Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-20-004

COMMISSION:	**Pamela Reilly, Chairperson** **Brian Hunt** **Paul Taillefer**
APPEARANCES:	**The Appellant, [text deleted], was represented by [husband];** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Anthony Lafontaine Guerra.**
HEARING DATE:	**January 12, 2022**
ISSUE(S):	**Whether the Appellant is entitled to Personal Injury Protection Plan catastrophically enhanced benefits.**
RELEVANT SECTIONS:	**Section 70(1) and Subsection 1(e)(i)(ii) of Schedule 4, (Subsection 70(1)) of The Manitoba Public Insurance Corporation Act ('MPIC Act').**

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL, IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

Background:

The relevant motor vehicle collisions, in which the Appellant was involved, occurred on April 24, 1999 and July 7, 2005 ("the MVAs"). On April 24, 1999 the Appellant was driving on [highway] when a young man deliberately stepped into the path of her vehicle. The Appellant had little time to react and her vehicle struck the young man, which caused him to crash through the passenger side windshield. This was very traumatic for the Appellant. Her doctors diagnosed the Appellant with, among other

harms, Post Traumatic Stress Disorder (PTSD) and Major Depressive Disorder, for which she receives psychological and psychiatric counselling, as well as medication.

The collision of July 7, 2005 was also a highway accident in which the Appellant's daughter was driving. From this collision the Appellant suffered, among other injuries, a fractured sternum. The July 7, 2005 collision aggravated the Appellant's PTSD and Depressive Disorder. She further developed Chronic Pain Disorder and continues to experience generalized pain with particular focus on the healed sternum.

MPIC paid Personal Injury Protection Plan ("PIPP") benefits to the Appellant, which included income replacement indemnity ("IRI"), personal care assistance ("PCA") and permanent impairment ("PI") benefits. The PI award applicable to the Appellant's date of loss was Regulation 41/94 as updated by Rev 01/98, Division 9, Subdivision 3, Category 10. The Regulation reads as follows:

DIVISION 9
MENTAL FUNCTION SYSTEM

. . .

SUBDIVISION 3
NON-PSYCHOTIC MENTAL DISORDER

. . .

10. The symptomatic intensity of the neurotic syndrome, although ordinarily variable, requires the victim to have constant recourse to therapeutic measures and to change his ordinary activities leading to a marked reduction in his social and personal achievement, such a syndrome being accompanied by functional psychophysiological disorders requiring symptomatic treatment and causing a constant interruption of regular activities, including any side effects of medication: 50 to 80%

A prior appeal in 2012 resulted in a Resolution Agreement between the Appellant and MPIC which (among other terms not relevant to this appeal) increased the Appellant's PI percentage award for her Non-Psychotic Mental Disorder from her original award of 65% to the maximum benefit of 80%.

The Appellant subsequently requested that MPIC categorize her injuries as "catastrophic", which could enhance her Permanent Impairment award above 80%. MPIC denied this request on the basis that her injuries did not fall within the definition of "catastrophic injury". The Appellant appealed, and the issue before the Commission is whether the Appellant's circumstances meet the definition of "catastrophic injury".

Issue:

Whether the Appellant sustained a "catastrophic injury" as defined by subsection 1(e)(i)(ii) of Schedule 4, subsection 70(1) of the MPIC Act ("the Act"), thereby entitling her to catastrophically enhanced PIPP benefits. More particularly, whether the Appellant's MVA injuries cause her to "require continuous supervision in an institutional or confined setting, or periodic supervision in such a setting for 50% or more of the time."

Decision:

The Commission finds that the Appellant's injuries are significant and her suffering is real. However, the Commission finds that the Appellant's injuries do not qualify as "catastrophic injuries" within the meaning of the Act. The Commission thereby dismisses the appeal and affirms the Internal Review Decision dated October 18, 2019.

Legislation:

Definitions

70(1) In this Part,
"bodily injury" means any physical or mental injury, including permanent physical or mental impairment and death"

"catastrophic injury" means a catastrophic injury within the meaning of Schedule 4;

. . .

SCHEDULE 4
(Subsection 70(1))

When a person is catastrophically injured
1 For the purposes of Part 2 of this Act, a person is catastrophically injured if, within the meaning of the regulations made under clause 202(k), he or she suffers

. . .

(e) an injury that results in a psychiatric condition, syndrome or phenomenon that, including adverse effects of medication,

(i) impairs the person's ability to perform the activities of daily living, ability to function socially or sense of well-being, to such an extent that he or she requires continuous supervision in an institutional or confined setting, or periodic supervision in such a setting for 50% or more of the time, and

(ii) is determined to result in a degree of permanent impairment of 70% or more;

Testimony and documentary evidence:

The Appellant and her husband have been married for more than 50 years. Both testified at the hearing. MPIC did not call any witnesses.

Appellant's husband's direct and cross-examination testimony

The Appellant's husband testified that he has been a [text deleted] for over 20 years. Earlier in his career, his work required that he travel in and out of [text deleted] for half

of each month. At the time of the hearing, he worked out of his home as a [text deleted]. Their [text deleted] daughter also resides at home.

He spoke sincerely about the Appellant's suffering since her MVAs. He described how the Appellant went from a successful, respected and high earning [text deleted] to a "shell of a woman" after the MVAs. He said the Appellant was well liked, and her accomplishments had been recognized in the [text deleted].

The Appellant's husband described the severe anxiety experienced by the Appellant whenever she left the house unattended by either himself or their [text deleted] daughter. He testified that the Appellant experiences anxiety when she is a passenger in the car, causing her to 'freak out' during car trips. This anxiety ultimately led to the Appellant losing her driver's licence.

The Appellant's husband believed that the Appellant's mental disorder was catastrophic, and remarked that the Appellant's psychiatrist had described it as catastrophic, as well. He said that the Appellant required ongoing psychiatric and psychological counselling to "keep her from being suicidal."

In response to questions from MPIC Counsel, the Appellant's husband confirmed that the Appellant is not subject to any type of court or administrative order that requires her to be confined; that is, an order that limits her movements or requires her to be monitored. The Appellant's husband added that the Appellant's mental health care providers had suggested that she be monitored.

The Appellant's husband confirmed that MPIC pays for the Appellant's daughter to accompany the Appellant on outings, and that they travel together to go shopping. He confirmed that this funding is provided at the request of the Appellant as opposed to something akin to a medical prescription, or official order or requirement. The Appellant's husband responded that he did not think there was anything official, and repeated that the Appellant's doctors "kind of suggest that."

Finally, although the Appellant voluntarily admitted herself into the [hospital] psychiatric ward in 2005, where she stayed for approximately 10 days, the Appellant's husband confirmed that the Appellant was not, and is not, formally confined to any type of hospital, health centre, treatment centre, group home or half way house, jail, prison or penitentiary. The Appellant is not locked in her home, she is not subject to a curfew, and she has free will to come and go as she pleases. The Appellant's husband testified that the Appellant is able to avoid hospital visits by utilizing the [health phone line].

Appellant's direct and cross-examination testimony

The Appellant testified to her ongoing pain associated with her sternum fracture, stating that she could feel every bump while seated as a passenger in the car. She explained that she does not go out in the car very often because she is "terrified." She testified that her medical caregivers consider her injuries to be catastrophic.

The Appellant described witnessing violence towards the nurses in the [hospital] psych ward, and this caused her to be terrified of returning to that ward. She said she would rather die than go back into that hospital setting. She said that a lot of times she wants

to kill herself. However, she also recognizes the love and support from her family and knows that ending her life would cause them pain.

The Appellant testified about a letter she submitted to her case manager, which, she said, thoroughly and truthfully describes what she is going through.

In response to questions from MPIC Counsel, the Appellant confirmed that she has a [text deleted] education. After leaving school, the Appellant immediately went to work [text deleted]. Despite leaving school before graduation, but with the encouragement of friends, the Appellant successfully studied to become a [text deleted]. She achieved impressively high marks in her qualification exams.

The Appellant confirmed that she has over 20 years of full-time work experience as a [text deleted]. She was well liked and so successful that she gave excess deals to other [text deleted]. She spoke sincerely of enjoying her [text deleted] work. The Appellant testified to her various unsuccessful attempts to return to [text deleted] after the MVAs, stating that “I never have felt safe since the accident.”

The Appellant spoke of the detrimental impact that her condition has had on her marriage, particularly after the second accident. She said the second collision aggravated her psychological pain, resulted in her chronic physical pain, and “broke her”.

The Appellant described herself as having “mood swings” but asserted that she is not a violent person, and that being around violence scares her. She said witnessing violence in the [hospital] made her condition worse.

She further explained, “That’s why when my husband says ‘I’m going to call 911’, I snap out of it because I don’t want to be in that situation”, meaning she does not want to be placed in a hospital setting.

The Appellant confirmed in cross-examination that she sees psychologist [text deleted] and psychiatrist [text deleted] on a regular basis. [Psychologist] discusses and provides the Appellant with “a lot of information that is very helpful.” The Appellant said that seeing both of these professionals has saved her life because they make her feel worthy and grounded.

The Appellant said that she knows that without these professionals she would not be here today, and acknowledged that her “daughter is not educated enough to deal with [when] I feel like I’m in a storm and I can’t get out of it.” She attends all of her medical appointments outside of her home, accompanied by either her daughter, husband, niece or son.

The Appellant confirmed that there are no medical certificates, reports or documents that state she must be monitored or supervised in her home and that she chooses to have someone with her because she is afraid. She testified that her doctors ‘wished’ that she did not always have someone accompany her.

In further response to questions from MPIC Counsel, the Appellant reviewed the activities she listed in her “Daily Activity Log” for a two-week period in November 2019, in which she attended outings such as shopping, the occasional restaurant, and a baptism.

She reiterated that she does not require permission from anyone to leave the home. She does not have a curfew. In fact, the Appellant stated that her husband will comment to her that she must “do more than sit at home”; that is, she needs to go out.

The Appellant agreed that, unlike her stay at the [hospital], which required that she sign in and out of the ward, she does not sign any log to leave her home. She confirmed that her ten-day stay at the [hospital] in 2005 was her only admission to an institution.

Documentary Evidence

Other than the Daily Activity Log, neither party referred to any particular documents. However, the Commission considered various medical reports in the Indexed File.

MPIC requested and received a diagnosis and opinion from the Appellant’s psychologist, [text deleted], specifically about the Appellant’s permanent impairment. In her report dated April 7, 2007, [psychologist] diagnosed the Appellant with Post Traumatic Stress Disorder and Major Depression with psychotic features.

[Psychologist] described the Appellant as “reclusive in her home or accompanied by an escort when out of the home.” [Psychologist] noted the Appellant’s prior inpatient admission but stated that she was “able to function outside of a hospital environment”.

[Psychologist] opined that the Appellant met the permanent impairment criteria “… for Subdivision 3, paragraph 9 at the higher end of the spectrum (100 percentile)” reiterating, among other things that “… She has self-secluded within her home unless escorted in the community.”

The Commission notes that Subdivision 3, paragraph 9 states as follows:

> The neurotic syndrome is invasive and leads to complete deterioration of social and personal achievement. It is accompanied by serious and constant changes in interpersonal relations, disrupting ordinary activities and requiring continuous supervision or confinement, including any side effects of medication: 100%

MPIC’s Health Care Services (HCS) psychological consultant provided a report dated October 17, 2007. He considered [psychologist]’s April 7, 2007 opinion and noted the primary diagnosis of Post Traumatic Stress Disorder. He also noted [psychologist]’s comments about the Appellant’s “looseness of association, suspicion and paranoia bordering on psychosis.” He noted however, that the Post Traumatic Stress Disorder was not a psychotic syndrome and therefore did not fall under the permanent impairment Subsection 2, Psychoses (also suggested by [psychologist]).

The HCS psychological consultant further noted that “the claimant does not require ongoing supervision or hospitalization (although she has been hospitalized in the past).” Therefore, he opined that the appropriate PI award fit within Category 10. (This

is the PI category quoted earlier in these reasons and under which the Appellant received her lump sum PI award in 2007.)

The Appellant attended an Independent Medical Examination (IME) conducted by neuropsychologist [text deleted] who provided a report dated May 19, 2011. [Neuropsychologist] interviewed the Appellant's husband and daughter who both described the Appellant as experiencing notable mood changes since her MVAs. They described the Appellant's irritability and anger towards them being at its worst while they were driving. [Neuropsychologist] also stated that the Appellant's daughter "ensures that she is readily available to her mother when her father is away." (There was no reference to supervision.) [Neuropsychologist] felt that the Appellant displayed a hint of dependence upon her doctors and, therefore, it may be best to encourage the Appellant to re-develop more traditional social contacts as opposed to relying on medical and psychological professionals.

[Psychologist] took issue with [neuropsychologist]'s conclusions about ongoing psychotherapy. In her report dated January 13, 2012, [psychologist] responded that the Appellant "continues to require psychotropics to stabilize her affect and pharmacotherapy to address her physical pain." [Psychologist] stated that the "ongoing psychotherapeutic sessions have provided [the Appellant] with the psychological stability to remain in the community and avoid inpatient psychiatric admission." (There was no reference to a requirement for supervision.)

[Psychologist] provided another report and opinion dated June 9, 2015. [Psychologist] commented that the Appellant was “unable to leave her home without a companion” such as a “family member”, and that the Appellant’s “husband and family in general, do not permit her to leave the home for fear she may become explosive.” However, [psychologist] further stated, as follows:

> While these situations are difficult emotionally for her and may be upsetting to a person she may come into conflict with if they enter too closely into her personal space, I do not believe that in many other situations in everyday life that she poses a health and safety risk to herself or others.

The Appellant’s psychiatrist, [text deleted] provided a number of reports at the request of MPIC. In his report dated June 30, 2015, [psychiatrist] commented as follows:

> … there are a number of factors which make it difficult for [the Appellant] to independently travel about comfortably in the community, which lead her to seek out a companion…

And further:

> … she has enlisted family members to operate in the role of being a companion…

In commenting on whether the Appellant posed a safety risk to herself or others, [psychiatrist] stated, as follows:

> … in circumstances where [the Appellant] is accompanied by a trusted companion, she is not concerned about the development of any symptoms of panic or … aggression towards herself or others.

In his report dated June 20, 2017, [psychiatrist] further commented on the Appellant’s psychiatric condition in that the Appellant experiences negative alterations in cognition and mood, particularly negative beliefs stemming from the MVA. He described the

Appellant as displaying irritability, anger, hypervigilance, exaggerated startle response, and difficulties in concentration and sleep. [Psychiatrist] treats all of these conditions with medication. In his report dated March 8, 2018 [psychiatrist] states that the Appellant "required a companion to facilitate attendance to her appointments."

[Psychiatrist]'s report dated September 28, 2020 reiterated the Appellant's diagnoses of Major Depressive Disorder, PTSD, and Pain Disorder and he confirmed that these impair the Appellant's daily functioning in varying ways. He noted that the Appellant struggles with suicidal ideation which, in the past, had required hospitalization in the [hospital] (2005). He described the Appellant as having a poor quality of life and diminished independent function because "she must rely on others for support." Although acknowledging that the Appellant is "able to function outside a hospital environment" he opined that the Appellant's psychological impairments were best characterized as "catastrophic".

In her report dated June 28, 2021, [psychologist] reiterated the Appellant's diagnoses which "manifests through irritability and difficulty connecting with others." The Appellant's ongoing treatment involved (among other strategies) "psychoeducation on maximizing communication through self-management" and being "provided with strategies for staying calm in upsetting situations". Further, "conflict resolution skills have been attempted when in the community if [the Appellant] becomes reactive and impulsive." [Psychologist] noted that the Appellant "has learned to ignore others when she is at risk of heightened reactivity." [Psychologist] concluded that the Appellant will

require ongoing assistance “whether this is through a psychiatrist, psychologist or community resources…”

The Appellant referred to letters she had submitted to MPIC. The Commission considered two short letters in the Indexed File, signed by the Appellant. The letter dated March 11, 2013 states that “[psychiatrist] and [psychologist] (sic) have kept me out of psychiatric hospitals… I need to have a driver for all my appointments because of the accidents.” The March 17, 2013 letter states “I have to receive psychiatry and psychology sessions on a regular basis to stop me from committing suicide or going back to a mental hospital. [They] have been keeping me safe from myself.”

The Commission also considered the “Daily Activity Log” created by the Appellant for the weeks of November 1 to November 15, 2019. The Log refers to various, typical daily activities carried out in the home, including visits with friends or relatives who came to the Appellant’s residence, as well as outside visits to her son, her church and to attend shops and restaurants. The Appellant occasionally recorded that she had an “escort” drive her to certain appointments.

Appellant closing submissions:

The thrust of the Appellant’s submission was that her injuries qualified as catastrophic as evidenced by how much she imposes upon her family due to her psychiatric condition. She submitted that she is not a lazy person and would be working outside the home but for all of her MVAs. Now she requires “constant companionship” to help

her feel safe. Her family, and in particular her daughter, has suffered, for which the Appellant blames herself.

She submitted that her doctors see her on a regular basis, which is evidence of the seriousness of her condition. She said that she does not feel worthy of their care, but believes that she "would not be here now if it wasn't for my family and the doctors that are helping."

The Appellant concluded by saying that "my daughter is a prisoner to me" and "I am a prisoner because I can't come and go because I am a danger to myself and my situation."

MPIC closing submissions:

MPIC Counsel provided written submissions, which the Commission appreciated. Counsel first acknowledged that the physical and psychological injuries the Appellant suffered in her MVAs were significant and had profound impacts on her life. Nonetheless, the issue before the Commission was whether those injuries qualified as "catastrophic" within the specific legal meaning of the MPIC Act.

Counsel submitted that the opinions from the Appellant and her psychological counsellors, which described her mental injuries as "catastrophic", were not determinative. Furthermore, it is ultimately the Commission's role to determine what test must be applied to make such a determination, and then determine whether MPIC correctly applied that test.

Counsel referenced Section 70(1) of the Act which defines the phrase "catastrophic injury" to mean "… a catastrophic injury within the meaning of Schedule 4 to the Act". Further, where the injury in question results in a psychiatric condition, syndrome or phenomenon, such as this case, it is Schedule 4, subsection 1(e)(i)(ii) that applies. That is, the individual must suffer the following:

> (e) an injury that results in a psychiatric condition, syndrome or phenomenon that, including adverse effects of medication,
>
> > (i) impairs the person's ability to perform the activities of daily living, ability to function socially or sense of well-being, to such an extent that he or she requires continuous supervision in an institutional or confined setting, or periodic supervision in such a setting for 50% or more of the time, and
> >
> > (ii) is determined to result in a degree of permanent impairment of 70% or more;

MPIC Counsel submitted that the above subsection contains four fundamental requirements which an appellant must establish. These are as follows:

1. The Appellant suffers an injury;

2. The injury results in a psychiatric condition, syndrome or phenomenon (including adverse effects of medication);

3. The injury impairs their ability to perform the activities of daily living, ability to function socially or sense of well-being, to such an extent that they require:
    a. continuous supervision in an institutional or confined setting; or
    b. periodic supervision in such a setting for 50% or more of the time; and

4. The injury is determined to result in a degree of permanent impairment of 70% or more.

Counsel submitted that MPIC accepted that the Appellant suffered the first three numbered criteria and did not contest that the Appellant's injury resulted in at least a 70% permanent impairment. However, MPIC disagreed that parts "a" and "b" above, had been established.

Therefore, the Appellant's sole obligation was to establish that, as a result of her automobile injury, she required continuous or periodic (i.e., more than 50%) supervision in an institutional or confined setting. However, the terms "supervision" and "institutional or confined setting" are not defined by the Act, which leaves such definition or interpretation to the Commission.

Counsel referred to the Commission's decision in AC-18-015 in which that panel was guided by the reasoning in [text deleted] *v. Manitoba Public Insurance Corporation,* 2007, MBCA 52 which, in turn, considered the general principles of statutory interpretation in *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27. In *Rizzo*, the Supreme Court stated the following principle:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Counsel submitted that the following statement from *The Interpretation Act* of Manitoba was also applicable:

> Every Act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

MPIC Counsel submitted that, in addition to considering the general purpose of Part 2 of the Act, the Commission must also consider the additional purpose of ascribing the specific label of “catastrophic” to an injury.

After citing the various and numerous sections throughout the Act and Regulations in which the term “catastrophic injury” appears, Counsel submitted that the purpose of such a designation is to provide additional or enhanced benefits to a specific subset of entitled victims. Further, these enhanced benefits should be bestowed in only the most exceptional cases.

In considering the wording in Schedule 4, subsection 1(e)(i), Counsel acknowledged that dictionary definitions of individual words are not determinative when interpreting statutes. However, dictionary definitions provide a useful starting point by demonstrating a range of meanings a word is capable of bearing. Counsel provided a number of definitions for the words “supervision”, “institutional”, “confined” and “setting” from various authoritative dictionaries.

Counsel submitted that in both English and French, the dictionary definitions of the word "supervision" supported a meaning where some measure of oversight and control is exerted over another.

Continuing with the wording in Schedule 4, subsection 1(e)(i), Counsel noted that “supervision” occurs in an “institutional or confined setting”. He referred to the “Associated Words Rule” of statutory interpretation, which states that the use of the

connector "or" implies that the associated terms “take colour from each other”. This means that interpretation should consider features that link the words together in order to narrow the possible meanings, albeit keeping in mind the overall rule of interpreting the words in their ordinary grammatical sense, within the entire context of the Act.

Once again referring to various definitions of the words “confined” and “institutional”, in both English and French, Counsel submitted that these words, as used in Schedule 4, Subsection 1(e)(i) refer to:

> … a space with physical limitations. Additionally, a common thread between some of the definitions for "confined setting" and "institutional setting" is that each refer to buildings wherein people are held and are unable to leave on their own.

MPIC Counsel also pointed out that Schedule 4, subsection 1(e)(i) states “…he or she requires continuous supervision in an institutional or confined setting”. To assist in the interpretation of the word “requires” within the context of the Act, Counsel referred to the approach suggested by the legal scholar Ruth Sullivan who notes that legislation should be interpreted with regard to any statutes dealing with similar subject matter in order to ensure, as Counsel quoted, “…a coherent and consistent treatment of the subject.”

To this end, Counsel considered the provisions of The Mental Health Act (“the MHA”) of Manitoba that deal with a person suffering a mental disorder who requires treatment, care and supervision in or out of a facility. Counsel referred to Parts 2, 3 and 6 of the MHA and the various forms of admission, including whether the admission is voluntary or involuntary. Part 6 of the MHA allows that a person who

must otherwise be in a facility may be granted leave to live outside such facility with treatment, and provided they comply with a supervision requirement.

Counsel noted that, under the MHA, someone authorized by law (i.e., a psychiatrist) determines the need for supervision. Therefore, he submitted, it would be absurd to interpret Schedule 4, subsection 1(e)(i) of the MPIC Act as allowing the victim themselves to determine whether supervision is required.

In consideration of the various principles of statutory interpretation to which he referred, MPIC Counsel submitted that the phrase “catastrophic injury”, as related to a psychiatric condition (as set out in Schedule 4 quoted above) requires a determination of whether that person’s ability to function is compromised in accordance with the following criteria:

1. to the extent that someone authorized by law has determined that, without some amount of monitoring and control of their behaviour within a mental health facility or within a space in which they are physically limited, the victim is likely to cause serious harm to themselves or to another or is likely to suffer a substantial physical or mental deterioration;

2. the amount of monitoring and control needed must be continuous for at least 50% of the time; and

3. MPIC must decide (subject to the right of appeal) that the injury results in a degree of permanent impairment of 70% or more.

Therefore, with respect to the facts in this case, Counsel submitted that the evidence established that the Appellant resides in her own home and is not subject to any medical order or recommendation that she be monitored, nor have her behaviour controlled. The Appellant admitted that she is free to, and in fact, does leave her home

from time to time without requiring permission from anyone. Counsel referred to the Appellant's psychiatric report which stated that the Appellant "… is able to function outside of a hospital environment."

Counsel addressed a statement in one of the Appellant's psychological reports, which stated that the Appellant is unable to function independently without intensive treatment. However, he submitted that there is a substantive distinction between the "inability to function independently without treatment" and a "requirement for supervision".

More particularly, Counsel noted that the psychologist did not state that the Appellant must be observed, or her behaviour be controlled, in a physically limited space. Counsel then referred to MPIC's expert opinion which states that the need for psychological or psychiatric treatment, and assistance with community outings, is not the same as requiring supervision.

Counsel reiterated the wording in subsection 1(e)(i) of Schedule 4 which requires "continuous supervision" or "periodic supervision" for 50% or more of the time, and submitted that irrespective of her admission to the [hospital] in 2005, the Appellant had not required any further institutional setting or supervision in nearly 17 years.

In conclusion, Counsel submitted that the Appellant had not established that she suffered a catastrophic injury under the MPIC Act. He again conceded that the Appellant's injuries were clearly significant and important. However, for the purposes

of establishing entitlement to enhanced Personal Injury Protection Plan benefits under the MPIC Act, the Appellant's injuries did not qualify as catastrophic. As such, he submitted that the Commission uphold the Internal Review Decision dated October 18, 2019 and dismiss the appeal.

Discussion:

Credibility and reliability

The Appellant and the Appellant's husband both testified in a straightforward and clear manner. They did not exaggerate or embellish their testimony. Their testimony was internally consistent and consistent with the documents. The Commission noted their sincerity and the careful thought they put into their responses to questions. Their demeanor was appropriate to the seriousness of the matter. MPIC Counsel did not raise any issue with respect to credibility or reliability. The Commission finds that both the Appellant and the Appellant's husband provided credible and reliable testimony. We believed them.

Substantive Issue

The Commission accepts that the Appellant suffers a psychiatric condition that impairs her activities of daily living, her social functioning and her sense of well-being, all as a result of the MVAs. This is not in dispute.

The issue for the Commission is whether the facts of the Appellant's psychiatric condition constitute a "catastrophic injury" within the meaning of the MPIC Act ("the Act"). The issue is novel in that the phrases "catastrophic injury" and subsequent

phrases of “requires continuous supervision” and “institutional or confined setting”, are not defined in the Act, and therefore must be interpreted, within the context of the Act.

For ease of reference, the relevant parts of the Act and Regulations are repeated, as follows:

> **Definitions**
> **70(1)** In this Part,
> “bodily injury” means any physical or mental injury, including permanent physical or mental impairment and death”
>
> “catastrophic injury” means a catastrophic injury within the meaning of Schedule 4;

SCHEDULE 4
(Subsection 70(1))

When a person is catastrophically injured

1 For the purposes of Part 2 of this Act, a person is catastrophically inured if, within the meaning of the regulations made under clause 202(k), he or she suffers

. . .

(e) an injury that results in a psychiatric condition, syndrome or phenomenon that, including adverse effects of medication

(i) impairs the person’s ability to perform the activities of daily living, ability to function socially or sense of well-being, to such an extent that he or she requires

continuous supervision in an institutional or confined setting, or periodic supervision in such a setting for 50% or more of the time, and

(ii) is determined to result in a degree of permanent impairment of 70% or more

The Commission agrees that, in accordance with the approach set out by the Supreme Court of Canada in *Rizzo,* the words of an Act should be read in their ordinary grammatical sense, in harmony with the scheme and object of the entire act, and in accordance with the intention of the legislators (as much as that intention may be discerned.)

As has been found in prior Commission and Court of Appeal decisions, and with which this Commission agrees, the purpose or object of the Act is to create "… an all-encompassing insurance scheme to provide immediate compensatory benefits to all Manitobans who suffer bodily injuries in accidents involving an automobile."

Part 2, Definitions Section 70(1) of the Act refers to both a "bodily injury" and a "catastrophic injury". The term "bodily injury" is defined within the Definition Section 70(1) and, notably, includes a "mental injury", including permanent mental impairment.

The Commission notes that dictionary definitions are not determinative. However, where the meanings of words are uncertain, dictionary definitions can offer a useful starting point in arriving at a reasonable legal interpretation of a legislative provision.

To find the meaning of "catastrophic injury", one is referred to Schedule 4 as set out above. The word "catastrophic" itself denotes a more serious injury when compared to the phrase "bodily injury". Schedule 4 utilizes seven additional pages to elaborate, for the purposes of Part 2, what a catastrophically injured person suffers.

The Commission has considered the general principle that all texts in a statute are drafted for a reason. The purpose of Schedule 4 is to exemplify what constitutes a catastrophically injured person within the meaning of the permanent impairment regulations. As such, we find that by defining “catastrophic injury” in a separate Schedule, the legislators intended to treat victims who suffered “catastrophic injuries” as a specific subset of entitled victims who suffered “bodily injuries”.

Fundamentally, the meaning of a word is its usage in language. With this in mind, we will deal with some of the individual words and phrases in the subsection, particularly within the phrase “requires continuous supervision in an institutional or confined setting, or periodic supervision in such a setting…”

“Requires continuous” or “periodic supervision”

The ordinary meaning of “supervision” is understood when we consider “supervision” in the context of minor children supervised, for example, by a parent, or teacher, or coach. We understand that, depending upon the age of the minor, they may not have the cognitive wherewithal to understand dangerous situations or to exhibit appropriate behaviour in social situations. Additionally, the minor’s actions may require the parent, teacher or coach to teach specific skills. The ‘supervisor’ is there to teach, observe and monitor, and presumably ensure correct and safe behaviour and, as such, this involves some measure of responsibility, oversight, skill and consequential control over the child.

Also, adults in work settings will typically be subject to supervision by another individual based upon a hierarchy of co-workers who, for example, have more experience or qualifications. These supervisors therefore teach, monitor and supervise the work activity of the less experienced employee. Again, typically the work supervisor has responsibility, skill, authority and a measure of control over the activities of the employee to ensure that work standards are maintained.

Similarly, cognitively or psychologically injured adults may require another individual to exert some level of teaching, responsibility, oversight and control to ensure their safe and appropriate behaviour.

In the above examples, there are typically adverse consequences to the child or adult who does not comply with any correction or improvement in behaviour. When we further consider that subsection 1(e)(i) refers to “supervision” in “an institutional or confined setting”, this idea of authority and control is reinforced. Lawful adults outside of the work or ‘institutional’ setting are generally autonomous and self-governing; our activities of daily living are not typically supervised. We are trusted to conduct ourselves in a socially safe and appropriate manner.

The Commission considered Counsel’s reference to the word “requires” in subsection 1(e)(i) as it relates to supervision. Counsel referred us to provisions in the Mental Health Act (the “MHA”) and directed us to the principle that statutes enacted by a legislature that deal with the same subject, are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject.

We do not think that it is correct to say that the MPIC Act and the Mental Health Act deal with the same subject. The MHA aims to strike a balance between a person's autonomous rights, and society's obligation to provide care and treatment to those individuals who, at times, may not appreciate their need for treatment due to their mental illness.

The purpose and intent of the MHA is to set out in law, the admission and treatment, as well as leave requirements for patients in psychiatric facilities. As previously stated, the purpose and intent of the MPIC Act is to provide an all-encompassing insurance scheme to provide compensatory benefits to Manitobans who suffer bodily injuries from motor vehicle accidents.

Nonetheless, Part 2 of the MPIC Act and its related regulations deal with bodily and catastrophic injuries of both a physical and psychiatric nature, which require medical assessment and treatment. Therefore, the Commission found it helpful to review the criteria of the MHA that allows "psychiatric treatment" to a patient while living in the community when that patient "needs continuing treatment or care and supervision."

The "need" (or requirement) for supervision under the MHA is linked to whether a lack of supervision would cause the patient serious harm to either themselves or others, or suffer substantial mental or physical deterioration. The MHA criteria for granting leave to a patient must include, and describe, the care and supervision the patient will receive when outside of the institution and in the community. The provisions stipulate that a psychiatrist must establish the leave criteria when granting the leave certificate.

We do not think that it would be appropriate to read into the MPIC Act, wording to the effect that supervision requires someone “authorized by law’. However, we do find it reasonable to interpret the Act as requiring a credentialled health care professional to make a clear statement that supervision is necessary, including the nature and scope of the supervision.

“Institutional or confined setting”

The Commission noted the definitions provided by Counsel for the word “institutional”, which is often characterized as a “facility” or “establishment” or “large organization”, sometimes where people receive care “in a confined setting.” Further, being “confined” can mean being limited to a particular location, or that one exists only in that place. Finally, a “setting” can be a particular place or type of surroundings where something is or takes place.

In its grammatical and ordinary use in everyday language, when we think of an individual as being in a “confined setting”, we understand this to mean that the person is in a setting which is beyond their circumstances to change of their own free will. This meaning can apply to a range of circumstances, from being confined to a jail cell to being confined to a wheelchair. The individual cannot simply open the cell door, or rise up from the wheelchair.

With this meaning in mind, the Commission also considered the usage of the linking word “or”. This linkage invites us to consider the common or analogous grammatical feature of the associated terms “institutional” and “confined setting”. This is referred to

as the associated words rule and was explained by Martin J.A. in *R. v. Goulis* (1981), 33 O.R. (2d) 55, at 61, as follows:

> When two or more words, which are susceptible of analogous meanings are coupled together, they are understood to be used in their cognate sense. They take their colour from each other, the meaning of the more general being restricted to a sense analogous to the less general.

The less general word “institution” colours the more general phrase “confined setting” with a more restricted meaning. Therefore, we interpret the meaning of “confined setting” to involve one that is limited to a particular location, where something is or takes place. This interpretation accords with the common meaning we attribute to the phrase when used in language.

Further, we find that this interpretation of “confined setting” fits within the context of the subsection which, as previously stated, deals with impairment due to a psychiatric condition, syndrome or phenomenon. That is, the psychiatric condition “impairs…to such an extent” that a “confined setting” (with supervision) is required.

The phrase, “to such an extent”, alerts the reader to consider the extended seriousness of the impairment and import that extended meaning to the “confined setting”, as well as the entire phrase, “requires…supervision in an institutional or confined setting”.

Application of Facts to Statutory Interpretation

The Commission reiterates that the purpose of the Act is to provide immediate compensatory benefits to persons who suffer bodily injuries, including catastrophic injuries caused by motor vehicle accidents. Such legislation attracts a liberal interpretation whereby any doubt arising from difficulties in language should be resolved in favour of the claimant.

The Commission finds that within the context of Schedule 4 and the Act as a whole, there is little doubt that the ordinary and grammatical meanings apply to the language of subsection 1(e)(i). There is nothing in either the section or the Act as a whole which indicates that the words should have anything other than their usual meanings.

"Requires continuous" or "periodic supervision"

We adhere to the principle that statutes are presumed to be drafted with one another in mind so as to offer a coherent and consistent treatment of the subject. Although the purposes of the MHA and the MPIC Act differ, they nonetheless both deal with the treatment of psychiatric conditions. Therefore, in consideration of the MHA provisions that outline leave criteria, we note that a psychiatrist must document that a psychiatric out patient needs supervision.

We find that a consistent and coherent interpretation of the MPIC Act imposes a similar requirement for a clear statement from a health care professional that the Appellant "needs" or "requires" supervision. It is not sufficient that the Appellant requests and receives the support and companionship of her family. The supervision

must involve something more than being an escort or companion. It must involve some prescriptive information from a health care professional.

The Appellant testified that she relies on and utilizes the psychological strategies and medications from her professional care givers. She primarily credits these treatments with ‘keeping her alive’. The Appellant’s testimony and letters to MPIC do not refer to, or state, that she receives or requires supervision.

The Appellant acknowledges and testified that she imposes upon her family, particularly her daughter. Nonetheless, the Appellant recognizes that her daughter does not have the education or training to deal with her psychological harms. We find that the simple availability and attendance by the Appellant’s daughter does not qualify as supervision.

The Commission found no evidence that, in 2005, the Appellant was discharged from the [hospital] with a certificate or recommendation stating a “need” (or requirement) for supervision while in the community. The Appellant admitted that no documentation exists to state that she currently requires supervision.

It is apparent that the Appellant no longer drives a vehicle due to her anxiety and therefore specifically relies upon various family members to drive her to appointments. Nonetheless, we do not consider the act of transporting the Appellant in a vehicle to be “supervision” by the drivers.

The Appellant's psychologist and psychiatrist do not state that the Appellant requires supervision. The terminology used in the various reports is that the Appellant "seeks out a companion", and the Appellant has "enlisted family members who operate in the role of being a companion", or she is "accompanied by an escort when out of the home".

The term "supervision" is consistently and notably absent in all of the psychological and psychiatric reports. We considered the expertise of these professionals and their knowledge of the Appellant's circumstances. We therefore inferred that the absolute absence in their reports of the word "supervision", represented their tacit view that the Appellant was not under, and did not require, supervision.

Further, notwithstanding the Appellant's husband's assertion that the Appellant's psychiatrist says the Appellant should be monitored, the Appellant was forthright in stating that her caregivers wish her to venture out on her own, without someone accompanying her.

As stated in [psychologist]'s June 28, 2021 report, when the Appellant experiences "heightened arousal" (related to being transported in a vehicle by her husband) she effectively utilizes the psychoeducation self-management strategies offered by [psychologist] to reduce her anxiety and stay calm in upsetting situations.

Also, while in the community, the Appellant uses conflict resolution skills to avoid becoming reactive and impulsive towards others when she is at risk of heightened

reactivity. To the Appellant's credit, this is evidence of her ability to manage her behaviour without in-person monitoring or "supervision".

When determining the appropriate PI award, MPIC's HCS psychological consultant opined in 2007 that "the claimant does not require ongoing supervision or hospitalization". This finding determined the appropriate PI award category. The Appellant's circumstances have not substantially changed and arguably have improved somewhat, since that opinion.

Alternatively, if we are wrong in declining to characterize the Appellant's escorts or companions as "supervision", the Commission finds that there is no evidence the Appellant requires such "supervision" or "companionship" on a continuous basis. Nor is there evidence to show that the Appellant requires "supervision" for 50% or more of the time.

The Daily Activity Log for the two-week period in November 2019 records activity between 6:00 a.m. and 10:00 p.m. – a 16-hour period. Counting the time that she was with her driver, and assuming that the Appellant always had someone with her while engaged in activities outside of her home, we heard no testimony that this constituted 50% of her activities of daily living and social functioning.

Looking at the Daily Activity Log the best we can determine is that the presence of other persons takes up, at most, 4-5 hours out of the total 16 of the Appellant's waking

hours. This amounts to about 25-30% of her waking hours, on some days; less on others.

“Institutional or confined setting”

Reiterating the adage that the meaning of a word is its usage in language, and with particular regard to the phrase “institutional or confined setting”, it is obvious that the Appellant is not in an ‘institution’; she lives at home. But is the phrase “confined setting” applicable to the Appellant’s circumstances?

The Commission does not go so far as to state that a person’s home, or some area within, can never constitute a “confined setting.” Each case must be decided on its particular facts.

In this case we are dealing with a “psychiatric condition, syndrome or phenomenon” which forms the contextual basis upon which to consider an “institutional or confined setting.” The Commission also finds that the word “institutional” colours the meaning of the words “confined setting”.

Further, we are considering an impairment that is “to such an extent” that an institutional or alternately “confined setting” is required. The Commission finds that, in this context, the confinement must involve something beyond the Appellant’s perception that she is a “prisoner in her home”. It requires a defined area with a specific function.

We find that the evidence does not support that the Appellant is in a “confined setting”. She admits that she has freedom of movement, at any time, to go for walks, go shopping, visit friends and conduct all of her activities of daily living without permission from, or notification to, anyone.

The Commission notes the 2007 comments of [psychologist] that describes the Appellant as “reclusive in her home”. However, we find that this is not synonymous with “confined” to her home. Nor do any of the expert reports recommend that the Appellant be confined to her home or anywhere else. Again, the Appellant testified that both her caregivers and husband encourage her to get out more, on her own.

Disposition:

We have utilized the ordinary meanings of the words in the legislative text to achieve what we believe to be a fair, large and liberal interpretation that best ensures the objects of the Act have been respected.

We acknowledge that the Appellant’s psychiatrist and family have described her injuries as catastrophic. Nonetheless, “catastrophic injury” has a specific legal meaning within the context and wording of the Act.

We find that the Appellant does not meet the definition of “catastrophically injured” as set out in Schedule 4 for a person suffering from a “psychiatric condition, syndrome or phenomenon”. The Commission therefore affirms the Internal Review Decision dated October 18, 2019 and dismisses the appeal.

Concluding Comments:

On a final note, the Commission emphasizes that we believed the Appellant's testimony about her psychiatric injuries and its consequences. Our interpretation of the Act does not, and is not intended to, diminish the Appellant's experiences. We acknowledge her past and continuing struggle to heal from her injuries. Nonetheless, we are bound by the wording of the legislation.

We wish the Appellant to know that we recognize the determination and resilience that she has demonstrated from an early age. We trust that her strength of character will continue to hold her in good stead, and we wish the Appellant and her family all the best.

Dated at Winnipeg this 2nd day of March, 2022.

PAMELA REILLY

BRIAN HUNT

PAUL TAILLEFER