

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-07-24**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Dr. Sheldon Claman
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], was represented by
Mr. Dan Joannis;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Kirk Kirby.

HEARING DATE: January 8, 2010

ISSUE(S): Entitlement to funding for non-surgical root canal treatment.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance
Corporation Act ('MPIC Act')

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

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on March 31, 2003. The vehicle in which she was the front seat passenger collided with three elk. The Appellant's seat belt was engaged, but the air bag did not deploy. One of the elk crashed through the vehicle's windshield and struck the Appellant in the head causing injuries to the Appellant's head, neck and teeth.

[Appellant's Dentist #1] examined the Appellant and requested approval of a crown following the root canal of #17. In his report of May 14, 2004 [Appellant's Dentist #1] stated:

“[The Appellant] requires a core restoration and crown #17 to properly restore tooth #17 and prevent further stress fractures. The stress fractures may have come from the accident or eventually due to clenching and bruxing para-functional habits.”

The Appellant was referred to [Appellant’s Dentist #2]. [Appellant’s Dentist #2] wrote to MPIC on June 20, 2006 and provided the following report:

“[The Appellant] was referred to our office for assessment of her teeth in the first and fourth quadrants. [The Appellant] reported that her teeth became sensitive after a motor vehicle accident involving an elk three years ago.

On examination of her teeth, I noted that tooth #47 had a hairline crack which involved both mesial and distal marginal ridges. When tested with cold, teeth #15 and #47 were hypersensitive and the elicited pain lingered for several minutes.

I suspect that teeth #47 and #15 are developing pulpitis as a result of trauma sustained from her accident. I advised [the Appellant] that non-surgical root canal treatment is needed for teeth #47 and #15.”

The case manager referred [Appellant’s Dentist #2’s] report to [MPIC’s Dentist], [text deleted], on June 26, 2006. On July 9, 2006, [MPIC’s Dentist] replied as follows:

“It is difficult to ascertain what the probable cause of present symptoms is. Patient has a history of grinding & very large pre existing filings in teeth. Also no previous report of discomfort in these teeth – although we had covered endo on #17 which is on the same side. I can’t say with any certainty what the probable cause is for present dental problem.” (underlining added)

Case Manager’s Decision:

On July 25, 2006 the case manager wrote to the Appellant and stated:

“As discussed, this confirms our decision regarding [Appellant’s Dentist #2’s] request for further treatment as outlined in his report of June 20, 2006.

That report, as well as your entire medical file, has been reviewed by our Health Care Services Team. The medical information reviewed indicates that there is insufficient evidence to support a causal relationship between your current signs/symptoms and the motor vehicle accident of March 31, 2003. Therefore, we are unable to approve funding of the requested treatment.

We base our decision on Section 136(1)(a) of The Manitoba Public Insurance Act which reads as follows:

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

On August 28, 2006, in response to receipt of the case manager's decision, the Appellant wrote to the case manager and stated:

"...I did not have any problems with my teeth prior to the accident on March 31, 2003. I would also like to draw your attention to the letter from [Appellant's Dentist #2] which states that teeth **#47 and #15 are developing pulpitis as a result of trauma sustained from the accident.**"

Application for Review:

On September 18, 2006, the Appellant made an Application for Review of the case manager's decision. On December 8, 2006 the Internal Review Officer wrote to [MPIC's Dentist] and stated:

"Please advise if you have spoken to [Appellant's Dentist #2] with respect to this Claimant. Also, please advise how you discovered that the Claimant has a history of grinding."

On December 18, 2006, [MPIC's Dentist] replied and stated:

"No I have not talked to [Appellant's Dentist #2]. Since the accident happened in 03 if the teeth had been damaged/cracked I would presume there would be symptoms long before this time.

The teeth in question had pre existing large fillings and the symptoms have developed very slowly over time – which is inconsistent with direct trauma but very consistent with repetitive trauma – as would be associated with grinding. I have noted in the file where there is mention of grinding – 2 areas."

Internal Review Officer's Decision:

On January 3, 2007 the Internal Review Officer issued her decision dismissing the Application for Review and confirming the case manager's decision dated July 27, 2006. In rejecting the Application for Review, the Internal Review Officer relied primarily on [MPIC's Dentist's] dental opinions. In her reasons for decision, the Internal Review Officer stated:

“After your hearing I asked [MPIC's Dentist] whether he had spoken to [Appellant's Dentist #2] and also how he had discovered that you had a history of grinding. In his response he advised that he had not talked to [Appellant's Dentist #2] but he goes on to say that because your motor vehicle accident happened in 2003 if your teeth had been damaged or cracked he presumes that there would have been symptoms long before this time. He also says that “the teeth in question had pre-existing large fillings and the symptoms have developed very slowly over time which is inconsistent with direct trauma but very consistent with repetitive trauma as would be associated with grinding.”

For my benefit [MPIC's Dentist] also pointed out two areas in your dental file that show a history of grinding. He pointed me to the report from [Appellant's Dentist #1] dated February 1, 2005 on Page 2 where it is noted that your original appliance is wearing down. [MPIC's Dentist] advises that acrylic does not wear unless the patient is grinding or clenching their teeth. He also pointed to a May 14, 2004 report from [Appellant's Dentist #1] that states that you have crunching and buxing para functional habits where [MPIC's Dentist] states clenching and buxing para functional habits is an indication of grinding. This therefore is an explanation of how [MPIC's Dentist] formed an opinion that you have a history of grinding.

After reviewing all the information and taking into account the reasoning of [MPIC's Dentist] I agree with his opinion. Therefore, it is my decision that the required root canal treatment is not related to your motor vehicle accident and therefore should not be funded by Manitoba Public Insurance. As a result I am confirming your Case Manager's decision and dismissing your Application for Review.”

Notice of Appeal:

On February 23, 2007 the Appellant filed a Notice of Appeal together with an attached letter dated January 20, 2007, which stated:

“I am in receipt of a letter from [Internal Review Officer] dated January 3, 2006 regarding the above claim number and the decision of appeal for the Non-Surgical Root Canal Treatment. I would like to appeal the decision of [Internal Review Officer] as I did not have any problems with my teeth prior to the accident on March 31, 2003. Tooth #17 had been repaired and paid for by MPI, obviously someone at that time thought that my tooth trouble was caused by the accident. A precedence (sic) has been

set. If my other two teeth, which are on the same side and suffer the same condition, the probability of this trouble being caused by the accident is quite likely.”

On June 6, 2008 the Claimant Adviser wrote to [Appellant’s Dentist #3] [text deleted], Manitoba and posed certain questions to him. [Appellant’s Dentist #3], who was not the Appellant’s dentist, responded to the Claimant Adviser Office and advised him that he had worked at the [text deleted] Dental Clinic since August 2000 and therefore did not have any personal knowledge of the status of the Appellant’s teeth prior to or shortly after the motor vehicle accident.

When [Appellant’s Dentist #3] was asked by the Claimant Adviser Office about the last time the Appellant was seen at the [text deleted] Dental Centre prior to the motor vehicle accident, he stated that the Appellant was last seen on May 16, 2002.

The Claimant Adviser also asked the following questions of [Appellant’s Dentist #3]:

“Do routine dental appointments include screening for bruxism or parafunctional grinding?”

As [the Appellant’s] attending dentist, having now had an opportunity to carefully review her dental records, what is your opinion with respect to whether or not there is evidence of bruxism or parafunctional grinding prior to March 31/03?”

In reply [Appellant’s Dentist #3] in his report dated July 17, 2008 states:

“The only notes made of any possible parafunction were made on May 16, 2002. The note is as follows: Pain in her left ear, frequent headaches, considering splint. The entry prior to this suggested a splint is required May 5, 2002.” (underlining added)

The Claimant Adviser Officer also wrote to [Appellant’s Dentist #1] whose first contact with the Appellant was on June 16, 2003. In response to a number of questions put by the Claimant Adviser, [Appellant’s Dentist #1] replied as follows:

“3. [The Appellant] wears her dental appliance on a continual basis. Acrylic material, from which the appliance is fabricated, can slowly erode away because of its inherent chemistry and composition.

4. Yes, direct trauma can cause bruxism and clenching due to the initiation of pain and discomfort. The body’s response to pain is muscle spasm, clenching and grinding and continued muscle spasm creates pain. This self-perpetuating situation will continue indefinitely unless interceptive intervention of the pain spasm cycle is initiated.

5. No, a dental appliance will not cause the wearer to clench their jaw. The purpose of the appliance is to alleviate muscle spasm by allowing the jaw to rest apart from the teeth but nocturnal parafunctionally grinding or clenching can occur if chronic pain still persists in muscles, teeth or joints as a result of the motor vehicle accident.

6. One can imagine the trauma associated with a large animal such as an elk crashing into a vehicle and striking [the Appellant] in the head as an extremely significant event. There is no doubt that such an event can produce significant problems to head, neck and teeth although enamel fractures were not present at the time. There is no doubt in my mind that, in all medical probability, the collision with the elk did materially contribute to the dental injuries of teeth #15 and #47 even though the enamel cusps appeared intact. Chronic trauma to the teeth could ultimately lead to deterioration of the pulp tissue within the teeth in question and ultimately the necessity of root canal treatment due to trauma.” (underlining added)

Appeal:

The relevant provision under the MPIC Act in respect of this appeal is Section 136(1)(a):

Reimbursement of victim for various expenses

136(1) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

The Appellant testified at the hearing that:

1. Prior to the motor vehicle accident she did not have any trouble with her teeth.
2. However, subsequent to the motor vehicle accident she had a great deal of pain and suffering to the right side of her mouth, but not to the left side of her mouth.

3. MPIC did reimburse her for the cost of a root canal for tooth #17 which is located on the right side of her mouth, which is the same side of her mouth as teeth #15 and #47.
4. MPIC, however, refused to reimburse the cost of the root canal for teeth #15 and #47.
5. She does not recall having pain to her left ear, frequent headaches and advising her dentist of this, nor discussing with her dentist the possibility of obtaining a splint.

The Appellant described the motor vehicle accident in which she was a passenger where the vehicle collided with elk, which crashed through the front window and smashed her in the face.

She also testified that:

1. Subsequent to the motor vehicle accident she commenced having pain to the right side of her mouth and in April of 2003 she attended at the local dentist's office and complained of facial pain and tension headaches.
2. She then saw [Appellant's Dentist #4] and complained of pain to the right side of her mouth and he referred her to [Appellant's Dentist #1] for assessment.
3. She saw [Appellant's Dentist #1] and complained of pain to her mouth.
4. [Appellant's Dentist #1] recommended that she wear a removable orthotic appliance to relieve the pain.
5. She was referred to [Appellant's Dentist #2] who advised her that she required root canal treatment to her teeth and her mouth.
6. MPIC agreed to pay for the cost of a root canal for tooth #17 which was on the same side as teeth #15 and #47 for which MPIC refused reimbursement of the cost of the root canal.

MPIC did not call any witness.

Submission:

MPIC's legal counsel submitted that:

1. The Appellant had not established, on a balance of probabilities a causal connection between the motor vehicle accident and the injury to teeth #17 and #47.
2. A review of the dental reports of [MPIC's Dentist] disclosed that prior to and following the motor vehicle accident, the Appellant did not have any complaints of pain to her teeth.
3. Although three years elapsed after the motor vehicle accident, [MPIC's Dentist] was correct in concluding that the Appellant's pre-existing large fillings and symptoms had developed slowly over a period of time and were inconsistent with direct trauma, but consistent with repetitive trauma as would be associated with grinding. MPIC's legal counsel referred to [MPIC's Dentist's] opinion that the Appellant's original orthotic appliance was worn down as a result of the Appellant's grinding or clenching of her teeth.
4. [MPIC's Dentist] was correct in asserting that the Appellant had a history of grinding.
5. When [MPIC's Dentist] completed his report, he was not aware of [Appellant's Dentist #3's] report which was provided to the Claimant Adviser Office on July 17, 2008.
6. In that report, [Appellant's Dentist #3] indicated that he had examined the clinical records of the [text deleted] Dental Centre and indicated that the notes made on May 16, 2002 indicated possible parafunction, and pain in the Appellant's left ear, frequent headaches and that a splint was being considered.
7. [Appellant's Dentist #3] further indicated that the previous entry dated May 5, 2002 suggested a splint.
8. [Appellant's Dentist #3] also indicated that when he read the chart there were only two areas of bruxism or parafunctional grinding prior to March 31, 2003 and these dates were May 5, 2002 and May 16, 2002.

9. The evidence prior to the motor vehicle accident indicated the Appellant had a history of parafunctional grinding and clenching which corroborated [MPIC's Dentist's] opinion that the Appellant's symptoms to teeth #15 and #47 were not connected to the motor vehicle accident.
10. The reports of [Appellant's Dentist #1] dated May 14, 2004 and August 22, 2008 demonstrated a conflict in [Appellant's Dentist #1's] opinion as to the issue of causation.

MPIC's legal counsel therefore submitted that the Internal Review Officer was correct in relying on [MPIC's Dentist's] personal opinion to deny reimbursement of the cost of the root canal for teeth #15 and #47 and requested that Appellant's appeal be dismissed.

The Claimant Adviser stated that:

1. The Appellant did establish, on a balance of probabilities that there was a causal connection between the motor vehicle accident and the damage to the Appellant's teeth #15 and #47, which required a root canal.
2. The Internal Review Officer relied solely on the reports of [MPIC's Dentist] in denying the Appellant's application for compensation.
3. [MPIC's Dentist] had erred in concluding that because the motor vehicle accident had happened in 2003 and any complaints about the Appellant's teeth being damaged or cracked would have been symptoms which would have been evident long before 2006.
4. That there was no record of the Appellant complaining about dental pain after the motor vehicle accident.

The Claimant Adviser further submitted that:

1. There were a number of reports that indicated that the Appellant did in fact complain

about dental pain following the motor vehicle accident and that [MPIC's Dentist] had erred in this respect.

2. As a result of this error, [MPIC's Dentist] concluded that the deterioration of the Appellant's dental appliance was due primarily to the Appellant's clenching and grinding.

The Claimant Adviser Office therefore submitted that [MPIC's Dentist's] report was flawed and as a result the Internal Review Officer erred in concluding that there was no causal connection between the motor vehicle accident and the Appellant's complaints to teeth #15 and #47.

The Claimant Adviser, in his submission, relied primarily on the reports of [Appellant's Dentist #1] and concluded that due to the nature of the motor vehicle accident there was a causal connection between the damage to the Appellant's teeth #15 and #47 and the motor vehicle accident. The Claimant Adviser therefore determined that the Appellant had established on a balance of probabilities that the Appellant's two teeth had been injured as a result of the motor vehicle accident. He requested that the appeal be allowed and MPIC be required to reimburse the Appellant for the cost of the root canal to teeth #15 and #47.

Decision:

The Commission rejects the submission of MPIC and concludes that there was a causal connection between the motor vehicle accident and the damage to the Appellant's teeth #15 and #47. The Commission notes that the Appellant's testimony in respect of the manner in which the motor vehicle accident occurred, indicated that the Appellant was struck in the head with great force by an elk which had crashed through the front window.

The Appellant testified that prior to the motor vehicle accident she had never had a complaint about her teeth and that shortly after the motor vehicle accident she started to complain about pain to the teeth on the right side of her face. She also testified that she had never worn a splint prior to the motor vehicle accident. The Commission concludes that if the Appellant did complain about pain to her left ear and headaches prior to the motor vehicle accident, these complaints were of a mild nature since there was no dental treatment provided to the Appellant at the time of these complaints.

The Appellant gave evidence in a direct and unequivocal fashion and maintained her position throughout her examination and cross-examination. The Commission finds her evidence to be credible and is consistent with the testimony of [Appellant's Dentist #1], [Appellant's Dentist #2] and [Appellant's Dentist #4].

MPIC's legal counsel submitted that without [Appellant's Dentist #3's] report of July 17, 2008 MPIC would not be able to establish that there was no causal connection between the Appellant and the motor vehicle accident. An examination of [Appellant's Dentist #3's] report indicates that he did not quote the clinical notes that were recorded on the Appellant's chart prior to the motor vehicle accident. Instead [Appellant's Dentist #3] provided his interpretation of the Appellant's clinical notes which had been authored by some other dentist, who was not identified to the Commission. The Commission did not have the opportunity of examining the actual clinical notes to determine whether or not [Appellant's Dentist #3] had accurately interpreted the clinical notes. Nor did the Commission have an opportunity of having [Appellant's Dentist #3] or the author of the original clinical notes testify and be subject to examination and cross-examination.

Since [Appellant's Dentist #3] did not testify at the hearing and was not subject to cross-examination, the Commission is unable to determine the accuracy of the clinical records reported on by [Appellant's Dentist #3]. The Commission finds that if MPIC was relying on [Appellant's Dentist #3's] report, it should have produced the entire clinical record for review by the Commission and to have called either the author of the original clinical notes or [Appellant's Dentist #3] to testify in respect of this report. The report from [Appellant's Dentist #3] was not a result of his personal examination of the Appellant, but rather his review of another dentist's clinical notes. For these reasons the Commission gives no weight to [Appellant's Dentist #3's] interpretation of the clinical records relating to bruxism or parafunctional grinding.

[Appellant's Dentist #3] in his report dated July 17, 2008 states:

“The only notes made of any possible parafunction were made on May 16, 2002. The note is as follows: Pain in her left ear, frequent headaches, considering splint. The entry prior to this suggested a splint is required May 5, 2002.” (underlining added)

[Appellant's Dentist #3] did not state that there was a probable parafunction but rather a possible parafunction. Accordingly, the Commission finds that [Appellant's Dentist #3's] opinion in respect of parafunction does not meet the standard of proof of a balance of probability and as a result the Commission gives no weight to [Appellant's Dentist #3's] report in this respect.

On the other hand, the Appellant testified and was subject to examination and cross-examination and the Commission accepts her testimony that she had no complaints about her teeth prior to the motor vehicle accident and that the symptoms started shortly after the motor vehicle accident itself. The Commission further accepts the Appellant's testimony that at no time was she treated for a splint prior to the motor vehicle accident. [Appellant's Dentist #3's] report did not describe any follow-up dental treatment in respect of the Appellant's complaints of dental pain and this

corroborates the Appellant's testimony in this respect.

The Commission therefore, in the circumstances, gives greater weight to the testimony of the Appellant than it does to [Appellant's Dentist #3's] report.

MPIC also relied on the dental opinion of [MPIC's Dentist] in concluding that there was no causal connection between the motor vehicle accident and the Appellant's complaints.

The Commission finds that [MPIC's Dentist] erred in concluding that there was no record of the Appellant complaining about her teeth until approximately three years after the motor vehicle accident. [MPIC's Dentist], in his interdepartmental memorandum to MPIC's case manager of July 9, 2006 stated that since the Appellant had a history of grinding and very large pre-existing fillings in her teeth prior to the motor vehicle accident and there had been no report of any dental pain from the Appellant until approximately three years after the motor vehicle accident, [MPIC's Dentist] concluded:

“...the teeth in question had pre-existing large fillings and the symptoms have developed very slowly over time which is inconsistent with direct trauma but very consistent with repetitive trauma as would be associated with grinding.”

[MPIC's Dentist's] opinion that the Appellant had not suffered any pain until three years after the motor vehicle accident was incorrect. [Appellant's Dentist #5] of the [text deleted] Dental Centre, in an initial health care report to MPIC dated April 25, 2003, stated that the Appellant had facial pain and tension headaches. [Appellant's Dentist #4], the Appellant's dentist, in a report dated June 4, 2003, stated that the Appellant “presented with generalized pain of dental origin likely ligament trauma. The reports from these two dentists clearly establish that shortly

after the motor vehicle accident the Appellant was complaining about dental pain. These two reports corroborate [Appellant's Dentist #1's] report to MPIC dated July 9, 2003 which stated:

“[The Appellant] presented to my office as a referral from [the Appellant's Dentist #4]. She had been involved in a motor vehicle accident March 31/03 and has the following symptoms since that time:

- 1) Bilateral temporal pain
- 2) Pain behind both eyes
- 3) Pain on the left side of her forehead and top of head
- 4) Bilateral neck pain
- 5) Pain her left ear
- 6) Left ear congestion
- 7) Occasional dizziness
- 8) Bilateral tempomandibular jaw joint pain
- 9) Bilateral clicking or popping in both jaw joints
- 10) Difficulty swallowing
- 11) Difficulty chewing with pain

[The Appellant] appears to be suffering from a myofascial pain and dysfunction problem. She will require the fabrication and wear of a mandibular removable orthotic appliance to alleviate pain and spasm in the cranio-mandibular musculature. In addition, assessment and treatment of cranio-cervical muscles should be done by a physiotherapist.”

This report from [Appellant's Dentist #1] graphically demonstrates that the Appellant was suffering from pain subsequent to the motor vehicle accident. In his report to MPIC dated June 27, 2005, [Appellant's Dentist #1] states:

“[The Appellant] is continuing to have problems since her motor vehicle accident.”

The Commission finds that [MPIC's Dentist] was either not provided with, or failed to consider, the above mentioned dental reports that the Appellant was clearly suffering from dental pain in the short period of time after the motor vehicle accident and not three years after the motor vehicle accident as found by [MPIC's Dentist]. As a result [MPIC's Dentist] erred in concluding, that since the Appellant's teeth contained pre-existing large fillings and there had been no complaints of dental pain by the Appellant until three years after the motor vehicle accident. As a result [MPIC's Dentist] concluded that the symptoms had developed very slowly

over time and this was inconsistent with direct trauma and very consistent with repetitive trauma associated with grinding.

The Commission finds that the Internal Review Officer accepted the flawed conclusion of [MPIC's Dentist] who had concluded there was no causal connection between the Appellant's complaints of teeth #15 and #47 and the motor vehicle accident.

The Commission further noted that the Internal Review Officer reported in her Internal Review Decision that [Appellant's Dentist #1] had indicated that the original appliance was wearing down and [MPIC's Dentist] had concluded that the acrylic material of the original appliance does not wear unless a patient is grinding or clenching their teeth. In reply, [Appellant's Dentist #1] testified that the wear and tear on an appliance can be caused by the original material wearing down over a period of time.

It should be noted that [MPIC's Dentist] did not personally examine the Appellant and did not have an opportunity of examining the Appellant's appliance. On the other hand, unlike [MPIC's Dentist], [Appellant's Dentist #1] did personally examine the Appellant on several occasions and had the opportunity of obtaining a dental history. As well, [Appellant's Dentist #1] arranged for the Appellant to obtain the original appliance and therefore had the opportunity of examining the appliance. As a result, [Appellant's Dentist #1] was in a much better position than [MPIC's Dentist] to determine the reason why the appliance wore down.

The Commission notes that [MPIC's Dentist] contradicted himself with respect to the issue of causation.

In reply to the case manager's interdepartmental memorandum, on July 9, 2006, [MPIC's Dentist] stated "It is difficult to ascertain what the probable cause of present symptoms is..." [MPIC's Dentist] further stated "I can't say with any certainty what the probable cause is for present dental problem".

The Commission further notes that on December 18, 2006, approximately five months later, in his memorandum to the case manager [MPIC's Dentist] stated:

"...Since the accident happened in 03 if the teeth had been damaged/cracked I would presume there would be symptoms long before this time. The teeth in question had pre existing large fillings and the symptoms have developed very slowly over time – which is inconsistent with direct trauma but very consistent with repetitive trauma – as would be associated with grinding..."

The Commission finds that there was no evidence presented by MPIC to establish that between [MPIC's Dentist's] report of July 9, 2006 and his report of December 18, 2006, he was provided with further information that would cause [MPIC's Dentist] to change his opinion and to conclude that there was no causal connection between the Appellant's symptoms and the motor vehicle accident. The Commission was provided with no information to explain the significant change in [MPIC's Dentist's] opinion from initially concluding he was uncertain if there was a causal connection to the motor vehicle accident to concluding that in fact there was no causal connection to the motor vehicle accident. In these circumstances, the Commission cannot give any weight to [MPIC's Dentist's] opinion in respect of the issue of causation.

[MPIC's Dentist] found large fillings on the Appellant's right side of her mouth and concluded that the Appellant's symptoms of pain occurred slowly over a period of time and were inconsistent with trauma. It should be noted that the Appellant testified that the elk struck her directly in her mouth. The Appellant had large fillings on both the right and left side of her

mouth and it was only three teeth on the right side which required treatment and the teeth on the left side did not require treatment. If the Appellant's damage to her teeth was caused by clenching and grinding – parafunction, then the root canals would have been required on both sides of the Appellant's mouth. The Commission therefore rejects [MPIC's Dentist's] opinion that due to the large fillings, the Appellant's symptoms to the right side of her mouth occurred slowly over a period of time and were inconsistent with trauma.

[Appellant's Dentist #1], who saw the Appellant on July 9, 2003 as a result of a referral from [Appellant's Dentist #4], stated:

“...She had been involved in a motor vehicle accident March 31/03 and has the following symptoms since that time:

- 12) Bilateral temporal pain
- 13) Pain behind both eyes
- 14) Pain on the left side of her forehead and top of head
- 15) Bilateral neck pain
- 16) Pain her left ear
- 17) Left ear congestion
- 18) Occasional dizziness
- 19) Bilateral tempomandibular jaw joint pain
- 20) Bilateral clicking or popping in both jaw joints
- 21) Difficulty swallowing
- 22) Difficulty chewing with pain”

[Appellant's Dentist #1] concluded that the Appellant had been suffering from myofascial pain and dysfunction problem and indicated that the Appellant would be required to wear an orthotic appliance.

Unlike [MPIC's Dentist], in arriving at this diagnosis [Appellant's Dentist #1] had the opportunity of personally examining the Appellant and obtaining her dental history and assessing her credibility in respect of the issue of causation. [Appellant's Dentist #1] also saw the Appellant on May 14, 2004 and in his report, he stated that the Appellant's stress fractures may have come from the accident which eventually led to clenching and bruxing – parafunctional

habits. The Commission notes that On July 9, 2003 [Appellant's Dentist #1] diagnosed the Appellant as suffering from myofascial pain which he related to the motor vehicle accident. In his testimony, [Appellant's Dentist #1] stated that myofascial pain could cause the Appellant to perform clenching and bruxing. [Appellant's Dentist #1] saw the Appellant on February 1, 2005 and reported that the Appellant's orthotic appliance needed resurfacing.

[Appellant's Dentist #1] next saw the Appellant on June 27, 2005 and stated:

“[The Appellant] is continuing to have problems since her motor vehicle accident. She will require:

- 1) A new dental appliance due to significant wear and deterioration
- 2) Reassessment and treatment with the [text deleted] Physiotherapy Clinic (including acupuncture if necessary)
- 3) Visit with another endodontist for ongoing dental problems (possibility of cracked teeth)...

In the report to the Claimant Adviser Office on August 22, 2008, [Appellant's Dentist #1] stated:

“Yes, direct trauma can cause bruxism and clenching due to the initiation of pain and discomfort. The body's response to pain is muscle spasm, clenching and grinding and continued muscle spasm creates pain. This self-perpetuating situation will continue indefinitely unless interceptive intervention of the pain spasm cycle is initiated.”

[Appellant's Dentist #1] further stated that in all medical probability the collision of the elk striking the Appellant's head did materially contribute to the dental injuries of teeth #15 and #47.

It is clear that subsequent to [Appellant's Dentist #1's] report of May 14, 2004, he did meet with the Appellant on August 11, 2004 and February 11, 2005 and had the opportunity of assessing her dental condition. Having regard to the information he had initially obtained from the Appellant on July 3, 2003 and on three subsequent visits, it was therefore open for [Appellant's Dentist #1] to conclude without any doubt, in his report to the Claimant Adviser Office on August 22, 2008, that the collision with the elk did materially contribute to the dental injuries to

teeth #15 and #47.

On June 20, 2006, [Appellant's Dentist #2], whose practice is limited to endodontics, examined the Appellant. He reported that the Appellant had advised him that:

“...her teeth became sensitive after a motor vehicle accident involving an elk three years ago.

On examination of her teeth, I noted that tooth #47 had a hairline crack which involved both mesial and distal marginal ridges. When tested with cold, teeth #15 and #47 were hypersensitive and the elicited pain lingered for several minutes.

I suspect that teeth #47 and #15 are developing pulpitis as a result of trauma sustained from her accident. I advised [the Appellant] that non-surgical root canal treatment is needed for teeth #47 and #15.” (underlining added)

Both [Appellant's Dentist #2] and [Appellant's Dentist #1] had personally examined the Appellant and concluded that there was a causal relationship between the Appellant's problems to her teeth #15 and #47 and the motor vehicle accident.

[Appellant's Dentist #1] did testify at the hearing by teleconference. He was examined and cross-examined by the respective representatives of each party. [Appellant's Dentist #1] had personally examined the Appellant over a period of two years and had the opportunity of obtaining her dental history and assessing her credibility. [Appellant's Dentist #2] also had the opportunity of personally examining the Appellant and obtaining her dental history and assessing her credibility. Under these circumstances the Commission gives greater weight to the dental opinions of [Appellant's Dentist #1] and [Appellant's Dentist #2] on the issue of causation than it does to the dental opinion of [MPIC's Dentist].

The Commission also finds that the dental opinions of [Appellant's Dentist #1] and [Appellant's

Dentist #2] corroborate the Appellant's testimony that as a result of the motor vehicle accident she suffered injuries to the right side of her mouth.

For these reasons the Commission finds that the Appellant has established, on the balance of probabilities that the motor vehicle accident caused or materially contributed to her symptoms in respect of teeth #15 and #47 which required root canal treatment. Pursuant to Section 136(1)(a) of the MPIC Act the Commission finds that the Appellant is entitled to be reimbursed for the expenses of the root canal treatment to teeth #15 and #47. The Commission therefore allows the Appellant's appeal and rescinds the decision of the Internal Review Officer dated January 3, 2007.

Dated at Winnipeg this 22nd day of January, 2010.

MEL MYERS, Q.C.

DR. SHELDON CLAMAN

PAUL JOHNSTON