

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-157**

PANEL: Ms Laura Diamond, Chairperson
Ms Janet Frohlich
Ms Linda Newton

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Dan Joannis of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: May 13 and May 21, 2014

ISSUE(S): Entitlement to Income Replacement Indemnity benefits.

RELEVANT SECTIONS: Section 81(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 8 of Manitoba Regulation 37/94.

AICAC 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

The Appellant was injured in a motor vehicle accident on January 17, 2004. At the time of the accident, he was employed as an [text deleted].

In April of 2006, the Appellant advised his case manager that he had lost his employment in November 2005 due to back pain which related to the motor vehicle accident of January 17, 2004. However, the Appellant's employer indicated to his case manager that his loss of

employment was as a result of company reorganization and not his inability to work due to injury.

The Appellant's case manager consulted with MPIC's Health Care Services team, and in a letter dated August 29, 2007 indicated to the Appellant that he was not entitled to Income Replacement Indemnity ("IRI") benefits as a causal relationship could not be drawn between his current symptoms and the motor vehicle accident.

The Appellant sought an Internal Review of this decision. On October 8, 2009, an Internal Review Officer for MPIC reviewed the Appellant's file, which included notes and reports from the Appellant's family physician and an opinion from a physiatrist with MPIC's Health Care Services team. The Internal Review Officer concluded that the information on the Appellant's file indicated that his employment was terminated as a result of a company reorganization and not due to any inability to work as a result of injury. She concluded that the medical information on the Appellant's file did not substantiate the Appellant's claim that the motor vehicle accident of January 17, 2004 resulted in injuries that, more than two years after the accident, prevented the Appellant from working.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing into his appeal. He explained that he had problems with back pain in the past, but indicated that these were effectively dealt with when he had back surgery, in approximately 2000. This included partial removal of two discs in his back.

Following surgery his back was in excellent condition. He moved to [Manitoba] and was employed as an [text deleted].

The Appellant described his job duties and indicated that initially he had no difficulty with his back while doing this job. He began suffering from back pain in September of 2003, which included some numbness in his right leg. He visited his doctor, who recommended that he try some anti-inflammatory and pain medication. He was able to continue working. During the next few months he continued to work, although sometimes he would require a week or two of rest or a change in his environment in the shop. By December of 2003 he was able to decrease his use of the anti-inflammatory medication (Vioxx) and continue with his job.

The Appellant also described the motor vehicle accident of January 2004, when he was rear-ended while waiting at a red light. He described the damage to his vehicle as extensive. The next day, he began suffering from headaches and his back felt tender. Although his back felt much worse after the motor vehicle accident, the Appellant indicated that he was able to continue working. Some of his job duties, particularly those that involved stooping, aggravated his back symptoms. This made work a lot more difficult. His work duties also caused his feet to be numb and burning, along with the stiffness and pain in his back.

The Appellant indicated that he told his case manager that things were getting worse and that his medications were not taking care of his pain and discomfort. However, he remained at work, as he was recently separated and had just bought a house. He had a mortgage and car to pay for. He discussed his back problems with his doctor, mentioning that he was going to lose his job because of how all the pain was affecting him. He tried attending therapy, and continued to work.

The Appellant also tried injections from [Appellant's Physiatrist], but these were only effective for a couple of hours. He continued physiotherapy treatments until the end of July 2005. After these benefits ended, the Appellant's numbness, burning and pain returned. The Appellant explained that his symptoms became worse on a continuous basis following the motor vehicle accident. He was in incredible pain and the medication that he was taking affected his stomach.

The Appellant described being laid off from his job in November of 2005. His employer told him that that this would be his last day and offered him a severance package if he would sign a release. The Appellant indicated that he was not expecting this event to occur and he was not given any reason for his termination, other than that the employer's volume of work had been reduced. He felt that he had worked for this employer longer than many of the others in the [text deleted] and that he should not have been terminated. He believed that the employer was worried about the status of his back and that was the reason for his termination.

The Appellant also described difficulties he was having with his psychological health and his referral to a psychiatrist, [text deleted], in September of 2005. [Appellant's Psychiatrist] provided reports which provided a diagnosis of major depression.

Eventually, the Appellant also saw [Appellant's Surgeon], in June of 2011. [Appellant's Surgeon] performed surgery on his lower back. The Appellant described the outcome from this surgery as very good. He described his back as being much better today.

The Appellant testified that in his view his inability to work in November of 2005 was due to his physical inability to perform his duties and that had the motor vehicle accident not injured his back he would have been able to continue working.

Counsel for the Appellant submitted that although he had suffered from some back problems prior to the motor vehicle accident, his condition was enhanced or chronically aggravated by the motor vehicle accident. Although the Appellant had some short periods off work prior to the motor vehicle accident, he was able to return to work before the accident occurred. Following the motor vehicle accident, however, the Appellant underwent a long course of treatment. He saw a number of specialists for his chronically aggravated lower back condition. Although he was able to continue working through to November of 2005, over this period of time his back condition deteriorated slowly but progressively.

Counsel submitted that the Appellant had demonstrated that following the motor vehicle accident the Appellant was no longer able to perform his job duties as an [text deleted], due to injuries sustained in the motor vehicle accident.

Counsel reviewed the Appellant's pre-motor vehicle accident status and the back surgery he had in 2000.

A careful review of the chart notes of the Appellant's family physician, [text deleted], showed that the Appellant did suffer from some back pain symptoms prior to the motor vehicle accident. These were controlled with anti-inflammatories. The Appellant continued to work at his job, after a brief course of treatment.

However, following the motor vehicle accident, the Appellant's back condition deteriorated. Medical reports showed a tender lumbar spine with discogenic right leg pain aggravation as well as concussion. Counsel took the position that the Appellant's condition continued to deteriorate from that point. He pointed to the Appellant's testimony that despite medication, physiotherapy

and injections, following the motor vehicle accident the Appellant's symptoms did not improve overall on a long term basis. Over time, the symptoms continued to deteriorate, up to November 2005 when the pain became so severe that the Appellant could no longer continue working.

Although there was some fluctuation in the symptoms reported by [Appellant's Doctor] and [Appellant's Physiatrist], counsel argued that this was likely a reflection of the Appellant's level of activity at the time, as the Appellant had indicated in his testimony that his symptoms got worse as he did more.

Counsel reviewed a report provided by [Appellant's Doctor], dated April 26, 2007 which indicated that the Appellant had back and right leg pain which had been improving until he was in the accident. Since then, his symptoms had not resolved and he continued to have loss of function. [Appellant's Doctor] indicated that this led to the Appellant being laid off from his job, due to his inability to do his work secondary to his injuries.

A further report from [Appellant's Doctor] dated September 26, 2010 indicated:

“When I last saw him prior to the accident in clinic on January 12, 2004 he had been doing much better on Vioxx and was able to tolerate his work although he still had a decreased S1 reflex and sensation but a negative straight leg raise. He then followed up on February 2, 2004, with increased symptoms in his right foot as well as symptoms of concussion. I diagnosed him with aggravation of his discogenic right leg pain as well as concussion. With the decreased reflex and sensation, he also had a positive slump test again following the injury.

He continued to work and according to the chart on April 5, 2005, I put him on light duties for the rest of the week as he was getting epidural injections. During this time, his symptoms continued to worsen and he had been seen by a number of specialists such as a physiatrist and neurosurgeon.

It was at the appointment of December 2, 2005, where he had stated he had been laid off. He was unable to do his duties due to his back and was laid off. Up to this point, he had been unable to return to work since then. I had filled out employment insurance form on December 12, 2005, as well as gave him further notes allowing him to be

continued to be off work for medical reasons. These were required due to the symptoms and signs of his back for him (sic) back injury related to the motor vehicle accident.”

[Appellant’s Doctor] concluded:

“He had coped with the back pain since the injury while we tried numerous medications and referrals to specialists however as it deteriorated, he was unable to continue working. While he did have previous symptoms of the back and right leg, it was much improved until the motor vehicle accident and it was following that point, that his symptoms continued to deteriorate even with further treatments...”

Counsel for the Appellant also reviewed a report from the [Appellant’s Psychiatrist], who stated:

“Comments pertaining to injuries sustained on January 17, 2004: I saw [the Appellant] many times in followup (sic) to monitor his response to antidepressant medication. There were many days when he displayed pain-related behaviour and certainly he discussed his low back pain on almost every occasion, as it was a major feature of his ongoing struggles. As I continued to see [the Appellant], it became apparent that his back pain was becoming worse and not responding to the various interventions by other specialists. He really became unemployable as a result of his low back pain and not so much because of his depression. I observed over time, with increasing alarm, [the Appellant’s] decreased ability to walk and function due to his low back pain.

Comments with respect to the impact of accident-related injuries on capacity to work: While at the height of his depressive symptoms, [the Appellant] clearly was incapable of returning to work by virtue of decreased mood, decreased concentration, and poor motivation. It is significant to note though that when his depressive symptoms responded to medication, it was apparent from [the Appellant’s] comments that the ongoing and worsening back pain, which he attributed to his motor vehicle accident of January 17, 2004, was the main issue that he felt made it impossible to return to work in any capacity.”

Counsel submitted that, while he recognized that [Appellant’s Psychiatrist’s] area of expertise was not in the area of physical causation, these references confirm the Appellant’s consistent reporting of his back pain from the motor vehicle accident.

Counsel reviewed reports provided by MPIC’s Health Care Services team and by an independent examiner, [Independent Psychiatrist]. He submitted that these reports recognized the deterioration of the Appellant’s condition over time. Counsel did not disagree that the Appellant’s back

surgery in 2000 likely predisposed him to further back problems over time, but submitted that the motor vehicle accident clearly aggravated the compromised state of the Appellant's lower back.

Further, counsel submitted that the [Appellant's Doctor], who had seen the Appellant repeatedly over time, was in the best position to determine whether the Appellant's lower back condition was caused by the motor vehicle accident.

Counsel for the Appellant then went on to review the essential duties of the Appellant's employment as an [text deleted] and how the deterioration of the Appellant's back condition following the motor vehicle accident prevented him from being able to perform these duties.

Counsel submitted that on a balance of probabilities, the Appellant had met the onus upon him to demonstrate that the motor vehicle accident caused a chronic permanent aggravation of his low back pain which deteriorated gradually over time to the point where he was unable to continue working. Accordingly, the Commission should allow the Appellant's appeal and find that the Appellant is entitled to IRI benefits from November 2005 to the present time.

Evidence and Submission for MPIC:

MPIC submitted several reports from MPIC's Health Care Services team and from [Independent Physiatrist], an expert in physical and rehabilitation medicine who had undertaken a forensic review of the Appellant's file, resulting in a report dated January 25, 2013. [Independent Physiatrist] also testified at the hearing into the Appellant's appeal.

[Independent Physiatrist] emphasized that he did not examine the Appellant. However, he indicated that the questions he was asked to answer were best addressed by reference to the self-explanatory data which was found on the Appellant's file.

In his evidence, [Independent Physiatrist] relied heavily upon the chart notes prepared by the [Appellant's Doctor]. He indicated that [Appellant's Doctor's] medical evaluation and testing was appropriate and provided excellent patient management. Therefore, the chart notes provided clear information regarding the Appellant's symptoms and findings both before and after the motor vehicle accident.

[Independent Physiatrist] reviewed the Appellant's previous history of back pain and back surgery as well as symptoms of radiculopathy which appeared in October of 2003. These radiculopathic symptoms indicated that the nerve root was compressed or irritated in some way. The Appellant's symptoms, examination results and treatment were reviewed by [Independent Physiatrist]. This included the period the Appellant was off work due to discogenic pain symptoms prior to December 8, 2003.

[Independent Physiatrist] then reviewed the circumstances surrounding the motor vehicle accident of January 17, 2004. The accident involved a rear-end collision and [Independent Physiatrist] provided his understanding, based upon his studies, of the expectation for injury in such collisions. He indicated that the common expectation is for minor whiplash symptoms which are expected to resolve within a three to four week period. He indicated that back injuries were unusual in such situations unless a seat breaks or collapses, which had not occurred in this situation. He would not have expected that this motor vehicle accident would have caused any physical structural damage to the Appellant's back. Further, he noted that following the motor

vehicle accident there was no documentation that the Appellant went to hospital. Notations from the Appellant's visit to his doctor on February 2, 2004 did not really show any changes to the Appellant's complaints from before the motor vehicle accident, with the possible exception that he now indicated that driving was difficult and there was some cervical tenderness (which should be expected). At most, the report showed a minor aggravation of the Appellant's back pain with minor neck whiplash and mild concussive symptoms.

Follow-up appointments documented some intermittent numbness. In [Independent Physiatrist's] view this reflected some improvement, since intermittent neurological symptoms (rather than continuous involvement) show that the pressure is off the radiculopathy.

In April of 2004, the Appellant's condition was further improved and it was noted that he was not experiencing numbness. The range of motion in his back and neck were normal and there was decreased tenderness. The chart notes showed the Appellant was improving.

[Independent Physiatrist] did not agree that the Appellant's back condition had been greatly improved prior to the motor vehicle accident. Further, based on his review of [Appellant's Doctor's] chart notes, it was his view that the motor vehicle accident did not cause deterioration in the Appellant's condition, beyond a temporary minor aggravation which resolved.

[Independent Physiatrist] reviewed the reports prepared by MPIC's Health Care Services team and agreed with those conclusions. In his view, the motor vehicle accident of January 17, 2004 did not give rise to any injuries which would have made the Appellant unable to perform the essential duties of his employment beyond November of 2005.

Counsel for MPIC submitted that the Appellant had significant back issues at a young age that went on for a period of time. These issues were significant enough to require surgery. Unfortunately, the Appellant's back problems returned, for no apparent reason, in 2003. These pre-existing long-standing back symptoms continued after the motor vehicle accident.

However, counsel disagreed with the Appellant's position that his condition resulting from the motor vehicle accident was so bad, and that he was taking so much medication and was in so much pain that he was unable to do his job or to function. The Appellant did not miss work, other than minor absences for other unrelated injuries, following the motor vehicle accident. He was not ever in receipt of IRI benefits.

Correspondence from his employer indicated that he was dismissed from his job due to a shortage of work and this was confirmed in the Record of Employment submitted by the employer. Counsel submitted that the onus is on the Appellant to support his position that, having not missed work after the motor vehicle accident, he was somehow unable to continue working in November of 2005, due to motor vehicle accident injuries.

Counsel for MPIC reviewed the reports from MPIC's Health Care Services team. MPIC's expert looked at the file many times and commented on the issues involved. It was her view that the motor vehicle accident injury did not play any part in the Appellant's inability to do his job beyond November of 2005.

[Independent Physiatrist], a physiatrist and rehabilitation consultant who has been working in the field for a long time and is licensed to perform independent medical exams, completed an objective review of the file material. He completed a careful review of notes from the

Appellant's caregivers during the period before and after the motor vehicle accident. These reports showed that before the motor vehicle accident the Appellant suffered from a significant discogenic back condition. It showed some exacerbation at certain points in time, with some improvement at other points in time. However, the back issue never went away.

[Independent Psychiatrist] also commented on the circumstances of the motor vehicle accident which was a rear-end collision which would not be expected to have an effect on the Appellant's low back.

His review of the file led [Independent Psychiatrist] to conclude that the Appellant's back was not damaged in the motor vehicle accident of January 17, 2004. Rather, a few months after that motor vehicle accident, his back was in better condition than it had been in September of 2003, prior to the motor vehicle accident.

The evidence established, counsel submitted, that the Appellant had been laid off from his employment due to a shortage of work and that this had nothing to do with his motor vehicle accident injuries. Nor was the Appellant's back pain in November of 2005 linked to the motor vehicle accident.

Counsel submitted that the Commission should prefer [Independent Psychiatrist's] reasoned analysis, which was based upon [Appellant's Doctor's] careful notes made at the time, both before and shortly after the motor vehicle accident. He argued that [Appellant's Doctor's] later reports had crossed over into the realm of advocacy for his patient, and did not carry the same level of expertise.

Counsel submitted that the Appellant had not established on a balance of probabilities that he was incapable of carrying out the essential duties of his employment due to the motor vehicle accident. The Appellant's appeal should be dismissed.

Discussion:

The MPIC Act provides:

Entitlement to I.R.I.

[81\(1\)](#) A full-time earner is entitled to an income replacement indemnity if any of the following occurs as a result of the accident:

- (a) he or she is unable to continue the full-time employment;
- (b) the full-time earner is unable to continue any other employment that he or she held, in addition to the full-time regular employment, at the time of the accident;
- (c) the full-time earner is deprived of a benefit under the *Employment Insurance Act* (Canada) to which he or she was entitled at the time of the accident.

Manitoba Regulation 37/94 provides:

Meaning of unable to hold employment

8 A victim is unable to hold employment when a physical or mental injury that was caused by the accident renders the victim entirely or substantially unable to perform the essential duties of the employment that were performed by the victim at the time of the accident or that the victim would have performed but for the accident.

The onus is on the Appellant to show, on a balance of probabilities that he was unable to perform the duties of his employment as a result of injuries sustained in the motor vehicle accident.

The panel has reviewed the evidence on the Appellant's indexed file, the testimony of the Appellant and of [Independent Psychiatrist] and the submissions of counsel.

The panel finds that the Appellant has failed to meet the onus upon him of establishing that his motor vehicle accident injuries prevented him from working at his job after November of 2005. We find that the Appellant has failed to establish both that the motor vehicle accident was the cause of his ongoing back symptoms in November of 2005 and that his termination from employment was as a result of back symptoms and his inability to do the job.

[Independent Physiatrist] undertook a thorough and comprehensive review of the Appellant's file. Most importantly, he undertook a careful review of the chart notes of the [Appellant's Doctor], prior to and following the motor vehicle accident (particularly in 2003 and 2004). [Independent Physiatrist] explained to the panel that [Appellant's Doctor's] notes provided well documented data from the period prior to and after the motor vehicle accident. He testified that [Appellant's Doctor's] medical evaluation and testing were appropriate and provided excellent medical management, so that all the symptoms and findings from that time are there to clearly see in his notes.

[Independent Physiatrist] explained the limitations of memory at a point in time so far from the events at issue and described [Appellant's Doctor's] notes as the "cleanest" information available. [Appellant's Doctor] also had the advantage, he explained, of repeatedly seeing the patient and his chart notes at that time were unencumbered by any concerns for advocacy that may later have affected him through his continued care for the patient once he lost his job.

Based on [Independent Physiatrist's] thorough review of the Appellant's pre-motor vehicle accident history, it was clear that the Appellant had a long standing history of back problems prior to the motor vehicle accident. He underwent back surgery in 1999 or 2000, in British Columbia, which improved his condition for a period of time. He then moved to Manitoba and

was working as an [text deleted] in September of 2003, when he saw [Appellant's Doctor] for back pain at work. This was diagnosed as a right radiculopathy. The chart notes show that the Appellant saw [Appellant's Doctor] on October 9, 2003 for follow-up, with continuing complaints of back pain, numbness and other symptoms, leading to an assessment of an S1 radiculopathy. The Appellant was treated with medications such as Vioxx, Tylenol 3 and Elavil, and physiotherapy was recommended.

What followed was a series of entries in the chart notes, every few weeks, through October, November and December of 2003 up to January 13, 2004. During these visits, [Appellant's Doctor] recorded a diagnosis of discogenic back pain with neurological symptoms including numbness, burning and muscle spasm, in addition to back pain. Improvement was recorded on January 12, 2004 with an ability to tolerate work, but still with decreased reflex and sensation on the right side at S1. Although the Appellant had been off work for a period of time due to the symptoms, he had returned to work on December 8, 2003 and was still able to tolerate working on January 12, 2004.

The accident occurred on January 17, 2004. However, the evidence showed that the Appellant did not attend at a hospital or a medical facility as a result and the notes show that the Appellant did not see [Appellant's Doctor] until February 2, 2004, some two weeks after the motor vehicle accident. Entries which followed visits to [Appellant's Doctor] during February of 2004 showed that the Appellant complained of headache and concussive symptoms and some neck pain, though both were slowly improving. The Appellant still suffered from discogenic back pain in this period as well.

The notes show that the Appellant's headache, concussive symptoms and neck pain improved and that he continued working, with a notation around March 18, 2004 that his leg pain was decreasing, although still with some numbness. By April 18, 2004, the notes showed that the patient was improving. The notes did not record complaints to [Appellant's Doctor] by the Appellant that he was having any trouble at work.

In June 2004, the notes showed that the Appellant was still experiencing back pain, as well as numbness in his foot, although not as bad as it had initially been. Throughout this period he continued to receive physiotherapy treatment and by June was referred to [Appellant's Physiatrist], with an assessment of radiculopathy.

During the next period, between June 2004 and November 2005, the Appellant continued to work. He attended for physiotherapy treatment, as well as for injections from [Appellant's Physiatrist] and saw other specialists, such as a neurosurgeon.

[Independent Physiatrist's] conclusion following his review of [Appellant's Doctor's] notes and the Health Care Services report, was that the Appellant's back condition, while possibly temporarily irritated by the motor vehicle accident, was not caused by the motor vehicle accident. The Appellant suffered from long standing disc pathology, with resulting symptoms that fluctuated over the course of time, and which existed long before the motor vehicle accident. The motor vehicle accident, beyond minor temporary irritation, did not change the course of this condition.

[Independent Physiatrist] also gave extensive evidence regarding the mechanism of injury in the motor vehicle accident. He explained why a rear-end collision was more likely to cause

whiplash symptoms in the upper back and neck than to affect the lumbar spine, which is protected when belted into a seat, leading to absorption of the impact by the seat.

Accordingly, it was his view that the motor vehicle accident in question was, on a balance of probabilities, not the kind of mechanism which would have affected the Appellant's disc condition. On a balance of probabilities, he explained, there was a high likelihood the Appellant's fluctuating symptoms were not caused or permanently exacerbated by the motor vehicle accident.

The panel has reviewed various reports provided by [Appellant's Doctor] which do connect the Appellant's back symptoms and his inability to work with the motor vehicle accident. In addition, [Appellant's Psychiatrist] also opined that the Appellant stopped working, not due to psychological issues, but rather due to back pain which the Appellant felt was due to the motor vehicle accident.

However, [Appellant's Psychiatrist] did not make any direct analytical comments regarding causation and conflicts did arise between [Appellant's Doctor's] later reports and the contents of his chart notes made closer to the time of the motor vehicle accident.

MPIC's Health Care Services consultant, while acknowledging that the motor vehicle accident may have caused temporary aggravation of the Appellant's pre-existing symptom complaint, concluded that, by November of 2005, it was apparent that the deterioration of the Appellant's symptoms and functions could not be explained on the basis of the January 2004 motor vehicle collision.

The Appellant testified that he was unable to continue working at his job because of motor vehicle accident related back pain. It was the position of the Appellant that the motor vehicle accident chronically aggravated his pre-existing back condition which had significantly improved in the period just prior to the motor vehicle accident, allowing him to return to work in December of 2003. His condition gradually deteriorated following the accident, and when his physiotherapy ended in 2005, his back symptoms prevented him from being able to continue to perform the essential duties of his job.

However, the panel finds that this evidence was directly contradicted by numerous reports in the Appellant's indexed file from both the employer, and some completed by the Appellant himself. These set out the reason for his job termination in November 2005 as a lay-off for shortage of work. This shortage of work as the reason for termination was established in various documents on the indexed file, including case manager's notes from conversations with the employer, the Record of Employment and the Appellant's application for Employment Insurance benefits.

Further, it became apparent through the evidence that prior to November of 2005 the Appellant lost very little working time due to the motor vehicle accident and that most of the time he had missed had been due to other, unrelated workplace injuries to his hand and eye.

Therefore, based upon this evidence and the thorough and credible evidence of [Independent Physiatrist], the panel has concluded that the Appellant has not clearly established that he was prevented from continuing to perform his job duties due to his motor vehicle accident injuries.

Based upon the medical evidence and the other evidence on the Appellant's indexed file, the panel finds that the Appellant has failed to meet the onus upon him of establishing that his motor

vehicle injuries prevented him from working at his job in November 2005. The Appellant's appeal is dismissed and the decision of the Internal Review Officer dated October 8, 2009 is upheld.

Dated at Winnipeg this 3rd day of July, 2014.

LAURA DIAMOND

JANET FROHLICH

LINDA NEWTON