

# **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by M. Z.  
AICAC File No.: AC-00-120**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Ms. Yvonne Tavares  
Mr. Colon C. Settle, Q.C.

**APPEARANCES:** The Appellant, M. Z., appeared on her own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Mark O'Neill.

**HEARING DATE:** April 17, 2002, January 17, 2003 and March 11, 2003

**ISSUE(S):** Reimbursement for dental treatment

**RELEVANT SECTIONS:** Section 136 of The Manitoba Public Insurance Corporation  
Act (the "MPIC Act") and Section 5 of Manitoba Regulation  
40/94

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

## **Reasons For Decision**

M. Z. (hereinafter referred to as the "Appellant") was involved in a motor vehicle accident in [text deleted] on December 11, 1997. She was rear-ended and, as a result thereof, suffered injuries to her neck. At the time of the accident she felt a crack to the left side of her neck spreading into her head. The next day she felt pain in her neck. By the third day she had severe pain to her neck, could not move the neck and had difficulty keeping her head straight. She did not appear to have any direct injury to any other part of her body and, in particular, no head injury. There was no loss of consciousness and she was not taken to the hospital. The Appellant attended for treatments of a chiropractor and a physiotherapist after the accident.

On May 29, 1998 (a period of approximately six months after the accident) the Appellant attended at the office of Dr. Babick complaining of low back pain which radiated to her hips, numbness to her fingers and toes and twitching in her left eye. Dr. Babick referred the Appellant to Dr. Dominique, a neurologist, who examined her on October 15, 1998. Dr. Dominique, in his report to MPIC dated October 28, 1998, described the symptoms that the Appellant was complaining of which included:

1. “Clenching of the jaws;
2. Pain in the teeth, left side more than right, fluctuating;
3. Pain in the jaws, uncomfortable positioning of the jaw, as well as twitching to the left eye, soreness in the head, intermittent disorientation, memory loss, etc.”

Dr. Dominique, in his report to MPIC, stated the conglomeration of symptoms was not suggestive of an organic disorder and none of the symptoms had any connection to the accident. Dr. Dominique concluded that the Appellant did not suffer from any organic neurological disorder of any kind resulting from her accident. Further, he stated that he could not see any neurological indication why the Appellant “*should develop the conglomeration of her multitudinous symptoms from her accident on an organic basis.*”

On December 18, 1998 MPIC’s Case Manager wrote to the Appellant and advised her that, based on the opinion of Dr. Babick, she had suffered a whiplash-type injury to her cervical spine and lumbosacral sprain, that chiropractic care and athletic therapy had been undertaken and despite this, symptoms have persisted which Dr. Babick was unable to medically explain. The Case Manager, in his letter to the Appellant, further stated that Dr. Dominique concluded that the Appellant’s numerous symptoms are not causally related to the motor vehicle accident and that no further therapeutic intervention was required. The Case Manager therefore advised the

Appellant that no further coverage of any type of therapeutic intervention would be provided beyond January 15, 1999.

On February 5, 1999 Dr. Brian Lukie wrote to MPIC and informed them that he examined the Appellant on January 4, 1999 and concluded the Appellant continues to experience myofascial pain to the cervical lumbar region, recommended a reconditioning program together with medication, and felt that there was a good prognosis for full recovery of six to eight weeks with reconditioning and progressive exercise.

On February 15, 1999 MPIC's Case Manager wrote to Dr. R. Mazurat, Dental Consultant for MPIC, and stated:

“She has complained of grinding her teeth and saw a student of U of M Facility Dentistry H.S.C. and has been advised to wear a night guard appliance. Dr. M. MacKay of our Medical Services Team verbally acknowledges that no consideration is warranted to consideration of the appliance.”

The Case Manager requested Dr. Mazurat to advise as to his opinion on the recommended use of the night guard appliance.

On February 22, 1999 Dr. Mazurat replied to the Case Manager and stated:

“In general, based on the history and reported symptoms we accept the premise that the MVA is a contributing cause of the current symptoms. Therefore we do generally cover the appliance.”

On February 25, 1999 the Case Manager wrote to Drs. Don Davidson and Michael Shapiro at the University of Manitoba, Faculty of Dentistry, who had been providing dental treatment to the Appellant, indicating that MPIC had approved treatment that the hard acrylic occlusal splint (hard night guard) as recommended in their dental report to MPIC.

On June 14, 1999 the Case Manager wrote to Drs. Davidson and Shapiro at the University of Manitoba, Faculty of Dentistry, and indicated that MPIC understood that the Appellant had developed problems with grinding of her teeth which she claims resulted in a tooth being affected and having to be subsequently extracted. The Case Manager further indicated that, based on the recommendations of Drs. Davidson and Shapiro, on November 23, 1998 MPIC had approved their recommendation of treatment by supplying the Appellant with a hard night guard. The Case Manager further informed the two dentists that the Appellant had now advised MPIC that due to the delay in approving the hard night guard the tooth became infected resulting in extraction. The Case Manager requested a report from two doctors in respect of this matter.

Dr. L. Stockton replied to MPIC's letter of June 14, 1999 and informed MPIC:

“She was first seen as a patient at the Faculty in January 1997. During that year she received endodontic, restorative and periodontal dental treatment. In June of 1997 her treatment was placed on hold due to an outstanding balance. Her restorative treatment continued in April 1998. In September 1998 she was seen and received a new treatment plan for a hard nightguard appliance as she complained she was constantly grinding and clenching her teeth. In November 1998 she had tooth #37 extracted as a result of decay, under an existing crown, approximating the pulp. It was her decision to extract rather than restore. In April 1999 the hard nightguard was delivered.” (underline added)

MPIC also requested a dental opinion from Dr. Mazurat with respect to tooth #37 in a letter dated July 8, 1999. In response Dr. Mazurat wrote to MPIC in a note dated July 12, 1999 and stated:

“The problem with the tooth was not from wear; it was pre-existing and the nightguard would have made little difference. The tooth could have been restored but it was on hold because of financial constraints.

MPI is not responsible for tx or impairment.”

The Appellant was complaining about chronic pain resulting from the accident and grinding of teeth. As a result, she sought a second opinion from the Garden City Dental Centre.

Dr. Zimak, who is associated with the Garden City Dental Centre, wrote to MPIC on August 30, 1999 and stated:

“Patient presents with chronic jaw pain sustained in a auto accident. The records we are requesting for authorization are necessary in order to provide you with further information as to our proposed treatment.”

Upon receipt of that report setting out a proposed treatment, the Case Manager sought advice from the Dental Consultant, Dr. R. Mazurat, in respect of Dr. Zimak’s request. Dr. Mazurat responded by note to MPIC, dated September 13, 1999, and stated that the request by Dr. Zimak for treatment was a duplication of treatment that had been previously provided. He further stated that the Appellant “. . . had an appliance provided after the diagnosis & treatment planning. She should continue with followup of that appliance.”

On September 30, 1999 Dr. Zdan Shulakewych, of the Garden City Dental Centre, wrote to the Case Manager and indicated:

“[M. Z.] presented to my clinic for an overall assessment. Following her accident in December, 1997, she presented with hot/cold/pressure sensitivity on #16/#26/#46. She exhibits tremendous signs of wear, through grinding and clenching her teeth. She is presently wearing a night guard which has worn through both sides. This is just 3 months after delivery. [M. Z.] will require a crown on #16/#26/#46 TMJ treatment and proper oral hygiene.

In meeting with [M. Z.], I can attest to the fact that she is suffering from extreme TMJ pain (clicking on both opening and closing) ever since the accident. I treated [M. Z.] at the University of Manitoba Dental school and she has never had this kind of pain. Her daily activities have been tremendously affected. She has trouble sleeping. I have referred her to Dr. Gary Zimak, in our office, for immediate TMJ assessment and treatment. His report will be forthcoming.

Speaking from personal experience in dealing with car accident patients, head, neck and shoulder problems are a serious matter. The effect it has on a person, both physically and

mentally, is astonishing. One has to put one's life on hold to deal with this and improve one's health. Relationships and life become strained. Please review our treatment plans and inform me as soon as possible. I can be reached at the Garden City Dental Centre 694 2042 or the Southwood Dental Centre 275 1000."

On October 18, 1999 MPIC informed the Appellant:

"Regarding the dental work recommended by Dr. Gary Zimak, his information has been reviewed, and it is our opinion that this is essentially a duplication of treatment that has already been provided. It is our opinion, based upon the available dental documentation, that the problem with the teeth was due to a pre-existing condition and the Night Guard, even though supplied would have made little difference to your eventual outcome/end result.

Therefore, it is our opinion that any further dental work is not MPI's responsibility and that you are not entitled to income replacement benefits."

As a result of receiving the decision of the Case Manager rejecting her claim for reimbursement of dental expenses, the Appellant, on December 7, 1999, made Application for Review by MPIC of the Case Manager's decision.

On February 7, 2000 the Internal Review Officer conducted an internal review of the decision by the Case Manager denying reimbursement to the Appellant for dental work.

The Internal Review Officer informed the Appellant in a letter dated March 3, 2000 that subsequent to MPIC's Dental Consultant reviewing the Appellant's file, MPIC had received some dental records from the University of Manitoba Clinic in a report from her treating dentist. As a result, the Case Manager intended to refer the file back to the Dental Consultant so that he could assess this new information.

On March 6, 2000 the Internal Review Officer wrote to the Dental Consultant, Dr. R. Mazurat, and stated:

“Would you please assess this claimant’s entitlement to dental benefits. She thinks the decay under number 37 resulted from her having worn through the existing crown grinding her teeth. She attributes the grinding to the car accident. As you know, this tooth has been extracted. Is she entitled to a Permanent Impairment benefit for the missing tooth? Is she entitled to benefits for bridgework to replace the tooth? She complains of TMJ problems. Is she entitled to a Permanent Impairment benefit for that? Is she entitled to treatment benefits?”

On March 27, 2000 the Internal Review Officer wrote to the Appellant and stated:

**“TOOTH #37**

At the hearing, you took the position that the decay under the existing crown on tooth #37 resulted from your having worn through the crown by grinding your teeth. You attributed the grinding to your car accident. The tooth was subsequently extracted. I asked our dental consultant if you were entitled to a Permanent Impairment benefit for the loss of tooth #37. I also asked if you were entitled to benefits for bridgework to replace the tooth. Our dental consultant is of the view that the problems you experienced with tooth #37 were not related to your motor vehicle accident. The cause of the problems was dental in origin. Accordingly, you are not entitled to an impairment benefit. Neither are you entitled to treatment costs, such as those that might be incurred in installing bridgework to replace the tooth.

**TEMPOROMANDIBULAR DYSFUNCTION (“TMD”)**

Our dental consultant feels that the symptoms you have been experiencing are jointly caused by stress from the motor vehicle accident and pre-existing habits involving clenching and grinding your teeth. Our consultant feels that coverage should be extended to the treatment costs you have been incurring for conservative appliance therapy. He notes that your need for such therapy “may be ongoing”. For purposes of this review decision, I interpret that to mean that the Corporation will cover any outstanding costs related to conservative appliance treatment up to the present date. The Corporation will assess your entitlement to coverage for future costs relating to conservative appliance treatment as they arise. Furthermore, you may be entitled to a Permanent Impairment benefit with respect to your TMD if your symptoms do not resolve. This issue will have to be assessed by your Case Manager as the dental evidence becomes available.”

On April 10, 2000 Dr. Mazurat wrote to the Internal Review Officer and stated:

“At your request I have again reviewed this file. In my opinion the situation is as follows:

1. The major problem is parafunction/grinding of the patient’s teeth. This problem is patient induced and the role of the MVA is possibly contributing to stress which may increase the tendency to parafunction. We accept this and have covered splint/appliance therapy. If the patient has worn through the splint we will cover a rebase/replacement.

2. The wear of pre existing crowns is not MVA related, it is due to previous wear and this work is not covered.
3. We had previously recommended the patient continue with treatment for her parafunction and return to the clinic where it was made. We however have also said we would cover current splint therapy – even though the primary cause for parafunction is not the MVA.”

On April 20, 2000 the Internal Review Officer wrote to the Appellant and stated:

“My March 27<sup>th</sup>, 2000 review decision decided, first, that Manitoba Public Insurance Corporation (“MPI”) would pay for all of the conservative dental appliance treatment you had received to date. Inquiries conducted by your adjuster indicate that you have received no such treatment.

Secondly, my review decision of March 27, 2000 decided that MPI would assess your “entitlement to coverage for future costs relating to conservative appliance treatment as they arise.” Your adjuster has recorded on the file that he has contacted your dentists. It appears that he has been told that they will not repair your existing appliance or supply a new one until other dental work you require has been completed. The other dental work in question does not appear to be related to your motor vehicle accident. Accordingly, your adjuster has decided that the Corporation is not presently in a position to make any payments with respect to any dental appliances you may require. Clearly, if a dentist prescribes a dental appliance for you at some future date, MPI would reopen the matter and reassess this decision.”

Dr. Zdan Shulakewych wrote to the Internal Review Officer on June 7, 2000 and stated:

“[M. Z.] has undergone dental treatment at the dental college (1997-1998). She has undergone periodontal, restorative, and endodontic treatment. As you know [M.Z.] was involved in a motor vehicle accident (December 1997). Since then her jaws have caused her considerable aggravation. She complains of speech difficulties, biting tongue and cheek, clenching, jaw noises, teeth not meeting, headaches and ringing in her ears.

From my experiences with [M. Z.’s] treatment at the dental school, I found that her overall dental health was good. She came in for periodontal maintenance and addressed problems as they arose. From checkups done at the college, it appears that there was no urgent need for immediate dental treatment on any of her teeth except that work which was done. Teeth were heavily restored on the molar region.

Following her accident her above mentioned symptoms began to appear. Since then, upon examination in August 1999, I observed severe wear on the teeth especially #16,26,46. She was seen by Dr. Zimak in our office, who proposed a new night guard appliance. The appliance she received at the dental college in April 1999 has already worn through. My treatment plan for [M. Z.] includes cores, full crowns on #16,26,46 and a new night guard. No evidence of severe grinding and clenching or jaw problems

(from my experience) were observed at the dental college. Since 1997, her problems have increased. The increased wear has caused occlusal problems; which have led to her immediate need for restorative treatment on tooth #16 (filling fell out), which has been recently temporized awaiting definitive treatment. Tooth #37 had an existing crown, which due to TMJ problems, fell off in September 1998, this led to subsequent extraction of this tooth.

. . . . After a diagnosis of fibromyalgia, individuals can suffer increased TMJ problems. Pain in the neck, upper back, along with occlusal problems can become greatly magnified. An increase in [M. Z.'s] TMJ problems is likely to have accelerated [M. Z.'s] wear of her back teeth. Such a condition, if not treated immediately may cause rapid damage to oral structures, as we see here.

Please reassess [M. Z.'s] need and compensation for further dental treatment at this point.”

In reply to Dr. Shulakewych’s letter, the Internal Review Officer wrote to him on June 13, 2000, and stated:

“I have your letter of June 7, 2000. There must be some misunderstanding. I understood that [M. Z.] had made copies of the relevant correspondence available to you. Perhaps this is not the case.

In any event, this second Review is not intended to revisit the question of your proposed treatment plan. That issue has already been resolved.

The only issue on the second Review has to do with the “new night guard appliance” proposed by Dr. Zimak of your office. The Corporation has already indicated a willingness to pay for this new appliance. What would be of assistance is an explanation as to why it has not been supplied.”

In reply to the Internal Review Officer’s inquiry, Dr. Shulakewych wrote to him and stated:

“I received your letter of June 13, 2000. The reason we have not supplied [M. Z.] with a new night guard appliance is because she requires restorative treatment first. The proposed crowns need to be done first, otherwise the nite guard will not fit properly after the crowns are placed. Should the crowns be done after the nite guard is made, it will be necessary to make a new appliance to ensure a proper fit.”

On July 6, 2000, the Internal Review Officer wrote to the Appellant and stated:

“This is further to our recent telephone conversation. You confirmed that you no longer required a hearing on this Review.

As you know, I had intended to render a Review decision immediately. On reviewing the

file, however, I concluded that there is perhaps some new information in Dr. Shulakewych's June 7, 2000 report which might, possibly, affect the conclusions of our dental consultant. Out of an abundance of caution, I have referred your whole file back to our dental consultant. I have asked him to advise whether anything in Dr. Shulakewych's recent reports alters his opinion in any way.

As soon as I have that advice from our dental consultant, I will be in a position to render a Review decision."

The Internal Review Officer, upon receiving advice from MPIC's Dental Consultant, wrote to the Appellant on July 19, 2000 and provided the Dental Consultant with Dr. Shulakewych's dental reports of June 7, 2000 and June 15, 2000 and stated:

"I accept the advice given by our dental consultant. Accordingly, the situation is still essentially that described in my letter to you dated April 20, 2000. MPI has extended coverage to you for "conservative appliance treatment" as needed. Your own dentist has declined to repair your existing appliance, or to supply a new one, until other dental work you require has been completed. That other dental work is not related to your motor vehicle accident. Your case manager decided that the Corporation is not in a position to make any payments whatever for any dental procedures you may require. If a dentist prescribes a dental appliance for you in the future, we will reopen the matter and reassess this decision.

Your case manager's decision was a reasonable one. Indeed, since your dentist has declined to supply a dental appliance, it is hard to see what other decision your case manager could have made. Nevertheless, his decision was, strictly speaking, a decision in respect of a claim for compensation within the meaning of Section 170 of *The Manitoba Public Insurance Corporation Act*. That is why you were entitled to have a Review. That has now been completed and your case manager's decision has been confirmed."

The Internal Review Officer had finally confirmed the decision of the Case Manager and rejected the Appellant's Application for Review and, as a result, the Appellant filed a Notice of Appeal dated October 30, 2000.

### **APPEAL**

The issue in appeal was the entitlement to reimbursement for dental work beyond coverage for a conservative appliance treatment. The relevant provision of the MPIC Act and Regulations are

as follows:

**Reimbursement of victim for various expenses**

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

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

**M.R. 40/94**

**Medical or paramedical care**

5 Subject to sections 6 to 9, the corporation shall pay an expense incurred by a victim, to the extent that the victim is not entitled to be reimbursed for the expense under *The Health Services Insurance Act* or any other Act, for the purpose of receiving medical or paramedical care in the following circumstances:

- (a) when care is medically required and is dispensed in the province by a physician, paramedic, dentist, optometrist, chiropractor, physiotherapist, registered psychologist or athletic therapist, or is prescribed by a physician.

The appeal hearing commenced on April 17, 2002. At this hearing the Appellant reviewed the dental reports of Dr. Shulakewych, her dentist, and argued that her dental problems arose as a result of the motor vehicle accident. She further requested she be reimbursed in respect of the cost of all dental treatment which should be provided by Dr. Shulakewych.

Legal counsel for MPIC disagreed with the Appellant's submission. He referred to the dental opinions of MPIC's Dental Consultant, Dr. Mazurat, that the Appellant's dental complaints pre-existed the motor vehicle accident and were not caused by the motor vehicle accident and, as a result, MPIC was not responsible for reimbursing the Appellant in respect of any dental treatments with the exception of repairing the appliance which MPIC had agreed to fund earlier.

In view of the conflict in respect of the dental opinions, having regard to the testimony and

submissions of the Appellant, the Commission decided to obtain an independent dental opinion from Dr. Koltek pursuant to Section 183(4) of the Act and adjourned the proceedings.

Dr. Koltek provided two reports to the Commission dated September 23, 2002 and December 1, 2002. In his report dated September 23, 2002 Dr. Koltek stated that there was a connection between the motor vehicle accident and the damage to the Appellant's teeth number #15, #16 and #45. However, Dr. Koltek was unable to conclude that in respect of the Appellant's complaints in respect of other teeth, that there was a causal connection between the dental problems relating to these teeth and the motor vehicle accident.

In his report, Dr. Koltek also stated in respect of:

- (a) tooth #25 that the records show a mesial occlusal distal amalgam as a pre-existing restoration.
- (b) tooth #26 that no further treatment was required.
- (c) tooth #27 that the records show an occlusal amalgam as a pre-existing restoration.
- (d) tooth #36 that this tooth was extracted on October 4, 2001 and the loss of this tooth is not related to parafunctional activity.
- (e) tooth #37 that this tooth was extracted on November 10, 1998 and that "*it is my opinion that this delay in the night guard being approved and its eventual delivery had little bearing on the loss of tooth #37.*" This tooth was lost for reasons which are not attributable to the increase in parafunction activity and/or occlusal instability.

The Commission reconvened the appeal hearing on January 17, 2003. At this hearing, the Appellant and MPIC's legal counsel agreed to a Consent Order which the Commission issued on January 20, 2003 and which stated:

"Whereas Counsel for the Manitoba Public Insurance Corporation ("MPIC") has agreed that the motor vehicle accident of December 11, 1997, materially contributed to increased and ongoing parafunctional activity, which in turn caused damage to the Appellant's existing restorations and teeth, and as a result MPIC is prepared to extend Personal Injury

Protection Plan benefits for dental work to the Appellant, and the Appellant having indicated her acceptance of that proposal, by the authority of Section 184(1) of The Manitoba Public Insurance Corporation Act, the Commission orders that:

1. the Appellant shall be referred to a dentist or a specialist for assessment and determination of a treatment plan for the Appellant's dental problems;
2. the treatment plan shall be referred to MPIC's case manager for consideration in light of MPIC's agreement to fund a night guard and dental work for teeth numbers 15, 16 and 45;
3. any additional dental work which may be contemplated shall be referred to MPIC's case manager for consideration;
4. the Commission shall retain jurisdiction in this matter and, if the parties are unable to agree with regard to the dental work to be reimbursed to the Appellant, either party may refer this issue back to the Commission for final determination;
5. the decisions of MPIC's Internal Review Officer, bearing dates March 27, 2000, and July 19, 2000, be rescinded and the foregoing substituted for it.”

Pursuant to paragraph 1 of the Consent Order the Appellant was referred to Dr. Lipkin for assessment and determination of a treatment plan. Dr. Lipkin examined the Appellant on January 21 and January 27, 2003, full mouth series of x-rays and diagnostic casts were taken and on January 29, 2003 Dr. Lipkin provided his report to the Commission, copies of which were provided to both the Appellant and MPIC.

After examining Dr. Lipkin's treatment plan MPIC's Case Manager wrote to the Appellant on February 24, 2003 and stated:

“As discussed on February 21, 2003, this confirms our decision regarding Dr. Lipkin's Treatment Plan request for further dental treatment as outlined in his report of January 29, 2003.

That report outlines a treatment plan for all your dental problems regardless of the source of those problems. Dr. Lipkin was not able to comment on causality, at least in relation to your motor vehicle accident. You will recall that, as noted in the Automobile Injury Compensation Appeal Commission decision, as a result of the motor vehicle accident, Manitoba Public Insurance has agreed to fund treatment to the following teeth.

- Nightguard repair

- Tooth #15
- Tooth #16
- Tooth #45

Our position was based on the remarks regarding causality by Dr. Koltek in his reports provided to the Commission.

In discussion with Dr. Lipkin, we asked which part of his treatment plan was necessary to stabilize the teeth for which we had agreed to cover treatment. He indicated that the work to Teeth #46 and #47 needs to be completed in order to stabilize Tooth #16. As such, Manitoba Public Insurance will approve funding for Dr. Lipkin's treatment plan insofar it involves work on teeth #15, 16, 45, 46, 47 and repair to the nightguard."

The Commission reconvened the appeal hearing on March 11, 2003, heard submissions from both the Appellant and MPIC's legal counsel. The Appellant submitted that MPIC was obligated to reimburse the cost of the entire dental treatment plan provided by Dr. Lipkin which related not only to teeth #15, #16 and #45 but also #25, #26, #27, #36, #37, #46 and #47.

MPIC on the other hand, relied on Dr. Koltek's opinion which indicated that as a result of the motor vehicle accident there was a connection between injuries sustained by the Appellant's teeth #15, #16 and #45 and, as a result, MPIC was prepared to pay for the dental costs in respect of these three teeth as well as the night guard repair. MPIC further asserted Dr. Lipkin did not express any opinion as to causality related to the motor vehicle accident in question but did indicate that work was required to teeth #46 and #47 in order to stabilize tooth #16. As a result, MPIC was prepared to fund Dr. Lipkin's treatment plan insofar as it involved teeth #15, #16, #45, #46, #47 and repair to the night guard.

The Commission accepts the position asserted by MPIC and rejects the position of the Appellant. Initially MPIC was only prepared to pay for the cost of repair of the night guard based on the dental opinion from Dr. Mazurat. However, MPIC did accept the dental opinion of Dr. Koltek

who did find causal connection between the motor vehicle accident and the injuries to the Appellant's teeth #15, #16 and #45. Although Dr. Lipkin did not address the issue of causality, he was of the view that in order to stabilize tooth #16, work had to be done to teeth #46 and #47. The Commission accepts Dr. Lipkin's dental opinion in this respect.

Dr. Lipkin does not comment the issue of causality. However, Dr. Mazurat and Dr. Kolttek did not find a connection between the motor vehicle accident and the dental problems to teeth #25, #26, #27, #36 and #37. As a result, the Commission accepts MPIC's position in respect of the matters in dispute and rejects the position of the Appellant in this respect.

While the Commission was in the process of preparing the reasons for this decision, MPIC's legal counsel advised that MPIC was prepared to cover the costs of replacing the nightguard which was one of the issues in this appeal.

### **CONCLUSION**

The Commission has carefully considered all of the dental reports, the submissions of the Appellant and MPIC, and finds:

- a) that the Appellant has established on the balance of probabilities that there is a causal connection between the motor vehicle accident and injury to teeth #15, #16, #45, #46 and #47. As a result, MPIC shall reimburse the Appellant in respect to dental work required for these teeth;
- b) MPIC shall reimburse the Appellant in respect to the cost of replacement of the nightguard;
- c) the Appellant has not established on the balance of probabilities that there is a causal connection between the motor vehicle accident and damage to teeth #25,

#26, #27, #36 and #37. As a result, MPIC is not obligated to reimburse the Appellant in respect to dental work required for these teeth;

- d) the decision of MPIC's Internal Review Officer, bearing date July 19, 2000, be rescinded and the foregoing substituted for it.

Dated at Winnipeg this 10<sup>th</sup> day of April, 2003.

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**MEL MYERS, Q.C.**

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**YVONNE TAVARES**

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**COLON C. SETTLE, Q.C.**