

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-128**

PANEL: Mr. Mel Myers, Q.C.

APPEARANCES: The Appellant, [text deleted] ([text deleted], Deceased) was represented by Ms Laurie Gordon of the Claimant Adviser Office;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: October 6, 2011

ISSUE(S):

1. Whether the Appellant received a Notice of Hearing pursuant to Sections 184.1(1) & (2) of the MPIC Act.
2. Whether the Appellant was a “common-law partner” to [text deleted] (deceased) in accordance with Section 70(1) of the MPIC Act.
3. Whether the above mentioned appeal should be dismissed on the grounds of abandonment.

RELEVANT SECTIONS: Sections 70(1), 184(1) and (2) 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.

Reasons For Decision

On July 29, 2007 [the Deceased] was involved in a fatal motor vehicle accident when the vehicle he was driving collided with another vehicle on the Trans-Canada Highway near [text deleted].

On November 25, 2007 [the Appellant] contacted the senior case manager by telephone to indicate that she was in a common-law relationship with the deceased at the time of the accident.

Under the legislation, a “spouse or common-law partner” of a deceased is entitled to a death

lump sum indemnity. In order to receive the benefit, the Appellant must clearly be within the definition of a spouse or common-law partner as defined in Section 70(1) of the MPIC Act.

The Internal Review Officer's decision of September 29, 2008 rejected the Appellant's claim that she was in a common-law relationship with the deceased.

In her decision, the Internal Review Officer refers to Section 70(1) of the MPIC Act:

Definitions

70(1) In this Part,

"spouse" means the person who, at the time of the accident, is married to and cohabiting with the victim;

"common-law partner" of a victim means

(a) a person who, with the victim, registered a common-law relationship under section 13.1 of *The Vital Statistics Act*, who was cohabiting with the victim immediately preceding the accident, or

(b) a person who, not being married to the victim, cohabited with him or her in a conjugal relationship

(i) for a period of at least three years immediately preceding the accident, or

(ii) for a period of at least one year immediately preceding the accident and they are together the parents of a child; (« conjoint de fait »)

In her decision, the Internal Review Officer determined that the Appellant was not a common-law partner to the deceased.

The Appellant's Notice of Appeal contained the Appellant's address at [text deleted].

The Claimant Adviser advised the Commission at a Case Conference on August 9, 2011 that she was unable to get a hold of the Appellant. Her last contact with the Appellant was approximately two years ago. The Claimant Adviser advised the Commission that she had attempted to call the Appellant at her home. The telephone number was not in service and Xpresspost mail sent to her was returned undelivered. At this case conference, the Claimant Adviser requested that an abandonment hearing be scheduled and MPIC's legal counsel agreed.

The Commission's secretary was instructed to set this appeal down and as a result a hearing was set for October 6, 2011 at the Commission's office in Winnipeg. The Commission's secretary further advised the Commission that:

1. On August 10, 2011 the commission sent out a Notice of Hearing to the Appellant by Xpresspost (a copy of which is attached and marked as Exhibit A) in respect of this appeal at the Appellant's address at [text deleted], which was the Appellant's address on the Notice of Appeal.

Appeal Hearing:

The hearing commenced on October 6, 2011 at 9:30 a.m. The Appellant did not attend at that time, but the Claimant Adviser and MPIC's legal counsel were present at the commencement of the hearing.

MPIC's legal counsel submitted that the Appellant had been properly served with the Notice of Hearing pursuant to Sections 184.1(1)(b) and 184.1(2) of the MPIC Act with provides as follows:

How notices and orders may be given to appellant

[184.1\(1\)](#) Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

When mailed notice received

[184.1\(2\)](#) A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

MPIC's legal counsel further submitted that since the Appellant had been properly served the Notice of Hearing by mail, pursuant to the Act, the Commission had the jurisdiction to hear the merits of the appeal or determine whether or not the Appellant, on the balance of probabilities, had established that MPIC had not properly determined whether she was the common-law partner of the deceased.

Abandonment of the Notice of Appeal:

MPIC's legal counsel submitted that the Commission is entitled to dismiss the Appellant's appeal on the grounds that the Appellant had abandoned her appeal and had not established on a balance of probabilities that she was the common-law partner of the deceased.

Internal Review Officer's Decision:

The Internal Review Officer issued a decision on September 29, 2008 confirming the case manager's decision which dismissed the Appellant's Application for Review.

The Internal Review Officer determined that the deceased, [text deleted], was involved in a fatal motor vehicle accident when the rig he was driving collided with another on the Trans-Canada Highway near [text deleted].

On September 25, 2007, the Appellant contacted the Senior Case Manager by telephone indicating that she had a common-law relationship with [the Deceased] at the time of his death. The Appellant stated that at the time of the accident [the Deceased] resided at her home and they had been together for several years.

After reviewing the provisions of the Act and the decision of the Manitoba Court of Appeal in *Steffen v. Bryer*, 184 Man. R. (2d) 310, the Internal Review Officer determined there was insufficient evidence to establish there was an interdependent relationship between the Appellant and [the Deceased]. The Internal Review Officer stated that:

1. Although the Appellant asserted that she depended financially on the deceased, she was unable to give any details of her income, her expenses, or facts to demonstrate that dependency.
2. There were no details provided by the Appellant to show that the parties shared a bank account or financial expenses and household or personal expenses.
3. There was also no evidence of tax returns whereby the Appellant or [the Deceased] would claim each other as a “common-law spouse” for income tax purposes.
4. The Appellant was unable to establish that she cohabitated with the deceased for a period of at least three years prior to the motor vehicle accident as prescribed by the legislation.

5. The Appellant had not established that she was in a common-law relationship with the deceased as described by the legislation and she was not entitled to a death benefit lump sum indemnity.

The Appellant filed a Notice of Appeal on December 4, 2008 which stated:

“I was a ‘common law partner’ to [the Deceased] as defined by Section 70(1) of the MPIC Act, and therefore am entitled to benefits under the Personal Injury Protection Plan.”

At the appeal hearing, MPIC’s legal counsel submitted that in regard to the decision of the Manitoba Court of Appeal in *Fegol v Asper*, 2004 MBCA 115, 2004 CarswellMan 287 (Man. C.A.), the appropriate criteria to determine whether there has been an abandonment of an appeal were:

1. There must have been a continuous intention to prosecute the appeal from the time when the documents in question should have been properly filed;
2. there must be a reasonable explanation for the failure to proceed with the appeal in a timely fashion; and
3. there must be arguable grounds of appeal.

MPIC’s legal counsel submitted that:

1. The Appellant had not demonstrated a continuous intention to prosecute the appeal.
2. The Appellant had not provided a reasonable explanation for failing to pursue the appeal in a timely fashion.
3. In her decision the Internal Review Officer had extensively reviewed the law, and had correctly determined that there was a lack of inter-dependency between the Appellant and the deceased, [text deleted].

4. The Appellant had failed to establish that there had been a common-law relationship between the parties for a period of at least three years immediately preceding the accident, pursuant to Section 70(1) of the MPIC Act.

The Commission notes that the Claimant Adviser did not disagree with MPIC's submission.

The Commission finds that:

1. The Appellant has not demonstrated that she intended to pursue the appeal on a continuous basis, nor has she provided a reasonable explanation for her failure to contact the Claimant Adviser with instructions to pursue the appeal.
2. The Internal Review Officer was correct in her decision to reject the Appellant's submission that there was a common-law relationship between herself and the deceased pursuant to Section 70(1) of the MPIC Act.
3. There are no arguable grounds of appeal.
4. The Appellant has abandoned her appeal for the reasons outlined herein.

The Commission therefore confirms the Internal Review Officer's Decision of September 29, 2008 and dismisses the Appellant's appeal.

Dated at Winnipeg this 18th day of October, 2011.

MEL MYERS, Q.C.