Automobile Injury Compensation
Appeal Commission

Annual Report
2017-2018

Manitoba

Automobile Injury Compensation Appeal Commission
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ATTORNEY GENERAL
MINISTER OF JUSTICE

Room 104
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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, 2018.

Respectfully submitted,

original signed by

Honourable Cliff Cullen
Minister of Justice and
Attorney General

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Honourable Cliff Cullen
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, 2018 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 2017-2018

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 2017-2018, qui a débuté le 1er avril 2017 et s'est terminé le 31 mars 2018, marquait la 24e année complète de fonctionnement de la Commission. Celle-ci compte un personnel de 11 personnes : un commissaire en chef, un commissaire en chef adjoint, un commissaire en chef adjoint à temps partiel, un directeur des appels, trois agents des appels, un secrétaire du commissaire en chef, deux secrétaires administratifs et un employé de bureau. En outre, 17 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 2017-2018, 158 appels ont été interjetés devant la Commission, comparativement à 152 en 2016-2017.

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 2017-2018, 61 % des appelants ont été représentés par le Bureau des conseillers des demandeurs. En 2016-2017, ce nombre s'élevait à 55 %.

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 158 nouveaux appels interjetés durant l'exercice 2017-2018, 133 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 agents 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 2017-2018. 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

Ci-après se trouve un tableau récapitulatif des audiences des six derniers exercices.

Exercice	Audiences	Conférences préparatoires	Total
2017-2018	23	124	147
2016-2017	27	117	144
2015-2016	37	80	117
2014-2015	47	150	197
2013-2014	66	141	207
2012-2013	87	157	244

Bien qu'il y ait eu moins d'audiences en général, il y a eu une augmentation d'audiences complexes nécessitants plusieurs jours au cours de l'exercice 2017-2018.

Ci-après se trouve un tableau récapitulatif du nombre de jours nécessaires pour les audiences des trois derniers exercices.

Exercice	Nombre de jours d'audience	Nombre de jours de conférence préparatoire	Nombre total de jours d'audience
2017-2018	31	124	155
2016-2017	39	117	156
2015-2016	52	80	132

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 http://www.gov.mb.ca/justice/cp/auto/decisions/index.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 2017-2018, les appelants ont eu gain de cause – partiellement ou complètement – dans 15 % des appels entendus par la Commission, comparativement à 14 % au cours de l'exercice 2016-2017.

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 2017-2018.

- Les dossiers ont été indexés dans un délai de 3,69 semaines après la réception du dossier de la Société et des documents supplémentaires, comparativement à 4,6 semaines en 2016-2017 et à 9,72 semaines en 2015-2016.

- Les dossiers ont été indexés dans un délai de 5,07 semaines après la réception de l'avis du Bureau 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 3,93 semaines en 2016-2017 et de 7,6 semaines en 2015-2016.
- Les audiences ont été tenues dans un délai moyen de 0,92 semaine après la date où les parties ont dit être prêtes, comparativement à 1,47 semaine en 2016-2017 et à 1,79 semaine en 2015-2016.
- La Commission a rédigé 22 décisions en 2017-2018, comparativement à 21 décisions en 2016-2017. Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision était de 5,94 semaines en 2017-2018, comparativement à 6,33 semaines en 2016-2017 et à 5,93 semaines en 2015-2016.

Les agents des appels de la Commission continuent d'apporter un soutien administratif considérable pour la gestion des appels. La complexité des appels continue d'augmenter avec plusieurs questions en appel incluses dans une décision interne révisée rendue par la Société. Cela a entraîné une réduction des dossiers indexés, mais une augmentation importante du processus de gestion des cas et du volume d'éléments de preuve documentaire qui doivent éventuellement être indexés.

- La Commission a indexé 51 dossiers en 2017-2018, comparativement à 84 en 2016-2017 et à 102 en 2015-2016.
- Le dossier indexé moyen comprenait 136 onglets en 2017-2018, comparativement à 156 en 2016-2017 et à 112 en 2015-2016.
- Le personnel de la Commission a préparé 61 dossiers indexés supplémentaires en 2017-2018, comparativement à 99 en 2016-2017 et à 85 en 2015-2016. Ces dossiers indexés sont utilisés pour les audiences de conférence de cause et les audiences relatives à une question de compétence alors que les dossiers indexés supplémentaires sont utilisés comme suppléments aux dossiers existant lorsque des renseignements additionnels sont reçus.

Si on tient compte des dossiers indexés supplémentaires, les agents des appels ont préparé en tout 112 dossiers indexés en 2017-2018, comparativement à 183 en 2016-2017 et à 187 en 2015-2016.

Au 31 mars 2018, il y avait 362 dossiers actifs à la Commission, par rapport à 380 au 31 mars 2017 et à 399 au 31 mars 2016.

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.

Une demande d'autorisation d'appel a été présentée en 2017-2018. Cette demande a été rejetée.

Au 31 mars 2018, la Cour d'appel avait accordé une autorisation d'appel dans 14 cas sur les 1719 décisions rendues par la Commission au cours de ses 24 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 communications reçues par la Commission pendant l'exercice 2017-2018.

Renseignements exigés annuellement (en vertu de l'article 18 de la *Loi*)	Exercice 2017-2018
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 2017/18

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 2017/18, which is April 1, 2017 to March 31, 2018, was the 24th 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 17 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 2017/18, 158 appeals were filed at the Commission, compared to 152 in the fiscal year 2016/17.

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 Appellants appearing before the Commission. In the 2017/18 fiscal year, 61% of all appellants were represented by the Claimant Adviser Office, compared to 55% in 2016/17.

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 158 new appeals that were filed during the 2017/18 fiscal year, 133 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 2017/18. 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

The following identifies the number of hearings held in the last six fiscal years.

Fiscal Year	Hearings Held	Case Conference Hearings	Total Hearings
2017/18	23	124	147
2016/17	27	117	144
2015/16	37	80	117
2014/15	47	150	197
2013/14	66	141	207
2012/13	87	157	244

While there were less hearings overall, there was an increase in complex multi-day hearings held in the 2017/18 fiscal year.

The following identifies the number of days required for hearings held in the last three fiscal years.

Fiscal Year	Days of Hearings Held	Days of Case Conference Hearings	Total Hearing Days
2017/18	31	124	155
2016/17	39	117	156
2015/16	52	80	132

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/justice/cp/auto/decisions/index.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 2017/18, appellants were successful in whole or in part in 15% of the appeals heard by the Commission, compared to 14% in 2016/17.

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 2017/18:

- Files were indexed within 3.69 weeks of receipt of MPIC's file and additional material compared to 4.6 weeks in 2016/17 and 9.72 weeks in 2015/16.
- Files were indexed within 5.07 weeks of receipt of notification by AIM that mediation was concluded but the unresolved or partially resolved issues will proceed to hearing, compared to 3.93 weeks in 2016/17 and 7.6 weeks in 2015/16.
- Hearing dates were scheduled, on average, within 0.92 weeks from the time the parties are ready to proceed to a hearing. This compares to 1.47 weeks in 2016/17 and 1.79 weeks in 2015/16.
- The Commission prepared 22 written decisions in 2017/18, compared to 21 written decisions in 2016/17. The average time from the date a hearing concluded to the date the Commission issued an appeal decision was 5.94 weeks in 2017/18, compared to 6.33 weeks in 2016/17 and compared to 5.93 weeks in 2015/16.

The Commission's appeals officers continue to provide substantial administrative support to the case management of appeals. The level of complexity of appeals has continued to increase, with multiple issues under appeal included in one MPIC internal review decision. This has resulted in a reduction of indexes prepared but a significant increase to the case management process and the volume of documentary evidence that come to form the index.

- The Commission completed 51 indexes in 2017/18, compared to 84 indexes in 2016/17 and compared to 102 indexes in 2015/16.
- The average indexed file included 136 tabs for the 2017/18 fiscal year, compared to 156 in 2016/17 and 112 in 2015/16.
- Staff prepared 61 supplemental indexes in 2017/18, compared to 99 supplemental indexes in 2016/17 and 85 in 2015/16. These indexes are for case conference hearings, jurisdictional hearings and additional indexes to supplement existing files where additional information is received.

Including supplementary indexes, appeals officers prepared a total of 112 indexes in 2017/18, as compared to 183 indexes in 2016/17 and 187 indexes in 2015/16.

As of March 31, 2018, there were 362 open appeals at the Commission, compared to 380 open appeals as of March 31, 2017 and 399 open appeals as of March 31, 2016.

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 was one application for leave to appeal in 2017/18. Leave to appeal was dismissed in this case.

In the Commission's 24 years of operation, as of March 31, 2018, the Court of Appeal has granted leave to appeal in 14 cases from the 1719 decisions made by the Commission.

Sustainable Development

The Commission is committed to the Province of Manitoba's Sustainable Procurement Practices plan. Commission staff is 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 2017/18.

Information Required Annually (per Section 18 of The Act)	Fiscal Year 2017/18
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 those decisions that were issued in 2017/18.

1. Income Replacement Indemnity (IRI) Benefits

Under the MPIC Act, an Appellant may be entitled to IRI benefits if he or she is unable to work for a period of time. Pursuant to paragraph 110(1)(a) of the MPIC Act, an Appellant ceases to be entitled to IRI benefits when he or she is able to hold employment that was held at the time of the accident. Similarly, under paragraph 110(1)(c) of the MPIC Act, IRI benefits will cease when an Appellant is able to hold an employment that was determined for him or her under the legislation. Manitoba Regulation 37/94 provides that an Appellant is unable to hold employment when a physical or mental injury that was caused by the accident renders him or her entirely or substantially unable to perform the essential duties of the employment.

Case #1

In this case, the Appellant argued that injuries caused by the motor vehicle accident (MVA) rendered him unable to perform the duties of his determined employment for 6 months. MPIC argued that the Appellant was able to perform the work duties at the relevant time, and therefore he should not be entitled to IRI benefits.

On September 28, 2013, the Appellant was driving his car when his brakes failed to work and he collided with two cars that were stopped at an intersection. The Appellant suffered various injuries as a result of this MVA and received medical treatment.

At the time of the MVA, the Appellant was classified as a non-earner for IRI purposes and received IRI benefits for the first 180 days following the MVA. Due to his injuries, the Appellant was unable to hold employment on the 180th day following the MVA, and consequently, MPIC determined an employment for him pursuant to the provisions of the MPIC Act. Specifically, his determined employment was that of a car salesman. Under the MPIC Act, the Appellant would be entitled to ongoing IRI benefits until he was able to hold the determined employment. As a result of various assessments, MPIC considered that he was able to hold the determined employment as of May 27, 2014. The Appellant

argued that he was not able to work as a car salesman until he actually began working at such a job on November 25, 2014.

At the hearing, the dispute between the parties centred on whether the Appellant could perform the determined employment, car salesman, and what the duties of that employment were. Certain duties of the job are outlined in the National Occupational Classification (NOC). The NOC identified the job as a light strength demand occupation and set out job demands including sitting and standing and handling loads of less than 10 kg. The Appellant testified that in addition to those duties, the job demands of a car salesman would include participating in sales team training sessions and moving cars on the lot if necessary. Further, the Appellant testified that during the winter months, it would also be a regular part of his duties to start cars on the lot if they wouldn't start. This would involve carrying a car battery, which could weigh 25 pounds, or wheeling one on a dolly. The Appellant's evidence on this point was accepted; however, the Commission noted that the period of time in question, late May to late November, fell mostly outside the winter months.

Having found what the duties of the Appellant's determined employment were, the Commission then considered whether the Appellant was entirely or substantially unable to perform the essential duties of that employment during the period in question. The Commission considered the medical reports provided by the Appellant's treating physicians. One report contained no objective measurements, but rather referred to the physician's understanding of the Appellant's condition. Accordingly, this report was not given any weight by the Commission. The second report did recommend a physical limitation on the Appellant, that he avoid "strenuous physical activities involving repetitive bending or heavy lifting". The Commission reviewed the duties of a car salesman and determined that none of the duties identified would fall within this limitation (particularly since the period in question fell primarily outside the winter months and so the duty of starting cars would not have been a significant impediment for the Appellant).

The Commission also reviewed the report provided by MPIC's medical consultant, who had the opportunity to review all of the medical reports and assessments on the Appellant's file and was thorough and comprehensive in his analysis. The medical consultant concluded that the Appellant would be functionally able to safely perform his work duties and the Commission accepted that opinion. This opinion was borne out by the Appellant's own testimony, evidencing that he went to work as a car salesman with little difficulty at the end of the time period in question. He indicated that the reason he went to work as a car salesman at the end of November was due to significant financial need. While on the one hand, he said that he was unable to perform the duties of a car salesman during the period in question, on the other hand he did not identify a functional impediment as the reason he did not secure his employment as a car salesman earlier than November 25, 2014. Accordingly, the Commission was left to conclude that the Appellant could have started work as a car salesman earlier, if he so desired, and that there were no functional impediments to him so doing. Therefore, the Commission found that the Appellant did not meet the onus of establishing, on a balance of probabilities, that he was entirely or substantially unable to perform the essential duties of car salesman during the relevant

period. Therefore, he was not entitled to IRI benefits for the period in question and his appeal was dismissed.

Case #2

In this case, the issue before the Commission was whether the Appellant was entitled to receive IRI benefits for the period beginning 180 days after the MVA. The Appellant argued that he was unable to perform his employment duties. MPIC argued that there was no evidence to support an inability to work.

On April 26, 2014, the Appellant was injured by a motor vehicle while he was riding his bicycle. As a result of the impact, he complained of an injury to his right knee. He saw his family doctor, who told him that he could try returning to work on June 9, 2014. The Appellant received IRI benefits up until June 9, 2014. He pursued a claim for further IRI benefits. MPIC denied further benefits, taking the position that there was no medical information on the file to support an inability to work after June 9, 2014. The Appellant specifically sought IRI benefits for the period beginning 180 days after the MVA, i.e. October 23, 2014.

In support of his claim at the Commission, the Appellant relied on medical reports and letters from his primary care physician. He noted that in spite of two attempts to return to work (both supported by letters from his doctor confirming his fitness to return), he was not able to return to work. Although he may have attempted to return, out of desperation, the injury from the MVA stopped him from working. In this regard, he relied upon a letter from his doctor dated August 17, 2015, which stated that he was limited by right knee pain and stiffness, precluding a return to work and indicating that his return to work date was currently indeterminate.

MPIC argued that a careful review of the reports from the Appellant's doctor show that he relied heavily upon the Appellant's subjective complaints. His reports lacked any objective assessment of the Appellant's injury and its effect on his ability to work. According to MPIC, the doctor was simply responding to the Appellant's requests.

The Commission carefully considered both the oral testimony of the Appellant and the reports of his doctor and noted that neither contained any specificity regarding the limitations faced by the Appellant and how they may have prevented him from doing his job. While the Appellant testified that he was barely able to walk, there was no explanation provided as to why his doctor had cleared him to work on two occasions, in a report dated June 5, 2014 and in a chart note dated May 12, 2015. The Commission also reviewed a report provided by MPIC's medical consultant dated October 26, 2015, which opined that a complete review of the Appellant's medical file did not disclose any condition arising from the MVA which prevented the Appellant from returning to employment.

The Commission concluded that the only medical evidence upon which the Appellant could rely in support of his position that he was unable to perform the duties of his employment was the letter of August 17, 2015 from the Appellant's doctor indicating that the timing of his ability to return to work was indeterminate. However, preceded as it was

by two indications from the same doctor that the Appellant was fit to return to work on June 9, 2014 and May 12, 2015, the Appellant failed to provide any contextual evidence from the doctor which would explain this contradiction. Accordingly, the Commission determined that the Appellant failed to meet the onus upon him to show, on a balance of probabilities, that he was unable to return to work as of October 23, 2014 and his appeal was dismissed.

Case #3

In this case, the Commission had to determine whether the Appellant was capable of performing the duties of her pre-accident employment as of a certain date. The Appellant was not present at the appeal hearing.

The Appellant was injured in an MVA on March 31, 2010. At the time of the MVA, the Appellant was a registered nurse working for the Winnipeg Regional Health Authority (WRHA) in home care. MPIC accepted that the Appellant suffered certain MVA-related injuries which initially prevented her from working and paid her IRI benefits. In May 2010, the Appellant attended for a psychological assessment and was found to have some elements of post-traumatic stress disorder (PTSD), but she did not meet the full criteria for the diagnosis. MPIC funded therapy to address the MVA-related psychological symptoms. In August 2010, the Appellant began a gradual return to work program with her pre-accident employer in the Wound Care Clinic (she could not be accommodated doing home care). On September 15, 2010, the Appellant was involved in a work altercation which resulted in a work leave and disciplinary action. The Appellant began a second gradual return to work program in June 2011, but did not progress past working six hours per day due to depression and stress. Her physician provided a Modified Duty Form dated August 5, 2011 confirming this and she ceased working at that time. Her IRI benefits were terminated effective August 12, 2011.

As noted above, the Appellant did not attend at the hearing of her appeal, although notice of the hearing had been given to her. She did provide a letter to the Commission outlining her reasons for filing the appeal. She noted that prior to the MVA, she had no issues or stress in the workplace; she was quite competent in performing her work duties. After the MVA, she had some elements of PTSD. The Appellant argued that she should have been placed back in her usual work area (home care) in the graduated return to work program, rather than in the area where she had the workplace incident (wound care clinic). She argued that prior to the MVA she never had a problem multitasking or doing her job.

MPIC noted that its psychological consultant provided an opinion dated April 28, 2011, which stated that there was no accident-related psychological or neuropsychological condition that would preclude the Appellant from a gradual return to work. In addition, the Appellant had been assessed by a neuropsychologist, and MPIC's consultant had reviewed the neuropsychologist's reports. The consultant noted that the neuropsychologist found that the Appellant did develop PTSD symptoms as a result of the accident, but these symptoms resolved over time. In addition, the neuropsychologist was unable to retrospectively state whether a psychological condition related to the MVA caused the Appellant's behaviour in the workplace incident. The neuropsychologist concluded that the Appellant's MVA-

related psychological injury did not render her functionally incapable of returning to her pre-accident employment.

The Commission carefully considered all of the medical reports and the submissions of counsel for MPIC as well as the letter provided by the Appellant. The Appellant did not testify at the hearing and therefore did not provide reasons as to why she could not return to full-time employment with her pre-accident employer. She did not provide any medical reports after the Commission received the results of the neuropsychologist's assessment and the MPIC consultant's review. She did not provide any testimony as to why her IRI benefits should continue beyond August 12, 2011. Accordingly, the Commission found that the Appellant failed to establish, on a balance of probabilities, that she sustained a physical or psychological injury in the MVA that prevented her from returning to her full-time pre-accident employment. She therefore failed to establish that she was entitled to IRI benefits beyond August 12, 2011 and her appeal was dismissed.

2. Permanent Impairment Benefits

Section 127 of the MPIC Act provides that a victim who suffers permanent disability or mental impairment because of an accident is entitled to a lump sump indemnity, which is calculated in accordance with Manitoba Regulation 41/94. The following cases provide examples of issues faced by the Commission when adjudicating these types of matters and illustrate the importance of expert evidence to establish the extent of the impairment or that the impairment was caused by the motor vehicle accident.

a) Whether the impairment suffered by the Appellant was caused by the motor vehicle accident:

Case #1

The Appellant was involved in a motor vehicle accident when he struck a steel cattle gate while driving on a rural road. The Appellant hurt his finger on the car steering wheel and cattle fence and months later sought medical attention for complaints of pain in his right third digit. An X-ray did not show a fracture but did show some degenerative changes and the radiologist indicated the findings may relate to old trauma. MPIC took the position that the impairment in the Appellant's finger was caused by pre-existing degenerative changes.

The Appellant testified at the appeal hearing regarding his condition before the accident, as well as the history of the injury to his finger and how it progressed following the accident. He submitted that he needs and uses his hands everyday doing hard physical work as a dairy farmer. He did not believe that the problems with his finger were caused by degenerative changes.

MPIC relied upon the X-ray report. While acknowledging that the Appellant may have initially suffered pain and injury to his finger in the accident, that condition had long since

abated and any deformity, pain and radiographic change that persisted could be attributed to a pre-existing condition and degenerative change.

The panel found the Appellant to be a credible witness regarding his plausible description of the accident and the mechanism of injury to his finger. The panel also accepted his evidence regarding a lack of old trauma and his explanation that after feeling his finger pop on the steering wheel during the accident, he felt pain which did not abate. He then waited for the swelling to go down, becoming concerned about two months later when it was still swollen and crooked.

The Appellant's doctor's reports also supported his contention that the injury to the finger occurred in the accident. The panel relied upon a report from the doctor which indicated that he had not complained of any problems with his finger prior to the accident and that he waited until the swelling subsided before seeking treatment and investigation, resulting in the X-ray. The Commission found that the accident resulted in a permanent injury to the Appellant's finger and that he was entitled to a permanent impairment award under the regulations.

Case #2

The Appellant, who was employed as a crusher and screener operator, was injured in a motor vehicle accident. Based on initial medical information, it was believed that he sustained soft tissue injuries involving his right hip, shoulders, neck and chest. He missed only two shifts from work and then returned.

Many months later, he contacted his case manager to advise that he had experienced slurred speech and right hand numbness. After medical investigation for a potential stroke, he was told that he had not suffered a stroke. Following further investigation, the Appellant was diagnosed with a cervical radiculopathy, believed to be responsible for his hand problems. He sought permanent impairment benefits for loss of motor and sensory function, as well as some IRI benefits for losses he had suffered through loss of seniority, lower hourly wages, earlier layoffs and later call-backs from shutdowns.

MPIC took the position that the Appellant had failed to establish that he suffered from a cervical radiculopathy and more importantly that there was any connection between the motor vehicle accident and the Appellant's symptoms.

The panel reviewed reports and testimony from the Appellant's physiatrist as well as from MPIC's Health Care Services medical consultant. The consultant was of the view that the Appellant had suffered from multiple transient ischemic attacks (TIAs) or stroke and that these were the cause of his symptoms, not the motor vehicle accident. However, the Appellant's own physiatrist ruled out stroke or TIA as a reason for the Appellant's continuing hand symptoms, as any frontal lobe lesions found would not correspond to hand or arm numbness, motor function or sensation. He noted that the cervical radiculopathy symptoms correlated with the Appellant's magnetic resonance imaging (MRI) and opined that while there were degenerative changes in the Appellant's spine, which pre-existed the accident, it was a combination of the motor vehicle accident and

these degenerative changes which caused his symptoms. He relied on the fact that the Appellant was asymptomatic prior to the accident and within months of the accident described numbness and tingling. While recognizing the existence and contribution of the degenerative changes, based on his assessment and treatment of the patient, the physiatrist was of the view that these changes were previously asymptomatic but aggravated by the motor vehicle accident.

As the physiatrist was the Appellant's treating physician who had also reviewed the material on the Appellant's file, the Commission accepted his diagnosis of cervical radiculopathy, which on a balance of probabilities was more likely than not caused by the accident. The Appellant's claim for IRI benefits and a permanent impairment benefit were referred back to the Appellant's case manager for investigation and determination.

b) **Whether the Appellant's permanent impairments were correctly assessed and calculated:**

Case #3

The Appellant was injured in a motor accident, sustaining a serious orthopedic injury. As a result he was entitled to permanent impairment benefits for thoracic spine fracture and infusion, scarring and loss of teeth. Dental reports regarding the loss of his teeth and physiotherapy reports which measured his scarring were reviewed, alongside the evidence of the physiatrist who assessed his back condition.

The Appellant was also treated for psychological issues resulting from the trauma of the accident. MPIC included a permanent impairment award of 5% for a psychiatric condition, pursuant to the Regulations under the Act. This award was based on reports from a psychiatrist who had treated him, and MPIC's Health Care Services psychological consultant.

According to the Regulations, the amount to be awarded for a psychiatric condition is greater for claimants who require psychiatric follow-up on a monthly basis, than is provided for claimants who require such intervention on an occasional basis (less than once per month).

The Commission considered the psychiatrist's reports, but also requested further evidence from the Appellant's caregivers, including his family physician, multiple psychiatrists and a mental health counsellor.

Following a review of all the evidence, the Internal Review Decision was upheld. The physical impairments awards were found to be appropriate. The panel found that the evidence provided by the psychiatrists and mental health counsellor clearly established that the Appellant required psychiatric/psychological care at a frequency of less than once per month (pursuant to class 5, under division 11 of the Regulations). Therefore, the 5% award provided to the Appellant for a psychiatric condition appropriately addressed this impairment and the IRD was upheld. The Appellant's appeal was dismissed.

3. Causation

Pre-Existing Conditions

Issues sometimes arise as to whether an Appellant's ongoing symptoms are caused by the MVA or whether the symptoms are caused by a pre-existing condition. Sometimes a determination needs to be made whether the MVA made a pre-existing condition worse. Personal Injury Protection Plan (PIPP) benefits may be provided on the basis that the MVA made an Appellant's pre-existing condition temporarily worse or because the MVA enhanced the Appellant's pre-existing condition.

Case #1

The Appellant fell forward when the transit bus on which he was a standing passenger suddenly stopped to avoid colliding with another vehicle. At issue was whether the Appellant's ongoing lower back pain and left leg symptoms were causally related to his fall on the transit bus or whether his symptoms were related to a pre-existing work-related condition.

Prior to the MVA, the Appellant was injured at work and had been in receipt of benefits from the Workers Compensation Board (WCB). MPIC took the position that the MVA merely caused a temporary acute worsening of the Appellant's pre-existing work-related condition and therefore that the Appellant's ongoing problems were not causally related to the MVA but rather to his pre-existing condition.

The Commission relied upon the opinion of MPIC's medical consultant, who reviewed the medical documents which included chart notes made by the Appellant's treating physician. The medical consultant found that the MRI evidence and clinical examination findings of the Appellant's physician showed there were no significant changes in the Appellant's presentation with lower back pain and left leg symptoms pre and post MVA. The Appellant's condition before and after the MVA was essentially the same. Therefore, the Commission found that, at most, the MVA caused a temporary worsening of his pre-existing condition and that the Appellant's ongoing low back and leg symptoms were not as a result of the MVA.

Case #2

The Appellant suffered soft tissue/sprain injuries in two MVAs, which occurred within 2 weeks of one another. These two MVAs were considered together by MPIC for the purposes of PIPP benefits. The Appellant continued to suffer symptoms for years following the MVAs. The Commission was required to decide whether the Appellant's ongoing symptoms were causally related to the MVAs. To do so, the Commission first had to determine whether the Appellant had a non-MVA related condition at the time of the MVAs and if she did, whether this pre-existing condition was exacerbated or enhanced by the MVA.

Based on the documentary evidence and the evidence at the hearing, the Commission found that the Appellant had a pre-existing condition that was unrelated to any prior MVAs. Once that was determined, the Commission considered the impact of the MVAs on this pre-

existing condition. The Commission accepted the opinion of MPIC's medical consultant that the Appellant developed minor symptoms following the MVAs that exacerbated but did not enhance her pre-existing condition. The Appellant was in receipt of PIPP benefits for the portion of time when the pre-existing condition was exacerbated by the MVAs. However, because the Appellant's ongoing symptoms were not found to be causally related to the MVAs, she was not entitled to further PIPP benefits.

4. Findings of Credibility and Reliability

Both of the "causation" cases addressing pre-existing conditions discussed above also addressed credibility and reliability.

In **Case #1** where the Appellant was injured on the transit bus, MPIC submitted that credibility was a key issue because the Appellant was relying on his subjective assessments of pain to support his position. The Commission carefully considered the Appellant's testimony during the hearing, including the Appellant's subjective assessments of his condition and the Appellant's comments to health care providers (as recorded in their reports). The Commission expressed serious concerns about the Appellant's credibility, finding that the Appellant was not always forthright in his testimony. At times he was dismissive and evasive to questions being asked by his representative and counsel for MPIC, including questions relating to some of his physician's chart notes, the non-disclosure to WCB about any pre-MVA improvements to his lower back pain and left leg issues, and why he continued to collect benefits from the WCB until approximately one year after he filed for PIPP benefits. As a result, the Commission placed less weight on the Appellant's evidence overall, including his subjective assessment of pain.

In **Case #2** where the Appellant suffered soft tissue/sprain injuries in two MVAs, the Commission placed more weight on MPIC's consultant reports rather than the reports from the Appellant's various treating physicians because the MPIC consultant was able to review, cross reference and synthesize all the medical information on the file. There was no evidence that any of the Appellant's care providers had full access to the many reports on file and chart notes that were provided. As well, the Commission found that the Appellant was not a reliable historian. She had no recollection of certain significant events. The Appellant was unable to identify an approximate time of when she started to take various medications and her reports of how much she was taking varied depending on the caregiver she saw. The testimony regarding when she experienced symptoms was inconsistent with when she sought medical attention and with her testimony in a prior hearing at the Commission. As a result, the Commission accepted the conclusion of MPIC's medical consultant that the Appellant developed only minor symptoms following the MVAs and that her ongoing symptoms were not causally related to the MVAs.

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