

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-15-039**

**PANEL:** Ms Jacqueline Freedman, Chairperson  
Dr. Arnold Kapitz  
Ms Sandra Oakley

**APPEARANCES:** The Appellant, [text deleted], was represented by Mr. Paul Simms of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

**HEARING DATE:** July 21, 2015

**ISSUE(S):** Extension of time to file a Notice of Appeal.

**RELEVANT SECTIONS:** Section 174 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.**

**Reasons For Decision**

**Background:**

The Appellant, [text deleted], was injured in a motor vehicle accident on September 8, 2009. He was in receipt of Personal Injury Protection Plan ("PIPP") benefits, including Income Replacement Indemnity ("IRI") benefits.

On September 21, 2012, the Appellant's case manager issued a decision indicating that according to a medical report, the Appellant had regained the functional ability to return to his

pre-accident employment. Therefore, his entitlement to IRI ended as of September 4, 2010, in accordance with paragraph 110(1)(a) of the MPIC Act.

The Appellant sought a timely review of this decision and on February 25, 2013, an Internal Review Officer from MPIC dismissed his application for review and upheld the case manager's decision. The Internal Review decision stated in part:

“Having reviewed your entire file, I am confirming the case manager's decision of September 21, 2012. The medical information on file does support that you were capable of holding the employment you held at the time of the accident as of September 4, 2010.”

The Internal Review decision further stated:

**“APPEAL RIGHTS**

If you are unsatisfied with this decision, you have ninety (90) days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission, which Commission can be reached at:

301 – 428 Portage Avenue  
Winnipeg, MB R3C 0E2

Telephone Number: 945-4155  
Fax Number: 948-2402

Toll Free: 1-800-282-8069

Please note that the Commission operates independently from the Manitoba Public Insurance Corporation and its decisions are binding on MPIC subject to the appeal provisions of Section 187 of *The Manitoba Public Insurance Corporation Act*.

**CLAIMANT ADVISER OFFICE**

If you need assistance in appealing this decision to the Commission, you can contact:

Claimant Adviser Office  
200 – 330 Portage Avenue  
Winnipeg MB R3C 0C4

Telephone Number: 945-7413 or 945-7442

Fax Number: 948-3157

Toll Free: 1-800-282-8069, Ext. 7413

The Claimant Adviser Office operates independently of both MPIC and the Commission and is available to you at no charge.”

The Appellant did not make application in writing to appeal the Internal Review Officer’s decision within 90 days from the date the decision was received by the Appellant. Rather, some 21 months beyond the 90 day time limit, on February 17, 2015, the Appellant sought to file a Notice of Appeal with the Commission.

The Appellant made application to the Commission for an extension of time for filing the Notice of Appeal pursuant to section 174 of the MPIC Act. The issue which requires determination is whether the Commission will grant such an extension of time to the Appellant in order to allow him to file a Notice of Appeal in respect of the decision of the Internal Review Officer dated February 25, 2013.

**Decision:**

For the reasons set out below, the Commission will not exercise its discretion to grant an extension of time to the Appellant in order to file a Notice of Appeal.

**Evidence for the Appellant:**

The Appellant testified at the hearing into his request for an extension of the 90 day period. He described the motor vehicle accident (“MVA”) of September 8, 2009. He indicated that he was driving two passengers from the airport, going through a green light on Osborne Street when his car was hit by another vehicle. He passed out and when he woke up he didn’t know what had happened. He woke up to his door being cut open. He was told that a bus had hit his door. He

thinks he was unconscious for 10 to 15 minutes but he doesn't know for sure. He injured his head and his leg was broken. He indicated that his whole body was sore and he went to therapy for a long time. He received IRI because he was not able to work and he also received compensation for his broken leg. He recalled that the IRI stopped sometime after he returned from a trip to [text deleted] in August, 2012.

The Appellant noted that his initial physician was [Appellant's doctor #1]. The Appellant indicated that he wasn't very happy with [Appellant's doctor #1] because he felt [Appellant's doctor #1] never treated him properly. The Appellant indicated that he talked to [Appellant's doctor #1] about feeling depressed but he felt that [Appellant's doctor #1] didn't listen to him. [Appellant's doctor #1] was always in a hurry and gave him pain killers but when he saw [Appellant's doctor #2] (who he eventually went to see in 2012), he felt he could speak of everything and [Appellant's doctor #2] spoke back to him. [Appellant's doctor #2] treated the Appellant for depression and also prescribed medications to the Appellant including Effexor and Seroquel. He eventually sent the Appellant to a specialist.

The Appellant testified that when his IRI was terminated, it affected him greatly. He felt "shut off". At the time, he and his wife were living with his mother and brother, and those were the only other people who he was in contact with. They all shared income and the loss of his income affected how they managed. The Appellant indicated that at the time of receipt of the Internal Review Decision he was "totally cut off" from himself and the world and he was not able to do much, due to feeling depressed. He indicated that depression is an inner problem and he was not able to make any decisions.

The Appellant also testified regarding his small claim against MPIC. Around the time of the MVA, he was also driving a limousine and it had been vandalized while at the garage. He made a claim for the damage to the limousine and the costs that he incurred to repair the vehicle, including costs to replace the engine and the transmission, which MPIC denied. MPIC took the position that he lied about the mileage on the vehicle. The Appellant indicated that there was a language barrier in his dealings with MPIC and that he didn't properly understand the questions that they were putting to him. He indicated that the total kilometers are always on file with the Taxi Cab Board and that he was unfairly punished by MPIC.

The small claim was filed with the Queen's Bench on June 29, 2012 by the Appellant. He lost that claim. He then hired a lawyer (his former counsel, [text deleted]) to represent him after he filed the small claim appeal. The Appellant indicated that he felt ignored by MPIC. When he received the Internal Review Decision regarding IRI from MPIC, he didn't properly understand it. He felt that MPIC didn't take his feelings into account. He provided the Internal Review decision to Campbell Marr. However, [Appellant's former counsel] told him that it wasn't worth the money to pursue it. [Appellant's former counsel] noted that the Appellant was already taking money from his mother and it would be a waste of her money to pursue it. However, in time, the Appellant spoke with his friends, who told him that he would eventually need more money and they encouraged him to go see his MP. His MP told the Appellant that he should see if there is anything he could do, so the Appellant went to his MLA. Talking with his MLA helped energize the Appellant and encouraged him to pursue this appeal.

**Evidence for MPIC:**

MPIC did not call any witnesses; however, counsel for MPIC did cross-examine the Appellant. On cross-examination, counsel for MPIC confirmed with the Appellant that he received the case

manager's decision and that he knew that it terminated his IRI benefits. The Appellant indicated that he knew he was not getting paid when he stopped receiving cheques. The Appellant confirmed that he requested a review of the case manager's decision within four days of receiving it. The Appellant indicated that he went to MPIC, where a woman there helped him by telling him what to write and he signed it. Counsel for MPIC confirmed that the Application for Review of the case manager's decision was completed all in the Appellant's own handwriting.

Counsel for MPIC also confirmed with the Appellant that he received the Internal Review Decision. The Appellant indicated that he was sure he would have received it and that he was aware that it didn't go in his favour. The Appellant indicated that he took it to his former counsel, [Appellant's former counsel]. He was unsure of the date that he had first retained [Appellant's former counsel]. The Appellant had signed an authorization form addressed to MPIC dated August 6, 2013. He thought that his first meeting with [Appellant's former counsel] was likely sometime prior to that date.

Counsel for MPIC questioned the Appellant regarding the advice he received from [Appellant's former counsel]. The Appellant indicated that [Appellant's former counsel] had advised him not to pursue an appeal of the Internal Review Decision, because it was too late to appeal it, and in addition that it wasn't worth the money to pursue the appeal in any event. The Appellant confirmed that he paid [Appellant's former counsel] for their services. The Appellant was unsure as to the extent of the research conducted by [Appellant's former counsel] into this issue, for example whether or not [Appellant's former counsel] may have contacted the Commission. The Appellant did not have anything in writing confirming the advice he received from [Appellant's former counsel] regarding whether to file an appeal of the Internal Review Decision.

Counsel for MPIC confirmed with the Appellant that he filed a small claim on June 29, 2012, before he retained [Appellant's former counsel]. The Appellant further confirmed that he testified at the hearing of his small claim, was subject to cross-examination and gave a submission at the small claim hearing. He also filled out the appeal form in the small claims appeal. The Appellant noted that he went down to the courthouse to fill out the forms and he did ask for some help. He also had assistance from his former counsel for the small claims appeal. Counsel for MPIC confirmed that his depression did not prevent the Appellant from attending the small claims appeal. The Appellant noted that he was able to do certain things. He was not confined to his bed, although he had ups and downs.

**Submission for the Appellant:**

Counsel for the Appellant provided a written submission, which was appreciated. Counsel noted that the criteria which are applied when determining whether the extension of time will be granted include:

1. the length of the delay,
2. the reasons for the late appeal application;
3. prejudice to the other party; and
4. waiver.

Counsel for the Appellant referred the panel to various cases in support of the Appellant's position. In particular, he referred the panel to a Manitoba Court of Appeal decision, *Law Society of Manitoba v. Eadie*, [1988] M.J. No. 342. In that case, Justice Twaddle stated for the Court as follows at page 3:

“It seems to me that the fundamental principle is this: A litigant is entitled to have his case decided on its merits unless he is responsible for undue delay which has prejudiced the other party.”

Counsel for the Appellant submitted that the Appellant is entitled to have his appeal heard on its merits unless MPIC can show that the Appellant is responsible for creating the delay. Counsel submitted that the Appellant is not responsible for the delay.

With respect to the length of the delay, counsel for the Appellant noted that while this is a factor to be considered, it need not be the determinative factor, even where the delay has been lengthy. Counsel referred the panel to a decision of Master Cooper of the Manitoba Court of Queen's Bench in *Millar v. SREIT (Church) Ltd.*, [2014] M.J. No. 284, in which the delay complained of was nearly seven years and the motion to dismiss was not granted. Counsel for the Appellant submitted, accordingly, that although the Appellant was two years late in filing his Notice of Appeal, this should not be a determinative reason for him to be deprived of his entitlement to have his case heard on the merits.

With respect to the issue of prejudice to MPIC, counsel for the Appellant noted that the substantive issue which would be addressed if this matter were to proceed to an appeal hearing is a medical one, being whether the Appellant had the functional ability to return to work. Accordingly, counsel for the Appellant submitted that in the absence of evidence which would show that the doctors who treated the Appellant would not be available to testify, or that the passage of time had led to the loss of documents which could be filed in evidence at the hearing, there would be no inherent prejudice to MPIC if this matter were to proceed.

With respect to specific prejudice and the inability to case manage the Appellant's condition, counsel for the Appellant submitted that there is no indication that the Appellant's depression was a factor in the case management decision. Accordingly, counsel submitted that there is no



indication that there has been any loss of opportunity. The Appellant has been under the care of his doctor since 2012 and all records would continue to be available.

With respect to the reasons for the late appeal filing, counsel for the Appellant referred to the report from [Appellant's doctor #2] dated July 13, 2015. In that report, [Appellant's doctor #2] states that the Appellant's first visit with him was August 27, 2012. He goes on to state:

“Since that time, he is being treated for Depression with Anxiety on continuous basis.”

Counsel for the Appellant also noted that the report from [Appellant's doctor #2] indicated that the Appellant was being treated with Effexor and Seroquel for depression and anxiety. Counsel submitted that the evidence of [Appellant's doctor #2's] diagnosis and prescriptions, as well as the Appellant's testimony, supports the Appellant's position that he was susceptible to being compromised by negative events in his life. His life was ebbing and flowing, and things had a cumulative negative effect on him. Counsel for the Appellant submitted that the Appellant's ability to initiate actions, such as filing a Notice of Appeal, was precarious.

Counsel submitted that there was a chain of events which led to the Appellant becoming overwhelmed. Specifically, the Appellant received the case manager's decision on September 21, 2012 informing him that his IRI benefits had been cut off. He then proceeded with his small claim against MPIC in October, 2012, which he lost. This had a significant financial impact on him, in that he was unsuccessful in his \$10,000 claim. The Appellant then attended his Internal Review hearing in November, 2012, which he found to be difficult. The Appellant then received the Internal Review Decision in February 2013, upholding the case manager's decision, which terminated his IRI.

Counsel for the Appellant submitted that the combination of all of these events, together with the Appellant's clinical depression, resulted in the Appellant lacking the resolve and the ability to respond to the Internal Review Decision once he received it. Counsel submitted that the Appellant was able to respond to inputs but couldn't initiate action on his own. It was only once the Appellant talked to his friend, then his MP, then his MLA and then when he was eventually referred to the Claimant Adviser Office that the Appellant was ultimately able to initiate the action necessary to file his Notice of Appeal with the Commission. This only occurred when he began to recover somewhat from his clinical depression.

Counsel for the Appellant further submitted that although the Appellant did have former counsel who represented him, that former counsel, [Appellant's former counsel], did not provide him with good advice and discouraged him from pursuing his appeal after he received the Internal Review Decision. Counsel for the Appellant submitted that it was reasonable for the Appellant to rely on the advice of his former counsel.

Further, that former counsel represented the Appellant with respect to the small claims appeal and the Appellant took no active role at that appeal other than testifying. Counsel for the Appellant submitted that the Appellant's involvement in the small claim appeal was minimal and should not be considered as impacting on his ability to file an appeal to the Internal Review Decision with the Commission.

Counsel for the Appellant submitted that the Appellant's reasons for the delay are compelling and well documented and should carry considerable weight. With respect to the Appellant's awareness of the 90 day appeal period, counsel for the Appellant submitted that it doesn't help to be aware of the deadline if you can't muster the mental fortitude to respond. The Appellant

simply was not capable of initiating action. He was responding to stimulus. His evidence was that he could not initiate actions. The diagnosis of depression was made by [Appellant's doctor #2], and the Appellant testified as to what he was capable of during this timeframe. Counsel for the Appellant submitted that it would be equitable to allow the Appellant's appeal to the Commission to be heard on its merits.

**Submission for MPIC:**

Counsel for MPIC noted that the issue before the panel is whether or not to grant to the Appellant an extension of time to file his Notice of Appeal. Counsel for MPIC noted that the Appellant filed his Application for Review of the case manager's decision within four days of receipt of the case manager's decision letter. The Internal Review Decision, which was dated February 25, 2013, contained the standard paragraph indicating that the Appellant had the right to appeal the Internal Review decision within 90 days, which period would have ended on May 25, 2013. The letter from the Appellant's former counsel, [Appellant's former counsel], dated October 10, 2013, contained an authorization form addressed to MPIC to discuss his file, which was dated August 6, 2013. In his testimony, the Appellant indicated that he had retained [Appellant's former counsel] sometime earlier than August 6, 2013, although he was not sure exactly when. Counsel for MPIC noted that August 6, 2013 is almost three months after the expiry of the 90 day appeal. He further noted that the Notice of Appeal was received by the Commission on February 17, 2015, one year and nine months after the expiry of the 90 day period, one week shy of two years after the date of the Internal Review decision.

With respect to the length of the delay, counsel for MPIC submitted that one year and nine months is a significant time period. He further submitted that the case law which counsel for the Appellant referred to is not relevant, given that the Commission and its procedure is designed to

be informal, and accordingly the time period is expected to be shorter. In particular, counsel for MPIC referred the panel to a decision of the Commission in file AC-10-149, in which it was noted that a delay of 25 months was a relatively lengthy period of time.

Regarding the issue of prejudice, counsel for MPIC submitted that there is specific prejudice to MPIC in this case. If the Appellant's appeal is permitted to proceed, MPIC won't be able to case manage or gather evidence. MPIC is already almost three years removed from looking at his medical condition at the time of the termination of the IRI benefits. In addition, the inherent prejudice due to the delay is clear here. The Appellant has already shown difficulties in his memory, given that he is unable to remember specifically when he hired his former counsel, [Appellant's former counsel].

However, counsel for MPIC submitted that the major issue here is the reasons for the delay. The Appellant has given two reasons for his delay, being his mental health and the advice he received from his former counsel, [Appellant's former counsel]. With respect to his mental health and his issues with depression, counsel for MPIC submitted that there is no solid medical evidence that the Appellant was impaired to such a degree as to be unable to fill out and file a Notice of Appeal. Counsel for MPIC did not dispute that there was evidence that the Appellant was suffering from depression; however, the Internal Review Decision sets out in clear terms the Appellant's right to appeal, the time limit and the contact information for the Claimant Adviser and the Commission. Counsel for MPIC submitted that this information was easily available to the Appellant. Furthermore, concurrent with the receipt of the case manager's decision and the Internal Review Decision, the Appellant was dealing with other matters with MPIC and the small claims process. On October 11, 2012, the small claim was dismissed and the Appellant filled out the paperwork for the small claim and the small claim appeal and in addition attended court for

both matters. In cross-examination, the Appellant stated that the forms for the small claim and the small claim appeal were very simple to fill out and that all he had to do was attend at the courthouse and fill them out. Counsel for MPIC submitted that the same could be said of the Notice of Appeal form at the Commission. The Appellant gave testimony at the hearing into his small claim and small claim appeal. Counsel for MPIC submitted that there is no evidence to suggest that he was anything but perfectly capable during that testimony. He was cross-examined in both of those hearings and in the first small claim hearing he also made a submission on his own behalf. Counsel for MPIC submitted that there is no evidence that in either of those hearings anyone had any concerns regarding his ability to appear or conduct himself.

Counsel for MPIC submitted that given that the small claim appeal is so close in time to when the Notice of Appeal had to be filed at the Commission, and given that he was apparently capable of filling out forms, attending and testifying at that hearing, this raises doubt about his inability to manage his affairs and his inability to file the Notice of Appeal with the Commission.

Counsel for MPIC also referred to the letter from [Appellant's doctor #2] dated July 13, 2015. Counsel submitted that it does not indicate that during the relevant period the Appellant was not capable of handling his affairs. It does state the following:

“At present, he is coping well. His illness is well controlled with counselling and meds. There is no social, occupational and physical functional impairment.”

Counsel for MPIC further submitted that the Appellant had the ability to seek legal advice sometime around or prior to August, 2013, the date that the authorization to MPIC was signed. In addition he had the ability to complete forms. Counsel submitted that this casts doubt on the Appellant's inability to complete a Notice of Appeal form.

Regarding the second point, that the Appellant had received bad legal advice, the Appellant put forward two arguments, that his former counsel had advised him that he did not have a chance of succeeding on an appeal, and in addition that it was not worth the money to pursue an appeal. The evidence of the Appellant was that counsel was retained sometime before August 6, 2013. It appears from the letter from [Appellant's former counsel] that counsel may have received the file in October, 2013. Counsel for MPIC submitted that the Appellant did not provide any evidence directly from [Appellant's former counsel] regarding the advice that they gave to him, and accordingly the panel should draw an adverse inference from the absence of this evidence. The MPIC Act is clear that an extension of time to file an appeal may be sought, and accordingly if [Appellant's former counsel] advised the Appellant that there was nothing to be done, wrong advice was given. However, the Appellant testified that he has not taken any steps against his former counsel. If the Appellant sought the advice of legal counsel on August 6, 2013, this was already past the expiration of the 90 day deadline. If the advice of counsel was sought prior to that time it could have been closer to the expiry of the appeal period. However, the Appellant is not certain of the date on which he first retained his former counsel.

Counsel for MPIC referred again to case AC-10-149, in which the Appellant believed that she (sic) didn't have a good chance of success and accordingly did not want to waste time and money in appealing. Counsel pointed out that the Commission held that "the idea that the Appellant thought that there was no hope of winning is not an excuse, and certainly not a reasonable one".

Counsel for MPIC submitted that the 90 day time period exists to provide finality. The Appellant has the onus of showing that the discretion of the Commission to extend the deadline should be exercised in his favour and counsel for MPIC submitted that the Appellant has not met

the onus. Counsel for MPIC submitted that there is no medical evidence showing that the mental health of the Appellant prevented him from filing a Notice of Appeal on a timely basis with the Commission. In addition, counsel submitted that there is insufficient evidence that the former counsel for the Appellant advised him against pursuing his appeal. Even so, counsel submitted that that would not be a reasonable excuse for failing to meet the deadline.

### **Reasons for Decision:**

Subsection 174(1) of the MPIC Act provides as follows:

#### **Appeal from review decision**

**174(1)** A claimant may, within 90 days after receiving notice of a review decision by the corporation or within such further time as the commission may allow, appeal the review decision to the commission.

In this case, the Appellant's Notice of Appeal was not received by the Commission within 90 days after he received the Internal Review Decision dated February 25, 2013. Accordingly, he has asked the Commission to exercise its discretion to allow an extension of time to file the Notice of Appeal, which was received by the Commission on February 17, 2015, approximately one year and nine months after the 90 day deadline.

In considering whether to exercise its discretion under Subsection 174(1) of the MPIC Act, the Commission may consider various relevant factors, such as:

1. the actual length of the delay compared to the 90 day time period set out in Section 174 of the MPIC Act;
2. the reasons for the delay;
3. whether there has been any prejudice resulting from the delay;
4. whether there has been any waiver respecting the delay; and,

5. any other factors which argue to the justice of the proceeding.

The panel has reviewed the documentary evidence on file, the evidence of the Appellant and the submissions of counsel. Upon a consideration of the totality of the evidence, both oral and documentary, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has not provided a reasonable excuse for his failure to appeal the Internal Review Officer's decision to the Commission within the 90 day time limit set out in subsection 174(1) of the MPIC Act.

As noted above, there are several factors to be considered by the Commission in the exercise of its discretion. In the present case, the delay has been relatively lengthy. There was no waiver, and there has been some prejudice to MPIC by virtue simply of the passage of time. Both parties, however, have acknowledged that the main issue here relates to the reasons for the delay.

The Appellant provided two reasons for the one year and nine month delay in filing his Notice of Appeal with the Commission. The first reason was that he was suffering from depression, which impacted his ability to take the initiative in filing the Notice of Appeal. The panel notes, however, that the Appellant did take the initiative in filing an appeal to a small claim on November 6, 2012, just 3½ months prior to receipt of the Internal Review Decision dated February 25, 2013. In fact, the Appellant's testimony was that he took the initiative with respect to pursuing his small claims matter against MPIC, going to the courthouse and filling out the paperwork to initiate both the small claim and the small claims appeal. He attended both hearings and gave testimony both in direct examination and under cross-examination. There was no evidence that there was any question as to the Appellant's capacity to be a witness in those small claims matters. Further, there was no medical evidence to indicate that there was a



deterioration in the Appellant's mental health condition between November 6, 2012 and the end of May, 2013 (the expiry of the 90 day deadline), to the extent that he would have been unable to file a Notice of Appeal form with the Commission. Rather, the July 13, 2015, letter from [Appellant's doctor #2] states that:

“... Initially, his depression was severe, however, with medications and counselling he has significantly improved.”

Accordingly, the panel finds that the Appellant's reliance on his mental health condition does not provide a reasonable excuse for his failure to file his Notice of Appeal with the Commission on a timely basis.

The other reason given by the Appellant for not filing his Notice of Appeal on a timely basis was that he provided the Internal Review Decision to his former counsel, [Appellant's former counsel], for advice. The 90 day deadline to file the Notice of Appeal expired on May 25, 2013. The Appellant testified that he retained [Appellant's former counsel] sometime prior to August 6, 2013, although he did not recall exactly when. There is no evidence before the panel that the Appellant sought the advice of [Appellant's former counsel] regarding the Internal Review Decision prior to the expiry of the 90-day deadline to appeal. Rather, the weight of the evidence is to the contrary. The Appellant gave evidence as to the advice that he received from [Appellant's former counsel]: he said he was told that nothing could be done (presumably since the appeal period had expired, which would confirm that [Appellant's former counsel] was engaged only after that time (and which would have been incorrect, as an extension of time could have been sought)) and that it was not worth the money to pursue an appeal. There was no direct evidence from [Appellant's former counsel] on this point. The Appellant's current counsel, in a

letter to the Commission dated March 20, 2015, made the following written submission in support of the Appellant's position:

“... It is also our understanding that [the Appellant] retained a law firm ([Appellant's former counsel]) in August 2013, and that subsequently (in October 2013) a request was made by them to MPI on his behalf to obtain a copy of the claim. [The Appellant] confirmed that with our office, and offered the following additional information:

1. That he did retain [Appellant's former counsel], but after their lawyer investigated his file, he was informed that he had missed the deadline to appeal; and that nothing could be done to help him. ...”

The panel finds that the Appellant has not met the onus to establish that he received and relied upon any advice from his former legal counsel prior to the expiry of the 90 day deadline to file an appeal. Therefore, the panel finds that that the Appellant's reliance on the advice from his former counsel does not provide a reasonable excuse for his failure to file his Notice of Appeal with the Commission on a timely basis.

Based on the foregoing, the Commission finds that the Appellant has not provided a reasonable excuse for the lengthy delay and for his failure to appeal the Internal Review decision within the 90-day limit set out in section 174 of the MPIC Act.

Accordingly, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review decision dated February 25, 2013 to the Commission.

Dated at Winnipeg this 24<sup>th</sup> day of September, 2015.

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**JACQUELINE FREEDMAN**

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**DR. ARNOLD KAPITZ**

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**MS SANDRA OAKLEY**