self-employed carpenter, operating a sole-proprietorship under the name "[text deleted]". In addition, he was also employed as a full-time carpenter for [text deleted]. As a result, counsel for the Appellant contends that the Appellant's IRI benefits should be calculated based upon the two employments – the salary of $1000/week plus the self-employed business income. This calculation would result in a greater IRI entitlement for the Appellant than that which was determined by MPIC's case manager.

Counsel for the Appellant argues that commencing in approximately March 2007, [the Appellant] began providing carpentry services to the [text deleted]. [The Appellant's] rate of pay for those services was $25.00 per hour. Counsel for the Appellant maintains that sometime in late May 2007 or early June 2007, the employment relationship between [the Appellant] and [text deleted] changed. Although he had originally been providing services to [text deleted] as a self-employed carpenter through [text deleted], [text deleted] had determined that it wanted to hire [the Appellant] personally and have him on staff as a full-time carpenter, five days per week, eight hours per day. [The Appellant] was considered an excellent carpenter and was well regarded by the Chief and members of the [text deleted] Council. Counsel for the Appellant argues that the expectation was that [the Appellant] would have his efforts recorded through the

payroll system as an employee and would ultimately be issued a T4 slip for the 2007 calendar year and in the years beyond. The full-time nature of the employment was anticipated to continue on a long-term basis, given the availability of work and the need for completion of projects within the [text deleted].

Counsel for the Appellant submits that the weight of the evidence is in favour of the Appellant. He claims that although no paperwork is available, the Commission should accept that a T4 slip would have been issued and that source deductions would have been remitted on behalf of [the Appellant]. Despite their best efforts, Chief [text deleted] and Councillor [text deleted] have been unable to locate any documentation relative to [the Appellant's] employment. However, based upon their testimony, counsel for the Appellant argues that as at the date of the accident, an employer/employee relationship existed between [the Appellant] and [text deleted]. Counsel for the Appellant submits that the Commission should discount all other criteria which may not be indicative of an employer/employee relationship in the face of this evidence. He submits that the evidence in favour of the Appellant is as follows:

- the Appellant had his own office at the [text deleted];
- the Appellant was required to work 40 hours per week at the [text deleted];
- the Appellant would have received a T4 slip from the [text deleted];
- the Appellant's work was reviewed by [text deleted] members;
- the Appellant was regarded as the [text deleted] carpenter;
- the Appellant would have participated in the benefit plan made available to employees of the [text deleted]; and
- the Appellant was not to supply his own materials, but rather he had authority to charge purchases to the [text deleted] account at the local hardware store.

As a result, counsel for the Appellant submits that on balance, the evidence favours the Appellant's version that he was employed on a full-time basis as an employee of [text deleted] and also had his own business operating as [text deleted] which was completely separate and distinct from his activities at [text deleted]. Accordingly, counsel for the Appellant contends that the Appellant's appeal should be allowed.

MPIC's Submission:

Counsel for MPIC submits that as of the date of the accident, [the Appellant] was a self-employed carpenter working for [text deleted] on a full-time basis. She contends that as of the date of the accident, the relationship between the Appellant and [text deleted] had not crystallized into an employee/employer relationship. No employment contract had been signed and she maintains that, regardless of their intentions, the employee/employer relationship had not yet started.

Counsel for MPIC submits that an employee/employer relationship is not borne out by the evidence in this matter. In support of her position, she relies on the following evidence which she submits is more indicative of [the Appellant's] self-employed status:

- [The Appellant's] control over his activities was more in keeping with a self-employed relationship. He was not supervised in his day to day work and had a measure of flexibility and independence in his work indicative of a self-employed carpenter.
- [The Appellant] used his own tools, his own vehicle and his own clothing.
- There were no source deductions remitted by [text deleted] on behalf of the Appellant. Additionally, there were no pay slips or a T4 slip issued by [text deleted].

- There was no contract of employment signed between the parties, even though Chief [text deleted] and Councillor [text deleted] both indicated that an employment contract was important. In their view, having an employment contract clearly set out each parties' responsibilities and obligations with respect to the employment relationship and would avoid the difficulties they had encountered in the past.
- The Application for Compensation listed [the Appellant's] employment status as self-employed.
- The Income Tax returns filed by the Appellant indicate his employment activities as self-employed. No employment income was reported on the Appellant's 2007 income tax return.
- The Appellant had an employee – [text deleted]. [The Appellant's employee] testified that he and [the Appellant] were building a nice little business together.

In conclusion, counsel for MPIC maintains that there is simply no documentation to support that the Appellant was an employee at the time of the motor vehicle accident. At most she maintains that there was perhaps an intention to employ him at a later date, but that had not crystallized as at the date of the motor vehicle accident. Accordingly, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review decision should be confirmed.

Decision:

Upon a careful review of all of the medical, paramedical and other reports and oral and documentary evidence filed in connection with this appeal, and after hearing the submissions of counsel for the Appellant and of counsel for MPIC, the Commission finds that the Appellant was an employee of the [text deleted] at the time of the motor vehicle accident. Accordingly, the

Appellant's IRI benefits shall be calculated based upon his two employments which he held at the time of the motor vehicle accident – the salary of $1000/week plus the self-employed business income.

Reasons for Decision:

The MPIC Act and Manitoba Regulation 39/94 (Determination of Income and Employment) provide different methods for the calculation of IRI benefits depending upon whether a claimant is considered to be employed and receiving a salary or wages from employment; or, whether a claimant is considered to be self-employed deriving a business income from self-employment or by way of a proprietorship, partnership interest or significant influence shareholder interest. However, neither the MPIC Act, nor the regulations enacted thereunder provide definitions of the terms "employed" or "self-employed". The Commission therefore found it necessary to consider the significant jurisprudence which has developed concerning the distinction between an employee and an independent contractor in order to determine whether the Appellant was an employee or self-employed at the time of the accident.

No universal test has been established by the courts or administrative tribunals to determine whether a person is an employee or an independent contractor. However, courts have set out a series of factors to be considered in making these determinations. Counsel for MPIC referred to the decision of the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59 (CanLII), 2001 SCC 59, [2001] 2 S.C.R. 983. In *Sagaz*, Major J., writing for a unanimous court, explained (at paras. 46-48):

> … [T]here is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor. Lord Denning stated in *Stevenson Jordan*, [[1952] 1 The Times L.R. 101 (C.A.)], that it may be impossible to give a precise definition of the distinction (p. 111) and, similarly, Fleming [*The Law of*

> *Torts*, 9th ed. (Sydney: LBC Information Services, 1998)] observed that "no single test seems to yield an invariably clear and acceptable answer to the many variables of ever changing employment relations ..." (p. 416). Further, I agree with MacGuigan J.A. in *Wiebe Door* [reflex, [1986] 3 F.C. 553], at p. 563, citing Atiyah, [*Vicarious Liability in the Law of Torts* (London: Butterworths, 1967)], at p. 38, that what must always occur is a search for the total relationship of the parties:
>
> > [I]t is exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service any longer serves a useful purpose .... The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned. Clearly not all of these factors will be relevant in all cases, or have the same weight in all cases. Equally clearly no magic formula can be propounded for determining which factors should, in any given case, be treated as the determining ones.
>
> Although there is no universal test to determine whether a person is an employee or an independent contractor, I agree with MacGuigan J.A. that a persuasive approach to the issue is that taken by Cooke J. in *Market Investigations* [[1968] 3 All E.R. 732 (Q.B.D.)]. The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker's activities will always be a factor. However, other factors to consider include whether the worker provides his or her own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker's opportunity for profit in the performance of his or her tasks.
>
> It bears repeating that the above factors constitute a non-exhaustive list, and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.
>
> [emphasis added]

Clearly, the issue of whether someone is an employee or an independent contractor is, in the end, context driven. Ultimately the decision in each case will depend on its own particular facts. In the present case, there are some facts which point to [the Appellant] being an employee, while other facts tend to support an independent contractor characterization. As noted by the Supreme Court of Canada in *Sagaz, supra*, the central question to be resolved in determining whether an individual is an employee or an independent contractor is "whether the person who has been engaged to perform the services is performing them as a person in business on his own account". The determination of that question in this case involved a consideration of a number of factors as follows:

1. The degree of control over [the Appellant's] activities – In this case the Commission accepts that as the "[text deleted] carpenter", [the Appellant] was required to be present at the [text deleted] for 8 hours per day, 40 hours per week and that he was generally directed and supervised in his work by the [text deleted]. The expectation was that he would be readily available to attend to urgent problems and emergencies as they arose. As Chief [text deleted] testified "*they ([text deleted]) would have more control over an employee, the service would be faster and potentially there would be fewer hassles"*. The Commission is satisfied that the [text deleted] exercised sufficient control over [the Appellant] in his day-to-day employment to such a degree that favours a finding that he was an employee of the [text deleted] rather than an independent contractor.
2. The provision by [the Appellant] of his own vehicle and equipment - the evidence was clear that [the Appellant] provided his own tools, his own cell phone and his own vehicle in carrying out his duties at the [text deleted]. The ownership of tools and equipment is important as it indicates that an individual has made a capital investment in a business enterprise. The Commission finds that, on balance, this factor favours the conclusion that [the Appellant] was an independent contractor at the time of the accident.
3. The hiring by [the Appellant] of his own helpers – much was made at the hearing of the fact that [the Appellant] was going to be solely responsible for providing services to the [text deleted]. The testimony on behalf of the Appellant clearly distinguished and emphasized the fact that [the Appellant] was personally hired to perform the work at the [text deleted]. This was contrasted with the arrangement at the [text deleted] where his employee, [text deleted] was responsible for the majority of the work and [the Appellant] was supervising that job. It also differed from the original work that [the Appellant] did for the [text deleted] at the golf course, where his father assisted [the Appellant] in the preparation of the yardage markers for the driving range. Given the evidence that [the

Appellant] was required to perform the work assigned to him personally (rather than delegating that work to others), the Commission finds that this factor suggests that [the Appellant] was an employee of [text deleted] rather than an independent contractor.

4. The degree of financial risk taken by [the Appellant] – the evidence concerning the arrangement between [the Appellant] and the [text deleted] indicated that the position as [text deleted] carpenter provided an assurance to [the Appellant] of 40 hours per week at a rate of $25.00 per hour. The testimony at the hearing from [the Appellant's] family members suggested that [the Appellant] was thrilled with the position and the security offered by the guarantee of work. Indeed, [the Appellant's girlfriend] testified that [the Appellant] purchased a new vehicle on the basis of this new employment and his confidence that his salary was secure and assured. The Commission finds that there was little financial risk assumed by [the Appellant] in his position with the [text deleted]. The arrangement was indicative of an employee-employer relationship whereby [the Appellant] was providing his labour in exchange for remuneration.

5. The characterization of the relationship by [the Appellant] and the [text deleted] – while the manner in which the parties described their relationship is not necessarily determinative of the matter, the intent of the parties is certainly a factor to be considered. Councillor [text deleted] testified that the intention was to enter into an employment relationship with [the Appellant], although the paperwork necessary to document that relationship was never undertaken and completed. Certainly, had [the Appellant] actually been entered onto the payroll at the [text deleted], it may be that this appeal may never have been required. The fact that the [text deleted] failed to exercise straightforward administrative tasks in an efficient manner should not penalize [the Appellant]. In any event, there was an oral agreement between [the Appellant] and the [text deleted] which purported to establish an employer/employee relationship. That very agreement is

significant in determining the true relationship between the parties especially in cases such as this one and cannot be disregarded.

6. The manner in which [the Appellant's] income tax returns were filed – while it may be of some relevance that [the Appellant's] income tax returns were filed on the basis of a self-employed individual, that fact is not ultimately determinative of his status under the MPIC Act. The testimony on this point was clear that the income tax returns were filed simply on the basis of what had been done in the year prior and given that no T4 slip was ever issued by [text deleted] for [the Appellant], it appears that there was little choice in the matter for [the Appellant's] family.

On the basis of the foregoing, the Commission has determined that at the time of the accident, [the Appellant] was an employee of [text deleted]. In this case, the Commission is satisfied that an oral contract of employment existed between the parties, which was never reduced to writing. In examining all of the factors set out in the jurisprudence, the Commission's conclusion is that [the Appellant] was not operating a business on his own account with respect to the provision of his services to [text deleted]. Rather, he received a wage for his work. There was no expectation or opportunity for profit related to the arrangement with the [text deleted]. Therefore, for the purposes of determining [the Appellant's] IRI benefits, his IRI benefits shall be calculated based upon his two employments which he held at the time of the motor vehicle accident – the salary of $1000/week plus the self-employed business income. This matter shall be referred back to MPIC's case manager for a redetermination of [the Appellant's] IRI benefits at the date of death in accordance with the foregoing findings.

As a result, the Appellant's appeal is allowed and the Internal Review decision dated July 18, 2008 is therefore rescinded.

Dated at Winnipeg this 15th day of August, 2012.

YVONNE TAVARES

TREVOR ANDERSON

MARY LYNN BROOKS