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## Missing Work And Losing Income To Attend Physiotherapy Will Not Trigger Income Replacement Benefit

- Reported Case: Pelchat v. Manitoba Public Insurance Corp.
- Citation: 2007 MBCA 52
- At Issue: Whether a claimant injured in a motor vehicle accident is entitled to receive an income replacement benefit under the *Manitoba Public Insurance Corporation Act* for pay lost to attendance at physiotherapy during working hours.
- The Court: Manitoba Court of Appeal
- Judgment Rendered: May 9, 2007
- Factual Summary: The claimant was injured in a motor vehicle accident while on parental leave and was required to attend physiotherapy. After the parental leave expired, the claimant returned to work full-time, but only was able to attend physiotherapy during her working hours. The provincial insurer agreed to pay for the physiotherapy, but refused to provide the claimant with an income replacement benefit for lost pay to attend during working hours.
- The legislation (s. 81(1)) provided that a full-time earner was entitled to income replacement indemnity if, as a result of an accident, the earner was unable to continue full-time employment, or was unable to continue any other employment held in addition to the full-time employment, or was deprived of a benefit under the *Unemployment Insurance Act* or *National Training Act* to which she was entitled at the time of the accident. The legislation also contained a further provision (s. 138) saying that the insurer shall take any measures necessary or advisable for the rehabilitation of the victim, to lessen a disability resulting from bodily injury, and to facilitate the return to normal life or the labour market.
- Disposition By Lower Court: Automobile Injury Compensation Appeal Commission found that a claimant who had to take time away from work to attend physiotherapy was entitled to the income replacement indemnity.
- Appellate Decision: To qualify for income replacement indemnity, a claimant must be unable to perform the essential duties of his or her employment. When the claimant ended her parental leave, she returned to full-time employment, and did not qualify for the indemnity. With respect to the application of s. 138, the claimant had already been rehabilitated to the degree contemplated by that section of the legislation, and the objectives had been achieved. Appeal allowed.