

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-045**

PANEL: Mr. Mel Myers, Q.C.,

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Kirk Kirby.

HEARING DATE: April 14, 2011 and October 4, 2011

ISSUE(S): Whether there is a causal connection between the Appellant's right lower limb symptoms and the motor vehicle accident.

RELEVANT SECTIONS: Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Sections 19 and 38 of Manitoba Regulation 40/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on April 2, 2008.

The [Appellant's Physiotherapist #1] provided an initial therapy report on April 30, 2008 to MPIC and stated that she had diagnosed musculoligamentous strain of the cervical spine, right ribs, low back; and left sciatica. At the time of discharge from physiotherapy on August 8, 2008, the Appellant reported neck pain, low back and right rib pain, neck stiffness and pain related to static postures and increased activity. The Appellant complained of right lower back pain with turning movements.

The Appellant saw [Appellant's Doctor #1] on October 16, 2008 and November 25, 2008 in respect of pain and numbness of the right upper leg which was of two months duration. The Appellant advised [Appellant's Doctor #1] that she felt these symptoms were related to the motor vehicle accident. [Appellant's Doctor #1] reported on August 14, 2009 that he believed the symptoms were suggestive of some nerve compression. [Appellant's Doctor #1] stated:

“Her past history included spinal stenosis and vascular surgery, so that would not have any association with the motor vehicle accident. Her motor vehicle accident report on the basis of her history showed that she was having neck pain, headache, thoracic and rib pain, abdominal pain, lower back pain, hip, thigh pain, knee and leg pain, ankle and foot pain on the right side. She did complain after the motor vehicle accident that she was having these pains. On that basis, one could argue that some tissue injury might have triggered the pain.” (underlining added)

[Appellant's Doctor #1] referred the Appellant to [Appellant's Neurologist], who provided a report to [Appellant's Doctor #1] on July 2, 2009. In this report [Appellant's Neurologist] indicated he saw the Appellant on June 29, 2009 and she was complaining of pain to her right foot since she had been involved in a motor vehicle accident on April 2, 1008. The Appellant advised him she had a whiplash injury causing neck pain. [Appellant's Neurologist] also reported:

“However, she pointed out that the injury to her right foot occurred as she was being helped out of the car; it got scraped on the dorsum...”

[Appellant's Neurologist] further stated:

“On examination, there was a scar on the dorsal aspect of the right foot, in the first dorsal interosseous space. She had sensory impairment to all modalities in a socks distribution in the entire right foot, affecting the L5 and S1 distribution on the foot but not the same distribution in the leg. Vibration sense was not detectible on the dorsal aspect of the foot. Joint position sense was markedly diminished. Tendon jerks were normal. No motor defect was detected.

Impression: I really cannot see how a localized lesion as described by [the Appellant] on the dorsal aspect of the right foot, could result in such widespread sensory loss and such widespread area of pain. The distribution of the pain and sensory symptoms are not anatomically appropriate. I have requested EMG and nerve conduction studies.”

[Appellant's Doctor #1] referred the Appellant to [Appellant's Plastic Surgeon] for assessment.

MPIC referred the Appellant's file to its Health Care Services consultant to determine whether the Appellant's right leg symptoms were causally related to the motor vehicle accident. On September 12, 2009, [MPIC's Doctor] provided the following opinion to MPIC:

“All medical documents on file were reviewed. There is no causal relationship between later emerging complaints involving the right lower limb and the MVC. It is evident that after PT discharge on August 8, 2008 and before November 25, 2008, the claimant's right lower leg became symptomatic. You refer to medical documentation from [Appellant's Plastic Surgeon]. For completeness, recommend obtaining a narrative from the specialist and addressing this issue.” (underlining added)

MPIC obtained a further opinion from [MPIC's Doctor] in a report dated November 26, 2009 wherein [MPIC's Doctor] stated:

“New documents to file reviewed: Tabbed 8 – 10 inclusively. The now reviewed, new information fails to change my September 12, 2009 opinion – that being, that the claimant's right lower limb complaints are not collision-related.”

Case Manager's Decision:

The case manager wrote to the Appellant on December 4, 2009 in respect of her request for reimbursement of medical and travel expenses from April 28, 2008 to July 28, 2009 and stated that:

1. The medical information on the Appellant's file had been reviewed by the Health Care Services Team.
2. The medical opinions indicated that the “right lower limb” was not causally related to the motor vehicle accident of April 2, 2008.
3. As a result there was no entitlement for the Appellant to receive reimbursement of any expenses related to the right lower limb under the Personal Injury Protection Plan (PIPP) benefits.

The Appellant filed an Application for Review, dated December 29, 2009, of the case manager's decision.

Internal Review Officer's Decision:

On February 16, 2010 the Internal Review Officer wrote to the Appellant advising her that her Application for Review was dismissed and that the case manager's decision dated December 4, 2009 was confirmed. In arriving at her decision, the Internal Review Officer relied on the medical opinions of [MPIC's Doctor] in rejecting the request for reimbursement of expenses incurred for medical care relating to her right leg complaints. The Internal Review Officer stated:

“I must agree with [MPIC's Doctor's] opinions which are supported by medical evidence on your file that there does not appear to be a causal relationship between your current right lower leg symptoms and the motor vehicle accident of April 2, 2008.

Accordingly, there is sufficient evidence to support the decision under review and no basis has been shown for interfering with the decision of December 4, 2009.”

On March 9, 2010 the case manager wrote to [Appellant's Plastic Surgeon] noting that [Appellant's Plastic Surgeon] had performed surgery on the Appellant's leg and requested a narrative report from him in respect of the following:

- “The date of your **first examination** of [the Appellant] following the MVA on April 2, 2008, including your diagnosis of the presented injuries & objective findings (please include all chart notes / test results).
- The date of your **most recent examination**, your diagnosis, objective findings and treatment recommendations relating to the motor vehicle accident (please include all chart notes / test results).
- Your current diagnosis & prognosis of her right leg symptoms.
- Details of any pre-existing conditions involving the right leg, if any.
- What are the medications being prescribed and their necessity?”

Notice of Appeal:

The Appellant filed a Notice of Appeal on March 25, 2010 and stated that:

1. Her foot injury was likely the “result of getting stuck behind the brake pad against the floor and under the brake pedal”.
2. Removing her foot was very difficult and her ankle became twisted and would not loosen while at the same time the upper part of her body was outside the car door.
3. She was unable to unlock her seat belt in a timely fashion.

Appeal:

The relevant provision of the MPIC Act is:

Reimbursement of victim for various expenses

[136\(1\)](#) Subject to the regulations, the victim is entitled, to the extent that he or she is not entitled to reimbursement under *The Health Services Insurance Act* or any other Act, to the reimbursement of expenses incurred by the victim because of the accident for any of the following:

(a) medical and paramedical care, including transportation and lodging for the purpose of receiving the care;

The relevant provisions of Manitoba Regulation 40/94 are:

Travel and accommodation

19 Subject to sections 20 to 29 and Schedule B, the corporation shall pay travel or accommodation expenses incurred by a victim for the purpose of receiving care.

Medication, dressings and other medical supplies

38 The corporation shall pay an expense incurred by a victim for the purchase of medication, dressings and other medical supplies required for a medical reason resulting from the accident.

On April 26, 2010 [Appellant’s Plastic Surgeon] issued his narrative report to MPIC and stated:

“This letter is with regards to [the Appellant] on your letter dated March 9th, 2010. [The Appellant] has recently undergone surgery to her right foot. The surgery was performed on March 2nd, 2010, in which she underwent peroneal nerve neurolysis in the digital branches to the first, second, third, and fourth toes. The patient tolerated the procedure well, and she was seen postoperatively approximately two weeks later. The patient was

doing quite well at that time and stated that her sensation was much improved and that her pain was significantly better. She was walking normally, and she was told that she could follow up on an as necessary basis in the future.

With regards to her first examination on April 2nd, 2008 (should be July 29), the patient was seen in my clinic with peroneal nerve entrapment on the right foot. She had decreased sensation of the dorsum of the foot and into the toes. She also complained about burning sensation. There was scar tissue that was present on the top. Currently, the patient is doing quite well and is able to return to her previous preinjury functioning. Her prognosis is excellent.”

Appeal Hearing – April 14, 2011:

The appeal hearing commenced on April 14, 2011. The Appellant appeared on her own behalf and Mr. Kirby represented MPIC. The Appellant testified that:

1. As a result of the motor vehicle accident she suffered a sore back and pain to her head and lower right limb at the time of the accident.
2. Her right lower limb got stuck under the automobile carpet and when she attempted to free herself from the car she wrenched her right lower limb.
3. As a result of this action she suffered pain to her lower right limb and she advised [Appellant’s Doctor #1] of her pain.
4. This pain has continued since the motor vehicle accident.

At the completion of the Appellant’s examination, Mr. Kirby informed the Commission that he was in possession of additional medical reports received from the Appellant’s healthcare providers, [Appellant’s Doctor #2] and [Appellant’s Plastic Surgeon], which were not contained in the indexed material filed with the Commission.

The Commission briefly reviewed the reports of [Appellant’s Doctor #2] and [Appellant’s Plastic Surgeon] and these documents appeared to be relevant to the central issue of causal connection between the Appellant’s right lower limb complaints and the motor vehicle accident. The

Commission noted that MPIC's position in respect of the appeal was based essentially on [MPIC's Doctor's] medical opinion who had indicated in her reports to MPIC that there was no causal connection between the Appellant's complaints to her right lower leg and the injuries she sustained in the motor vehicle accident. The Commission further noted that the reports of [Appellant's Doctor #2] and [Appellant's Plastic Surgeon] had not been provided to [MPIC's Doctor] with a request that she review these medical reports and comment on the issue of causality. The Commission further noted that MPIC had not provided [MPIC's Doctor's] medical opinion on this issue to [Appellant's Doctor #2] and [Appellant's Plastic Surgeon] for their opinion on the issue of causation.

The Commission advised the parties that it would be necessary to adjourn the proceedings and to give [MPIC's Doctor] an opportunity to review the reports of [Appellant's Doctor #2] and [Appellant's Plastic Surgeon] to make any further comments she may wish to make on the issue of causation. The Commission further advised MPIC's legal counsel that upon receipt of [MPIC's Doctor's] comments it would be necessary to forward the report to [Appellant's Doctor #2] and [Appellant's Plastic Surgeon] for their comments.

In response, MPIC's legal counsel objected to the adjournment and wished to proceed with the hearing at that time. The Commission advised him that although [MPIC's Doctor] had had the opportunity of reviewing the medical reports of the Appellant's caregivers, neither [Appellant's Doctor #2] nor [Appellant's Plastic Surgeon] had been given the opportunity of reviewing [MPIC's Doctor's] medical opinion and provide their comments on the issue of causation. I further indicated to him that:

- a) "it would be unfair for MPIC to determine the issue of causation on the basis of [MPIC's Doctor's] medical opinion without giving [Appellant's Doctor #2] and [Appellant's Plastic Surgeon] an opportunity of providing their comments on the issue of causation.

- b) It would be inappropriate to proceed with the appeal hearing without obtaining all the relevant medical reports on behalf of the Appellant and MPIC before the Commission made a determination on the issue of causation.”

I therefore directed MPIC’s legal counsel that [MPIC’s Doctor] be provided with the reports of [Appellant’s Doctor #2] and [Appellant’s Plastic Surgeon] for her comments. Upon receipt of her report, [Appellant’s Doctor #2] and [Appellant’s Plastic Surgeon] were to be given the opportunity to review [MPIC’s Doctor’s] medical opinion and to provide their comments on the issue of causation.

[MPIC’s Doctor’s] report dated May 5, 2011 was provided to the Commission and to the Appellant. In her report [MPIC’s Doctor] confirmed her earlier opinion that there was no causal relationship between the Appellant’s complaints to her right lower limb and the motor vehicle accident. [MPIC’s Doctor] noted that the medical information clearly indicated that the Appellant had not complained about right lower limb symptoms in a timely fashion having regard to [Appellant’s Neurologist’s] medical report that there was no causal connection between the right lower limb symptoms and the motor vehicle accident. [MPIC’s Doctor] further noted that in his report of May 29, 2009, [Appellant’s Doctor #2] indicated that he was not sure if the Appellant’s right leg injury was related to the motor vehicle accident.

MPIC’s legal counsel provided [Appellant’s Plastic Surgeon] with [MPIC’s Doctor’s] report dated May 5, 2011. In response on June 9, 2011 [Appellant’s Plastic Surgeon] sent a report to MPIC’s legal counsel and stated:

“I read the report documented with regards to the details of the events of the accident, specifically those of [Appellant’s Neurologist] and [Appellant’s Doctor #1]. As I was not first there to assess the patient following her accident, I am not sure if I can appropriately comment on whether or not her injuries are principally caused by the accident; however, it is definitely plausible that if her foot was stuck underneath the brake, that she sustained a contusion to the dorsum of her foot which caused scarring and neuropraxia to the

peroneal nerve distribution of her foot. The area that was released on the peroneal nerve region was that on the dorsum of her foot which has now improved significantly.

As you are well aware however, I am not a lawyer nor am I a trauma surgeon who sees many multiple motor vehicle accidents; however, pain and injuries can present themselves many weeks to months after a motor vehicle accident as they are not often the most pressing issues however, when the most pressing issue is often dealt with, these minor irritations and injuries do present themselves at a later date.

As such, that is the best that I can provide you with in terms of information with regard to her injury and its relationship to the accident; however, at this time, the patient is doing much better.” (underlining added)

Appeal Hearing – October 4, 2011:

The appeal hearing reconvened on October 4, 2011. The Appellant was given an opportunity of completing her testimony. She testified that:

1. She had injured her right lower limb when she attempted to leave the automobile after the motor vehicle accident.
2. Due to the manner in which she had removed her right lower limb from the automobile she had developed a pain to her right lower limb which required her to have surgery.
3. She has continued to suffer from this pain.

The Appellant was cross-examined by MPIC’s legal counsel and she maintained her position on the manner in which she suffered an injury to her right lower limb. She acknowledged that she had not reported the problems to her right leg when she attended the [Hospital] on April 4 and 6, 2008. At that time the Appellant’s complaints related to her chest pains.

Discussion:

In her decision dated February 16, 2010 the Internal Review Officer dismissed the Appellant’s application for reimbursement of expenses incurred for medical care relating to her right leg on the following grounds:

1. The medical documentation demonstrated that there was no causal connection between the injuries to the Appellant's right lower limb complaints and the motor vehicle accident.
2. The Appellant's delay in making complaints to her caregivers in respect of her right lower limb symptoms.

Medical Documentation:

The Commission finds that the case manager did not have all the relevant medical information to make a decision on the issue of causality when she issued her decision on December 4, 2009, rejecting the Appellant's request for reimbursement of medication, medical supplies and travel expenses. The case manager had not obtained a report from [Appellant's Plastic Surgeon] on the issue of causality and based her decision upon [MPIC's Doctor's] report dated September 12, 2009.

[MPIC's Doctor] had not had an opportunity of reviewing any reports from [Appellant's Plastic Surgeon] and concluded that the Appellant's complaints to her "right lower limb" were not causally related to the motor vehicle accident. However, [MPIC's Doctor] was aware that in providing a report she had not had the opportunity of reviewing any documentation from [Appellant's Plastic Surgeon]. As a result, in her report of September 12, 2009 to the case manager [MPIC's Doctor] stated:

"All medical documents on file were reviewed. There is no causal relationship between later emerging complaints involving the right lower limb and the MVC. It is evident that after PT discharge on August 8, 2008 and before November 25, 2008, the claimant's right lower leg became symptomatic. You refer to medical documentation from [Appellant's Plastic Surgeon]. For completeness, recommend obtaining a narrative from the specialist and addressing this issue." (underlining added)

The case manager proceeded to obtain reports from [Appellant's Doctor #2], [Appellant's Doctor #1], [Appellant's Neurologist] and the [Appellant's Physiotherapist #2] and provided these reports to [MPIC's Doctor]. Unfortunately, the case manager did not comply with [MPIC's Doctor's] instructions to obtain a report from [Appellant's Plastic Surgeon] on the issue of causality. [MPIC's Doctor] provided a further report to the case manager on November 26, 2009 indicating that she had reviewed the new documents and the information did not change her September 12, 2009 opinion that the Appellant's right lower limb complaints were not collision related. [MPIC's Doctor] had not received a report from [Appellant's Plastic Surgeon] in respect of his opinion relating to causality when issuing her decision.

The case manager then issued her decision on December 4, 2009 rejecting the Appellant's application for compensation by relying on [MPIC's Doctor's] report without the benefit of a report from [Appellant's Plastic Surgeon].

On December 14, 2009, [MPIC's Doctor] provided a further and more complete report to the case manager reviewing the relevant medical reports and setting out her reasons why she had determined there was no causal connection between the Appellant's right lower limb complaints and the motor vehicle accident. Unfortunately [MPIC's Doctor] still had not received a report from [Appellant's Plastic Surgeon] in respect of the issue of causality when issuing this report.

The Appellant made an application for review of the case manager's decision on December 29, 2009.

The Internal Review Officer issued a decision on February 16, 2010 dismissing the Appellant's Application for Review and confirming the case manager's decision. In arriving at her decision,

the Internal Review Officer did not have the opportunity of reviewing a medical report from [Appellant's Plastic Surgeon] on the issue of causality. The Commission finds that in issuing this decision the Internal Review Officer did not have all of the relevant medical information prior to dismissing the Appellant's Application for Review of the case manager's decision.

The Commission notes that following the decision of the Internal Review Officer of February 16, 2010, the case manager, on March 9, 2010 wrote to [Appellant's Plastic Surgeon] and requested a narrative report from him. In her request to [Appellant's Plastic Surgeon], the case manager did not specifically request him to provide a medical opinion as to whether or not the Appellant's right lower limb complaints were causally related to the motor vehicle accident. As a result, [Appellant's Plastic Surgeon's] narrative report on April 26, 2010 did not comment on the issue of causality as he was not asked to do so. [Appellant's Doctor #2] provided a report wherein he indicated he was not able to comment on the matter.

On April 21, 2011 (at the request of the Commission) MPIC's legal counsel wrote to [MPIC's Doctor], enclosing the reports of [Appellant's Doctor #2] and [Appellant's Plastic Surgeon]. In this letter MPIC's legal counsel referred to the Appellant's testimony before the Commission on April 14, 2011, and specifically requested that [MPIC's Doctor] "Please provide your opinion and comments with reference to the same and whether or not your opinion that the right lower limb complaints are not related to the accident of April 2, 2008 is altered in any way".

In response to this request from MPIC's legal counsel for an opinion, [MPIC's Doctor] provided a report dated May 5, 2011 confirming her earlier opinion that there was no connection between the motor vehicle accident and the Appellant's complaints to her right lower limb.

At the request of the Commission, MPIC's legal counsel wrote to [Appellant's Plastic Surgeon] on May 25, 2011, enclosing [MPIC's Doctor's] report of May 5, 2011 and requested that he provide a medical opinion as to whether or not his previous opinion as to the relationship between the Appellant's right foot medical condition and the accident had changed. In response, on June 9, 2011 [Appellant's Plastic Surgeon] provided a report where he stated it was definitely plausible that the Appellant's foot was stuck underneath the brake and she sustained a contusion to the dorsum of her foot which would cause scarring and neuropraxia to the peroneal nerve distribution of her foot. The Commission notes that the word "plausible" is defined in the 10th Edition of the Concise Oxford Dictionary to mean "apparently reasonable or probable".

The Commission finds that because the case manager failed to obtain a report from [Appellant's Plastic Surgeon] as requested by [MPIC's Doctor], she provided her medical reports to the Internal Review Officer without [Appellant's Plastic Surgeon's] medical opinion on causality. As a result, when issuing her decision the Internal Review Officer was not aware that there was a conflict of opinions on causality between [MPIC's Doctor] and [Appellant's Plastic Surgeon]. The Commission can only speculate on whether or not the Internal Review Officer may have come to a different conclusion when reviewing the case manager's decision if [Appellant's Plastic Surgeon's] medical report had been available prior to issuing her decision.

The Commission concludes that when the Internal Review Officer issued her decision on February 16, 2010 she did not have in her possession all of the relevant medical evidence as to whether or not there was a probable connection between the motor vehicle accident and the Appellant's complaints to her right lower limb. As a result the Commission determines that the Internal Review Officer's Decision was flawed.

Delay in the Appellant making complaint of lower limb pain:

In arriving at her decision, the Internal Review Officer relied on [MPIC's Doctor's] medical opinion that the Appellant's delay in reporting the pain to her right lower limb to [Appellant's Doctor #1] demonstrated that there was no causal connection between the motor vehicle accident and her right lower limb symptoms. [Appellant's Doctor #1] reported that on November 25, 2008 the Appellant complained about pain and numbness to her right leg which was of two months' duration.

Since the accident had occurred on April 2, 2008 [MPIC's Doctor] concluded that as the Appellant made a complaint of pain to her right lower leg in August 2008, and this delay demonstrated that there was no temporal relationship between the motor vehicle accident and the Appellant's complaints. In response, [Appellant's Plastic Surgeon] in his report of June 9, 2011 disagreed with [MPIC's Doctor] on this issue and stated:

“As you are well aware however, I am not a lawyer nor am I a trauma surgeon who sees many multiple motor vehicle accidents; however, pain and injuries can present themselves many weeks to months after a motor vehicle accident as they are not often the most pressing issues however, when the most pressing issue is often dealt with, these minor irritations and injuries do present themselves at a later date.”

In her report to MPIC dated December 14, 2009 [MPIC's Doctor] noted that prior to the motor vehicle accident the Appellant had been disabled from [text deleted] duties with reference to osteoporosis. As well, the Appellant had a remote history of L3 spine fracture and she had undergone leg surgery in 2005. [MPIC's Doctor] further noted the Appellant received care for chronic medical problems and treatment for depression. In her report, [MPIC's Doctor] stated:

“In the acute period post-collision, there was one documented care provider; [Appellant's Physiotherapist #1]. On April 17, 2008, [Appellant's Physiotherapist #1] diagnosed musculoligamentous strain of the cervical spine, right ribs, lower back; and left sciatica. The claimant subsequently underwent 25 physiotherapy sessions. At the time of discharge, on August 8, 2008, the claimant reported neck pain, low back and right rib

pain, neck stiffness and pain related to static postures and increased activity. The claimant complained of right lower back pain with turning movements.

On November 25, 2008, the claimant attended her family physician with complaints of neck pain, headache, ribcage pain, bilateral abdominal pain, right low back pain; right hip, knee and ankle pain, sleep disturbance and, one or both of anxiety/depression. The physician diagnosed whiplash injury.”

The Commission finds that having regard to the Appellant’s pre-existing chronic medical problems and her depression, the motor vehicle accident injuries had a significant effect on the Appellant which probably resulted in the Appellant masking her complaints in respect of her foot symptoms until after she completed her physiotherapy treatments on August 8, 2008.

Although [MPIC’s Doctor] noted that the Appellant had significant medical and psychological problems prior to the motor vehicle accident, and significant injuries as a result of the motor vehicle accident with pain to many parts of the Appellant’s body, she failed to consider that the Appellant was overwhelmed and this may have resulted in her delay in making a timely complaint about her right lower leg symptoms. In making her decision, the Internal Review Officer adopted [MPIC’s Doctor’s] opinion on the issue of the relationship between the Appellant’s delay in reporting the pain to her right lower limb and the issue of causality without considering the Appellant’s pre-existing physical and psychological condition and the significant injuries she sustained in the motor vehicle accident.

The Commission notes that [Appellant’s Doctor #1], who saw the Appellant on October 16, 2008 and November 25, 2008, reported that the complaint of pain and numbness to her right upper leg was of two months’ duration (in the month of August). [Appellant’s Doctor #1] also reported that she had complained to him of a number of injuries as a result of the motor vehicle accident, including “knee and leg pain, ankle and foot pain on the right side. This complaint supports the

Appellant's testimony that although she reported to [Appellant's Doctor #1] that the pain and numbness to her right leg commenced in the month of August 2008, the leg and foot pain on her right side was present from the date of the motor vehicle accident. The Appellant's complaint of foot pain to her right side which was present from the date of the motor vehicle accident contradicts [MPIC's Doctor's] findings that the Appellant's untimely complaints of her right leg symptoms demonstrated that there was no causal connection between these injuries and the motor vehicle accident.

When arriving at her decision the Internal Review Officer was not aware of the conflict between the opinions of [MPIC's Doctor] and [Appellant's Plastic Surgeon] on the issue of the Appellant's delay in making her complaints to [Appellant's Doctor #1]. The Commission cannot know what the Internal Review Officer would have decided on the issue of the delay if she had known that there were conflicting medical opinions on this issue. The Commission therefore concludes that the Internal Review Officer's Decision on the issue of delay was flawed because she did not have the opportunity to review [Appellant's Plastic Surgeon's] medical opinion that, as a result of a motor vehicle accident, pain and injuries can present themselves many weeks or months after the motor vehicle accident.

Credibility:

The Commission notes that the Appellant testified in a direct and unequivocal fashion and was candid in her responses, both in examination in chief and cross-examination. The Commission accepts the Appellant's testimony that:

1. When removing her foot from the automobile after the motor vehicle accident, her ankle became twisted and would not loosen, at the same time the upper part of her body was outside the car door.
2. She was unable to unlock her seat belt in a timely fashion when attempting to remove herself from the car following the motor vehicle accident.
3. The injury to her right lower limb was caused as a result of her foot getting stuck behind the brake pad against the floor and under the brake pedal and resulted in pain to her right lower limb.
4. The pain to her right lower limb commenced as a result of the injuries she sustained when leaving the car and has continued unabated

[Appellant's Plastic Surgeon], unlike [MPIC's Doctor], had the opportunity on several occasions of personally interviewing the Appellant and therefore was in a position to assess her credibility. There is nothing in [Appellant's Plastic Surgeon's] medical reports that indicate the Appellant had been exaggerating or misrepresenting her complaints to her right lower limb. On the other hand, [MPIC's Doctor] only conducted a paper review and did not have the opportunity to interview the Appellant personally to assess her credibility.

In these circumstances the Commission gives greater weight to the medical opinion of [Appellant's Plastic Surgeon] than it does the opinion of [MPIC's Doctor] on the issue of causality. The Commission finds that [Appellant's Plastic Surgeon's] medical opinion on causality corroborates the testimony of the Appellant and therefore rejects the medical opinion of [MPIC's Doctor] on this issue.

Decision:

The Commission determines that the Appellant has established on the balance of probabilities that as a result of the motor vehicle accident she sustained an injury to her right lower limb, resulting in pain which has continued unabated since the motor vehicle accident.

The Commission finds for the reasons outlined herein that the Internal Review Officer's decision was flawed because she did not have the opportunity of considering [Appellant's Plastic Surgeon's] medical opinion as set out in his report of June 9, 2011. The Commission therefore determines that MPIC erred in rejecting the Appellant's request for reimbursement of expenses related to complaints of pain to her right lower limb and therefore allows the appeal and rescinds the decision of the Internal Review Officer dated February 16, 2010.

Dated at Winnipeg this 4th day of November, 2011.

MEL MYERS, Q.C.