Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-98-61

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Mr. Charles T. Birt, Q.C.** **Mrs. Lila Goodspeed**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Mr. Keith Addison;** **the Appellant, [text deleted], appeared on his on behalf**
HEARING DATE:	**June 23rd, 1999**
ISSUE(S):	**(a) Whether Appellant entitled to renewal of chiropractic care;** **(b) Whether Appellant entitled to reinstatement of income replacement indemnity ('IRI');** **(c) Whether Appellant entitled to permanent impairment award for cervico-thoracic injury;** **(d) Whether Appellant entitled to permanent impairment award for injury to right shoulder;** **(e) Whether Appellant entitled to permanent impairment award for injury to left shoulder;** **(f) Whether Appellant entitled to re-education for new career.**
RELEVANT SECTIONS:	**Sections 81 (1)(a), 81 (2)(a)(ii), 110 (1)(a), 116 (1), 127 and 136 (1)(a) of the MPIC Act, and Section 5 of Manitoba Regulation 40/94.**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

REASONS FOR DECISION

The Appellant, [text deleted], was driving his [text deleted] vehicle on December 16th, 1994, stopped at a red light, turned his head slightly to the right to check up on his children, saw another vehicle approaching his from the rear and was unable to avoid the collision which resulted. [The Appellant] testified that he hit his left temple on the steering wheel and sustained a concussion, subsequent loss of memory and an apparent whiplash associated disorder. In describing his accident, [the Appellant] said that, at the time of the impact, he had been adjusting something on his dashboard with his left hand - he could not remember what it was that had required adjusting - while his right hand held the steering wheel, the right arm being slightly flexed. [The Appellant] also testified that, at the time of impact, his left arm was between his torso and the steering wheel; he was thrown backwards, then forwards, hitting his left temple on the steering wheel. After the accident, he had taken a rough measurement of the skid marks left on the road surface by the other vehicle [text deleted] which he estimated to be about 130 feet. The costs of repairing [the Appellant's] vehicle amounted to $449.45, inclusive of tax; the rear bumper and its mounting brackets and reinforcement were removed and replaced.

The exact nature of the injuries sustained by [the Appellant] as a direct result of his motor vehicle accident is unclear. While [the Appellant] testified that, in addition to his head injury and resultant loss of memory, he sustained serious injuries to both shoulders as well as his cervical area, his medical records do not necessarily support the shoulder injuries of which he testified. [The Appellant's] application for compensation, in the space designed for a description of his injuries sustained at the time of the accident, merely says "See medical info from

[Appellant's neurologist]/[Appellant's doctor #1]/[Appellant's chiropractor #1]. [Appellant's chiropractor #1's] reports make no mention of any complaint by [the Appellant] about his right shoulder until August 21st, 1996, despite earlier reports to MPIC on January 4th, 1995, July 31st, 1995 and a very detailed report on February 7th, 1996. Even this latter report, while it does mention complaint by [the Appellant] of pain in the "left upper arm (Deltoid)" mentions neither left nor right shoulder injury. That five page report speaks of "cervico-thoracic sprain, cervico-genic headaches, autonomic nervous system insult, C5-C6 radiculopathy and hypertonic paravertebral musculature of the cervico-thoracic spine with concominant spinal fixations" (sic) and attributes [the Appellant's] complaints of left upper arm pain to [Appellant's chiropractor #1's] belief that "the trauma affected the C5 nerve root", resulting in that pain. [Appellant's chiropractor #1's] quite detailed report of August 21st, 1996 mentions that [the Appellant] at that juncture was complaining of right shoulder pain, but that comment is made in the third line of [Appellant's chiropractor #1's] letter and is never referred to again. It was not until December 20th, 1996 that [Appellant's chiropractor #1], in a letter to [the Appellant's] adjuster at MPIC, makes the statement that

> Upon [the Appellant's] initial examination dated December 20th, 1994, he related to me that he had right shoulder discomfort (superior aspect). He also related to me that he had severe neck and back pain, left upper arm pain (deltoid) as well as other symptoms.
>
> His treatment consisted of T.E.N.S. therapy and spinal manipulation to the cervical-thoracic spine and intermittent treatment to the right shoulder….
>
> At times of T.E.N.S. and mobilization to the right shoulder it would exacerbate his pain in his shoulder. Therefore, he has been referred to [Appellant's orthopaedic surgeon] for further investigation into the etiology of his shoulder problem. It is my belief his shoulder pain is attributed to his motor vehicle accident.

It is, perhaps, noteworthy that [Appellant's chiropractor #1] did not refer [the Appellant] to [Appellant's orthopaedic surgeon] until October or early November of 1996. [Appellant's orthopaedic surgeon] first saw [the Appellant] on November 4th of that year. [Appellant's chiropractor #1] has indicated that his omission of any earlier mention of [the Appellant's] right shoulder was a matter of mere inadvertence yet, he testified "I do mark down everything that a patient complains of".

In a letter bearing date October 10th, 1997 addressed to [the Appellant], [Appellant's chiropractor #1] said, in part:

> Initially following your accident on December 16th, 1994 you had extreme neck pain, upper and mid-back pain, headaches, left shoulder pain as well as anterior deltoid pain.
>
> Also a few months following the initial trauma of December 16th, 1994 you developed right shoulder pain. It was my feeling at that time that the shoulder pain was referred pain from the neck as a result of the motor vehicle accident. It was then later discovered that you had sustained an inflammatory posterior rotator cuff tendonitis as a result of the forces of the motor vehicle transmitted through that joint.

[Appellant's chiropractor #1], when giving evidence on behalf of [the Appellant] at the hearing of this appeal, responded to one of [the Appellant's] questions by saying

> The major focus at our initial interview was your bilateral neck pain, headaches, nausea and you were unbalanced. Three weeks to a month later you may have mentioned that your right shoulder was getting more troublesome.

[Appellant's doctor #1], who examined [the Appellant] on February 20th, March 7th and April 3rd, 1995, makes no mention at all of any shoulder problems in her report of April 3rd, 1995 nor in a subsequent report of July 22nd, 1995.

[Appellant's doctor #1], in a detailed report to MPIC's adjuster on February 29th, 1996, relates that [the Appellant's] initial contact with the [text deleted] Medical Clinic (where [Appellant's doctor #1] carries on her practice) was with [Appellant's doctor #2]. [The Appellant] had asked for a checkup to rule out high blood pressure; he had apparently mentioned his accident and that he was having headaches and fatigue. He told [Appellant's doctor #2] he was working up to 70 hours per week and was advised to reduce his work hours. [Appellant's doctor #1] herself first saw [the Appellant] on February 28th, 1995, when he complained of dizziness and nausea, headache and neck stiffness since the accident; numbness on the left side of his forehead and face; memory lapses and some episodes of sudden heart racing associated with feelings of depersonalization. [Appellant's doctor #1's] findings were borderline blood pressure, a normal neurologic exam except for subjective decrease in sensation over the left forehead, cheek and chin, normal neck movements but dizziness with extending the neck and pain with flexion, and a normal examination of ears, carotid pulses, head, lungs and abdomen. [The Appellant] had returned on February 28th, complaining of a sore neck and restless sleep. She had prescribed Amitriptylene. On March 21st, 1995 [Appellant's doctor #1] spoke with [the Appellant] by telephone. He told her of his March 10th, 1995 event but appears to have made no mention then, nor on April 3rd, August 1st and August 28th, 1995 of any shoulder problems at all. [the Appellant] was seen by [Appellant's doctor #1] again on February 20th, 1996 and then, also, no mention is made of any shoulder problem.

[Appellant's neurologist], of [text deleted], reviewed [the Appellant] for the first time on March 10th, 1995, after the Appellant had been found in his vehicle in a snow bank, communicative but amnesic for the antecedent period. [Appellant's neurologist], in a subsequent report of May 30th

following a review of [the Appellant] on that date, outlined extensive investigations that had been conducted and offered the opinion that, as a result of two abnormal electro-encephalograms showing epileptiform activity, [the Appellant] should be treated with anti-convulsants. On August 4th, 1995 [Appellant's neurologist], in a further report to [Appellant's doctor #1], reiterated the earlier opinion that [the Appellant's] event of March 10th, 1995 was a seizure, adding that, provided [the Appellant] recognized that he might well have a pre-existing propensity to epileptiform seizures and therefore refrained from operating machinery (particularly if he does not drive) there would be no particular objection to his taking no further anticonvulsant drug. That propensity on [the Appellant's] part was re-emphasized in a further report from [Appellant's neurologist] to [Appellant's doctor #1] of October 17th, as a result of some followup EEGs. [The Appellant] did not agree with [Appellant's neurologist's] diagnosis, nor with the prescription for anti-convulsant medication. As [Appellant's neurologist] says in a report to MPIC on February 19th, 1996, "I reiterated the need for him to take his anti-convulsant at my meeting with him in August 1995. He had declined to do so, and this is his decision, against my advice."

[The Appellant] has received a permanent impairment award of $12,000.00 for his head injury and loss of memory although, he testified, he has been seizure-free for four years. His driver's licence is, however, still suspended.

[The Appellant], at the time of his motor vehicle accident, was a [text deleted] therapist. He filed a claim for income replacement indemnity for the period commencing July 29th, 1996 because, he said, the sequelae from his motor vehicle accident included injury to his right shoulder which,

in turn, caused him to compensate with his left shoulder, producing pain at both locations and diminishing his ability to work with the same number of patients in his [text deleted] practice that he had attended to before his accident. The insurer originally accepted the basis of that claim, although it was not until March 24th, 1997 that MPIC sent him a cheque for $15,272.31, representing income replacement indemnity for the period July 29th, 1996 to March 1st, 1997. We are given no explanation for that extraordinary delay, which is not to MPIC's credit. The amount of that cheque was based upon calculations provided by [the Appellant] to MPIC, indicating that the Appellant's work production was down, as the adjuster puts it, "by an average of 88%" (*we believe he means to an average of 88%, in light of his resultant figures*) over the months of August, 1996, through February 1997. MPIC had therefore taken 88% of [the Appellant's] full IRI entitlement (which would have been $1,119.68 bi-weekly) and worked out a payment of $985.31 bi-weekly.

In the letter sending that last noted cheque to [the Appellant], MPIC also confirmed that it had made arrangements to initiate a cervical Stabilization Program for him with [text deleted], an athletic therapist at [text deleted]. MPIC also told him they had made arrangements for an occupational therapist at [vocational rehab consulting company] to oversee his return to full-time work. The Stabilization Program and the occupational therapy program could not be undertaken with any degree of thoroughness, pending the completion of surgery on [the Appellant's] right shoulder that had been recommended by [Appellant's orthopaedic surgeon]. [Appellant's orthopaedic surgeon] had advised [the Appellant] as early as May of 1997 that surgery was an option; that option was explained to [the Appellant] by [Appellant's orthopaedic surgeon] again, by telephone, on July 25th, 1997 and, again, in a letter from

[Appellant's orthopaedic surgeon] on January 5th, 1998. It was not, however, until the spring of 1999 that [the Appellant] elected to go ahead with that surgery, with what appear to have been excellent results.

On September 17th, 1997 [the Appellant's] adjuster at MPIC wrote to tell him that, as of September 27th of that year, his IRI payments would cease and the Corporation would pay for no further chiropractic treatments nor, indeed, for any other form of treatment after September 27th. The Corporation was prepared to fund some counseling sessions if [the Appellant] felt them to be required. The reason given in that letter was that, in the view of MPIC, [the Appellant] was no longer disabled from his occupation as a result of injuries sustained in his accident of December 16th, 1994.

The Right Shoulder

The damage that [the Appellant] claims to have suffered to his right shoulder as a result of his motor vehicle accident is by far the most important facet of his present claim. If his accident caused the damage to his right shoulder, with the consequent need for surgery, then certain benefits must flow - benefits that he has been denied since September 27th, 1997.

In this context, the evidence of [Appellant's orthopaedic surgeon] is of particular significance. His evidence, supported by his earlier correspondence, indicates that there were two aspects of [the Appellant's] right shoulder that had to be dealt with: first, there was evidence of an anterior labral tear; second, there was rotator cuff tendonitis. There was no evidence of any tearing of the rotator cuff. [Appellant's orthopaedic surgeon] testified that the anterior labral tear was most

likely related to a much earlier shoulder dislocation, predating by some 20 years the motor vehicle accident now under review. As [Appellant's orthopaedic surgeon] put it in his testimony, "The labrum was loose but I cannot tell whether the tear was 3 or 23 years old. With respect to the rotator cuff tendonitis, [Appellant's orthopaedic surgeon] was initially of the view that it had been caused by the motor vehicle accident. That view was based upon information given him by [the Appellant] in November of 1996 to the effect that his shoulder problem surfaced almost immediately after his accident. When he was asked whether he would still be of the same view if he were told that the shoulder problem had not surfaced until about 14 months after the accident, [Appellant's orthopaedic surgeon] said that, in the latter event, he would not be prepared to link the shoulder problem to the motor vehicle accident. If it were caused by the accident, he said, it would have surfaced within 2 or 3 weeks.

After careful consideration of all of the evidence before us, both viva voce and in written form, we have concluded, on a strong balance of probabilities, that neither the labral tear nor the rotator cuff tendonitis was caused by the motor vehicle accident. Our reasons may be summarized this way:

1. despite [Appellant's chiropractor #1's] delayed recall, the total absence of any mention of the shoulder problem by [the Appellant] to his adjuster, to [Appellant's doctor #1] or to [Appellant's neurologist] (although, arguably, he would have been less likely to mention it to [text deleted], a neurologist) persuades us that all of [Appellant's chiropractor #1's] earlier notes and reports up to August 21st, 1996, at the earliest, accurately omitted a reference to the right shoulder. As noted above, the reference to right shoulder pain in [Appellant's chiropractor #1's] letter of August 21st, 1996 might almost be called a 'throw

away line', since no further reference to it appears in a letter which is otherwise quite detailed;

2. [the Appellant] testified that he had sold his home on [text deleted] on or about December 1st, 1995. He and his family moved to [text deleted]. The land originally had a log cabin, 16 by 21 feet, which has now been enlarged to 16 by 52 feet. There is, as well, a 24 by 48 feet house on the land, adjacent to the cabin. [The Appellant] testified that his mother, father, father-in-law and friends all came out to [text deleted] to help him complete the buildings before he and his family moved there. "I participated in all the work as much as I could." It is noteworthy that, having reduced the monthly frequency of his chiropractic treatments to 2 by September of 1995, 3 in October, 4 in November and 3 again in December, there is a significant increase in frequency from January through June of 1996: 6 in January, 6 in February, 9 in March, 8 in April, 5 in May, 12 in June. In the absence of any other factors that might have made that increase necessary, we have to conclude that [the Appellant] sustained some injury in the course of his move and subsequent finishing of his new home. Contrary to the conclusion that we have reached, [the Appellant] expressed the view that "My participation in the construction of my home……is not relevant".

3. [the Appellant] had initially consulted [Appellant's orthopaedic surgeon] on November 1st, 1994 with respect to an injury he had sustained on his right knee. [The Appellant] explained to this commission that he had been moving a rural outhouse on log rollers; the other members of his group had left and he had tried to finish the pushing himself when, as he puts it, "my right knee popped". [The Appellant] demonstrated this by going through the motions of pushing with his left shoulder but, appearing to catch himself, orally

described "leaning against the outhouse" with his back. However it occurred, the fact is that his right knee required anterior cruciate ligament reconstruction and that was performed by [Appellant's orthopaedic surgeon] on August 31st, 1995. [The Appellant], himself, testified that he had never mentioned his shoulder problem to [Appellant's orthopaedic surgeon] and that, although he had seen [Appellant's doctor #1] several times in 1995, he had never told her about his shoulder either; he had felt that there was no need to do so.

4. the mechanics of [the Appellant's] motor vehicle accident preclude the kinds of injury sustained by his shoulder. By his own testimony, [the Appellant's] right arm was not fully extended and rigid. Rather, it was bent at the elbow; the weak points would therefore have been the elbow and the wrist which, from the force of the impact transmitted through the body of the vehicle to [the Appellant's] body, would simply have bent further. The situation was not one in which his arm was fixed and his shoulder mobile; the reverse was the case.

The Left Shoulder

This facet of [the Appellant's] claim is not before us, not having been the subject of any earlier decision either by MPIC's Claims Department or by the internal review officer. In any event, there is no evidence before us to indicate that [the Appellant] sustained injury to his left shoulder as a result of his motor vehicle accident. [Appellant's orthopaedic surgeon], in a letter to [the Appellant] of January 5th, 1998, added the following comment:

> You have indicated in the past that you tend to be somewhat ambidextrous although right-handed by definition. In protecting your right shoulder there is a tendency to in fact over-compensate by using the left side more. Even without a history of trauma, cuff tendonitis tends to occur in patients in their 30s to 50s or early 60s and do have some association with

> the type of work that is done. You are a high demand person on your shoulder and are at the appropriate age that you can in fact develop similar symptoms on the left side even without a history of traumatic incident to incite the problem.

Chiropractic Treatments

As noted earlier, MPIC ceased paying for [the Appellant's] chiropractic treatments as of September 27th, 1997. As early as May 27th, 1996, [text deleted], medical co-ordinator of MPIC's Claims Services Department, offered the comment that, on the understanding that [the Appellant] had been attending [Appellant's chiropractor #1] an average of twice per week for the preceding 3 months, and given that it was then about 14 months since [the Appellant's] most recent motor vehicle accident, "He has exceeded all reasonable standards of conservative care for spinal manipulative therapy and there is no evidence to support its continued use in his condition".

[Text deleted], chiropractic consultant to MPIC, comments in a memorandum of August 8th, 1996 that

> [the Appellant] has now…….received 19 months of chiropractic care since his accident of December 1994 and 16 months of chiropractic care since his accident of March 10th, 1995.
>
> Cervical spine X-rays obtained February 3rd, 1995, less than 2 months following his initial injury and prior to his second motor vehicle accident, revealed moderate to marked narrowing of the C5-6 and the C6-7 disk spaces with marginal osteophytic activity anteriorly through most of the cervical spine and Luschka joint and posterior articulation scelerosing…..It is unlikely that this type of spinal degeneration would occur in a period of less than 2 months, and therefore these findings, in my opinion, primarily represent a pre-existing condition.
>
> In summary, regarding ongoing spinal manipulative therapy, I am in agreement with [MPIC's doctor's] opinion that ongoing care is unlikely to be of benefit to [the Appellant] at this time. He should be able to manage at the same level of function with the home stretches and strengthening procedures that he has reportedly been instructed in.

MPIC then referred [the Appellant] for an independent chiropractic examination by [independent chiropractor], who saw him on November 8th, 1996. [Independent chiropractor], in a very detailed report of November 15th, 1996, finds that [the Appellant's] injuries were consistent with a Grade 2 Whiplash Associated Disorder, notes that there is no documentation of a right shoulder injury, finds it questionable whether that was accident-related, and finds residual cervical dorsal pain with no signs of nerve root compression. [Independent chiropractor] says that [the Appellant] had "fairly significant pre-existing degenerative disk disease in the cervical spine which, no doubt, was likely aggravated". He notes that [the Appellant] had been attending for chiropractic treatment prior to the accident and was seen by [Appellant's chiropractor #1] and at the [text deleted] Chiropractic Centre. [Independent chiropractor] says, further:

> With regards to further treatment, chiropractic care has not returned him to full duties. He's now almost 2 years post-accident and he is still claiming partial disability for various reasons……From what he told me, he is only have periodic adjustments to the cervical spine every 4 to 5 weeks on average. Notwithstanding the events which occurred on March 10th, 1995, manipulation of the cervical spine represents a relative contra-indication although not necessarily an absolute contra-indication. The frequency of adjustments to the cervical spine at every four to five weeks is likely relative to or close to what is termed a maintenance level of care…..I believe that a time-framed cervical Stabilization Program (4 to 6 weeks) should be considered. Any partial disability relative to the cervical spine should not extend beyond this time frame.

[The Appellant] was re-examined by [independent chiropractor] on August 29th, 1997. In a further, detailed analysis of [the Appellant's] condition from a chiropractic viewpoint, [independent chiropractor] comments that, with respect to the treatment of [the Appellant's] right shoulder, whether or not to proceed with surgery was a decision that only [the Appellant] could make. "As for chiropractic care, I believe that he has reached maximum therapeutic benefit and maximum medical improvement.

At a team meeting on March 13th, 1997, at which [MPIC's doctor], [Appellant's chiropractor #1], [MPIC's chiropractor #2], the Appellant and his lawyer, [text deleted], were present. A memorandum of that meeting prepared by [MPIC's doctor] contains the following notation, amongst others:

> It was concluded during the Team Meeting with the agreement of the claimant, [text deleted] (the claimant's chiropractor) and myself that this claimant has likely reached maximum medical improvement with respect to his neck pain. It would seem reasonable to begin weaning from treatment over a 4 to 8 week period while the claimant is attending for stabilization exercises.

A memorandum from [text deleted], a chiropractic consultant for MPIC, addressed to [Appellant's chiropractor #2] on November 25th, 1997, reads in part:

> I have had some discussion with [the Appellant's] previous treatment provider. He indicated that [the Appellant] was deemed to be at maximum therapeutic benefit and, in a sense, was discharged from care.
>
> It is my understanding that no further care is deemed necessary for [the Appellant] as it related to his motor vehicle accidents (as of September 1997).

This last noted memorandum seems to have arisen as result of a telephone discussion between [MPIC's chiropractor #2] and [Appellant's chiropractor #2], whom [the Appellant] had apparently consulted on November 19th, 1997. Shortly thereafter, [Appellant's chiropractor #2] submitted a lengthy and detailed report to MPIC, recommending continued chiropractic care for at least three months on a twice weekly basis but, with deference and although [Appellant's chiropractor #2] describes her treatment plan for [the Appellant] as a 'different approach' we are not persuaded that her treatment plan will be markedly different from, nor more likely to succeed than, the 186 spinal manipulations administered to [the Appellant] by [Appellant's chiropractor

#1]. [Appellant's chiropractor #2's] reporting letter of December 9th, 1997 diagnoses [the Appellant] with:

1. a chronic severe cervical sprain/strain reaction due to hyperextension/herperflexion and compression reaction to an acceleration injury;

2. dorsal and costovertedbral myositis;

3. severe cervicogenic headaches;

4. bilateral shoulder instabilities secondary to aberrant spinal biomechanics;

5. autonomic concomitants; and

6. traumatic spinal subluxation complex.

[Appellant's chiropractor #2] concludes that:

> Given the above noted findings and from former clinical experiences, the form of treatment consists of specific correction of the interosseous disrelationships for the reduction of neurological compromise. Our method of treatment represents the clinical approach of preference and the only scientific means of attaining spinal integrity and stability. The treatment specifically consists of specific spinal adjustments, mobilization techniques and soft tissue therapy for restoring proper neurological integrity. This form of treatment will directly affect the patient by removing nerve root pressure and mechanoreceptor deafferentation.

It is not clear from [Appellant's chiropractor #2's] report whether she had received copies of all of the other relevant, medical opinions, including those of [Appellant's chiropractor #1]. The treatment that she recommends appears to be, in very large measure, identical to that applied by [Appellant's chiropractor #1]. As well, there is no evidence on [the Appellant's] file of nerve root pressure nor of any neurological deficit other than the intra-cranial problem described by [Appellant's neurologist]. 'Mechanoreceptor deafferentation' may be described as the loss of sensory nerve fibres from a portion of the body; we are not aware of any evidence to indicate that

[the Appellant] has such a deficiency. While [Appellant's chiropractor #2's] thoroughness is certainly commendable, her report does not persuade us to disagree with the conclusions reached by [independent chiropractor], [MPIC's chiropractor #2] and [MPIC's doctor], concurred in by [Appellant's chiropractor #1], that [the Appellant] had reached maximum chiropractic benefit prior to the time when MPIC quit paying for his chiropractic treatments.

Claim for Permanent Impairment Benefits for Cervico-thoracic Injury

No evidence was presented to us, either in written or oral form, to indicate the presence of any permanent injury to [the Appellant's] cervical or thoracic spine - none, at least, that has its origins in his motor vehicle accident of December 16th, 1994. This aspect of [the Appellant's] claim must, therefore, fail.

Claim for Re-education

Having found that [the Appellant's] shoulder injury was not caused by his motor vehicle accident, and that he is therefore not entitled to further income replacement indemnity (except as noted below), it follows that we are of the view that, in the context of injuries caused by his motor vehicle accident, [the Appellant] needs only to complete the Stabilization Program that was made available to him in early 1997. The decision not to proceed with the Stabilization Program then appears to have been a joint decision in which [Appellant's orthopaedic surgeon], MPIC's adjuster, [Appellant's athletic therapist] and [the Appellant] all concurred, upon the basis that he needed to have his right shoulder problem resolved before he could participate in a Stabilization Program in any meaningful way. As noted above, [the Appellant] did not elect to

undergo his shoulder surgery until 1999, thus placing the Stabilization Program on hold until now.

That Stabilization Program is still available for [the Appellant], who will be entitled to a resumption of his income replacement indemnity while participating in that program. He will, of course, also be entitled to be reimbursed his travel expenses between [text deleted] and [text deleted].

Dated at Winnipeg this 5th day of August , 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED