Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-171

PANEL:	**Mr. Mel Myers, Q.C., Chairperson** **The Honourable Mr. Wilfred De Graves** **Dr. Patrick Doyle**
APPEARANCES:	**The Appellant, [the Appellant], was represented by Mr. Bob Tyre of the Claimant Adviser Office;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.**
HEARING DATE:	**July 18, 2007**
ISSUE(S):	**Entitlement to Personal Injury Protection Plan ('PIPP') benefits**
RELEVANT SECTIONS:	**Sections 70(1) and 71(1) of *The Manitoba Public Insurance Corporation Act* ('MPIC Act')**

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) is appealing an internal review decision dated September 22, 2006 in respect to her entitlement to PIPP benefits arising out of an incident which took place on April 1, 2005.

The Internal Review Officer in her decision of September 22, 2006 determined that this incident did not constitute a "bodily injury caused by an automobile" within the meaning of Section 70(1)

of the MPIC Act and, therefore, the Appellant was not entitled to PIPP benefits in connection with this incident.

Facts and Background

The Appellant resides in [text deleted], Manitoba and participated in the appeal hearing by teleconference and her testimony was provided to the Commission in the French language. [Appellant's translator #1] and [Appellant's translator #2] acted as interpreters and translated the Appellant's testimony in English and concurrently translated the English that was spoken by the members of the Commission and the two representatives to the Appellant in French.

At the commencement of the hearing both representatives agreed that the essential facts in the appeal were not in dispute and were set out in the following documents:

1. Interview between the Appellant and the case manager dated May 5, 2005.
2. Statutory Declaration signed by the Appellant dated May 20, 2005.
3. Appellant's letter to the case manager dated August 18, 2006 (English translation).
4. Written statement from [text deleted], employed by [text deleted], [text deleted], Manitoba, dated July 25, 2006.

Based on the Appellant's testimony at the hearing of this appeal, and the written documents submitted to the Commission, we find the following facts with regards to the incident which occurred on April 1, 2005 and the events thereafter.

The Appellant, who is a resident of [text deleted], after moving from Quebec to [text deleted] on July 5, 2000, was the owner of a small business [text deleted].

The Appellant won a stove and propane tank at a [text deleted] banquet in [text deleted] in January or February 2005, which she had stored in her garage. She decided, on March 31, 2005, that she would give the stove and propane tank to a friend for his use [text deleted] but did not want to give it to him with an empty propane tank.

On April 1, 2005 she loaded the stove and propane tank in the back seat of her automobile, together with her two (2) dogs, and traveled to [text deleted], which was approximately four (4) to five (5) blocks from her residence, where she proceeded to have the propane tank filled with propane gas. The Appellant then proceeded by automobile to deliver the stove and propane tank to her friend at his garage but was unable to make the delivery because her friend was absent and the garage door was closed.

The Appellant, in accordance with her daily practice, proceeded by automobile to a location known as [text deleted], located approximately five (5) miles from the [text deleted]. The purpose of her trip was to take her two (2) dogs for a walk in an area where there was no danger to them (traffic, fox or [text deleted], etc). The Appellant, on arriving at [text deleted], left the engine running as she wanted to keep the vehicle warm upon her return and proceeded to take a twenty (20) minute walk with her two (2) dogs.

On her return to the motor vehicle she proceeded to load her two (2) dogs into the vehicle and entered the front seat on the drivers side of her automobile for the purpose of returning to [text deleted]. The Appellant reported that the stove and tank had been making a lot of noise while she was traveling to [text deleted] and, as a result, she decided to rearrange the position of the stove and tank. The Appellant was a cigarette smoker and she decided to light a cigarette in her mouth at the same time as adjusting the propane stove and tank, which were located in the back

seat of her car. While stretching to move the stove and tank the Appellant was suddenly enveloped by fire and was thrown from the car. The Appellant reports that an explosion occurred, she lost consciousness and did not recall anything until four (4) days later when she awoke in a room at the [hospital], when she discovered that she had severe burns to her face, lost two (2) teeth as well as most of her hair.

Case Manager's Decision

The Appellant filed an Application for Compensation with MPIC on May 9, 2005. The matter was subsequently investigated by MPIC's case manager and a decision rendered, dated May 26, 2005. The case manager advised the Appellant that:

> For coverage to exist under the Personal Injury Protection Plan (PIPP) the bodily injury must be caused by an automobile. Our investigation has revealed the proximate cause of your injuries was not due to the use and operation of an automobile, but rather caused by an explosion due to you smoking a cigarette in the presence of propane fuel. As such, we will be unable to extend coverage under the Personal Injury Protection Plan for bodily injuries you sustained as a result of the incident.

Internal Review Officer's Decision

The Appellant then sought an Internal Review of the case manager's decision and filed an Application for Review dated August 14, 2006. The Internal Review Officer in her decision dated September 22, 2006 dismissed the Appellant's Application for Review and confirmed the case manager's decision of May 26, 2005 on the basis that the Appellant's injuries did not occur as a result of a motor vehicle accident. The Internal Review Officer further stated:

> While I can appreciate that you sustained significant injuries (including the loss of your dog) in this incident, your injuries, in my opinion, were directly and proximally caused by your smoking in the presence of propane gas. Your injuries were not caused by an automobile or the use of an automobile.

On October 23, 2006 the Appellant filed a Notice of Appeal.

Appeal

Relevant Statutory Provisions

The relevant sections of the MPIC Act are as follows:

> **Definitions**
> 70(1) In this Part,
> **"accident"** means any event in which bodily injury is caused by an automobile;
> **"automobile"** means a vehicle not run upon rails that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires;
> **"bodily injury"** means any physical or mental injury, including permanent physical or mental impairment and death;
> **"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused
> (a) by the autonomous act of an animal that is part of the load, or
> (b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile;
>
> **Application of Part 2**
> 71(1) This Part applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

Submissions

The Claimant Adviser, on behalf of the Appellant, submitted that the Appellant's claim arose out of the use of an automobile and/or a load and, accordingly, her injuries came within the meaning of "bodily injury caused by an automobile" or a load as set out in Section 70(1) of the MPIC Act.

In his submission the Claimant Adviser referred to the decision of the Manitoba Court of Appeal in *McMillan v Thompson (Rural Municipality)* (1997) 115 Man. R. (2d) p 2, and he submitted that the Commission was required to take an extremely liberal interpretation of the MPIC Act when considering whether the incident giving rise to the Appellant's claim constituted an

accident within the meaning of the MPIC Act. In addition, the Claimant Adviser referred to the decisions of the Commission in [text deleted] *(AC-04-47)* and [text deleted] *(AC-00-19)*. The Claimant Adviser, having regard to the above-mentioned decisions, urged the Commission to find that the incident was an accident within the meaning of the MPIC Act and, accordingly, the Appellant was entitled to benefits pursuant to Part 2 of the MPIC Act.

Not surprisingly MPIC's counsel submitted that the definition of "bodily injury caused by an automobile" under Section 70(1) of the MPIC Act should be strictly construed and that the Commission should reject providing a liberal interpretation of this provision.

MPIC's counsel further submitted that the Appellant has failed to establish, on a balance of probabilities, that there was a direct link between the use or operation of the automobile in the Appellant's injuries. The Appellant's injuries were not caused by the use or operation of the automobile but by the location of the propane tank in the back seat of the Appellant's car in proximity of the Appellant's lighted cigarette.

MPIC's legal counsel also submitted that the location of the tank was merely coincidental to the use or operation of a motor vehicle and, as a result, the connection between the injuries the Appellant sustained in the use or operation of a motor vehicle was not direct but was too remote. As a result, MPIC's counsel submitted that the appeal should be dismissed.

MPIC's legal counsel referred to the decision of Mr. Justice Philp in ***McMillan v Thompson*** (supra) wherein he stated:

> . . . The inquiry becomes: Did the use of an automobile contribute to the bodily injuries? Was there a connection between the automobile or the use of the automobile and the bodily injuries sustained as a result of the accident?

MPIC's legal counsel submitted that the use of the automobile did not contribute to the Appellant's injuries and there was no connection between the automobile or the use of the automobile and the bodily injuries sustained as a result of the accident. MPIC's legal counsel also referred to the comments of Mr. Justice Philp, Madam Justice Helper and Mr. Justice Kroft in *McMillan v Thompson* (supra) in respect of the Australian High Court decision in *Dickinson v. Motor Vehicel Insurance Trust* (1987), 61 A.L.J.R. 553 (H.C.) and stated that:

1. the language in the statutory provision interpreted by the Australian High Court was very different from the language used in Section 70(1) of the MPIC Act and, as a result, there is no justification in the Court granting a very broad and expansive interpretation of the term "caused" as used in Section 70(1).
2. the Appellant had been seated in a parked car, the motor had been turned off, and the accident occurred when the Appellant brought her lighted cigarette in close proximity of the propane tank which was full of propane gas.
3. as a result, there was no direct link between the use or operation or load of a motor vehicle and the injuries sustained by the Appellant and, therefore, the appeal should be dismissed.

Discussion

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant's injuries were caused by the use of an automobile or by a load and, accordingly, she is entitled to the benefits pursuant to Part 2 of the MPIC Act.

MPIC's legal counsel's submission as to the meaning of the provision "bodily injury caused by

an automobile" as set out in Section 70(1) of the MPIC Act is inconsistent with the judgments of both Mr. Justice Philp and Madam Justice Helper in *McMillan v Thompson* (supra). In this case the Court was required to determine the meaning and application of Section 70(1) of the MPIC Act. In *McMillan v Thompson* (supra) the respondents had sustained severe bodily injuries when the automobile in which they were traveling was involved in an accident which occurred on a concrete bridge within the Appellant's rural municipality. Part of the bridge was washed out, leaving a gap in the road and no notice was given to potential users of the bridge of this dangerous condition. The respondents were traveling across the bridge when their automobile plunged into the void created by the gap in the road.

The Appellant moved to have the respondents' actions struck out on the grounds that Part 2 of the MPIC Act provided a comprehensive scheme of insurance coverage for all Manitobans injured in automobile accidents and precluded any Court action for the recovery of damages for bodily injuries. In response the respondents argued that the responsibility for the maintenance and repair of the municipal road and bridge rested with the Appellants under the provisions of the Municipal Act of Manitoba. The motions judge allowed the respondents to proceed with their court action against the Municipality and, as a result, the Municipality appealed that decision to the Manitoba Court of Appeal.

The Manitoba Court of Appeal granted the Appellant's motion and dismissed the respondent's claim. Madam Justice Helper stated that:

1. the MPIC Act created an all-encompassing insurance scheme to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile.
2. a restrictive interpretation of the words "caused by" defeated the purpose of the

legislation.

3. in the Supreme Court of Canada's decision in *Amos v. Insurance Corporation of British Columbia* (1995) 9 W.W.R. 305, the Court was required to interpret:

> . . . s. 79(1) in Part 7 of the *Revised Regulation (1984) Under the Insurance (Motor Vehicle) Act*, B.C. Reg. 447/83 as amended. The Appellant was attacked by a gang of six people while driving his van in California. One of the gang shot the appellant. When he had distanced himself from his assailants, the appellant brought his van to a stop using the emergency hand brake. He had sustained serious, disabling and permanent injuries from the gunshot wound and applied for benefits under the applicable legislation. Section 79(1) of the regulation reads as follows:
>
> > Subject to subsection (2) … the corporation shall pay benefits to an insured in respect of death or injury caused by an accident that arises out of the ownership, use or operation or a vehicle …
>
> It was the appellant's position, accepted by the Court, that the nature of the no-fault benefit scheme created by the legislation meant that s. 79(1) was to be construed in a broad and liberal manner and that its interpretation should not be affected by previous jurisprudence dealing with private policies of insurance.
>
> . . .
>
> In the course of his reasons, Major J. reviewed the Australian decision of *Dickinson v. Motor Vehicle Insurance Trust* (1987), 61 A.L.J.R. 553 (H.C.). That was a case decided on hard facts. The appellant's claim for indemnity was made pursuant to s. 7(1) of the *Motor Vehicle (Third Party Insurance) Act 1943* which stated:
>
> > Any person who has obtained a judgment against an insured person in respect of death or bodily injury caused by negligence in the use of a motor vehicle …
>
> The appellant father had left his two children unattended in his automobile while he went briefly into a store on an errand. The children were severely burned when one accidentally started a fire in the parked automobile by playing with a packet of matches which had been left within the children's reach.

Madam Justice Helper observed that the Court in *Dickinson* (supra) gave a very broad interpretation to 7(1) when granting indemnification to the Appellant. Madam Helper stated:

> . . . The ultimate issue was whether the children's injuries were caused by or arose out of the use of the motor car. The appellant's negligence which lay in his leaving the children unattended in the automobile, not in the operation of the automobile, did not concern the Court. They chose not to consider the proximate cause of the fire. It was sufficient to

> conclude that the injuries arose in relation to the use of the automobile, no matter how remote that use was.

Madam Justice Helper further stated:

> An analysis of the *Dickinson* case demonstrates the extent to which the court was required to expand the meaning of the words used in the applicable section of the legislation to find in favour of the appellant. The only connection between the automobile and the injuries in that case was the location of the victims in the automobile at the time of the fire. The automobile was parked, the injuries were not related to the operation of the car and did not result from the automobile having been involved in an accident. The court interpreted s. 71(1), not by relying on the ordinary meaning of the words used in that section, but mainly by looking to other parts of the legislation in order to provide the appellant with indemnification. The court focused on the meaning of the words "arising out of" in those other parts of the legislation and essentially failed to address the ordinary meaning of the words "injury caused by negligence" used in s. 7(1) of the *Act* to reach its conclusion.
>
> In the *Amos* case, it was not an automobile accident but rather an external event, a shooting, which caused the injury. In the case at bar, the injuries resulted from an accident which occurred while the automobile was being driven in the ordinary course of events. The phrase in *Amos* was an "injury caused by an accident that arises out of the … use of a vehicle…". The court was required to find that the injury in question arise from the plaintiff's use of a vehicle despite the fact that the vehicle was not involved in an accident.

Madam Justice Helper concluded that the motions judge did not recognize that the words "caused by" relate "bodily injuries" to an automobile or use of an automobile and not to an accident and stated:

> All of the above noted cases support the reasoning that where the words "caused by" are used, there must be some link between the injuries sustained and the use of the automobile. An ordinary reading of s. 70(1) leads to the same conclusion. The legislation does not require more. It does not seek out causation in terms of the accident. It specifically eliminates the concept of fault. In light of the elimination of fault, there is no support for the submission that the proximate cause of an automobile accident determines the application of Part 2. (underlining added)

Madam Justice Helper therefore concluded that the only question the motions judge was required to determine was:

> . . . Were the respondents' injuries caused by (in the sense of being related to) the use of an automobile? The answer to that question is undoubtedly "yes". (underlining added)

As a result, Madam Justice Helper granted the Appellant's motion and dismissed the respondent's claim.

Mr. Justice Philp, who essentially came to the same conclusion as did Madam Justice Helper, stated:

> In my view, in interpreting the no-fault benefits scheme under Part 2 of the *Act*, the answer to the question as to whether or not the plaintiffs' bodily injuries were "caused by an automobile, by the use of an automobile" will be determined by an inquiry into the circumstances of the injuries. The inquiry becomes: Did the use of an automobile contribute to the bodily injuries? Was there a connection between the automobile or the use of the automobile and the bodily injuries sustained as a result of the accident? (underlining added)

Mr. Justice Philp as well analyzed the decision of the Supreme Court of Canada in *Amos* (supra) and the decision of the Australian High Court in *Dickinson v Motor Vehicle Insurance Trust* (supra) which was referred to by Mr. Justice Major in *Amos* (supra). Mr. Justice Philp quoted Mr. Justice Major as follows:

> Major J. acknowledged (an acknowledgment most members of the motoring public would surely hope was an understatement) that the circumstances in *Amos* did "not present the typical motor vehicle accident" Nevertheless, in applying the causation test, he concluded (at p. 420):
>
> > The appellant's injuries arose out of the ownership, use and operation of his van. They originated from, flowed from, or were causally connected with its ownership, use and operation. Neither can it be said that there was an intervening act, independent of the ownership, use or operation of the vehicle, which broke the chain of causation. The appellant is therefore entitled to Part VII no-fault benefits to compensate him for the injuries suffered as a result of the accident.

Mr. Justice Philp also stated:

In interpreting the insuring provision in Part 7 of the regulation in *Amos*, Major J. referred (at p. 415) to the "purpose" test and its genesis in the statement of Rand J. in *Reliance Petroleum Ltd. v. Stevenson,* (sub nom. *Stevenson v. Reliance Petroleum Ltd.)* [1956] S.C.R. 936 (at p. 941):

> An analogous "use", as distinguished from "operation", is exemplified in the case of a bus. The undertaking in such a case includes the entrance and exit to and from the bus of passengers. If the steps are defective and a passenger is injured, could it be said that injury did not arise out of the "use"? The expression "use or operation" would or should, in my opinion, convey to one reading it all accidents resulting from the ordinary and well-known activities to which automobiles are put, all accidents which the common judgment in ordinary language would attribute to the utilization of an automobile as a means of different forms of accommodation or service. It may be said that in these instances both words and meaning can be given to each in this manner which the "use" is that in fact of the automobile.

In applying the "purpose" test to the facts before the court Major J. observed (at pp. 415-16):

> The appellant here was driving his van down a street; the accident clearly resulted "from the ordinary and well-known activities to which automobiles are put."

. . . . .

It would seem from that observation, and the facts in *Amos* (and from the court's approval of the reasoning in *Dickinson*), that a much broader application of the "purpose" test has been adopted, one that does not require that the accident by on "which the common judgment in ordinary language would attribute to the utilization of an automobile as a means of different forms of accommodation or service." <u>It is hard to imagine an accident occurring when an automobile was being driven, or even when it was parked, that would not satisfy the "purpose" test as it is now posited</u>. (underlining added)

. . .

The circumstances of the "accident" in *Dickinson* and in *Amos* required a relaxation of the causation connection. They were not events which "the common judgment in ordinary language would attribute to the utilization of an automobile as a means of different forms of accommodation or service." It was in this sense that the court in *Dickinson* reasoned that "(t)he test posited by the words 'arising out of' is wider than that posited by the words 'caused by'." <u>That distinction, however, does not mean that the words "caused by" cannot be given a broad and liberal construction in the interpretation of the legislature's intention in enacting a no-fault scheme of benefits under Part 2 of the *Act*</u>. (underlining added)

. . . . .

Applying those principles to Part 2 of the *Act*, I conclude (again paraphrasing the words of Major J.) that:

> *Generally speaking, where an automobile or the use of an automobile in some manner contributes to or adds to the injury, Part 2 of the Act applies. (underlining added)*

The Commission has on two (2) occasions, in [text deleted] *(AC-00-19)* and [text deleted] *(AC-04-47)*, considered the meaning and application of Section 70(1) of the MPIC Act having regard to the decisions of the Manitoba Court of Appeal in *McMillan v Thompson (Rural Municipality)* (supra).

[text deleted] ***(AC-00-19)***

The facts in this appeal were set out by the Commission as follows:

> The Appellant, [the Appellant], attended at the [text deleted] Restaurant located at [text deleted] on June 25, 1997, at approximately 5:30 a.m. [The Appellant] purchased a [text deleted] breakfast meal through the drive-thru window. The breakfast meal included a cup of coffee. [The Appellant] placed the cup of coffee in a RubberQueen beverage cup holder which was located immediately to his right on the center of the front bench seat of the 1977 El Camino that he was driving at the time. [The Appellant] proceeded to exit the [text deleted] parking lot and head north on Pembina Highway. He then gradually made his way across three lanes to the left turning lane, at which time he realized that the coffee had spilled onto the seat and onto his right leg and buttocks. He stopped his vehicle in the left turning lane, got out of his car and proceeded to clean up the spill before continuing on to his place of employment. [The Appellant] testified that as a result of the coffee spill, he received second- and third-degree burns to his right thigh and buttocks, which necessitated medical treatment. Further, he was required to be absent from work for three days in order to recover from his injuries.

The Appellant asserted that his claim arose out of the use of an automobile and was occasioned by a load in the automobile and, as a result, his injury came within the definition of "bodily injury caused by an automobile" as set out in the MPIC Act. In response, counsel for MPIC argued that the cause of the Appellant's injury was the excessive temperature of the coffee and

not the operation of the motor vehicle. The Commission upheld the appeal and stated:

> Applying the facts of the case at hand to the legislation, the Commission relied on Helper, J.A.'s decision in McMillan v. Thompson (Rural Municipality), *supra*. At page 21 of her decision, Helper, J.A. states that:
>
> > The only question which required determination was: Were the respondents' injuries caused by (in the sense of being related to) the use of an automobile? The answer to that question is undoubtedly "yes."
>
> The Commission is thus required to ask in the present circumstances, were [text deleted's] injuries caused by the use of an automobile? After careful consideration of the evidence presented before it, the Commission finds that the coffee spill and [text deleted's] resultant injuries were caused by the use of the automobile, or by a load.

[text deleted] *(AC-04-47)*

The Commission, in its decision, set out the facts as follows:

- On April 26, 2001, at approximately 12:30 p.m., the Appellant attended at the [text deleted] on [text deleted] to pick-up materials for a home renovation project. He drove his pick-up truck to the self-serve lumber yard, parked the truck alongside the lumber piles and proceeded to choose his lumber and load the lumber onto a roof rack on the back of his truck.

- After he had loaded the lumber, the Appellant proceeded to secure the lumber with straps. He hitched the straps onto the passenger side of the truck and then threw them over the lumber to the driver's side. He then proceeded to the driver's side of the truck to finish tightening the straps. He was standing on the box of the truck immediately behind the driver's door with a strap in his left hand. He then proceeded to dismount from the truck. As he stepped backwards off the truck, his foot caught a piece of lumber, he lost his balance and the strap broke. He fell backwards onto a steel post (a U-Tube) and then fell onto the ground and rolled under his truck.

As a result of this accident the Appellant sustained multiple injuries.

Initially the Appellant [text deleted] had proceeded against [text deleted] by filing a Statement of Claim in the Manitoba Court of Queen's Bench and concurrently made an Application for Compensation to MPIC. In the Court of Queen's Bench action [text deleted] a Statement of Defense was filed, in which the Defendant [text deleted], pleaded that the action by the Plaintiff

[text deleted] was statute barred by virtue of the provisions of Sections 71 and 72 of the MPIC Act as the Plaintiff's [text deleted] injuries arose by virtue of his use of a motor vehicle or by virtue of a load thereon. The Defendant [text deleted] made application to the Court of Queen's Bench for summary judgment dismissing the Plaintiff's [text deleted] claim.

In his written decision [text deleted]dated [text deleted], [text deleted] referred to the decision of the Manitoba Court of Appeal in ***McMillan v Thompson*** (supra) as follows:

> . . . Helper, J.A., at p. 18, stated:
>
> > … The words chosen by the Legislature indicate there must be a direct link between the automobile or use of an automobile and the injuries resulting from an automobile accident.
>
> Helper J.A.'s comments have a direct application to the case at bar. In the case at bar, there is a direct link between the use of an automobile inasmuch as it was being loaded with lumber which was help in place by a faulty strap which gave way, leading to the injuries sustained by the plaintiff.
>
> The determination of the ***McMillan*** decision by the Court of Appeal leaves little doubt that if injuries were caused by an automobile accident or by the use of an automobile, an action cannot proceed.

[text deleted]further stated:

> In this case the automobile was being used for the purposes of carrying lumber. The strap, which [text deleted] appears to have held onto in order to dismount from the back of the truck, gave way, causing him to lose his balance by stepping on a piece of lumber and to fall onto the Blue U. Perhaps his tripping or slipping on the lumber when he fell from the truck may well have been the cause of his injury, but there is no doubt that the injury occurred while using an automobile.

As a result of this decision the Appellant [text deleted] proceeded with his Application for Compensation with MPIC, who rejected his claim and, as a result, he appealed MPIC's decision to this Commission.

In a decision dated March 5, 2007 the Commission found that the Appellant's [text deleted] injuries were caused by an automobile and, accordingly, he was entitled to benefits pursuant to Part 2 of the MPIC Act. The Commission stated:

> Applying the facts of the case at hand to the legislation, the Commission relied upon the decision of Helper, J.A. in *McMillan v Thompson (Rural Municipality), supra*. At page 21 of her decision, Helper, J.A. states that:
>
> > The only question which required determination was: were the respondent's injuries caused by (in the sense of being related to) the use of an automobile? The answer to that question is undoubtedly "yes."
>
> The Commission is thus required to ask in the present circumstances, were the Appellant's injuries caused by the use of an automobile. The answer to that question is undoubtedly "yes". The Commission finds that the Appellant's accident and the Appellant's resultant injuries occurred while he was disembarking from his vehicle. As a result, his injuries were caused by (in the sense of being related to) the use of an automobile.

Decision

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission finds that the Appellant's injuries were caused by (in the sense of being related to) the use of an automobile or a load and, accordingly, she is entitled to the benefits pursuant to Part 2 of the MPIC Act.

In *McMillan v. Thompson* (supra), Helper, J.A. stated that:

> The only question which required determination was: Were the respondents' injuries caused by (in the sense of being related to) the use of an automobile? The answer to that question is undoubtedly "yes".

The Commission is required to ask, in the present circumstances, whether the Appellant's injuries were caused by the use of an automobile? After careful consideration of the evidence presented before it, the Commission finds that the fire, explosion, and the Appellant's resultant

injuries, were caused by the use of an automobile.

In this appeal the automobile was being used for the purpose of conveying both the Appellant as well as the propane stove and tank which was situated on the back seat of the automobile. The Appellant entered the front seat of the automobile for the purpose of driving back to [text deleted] and while in the process of attempting to move the propane stove and tank the Appellant lit a cigarette and, as a result, a fire and explosion occurred causing injury to the Appellant. The Commission finds that her injuries were caused by (in the sense of being related to) the use of an automobile.

The Appellant had filled the propane tank with propane shortly before driving from the [text deleted] to [text deleted], which was approximately five (5) miles from the [text deleted]. Perhaps the propane tank had not been properly sealed and there may have been contact between the propane fumes emanating from the propane tank and the Appellant's lighted cigarette, which may very well have been the cause of the Appellant's injuries. However, there is no doubt that these injuries occurred while the Appellant was using the automobile.

In *McMillan v Thompson* (supra) Helper, J.A. stated:

> … The words chosen by the Legislature indicate there must be a direct link between the automobile or use of an automobile and the injuries resulting from an automobile accident.

Contrary to MPIC's legal counsel's submission in this appeal, there was a direct link in the use of the automobile inasmuch as it was loaded with a propane stove and tank which came into contact with the Appellant's lighted cigarette leading to the injuries sustained by the Appellant.

The Commission also finds that by applying the "purpose" test referred to by Mr. Justice Philp in his judgment in *McMillan v. Thompson (Rural Municipality)* (supra), the accident resulted "from the ordinary and well known activities in which automobiles are put". The Appellant entered the automobile at [text deleted] for the purpose of driving the automobile back to the [text deleted] and this activity is an ordinary and well known activity to which an automobile is put. The Appellant had loaded the automobile with a propane stove and tank for the purpose of conveying it to her friend and this also constituted an ordinary and well known activity to which an automobile is put.

The Commission notes that at the time of the accident the automobile was parked but a parked automobile is not excluded from the application of Section 70(1) of the MPIC Act. Mr. Justice Philp, in his decision in *McMillan v. Thompson (Rural Municipality)* (supra) stated:

> . . . It is hard to imagine an accident occurring when an automobile was being driven, or even when it was parked, that would not satisfy the "purpose" test as it is now posited.

In *Dickinson* (supra) the only connection between the claimant's injuries and the automobile was that the automobile, while in a parked position, was the location of the fire which caused the claimant's injuries.

In *Amos*, Mr. Justice Major stated:

> The appellant's vehicle was not merely the situs of the shooting. The shooting appears to have been the direct result of the assailants' failed attempt to gain entry to the appellant's van.

[text deleted] in [text deleted], found that although the Appellant's truck was parked it was being used to load lumber, which [text deleted] found caused the Appellant's injuries (in the sense of

being related to it). The Commission, in [text deleted] *(AC-04-47)*, came to the same conclusion.

In the alternative, the Commission finds that the Appellant has established, on a balance of probabilities, that his injuries were caused by a load within the meaning of "bodily injury caused by an automobile" as set out in Section 70(1) of the MPIC Act, which states:

> **Definitions**
> 70(1) In this Part,
> **"bodily injury caused by an automobile"** means any bodily injury caused by an automobile, by the use of an automobile, or by a load . . .

The Dictionary of Canadian Law, Second Edition, p 689, defines the word load as:

> **LOAD.** *n.* 1. Everything conveyed by a motor vehicle. . . .

The dictionary definition of the word load as defined in the Webster's New World College Dictionary, Fourth Edition, p 841 is**:**

> **Load** . . . **1** something carried or to be carried at one time or in one trip; burden, cargo . . .

In [text deleted] *(AC-00-19)* the Commission found that the coffee spill and the Appellant's resulting injuries were caused by the use of an automobile or by a load.

The Commission therefore concludes in this appeal that the fire and explosion which resulted in the Appellant's injuries were caused by either the use of an automobile or by a load within the meaning of Section 70(1) of the MPIC Act. For the reasons outlined herein the Commission finds that the Appellant is entitled to receive the PIPP benefits under the MPIC Act.

By the authority of Section 184(1) of the MPIC Act, the Commission's decision therefore that:

A. the Appellant's claim be referred back to MPIC for processing in light of the foregoing findings; and

B. the decision of MPIC's Internal Review Officer bearing date September 22, 2006 is therefore rescinded and the foregoing substituted for it.

Dated at Winnipeg this 27th day of August, 2007.

MEL MYERS, Q.C.

HONOURABLE WILFRED DE GRAVES

DR. PATRICK DOYLE