

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

| | | |
|----------------------------------|---|----------------------------------|
| RYAN SANDULAK |) | <i>R. Sandulak</i> |
| |) | <i>on his own behalf</i> |
| <i>(Appellant) Applicant</i> |) | |
| |) | <i>M. J. Maslanka</i> |
| <i>- and -</i> |) | <i>for the Respondent</i> |
| |) | <i>Manitoba Public Insurance</i> |
| MANITOBA PUBLIC INSURANCE |) | <i>Corporation</i> |
| CORPORATION |) | |
| |) | <i>D. G. Guénette</i> |
| <i>(Respondent) Respondent</i> |) | <i>for the Respondent</i> |
| |) | <i>The Automobile Injury</i> |
| <i>- and -</i> |) | <i>Compensation Appeal</i> |
| |) | <i>Commission</i> |
| THE AUTOMOBILE INJURY |) | |
| COMPENSATION APPEAL |) | <i>Chambers motion heard:</i> |
| COMMISSION |) | <i>March 30, 2017</i> |
| |) | |
| <i>Respondent</i> |) | <i>Decision pronounced:</i> |
| |) | <i>April 12, 2017</i> |

CHARTIER CJM

[1] The applicant moves for leave to appeal the decision of the Automobile Injury Compensation Appeal Commission (the Commission) dismissing his appeal and confirming the decision of the internal review officer of the Manitoba Public Insurance Corporation (MPIC).

[2] For the applicant to be successful, he must establish that the Commission erred on a question of law or jurisdiction which does not require the Court to assess or analyze conflicting factual issues. In addition,

the question must be one of sufficient importance to warrant consideration by this Court and must have arguable merit; i.e., one with a reasonable prospect of success (see *Pelchat v Manitoba Public Insurance Corp and Automobile Injury Compensation Appeal Commission*, 2006 MBCA 90; and *Sosnowicz v Manitoba Public Insurance Corp et al*, 2016 MBCA 75).

[3] The applicant, a commercial truck driver, had his truck stolen. As a result of this, he missed several weeks of work. He sought income replacement indemnity benefits under the Personal Injury Protection Plan (PIPP) because he had sustained a loss of income due to business disruption.

[4] Section 71(1) of *The Manitoba Public Insurance Corporation Act*, CCSM c P215, (the *Act*), states that PIPP “applies to any bodily injury suffered by a victim in an accident”. Accident is defined under section 70(1) of the *Act* as “any event in which bodily injury is caused by an automobile”. Under PIPP, persons who do suffer bodily injuries in a motor vehicle accident may receive compensation for lost income. Given that the applicant was not involved in a motor vehicle accident and did not suffer any bodily injury, his request for benefits was denied.

[5] On appeal to the Commission, the applicant submitted that he was entitled to the PIPP benefits and, if not, he argued that sections 70(1) and 71(1) of the *Act* were of no force and effect on the grounds that they offended sections 9 and 13 of *The Human Rights Code*, CCSM c H175 (the *Code*) or section 15 of the *Canadian Charter of Rights and Freedoms* (the *Charter*). The Commission summarily dismissed his ground relating to entitlement, ruling that he clearly did not fall within the PIPP provisions because he did not suffer bodily injuries in a motor vehicle accident. The

Commission also issued considered and comprehensive reasons explaining why the *Code* and *Charter* principles were not engaged in the circumstances.

[6] The applicant's leave application raises two errors of fact as well as an error of law and an error of jurisdiction with respect to the Commission's section 1 *Charter* analysis. Since errors of fact are not appealable, there is no arguable merit to those two grounds.

[7] I now turn to the alleged errors of law and jurisdiction found in the Commission's section 1 *Charter* analysis. The Commission was only considering the section 1 argument in the event that it was incorrect in its conclusion that there had not been a section 15 *Charter* breach. Since the applicant has not raised an error of law or jurisdiction with respect to the Commission's section 15 findings, there is no arguable merit to those alleged errors. However, given the applicant made general oral submissions with respect to the correctness of the Commission's broad conclusions, I have reviewed them.

[8] Regarding the issue of whether the Commission erred in its finding that the applicant was not entitled to the PIPP benefits, I easily conclude that there is no arguable merit to this ground. While this question is at best a question of mixed fact and law, the applicant's circumstances simply do not meet the section 70(1) definition of "accident" or fall under the sections 71(1) PIPP provisions because he was neither involved in an accident nor injured.

[9] The Commission rejected the applicant's section 9 *Code* breach assertions that he suffered differential treatment on the basis of "social disadvantage" or "source of income" characteristics. The Commission

found that the applicant failed to adduce any evidence to establish such claims. The applicant has failed to convince me that there is any arguable merit to the claim that the Commission erred in finding that he had failed to provide such evidence.

[10] The Commission also rejected the applicant's section 13 *Code* claim that the MPIC discriminates against commercial drivers with respect to a provision of service or program. The Commission accepted that it would not be feasible or economical for MPIC to insure all losses, such as theft. It also noted that "loss of use" insurance coverage was available for purchase. It concluded that excluding persons who do not suffer a bodily injury from the PIPP scheme was reasonable and rejected his claim of state-based discrimination against non-injured commercial drivers. Again, the applicant has failed to convince me that there is any arguable merit to his claim that the Commission erred in law.

[11] Finally, the applicant argued that his status as a non-injured commercial driver was deserving of protection as a ground analogous to those listed under section 15 of the *Charter*. The Commission concluded that to find an analogous ground, a personal, unchangeable characteristic must be present. It noted that one's occupation does not easily fit within the concept of immutability because one's type of work can change. In any event, the Commission noted with respect to this ground that the applicant had not established that the commercial drivers, to the exclusion of other drivers, had been subject to a historical disadvantage. It found that the ineligibility to PIPP benefits was not restricted to commercial drivers since it encompassed non-commercial drivers as well. The Commission noted in its reasons that, "no distinction is made by the legislation between non-injured

commercial drivers and non-injured domestic drivers; they are both subject to the same fate.”

[12] In the end, the applicant has failed to persuade me that there is any arguable merit regarding his assertion that the Commission erred in law with respect to its conclusion that there was no section 15 *Charter* breach. As a result, and as already stated, the applicant’s argument that the Commission erred with respect to its section 1 *Charter* analysis is moot since section 1 need only be considered if the Commission held that there had been a section 15 *Charter* breach, which it did not.

[13] For these reasons, the application for leave to appeal is denied. I make no order on costs.