Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No. AC-01-100

PANEL:	**Mr. Mel Myers, Q.C., Chairman** **Ms. Laura Diamond** **Mr. Guy Joubert**
APPEARANCES:	**The Appellant, [text deleted], was represented by Ms. Rosemary Hnatiuk;** **Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Mark O'Neill.**
HEARING DATE:	**June 12, 2002**
ISSUE:	**Entitlement to travel expenses incurred in travelling to the place of employment.**
RELEVANT SECTIONS:	**Section 138 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act')**

Reasons For Decision

The Appellant, [text deleted], was the passenger in a vehicle involved in a motor vehicle accident on June 4, 1997. As a result of the accident, the Appellant suffered fractured ribs, a lacerated spleen, a fractured pelvis, left and right pulmonary contusions including loss of lung function, and a cardiac contusion, and he had to undergo a left thoracotomy. The Appellant had undergone an extensive rehabilitation program after the motor vehicle accident and was unable to resume his former employment due to a residual lung capacity of 50%.

Prior to the motor vehicle accident, the Appellant had been employed on a full-time basis as a cleaner/operator with [text deleted] in [text deleted], a few kilometres from his home. Following the motor vehicle accident, he attempted to return to [text deleted] in a modified capacity. However, due to his reduced lung capacity, the Appellant was less tolerant of dust and could not work in this environment.

An undated document prepared by MPIC, entitled "Two Year Determination", states:

> Aim For Work, completed an earning capacity analysis and post determination report and identified [the Appellant's] transferable skills in several employment areas which were appropriately matched to his physical abilities. These positions were identified within his region of employment. Through this process a position of a housekeeper, NOC 6661, was identified. A work experience was arranged to confirm suitability to this position. The physical demands of this profession are suitable to [the Appellant's] abilities and reduced physical capabilities. [The Appellant] has been in this position for over a year now, earning [text deleted] in a .7 position.
>
> At the time of the accident, Mr. Poole's gross yearly employment income (GYEI) was calculated at [text deleted].
>
> We are now able to complete a two-year determination, and under Schedule C of the Manitoba Public Insurance regulations, the determined occupation of would be [*sic*] in the category Housekeepers, Servants, Cleaners, with a level of 1 GYEI of [text deleted] for 2001. Through cross-referencing, we have confirmed this position in our Schedule C matches the NOC.

Subsequent to his employment, MPIC has continued to provide, on a reduced basis, payment of Income Replacement Indemnity ('IRI') to the Appellant, pursuant to Section 116 of the Act.

When the Appellant was employed at [text deleted] prior to his motor vehicle accident, he was only required to travel a few kilometres each day to work and did not incur any significant travel expenses to attend work. However, he was unable to find employment in his home town of [text deleted] but was able to find employment at [text deleted] which is located in [text deleted],

approximately 51 kilometres from the Appellant's home. In order to attend work, the Appellant is required to travel by car a total of 102 kilometres each day, Monday through Friday.

The Appellant requested MPIC to compensate him for his daily travel costs of going to work. On May 11, 2001, the case manager rejected this request and, as a result thereof, the Appellant applied to an Internal Review Officer to review the case manager's decision. In his Application for Review, the Appellant stated:

> I drive from [text deleted] to [text deleted] for work each day, Monday – Friday, a total of 102 km round-trip. In June of 1999 I agreed to accepting this position not taking into account the expense entailed to drive this distance daily. Since that time the cost of gas has increased dramatically and is now at 72.9¢ per litre as of today. This has become a hardship for me to pay. Therefore the income placement amount that MPIC pays me is really not a true replacement as it becomes less and less as time goes on. Previously (before my accident) my job was only 3 miles from [text deleted] so travel expense was not a consideration. To date no job position has become available in this field in [text deleted] and the way the union rules work it is highly unlikely a position would become available.

In his decision dated July 13, 2001, the Internal Review Office dismissed the Application for Review and confirmed the decision of the case manager to deny the Appellant's claim for travel expenses. The Internal Review Officer stated in his decision that there was no provision anywhere in the Act or Regulations treating coverage for travel expenses to and from work in the Appellant's circumstances. As a result thereof, the Appellant filed a Notice of Appeal on November 28, 2001, in which he indicated:

> The decision erroneously concludes that there is no provision in the Act or Regulations to cover travel expenses. On the contrary, Sec. 138 clearly states that the Corporation has the power to take any measure it considers necessary and advisable to facilitate the victim's reintegration into society and the labour market.

Discussion

The Commission heard this appeal on June 12, 2002. The Appellant was represented by Ms. Rosemary Hnatiuk, and Mr. Mark O'Neill represented MPIC. The issue for determination is whether Section 138 and/or Section 10(1) of Manitoba Regulation 40/94 (hereinafter referred to as 'Section 10(1)') requires MPIC to reimburse the Appellant for his travel expenses incurred in travelling between his home in [text deleted] and his work at [text deleted] in [text deleted].

Section 138 of the Act states:

> **Corporation to assist in rehabilitation**
> **138** Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

The Regulation referred to in Section 138 is set out in Section 10(1) of Manitoba Regulation 40/94 which provides as follows:

> **Rehabilitation expenses**
> **10(1)** Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following:
>
> (a) funds for an extraordinary cost required to adapt a motor vehicle for the use of the victim as a driver or passenger;
>
> (b) funds for an extraordinary cost required
>
> (i) where the victim owns his or her principal residence, to alter the residence or, where alteration is not practical or feasible, to relocate the victim,
>
> (ii) where the victim does not own his or her principal residence, to relocate the victim or, where relocation is not practical or feasible, to alter the victim's residence, or
>
> (iii)to alter the plans for or construction of a residence to be built for the victim;

> (c) funds for an extraordinary cost required to alter the victim's primary residence, where the victim is moving in order to accommodate an approved academic or vocational rehabilitation plan, or the victim was a minor or dependant at the time of the accident who is moving from the family home;
>
> (d) reimbursement of the victim at the sole discretion of the corporation for
>
> (i) wheelchairs and accessories,
>
> (ii) mobility aides and accessories,
>
> (iii) medically required beds, equipment and accessories,
>
> (iv) specialized medical supplies,
>
> (v) communication and learning aides,
>
> (vi) specialized bath and hygiene equipment,
>
> (vii) specialized kitchen and homemaking aides, and
>
> (viii) cognitive therapy devices;
>
> (e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

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 travelling between [text deleted] and [text deleted].

The legal counsel for the Appellant, however, asserted that pursuant to Section 138 of the Act, MPIC was required to reimburse the Appellant for his travelling expenses when travelling from [text deleted] to his place of work at [text deleted], and from [text deleted] to his home in [text deleted].

The Appellant's legal counsel submitted that the Appellant's cost of gas for travelling to and from [text deleted] is approximately $200 per month. Having regard to the income that the Appellant earned at [text deleted], the Appellant found that it was a significant financial hardship to pay for the cost of gas. The Appellant's legal counsel asserted that the Appellant was injured in a motor vehicle accident which resulted in his inability to continue his employment at [text deleted] in [text deleted], which was approximately three miles from his home. As a result of finding employment in [text deleted], the Appellant is incurring very substantial travel expenses which he would not have incurred if not for the accident.

Accordingly, the Appellant's legal counsel submitted that the rehabilitation provisions in Section 138 were of sufficient scope to permit MPIC to reimburse the Appellant for the economic loss he suffered due to the accident by reimbursing him for his gasoline expenses in order to permit him to travel to and from his place of employment.

In reply, legal counsel for MPIC submits that there is no provision in the Act or Regulations which would authorize MPIC to pay the travel expenses of the Appellant for travelling between [text deleted] and [text deleted].

In respect of Section 10(1) of Manitoba Regulation 40/94, MPIC's legal counsel submits that:

1. the Appellant's request for reimbursement of travel expenses is not provided for in Section 10(1) of the Regulation and, therefore, MPIC has no statutory requirement to reimburse the Appellant in respect of this matter;
2. where it considers it necessary or advisable, MPIC may exercise its discretion and provide for the extraordinary costs of the victim in respect of the adaptation of a motor vehicle, the

construction or alteration of a residence, or provide reimbursement in respect of specific appliances such as wheelchairs, mobility aids, medically required beds, etc., or provide funds for occupational, educational, or vocational rehabilitation.

Legal counsel for MPIC further submitted that in respect of Section 138 of the Act:

1. this provision does not permit MPIC to provide reimbursement to the Appellant in respect of his request for the cost of travel expenses;
2. the word 'rehabilitation' in Section 138 has the same meaning as the word 'rehabilitation' in Section 10(1) of the Regulation. Section 10(1) of the Regulation specifically sets out the rehabilitation measures that MPIC may undertake, and Section 138 does not expand the scope of the rehabilitation measures; and
3. in order for MPIC to reimburse the Appellant in respect of his travel expenses, the Appellant must establish that reimbursement satisfies the following requirements of Section 138:
    a) contribute to the rehabilitation of a victim; and
    b) lessen a disability resulting from a bodily injury; and
    c) facilitate the victim's return to a normal life; or
    d) reintegration into society; or
    e) the labour market.

Legal counsel for MPIC, therefore, submits that the above-mentioned provisions of Section 138 must be applied jointly and not separately, i.e., that paragraphs a) and b) as set out above must be read conjunctively with paragraphs c) or d) or e). Legal counsel for MPIC further submits that to interpret these provisions disjunctively is contrary to the legal principles relating to the interpretation of statutes.

It should be noted that the Commission is sympathetic to the financial circumstances that the Appellant finds himself in. Through no fault of his own, he suffered serious injuries as a result of a motor vehicle accident which resulted in the loss of 50% of his lung capacity. Prior to the accident, the Appellant was gainfully employed at [text deleted] in his hometown of [text deleted]. He testified as to the enjoyment of his employment and being able to work in his hometown of [text deleted]. The motor vehicle accident was a traumatic experience for the Appellant, both physically and emotionally. Because of his serious physical disability, the Appellant was unable to continue to be employed and was no longer economically self-sufficient.

In regard to his training and experience, finding employment was difficult for the Appellant. Unfortunately, employment opportunities in small rural communities such as [text deleted] are limited. However, he was able to find employment in [text deleted], approximately 51 kilometres from [text deleted]. Unfortunately, he is required to travel 102 kilometres daily to his place of employment at a significant financial cost to him.

The Appellant's income at the time of the accident was [text deleted]. Subsequent to the accident, his income was reduced to [text deleted], a difference of approximately [text deleted] per year. However, pursuant to Section 116 of the Act, MPIC is providing IRI benefits to the Appellant which tops up his income to approximately what he had earned in his previous employment. However, the Appellant asserts that the annual cost of gasoline to travel to and from [text deleted] is approximately [text deleted] per year, resulting in a significant financial loss to him.

Decision

The Commission agrees with the position of MPIC's legal counsel that Section 10(1) of Manitoba Regulation 40/94 has no application to the Appellant's request for reimbursement of compensation in respect of travel allowances.

The Commission notes that Section 10(1) of the Regulation is quite specific in respect to matters in which MPIC may assist a victim of an accident. The only specific provision under Section 10(1) of the Regulation that may have application to the Appellant's request for reimbursement of compensation in respect of travel allowances is Section 10(1)(e) of the Act which provides:

> **Rehabilitation expenses**
> **10(1)** Where the corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with anyone or more of the following:
>
> > (e) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence.

The Appellant's occupation as a cleaner/operator with [text deleted] before the accident is not consistent with the skill and abilities that the Appellant must use in order to carry out his occupation after the accident as a care-giver at [text deleted]. As a result, Section 10(1)(e) has no application to the Appellant's request for compensation in respect of travel allowances.

The Commission rejects MPIC's legal counsel's interpretation of Section 138 of the Act. The Commission notes that the ordinary dictionary definition of 'rehabilitation' has a wider meaning than the specific measures which are addressed in Section 10(1) of the Regulation. One of the dictionary definitions of 'rehabilitation' as set out in the *Dictionary of Canadian Law 2nd*

Edition, Carswell 1995 is "*the establishment or the restoration of a disabled person to a state of economic and social sufficiency.*" The *Concise Oxford Dictionary 10th Edition, Oxford University Press* defines 'rehabilitation' as "*1. restore to health or normal life by training and therapy after imprisonment, addiction, or illness. 2. restore the standing or reputation of. 3. restore to a former condition.*"

It should be noted that these definitions of 'rehabilitation' include restoration of a disabled person to a state of economic sufficiency, social sufficiency, and restoration of a disabled person to health. Therefore, these definitions of 'rehabilitation' encompass economic and/or health and/or social restoration which would assist a person to return to his previous status.

In Re [text deleted] AC-95-06, this Commission interpreted Section 10(1)(e) of Manitoba Regulation 40/94 as follows:

> Further, Section 10(1)(e) of Regulation 40/94 reads as follows:
>
> > "10(1)(e) Where the Corporation considers it necessary or advisable for the rehabilitation of a victim, the corporation may provide the victim with any one or more of the following: …
> >
> > (a) funds for occupational, educational or vocational rehabilitation that is consistent with the victim's occupation before the accident and his or her skills and abilities after the accident, and that could return the victim as nearly as practicable to his or her condition before the accident or improve his or her earning capacity and level of independence."
>
> We take the view that, in the absence of bad faith on the part of an insured, the provisions of the Act and of the Regulations should be interpreted liberally for the benefit of the insured and in keeping with the declared intent of the Corporation's Personal Injury Protection Plan which is based, in part, upon 'compensation for real economic losses … resulting from accidental injuries in automobile collisions …'. (Vide the Corporation's own brochure of 1994.) [*underlining added*]
>
> We are of the view that the $95.00 disbursement necessarily paid by [text deleted] for the privilege of deferring his examination was a direct result of the accident

> and falls within one or both of Section 138 of the Act or Section 10(1)(e) of the Regulation cited above, and we therefore find that he is entitled to be reimbursed by the Corporation to that extent. The $245.00 fee that he had to pay in order to repeat the course after failing the law exam in December was not, in our view, related in any material way to the accident, and any claim for its reimbursement must fail.

The Manitoba Public Insurance Corporation has a website (www.mpi.mb.ca) which provides an overview of the Personal Injury Protection Plan (PIPP). This website states, in part, 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. [*underlining added*]

MPIC has publicly stated that it considers rehabilitation to include not only restoration of a person's health but also provides compensation for real economic losses and to offset economic hardship.

The Commission notes that MPIC's narrow interpretation in respect of the meaning of 'rehabilitation' as set out in Section 138 of the Act is inconsistent with MPIC's public statements relating to the purposes of rehabilitation under the Act. Having regard to the dictionary definition of 'rehabilitation' and to the public statements by MPIC that the primary purposes of rehabilitation are:

1. to compensate a victim for real economic losses resulting from accidental injuries in automobile collisions,
2. to assist in the victim's recovery and to assist the victim by offsetting economic hardship, and
3. to provide compensation to the victim for a range of economic losses,

the Commission determines that the word 'rehabilitation' in Section 138 includes rehabilitation measures for the purpose of restoring the victim's health, and also for the purpose of assisting the victim economically as set out in paragraphs 1., 2. and 3. as noted above.

The Commissioner further rejects MPIC's interpretation of Section 138 which requires that the provisions of this section be read conjunctively and not disjunctively. The Commission finds that the word 'and' in Section 138 can be interpreted to read as 'or.'

This issue was dealt with fully by the Manitoba Court of Appeal in the case of **Ahluwalia v. College of Physicians and Surgeons of Manitoba**[1]. In that case, the Manitoba Court of Appeal had to consider whether the potential sanctions in Section 57(1) of The Medical Act were an alternative measure or whether the intent of the legislation was to permit an *inquiry committee* of the College to impose these sanctions with flexibility in the application of a variety of sanctions, some of which could be employed in concert with others.

Section 57(1) of The Medical Act read as follows:

> **Discipline of members**
> **57(1)** Where a member is found by the inquiry committee to have been guilty of professional misconduct, conduct unbecoming a member, or to have demonstrated incapacity or unfitness to practice medicine, or to be suffering from an ailment that might if the member continues to practise medicine constitute a danger to the public, the council may by resolution

[1] [1999] M.J. No. 225 Q.L. (MbCA)

(a) cause the name of that member to be erased from the register; or

(b) suspend the licence of the member for a period not in excess of two years; or

(c) reprimand the member; or

(d) permit the member to practise upon such terms and conditions as it may deem appropriate.

At pages 3-4 of this decision, the court stated:

> The issue is whether erasure from the register constitutes a reasonable disposition if a combination of the other sanctions could have been employed to both punish Dr. Ahluwalia for past conduct and give reasonable assurance that the public will be protected in the future.
>
> While the word "or" is normally read in a disjunctive fashion, both academic and case law authority have consistently approved the view that it may be read in a conjunctive sense if that is the perceived legislative intent. [*underlining added*]
>
> In Maxwell on the Interpretation of Statutes (12th ed. 1969), by P. St. J. Langan, at pp. 232-33, it is stated:
>
> > In ordinary usage, "and" is conjunctive and "or" disjunctive. But to carry out the intention of the legislature it may be necessary to read "and" in place of the conjunction "or," and vice versa.
>
> There are any number of Canadian and English authorities that have construed the word "or" in a conjunctive manner. It depends upon the purpose or intention of the legislature and the context in which the word appears.
>
> In Federal Steam Navigation Co. Ltd. v. Department of Trade and Industry, [1974] 2 All E.R. 97 at 99 (H.L.), the statute under consideration provided that:
>
> > If any oil … is discharged … into a part of the sea which is a prohibited sea area, … the owner or master of the ship shall, … be guilty of an offence ….
>
> The question was whether only the owner or only the master, or both the owner and the master, should be liable. In the result, the majority held that the word "or" should be construed conjunctively and should be replaced by "and." Lord Wilberforce noted at p. 110:
>
> > In logic, there is no rule which requires that "or" should carry an exclusive force. Whether it does so depends on the context.

And Lord Salmon wrote at p. 113:

> There is certainly no doubt that generally it is assumed that "or" is intended to be used disjunctively and the word "and" conjunctively. Nevertheless, it is equally well settled that if so to construe those words leads to an intelligible or absurd result, the courts will read the word "or" conjunctively and "and" disjunctively as the case may be; or to put it another way, substitute the one word for the other. This principle has been applied time and again even in penal statutes: see for example R. v. Oakes [[1959] 2 All E.R. 92 (C.C.A.)].

A Canadian example is to be found in Marathon Realty Co. v. Regina (City) (1989), 64 D.L.R. (4th) (Sask. C.A.). In that case, Tallis J.A. makes the point at p. 255:

> However, to carry out the legislatures [sic] intention it may be necessary to read "and" in place of the conjunctive "or" and vice versa. Accordingly, the issue before us must be passed upon in the context of the legislation before the court.

A case which involved the imposition of sanctions is Industrial Construction Ltd. v. Petit-Rocher, Village of (1980), 31 N.B.R. 2d) 288 (C.A.), in which Chief Justice Hughes wrote at p. 291:

> In our opinion Order 27, r.15 gives the court or judge a wide discretion in ordering that a judgment entered by default, whether regularly or irregularly, be set aside. It provides that the order may be made "upon such terms as to costs or otherwise as such judge or court may think fit". While the natural meaning of "or" when used as a connective is to mark an alternative or present a choice implying an election to do one of two things, we do not think that is the sense in which "or otherwise" is used in the rule but that it was intended to empower the court or a judge to impose both terms as to costs and to other matters as the justice of the case might require.

In R. v. Shaw (1920), 54 D.L.R. 577 (Sask. C.A.), the court held that the words "punishment by fine, penalty or imprisonment," as used in s. 92(15) of the British North America Act, was held not to mark such an alternative, but to empower the provincial legislature to authorize punishment by both fine and imprisonment.

The Manitoba Court of Appeal, in the case of **Ahluwalia v. College of Physicians and Surgeons of Manitoba** *supra*, concluded at page 4 as follows:

> The Medical Act, as it was when the complaints about Dr. Ahluwalia arose (the Act has since been amended), contemplated a process to investigate complaints, to determine their validity, and where misconduct was established, to apply appropriate sanctions. Looking at the legislation as a whole, it was not intended that the sanctions should take the form of stark alternatives. That could lead to excessive leniency in some cases and excessive harshness in others. The intent of the legislation was to provide the executive with flexibility in the application of a variety of sanctions, some of which could be employed in concert with others.

In Marathon Realty Co. v. Regina (City) *supra* which was applied by the Manitoba Court of Appeal in the above-mentioned case, Chief Justice Bayda, on behalf of the majority of the Saskatchewan Court of Appeal, stated at page 12:

> I agree with the respondent's submission and reject Marathon's contention that the Board committed an error in law in its interpretation of the applicable test under s. 151(1). In my opinion, the interpretation by the Board, which was not challenged at that time, comports harmoniously with the overall scheme of the Act, its purpose and the intention of the legislature. I find that the principle articulated by Kerans J.A. in Wyo-Ben Inc. v. Wilson Mud Canada Ltd. (1985), 23 D.L.R. (4th) 760 at p. 763, [1986] 2 W.W.R. 350, 41 Alta. L.R. (2d) 289 (C.A.), applies to this case:
>
> > The words of this statute should be given a purposive interpretation, by which I mean that the words must be given that meaning which is most harmonious with the object or scheme of the statute provided always that the meaning is one they can reasonably bear.

Section 12 of *The Interpretation Act*, R.S.M. 1987, c. 180, states:

> Every enactment shall be deemed remedial, and shall be given such fair, large, and liberal construction and interpretation as best insures the attainment of its objects.

Applying the legal principles enunciated by the Manitoba Court of Appeal in **Ahluwalia v. College of Physicians and Surgeons of Manitoba** *supra*, the Commission finds that the words of Section 138 should be given a purposive interpretation in order that its meaning be harmonious with the object and scheme of the statute.

Section 138 of the Act states:

> **Corporation to assist in rehabilitation**
> **138** Subject to the regulations, the corporation shall take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury, and to facilitate the victim's return to a normal life or reintegration into society or the labour market.

In Section 138, the provisions of "rehabilitation of a victim" are separated by a comma from the words "to lessen a disability resulting from bodily injury." Legal counsel for MPIC submits that:

1. These words must be read conjunctively as follows: "contribute to the rehabilitation of a victim and to lessen a disability resulting from bodily injury."
2. Since the Appellant's request for reimbursement of the cost of travel expenses relates only to compensation for an economic loss and does not relate to any rehabilitation measure in respect of a disability resulting from bodily injury, the Commission must reject the Appellant's request for compensation.
3. Both provisions must be satisfied concurrently before MPIC is obligated to reimburse the travel expenses of the Appellant.

The Commission finds that MPIC's interpretation of these provisions is too narrow to achieve the purposes and intent of the legislation. Under Section 138 of the Act, the Commission determines that MPIC may be required to provide concurrently to a victim of an accident rehabilitation measures in order to:

1. lessen a disability resulting from bodily injury; and/or
2. be compensated for economic losses and to offset economic hardship resulting from injuries sustained in the accident.

Legal counsel for MPIC also notes that the words "a disability resulting from bodily injury" in Section 138 of the Act are followed by the words "and to facilitate the victim's return to a normal life." Legal counsel for MPIC notes that the word 'and' is used between these two provisions and, therefore, these two provisions must be interpreted conjunctively and not disjunctively.

The Commission determines that it is not unreasonable to interpret the words "to facilitate the victim's return to a normal life" to include:

1. to facilitate the victim's return to a normal economic life that the victim enjoyed prior to the accident, and/or
2. to facilitate the victim's return to a condition of health that the victim enjoyed prior to the accident.

The Commission finds that MPIC's interpretation of these provisions is too narrow to achieve the purposes and intent of the legislation. As indicated earlier, a victim of an accident is entitled, under the Act, to concurrently obtain rehabilitation in order to

1. lessen a disability resulting from bodily injury; and/or
2. to offset economic losses and to offset economic hardship.

The Commission, therefore, rejects MPIC's interpretation as not being harmonious with the object and scheme of the statute and, therefore, concludes that these provisions must be read disjunctively and not conjunctively.

The Commission, therefore, determines that all of the provisions under Section 138 must be read disjunctively in order to provide MPIC with the flexibility in assisting victims of motor vehicle accidents to be able to return as reasonably and as practicably as possible to their previous economic status and/or their previous health status prior to the accident.

The Commission has determined that there is no factual foundation for the application of Section 10(1) of Manitoba Regulation 40/94 in respect of the Appellant's request for reimbursement of his travel allowances. Where, as in this case, Section 10(1) does not provide for a specific rehabilitation measure needed to assist a victim of an accident, then in the appropriate circumstances MPIC, where it determines it is advisable or necessary, may provide for rehabilitation measures under Section 138 of the Act, and this would include measures that relate not only to the health of the victim of an accident, but also to the economic losses or economic hardships which resulted from the accident.

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.

Pursuant to Section 138, MPIC has the responsibility to determine whether a specific request for rehabilitation is advisable or necessary in the particular circumstances of the case. Once it makes

this determination, MPIC should not be limited in the manner in which it provides rehabilitation. In any particular situation, a victim of a motor vehicle accident may require not only assistance to restore that person's health, but that person may also require rehabilitation in a variety of economic ways. Where MPIC deems it necessary or advisable, it may assist a person in retraining, in finding employment and, in the appropriate circumstances, assisting that person by compensating him or her in respect of a range of economic losses or to offset economic hardship as a result of the accident, where such compensation measures are not specifically provided for in the Act.

The Commission, therefore, finds that MPIC erred in failing to assess the Appellant's request for compensation in respect of the cost of travel expenses on its merits, since the Appellant's request should not have been rejected because the request did not come within the scope of Section 138 of the Act.

In this case, as a result of the Appellant's motor vehicle accident, he has suffered a significant financial loss. In order to attend at work, the Appellant is required to spend an additional $2,400/per year to cover the cost of gasoline to and from his place of employment. In the Commission's view, and having regard to the income the Appellant earns, the additional travel cost places a significant financial burden upon the Appellant.

In our society, work is not only a means for providing a person with financial support and independence. It also gives meaning and purpose to a person's life. It defines a person's role in society and gives that person a sense of dignity, self-respect, and self-worth. Loss of

employment results not only in a significant financial loss to a person, but it may also result in a traumatic, emotional experience to that individual.

The accident in this case was a major traumatic event in the Appellant's life, resulting in significant physical injuries which materially affected his quality of life. He was unable to continue with employment that he enjoyed, in a location a short distance from his home. As a result of the accident, he is now required to travel a significant distance to his place of employment. Having regard to all of the circumstances, the Appellant has suffered a significant financial loss due to the injuries he sustained in the accident, and the rehabilitation measures provided by MPIC should place the Appellant, as reasonably as possible, in the same economic position he was in prior to the accident.

Under Section 184(1)(b) of the Act, the Commission may make any decision that MPIC could have made. The Commission, pursuant to Section 138 of the Act, finds that it is advisable that MPIC reimburse the Appellant for the cost of gasoline for travelling by automobile to and from his place of employment in [text deleted] from June 14, 1999.

The Commission, therefore:

(a) directs that MPIC reimburse the Appellant for the cost of gasoline for travelling by automobile to and from his place of employment in [text deleted] from June 14, 1999, together with interest thereon at the prescribed rate;

(b) the Commission retains jurisdiction in this matter, and if the parties are unable to agree as to the amount of the cost of gasoline for travelling by automobile to and from the Appellant's place of employment in [text deleted], then either party may refer this dispute back to this Commission for final determination; and

(c) the decision of MPIC's Internal Review Officer, dated July 13, 2001, is, therefore, rescinded.

Dated at Winnipeg this 21st day of August, 2002.

MEL MYERS, Q.C.

LAURA DIAMOND

GUY JOUBERT