Manitoba

Automobile Injury Compensation Appeal Commission

Annual Report 2014-2015

MINISTER OF TOURISM, CULTURE, HERITAGE, SPORT AND CONSUMER PROTECTION

Room 118
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

Her Honour the Honourable Janice C. Filmon, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235, Legislative Building
Winnipeg, Manitoba
R3C OV8

May it Please Your Honour:

I have the privilege of presenting, for the information of Your Honour, the Annual Report of the Automobile Injury Compensation Appeal Commission for the year ended March 31, 2015.

Respectfully submitted,

"Original Signed By"

Honourable Ron Lemieux
Minister of Tourism, Culture, Sport, Heritage and Consumer Protection

The Honourable Ron Lemieux
Minister of Tourism, Culture, Heritage, Sport and Consumer Protection
Room 118, Legislative Building
Winnipeg, Manitoba
R3C OV8

Dear Minister:

Section 180(1) of the *Manitoba Public Insurance Corporation Act* states that within six months after the end of each fiscal year, the Chief Commissioner shall submit an annual report to the Minister respecting the exercise of powers and the performance of duties by the Commission, including the significant decisions of the Commission and the reasons for the decisions.

I am pleased to enclose herewith the Annual Report of this Commission for the fiscal year ending March 31, 2015 which includes a summary of significant decisions.

Yours truly,

"Original Signed By"

MEL MYERS, QC
CHIEF COMMISSIONER

RAPPORT ANNUEL DE LA COMMISSION D'APPEL DES ACCIDENTS DE LA ROUTE POUR L'EXERCICE 2014-2015

Généralités

La Commission d'appel des accidents de la route (« la Commission ») est un tribunal administratif spécialisé indépendant qui a été constitué en vertu de la *Loi sur la Société d'assurance publique du Manitoba* (« la *Loi* »). Elle est chargée d'instruire les appels interjetés relativement aux révisions internes de décisions sur les indemnités du Régime de protection contre les préjudices personnels (« le Régime ») de la Société d'assurance publique du Manitoba (« la Société »).

L'exercice 2014-2015, qui a débuté le 1er avril 2014 et s'est terminé le 31 mars 2015, marquait la 21e année complète de fonctionnement de la Commission. Celle-ci compte un personnel de 12 personnes : un commissaire en chef, deux commissaires en chef adjointes, une commissaire en chef adjointe à temps partiel, une directrice des appels, trois agentes des appels, une secrétaire du commissaire en chef, deux secrétaires administratives et une employée de bureau. En outre, 25 commissaires à temps partiel siègent à des comités d'appel selon les besoins.

Le processus d'appel

Pour recevoir des indemnités du Régime, le demandeur doit présenter une demande d'indemnisation à la Société. Si le demandeur n'est pas d'accord avec la décision du gestionnaire de cas sur son admissibilité à des indemnités du Régime, il a 60 jours pour demander une révision de la décision. Un agent de révision interne de la Société examine la décision du gestionnaire de cas et rend par écrit une décision motivée.

Le demandeur qui n'est pas satisfait des conclusions de l'agent de révision interne peut interjeter appel devant la Commission dans les 90 jours qui suivent la date de réception de la décision interne révisée. La Commission peut, à sa discrétion, accorder une prolongation de délai.

En 2014-2015, 214 appels de décisions internes révisées ont été interjetés devant la Commission, comparativement à 176 en 2013-2014.

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 2014-2015, 62 % des appelants ont été représentés par le Bureau des conseillers des demandeurs, soit la même proportion qu'en 2013-2014.

Procédures préalables à l'audience et projet pilote de médiation

Depuis février 2012, le formulaire d'avis d'appel indique que les appelants ont la possibilité de participer à la médiation de leur appel. Établis dans le cadre d'un projet pilote, les services de médiation sont fournis par le Bureau de médiation relative aux accidents de la route, un organisme gouvernemental indépendant. Une feuille de renseignements sur la médiation est également jointe au formulaire d'avis d'appel. Sur les 214 nouveaux appels interjetés durant l'exercice 2014-2015, 167 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. Au lieu de préparer un dossier indexé pour chaque appel déposé, les agentes des appels de la Commission n'en préparent désormais que pour les appels non réglés que le Bureau renvoie à la Commission. Si des services de médiation ne sont pas demandés au moment du dépôt de l'avis d'appel, un dossier indexé sera préparé. Le dossier indexé regroupe les preuves documentaires jugées pertinentes pour les questions en litige. Il est fourni à l'appelant ou à son représentant ainsi qu'à la Société. De plus, on s'y reporte à l'audience. Lorsque les parties ont examiné le dossier indexé et présenté tout autre élément de preuve qu'elles jugent pertinent, la date d'audition de l'appel est fixée.

Activités

Exercice	Audiences	Conférences préparatoires	Total
2014-2015	47	150	197
2013-2014	66	141	207
2012-2013	87	157	244
2011-2012	94	102	196
2010-2011	81	48	129
2009-2010	120	72	192

Conférences préparatoires

Les conférences préparatoires contribuent à la gestion du déroulement des appels et elles demeurent donc un élément important du calendrier des audiences de la Commission. Au cours des sept derniers exercices, celle-ci a constaté que, pour de nombreux appels, un commissaire devait fournir du soutien supplémentaire pour la gestion de cas. Comme par le passé, la

Commission a continué de convoquer des conférences préparatoires en 2014-2015. Elle estime que ces conférences aident à déterminer où en sont les appels, à établir la cause des retards, à résoudre les obstacles qui empêchent de fixer une date d'audience, à faciliter la médiation et à fixer les dates d'audience.

En 2014-2015, les appelants ont eu gain de cause – entièrement ou partiellement – dans 40 % des appels entendus par la Commission.

Audiences

Lorsqu'un appel n'est pas entièrement réglé durant la médiation ou lorsqu'un appelant décide de ne pas recourir à la médiation, la Commission tient une audience afin de se prononcer sur l'appel.

Comme la Commission n'est pas strictement liée par les règles de droit concernant la preuve applicable aux procédures judiciaires, les audiences sont relativement informelles. Les appelants et la Société peuvent y appeler des témoins et y présenter de nouveaux éléments de preuve. Toutefois, les lignes directrices de la Commission exigent des parties qu'elles divulguent à l'avance leurs éléments de preuve documentaire et orale. La Commission peut aussi délivrer des assignations de témoins, qui obligent des personnes à comparaître à l'audience pour témoigner et à apporter les documents pertinents avec elles.

Au besoin, la Commission se rend à l'extérieur de Winnipeg pour tenir une audience ou, si les circonstances s'y prêtent et si cela est dans l'intérêt d'un appelant qui vit ou travaille ailleurs, une audience peut avoir lieu par téléconférence.

Le ou les commissaires qui entendent un appel évaluent la preuve et les représentations de l'appelant et de la Société. Conformément à la *Loi*, après la tenue de l'audience, la Commission peut, selon le cas :

(a) confirmer, modifier ou rescinder la décision de la Société;
(b) rendre toute décision que la Société aurait pu rendre.

La Commission rend des décisions écrites et en communique les motifs par écrit. Les décisions et les motifs sont envoyés à l'appelant et à la Société. Les décisions rendues par la Commission ainsi que les motifs les justifiant peuvent être consultées au bureau de la Commission ou sur son site Web, au www.gov.mb.ca/cca/auto/decisions.html (décisions en anglais seulement). Les décisions rendues publiques sont modifiées de manière à protéger la vie privée des parties, conformément à la législation manitobaine en matière de protection de la vie privée. La Commission s'est engagée à mettre à la disposition du public la preuve et les motifs de ses décisions tout en veillant à ce que les renseignements personnels concernant les appelants et d'autres personnes, notamment les renseignements sur la santé, soient protégés et demeurent confidentiels.

Statistiques

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

- Dans les cas où l'appelant n'a pas recours à la médiation et demande une audience pour le règlement de l'appel, le personnel de la Commission prépare le dossier indexé qui sera utilisé à l'audience cinq semaines après la réception du dossier de la Société et de tout document supplémentaire.
- Pour les appels où l'appelant demande des services de médiation, le personnel de la Commission prépare le dossier indexé cinq semaines après que la Commission a été avisée par le Bureau que la médiation est terminée et que l'appel sera renvoyé à la Commission en vue d'une audience.
- La Commission a l'intention de fixer la date d'audience six à huit semaines après que les parties l'avisent qu'elles sont prêtes à aller de l'avant.
- La Commission a l'intention de remettre la décision écrite six semaines après la tenue de l'audience et la réception de tous les renseignements requis.

La Commission continue d'enregistrer un nombre constant d'avis d'appel, ce qui s'est traduit par les délais de traitement moyens suivants en 2014-2015 :

- Les dossiers ont été indexés dans un délai de 7,34 semaines après la réception du dossier de la Société et des documents supplémentaires, comparativement à 15 semaines en 2013-2014 et à 11,7 semaines en 2012-2013.
- Les dossiers ont été indexés dans un délai de 6,84 semaines après la réception par le Bureau de l'avis indiquant que la médiation était terminée, mais que l'appel non réglé ou partiellement réglé ferait l'objet d'une audience. Le délai était de quatre semaines en 2013-2014 et de huit semaines en 2012-2013.
- Les audiences ont été tenues dans un délai moyen de 2,33 semaines après la date où les parties ont dit être prêtes, comparativement à 2,13 semaines en 2013-2014 et à 2,25 semaines en 2012-2013.
- La Commission a rédigé 40 décisions en 2014-2015. Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision était de 5,28 semaines en 2014-2015, comparativement à 5,14 semaines en 2013-2014 et à 4,95 semaines en 2012-2013.
- La Commission a indexé 95 dossiers en 2014-2015, comparativement à 82 en 2013-2014 et à 100 en 2012-2013.

Les agentes des appels de la Commission continuent d'apporter un soutien administratif considérable pour la gestion des appels. Outre l'augmentation du nombre de dossiers indexés préparés en 2014-2015, le nombre de dossiers indexés supplémentaires préparés par les agentes des appels de la Commission a également augmenté, atteignant 111 en 2014-2015, comparativement à 109 en 2013-2014 et 76 en 2012-2013. La préparation de ces dossiers s'est avérée nécessaire notamment pour les conférences préparatoires et les audiences relatives au désistement ou à une question de compétence ainsi que pour les dossiers existants après la réception de documents supplémentaires.

Si on tient compte des dossiers indexés supplémentaires, les agentes des appels ont préparé en tout 206 dossiers indexés en 2014-2015, comparativement à 191 en 2013-2014 et à 176 en 2012-2013.

Au 31 mars 2015, il y avait 355 dossiers actifs à la Commission, par rapport à 301 au 31 mars 2014 et à 366 au 31 mars 2013.

Appels interjetés devant la Cour d'appel du Manitoba

Les décisions de la Commission sont exécutoires, sous la seule réserve du droit d'interjeter appel devant la Cour d'appel du Manitoba sur une question de droit ou de compétence et, le cas échéant, uniquement avec l'autorisation du tribunal.

Une demande d'autorisation d'appel a été présentée en 2014-2015. Elle a été rejetée.

Une motion en rejet lié à un dossier pour lequel la Cour d'appel avait accordé une autorisation d'appel au cours d'un exercice antérieur a été entendue par un comité de la Cour d'appel. La Cour d'appel a donné son accord à la motion en rejet de l'appel.

Au 31 mars 2015, la Cour d'appel avait accordé une autorisation d'appel dans 14 cas sur les 1 651 décisions rendues par la Commission au cours de ses 21 années d'existence.

Développement durable

La Commission s'est engagée à suivre le plan de pratiques d'approvisionnement durable de la Province du Manitoba. Le personnel de la Commission est conscient des avantages associés aux pratiques d'approvisionnement respectueuses du développement durable. La Commission utilise des produits écologiques autant que possible et participe à un programme de recyclage des déchets non confidentiels.

Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles)

La *Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles)* est entrée en vigueur en avril 2007. Cette loi donne aux employés une marche à suivre claire pour communiquer leurs inquiétudes au sujet d'actes importants et graves (actes répréhensibles) commis dans la fonction publique du Manitoba et les protège davantage contre les représailles. La *Loi* élargit la protection déjà offerte dans le cadre d'autres lois manitobaines, ainsi que par les droits à la négociation collective, les politiques, les règles de pratique et les processus établis dans la fonction publique du Manitoba.

Aux termes de la *Loi*, on entend par acte répréhensible une infraction à la législation fédérale ou provinciale; une action ou une omission qui met en danger la sécurité publique, la santé publique

ou l'environnement; les cas graves de mauvaise gestion; ou le fait de sciemment ordonner ou conseiller à une personne de commettre un acte répréhensible. La *Loi* n'a pas pour objet de traiter des questions courantes liées au fonctionnement ou à l'administration.

Conformément à la *Loi*, une divulgation est considérée comme telle si elle est faite de bonne foi par un employé qui aurait des motifs raisonnables de croire qu'il possède des renseignements pouvant démontrer qu'un acte répréhensible a été commis ou est sur le point de l'être, que la situation constitue ou non un acte répréhensible. Toutes les divulgations font l'objet d'un examen minutieux et approfondi visant à déterminer si des mesures s'imposent en vertu de la *Loi*. En outre, elles doivent être déclarées dans le rapport annuel du ministère conformément à l'article 18 de la *Loi*. L'ombudsman a donné une exemption à la Commission d'appel des accidents de la route en vertu de l'article 7 de la *Loi*. En conséquence, toute divulgation reçue par le commissaire en chef ou un supérieur est renvoyée à l'ombudsman, selon l'exemption prévue.
Voici un résumé des divulgations reçues par la Commission d'appel des accidents de la route pendant l'exercice 2014-2015.

Renseignements exigés annuellement (en vertu de l'article 18 de la *Loi*)	Exercice 2014-2015
Nombre de divulgations reçues et nombre de divulgations auxquelles il a été donné suite et auxquelles il n'a pas été donné suite. Alinéa 18(2)a)	Aucune

ANNUAL REPORT OF THE AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION FOR FISCAL YEAR 2014/15

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 2014/15, which is April 1, 2014 to March 31, 2015, was the 21st full year of operation of the Commission. The staff complement of the Commission is 12, including a chief commissioner, two deputy chief commissioners, one part-time deputy chief commissioner, a director of appeals, three appeals officers, a secretary to the chief commissioner, two administrative secretaries and one clerical staff person. In addition, there are 25 part-time commissioners who sit on appeal panels as required.

The Appeal Process

In order to receive PIPP benefits, a claimant must submit an Application for Compensation to MPIC. If a claimant does not agree with their case manager's decision regarding an entitlement to PIPP benefits, the claimant has 60 days to apply for a review of the decision. An Internal Review Officer will review the case manager's decision and issue a written decision with reasons.

If a claimant is not satisfied with the Internal Review Decision, the claimant may appeal the decision to the Commission within 90 days of receipt of the Internal Review Decision. The Commission has the discretion to extend the time by which an appeal must be filed.

In fiscal year 2014/15, 214 appeals of Internal Review Decisions were filed at the Commission, compared to 176 appeals in the fiscal year 2013/14.

The Claimant Adviser Office

The Claimant Adviser Office was created in 2004 by an amendment to Part 2 of the *MPIC Act*. Its role is to assist claimants appearing before the Commission. In the 2014/15 fiscal year, 62% per cent of all appellants were represented by the Claimant Adviser Office, which remained unchanged from 2013/14.

Pre-hearing procedures & the mediation pilot project

Since February 2012, the Notice of Appeal indicates that appellants have the option to participate in the mediation of their appeal. Established as a pilot project, mediation services are provided by the Automobile Injury Mediation Office (AIM), an independent government agency. A mediation information sheet is also provided with the Notice of Appeal. Of the 214 new appeals that were filed during the 2014/15 fiscal year, 167 appellants requested the option of mediation.

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

Hearing Procedure

Once the mediation process concludes, unresolved or partially resolved appeals are returned for adjudication at a hearing before the Commission. Instead of preparing indexed files for each appeal filed, the Commission's appeals officers now prepare indexed files only for those unresolved appeals returned to the Commission from the AIM Office. If mediation is not requested at the time the Notice of Appeal is filed, an indexed file will be prepared. The indexed file is the compilation of documentary evidence considered relevant to the issues under appeal. It is provided to the appellant or the appellant's representative and to MPIC and will be referred to at the hearing of the appeal. Once the parties have reviewed the indexed file and submitted any further relevant evidence, a date is fixed for hearing the appeal.

Hearing Activity

Fiscal Year	Hearings Held	Case Conference Hearings	Total Hearings
2014/15	47	150	197
2013/14	66	141	207
2012/13	87	157	244
2011/12	94	102	196
2010/11	81	48	129
2009/10	120	72	192

Case Conference Hearings

Management of appeals by case conference continues to be an important part of the Commission's hearing schedule. Over the last seven fiscal years, the Commission's experience has been that many appeals require additional case management by a commissioner. In keeping with past practice, the Commission continued to initiate case conference hearings in 2014/15. The Commission finds that these 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.

In fiscal year 2014/15, appellants were successful in whole or in part in 40 per cent of the appeals heard by the Commission.

Hearings

For appeals that are not fully resolved at mediation, or where an appellant does not elect the option of mediation, the Commission will adjudicate appeals by hearings.

Hearings are relatively informal in that the Commission is not strictly bound by the rules of evidence followed by the courts. Appellants and MPIC may call witnesses to testify and may also bring forward new evidence at appeal hearings. The Commission's hearing guidelines require each party to disclose documentary and oral evidence in advance of the hearing. The Commission may also issue subpoenas, which require persons to appear at the hearing to give relevant evidence and to bring documents with them.

If required, the Commission will travel outside of Winnipeg to conduct a hearing or, if it is appropriate and of benefit to an appellant who lives or works elsewhere, a hearing may be conducted by teleconference.

The commissioner(s) hearing an appeal weigh the evidence and the submissions of both the appellant and MPIC. Under the *MPIC Act*, following an appeal hearing the Commission may:

(a) confirm, vary or rescind MPIC's review decision; or
(b) make any decision that MPIC could have made.

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

Statistics

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

- For those appellants who do not request the option of mediation and request a hearing for the adjudication of the appeal, Commission staff prepares the indexed file of material to be used at the hearing five weeks after receipt of MPIC's file and all other additional material.
- For those appeals that request the option of mediation, Commission staff prepares the indexed file five weeks after the Commission is notified by AIM that mediation is concluded and the appeal will continue to proceed at the Commission to hearing.
- The Commission's expectation is to schedule hearings within six to eight weeks from the time the parties notify the Commission of their readiness to proceed.
- The Commission's expectation for rendering written decisions is six weeks following the hearing and receipt of all required information.

The Commission continues to experience a consistent volume of appeals filed resulting in the following average turnaround times for 2014/15:

- Files were indexed within 7.34 weeks of receipt of MPIC's file and additional material compared to fifteen weeks in 2013/14 and 11.7 weeks in 2012/13.
- Files were indexed within 6.84 weeks of receipt of notification by AIM that mediation was concluded but the unresolved or partially resolved issues will proceed to hearing, compared to four weeks in 2013/14 and eight weeks in 2012/13.
- Hearing dates were scheduled, on average, within 2.33 weeks from the time the parties are ready to proceed to a hearing. This compares to 2.13 weeks in 2013/14 and 2.25 weeks in 2012/13.
- The Commission prepared 40 written decisions in 2014/15. The average time from the date a hearing concluded to the date the Commission issued an appeal decision was 5.28 weeks in 2014/15, compared to 5.14 weeks in 2013/14 and 4.95 weeks in 2012/13.
- The Commission completed 95 indexes in 2014/15, compared to 82 indexes in 2013/14 and 100 indexes in 2012/13.

The Commission's appeals officers continue to provide substantial administrative support to the case management of appeals. In addition to an increase in the number of indexes prepared in 2014/15, the number of supplementary indexes prepared by the Commission's appeals officers also increased to 111 supplementary indexes in 2014/15, compared to 109 in 2013/14 and 76 supplementary indexes in 2012/13. Supplementary indexes include the preparation of additional indexes for case conference hearings, abandonment hearings and jurisdictional hearings, and preparing additional indexes on existing files where additional material is received.

Including supplementary indexes, appeals officers prepared a total of 206 indexes in 2014/15, as compared to a total of 191 indexes in 2013/14 and 176 indexes in 2012/13.

As of March 31, 2015, there were 355 open appeals at the Commission, compared to 301 open appeals as of March 31, 2014 and 366 open appeals as of March 31, 2013.

Appeals to the Manitoba Court of Appeal

A decision of the Commission is binding, subject only to a right of appeal to the Manitoba Court of Appeal on a point of law or a question of jurisdiction, and then only with leave of the court.

There was one application for leave to appeal in 2014/15. Leave to appeal was dismissed.

A motion to dismiss a case where the Court of Appeal previously granted leave to appeal in a previous fiscal year was heard by a panel of the Court of Appeal. The Court of Appeal granted the motion to dismiss the appeal.

In the Commission's 21 years of operation, as of March 31, 2015, the Court of Appeal has granted leave to appeal in a total of 14 cases from the 1,651 decisions made by the Commission.

Sustainable Development

The Commission is committed to the Province of Manitoba's Sustainable Procurement Practices plan. Commission staff are aware of the benefits of Sustainable Development Procurement. The Commission uses environmentally preferable products whenever possible and takes part in a recycling program for non-confidential waste.

The Public Interest Disclosure (Whistleblower Protection) Act

The Public Interest Disclosure (Whistleblower Protection) Act came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service, and strengthens protection from reprisal. The Act builds on protections already in place under other statutes, as well as collective bargaining rights, policies, practices and processes in the Manitoba public service.

Wrongdoing under the Act may be: contravention of federal or provincial legislation; an act or omission that endangers public safety, public health or the environment; gross mismanagement; or, knowingly directing or counselling a person to commit a wrongdoing. The Act is not intended to deal with routine operational or administrative matters.

A disclosure made by an employee in good faith, in accordance with the Act, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under the Act, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the Act, and must be reported in a department's annual report in accordance with Section 18 of the Act. The Automobile Injury Compensation Appeal 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 Automobile Injury Compensation Appeal Commission for the fiscal year 2014/15.

Information Required Annually (per Section 18 of The Act)	Fiscal Year 2014/15
The number of disclosures received, and the number acted on and not acted on. Subsection 18(2)(a)	NIL

Significant Decisions

The following are summaries of significant decisions of the Commission and the reasons for the decisions that were issued in 2014/15.

1. Extension of Time Limits

In this case the Commission was required to determine whether the Appellant would be allowed an extension of time to file her appeal to the Commission. The Appellant was involved in a motor vehicle accident and suffered soft tissue injuries including a whiplash injury. As a result, MPIC compensated the Appellant for her loss of income and reimbursed her for physiotherapy and acupuncture treatments. MPIC referred the Appellant for a six week rehabilitation program beginning in February 2011.

The Appellant asserted that as a result of the injuries sustained in the motor vehicle accident she was unable to return to work. MPIC referred the Appellant for an assessment by a physiatrist and a psychologist and received reports from these practitioners that the Appellant was capable physically and psychologically of returning to work.

Subsequently MPIC arranged for video surveillance of the Appellant in January and February 2012. The Appellant was observed carrying out daily activities inconsistent with her self-reported levels of function. In July 2012 MPIC referred all relevant medical reports and the video surveillance to an independent physiatrist who concluded that there was a substantial degree of inconsistency between the Appellant's self-reported levels of function when compared to the observed function of the Appellant outside of a clinical setting. The physiatrist concluded that the diagnosis of chronic pain disorder was medically improbable.

As a result MPIC terminated the Appellant's benefits on the grounds the Appellant had misrepresented the extent of her injuries and function abilities and knowingly provided MPIC with false and inaccurate information as per Section 160(a) of the MPIC Act. As well, MPIC requested the Appellant reimburse MPIC in the amount of $31,541.67 for IRI benefits that the Appellant was not entitled to.

The Appellant made an Application to Review the case manager's decision and on April 2, 2013 the Internal Review Officer issued its decision indicating that MPIC had correctly terminated the

Appellant's PIPP benefits and the Appellant was responsible for reimbursing money to which she was not entitled, in the amount of $31,541.67.

The Internal Review decision stated:

> **"APPEAL RIGHTS**
>
> If you are unsatisfied with this decision, you have ninety (90) days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission, which can be reached at:
>
> 301-428 Portage Avenue
> Winnipeg, MB R3C 0E2
>
> Telephone Number: 204-945-4155
> Fax Number: 204-948-2402
> Toll Free: 1-800-282-8069
>
> Please note that the Commission operates independently from the Manitoba Public Insurance Corporation and its decisions are binding on MPIC subject to the appeal provisions of Section 187 of *The Manitoba Public Insurance Corporation Act.* (underlining added)
>
> **CLAIMANT ADVISER OFFICE**
>
> If you need assistance in appealing this decision to the Commission, you can contact:
>
> Claimant Adviser Office
> 200 – 330 Portage Avenue
> Winnipeg, MB R3C 0C4
>
> Telephone Number: 204-945-7413 or 204-945-7442
> Fax Number: 204-948-3157
> Toll Free: 1-800-282-8069, Ext. 7413
>
> The Claimant Adviser Office operates independently of both MPIC and the Commission and is available to you at no charge." (underlining added)

In accordance with the provisions of the MPIC Act the Appellant is entitled to appeal the Internal Review decision to the Commission within 90 days of receipt of the decision or within such further time as the Commission may allow.

The Appellant's Notice of Appeal was received by the Commission on February 11, 2014, a period of approximately 10½ months after the Internal Review decision of April 2, 2013.

The Appellant was now represented by the Claimant Adviser Office and on February 17, 2014 the Appellant wrote to the Director of the Claimant Adviser Office and advised that the primary reason why she had not filed her appeal prior to the deadline was:

1. Her time has been consumed with health issues.
2. Her husband has had a heart defect since 2004 and was rushed to the hospital in April 2013 and in November 2013. On release he was restricted to bed rest for weeks and she had been busy with doctors and specialists with her own health issues.
3. In the spring of 2013 she underwent a scope due to stomach problems. She underwent a back injection in February 2013 with a follow up in March 2013. This resulted in having to go for a scope in May 2013.
4. All these events took priority over filing an appeal in respect of the Internal Review Decision dated April 2, 2013.

The Commission referred this letter to MPIC and requested to know whether MPIC had any objection to the Commission granting an extension of time to permit the Appellant's Notice of Appeal to be received by the Commission. In response, MPIC indicated that the Appellant is stating that her reasons for not filing a timely Notice of Appeal is because of health problems which were clustered around the spring of 2013 and her deadline for filing a Notice of Appeal would have been expired by July of 2013. MPIC therefore did not agree to an extension of time being granted.

The appeal hearing took place and the Appellant testified on her own behalf.

The Appellant acknowledged in cross-examination:

1. Her husband's attendance at the hospital in April 2013 was at the beginning of the appeal period which commenced on April 2, 2013 and expired on July 2, 2013.
2. Her undergoing a scope due to stomach problems occurred in the spring of 2013 and her back injections occurred in February and March 2013, all of which occurred prior to the commencement of the appeal period on April 2, 2013.
3. Her daughter's pregnancy problem related to high blood pressure occurred in the month of April, prior to the expiry of the deadline of July 2, 2013.

MPIC asserted that the Appellant had sufficient time, notwithstanding her health problems, to file a timely appeal to the Commission.

The Appellant also testified that she was not aware of the existence of the Claimant Adviser Office until sometime after she consulted a lawyer in November 2013. As a result, she then contacted the Claimant Adviser Officer. MPIC's legal counsel referred the Appellant to the Internal Review decision which clearly stated:

1. That if the Appellant needed assistance in appealing the decision to the Commission, she could contact the Claimant Adviser Officer.
2. The address and telephone number for the Claimant Adviser Office were set out in the Internal Review decision.

3. The Claimant Adviser Office operated independently of MPIC and the Commission and was available to the Appellant without charge.

After hearing submissions from both parties, the Commission rejected the Appellant's application for an extension of time on the following grounds:

1. The Internal Review decision clearly stated that the Appellant was entitled to file a Notice of Appeal within 90 days. The Notice of Appeal was filed 7½ months after the July 2013 deadline.
2. The Commission found that the Appellant had not produced a credible explanation for disregarding the 90 day period to file her Notice of Appeal.
3. The Appellant's position that she was so consumed by her husband's and her health issues is contradicted by her testimony that the health issues all occurred in a period well before the deadline for filing the Notice of Appeal.

The Commission further determined that:

1. It could not give weight to the Appellant's statement that she was unaware of the existence of the Claimant Adviser Office until after she consulted a lawyer in November of 2013 and immediately contacted the Claimant Adviser Office.
2. The Internal Review decision clearly stated that if the Appellant needed assistance in appealing a decision to the Commission, she could contact the Claimant Adviser Office and the address and telephone number were set out in the Internal Review decision.

For these reasons, the Commission found that the Appellant has failed to establish on a balance of probabilities that she provided a reasonable explanation to permit the Commission to exercise its discretion to extend the 90 day period for having her appeal heard on the merits and as a result the Commission dismissed the Appellant's appeal.

2. Bifurcation, Test for New Information

In this appeal the Commission was required to determine:

1. Whether new information had been provided following the Commission's decision of August 23, 2007 and prior to the Internal Review decision of October 15, 2012.
2. Does the Commission have jurisdiction in this case to review an appeal from a previous decision issued by the Commission on August 23, 2007.

The Appellant was involved in three separate motor vehicle accidents in 1999, 2000 and 2002. A period of approximately 15½ years occurred between the initial motor vehicle accident in 1999 and the hearing of the appeal on June 25, 2014. During that period of time numerous medical reports were filed in respect of two appeals to the Commission and the Commission issued two decisions dated January 8, 2001 and August 23, 2007. In respect of the Commission's decision of August 23, 2007, the Appellant's appeal for termination of PIPP benefits was dismissed.

The Appellant was entitled to seek leave to appeal within 30 days after receipt of the Commission's decision or within further time as a judge of the Manitoba Court of Appeal allowed.

Instead of seeking leave to appeal, the Appellant sent a series of letters to MPIC dated July 3, 2011, February 3, 2012, and March 11, 2012 and requested a review of the Commission's decision of August 23, 2007. The Appellant's application was dismissed by MPIC's case manager on April 4, 2012 and MPIC's Internal Review decision of October 15, 2012. The Appellant filed a Notice of Appeal to the Commission on November 6, 2012 asserting that the Appellant's PIPP benefits were terminated based on a misinformed medical opinion.

The Appellant's appeal to the Commission was based on the following grounds:

1. That new information had been obtained and MPIC refused to make a fresh decision in respect of the Appellant's claim for compensation.
2. A substantive or procedural error was made by the Commission in its decision of August 23, 2007.

MPIC's legal counsel wrote to the Commission indicating that the only issue that could be properly considered by the Commission was on the first issue relating to new information. In respect of the second issue, MPIC submitted that the Commission had no jurisdiction to review its previous decision of August 23, 2007.

MPIC's legal counsel further submitted that in respect of the second issue the Commission should hear and determine that issue before the commencement of the hearing of the appeal in respect of new information. MPIC's counsel submitted that if the Commission determined that it did have jurisdiction to deal with the second issue, then MPIC would have a right to appeal to the Court of Appeal.

In response, the Appellant's representative noted the Appellant has discovered significant errors in the manner in which MPIC processed the appeal and therefore the Commission had jurisdiction to determine whether MPIC had committed significant errors and could order MPIC to reconsider its decision for the Appellant's PIPP benefits under the MPIC Act.

Bifurcation of Appeal Issues:

After hearing submissions from the parties, the Commission issued a decision rejecting the bifurcation of the Appellant's appeal. In respect of bifurcation before administrative tribunals the case law provides (***Syndicat des employés de production du Québec v. C.L.R.B.*, 1984 CanLII 26 (Sc), [1984] 2 S.C.R. 412**):

> "So long as the guiding statue authorizes the board to enter into the inquiry in the first place, then, save exceptional circumstances, the board has the jurisdiction to deal with whether a particular issue comes within its scope and mandate, subject of course to judicial review at the conclusion of the proceedings, applying the appropriate measure of curial deference." (Underlining added)

The Commission has the authority under the MPIC Act to determine whether it has the jurisdiction to hear and determine an appeal. The Commission has determined that it had the jurisdiction to hear and determine both issues in this appeal.

Substantive or Procedural Error Committed by the Commission:

A hearing was held to determine whether the Commission had committed a substantial or procedural error in its decision of August 23, 2007. After hearing both parties, the Commission dismissed the Appellant's appeal on the following grounds:

1. MPIC had the sole discretion to reconsider its decision at any time prior to an appeal being filed by an Appellant.
2. The only specific right the Appellant had was that prior to applying for a review of a decision or appealing a decision, the Appellant may request MPIC to correct a substantive procedural or clerical error.
3. The appeal was heard by the Commission on July 11, 2007 with a decision issued on August 23, 2007 dismissing the Appellant's appeal in respect of the termination of her PIPP benefits.
4. Once the Commission issued its decision on August 23, 2007 the Appellant had no right to file a Notice of Appeal on November 6, 2012 asking the Commission to exercise its jurisdiction to review its decision.
5. The only remedy available to the Appellant following the August 23, 2007 decision was to file an appeal to the Manitoba Court of Appeal and the Appellant failed to do so.

New Information:

The Commission was required to determine whether the Appellant had provided new information to MPIC following the Commission's decision of August 23, 2007 and prior to the Internal Review decision of October 15, 2012 which would have caused MPIC to issue a fresh decision in regard to the Appellant's appeal.

Under the provisions of the MPIC Act, MPIC may at any time make a fresh decision in respect of a claim for compensation where it is satisfied that new information is available in respect of the claim. In determining whether or not new information has been provided to MPIC the Commission is guided by a decision of the Manitoba Court of Appeal which provides:

1. "The evidence should generally not be admitted if, by due diligence it could have been adduced at trial;

2. The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue on the trial;

3. The evidence must be credible in the sense that it is reasonably capable of belief; and

4. The evidence must be such that if believed, it could reasonably, when taken with other evidence at trial be expected to have affected the result."

Upon reviewing the medical information the Commission determined that this information did not constitute new information which would cause MPIC to make a fresh decision in respect of the Appellant's claim for compensation. Therefore the Commission dismissed the Appellant's appeal in this respect.

3. **Assessment of Permanent Impairment Benefits**

Section 127 of the MPIC Act provides that a victim who suffers permanent disability or mental impairment because of an accident is entitled to a lump sum indemnity, which is calculated in accordance with Manitoba Regulation 41/94. The following case provides an example of the issues faced by the Commission when adjudicating these types of matters and illustrates the importance of expert evidence.

The Appellant suffered from a pre-existing medical condition known as ankylosing spondylitis ("AS"). He was then involved in three motor vehicle accidents ("MVAs") in 1997, 2000 and 2002. MPIC acknowledged that the MVAs caused an enhancement of the pre-existing condition of AS in relation to the Appellant's cervical spine and awarded the Appellant a permanent impairment ("PI") benefit in relation to that enhancement. The Appellant, while agreeing that the MVAs did cause an enhancement of his AS in relation to his cervical spine, disagreed that the enhancement was only to that area of his spine. He argued that the enhancement was also to his thoracic and lumbar spine and sought additional PI benefits. MPIC argued that changes to the Appellant's thoracic and lumbar spine were not attributable to the MVAs but were rather attributable to the natural progression of his AS disease.

Although the Appellant was present at the hearing of his appeal, he did not testify. The only witness to testify at the hearing was a physician, who had been treating the Appellant as a patient since 2002 and who was qualified as an expert in rheumatology. This physician had also provided written reports which were part of the record in the appeal. At the hearing he provided oral evidence regarding the nature of AS and how the mechanism of the MVAs likely would have affected the development of the disease in the Appellant. He indicated that in his view, on a balance of probabilities, the Appellant's AS was accelerated in his lumbar and thoracic spine by the MVAs. He indicated that this acceleration happened much earlier to the Appellant than would be the natural progression of the disease. MPIC did introduce medical reports which provided an opinion contrary to the opinion of the expert rheumatologist; however, these reports were from a sports medicine doctor with no specific training or experience in treating patients with AS. Based on the weight of the expert evidence of the rheumatologist, the Commission found that the Appellant had established that he was entitled to the additional PI benefits that he sought.

4. Calculation of Death Benefits

Division 3 of the MPIC Act provides for the payment of a lump sum indemnity on the death of a victim of a motor vehicle accident. The following case provides an example of the diverse circumstances which may arise in these types of matters.

In 2013, a young woman and her young son were tragically involved in a serious motor vehicle accident, and neither survived the accident. Neither of them had a will. At the time of the accident, the young woman was no longer in a relationship with her son's biological father (they had never married), although they did share custody.

As noted above, under the MPIC Act, a death benefit is payable where a victim dies as a result of an accident. MPIC interprets this legislation very broadly where two people die at the same time, and calculates the payment as though each person survived the other. Accordingly, a payment was made by MPIC to the young woman's estate with respect to the death of her son (and there was no dispute regarding this payment). Similarly, a payment was made by MPIC to the son's estate with respect to the death of the young woman.

A dispute arose with respect to the payment that was made to the son's estate. The son's biological father, being his sole surviving parent, became the administrator of his estate. The payment that was made to the son's estate with respect to the death of his mother was paid to his biological father in his capacity as administrator of the son's estate. The son's grandparents (being the parents of the young woman, the other victim) wished to dispute this payment. They came before the Commission seeking to file an appeal with respect to the payment made to the administrator of the son's estate. They argued that it would be more equitable to pay a portion of the funds to the mother's estate in order that they be permitted to use the funds to pay tribute to the mother.

The Commission heard submissions from all parties, being the grandparents, the biological father as well as MPIC, who argued that the grandparents should not be permitted to file an appeal with respect to a payment made to somebody else. The Commission reviewed the applicable legislation and determined that all payments made by MPIC were correctly calculated and paid. Accordingly, the grandparents were not permitted to file an appeal with respect to the payment made to the biological father in his capacity as administrator of the son's estate. The Commission expressed its condolences and sympathies to the parties for their tragic loss.

5. Reimbursement of Expenses for Medical Treatments

Section 136 of the MPIC Act provides that, subject to the regulations, a victim of a motor vehicle accident is entitled to be reimbursed for expenses incurred for medical and paramedical care. Such expenses may include costs for physiotherapy treatments and chiropractic treatments. The following cases illustrate the issues faced by the Commission when considering claims for reimbursement of such expenses.

a) Whether the Appellant is entitled to funding for further physiotherapy treatments

The Appellant was involved in a motor vehicle accident on May 28, 2008, in which she suffered various injuries. Following the accident, she consulted with several health care practitioners and underwent a variety of treatments, including physiotherapy. MPIC funded physiotherapy treatments for a period of time, but in 2012 ceased funding such treatments.

In order to qualify for entitlement to Personal Injury Protection Plan ("PIPP") benefits, the onus is on the Appellant to establish, on a balance of probabilities, that he or she suffered an injury caused by an accident. Further, the Appellant must establish that the treatments that he or she has received or wishes to receive are medically required. MPIC took the position that the Appellant's symptoms and condition at the point in time that funding was terminated were not caused by the accident. Further, at that point in time physiotherapy treatments were not medically required.

The Commission reviewed the testimony of witnesses and the medical reports which had been tendered at the hearing. The Commission determined that the Appellant had established, on a balance of probabilities, that the condition she suffered from was caused by the accident.

The Appellant sought to further establish that she required physiotherapy treatment on a supportive basis in order to maintain her health and level of function. The onus was therefore on the Appellant to show, on a balance of probabilities, that such supportive physiotherapy treatment was medically required. The Commission has accepted the following test for supportive care:

> "Treatment for patients who have reached maximum therapeutic benefit but who have failed to sustain this benefit and progressively deteriorate when there are periodic trials of withdrawal of treatment. Supportive care follows application of active and passive care including rehabilitation and lifestyle modifications. It is appropriate when alternative care options including home based self-care have been considered attempted."

The Commission reviewed the medical and paramedical evidence relating to the various modalities of treatment which the Appellant had sought and received, and found that the evidence presented satisfied the onus upon the Appellant of showing, on a balance of probabilities, that supportive physiotherapy care was medically required. The Appellant had reached maximum therapeutic benefit in August of 2008, and then suffered a deterioration in her condition after the withdrawal of treatment. She had used other active and passive modalities, including massage therapy and home exercise, and physiotherapy had been successful in providing her relief. The Appellant had established that periodic, reasonable physiotherapy would provide her with the necessary relief to continue her activities of daily living and increase her general quality of life.

b) Whether the Appellant is entitled to funding for further chiropractic treatment

The Appellant was involved in a motor vehicle accident in 2008, in which she suffered various injuries. Following the accident, she consulted with several health care practitioners and underwent a variety of treatments, including chiropractic treatment. MPIC funded chiropractic treatments for a period of time, but in 2011 ceased funding such treatments.

There was no dispute that the Appellant's injuries were caused by the accident, however, the parties disagreed with respect to whether supportive chiropractic treatment was medically required. The Appellant testified and relied on various medical and paramedical reports in support of her position that she met the test for supportive care. MPIC also relied on various medical and paramedical reports in support of its position that the test was not met. In particular, MPIC relied on the report from an independent chiropractic examiner, who had an opportunity to review the Appellant's entire medical file. As well, he conducted two days of personal examinations and assessments of the Appellant. In his opinion, the Appellant had not yet attained maximum medical improvement with her neck and headache symptoms. In addition, he recommended that she enroll in a particular rehabilitative exercise program and the Appellant testified that she was in fact currently enrolled in such a program and that she was achieving benefits from such treatment. Accordingly, while there was some conflicting evidence, the Commission found that the weight of all of the evidence established that the Appellant did not at that time meet the required first element of the test for supportive chiropractic treatment, in that she had not yet reached maximum medical benefit. Accordingly, she had not established that such care was currently medically required.

However, the Commission noted that MPIC had acknowledged that the Appellant's current symptoms and conditions were caused by the accident. Therefore, at such time as the Appellant were to reach maximum medical benefit, she would be free to bring evidence of such improvement before her case manager. It is possible that the test for supportive chiropractic treatment would be met at that time.

6. **Whether there is a causal connection between the motor vehicle accident and the Appellant's symptoms**

In these cases, the Commission carefully considered and relied upon the evidence of medical experts in determining whether there was a causal connection between the motor vehicle accident ("MVA") and the Appellant's injuries and symptoms, in order to determine the Appellant's entitlement to benefits.

a) Whether there is a causal connection between the Appellant's cervical disc herniation and whether the Appellant is entitled to IRI benefits

MPIC reviewed the medical information on the Appellant's file, including information received from its Health Care Services consultant and a physiatrist who had cared for the Appellant. Doctors had noted that the Appellant suffered a whiplash (WAD II) injury as a result of the motor vehicle collision in 2007 and that in 2008, he suffered a disc herniation at the C7-T1 level.

MPIC's conclusion was that these were two different conditions and that the disc herniation had occurred as a result of a 2008 incident when the Appellant was stretching. This was independent from the injuries in the MVA and the diagnosis of disc herniation was not related to the MVA.

The Commission reviewed a report from a neurologist who had treated the Appellant and heard testimony from two other doctors who had treated the Appellant, including a pain specialist. MPIC also called evidence from its Health Care Services medical consultant and from the physiatrist who had treated the Appellant and provided reports. This physiatrist and the Health Care Services medical consultant did not believe that the Appellant's disc herniation was related to the MVAs. The Appellant's other caregivers, on the other hand, were of the view that, on a balance of probabilities, the MVA materially contributed to the Appellant's left C8 radiculopathy and his disc herniation. The neurologist's written report expressed a similar view.

The panel found that the Appellant, through the evidence reviewed, had met the onus of showing, on a balance of probabilities, that there was a connection between the accidents and the herniation. After being hit on the left side in a MVA and reporting consistent left sided pain and symptoms (including some numbness in the neck, shoulder, arm and hand) the Appellant, following an exacerbation of symptoms during morning stretching in 2008, was eventually diagnosed with a C7-T1 herniation and C8 radiculopathy. The evidence of the Appellant's doctors confirmed their views that the MVAs materially contributed to a compromised disc and predisposed the Appellant to the eventual development of the disc herniation and resulting symptoms. Accordingly, the Commission found that the Appellant had met the onus upon him of showing on a balance of probabilities that his condition was causally connected to the MVA.

b) Whether the Appellant is entitled to PIPP benefits

In another case, however, the evidence and opinion of the Appellant's caregivers which were provided to the Commission were not sufficient to meet the onus upon the Appellant to show, on a balance of probabilities, that his MVA injuries necessitated his back surgery. The Appellant was injured in a MVA when he was a pedestrian struck by a reversing vehicle in a parking lot. He had a pre-MVA medical history which included degenerative back disease and previous back surgery. MPIC agreed with an opinion provided by its medical consultant that there was no causal relationship between the eventual requirement for the Appellant to have low back surgery and the motor vehicle collision. The evidence did not satisfy MPIC that there was any indication of serious injury to the Appellant's lower back at the time of the MVA and, on a balance of probabilities, MPIC determined that the requirement for further back surgery could not be attributed to the accident.

The Appellant testified at the appeal hearing and also provided reports from his doctor, a pain specialist, nurse practitioner and neurosurgeon, who had all treated him.

After reviewing the medical evidence on the Appellant's file, including reports completed by three of the Appellant's caregivers and noting their comments regarding causation of the Appellant's condition, the Commission found that none of these caregivers had provided an opinion establishing that the need for the Appellant's back surgery was due to the MVA. Their reports did not go beyond a recognition that this was a <u>possibility</u>. The evidence and opinions

that they had provided were not sufficient to meet the onus upon the Appellant to show, on a balance of probabilities, that the MVA injury necessitated his back surgery.

7. **Entitlement to Income Replacement ("IRI") Benefits after a Relapse:**

Section 117(1) of the MPIC Act provides that if a victim suffers a relapse of bodily injury within two years following the end of IRI benefits or the date of the accident, the victim is entitled to IRI from the day of the relapse.

The Appellant was injured in a MVA in 2005, suffering multiple soft tissue injuries of the neck and spine, including whiplash, lower back and left shoulder strain. She was absent from employment due to these injuries for approximately six months, and then began a gradual work re-entry program. This included various forms of treatment including physiotherapy, treatment from her family doctor, a neurologist and pain specialist, and psychological treatment for depression and post-traumatic stress disorder. MPIC determined that her residual capacity for employment was at 50% of full-time employment. In June of 2009, following a one year job search supported by MPIC benefits, the Appellant's entitlement to IRI benefits was accordingly reduced. The Appellant, while working at 50%, reported that she continued to struggle with chronic pain, psychological difficulties and heavy workloads. In July of 2009, an event occurred at work that she found highly upsetting and she did not return to work after that, seeking additional IRI benefits from that time period.

MPIC determined that it was this work-related incident which led to the Appellant's deterioration and that this could not be considered related to her MVA. It was determined that the Appellant had not established that she sustained a relapse of her initial injury that would render her entirely or substantially unable to hold her determined employment as a result of the MVA and entitle her to further IRI benefits.

The Commission heard evidence from the Appellant and her physiotherapist. The Commission also reviewed several reports from the Appellant's family physician and her psychologist. Reports were also provided by MPIC's psychological consultant.

The Commission found that the Appellant had sustained a relapse of her initial injury that rendered her entirely or substantially unable to perform the duties of her determined employment. The Commission considered the Appellant's description of her workplace experience prior to the MVA and the difficulties which she encountered after the accident (when she could no longer work full-time) to be credible. The Appellant worked for many years at a demanding job, in a stressful environment without psychological problems and loved her job. Following the MVA, she was not able to return full-time but returned to work on a part-time basis, although her work load was not sufficiently reduced to reflect the reduced working hours. With her heavy workload and difficulties with chronic pain, depression and post-traumatic stress, the Appellant began to have problems at work and entered into a cycle of pain, depression and stress.

Evidence from the Appellant's family practitioner and psychologist emphasized her struggles with chronic pain and difficulties coping. They supported the Appellant's position that the workplace incident was not the predominating factor in the Appellant's relapse. Although MPIC's Health Care Services psychological consultant did not agree, the panel found that the psychological consultant had not thoroughly investigated or inquired as to the details of the workplace incident and did not provide a thorough analysis of the relative effects of that incident and the MVA injuries on the Appellant's condition. As a result, the panel assigned greater weight to the opinions of the Appellant's family doctor and her psychological caregiver and concluded that the Appellant had met the onus upon her of establishing that she had sustained a relapse of her initial injury and was entitled to IRI and other PIPP benefits which might arise for the period following July 2009.