Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-99-07

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Ms. Yvonne Tavares** **Mr. Colon C. Settle, Q.C.**
APPEARANCES:	**[Appellant's representative] appeared for the Appellant; Mr. Keith Addison appeared for the Manitoba Public Insurance Corporation ('MPIC').**
HEARING DATE:	**December 5, 2000**
ISSUE(S):	**(1) Whether Appellant was non-earner, temporary earner or full-time earner at the time of each of four accidents;** **(2) Causation - whether one or more accidents resulted in disability;** **(3) Whether Appellant entitled to Income Replacement Indemnity (IRI) and, if so, during what period(s).**
RELEVANT SECTIONS:	**Sections 81(2)(a)(ii), 85(1)(a), 86(1), 106 and 110(1) of the MPIC Act, Section 8 of Manitoba Regulation 37/94, Section 3 and Schedule A of Mb. Regulation 39/94, copies of each being annexed to these Reasons.**

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] has an unfortunate history of motor vehicle accidents (MVAs). She apparently sustained MVA-related Whiplash Associated Disorders (WADs) in 1977, on December 17th, 1980, on May 14th, 1984, in November 1985, on July 9th and on October 10th, 1987; she was involved in a further collision on March 26th, 1991, and another on August 26th, 1993. From the injuries sustained in each of those accidents, [the Appellant] appears to have recovered to the

point of being able to either resume a former occupation or adopt a new one, whether as real estate agent, university student, real estate developer or trainee in the life insurance industry. That is not to say that she was symptom-free by November of 1997, but she was by then self-employed on a full-time basis.

That history was fated to repeat itself, in the form of four more MVAs that are the subject of the present appeal. They took place on November 18th, 1997, December 11th, 1997, January 26th, 1999, and September 2nd, 1999, respectively.

Appellant's Business Background

The Appellant, who was born on [text deleted], became licensed as a real estate agent [text deleted]. She worked in that field until [text deleted] she started a [text deleted] business, which she ran for five years before selling out to her sister. Some time during that same period she appears to have started a [text deleted] company which she also sold.

In [text deleted] she started a business called [text deleted], a real estate development and general contracting company. She testified that [text deleted] she had had primary responsibility for the building of 12 residences and 11 duplexes, continuing in that field until [text deleted]. She then joined [text deleted] for management training, and worked for that company until [text deleted] when she moved to [text deleted], enrolled as a part-time student at [text deleted] and obtained part-time employment in sales with a company called [text deleted].

All of the foregoing were, of course, interrupted from time to time by the effects of her several motor vehicle accidents.

In 1995, she decided to return to the field of real estate sales, obtained her agent's licence and, from early 1995 until October of 1996, she worked in the sale of new homes, [text deleted].

In October of 1996, she started working as a project manager in the building of new homes in [text deleted], Manitoba, for [text deleted]. She testified that her work was really akin to that of a general contractor, from obtaining building permits, obtaining quotations from three different sub-trades in every aspect of construction, estimating materials needed and taking off prices. [The Appellant] further testified that she had to supervise and inspect the work of each sub-trade and, on occasion, actually become physically involved in helping some of the sub-trades to complete their work. She had no particular training in any of the mechanical sub-trades but had learned by experience and observation. Concurrently with her work for [text deleted], [the Appellant] was also doing similar work "on the side" for several individual lot owners. She was close to finishing her work for [text deleted] when the first of her MVAs now under review occurred.

We find that, despite some inaccuracies and a tendency to exaggerate, [the Appellant's] evidence was, for the most part, credible. Her history reflects a woman who demands much (sometimes, perhaps, too much) of herself. She is not a person given to voluntary inactivity, although she may, at times, have become caregiver-dependent.

MVA of November 18th, 1997

[The Appellant's] evidence was that she was stopped at a red light behind five other vehicles; the light had turned green, the traffic had proceeded forward, she had turned her head to the right side (doing so, as later emerged, to respond to a call on her cellular phone) without noticing that the vehicle immediately in front of her had stopped. By the time she had realized it, the front of

her vehicle had hit the rear of the other car. The file discloses that there was no damage of any consequence to [the Appellant's] vehicle and $238 of damage to the other vehicle. However, [the Appellant] reported injuries to her neck and mid-back, headaches, numbness in both hands, dizziness and disorientation. She reported to MPIC's adjuster that, as a result of her accident, she could not vacuum in her home and could no longer put in the hours of work to which she had been accustomed.

The information given by [the Appellant] to MPIC recorded that, in the period from October of 1996 to October of 1997, she had been in charge of constructing 10 residences in [text deleted] for [text deleted], plus another four under private contracts. The last two of the [text deleted] houses were apparently a few weeks short of completion. The Appellant testified that her injuries from this accident caused her to abandon two of the private contracts, although she was able to continue some of her work by telephone.

[The Appellant], then as now a single mother with [text deleted] children at school, testified that during the months prior to her November 18th accident, she was commuting on an almost daily basis between her home in [text deleted] and her work in [text deleted], working about 76 hours per week. She was, at the same time, in the throes of divorce proceedings and suffering from [text deleted]. In a letter to the Manitoba College of Physicians & Surgeons, she later described herself as having been "near the end of my rope" from the accumulated stresses, just prior to this first MVA. She attended upon her chiropractor, [text deleted], on November 20th; his report of November 25th to MPIC suggested that she was "presently unable to drive long distance which is required of her present job. No other category applies". The reference to "other category" refers to the question posed in the form of health care report, asking whether the patient was able to work full duties, work modified duties, work supernumerary or unable to work at any job.

[Appellant's chiropractor] also diagnosed a Grade 3a Whiplash Associated Disorder, although we do not find any neurological deficit that might be expected to form a basis for such a diagnosis.

[The Appellant] apparently told her case manager at MPIC that, following this first accident, she was using the phone to conduct most of the business of which she was capable, since her daily attendance in [text deleted] was no longer necessary. She did, however, make the trip to [text deleted] on three more occasions in December, 1997, despite complaints of dizziness, headaches and nausea; she was obliged to take a passenger with her for safety's sake and, even then, had to stop on occasion due to the nausea. She is supported in that testimony by an unsworn, written statement of her passenger.

The insurer then referred [the Appellant] for independent examinations by [text deleted], chiropractor, and by [text deleted], neurologist.

[Independent chiropractor] examined [the Appellant] on December 8th, 1997. She described herself as a self-employed project manager, engaged in both construction and marketing. She told [independent chiropractor], and confirmed during her testimony to this Commission, that her work in [text deleted] was scheduled to end at the end of December and that, thereafter, she would have been working in [text deleted]. [Independent chiropractor's] detailed report of December 10th, 1997, while noting a large number of limitations and symptoms of which [the Appellant] was complaining at the time, suggests that she had sustained an apparent soft-tissue strain type of injury, likely consistent with a Grade 2 Whiplash Associated Disorder. Her right upper limb sensory symptoms were non-dermatomal and were not nerve-root related. "Her limitation of glenohumeral movements symmetrically, both actively and passively, with the pain

being in the mid-dorsal spine, as opposed to the shoulder, is somewhat difficult to explain. She has an apparent high level of anxiety which could very well be factors [*sic*] in her symptom complex….In spite of her numerous symptoms, no hard neurological signs were identified".

[Independent chiropractor] recommended continuance of exercising with increased frequency, a referral to [the Appellant's] physician respecting her symptoms of anxiety, depression and sleep disturbance, and intermittent chiropractic care over the ensuing three to six months to resolve any soft-tissue injuries from her accident. He offered the opinion that the Appellant would be "able to function in some capacity in her workplace", although he advised against the lifting of drywall or other activities involving extensive labour. She should restrict her hours of work to a 40-hour work week over the next few weeks, said [independent chiropractor]; her ability to drive on the highway should be addressed by a neurologist. It should be noted that commuting between [text deleted] and [text deleted] requires between five and six hours of driving per day, rendering a 40-hour week somewhat impracticable for the Appellant at this stage.

[The Appellant] was examined by [independent neurologist #1] on December 9th. He reports "she said it was 'not much of an accident'". [The Appellant] is reported to have told him that, at the time of her accident, she "never thought too much of it". She had apparently paid some bills and driven on to [text deleted] that same day, but said that, by the time she reached [text deleted], her whole right upper limb was numb and she had a headache.

The essence of [independent neurologist #1's] report is that he could find no evidence of any neurological nor any organic disorder to account for [the Appellant's] complaints.

> Whereas I cannot describe the nature and extent of injuries received at the time of the accident, I can say quite definitely that on the date she was seen, December 9, 1997, there

> was no evidence whatsoever of any injuries or any residual defect or disorder resulting from the accident or, for that matter, any previous accidents.

[Independent neurologist #1] did not feel that [the Appellant] required any form of treatment at all. "She is completely normal and fully fit to return to whatever work or employment she did before." He also expressed the view the Appellant was able to drive back and forth every day to and from [text deleted] or any point beyond. [Independent neurologist #1] went further, to say that he had reviewed all of the documentation from chiropractors, family physicians, physiotherapists and pain specialists that had been provided to him by MPIC, related to [the Appellant's] prior history, and he could not find "one single line of objective evidence suggesting that this woman ever had an organic neurological disorder of any kind".

On December 17th, 1997, [the Appellant's] case manager at MPIC noted that, in a telephone discussion she had held with the Appellant that day, [the Appellant] had said that she had only planned to work up to the end of December of 1997 and had planned to be off work for January and February of 1998. She was looking for something in [text deleted] but her accident had made her scared to drive; despite [independent neurologist #1's] critique, [the Appellant] was still complaining of dizziness, imbalance and disorientation.

MVA of December 11th, 1997

Although the insurer has questioned whether this particular occurrence ever took place, we find as a fact that, on December 11th, 1997, with her young son as a passenger in her vehicle, [the Appellant] caused her car to collide with a cautionary traffic sign. She testified that she has no clear recollection of just what happened, although she believes that she was in the process of shoulder-checking. She thinks she may have had a dizzy spell. She was wearing a 3-point seatbelt and remembers being able to leave the vehicle. She did not attend upon her physician or

at any hospital but, rather, went home and, according to her statement to [independent chiropractor], she stayed in bed for about four days. On December 15th, 1997, she attended upon [Appellant's chiropractor]. She told [independent chiropractor] that she had not reported the December 11th accident to [Appellant's chiropractor], nor to her family physician, [text deleted], as she was afraid of losing her licence. It is clear from the file that she did not tell her case manager at MPIC either. [The Appellant's] statement to [independent chiropractor] conflicts to that extent with her evidence before this Commission. She testified that not only had she told [Appellant's chiropractor] of the December 11th incident when she saw him on the 18th, but had begged him to say nothing to MPIC about it. She had told her case manager on December 18th, merely, that she was "scared to be on the road". It was not until March 5th, 1998, that [the Appellant] told her case manager of the December 11th incident but then, as now, no evidence has been furnished to MPIC nor to this Commission to indicate the true nature and extent of any new injury, or of an exacerbation of a prior injury, resulting from this second accident. About a year later, repair costs for the Appellant's car of some $1,600 are reported, but it is difficult to relate these costs to her December 11th, 1997 MVA (except a comment apparently made by [the Appellant] to Internal Review Officer [text deleted] in October of 1998 that the impact had resulted in "a small amount of damage to the front of her bumper").

[Appellant's chiropractor] completed a progress report following his examination of [the Appellant] on February 26th, 1998. In that report, [Appellant's chiropractor] notes that the Appellant was having no more dizziness, although she continued to complain of recurrent neck pains, headaches, numbness in the right hand, throbbing in her left leg, and increased menstrual cramping, bleeding and duration since her November 18th MVA. [Appellant's chiropractor] diagnosed "ongoing spinal joint and soft-tissue dysfunction. Right brachial neuro." He prescribed regular spinal adjustments, daily stretching, daily walking and strengthening once to

three times per week, with an estimated discharge in the spring of 1999. [Appellant's chiropractor] also reported that [the Appellant] was at work although, he said, with less than full function due to symptoms in the form of headaches. He opined that she was able to work modified duties.

Appellant's Activities, January 1998 to January 1999

[The Appellant] testified that [Appellant's chiropractor] and [Appellant's doctor] had each told her to increase her activities gradually. She said "I was certainly unable to go back to the [text deleted] work, so I started a newsletter". We have some difficulty with that comment, since [the Appellant] had already testified that her work in [text deleted] was to have finished at the end of 1997 in any event, and she is reported to have told [independent chiropractor] on December 10th, 1997, that she would have been able to handle the job had it been in [text deleted]. It was never made clear to us why, in that event, [the Appellant] did not follow her pre-accident occupation in [text deleted] after her [text deleted] activities had come to an end.

In the interim, [the Appellant's] case manager at MPIC had written to her on March 17th, 1998, to tell her that she was classified as a self-employed temporary earner with a gross yearly employment income (GYEI) of $23,421.95 and was therefore entitled to bi-weekly Income Replacement Indemnity of $681.77. IRI, starting on the eighth day immediately following her November 18th accident, was paid up to and including December 9th, 1997, at which date MPIC determined that [the Appellant] was "capable of returning to your regular work duties". [The Appellant] appealed from that decision to MPIC's Internal Review Officer who, while confirming a termination date of December 9th, 1997, also decided that [the Appellant] should be classified as a real estate salesperson at Level 2 (that is to say, one who has worked in that occupation for at least 36 months but less than 120 months), entitling her to an IRI based upon a

deemed GYEI of $35,376. [The Appellant] appeals from that decision to this Commission with respect to both the quantum and duration of her IRI entitlement.

The Appellant's testimony was that she had started contacting potential advertisers for the newsletter in the Spring of 1998, the concept being that each customer would pay $100 to place an advertisement in the newsletter. She would retain $35 from each such subscription, and the advertiser would offer a discount or special promotion. The newsletter would be placed at convenience stores. She added "The newsletter was not, in itself, expected to make money for me. It was really a vehicle for me to advertise my own, other services, such as [text deleted]. The newsletter never did get published, although I had intended to do so." [The Appellant] testified that, throughout most of 1998, she frequently and regularly suffered from what she called "pinched nerve headaches", lasting three to four days at a time.

In November, 1998, [the Appellant] started organizing a "[text deleted]" for which, as for the newsletter, she was actually working as an independent contractor for [text deleted], who operated under the business name [text deleted]. The [text deleted] contemplated obtaining contracts with a number of wholesalers who would agree to sell to club members at wholesale prices. [The Appellant] would then sell memberships in the club for $100 each, members would place their orders through her, she would pick up the orders and assemble them at her own home and at other depots, where members could pick up their merchandise upon paying the wholesale price plus 10% that [the Appellant] would retain for handling and delivery. (It was never made clear what profit lay in this for [text deleted].) [The Appellant] testified she had everything arranged with the wholesalers and had contacted a number of people who were going to join the club in January of 1999. She had been working about 35 hours per week during the last few months of 1998, "not necessarily 9 to 5, but even midnight to 5 a.m. if that's when I felt good".

Unfortunately, [the Appellant] was unable to fullfill the demands of the [text deleted], she said, because she was not able to fill customers' orders due to her headaches. They were so bad that she could not drive, did not do much housework and even had to cancel some medical and other appointments. By November of 1998 at the latest, said [the Appellant], she was feeling well enough to start planning the recommencement of her construction business the following Spring; she was "on the road to" putting out her newsletter, completing the organization of the [text deleted] and recommencing her general contracting.

In early January of 1999, [the Appellant] testified, she started working for a group called [text deleted], to raise money for an anti-drug program for young people. She had tentatively planned a Spring social, a September golf tournament and a fundraiser to be held in November of 1999 at [text deleted]. Later in her evidence, however, [the Appellant] acknowledged that with respect to the fundraising group, "I met them in November 1998, but did not actually start until March and April. I was not able to accomplish much."

Medical History from February 26th, 1998, to January 1999

[Appellant's chiropractor] provided a further progress report to MPIC as a result of his examination of the Appellant on June 18th, 1998. This report reflects complaints by [the Appellant] of recurrent headaches, neck and shoulder pain and stiffness, occasional balance and vertigo problems, with reduced left arm and hand strength. (We note, in passing, that his earlier reports speak of problems with the right hand.) [Appellant's chiropractor] reports reduced range of motion of the Appellant's cervical and dorsal spine with "fixation subluxation complex" at several points in the cervical and thoracic regions of the spine. He diagnosed "ongoing spinal joint and soft-tissue dysfunction, fixation subluxation complexes". He recommends chiropractic treatments twice weekly for the following 8 to 12 weeks, once a week for the subsequent 8 to 12

weeks, and twice monthly for a further three to four months, finishing with monthly treatments for a further four to six months. He anticipated a discharge from care by the summer of 1999, rather than the Spring, 1999, discharge he had forecast in February 1998. He reported that the Appellant was at work and that he could identify no risk factors for chronic pain or delayed recovery.

[Appellant's doctor] referred [the Appellant] to [text deleted], physiatrist, who saw her on July 31st, 1998. She complained of neck pain, left-sided posterior cervical and occipital headaches, weakness in the left forearm and hand grip, and numbness of the left fourth and fifth fingers since November 18th, 1997. She had told [Appellant's physiatrist] that her symptoms were persistent and had not improved, other than the dizziness which had gradually subsided by the end of February, 1998. She had received chiropractic manipulations until July 1st, 1998, at an average frequency of four or five per month. [Text deleted]. [Appellant's physiatrist] diagnosed

> …..cervical spine strain manifested by interspinous ligamentous tenderness, regional myofascial trigger points and restriction of the movements of the neck. She may have suffered a vertebrobasilar insufficiency manifested by dizziness and trigeminal nerve paresthesias.

[Appellant's physiatrist] had recommended gentle range-of-motion and stretching exercises of the neck, preceded by the application of local moist hot packs. He gave her home stretching exercises to do twice daily and started her on a regimen of Cyclobenzaprine, 10 mg daily. He advised her to discontinue aggressive chiropractic manipulations. While recording her statement that she only felt able to work three to four hours per day, [Appellant's physiatrist] does not suggest a substantial inability on [the Appellant's] part to perform the essential duties of her occupation by the date of his examination.

[The Appellant] was also referred by [Appellant's doctor] to [Appellant's neurologist], [text deleted]. His neurologic examination of [the Appellant] on July 7th, 1998, revealed that

> ….neck movements are restricted by pain but she does not specifically have pain on extension and rotation of the neck. There is no evidence of weakness of the arm. There appears to be diminished pinprick in the middle and ring fingers of the left hand extending up into the palm. The left biceps reflex is absent.

[Appellant's neurologist] had ordered a CT scan of the Appellant's cervical region from which, he reported on October 7th, 1998, "there is absolutely nothing on the CT scan to suggest problems at the level of the spinal cord and cervical nerve roots. This would seem to rule out most serious disease in the nervous system. Unless new symptoms develop, I do not think further neurologic investigation is needed."

[Text deleted]

On October 27th, 1998, [Appellant's doctor] advised MPIC's Internal Review Officer that [the Appellant] "had an interspinous ligament strain, which is taking some time to settle. She has been given shots by [Appellant's physiatrist] which seem to be helping, but it is going to be some further months yet before healing has taken place. She may always have some weakness of this ligament for the rest of her life."

On October 30th, 1998, [the Appellant] was again reviewed by [Appellant's physiatrist]. She told him that, following the injections he had given her on September 4th, she had noted good pain relief in the left side of the neck. She had been sleeping well and her functional level had improved, although she had not been able to increase her working hours more than four hours per day. (It is unclear to us whether this means "by" or "to" more than four hours.) She continued to experience pain in the right side of the neck which was most of the time mild and

intermittent in nature. [Appellant's physiatrist] noted that a CT scan of [the Appellant's] cervical spine had revealed no evidence of disc herniation, fracture, subluxation or stenosis of the cervical spine, contrary to reports of [Appellant's chiropractor]. However, [Appellant's physiatrist] felt that the Appellant had not completely recovered from her injuries and still had residual trigger points and mechanical neck pain with reduced functional capabilities. He felt that the prognosis for her recovery was good to excellent and that, over the following six to eight weeks, she would make significant recovery and be able to return to a full-time job with or without some restrictions.

MVA of January 26th, 1999

On this date, [the Appellant] was apparently driving her car east on [text deleted] when the vehicle in front of her stopped suddenly. She was able to stop but the car behind her did not; as a result, she was rear-ended. While her car was pushed forward, it apparently did not collide with the car in front of her. The estimated amount of damage to her car was $363.43.

When examined by [Appellant's physiatrist] on February 10th, 1999, [the Appellant] told him that she had been doing very well and was 80 to 90% better in her pain and functional levels and was almost back to work on a full-time basis when the January 26th accident occurred. [Appellant's physiatrist] opined that she had sustained

> …..soft-tissue injuries of the neck and back manifested by interspinous ligamentous strain and active trigger points of several and neck and back muscles. Clinically, there was no evidence of disc herniation causing radiculitis or radiculopathy.

In his report of March 14th, 1999, to MPIC's case manager, [Appellant's physiatrist] added that the January 26th MVA had caused recurrence of soft-tissue pain syndrome, that [the Appellant] had developed exacerbation of her neck pain and had also developed back pain with headaches with reduced functional capabilities. He believed that on completion of treatments and

resolution of the soft-tissue pain syndrome, [the Appellant] would be able to return to her work for the [text deleted]; he was hopeful that, over the ensuing two to three months, she would make a good recovery and be able to return to her work.

MPIC then referred [the Appellant] for independent assessments by three different specialists: [text deleted], physiatrist; [text deleted], neurologist; and [text deleted], chiropractor.

[The Appellant] was examined by [independent neurologist #2] on April 16th, 1999. His report, dated April 21st, 1999, contains a brief history of [the Appellant's] 1997 accidents and a précis of her medical history up to and including the accident of January 26th, 1999. Referring to the latter, [independent neurologist #2] says that "in the first week after the accident she noticed increasing stiffness of her back and neck. She returned to [Appellant's physiatrist] with a frozen neck and increased headache (January or February 1999). Over the passage of time, she has improved and has just received another injection from [Appellant's physiatrist].....She was off work from February 7th until March 26th and has subsequently been working three days per week (24 hours per week)." [Independent neurologist #2's] report then notes that [the Appellant] was complaining of numbness of her hands, particularly at night, a weakness of grip, a sense of soreness and aching in the shoulders and chronic discomfort of the neck and back. The Appellant also complained of headaches that seemed to stem from her neck pain which, in turn, radiated from the neck into the occipital region. "With these headaches, she tends to have some tearing of the left eye as well as some squinting or dropping of the left eye. Both eyes are bloodshot." This latter statement appears to be a recital of what was said by [the Appellant] to [independent neurologist #2], rather than his own, clinical observation, in light of the remainder of [independent neurologist #2's] report which may be summarized this way:

- His neurological examination of [the Appellant] was unremarkable.
- As to any myofascial pain syndrome, he could only comment that her neck and shoulder musculature was mildly tender to palpation (a subjective complaint), and there were no objective physical findings to confirm any neurological process.
- He believed that the Appellant had sustained a soft-tissue injury without any significant neurological injury, although it was conceivable that she had experienced some subtle labyrinthine pathology as a result of her initial accident which contributed to her sense of dizziness. It was also possible that her neck discomfort, presumably reflecting underlying soft-tissue pathology, might have been cause for dizziness.
- CT scans of [the Appellant's] brain as well as of her cervical spine had found no significant abnormalities.
- He did not feel that [the Appellant] required any particular treatment that would be suggested by the discipline of neurology, and felt that the parallel disciplines of sports medicine and physical medicine and rehabilitation would be more appropriate in that context.
- He was of the opinion that [the Appellant] was capable of resuming her occupation, which both [the Appellant] and MPIC had described, simply, as an "entrepreneur". He felt that the Appellant was well motivated but, while sympathetic to her condition, it appeared that her symptoms had been quite protracted and he was not convinced that the insurer should assume full responsibility for the entire period of her disability.

[The Appellant] was examined by [independent chiropractor] in the context of her January 26th, 1999, accident, on April 21st, 1999. She described herself to him as being self-employed with the [text deleted] and also as campaign manager for the fundraising organization referred to above. She planned on returning to her job as a project manager in June or July, 1999.

She told [independent chiropractor] that she had told neither [Appellant's chiropractor] nor [Appellant's doctor] of the December 11th, 1997, accident, being afraid of losing her licence. [Independent chiropractor's] report contains a fairly detailed medical history given him by the Appellant, who reported that, at the time of his examination, she was 70% improved. Her neck was aggravated by sitting at the computer for long periods, extending her neck back, and by normal stress. However, she was no longer having adjustments in the neck region. Her headaches had decreased both in frequency and intensity, and were now limited to about once weekly. She had been numb in her right second and third fingers after her accident in January, 1999, but that had resolved with [Appellant's physiatrist's] injections. Her lower back had not been specifically injured in that accident. She was working 24 hours per week and planned to return to full duties within a month. She was able to perform all of her duties but had changed those duties so that she does not have to do heavy lifting. She was able to perform all domestic duties although vacuuming and cleaning her bathtub produced soreness. She had started dancing again. She was "definitely getting better".

After detailing the results of his physical examination of the Appellant, [independent chiropractor] reported that:

- In the absence of clinical notes from either [Appellant's chiropractor] or [Appellant's doctor] respecting the accident of December 11th, 1997, [independent chiropractor] felt unable to relate any injuries to that accident.
- The MVA of January 26th, 1999, resulted in soft-tissue strain type injury, primarily to the cervical dorsal spine, consistent with a Grade 2 Whiplash Associated Disorder.

- [The Appellant] had resolving soft-tissue injuries of primarily a myofascial nature, with no nerve-root signs. While she had symptoms suggestive of right shoulder subacromial bursitis, that latter finding was not consistent with the mechanism of injury.
- He suggested introducing some additional forms of exercise, aimed at scapular extension and stabilization, as well as a regular activity such as swimming or 'aqua fitness'. He also felt that with continued exercise, chiropractic care diminishing from weekly to once every two weeks for the mid-dorsal area, along with the treatment she was having from [Appellant's physiatrist], she should be able to self-manage within about three months.
- "As for work, I would recommend a return to full duties by May 1st, 1999. If this is not achievable, then an occupational therapy work assessment should be undertaken."

[Independent physiatrist] performed an independent medical examination of the Appellant on April 30th, 1999. He provided a lengthy report, bearing date June 4th of that year. [The Appellant] reportedly described herself to him as the sole employee of a marketing and promotions company. She listed the physical demands of her job as being light in nature, including the lifting of less than 30 pounds, a lot of computer work and a lot of telephone work; sitting at her desk and computer for more than half an hour at a time would aggravate her back and neck symptoms. She had increased her work time to 32 hours per week, four days per week, and felt that she was almost back to her pre-January 26th, 1999, base line. Her goal was to work about 40 to 50 hours per week.

[Independent physiatrist's] report goes on to detail the results of his physical examination of the Appellant and contains the following conclusions:

- There were no objective findings present, but the subjective symptoms elicited suggested

(i) a mild myofascial pain syndrome in the region of the left trapezius;
(ii) the likely presence of mild cervical spondylosis;
(iii) the subjective report of decreased sensation in the fourth and fifth fingers of the left hand, of uncertain significance, might be related to some ulnar nerve involvement; and
(iv) a possible right carpal tunnel syndrome.

- Given the number of accidents in which the Appellant had been involved, it was difficult to state with complete certainty whether there was any relationship between her accidents of December 11th, 1997, and January 26th, 1999, and her current symptoms. Soft-tissue and/or muscle injuries, although probably re-aggravated by each consecutive accident, should have healed with aggressive, proper treatment and with time, without residual impairment. [Independent physiatrist] felt that [the Appellant] was currently at her pre-January 26th, 1999, base line with respect to her symptoms.
- [The Appellant's] prognosis for complete resolution of pain complaints was fair. She was close to but had not reached her maximum medical improvement from a physical point of view. It was probable that she would achieve further symptomatic reduction with other rehabilitative efforts.
- [The Appellant's] prognosis for complete restoration of function was good. [Independent physiatrist] was of the view that, in her then present condition, she was capable of resuming her pre-accident occupation which she was then engaged in, with minor modifications.
- [The Appellant] had no permanent impairment, nor any disability with regard to activities of daily living.
- [Independent physiatrist] recommended limited "judicious needling treatment" of the left trapezius, a general fitness program with emphasis on the neck and shoulder muscles, and a strengthening program directed to the bilateral anterior and exterior rotator muscles. He also suggested the possible benefit of an evaluation of her work station, to maximize her

productivity and decrease movements in that work area that might aggravate her painful neck and back.

- [Independent physiatrist] was of the view that [the Appellant] was physically capable of resuming her then present occupation as an entrepreneur.

On May 7th, 1999, [the Appellant] was again reviewed by [Appellant's physiatrist], complaining that the aggressive movement testing of her neck and shoulders conducted by [independent physiatrist] had triggered a regression, producing more pain in those areas and reducing her working tolerance to only three to four hours per day. She was back, she felt, to only about 50% of her normal level of functional capacity. [Appellant's physiatrist], noting trigger points in the left sternocleidomastoid and trapezius muscles bilaterally, with a 15% reduction in range of motion of the neck in all planes, injected the trigger points with Depo-Medrol, following that up with stretching exercises and the application of moist hot packs. [The Appellant] was instructed in daily home stretching exercises. On June 25th, at a further review by [Appellant's physiatrist], the Appellant reported good pain relief but low tolerance; she was able to work three days per week from 24 to 32 hours per week and was planning to start work as a commercial real estate agent. [Appellant's physiatrist] recommended a four-week, supervised reconditioning exercise program, followed by a Functional Capacity Evaluation.

July-September 1999

Following [independent physiatrist's] recommendation, [the Appellant's] case manager at MPIC arranged for an ergonomic assessment at [the Appellant's] home computer work station. The report of [text deleted], occupational therapist, notes that some temporary modifications of the work station had been made but recommended the provision of an ObusForme back cushion, a

monitor stand and a foot stool. MPIC approved those recommendations and agreed that the equipment would be supplied at its expense, as well as payment for the fitness program that [independent physiatrist] had recommended.

On July 13th, 1999, [the Appellant] advised MPIC that she no longer required any further treatments from [Appellant's physiatrist]. That decision was effectively confirmed by a letter from [Appellant's physiatrist] to this Commission bearing date August 8th, 1999.

Also in July of that year, [the Appellant] applied for a salaried position at [text deleted], at a monthly salary of $1,000. The duties of that position involved the overall management or supervision of some leased properties that [text deleted] owned.

On August 3rd, 1999, the case manager wrote to [the Appellant] to tell her that, at the date of her January 26th, 1999, MVA she was classified as a non-earner and, since that MVA had not rendered her unable to hold an employment that she would have held had the accident not occurred, she was not entitled to Income Replacement Indemnity during the first 180 days following that accident.

On November 29th, 1999, MPIC's Internal Review Officer rendered a decision, confirming the August 3rd, 1999, decision of the case manager to the effect that [the Appellant] was a non-earner at the time of her January 26th, 1999, MVA, and was therefore not entitled to IRI during the first 180 days post-accident. The Internal Review Officer also confirmed the case manager's decision that, since [the Appellant] appeared able to perform the essential duties of her entrepreneurial

enterprise well within those first 180 days, she was not entitled to IRI upon the expiry of that period.

MVA of September 2nd, 1999

On this date, [the Appellant] was travelling eastbound on [text deleted] in the second lane from the curb. The right-hand curb lane was largely occupied by parked vehicles. She had just passed the intersection of [text deleted] and [text deleted], travelling at about 40 to 50 km. per hour, when the driver of a [text deleted] pick-up truck that had been parked in the right-hand lane suddenly caused his vehicle to pull out, immediately in front of [the Appellant's] vehicle. She was unable to avoid the collision and the front passenger's side of her vehicle struck the front driver's side of the truck. Her airbag deployed, she reported injuries to her arm, chest, face, throat, tongue, neck and back, as well as aggravation of her previous injuries to her neck, shoulders and upper back. Her car was written off.

At the time of this fourth accident, [the Appellant] had been offered employment by [text deleted] earlier that same day. [Text deleted] had given her a cheque for $200 to enable her to apply for her real estate agent's licence. While her employment was subject to her ability to pass the standard examination and obtain her licence, it is clear from her previous experience in [text deleted] that this would have presented no difficulty to her.

On November 19th, 1999, the case manager wrote to [the Appellant] in the context of the September 2nd MVA, to tell her that the insurer had determined that [the Appellant] was a non-earner at the time of her September 2nd accident, that she had not been rendered, by that accident unable to hold an employment that she would otherwise have held during the first 180 days post-

accident, and that she was therefore not entitled to any IRI. She sought and obtained an Internal Review of that decision, which was confirmed.

Events after MVA of September 2nd, 1999

By letter of December 23rd, 1999, MPIC's Internal Review Officer dealt with claims that had been filed by [the Appellant] arising from her MVAs of December 11th, 1997, and September 2nd, 1999. With respect to the former, the Internal Review Officer apparently felt unable to conclude that the December 11th, 1997, accident had ever taken place or, if it had, that there were any resultant injuries. For some reason, the Internal Review Officer does not seem to have been provided with a copy of a letter, dated November 4th, 1999, and obtained by the Appellant from the [text deleted] Public Works Department, clearly indicating that a "hazard marker" sign had been damaged at the very location where [the Appellant] claimed her vehicle had collided with just such a sign.

Despite that, [text deleted] wrote to MPIC on December 20th, 1999, to say that it had no knowledge of any accident happening at the intersection and that the post had been changed "as a matter of maintenance. There is nothing that indicates it's [*sic*] state of repair was caused by an accident and there is no record as to who, or if someone notified them, as to the condition of the sign." [Text deleted] had also written to MPIC on June 15th, 1999, denying that there had been any losses, in the form of damage to signs, at that particular location at any time either on December 11th, 1997, or within 15 days on either side of that date. Yet, the November 4th, 1999, letter from [text deleted] to [the Appellant] clearly says that the sign was repaired on December 17th, 1997 - a clear case of a bureaucracy's left hand being unaware of its right hand's activities. Ironically, it seems to have taken [text deleted] Traffic Services Department three hours to complete the repair of the sign and 2 hours to locate the resultant work sheet.

We are satisfied that, for the purposes of her claim under the Personal Injury Protection Plan, [the Appellant] has established the fact of the collision of her vehicle with that hazard marker sign on December 11th, 1997. What is less clear, due to the absence of clinical evidence on the point, is the physical effect of that collision upon [the Appellant].

With respect to the September 2nd, 1999, MVA, the Internal Review Officer dealt with the question whether [the Appellant] was properly classified as a "non-earner" at the time of that accident. He agreed with that classification.

The Internal Review Officer also went on, however, to point out that the adjuster's notes clearly raised the question of [the Appellant's] possible entitlement to IRI under the provisions of Section 85(1)(a) of the MPIC Act. That subsection entitles a non-earner to IRI if it can be established that the claimant was prevented by the MVA from holding employment during the first 180 days after the accident. After touching upon the available evidence, the Internal Review Officer said

> A fairly high standard of proof is required to establish an entitlement to IRI pursuant to Section 85(1)(a) of the Act, and I simply cannot conclude on the basis of the material before me that the standard has been met in this case.

[The Appellant] testified that, following her accident of September 2nd, 1999, many of her earlier symptoms reappeared or were exacerbated. She had established a series of chiropractic and physiotherapy programs for herself; MPIC paid for the physiotherapy but not the chiropractic treatments. In that 4th collision, she testified, the airbag in her vehicle had exploded in her face, leaving her with headaches, a stiff back, temporomandibular joint problems, neck pain and major limitations in the range of motion of her cervical, dorsal, lumbar and pelvic regions. [Appellant's chiropractor], on October 2nd, 2000, was still recommending daily chiropractic

manipulations for problems related to her September 2nd, 1999, MVA which, he opined, would need another 12 to 18 months or more of regular treatments. He felt she would be able to return to work in "May of 2000" (he obviously means 2001). It should be noted that, although this last report of [Appellant's chiropractor] purports to relate to [the Appellant's] accident of September 2nd, 1999, she had in fact sustained yet another motor vehicle accident on January 5th, 2000, which, although not relevant to this present appeal, may account for some facets of [Appellant's chiropractor's] October 2nd report.

[The Appellant] testified that, during the year 2000, on days when she felt reasonably well "I felt I could move mountains". However, her eyesight deteriorated seriously - a fact of which we have no medical evidence nor anything to relate it to any of her MVAs.

By March of 2000 she had started to feel better; she had taken physiotherapy, chiropractic adjustments, and [Appellant's physiatrist's] injections, and was feeling better than she had felt in the previous three years; she was planning her return to general contracting. She started general contracting or project management in April of 2000 and received her first earned income from those endeavours in July, in the amount of $1,500. She had earned $12,000 in 2000 up to the date when her appeal was heard.

[The Appellant] further testified that she believed herself capable of gainful employment by May of 2000; April had been the pre-planning stage of her renewed enterprise. She has three house constructions lined up for the year 2001. She seeks the following remedies:

(i) payment of Income Replacement Indemnity for the year 1998, based upon Gross Yearly Employment Income of $33,000 as disclosed in her 1997 income tax return;

(ii) to be classified either as a temporary earner or as a part-time earner for 1999, rather than as a non-earner, since she was in the course of building the business of the [text deleted] and the newsletter;

(iii) payment of IRI for the year 1999, based upon what her counsel submits should be "her level of income during her last successful year"; and

(iv) the continuance of her IRI, upon the foregoing basis, through until the beginning of May, 2000.

Evidence of [Appellant's chiropractor]

[Appellant's chiropractor] testified that he had known [the Appellant] as a patient since some time in 1993. When he had first seen her two days after her accident of November 18th, 1997, she had complained of acute neck pain, headaches, dizziness, vertigo, fatigue, lack of concentration, a flare-up of past shingles problems, pain in her left posterior thigh, low back pain, mid back pain, bilateral shoulder pain and right scapula pain. His primary concerns at the time had been the acute neck pain, dizziness and vertigo of which the Appellant had complained, although, even then, he had felt that a likely date for her return to work would have been in January of 1998. He had treated [the Appellant] from November 20th, 1997, until some time in June of 1998, 43 times. Treatment had then been suspended because neurological problems were not resolving fast enough and MPIC wanted the Appellant to try some other treatment modalities. [The Appellant] had told him of her December 11th, 1997, MVA on or about December 15th of that year, but had begged him not to tell MPIC. He had made no note of that second accident in his clinical records. He had not seen [the Appellant] between June 25th, 1998, and January 22nd, 1999; he had given her a further 34 adjustments between the latter date and August 16th, 2000.

[Appellant's chiropractor] said that, to the best of his knowledge, [the Appellant] had always been involved in real estate sales.

[Appellant's chiropractor's] further evidence was that, when he had examined the Appellant on February 2nd, 1999, following her MVA of January 26th of that year, her symptoms had been substantially the same as those resulting from her 1997 accidents. Signs included dizziness upon cervical extension, which he took to be an indication that the MVA of January 26th, 1999, had caused a recurrence of her old problem. Almost all of [the Appellant's] symptoms were from exacerbations of former MVA-related problems. His examination of the Appellant on October 2nd, 2000, reflected injuries or problems arising from MVA of September 2nd, 1999. Here, too, she had presented much the same symptoms as before, plus some additional injuries from the deployment of her vehicle's airbag.

[Appellant's chiropractor] testified that any time someone sustained an injury to soft or connective tissue, repair with normal tissue was not possible. Instead, repair took the form of scar tissue which, while strong, lacked the elasticity of normal tissue. [The Appellant] would never recover fully; she would always have recurrent problems, he thought. The damage to her joints and around her nerve roots that he believed had caused her vertigo would attract calcium deposits and would bring about arthritic degenerative process; that would never get better. Multiple traumas would merely have hastened the foregoing process.

Discussion

We must turn, first, to the Appellant's accident of November 18th, 1997, since several queries arise from it. The first query is whether she was properly classified and given the correct occupation by MPIC for purposes of determining her Income Replacement Indemnity. We do

not believe that she could properly be classified as a real estate salesperson since, so far as we can tell from the evidence, her involvement in sales during the year immediately preceding this first accident was minimal. Rather, she was properly classified as a project manager.

Was she classified as a 'temporary' earner - that is, one who has been employed for at least 28 hours per week but for less than one year before the day of the accident? The evidence satisfies us that [the Appellant] had been a project manager since October or November of 1996 and so had pursued that occupation for one full year before her November 18th accident. Therefore, by virtue of Section 81(2)(a)(ii) of the MPIC Act, she became entitled, as a full-time self-employed earner, to Income Replacement Indemnity

> determined in accordance with the regulations for an employment of the same class, or the gross income the full-time earner earned from her employment, whichever is the greater ….

That finding, in turn, gives rise to another query, since there is no specific classification of "project manager" in Schedule C to Regulation 39/94. None of the categories listed under construction trades occupations is in any way applicable to [the Appellant's] former occupation, yet we are not prepared to find that Category No. 1145 - "Management Occupations, Construction Operations" - is entirely suitable, either. In our view, this latter classification contemplates the hands-on kind of general contractor who hires all his own sub-trades ([the Appellant] testified that her clients made the selection of sub-trades from quotations that she obtained), hires his or her carpenters, labourers and non-mechanical trades, and maintains a payroll. [the Appellant] had no employees and at no point that we are aware of did she come close to earning the income that Schedule A to Regulation No. 39/94 provides as a deemed employment income for a Level 2 person in that category. We find that a more appropriate classification for [the Appellant] would fall under the head of "Other Managers and Administrators, Not Elsewhere Classified", at Level 2, adjusted for 1997.

The next question arising with respect to the Appellant's MVA of November 18th, 1997, is whether she was, in fact, able to resume her occupation as a full-time, self-employed project manager on December 9th of that same year. We have concluded, although not without some hesitation, that she was not. [Independent chiropractor], as well as MPIC's medical consultant, [text deleted], both speak of her working reduced hours, but we have already noted that this was impracticable, at least on a daily basis, until December 31st when her [text deleted] work was scheduled to have been completed. She was able to visit [text deleted] on three occasions between November 18th and December 11th, 1997, and was also able to contact some of her clients and the sub-trades by telephone but this did not, in our respectful view, amount to an ability to 'perform substantially all the essential duties of her work' nor, so far as we can tell, did her activities between November 18th and December 11th produce any income except, perhaps, to consolidate her entitlement to monies she had earned earlier in the year.

That takes us to the second accident on December 11th, 1997. Here, the Commission is greatly hampered by the absence of any physical evidence that sheds much light on the damage caused by the second accident either to [the Appellant] or to her vehicle. We have no report of any inspection of that vehicle, nor any claim for vehicular damage, until much later in 1998 and, even then, no evidence that the damage then reported was caused by the MVA of December 11th, 1997.

More to the point, since it is [the Appellant's] injuries rather than those of her vehicle that are at issue here, all that we have by way of medical or para-medical evidence between November 18th, 1997, and October 30th, 1998, are two reports from [Appellant's chiropractor]. In his examinations of the Appellant on February 26th, 1998, and, again, on June 18th of that year, he

shows [the Appellant] as being back at work. In his February report, [Appellant's chiropractor] describes "less than full function due to symptoms and/or functional deficits (headaches)"; he describes her as a builder and says she is able to "work modified duties". This contradicts the evidence of [the Appellant] herself. By the time of [Appellant's chiropractor's] examination of the Appellant on June 18th, 1998, she does not seem to have improved much since February although, when asked to identify any risk factors for chronic pain or delayed recovery, [Appellant's chiropractor] notes "none". This seems to contradict the evidence that he gave us orally, when he spoke of the cumulative effect of the multiple traumas to which her body had been subjected over the years. [Appellant's chiropractor] is still describing his patient as a "builder" in a further report in September of 1998.

[The Appellant] herself, although testifying that she had several areas of pain through 1998, also testified that **the** debilitating factor throughout most of that year was her headaches.

Although [the Appellant] takes great issue with the report of [independent neurologist #1], arising from his examination of the Appellant on December 9th, 1997, the fact is that [independent neurologist #1's] conclusions seem to be corroborated by the subsequent report of [Appellant's neurologist].

Another troublesome aspect of this entire series of claims is that, although [the Appellant] was apparently fully functional and, indeed, working very long hours under extremely stressful circumstances prior to her November and December accidents in 1997, she is at pains to emphasize, in a letter of December 15th, 1998, to the Internal Review Officer, that she had major residual problems from all of her previous accidents. She speaks of having been refused life insurance in 1991 "due to what they [a life insurance company] thought was a heart condition",

although she says that subsequent tests confirmed that her problem was due to "muscle spasms in my back that came around into the chest cavity". She had gone to a walk-in clinic with severe chest pains although here, too, her care-givers apparently decided that the real problem was with her back rather than her heart. "I have had an ongoing problem and have learned to manage the pain and problems associated with them. However, every time the neck area is jarred (as in these two MVAs) it further exasperates [*sic*] the problem." The further question that these facts raise, therefore, is whether, and at what point, [the Appellant] was restored to her pre-November 18th, 1997, condition, in the context of her functional capacity. In fact, there is ample evidence that any dizziness that might, possibly, have been caused by one or the other of her first two accidents had gone by February 26th, 1998. Other than the reports of [Appellant's chiropractor] of February 26th and June 18th, 1998, referred to earlier, there is precious little by way of medical evidence until we get to [Appellant's physiatrist's] report of October 30th, 1998. [The Appellant] testified that she had started work on February 10th, 1998, trying to organize the newsletter for [text deleted] - she described her new career to her case manager as that of a 'consultant' but, from her own evidence and that of [text deleted], it seems clear that [the Appellant] had not reached a condition that would have allowed her to return to the project manager's occupation that she had previously enjoyed.

We must then have recourse to the report of [Appellant's physiatrist] bearing date October 30th, 1998. He had seen [the Appellant] first on July 31st, 1998, when he diagnosed "cervical spine strain manifested by interspinus ligamentous tenderness, regional myofascial trigger points and restriction of the movements of the neck". On September 4th, 1998, he again saw [the Appellant] [text deleted]. His diagnosis was unchanged and, with a treatment involving needling of her trigger points along with gentle range-of-motion and stretching exercises, she improved well. By October 30th, 1998, she had shown continued improvement and [Appellant's physiatrist] opined

that, over the following six to eight weeks, she would be able to return to a full-time job "with or without some restrictions".

We are conscious of the fact that, at the times of [Appellant's physiatrist's] examinations of [the Appellant] in September and October of 1998, she was still recuperating from her major surgery that was unconnected with any of her motor vehicle accidents. It is clear that, from the enforced inactivity brought about by that surgery, [the Appellant] became even more deconditioned than had been the case before the surgery. We find that, although she may well have continued to require treatments from [Appellant's physiatrist], [the Appellant] had attained an ability to perform the essential duties of her full-time self-employment as a project manager by August 5th, 1998, immediately prior to her surgery. We draw that conclusion from a careful reading of [Appellant's physiatrist's] reports of July 31st and October 30th, and from her own testimony. She will therefore be entitled to IRI from November 26th, 1997, (seven days post-accident) to August 5th, 1998, both inclusive, by applying Section 81(2)(a)(ii) as noted above, and by classifying her at Level 2 under "Other Managers and Administrators, Not Elsewhere Classified".

At the time of her third accident, on January 26th, 1999, [the Appellant] had unfortunately become obliged to rely upon social assistance and was, therefore, a non-earner within the meaning of the MPIC Act and Regulations. Section 85(1)(a) would not have been applicable, since she was not deprived of any employment that, but for this third accident, she would have held during the first 180 days thereafter.

After the first 180 days following her January 26th, 1999, accident (i.e., after August 1st of that year), we adopt the view of MPIC's Internal Review Officer at page 5 of his decision bearing date November 29th, 1999:

> The independent reports from [independent chiropractor], [independent neurologist #2] and [independent physiatrist] all confirm an ability to perform the essential functions of your entrepreneurial enterprise well within the first 180 days. There is nothing in these reports to suggest that the respective writers did not have a good understanding of the types of physical activities required by your business enterprises. The conclusions in these reports are consistent with the remarks and prognostications set out in the two most recent reports from your treating physicians (the March 11th, 1999, report from [Appellant's doctor] and the March 14th, 1999, report from [Appellant's physiatrist]).

We therefore find that [the Appellant] is not entitled to any income replacement benefits arising from her accident of January 26th, 1999.

At the time of her fourth accident, on September 2nd, 1999, [the Appellant] was also a non-earner but, quite clearly, would have held an employment shortly thereafter. True, that employment was contingent upon her passing her real estate agent's examinations, but she had already done that in both Saskatchewan and Manitoba. She had allowed her Manitoba licence to lapse, but would clearly have requalified here. Her evidence was that she had been hired by [text deleted] at 5 p.m. on September 2nd, 1999, subject only to her ability to obtain her licence from the Manitoba Securities Commission and become a member of the [text deleted] Real Estate Board. Section 85(1)(a) therefore applies. We understood her testimony to be that she was to have been employed by [text deleted] to manage his leased properties for a flat fee of $1,000 per month and, as well, would have been able to make sales of properties for which she either had obtained the listings herself or of which listings were available to her through the multiple listing service of the [text deleted] Real Estate Board or 'in house'. [Text deleted] gives a somewhat different version: his letter tells us that [the Appellant] was to be paid on commission but that he offered her a $1,000 per month draw against commissions to be earned.

From an analysis of [the Appellant's] own testimony and of [Appellant's physiatrist's] clinical notes spanning the period from September 24th, 1999, to March 3rd, 2000, we find that, by the latter date at the very latest, [the Appellant] was capable of holding the employment offered to her by [text deleted] - an employment that, he said on November 5th, 1999, was still available to her - as a real estate agent and, perhaps, property manager. Section 110(1)(c) will therefore apply to terminate on March 3rd, 2000, the IRI to which, we find, she was entitled from September 2nd, 1999, but subject to the deductions noted below. This portion of [the Appellant's] claim will therefore be referred back to MPIC's case manager, for calculation of the amount of IRI to which she is entitled for the foregoing period. MPIC's case manager may need to consult [text deleted] for assistance in determining the income that [the Appellant] might reasonably have been expected to earn during the period of entitlement.

Summary

1. Although [independent neurologist #1] and [Appellant's neurologist] found no neurological abnormalities upon their examinations of [the Appellant], we find that her history of multiple MVAs combined with the physical and emotional stresses to which she was exposed during 1997, left her much more vulnerable to what, in most other drivers, would have been the comparatively minor trauma of her MVA of November 18th, 1997. In consequence, she had not recovered to the point of being able to return to work on a full-time basis by the date of her second MVA on December 11th, 1997.
2. We accept the Appellant's evidence that the December 11th MVA did occur and that, in consequence, she continued to be substantially unable to perform the essential duties of her former employment until August 5th, 1998. From that period, however, the months of January and February 1998 must be omitted, since the evidence indicates that [the Appellant]

had planned to be off work for those two months in any event and was therefore not deprived of income that she might otherwise have earned during those months. There will also need to be deducted, from the IRI to which [the Appellant] is entitled for the year 1998, any monies that she earned while working as a consultant for [text deleted], since [text deleted] indicates earnings of about $200 per month. She was, on November 18th, 1997, a full-time, self-employed project manager under Category 1149, Level 2 of Schedule C to Manitoba Regulation No. 39/94. Her GYEI will therefore be calculated according to the provisions of Section 81(2)(a)(ii), from November 26th, 1997.

3. On January 26th, 1999, the date of her third MVA, [the Appellant] was a non-earner. She had no entitlement to IRI for the succeeding 180 days, nor for any time thereafter related to this accident.
4. On September 2nd, 1999, although a non-earner, [the Appellant] was deprived by that fourth MVA of employment that she would have held had the accident not occurred.
5. The file will therefore be referred back to MPIC's claims manager for the recalculation of the IRI to which [the Appellant] has been found entitled during the periods noted above.

MPIC's case manager may need to consult [text deleted] in order to determine the income that [the Appellant] might reasonably have been expected to earn during the period of entitlement.

Dated at Winnipeg this 29th day of January, 2001.

J. F. REEH TAYLOR, Q.C.

YVONNE TAVARES

COLON C. SETTLE, Q.C.