

**Automobile Injury Appeal Commission**

**Province of Saskatchewan**

**Citation:** *V.R. v. Saskatchewan Government  
Insurance, 2006 SKAIA 069*

**Date:** 20061117

**File:** 065 of 2003

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**BETWEEN**

**V.R., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**

**Ed Holgate for the Applicant**

**Dale Brown for the Respondent**

***Before:*** **Beverly Cleveland, Chair**

**THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH  
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND  
OTHER IDENTIFYING INFORMATION**

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Heard at Regina, Saskatchewan  
October 27, 2006

## ORDER

[1] This is an application by the Appellant, V.R., for leave to vary the decision of this Commission: *V.R. v. Saskatchewan Government Insurance* 2004 SKAIA 023 (the original decision). In addition to the Application for Leave and Variation filed by the Appellant and the included documents, the parties attended by teleconference for argument.

### SUBMISSIONS AND ARGUMENT

[3] Mr. Holgate, solicitor for the Appellant, submits the material changes of circumstance on which his client relies are the appeal by SGI of the original decision to the Court of Appeal and then later abandoning it, the passage of time, his health has markedly declined and that SGI refuses to calculate or pay any benefits to him.

[2] Mr. Holgate submits in the alternative this is an application to clarify the meaning of paragraphs [71] to [73]<sup>1</sup> of the original decision, particularly at [71] and what is meant by “(H)e is not entitled to an income replacement benefit for the period claimed”; at [72] what are the “other benefits” and for what period of time are they reinstated and for an order calculating the amount of the income benefits he is entitled to under the *Act*.

[4] Mr. Holgate states the leave application is partly based on two decisions that have not yet been heard by the Commission. He states the benefits in the application to vary and the pending appeals are inextricably linked and it is necessary to keep those issues alive to preclude a finding by the Commission it has no jurisdiction because the matter has already been decided or that it is bound by the original decision. He seeks to adduce further evidence on certain findings of fact made in the original decision.

{5} Mr. Brown, solicitor for SGI, submits the appeal to the Court of Appeal or passage of time is not a change of circumstance reasonably contemplated by s. 195(3) of the *Act*.

[6] He states the Appellant's allegation that SGI refuses to calculate or pay (any) benefits ties into the subsequent letters in June and September 2006. He argues the original decision directs the matter back to SGI to determine what benefits the Appellant is eligible for and not, as he suggests the Appellant interprets, that he is entitled to an income benefit which SGI must pay immediately.

[7] The Appellant has two appeals pending with the Commission arising from letters dated June 28 and September 5, 2006. Mr. Brown says the June 28 letter is not a decision but rather a "game plan" of sorts as to how SGI views the status of the file since the appeal was abandoned. Both counsel refer to the letters in their submissions and I read them after their arguments were concluded.

## LAW AND ANALYSIS

[8] *The Automobile Accident Insurance Act*<sup>2</sup> provides for variation of compensation as follows:

**195(1)** A decision of the Court of Queen's Bench of the appeal commission made pursuant to section 191 or 193 may, at any time, be varied on the application of either the claimant or the insurer.

(2) A party who wishes to have a decision varied shall apply for leave to make an application for variation to the Court of Queen's Bench or the appeal commission:

(a) by serving on the other party a copy of the application in the prescribed form; and

(b) by filing the application mentioned in clause (a), together with proof of service, with the Court of Queen's Bench or the appeal commission, whichever originally decided the matter.

(3) If the Court of Queen's Bench or the appeal commission is of the opinion that the claimant has established a prima facie case that there has been a material change in the claimant's circumstances, the Court of Queen's Bench or the appeal commission may grant leave to make an application for variation.

(4) The provisions of section 192 or 193, as the case may be, apply, with any necessary modification, to an application for variation pursuant to this section.

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<sup>1</sup> No argument was raised regarding paragraph [73]

<sup>2</sup> c. A-35, RSS 1978 as amended 2002 (the new *Act*)

[9] The leave application dated August 31, 2006 was filed with the Commission office by fax on September 15, 2006. Mr. Brown acknowledged service on SGI was made August 16, 2006.<sup>3</sup>

[10] The Appellant must establish a *prima facie* case there has been a material change in his circumstances to grant leave to make an application for variation. What is a material change in circumstance is not defined in the *Act*. The Supreme Court of Canada defines material change of circumstances in *Willick v. Willick*<sup>4</sup> as "...a change that, if known at the time, would likely have resulted in different terms...." The *Willick* case deals with an entirely unrelated area of law but I think the definition is helpful in considering what kinds of things might be a material change in circumstance.

[11] I agree with Mr. Brown that an appeal to the Court of Appeal is not a material change in circumstance contemplated by s. 195(3) of the *Act*. An appeal is a statutory remedy to correct legal errors. It *may* be that a material change in circumstance *could* be made out in a case where the prosecution of the appeal was found to be tantamount to abuse - but that is not the case here. The fact the appeal was abandoned well after the time periods set out in the Rules of the Court of Appeal to "perfect" is not on the face of it an abuse nor do I find it is a material change in the Appellant's circumstance.

[12] Mr. Brown queries what is a *prima facie* case and if it is sufficient for the Appellant to assert his condition has deteriorated or if something more is needed, for example, a medical report. To the extent necessary, Mr. Holgate requests leave to file Affidavit(s) or call *viva voce* evidence. I find leave to file or hear evidence is not required in this application. I find the submission that the Appellant is now more incapacitated is not a material change relevant to the application for leave to vary. In my view, minimally, a material change must be related to the original decision – and it is not here.

[13] SGI raised a limitation argument in the original decision that ultimately failed and its decision (April 2002) terminating his benefits under s. 185 of the *Act* for providing false travel

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<sup>3</sup> Note: the date of service on SGI predates completion of the formal Application for Leave and Variation dated August 31, 2006

expense and income benefit claims was set aside in part.<sup>5</sup> The nature or extent (causation) of the Appellant's injuries was not in issue in the original decision.

[14] The preservation of jurisdiction and adducing further evidence on findings of fact in the original decision is not a material change in circumstance and is, seemingly, a means to correct what the Appellant sees is a faulty or incomplete decision. The decision dated September 5, 2006 currently under appeal but not yet heard by the Commission, as I read it, deals with these issues: causation, income and treatment (rehabilitation) benefits and calculation of the expense claims in the original decision. The Appellant is, of course, entitled to adduce whatever evidence he thinks is relevant to his case on the issues pending on appeal before the Commission.

[15] Variation of compensation under s.195 of the *Act* does not, in any manner, provide for clarification of a decision and the Appellant's request for an alternative remedy is *ultra vires* of the legislation and my jurisdiction and accordingly must fail.

[16] The application for leave to vary the original decision is dismissed.

**Dated** at Regina, Saskatchewan, on November 17, 2006.

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Beverley Cleveland, Chair

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<sup>4</sup> [1994] 3SCR 670 at 671

<sup>5</sup> Reimbursement for the purchase of a family leisure pass was denied in the original decision and was not raised in the leave application