

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-95-19**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')

represented by Ms Joan McKelvey
[Text deleted], the Appellant, appeared in person

HEARING DATE: January 5th, 1995

ISSUES: (i) Calculation of Income Replacement Indemnity for Appellant ;
(ii) whether Appellant entitled to cost of hiring replacement labour.

RELEVANT SECTIONS: 81(1), 81(2), 111(1) and 112(1) of the M.P.I.C. Act and Regulations 39/94 (Schedule C) & 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 FACTS:

[the Appellant], a [text deleted] year old farmer, was seriously injured in an automobile accident on the 16th of August 1994. The injury, which was primarily focused on his

hip, has prevented him from any active, physical participation in the farming operations, except to a minimal extent, ever since. The [Appellant's] family runs a mixed farming operation, involving wheat, flax, canola and oats, some chickens and about 60 cows plus their calves. The whole operation encompasses some 1,600 acres, inclusive of pasture and grain land.

Prior to his accident [the Appellant], as a self-employed farmer, with help from [Appellant's wife] and occasional, part-time help from his two sons, ran the entire operation. The accident occurred during harvesting season, exacerbating its effect.

[The Appellant's] younger son, [text deleted], who would have been classified as a student at the time of the accident but was working part-time for his father on the farm, would normally have been laid off on October 7th, 1994 but, because of his father's injury, was kept on until November 18th. [Appellant's younger son] was earning a salary of \$7.00 per hour and, by [the Appellant's] calculation, earned \$1,680.69 to November 18th.

The [Appellant's] older son, [text deleted], had also been employed on a part-time basis by a Manitoba land surveyor but, as his father put it, "pitched in with the farm occasionally". Since the accident, however, and [the Appellant's] resultant inability to run the farm, [Appellant's older son] has managed the farm on a full-time basis at a wage of \$12.00 per hour. By [the Appellant's] calculation, [Appellant's older son] earned a total of \$51,4200.00 between August 17th, 1994 and December 31st, 1995. In addition to these salaries earned by the Appellant's two sons, [the Appellant] was also obliged to pay the employer's contributions for his employed sons towards Unemployment Insurance and the Canada Pension Plan. [the Appellant] further

testified that, although he and his son had agreed upon the appropriate figure, with the approval of M.P.I.C.'s adjuster, in fact little cash had been available with which to pay [Appellant's older son] who, so far, had been working for his parents in whole or in part on credit. [Appellant's older son] has been living with his parents on the farm.

M.P.I.C., in addition to making arrangements for [the Appellant's] medical and rehabilitative needs, has been paying him income replacement indemnity of \$683.44 every two weeks. He feels that this is inadequate and seeks reimbursement for his replacement labour costs as well - that is to say, the amount that he has either had to pay or become indebted to his son for, to cover his son's wages earned in performing the work that [the Appellant] himself used to perform.

THE LAW:

The Manitoba Public Corporation Act is, in effect, an insurance policy whereby all licensed owners and drivers of registered vehicles in Manitoba are covered. As with any other form of insurance, it is to the specific wording of the policy that we have to look, in order to discover the nature and extent of the insurance coverage.

[the Appellant's] rights are to be found, initially, in Section 81(1) of that statute, which provides that he, as a full-time earner, is entitled to an income replacement indemnity ('I.R.I') if he is unable to continue his full-time employment as a result of an automobile accident. That is what happened to [the Appellant].

Section 81(2) provides that M.P.I.C. must determine the I.R.I. for a full-time earner who is self-employed, on the basis either of the gross income determined in accordance with the Regulations for an employment of the same class, or his actual gross income earned from his employment, whichever is the greater. The Regulations have reference to the figures published by Statistics Canada which set out average annual incomes for self-employed persons in each standard category of work.

Once that gross income has been determined, then we must have reference to Sections 111(1) and 112(1) of the Act which, when read together, fix a victim's income replacement indemnity at 90% of his net, annual income, which is defined as his gross annual income from employment less statutory deductions for income tax, unemployment insurance premiums and Canada Pension Plan contributions.

A review of [the Appellant's] annual earnings over the preceding five years showed that his declared, gross income, for income tax purposes, ranged from a low of \$7,600.00 to a high of \$22,895.00. Since average, gross income for employment of the same class (i.e. a self-employed farmer) under Schedule C of Regulation No.39/94 produced a figure of \$23,651.00, M.P.I.C. used the latter figure as [the Appellant's] gross income, made the appropriate deductions and paid him 90% of the resultant balance.

The out-of-pocket expenses to which a person insured under the Act is entitled are, for the most part, set out in Regulation 40/94. At the risk of over-simplification, they may be summarized as: the costs of home care and personal care required by the victim; medical,

paramedical and hospital care; rehabilitation expenses; the costs of acquiring prostheses, eye glasses, dentures, and the like; travel and accommodation expenses made necessary for the purpose of medical or rehabilitative care; the cost of replacing clothing damaged by the accident, and certain other specific expenses that are not relevant here.

Unfortunately for [the Appellant], there is no provision in the Act nor in the Regulations whereby the insurer could be required to reimburse [the Appellant] for the cost of paying someone else to do the work that he was doing prior to the accident. One may speculate that the Legislature assumed that the person hired to do the work of an accident victim would be able to generate at least enough income with which to pay his or her own salary but, in any event, we are not at liberty to amend the Act

We have therefore concluded that M.P.I.C.'s calculation of [the Appellant's] income replacement indemnity was made upon a correct basis, and that his claim for his replacement labour costs must fail.

DISPOSITION:

We therefore confirm the ruling of M.P.I.C.'s Internal Review Officer and dismiss [the Appellant's] appeal.

Dated at Winnipeg this 10th day of January 1996.

CHARLES T. BIRT, Q.C.
GOODSPEED

J.F.R.TAYLOR, Q.C.

LILA

