Automobile Injury Compensation
Appeal Commission

Annual Report
2015 - 2016

Manitoba

Automobile Injury Compensation Appeal Commission
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Le rapport peut être obtenu en médias substituts sur demande.

ATTORNEY GENERAL
MINISTER OF JUSTICE

Room 104
Legislative Building
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R3C 0V8

Her Honour The Honourable Janice C. Filmon, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235 Legislative Building
Winnipeg MB 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, 2016.

Respectfully submitted,

"Original Signed By"

Honourable Heather Stefanson
Minister of Justice
Attorney General

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Honourable Heather Stefanson
Minister of Justice
Attorney General of Manitoba
Room 104 Legislative Building
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, 2016 which includes a summary of significant decisions.

Yours truly,

"Original Signed By"

LAURA DIAMOND
CHIEF COMMISSIONER

RAPPORT ANNUEL DE LA COMMISSION D'APPEL DES ACCIDENTS DE LA ROUTE POUR L'EXERCICE 2015-2016

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 »).

L'exercice 2015-2016, qui a débuté le 1er avril 2015 et s'est terminé le 31 mars 2016, marquait la 22e année complète de fonctionnement de la Commission. Celle-ci compte un personnel de 11 personnes : une commissaire en chef, une commissaire en chef adjointe, une commissaire en chef adjointe à temps partiel, une directrice des appels, trois agentes des appels, une secrétaire du commissaire en chef, deux secrétaires administratives et une employée de bureau. En outre, 19 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 dans les 90 jours qui suivent la date de réception de la décision interne révisée. La Commission peut, à sa discrétion, accorder une prolongation de délai.

En 2015-2016, 217 appels ont été interjetés devant la Commission, comparativement à 214 en 2014-2015.

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 2015-2016, 62 % des appelants ont été représentés par le Bureau des conseillers des demandeurs, soit la même proportion qu'en 2014-2015.

Procédures préalables à l'audience et projet pilote de médiation

Depuis février 2012, le formulaire d'avis d'appel indique que les appelants ont la possibilité de participer à la médiation de leur appel. Les services de médiation sont fournis par le Bureau de médiation relative aux accidents de la route, un organisme gouvernemental indépendant. Une feuille de renseignements sur la médiation est également jointe au formulaire d'avis d'appel. Sur les 217 nouveaux appels interjetés durant l'exercice 2015-2016, 164 appelants ont demandé des services de médiation.

Si des services de médiation sont demandés au moment du dépôt d'un avis d'appel, la Commission est chargée de réunir dans une trousse de renseignements les documents d'appels importants qui seront utilisés pendant la médiation.

Procédure lors des audiences

À la fin du processus de médiation, les questions qui ne sont pas réglées ou qui ne sont réglées que partiellement sont renvoyées à la Commission pour la tenue d'une audience visant à trancher l'appel. Les agentes des appels de la Commission ne préparent des dossiers indexés 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.

Conférences préparatoires

Les conférences préparatoires contribuent à la gestion du déroulement des appels et elles demeurent donc un élément important du calendrier des audiences de la Commission. Au cours des six 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 2015-2016. Elle estime que ces conférences préparatoires 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.

Activités

Exercice	Audiences	Conférences préparatoires	Total
2015-2016	37	80	117
2014-2015	47	150	197
2013-2014	66	141	207
2012-2013	87	157	244
2011-2012	94	102	196
2010-2011	81	48	129

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 tient une audience afin de se prononcer sur l'appel.

Comme la Commission n'est pas strictement liée par les règles de droit concernant la preuve applicable 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. Toutefois, les lignes directrices de la Commission exigent des parties qu'elles divulguent à l'avance leurs éléments de preuve documentaire et orale. 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 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 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. Les décisions rendues par la Commission ainsi que les motifs les justifiant peuvent être consultées au bureau de la Commission ou sur son site Web, au www.gov.mb.ca/cca/auto/decisions.html (décisions en anglais seulement). Les décisions rendues publiques sont modifiées de manière à protéger la vie privée des parties, conformément à la législation manitobaine en matière de protection de la vie privée. La Commission s'est engagée à mettre à la disposition du public la preuve et les motifs de ses décisions tout en veillant à ce que les renseignements personnels concernant les appelants et d'autres personnes, notamment les renseignements sur la santé, soient protégés et demeurent confidentiels.

En 2015-2016, les appelants ont eu gain de cause – partiellement ou complètement – dans 24 % des appels entendus par la Commission.

Statistiques

La Commission entend et tranche des appels de façon équitable, exacte et rapide. C'est dans cette optique qu'elle a établi les paramètres de niveau de service ci-dessous.

- Dans les cas où l'appelant n'a pas recours à la médiation et demande une audience pour le règlement de l'appel, le personnel de la Commission prépare le dossier indexé qui sera utilisé à l'audience 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, le personnel de la Commission prépare le dossier indexé 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.
- La Commission a l'intention de fixer la date d'audience six à huit semaines après que les parties l'avisent qu'elles sont prêtes à aller de l'avant.
- La Commission a l'intention de remettre la décision écrite six semaines après la tenue de l'audience et la réception de tous les renseignements requis.

La Commission continue d'enregistrer un nombre constant d'avis d'appel, ce qui s'est traduit par les délais de traitement moyens suivants en 2015-2016 :

- Les dossiers ont été indexés dans un délai de 9,72 semaines après la réception du dossier de la Société et des documents supplémentaires, comparativement à 7,34 semaines en 2014-2015 et à 15 semaines en 2013-2014.
- Les dossiers ont été indexés dans un délai de 7,6 semaines après la réception par le Bureau de l'avis indiquant que la médiation était terminée mais que l'appel non réglé ou partiellement réglé ferait l'objet d'une audience. Le délai était de 6,84 semaines en 2014-2015 et de quatre semaines en 2013-2014.
- Les audiences ont été tenues dans un délai moyen de 1,79 semaine après la date où les parties ont dit être prêtes, comparativement à 2,33 semaines en 2014-2015 et à 2,13 semaines en 2013-2014.
- La Commission a rédigé 25 décisions en 2015-2016, comparativement à 40 décisions en 2014-2015. Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision était de 5,93 semaines en 2015-2016, comparativement à 5,28 semaines en 2014-2015 et à 5,14 semaines en 2013-2014.
- La Commission a indexé 102 dossiers en 2015-2016, comparativement à 95 en 2014-2015 et à 82 en 2013-2014.

Les agentes des appels de la Commission continuent d'apporter un soutien administratif considérable pour la gestion des appels. Outre l'augmentation du nombre de dossiers indexés préparés en 2015-2016, les agentes des appels de la Commission ont préparé 85 dossiers indexés supplémentaires, comparativement à 111 en 2014-2015 et 109 en 2013-2014. La préparation de ces dossiers s'est avérée nécessaire notamment pour les conférences préparatoires et les audiences relatives à une question de compétence, ainsi que pour les dossiers existants après la réception de documents supplémentaires.

Si on tient compte des dossiers indexés supplémentaires, les agentes des appels ont préparé en tout 187 dossiers indexés en 2015-2016, comparativement à 206 en 2014-2015 et à 191 en 2013-2014.

Au 31 mars 2016, il y avait 399 dossiers actifs à la Commission, par rapport à 355 au 31 mars 2015 et à 301 au 31 mars 2014.

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.

Trois demandes d'autorisation d'appel ont été présentées en 2015-2016. Deux demandes d'autorisation d'appel ont été rejetées, et la troisième est actuellement devant les tribunaux.

Au 31 mars 2016, la Cour d'appel avait accordé une autorisation d'appel dans 14 cas sur les 1 676 décisions rendues par la Commission au cours de ses 22 années d'existence.

Développement durable

La Commission s'est engagée à suivre le plan de 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* élargit la protection déjà offerte dans le cadre d'autres lois manitobaines, ainsi que par les droits à la négociation collective, les politiques, les règles de pratique et les processus établis dans la fonction publique du Manitoba.

Aux termes de la *Loi*, on entend par acte répréhensible une infraction à la législation fédérale ou provinciale; une action ou une omission qui met en danger la sécurité publique, la santé publique ou l'environnement; les cas graves de mauvaise gestion; ou le fait de sciemment ordonner ou conseiller à une personne de commettre un acte répréhensible. La *Loi* n'a pas pour objet de traiter des questions courantes liées au fonctionnement ou à l'administration.

Conformément à la *Loi*, une divulgation est considérée comme telle si elle est faite de bonne foi par un employé qui aurait des motifs raisonnables de croire qu'il possède des renseignements pouvant démontrer qu'un acte répréhensible a été commis ou est sur le point de l'être, que la

situation constitue ou non un acte répréhensible. 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*. L'ombudsman a accordé une exemption à la Commission 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 pendant l'exercice 2015-2016.

Renseignements exigés annuellement (en vertu de l'article 18 de la *Loi*)	Exercice 2015-2016
Nombre de divulgations reçues et nombre de divulgations auxquelles il a été donné suite et auxquelles il n'a pas été donné suite. Alinéa 18(2)a)	Aucune

ANNUAL REPORT OF THE AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION FOR FISCAL YEAR 2015/16

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").

Fiscal year 2015/16, which is April 1, 2015 to March 31, 2016, was the 22nd full year of operation of the Commission. The staff complement of the Commission is 11, including a chief commissioner, one deputy chief commissioner, one part-time deputy chief commissioner, a director of appeals, three appeals officers, a secretary to the chief commissioner, two administrative secretaries and one clerical staff person. In addition, there are 19 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. An 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 within 90 days of receipt of the Internal Review Decision. The Commission has the discretion to extend the time by which an appeal must be filed.

In fiscal year 2015/16, 217 appeals were filed at the Commission, compared to 214 in the fiscal year 2014/15.

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 2015/16 fiscal year, 62% of all appellants were represented by the Claimant Adviser Office, which remained unchanged from 2014/15.

Pre-hearing procedures & the mediation pilot project

Since February 2012, the Notice of Appeal has indicated that appellants have the option to participate in the mediation of their appeal. Mediation services are provided by the Automobile Injury Mediation Office (AIM), an independent government agency. A mediation information sheet is also provided with the Notice of Appeal. Of the 217 new appeals that were filed during the 2015/16 fiscal year, 164 appellants requested the option of mediation.

If mediation is requested at the time an appellant files a Notice of Appeal, the Commission is responsible for assembling the package of information containing the significant appeal documents which will be utilized in the mediation process.

Hearing Procedure

Once the mediation process concludes, unresolved or partially resolved appeals are returned for adjudication at a hearing before the Commission. The Commission's appeals officers prepare indexed files only for those unresolved appeals 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.

Case Conference Hearings

Management of appeals by case conference continues to be an important part of the Commission's hearing schedule. Over the last six 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 2015/16. The Commission finds that these case conference 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.

Hearing Activity

Fiscal Year	Hearings Held	Case Conference Hearings	Total Hearings
2015/16	37	80	117
2014/15	47	150	197
2013/14	66	141	207
2012/13	87	157	244
2011/12	94	102	196
2010/11	81	48	129

Hearings

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. The Commission's decisions and reasons are publicly available for review at the Commission's office and on the Commission's web site, http://www.gov.mb.ca/cca/auto/decisions.html. Decisions made available to the public are edited to protect the privacy of the parties, in compliance with privacy legislation in Manitoba. The Commission is committed to providing public access to the evidentiary basis and reasons for its decisions, while ensuring that personal health information and other personal information of the appellants and other individuals are protected and kept private.

In fiscal year 2015/16, appellants were successful in whole or in part in 24% of the appeals heard by the Commission.

Statistics

The Commission hears and decides appeals fairly, accurately and expeditiously. With this in mind, the Commission has established the following service level parameters:

- For those appellants who do not request the option of mediation and request a hearing for the adjudication of the appeal, Commission staff prepares the indexed file of material to be used at the hearing five weeks after receipt of MPIC's file and all other additional material.

- For those appeals that request the option of mediation, Commission staff prepares the indexed file 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 Commission's expectation is to schedule hearings within six to eight weeks from the time the parties notify the Commission of their readiness to proceed.
- The Commission's expectation 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 2015/16:

- Files were indexed within 9.72 weeks of receipt of MPIC's file and additional material compared to 7.34 weeks in 2014/15 and fifteen weeks in 2013/14.
- Files were indexed within 7.6 weeks of receipt of notification by AIM that mediation was concluded but the unresolved or partially resolved issues will proceed to hearing, compared to 6.84 weeks in 2014/15 and four weeks in 2013/14.
- Hearing dates were scheduled, on average, within 1.79 weeks from the time the parties are ready to proceed to a hearing. This compares to 2.33 weeks in 2014/15 and 2.13 weeks in 2013/14.
- The Commission prepared 25 written decisions in 2015/16, compared to 40 written decisions in 2014/15. The average time from the date a hearing concluded to the date the Commission issued an appeal decision was 5.93 weeks in 2015/16, compared to 5.28 weeks in 2014/15 and compared to 5.14 weeks in 2013/14.
- The Commission completed 102 indexes in 2015/16, compared to 95 indexes in 2014/15 and compared to 82 indexes in 2013/14.

The Commission's appeals officers continue to provide substantial administrative support to the case management of appeals. In addition to an increase in the number of indexes prepared in 2015/16, the Commission's appeals officers prepared 85 supplementary indexes, compared to 111 supplementary indexes in 2014/15 and 109 in 2013/14. Supplementary indexes include the preparation of additional indexes for case conference hearings and jurisdictional hearings, and preparing additional indexes on existing files where additional material is received.

Including supplementary indexes, appeals officers prepared a total of 187 indexes in 2015/16, as compared to 206 indexes in 2014/15 and 191 indexes in 2013/14.

As of March 31, 2016, there were 399 open appeals at the Commission, compared to 355 open appeals as of March 31, 2015 and 301 open appeals as of March 31, 2014.

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 2015/16. Leave to appeal was dismissed in two applications; the remaining application is currently pending before the court.

In the Commission's 22 years of operation, as of March 31, 2016, the Court of Appeal has granted leave to appeal in a total of 14 cases from the 1,676 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 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 Commission for the fiscal year 2015/16.

Information Required Annually (per Section 18 of The Act)	Fiscal Year 2015/16
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 2015/16.

1. Jurisdiction of the Commission

The issue was whether the Commission had jurisdiction over an appeal regarding a motor vehicle accident ("MVA") that occurred in 1993, before the "no-fault" provisions in the MPIC Act were enacted. Section 175 of the MPIC Act states that the Commission is established as a specialist tribunal to hear appeals under Part 2 of the MPIC Act while subsection 71(1) states that Part 2 applies to any bodily injury suffered by a victim in an accident that occurs on or after March 1, 1994.

The Appellant was a pedestrian who was struck by a vehicle on November 21, 1993. As she continued to suffer from her injuries, the Appellant contacted MPIC in September 2002, inquiring as to whether she was eligible for benefits. An MPIC case manager wrote to the Appellant and stated that the limitation period in Manitoba for suing for injuries is two years from the date of the accident. The case manager stated that MPIC was unable to consider any claims advanced by her regarding this accident as no notifications were filed with the courts within two years of the MVA.

The Appellant contacted MPIC again in September 2014. Another case manager wrote to her and indicated there was no coverage as the two years statute of limitation had passed and that there are no appeal options. The Appellant wrote to the Commission in October 2014, seeking to make a claim in regard to the MVA and her injuries. The Appellant stated that justice had been denied as she was disabled by the accident and she asserted that she did not get proper guidance from MPIC. The Appellant sought to file an appeal with the Commission.

The Commission held a hearing to determine whether it had jurisdiction to hear the appeal. At the hearing, counsel for the Appellant acknowledged that the MVA had occurred in 1993, before the current "no-fault" provisions in the MPIC Act were enacted. However, counsel submitted that the Appellant's initial contact with MPIC took place in 2002, when the provisions of the MPIC Act were in place. Counsel argued that section 150 of the MPIC Act imposes a positive duty upon MPIC to treat claimants in a certain way and creates a fiduciary duty which was in place at the time of the Appellant's interaction with MPIC in 2002.

Counsel for the Appellant submitted that MPIC failed in its duty to the Appellant, beginning with the case manager's letter in September 2002. Counsel submitted that the case manager inappropriately provided a legal opinion to the Appellant regarding the viability of her claim. Counsel submitted that the circumstances of the accident showed that the Appellant had been in an intimate relationship with the driver, who assaulted the Appellant by using a vehicle as a weapon. This brought the events within an exception under Manitoba's Limitation of Actions Act as an action for assault. Relying on subparagraph 2.1(2)(b)(i) of *The Limitation of Actions Act*, counsel submitted that the Appellant had a viable common law tort claim in September 2002 when she first contacted MPIC. Counsel submitted that the Appellant, rather than pursuing her

claim, relied upon the opinion provided by the case manager, who was someone in authority and who she considered to be an expert. When MPIC was again contacted by the Appellant in September 2014, it was given an opportunity to right this wrong. However, once again, MPIC referred to the passing of the limitation period and advised that there were no appeal options. Counsel for the Appellant submitted that the Commission has jurisdiction to deal with misconduct such as this, where section 150 of the MPIC Act is at issue.

Counsel for MPIC took the position that the Commission does not have the authority or jurisdiction to deal with an appeal by this Appellant regarding the MVA alleged to have occurred in 1993. Counsel referred to subsection 71(1) and section 175 of the MPIC Act and submitted that this matter was one for the courts.

The Commission held that it is restricted in its jurisdiction under section 175 of the MPIC Act to hear appeals under Part 2 of the MPIC Act. Subsection 71(1) of the MPIC Act is clear in establishing that Part 2 applies to bodily injuries suffered by victims in accidents occurring on or after March 1, 1994. The Commission therefore does not have jurisdiction under the MPIC Act to hear claims arising out of injuries from MVAs that occurred before 1994. Regarding the Appellant's argument that the alleged violation of MPIC's fiduciary duty under section 150 of the MPIC Act should be rectified by the Commission, the Commission held that section 150 cannot be applied to impose a statutory fiduciary duty upon MPIC regarding an MVA to which Part 2 does not apply. Accordingly, the Commission found that it did not have jurisdiction to hear the Appellant's appeal.

2. Extension of Time Limits

The MPIC Act provides time limits to file applications for review and appeals to the Commission. However, the MPIC Act also gives MPIC and the Commission the ability to extend these time limits. While subsection 172(1) of the Act states that a claimant may file an Application for Review within 60 days after receiving notice of a decision, subsection 172(2) allows MPIC to extend the time if it is satisfied that the claimant has a reasonable excuse for failing to apply within the 60 days. Subsection 174(1) of the Act states that a claimant may appeal the Internal Review Decision to the Commission within 90 days after receiving notice of the decision or within such further time as the Commission may allow.

a) Extension of time limit to file an application for review to the Internal Review Office

The Appellant was involved in an MVA in February 2005 and suffered a number of injuries. The Appellant's injuries were aggravated by four subsequent MVAs. In 2009, the Appellant's case manager determined that the Appellant was no longer entitled to Income Replacement Indemnity ("IRI") benefits.

In December 2010, the Internal Review Officer issued a decision rejecting the Appellant's Application for Review, finding that the Appellant did not file a timely Application for Review and that the Appellant was capable of working. The Internal Review Officer found that the Appellant was aware of the timeline under which to file an Application for Review and failed to

provide a reasonable excuse for a delay in filing it. The Application for Review was filed approximately 7 weeks after expiry of the 60 day time limit.

While the Appellant filed an appeal to the Commission within the timelines under the MPIC Act, an issue that remained before the Commission was whether the appeal should be denied on the basis that the Appellant failed to file a timely Application for Review of the case manager`s decision.

The Commission found that the Internal Review Officer erred in failing to take into account the psychological condition of the Appellant, who had sleep problems, was emotionally exhausted, was frustrated in dealing with MPIC, was unable to find employment, and was without funds to retain legal counsel to represent her. The Commission found that the Appellant provided a reasonable excuse for failing to file an Application for Review within the 60 day time period and therefore extended the time within which the Appellant had to make a timely Application for Review of the case manager's decision.

b) Extension of time limit to file an appeal to the Commission

The Appellant was injured in an MVA and, as a result, was in receipt of Personal Injury Protection Plan ("PIPP") benefits, including IRI benefits. The Appellant's case manager issued a decision indicating that the Appellant had regained the functional ability to return to his pre-accident employment and, therefore, his entitlement to IRI ended as of September 4, 2010. The Appellant filed an Application for Review but the Internal Review Officer agreed with the case manager.

The Internal Review Decision stated that the Appellant had ninety (90) days within which to appeal in writing to the Commission. The Internal Review Decision provided the Commission's full contact information and stated that the Commission operates independently from MPIC. The Internal Review Decision also stated that if the Appellant needed assistance in appealing to the Commission, the Appellant could contact the Claimant Adviser Office, which operates independently and is available to the Appellant at no charge. The Claimant Advisor Office's full contact information was also provided.

The Appellant's Notice of Appeal was received by the Commission on February 17, 2015, some 21 months beyond the 90 day time limit. As the Appellant had not filed the Notice of Appeal within 90 days of receipt of the decision, the Appellant therefore made application to the Commission for an extension of time for filing the Notice of Appeal.

The Appellant testified that at the time of receipt of the Internal Review Decision he was "totally cut off" from himself and the world and he was not able to do much, due to feeling depressed. He indicated that, as a result of the depression, he was unable to make any decisions.

The Appellant also testified that he had another dispute with MPIC regarding damage to a vehicle. As a result of that dispute, the Appellant filed a small claim against MPIC and then a subsequent appeal of the small claim. The Appellant hired a lawyer to represent him on the small

claim appeal and also obtained advice regarding the Internal Review Decision. The Appellant stated that his lawyer advised him not to pursue the appeal of the Internal Review Decision.

The Appellant acknowledged that he applied for a review of the case manager's decision within four days of receiving it. The Appellant acknowledged that he received the Internal Review Decision and that he was aware that it didn't go in his favour. The Appellant indicated that his lawyer had advised him not to pursue an appeal of the Internal Review Decision because, by that time, it was too late to appeal it, and, in addition, that it wasn't worth the money to pursue the appeal in any event. The Appellant acknowledged that he did not have anything in writing confirming the advice he received from his lawyer.

With respect to the small claim and small claim appeal that he filed, the Appellant confirmed that he filed a small claim before he retained a lawyer. The Appellant further confirmed that he participated fully at the hearing of his small claim and filled out the small claims appeal form. The Appellant acknowledged that his depression did not prevent him from attending the small claims appeal.

Counsel for the Appellant submitted that a combination of events, together with the Appellant's clinical depression, resulted in the Appellant lacking the resolve and the ability to respond to the Internal Review Decision once he received it. It was only when he began to recover somewhat from his clinical depression that he was able to pursue his appeal. Counsel also submitted that the Appellant was not provided good advice from his former legal counsel, but rather was discouraged from pursuing his appeal. Counsel submitted it was reasonable for the Appellant to rely on the advice of his former counsel.

Counsel for MPIC submitted that the 90 day time period within which to appeal exists to provide finality. Counsel submitted that there was no medical evidence showing that the mental health of the Appellant prevented him from filing a Notice of Appeal on a timely basis with the Commission. In addition, counsel submitted there was insufficient evidence that the former counsel for the Appellant advised him against pursuing his appeal. Even so, this would not be a reasonable excuse for failing to meet the deadline. Counsel noted that the Appellant had not actually sought legal advice until almost three months after the expiry of the 90 day appeal.

The Commission found that, in the particular circumstances, the Appellant's reliance on his mental health condition did not provide a reasonable excuse for his failure to file his appeal with the Commission on a timely basis. Further, the Commission found that the Appellant did not meet the onus to establish that he received and relied upon any advice from his former legal counsel prior to the expiry of the 90 day deadline to file an appeal. The Commission rejected the Appellant's application for an extension of time.

3. Whether there is a causal connection between the MVA and the Appellant`s symptoms

Case #1

In this case, the Commission found that the written opinion of one the Appellant's caregivers was not sufficient to meet the onus upon the Appellant to show, on a balance of probabilities, that her bilateral knee difficulties were caused by the MVA.

The Appellant was injured on October 30, 2007. In 2008, the Appellant was provided a walking cast as a result of her right foot injury. The Appellant wore the walking cast boot between 2008 and 2012, when surgery was finally performed.

The Appellant had developed knee problems after the MVA and ultimately had bilateral knee replacements. The Appellant took the position, that while the MVA didn't directly injure her knees, her knee conditions were a direct result of her right foot injury which was caused by the MVA. She believed that the resulting difference in height caused by wearing the walking cast for so many years put stress on her knees.

The physician who operated on the Appellant's knees indicated that the diagnosis of the Appellant's bilateral knee condition was osteoarthritic wear and tear and degenerative arthritis and that the arthritic degeneration of the Appellant's knees was not related to the MVA.

The Appellant's family doctor provided an opinion that the deterioration of the Appellant`s knees was caused by her unbalanced gait caused by wearing the cast boot. The Appellant submitted that the Commission should accept the opinion of her family doctor.

MPIC's medical consultant testified at the appeal hearing. He indicated that he reviewed the Appellant's claim file to see if he could find any evidence of an injury to the knee and found none. He indicated that he had not seen a case where knee arthritis developed due to an unbalanced gait and had never diagnosed a patient with arthritis due to an altered gait. He further indicated that he had done extensive research and had not been successful in finding any studies which show that an altered gait is a risk factor in the development of osteoarthritis. He took the position that, in all probability, degenerative changes would have developed in the Appellant's knees even if the MVA had not taken place.

The Commission concluded that the Appellant failed to show, on a balance of probabilities, that the need for her knee replacement surgery was caused by the MVA. The Commission agreed with MPIC that the radiological evidence supported the finding that osteoarthritic changes were likely already present in the Appellant's knees prior to the MVA. The Commission also gave weight to the opinion of the surgeon who stated that the arthritic degeneration in the Appellant's knees could not be attributed to the MVA unless there was some significant damage to the knee at the time of the MVA. MPIC's medical consultant confirmed that he had looked for evidence of such an injury and found none. The Commission held that the Appellant's family doctor had failed to provide supporting evidence or information to substantiate her opinion. Accordingly, the Internal Review decision was upheld and the Appellant's appeal was dismissed.

Case #2

The issue in this case was whether the Appellant's cervical disc herniation was causally connected to the MVA, thereby entitling him to further IRI benefits.

The Appellant was injured in a motor vehicle accident in September 2007 and received chiropractic care benefits. The Appellant was involved in a second MVA in November 2007. On January 11, 2008 the Appellant suffered an episode of intense neck pain after stretching back his arms. The Appellant immediately sought medical attention and was eventually diagnosed with disc herniation. The Appellant was unable to continue working after January 11, 2008 due to the pain. It was the Appellant's belief that his disc herniation was caused by the MVA. MPIC took the position that the medical information did not support a causal relationship between the September 2007 MVA and his symptoms.

Counsel for the Appellant submitted that the evidence clearly demonstrated that the Appellant's disc was significantly compromised as a result of the violent forces in the September 2007 MVA and that the Appellant's condition thereafter slowly improved up to the time of the second MVA in November 2007. Shortly after that collision, the symptoms progressively increased, with further deterioration documented as of January 8, 2008. Three days later, the Appellant experienced an acute exacerbation of his condition with a low velocity, low force stretching of the neck. Counsel submitted that in all probability, the Appellant sustained a combination of neurological injuries and soft tissue strains as a result of the first MVA, and that the acute deterioration that occurred on January 11, 2008 was simply an exacerbation of the already present accident-related condition. Counsel submitted that "but for" the MVAs the disc would not have herniated with simple stretching and, in the alternative, submitted that the MVAs materially contributed to the disc herniation that occurred.

Counsel for MPIC submitted that the Appellant had not met the onus of showing, on a balance of probabilities, that the MVAs caused or materially contributed to disc herniation. Counsel submitted that at best the Appellant had raised the possibility that the MVAs may have been involved. However, this was not sufficient; there needs to be more convincing evidence.

The Commission agreed with counsel for the Appellant that the Commission is not required to determine causation with scientific certainty. Citing jurisprudence from the Supreme Court of Canada, the Commission noted that the causation test is not to be applied too rigidly and that causation need not be determined by scientific precision, but rather by ordinary common sense.

After reviewing all the evidence, the Commission found that, applying the threshold test of a balance of probabilities rather than a test of scientific certainty, the Appellant met the onus upon him to establish a causal connection between the MVA and the disc herniation. This was established through not just the Appellant's own credible testimony, but also through the reports and evidence of two physicians who treated the Appellant and testified at the hearing as well as the neurologist who treated the Appellant and provided a report. The Appellant's appeal was allowed.

4. 180 Day Determination of Employment

Subsection 86(1) of the MPIC Act entitles non-earners to be classified into determined employment after the first 180 days after the accident if they are unable to hold employment because of the accident. The issue in this case was whether the 180 day determination of the Appellant's employment was appropriate and in accordance with the applicable statutory provisions.

While he was laid off from his employment as a welder, the Appellant was involved in an MVA in which he suffered various injuries. Because he wasn't working at the time of the MVA, the Appellant was classified as a "non-earner" pursuant to subsection 70(1) of the MPIC Act. The Appellant received various treatments with respect to his injuries from the MVA and was scheduled to return to work, subject to modified duties and a graduated return to full duties. Just prior to his return to work, the Appellant was involved in a second MVA which caused the Appellant further injuries. Because he was not yet back at work, the Appellant was again classified as a "non-earner".

The Appellant's case manager notified the Appellant that his 180 day determined employment fell under the occupational description of "Retail Salesperson" specializing in the sale of welding supplies and/or equipment. Although the Appellant had never worked as a retail salesperson, MPIC determined this was an occupation he would have been capable of performing based on his transferable skills and physical and intellectual capabilities.

The Appellant disagreed with MPIC's decision and filed an appeal. Despite receiving notice of the hearing, the Appellant did not attend the hearing. However, in his Notice of Appeal he indicated he was relying on the reasons provided in letters from his former legal counsel.

Counsel for the Appellant wrote that the Appellant had in fact ultimately returned to working as a welder and that the only reason he had not returned to work as a welder earlier was because of the two MVAs. Counsel noted that MPIC identified the classification of "Retail Salesperson", notwithstanding that the Appellant had never worked as a retail salesperson in his life and had a very lengthy history of employment as a welder.

Counsel for MPIC acknowledged that at the time of the second MVA the Appellant was able to perform some of the required duties of his welding job, but submitted that the Appellant had to be determined into some other form of employment given that he could not perform all of the required duties of his job.

The Commission noted the MPIC Act sets out the factors which must be considered by MPIC in making a determination of employment. Subsection 86(2) provides that in making a determination, the corporation shall take into account the work experience of the Appellant in the five years before the accident. In addition, subsection 106(1) of the MPIC Act provides that MPIC shall consider the regulations and the education, training, work experience and physical and intellectual abilities of the victim immediately before the accident. In this case, the relevant time period was immediately prior to the second MVA.

The Commission noted that MPIC had a Transferable Skills Analysis ("TSA") prepared in order to assist in determining a suitable employment for the Appellant. The authors of the TSA concluded there were several categories of occupations which would be reasonable for the Appellant, including welders and related machine operators as well as retail salespersons and sales clerks. The Commission noted that it was unclear why the occupation of retail salesperson was chosen by MPIC over various others on the list provided in the TSA. The Commission noted that the authors of the TSA, in making their findings that the occupation of a welder would be reasonable for the Appellant, took into account the physical restrictions and limitations on the Appellant. The Commission noted that prior to the second MVA, the MPIC medical consultant was of the opinion that the Appellant was able to return to work and did not have an occupational disability. The MPIC medical consultant stated that it was the second MVA that prevented the Appellant from successfully participating in the graduated return to work program. The Commission rejected the argument from counsel for MPIC that the Appellant could not be determined as a welder simply because, immediately prior to the second MVA, he was scheduled to return to modified duties on a graduated return to work basis.

The Commission found that a proper consideration of all of the relevant factors under section 106 of the MPIC Act, including the Appellant's physical capabilities, together with the Appellant's training and lengthy work history as a welder, as well as his stated preference to return to work as a welder, led to the conclusion that a determination as a welder would be the most appropriate employment. As a result, the Appellant's appeal was allowed and the Commission directed that the Appellant's IRI be adjusted accordingly.

5. Suspension or Termination of Benefits for knowingly providing MPIC with false or inaccurate information

Section 160 of the MPIC Act states that MPIC may terminate benefits where the claimant knowingly provides false or inaccurate information to MPIC. The Commission dealt with two cases in which MPIC terminated benefits of claimants who MPIC alleged knowingly provided false or inaccurate information.

Case #1

The Appellant was injured in an MVA on August 31, 2003. In November 2005, the case manager concluded that the Appellant's benefits should be terminated pursuant to section 160 of the MPIC Act because MPIC's investigation revealed that she was physically able to do various functions she had alleged she could not. MPIC had conducted video surveillance of the Appellant during a period of time when the Appellant was required to self-report regarding her level of function and when she reported her abilities to an independent medical examiner.

The position of the Appellant was that she was functionally incapable of working for psychological reasons in the period following the MVA and ever since. With respect to the termination of benefits under section 160, former counsel for the Appellant had submitted that in order to prove what is in essence an allegation of fraud, it would be necessary to prove that there had been a deliberate intent to mislead and there was no such evidence. Rather, all of the

evidence supported the conclusion that the Appellant had psychological impairments caused by the MVA which were genuine and disabling.

Counsel for MPIC submitted that the evidence was clear that the Appellant's actual functionality at the time of the surveillance was markedly different from the information she was providing to MPIC. There was no evidence to suggest that this false information was not knowingly provided and, accordingly, MPIC submitted that the Appellant's appeal should be dismissed.

The Commission found that the video surveillance showed the Appellant walking and moving fluidly, at a normal, brisk and comfortable gait. The Appellant's appearance did not indicate that she found such movements difficult. The Commission observed no grimaces or tentative, protective behaviour. Rather, the Appellant appeared animated, relaxed, and smiling. The Commission found that the material viewed on the videotapes was very different from the level of function forms completed by the Appellant. The Commission concluded that the Appellant did provide false information to MPIC by falsely representing and exaggerating her symptoms and disabilities. As such, the appeal was dismissed.

Case #2

The Appellant suffered various injuries in an MVA in 2009 and was in receipt of PIPP benefits for a period of time. In early 2010, MPIC concluded that the Appellant's benefits should be terminated because the Appellant had knowingly provided false or inaccurate information to MPIC. The Appellant had worked while collecting IRI and failed to inform MPIC that she had earned income. The only issue before the Commission was whether it would confirm, vary or rescind MPIC's decision to terminate the Appellant's entitlement to PIPP benefits under paragraph 160(a) of the MPIC Act.

Counsel for the Appellant indicated that the Appellant did not dispute that she provided false information to MPIC. However, it was the Appellant's position that there were mitigating circumstances which should be considered by the Commission. Counsel submitted that the penalty for the provision of false information should be changed from termination of the Appellant's PIPP benefits to a suspension of those benefits, with the term of the suspension to be decided by the Commission. After the end of the suspension, the Appellant's PIPP benefits should be reinstated.

Counsel for the Appellant noted that at the time of the MVA, the Appellant was suffering from serious and significant personal stressors. As well, the Appellant suffered from a number of medical conditions since the MVA which had added a new dimension to an already stressful situation. The Appellant was also suffering stress due to the nature of her relationship with MPIC. Counsel referred to a neuropsychologist's opinion that the Appellant's conflict with MPIC, family issues, financial struggles and feelings of distress and desperation appear to have contributed in part to her providing false and/or inaccurate information.

Counsel for MPIC noted that the Appellant had conceded that she provided false and inaccurate information to MPIC by not advising that she was doing some work. This was despite the Appellant having advised many people that she had not been able to work since the MVA.

Counsel submitted that it was not wrong for the Appellant to want to earn some money, but she had to report it to MPIC. Counsel submitted that there isn't enough in the Appellant's personal circumstances to warrant changing the termination to a suspension; there are not enough extenuating circumstances to mitigate the penalty.

The Commission found that the Appellant met the onus of showing, on a balance of probabilities, that MPIC's decision should be varied and found that the Appellant's PIPP benefits should be suspended rather than terminated. The Commission found that the weight of the evidence established that the Appellant suffered from extenuating personal circumstances such as to mitigate her behaviour.

The Commission then went on to consider the appropriate length of the suspension, taking into account the seriousness of the Appellant's breach. In particular, the Commission noted the fact that false or inaccurate information was provided by the Appellant to MPIC over a period of time. As this was not an isolated incident, the Commission found that a lengthy suspension of benefits would be appropriate, holding that the Appellant's PIPP benefits should be suspended for a period of two years from the date that the case manager first determined that the false or inaccurate statements were made.

6. Reimbursement of Expenses

Subject to the regulations, section 131 of the MPIC Act provides for reimbursement of personal assistance expenses and section 136 provides for reimbursement for expenses incurred for medical and paramedical care. Subsection 10(1) of Manitoba Regulation 40/94 addresses rehabilitation expenses, such as mobility aids, and section 43 addresses costs for medical reports. The following cases illustrate the issues faced by the Commission when considering claims for reimbursement of various expenses.

a. Whether the Appellant is entitled to funding for further chiropractic treatment

The Appellant was injured in an MVA in 2008 and received more than 40 chiropractic treatments covered by MPIC. In 2011, the Appellant's chiropractor requested additional chiropractic treatment as a result of a number of symptoms, but the case manager issued a decision denying further chiropractic treatment. This decision was not appealed.

The Appellant's chiropractor submitted further invoices for chiropractic care in 2013. The case manager issued a decision stating that these invoices would not be paid by MPIC and the Appellant sought an Internal Review of this decision. The Internal Review Officer upheld the case manager's decision and the Appellant appealed to the Commission.

The Appellant's chiropractor provided a narrative report describing treatment in October 2014. The chiropractor stated that it was his opinion that the Appellant will not be able to fully regain his pre-accident health status due to permanent damage sustained in the MVA of 2008. It was the chiropractor's view that the Appellant would be able to maintain his present functional and pain levels with minimal monthly supportive chiropractic maintenance care and home exercises/stretches.

Counsel for MPIC submitted that the medical evidence indicated that the Appellant had reached maximum medical improvement with chiropractic treatment, with no requirement for supportive chiropractic treatment having been established.

The Commission noted that the onus is on the Appellant to show, on a balance of probabilities, that he is entitled to further chiropractic benefits as a result of the MVA. The Commission reviewed the criteria to be met for entitlement to supportive chiropractic care benefits:

1. There must be an established cause and effect relationship between the claimant's current symptoms and the MVA in question.

2. Initial treatment must provide benefit and the claimant must be at maximal therapeutic benefit.

3. The condition deteriorates in the absence of treatment over a therapeutically relevant timeframe.

4. The condition improves with resumption of treatment.

5. Alternate treatment approaches have been attempted without success.

6. An appropriate home-based program is in place.

The Commission focussed on the last four criteria for supportive care and found that no evidence was provided to demonstrate deterioration in the absence of treatment over a therapeutically relevant timeframe, no subjective or objective measurable evidence was provided to demonstrate that the Appellant's condition improved with resumption of treatment after such an absence, no alternative approaches had been attempted and no evidence was provided that the Appellant had complied with any recommendation to follow a home-based exercise program. As the evidence failed to establish an entitlement to supportive chiropractic care using the appropriate criteria, the Appellant's appeal was dismissed.

b. Whether the Appellant is entitled to reimbursement for medical expenses, personal care assistance, medical aids, and extra coverage for medical reports

The Appellant was a pedestrian who was hit by a truck in January 2008. He suffered various injuries as a result of the accident and sought several forms of treatment. He incurred expenses for those treatments as well as for personal home care assistance. For a period of time, MPIC covered the Appellant's expenses, but the Appellant was advised that these treatments would no longer be covered after August 6, 2009.

The issues in the appeal were whether physiotherapy, chiropractic, acupuncture and kinesiology treatments received by the Appellant after August 6, 2009 were medically required; whether the Appellant was entitled to reimbursement for certain medical aids and supplies and certain medical reports beyond the amount already reimbursed by MPIC; and whether the Appellant was entitled to a reassessment of his Personal Care Assistance ("PCA") benefits.

Counsel for the Appellant submitted that the Appellant suffered severe physical injuries in the MVA and that the treatments he was undergoing continued to be medically required by the Appellant after MPIC terminated them. Counsel urged the panel to accept the recommendations of the Appellant's treating physicians with respect to his requirement for chiropractic treatment, physiotherapy, acupuncture and kinesiology.

With respect to the requirement for a new PCA assessment, counsel for the Appellant argued that the most recent PCA assessment was flawed and should be disregarded. The Appellant testified that he felt that the occupational therapist had already made up her mind before she got there.

The Commission found that the weight of all the evidence established that the physiotherapy treatments, chiropractic treatments and acupuncture treatments, which the Appellant received and which MPIC had been paying for prior to August 6, 2009, continued to be medically required thereafter. This portion of the appeal was allowed.

With respect to the kinesiology treatments, the Commission held that Appellant did not adduce any evidence regarding these treatments (apart from the dates and amounts) and there was no documentary evidence on the indexed file which would allow the Commission to make an assessment as to the nature of the services provided or the success of those services. As such, the Appellant had not met the burden of establishing, on a balance of probabilities, that the kinesiology treatments he received were medically required.

The Commission held that the Appellant did not adduce any evidence to establish that the medical aids which he purchased had been prescribed or recommended by any of his health care practitioners. Accordingly, the expenses which he incurred for these items were not considered necessary or advisable and therefore there was no entitlement to reimbursement for such expenses under the MPIC Act or Regulations.

With respect to the Appellant's request to be reimbursed for an additional amount to cover the actual cost of two medical reports, the Commission held that language of section 43 of Manitoba Regulation 40/94 is clear: MPIC is authorized to reimburse an Appellant to a maximum amount in respect of a medical report. The Appellant was not entitled to any further reimbursement with respect to those reports.

Regarding PCA benefits, the only issue properly before the Commission was whether the Appellant was entitled to a reassessment of his PCA needs, or, in other words, a new assessment. The Commission found the Appellant had not established that the occupational therapist's PCA assessment should be disregarded by the Commission, nor had he adduced any new, objective evidence that would indicate that his functional abilities have materially changed since the time of the assessment. This portion of the appeal was also dismissed.

The Appellant sought leave to appeal the Commission's decision to the Manitoba Court of Appeal, but the Appellant's application for leave was dismissed by the Court.

7. Entitlement to Further IRI and Educational Expenses

There were two separate appeals that were heard together by the Commission regarding the Appellant. The first appeal concerned whether the Appellant's IRI benefits were correctly terminated. Pursuant to paragraph 110(1)(a) of the MPIC Act, a victim ceases to be entitled to IRI benefits when the victim is able to hold the employment he held at the time of the accident. The second appeal concerned whether MPIC was obligated to fund educational costs related to retraining the Appellant in a different employment. Section 10 of Manitoba Regulation 40/94 addresses funding for educational costs and subsection 10(2) states that MPIC is not liable for paying for educational costs unless the victim first obtains the consent of the corporation.

The Appellant was involved in an MVA in March 2004 and he sustained a number of injuries. Two years after the accident, the Appellant was able to work, but not for the same number of hours as he had prior to the MVA. As a result, the Appellant, who operated a business with a partner, began to consider dissolving the business because he felt it was failing due to his inability to perform at the same level as he had prior to the MVA.

An occupational therapist assessed the Appellant in August 2007 and determined that the Appellant had the capacity to carry out 73% of his work duties. As a result of his inability to work at full capacity in his business, the Appellant decided to return to university to complete a degree and contacted MPIC requesting coverage of his education costs. In the spring of 2008, the Appellant reported to his case manager that he was letting his business close and hoped to have alternate employment by the fall. The Appellant completed his university degree in 2008.

In November 2008, his family physician conducted a medical reassessment of the Appellant and concluded that he continued to suffer from his MVA injuries. His physician estimated that he was functioning at approximately 70% of his physical and mental capacity prior to the MVA. The Appellant was unable to secure alternate employment and advised MPIC that he decided to pursue an unpaid international internship in human resources. Upon receipt of this information, the case manager advised the Appellant that his entitlement to IRI would end on February 15, 2009 because the Appellant had demonstrated an ability to perform the essential duties of his pre-accident employment. The Appellant filed an Application for Review, but the Internal Review Officer upheld the case manager's decision. The Appellant appealed to the Commission.

The Appellant's family physician wrote to the Appellant's representative and reported that the Appellant was assessed in February 2009 before leaving for his international internship and was still limited in his capacity to work in his pre-accident employment. Subsequent medical follow-ups confirmed that the Appellant still had significant symptoms with no evidence of any significant improvement in his level of functioning or his capacity to perform employment beyond approximately 70% of his pre-accident employment. The Appellant's neuropsychologist also provided an opinion that the Appellant, while not restricted from working, was restricted in his ability to work in his pre-accident employment.

The Appellant's representative wrote to a vocational rehabilitation specialist for an opinion on the comparison of the Appellant's pre-MVA occupation and the internship position. The

vocational rehabilitation specialist concluded that MPIC's classification of the Appellant's pre-MVA occupation required a higher level of complexity than the internship position.

The Commission noted that, pursuant to paragraph 110(1)(a) of the MPIC Act, a victim ceases to be entitled to IRI benefits when the victim is able to hold the employment he held at the time of the accident. The Commission found that the Appellant could not be said to be holding the same employment he held at the time of the MVA if he is only able to carry out 73% of his work duties. As such, the Commission found that the Appellant had established on a balance of probabilities that MPIC incorrectly terminated the Appellant's IRI benefits. The appeal was allowed and the decision of the Internal Review Officer was rescinded.

Regarding educational costs, the Appellant requested reimbursement for costs relating to the completion of a Bachelor of Arts degree in the amount of $25,745.68. MPIC's Internal Review Officer held that the Appellant had not satisfied MPIC that completing a Bachelor of Arts degree was required to lessen the disability resulting from injuries sustained in the accident and to facilitate his return to a normal life or reintegration into society or the labour market. The Appellant appealed to the Commission.

The Appellant, in his testimony, stated that he had advised MPIC that he was intending on taking University courses and asked whether MPIC would reimburse him for the educational costs. The Appellant stated while he was advised by the case manager that he should complete his course work and then provide MPIC with receipts indicating the amount of the educational costs, MPIC had never agreed to pay these costs.

In his submission, the Appellant's representative referred to sections 138 and 150 of the MPIC Act. The Appellant's representative submitted that, pursuant to these provisions, MPIC was legally obligated to reimburse the Appellant for his education expenses since his degree contributed to the Appellant's rehabilitation and facilitated his return to a normal life and reintegration into the labour market.

Relying on subsection 10(2) of Manitoba Regulation 40/94, MPIC's legal counsel submitted that the Appellant's appeal ought to be dismissed, since the Appellant had no authority to seek reimbursement of educational costs without first obtaining the consent of MPIC.

The Commission noted that sections 138 and 150 of the MPIC Act are of general application and that subsection 10(2) is of specific application. The Commission cited jurisprudence affirming the principle that where there are conflicting provisions in a statute relating to the same subject matter, the specific enactment takes precedence over a general enactment. As such, the specific provision of subsection 10(2) of Manitoba Regulation 40/94 overrides sections 138 and 150 of the MPIC Act.

As the Appellant admitted that he did not obtain the consent of MPIC prior to incurring the cost of obtaining his degree in accordance with subsection 10(2) of Manitoba Regulation 40/94, the Commission found that MPIC was not legally obligated to reimburse the Appellant for his education costs. The Commission dismissed the Appellant's appeal.