Manitoba

Automobile Injury Compensation Appeal Commission

Annual Report 2012-2013

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, 2013.

Respectfully submitted,

"Original 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, 2013 which includes a summary of significant decisions.

Yours truly,

"Original signed by"

MEL MYERS, QC
CHIEF COMMISSIONER

Encl.

RAPPORT ANNUEL DE LA
COMMISSION D'APPEL DES ACCIDENTS DE LA ROUTE
POUR L'EXERCICE 2012-2013

Généralités

La Commission d'appel des accidents de la route (« la Commission ») est un tribunal administratif spécialisé indépendant qui a été constitué en vertu 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 indemnités du Régime de protection contre les préjudices personnels (« le Régime ») de la Société d'assurance publique du Manitoba (« la Société »), un programme d'assurance sans égard à la responsabilité.

L'exercice 2012-2013, qui a débuté le 1er avril 2012 et s'est terminé le 31 mars 2013, marquait la 19e année complète de fonctionnement de la Commission. Celle-ci compte un personnel de 11 personnes : un commissaire en chef, deux commissaires en chef adjointes, une directrice des appels, trois agentes des appels, une secrétaire du commissaire en chef, deux secrétaires administratives à temps partiel et une employée de bureau. En outre, 27 commissaires à temps partiel siègent à des comités d'appel selon les besoins.

Le processus d'appel

Pour recevoir des indemnités du Régime, 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 Régime, 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 par écrit une décision motivée.

Le demandeur qui n'est pas satisfait des conclusions de l'agent de révision interne peut interjeter appel devant 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.

En 2012-2013, 187 nouveaux appels de décisions internes révisées ont été interjetés devant la Commission, comparativement à 171 en 2011-2012.

Procédures administratives préalables à l'audience

Le formulaire d'avis d'appel indique que les appelants ont la possibilité de participer au projet pilote de médiation. Une feuille de renseignements sur la médiation est jointe au formulaire.

Si des services de médiation sont demandés au moment du dépôt d'un avis d'appel, la Commission fournit des copies des principaux documents d'appel à l'appelant ou à son représentant ainsi qu'au Bureau de médiation relative aux accidents de la route (« le Bureau »). Durant l'exercice 2012-2013, la Commission a préparé 30 trousses de médiation qu'elle a envoyées aux appelants qui avaient déjà déposé un appel et, s'il y avait lieu, à leurs représentants. Vingt-six des appelants qui ont reçu la trousse ont exprimé leur intérêt à l'égard de la médiation. Ce nombre s'ajoute aux 178 appelants qui ont manifesté leur intérêt à la suite de l'envoi de 288 trousses de médiation par la Commission à l'exercice précédent.

Sur les 187 nouveaux appels interjetés en 2012-2013, 158 appelants ont demandé des services de médiation.

Les questions qui ne sont pas réglées par la médiation sont renvoyées à la Commission pour la tenue d'une audience visant à trancher l'appel. Au lieu de préparer un dossier indexé pour chaque appel déposé, les agents des appels de la Commission n'en préparent désormais que pour les appels non réglés que le Bureau renvoie à la Commission. Si des services de médiation ne sont pas demandés au moment du dépôt de l'avis d'appel, un dossier indexé sera préparé. Le dossier indexé regroupe les preuves documentaires jugées pertinentes pour les questions en litige. Il est fourni à l'appelant – ou à son représentant – ainsi qu'à la Société. De plus, on s'y reporte à l'audience. Lorsque les parties ont examiné le dossier indexé et présenté tout autre élément de preuve qu'elles jugent pertinent, la date d'audition de l'appel est fixée.

Le Bureau des conseillers des demandeurs

Le Bureau des conseillers des demandeurs a été constitué en 2004 par une modification apportée à la partie 2 de la *Loi.* Son rôle est d'aider les appelants qui comparaissent devant la Commission. En 2012-2013, 73 % des appelants ont été représentés par le Bureau des conseillers des demandeurs, comparativement à 65 % en 2011-2012.

Activités

Exercice	Audiences	Conférences préparatoires	Total
2012-2013	87	157	244
2011-2012	94	102	196
2010-2011	81	48	129
2009-2010	120	72	192

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 souplesse à la Commission et lui permet, dans certains cas, de régler plus efficacement et plus rapidement les appels.

La gestion des appels au moyen de conférences préparatoires représente toujours une partie importante du calendrier des audiences de la Commission. Au cours des cinq derniers exercices, celle-ci a constaté que, pour de nombreux appels, un commissaire devait fournir du soutien supplémentaire pour la gestion de cas. Comme par le passé, la Commission a continué de convoquer des conférences préparatoires en 2012-2013. Le nombre de ces conférences a encore augmenté considérablement cette année, car la Commission estime qu'elles aident à déterminer où en sont les appels, à établir la cause des retards, à résoudre les obstacles qui empêchent de fixer une date d'audience, à faciliter la médiation et à fixer les dates d'audience.

En 2012-2013, les appelants ont eu gain de cause – entièrement ou partiellement – dans 28 % des appels entendus par la Commission.

Procédure lors des audiences

Lorsqu'un appel n'est pas entièrement réglé durant la médiation ou lorsqu'un appelant décide de ne pas recourir à la médiation, la Commission teint une audience afin de se prononcer sur l'appel.

Comme la Commission n'est pas strictement liée par les règles de la preuve applicables aux tribunaux, les audiences sont plutôt dénuées de formalités. 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 divulguent à l'avance leurs éléments de preuve documentaires ou oraux. La Commission peut aussi délivrer des assignations de témoins, qui obligent des personnes à comparaître à l'audience pour témoigner et à apporter les documents pertinents avec elles.

Au besoin, la Commission se rend à l'extérieur de Winnipeg pour tenir une audience ou, si les circonstances s'y prêtent et si cela est dans l'intérêt d'un appelant qui vit ou travaille ailleurs, une audience peut avoir lieu par téléconférence.

Le commissaire ou les commissaires qui entendent un appel évaluent la preuve et les observations 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 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. La version anonymisée des décisions rendues par la Commission ainsi que les motifs les justifiant peut être consultée au bureau de la Commission ou dans 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 entend et tranche des appels de façon équitable, exacte et rapide. C'est dans cette optique qu'elle s'est fixé les objectifs de rendement suivants :

- Dans les cas où l'appelant n'a pas recours à la médiation et demande une audience pour le règlement de l'appel, l'objectif de rendement concernant la préparation du dossier indexé qui sera utilisé à l'audience est de cinq semaines après la réception du dossier de la Société et de tout document supplémentaire.
- Pour les appels où l'appelant demande des services de médiation, l'objectif de rendement relatif à la préparation du dossier indexé est de cinq semaines après que la Commission a été avisée par le Bureau que la médiation est terminée et que l'appel sera renvoyé à la Commission en vue d'une audience.
- L'objectif de rendement pour la tenue de l'audience est de six à huit semaines après que les parties avisent 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 tenue de l'audience et la réception de tous les renseignements requis.

La Commission continue d'enregistrer un volume constant d'appels, et ses délais de traitement moyens en 2012-2013 ont été les suivants :

- Les dossiers ont été indexés dans un délai de 11,7 semaines après la réception du dossier de la Société et des documents supplémentaires, comparativement à 13 semaines en 2011-2012 et à 17 semaines en 2010-2011.
- Les dossiers ont été indexés dans un délai de 11,1 semaines après la réception par le Bureau de l'avis indiquant que la médiation était terminée mais que l'appel non réglé ferait l'objet d'une audience.
- Les audiences ont été tenues dans un délai moyen de 2,25 semaines après la date où les parties ont dit être prêtes, comparativement à 8 semaines en 2011-2012 et à 9 semaines en 2010-2011.
- Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision était de 4,95 semaines; il était de 5,5 semaines en 2011-2012 et en 2010-2011.
- La Commission a indexé 100 dossiers en 2012-2013, comparativement à 157 en 2011-2012 et à 174 en 2010-2011.

Même si on s'attendait à une réduction du nombre de dossiers indexés en raison des changements de procédure associés au projet pilote de médiation, le nombre de dossiers indexés supplémentaires préparés par les agents des appels de la Commission a augmenté, passant de 58 en 2011-2012 à 76 en 2012-2013. La préparation de ces dossiers s'est avérée nécessaire notamment pour les conférences préparatoires ainsi que pour les dossiers existants après la réception de documents supplémentaires.

En plus du soutien fourni pour le projet pilote de médiation, les agents des appels de la Commission continuent d'apporter un soutien administratif considérable pour la gestion des

appels. Si on tient compte des dossiers indexés supplémentaires, les agents des appels ont préparé en tout 176 dossiers indexés en 2012-2013, comparativement à 215 en 2011-2012.

Au 31 mars 2013, il y avait 366 dossiers actifs à la Commission, par rapport à 467 au 31 mars 2012 et à 488 au 31 mars 2011.

Appels interjetés devant la Cour d'appel du Manitoba

Les décisions de la Commission sont exécutoires, sous la seule réserve du droit d'interjeter appel devant la Cour d'appel du Manitoba sur une question de droit ou de compétence et, le cas échéant, uniquement avec l'autorisation du tribunal. En 2012-2013, trois demandes d'autorisation d'appel ont été présentées. Une demande a été rejetée, et une autre est toujours en instance. Dans le cas de la troisième, la Cour d'appel a accordé l'autorisation d'interjeter appel. Cependant, l'appel a été entendu sur le fond et rejeté par tous les membres du comité.

Une motion en rejet lié à un dossier pour lequel la Cour d'appel avait accordé une autorisation d'appel au cours d'un exercice antérieur a été entendue par un juge des motions de la Cour d'appel, mais la décision n'a pas encore été rendue. Au cours des 19 années d'existence de la Commission, la Cour d'appel a accordé une autorisation d'appel dans 14 cas sur les 1 567 décisions rendues par la Commission.

Développement durable

La Commission épouse les pratiques d'approvisionnement durable de la Province du Manitoba. Le personnel de la Commission est conscient des avantages associés aux 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 leurs inquiétudes au sujet d'actes importants et graves (actes répréhensibles) commis 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 courantes d'ordre administratif ou opérationnel.

Une divulgation faite de bonne foi et conformément à la *Loi* par un employé qui a des motifs raisonnables de croire qu'un acte répréhensible a été ou est sur le point d'être commis est réputée une divulgation faite en vertu de la *Loi,* que l'acte en cause soit un acte répréhensible ou non. Toutes les divulgations font l'objet d'un examen minutieux et approfondi visant à déterminer si des mesures s'imposent en vertu de la *Loi*. En outre, 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 supérieur est renvoyée à l'ombudsman, selon l'exemption prévue.

Voici un résumé des divulgations reçues par la Commission d'appel des accidents de la route pendant l'exercice 2012-2013.

Renseignements exigés chaque année (selon l'article 18 de la *Loi)*	Exercice 2012-2013
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 2012/13

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 2012/13, which is April 1, 2012 to March 31, 2013, was the 19th full year of operation of the Commission. The staff complement of the Commission is 11, including a chief commissioner, two deputy chief commissioners, a director of appeals, three appeals officers, a secretary to the chief commissioner, two part-time administrative secretaries and one clerical staff person. In addition, there are 27 part-time commissioners who sit on appeal panels as required.

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.

In fiscal year 2012/13, 187 new appeals of Internal Review Decisions were filed at the Commission, compared to 171 appeals in the fiscal year 2011/12.

Pre-hearing administrative procedures

The Notice of Appeal indicates that appellants have the option to participate in the mediation pilot project. A mediation information sheet is also provided with the Notice of Appeal.

If mediation is requested at the time an appellant files a Notice of Appeal, the Commission provides copies of the main appeal documents to the appellant or the appellant's representative and to the Automobile Injury Mediation (AIM) Office. In the 2012/13 fiscal year, the Commission prepared and sent 30 mediation packages to appellants with existing appeals and, if applicable, their representatives. Of these 30 packages sent, 26 expressed an interest to participate in mediation. This is in addition to the 288 packages that the Commission sent during the previous fiscal year, where 178 appellants expressed an interest to participate in mediation.

Of the 187 new appeals that were filed during the 2012/13 fiscal year, 158 appellants requested the option of mediation.

For issues that are not resolved at mediation, the appeals are returned for adjudication at a hearing before the Commission. Instead of preparing indexed files for each appeal filed, the Commission's appeals officers now prepare indexed files only for those unresolved appeals that returned to the Commission from the AIM Office. If mediation is not requested at the time the Notice of Appeal is filed, an indexed file will be prepared. The indexed file is the compilation of documentary evidence considered relevant to the issues under appeal. It is provided to the appellant or the appellant's representative and to MPIC and will be referred to at the hearing of the appeal. Once the parties have reviewed the indexed file and submitted any further relevant evidence, a date is fixed for hearing the appeal.

The Claimant Adviser Office

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 2012/13 fiscal year, 73 per cent of all appellants were represented by the Claimant Adviser Office, compared to 65 per cent in 2011/12.

Hearing Activity

Fiscal Year	Hearings Held	Case Conference Hearings	Total Hearings
2012/13	87	157	244
2011/12	94	102	196
2010/11	81	48	129
2009/10	120	72	192

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.

Management of appeals by case conference continues to be an important part of the Commission's hearing schedule. Over the last five 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 2012/13. There was another significant increase in case conferences this year, as the Commission finds that these hearings continue to assist in determining the status of appeals, identifying sources of delay, resolving parties' impediments to scheduling a hearing date, facilitating mediation, and scheduling hearings.

In fiscal year 2012/13, appellants were successful in whole or in part in 28 per cent of the appeals heard by the Commission.

Hearing Procedure

For appeals that are not fully resolved at mediation, or where an appellant does not elect the option of mediation, the Commission will adjudicate appeals by hearings.

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.

If required, 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.

- For those appellants who do not request the option of mediation and request a hearing for the adjudication of the appeal, 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.
- For those appeals that request the option of mediation, the performance target for preparing the indexed file is five weeks after the Commission is notified by AIM that mediation is concluded and the appeal will continue to proceed at the Commission to hearing.
- 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 2012/13:

- Files were indexed within 11.7 weeks of receipt of MPIC's file and additional material compared to 13 weeks in 2012/13 and 17 weeks in 2010/11.
- Files were indexed within 11.1 weeks of receipt of notification by AIM that mediation was concluded but the unresolved appeal will proceed to hearing.
- Hearing dates are scheduled, on average, within 2.25 weeks from the time the parties are ready to proceed to a hearing. This compares to meeting the performance target of eight weeks for the 2011/12 fiscal year and compared to nine weeks in 2010/11.
- The average time from the date a hearing concluded to the date the Commission issued an appeal decision was 4.95 weeks, compared to 5.5 weeks in 2011/12 and 5.5 weeks in 2010/11.
- The Commission completed 100 indexes in 2012/13, compared to 157 indexed files in 2011/12 and compared to 174 indexed files completed in 2010/11.

While the reduction of the number of indexes prepared was expected as a result of the procedural changes associated with the mediation pilot project, the number of supplementary indexes prepared by the Commission's Appeals Officers increased to 76 supplementary indexes in 2012/13, compared to 58 supplementary indexes in 2011/12. Supplementary indexes include the preparation of additional indexes for case conference hearings and preparing additional indexes on existing files where additional material is received.

In addition to providing administrative support to facilitate the Mediation Pilot Project, the Commission's Appeals Officers continue to provide substantial administrative support to the

case management of appeals. Including supplementary indexes, Appeals Officers prepared a total of 176 indexes in 2012/13, as compared to a total of 215 indexes in 2011/12.

As of March 31, 2013, there were 366 open appeals at the Commission, compared to 467 active files as of March 31, 2012 and 488 active files as of March 31, 2011.

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 three applications for leave to appeal in the 2012/13 fiscal year. One application for leave was dismissed and one application for leave remains pending. The Court of Appeal granted leave to appeal in the third case, but the appeal on its merits was heard and dismissed by the full panel.

A motion to dismiss a case where the Court of Appeal previously granted leave to appeal in a previous fiscal year, was heard by a Court of Appeal motions judge but a decision has not yet been issued. In the Commission's 19 years of operation, the Court of Appeal has granted leave to appeal in a total of 14 cases from the 1,567 decisions made by the Commission.

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 2012/13.

Information Required Annually (per Section 18 of The Act)	Fiscal Year 2012/13
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 2012/13.

Entitlement to Death Benefits

Division 3 of Part 2 of the *MPIC Act* sets out various provisions which provide entitlements to certain death benefits where a victim has died as a result of a motor vehicle accident. The Commission considered several cases regarding entitlement to death benefits, including the following cases:

1. **Entitlement of parent of deceased victim**:

In this case, the victim was involved in a motor vehicle accident on October 16, 2010, wherein he sustained serious injuries which resulted in his death. At the time of the accident, the victim was 70 years of age and he was a person with an intellectual disability. He resided in a home with other adults with disabilities. He was not married and had no dependents. He held part-time employment and was financially self-sufficient. He was predeceased by both of his parents and survived by his four brothers. In December 2010, MPIC's case manager issued a decision indicating that there was no entitlement to a death benefit as the victim did not have a spouse or dependents at the time of his death. The victim's brothers (the "Appellants") sought an Internal Review of that decision on the basis that they stood "*in loco parentis*" to the victim at the time of his death and therefore they were entitled to a death benefit pursuant to Section 123 of the MPIC Act. The Internal Review Officer dismissed the Appellants' application for review and confirmed the case manager's decision. The Internal Review Officer found that the Appellants did not fall within the definition of "*in loco parentis*" to the victim and therefore they were not entitled to a death benefit pursuant to Section 123 of the MPIC Act.

On appeal to the Commission, the Claimant Adviser argued that the Appellants took on the role of parents to the victim when their biological parents passed away. The Appellants had made a commitment to their parents that they would look after the deceased and would continue to

include him in family functions. The Claimant Adviser relied upon the decision of the Supreme Court of Canada in *Chartier v. Chartier*, [1999] 1 SCR 242, which sets out the factors for determining the status of *"in loco parentis"*. The Claimant Adviser submitted that the Appellants took on all the roles that their parents had previously handled and more and that the factors in the *Chartier* case were satisfied. The Claimant Adviser argued that the Appellants were not merely a support network, but rather they were in fact substitute parents for the deceased and therefore they were entitled to a death benefit pursuant to Section 123 of the MPIC Act.

Counsel for MPIC argued that the Appellants were not in the position of "*in loco parentis"* to the deceased and therefore there was no death benefit payable to any of the Appellants pursuant to Section 123 of the MPIC Act. Counsel for MPIC claimed that the deceased was able to adequately manage his own affairs with some limited assistance from his family members. She argued that the deceased's family members were a support network and there was no parental relationship established after his biological parents passed away. Counsel for MPIC also applied the factors set out in the *Chartier* case. She maintained that the Appellants' role was one of support and guidance to the deceased. She submitted that the fact that they assisted their brother did not equal an obligation as set out in the *Chartier* decision and did not render them the deceased's parents.

The Commission found that the Appellants were not entitled to a death benefit pursuant to Section 123 of the MPIC Act. The Commission carefully considered the totality of the evidence before it and applied the test set out in the *Chartier* decision in coming to the determination that the Appellants did not stand *in loco parentis* to the deceased. The Commission found that the evidence before it was inadequate to support a parental relationship between the Appellants and the deceased. Rather, the Commission was satisfied that the Appellants provided guidance and support to the deceased as compassionate siblings and did not assume a parental role to the deceased. In determining whether a parental relationship existed between the deceased and the Appellants, the Commission found that it was necessary to establish a significant degree of dependency between the deceased and the Appellants. The evidence before the Commission simply did not establish such a degree of dependency between the deceased and the Appellants. Although they did provide advice, support and assistance to the deceased, the Appellants did not provide financially for the deceased; the deceased did not reside with any of them; they did not represent themselves as the deceased's parents; there was no discipline of the deceased; and there was no legal responsibility for the deceased, either as guardians, substitute decision makers or committees. Additionally, the Commission found that there were neither explicit nor implicit representations made to the world that they were responsible for the deceased. As a result, the Commission found that none of the Appellants stood in the place of a parent to the deceased.

2. **Entitlement to death benefits and funeral expenses - causation:**

In this case, the issue to be determined by the Commission was whether the victim's death was causally related to a motor vehicle accident. The victim had been involved in a motor vehicle accident on August 26, 2009, when a Handi-Transit vehicle in which she was travelling stopped

suddenly, causing her to be thrown from her wheelchair. She was 93 years old at the time of the accident and suffered a fracture to her right hand as well as bruising to her head, both arms and left knee. The victim subsequently passed away on September 19, 2009.

In December 2010, MPIC's case manager issued a decision which determined that there was no entitlement to death and funeral benefits in regards to the victim's August 26, 2009 motor vehicle accident. The case manager found that the victim's death was not caused by the August 26, 2009 motor vehicle accident.

The Estate of the deceased (the "Appellant") disagreed with that decision and sought an Internal Review of the case manager's decision. The Appellant's position was that the deceased's death was accelerated by the motor vehicle accident of August 26, 2009. As a result, it claimed that there was an entitlement to death and funeral benefits pursuant to the MPIC Act. In a decision dated March 23, 2011, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the evidence did not show that the deceased's death was causally related to the accident of August 26, 2009.

On appeal to the Commission, the Commission found that the deceased's death was not caused by the motor vehicle accident of August 26, 2009 and therefore there was no entitlement to a death benefit or funeral expenses arising out of the motor vehicle accident of August 26, 2009. At the hearing of this matter, the Commission heard testimony from the deceased's son who was travelling with his mother in the Handi-Transit van at the time of the motor vehicle accident. The Commission also heard testimony from the attending physician at the Personal Care Home where the deceased resided at the time of the accident. The attending physician's opinion was that the stress and injuries that the deceased sustained in the August 26, 2009 motor vehicle accident had an effect on her health and led to an earlier than expected death. It was the physician's opinion that although the deceased did have several pre-existing medical conditions, she had been stable prior to the motor vehicle accident. This testimony contrasted with the testimony of Dr. Balachandra, the Chief Medical Examiner from the Province of Manitoba. At the hearing, Dr. Balachandra testified that the Appellant's cause of death was diabetic nephropathy as a consequence of Diabetes Mellitis Type II. He testified that he was very certain as to the cause of death and he was certain that the motor vehicle accident did not contribute to the deceased's death. Dr. Balachandra testified that the cause of death as listed by the medical examiner was more probable "as opposed to the cause of death indicated by Dr. Prenovault" because of the deceased's magnesium levels prior to her death. Her magnesium levels were critical, indicating renal failure and there were no signs of heart attack. Dr. Balachandra's opinion was that the motor vehicle accident of August 26, 2009 did not contribute to or cause the deceased's death. He testified that the deceased had more significant trauma prior to the motor vehicle accident and the relatively insignificant injuries from the motor vehicle accident would not have caused more stress than those previous injuries. In his opinion, the motor vehicle accident-related injuries were relatively minor compared to the prior trauma. As a result, he was definitely satisfied that the motor vehicle accident injuries did not cause or contribute to her death. In this case, the Commission carefully considered the oral testimony presented at the hearing. The Commission found that the evidence of Dr. Balachandra established that the

Appellant's condition was not stable prior to the motor vehicle accident. She had been unwell and weak prior to the motor vehicle accident and her condition had been slowly deteriorating. Her magnesium levels were increasing and her anemia was worsening. The Commission accepted Dr. Balanchandra's evidence which was definite and unequivocal and found that the cause of death was diabetic nephropathy as a consequence of Diabetes Mellitis Type II. Additionally, the Commission found that there was insufficient evidence to establish that the Appellant's psychological condition diminished following the motor vehicle accident so as to have led to her death on September 19, 2009. As a result, the Commission was unable to find, on a balance of probabilities that the effects of the motor vehicle accident contributed directly or indirectly to the deceased's death.

3. **Meaning of "common law relationship" to determine entitlement to Lump Sum Indemnity:**

In this appeal the Commission was required to determine the meaning of the term of "common-law partner" in order to decide whether the Appellant was entitled to a lump sum indemnity. The Appellant appealed the decision of MPIC's Internal Review Officer who determined that the Appellant was not entitled to this indemnity because he was not the common-law partner of the Deceased, whose death was caused by a motor vehicle accident.

The Appellant was employed as a long distance transport driver and from 2003 jointly operated a truck with the Deceased for periods between 25 to 31 days on each trip and after which they returned to Winnipeg for a break of approximately 5½ days before starting the next long distance trip.

MPIC's legal counsel submitted that the Appellant had not established on a balance of probabilities that a common-law relationship in excess of two years existed between the Appellant and the Deceased as required by the legislation on the following grounds:

1. The Appellant and the Deceased had separate residences and although not conclusive was a factor to be considered on the issue of cohabitation.
2. In respect of financial arrangements there was no co-mingling of funds; each had their own bank account.
3. The Deceased and the Appellant did not name each other as beneficiary in their respective wills.
4. The Deceased had an opportunity during their long-standing relationship to change the beneficiary on her will and she did not.
5. When completing their Income Tax returns the Appellant and the Deceased designated themselves as single rather than in a common-law relationship.

MPIC's legal counsel asserted that, having regard to the legal authorities, the separate financial arrangements between the Appellant and the Deceased, the beneficiaries named in the wills and the separate residences clearly demonstrated that the Appellant and the Deceased did not have a common-law relationship.

The Appellant's legal counsel, in reviewing the number of legal decisions concerning the interpretation of the term cohabit, noted that the following criteria are being applied by the Courts in determining the meaning of this term:

(1) shelter;
(2) sexual and personal behaviour;
(3) services;
(4) social;
(5) societal;
(6) support (economic); and
(7) children.

In respect of shelter, the Appellant's legal counsel indicated that in accordance with the legal authorities maintaining separate residences does not prevent the finding of cohabitation.

The Appellant testified at the hearing that:

1. Although he and the Deceased had separate residences, they lived together in a conjugal relationship while they were jointly operating the truck on long-distance trips and in the periods while they were on break in Winnipeg.
2. The Appellant and the Deceased lived at each other's homes on a rotation basis, slept together during this time and kept personal clothing and toiletries at each other's homes.
3. In 2003 they began to operate the truck jointly and developed a dating relationship. Five years later in 2008, that relationship became a common-law relationship.
4. They ate their meals together during the course of their trips and during the time they were in Winnipeg.
5. They assisted each other in time of illness, assisted each other financially and shared domestic duties jointly.
6. He did her yard work, vacuumed the home, did the snow clearing and lawn mowing.
7. She did his laundry.
8. They shopped together for food.
9. While they were in Winnipeg she did the cooking and he did the meal preparation.
10. When they were on their work breaks they visited the Deceased's family farm together and the Appellant became very close to the Deceased's mother and siblings and was treated as a member of the family.
11. The Appellant and the Deceased demonstrated a close and loving relationship to the members of the Deceased's family and to the public.

The Commission rejected the submission of MPIC's legal counsel and concluded that although the Appellant and the Deceased had dated for a period of five years until 2003, they entered in a common-law relationship thereafter which existed for a period in excess of two years prior to the time of the Deceased's death.

The Commission agreed with the decision of the Ontario Court of Appeal which determined that a common-law relationship existing on the following grounds:

> "...Their relationship was an exclusive one, neither party being unfaithful. They slept, shopped, gardened, cooked, cleaned, socialized, and lived together as a couple and

> were treated as such by their friends, family and neighbours. While they may not have finalized any joint financial arrangements and continued to maintain separate residences, they lived together under the same roof."

The Commission found that the relationship between the Appellant and the Deceased were similar to that stated in the Ontario Court of Appeal decision. The Commission determined that the Appellant had met the criteria that determined a common-law relationship existed between the Appellant and the Deceased. The Commission therefore allowed the appeal and directed that MPIC pay the Appellant a lump-sum indemnity.

4. **Definition of "victim" under the *MPIC Act***

The Appellant's son was fatally injured as a result of a motor vehicle accident. The Appellant sought compensation for lost income due to her inability to return to work following her son's passing. Although MPIC provided payments under the MPIC Act for a non-dependent death benefit and funeral expenses, MPIC advised that there were no provisions in the Act to allow reimbursement or compensation for the Appellant's lost income.

The Appellant also indicated, at the appeal hearing, that she was not satisfied with the amount of funeral expenses which had been provided as they were insufficient to cover the expenses of her son's grave.

The Appellant described both her financial burden and emotional stress following her son's fatal injuries. The Commission reviewed the provisions of the MPIC Act dealing with the entitlement of a parent of a deceased victim (Section 123 of the MPIC Act) and reimbursement for funeral expenses (Section 124 of the MPIC Act). Although the Commission was sympathetic to the Appellant's situation and loss, the panel was bound by these provisions of the MPIC Act, as well as Section 71(1) of the Act which stated that PIPP benefits apply to any bodily injury suffered by a victim in an accident. The term "victim" was defined under Section 70(1) of the Act as a person who suffers bodily injury in an accident. The Appellant did not meet the test of having suffered bodily injury in an accident, pursuant to the particular definition set out in the MPIC Act. In spite of the Appellant's suffering and financial loss, the Commission was bound by the wording in Section 70(1) and found that the victim in this case was the Appellant's son. The Appellant was not a victim as defined in the MPIC Act, but rather the parent of a victim, whose entitlement to benefits was limited in this case to the parental benefit under Section 123 of the Act and a reimbursement of funeral expenses to a maximum of $6,000, pursuant to Section 124 of the Act.

Entitlement to PIPP benefits

5. **Discretion to provide benefits in a subsequent appeal, upon a finding that appellant knowingly provided false or inaccurate information in an earlier appeal**

In this case, the Appellant's benefits had been terminated for knowingly providing MPIC with false or inaccurate information with respect to the extent of his injuries and ability to work in

contravention of Section 160(a) of the MPIC Act. The Appellant had appealed that decision to this Commission. In a Decision and Reasons for Decision dated July 31, 2009, the Commission found that the Appellant did, on a balance of probabilities, provide false and inaccurate information to MPIC with regard to his return to work. The Commission also found that the Appellant was able to hold his pre-accident employment as of December 14, 2005. At the hearing of that appeal and in its Reasons for Decision, the Commission had expressly stated that the Claimant Adviser on behalf of the Appellant and MPIC had agreed that the Commission's decision in that appeal would be limited to the Appellant's entitlement to PIPP benefits for the period from December 14, 2005 to April 2006. The Appellant's entitlement to PIPP benefits (including Income Replacement Indemnity ("IRI") benefits, reimbursement of medical expenses and permanent impairment benefits) following the surgery to his left ankle of August 30, 2007 was referred back to MPIC's case manager for determination.

In a decision dated October 26, 2009, MPIC's case manager denied the Appellant's claim for further PIPP benefits as a result of his knowingly providing false and inaccurate information to MPIC regarding his functional ability and employability as referenced in the previous case manager's decision of February 2006. The case manager found that there was no further entitlement to any indemnity relating to the accident and resulting injuries due to the effect of Section 160(a) which was to terminate entitlement.

On appeal, the Commission found that the Appellant was entitled to PIPP benefits following the surgery to his left ankle, effective August 30, 2007. The Commission determined that its previous decision was not a definite termination of all future PIPP entitlements. As noted in its Reasons, the Commission contemplated that a potential entitlement to further PIPP benefits might exist, irrespective of the Appellant's misrepresentation in the earlier appeal, and referred the matter of the Appellant's entitlement to PIPP benefits following the surgery to his left ankle of August 30, 2007 back to MPIC's case manager for determination.

The Commission stated that Section 160(a) provides a discretion on the part of MPIC when dealing with instances where a claimant has provided false or inaccurate information to the Corporation. Section 160 specifically contemplates that a reduction of benefits, or a suspension, or a termination may be imposed. A misrepresentation by a claimant does not necessarily conclude a claim and all future entitlements. That is a matter which is to be determined in accordance with the specific facts and circumstances surrounding each claim. In this case, upon a careful consideration of all of the facts and circumstances before it, the Commission found that the suspension of the Appellant's PIPP benefits for the period from December 14, 2005 until April 2006 was an appropriate penalty for the Appellant's contravention of Section 160(a) of the MPIC Act in December 2005. The Commission determined that a suspension of benefits was a suitable outcome in circumstances of this case, as opposed to an outright termination of all entitlements to ongoing PIPP benefits. The Appellant had sustained significant injuries and permanent impairments as a result of the August 2005 motor vehicle accident which had lifelong implications for him. The seriousness of his breach must be considered in terms of the ongoing impact of his injuries. The Commission determined that the short duration of the Appellant's breach did not warrant a definite termination of the Appellant's ongoing entitlement to all future PIPP benefits arising from the motor vehicle accident of August 9, 2005 and found that the

Appellant was entitled to PIPP benefits following the surgery to his left ankle, effective August 30, 2007.

6. **Bodily injury caused by an automobile: causation**

The Appellant sought PIPP benefits as a result of an incident that occurred while he was seated as a passenger in a moving vehicle and received head injuries from shotgun pellets and glass. The Appellant's case manager indicated that as the medical reports showed that the Appellant's injuries resulted from a gunshot wound and were caused by an assault and not by an automobile or the use of an automobile, MPIC was unable to provide coverage to him for the injuries sustained in the incident. The Appellant sought an Internal Review of this decision. The Internal Review Officer confirmed the caser manager's decision that the injuries did not result from the ordinary and well-known activities to which automobiles are put. The Internal Review Officer found there was no causal relationship between the Appellant's injuries and the ownership, use or operation of a vehicle. The firing of the shotgun at the Appellant and the resulting shotgun pellets in his head had no connection with the use of the motor vehicle and the use of the motor vehicle did not cause him a greater injury.

At the appeal hearing and in written submissions, the parties addressed both the case law regarding the role of a motor vehicle and incidents falling within the definition of accidents, as well as the provisions of the MPIC Act dealing with the reduction of or exclusion from certain benefits for persons involved in illegal activities.

The Appellant described the incident. He was seated in the passenger seat of a vehicle driven by a friend, while they were working a "dial-a-dope" call. People would call him on his cell phone and he would go see them and deliver the drugs that they wanted. That is where the Appellant was when he was shot.

The panel found the Appellant to be a credible and consistent witness in describing the incident in question and the injuries that followed. This evidence was not contradicted by any evidence provided by MPIC.

Section 71(1) of the MPIC Act provides that Part 2 of the Act applies to any bodily injury suffered by a victim in an accident. The Commission considered the application of Sections 70(1) and 71(1) of the MPIC Act. Section 70(1) of the MPIC Act defines a victim as a person who suffers bodily injury in an accident, and an accident as any event in which bodily injury is caused by an automobile.

The panel also reviewed exceptions set out in Section 71(2) of the MPIC Act, agreeing with counsel for the Appellant that Section 71(2) does not automatically exclude persons involved in illegal activities from coverage under the Act. None of the special exclusions covered in Section 71(2) purport to deny benefits to an insured involved in illegal activity. Paragraph 161(1) of the MPIC Act authorizes a reduction of indemnities where a criminal conviction is made out in respect of an accident. However, the Appellant's illegal activity was not within the scope of

Section 161(1), nor was he charged or convicted of any of the offences set out in that Section, or of any criminal offence.

Accordingly, the panel agreed that the Appellant was not excluded from PIPP benefit coverage as a result of the illegal nature of his activities on the night of the incident in question.

In regard to whether the Appellant's injuries could be characterized as bodily injury caused by an automobile or an accident under Section 70(1) of the MPIC Act, the Commission reviewed the case law submitted by the parties, and closely examined the decision of the Supreme Court of Canada in the *City of Westmount v. Rossy*, 2012 SCC 30, where the respondent was killed when a tree fell on the vehicle he was driving. The Supreme Court of Canada found that the relevant Automobile Insurance Act was remedial legislation and must be given a large and liberal interpretation to ensure that its purpose is attained. The Court must not look for a traditional causal link between fault and damage as is routinely done in delictual or quasi-delictual civil liability cases, but must consider each case on its facts. At a minimum, an accident arising out of the use of a vehicle as a means of transportation will fall within the definition "accident" in the Act and will therefore be "caused by automobile". The vehicle's role in the accident need not be an active one. The mere use or operation of the vehicle, as a vehicle, will be sufficient for the Act to apply. Since the victim was using the vehicle as a means of transportation when the accident occurred, this was enough to find that damage arose as a result of an accident within the meaning of the Act.

The Commission therefore concluded the use of the vehicle here as a means of transportation, when the Appellant was injured while a passenger in a moving vehicle, meant that the incident and injuries which occurred arose out of the use of the vehicle and the incident fell within the definition of "accident" in the MPIC Act. The Appellant's appeal was allowed.

Determination of Income Replacement Indemnity ("IRI") Benefits

7. **Whether appellant was self-employed or an employee at the time of the accident**

In this case, the Commission was required to consider whether a victim was self-employed at the time of the accident or an employee in order to determine whether his IRI benefits were properly determined by MPIC. In this case, the Appellant was involved in a serious motor vehicle accident in June 2007. As a result of that accident, the Appellant suffered a severe brain injury. He requires continuous supervision in an institutional setting. Prior to the accident, the Appellant worked full-time as a self-employed carpenter. He was unable to return to any form of employment following the motor vehicle accident and as a result he qualified for IRI benefits in accordance with the MPIC Act.

On June 30, 2008, MPIC's case manager issued a decision regarding the Appellant's entitlement to IRI benefits. The case manager found that at the time of the accident, the Appellant was a self-employed carpenter. He was classified as a full-time earner for IRI purposes as he had held his self-employment for more than one year and worked an average of at least 40 hours per week. As a self-employed earner, the Appellant's IRI benefit was calculated in accordance with

Schedule C of Manitoba Regulation 39/94. This resulted in a bi-weekly IRI payment of $541.04.

The Appellant's parents, as Committee for the Appellant, disagreed with the IRI calculation and sought an Internal Review of the case manager's decision. Their position was that at the time of the accident, the Appellant had begun a full-time position with the First Nation as band carpenter, working 40 hours per week at a rate of pay of $25 per hour. They claimed that his IRI benefits should be calculated on the basis of the salary from this employment. The Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the evidence on the file confirmed that at the time of the accident, the Appellant was providing self-employed carpenter services to the First Nation and he was not an employee at the time of the accident. As a result, the Internal Review Officer found that the victim's IRI entitlement was properly determined.

On appeal, the Commission heard a significant amount of oral testimony, including testimony from the victim's parents, his girlfriend, his employee, and the Chief and Councillor of the First Nation. Upon a careful review of all of the oral and documentary evidence filed in connection with this appeal, the Commission found that the Appellant was an employee of the First Nation at the time of the motor vehicle accident. In arriving at its decision, the Commission found it necessary to consider the significant jurisprudence which has developed concerning the distinction between an employee and an independent contractor in order to determine whether the Appellant was an employee or self-employed at the time of the accident. The Commission referred to the decision of the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59 (CanLII), 2001 SCC 59, [2001] 2 S.C.R. 983. The Commission applied the criteria set out in that case to the facts of the case at hand in order to determine whether the victim was an employee or an independent contractor. The determination of that question in this case involved a consideration of a number of factors including:

- the degree of control over the victim's activities;
- the provision by the victim of his own vehicle and equipment;
- the hiring by the victim of his own helpers;
- the characterization of the relationship by the victim and the First Nation.

The Commission carefully reviewed those factors and the evidence surrounding the relationship between the victim and the First Nation. On the basis of the foregoing, the Commission determined that at the time of the accident, the victim was an employee of First Nation. The Commission was satisfied that an oral contract of employment existed between the parties, which was never reduced to writing. In examining all of the factors set out in the jurisprudence, the Commission's conclusion was that the victim was not operating a business on his own account with respect to the provisions of his services to First Nation. Rather, he was to receive a wage for his work. There was no expectation or opportunity for profit related to the arrangement with the First Nation. Therefore, for the purposes of determining the victim's IRI benefits, his benefits were to be calculated based upon his two employments which he held at the time of the motor vehicle accident – the salary of $1,000 per week from First Nation plus his self-employed business income.

8. **Compensation for future lost income and requirement to repay overpayment where no fraud is alleged**

The Appellant appealed the Internal Review Officer's decision:

1. terminating his IRI on the basis that the Appellant's annual income exceeded the amount provided by the IRI;
2. requiring him to repay MPIC a sum of $8,125.70 in overpayment of IRI.

The Appellant was a farmer and as a result of a motor vehicle accident suffered significant injuries which prevented him from carrying out his cow/calf farm operation and other farm duties at his farm located in rural Manitoba. The Appellant determined that as a result of the injuries he sustained in the motor vehicle accident he was unable to continue his cow/calf operation and decided that it was necessary to sell a number of his calves which resulted in a significant loss of income. The Appellant asserted that as a result of this forced sale he suffered a loss of income for which he wished to be reimbursed by MPIC.

The Commission determined that as a result of the sale of a number of his calves by the Appellant, there was a significant increase in income which caused an overpayment of MPIC's IRI.

The Commission agreed with the submission of MPIC's legal counsel that:

1. The Appellant failed to demonstrate that MPIC erred in calculating the gross yearly income for the purpose of determining his entitlement to IRI benefits.
2. There was no provision in the MPIC Act or Regulations to require MPIC to compensate the appellant for any future lost income from the sale of the calves.

The Commission therefore dismissed the Appellant's appeal in this respect.

However, in respect of the Appellant's appeal concerning the requirement to repay the overpayment of $8,125.70 to MPIC, the Commission raised the issue with MPIC's legal counsel as to the relationship between Section 189(1) and Section 192 of the MPIC Act. Section 189(1) provides that a person who receives an indemnity to which the person is not entitled shall reimburse MPIC for the amount to which the person was not entitled. However, Section 189(2) of the MPIC Act provides that MPIC may commence an action to recover an amount to which it is entitled to be reimbursed within two years after the day the amount is paid or if the amount is paid as a result of fraud, within two years after the day the fraud is first known or discovered by MPIC.

The Commission noted that:

1. MPIC has not commenced an action to recover the overpayment in the two years after the date the payment was made.
2. There was no evidence to indicate that the Appellant had received the amount in question from MPIC by fraud.

The Commission therefore requested MPIC's legal counsel, in the circumstances, to consider whether MPIC wished to pursue its claim of an overpayment of IRI to the Appellant. The hearing was adjourned for a short period of time to permit MPIC's legal counsel time to consider this issue. When the hearing reconvened MPIC's legal counsel advised the Commission that MPIC was withdrawing its claim for reimbursement of the sum of $8,125.70 from the Appellant on a "without prejudice" basis and that MPIC would not be seeking reimbursement.

The Commission therefore allowed the Appellant's appeal in this respect and determined that the Appellant was not required to reimburse MPIC for the amount of the overpayment of IRI.

Entitlement to Supportive Care

9. **Causation and application of supportive care to physiotherapy treatment**

The Appellant appealed from a decision of MPIC's Internal Review Officer with respect to her entitlement to reimbursement for the cost of physiotherapy treatments for Temporomandibular Joint Dysfunction ("TMD"). In this appeal the Commission considered whether there was a causal relationship between the motor vehicle accident and TMD and whether the physiotherapy treatments were medically required.

The Appellant testified that as a result of the motor vehicle accident she sustained a soft tissue injury to her neck and subsequently developed pain to her neck and jaw. The Appellant saw her dentist who diagnosed that she was suffering from TMD and provided her with a night guard. The Appellant was subsequently referred to a dental specialist in respect of TMD who treated her and recommended that she receive physiotherapy treatments. The Appellant testified that these treatments resulted in a substantial improvement in her jaw pain and reduced her neck pain. As a result she attended the physiotherapist only on an as-needed basis.

MPIC's case manager obtained a medical opinion from MPIC's medical consultant who concluded that the Appellant's TMD was not caused by the motor vehicle accident and that the physiotherapy treatments were not medically required. As a result, MPIC determined that the Appellant was not entitled to be reimbursed for physiotherapy treatments.

The Appellant's dentist testified at the hearing and disagreed with the opinion of MPIC's medical consultant and concluded that the Appellant did suffer from TMD as caused by the accident. He testified that the physiotherapy treatments assisted the Appellant to improve her ability to function and carry out the ordinary activities of daily life. The dentist's testimony was confirmed by dental reports from several other dentists who had treated the Appellant.

The Commission accepted the Appellant's testimony and the testimony and opinion of the Appellant's dentist and concluded that there was a causal relationship between the motor vehicle accident and the Appellant's TM.

The Commission also reviewed a two-page document entitled "Clinical Guidelines for Chiropractic Practice in Canada" which defined the term "supportive care". The document

indicated that treatment for patients who have reached maximum therapeutic benefit, but who fail to sustain this benefit and progressively deteriorate when there are periodic trials of withdrawal of treatment were entitled to receive supportive care in order to ensure that the patient will be able to function and be able to carry out the ordinary activities of daily life.

The Commission determined that this definition of supportive care applies not only to chiropractic treatment but also to physiotherapy treatment. The Commission found that the Appellant testified that the absence of physiotherapy treatment caused a significant increase in chronic pain to the Appellant's neck and jaw and adversely affected her ability to function to be able to carry out the ordinary activities of daily life. In these circumstances the Appellant was entitled to receive reimbursement for expenses she incurred for supportive care of physiotherapy treatments.

The Commission therefore determined the Appellant had established on a balance of probabilities that the physiotherapy treatments were medically required in accordance with Section 5(a) of Manitoba Regulation 40/94.

10. **Medical requirement for ongoing physiotherapy treatment**

The Commission heard another appeal where the Appellant was seeking ongoing supportive physiotherapy treatment.

MPIC submitted that as the Appellant had already undergone extensive therapy since the accident, it seemed unlikely that further physiotherapy treatment would result in any demonstrable improvement. After considering the Appellant's testimony and the documentary evidence from the Appellant's caregivers, as well as MPIC's Health Care consultants, the panel found that the Appellant had established, on a balance of probabilities, that further physiotherapy treatments on an ongoing basis and at a frequency of approximately 12 to 15 treatments per year were medically required as a result of the accident. The Commission noted the Appellant's testimony regarding her ongoing efforts to comply with and advance her own rehabilitation program through walking, hiking, strength training, tai-chi, home stretching, yoga, pilates, injections and various physiotherapy treatments. The Commission accepted the evidence presented by the Appellant that periodic physiotherapy treatments helped her maintain her functionality with daily living and increase, or at least maintain, her capacity.