

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File Nos.: AC-07-124 AND AC-10-017**

PANEL: Ms Laura Diamond, Chairperson
Mr. Paul Johnston
Mr. Robert Malazdrewich

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

HEARING DATES: May 14 and 15, 2012

ISSUE(S):

- 1. Entitlement to further Income Replacement Indemnity benefits.**
- 2. Whether the Appellant's Income Replacement Indemnity benefits were properly calculated.**
- 3. Whether the Appellant is entitled to funding for further chiropractic treatment.**

RELEVANT SECTIONS: Sections 70(1), 83(1), 83(2), 111(1), and 136(1)(a) of The
Manitoba Public Insurance Corporation Act ('MPIC Act')

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

On November 28, 2006 the Appellant and her husband were pedestrians in the [text deleted] parking lot. The Appellant reported that both she and her husband were struck by a moving vehicle. The Appellant's initial injuries were recorded as a sacro-iliac sprain/strain and bruising to her right elbow. She attended for chiropractic care and was in receipt of chiropractic

treatment benefits from MPIC from [Appellant's chiropractor #1] and [Appellant's chiropractor #2], for approximately 40 treatments.

At the time of the accident the Appellant was employed with the [text deleted] as a [text deleted] clerk. She was in receipt of Income Replacement Indemnity ("IRI") benefits as a result of her inability to work at her job following her injuries sustained in the motor vehicle accident.

The Appellant sought continued chiropractic care in regard to her injuries, including symptoms in her right knee. The Appellant also took the position that she was unable to return to work as a result of her right knee symptoms.

When the Appellant's case manager queried the causal connection between her right knee symptoms and the motor vehicle accident (due to a lack of medical documentation concerning the right knee in the period following the motor vehicle accident), the Appellant indicated that she had reported difficulties with her knee following the motor vehicle accident, but that her health care providers had failed to record it.

On March 1, 2007, the Appellant's case manager wrote to her to advise that following a gradual return to work schedule supported by her healthcare providers, the Appellant was able to return to her employment at the same hours as prior to the motor vehicle accident and her entitlement to IRI benefits would end as of February 3, 2007.

A case manager's decision dated February 23, 2009 concluded that the Appellant's chiropractor had not provided sufficient evidence to establish that she required treatment at a higher level than

Track 1 chiropractic primary care treatment and that the Appellant would not be entitled to further chiropractic treatment.

The Appellant sought an Internal Review of both of these case managers' decisions.

On August 14, 2007, an Internal Review Officer for MPIC reviewed the Appellant's claim for IRI benefits after February 3, 2007, as a result of difficulties with her right knee. The Internal Review Officer noted a variety of documents from caregivers on the Appellant's file which did not mention right knee symptoms. She noted that the right knee was first noted in documents after Sunday, January 14, 2007, when [Appellant's chiropractor #1] received a call from the Appellant about her right knee beginning to swell after stepping off a stair onto the floor and feeling a sharp pain. Although subsequent investigation showed osteo-arthritic changes and a diagnosis of a meniscal tear followed, MPIC's healthcare consultants were of the view that the Appellant's knee pain occurred in a separate incident than the motor vehicle accident. The Internal Review Officer concluded that the Appellant's right knee symptoms were not related to the motor vehicle accident of November 28, 2006.

The Appellant also sought an Internal Review of the calculation of the amount of her IRI benefits. The Internal Review Officer reviewed the pay stubs submitted for the period August 28, 2006 to December 1, 2006 and noted that the annualization of the Appellant's income resulted in the proper calculation of Gross Yearly Employment Income ("GYEI") and biweekly IRI payments.

In a separate Internal Review Decision regarding the Appellant's application for further chiropractic care, an Internal Review Officer for MPIC found, on October 26, 2009, that the

relationship between the Appellant's right knee and the incident of November 28, 2006 was not established. She also found that the Appellant was currently attending for chiropractic care at the same frequency as she had attended prior to November 28, 2006 and that the medical requirement for continued chiropractic care to address the Appellant's soft tissue injuries involving her lumbar spine and neck was not supported by the evidence on the file.

The Internal Review Officer also noted that the Appellant, at the Internal Review Hearing held on June 3, 2009, disclosed further details surrounding the incident of November 28, 2006, some 2½ years after the fact. The Internal Review Officer noted that in the past, the mechanism of injury had been misrepresented to the Appellant's care providers as the Appellant had eventually indicated that in fact, she had not been struck by a moving vehicle, but rather, fell while trying to get away from the car.

It is from these decisions of MPIC's Internal Review Officers that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into her appeal. She indicated that she had not in fact been injured by direct contact with the car, although she first reported this when she reported the accident. She indicated that after the shock of the incident wore off, she realized that she had been injured by her hard fall trying to avoid the vehicle and not by direct contact with the motor vehicle.

The Appellant described her initial contact with her MPIC case manager, on December 22, 2006, as adversarial. She felt that the case manager came across in an adversarial manner and she did

not feel comfortable with her. That is why, the Appellant stated, she did not report to the case manager that she was not hit directly by the car.

The Appellant also maintained that she did report verbally to her case manager, on December 22, 2006, that she was having a problem with her right knee. However, the Appellant indicated that the case manager didn't pay any attention to it.

The Appellant gave further evidence, describing how she sought legal counsel. She testified that she told her lawyer that she was injured by the fall, and not by direct contact with a vehicle, but the lawyer advised her that she should still report this as a motor vehicle accident. Initially, the Appellant testified that she followed her lawyer's advice not to explain the real circumstances of the incident until she met [text deleted], the Internal Review Officer, who presented herself in a manner which made it easy for the Appellant to communicate with her. That is why, at the Internal Review Hearing of June 3, 2009, she told [text deleted] the truth.

The Appellant reviewed her medical history and the contact which she and her husband had, in the past, and following the motor vehicle accident, with a family medical centre. She noted that her husband had been injured in the motor vehicle incident and that this was her highest concern at the time. She made her claim the day after the motor vehicle accident when she was still in shock. At the time she filed her Notice of Appeal, she indicated, on October 25, 2007, the shock had worn off and the lawyer who helped her complete the Notice of Appeal assured her that it was normal for unprotected pedestrians to experience such shock.

A review of the appendix filed by her lawyer to support the Notice of Appeal dated October 25, 2007 still refers to the Appellant being "hit by a car on November 28, 2006". Upon questioning

from the panel, the Appellant then indicated that she actually told her lawyer, [text deleted], that she had not been hit by the car after he filled out the Notice of Appeal, and not in her first interviews with him, as she had previously testified.

She also explained that she had reported the accident to the police, although no police report could be found on her file.

The Appellant complained that although she told [Appellant's chiropractor #1] after the accident that she had knee pain, [Appellant's chiropractor #1] had failed to properly document her complaints about her knee following the motor vehicle accident.

The Appellant described the incident which occurred at the [text deleted] when she first had difficulty with her right knee using stairs. That led her to seek attention from [Appellant's chiropractor #1], her chiropractor, and she described that examination and interview with him. She described the swelling and pain in her knee and the occasional difficulties going upstairs. She explained that she had never had these problems before the accident and that due to the requirements of her job and the stair climbing [text deleted] where she worked, this had prevented her from working after the accident.

On cross-examination the Appellant was asked a variety of questions regarding the lack of knee symptom complaints in initial reports following the incident, including the ambulance report, and reports at the [Hospital], from [Appellant's chiropractor #1], from her family doctor and other caregivers. Counsel for MPIC suggested to the Appellant that she attempted to mislead everybody, including her lawyer, and the Appellant indicated that this was only the case in regards to how she was injured. She did not agree that it was important for her to tell the truth

about what happened in the motor vehicle accident to caregivers and others who were trying to determine whether her knee injuries were related to the motor vehicle accident. The Appellant did not agree that all of the inconsistencies in her reporting might have influenced the reports of her caregivers. She maintained that she was just confused and was not purposely misleading people. She was just going through so much at the time and reacting to the shock of the incident.

The Appellant's most current chiropractor, [Appellant's chiropractor #3], also testified at the hearing into the Appellant's appeal. He described the difficulties that the Appellant was having with her knee and the treatments which he provided, resulting in improvement. It was his view, as set out in his narrative reports (particularly a report he provided on November 18, 2010) that the problem with the Appellant's knee was trauma induced. He could not definitively say which specific trauma would have caused this, but opined that in his view there had been an injury causing the problem, as opposed to the Appellant's degenerative condition. However, [Appellant's chiropractor #3] did indicate that he only began treating the Appellant in June of 2008, after she had a knee scope and surgery in September of 2007, and that he had not conducted a forensic review of all the documentation on the Appellant's file.

The Appellant submitted that her case manager had made errors, mostly due to the false reporting of her chiropractor, [Appellant's chiropractor #1]. In her view, the chiropractors who saw a connection between her knee condition and the motor vehicle accident were correct and [Appellant's chiropractor #1] was wrong. MPIC was basing all of their decisions on [Appellant's chiropractor #1's] incorrect statements.

The Appellant submitted that although MPIC took the position that she had lied, she was still injured, no matter whether she had been hit by the car or not. Was it not the case, she argued, that the case manager and [Appellant's chiropractor #1] were lying as well?

Even though there may have been some references on her file to knee treatment prior to the motor vehicle accident, she never had any problems with pain or stiffness or buckling knees before that. There was no evidence that her knee was a problem before the motor vehicle accident. She complained of knee pain to [Appellant's chiropractor #1] after the motor vehicle accident on December 2, 2006, but he did not record it. Then he did record that she had knee problems due to an injury on January 14. This was a false report, because he had failed to examine her knee on December 2, 2006. The Appellant maintained that [Appellant's chiropractor #1] was negligent and that the case manager was using [Appellant's chiropractor #1's] false information to base her judgments upon.

The Appellant also noted the Healthcare Services Review undertaken by [MPIC's doctor] on November 29, 2011. She indicated that although [MPIC's doctor] referred to his conclusions based upon the totality of the medical documents on her file, he failed to really consider the pain and swelling which started before she even went to the [text deleted]. This showed that the injury to the knee was not a result of stepping on stairs there and he was wrong to attribute the cause of her knee problems to that.

The Appellant also submitted that the IRI calculations provided by MPIC did not make any sense. She argued that MPIC was in error in calculating her net gross yearly employment income (GYEI) and dividing that by 52 weeks. Rather, she submitted that it should only be divided by 40 weeks, as a result of lay-off periods in the [text deleted]. MPIC's erroneous

calculation resulted, she submitted, in a difference of \$80 per week which she should have been entitled to.

Evidence and Submission for MPIC:

Counsel for MPIC noted that the Internal Review Officer, in her decision of October 26, 2009, did applaud the Appellant for her honesty in finally providing a disclosure of the real details surrounding the incident of November 28, 2006. Although MPIC did not take the position at the appeal hearing that the Appellant's fall while trying to evade the vehicle was not an "accident" within the meaning of the MPIC Act, he did take the position that the Appellant's misrepresentation to her care providers in regard to the mechanism of her injury affected the accuracy of their reports and complicated the question of the causal connection between her injuries and the motor vehicle accident. The reports from the Appellant's caregivers depended largely on the historical framework of what took place and an analysis and opinion in that regard.

Counsel submitted that a review of the medical records following the motor vehicle accident indicated that as far as the knee was concerned, the motor vehicle accident was not a significant event. Records from the hospital and the initial caregivers make no mention of the Appellant's knee. In fact, reports from the [Hospital] indicated that there were no obvious injuries which resulted following the incident. The ambulance report indicated that she fell on her right hip and elbow, but made no reference to her knee. [Appellant's chiropractor #1] treated her hip and elbow. [Appellant's doctor], her family practitioner, did not check off the specific box provided on the form regarding knee injuries.

The Appellant's Application for Compensation, dated December 8, 2006, made no mention of her knee.

Although she had an adjustment to her knee in the three months before the motor vehicle accident, her report to the case manager on December 22, 2006 also made no reference to her knee.

It was not until [Appellant's chiropractor #1] reported an incident occurring on January 14, 2007, regarding the Appellant's knee, that we see any reference in the file to the Appellant's knee. [Appellant's chiropractor #1] mentioned a problem that the Appellant had with stairs and counsel for MPIC described this as another incident relevant to the causal connection chain.

Further, counsel submitted that the variety of possible different opinions regarding causation and the Appellant's knee were compounded by the Appellant's reports to everyone along the way, including her case manager, her doctors, her chiropractors, specialists and her lawyer. Numerous examples include the Appellant's claims that a "car hit us" or that they were "struck" by a car, or that they were "pedestrians hit by a car" or "struck by a vehicle and thrown six feet", "a car hit us and knocked us down", "car hit my husband and me as pedestrians", etc...

Counsel submitted that the resulting difficulty in accepting and believing the Appellant makes it more difficult for her to meet the onus upon her of establishing a causal connection on a balance of probabilities between the motor vehicle accident and the Appellant's knee difficulties. She has certainly not helped matters, he submitted, by how she has chosen to describe what took place on that particular day.

As a result, the Commission is left with no initial reports of symptoms in the Appellant's knee, evidence of pre-existing degenerative changes and some chiropractic treatment to her knee prior to the motor vehicle accident. We also have another incident of climbing on stairs, he submitted, that is a reasonable explanation of what could have caused the Appellant's problems.

There is no real evidence that one can look at to say that the Appellant fell on her knee, bruising it or hurting it in the motor vehicle incident; there is just a reference to her falling on her hip and elbow with some bruising to her buttocks. The medical reports are clear that the Appellant has moderately advanced osteo-arthritic changes in her knee, which were not caused by the motor vehicle accident.

[text deleted], an orthopaedic specialist, was initially of the opinion, compounded by his belief that she had been struck by a car, that the Appellant's knee problems were caused by the motor vehicle accident. His later report dated September 21, 2009 indicated that he had formulated his previous opinion based on history provided to him by the patient. He noted a diagnosis of degenerative changes (osteo-arthritis) as well as a lateral meniscus tear:

“I base this opinion on history as provided by the patient as well as my examinations at the time and I have not used reports of other physicians or professionals to formulate my opinion. Therefore though, I cannot state with absolute certainty that there is a direct causal relationship between the patient's symptoms and the motor vehicle accident, based on a balance of probabilities, her meniscal tear may have been caused by or at least was significantly exacerbated by the motor vehicle pedestrian accident.”

The Appellant's surgeon, [text deleted], initially believed that the Appellant had been struck by a motor vehicle and was of the view that the incident could possibly have caused or exacerbated her knee symptoms. However, after being provided with more complete information regarding the Appellant's file and the accident, he stated:

“...I felt that she had two distinct problems within the knee. The first was a lateral meniscal tear and the second was the presence of tricompartmental osteoarthritis. Based on the history which I have obtained from the patient at that time I concluded that the meniscal tear was more consistent with the cause and effect relationship as a result of the accident. However, the problem she was experiencing as a result of the arthritis was less clear. It has been my experience that osteoarthritis may go undetected by both patient and physician for many years until it reaches a “breaking point”. Certainly, any underlying osteoarthritis can be aggravated significantly by an injury of this magnitude. It is unlikely, however, that the arthritis was absent prior to the injury. It had likely been developing in the knee for several years but became symptomatic only after the accident had occurred.

I have had the opportunity to review some of the other documents which were not available to me upon my initial meeting with [the Appellant]. Many of these throw further uncertainty into the cause and effect relationship of the accident to her present symptoms. Specifically, the [Hospital] initial emergency report makes note of right sided injury but specifies the shoulder and hip while making no direct mention of the knee. There is a note made of normal gait present at that time. This would be unusual with a significant knee injury. The nursing and ambulance report at that time similarly specifies that the right hip was the area of concern.

Initial chiropractic report also makes no note of right knee problems. Finally, there is an initial health care report made by [Appellant’s doctor] on December 21, 2006 which again does not demonstrate any significant knee problems. There is an undated note from [Appellant’s chiropractor #1] which indicates that on January 14 (I assume this is 2007) that he received a phone call from [the Appellant] regarding pain in her right knee. At that point there is a note made that this was a result of a fall which occurred while stepping on a slippery floor.

The end result after reviewing all these documents is that there is no obvious link which can be established between the accident which occurred in November 2006 and her present symptoms. As I have stated earlier, I do believe that she had some underlying arthritis which was exacerbated by the injury. However, even the relationship with the lateral meniscus tear becomes less clear after reviewing the initial nursing/doctor/chiropractic notes. As a result, I certainly cannot establish any causal relationship of the motor vehicle accident with her present knee symptoms. I feel that I must agree with [MPIC’s doctor’s] assessment in his note made of September 30, 2008. My only addition would be to reiterate the fact that her arthritis could have been significantly exacerbated although the symptoms may not have been present for several weeks to months thereafter.”

Counsel submitted that [Appellant’s chiropractor #3’s] view was based primarily upon what the Appellant told him in his primary role as a treating chiropractor, but that he did not come on the scene until June 2008 and had very little information regarding the motor vehicle accidents, and

what the Appellant's condition was following that accident. Accordingly, he could not assist the Commission regarding the causal connection between her knee and the accident.

Counsel relied upon the report of MPIC's Healthcare Services Consultant dated November 29, 2011 which summarized the medical information on the file and concluded:

“In reviewing the totality of the medical documentation on file, the probable diagnosis that was listed and supported by clinical findings and imaging reports was a meniscal injury to the knee superimposed upon degenerative joint disease (osteoarthritis). The association between the collision and the development of this condition was not supported by [the Appellant's] treating surgeon or her treating sport medicine physician (based on the newest report on file from [Appellant's orthopaedic specialist] as outlined above). The present temporal series of reports would also not support a probable association being present in this case.

When all of the medical information was reviewed, the lack of a temporal relationship as well as the report of an interceding event which could, probably lead to the development of a meniscal injury by itself renders the association between the motor vehicle collision and the development of the knee pain improbable...”

In reviewing the calculation of the IRI benefits which the Appellant received, counsel submitted that it was clear that they were done fairly, and in accordance with the legislation. Counsel for MPIC noted that the Appellant submitted that her 2006 income should be taken and divided by 40, instead of by 52, for a weekly amount. However, he noted that [text deleted] layoff periods had already been taken into account in MPIC's calculation. The calculation took into account pay stubs provided for the period between August 28, 2006 to December 1, 2006. These are periods of time when the Appellant would have been working during the [text deleted] year. This amount was then annualized for the whole year. CPP and Employment Insurance Income deductions were taken into account to reduce the net income for the year. Ninety percent of that was then used, in accordance with the legislation, for a total sum which was then paid out on a biweekly basis. Counsel submitted that MPIC took six months when the Appellant was actually working, and not any layoff periods during [text deleted], in calculating her annual income. This

worked to the Appellant's benefit, and there was no support for the Appellant's submission that MPIC had incorrectly calculated her IRI amounts.

As a result, counsel submitted that the Appellant's appeal should be dismissed and the decisions of the Internal Review Officers dated August 14, 2007 and October 26, 2009 should be upheld.

Discussion:

The MPIC Act provides:

Definitions

[70\(1\)](#) In this Part,

"accident" means any event in which bodily injury is caused by an automobile

"bodily injury caused by an automobile" means any bodily injury caused by an automobile, by the use of an automobile, or by a load, including bodily injury caused by a trailer used with an automobile, but not including bodily injury caused

(a) by the autonomous act of an animal that is part of the load, or

(b) because of an action performed by the victim in connection with the maintenance, repair, alteration or improvement of an automobile; (« dommage corporel causé par une automobile »)

Entitlement to I.R.I. for first 180 days

[83\(1\)](#) A temporary earner or part-time earner is entitled to an income replacement indemnity for any time, during the first 180 days after an accident, that the following occurs as a result of the accident:

(a) he or she is unable to continue the employment or to hold an employment that he or she would have held during that period if the accident had not occurred;

(b) he or she is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

Basis for determining I.R.I. for temporary earner or part-time earner

[83\(2\)](#) The corporation shall determine the income replacement indemnity for a temporary earner or part-time earner on the following basis:

(a) under clause (1)(a), if at the time of the accident

(i) the temporary earner or part-time earner holds or would have held employment as a salaried worker, the gross income that he or she earned or would have earned from the employment,

(ii) the temporary earner or part-time earner is or would have been self-employed, the gross income determined in accordance with the regulations for an employment of the same class, or the gross income that he or she earned or would have earned from the employment, whichever is the greater, and

(iii) the temporary earner or part-time earner holds or would have held more than one employment, the gross income earned or would have earned from all employment that he or she is unable to continue because of the accident;

(b) under clause (1)(b), the benefit that would have been paid to the temporary earner or part-time earner.

I.R.I. is 90% of net income

[111\(1\)](#) The income replacement indemnity of a victim under this Division is equal to 90% of his or her net income computed on a yearly basis.

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 onus is on the Appellant to show, on a balance of probabilities, that the Internal Review Officers erred in finding that she was not entitled to further IRI benefits or chiropractic treatment benefits as a result of an injury to her right knee. The onus is also on the Appellant to show, on a balance of probabilities, that MPIC's calculation of her IRI benefits during the period when she was entitled to receive those payments, was in error.

The panel has reviewed the documentary evidence on the Appellant's indexed file, as well as the testimony at the hearing from the Appellant and from [Appellant's chiropractor #3]. We have also reviewed the Appellant's submission and the submission of counsel for MPIC.

Having reviewed all of the above, the panel finds a number of inconsistencies between the Appellant's account of the motor vehicle incident and her injuries and what actually occurred.

On many occasions, the Appellant reported that she had been struck by a car when, in fact, this was not the case. This inaccurate reporting and misrepresentation was repeated to various caregivers and professionals who relied upon this erroneous information.

Although the Appellant testified she told the truth when she met with her lawyer, it later became apparent that she initially told her lawyer that she had been struck by a motor vehicle and only told him the truth sometime later, after the Notice of Appeal was filed.

The panel also found inconsistencies in the Appellant's reporting of any previous knee treatments, and how and when she first experienced and noticed problems with her right knee. We also found inconsistencies in her accounts of when she first reported such symptoms to caregivers. Her assertion that she reported symptoms but that her caregivers were negligent and failed to record her complaints is not supported by any other evidence.

The panel finds that there were numerous inconsistencies between the Appellant's version of events, and the actual events and medical findings. Accordingly, the panel finds that the Appellant's story throughout the history of her claim file and her testimony simply is not

credible. We find that we cannot rely upon the statements she has made to her case managers, caregivers or to the panel.

The Commission agrees with counsel for MPIC that the deficiencies and misrepresentations in the Appellant's reporting throughout her claim may have affected the course of the management of her condition and of her claim. We agree with the comments of the Internal Review Officer of October 26, 2009:

"I applaud your honesty and disclosure of the details surrounding the incident of November 28, 2006, albeit 2 ½ years after the fact. I cannot disregard that the mechanism of your injuries has been misrepresented to your care providers and, therefore, the accuracy of their reports and subsequent consultant review opinions may be further questioned."

As a result, the Commission finds that the Appellant has failed to meet the onus upon her of showing that the Internal Review Decisions of August 14, 2007 and October 26, 2009 were in error in regard to the absence of a causal connection between the Appellant's knee injury and the motor vehicle incident.

The panel also accepts the submission of counsel for MPIC that the Appellant was treated fairly in regard to the calculation of her IRI benefit amounts. Were we to recommend the calculation which the Appellant advocated, the Appellant could have ended up receiving \$18,000 more in IRI benefits than she normally ended up earning during a year of work.

On the other hand, we find that MPIC's approach to annualize the Appellant's daily earnings during the six month period when she was actually working and then base IRI benefit calculations on that amount was a reasonable approach. We find that the Appellant was not

disadvantaged by this approach and that it resulted in a reasonable calculation of the Appellant's IRI benefits.

The panel finds that the Appellant has failed to meet the onus upon her of showing, on a balance of probabilities, that the decisions of the Internal Review Officers were in error.

Accordingly, the Commission upholds the decisions of MPIC's Internal Review Officers dated August 14, 2007 and October 26, 2009 and dismisses the Appellant's appeals.

Dated at Winnipeg this 21st day of June, 2012.

LAURA DIAMOND

PAUL JOHNSTON

ROBERT MALAZDREWICH