Automobile Injury Compensation
Appeal Commission

Commission d'appel des accidents de la route

Annual Report 2018-2019

Rapport annuel 2018-2019

Manitoba

Automobile Injury Compensation Appeal Commission
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ATTORNEY GENERAL
MINISTER OF JUSTICE

Room 104
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Winnipeg, Manitoba CANADA
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Her Honour The Honourable Janice C. Filmon, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235 Legislative Building
Winnipeg MB R3C OV8

May it Please Your Honour:

I have the privilege of presenting, for the information of Your Honour, the Annual Report of the Automobile Injury Compensation Appeal Commission for the year ended March 31, 2019.

Respectfully submitted,

Honourable Cliff Cullen
Minister of Justice and
Attorney General

Manitoba
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Honourable Cliff Cullen
Minister of Justice
Attorney General of Manitoba
Room 104 Legislative Building
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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, 2019 which includes a summary of significant decisions.

Yours truly,

LAURA DIAMOND
CHIEF COMMISSIONER

RAPPORT ANNUEL DE LA COMMISSION D'APPEL DES ACCIDENTS DE LA ROUTE POUR L'EXERCICE 2018-2019

Renseignements généraux

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

L'exercice 2018-2019, qui a débuté le 1 avril 2018 et s'est terminé le 31 mars 2019, marquait la 25e année complète de fonctionnement de la Commission.

Celle-ci compte 10 membres : un commissaire en chef, un commissaire en chef adjoint, un commissaire en chef adjoint à temps partiel, un directeur des appels, trois agents des appels, un secrétaire du commissaire en chef et deux secrétaires administratifs. Pendant la majeure partie de cet exercice, le poste de commissaire en chef adjoint à temps plein a affiché un taux de vacance équivalent à 0,6 équivalent temps plein.

En outre, 14 commissaires à temps partiel siègent à des comités d'appel selon les besoins.

Le processus d'appel

Pour recevoir des indemnités du Régime, le demandeur doit présenter une demande d'indemnisation à la Société. Si le demandeur n'est pas d'accord avec la décision du gestionnaire de cas relativement à son admissibilité à des indemnités du Régime, il dispose de 60 jours pour demander une révision de la décision. Un agent de révision interne 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, prolonger le délai pour interjeter appel.

En 2018-2019, 149 appels ont été interjetés devant la Commission, comparativement à 158 en 2017-2018.

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 2018-2019, 57 % des appelants ont été représentés par le Bureau des conseillers des demandeurs. En 2017-2018, ce nombre s'élevait à 61 %.

Procédures préalables à l'audience et projet pilote de médiation

Depuis février 2012, le formulaire d'avis d'appel indique que les appelants ont la possibilité de participer à la médiation de leur appel. Les services de médiation sont fournis par le Bureau de médiation relative aux accidents de la route. Une feuille de renseignements sur la médiation est également jointe au formulaire d'avis d'appel. Sur les 149 nouveaux appels interjetés durant l'exercice 2018-2019, 123 appelants ont demandé des services de médiation.

Si des services de médiation sont demandés au moment du dépôt d'un avis d'appel, la Commission est chargée de réunir dans une trousse de renseignements les documents d'appels importants qui seront utilisés pendant la médiation.

Procédure lors des audiences

À la fin du processus de médiation, les questions qui ne sont pas réglées ou qui ne sont réglées que partiellement sont renvoyées à la Commission pour la tenue d'une audience visant à trancher l'appel. Les agents des appels de la Commission ne préparent des dossiers indexés que pour les appels non réglés que le Bureau de médiation relative aux accidents de la route renvoie à la Commission. Si des services de médiation ne sont pas demandés au moment du dépôt de l'avis d'appel, un dossier indexé sera préparé. Le dossier indexé regroupe les éléments de preuve documentaire jugés pertinents pour les questions en litige. Il est fourni à l'appelant ou à son représentant ainsi qu'à la Société. De plus, on s'y reporte à l'audience. Lorsque les parties ont examiné le dossier indexé et présenté tout autre élément de preuve qu'elles jugent pertinent, la date d'audition de l'appel est fixée.

Conférences préparatoires

Les conférences préparatoires contribuent à la gestion du déroulement des appels et elles demeurent donc un élément important du calendrier des audiences de la Commission. Au cours des six derniers exercices, la Commission 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 2018-2019. Elle estime que ces conférences préparatoires aident à déterminer où en sont les appels, à établir la cause des retards, à éliminer les obstacles qui empêchent de fixer une date d'audience, à faciliter la médiation et à fixer les dates d'audience.

Audiences

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

Comme la Commission n'est pas strictement liée par les règles de droit concernant la preuve applicable aux procédures judiciaires, les audiences sont relativement informelles. Les appelants et la Société peuvent appeler des personnes à témoigner et présenter de nouveaux éléments de preuve au cours de ses audiences. Toutefois, les lignes directrices de la Commission exigent des parties qu'elles divulguent leurs éléments de preuve documentaire et orale en prévision des

audiences. La Commission peut aussi délivrer des assignations de témoin, qui obligent des personnes à comparaître à l'audience pour témoigner et à apporter les documents pertinents avec elles.

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

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

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

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

En 2018-2019, les appelants ont eu gain de cause – partiellement ou complètement – dans 55 % des appels entendus par la Commission, comparativement à 15 % au cours de l'exercice 2017-2018. En outre, les travaux de la Commission ont permis de régler 27 appels par voie de règlement ou de retrait; une audience ou une décision officielle n'a pas été nécessaire.

Résolutions

Les travaux de la Commission ont permis de régler un certain nombre d'appels par voie de règlement ou de retrait de façon à ce qu'aucune audience ou décision officielle ne soit nécessaire.

- Quatre appels ont été retirés ou réglés après une conférence préparatoire, et la planification d'une audience n'a pas été nécessaire.
- Vingt-deux jours d'audience ont été prévus, mais les appels ont été retirés ou réglés avant le début de l'audience.
- Un appel a été retiré ou réglé avant la fin de l'audience ou le prononcé d'une décision.

Activités liées à l'audience

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

Exercice	Audiences	Conférences préparatoires	Nombre total d'audiences
2018-2019	30	75	105
2017-2018	23	124	147
2016-2017	27	117	144
2015-2016	37	80	117
2014-2015	47	150	197
2013-2014	66	141	207

Bien qu'il y ait eu moins d'audiences en général, il y a eu plus d'audiences complexes tenues sur plusieurs jours au cours de l'exercice 2018-2019.

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

Exercice	Nombre de jours d'audience	Jours de règlement	Jours de conférences préparatoires	Jours de conférences préparatoires ajournées	Nombre total de jours d'audience prévus
2018-2019	40	23	75	4	142
2017-2018	31	Non consigné*	124	Non consigné*	155
2016-2017	39	Non consigné*	117	Non consigné*	156

*Non consigné

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 2018-2019.

- Les dossiers ont été indexés dans un délai de 4,57 semaines après la réception du dossier de la Société et des documents supplémentaires, comparativement à 3,69 semaines en 2017-2018 et à 4,6 semaines en 2016-2017.
- Les dossiers ont été indexés dans un délai de 5,43 semaines après la réception par le Bureau de médiation relative aux accidents de la route indiquant que la médiation était terminée, mais que l'appel non réglé ou partiellement réglé ferait l'objet d'une audience. À titre de comparaison, le délai était de 5,07 semaines en 2017-2018 et de 3,93 semaines en 2016-2017.
- Les audiences ont été tenues dans un délai moyen de 3,31 semaines après la date où les parties ont dit être prêtes. Ce délai était de 0,92 semaine en 2017-2018 et de 1,47 semaine en 2016-2017.
- La Commission a rédigé 20 décisions en 2018-2019, comparativement à 22 décisions en 2017-2018. Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision était de 8,43 semaines en 2018-2019, comparativement à 5,94 semaines en 2017-2018 et à 6,33 semaines en 2016-2017.

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

- La Commission a indexé 112 dossiers en 2018-2019, comparativement à 51 en 2017-2018 et à 84 en 2016-2017.
- Le dossier indexé moyen comprenait 190 onglets en 2018-2019, comparativement à 136 en 2017-2018 et à 156 en 2016-2017.
- Le personnel de la Commission a préparé 73 dossiers indexés supplémentaires en 2018-2019, comparativement à 61 en 2017-2018 et à 99 en 2016-2017. Ces dossiers indexés sont utilisés pour les conférences préparatoires et les audiences relatives à une question de compétence, alors que les dossiers indexés supplémentaires sont utilisés comme suppléments aux dossiers existants lorsque d'autres renseignements sont reçus.

Si on tient compte des dossiers indexés supplémentaires, les agents des appels ont préparé en tout 185 dossiers indexés en 2018-2019, comparativement à 112 en 2017-2018 et à 183 en 2016-2017.

En date du 31 mars 2019, il y avait 371 dossiers actifs à la Commission, comparativement à 362 le 31 mars 2018 et à 380 le 31 mars 2017.

Modifications à la Loi sur la Société d'assurance publique du Manitoba

En novembre 2018, en vertu de *la Loi sur la réduction du fardeau administratif et l'efficacité du gouvernement*, des modifications ont été apportées à la Loi pour permettre le rejet complet ou en partie d'un appel si la Commission est d'avis que l'appelant a manqué de diligence dans le cadre de cet appel. La modification relative au rejet pour défaut de poursuivre l'appel a été adoptée en vertu du projet de loi 12 et se reflète aux paragraphes 182.1(1), 182.1(2) et 182.1(3) de la *Loi*. La Commission s'attend à ce que les questions découlant de cette modification législative soient entendues au cours du prochain exercice.

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.

Deux demandes d'autorisation d'appel ont été présentées en 2018-2019. La Cour a rejeté la demande dans les deux cas.

En date du 31 mars 2019, la Cour d'appel avait accordé une autorisation d'appel dans 14 cas sur les 1 739 décisions rendues par la Commission au cours de ses 25 années d'existence.

Développement durable

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

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

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

Aux termes de la *Loi*, on entend par acte répréhensible une infraction à la législation fédérale ou provinciale; une action ou une omission qui met en danger la sécurité publique, la santé publique ou l'environnement; les cas graves de mauvaise gestion; ou le fait de sciemment ordonner ou conseiller à une personne de commettre un acte répréhensible. La *Loi* n'a pas pour objet de traiter des questions courantes liées au fonctionnement ou à l'administration.

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

Voici un résumé des communications reçues par la Commission pendant l'exercice 2018-2019.

Renseignements exigés annuellement (en vertu de l'article 18 de la *Loi*)	Exercice 2018-2019
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 2018/19

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 2018/19, which is April 1, 2018 to March 31, 2019, was the 25th full year of operation of the Commission.

The staff complement of the Commission is 10, including a chief commissioner, one deputy chief commissioner, one part-time deputy chief commissioner, a director of appeals, three appeals officers, a secretary to the chief commissioner and two administrative secretaries. For the majority of this fiscal year, the full-time deputy chief commissioner position experienced a vacancy equivalent to a .6 FTE.

In addition, there are 14 part-time commissioners who sit on appeal panels as required.

The Appeal Process

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

If a claimant is not satisfied with the Internal Review Decision, 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 2018/19, 149 appeals were filed at the Commission, compared to 158 in the fiscal year 2017/18.

The Claimant Adviser Office

The Claimant Adviser Office was created in 2004 by an amendment to Part 2 of the *MPIC Act*. Its role is to assist appellants appearing before the Commission. In the 2018/19 fiscal year, 57% of all appellants were represented by the Claimant Adviser Office, compared to 61% in 2017/18.

Pre-hearing procedures & the mediation pilot project

Since February 2012, the Notice of Appeal has indicated that appellants have the option to participate in the mediation of their appeal. Mediation services are provided by the Automobile Injury Mediation Office (AIM). A mediation information sheet is also provided with the Notice of Appeal. Of the 149 new appeals that were filed during the 2018/19 fiscal year, 123 appellants requested the option of mediation.

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

Hearing Procedure

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

Case Conferences

Management of appeals by case conference continues to be an important part of the Commission's hearing schedule. Over the last six fiscal years, the Commission's experience has been that many appeals require additional case management by a commissioner. In keeping with past practice, the Commission continued to initiate case conference hearings in 2018/19. The Commission finds that these case conference hearings continue to assist in determining the status of appeals, identifying sources of delay, resolving parties' impediments to scheduling a hearing date, facilitating mediation, and scheduling hearings.

Hearings

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

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

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

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

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

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

In fiscal year 2018/19, appellants were successful in whole or in part in 55% of the appeals heard by the Commission, compared to 15% in 2017/18. In addition, the work of the Commission resulted in the resolution of 27 appeals through settlement or withdrawal and a formal hearing or decision was not required.

Resolutions

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

- 4 appeals were withdrawn or settled after a case conference and the scheduling of a hearing was not required.
- 22 days of hearings were scheduled but the appeals were withdrawn or settled prior to the commencement of the hearing.
- 1 appeal was withdrawn or settled prior to the conclusion of the hearing or issuing of a decision.

Hearing Activity

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

Fiscal Year	Hearings	Case Conferences	Total Hearings
2018/19	30	75	105
2017/18	23	124	147
2016/17	27	117	144
2015/16	37	80	117
2014/15	47	150	197
2013/14	66	141	207

While there were less hearings overall, there was an increase in complex multi-day hearings held in the 2018/19 fiscal year.

The following identifies the number of days scheduled for hearings and case conferences in the last three fiscal years.

Fiscal Year	Days of Hearings Held	Settled Days	Days of Case Conferences	Adjourned Case Conference Days	Total Hearing Days Scheduled
2018/19	40	23	75	4	142
2017/18	31	N/R*	124	N/R*	155
2016/17	39	N/R*	117	N/R*	156

*Not Recorded

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 2018/19:

- Files were indexed within 4.57 weeks of receipt of MPIC's file and additional material compared to 3.69 weeks in 2017/18 and 4.6 weeks in 2016/17.
- Files were indexed within 5.43 weeks of receipt of notification by AIM that mediation was concluded but the unresolved or partially resolved issues will proceed to hearing, compared to 5.07 weeks in 2017/18 and 3.93 weeks in 2016/17.
- Hearing dates were scheduled, on average, within 3.31 weeks from the time the parties were ready to proceed to a hearing. This compares to 0.92 weeks in 2017/18 and 1.47 weeks in 2016/17.
- The Commission prepared 20 written decisions in 2018/19, compared to 22 written decisions in 2017/18. The average time from the date a hearing concluded to the date the Commission issued an appeal decision was 8.43 weeks in 2018/19, compared to 5.94 weeks in 2017/18 and compared to 6.33 weeks in 2016/17.

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

- The Commission completed 112 indexes in 2018/19, compared to 51 indexes in 2017/18 and compared to 84 indexes in 2016/17.
- The average indexed file included 190 tabbed documents for the 2018/19 fiscal year, compared to 136 in 2017/18 and 156 in 2016/17.
- Staff prepared 73 supplemental indexes in 2018/19, compared to 61 supplemental indexes in 2017/18 and 99 in 2016/17. These indexes are for case conference hearings, jurisdictional hearings and additional indexes to supplement existing files where additional information is received.

Including supplemental indexes, appeals officers prepared a total of 185 indexes in 2018/19, as compared to 112 indexes in 2017/18 and 183 indexes in 2016/17.

As of March 31, 2019, there were 371 open appeals at the Commission, compared to 362 open appeals as of March 31, 2018 and 380 open appeals as of March 31, 2017.

Amendments to the Manitoba Public Insurance Corporation Act

In November 2018, under the *Red Tape Reduction and Government Efficiency Act*, changes were made to the *MPIC Act* to allow all or part of an appeal to be dismissed if the Commission is of the opinion that the appellant failed to diligently pursue the appeal. The Dismissal for Failure to Pursue Appeal amendment passed under Bill 12, and is reflected in subsection 182.1(1), 182.1(2) and 182.1(3) of the *MPIC Act*. The Commission expects to hear matters from this change in legislation in the upcoming fiscal year.

Appeals to the Manitoba Court of Appeal

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

There were two applications for leave to appeal in 2018/19. Leave to appeal was denied in both cases.

In the Commission's 25 years of operation, as of March 31, 2019, the Court of Appeal has granted leave to appeal in 14 cases from the 1739 decisions made by the Commission.

Sustainable Development

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

The Public Interest Disclosure (Whistleblower Protection) Act

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

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

A disclosure made by an employee in good faith, in accordance with *the Act*, and with a reasonable belief that wrongdoing has been or is about to be committed is considered to be a disclosure under *the Act*, whether or not the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under *the Act*, and must be reported in a department's annual report in accordance with Section 18 of *the Act*. The Commission has received an exemption from the Ombudsman under Section 7 of *the Act*. As a result, any disclosures received by the Chief Commissioner or a supervisor are referred to the Ombudsman in accordance with the exemption.

The following is a summary of disclosures received by the Commission for the fiscal year 2018/19.

Information Required Annually (per Section 18 of *The Act)*	Fiscal Year 2018/19
The number of disclosures received, and the number acted on and not acted on. Subsection 18(2)(a)	NIL

Significant Decisions:

The following are summaries of significant decisions of the Commission and the reasons for those decisions that were issued in 2018/19.

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

The *MPIC Act* provides a time limit for seeking review and for appealing decisions to the Commission. However, the Commission has the ability to extend this time limit. Subsection 174(1) of the *MPIC Act* states that a claimant may appeal an Internal Review Decision (IRD) to the Commission within 90 days after receiving notice of the decision or within such further time as the Commission may allow. Similarly, situations may arise where a person may be eligible to receive compensation under both the *MPIC Act* and the *Workers Compensation Act*. In those circumstances, where that person receives a joint decision from MPIC and the Workers Compensation Board, subsection 196(2) of the *MPIC Act* states that they may appeal the joint decision to the Commission within 90 days after receiving notice of the decision or within such further time as the Commission may allow. The following cases illustrate factors the Commission may consider in exercising its discretion to extend a time limit.

Case #1

The Appellant was involved in a motor vehicle accident (MVA) in 2015. The case manager and the Internal Review Officer (IRO) found that there was no causal connection between the MVA and the Appellant's symptoms, and therefore the Appellant was not entitled to income replacement indemnity benefits. The Appellant filed a Notice of Appeal with the Commission almost a year after receiving the IRD, which was outside the 90-day deadline.

The IRO sent the Appellant the IRD on two occasions. Despite not receiving the original IRD in August 2017, the Appellant was certain he received the IRD when it was sent to him the second time, in September 2017.

The Appellant submitted that he always had the intention to file an appeal, but was unable to do so on a timely basis due to many factors beyond his control. Following the MVA, the Appellant had health issues which became concerning, and required him to concentrate his focus on his rehabilitation. He became anxious and overwhelmed, and was advised to avoid stressful activities. Although he had spoken to Commission staff, who gave him instructions on how to file an appeal, it was his first time appealing a decision and he did not understand the urgency. In addition to managing his health, he was focused on attending to his business.

Counsel for MPIC noted that if the 90-day period commenced in September 2017 (when the second copy of the IRD was received) the Appellant was required to submit his appeal by December 2017, but instead waited until August 2018. Counsel stressed that the 90-day deadline was expressly set out in the IRD, and that the Appellant had also received a lengthy email from the Commission explaining the appeal process, which he chose to ignore. In January 2018, the Appellant advised the Commission that he wanted to continue the appeal process and was sent a second Notice of Appeal form which he did not complete. The Appellant therefore had sufficient information that emphasized the urgency of filing the appeal. Counsel for MPIC argued that the Appellant was able

to travel and manage his business notwithstanding his health. Therefore, his health concerns were not an excuse for the failure to appeal in a timely manner.

The Commission considered the submissions of the parties, and reviewed the factors which it has considered in previous cases: the length of the delay, prejudice, waiver, and the reasons for the delay.

The Commission found that the Appellant's reasons for delay were not sufficient to warrant granting an extension of time. The Commission noted that the Appellant testified that he had carefully read the IRD, which contained explicit instructions regarding the 90-day appeal period. As well, he had spoken personally with the IRO and Commission staff, who had both advised him of the time requirements. The Appellant had previously appealed the case manager's decision to MPIC's IRO on a timely basis, and could have applied the same due diligence to the current Notice of Appeal. The Appellant's education and knowledge, as well as his proficiency in operating a business, were also considered by the Commission in concluding that filing a Notice of Appeal on a timely basis was not too onerous for him. While the Commission did not minimize the Appellant's health concerns, it noted that there was no formal diagnosis supporting his assertion that anxiety over his health prevented him from filing a Notice of Appeal. On the contrary, there was evidence of his ability to travel, attend to his business and follow up with other aspects of his MPIC claim during the same time period, demonstrating his ability to pursue his appeal in a timely manner. The extension of time was not granted and the Appellant was not permitted to file his Notice of Appeal.

Case #2

The Appellant was injured at his workplace in 1994 and was entitled to benefits under the *Manitoba Workers Compensation Act*. He was subsequently involved in an MVA in 2006, and entitled to benefits under the *MPIC Act*. In 2016, the Appellant received a Joint Decision Letter from MPIC and the Workers Compensation Board (WCB), concerning "their respective responsibility for wage loss benefits". The letter referred to section 196 of the *MPIC Act*, and stated that the Joint Decision Letter could be appealed within 90 days pursuant to that section. That section allows an appeal within 90 days, either to the Commission or pursuant to the provisions of the *Workers Compensation Act*.

Despite these instructions, the Appellant attempted to file his appeal with the IRO for MPIC 10 months after receiving the Joint Decision Letter. The IRO replied and instructed the Appellant to appeal to the WCB or the Commission. Approximately 26 months after receiving the Joint Decision Letter and 16 months after receiving the letter from the IRO, the Appellant filed a Notice of Appeal with the Commission and asked for an extension of time, since the 90-day appeal period had elapsed.

In his submission, the Appellant noted that the MVA had been serious, and he had suffered significant injuries. His MPIC case manager had phoned to tell him that the WCB would be taking over his case, but after she went on leave for an extended period he found it difficult to get information. He was confused after receiving the Joint Decision Letter, as he expected the letter to come from MPIC, not the WCB. He tried to get information from the WCB, but this caused further delays due to multiple case managers, who continuously asked him to provide additional

information, as well as confusion regarding an overpayment which was ultimately resolved. The Appellant ultimately filed his Notice of Appeal with the Commission after he had contacted MPIC's Fair Practices office and the Manitoba Ombudsman's office. The Appellant emphasized the importance of the time extension, as his wage loss benefits and medication reimbursement payments were decreased after his case was transferred from MPIC to WCB.

Counsel for MPIC focused on the length of the delay. MPIC submitted that the Appellant should have been aware of the 90-day deadline after reading the Joint Decision Letter. He was also given specific instructions in the letter from the IRO. The Appellant had demonstrated willful ignorance, acknowledging that he had not read the letters. Counsel stressed that if the Appellant was able to file an Application for Review, the same capacity could be transferred to filing the Notice of Appeal. MPIC submitted that it would suffer prejudice from the extension, as the Appellant's file was currently being managed by the WCB, which may have different standards than MPIC. In considering the overall justice of the proceedings, counsel for MPIC stressed that the Appellant would still receive benefits from WCB if the extension was not granted.

The Commission concluded that in considering all of the relevant factors surrounding the delay, the extension of time should be granted. The Commission found that the Appellant was not wilfully ignorant, as the Joint Decision Letter did not contain sufficient detail that would allow the Appellant to understand the appeal process, or the changes that were being made to his benefits. In addition, the Joint Decision Letter did not contain contact information for the Commission or for the Claimant Advisor Office, which is normally set out in Internal Review Decisions sent to appellants. Section 150 of the *MPIC Act* states that MPIC has a duty to advise and assist appellants, but in this case it was not until receiving advice from the Manitoba Ombudsman's office that the Appellant understood how to file his Notice of Appeal with the Commission. The Commission did not find MPIC's concern that the claim may not have been managed by WCB to MPIC's standards to be of sufficient weight. The Commission found that, based on the nature of the dispute between the parties, the justice of the proceedings militated in favour of a consideration of the merits of the appeal. Therefore, the extension of time was granted, and the Appellant was permitted to file his Notice of Appeal.

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

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

Case #1

The Appellant was injured in an MVA in November of 2010. After the MVA, the Appellant received IRI benefits as a temporary earner. Following third party medical assessments, MPIC concluded that the Appellant had fully recovered from her medical conditions (except for her driving phobia). The Appellant's case manager ended her IRI benefits. The Appellant appealed to the IRO, who did extend her IRI benefits somewhat, but upheld the termination. She appealed this decision to the Commission. The issue before the panel was whether the Appellant was still suffering from MVA-related injuries which prevented her from working.

The Appellant relied on the reports of various doctors who concluded that she still suffered from injuries as a result of the MVA. Although she was making some improvement, she was unfit to perform the duties of her employment. Prior to the injury, the Appellant suffered from occasional depression and anxiety, but submitted these were isolated incidents. She had been able to cope and had displayed resiliency. Her injuries following the MVA (along with post-accident stressors such as a loss of relationship, job and financial problems) exacerbated her depression and anxiety.

Counsel for MPIC submitted that the evidence established that MVA-related injuries did not prevent the Appellant from performing the duties of her employment. Although her driving phobia was a result of the MVA, her other injuries were linked to other, indirect causes. Medical reports concluded that most of the Appellant's current symptoms were related to conditions which pre-existed the MVA. Further, the Commission should not rely on the Appellant's narrative, as there were inconsistencies between her testimony and her caregivers' reports.

The Commission placed greater weight upon on the reports of doctors who treated the Appellant on a consistent basis in concluding that the Appellant's injuries were caused by the MVA. The Commission acknowledged that the Appellant had a history of medical problems. However, her caregivers had provided a diagnoses of PTSD from the MVA, with no evidence to suggest she suffered from this prior to the MVA. The substantial difference in her ability to cope and perform day-to-day activities following the MVA demonstrated the cascading impact of the MVA upon her and supported a causal connection between the MVA and her current condition. The Commission concluded that the Appellant was unable to perform the substantial duties of her job as a result of psychological injuries resulting from the MVA and she was entitled to receive IRI benefits on an ongoing basis.

Case #2

The Appellant was injured in an MVA in 2011 and was diagnosed with a neck strain. He reported his injuries to MPIC and completed an application for payment. He continued working as a pizza delivery boy but soon contacted MPIC and indicated he was no longer able to work due to increased pain. The Appellant had reported subsequent MVAs to his doctor, but failed to report them to MPIC. When the Appellant's file was reviewed by an MPIC health care consultant, MPIC was of the opinion that the initial injuries were a result of the reported MVA, but symptoms that continued to persist were not causally related. The issue before the Commission was whether the Appellant developed a physical impairment secondary to the MVA which rendered him incapable of performing his pre-MVA duties.

The Appellant contended that he was a healthy man prior to the MVA and was able to work daily. Following the MVA, he could no longer work at his job due to the stress on his body, but was able to find alternate work that was less strenuous on his neck. Although doctors did not tell him to stop working altogether, his suffering was evidenced by his constant need to take medication to control his pain.

MPIC submitted that after the initial MVA, the Appellant received chiropractic treatment and physiotherapy which resolved his injuries and allowed him to return to work. The Appellant was able to return to his same work immediately following the MVA, and only switched jobs after he was told that night driving was too dangerous. The Appellant had failed to show that injuries

sustained in the MVA prevented him from working or led to a condition which impaired his ability to work.

After examining the evidence, the Commission concluded that there was no causal connection between the MVA and the Appellant's current complaints. The evidence illustrated that following the MVA, the Appellant stopped working as a driver due to safety concerns. Further, the Appellant argued he could not work full time hours but provided no medical evidence to support the claim. Although medical reports were submitted acknowledging the Appellant's pain, the pain was a result of natural spine and musculoskeletal degeneration, not the MVA. The Appellant was not entitled to further PIPP benefits and the appeal was dismissed.

Case #3

The Appellant was injured in an MVA in 2011 and a subsequent MVA in 2012. He was diagnosed with a herniated disc and underwent surgery. He contacted MPIC as he was still experiencing neck and back pain. Both the case manager and IRO could not find a causal connection between his pain and the MVAs. He appealed to the Commission. The issue before the panel was whether the Appellant's back condition was causally related to the MVAs.

The Appellant relied on medical reports from his family doctor, physiotherapist and sports medicine specialist who confirmed that he had no history of back or leg pain prior to the first MVA. His pain increased following a shovelling accident, but his doctors were of the opinion that the shovelling had merely exacerbated the back problems caused by the MVAs. Any gaps in the Appellant seeking treatment could be explained by his attempts to manage the pain on his own. He had suffered minor pains and strains prior to the MVAs but he had never previously experienced persistent pain.

MPIC's health care consultant had reviewed the file and concluded that the MVAs did not play a significant or substantial role in the Appellant's symptoms. Counsel for the Appellant stressed that this was too high a test to meet and instead submitted that the proper test was to determine whether, on a balance of probabilities, the MVA caused or materially contributed to the Appellant's condition.

Counsel for MPIC submitted that the back symptoms were caused by other injuries and problems and were not caused by the MVA. The injuries sustained in the 2011 MVA were minor. The Appellant had declined hospital care and returned to work almost immediately. The injuries sustained after the Appellant's second MVA were also minor, as evidenced by the 8 month gap in pursuing physiotherapy treatment. MPIC's health care consultant's reports concluded that back pain does not need to be triggered by a severe accident but can arise naturally.

The Commission concluded that the IRO erred in its decision and found that a causal connection existed between the Appellant's current pain and the MVAs. The Appellant did not have a pre-existing back condition. He had occasionally suffered temporary aches and pains, usually following exertion. The panel accepted the report of the Appellant's orthopedic surgeon, who indicated that the Appellant now suffered from a chronic condition, as the 2011 MVA had caused or materially contributed to the Appellant's lumbar disc herniation with nerve root involvement. The panel accepted the Appellant's credible evidence that gaps in treatment were the result of

trying to work through his pain, having received advice that his problems were muscular and would improve with time. The panel found that the Appellant was entitled to PIPP benefits as a result of his MVA injuries.

Case #4

The Appellant was a passenger involved in an MVA in 2013. She reported to MPIC that she had injured her wrists by bracing herself on the dashboard when another vehicle stopped suddenly in front of her. Both the case manager and IRO concluded that there was insufficient evidence to support a causal connection between the Appellant's wrist injuries and the MVA.

Prior to the MVA, the Appellant was diagnosed with carpal tunnel syndrome and scheduled for surgery. The MVA occurred on the same day of the Appellant's first carpal tunnel surgery. She sought medical care for pain and swelling post-surgery, and later underwent the second surgery as scheduled, despite her ongoing pain. When the pain in the Appellant's wrists continued to persist following the second surgery, the Appellant believed that her ongoing pain was a result of the MVA rather than the two surgeries. She eventually filed a claim with MPIC nearly eight months after the MVA. The Appellant testified at the hearing and provided a report from her surgeon, who also provided testimony at the appeal hearing. He indicated that 99% of the surgeries he performs for carpal tunnel are successful with no ongoing pain or complications.

Counsel for MPIC submitted that no MVA as defined in the *MPIC Act* had occurred because there was insufficient evidence that any bodily injury had occurred. However, even if an accident occurred as defined in the *MPIC Act*, MPIC submitted the Appellant's wrist complaints were not casually related to the MVA. There were inconsistencies about what actually happened in the MVA so the mechanism of injury was unclear. If the Appellant was truly concerned that her hand had been injured in an MVA, she would have attended for medical attention after the MVA rather than just telephoning her doctor. Although the Appellant complained of pain, she was able to return to work after the second surgery. Counsel for MPIC argued that the surgeon who testified on behalf of the Appellant based his opinion regarding causation on an incorrect understanding of the mechanism of injury. Further, the surgeon never examined the Appellant after the MVA and based his opinion solely on the Appellant's subjective reporting.

The panel found that the Appellant was not a reliable historian and had concerns regarding her credibility. The panel recognized that the Appellant's surgeon opined that the MVA caused the Appellant's ongoing wrist problems. However, the panel found that there were some factual inaccuracies and misconceptions contained in the surgeon's reports. As well, the surgeon acknowledged there were other possible causes of the Appellant's ongoing wrist pain.

The Commission considered the Appellant's long history of bilateral hand problems predating the MVA, the carpal tunnel surgeries, the uncertain mechanism of injury, the lack of supporting documentation at the time of injury and in the weeks following the injury, the delay in reporting an injury to MPIC, the different diagnoses for the Appellant's ongoing wrist problems, and the various possibilities for the cause of the Appellant's ongoing wrist problems. All of these factors led the panel to conclude that the Appellant had not met her onus to prove a causal relationship between her wrists problems and the MVA. The appeal was dismissed.

3. Entitlement to Income Replacement Indemnity (IRI) benefits

Under the *MPIC Act*, an Appellant may be entitled to IRI benefits if he or she is unable to work for a period of time. Where a person is a non-earner at the time of the accident, subsection 86(1) of the *MPIC Act* entitles MPIC to classify him or her into a "determined employment" after the first 180 days after the accident, if they are unable to hold employment because of the accident. Pursuant to paragraph 110(1)(c) of the *MPIC Act*, an Appellant ceases to be entitled to IRI benefits when he or she is able to hold an employment that was determined for him or her under the legislation. Manitoba Regulation 37/94 provides that an Appellant is unable to hold employment when a physical or mental injury that was caused by the accident renders him or her entirely or substantially unable to perform the essential duties of the pre-accident employment.

Case #1

The Appellant was injured in an MVA in 2013 and was entitled to IRI benefits as a non-earner. After the first 180 days after the MVA, MPIC was required to determine an employment for the Appellant. The 180 day determination for the Appellant was administrative clerk. Three months after making that determination, the case manager issued a decision, finding that the Appellant was able to perform the duties of an administrative clerk and ending her IRI benefits. The Appellant appealed and the IRO upheld the decision of the case manager. The issue on appeal was whether the Appellant was entitled to further IRI benefits.

The Appellant attended a rehabilitation program which included typing exercises but the Appellant had difficulty with sitting and typing without pain. She submitted that MPIC based its decision to terminate her benefits solely on a rehabilitation report that did not adequately test her abilities. The doctor who wrote the report failed to expand on his conclusions and did not mention that the Appellant could not sit for long periods of time bent over at a computer. The Appellant's counsel also submitted that the recommendation in the report for ergonomic equipment was evidence that the Appellant was not fit for an immediate and unmodified return to work.

The Appellant had held management positions prior to the MVA and her determination of employment as an administrative clerk decreased her IRI benefits. She contended that MPIC failed to conduct an analysis of the physical demands of an administrative clerk and failed to offer to relocate her, due to the lack of such jobs in her community. After the Appellant's benefits were terminated, she continued to have difficulties finding a job and often worked with her spouse, who did the majority of the labour.

MPIC relied upon medical reports which showed that the Appellant had fully healed. MPIC argued that the Appellant contributed to her own pain by choosing to sit bent over, instead of listening to the doctor's recommendation to maintain proper posture.

The Commission noted that the Appellant failed to request a review of the determination of employment. Therefore, the Appellant's determined employment was administrative clerk and the panel was required to determine whether the Appellant could hold this employment. The panel agreed with MPIC that whether or not the determined employment is normally available in the region was not a factor to be considered in this particular case.

The panel accepted the rehabilitation doctor's evidence that after the completion of the rehabilitation program, the Appellant was capable of working in her determined employment without restrictions. The panel accepted the evidence of the rehabilitation doctor and MPIC's medical consultant that the Appellant had failed to use proper posture and therefore was not reducing the strain on her back when performing the duties of an administrative clerk. The Commission did not agree that potential employers would not allow the Appellant to change and shift positions as had been recommended.

Although the Appellant may have continued to feel pain, the Commission found that in this case, the existence of symptoms alone did not automatically mean that the Appellant was not functionally able to safely work. Considering the evidence as a whole, the panel did not accept that the Appellant was substantially unable to perform the essential duties of an administrative clerk at the time of her IRI benefit termination. The appeal was dismissed.

4. Entitlement to Benefits – Findings of Credibility and Reliability

In all appeals at the Commission, where an Appellant is seeking to overturn the decision of MPIC's internal review office and establish an entitlement to benefits, the onus (responsibility) is on the Appellant to establish his or her case. This can be done through documents, as well as through witness testimony. The Appellant is usually the primary witness. In the following cases, the Commission made findings regarding the credibility and reliability of the Appellant, which resulted in the denial of benefits under the *MPIC Act*.

Case #1

The Appellant was injured in an MVA in 2015. He sought IRI benefits, but he was unsuccessful because he had failed to provide documentation showing that he was employed at the time of the accident. The issue on appeal was entitlement to IRI benefits.

The Appellant argued that at the time of the MVA, he was working 20-25 hours per week as a handyman. In addition to this work, he did some odd jobs. Following the MVA, he had to abandon his work obligations due to his injuries.

MPIC submitted that the Appellant, being over 65, was not entitled to the claimed IRI benefits, as he did not hold remunerative employment at the time of the MVA. The only evidence that the Appellant had provided to support his claims of employment was the statement of a friend, who indicated that she had paid him for gas when he drove her around. MPIC submitted that this was payment for expenses, not remuneration for employment. When MPIC asked for income tax records and an Employment Verification Form, the Appellant could not provide them.

The panel noted that the Appellant provided no documents, such as work orders, receipts, invoices, copies of cheques, or bank deposit records, in support of his position that he was a self-employed handyman at the time of the MVA. Further, he provided no details in his viva voce evidence of what specific work he had done, when he performed this work, for whom he performed it and how much he earned. The panel agreed with counsel for MPIC that helping his friend by driving her around did not constitute paid work and did not meet the definition of employment under the *MPIC Act*.

Due to the fact that the Appellant was not able to provide clear and reliable testimony on the work he alleged he was performing at the time of the MVA, and since he provided no documentary evidence supporting his assertion that he was working at the time of the MVA, the Appellant was not able to establish his case. The appeal was dismissed.

Case #2

The Appellant reported that he was injured in 2014 when he fell off his scooter after a police car cut him off. Both the case manager and the IRO denied benefits. They did not accept that an MVA had actually occurred. The issue on appeal was whether the Appellant was injured in an accident falling under the scope of the *MPIC Act*, as a scooter accident does not entitle one to benefits unless an automobile in motion caused the accident.

The Appellant testified that he was returning home from a dialysis appointment when a police car stopped in front of him to investigate two individuals on the sidewalk. This caused him to fly off his scooter and injure his hip, but the police did not help him. He asked the police to call an ambulance but the officers just helped him back on the scooter. He then drove home and fell off his scooter again, not realizing that he had broken his left hip.

The Appellant's daughter also testified as to the events of that night, but indicated that when she arrived to assist her father at his home, he was sitting on the front step, upset, with his scooter lying on the ground 15 feet in front of him. The Appellant stressed that his daughter was a credible witness and testified honestly.

One of the police officers also testified. The officer stated that they had passed the Appellant two blocks before parking, and when the Appellant says that he fell, the cruiser was motionless. When the officers approached him, the Appellant did not display any behaviour which indicated that he was in pain. They found the Appellant lying on the ground near his scooter and helped the Appellant to stand. He did not complain of any injuries, climbed back on his scooter and drove away.

Counsel for MPIC relied on the officer's testimony and argued that the Appellant had not been hit by the police car. It was submitted that the reasons for the fall included the effects of the dialysis treatment, as well as the Appellant's inexperience driving his new scooter.

The Commission found that there were numerous inconsistencies between the documentary evidence and the testimony of both the Appellant and his daughter. There were also inconsistencies between the Appellant's evidence and the clear, consistent evidence of the police officer. These inconsistencies undermined the Appellant's credibility. The Commission found that the police officer's recollection of the events was more plausible.

The evidence did not establish that the Appellant had suffered from a hip or leg injury as a result of the incident behind the cruiser car. The Commission found that the Appellant did not have injuries caused by an automobile, and the appeal was dismissed.

Case #3

Section 160 of the *MPIC Act* states that MPIC may terminate benefits where the claimant knowingly provides false or inaccurate information to MPIC. It also allows for a termination of benefits where a claimant fails to follow or participate in a rehabilitation program, without valid reason.

In this case, the Appellant was involved in an MVA in 2010. She suffered several injuries and received benefits under the *MPIC Act*. MPIC arranged a rehabilitation program and also asked the Appellant to complete Daily Activity Log (DAL) forms. In addition, MPIC conducted video surveillance of the Appellant outside a clinical setting. The Appellant did not attend all of the scheduled rehabilitation sessions. MPIC further determined that the activities indicated on the DAL forms were inconsistent with the surveillance footage.

MPIC terminated the Appellant's benefits, on the basis that she knowingly provided false or inaccurate information, and that she failed to participate in the rehabilitation program without valid reason. MPIC also sought reimbursement of benefits paid to the Appellant, on the basis that she received benefits to which she was not entitled.

The Appellant acknowledged that her written statements and the surveillance were inconsistent, but argued that it was because she did not fill out the DAL forms every day. Filling out the DAL forms was a constant reminder of her limitations and she preferred to complete them all at one time. The Appellant suffered constant pain, but she was motivated to try to get better. With respect to the Appellant's lack of attendance at the rehabilitation program, the Appellant argued that the doctors pushed her too hard. As well, she didn't think the program would help her. It would have been more beneficial if MPIC had funded a certain dental procedure, as she cited an improvement to her health after paying for the procedure herself. Counsel for the Appellant acknowledged that her actions fell within the parameters of section 160 of the *MPIC Act*, but submitted that MPIC had erred in terminating her benefits.

Counsel for MPIC submitted that the Appellant knowingly provided false information in order to continue to receive benefits. Counsel pointed out that the medical director of the rehabilitation program, as well as one of MPIC's health care consultants, had both reviewed the video surveillance, and had provided reports, as well as testimony, regarding the differences between the Appellant's self reporting of her functional abilities and daily activities as compared to how she appeared on the surveillance videos. The Appellant presented herself to doctors as being disabled, with limited abilities, and incapable of improving; however, 16 randomly captured days of surveillance showed a normal individual, functioning normally in her daily activities, with no noticeable pain presentation for an extended period. Counsel argued that credibility is essential when assessing whether false information has been provided, and he pointed out several inconsistencies in the Appellant's evidence. With respect to the rehabilitation program, counsel pointed out that the evidence was that the Appellant attended only three days of the program.

The Commission considered the issue of the credibility of the Appellant. There were three areas of concern: First, while the Appellant testified that her medication allowed her to participate in day-to-day activities, she told her doctors that her medication was no longer helping her. If, in fact, the medication was helping her, she should have been able to perform the exercises in the

rehabilitation program. Second, the Appellant stated that after being out in the community, she would need to come home and "crash". This was inconsistent with the video footage, which showed her out for several hours during the day, several days in a row. Lastly, the Appellant testified that she was in "great health" prior to the MVA and that her use of medication was occasional. However, her doctor's reports indicated that she suffered from chronic neck and headache pain and took daily medication as a result of another MVA years prior. When pressed, on cross-examination, regarding matters of inconsistency, the Appellant was often either confrontational or evasive. The Commission found that the inconsistencies were not reasonably explicable. Combined with the Appellant's demeanour under cross-examination and taking into account the fact that the inconsistencies bore on the fundamental matters at issue, the Commission found that the Appellant was not a credible witness on the fundamental issues.

Having made that finding regarding the Appellant's credibility, the Commission then considered the main questions in the appeal. The Commission determined that the Appellant had knowingly provided false information to MPIC. There were numerous instances of false reporting and false information provided by the Appellant to MPIC and its agents. As well, the Appellant and her counsel acknowledged that her actions contravened the provisions of section 160 of the *MPIC Act*. Similarly, it was clear that the Appellant had failed to attend all of the scheduled sessions of the 10 week rehabilitation program provided for her by MPIC. The Commission found that she did not have a valid reason for her failure to attend the program. The Commission found that the Appellant's IRI and personal care assistance (PCA) benefits were properly terminated. Finally, the Commission found that the Appellant was required to reimburse MPIC for IRI and PCA benefits she had received to which she was not entitled.

5. Reimbursement of Expenses

The *MPIC Act* and regulations contain many provisions dealing with the reimbursement of expenses. Paragraph 136(1)(d) of the *MPIC Act* provides for the reimbursement of expenses which are prescribed by regulation. Section 138 of the *MPIC Act* provides that, subject to the regulations, MPIC shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a claimant. Subsection 10(1) of Manitoba Regulation 40/94 also addresses rehabilitation expenses, such as mobility aids and medically required beds. Section 38 of that same Regulation provides for the reimbursement of medication that was required for a medical reason resulting from the accident.

The following cases illustrate the issues faced by the Commission when considering claims for reimbursement of various expenses. They also illustrate issues that can arise where claimants who have significant injuries, or long-standing claims, develop long-term relationships with MPIC.

Case #1

In this case, the Appellant was seriously injured in an MVA in 2002. She was ejected through the front window of the vehicle and suffered numerous injuries, including multiple bone fractures and a traumatic brain injury (TBI). She was 18 at the time of the MVA and had not finished grade 12. She required multiple surgical procedures, and underwent extensive rehabilitation. She received benefits under the *MPIC Act*. In addition to various treatment and IRI benefits, the Appellant received permanent impairment benefits under the *MPIC Act* in the amount of 84.4% of the maximum entitlement.

In 2004, MPIC funded the Appellant's purchase of a mattress and box spring, based on the recommendation of her physiotherapist. In 2015, the Appellant approached MPIC and asked that the purchase of a new mattress be funded, because she was having ongoing problems due to her MVA injuries. Her request was denied by the case manager and the IRO. After MPIC denied the Appellant's funding request in 2015, she did not buy a new mattress. However, she did eventually buy a mattress two years later, and then sought reimbursement from MPIC for the purchase. MPIC denied reimbursement on the basis that the purchase of a new mattress was not medically required.

The Appellant argued that she continued to suffer from the effects of the MVA. MPIC was aware of this, as they had recently approved the funding for the purchase of a treadmill, as well as acupuncture treatments. She required a good night's sleep for good physical and mental health, to aid in her overall rehabilitation. Her general practitioner supported her purchase of a new mattress and wrote a letter to that effect to MPIC. Her psychologist also wrote a letter to MPIC, supporting that she needed a good night's sleep; due to her TBI, it was important for her emotional stability. The Appellant worked hard for optimal health and she noted that a comfortable mattress had helped her achieve that. She said that rest was important to her cognitively. Therefore, the purchase of the mattress was medically required.

Counsel for MPIC submitted that the request for the mattress came 13 years after the MVA, at a time when the Appellant would have reached maximum medical improvement. The mattress was therefore not medically required under the legislation, because the *MPIC Act* and regulations only covered devices used for rehabilitation. The reports from the Appellant's doctors did not indicate how a new mattress would help her to sleep better, nor how sleeping better might impact her emotional well-being. The Appellant did not provide any medical evidence to indicate improvements in her emotional stability since purchasing the mattress.

The Commission found that the reimbursement to the Appellant for the cost of a new mattress would be considered to be medically required. The report of the Appellant's treating physician noted that she had sustained severe pelvic and femur injuries which will never heal completely, and that she suffered from disrupted sleep due to an old and worn out mattress. The Commission also reviewed the documentary evidence of the psychologists who assessed the Appellant in connection with the significant MVA-related psychological injuries she suffered. The Commission noted that the Appellant continued to have functional impairment and emotional dysregulation related to her TBI, and as such MPIC continued to fund her psychological treatments. The Appellant's psychological injuries had a significant impact on her well-being, including limiting her ability to work for pay. Her treating psychologist noted that the Appellant required routine, especially with regards to sleep, and that she was more emotionally dysregulated when she was not sleeping regularly. The Appellant's requirement for a full night's sleep went beyond being merely beneficial for her; the Commission found that it was medically required. Therefore, MPIC was required to reimburse the Appellant for the cost of her new mattress.

Case #2

The Appellant was seriously injured in a motorcycle accident in 1998. His left leg was crushed, and had to be amputated below the knee. The Appellant received benefits under the *MPIC Act*, including rehabilitation treatment, in order to assist him in using his prosthetic leg. He was also required to use a wheelchair at times.

Prior to the MVA, the Appellant rode two-wheeled motorcycles. He continued to ride a two-wheeled motorcycle after the MVA, but he eventually began to worry about his safety following the amputation. In 2010, he purchased a three-wheeled motorcycle and requested that MPIC reimburse the expense. The IRD found that he should be allowed reimbursement for the price difference between a two-wheeled motorcycle and a three-wheeled motorcycle. The issue before the Commission was whether the reimbursement was properly calculated.

The Appellant argued that he had asked the case manager to pay for the entire amount of the three wheeled motorcycle, but the case manager told him that MPIC would only pay him the difference in price between a three-wheeled motorcycle and an equivalent two-wheeled motorcycle. He submitted that MPIC had underpaid him, basing its payment on too low a price for the three-wheeled motorcycle. He argued that the actual price difference between these two motorcycles is higher, and is similar to the cost of converting a two-wheeled motorcycle into a three-wheeled motorcycle.

Counsel for MPIC acknowledged that as a result of the amputation caused by the MVA, the Appellant was no longer able to safely ride a two-wheeled motorcycle, which had been his primary mode of transportation when seasonally appropriate. Therefore, when the Appellant requested that MPIC fund the difference between a two-wheeled motorcycle and a three-wheeled motorcycle, the case manager authorized reimbursement of the price difference. The case manager sought quotes from dealerships to identify the cost of an equivalent two-wheeled motorcycle and compared these to the actual price that the Appellant paid for his three-wheeled motorcycle. MPIC paid that price difference to the Appellant. Counsel submitted that MPIC paid a reasonable amount towards the cost of the Appellant's three-wheeled motorcycle, to facilitate his continued motorcycle use in accordance with section 138 of the *MPIC Act*.

The Commission noted that had the Appellant approached MPIC in advance of purchasing the three-wheeled motorcycle, the Appellant could have requested MPIC to fund the entire purchase price, and it is possible that MPIC may have been required to do so. However, the Appellant did not approach MPIC in advance of making the purchase. The Appellant went to the case manager only after having already purchased the three-wheeled motorcycle. Counsel for MPIC had advised that if the Appellant had approached MPIC in advance of the purchase, MPIC would likely have paid for the conversion of the Appellant's two-wheeled motorcycle, rather than the purchase of a new three-wheeled motorcycle, as this would have been the more economical option. The Commission considered that this would have been a reasonable decision by MPIC, as the conversion would have been a reasonable way to contribute to the rehabilitation of the Appellant under section 138 of the *MPIC Act*, by providing him with a three-wheeled motorcycle in order to facilitate his return to a normal life and reintegration into society. The Commission therefore considered it to be reasonable to use the cost of the conversion under subsection 10(1) of the Regulation as a benchmark for the amount of the reimbursement that should be paid to the

Appellant. The Appellant was therefore awarded a further amount, beyond what had already paid been paid to him by MPIC.

Case #3

The Appellant was injured in an MVA while riding his bicycle in 1994. He attended to the emergency room and received treatment. In October 1999, the Appellant asked MPIC to reimburse him for prescription medication which he had purchased to treat left elbow epicondylitis. The IRD found that the left elbow epicondylitis was not caused by the MVA. The Appellant, a Francophone, filed a Notice of Appeal in French with the Commission, in November 2000.

The Appellant's appeal regarding the prescription medication was held in abeyance while an earlier appeal, related to IRI benefits, was heard and decided by the Commission and while the Appellant filed an application for leave to appeal with the Manitoba Court of Appeal. That took a considerable length of time, but the Appellant's application for leave to appeal was eventually denied by Court in 2014 (leave to appeal to the SCC was dismissed in October 2015).

The appeal regarding the prescription medication resumed in 2016. In 2017, MPIC sent the Appellant a cheque for the amount of his medication expense, together with interest. MPIC then took the position that the Appellant's appeal should be dismissed, as there was no longer an issue for the Commission to deal with. The Appellant declined to withdraw his appeal.

Therefore, a hearing was scheduled, restricted to the issue of whether the Appellant's claim for reimbursement for the purchase of medication was moot. As noted above, the Appellant was a Francophone. He requested that his hearing be conducted in the French language. The Commission advised the parties that the hearing would be conducted in French and that translation/interpretation assistance could be provided, if requested in advance. At the hearing, a preliminary issue arose, related to the French language.

Preliminary issue: French Language

The hearing was held before a panel of three Commissioners, all of whom were competent to hear the appeal in French. Two qualified interpreters were present, to assist the panel, if the need arose. Counsel for MPIC, an English speaker, appeared with someone to assist him, although it was not made clear whether that person was an interpreter, and her input was not sought by counsel for MPIC when either the Appellant or the Chair spoke in French. Counsel for MPIC communicated in English and did not ask his assistant to translate for him. The Appellant made a preliminary objection to the fact that counsel for MPIC appeared at the hearing unprepared to conduct the matter in the French language. The Appellant asked that the Commission adjourn the hearing until MPIC could appear with a lawyer able to proceed in French. Counsel for MPIC did not attend on the second day of hearing, although MPIC had been provided with a formal notice of hearing.

The Appellant argued that the duty of the Commission to provide service in French applies to MPIC as much as to the Commission and requires that MPIC should have a French-speaking lawyer to represent the Corporation. On the second day of hearing, the Appellant further argued that his language rights were not respected by MPIC. He stated that counsel for MPIC appeared on the first day of hearing unprepared to proceed in French, and failed to appear on the second day

of hearing. He argued that the Commission and MPIC have an obligation to provide services equally in French and English.

Counsel for MPIC noted, in English, that he had submitted, in advance of the hearing, a written submission in English and in French, but he declined to respond directly to the Appellant's objection, despite being offered more than one opportunity to do so.

The Commission considered the Appellant's objection in light of the refusal of MPIC to respond. In the normal course of a dispute, if an objection is raised by one party, the other party will respond. In this case, MPIC declined to make any response. As a result, the Commission sustained the Appellant's objection. As a result of the decision regarding the Appellant's objection, the Commission determined that it would be necessary to reconvene the hearing on another date, when MPIC could appear with counsel who would be capable of conducting the hearing in the French language.

(Approximately 4 months after the first day of hearing, counsel for MPIC wrote to the Commission and stated that MPIC did not believe that the Commission had the jurisdiction or authority to direct any attributes a lawyer representing MPIC must have, including the ability to speak French. The Commission interpreted this comment as a submission directed at the Appellant's objection made on the first day of hearing; however, this letter was received after the time when submissions were invited in response to the objection, and subsequent to the panel having made its ruling, as discussed above. As noted above, MPIC did not attend on the second day of the hearing.)

In its Reasons, the Commission reviewed a 2018 decision of the Supreme Court of Canada, as well as recent policy pronouncements from the government of Manitoba, and concluded that the Commission has the responsibility to give full effect to and participate actively in protecting the language rights of appellants appearing before it. To achieve this, MPIC, as a Crown Corporation which is an automatic party in all cases that are heard by the Commission, must be able to fully participate in the Commission's process, in the official language of the appellant's choice. Otherwise, the right of appellants to be heard at the Commission in the language of their choice would be hollow. In the specific circumstances of this case, the Commission concluded that MPIC was required to attend at the second day of hearing with counsel prepared to conduct the hearing in French. The Commission further concluded that the conduct of MPIC in this case reflected a disregard for the Appellant's language rights.

Main Issue: Mootness

As noted above, the main issue for consideration by the Commission was MPIC's motion that, due to its payment to the Appellant of the medication expense, together with interest, the Appellant's appeal was moot.

Relying on the leading Supreme Court of Canada case, MPIC argued that the Appellant's appeal was moot because there was no longer any relief which could be granted to him. MPIC had already reimbursed to the Appellant the amount of his medication expense, together with interest. If the issue is resolved, the Commission should decline to hear it, particularly where the issue is not of great public importance. MPIC therefore argued that the Commission should dismiss the appeal.

The Appellant argued that the matter had not been resolved, because MPIC refused to admit liability, and therefore causation was still a live issue between the parties. Although he acknowledged that he had no other receipts in regard to his elbow injury, he said that he had ongoing problems and was told by his doctors that it would never heal. The Appellant also wanted to assert additional claims regarding IRI, but the Commission noted that the IRI matter had been finally determined by the decision of the Court of Appeal in 2014.

The first question that the Commission considered was whether the Appellant's appeal was moot. Since MPIC had not admitted liability, it had not been decided whether the left elbow injury was a result of the MVA. Despite this, the Commission determined that any hearing in this matter would not have any practical effect on the rights of the parties, because MPIC had already reimbursed to the Appellant the cost of the medication that he had purchased, together with interest, and the Appellant had no other expenses in respect of his left elbow injury. For this reason, the Commission found that the Appellant's appeal was moot.

The Commission then considered a second question: even if the Appellant's appeal was moot, should the Commission hear the Appellant's appeal? The Commission would have the discretion to do so, upon a consideration of three factors: the adversarial nature of the dispute, the judicial economy of proceeding with the hearing and the public importance of the matter. In this case, after weighing the factors, the Commission declined to exercise its discretion to hear the Appellant's appeal, because the Appellant had received the remedy he sought and was not seeking any further remedy in respect of his left elbow injury that the Commission had the ability to award.

Leave to Appeal

The Appellant has sought leave to appeal the Commission's decision to the Manitoba Court of Appeal. The leave application has not yet been heard.

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