

1996 CarswellOnt 5994
Ontario Insurance Commission

Wigle v. Royal Insurance Co. of Canada

1996 CarswellOnt 5994, [1996] O.I.C.D. No. 13

Danny M. Wigle, Applicant and Royal Insurance Company of Canada, Insurer

Asfaw Seife Member

Heard: May 1-2, 1995

Judgment: January 12, 1996

Docket: A-012312

Proceedings: Affirmed, [1998 CarswellOnt 1585](#), [1998] O.I.C.D. No. 63 (Ont. Insurance Comm. Dir. of Arbs.)

Counsel: Joseph J. Comartin, for Applicant

Nestor E. Kostyniuk, for Insurer

Subject: Insurance

Asfaw Seife Member:

Issues:

1 The Applicant, Danny M. Wigle, was injured in a motor vehicle accident on June 15, 1991. He applied for and received statutory accident benefits from the Insurer, payable under Ontario Regulation 672.¹ Weekly income benefits were terminated by the Insurer on June 13, 1994, 156 weeks after the accident.

2 The sole issue in this hearing is:

3 Is Mr. Wigle entitled to weekly income benefits after June 13, 1994, under section 12(5)(b) of the *Schedule*?

4 Mr. Wigle also claims interest on any amounts owing, and his expenses incurred in the hearing.

Result:

5

1. Mr. Wigle is not entitled to further weekly income benefits.

2. Royal must pay Mr. Wigle his expenses in respect of the arbitration.

Hearing:

6 The hearing was held in Windsor, Ontario, on May 1 and May 2, 1995, before me, Asfaw Seife, Arbitrator.

Present at the Hearing:

7

Applicant:

Danny M. Wigle

Applicant's Representative:

Joseph J. Comartin Barrister and Solicitor

Insurer's Representative:

Witnesses:

Nestor E. Kostyniuk Barrister and Solicitor

Danny Wigle Applicant

Dr. Gary Kuprowski Family Physician

Leslie Davis Occupational Therapist

Jacqueline Wigle The Applicant's daughter

As listed in Appendix A

Exhibits:

Background:

8 At the time of the accident on June 15, 1991, Mr. Wigle was 44 years old. He lived with his parents and his adult daughter, in his parents' home in Windsor, Ontario. He had been working for Ford Motor Company ("Ford") in Windsor since 1967.

9 The accident occurred when the car Mr. Wigle was driving, which was stopped at a red light, was rear-ended by another vehicle.

10 Mr. Wigle started experiencing stiffness in the neck and back the morning after the accident. He also began to experience severe headaches some time after the accident. Dr. Kuprowski, his family doctor, ordered x-rays of his neck and back and referred Mr. Wigle to Uptown Physiotherapy and Rehabilitation Centre in Windsor, where he was involved in mostly active exercises until November 1991. This did not help him.

11 In early 1992, Royal retained the services of Crawford & Company Health and Rehabilitation Services ("Crawford") to co-ordinate Mr. Wigle's medical management and to assist in his vocational rehabilitation. Over the three years following the accident, in addition to seeing his family doctor regularly, Mr. Wigle was involved in extensive exercise maintenance, physiotherapy and work hardening programmes at the Canadian Back Institute ("CBI"), and a cognitive behavioural and psychological therapy programme provided by Dr. William Ross. He has been assessed by Dr. D.A. Fleming, orthopaedic surgeon, and Dr. John Clifford, physiatrist, in independent medical examinations arranged by Royal. In April 1995, Mr. Wigle was also examined by Dr. Gail Delaney, physiatrist, and Dr. K. White, a specialist in rheumatology, further to a referral by his counsel. Mr. Wigle has undergone various investigative procedures, including x-rays, a bone scan and CT scan. He has had a Functional Abilities Evaluation administered at Windsor Western Hospital.

12 Despite the treatments and medications he has received since the accident, Mr. Wigle claims that his symptoms have continued without much improvement. He has not returned to his job at Ford, or to any other employment since the accident. He states that at present, his low back pain remains his main problem. He states he is unable to return to work because of back pain.

13 Mr. Wigle testified that at the time of the accident, he had been back at his job at Ford for six months, after a two year absence due to a duodenal ulcer. Mr. Wigle testified that at the time of the accident, he enjoyed good health; he was athletic and jogged daily. He enjoyed training and grooming race horses as a hobby. He denied any history of neck or back problems prior to the accident, and he claimed he had never missed work as a result of back or neck injury.

14 The Insurer raised questions about Mr. Wigle's state of health prior to the accident, suggesting that before the accident, he suffered from back problems and migraine headaches. During his cross-examination, counsel for Royal questioned Mr. Wigle regarding several notes of doctors who recorded complaints of back pain, including chronic back pain, prior to the accident.² Mr. Wigle maintained that he suffered no back problems prior to the accident, "except perhaps a sore back after driving for a long distance." He stated that he had received no treatment for back pain, nor could he remember making any back complaints. He stated he had no idea why the doctors made such notations, in the absence of a complaint on his part.

15 After reviewing the relevant notes in the context of the post-accident medical evidence, I find that Mr. Wigle had pre-existing degenerative changes in his spine and suffered occasionally from back pain; however, his condition was largely asymptomatic at the time of the accident, and did not adversely affect his functional abilities.

16 During cross-examination, Mr. Wigle admitted that he had suffered from sinus headaches prior to the accident, since he was a child. Mr. Wigle's family physician, Dr. Kuprowski, testified that Mr. Wigle suffered from migraine headaches before the accident; however, after the accident they became more severe. Given this background, and the medical records in evidence, I do not find that the car accident caused Mr. Wigle's migraines; however, his symptoms were aggravated by the accident. Mr. Wigle also testified in cross-examination that before the accident he suffered from anxiety due to the deteriorating health of his mother.

17 Mr. Wigle testified that after the accident, he saw his family doctor regularly and was enrolled in a rigorous rehabilitation program coordinated by Crawford and Company. He underwent extensive exercise maintenance, work hardening programmes and physiotherapy treatment. He also continued taking Tylenol #3 and Valium to alleviate his pain. After the completion of his physiotherapy, Mr. Wigle testified that his condition became worse, and he started taking Toradol injections for his headaches.

18 Mr. Wigle testified that in September of 1993 he had surgery to remove a lipoma on his chest, which apparently developed while he was taking physiotherapy. This condition was subsequently determined to be unrelated to the accident.

19 Mr. Wigle testified during cross-examination that, both before and after the accident, he used prescription drugs to deal with obesity problems, his duodenal ulcer and his anxiety over his mother's illness. He candidly admitted to overusing drugs to the point of developing an addiction to codeine. He obtained narcotic pain relief medications from several doctors, including his family doctor, at the same time, without the doctors knowing about this. He stated that he continued to have this problem until April 1993, when he was referred to Dr. Ross, a psychologist, who helped him learn bio-feedback and relaxation techniques to deal with his pain. He stated that Dr. Ross "brought me from a severe injury to injury I can cope with." He said Dr. Ross helped him reduce his use of medication to deal with the pain. For several years prior to seeing Dr. Ross, he consumed up to 10 Tylenol #3's a day, and 5 mg. Valium tablets, twice a day. Presently, he takes only Tylenol #2s four times a day.

20 Mr. Wigle testified that after the accident, his activities were severely curtailed. Because of his injuries from the accident, he does virtually no house work, he does not jog, nor does he groom horses. His testimony in this regard was corroborated by Jacqueline Wigle, his 26 year-old daughter, who testified that Mr. Wigle no longer prepares meals; he does not vacuum or sweep the floor; or shovel snow. He is not able to do his laundry, and needs assistance in washing his hair. He "has a hard time sitting in a movie or watching t.v., and moves around a lot."

21 Mr. Wigle testified that he is able to drive around town regularly when required. He did not describe experiencing pain while he engaged in such driving. He also drove to Harrow, a town 25 minutes from Windsor, where his girlfriend's horses are located. He denied grooming the horses; he said he only walked them, putting them on a lead.

22 The evidence indicates that starting in 1992, Crawford engaged Mr. Wigle in extensive exercise maintenance, physiotherapy and work hardening programmes and attempted to arrange for a return to his job at Ford on a modified, part-time basis. However, this was not successful, partly because Ford would not agree to such arrangement, and partly because Mr. Wigle had made an application with Ford for permanent disability benefits, prior to Crawford's involvement in the case.

23 On July 22, 1993, Mr. Wigle retired from Ford with permanent disability benefits. He stated that he would not have retired had it not been for the accident. In terms of other employment, he testified that there have been no discussions with the Insurer, and has not had any retraining. He himself has not attempted to seek any employment. I do not discount Mr. Wigle's substantial long-term disability benefits from Ford as a disincentive to return to work.

Medical Evidence:

24 After reviewing the extensive medical evidence, I find that there is no dispute among the medical professionals and health care providers who have treated or assessed Mr. Wigle regarding the nature and extent of the injuries he sustained in the accident. They all agree that Mr. Wigle sustained a whiplash-type, soft tissue injury, resulting in neck and low back pain, and associated headaches. However, there is less consensus of opinion regarding the impact of Mr. Wigle's injuries on his functional abilities.

25 Dr. Kuprowski, the only physician who gave evidence at the hearing, initially estimated the duration of Mr. Wigle's disability to be "6 weeks."³ However, in his report dated July 22, 1993,⁴ approximately two years after the accident, Dr. Kuprowski's prognosis was more guarded. He said: "the prognosis for Mr. Wigle's recovery is poor and I feel he will continue to suffer from chronic pain syndrome and migraine headaches for many years to come. He may never recover sufficiently to return to his regular job."

26 Dr. Kuprowski testified that Mr. Wigle "can't do anything physical with his back." As for retraining, Dr. Kuprowski stated that Mr. Wigle "is limited by his migraine" - however, he agreed that he might be able to return to a lighter, less physically demanding job.

27 Dr. Fleming, the Insurer's orthopaedic expert, felt in June 1992, that with an appropriate strengthening program oriented specifically to returning to his previous employment, Mr. Wigle should be able to return to his employment "in the very near future." He recommended a gradual return to full-time employment, preferably through a work hardening programme.

28 The Functional Abilities Evaluation conducted by Leslie Davis (formerly Leslie Dooby) in November 1993 at the Acute Injuries Rehabilitation and Evaluation Centre ("AIREC"), at Windsor Western Hospital⁵ concluded that Mr. Wigle did not have the ability to meet the job requirements at Ford. In her testimony, Ms. Davis stated that the result of the evaluation showed that because of pain in his low back, Mr. Wigle could not meet the various physical demands of his employment at Ford. Specifically, the evaluation indicated that Mr. Wigle reported increased pain in the lower back with prolonged sitting and standing, and that "...following 1-1/4 hours of standing activities, he required regular position changes between standing and sitting throughout the assessment."

29 Dr. Ross, the psychologist who has seen Mr. Wigle during regular sessions from April 1993 to June 1994, concluded that Mr. Wigle did not display chronic pain behaviour, nor did he show evidence of chronic pain syndrome, as suggested by Dr. Kuprowski. Dr. Ross helped Mr. Wigle develop some coping strategies for his pain, which provided some symptom relief. Although Dr. Ross felt that Mr. Wigle could be exaggerating his symptoms somewhat, he did not think that he was likely to be malingering. Dr. Ross found that from strictly an intellectual perspective, Mr. Wigle's academic readiness was not consistent with his grade 11 level of education; however, Dr. Ross felt that he was capable of learning, should he desire to enter a vocational retraining programme or to pursue academic upgrading.

30 Dr. White, a rheumatologist at the University Hospital in London, felt that "it is highly unlikely that [Mr. Wigle] will return to meaningful employment."⁶ He based his opinion on the Functional Abilities Evaluation conducted at AIREC, and epidemiological data which he said "suggests that only a very small percentage of individuals who have had chronic neck or back pain for two years requiring cessation of work ever return to meaningful employment."

31 Dr. Delaney, the physiatrist who examined Mr. Wigle in April 1995, stated in her report⁷, that he suffered from a chronic pain involving his cervical, thoracic and lumbar spine, with underlying asymptomatic degenerative changes which may have become symptomatic with the motor vehicle accident. She concluded that Mr. Wigle "has a permanent, partial disability *which* does continuously prevent him from engaging in any occupation or employment for which he is reasonably suited by education, training or experience." She stated that he "would require retraining and significant modification if he was to be able to be employed and I would predict that he would only tolerate part-time employment

and only in a very flexible work situation." She was of the view that with appropriate retraining, Mr. Wigle can do "light work or a sedentary job."

32 In contrast to the opinions of the above doctors, Dr. Stecko and Elizabeth Gillies, the orthopaedic specialist and physiotherapist, respectively, at CBI were of the view that, as of May 1992, Mr. Wigle could return to his former employment without restrictions⁸, despite his continued complaints of back pain and his standing, sitting and walking tolerance of 30 minutes. The CBI discharge summary⁹ notes that "the patient has a job that requires prolonged standing and walking, however, from the job description it is evident that he is able to change positions quite readily and this would definitely be advised for him when he returned to work." The CBI report expressed concerns that Mr. Wigle "might be eliciting an excessive degree of illness behaviour."

33 The views of CBI appear to be supported by Dr. Clifford, who saw Mr. Wigle on one occasion in April 1994. Dr. Clifford found that all soft tissue injuries which Mr. Wigle sustained in the accident "have long since healed and there is no reason to anticipate any significant soft tissue complication." However, Dr. Clifford commented that "an individual may continue to complain of pain as the affected tissues are stretched following prolonged periods of inactivity, because the affected tissues may shorten." Dr. Clifford concluded that it is "absolutely safe" for Mr. Wigle to return to work at Ford, from the perspective of tissue integrity. However, he cautioned that "any decision to return to work will likely be influenced far more by current and future environmental contingencies than on any remote soft tissue injuries." Dr. Clifford felt that because Mr. Wigle was receiving disability benefits from Ford and Royal, he lacked the motivation to return to work.¹⁰

34 Mr. Wigle has indicated that at present his main problem is his back pain, which has limited his ability to sit, stand or walk for extended periods of time. I find Mr. Wigle generally a credible witness. I find that Mr. Wigle suffered injuries to his back in the accident, and as a result, he experiences chronic back pain which restricts his ability to sit or stand for extended periods of time. I find, however, that his pain is alleviated and he is able to function normally as long as he can change his positions frequently.

Mr. Wigle's Education, Training and Experience:

35 Mr. Wigle started working at Ford in 1967, after completing grade 11. He has never held any other job, and has not received any formal education beyond grade 11. He has not taken any courses or training, except a two-week computer data entry course, and workplace safety course provided by Ford.

36 Mr. Wigle testified that at Ford, he started in the foundry section, pouring metals. Later, he drove a lift truck for a while; however, most of his 25 years at Ford were spent operating machines. During the years, his work at Ford had involved progressively less physically demanding tasks, mainly as a result of the increasing use of robotics and his seniority. However, the nature of the work has always been unskilled and manual.

37 Mr. Wigle testified that at the time of the accident, he was working as a water pump operator. This was an eight-hour per day, five days per week job, with two ten-minute and one 30-minute breaks. For most of his shift, he was on his feet, standing and walking. His job entailed monitoring the production of water pumps — up to a 1000 water pumps a day — putting readings into a computer, maintaining and checking the machine. He testified that this involved frequent bending and twisting.

38 I find that Mr. Wigle's education, training and work experience are essentially those of an unskilled "factory worker," performing predominantly physical tasks. I find that his experience relates primarily to the operation of machines used in the auto manufacturing industry.

39 Royal filed a Skill Transfer Analysis Report.¹¹ This analysis was performed by Stephen Kristof, Employment Consultant, at Crawford's request. This is a computerized search for specific alternate occupations which Mr. Wigle could pursue, given his physical limitations, his vocational and experiential profile.

40 This report concluded that Mr. Wigle was considered "reasonably suited by his education, training or experience and physical capacity to pursue and engage in 22 job matches." The job titles of these "Alternate Job Matches" are as follows:

Photocopy Machine Operator, Salad Maker, Fast Food Maker, Bottled Beverage Inspector, Cannery Worker, Compression Mold Tender, Blow Mold Tender, Quality Inspector, Bench Worker, Offset Press Operator, Pantograph Engraver, Metal Sander/Finisher, Key Cutter, Instrument Inspector, Battery Assembler, Molded Parts Inspector, Trophy Assembler, Embroidery Machine Operator, Auto Manufacturing Inspector, Driver - Auto Manufacturing, Bottling Line Attendant, Blueprint Maker.

41 The job titles were accompanied by their C.C.D.O (Canadian Classification and Dictionary of Occupations) and D.O.T (Department of Labour Dictionary of Occupational Titles) codes, as well as an indication of the physical strength they require. All of the 22 job matches were identified as "light."

42 Mr. Comartin filed a report prepared by Professor Michael F. Charette (of Michael F. Charette Consultants Ltd.)¹², challenging Mr. Kristoff's report. I was not provided with the qualifications and areas of expertise of Professor Charette. I do not find Professor Charette's report particularly helpful. Professor Charette discusses various labour market considerations which he felt Mr. Kristoff ignored in his report. He paints a bleak picture in terms of Mr. Wigle's employment prospects, were he to attempt to enter the labour market at this time. Professor Charette rejects all of the 22 jobs identified in the Skill Transfer Analysis; he says: "considering direct earnings, non-wage benefits, security of employment, the status of his employer and union, it is difficult to provide examples of employment which would be considered the equivalent for a worker with Mr. Wigle's characteristics." Professor Charette concludes that "...if one is to argue that Mr. Wigle could come anywhere close to duplicating his previous employment, then a very complete labour market research would be required to support that claim."

43 In response to counsel for Royal's questions, Mr. Wigle indicated many of these jobs could be within his physical capabilities, but he does not know whether they involve extended standing, sitting or walking. He acknowledged he did not look for alternate work; nor has he attempted to do any other job. Mr. Wigle indicated that he is prepared to take a less demanding, less well-paying job than his job at Ford, depending on the amount of sitting, standing and moving around required. He stated he might be able to do lighter and less physically demanding work than that at Ford, however, he can only do this on a part-time basis. He stated: "so long as I can move around as required, from time to time, and the length of the day, I am prepared to try it."

44 Ms. Davis, the Occupational Therapist who conducted the Functional Abilities Evaluation in November 1993, testified that in the absence of a physical demands analysis of the alternate jobs suggested by the Skills Transfer Report, she is unable to state whether or not any of them would be within Mr. Wigle's physical limitations, despite the fact that they are classified as "light" by the C.C.D.O.

Analysis and Conclusion:

45 Royal has paid Mr. Wigle weekly income benefits up to the 156 week mark of the accident under section 12(1) of the *Schedule*, which requires the insurer to pay weekly income benefits *during the period in which the insured person suffers substantial inability to perform the essential tasks of his or her occupation or employment*, as a result of injuries sustained in the accident. Therefore, Mr. Wigle's entitlement to weekly income benefits under section 12(1) is not at issue in this arbitration; however, Royal claims that Mr. Wigle does not meet the stricter test of disability under section 12(5)(b), which provides as follows:

(5) The insurer is not required to pay a weekly benefit under subsection (1),

(b) for any period in excess of 156 weeks unless it has been established that **the injury continuously prevents the insured from engaging in any occupation or employment for which he or she is reasonably suited by education, training or experience.**

(emphasis added)

46 Royal takes the position that Mr. Wigle's soft tissue injuries from the accident do not exist any more, and that his current physical problems arise from medical conditions pre-existing the accident. Royal also questions Mr. Wigle's motivation to return to any type of work. In addition, Royal contends that Mr. Wigle's present physical limitations do not continuously prevent him from engaging in employment for which he is reasonably suited by his education, training and experience.

47 The parties have cited a number of court cases and arbitration decisions¹³ to support their positions. In interpreting the phrase *continuously prevent the insured from engaging in any occupation or employment reasonably suited by education, training, or experience* in section 12(5)(b), a number of arbitration decisions have considered judicial decisions and have identified guidelines to assist in the determination of disability under section 12(5)(b).¹⁴ These guidelines may be summarized as follows:

1. The question of suitable employment in every case is a question of fact: the work must be suitable for that applicant, viewed fairly and realistically in the context of his or her educational and employment background.
2. Suitable work is not limited to what the applicant was doing at the time of the accident, provided that it is not unrelated to his or her previous experience. However, work is not necessarily suitable because an applicant has done a stint of it in the past. If the job is substantially different in nature, status, or remuneration it may not be an appropriate alternative.
3. In deciding suitable employment, one must consider such factors as the nature and status of the work compared with what the applicant did before, the hours of work and level of remuneration, the applicant's employment experience and length of time spent in different jobs, his or her age, and his or her qualifications and technical training and know-how.
4. The primary focus is on an applicant's functional limitations; however, job-market considerations are relevant in determining suitable employment.

48 I am in agreement with these principles and adopt them for the purposes of this case. In addition, in my view, it should be demonstrated that the injuries continuously prevent the applicant from engaging in the essential tasks of the alternate work. The word "continuously" is defined as "unbroken, uninterrupted, connected throughout in space or time."¹⁵

49 It has been stated in a number of arbitration decisions that the onus to establish entitlement under section 12(5)(b) lies on the insured person. Accordingly, in order to succeed in his claim for weekly income benefits after June 13, 1994, Mr. Wigle must adduce evidence sufficient to establish, on the balance of probabilities, that the injury to his back continuously prevents him from engaging in any occupation or employment for which he is reasonably suited by education, training or experience.

50 As indicated above, the primary focus of the test under section 12(5)(b) is the applicant's physical limitations. In my view, in discharging the onus of proof, the applicant is not required to prove the impossible; i.e., that the applicant is unable to perform every employment or occupation for which he/she is reasonably suited. However, at the very least, the applicant must identify some sort of "suitable" employment, describe the physical demands of the work and demonstrate with credible evidence that his/her injuries continuously prevent him/her from engaging in such employment.

51 I am not satisfied that Mr. Wigle has discharged this onus of proof. Mr. Wigle has proved that he suffers from chronic back pain as a result of the accident; and despite the contradictory medical evidence, there might be sufficient evidence to warrant the conclusion that he is disabled from his job duties at Ford. However, the evidence before me is

far from sufficient to prove that Mr. Wigle's injury continuously prevents him from engaging in any other employment for which he is reasonably suited by virtue of his educational and vocational background. I cannot assume that the only suitable work that Mr. Wigle can engage in is what he was doing at the time of the accident, nor can I conclude, on the evidence before me, that all employment for which he is reasonably suited will have the same physical demands and requirements as his job at Ford.

52 While I agree with Professor Charette's report that "the position held by Mr. Wigle at Ford Motor Company, must be classified as a premier job for an individual with his educational and skill background," I find that this is only one consideration, and not the only consideration in determining entitlement under section 12(5)(b).

53 Mr. Wigle stated he is prepared to try any work, on a part-time basis, including driving taxi in Windsor. I found Mr. Wigle a very pleasant person who could do well in a job interview. In particular, I was impressed with his candid admission of prescription drug-over use, and with how Dr. Ross helped him in dealing with his pain with less medication. He has indicated that now that he no longer has the drug problem, he is mentally prepared to return to work.

54 For all the above reasons, I find that Mr. Wigle is not entitled to weekly income benefits after June 13, 1994.

55 I have decided to exercise my discretion under section 282(11) of the *Insurance Act* to grant Mr. Wigle his expenses in respect of this arbitration.

Order:

56

1. Mr. Wigle is not entitled to further weekly income benefits.
2. Royal must pay Mr. Wigle his expenses incurred in respect of this arbitration.

Appendix A

List of Exhibits:

1. Applicant's Medical Brief
2. Insurer's Medical Brief
3. OHIP Summary
4. Investigation Reports, dated February 2, 1995
5. Two surveillance videotapes, dated January 25 and 27, 1995 and March 27 and 30, 1995
6. Dr. Young's clinical notes
7. Dr. Messer's clinical notes
8. Dr. Laing's clinical notes and records
9. Curriculum vitae of Leslie Davis
10. Dr. Stecko's report, dated October 19, 1993
11. Physiotherapy Assessment by Chi Ho Leung, dated November 2, 1993
12. Professor Charette's report, dated May 1, 1995

13. Letter from Ford to Mr. Wigle, dated March 2, 1993
14. Curriculum vitae of Dr. Gail Delaney
15. Curriculum vitae of Dr. Kevin Patrick White
16. Medical or Psychological Report (Form 4), dated July 15, 1991
17. Dr. Stecko's reports, dated December 3, 1991, April 7, 1992, May 7, 1992, September 2, 1992, November 17, 1992, February 2, 1993, May 18, 1993, and October 4, 1993

Appendix B

Other Court Cases and Arbitration Decisions before the Arbitrator:

1. *Foden v. Co-Operators Insurance Association*, 20 O.R. (2d) p. 728.
2. *Coombe v. Constitution Insurance Company*, C.I.L.R. (1978) p. 1283.
3. *DePape v. The Manitoba Public Insurance Corporation*, C.I.L.R. (1981) p. 398.
4. *McKenzie v. Federation Insurance Company of Canada*, C.I.L.R. (1981) p. 398.
5. *Hickman v. National Life Assurance Co. of Canada*, 19 C.C.L.I. p. 212.
6. *Johal v. National Life Assurance Co. of Canada*, C.I.L.R. (1992) p. 1598.
7. *Martin Wilson and Jevco Insurance Company*, January 13, 1995, OIC File No. A-008409.
8. *G. Brett Marry and Sun Alliance Insurance Company*, March 7, 1995, OIC File No. A-006752.
9. *Kathy Crouter and Economical Mutual Insurance Company*, January 3, 1995, OIC File No. A-007284.
10. *Sabita Johnson and Halifax Insurance Company*, September 1, 1994, OIC File No. A-005216.
11. *Vincenza Di Censo and Wellington Insurance Company*, August 31, 1994, OIC File No. A-004198.
12. *Kathleen Lyons and Metropolitan Insurance*, March 7, 1995, OIC File No. A-009824.

Footnotes

- 1 Prior to January 1, 1994, Ontario Regulation 672 was called the *No-Fault Benefits Schedule*. After that date it became the *Statutory Accident Benefits Schedule — Accidents Before January 1, 1994*. In this decision, the term "Schedule" will be used to refer to Regulation 672.
- 2 Found in the clinical notes and records of Dr. Anderson, exhibit 1, page 197; Dr. Young, exhibit 6; and Dr. Messer, exhibit 7.
- 3 Exhibit 16, Medical and Psychological Report, dated July, 15, 1991
- 4 Exhibit 1, page 105
- 5 Exhibit 1, page 179
- 6 Exhibit 1, page 14

- 7 Exhibit 1, page 7
- 8 Exhibit 10
- 9 Exhibit 2, tab F
- 10 Exhibit 1, pages 15-28
- 11 Exhibit 2, tab X-D
- 12 Exhibit 12
- 13 listed in Appendix B to this decision
- 14 *Francis Mills and Canadian General Insurance Company*, July 6, 1995, OIC File No. A-005599; *Judy Spicer and State Farm Mutual Automobile Insurance Company*, May 24, 1995, OIC File A-010158; *Rene G. Lafleur and Zurich Insurance Company*, May 11, 1995, OIC File No. A-004141; *Bahman Mehrani and Wellington Insurance Company*, December 15, 1995, OIC File No. A-010327; *Shirley Reid and Continental Insurance Company*, July 27, 1995, OIC File No. A-006022; *Debra Macpherson and Pilot Insurance Company*, June 30, 1995, OIC File No. A-006195.
- 15 As defined in the Concise Oxford Dictionary