Automobile Injury Compensation Appeal Commission

Annual Report
2022 - 2023

Indigenous Land Acknowledgement

We recognize that Manitoba is on the Treaty Territories and ancestral lands of the Anishinaabe, Anishininewuk, Dakota Oyate, Denesuline and Nehethowuk peoples.

We acknowledge Manitoba is located on the Homeland of the Red River Métis.

We acknowledge northern Manitoba includes lands that were and are the ancestral lands of the Inuit.

We respect the spirit and intent of Treaties and Treaty Making and remain committed to working in partnership with First Nations, Inuit and Métis people in the spirit of truth, reconciliation and collaboration.

Reconnaissance du territoire

Nous reconnaissons que le Manitoba se trouve sur les territoires visés par un traité et sur les terres ancestrales des peuples anishinaabe, anishininewuk, dakota oyate, denesuline et nehethowuk.

Nous reconnaissons que le Manitoba se situe sur le territoire des Métis de la Rivière-Rouge.

Nous reconnaissons que le nord du Manitoba comprend des terres qui étaient et sont toujours les terres ancestrales des Inuits.

Nous respectons l'esprit et l'objectif des traités et de la conclusion de ces derniers. Nous restons déterminés à travailler en partenariat avec les Premières Nations, les Inuits et les Métis dans un esprit de vérité, de réconciliation et de collaboration.

Automobile Injury Compensation Appeal Commission
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This publication is available in alternate formats, upon request.

MINISTRE
DE LA PROTECTION DU CONSOMMATEUR ET DES SERVICES GOUVERNEMENTAUX

Bureau 343
Palais législatif
Winnipeg (Manitoba) R3C 0V8
CANADA

Son Honneur l'honorable Anita R. Neville
Lieutenante-gouverneure du Manitoba
Palais législatif, bureau 235
Winnipeg (Manitoba) R3C 0V8

Madame la Lieutenante-Gouverneure,

J'ai l'honneur de vous présenter, à titre d'information, le rapport annuel de la Commission d'appel des accidents de la route pour l'exercice qui s'est terminé le 31 mars 2023.

Le tout respectueusement soumis,

Monsieur James Teitsma
Ministre de la Protection du consommateur et des Services gouvernementaux

MINISTER
OF CONSUMER PROTECTION AND GOVERNMENT SERVICES

Room 343
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

Her Honour, the Honourable Anita R. Neville, P.C., O.M.
Lieutenant Governor of Manitoba
Room 235 Legislative Building
Winnipeg MB R3C 0V8

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 fiscal year ending March 31, 2023.

Respectfully submitted,

Honourable James Teitsma
Minister Consumer Protection and Government Services

Manitoba
Consumer Protection and Government Services
Consumer Protection Division / Assistant Deputy Minister
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Honourable James Teitsma
Minister of Consumer Protection and Government Services
Room 343 Legislative Building
Winnipeg MB R3C 0V8

Dear Minister:

Subsection 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, 2023 which includes a summary of significant decisions.

Yours truly,

L. Diamond

LAURA DIAMOND
CHIEF COMMISSIONER

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RAPPORT ANNUEL DE LA COMMISSION D'APPEL DES ACCIDENTS DE LA ROUTE POUR L'EXERCICE 2022-2023

Renseignements généraux

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 2022-2023, qui a débuté le 1er avril 2022 et s'est terminé le 31 mars 2023, marquait la 29e année complète de fonctionnement de la Commission.

Celle-ci compte 10 membres : un commissaire en chef, deux commissaires en chef adjoints à temps partiel, un directeur des appels, trois agents des appels, un secrétaire du commissaire en chef et deux secrétaires administratifs. Pour l'exercice 2022-2023, 30 % de ces postes étaient temporairement vacants.

En outre, 14 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 relativement à son admissibilité à des indemnités du Régime, il dispose de 60 jours pour demander une révision de la décision. Un agent de révision interne examinera la décision du gestionnaire de cas et rendra par écrit une décision motivée.

Le demandeur qui n'est pas satisfait de la décision interne révisée peut interjeter appel devant la Commission dans les 90 jours qui suivent la date de réception de cette décision. La Commission peut, à sa discrétion, prolonger le délai pour interjeter appel.

En 2022-2023, 131 appels ont été interjetés devant la Commission, comparativement à 140 en 2021-2022.

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 2022-2023, 58 % des appelants ont été représentés par le Bureau des conseillers des demandeurs. En 2021-2022, ce nombre s'élevait à 52 %.

Procédures préalables à l'audience et médiation

Depuis février 2012, l'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. Une feuille de renseignements sur la médiation est également jointe à l'Avis d'appel. Sur les 131 nouveaux appels interjetés durant l'exercice 2022-2023, 86 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 de médiation relative aux accidents de la route 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 éléments de preuve documentaire jugés pertinents 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. L'expérience de la Commission montre que de nombreux appels nécessitent une gestion supplémentaire de la part d'un commissaire. Comme par le passé, la Commission a continué de convoquer des conférences préparatoires en 2022-2023. Elle estime que ces conférences préparatoires aident à déterminer où en sont les appels, à établir la cause des retards, à éliminer les obstacles qui empêchent de fixer une date d'audience, à faciliter la médiation et à fixer les dates d'audience.

Audiences

Lorsqu'un appel n'est pas entièrement réglé durant la médiation ou qu'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 la preuve applicable aux procédures judiciaires, les audiences sont relativement informelles. Les appelants et la Société peuvent appeler des personnes à témoigner et présenter de nouveaux éléments de preuve au cours de ses audiences. Toutefois, les lignes directrices de la Commission exigent des parties

qu'elles divulguent leurs éléments de preuve documentaire et orale en prévision des audiences. La Commission peut aussi délivrer des assignations de témoin, 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, des parties ou de témoins, une audience peut avoir lieu par téléconférence ou vidéoconférence.

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 consultés au bureau de la Commission ou sur son site Web, au http://www.gov.mb.ca/justice/cp/auto/decisions/index.html. 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 2022-2023, les appelants ont eu gain de cause, partiellement ou complètement, dans 29 % des appels entendus par la Commission, comparativement à 41 % au cours de l'exercice 2021-2022.

Résolutions

Les travaux de la Commission ont permis de régler ou de retirer trois appels de façon à ce qu'aucune audience ou décision officielle ne soit nécessaire.

- Quatre jours d'audience ont été prévus, mais les appels ont été retirés ou réglés avant le début de l'audience.

Activités liées à l'audience

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

Exercice	Audiences	Conférences préparatoires	Nombre total d'audiences
2022-2023	10	75	85
2021-2022	26	45	71
2020-2021	15	52	67

2019-2020	26	91	117
2018-2019	30	75	105
2017-2018	23	124	147

Bien qu'il y ait eu moins d'audiences en général, il y a eu plus d'audiences complexes tenues sur plusieurs jours au cours de l'exercice 2022-2023. Ci-après se trouve un tableau récapitulatif du nombre de jours prévus pour les audiences et les conférences préparatoires des trois derniers exercices.

Exercice	**Nombre de jours d'audience**	**Jours de règlement**	**Jours de conférences préparatoires**	**Jours de conférences préparatoires ajournées**	**Nombre total de jours d'audience prévus**
2022-2023	16	4	75	13	108
2021-2022	55	9	45	9	118
2020-2021	35	6	52	4	97

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 demandant 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 2022-2023 :

- Les dossiers ont été indexés dans un délai de 3,73 semaines après la réception du dossier de la Société et des documents supplémentaires, comparativement à 1,84 semaine en 2021-2022 et à 2,25 semaines en 2020-2021.

- Les audiences ont été tenues dans un délai moyen de 23 semaines après la date où les parties ont dit être prêtes. Ce délai était de 16,86 semaines en 2021-2022 et de 15 semaines en 2020-2021.
- La Commission a rédigé 14 décisions en 2022-2023, comparativement à 17 décisions en 2021-2022. Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision était de 11 semaines en 2022-2023 comparativement à 7,9 semaines en 2021-2022 et à 10 semaines en 2020-2021.
- Conformément au pouvoir discrétionnaire de la Commission en vertu des dispositions adoptées dans le projet de loi 12 concernant le rejet de l'appel, la Commission a rédigé quatre décisions en 2022-2023. Il s'est écoulé 3,89 semaines entre la date de clôture de l'audition et la date à laquelle la Commission a rendu sa décision.

Les agents des appels de la Commission continuent d'apporter un soutien administratif considérable pour la gestion des appels. La complexité des cas et l'inclusion de multiples questions en appel dans une seule décision interne révisée de la Société entraînent une augmentation de la gestion des cas et du volume des dossiers de demandes d'indemnisation pour dommages corporels.

- La Commission a indexé 52 dossiers en 2022-2023, comparativement à 91 en 2021-2022 et à 130 en 2020-2021.
- Le dossier indexé moyen comprenait 111 onglets pour l'exercice 2022-2023, comparativement à 136 en 2021-2022 et à 121 en 2020-2021.
- Le personnel de la Commission a préparé 35 dossiers indexés supplémentaires en 2022-2023, comparativement à 45 en 2021-2022 et à 70 en 2020-2021. Ces dossiers indexés sont utilisés pour les conférences de gestion de cause et les audiences relatives à une question de compétence, alors que les dossiers indexés supplémentaires sont utilisés comme suppléments aux dossiers existants lorsque d'autres renseignements sont reçus.

Si on tient compte des dossiers indexés supplémentaires, les agents des appels ont préparé en tout 87 dossiers indexés en 2022-2023, comparativement à 136 en 2021-2022 et à 200 en 2020-2021.

En date du 31 mars 2023, il y avait 395 dossiers actifs à la Commission, comparativement à 407 le 31 mars 2022 et à 368 le 31 mars 2021.

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 2022-2023. La Cour a rejeté la demande dans tous les cas.

En date du 31 mars 2023, la Cour d'appel avait accordé une autorisation d'appel dans 14 cas sur les décisions rendues par la Commission au cours de ses 29 années d'existence.

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.

Une divulgation faite de bonne foi et conformément à la Loi par un employé qui a des motifs raisonnables de croire qu'un acte répréhensible a été ou est sur le point d'être commis est réputée une divulgation faite en vertu de la Loi, que l'acte en cause soit un acte répréhensible ou non. Toutes les divulgations font l'objet d'un examen minutieux et approfondi visant à déterminer si des mesures s'imposent en vertu de la Loi. En outre, elles doivent être déclarées dans le rapport annuel du ministère conformément à l'article 18 de la Loi. 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 2022-2023.

Renseignements requis annuellement (en vertu de l'article 18 de la Loi)	Exercice 2022-2023
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))	NÉANT

ANNUAL REPORT OF THE
AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION
FOR FISCAL YEAR 2022/23

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 2022/23, which is April 1, 2022 to March 31, 2023, was the 29th full year of operation of the Commission.

The staff complement of the Commission is 10, including one chief commissioner, two part-time deputy chief commissioners, one director of appeals, three appeals officers, one secretary to the chief commissioner and two administrative secretaries. For the 2022/23 fiscal year, 30% of these positions were temporarily vacant.

In addition, there are 14 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 (IRD), the claimant may appeal the decision to the Commission within 90 days of receipt of the IRD. The Commission has the discretion to extend the time by which an appeal must be filed.

In fiscal year 2022/23, 131 appeals were filed at the Commission, compared to 140 in the fiscal year 2021/22.

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 2022/23 fiscal year, 58% of all appellants were represented by the Claimant Adviser Office, compared to 52% in 2021/22.

Pre-Hearing Procedures & Mediation

Since February 2012, the Notice of Appeal (NOA) 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). A mediation information sheet is also provided with the NOA. Of the 131 new appeals that were filed during the 2022/23 fiscal year, 86 appellants pursued the option of mediation.

If mediation is requested at the time an appellant files a NOA, 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 NOA 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 Conferences

Management of appeals by case conference continues to be an important part of the Commission's hearing schedule. 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 2022/23. 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.

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, the parties or witnesses, a hearing may be conducted by teleconference or videoconference.

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 2022/23, appellants were successful in whole or in part in 29% of the appeals heard by the Commission, compared to 41% in 2021/22.

Resolutions

The work of the Commission resulted in the resolution of three appeals, through settlement or withdrawal, so that a formal hearing or decision was not required.

- Four days of hearings were scheduled but the appeals were withdrawn or settled prior to the commencement of the hearing.

Hearing Activity

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

Fiscal Year	Hearings	Case Conferences	Total Hearings
2022/23	10	75	85
2021/22	26	45	71
2020/21	15	52	67
2019/20	26	91	117
2018/19	30	75	105
2017/18	23	124	147

While there were less hearings overall, there was again an increase in complex multi-day hearings held in the 2022/23 fiscal year. The following identifies the number of days scheduled for hearings and case conferences in the last three fiscal years.

Fiscal Year	Days of Hearings Held	Settled Days	Days of Case Conferences	Adjourned Case Conference Days	Total Hearing Days Scheduled
2022/23	16	4	75	13	108
2021/22	55	9	45	9	118
2020/21	35	6	52	4	97

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 prepare 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 the AIM Office 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 2022/23:

- Files were indexed within 3.73 weeks of receipt of MPIC's file and additional material compared to 1.84 weeks in 2021/22 and 2.25 weeks in 2020/21.
- Hearing dates were scheduled, on average, within 23 weeks from the time the parties were ready to proceed to a hearing. This compares to 16.86 weeks in 2021/22 and 15 weeks in 2020/21.
- The Commission prepared 14 written decisions in 2022/23, compared to 17 written decisions in 2021/22. The average time from the date a hearing concluded to the date the Commission issued an appeal decision was 11 weeks in 2022/23, compared to 7.9 weeks in 2021/22 and 10 weeks in 2020/21.
- In accordance with the Commission's discretion under the provisions passed in Bill 12 for Dismissal for Failure to Pursue an Appeal or Appeals, the Commission has written four decisions in 2022/23. The time from the date the hearing concluded to the date the Commission issued the decision was 3.89 weeks.

The Commission's appeals officers continue to provide substantial administrative support to the case management of appeals. The complexity of cases and the inclusion of multiple issues under appeal included in one MPIC IRD results in increased case management and larger volume Bodily Injury Claim Files.

- The Commission completed 52 indexes in 2022/23, compared to 91 indexes in 2021/22 and compared to 130 indexes in 2020/21.
- The average indexed file included 111 tabbed documents for the 2022/23 fiscal year, compared to 136 tabbed documents in 2021/22 and 121 in 2020/21.
- Staff prepared 35 supplemental indexes in 2022/23, compared to 45 supplemental indexes in 2021/22 and 70 in 2020/21. These indexes are for case conference hearings, jurisdictional hearings and additional indexes to supplement existing files where additional information is received.

Including supplemental indexes, appeals officers prepared a total of 87 indexes in 2022/23, as compared to 136 indexes in 2021/22 and 200 indexes in 2020/21.

As of March 31, 2023, there were 395 open appeals at the Commission, compared to 407 open appeals as of March 31, 2022 and 368 open appeals as of March 31, 2021.

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 2022/23. Leave to appeal was denied in all cases.

In the Commission's 29 years of operation, as of March 31, 2023, the Court of Appeal has granted leave to appeal in 14 cases from decisions made by the Commission.

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 2022/23.

Information Required Annually (per section 18 of The Act)	Fiscal Year 2022/23
The number of disclosures received, and the number acted on and not acted on. (Paragraph 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 2022/23.

1. Failure to Pursue the Appeal

In cases where an appellant does not take active steps to pursue their appeal, the Commission has the power to consider whether to dismiss the appeal. Subsection 182.1(1) of the MPIC Act provides that "the commission may dismiss all or part of an appeal at any time if the commission is of the opinion that the appellant has failed to diligently pursue the appeal".

There are several circumstances in which an appellant may fail to diligently pursue their appeal. For example, in some cases, the appellant has not taken active steps to communicate with the Commission. In other cases, the appellant has failed to attend case conferences and meet deadlines set by the Commission.

The following cases illustrate factors the Commission may consider in determining whether to dismiss an appeal due to the appellant's failure to diligently pursue it.

Case #1

The appellant in this case did participate in their appeal initially; however, subsequently, they failed to attend case conferences and meet deadlines set by the Commission.

The appellant was involved in a motor vehicle accident (MVA) in October 2018. They filed a NOA with the Commission in October 2019, with respect to their entitlement to Income Replacement Indemnity (IRI) benefits.

An initial case conference was held in January 2021, to discuss the status of the appeal. The appellant participated by teleconference and indicated that they were still interested in pursuing their appeal. A second case conference was scheduled for April 2021; however, the appellant did not participate. The Commission wrote to the appellant, and gave them thirty days to advise as to whether they would be providing further medical reports; if so, they would be given a reasonable amount of time to submit these. The deadline passed and the appellant did not contact the Commission.

The Commission then determined that a third case conference would be scheduled to discuss whether the appeal was ready to be set down for hearing. The Commission attempted to contact the appellant on several occasions to schedule a date; however, the appellant did not provide a response, and a peremptory date was therefore set. The case conference was held in March 2022, and the appellant did not participate.

The Commission wrote to the parties following the third case conference, noting that this matter would now be dealt with through the Commission's process for cases where the appellant may have failed to diligently pursue an appeal. The letter enclosed a Notice of Withdrawal form, in

case the appellant no longer wished to pursue their appeal. When this form was not returned and the appellant did not contact the Commission, the Commission wrote to the appellant and advised them that the appeal would be held in abeyance for three months. They were also advised that pursuant to subsection 182.1(1) of the MPIC Act, their appeal could be dismissed if they did not diligently pursue it; they were encouraged to contact the Commission to pursue their appeal or provide an explanation as to why they were unable to do so.

After three months passed without contact from the appellant, the Commission wrote to the parties, advising that the Commission would schedule a hearing to determine whether the appellant had failed to diligently pursue their appeal and, if so, whether the Commission should dismiss it. Notice of the hearing was sent to the appellant by regular mail, in accordance with the provisions of the MPIC Act. The mail was not returned to the Commission. Notice of the hearing was also provided to the appellant by email.

The appellant did not attend the hearing and the hearing proceeded in their absence. Counsel for MPIC attended and provided submissions.

The Commission found that the appellant had been properly served with the NOA and had been given an opportunity to be heard in respect of the dismissal of their appeal, as required under the MPIC Act.

The Commission noted that the onus is on the appellant to show that they had diligently pursued their appeal and that the appeal should not be dismissed. The Commission also noted prior decisions, which held that "diligence" is defined to mean "careful and persistent application or effort". Here, the appellant's conduct of their appeal following the first case conference did not meet this definition. Their last active participation in the appeal had been almost 20 months prior to the hearing. The appellant had not responded to the Commission's letters and attempts to contact them, or taken any further steps to move their appeal forward since that time. They did not attend the hearing, nor did they provide any written submissions, although they were provided with notice of the hearing and the opportunity to do so. They did not provide any explanation for their failure to appear or for their failure to respond to the Commission's attempt to contact them.

The Commission therefore found that the appellant had failed to diligently pursue their appeal, and the appellant's appeal was dismissed.

Case #2

In this case, the appellant failed to meet deadlines set by the Commission, did not attend a case conference, and ceased to communicate with the Commission.

The appellant filed a NOA with the Commission and provided their residential mail and email addresses, and two telephone numbers. They participated in mediation to attempt to resolve the appeal and, when this was not successful, the appeal was returned to the Commission to prepare the file for hearing. Commission staff prepared an index of relevant documents and provided the

appellant with a copy, asking for feedback. No response was received, in spite of numerous attempts by the staff to contact them.

After several months, the appellant phoned the Commission and advised that they would like to obtain and submit an additional physiotherapy report. Staff advised them of the existence of the Claimant Adviser Office and gave them some time to decide whether to contact them for representation and to obtain further reports.

When this period had passed, the Commission staff telephoned the appellant, left voicemail messages and sent them letters with further information, but they did not respond. When several months passed with no response or communication from the appellant, the Commission scheduled a case conference to update the status of the appeal. The parties were provided with notice of the case conference by teleconference; however, the appellant did not attend.

Since by then it had been over a year since the appellant had communicated with the Commission, the chair of the case conference determined that it was appropriate for the matter to proceed through the Commission's process for determining whether an appeal has been diligently pursued. The matter was held in abeyance for an additional three months to allow the appellant to contact the Commission, take steps to pursue the appeal or to provide a reasonable explanation for their failure to do so. They were advised that after three months the matter would be scheduled for a hearing to determine whether they had failed to pursue their appeal and, if so, whether the Commission should dismiss the appeal.

Having received no communication from the appellant, the Commission set a date for hearing and determination of the question of their failure to diligently pursue the appeal. The appellant was provided with notice of the hearing as well as an indexed file of documents relevant to the failure to pursue issue.

The Commission found that the appellant had been provided with proper notice of the hearing and an opportunity to make submissions; however, they failed to attend or to make any submissions. They provided no explanation for their failure to advance their appeal or participate in the hearing.

Counsel for MPIC attended the hearing and the Commission heard submissions from them.

As noted above, the onus is on the appellant in such cases to show that they had diligently pursued the appeal and that the appeal should not be dismissed. As well, "diligence" means that the appellant must carry out their appeal with care and perseverance.

The evidence showed that, on numerous occasions, the appellant did not respond to the Commission's inquiries. The appeal was no further ahead more than two years after the filing of the NOA, in spite of the many efforts the Commission made to contact the appellant.

A review of the documents on file showed that after filing their NOA, participating in mediation and indicating their wish to submit further physiotherapy reports, the appellant did nothing

further with respect to their appeal. They failed to respond to numerous letters, email messages and telephone calls from Commission staff. They failed to provide any response, documents or details for a period of 20 months.

The Commission found that, on a balance of probabilities, the appellant had not pursued their appeal with care and perseverance. In spite of having been given the opportunity to make submissions, the appellant did not meet the onus upon them to establish diligent pursuit of the appeal by careful and persistent application or effort. Nor did the appellant provide an explanation for their failure to do so.

The Commission found that the appellant failed to diligently pursue their appeal and the appeal was dismissed.

2. Extension of Time Limit to file a Notice of Appeal

The MPIC Act provides a time limit for appealing decisions to the Commission. However, the Commission has the ability to extend this time limit. Subsection 174(1) of the MPIC Act states that a claimant may appeal an IRD to the Commission within 90 days after receiving notice of the decision or within such further time as the Commission may allow.

Case #1

This case illustrates factors that the Commission may consider in exercising its discretion to extend the time limit.

The appellant failed to file their NOA within the 90-day deadline provided under the MPIC Act. They filed the late appeal form 11 years after the deadline.

The appellant argued that an email they sent to the Commission within the timeframe to appeal should be considered the launch of their appeal, notwithstanding the lack of formality.

In the alternative, if the email was not found to be an appeal, they argued that the Commission should extend the deadline to appeal in their case because their ability to deal with paperwork and things like the appeal had been impaired by their MVA injuries.

The appellant argued that their email mirrored their intent to file an appeal within the timeline. However, upon reviewing the background surrounding the email, including the Commission's response to it and the appellant's subsequent actions, as well as the submissions of the parties in this regard, the panel concluded that the appellant's email was not intended to form or mirror an appeal and accordingly was treated by both the appellant and the Commission as a request for more information.

The Commission also declined to exercise its discretion to grant an extension of time for the appellant to file their appeal. Various factors were considered by the Commission in arriving at this conclusion.

The length of the delay in this case was found to be substantial and unreasonable, which had the potential to create both inherent and actual prejudice to MPIC in administering the claim.

The appellant's claims that they filed late because they wanted to first gather more evidence and they did not realize that the deadline for filing was 90 days were not found to be reasonable positions or established by the evidence.

Although they referred to many health conditions as preventing them from filing their appeal on time, there was not sufficient medical evidence, if any, on file to support this claim.

The appellant's submission that the Commission should exercise its discretion in their favour because they had not previously realized that they could apply for an extension of time was not found to be a reasonable excuse for failing to file an appeal on a timely basis.

Upon reviewing the evidence on file, the testimony of the appellant and the submissions of the parties, the panel found that the appellant did not make the appeal a priority and did not have a reasonable excuse for the late filing of the appeal. The appellant did not establish that the Commission should exercise its discretion to extend the timelines under the MPIC Act for the filing of their appeal.

3. Whether there is a Causal Connection between the MVA and the Appellant's Symptoms

In order to be entitled to PIPP benefits under the MPIC Act, an appellant must establish, on a balance of probabilities that their injuries were caused by the MVA. In the following cases, the Commission carefully considered the evidence and the reports of the medical experts to determine whether there was a causal connection between the MVA and the appellants' injuries and symptoms in order to determine the appellants' entitlement to benefits.

Case #1

In this case, the issue was whether there was a causal link between the MVA and the appellant's right shoulder injury and need for surgery.

In May 2017, a vehicle rear-ended the appellant, which propelled their truck into another vehicle (the MVA). They opened an MPIC claim and continued to work in their landscaping business. In mid-July 2017, the appellant attended their first post-MVA medical appointment and in August 2017, they started physiotherapy treatment, which continued until early April 2018. In February 2020, the appellant requested that MPIC pay their IRI benefits for the time-period they needed to recover from their recent corrective surgery for a torn shoulder, as well as pay their medical expenses for related exercise equipment. Upon review of the medical records, MPIC concluded that the appellant's right shoulder condition and surgery were not MVA-related. The appellant appealed that decision to the Commission.

The appellant's main contention was that they had no pre-MVA medical history of a right shoulder condition and that the cause of their shoulder injury was the MVA mechanism of being struck from behind and then propelled forward. They argued that their shoulder pain started

right after the MVA and MPIC had covered their pre-surgery medical and travel expenses, which was evidence that MPIC considered their injury MVA-related.

MPIC focused on the temporal relationship between the shoulder tear and the MVA. In particular, medical records and images immediately post-MVA, and for the next year, documented no tear. The surgical report in February 2020 (two and a half years post-MVA) identified a tear. The appellant's medical records and operative report also noted degenerative arthritic changes in their shoulder. The surgeon stated that the degenerative changes were not MVA-related, but it was "possible" that the MVA aggravated the underlying arthritic condition.

The Commission considered the appellant's pre-existing shoulder arthritis and their immediate resumption of work running their landscaping business, including occasional physical labour. The Commission noted that the appellant did not report any type of MVA-related soft tissue injury, such as whiplash. The Commission considered the medical evidence, which did not record a shoulder tear in the first year post-MVA and noted the lack of temporal relationship between the tear diagnosis and the MVA. Further, the Commission considered the surgeon's opinion, which stated only a possible link between the MVA and an aggravation of the underlying arthritis. The Commission considered subsection 70(1) of the MPIC Act and concluded that the appellant had not met their burden of proving the causal connection between the MVA and their shoulder symptoms on a balance of probabilities, and dismissed the appeal.

Case #2

In this case, the issue was whether the appellant's seizure activity and dizziness were causally connected to the MVA.

The appellant was a passenger in a van involved in a multiple vehicle accident. They exited the vehicle, called 911 and assisted other passengers. After paramedics arrived, they suffered a seizure and fell, hitting their head, losing consciousness, and suffering a laceration and hematoma.

After transfer to hospital and testing, they were diagnosed with alcohol withdrawal and received treatment for the laceration. They continued to suffer from memory issues, episodic seizures and dizziness, which affected their ability to return to work. MPIC denied them benefits, taking the position that their symptoms were not causally related to the accident.

The appellant testified that they were unable to work because of light headedness and dizziness which began about a month after the accident. They said that they had hit their head on the dashboard during the collision. Although they admitted to past struggles with alcohol, including withdrawal seizures, they maintained that this was irrelevant, since they had suffered a seizure minutes after the accident, falling and hitting their head as a result. About a month after the accident, their dizziness started.

They submitted that all of these issues were caused by the accident and voiced frustration with MPIC for having "dropped the ball" on their claim.

MPIC submitted that the Commission must be satisfied on a balance of probabilities that, but for the accident, the appellant would not have suffered a seizure and dizziness. However, there was conflicting evidence about how and where they hit their head prior to the seizure and how much alcohol they may have consumed prior to that. There was no initial sign of trauma and the emergency doctor did not diagnose any injuries from the accident, only noting a seizure resulting from alcohol withdrawal.

The panel reviewed the testimony of the appellant, medical records on file (including neurology, vestibular physiotherapy and medical consultant reports) and the parties' submissions.

In regard to the appellant's seizures, the panel noted that the medical records were clear that the appellant had not displayed any trauma immediately following the accident, but they had suffered a seizure a few minutes afterwards, causing them to fall. The EMS documented signs of intoxication and, with a history of falls due to possible alcohol withdrawal seizures, the emergency doctor diagnosed a similar cause of seizure following the accident.

Although the neurologist found this to be an unlikely diagnosis, they did not seem to be aware of the appellant's past difficulties with alcohol. The panel preferred the expert evidence of MPIC's medical consultant, who opined that the seizure was not accident related.

In considering the appellant's dizziness, although the neurologist had opined that the dizziness appeared to be the sequelae of the accident, they did not identify what was causing the dizziness or provide a basis for their opinion. MPIC's medical consultant pointed out that the lack of description, and absence of an underlying factual basis for their conclusion, made the probable cause of the diagnosis of dizziness unknown.

The panel agreed with this assessment by the medical consultant and found that, on a balance of probabilities, the appellant's dizziness was not related to the accident.

Based upon the current available medical records and MPIC's expert opinions, the Commission found that the appellant had not proven, on a balance of probabilities, that their seizures or dizziness were accident related. Therefore, the Commission found that the appellant had failed to meet the onus to prove that they suffered a bodily injury caused by an automobile and their appeal was dismissed.

Case #3

In this case, the issue was whether the appellant's lower back complaints and 2017 surgery were causally related to their 2008 MVAs.

The appellant was involved in two MVAs in 2008, within minutes of one another. First, while attempting to pass the appellant on the highway at night, a third party vehicle struck the appellant's vehicle on the rear driver's side. The appellant and the other driver pulled over to exchange particulars. The second collision occurred when a half-ton truck rear-ended the appellant's pulled-over vehicle at highway speed, while the appellant was seated inside, and launched their vehicle into the ditch. The appellant suffered neck and lower back pain for which

they received chiropractic and massage treatment. Their back pain did not resolve despite their efforts to remain strong and active. The appellant underwent surgery approximately nine years post-MVA to treat their lower back pain.

MPIC denied PIPP benefits on the basis that the ongoing lower back pain and ultimate surgery were not MVA-related.

The panel qualified the appellant's orthopaedic surgeon (the "appellant's expert") as an expert witness in the specialty of spinal injury and orthopaedic surgery. They concluded that the MVAs caused the appellant's lower back pain. The appellant's expert testified that their ability to conduct the appellant's initial physical and follow-up examinations was a critical factor for obtaining objective information, as well as assessing the appellant's subjective symptoms. The appellant's expert reviewed x-ray and MRI images during their testimony and clearly explained the deterioration of a specific area of the appellant's spine since the MVAs. The appellant's expert noted the appellant's young age (late twenties) at the time of the MVAs and stated that this was too early to experience degenerative discs. The appellant's expert disputed that playing hockey or the appellant's occasional lifting of heavy bags would cause the type of injury they observed. The appellant's expert testified that despite the one area of deterioration, their spine was otherwise "pristine." This led them to conclude that the genesis of the appellant's disc herniation was not the result of age-related disc degeneration or other injury, but rather the result of a cascade of symptoms starting with the MVAs and developing over time. This cascade of symptoms ultimately required the appellant's back surgery.

The panel qualified MPIC's expert in the medical specialty of physiatry in order to provide opinion evidence about the appellant's musculoskeletal injuries. They based their opinion upon their review of the appellant's medical records. MPIC's expert did not see any significant injury recorded at the time of the MVAs. They disagreed that an undetectable injury at the time of the MVAs would undergo the type of cascade event described by the appellant's expert leading to the appellant's disc herniation that required surgery. They concluded that there was no temporal relationship between the MVAs and the appellant's disc problems and therefore the later disc herniation and surgery were not MVA-related.

The panel addressed submissions about "material contribution" and the applicable test for causation, and re-affirmed that the appellant must show, on a balance of probabilities, that "but for" the MVAs their injuries would not have occurred. The panel need only consider "material contribution" in situations where there are two or more apparent causes of an injury and an appellant, through no fault of their own, cannot establish which event caused the injury. Notwithstanding the argument that playing hockey or the appellant's occasional need to lift heavy bags in the course of their employment led to their lower back complaints, the panel found that there were no other likely causes of the appellant's localized disc deterioration. Therefore, because the scenario of more than one potential cause of injury did not arise in this case, the panel applied the "but for" test.

The panel preferred the appellant's expert's testimony over MPIC's expert's testimony. The panel found that the appellant's expert had the greater medical expertise with respect to this particular

condition. Further, the appellant's expert provided clear, cogent and objective testimony based upon their examination of the appellant. Conversely, the panel found that MPIC's expert was less reliable in stating the underlying facts for their opinion, and tended to speculate when interpreting the appellant's medical records. As well, they did not have the benefit of examining the appellant.

The panel accepted the appellant's expert's evidence that the MVAs caused injury to the appellant's lower back that was likely minor initially, but cascaded over time to result in the disc herniation that required the corrective surgery. The panel allowed the appeal and overturned the IRD.

4. Reimbursement of Expenses

The MPIC Act and Regulations contain many provisions dealing with the reimbursement of expenses. Paragraph 136(1)(a) of the MPIC Act provides for the reimbursement of expenses incurred because of the accident for medical and paramedical care, as set out in the Regulations. Section 5 of Manitoba Regulation 40/94 provides for the reimbursement of physiotherapy expenses, where they are medically required.

Case #1

In this case, the issue was whether the appellant was entitled to funding for further physiotherapy treatment.

The appellant was injured in an MVA in 1999. In a 2006 decision, the Commission determined that the appellant's vestibular condition was caused by the MVA. The Commission's decision further provided that the appellant would be entitled to reimbursement for treatment expenses that they had incurred, which included physiotherapy treatment.

MPIC reimbursed the appellant for the physiotherapy expenses that they had incurred, and continued to fund physiotherapy treatments thereafter for several years.

In 2017, the appellant's physiotherapist submitted a report requesting funding for further physiotherapy treatment. This request was denied by MPIC on the basis that physiotherapy treatment was no longer medically required, given that the appellant's condition would be considered to be at maximum medical improvement (MMI). On appeal, the appellant acknowledged that they were at MMI, but noted that MPIC had historically proceeded on the basis of funding supportive physiotherapy treatments for them.

The issue before the Commission in the appeal was whether further physiotherapy treatments were medically required. As a preliminary issue, the panel considered the issue of "supportive care" in connection with physiotherapy treatment.

The panel noted that the phrase "supportive care" arises from the Clinical Guidelines for Chiropractic Practice in Canada. These Guidelines also provide a definition (and test) that has previously been used by the Commission not only in the context of chiropractic treatment but

also in the context of physiotherapy treatment. The panel determined, in the circumstances of this case, not to apply to physiotherapy the definition (and test) of "supportive care" from the chiropractic field. However, the panel noted that the Commission has previously accepted that the meaning of the phrase "medically required" contained in subsection 5(a) of the Regulation encompasses not only physiotherapy treatments that direct a patient towards maximum medical improvement, but also treatments that prohibit deterioration once maximum medical improvement has been reached. The labeling, or non-labeling, of this second type of treatment as "supportive care" physiotherapy treatment does not change the fact that such treatment can be considered to be medically required. That remains true, regardless of the label. In any given case, based on the evidence, an appellant would have to establish, on a balance of probabilities, that such physiotherapy treatment is medically required. All that has changed is that the panel will not apply the test for "supportive care" that was based on language arising from the definition found in the Clinical Guidelines for Chiropractic Practice.

The panel then reviewed the evidence to determine whether further physiotherapy treatments were medically required. The appellant's testimony was unequivocal, that they derived a benefit, although short-term, from the physiotherapy treatment. However, the determination of whether such treatments are medically required cannot depend solely on the subjective reporting of the appellant. An analysis of whether physiotherapy treatment is *medically* required also necessarily involves an analysis of the medical evidence. Here, there was no objective documentary medical evidence in support of the appellant's position, and none to support the contention made by the appellant and by their physiotherapist that the condition of the appellant would deteriorate in the absence of physiotherapy treatment. While their physiotherapist acknowledged that numerous assessments of the appellant could have been made, none were in fact made. As well, there was no medical evidence before the panel to support the appellant's contention that their use of physiotherapy treatment allowed them to decrease their consumption of medication.

Based on all of the evidence, the panel found that further regular physiotherapy treatment was not medically required.

Having said that, both the appellant's physiotherapist and MPIC's Health Care Services (HCS) physiotherapy consultant testified that the appellant should be referred for further assessment and physiotherapy treatment (as recommended) due to their ongoing vestibular issues. Both physiotherapists indicated that this would not be regular physiotherapy (of the kind provided at that time by the appellant's treating physiotherapist), but rather assessment and treatment provided by a physiotherapist trained to provide advanced vestibular treatments. The panel accepted the evidence of the appellant's physiotherapist and the HCS physiotherapy consultant, who agreed on this point, that further assessment and physiotherapy treatment is required for the treatment of the appellant`s ongoing vestibular issues, and found that such further vestibular assessment and treatment were medically required.

Case #2

This case also concerned the entitlement to funding for physiotherapy treatment, but the parties did not agree as to the nature of the MVA injuries.

The appellant was involved in an MVA in December 2014. MPIC funded physiotherapy treatment for them until October 2016. The appellant was then subsequently involved in MVAs in June 2017 and February 2018. MPIC funded physiotherapy treatment for a period of time after these MVAs as well. The appellant sought further physiotherapy treatment, from October 2016 onward, for treatment of their lower back pain. They also sought reimbursement from MPIC for the costs of certain medication related to their lower back pain and radiculopathy.

Here, as the parties did not agree on the nature of the appellant's MVA injuries, that was a preliminary issue before the Commission.

The panel accepted the testimony of the appellant that they were suffering from lower back pain. They were of the view that the 2014 MVA was the cause of a structural lower back injury; however, there was no medical evidence supporting their position. Rather, the only medical evidence directly addressing causation of a lower back injury was from MPIC's HCS medical consultant, who was of the opinion that there was no alteration to the appellant's spine caused by the MVAs. However, the HCS medical consultant was also of the opinion that each of the MVAs likely caused an irritation to the appellant's degenerative back condition for a period of time, and the panel accepted this evidence.

Given the panel's finding that there was a temporary irritation to the appellant's pre-existing degenerative back condition caused by each of the MVAs, the next issue to consider was whether further physiotherapy after October 2016 would be medically required.

The panel reviewed the medical evidence on file. Apart from the appellant's general practitioner, all of the appellant's health care providers recommended home exercises and self-management techniques such as self-massage, stretching and the use of a TENS machine for pain control. Further, MPICs HCS physiotherapy consultant opined that additional physiotherapy treatment would not be considered medically required. The panel therefore found that the weight of the objective medical evidence did not support the medical requirement for further physiotherapy treatment. Consequently, the panel found that funding from MPIC for further physiotherapy treatment after October 2016 was not medically required.

Although not detailed here, other issues on appeal were whether the appellant was entitled to funding from MPIC for certain medications, and whether the appellant was entitled to a permanent impairment benefit as a result of injures sustained in the MVAs. The Commission ultimately determined that the appellant did not establish, on a balance of probabilities, that they were entitled to funding for the medication, or to any permanent impairment benefit.

5. Entitlement to Income Replacement Indemnity (IRI) benefits

Under the MPIC Act, an appellant may be entitled to IRI benefits if they are unable to work after the accident 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 they are 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 them 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 them entirely or substantially unable to perform the essential duties of the pre-accident employment.

Case #1

In this case, the issue was whether the appellant ceased to be entitled to IRI benefits, on the basis that their injuries were not caused by the MVA.

As a result of injuries sustained in an accident, the appellant was unable to return to their work as a truck driver. MPIC determined and confirmed their employment as a truck driver and, for a time, paid them IRI benefits on that basis.

Due to their claims of psychological injury, MPIC referred the appellant for an independent psychological examination. The independent psychologist prepared a narrative report describing the appellant's history and condition, and diagnosing the appellant with certain psychological conditions. This report was reviewed by MPIC's HCS psychological consultant, who concluded that the appellant's psychological diagnoses were not caused by the accident.

MPIC's HCS medical consultant then reviewed the documentation of other injuries on the appellant's file to determine whether the appellant's physical injuries still prevented them from returning to employment as a truck driver. The consultant concluded that the appellant had initially suffered a soft tissue injury as a result of the accident, but that they no longer had an accident-related medical condition that would prohibit them from driving.

The appellant's case manager issued a decision terminating their IRI benefits, which was upheld on internal review.

On appeal to the Commission, the appellant provided documentation (including a letter from their family doctor confirming that they were unable to work as a truck driver due to severe lower back pain present since the accident) and testified at the appeal hearing.

The panel considered the documentation on file (which included their medical history) and the testimony of the appellant. It reviewed some of the appellant's statements which:

- exaggerated the size of the vehicle which hit their car;
- exaggerated their sitting limitations;
- exaggerated the severity of a cut they received;
- under-reported their pre-accident time off work due to injury;

- contradicted their doctor's summary of their use of the medication methadone for knee pain;
- contradicted occupational therapy reports about their self-medicating behaviour; and
- were inconsistent and contradictory with their reports to their occupational therapist regarding driving tolerance.

On the basis of these examples, the panel found the appellant's evidence to contain embellishment, exaggeration and inconsistency, which undermined the reliability of their statements and testimony. These examples were found to be consistent with their pre-accident behavior and injury, demonstrating a pattern of behaviour which had been documented in the independent psychological examination report. The panel therefore chose to place more weight upon the documentary evidence on file than upon the appellant's unreliable testimony and self reporting.

Further, due to the subjective nature of the opinions provided by the family doctor that the appellant's back pain was caused by the accident, and considering the lack of evidence showing that the accident caused the documented arthritic and degenerative changes in the appellant's back, the panel preferred the more objective and reliable reports of the HCS medical consultant.

The panel also relied upon the reports of the independent psychologist and the HCS psychological consultant to conclude that the appellant's current psychological challenges were not caused by the accident.

Relying upon these reports and reviews, the panel concluded, on a balance of probabilities, that the appellant did not suffer accident-related medical or psychological injuries that prevented them from returning to work, and that the appellant had not proven that MPIC had improperly terminated their IRI benefits. The appeal was therefore dismissed.

Case #2

In this case, the appellant did not attend the hearing. They did not provide sufficient evidence to establish that their injuries prevented them from performing the essential duties of their pre-accident employment.

In July 2018, another vehicle rear-ended the appellant's vehicle, which pushed them into the vehicle in front of them (the MVA). The appellant opened an MPIC claim and reported whiplash injuries to their neck, and injuries to their back, left wrist and shoulder, with right pointer finger pain and right ankle sprain. The MPIC Intake Form recorded that the appellant worked full-time as a self-employed manual labour technician, but noted that they were unable to work because of their MVA injuries.

Notwithstanding both the appellant's and their employer's (in this case, their parent) reluctance to respond to MPIC's many requests to provide employment verification, MPIC paid IRI benefits based upon partial documentation provided. The appellant disagreed with MPIC's calculated amount of IRI payments and advised they would provide further information to verify their

earnings, which MPIC confirmed it would consider. The appellant did not provide further information.

MPIC explained its obligation to assist the appellant with treatment and rehabilitation of their MVA-related injuries, and its requirement to obtain medical information, which the appellant initially had declined to provide. MPIC arranged for the appellant to attend physiotherapy and rehabilitation treatment, which the appellant attended. Assessment results from the rehabilitation program and from MPIC's HCS consultant concluded that the appellant did not have restrictions that would preclude them from returning to their work as a drywall taper. Therefore, pursuant to paragraph 110(1)(a) of the MPIC Act, MPIC discontinued the appellant's IRI benefits. The appellant appealed that decision to the Commission.

Prior to setting an appeal hearing, the Commission conducts a pre-hearing case conference by teleconference, to confirm that the parties are ready for hearing. The appellant called in to the case conference and requested an adjournment due to "national security" concerns. The Commission denied the request and advised the appellant that the case conference would proceed, at which point the appellant left the teleconference call.

Subsequent to the case conference, the Commission sent written notice to the appellant of the date and time of their appeal hearing. The appellant did not attend their hearing. In accordance with Commission's policy, the panel allowed a 15-minute grace period to allow the appellant to appear. They did not appear and the hearing proceeded without them.

MPIC counsel reviewed paragraph 110(1)(a), which states that a victim ceases to be entitled to IRI in the event the victim is able to hold the employment that they held at the time of the accident. MPIC counsel reviewed the medical evidence that documented the objective and subjective criteria of the appellant's functioning during the rehabilitation assessment. Counsel submitted that there was insufficient evidence of an ongoing injury that would preclude the appellant from performing their work tasks and therefore the Commission should uphold MPIC's IRD and dismiss the appeal.

The Commission considered the appellant's history of non-compliance with MPIC's requests for information. The Commission considered its written notification to the appellant of their case conference, which informed the appellant that the parties would discuss the readiness of their appeal for hearing. The Commission found that as a result of the appellant's attendance at the case conference, they were aware that their appeal was proceeding to a hearing before the Commission. The Commission considered the various notifications sent to the appellant in accordance with the MPIC Act requirements imposed on the Commission and concluded that the appellant had proper notice of their appeal hearing.

The onus is on the appellant to prove that they were entitled to further IRI benefits. The Commission found that the appellant did not dispute the documentary medical evidence. The Commission placed weight on the comprehensive physical examination of the appellant during their rehabilitation assessment. The undisputed conclusion in the rehabilitation assessment was

that the appellant did not suffer an injury that would preclude them from returning to their pre-MVA dry-wall employment. The Commission upheld the IRD and dismissed the appeal.

Case #3

The main issue in this case was the appellant's ability to hold certain employment that had been determined for them by MPIC. In the course of the appeal, the appellant advised that they wished to challenge MPIC's decisions on the basis that they violated certain sections of The Canadian Charter of Rights and Freedoms (the Charter).

The appellant was injured in an accident in 2008 and sustained injuries which included a soft tissue injury to their neck, back and shoulders, dental injuries and a concussion. At the time of the accident, they were about to start employment and received IRI benefits based on a classification as a non-earner. Following a number of appeals to the Commission, their employment classification was changed to reflect IRI status as a temporary earner. Prior appeals also dealt with issues such as IRI calculation, chiropractic treatment, permanent impairment benefits, dental injuries, medication and acupuncture treatment.

The current appeals before the Commission considered the appellant's residual capacity to hold alternate part-time employment as a data entry clerk, the calculation of IRI benefits in that regard, and funding for treatment at a functional neurology center.

The appellant also raised constitutional issues in regard to their MPIC claim and appeal, advising the Commission that they wished to challenge MPIC's decisions on the basis that they violated sections 11 and 15 of the Charter as well as the "Jordan Rule".

With the assistance of Commission staff, the appellant submitted a Notice of Constitutional Question, which was served upon MPIC and upon the Attorneys General for Canada and Manitoba, who declined to participate in the appeal.

The appellant submitted that, as a result of delays by MPIC and at the Commission, the length of time which passed between the filing of their first NOA and the hearing of the matter exceeded 18 months, which is the timeframe set out by the Supreme Court of Canada, known as the "Jordan Rule". They argued that they were denied the right to have their case heard within a reasonable time contrary to paragraph 11(b) of the Charter.

The appellant also argued that their rights under section 15 of the Charter were violated when MPIC discriminated against them by failing to recognize the subjective aspect of their chronic pain disability, since chronic pain is a physical disability which should be treated the same as other physical disabilities.

The Commission heard submissions from both parties, including MPIC's submission that paragraph 11(b) is not applicable in the context of claims or appeals under the MPIC Act, and that the appeal involved a factual disagreement as to the appellant's capacity, and not a discriminatory policy to be reviewed under section 15.

The panel reviewed relevant legal authorities and concluded that paragraph 11(b) of the Charter generally applies in the criminal context. It applies to individuals who have been charged with a criminal offense or sometimes in administrative law settings, to guard against delay where an individual has been charged with an offense under a statute. It was not applicable in the current appeal. The panel considered the total process followed in the claim, including internal review, combining two appeals, gathering, indexing, and adding further documents, Commission's case management, additional issues raised by the appellant and their later filing of a Notice of Constitutional Question (with attendant adjournments to allow the parties to address that). The panel found that the appellant had failed to establish that, with all of these steps, there had been unreasonable delay in the case, and determined that there had not been a violation of the appellant's constitutional or procedural rights due to delay.

The Commission also agreed with counsel for MPIC that the appellant had failed to establish a violation of section 15 in their claim. The MPIC Act and Regulations call for each individual to be assessed on their unique, personal ability to hold employment. They did not create a distinction here based upon an enumerated ground and did not fail to respond to the actual capacities and needs of a particular group in a manner that reinforces, perpetuates or exacerbates their disadvantage. Under the legislative scheme applied, each individual's entitlement is assessed according to their own individual needs and a distinction based upon enumerated grounds in the Charter was not created.

The appellant's challenge on the basis of sections 11 and 15 of the Charter was dismissed.

On the issue of IRI benefits, the Commission determined that the weight of the evidence supported MPIC's position with respect to the appellant's ability to hold the alternate determined employment, and their appeals on that issue, and on the issue of the calculation of those benefits, were dismissed.

6. Termination of Benefits

Section 160 of the MPIC Act provides that MPIC may suspend or terminate benefits in certain circumstances. Paragraph 160(a) allows MPIC to take such action where a person knowingly provides false or inaccurate information to MPIC. Paragraph 160(g) allows MPIC to take such action where a person, without valid reason, does not follow or participate in a rehabilitation program made available by the corporation.

Case #1

In this case, the issue was whether MPIC properly terminated the appellant's IRI benefits for failure to participate in a rehabilitation program.

In August 2016, the appellant was involved in a high speed roll-over accident that required nine days of hospitalization. The appellant suffered a gall bladder injury, L1 compression fracture, C2 transverse fracture, multiple left rib fractures and single right rib fracture, and bilateral pulmonary contusions. They suffered a blow and laceration to the head and loss of consciousness, although imaging did not reveal signs of head trauma.

MPIC initially paid IRI benefits and physiotherapy costs. The appellant began physiotherapy treatment in January 2017, and initially attended regularly. However, after a few months, they missed a number of appointments and did not notify the provider of their non-attendance. MPIC sent letters warning the appellant that, if they did not fully participate in the recommended physiotherapy, their benefits might be suspended or terminated in accordance with MPIC legislation.

In April 2017, MPIC determined that the appellant should attend a work hardening rehabilitation program. The appellant's attendance at that program was inconsistent and MPIC sent a further warning letter advising that MPIC would suspend their benefits unless they provided written medical evidence of their inability to attend. The appellant continued to miss appointments and MPIC suspended the appellant's IRI benefits. Approximately 40 days after the suspension, the appellant contacted their case manager and requested that MPIC re-start their rehabilitation program. MPIC restarted the six-week rehabilitation program on the strict condition that if the appellant missed an appointment without an objective written medical reason, MPIC would terminate their benefits. The appellant missed an appointment in the final week of their program. They did not have a medical reason (although they had a non-medical reason). Their case manager terminated their IRI benefits on the basis that the latest medical assessment determined that they were fit to work medium strength duties and they had missed their rehabilitation appointment without a valid medical reason.

Note: In response to further information from the appellant about their work duties, MPIC agreed to change the appellant's strength demands from medium to heavy. As such, the appeal proceeded on the sole issue of whether MPIC had properly terminated the appellant's IRI due to a breach of paragraph 160(g) of the MPIC Act.

The appellant's testimony was inconsistent. They admitted that they could not remember events from five years ago. During the time of their missed physiotherapy appointments, the appellant's living situation was unstable and they did not have strong family support. English was not the appellant's first language. The panel found that the inconsistent testimony was likely due to faded memory, concussion related memory issues (medically documented), their chaotic living situation, and language challenges. The panel therefore relied primarily on documentary evidence, which was largely undisputed.

The documentation showed that the appellant had regularly attended their three-time per week physiotherapy appointments for the first month. They then began to miss appointments consistently and without notice. The case manager documented the appellant's reasons as illness, forgetfulness, or lack of transportation because their estranged spouse had their vehicle. The appellant's medical records showed a lengthy illness due to flu. The case manager notified the appellant that they must have a "valid medical reason" supported by a doctor's note to justify missed appointments.

After MPIC suspended their initial rehabilitation program, the appellant continued seeing other medical providers and complied with their suggestions to improve their memory. They obtained

better pain medication to control the pain they experienced in the initial work hardening program. They obtained stable transportation. They requested that their case manager reinstate the 6-week rehabilitation program, which they did. The case manager repeated the strict condition that any missed appointments must be for a medical reason and supported by a doctor's note. The appellant did not dispute that they understood this warning.

The rehabilitation records showed that the appellant had perfect attendance but for two medical appointments about which they advised the rehabilitation staff ahead of time. However, in the fifth week of their program, the appellant travelled to their home for the weekend, located approximately 200 kilometers from the city. They testified that their vehicle would not start because of a dead battery and they missed their Monday appointment. They attended their rehabilitation on time the following morning. They admitted to not calling to advise that they would miss the Monday appointment. This was because they did not have a medical reason. Because of this missed appointment, their case manager terminated their IRI benefits.

The parties approached the termination of benefits as being akin to progressive discipline used in the labour context. The panel considered that the goal of progressive discipline is to correct and improve unacceptable behaviour by using increasingly severe measures until correction. An organization typically increases the severity of the discipline only if the person does not correct their behaviour. MPIC argued that first suspending and then terminating the benefits was an appropriate application of progressive discipline. The appellant argued that the panel should consider their behaviour pre- and post-suspension as two distinctly different situations.

The panel found that the two periods of the rehabilitation program were distinct in that the appellant clearly corrected their behaviour after the suspension. They developed and utilized a successful memory strategy, they secured transportation, and they obtained better medication to manage their pain. Importantly, their near perfect attendance during the reinstated rehabilitation program and their attendance the day immediately following their missed appointment was also evidence of their corrected behaviour. The documentation from their rehabilitation program showed that they actively participated. Finally, the panel found that the appellant's dead truck battery, and inability to travel the 200 kilometers to make the appointment, constituted a valid reason for their non-attendance on that day. MPIC was incorrect in limiting the wording of paragraph 106(g) by restricting it to a medical reason for non-attendance.

The panel found that when applying principles of fairness to a situation in which a case manager imposes the most severe punishment (termination of benefits), there should be some proportionality to the culpable behaviour by the appellant, which was not the case here. The appellant's near perfect attendance and their notification of medical appointments significantly mitigated any culpability related to their past behaviour. The panel found that the appellant's IRI benefits were not properly terminated, and allowed the appeal.

Case #2

The main issue in this case was whether MPIC properly terminated the appellant's PIPP benefits for knowingly providing false or inaccurate information to MPIC.

Although this case considered a number of issues that the appellant brought before the Commission, this summary only deals with the issue under paragraph 160(a) of the MPIC Act.

The appellant was involved in a high speed roll-over MVA in which they suffered multiple injuries, including a knee ligament tear, C-spine fractures, small and large bowel tears requiring a temporary colostomy, and blunt trauma to their eye. They received 18 days' hospital treatment. Their injuries led to psychological difficulties and they developed abdominal hernias.

The appellant was a high school student at the time of the MVA. MPIC calculated and paid IRI benefits, and also established a multi-disciplinary team of professionals to work with the appellant to manage both their physical and vocational rehabilitation. The physiotherapy and vocational rehabilitation professionals noted inexplicable inconsistencies in the appellant's physical presentation as between their physiotherapy and vocational rehabilitation sessions, as well as inconsistent attendance for treatment. MPIC conducted varying intervals of video surveillance over the course of approximately five years. MPIC terminated the appellant's PIPP benefits based upon surveillance video, which MPIC determined showed that the appellant had provided false or inaccurate information to MPIC.

The appellant testified that their injuries and resulting "chronic" pain continued to prevent them from working and functioning on a daily basis. They described their abdominal pain and gall bladder pain as "unimaginable", "gruelling" and significant, and described it as a lifetime painful condition. They testified that they had a psychological adjustment disorder and depressed mood, which kept them isolated from others. They submitted that they had good days and bad days, and the surveillance video and photos did not capture this.

The surveillance videos and photos were compelling in that they showed the appellant actively participating in group athletic activities such as zip-lining, mud surfing, mountain hiking, surfing, carrying an adult female on their shoulders, marathon running, basketball and crab fishing. The degree of athleticism depicted in the videos was strikingly contrary to the level of function the appellant attributed to himself. The appellant's explanation that they suffered through the pain to perform these activities was not apparent in the videos. It also did not account for the obvious contrast between their stated abilities and the video evidence showing them performing activities far beyond their stated abilities.

The panel found that the appellant knowingly provided false or inaccurate information to MPIC, which justified MPIC's termination, rather than suspension, of the appellant's benefits. The panel dismissed the appeal in its entirety.