

HARPER GREY LLP  
3200 – 650 West Georgia Street  
Vancouver, British Columbia, V6B  
4P7  
Canada

Tel: 604 687 0411  
Fax: 604 669 9385

## **CASE SUMMARY: MANITOBA PERMANENT IMPAIRMENT BENEFITS ARE SIMILAR TO NO FAULT BENEFIT REGIME IN BRITISH COLUMBIA: MANITOBA INSURED WAS DEEMED TO HAVE RELEASED CLAIM TO THE EXTENT OF THE BENEFITS RECEIVED**

Insurance law – Automobile insurance – Benefits – No-fault coverage – Statutory provisions – Collateral benefits – Jurisdiction – Conflict of laws – Choice of law; Subrogation – Right of insurer to subrogation

### *Manitoba Public Insurance v. Dybhaun*

The Manitoba Public Insurance Corporation Act granted the Manitoba public auto insurer the ability to bring a subrogated claim paid to its insured as a result of a MVA that occurred in BC for which the defendant was liable. The benefits were strikingly similar to the no fault benefit regime in B.C. Therefore the relevant sections of the B.C. legislation applied such that the Manitoba insured was deemed to have released their claim to the extent of the benefits received.

[2016] B.C.J. No. 28

2016 BCSC 27

British Columbia Supreme Court

January 11, 2016

R.A. Skolrood J.

This was a special case brought by Manitoba Public Insurance (“MPI”), the Manitoba public automobile insurer, with respect to whether it could recover permanent impairment benefits (“PI Benefit”) paid to its insured as a result of a motor vehicle accident that occurred in British Columbia. For the purposes of the special case, the defendant admitted liability for the accident.

Specifically, the parties sought the court’s answer to the following three questions:

1. Is the PI Benefit in s.127 of the Manitoba Public Insurance Corporation Act, C.C.S.M., c. P215 (“MPICA”) an injury, loss, damage or expense that raises a claim under a head of damages that may be claimed against the defendant in tort?
2. Is the PI Benefit in s.127 of the MPICA “similar” to those within the definition of “benefits” in ss. 1.1 and 83 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c.231 (“IVA”)?
3. Is the PI Benefit in s.127 of the MPICA a collateral benefit deductible from any tort claim against the defendant?

After reviewing the legislative framework and the relevant case law, the court distilled the following principles:

1. Section 79 of the MPICA purports to confer on MPI a right of subrogation for the purpose of enabling MPI to pursue recovery of statutory benefits paid to its insured in connection with motor vehicle accidents that occur outside of Manitoba. As a right of subrogation, as distinct from a statutory right, MPI is limited to seeking recovery of only the amount that would be payable in a tort action;

2. As a matter of constitutional law, a provincial legislature may not legislate beyond its territorial competence so as to affect civil rights in another province;

3. Where an out-of-province insurer pays benefits to an insured who is injured in an accident in B.C., those benefits are deductible from any damages award in a tort action in B.C. to the extent that they are similar to the benefits payable under Part 7 of the Insurance (Vehicle) Regulation, B.C. Reg 447/83 (the "Regulation"); and

4. The question of similarity is to be assessed by reference to the general nature and character of the benefits in issue and a precise match is not required.

With respect to the first issue, the court rejected the argument that the statutory benefits must align with a head of damages in tort to be recoverable. In any event, the court noted that they were similar as both were payable in respect of injuries suffered in a motor vehicle accident. As well, the court noted because MPICA conferred a subrogated right of recovery, rather than a statutory right, it did not offend the principles of constitutional law. Therefore, the court answered the first issue in the affirmative, subject to any statutory or common law defences available to the defendant.

The court also answered the second issue in the affirmative as it found that the no fault benefits sections of the MPICA and the Regulation to the IVA were strikingly similar such that s.83 of the IVA applied. MPI's insured was therefore deemed to have released their claim to the extent of the PI Benefit received. This was determinative of MPI's ability to recover the PI Benefits.

Finally, the court agreed that the collateral benefits rule had no application to the PI Benefits as they were benefits paid by a third party with a right of subrogation.

This case was digested by [Michael J. Robinson](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at [mrobinson@harpergrey.com](mailto:mrobinson@harpergrey.com) or review his biography at <http://www.harpergrey.com>.