

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-125**

PANEL: Ms Laura Diamond, Chairperson
Mr. Paul Johnston
Ms Sharon Macdonald

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jim Shaw.

HEARING DATE: January 22, 2008

ISSUE(S): Whether or not the Commission has jurisdiction to deal with the claim of misconduct contrary to Section 150 of the MPIC Act.

Whether or not the Commission has jurisdiction to award legal costs and/or any other remedy for violation of Section 150 of the MPIC Act.

RELEVANT SECTIONS: Sections 150, 177(3) and 184(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Decision

The Appellant has filed appeals with the Commission in regard to MPIC Internal Review decisions dated May 11, 2004, February 3, 2005, May 5, 2005, and August 29, 2005.

During the course of preparing these appeals for hearing, the parties identified two jurisdictional issues. A pre-hearing meeting was scheduled by the Commission to deal with the issues of:

- a) whether or not the Commission has jurisdiction to deal with the Appellant's claim of misconduct contrary to Section 150 of the MPIC Act and
- b) whether or not the Commission has jurisdiction to award legal costs or any other remedy for violations of Section 150 of the MPIC Act.

On January 22, 2008, the parties appeared before a panel of the Commission which heard oral submissions regarding these two issues. The panel was also provided with written submissions on behalf of both parties.

Submission for MPIC

Counsel for MPIC submitted that the Commission has no jurisdiction either to deal with the claim of misconduct contrary to Section 150 or to award legal costs or any other remedy for violation of Section 150 of the MPIC Act.

Counsel submitted that the purpose of Part 2 of the MPIC Act, as confirmed by the Court of Appeal, is to provide compensatory benefits to Manitobans who suffer bodily injuries in accidents involving an automobile. Therefore, in accordance with Section 169(1) and Section 170(1) of the MPIC Act, MPIC and the Commission only have jurisdiction to deal with matters "related to compensation" or "in respect of a claim for compensation".

Jurisdiction of corporation

169(1) Subject to subsection 196(2) (appeal under this Part or Workers Compensation Act), the corporation has exclusive jurisdiction to decide any matter related to compensation under this Part and to review any such decision.

Corporation to give written reasons to claimant

170(1) A decision made by the corporation in respect of a claim for compensation shall be given to the claimant in writing, and shall include reasons for the decision.

Counsel for MPIC submitted that a claim for misconduct is not a “matter related to compensation” since the former deals with how a claim was handled by MPIC, while the latter deals with what compensation a victim may be entitled to “in respect of a claim”. It is the latter which is subject to review and appeal. MPIC submitted that the jurisdiction of the Commission is confined to the hearing of appeals relating to a victim’s entitlements to compensation, and that it has no jurisdiction to conduct a hearing as to how a claim was case managed and whether or not there was misconduct on the part of MPIC.

Counsel submitted that the purpose of Section of 150 of the MPIC Act is only to confirm the intention of the legislature that benefits under the Act are to be delivered in a non-adversarial frame work. In the absence of any sanctions or remedies for a violation thereof, this section amounts only to a standard for customer service, which can be pursued through MPIC’s Fair Practices and customer relations office.

Counsel submitted that the Commission’s jurisdiction was limited by Section 184(1) of the Act to review a decision of the Corporation and not to deal with claims of misconduct contrary to Section 150.

Powers of commission on appeal

184(1) After conducting a hearing, the commission may

- (a) confirm, vary or rescind the review decision of the corporation; or
- (b) make any decision that the corporation could have made.

If the legislature had intended that claims of misconduct contrary to Section 150 could be heard by the Commission, it would have given the Commission the power to do so and established specific rules of procedure to deal with issues (such as notice, discovery procedures and criteria for assessing such a claim). As well, if the legislature had intended for the Commission to have jurisdiction to deal with a claim of misconduct under Section 150 it would have provided for sanctions, remedies and/or costs for such a violation.

In regard to the issue of awarding costs, counsel for MPIC submitted that there is no provision in the MPIC Act or Regulations for the Commission to award costs to a claimant who is successful in an appeal, whether it be a claim for benefits or claim for alleged misconduct on the part of MPIC under Section 150.

He reviewed the provisions of Section 184(1), as set out above, and noted that these set out the remedial powers of the Commission.

Section 177(3) (which was referred to by the Appellant) does not provide authority to the Commission to award costs. Although Section 177(3) had been referred to by an earlier decision by the Commission in *[text deleted]*, ([1999] MACACD No. 59), a careful review of that section makes it clear that it deals with a discretion for the Commission to order deposit into the Consolidated Fund, and not to award costs as a remedy to an Appellant or any party.

Submission for the Appellant

Counsel for the Appellant stressed the importance of Section 150, arguing that the Commission must be a watch dog for when the Corporation fails to meet the standard of care upon it towards claimants.

He submitted that an issue arising under Section 150 of the Act is a matter in respect of compensation, pursuant to Section 169 and Section 171 of the Act. If the Corporation's duty to the Appellant is not properly fulfilled, an insured may in fact be denied compensation. A denial of benefits and/or a threat of termination of benefits is a matter in relation to compensation, he submitted. The termination of benefits after they have been initially granted, or a suspension of these benefits, is a matter relating to compensation.

The existence of Consumer Relations and Fair Practices agencies can not replace the Commission's role of an overseer, because such agencies do not have any "teeth" or accountability. Counsel submitted that the Commission is a specialist tribunal whose expertise should be put to work ensuring that the standards and duties of care imposed upon MPIC by Section 150 are lived up to by the Corporation.

In regard to the issue of the Commission's power to award costs, Counsel for the Appellant argued for a very broad definition of compensation, in accordance with various dictionary definitions. He argued that the Commission should find that it has the power to award costs in exceptional circumstances and that every finding of bad faith or violation of Section 150 of the MPIC Act would be an exceptional circumstance. Counsel pointed to the reference by the Commission to awarding costs in the *[text deleted]* decision, *supra*.

Counsel for *[text deleted]* argues strenuously that this Commission should award *[text deleted]* her legal costs of this appeal. It is moot whether the Commission has the power to award costs – for example, it is at least arguable that the language of Section 177(3) of the MPIC Act is capable of that interpretation. However, whether we have that power or not, this Commission decided from the outset that it would never attempt to do so except in a case of extreme oppression, bad faith or other serious misconduct on the part of the insurer or conduct encroaching upon the field of fraud or on the part of the insured. The reason underlying that philosophy on our part is simply stated: the object of the statute is to make the appellate procedure as relatively simple, speedy and inexpensive as possible;

if we were to award costs to a successful appellant, justice would require us to award costs against an unsuccessful appellant which, patently, would effectively discourage the overwhelming majority of victims from seeking the redress to which they feel entitled. Hence, costs will not be awarded.

Counsel for the Appellant submitted that this was just such a case where costs should be awarded.

DISCUSSION

Jurisdiction under Section 150

Corporation to advise and assist claimants

150 The corporation shall advise and assist claimants and shall endeavour to ensure that claimants are informed of and receive the compensation to which they are entitled under this Part.

Counsel for MPIC argued that the Commission does not have jurisdiction to consider a claim of misconduct under Section 150 on its own, independent of any decision regarding compensation or benefit entitlement.

It is not necessary for the Commission to determine this issue in the case before us. The Commission does not make a practice of framing issues in the abstract and hearing issues, without their factual underpinnings.

The Appellant has argued that the Corporation's failure to "advise and assist" her and "endeavor to ensure" that she is informed of and receives the compensation to which she is entitled, has resulted in her failure to receive compensation under four separate Internal Review decisions issued by the Corporation. These Internal Review decisions deal with such various issues as the suspension of her benefits and reimbursement of expenses.

The Appellant argues that the Corporation's decisions in regard to these matters were affected by its misconduct, through a failure to properly and fairly assist and advise her. These appeals are before the Commission and the question of the effect of alleged misconduct under Section 150 is part of the issue before the Commission in determining matters in respect of these claims for compensation.

The Commission is not being asked to determine, in isolation, whether the Corporation has acted in accordance with Section 150. Rather, it is being asked to determine the Appellant's entitlement to compensation under the Act, and to consider the Corporation's alleged failure to comply with Section 150 when determining her entitlement.

The panel agrees with counsel for the Appellant that the Corporation's denial of benefits and threats of termination of benefits are matters in relation to compensation. Similarly, terminating the Appellant's benefits after they have initially been granted, or suspending them, is a matter relating to compensation. It is the panel's view that evidence of the Corporation's actions in making such decisions may be relevant to the review and assessment of the determination of the Appellant's entitlement and the decisions of the Internal Review Officers in that regard.

Costs

Like the power to award damages or compensation, the power to award or recover costs must be specifically conferred by the empowering statute. The panel has reviewed the MPIC Act and has concluded that it does not confer any statutory authority upon the Commission to award such costs.

Section 184 of the Act provides the Commission with the power to make a declaration, and to order the Corporation to afford benefits and compensation under the Act:

Powers of commission on appeal

- 184(1)** After conducting a hearing, the commission may
- (a) confirm, vary or rescind the review decision of the corporation; or
 - (b) make any decision that the corporation could have made.

It was submitted on behalf of the Appellant that Section 177(3) of the Act confers a discretion upon the Commission to award costs. Appellant's counsel pointed to the Commission's comments in the 1999 decision of [text deleted].

It is moot whether this Commission has the power to award cost – for example, it is at least arguable that the language of Section 177(3) of the MPIC Act is capable of that interpretation. . . .

However, the panel has carefully reviewed Section 177(3) of the MPIC Act:

Corporation to pay variable costs into C.F.

177(3) The costs of proceedings before the commission are in the discretion of the commission, and the costs determined by the commission shall be paid by the corporation from time to time, on the requisition of the commission, to the Minister of Finance for deposit into the Consolidated Fund.

It is the panel's conclusion that Section 177(3) does not confer upon the Commission the power to award costs to Appellants. Rather, it contemplates that, in addition to the fixed costs of the Commission being paid by MPIC into the Consolidated Fund, pursuant to Sections 177(1) and 177(2) of the Act, "variable" costs of the Commission, may be requisitioned by the Commission to be paid by the Corporation for deposit into the Consolidated Fund.

Although counsel for the Appellant submitted that this would allow the Commission to order such costs paid to the Appellant, the panel does not agree. We are of the view that the MPIC Act does not set out any statutory authority for the Commission to order or award legal costs to parties appearing before it.

Summary

Accordingly, the panel finds that the Commission has the jurisdiction to deal with a claim of misconduct contrary to Section 150 of the MPIC Act.

The panel finds, however, that the Commission does not have jurisdiction to award legal costs for a violation of Section 150 of the MPIC Act.

Dated at Winnipeg this 27th day of February, 2008.

LAURA DIAMOND

PAUL JOHNSTON

SHARON MACDONALD