MINISTER
OF HEALTHY LIVING, SENIORS AND CONSUMER AFFAIRS

Room 310
Legislative Building
Winnipeg, Manitoba CANADA
R3C 0V8

His Honour the Honourable Philip Lee, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235, Legislative Building
Winnipeg, Manitoba
R3C OV8

May it Please Your Honour:

I have the privilege of presenting, for the information of Your Honour, the Annual Report of the Automobile Injury Compensation Appeal Commission for the year ended March 31, 2012.

Respectfully submitted,

ORIGINALLY SIGNED BY

Honourable Jim Rondeau
Minister of Healthy Living, Seniors and Consumer Affairs

Manitoba
Healthy Living, Seniors and Consumer Affairs
Automobile Injury Compensation Appeal Commission
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The Honourable Jim Rondeau
Minister of Healthy Living, Seniors and Consumer Affairs
Room 310
Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

Dear Minister:

Section 180(1) of the *Manitoba Public Insurance Corporation Act* states that within six months after the end of each fiscal year, the Chief Commissioner shall submit an annual report to the Minister respecting the exercise of powers and the performance of duties by the Commission, including the significant decisions of the Commission and the reasons for the decisions.

I am pleased to enclose herewith the Annual Report of this Commission for the fiscal year ending March 31, 2012 which includes a summary of significant decisions.

Yours truly,

ORIGINALLY SIGNED BY

MEL MYERS, QC
CHIEF COMMISSIONER

Encl.

RAPPORT ANNUEL DE LA
COMMISSION D'APPEL DES ACCIDENTS DE LA ROUTE
POUR L'EXERCICE 2011-2012

Généralités

La Commission d'appel des accidents de la route (« la Commission ») est un tribunal spécialisé indépendant constitué sous le régime de la *Loi sur la Société d'assurance publique du Manitoba* (« la *Loi* »). Elle est chargée d'instruire les appels interjetés relativement aux révisions internes de décisions sur les prestations du Régime de protection contre les préjudices personnels (« le RPPP ») de la Société d'assurance publique du Manitoba (« la Société »), un programme d'assurance « sans égard à la responsabilité ».

L'exercice 2011-2012, qui a débuté le 1er avril 2011 et s'est terminé le 31 mars 2012, marquait la 18e année complète de fonctionnement de la Commission. Celle-ci compte un personnel à temps plein de dix personnes : un commissaire en chef, deux commissaires en chef adjointes, une directrice des appels, trois agentes des appels, une secrétaire affectée au commissaire en chef, une adjointe administrative et une aide-commis. En outre, 23 commissaires à temps partiel siègent à des comités d'appel selon les besoins.

En 2011-2012, 171 nouveaux appels de décisions internes révisées ont été interjetés auprès de la Commission, comparativement à 192 en 2010-2011.

Le processus d'appel

Pour recevoir des indemnités du RPPP, le demandeur doit présenter une demande d'indemnisation à la Société. Si le demandeur n'est pas d'accord avec la décision du gestionnaire de cas sur son admissibilité à des indemnités du RPPP, il a 60 jours pour demander une révision de la décision. Un agent de révision interne de la Société examine la décision du gestionnaire de cas et rend une décision écrite motivée.

Si le demandeur n'est pas satisfait des conclusions de l'agent de révision interne, il peut en appeler à la Commission. L'appel doit être déposé dans les 90 jours qui suivent la date de réception de la décision interne révisée. La Commission peut accorder une prolongation si le demandeur fournit une explication raisonnable quant à la raison pour laquelle il n'a pas respecté le délai de 90 jours.

À la réception de l'avis d'appel, la Commission obtient le dossier de l'appelant de la Société. Le dossier est examiné et les agents des appels de la Commission préparent un « dossier indexé ». Le dossier indexé est la compilation des preuves documentaires que la Commission considère pertinentes pour les questions en litige. Les parties et les commissaires s'y réfèrent pendant l'audience. Le dossier indexé est fourni à l'appelant – ou à son représentant – ainsi qu'à la

Société. Lorsque les parties ont étudié le dossier indexé et soumis tout autre élément de preuve qu'elles jugent pertinents, une date d'audition de l'appel est fixée.

Le Bureau des conseillers des demandeurs a été constitué en 2004 par une modification de la partie 2 de la *Loi.* Son rôle est d'aider les appelants qui comparaissent devant la Commission. En 2011-2012, 65 % de tous les appelants ont été représentés par le Bureau des conseillers des demandeurs.

Avant l'exercice 2005-2006, les audiences étaient présidées par un comité composé de trois commissaires. En 2005, la *Loi* a été modifiée afin que les appels puissent être entendus soit par un seul commissaire, soit par un comité de trois commissaires. Cette modification donne plus de flexibilité à la Commission et lui permet de procéder avec plus de célérité et d'efficience au règlement de certains appels.

Activité

Exercice	Audiences	Conférences préparatoires	Total
2011-2012	94	102	196
2010-2011	81	48	129
2009-2010	120	72	192

La gestion des appels au moyen de conférences préparatoires continue d'être une partie importante du calendrier des audiences de la Commission. Au cours des quatre derniers exercices, la Commission a constaté que de nombreux appels exigent un surcroît de gestion de cause de la part d'un commissaire. La Commission a donc continué sa pratique de convoquer des conférences préparatoires en 2011-2012. Le nombre de ces conférences a augmenté considérablement cette année, car la Commission estime qu'elles aident à préciser où en sont rendus les appels, à déterminer et résoudre les obstacles qui empêchent de fixer une date d'audience, à faciliter la médiation et à fixer les dates d'audience.

En 2011-2012, les appelants ont eu gain de cause – partiellement ou complètement – dans 24 % des appels entendus par la Commission.

Projet pilote de médiation de deux ans

Au deuxième trimestre de 2011-2012, le gouvernement du Manitoba a établi le Bureau de médiation des accidents de la route (« le Bureau ») pour offrir aux appelants qui avaient appelé de décisions de révisions internes l'option d'avoir recours à des services de médiation.

La Commission a fourni de l'information sur le projet pilote aux appelants qui avaient déjà déposé un appel pour leur faciliter la possibilité d'avoir recours à la médiation. On s'attend à ce que la médiation offre aux demandeurs d'indemnités du RPPP un autre moyen de résoudre les questions en litige avec la Société et réduise le temps requis par les parties pour se préparer à

l’audience. Les questions qui ne sont pas réglées par la médiation du Bureau sont renvoyées à la Commission pour arbitrage à une audience.

Au début de février 2012, la Commission a révisé son formulaire d’avis d’appel pour donner aux appelants la possibilité d’avoir recours à la médiation au moment où ils interjettent appel. Une feuille de renseignements sur la médiation est aussi jointe au formulaire d’avis d’appel, pour aider les appelants et leurs représentants dans leur décision de participer ou non au projet pilote de médiation.

Au 31 mars 2012, la Commission avait préparé et envoyé 288 trousses de médiation aux appelants et à leurs représentants, s’il y avait lieu. Cent soixante-dix-huit (178) des appelants qui ont reçu cette trousse ont exprimé de l’intérêt à participer à la médiation.

Procédure lors des audiences

Comme la Commission n'est pas strictement liée par les règles de droit concernant la preuve applicables aux procédures judiciaires, les audiences sont relativement informelles. Les appelants et la Société peuvent y appeler des témoins et y présenter de nouveaux éléments de preuve. Les lignes directrices de la Commission exigent des parties qu’elles divulgent à l’avance leurs éléments de preuve documentaires et oraux. La Commission peut aussi faire des assignations, qui obligent les personnes à comparaître à l’audience pour témoigner et à apporter les documents pertinents avec elles.

Lorsque c’est possible, la Commission se rend à l'extérieur de Winnipeg pour tenir une audience ou, selon le cas et si c’est dans l'intérêt d'un appelant qui vit ou travaille ailleurs, une audience peut avoir lieu par téléconférence.

Le ou les commissaires qui entendent un appel évaluent la preuve et les représentations de l’appelant et de la Société. Conformément à la *Loi*, après la tenue de l'audience, la Commission peut, selon le cas :

a) confirmer, modifier ou rescinder la décision interne révisée de la Société;
b) rendre toute décision que la Société aurait pu rendre.

La Commission rend des décisions écrites et en communique les motifs par écrit. Les décisions et les motifs sont envoyés à l'appelant et à la Société. Toutes les décisions rendues par la Commission, anonymisées et accompagnées des motifs les justifiant, peuvent être consultées au bureau de la Commission ou sur son site Web. Les décisions anonymisées sont aussi publiées sur QuickLaw, un fournisseur commercial de services d'information en ligne qui tient une base de données électronique des décisions rendues par les cours et tribunaux du pays.

Objectifs de rendement

La Commission cherche à être juste, exacte et expéditive dans l’audition des appels et dans ses décisions. C’est dans cette optique qu’elle s’est fixé les objectifs de rendement suivants :

- L'objectif de rendement pour la préparation du dossier indexé de documents en vue de l'audience est de cinq semaines après la réception du dossier de la Société et de tous les documents additionnels.
- L'objectif de rendement pour la tenue de l'audience est de six à huit semaines après que les parties notifient la Commission qu'elles sont prêtes à aller de l'avant.
- L'objectif de rendement pour la remise de la décision écrite est de six semaines après la conclusion de l'audience et la réception de tous les renseignements requis.

La Commission continue d'enregistrer un volume constant d'appels, et ses délais d'exécution moyens en 2011-2012 ont été les suivants :

- Les dossiers ont été indexés dans un délai de 13 semaines après la réception du dossier de la Société et des documents additionnels, comparativement à 17 semaines en 2010-2011 et 12 semaines en 2009-2010.
- Les audiences ont été tenues dans les huit semaines après la date où les parties ont dit être prêtes. Cet objectif de rendement a été atteint durant l'exercice 2011-2012, comparativement à neuf semaines en 2010-2011 et neuf semaines en 2009-2010.
- Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision a été de 5,5 semaines, comparativement à 5,5 semaines en 2010-2011 et 4,9 semaines en 2009-2010.
- La Commission a indexé 157 dossiers en 2011-2012, comparativement à 174 en 2010-2011.

Bien qu'il y ait eu une amélioration appréciable des délais d'exécution moyens, la Commission reconnaît qu'elle n'atteint pas encore son objectif de rendement pour la préparation des dossiers indexés. Plusieurs raisons sont en cause :

- Le roulement du personnel depuis quelques années.
- La complexité des questions portées en appel et la quantité de documents dans de nombreux dossiers d'indemnisation ont augmenté depuis quelques années, et il faut donc plus de temps pour indexer le dossier.
- Les agentes des appels doivent fournir un soutien administratif accru pour la gestion de cause des appels. Elles doivent notamment préparer des index additionnels pour les conférences préparatoires ainsi que des index supplémentaires pour les dossiers existants quand d'autres documents sont reçus. Outre les 157 dossiers indexés terminés en 2011-2012, les agentes des appels ont aussi indexé 58 dossiers de conférences préparatoires et dossiers supplémentaires, portant le total de dossiers indexés à 215.
- Cette année, les agentes des appels ont apporté un soutien administratif considérable au projet pilote de médiation en envoyant des trousses de renseignements et formulaires de consentement à 288 appelants, et en traitant leurs réponses, avant la révision du formulaire d'avis d'appel en février 2012.

Depuis 2006, la Commission s'attaque à l'arriéré de travail en embauchant des employés temporaires pour aider à l'indexation des dossiers et à la gestion de cause. La Commission a déterminé qu'elle avait un besoin continu de soutien administratif additionnel et, en 2011-2012, elle a augmenté son nombre de postes en ajoutant un poste d'adjoint administratif à temps partiel et un poste d'aide-commis à temps plein. Le poste d'adjoint administratif à temps partiel a été pourvu au dernier trimestre de 2011-2012. Le poste d'aide-commis à temps plein était encore vacant à la fin de l'exercice. On s'attend à plus d'efficacité dans la préparation des dossiers indexés quand les deux postes seront pourvus.

Au 31 mars 2012, la Commission avait 467 dossiers actifs et un arriéré de 58 dossiers à indexer, comparativement à 488 dossiers actifs et un arriéré de 62 dossiers à indexer au 31 mars 2011. Les chiffres de ces deux exercices continuent de montrer une nette diminution par rapport à octobre 2006, quand l'arriéré était de 214 dossiers à indexer.

Développement durable

La Commission épouse les pratiques d'approvisionnement durable de la Province du Manitoba. Le personnel de la Commission est conscient des avantages des pratiques d'approvisionnement respectueuses du développement durable. La Commission utilise des produits écologiques autant que possible et participe à un programme de recyclage des déchets non confidentiels.

Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles)

La *Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles)* est entrée en vigueur en avril 2007. Cette loi donne aux employés une marche à suivre claire pour communiquer les soupçons qu'ils pourraient avoir au sujet d'affaires importantes et graves (actes répréhensibles) dans la fonction publique du Manitoba et les protège davantage contre les représailles. La Loi renforce la protection déjà offerte par d'autres lois, ainsi que par les droits, politiques, pratiques et processus de négociation collective en place dans la fonction publique du Manitoba.

Un acte répréhensible aux termes de la Loi peut être une infraction à une loi fédérale ou provinciale, un acte ou une omission qui menace la sécurité publique, la santé publique ou l'environnement, un cas grave de mauvaise gestion, ou le fait d'ordonner ou de conseiller sciemment à quelqu'un de commettre un acte répréhensible. La Loi ne vise pas les questions d'ordre administratif ou opérationnel courantes.

Une divulgation faite de bonne foi par un employé, conformément à la Loi et avec une conviction raisonnable qu'un acte répréhensible a été ou est sur le point d'être commis, est réputée être une divulgation aux termes de la Loi, que l'acte en cause soit un acte répréhensible ou non. Toutes les divulgations sont examinées avec soin et à fond pour déterminer si des mesures s'imposent en vertu de la Loi, et elles doivent être déclarées dans le rapport annuel du ministère conformément à l'article 18 de la Loi. La Commission d'appel des accidents de la route a reçu une exemption de l'ombudsman en vertu de l'article 7 de la Loi. En conséquence,

toute divulgation reçue par le commissaire en chef ou un superviseur est renvoyée à l'ombudsman conformément à l'exemption.

Voici un résumé des divulgations reçues par la Commission d'appel des accidents de la route pendant l'exercice 2011-2012.

Renseignements exigés chaque année (selon l'article 18 de la Loi)	Exercice 2011-2012
Nombre de divulgations reçues, et nombre de divulgations auxquelles on a donné suite et auxquelles on n'a pas donné suite. Alinéa 18(2)(a)	Aucune

ANNUAL REPORT OF THE AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION FOR FISCAL YEAR 2011/12

General

The Automobile Injury Compensation Appeal Commission (the "Commission") is an independent, specialist administrative tribunal established under the *Manitoba Public Insurance Corporation Act* (the "*MPIC Act*") to hear appeals of Internal Review Decisions concerning benefits under the Personal Injury Protection Plan ("PIPP") of Manitoba Public Insurance Corporation ("MPIC"), a "no-fault" insurance program.

Fiscal year 2011/12, which is April 1, 2011 to March 31, 2012, was the 18th full year of operation of the Commission. The full-time staff complement of the Commission is 10, including a chief commissioner, two deputy chief commissioners, a director of appeals, three appeals officers, a secretary to the chief commissioner, one administrative assistant and one clerical assistant. In addition, there are 23 part-time commissioners who sit on appeal panels as required.

In fiscal year 2011/12, 171 new appeals of Internal Review Decisions were filed at the Commission, compared to 192 appeals in the fiscal year 2010/11.

The Appeal Process

In order to receive PIPP benefits, a claimant must submit an Application for Compensation to MPIC. If a claimant does not agree with their case manager's decision regarding an entitlement to PIPP benefits, the claimant has 60 days to apply for a review of the decision. A MPIC Internal Review Officer will review the case manager's decision and issue a written decision with reasons.

If a claimant is not satisfied with the Internal Review Decision, the claimant may appeal the decision to the Commission. An appeal to the Commission must be filed within 90 days of the date a claimant receives the Internal Review Decision. An extension for filing an appeal may be granted by the Commission if the claimant provides a reasonable explanation for missing the 90-day filing deadline.

Once a Notice of Appeal is received, the Commission obtains the appellant's claim file from MPIC. The file is reviewed and an "indexed file" is created by the Commission's appeal officers. The indexed file is the compilation of documentary evidence which is considered to be relevant to the issues under appeal. It will be referred to by the parties and the panel of the Commission at the hearing of the appeal. The indexed file is provided to the appellant or the appellant's representative and to MPIC. Once the parties have reviewed the indexed file and

submitted any further evidence they feel is relevant to the appeal, a date is fixed for hearing the appeal.

The Claimant Adviser Office was created in 2004 by an amendment to Part 2 of the *MPIC Act*. Its role is to assist claimants appearing before the Commission. In the 2011/12 fiscal year, 65 per cent of all appellants were represented by the Claimant Adviser Office.

Prior to fiscal year 2005/06, appeal hearings were conducted by panels of three commissioners. In 2005 the *MPIC Act* was amended to allow appeals to be heard by either a single commissioner or a panel of three commissioners. This amendment provides increased flexibility to the Commission and allows the Commission to deal more efficiently and expeditiously with some appeals.

Hearing Activity

Fiscal Year	Hearings Held	Case Conference Hearings	Total Hearings
2011/12	94	102	196
2010/11	81	48	129
2009/10	120	72	192

Management of appeals by case conference continues to be an important part of the Commission's hearing schedule. Over the last four fiscal years, the Commission's experience has been that many appeals require additional case management by a commissioner. In keeping with past practice, the Commission continued to initiate case conference hearings in 2011/12. There was a significant increase in case conferences this year, as the Commission finds that these hearings continue to assist in determining the status of appeals, identifying and resolving parties' impediments to scheduling a hearing date, facilitating mediation, and scheduling hearings.

In fiscal year 2011/12, appellants were successful in whole or in part in 24 per cent of the appeals heard by the Commission.

Two Year Mediation Pilot Project

In the second quarter of 2011/12, the Automobile Injury Mediation ("AIM") Office was established by the Manitoba government to provide the option of mediation services to appellants who had filed appeals of Internal Review Decisions.

The Commission facilitated the option for appellants, with existing appeals, to pursue mediation by providing information about the pilot project. It is anticipated that mediation will provide an additional resource for PIPP claimants to resolve outstanding issues with MPIC and to reduce the time required by the parties to proceed to hearing. Issues not resolved by mediation through the AIM Office are returned for adjudication at a hearing before the Commission.

In early February 2012, the Commission revised its Notice of Appeal form to provide appellants with the option to participate in mediation at the time the appeal is filed. A mediation information sheet is also provided along with the Notice of Appeal, to assist appellants and their representatives in their decision to participate in the mediation pilot project.

As of March 31, 2012, the Commission prepared and sent 288 mediation packages to appellants and, if applicable, their representatives. Of the 288 packages, 178 appellants expressed an interest to participate in mediation.

Hearing Procedure

Hearings are relatively informal in that the Commission is not strictly bound by the rules of evidence followed by the courts. Appellants and MPIC may call witnesses to testify and may also bring forward new evidence at appeal hearings. The Commission's hearing guidelines require each party to disclose documentary and oral evidence in advance of the hearing. The Commission may also issue subpoenas, which require persons to appear at the hearing to give relevant evidence and to bring documents with them.

Where feasible, the Commission will travel outside of Winnipeg to conduct a hearing or, if it is appropriate and of benefit to an appellant who lives or works elsewhere, a hearing may be conducted by teleconference.

The commissioner(s) hearing an appeal weigh the evidence and the submissions of both the appellant and MPIC. Under the *MPIC Act*, following an appeal hearing the Commission may:

(a) confirm, vary or rescind MPIC's review decision; or
(b) make any decision that MPIC could have made.

The Commission issues written decisions and provides written reasons for the decisions. The decisions and reasons are sent to the appellant and to MPIC. All of the Commission's decisions and reasons, in anonymized form, are available for viewing at the Commission's office and on the Commission's web site. Anonymized decisions are also available through QuickLaw, a commercial online information provider that maintains an electronic database of decisions issued by courts and tribunals across the country.

Performance Targets

The Commission hears and decides appeals fairly, accurately and expeditiously. With this in mind, the Commission has established performance targets:

- The performance target for preparing the indexed file of material to be used at the hearing is five weeks after receipt of MPIC's file and all other additional material.
- The performance target for scheduling hearings is six to eight weeks from the time the parties notify the Commission of their readiness to proceed.

- The performance target for rendering written decisions is six weeks following the hearing and receipt of all required information.

The Commission continues to experience a consistent volume of appeals filed resulting in the following average turnaround times for 2011/12:

- Files were indexed within 13 weeks of receipt of MPIC's file and additional material compared to 17 weeks in 2010/11 and 12 weeks in 2009/10.
- Hearing dates are scheduled within eight weeks from the time the parties are ready to proceed to a hearing. This performance target was met for the 2011/12 fiscal year, compared to nine weeks in 2010/11 and nine weeks in 2009/10.
- The average turnaround time from the date a hearing concluded to the date the Commission issues an appeal decision is 5.5 weeks, compared to 5.5 weeks in 2010/11 and 4.9 weeks in 2009/10.
- The Commission completed 157 indexed files in 2011/12, compared to 174 indexed files completed in 2010/11.

While there has been measurable improvement in the average turnaround times, the Commission recognizes that the preparation of indexed files still does not meet its performance targets. This is due to a number of reasons:

- Staff turnover over the last number of years.
- Complexity of issues under appeal and the volume of documents in many of the claim files have increased over the last number of years, which result in more time required to index the file.
- Increased administrative support by appeals officers to the case management of appeals. This includes the preparation of additional indexes for case conference hearings and supplementary indexes on existing files where additional material is received. In addition to the 157 indexed files prepared in 2011/12, appeals officers also prepared 58 case conference indexes and supplementary index files, a total of 215 indexes.
- This year, appeals officers provided significant administrative support to the mediation pilot project by sending information packages and consent forms to 288 appellants, and in processing responses, prior to the Notice of Appeal being revised in February 2012.

Since 2006 the Commission has been addressing the backlog by hiring temporary staff to assist with the backlog of indexing and the case management of files. The Commission identified an ongoing requirement for additional administrative support and in 2011/12, the number of staff positions increased with the addition of a part-time administrative assistant and a full-time clerical assistant. The part-time administrative assistant position was filled in the last quarter of 2011/12. The full-time clerical position remained vacant at the end of the fiscal year. It is expected that when both positions are filled, they will contribute to a more efficient turnaround in the preparation of indexed files.

As of March 31, 2012, the Commission has 467 active files and a backlog of 58 files to be indexed compared to 488 active files and a backlog of 62 indexes to be indexed, as of March 31, 2011. Both years continue to show a significant reduction from October 2006 when the backlog was 214 files to be indexed.

Sustainable Development

The Commission is committed to the Province of Manitoba's Sustainable Procurement Practices plan. Commission staff are aware of the benefits of Sustainable Development Procurement. The Commission uses environmentally preferable products whenever possible and takes part in a recycling program for non-confidential waste.

The Public Interest Disclosure (Whistleblower Protection) Act

The Public Interest Disclosure (Whistleblower Protection) Act came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The Act builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the Act may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counselling a person to commit a wrongdoing. The Act is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the Act, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the Act, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the Act, and must be reported in a department's annual report in accordance with Section 18 of the Act. The Automobile Injury Compensation Appeal Commission has received an exemption from the Ombudsman under Section 7 of the Act. As a result, any disclosures received by the Chief Commissioner or a supervisor are referred to the Ombudsman in accordance with the exemption.

The following is a summary of disclosures received by the Automobile Injury Compensation Appeal Commission for the fiscal year 2011/12.

Information Required Annually (per Section 18 of The Act)	Fiscal Year 2011/12
The number of disclosures received, and the number acted on and not acted on. Subsection 18(2)(a)	NIL

Significant Decisions

The following are summaries of significant decisions of the Commission and the reasons for the decisions that were issued in 2011/12.

1. Determining Eligibility to "PIPP" Benefits

On occasion the Commission is required to determine whether the *MPIC Act* applies to or excludes accidents involving bodily injury. The *MPIC Act* provides that bodily injury caused by an automobile excludes bodily injury caused by an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile.

An executor of an estate appealed MPIC's decision denying the estate's entitlement to PIPP benefits relating to a fatal accident in respect of a farm labourer found deceased, while working alone on a grain truck, inside a farm building. The deceased had been pinned between the truck box and the frame of the truck.

Members of the RCMP and Manitoba Workplace Health and Safety (WHS) attended at the accident scene, together with a service station owner, and they conducted an investigation at the scene of the accident. The service station owner was experienced and familiar with the operation and repair of farm vehicles, including hydraulic systems, and worked on such machinery in a consistent and regular basis for the past 16 years.

WHS provided a report to MPIC which concluded that, based on the location of the deceased and the tools found at the scene of the accident, the deceased was attempting to service a faulty set screw on the vehicle in an unsafe manner which resulted in him being pinned between the truck box and the frame causing his death. MPIC accepted the WHS Investigation Report that the deceased was engaged in "maintenance, repair, alteration or improvement of an automobile" and rejected the estate's application for death benefits.

The service station owner was familiar with the farm truck involved in the accident since he had serviced this vehicle in the past, prior to the accident. As a result of his investigation, the service station owner determined that:

1. The deceased was not repairing or maintaining the truck at the time of the accident but was instead adjusting the set screw on the hydraulic control lever of the truck box.
2. Adjusting the set screw was part of operating the farm truck and such an action is in the ordinary course and use of the farm truck.

The Commission stated that exclusions under the provisions of the *MPIC Act* must be interpreted narrowly. The Commission found that an adjustment of a set screw on the farm truck's hydraulic system did not come within the exclusions as set out in the *MPIC Act*. The Commission determined that there was no direct evidence that the deceased was working on the farm truck at the time of accident and rejected the report of the WHS and the RCMP who had determined the deceased was working on the farm truck.

The Appellant's appeal was allowed.

2. <u>Requirement to repay Income Replacement Indemnity ("IRI") Overpayment, where no Fraud Alleged</u>

The Appellant appealed from an Internal Review Decision which determined that the Appellant must repay an overpayment of $14,391.26 to MPIC. As a result of injuries sustained in a motor vehicle accident the Appellant was unable to continue her self-employment as a farmer and became entitled to IRI benefits. The Appellant was required to provide her tax returns annually to MPIC to verify her earnings from her self-employment. MPIC reviewed the Appellant's 2003 Income Tax information and determined, that since her reported income was less than her IRI benefits, she continued to be entitled to receive IRI benefits. MPIC, at that time, did not request the Appellant's 2004 Income Tax return for review, but subsequently requested the Appellant's 2005 Income Tax return.

On review of the 2005 Income Tax return, MPIC noted that the Appellant had deducted a capital cost allowance from her self-employed income. As a result, MPIC requested the Appellant's 2004 Income Tax return and noted that the Appellant had also deducted a capital cost allowance on her 2004 Income Tax return.

The provisions of the *MPIC Act* provide that for the purposes of calculating an Appellant's IRI benefits, capital cost allowances are not deductible as an expense from self-employed income. As a result MPIC advised the Appellant that she had received an overpayment of $14,391.26 and requested repayment of that amount.

On appeal, the Commission determined that the Appellant was not required to repay the sum of $14,391.26 to MPIC. The Commission concluded that MPIC had made a substantial procedural error in failing to obtain the Appellant's complete 2004 and 2005 Income Tax returns in a timely fashion. If these returns had been requested in a timely fashion, it would have demonstrated that the Appellant had deducted the capital cost allowance in determining her taxable income. However, under the provisions of the MPIC Act, MPIC was not entitled to make a fresh decision and request reimbursement since there was no fraud involved by the Appellant in obtaining the IRI benefits. At the appeal hearing, MPIC agreed that the Appellant had not received the overpayment by fraud and as a result the Commission determined that MPIC was not entitled to reimbursement of the IRI overpayment.

The appeal was allowed.

3. <u>Entitlement to personal care assistance for snow removal</u>

The Appellant appealed from an Internal Review Decision in respect of his entitlement to personal care assistance benefits for snow removal.

The Appellant was involved in a motor vehicle accident and sustained soft tissue injuries to his neck. An assessment for personal care assistance determined that the Appellant did not qualify for reimbursement of the cost of snow removal. The assessment indicated that the Appellant scored a total of 3 points, and in order to qualify for reimbursement of personal care assistance, a minimum score of 9 points was required.

The Appellant resided in rural Manitoba and his driveway was approximately 700 feet long and abutted a provincial highway. Medical reports corroborated the Appellant's testimony that he was physically unable to operate his snow removal equipment, a task he had carried out for the previous 20 years. The Appellant submitted that snow removal from his residential roadway was essential for him to enter and exit his residence during the winter months. He further submitted that yard work was fundamentally different from snow removal and that yard work was not an essential service.

In response MPIC referred to the provisions of the *MPIC Act* which provided that snow removal was clearly included as part of yard work in the MPIC Act and since the Appellant did not score the requisite 9 points to qualify for personal care assistance, the snow removal expenses were not covered.

On appeal, the Commission found, having regard to the definition of yard work, that the Appellant did not qualify for reimbursement of snow clearing expenses and dismissed the Appellant's appeal. The Commission found that snow clearing was an essential service to enable the victim to enter or exit from his residence. However, the Commission was bound by the provisions of the *MPIC Act* and Regulations and there was no basis upon which to allow reimbursement of the snow clearing expenses.

4. Reimbursement of Out-of-Province Medical Expenses:

The Commission considered two cases regarding an Appellant's entitlement to reimbursement of expenses for out-of-province medical care.

a) Expenses for Out-of-Province Back Surgery:

In the first case, the Appellant was involved in a motor vehicle accident on October 5, 2005. He suffered injuries, including neck and back pain, which over time became debilitating and he was unable to work. He was treated by a number of specialists in Manitoba without success. The Appellant became aware of a surgical procedure available in Europe and advised his case manager that he would like to attend for back surgery abroad. In October 2008, MPIC's case manager wrote to the Appellant to advise him that MPIC would not provide reimbursement of his expenses for attending for back surgery in another country.

In December 2008, the Appellant travelled to Europe and underwent surgery which involved the implantation of an artificial disc at L5/S1. As a result of this procedure, the Appellant made a remarkable recovery. He has been able to return to work full-time since the surgery.

The Appellant sought reimbursement for his medical and related expenses from Manitoba Health. The procedure which he had is an "insured service" in Manitoba within the meaning of *The Health Services Insurance Act*, C.C.S.M., c.H 3 5. A form of this surgery is performed in Manitoba. Manitoba Health denied the Appellant's claim as he had failed to show that the service was not available in Manitoba, one of the requirements of Manitoba Health before it will reimburse out-of-province medical expenses.

The Appellant also sought an Internal Review of the case manager's decision. The Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that there were no provisions in the *MPIC Act* to cover the cost of the out-of-province surgery or related expenses under the PIPP. As a result, she found that the Appellant was not entitled to reimbursement of his expenses for back surgery in Europe.

On appeal to the Commission, counsel for the Appellant argued that pursuant to Section 5(b) of Manitoba Regulation 40/94, the Appellant is entitled to reimbursement of his out-of-province medical expenses. He argued that a literal reading of the Regulation provides that a claimant is entitled to reimbursement of out-of-province medical expenses if he is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* (or any other Act), so long as this service is an insured service in Manitoba.

Counsel for the Appellant argued that Section 5(b) of Manitoba Regulation 40/94 expressly provides for reimbursement of medical expenses where a claimant is not entitled to reimbursement from Manitoba Health, regardless of the reasons for the denial of reimbursement from Manitoba Health. He submitted that Section 5(b) of Manitoba Regulation 40/94 does not require a claimant to qualify for coverage under *The Health Services Insurance Act*, in order to also qualify for coverage under PIPP. Counsel for the Appellant argued that this provision expressly provides for payment of expenses in those cases where Manitoba Health does not provide coverage, so long as the type of care is an insured service in Manitoba. Counsel for the Appellant maintained that the claimant is not compelled to seek medical care in Manitoba, but rather can choose to obtain medical care anywhere, and, if the care is an insured service in Manitoba, MPIC is required to cover the expenses of that care pursuant to Section 5(b) of Manitoba Regulation 40/94.

The Commission found that the Appellant was not entitled to reimbursement of expenses for his out-of-province medical care. The Commission determined that the literal interpretation suggested by counsel for the Appellant ignored the purpose and intent of the MPIC Act and *The Health Services Insurance Act*. The Commission found that the Legislature intended a correlation between the two Acts to provide a broad range of coverage for Manitoba residents. In coming to this conclusion, the Commission looked at the entire context of Section 5(b) of Manitoba Regulation 40/94, including the purpose and scheme of the *MPIC Act*. It found that *The Health Services Insurance Act* provides health care benefits on behalf of Manitobans. That was not the purpose of the *MPIC Act*.

In its conclusion, the Commission stated that Manitoba Health was the primary funding body for insured medical services and that obligation did not transfer to MPIC when the injuries were caused by a motor vehicle accident. It found that in this case, the Appellant did not become entitled to reimbursement of his out-of-province medical expenses, simply because Manitoba Health denied reimbursement. As a result, the Appellant's appeal was dismissed.

Leave to appeal this decision to the Court of Appeal was granted. The appeal is expected to be heard in the next fiscal year.

b) **Out-of-Province Medical Expenses for Shoulder Surgery**:

In this case, the Appellant was involved in a head-on collision with another vehicle. As a result of that accident, the Appellant sustained serious multiple injuries, including bilateral ankle fractures, left hip/pelvis fractures, a collapsed lung, bruising of the shoulders and numerous cuts and abrasions, as well as a left rotator cuff tear. Initially, the Appellant was treated for a possible rotator cuff sprain, but made no progress with physiotherapy. Further investigation revealed that he had sustained three badly torn tendons in his shoulder. The Appellant`s family physician made referrals to two orthopaedic specialists in Winnipeg. However, they were unable to see the Appellant. The Appellant also attended on his own to the Pan-Am Clinic and a referral was made for him to see an orthopaedic surgeon there for an assessment of the rotator cuff tear. However, the earliest appointment that the Appellant could obtain was in six months. The Appellant was advised that he could expect to wait a further six months for the actual surgery (if the decision following the initial consultation, was to proceed with the surgery).

At the hearing, the Appellant testified that he was advised by several doctors that the rotator cuff surgery to repair the torn tendons had to take place within six months of the date of the injury in order to be successful. Thereafter, his chances of even partial recovery would diminish. The Appellant testified that, by this time, it had been seven months since the date of the accident. Since it appeared that he did not have much chance of having the surgery within the recognized time frames for the type of surgery he required and feeling that he had exhausted all options in Manitoba, he decided to pursue the possibility of having surgery elsewhere. Based on discussions with his family physician, the Appellant decided to undergo surgery with an orthopaedic surgeon in North Dakota. Following the surgery, the Appellant has essentially regained full use of his left arm, although some residual weakness remains. He considers the surgery to have been very successful.

MPIC`s case manager advised the Appellant that MPIC would not provide reimbursement of his surgical and travel costs related to rotator cuff surgery in North Dakota. On Internal Review, the Internal Review Officer found that MPIC was not obligated to reimburse the Appellant for the expenses he unilaterally and voluntarily incurred in relationship to rotator cuff surgery.

The Appellant also sought reimbursement from Manitoba Health for his expenses. His request was denied by Manitoba Health as the funding requirements set out in *The Health Services Insurance Act* had not been met. *The Health Services Insurance Act* requires that there must be

a referral from an appropriate Manitoba specialist, in this case an orthopaedic surgeon. Since the Appellant did not have a referral from an appropriate specialist in Manitoba, Manitoba Health determined that the criteria for funding had not been met and it was unable to provide benefits for care obtained outside the province. It was accepted, that the procedure that was performed in Grand Forks, North Dakota is available in Manitoba. There are orthopaedic surgeons practicing in Manitoba who are fully qualified to undertake and perform the surgical repair of a rotator cuff.

On appeal, the Commission found that the Appellant was not entitled to reimbursement of expenses for his out-of-province medical care. The Commission found that MPIC did not become obligated to reimburse the Appellant's expenses in a situation where the Appellant sought care outside of Manitoba, which would normally be covered under *The Health Services Insurance Act*.

5. Assessment of Permanent Impairment Benefits

Section 127 of the *MPIC Act* provides that a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity which is calculated in accordance with Manitoba Regulation 41/94. The following cases provide an illustration of the issues faced by the Commission when adjudicating these types of matters.

a) Assessment for Non-Psychotic Mental Disorder:

The Appellant was involved in a motor vehicle accident on June 7, 1997. As a result of the injuries which she sustained in that accident, the Appellant sustained a permanent psychological impairment.

The case manager determined that the Appellant qualified for a permanent impairment benefit of 32.5% for non-psychotic mental disorder pursuant to Division 9, Subdivision 3, Section 11 of Manitoba Regulation 41/94. This decision was based upon a psychological assessment of the Appellant which evaluated her current psychological status, level of impairment, DSM-IV diagnosis in order to evaluate the Appellant`s psychological condition. On Internal Review, the Internal Review Officer concluded that there was no error made in the determination of the Appellant`s permanent impairment entitlement and found that there was no basis for interfering with the case manager`s decision.

On appeal, the Commission found that the Appellant was entitled to a permanent impairment benefit of 50% for non-psychotic mental disorder. The Commission found that with the benefit of the Appellant`s testimony and the further medical reports that had been filed in support of the appeal, there was further evidence to increase the Appellant`s impairment benefit to 50%. The Commission found that MPIC`s psychological consultant did not have the benefit of the Appellant's verbal testimony upon which to base a higher award. However, upon hearing the Appellant`s testimony and the evidence from her caregivers, the Commission was satisfied that the Appellant required constant recourse to therapeutic measures, including medication and hospital visits, and that the Appellant`s ordinary activities were reduced to such an extent that

she had minimal social and personal achievement. As a result, the Commission was convinced that the appropriate award for the Appellant`s permanent impairment benefit fell within Division 9, Subdivision 3, Section 10 rather than Section 9, and that 50% was an appropriate impairment rating. The Commission found that this rating accurately reflected the Appellant`s markedly altered functional status since the motor vehicle accident and the psychological factors which accounted for her lifestyle changes, her reduced responsibilities, her destructed relations with her family and friends, her demoralization and her significant stress and anxiety.

b) **Permanent Impairment for Scarring**:

The Appellant appealed an Internal Review Decision with respect to the permanent impairment benefit determined by MPIC. In this case the Appellant had a left elbow scar which totalled 0.8 square centimetres, which equated to an award of 0.4% pursuant to Manitoba Regulation 41/94. The Internal Review Officer determined that awards of less than 0.5% are rounded down and therefore the Appellant`s award for left elbow scarring was calculated as 0%.

On appeal, the Commission noted a previous decision wherein the Commission determined that a case manager should not reduce a permanent impairment benefit for an Appellant`s scarring. The impairment benefit is clearly set out in the Regulations and MPIC is not entitled to reduce a statutory benefit pursuant to an internal administrative policy of convenience or otherwise. The Commission found that, in accordance with the Schedule of Permanent Impairments, the Appellant was entitled to a permanent impairment benefit of 0.4% in accordance with Table 13.3 of Division 13 for left elbow scar. Again, the Commission reiterated that the impairment benefits were clearly set out in the Regulations and MPIC was not entitled to reduce a statutory benefit pursuant to an internal administrative policy of convenience or otherwise.

6. Application of Section 150 of the *MPIC Act* – MPIC's duty to advise and assist claimants:

The Appellant was a pedestrian injured in a motor vehicle accident. Following her discharge from hospital she was in receipt of caregiver weekly indemnity, personal care assistance, treatment and IRI benefits as well as a reconditioning work hardening program provided by MPIC.

The Appellant's benefits were suspended, pursuant to Section 160(d) and (g) of the *MPIC Act*, for her refusal to undergo a psychological assessment as recommended by an independent physiatrist and for absenteeism at her reconditioning program.

The Appellant's reluctance to meet with the psychologist stemmed from her reluctance, based on religious and cultural factors, to meet with a male psychologist. In June of 2010, the Appellant agreed to meet with a female psychologist and that meeting was held in October of 2010.

At a pre-hearing Case Conference held on August 10, 2011, MPIC agreed that since the Appellant had complied with the request to undergo a psychological assessment and had met with the female psychologist in October of 2010, the Appellant's benefits would be reinstated

from that date forward. The issue remained as to whether the Appellant's suspension for failure to comply with the reconditioning program should be upheld, and if so, whether the Appellant's benefits should have continued to be suspended after she agreed to see the psychologist in June of 2010.

The Appellant gave detailed evidence regarding her physical injuries and the psychological effects which occurred as a result of the accident and her injuries. She explained the cultural and religious barriers with respect to her seeing a male psychologist. Although she expressed her willingness to meet with a female psychologist for assessment and treatment, her case manager merely responded to this by indicating that should she wish to attend a female psychologist, she should please provide the name of the person she wished to see and the case manager would contact them about authorization for an assessment. The Appellant explained that because of her psychological difficulties, she was struggling with activities of daily living, had trouble leaving her house and needed help in finding a female psychologist. Reports from her family physician and a physiatrist confirmed both her physical and psychological difficulties. The female psychologist's reports diagnosed psychological injuries, including post-traumatic stress disorder and depressive disorder, resulting from the motor vehicle accident. The Appellant also submitted that she had not refused to comply with the rehabilitation program and psychological assessments but rather that she was unable to respond, as a result of her physical and psychological condition as well as language, cultural and religious issues.

The panel agreed with the submission of counsel for the Appellant that MPIC had failed in its duty to advise and assist the Appellant and to ensure that she was informed of and received the compensation to which she was entitled, pursuant to Section 150 of the *MPIC Act*. The Commission further found that MPIC erred in concluding that the Appellant had, without valid reason, refused to undergo a medical examination and that she had, without valid reason, not followed or participated in a rehabilitation program made available by the Corporation. The panel found a number of deficiencies in the management of the Appellant's claim. Psychological issues identified and recommendations made by the rehabilitation consultants and the independent assessing physician were not addressed by the Appellant's case manager. Although the Appellant's progress may have been slower than MPIC may have wished, the Appellant was progressing in her rehabilitation, despite her difficulties with pain complaints, asthma, psychological difficulties and cultural, language and religious differences. MPIC discontinued the Appellant's benefits and then made no attempt whatsoever to continue with rehabilitation of her physical injuries or to assist her with finding a female psychologist. MPIC then maintained the Appellant's benefits should only be reinstated back to October 2010 (when she actually saw a psychologist) and not to June of 2010 when she agreed to see one, because, it claimed, there was no guarantee she would actually go to the appointment. In the Commission's view this was not a reasonable position as the decision to reinstate those benefits to the Appellant was made following a Case Conference Hearing with the Commission on August 12, 2011, when all the parties were fully aware that the Appellant had already attended for an assessment in October of 2010. The failure to reinstate benefits, even after the Appellant agreed to see a psychologist in June 2010 was found to be consistent with MPIC's failure to comply with Section 150 of the *MPIC Act.* The panel found the Appellant was entitled to reinstatement of PIPP benefits from the date those benefits were discontinued by MPIC.

7. Causation

The Commission is often required to find whether there is a causal relationship between an Appellant's bodily injuries and the motor vehicle accident to determine whether an Appellant is entitled to PIPP benefits. The following three decisions involve the issue of causation.

a) Establishing Causation where there is evidence of conflicting Medical Reports

The Appellant appealed from MPIC's Internal Review Decision which rejected the Appellant's Application for Compensation in respect of her right lower limb on the basis that there was no causal relationship between the motor vehicle accident and the Appellant's complaints. The Appellant was involved in a motor vehicle accident and complained of pain to her cervical spine, right ribs, low back, and left sciatica. She received physiotherapy treatments which resolved these complaints. Six months after the accident she complained to her caregiver that she was suffering pain and numbness to her right lower leg, which was of two months' duration. The Appellant was referred to a plastic surgeon who performed surgery to her right leg.

MPIC referred the Appellant's file to its Medical Health Consultant who determined the Appellant's right leg symptoms were not causally related to the motor vehicle accident. However, the Medical Health Consultant suggested that MPIC's case manager obtain a narrative report from the plastic surgeon in respect of the issue of causality between the Appellant's right lower limb complaints and the motor vehicle accident. The case manager did not request such a report from the plastic surgeon.

Upon receipt of several medical reports the case manager issued a decision denying the Appellant's Application for Compensation and relied on the Medical Health Consultant's report on the issue of causality without the benefit of a report from the plastic surgeon in respect of this issue.

The Appellant made an Application for Review of the case manager's decision and the Internal Review Officer issued a decision dismissing the Appellant's appeal and confirmed the case manager's decision. The Appellant filed a Notice of Appeal.

The Commission determined at the appeal hearing that because the case manager failed to obtain a report from the plastic surgeon on the issue of causality, the Internal Review Officer rejected the Appellant's Application for Compensation without having the opportunity of reviewing the plastic surgeon's opinion on causality. As a result the Commission requested further reports from the plastic surgeon and MPIC's Medical Health Consultant and adjourned the hearing pending receipt of these reports.

On receipt of these reports, the Commission noted that there were conflicting written medical opinions between MPIC's Medical Health Consultant and the plastic surgeon on the issue of causality. MPIC's Medical Health Consultant concluded there was no causal relationship between the Appellant's injury to her lower right limb and the motor vehicle accident while the plastic surgeon concluded that there was a causal connection.

The Commission reconvened the appeal hearing and heard testimony from the Appellant who asserted that the injury to her right lower limb was a result of the motor vehicle accident. The Commission heard submissions from both parties and adjourned the proceedings in order to consider the evidence.

In its written decision following the hearing the Commission found that the Appellant was a credible witness and accepted her testimony on the issue of causality. The Commission noted that the Appellant's plastic surgeon personally examined the Appellant and was able to assess her credibility, and concluded that there was a causal connection between the Appellant's injuries and the motor vehicle accident. On the other hand, the Commission found that MPIC's Medical Health Consultant did not physically examine the Appellant but conducted a paper review prior to issuing his decision on causality. In these circumstances, the Commission gave greater weight to the plastic surgeon's opinion on causality than it did to the opinion of MPIC's Medical Health Consultant. The Commission also found that the plastic surgeon's medical opinion corroborated the Appellant's testimony on the issue of causality.

The appeal was allowed.

b) **Causation of Aneurysm Discovered Upon Treatment for MVA Injuries:**

The Appellant was injured in a motor vehicle accident and was transported to a hospital emergency room. Investigations conducted in the hospital revealed that the Appellant had a basilar artery aneurysm and an internal carotid aneurysm. Later, an abdominal aortic aneurysm was also discovered. The Appellant underwent surgery for her aneurysms and later suffered from complications of dizziness, headaches and shortness of breath, determined to be due to the treatment of the aneurysms. The Appellant sought compensation from MPIC for medical expenses connected with those symptoms.

MPIC took the position that the medical evidence did not support a causal relationship between the surgery required for the Appellant's aneurysms, along with her related symptoms, and the motor vehicle accident. Any treatment directed at the musculoskeletal condition which related to the whiplash injury from the motor vehicle accident would be considered, but treatment resulting from the diagnosis of the aneurysm would not be funded.

The panel reviewed evidence from the Appellant's neurosurgeon who indicated that if the motor vehicle accident had not occurred, the aneurysm may never have been discovered and the Appellant may have lived her life without worrying about it. The panel also heard evidence from MPIC's Healthcare Consultant who did not agree with the neurosurgeon's statement equating causation with presentation of the aneurysm at the time of the motor vehicle accident. It was very difficult to predict when an aneurysm might become symptomatic. Her evidence regarding causation made an analogy to a lung tumour being discovered during investigations following a motor vehicle accident. The lung tumour may have been discovered as a result of the motor vehicle accident, but it could not be said to have been caused by the motor vehicle accident.

The Commission found that on a balance of probabilities, there was no evidence to suggest what course the Appellant's aneurysms might have taken, whether treated or untreated. The Appellant had failed to satisfy the onus upon her of showing, on a balance of probabilities, that the motor vehicle accident caused the neurological condition leading to her symptoms. The evidence on the file and at the hearing did not establish that the neurological condition or symptoms resulting from its treatment were caused by the motor vehicle accident. The appeal was dismissed.

c) **Medically Required Treatment as a Result of Injuries Sustained in a Motor Vehicle Accident:**

Following her accident, MPIC provided the Appellant with physiotherapy treatment and a work hardening program. Her right ankle pain was diagnosed as a peroneal tendon split syndrome, which is a rupture of the peroneal muscle tendon. Orthopaedic surgery was performed on the ankle and she was provided with a prescription for an exogen electrical stimulator brace for the ankle and nitroglycerin patch.

MPIC denied reimbursement for these expenses, taking the position that the brace and nitroglycerin patch were prescribed for conditions not related to the motor vehicle accident.

The Appellant testified at the hearing into her appeal and provided medical documentation from her family physician, physiatrist and orthopaedic surgeon.

The panel of the Commission found that the Appellant's testimony was credible and was supported by a lack of evidence regarding treatment for ankle pain prior to the motor vehicle accident, her reports of ankle pain to her caregivers within approximately one month following the motor vehicle accident and the opinion of her surgeon that the injury was consistent with the mechanism of the motor vehicle accident. The Commission therefore concluded that the Appellant had met the onus upon her of showing on a balance of probabilities, that her right ankle condition was aggravated or enhanced by and was a result of the motor vehicle accident.

The panel also accepted the evidence and opinion of the orthopaedic surgeon who treated the Appellant that the nitroglycerin patch was to be used on the skin overlying the ankle tendon and that he also recommended the use of the exogen stimulator. The Commission held that MPIC should reimburse the Appellant for any expenses incurred in this regard and that it should fund the exogen stimulator brace, which the orthopaedic surgeon continued to recommend, allowing the Appellant's appeal.

8. Application of Section 3(3) of the *MPIC Act* – Definition of Canadian Controlled Private Corporation and Significant Influence of Shareholder:

As a result of injuries sustained in a motor vehicle accident, the Appellant was prevented from returning to his full-time employment and was in receipt of IRI benefits. At the time of the motor vehicle accident, the Appellant was working at a silk screening business. The Appellant had purchased this business in 1987 and ran it through his own name until June 1, 1992 when he transferred the business by signing it over to his wife for $1.00. The transfer was arranged as a

result of consultation by the Appellant with a bankruptcy lawyer due to some financial difficulties he had encountered. As a result of the transfer, the Appellant was given some protection from creditors and continued to operate the business as an employee for 22 years, while continuing to have *de facto* control. The Appellant submitted that he did not really consider himself as an employee of the corporation and believed that he was paying income tax as a self-employed person.

MPIC classified the Appellant as a full-time earner employed by the screen printing business, and calculated his gross yearly employment income ("GYEI") and biweekly entitlement to IRI benefits based upon his 2005 and 2006 tax returns. MPIC concluded that the Appellant did not fall within the definition of a "significant influence shareholder" pursuant to Section 3(3) of Regulation 39/94 of the MPIC Act as he did not hold 20% or more of the voting rights in the corporation.

Although the panel found that the Appellant was credible regarding his evidence that he was actively running the business on his own, the evidence showed that the legal structure under which the business operated was one where the Appellant was an employee. Although the Appellant was able to demonstrate an active, authoritative influence over the day to day financial and administrative operations of the corporation pursuant to Section 3(3)(b) of the Regulation, he failed to establish that he met the criteria for the first prong of that test, found in Section 3(3)(a), which requires that the shareholder hold 20% or more of the voting rights in the Corporation. The Commission found that both aspects of the test set out in Section 3(3) of the Regulation for a significant influence shareholder must be met in order for the Appellant to establish that his income was "business income" pursuant to Section 3(1) of Regulation 39/94. As the Appellant did not meet both tests, the decision of the Appellant's case manager and the Internal Review Officer classifying him as a full-time employee were upheld.

Appeals to the Manitoba Court of Appeal

A decision of the Commission is binding, subject only to a right of appeal to the Manitoba Court of Appeal on a point of law or a question of jurisdiction, and then only with leave of the court. There were two applications for leave to appeal in the 2011/12 fiscal year. The Court of Appeal denied leave in one case and granted leave to appeal in the other case.

One other case, in which the Court of Appeal previously granted leave to appeal, remains adjourned indefinitely.

In the Commission's 18 years of operation the Court of Appeal has granted leave to appeal in a total of 13 cases from the 1,493 decisions decided by the Commission.