



## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by D.M.  
AICAC File No.: AC-03-36**

**PANEL:** Mr. Mel Myers, Q.C., Chairman  
Mr. Guy Joubert  
Mr. Paul Johnston

**APPEARANCES:** The Appellant, D.M., was represented by Ms. Candace Everard;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

**HEARING DATE:** November 18, 2003, January 13, 2004, June 10, 2004

**ISSUE(S):** Jurisdiction of the Automobile Injury Compensation Appeal Commission in respect of Section 138 of The Manitoba Public Insurance Corporation Act and Section 10 of Manitoba Regulation 40/94

**RELEVANT SECTIONS:** Section 138 of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 10 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

On July 2, 1994 D.M. (hereinafter referred to as the "Appellant") sustained a serious closed head injury in a car/bicycle accident. The Appellant graduated from the Faculty of Engineering, University of Manitoba, in 1991 and had been working as a maintenance engineer with [text deleted] in [text deleted], Manitoba. He traveled frequently both for work and recreation, and regularly attended professional sporting events in Winnipeg. As a result of the motor vehicle accident the Appellant currently functions – intellectually - at a Grade 4 level. He is capable of

doing many household and other functions, including recreational activities such as golf and bowling. He is also capable of using public transportation for various purposes. He does, however, require close supervision by an adult family member or paid attendant for these various purposes. Although he lives in a non-institutional setting (a supported living residence) he still requires 24 hour supervision.

On July 31, 2002 the Appellant's father, R.M., met with the case manager and his supervisor. At this meeting R.M. was informed that MPIC, effective September 1, 2002, would no longer reimburse the Appellant in respect of travel expenses or entrance fees to or from football games, hockey games, movie theatres and bowling alleys. The case manager informed R.M. that these costs do not fall within the provisions of the Act and Regulations.

As a result of the case manager's decision, the Appellant filed an Application for Review of this decision. A meeting took place between the Internal Review Officer, R.M. and his son B.M. (the Appellant's brother) on November 15, 2002. The Internal Review Officer in his decision stated:

1. MPI is obligated to reimburse [D.M.], in accordance with Manitoba Regulation P215-40/94, for expenses incurred to attend his medical and rehabilitation appointments. This includes actual transit fares incurred or, where private transportation is used, mileage in accordance with the regulation and actual parking expenses.

Where an additional cost (for example, the individual transit fare which the attendant is required to pay) is actually incurred. MPI is obligated to reimburse [D.M.] for that cost as well.

This obligation would include expenses of this nature incurred for emergency, as well as non-emergency, medical attention, but does not extend to costs incurred for visits or outings with family and friends.

2. MPI is not obligated to pay the admission fees of [D.M.'s] attendants to recreational events such as movies and professional sporting events.
3. MPI is not obligated to pay for mileage and parking expenses incurred by family members for [D.M.'s] non-medical/rehabilitation appointments or outings. This

would include trips to the Society for Manitoba Disabilities (“SMD”) for Men’s Club functions and for woodworking workshops.

R.M. submitted to the Internal Review Officer that the reimbursement of the expenses rejected by the case manager related to the “rehabilitation” provisions of the Act, and specifically Section 138.

In response, the Internal Review Officer stated:

With respect to travel and accommodation expenses, entitlement is governed by Sections 137 and 145 of the *Act* and Sections 19 to 29 of Manitoba Regulation P215-40/94. Copies of these provisions are enclosed.

In my view, none of these provisions are broad enough to cover expenses incurred – by [D.M.], or an attendant, or a family member – to travel to non-medical/rehabilitation appointments, or to various other recreational events. MPI covered some of these expenses, on an *ex gratia* basis, for over 8 years, but there was never any entitlement on [D.M.’s] part to be so compensated.

I am not prepared to direct that MPI continue to cover these types of expenses.

You argued that the expenses outlined above which are incurred in connection with various recreational and SMD events should be reimbursed pursuant to the “rehabilitation” provisions of PIPP, specifically Section 138 of the *Act*.

Although Section 138 is quite broadly worded, it is expressly limited by the opening words of section – “Subject to the regulations ...”

Section 10 of Manitoba Regulation P215-40/94 (copy enclosed) deals specifically with rehabilitation expenses which are compensable under PIPP. Of the types of expenses enumerated under Section 10(1), only subsection 10(1)(e) has any potential relevance to the matters under review.

Subsection 10(1)(e) seems intended to, where possible, facilitate the return of the claimant to their pre-accident occupation. It perhaps goes without saying that it is highly unlikely that [D.M.] will ever return to the type of skilled, high-level work he was doing prior to the accident.

The provision goes on to state that the expenses to be reimbursed should go towards improving earning capacity and the claimant’s level of independence.

I have no doubt that [D.M.] enjoys these various outings immensely, and that they provide much-needed respite to yourself and other family members. I am not convinced,

however, that the expenses fall into any of the categories for which MPI is obligated to provide reimbursement.

Subsequently, the Appellant requested reimbursement of certain expenses, including the cancellation fees in the amount of \$310.30 for a flight to Thunder Bay, Ontario that the Appellant and his attendant were scheduled to take but cancelled on doctor's recommendations for medical reasons. This request was rejected by the case manager and, as a result, the Appellant made Application for Review, dated April 2, 2003. The Internal Review Officer issued a decision on May 20, 2003 rejecting the Application for Review and confirming the decision of the case manager. In his decision the Internal Review Officer stated:

While there is little doubt that all of the expenses being claimed can be logically linked to sequelae from the injuries sustained by [D.M.] in the accident, the fact remains that MPI is only obligated to reimburse those expenses which come within the legislative parameters of PIPP.

.....

I reviewed the limitations on the reimbursement of travel-related expenses in my decision letter dated December 11, 2002 (Internal Review No. 02-529). Those same considerations apply in terms of the costs incurred to change flight dates. In my view, those costs are not recoverable in this case.

As a result of the Internal Review decisions the Appellant filed a Notice of Appeal dated June 10, 2003.

### **APPEAL**

The Commission initially heard this appeal on November 18, 2003 and R.M. appeared on behalf of his son, unrepresented by legal counsel. Mr. Strutt appeared on behalf of MPIC.

The issue for determination was whether Section 138 of the Act and/or Section 10(1) of Manitoba Regulation 40/94 (hereinafter referred to as “Section 10(1)”) requires MPIC to reimburse the Appellant in respect of the following expenses:

- (a) attendant travel expenses to non-medical/rehabilitation appointments or outings, including trips to Thunder Bay, Ontario (two per year);
- (b) admission fees of [D.M.’s] attendants to recreational activities such as movies, professional sporting events, bowling and the YMCA;
- (c) mileage and parking expenses incurred by family members for non-medical/rehabilitation appointments or outings, including trips to the Society for Manitobans with Disabilities, or woodworking workshops;
- (d) the cost to replace two electric shavers, damaged by [D.M.] (\$200.61);
- (e) cancellation fees (\$310.30) for a flight to Thunder Bay, Ontario that [D.M.] and his attendant were scheduled to take, but cancelled on doctor’s recommendation, for medical reasons.

In view of the complexity of the legal issue relating to the relationship between Section 138 and Section 10(1), the Commission panel recommended that R.M. retain legal counsel to argue the legal issues before the Commission. After a short recess of the proceedings, R.M. indicated to the Commission panel that he would retain legal counsel and, as a result, the Commission adjourned the proceedings.

On June 10, 2004 the Commission reconvened. The Appellant was represented by Ms. Candace Everard and MPIC was represented by Mr. Tom Strutt. At the commencement of the hearing Ms. Everard indicated that the appeal in respect of the cost to replace two electric shavers damaged by the Appellant was being withdrawn from the appeal.

No witnesses were called at the appeal hearing, and both counsel filed written submissions and made verbal submissions.

The Appellant’s legal counsel submitted that the narrow interpretation of the Act and Regulations advanced by MPIC was without merit. MPIC’s power to make expenditures pursuant to Section 138 of the Act was not limited by the phrase “subject to the Regulations” in that section. In support of her position the Appellant’s legal counsel cited the decision of the Commission in [B.P.]. In her written submission the Appellant’s legal counsel submitted:

4. In the [B.P.] case (**Tab 1**), this Appeal Commission had to decide whether the claimant was entitled to reimbursement for travel expenses, incurred traveling between his home and his place of work that would not have been incurred but for this accident.
5. MPI argued in [B.P., as it does in the within appeal, that there was no provision in the Act or Regulation which authorized MPI to pay the travel expenses.
6. The Commission agreed that Section 10 of the Regulation had no application to the appellant’s request for reimbursement, but the Commission rejected MPI’s interpretation of Section 138 of the Act. The Commission found that the definition of rehabilitation in s. 138 had a wider meaning than the specific measures addressed in Section 10(1) of the Regulation and that the narrow interpretation of the legislation as put forward by MPI was inconsistent with MPI’s public statements and the intended liberal interpretation of the Act and Regulations.
7. The Commission referenced two statements on MPI’s website regarding the Personal Injury Protection Plan, that

“PIPP supports your return to normal activities as quickly as possible after the accident. If the injuries from the accident are so serious that you can’t resume your pre-accident employment and your pre-accident lifestyle, PIPP helps you minimize the effects of the accident and maximize your employment and personal opportunities.”

and that

“Our goal is to help you to resume your normal pre-accident activities as much as possible. To assist your recovery and offset economic hardship, we provide compensation for treatment costs and a range of economic losses.”

8. These precise statements remain in the PIPP guidebook published by MPI and distributed to claimants. The relevant excerpt of the guidebook is attached at **Tab 2**.
9. [D.M.] relies upon the excerpt of the PIPP guidebook as evidence of a public statement by MPI that it considers rehabilitation to include compensation for real economic losses and to offset economic hardship.

10. [D.M.] also relies upon the conclusion of this Commission in [B.P.] that the primary purposes of rehabilitation are as listed in paragraph 30 of that decision.
11. [D.M.] submits that the items for which he is seeking reimbursement fall within the definition of rehabilitation as set out in [B.P.], and that in accordance with the Commission's decision in [B.P.], he is entitled to concurrently obtain rehabilitation to lessen a disability resulting from bodily injury or to offset economic losses and hardship.

The Appellant's legal counsel in her verbal submission confirmed in substance her written submission as set out above.

In reply, MPIC's legal counsel acknowledged that Section 138 of the Act was broad enough to cover the expenses claimed by the Appellant but stated:

Section 138 is, however, expressly "subject to the regulations." If authority to reimburse the expense does not exist under the Regulations, then MPI has no authority under Section 138 to reimburse it.

MPIC's legal counsel then reviewed a number of previous Commission Decisions in support of his position. He argued that the Appeal Commission, with the one exception in [B.P.] (AC-01-100, dated August 21, 2002), consistently applied Section 138 in this fashion. He also referred to the Commission's decision in [B.C.] (AC-99-119, dated March 10, 2000) and stated in that case the Commission managed to find authority in Section 10(1)(d)(vi) of M.R. 40/94 to cover the installation of the cost of a residential water pump.

In [E.M.] (AC-01-87, dated January 10, 2002) MPIC's legal counsel indicated that the Commission declined to order a contribution towards the capital cost of the purchase of a wheelchair van and referred to the Commission's comments in that case as follows:

“In this case, the relevant law is found in Section 138 of the MPIC Act *which is clearly subject to the Regulations. The qualification of the Regulations must guide the Commission in its application of Section 138 of the MPIC Act.*”

MPIC’s legal counsel also submitted that the Commission in *[E.M.]* further stated that Section 10(1)(a) of MR 40/94 did not “encompass the authority to require MPIC to provide funds for the acquisition of a motor vehicle, *although the acquisition may be necessary or advisable for the purposes of the victim’s rehabilitation and reintegration in to society.*” MPIC’s legal counsel further stated that it was impossible to distinguish the issue in *[E.M.]* from the issue in the present appeal.

As well in support of his position MPIC’s legal counsel referred to the Commission’s decision in *[S.F.]* (AC-02-66, dated September 5, 2002) as follows:

In *[S.F.]* (AC 02-66, decided September 5, 2002) the claimant had been elected president of a political party. The Commission rejected his claim to be entitled to additional attendant care expenses via Section 138 of the Act and Section 10(1)(e) of MR 40/94.

At page 7, the Commission observed that “*In carrying out its duties pursuant to Section 138, MPIC is subject to Subsection 10(1)(e) of Manitoba Regulation 40/94.*” The passage goes on to make it clear that the Corporation’s discretion must be exercised within the confines of the Subsection, and then on page 8 acknowledges that, in exercising its own discretion under Section 184 of the Act, “*the Commission must be satisfied, on a balance of probabilities that the funds to be expended are necessary or advisable for the Appellant’s rehabilitation in the context or occupational, educational or vocational rehabilitation.*”

Once again, we submit that it is impossible to distinguish this decision on any substantive basis from the present appeal. The same reasoning is clearly applicable to both.

MPIC’s legal counsel, in his written submission, stated:

***Principles to be derived from [B.D.],[E.M.], and [S.F.]***

We submit these decisions make it clear that Section 138 provides no right to reimbursement of a rehabilitation expense unless

- there is specific coverage somewhere in Regulation 40
- the expense can be characterized as an occupational, educational or vocational rehabilitation expense under Section 10(1)(e) of Regulation 40

MPIC's legal counsel argued that the *[B.P.]* decision was inconsistent with the decisions of the Commission in *[B.D.]*, *[E.M.]* and *[S.F.]* and should not be followed by the Commission in the present case.

In his written submission MPIC's legal counsel further stated in respect of the *[B.P.]* decision:

1. This reading is contrary to the express language of Section 138 of the Act. Section 138 is expressly made "subject to the Regulations." Unless authority to pay a benefit exists in Regulation 40, it does not exist under Section 138. What *Poole* appears to say at page 18 might be legitimate if the phrase introducing Section 138 did not exist, or if it read along these lines: "Except where the discretion of the corporation is expressly limited by regulation, the corporation shall . . . ."
2. What *[B.P.]* appears to say at page 18 is inconsistent with all the other Appeal Commission decisions, all of which limit the discretion described in Section 138 to the exercise of the powers conferred by regulation.
3. *[S.F.]* (AC 02-66, decided November 14, 2002) was decided *after* *[B.P.]*. It also limits the discretion described in Section 138 to the exercise of the powers conferred by regulation.

MPIC's legal counsel further submitted that if the Commission felt MPIC should reimburse the expenses that the Appellant was claiming it could easily have given effect to the conclusion pursuant to Section 10(1)(e) of Regulation 40/94. In support of that position MPIC's legal counsel referred to an earlier *[S.F.]* decision (AC-97-87 and 97-116, delivered together on November 27, 1998) where the Commission used Section 10(1)(e) to extend coverage for a contribution to the capital cost of a van, as well as a contribution to the operating costs of the van. MPIC's legal counsel further stated:

[*B.P.*] has some distinct similarities to the first [*S.F.*] decision. The claimants in both these decisions had occupational, educational and/or vocational prospects. Neither decision is at all like the present case where, as was said in [*E.M.*], “regrettably, the prospects for the Appellant’s occupational, educational and/or vocational rehabilitation are non-existent.”

### **Discussion**

The Commission notes that MPIC’s legal counsel’s position in respect of the application of Section 10(1)(e) of the Regulation is inconsistent with the position taken by MPIC’s legal counsel in *Poole* and the position taken by the Internal Review Officer in the present appeal.

In *Poole* the Commission stated at page 5:

Legal counsel for MPIC asserted that there is no provision in the Act or Regulations which would authorize MPIC to pay the travel expenses of the Appellant for traveling between Arborg and Fisher Branch.

In [*B.P.*] the Commission agreed with MPIC’s legal counsel that Section 10(1)(e) of Regulation 40/94 had no application with respect to the request of the Appellant that he be reimbursed for travel expenses incurred in traveling to his place of employment.

The Commission notes that in this appeal the Internal Review Officer, in his decision dated December 11, 2002, in respect of Section 10(1)(e) stated:

Section 10 of Manitoba Regulation P215-40/94 (copy enclosed) deals specifically with rehabilitation expenses which are compensable under PIPP. Of the types of expenses enumerated under Section 10(1), only subsection 10(1)(e) has any potential relevance to the matters under review.

Subsection 10(1)(e) seems intended to, where possible, facilitate the return of the claimant to their pre-accident occupation. It perhaps goes without saying that it is highly unlikely that David will ever return to the type of skilled, high-level work he was doing prior to the accident.

The provision goes on to state that the expenses to be reimbursed should go toward improving earning capacity and the claimant’s level of independence.

The Commission therefore rejects the position taken by MPIC's legal counsel in this appeal that the expenses in question come within the scope of Section 10(1)(e) of the Regulation. The Commission agrees with the position asserted by MPIC's legal counsel in *[B.P.]* and the decision of the Internal Review Officer in this appeal that Section 10(1)(e) seems intended to, where possible, facilitate the return of an Appellant to their pre-accident occupation. Since in this appeal the Appellant is not requesting MPIC facilitate his return to his pre-accident occupation, Section 10(1)(e) has no application to the Appellant's request for reimbursement of certain expenses.

In response to MPIC's legal counsel's submission in respect of *[B.D.]* and *[S.F.]*, the Commission notes that the Commission determined in these two decisions that the Appellant's request for reimbursement of expenses was covered by the specific provisions of Section 10(1) and not under the general provisions of Section 138.

Further to MPIC's submission in respect of *[E.M.]*, (supra) the Commission notes that:

1. In *[E.M.]*, like *[S.F.]* and *[B.D.]*, the Appellant's request for reimbursement of expenses was covered by a specific provision of Section 10(1) and therefore Section 138 had no application.
2. The Commission found that Section 10(1)(a) of Regulation MR 40/94 provided for the adaptation of a motor vehicle for the use of an accident victim but was silent on the issue of a contribution towards the capital costs of the purchase of the vehicle.
3. The Commission concluded that there was a conflict between the Applicant's request for the purchase of a van under Section 138 with the provision relating to the

adaptation of the van under Section 10(1)(a) and in cases of conflict the specific provision in Section 10(1)(a) would override the general provisions of Section 138.

The Commission notes that [*E.M.*] (decided on January 10, 2001) was decided earlier than [*B.P.*] (decided August 21, 2002) and was not subjected to the analysis that the Commission conducted in [*B.P.*] in respect of the relationship between Section 138 and Section 10(1).

The Commission further notes that the decision in [*E.M.*] must now be read in light of the Commission's subsequent decision in *Poole* and in light of the decision of the Supreme Court of Canada in *Stoddard v. Watson*, (1993) 106 DLR (4<sup>th</sup>) 404, which will be referred to later in this decision.

In a Supplementary Written Submission, MPIC's legal counsel stated he had the opportunity to research the case law for relevant precedents interpreting the phrase "subject to" and particularly interpreting the phrase "subject to the Regulations". He further stated "There is surprising little such law. We submit that is most probably because the phrase is well understood and rarely causes difficulties of interpretation".

In support of his position MPIC's legal counsel refers to the Ontario Court of Appeal decision in *Murphy v. Welsh* (1991) 81 DLR (4<sup>th</sup>) 475 (which decision is referred to in the Supreme Court of Canada as *Stoddard v. Watson* (supra)). The headnote of this case states:

In two actions involving infants injured in motor vehicle accidents the two-year limitation period provided for by s. 180(1) of the *Highway Traffic Act*, R.S.O. 1980, c. 198, was missed. In both cases the trial judges allowed the actions to proceed, relying upon s. 47 of the *Limitations Act*, R.S.O. 1980, c. 240, which allows an infant to bring an action within two years of attaining majority. Both judgments were appealed. On appeal the argument was made that the shorter limitation period provided under s. 180(1) of the

*Highway Traffic Act* constituted unequal treatment of minors and violated s. 15(1) of the *Canadian Charter of Rights and Freedoms*.

**Held**, the appeal should be allowed. Section 180(1) of the *Highway Traffic Act* excludes the operation of s. 47 of the *Limitations Act*. The sole exceptions to the two-year limitation in s. 180(1) are those provided for in s. 180(2) and (3). The legislative history of s. 180 shows that the legislature initially made special provision for infants and then repealed it, thus indicating an intention that infants should be subject to the same limitation period as adults.

This appeal concerned the relationship between provisions in two different statutes. At page 481 the Ontario Court of Appeal stated:

The question that emerges is whether s. 180, read as a whole, specifically excludes the operation of s. 47 of the *Limitations Act* or, put another way, whether the sole exceptions to the two-year limitation in s. 180(1) are those provided for in s-s (2) and (3).

.....

... The narrow question becomes, what is the meaning to be attributed to the words “subject to” in s. 180(1)?

The meaning of the expression “subject to” in statutes was, in my opinion, correctly stated by the late Professor Driedger in *The Composition of Legislation*, 2<sup>nd</sup> ed. (1976), at pp. 139-40, as follows:

Subject to – Used to assign a subordinate position to an enactment, or to pave the way for qualifications.

Where two sections conflict, and one is not merely an exception to the other, the subordinate one should be preceded by *subject to*; this reconciles the conflict and serves as a warning that there is more to come.

The phrase “subject to” always has a counterpart. In other words, the section containing the phrase will always specify the enactment or qualification to which it is subordinate. In s. 180(1), the words “subject to” are followed only by a reference to s-s. (2) and (3). In my opinion, the ordinary interpretation of this provision is that s. 180(1) is subordinate only to s-s. (2) and (3). Had the legislature intended to restrict the operation of s. 180(1) further, it could have included s. 47 of the *Limitations Act* or any other statutory provision in the exceptions named after the words “subject to”: see *Hinton Electric Co. v. Bank of Montreal* (1903), 9 B.C.R. 545 at p. 550. It did not do so and, therefore, I find that the operation of s. 180(1) is not subject to s. 47 of the *Limitations Act*.

On appeal (*Stoddard v. Watson* (supra)) the Supreme Court reversed the decision of the Court of Appeal but, as MPIC’s legal counsel in his written submission in this appeal indicated, this did not affect the approval of Professor Driedger’s analysis of the effect of the words “subject to”. Mr. Justice Major, on behalf of the Supreme Court of Canada stated:

## ANALYSIS

### A. *Interpretation of ss. 180(1) and 47*

These appeals concern the relationship between provisions in different statutes. The respondents argue that the opening words of s. 180(1) define this relationship and exclude the application of s. 47: “Subject to subsections (2) and (3), no action shall be brought . . . “. However, to find that subsections (2) and (3) are the sole exceptions to s. 180(1) means reading s. 180(1) as “subject *only* to subsections (2) and (3)”. Statutory interpretation presumes against adding words unless the addition gives voice to the legislator’s implicit intention. As Pierre-André Côté states in *The Interpretation of Legislation in Canada*, 2<sup>nd</sup> ed. (Cowansville, Quebec: Yvon Blais Inc., 1991), at pp. 231-2:

Since the judge’s task is to interpret the statute, not to create it, as a general rule, interpretation should not add to the terms of the law. Legislation is deemed to be well drafted, and to express completely what the legislator wanted to say:

. . . . .

The presumption against adding words must be treated with caution because legal communication, like all communication, has both implicit and explicit elements. The presumption only concerns the explicit element of the legislature’s message: it assumes that the judge usurps the role of Parliament if terms are added to a provision. However, if the judge makes additions in order to render the implicit explicit, he is not overreaching his authority. The relevant question is not whether the judge can add words or not, but rather if the words that he adds do anything more than express what is already implied by the statute.

In respect of the relationship between Section 138 of the Act and Section 10(1) of the Regulation, the Commission, determines that in order to adopt MPIC’s position in respect of these two provisions that the opening words of Section 138 defined the relationship and that Section 138 for all purposes is subordinate to Regulation 40 (R s. 10(1)), requires reading Section 138 as “*subject only to Section 10(1)*”. In order to accept MPIC’s position, the Commission must therefore add the word “only” to the opening words of Section 138. However,

in the Commission's view it is unnecessary in order to determine the explicit meaning of Section 138 by adding the words "only" to the opening words of this section.

The Commission further notes that to accept MPIC's position would render Section 138 meaningless. If it was the intention of the legislature that all rehabilitation expenses claimed by an accident victim would be governed by Section 10(1) then it would have been open for the legislature to have substituted the first paragraph in 10(1) for Section 138. As a result, Section 138 would have stated:

**10(1)** Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with rehabilitation expenses as set out in Section 10(1).

Had the legislation been expressed in this fashion then there could be no conflict between Section 138 and Section 10 and there would always be harmony between these provisions. However, the legislature chose to provide very wide powers to MPIC (and therefore the Commission) under Section 138 and, as a result, intended that Section 138 be limited only by the specific provisions as set out in Section 10(1) of the Regulation.

Mr. Justice Major further stated:

In determining the legislator's intention there is a presumption of coherence between related statutes. Provisions are only deemed inconsistent where they cannot stand together. Sections 180(1) and 47 are not *prima facie* inconsistent. Section 180(1) sets the length of the limitation period. Section 47 states when the limitation period begins to run. Their coexistence does not lead to absurd results. Merely because s. 180(1) sets a short limitation period does not bar postponement for disability. Section 45(1)(h) and (i) of the *Limitations Act* sets two-year limitation periods, and s. 45(1)(m) sets a one-year limitation period, all of which are subject to s. 47. The coexistence of a short limitation period and a rule for its postponement is not an absurd result.

The Commission agrees with MPIC's legal counsel that the comments made by the Ontario Court of Appeal in respect of Professor Driedger's analysis of the word "subject to" was not reversed by the Supreme Court of Canada. The Commission finds that Section 138 of the Act is subordinate to Section 10(1) of the Regulation only when there is actual conflict between these provisions. Accordingly, in respect of the specific matters set out in Section 10(1) of the Regulation, the power of MPIC or the Commission to exercise its discretion under Section 138 must be governed by Section 10(1). However, where the subject matter in question does not fall within the scope of Section 10(1) then the discretion that MPIC or the Commission has under Section 138 is governed only by that provision and not by the provisions under Section 10(1) of the Regulation.

This analysis is totally consistent with the principles enunciated by the Supreme Court of Canada in *Stoddard v. Watson* (supra). The Supreme Court of Canada determined that in interpreting the provisions of the statute one should seek to find harmony between the relevant provisions rather than conflict. It is only where the one provision is inconsistent with the other provision that one can conclude there is conflict between these provisions.

The Commission, in accordance with the decision of Mr. Justice Major in *Stoddard v. Watson* (supra) finds there is coherence and no inconsistency between Section 138 and Section 10(1) in respect of the Appellant's claim for reimbursement of expenses in this appeal.

Section 138 sets out in broad terms the power of the corporation to take any measure necessary or advisable to contribute to the rehabilitation of a victim. In [*B.P.*] the Commission referred to the MPIC's policy on rehabilitation as follows:

## **Bodily Injury (PIPP) Claims – Rehabilitation**

PIPP supports your return to normal activities as quickly as possible after the accident. If the injuries from the accident are so serious that you can't resume your pre-accident employment and your pre-accident lifestyle, PIPP helps you minimize the effects of the accident and maximize your employment and personal opportunities.

### **Key Points**

Our goal is to help you to resume your normal pre-accident activities as much as possible. To assist your recovery and offset economic hardship, we provide compensation for treatment costs and a range of economic losses.

On page 18 of the *[B.P.]* decision the Commission stated:

The Commission, therefore, concludes that pursuant to Section 138 of the Act, MPIC is entitled to take any measure it deems advisable or necessary to contribute to the rehabilitation of a victim and/or to lessen a disability resulting from a bodily injury and/or to facilitate the victim's return to a normal life and/or reintegration into society and/or the labour market. It is the Commission's position that unless the above-mentioned provisions are interpreted in a flexible manner, they will lead to unintelligible or absurd results and be inconsistent with the purpose of the Act.

The Commission recognizes that Section 10(1) specifically limits the manner in which MPIC (and therefore the Commission) exercises its discretion in respect of the matters set out in Section 10(1), for example the adaptation of a motor vehicle, funds for external costs required for an accident victim's principal residence, or in respect of reimbursing the cost of an accident victim in respect of acquiring wheelchairs, mobility aids, etc and funds for occupational education or vocational rehabilitation with the accident victim's occupation before the accident. However, in respect of specific matters which do not come within the scope of Section 10(1), Section 138 is not governed by Section 10(1) of the Regulation.

In this appeal, Sections 136(1), 137 and 145 of the Act, as well as Manitoba Regulation P215-40/94 do not deal with reimbursement of the expenses claimed by the Appellant. The

Commission therefore determines that there are no provisions set out in Section 10(1)(e) which prevent MPIC from considering whether it is necessary or advisable to reimburse the Appellant in respect of the expenses he has claimed in this appeal. These expenses are not matters covered by Section 10(1) of the Regulation but fall within the scope of Section 138 of the Act.

The Commission notes that simply because a matter comes within the scope of Section 138 and is not covered by Section 10(1) of the Act does not mean that MPIC is required to fund the specific request for rehabilitation by an accident victim. However, MPIC does have a statutory responsibility when such a request is made by an accident victim to consider on the merits whether this request is advisable and necessary in the particular circumstances of the case. Having regard to the provisions of Section 138, MPIC is free to accept or reject a request for the payment of expenses by the Appellant.

The Commission therefore finds that MPIC erred in failing to assess the Appellant's request for compensation on its merits when it concluded it had no authority under the Act or Regulations to consider the request.

The Commission directs that MPIC, having regard to the provisions of Section 138, consider the Appellant's request for the reimbursement of the expenses he has claimed. The Appellant's claim shall therefore be referred back to his case manager for determination of his claims for reimbursement of his expenses as set out in this appeal.

As a result, the Appellant's appeal is allowed and the Internal Review Officer's decisions dated December 11, 2002 and May 20, 2003 are, therefore, rescinded.

Dated at Winnipeg this 27<sup>th</sup> day of July, 2004.

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**MEL MYERS, Q.C.**

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**GUY JOUBERT**

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**PAUL JOHNSTON**