Manitoba

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-13-049

PANEL:	**Ms Jacqueline Freedman, Chair** **Ms Leona Barrett** **Mr. Paul Taillefer**
APPEARANCES:	**The Appellant, [text deleted], was represented by Mr. Ken Kalturnyk of the Claimant Adviser Office;** **Manitoba Public Insurance Corporation ("MPIC") was represented by Ms Danielle Robinson.**
HEARING DATE(S):	**June 28, June 29, July 6 and July 7, 2016.**
ISSUE(S):	**Whether the Appellant is entitled to Income Replacement Indemnity benefits from September 10, 2010 to June 9, 2011 and from July 26, 2011 to December 6, 2012.**
RELEVANT SECTION(S):	**Paragraph 110(1)(a) 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 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:

On June 26, 2010, [text deleted] (the "Appellant") was in the parking lot outside the [text deleted] store where she was employed as a sales associate. She was walking through the parking lot when a vehicle backed up and struck her. She was knocked down and suffered various injuries as a result of this motor vehicle accident ("MVA"). The Appellant received

various benefits pursuant to the Personal Injury Protection Plan ("PIPP") provisions of the MPIC Act, including physiotherapy treatment and Income Replacement Indemnity ("IRI") benefits. She was off work for a period of time and she returned to work at the [text deleted] on a part-time basis on August 5, 2010. Her IRI benefits were terminated when she returned to work (although she did not return to work on a full-time basis).

Subsequent to her return to work, and while the Appellant was present in the store, the [text deleted] was robbed on August 21, 2010 and again on September 3, 2010. The Appellant went to see her family physician, [text deleted]. He was of the view that she may be suffering from post-traumatic stress disorder ("PTSD"), and he advised her to stay off work until September 28, 2010, when he saw her again and advised her to remain off work until further notice. She did not return to work at [text deleted]. The Appellant remained off work until December 6, 2012, when she became an employee at [text deleted] (a personal care home).

On June 10, 2011, the Appellant had surgery for a cataract, which was determined to be caused by the MVA. MPIC provided IRI benefits to the Appellant for a period of time, beginning on the date of her cataract surgery, and ending on July 25, 2011. The Appellant sought IRI benefits for the period from her initial return to work in August of 2010 until she was able to resume employment.

The case manager considered her request and issued a decision dated January 29, 2013, which states as follows:

> "This letter will confirm your entitlement to the Income Replacement Indemnity (IRI) benefit following your last IRI payment which ended on August 4, 2010.
>
> Medical information on file indicates that on June 10, 2011, you had cataract surgery performed on your right eye. The requirement for this surgery was related to your

> motor vehicle accident (Health Care Services review of November 16, 2012, enclosed). As a result of this surgery, you were not able to work. …
>
> Your IRI entitlement for the period of June 10, 2011, to July 25, 2011, is $2,624.92. A cheque in this amount was mailed to you under separate cover.
>
> [Appellant's eye doctor] (sic) performed an eye exam on July 25, 2011. At the time of that exam, it appears you did not have a visual impairment, which would have precluded you from performing employment. Therefore, as you were functionally able to perform employment as of July 25, 2011, your IRI ended as of this date. This decision is based upon Section 110(1)(a) of *The Manitoba Public Insurance Corporation Act.*"

The Appellant disagreed with the decision of the case manager and filed an Application for Review. The Internal Review Officer agreed with the decision of the case manager and issued a decision dated March 26, 2013, which provides as follows:

> "Based on my review, the medical information on file does not establish that you have an impairment of function (physical, psychological or visual) as a result of your motor vehicle accident that would render you entirely or substantially incapable of performing the essential duties of your pre-accident employment. Therefore, I agree with the case manager's decision, which is supported by the medical evidence on file and confirm your IRI benefits conclude as of July 25, 2011."

The Appellant disagreed with the decision of the Internal Review Officer and filed this appeal with the Commission. Prior to the hearing of this appeal, a Case Conference Hearing was held (on February 24, 2015) to discuss preliminary matters. At that hearing, the parties and the Commission agreed that at the hearing of this appeal, when the Commission is considering whether the Appellant is entitled to IRI benefits, the time periods under consideration would be limited to the following:

1. The period from the time the Appellant ceased work upon the advice of [Appellant's doctor #1] as of September 10, 2010, until just prior to her cataract surgery, i.e. June 9, 2011; and

2. The period from the time MPIC ceased payment of IRI after the Appellant's cataract surgery, i.e. July 26, 2011, until her employment with [personal care home] on December 6, 2012.

Accordingly, the issue which requires determination on this appeal is whether the Appellant is entitled to IRI benefits from September 10, 2010 to June 9, 2011 and from July 26, 2011 to December 6, 2012.

Decision:

For the reasons set out below, the panel finds that the Appellant has established, on a balance of probabilities, that she is entitled to IRI benefits for the periods from September 10, 2010 to June 9, 2011, and from July 26, 2011 to December 6, 2012.

Evidence of the Witnesses:

The panel heard testimony from five witnesses. The Appellant testified at the hearing into her appeal. As well, she called as additional witnesses her husband, [text deleted], and her physician [text deleted]. MPIC called as witnesses two of their Health Care Services consultants, [MPIC's psychologist] and [MPIC's doctor].

Direct Examination of the Appellant:

The Appellant testified regarding the circumstances of the MVA. She said that she went to work ten minutes early and was attending to matters in the gas bar in the parking lot of the [text deleted] where she worked. While she was walking in the parking lot, a car suddenly reversed into the Appellant and knocked her down. The Appellant was injured and she was very

frightened. Her heart was racing. She was worried that she was going to have a spinal injury and that she would not be able to do things for herself. She had the sensation of her life flashing in front of her eyes. She was crying very hard. There was a woman in the parking lot who helped her to stand up. Neither she nor the woman was able to read the license plate of the vehicle which had hit her, as it had departed the parking lot. Immediately after the MVA, the Appellant noticed that she had difficulty seeing out of her right eye. She went into the store and called her husband to come and collect her. She was too upset to go to the hospital that evening. The next day, her knee was swollen and her right ankle hurt. Her neck hurt as well. Her husband took her to the hospital, although she was still quite upset.

The Appellant had worked at this particular [text deleted] store for 22 years prior to the MVA. She performed various duties there, including cashier, stocking shelves and receiving stock. Prior to the MVA she was working full time. The Appellant said that she enjoyed working at [text deleted] and that she had been working for this particular manager for 12 years. She also used to work occasionally at this manager's other store for 5 years prior to his start at her store.

After the MVA the Appellant was off work for a period of time. She testified that she saw [Appellant's doctor #2] regarding her sore ankle and knee a few days after the MVA. She is not sure whether she saw him again. He suspected that she may have fractured her right ankle. She had to wear a boot on her ankle for several weeks. She was told at some point that the ankle was not broken.

The Appellant said that the MVA was traumatic and that she suffered from depression after the MVA, although she pointed out that she wasn't aware that it was depression until [Appellant's doctor #1] explained it to her. After the MVA, she didn't want to get out of bed and she had

difficulty with everyday activities like cooking and cleaning. In addition, she suffered from headaches and her shoulders were hurting. Her depression was very bad and every day it got worse. She said that she did not suffer from depression before the MVA.

The Appellant started having bad dreams right after the MVA. As well, she was having other emotional trouble after the MVA, which she noted she had pointed out in the Application for Compensation that she filed with MPIC. She was shaking when she thought about going back to work, as it made her think about the car hitting her. She said she would try to tell herself that it would not happen again when she returned to the parking lot of the [text deleted]. She resolved to try to take things one day at a time, because she wanted to get back to work.

She returned to work at the [text deleted] on August 5, 2010, on a part-time basis, two days per week. She said that she was only capable of working two days per week due to her physical and emotional problems. She was still having a lot of knee problems and she couldn't do all of her work duties. Her intent was to try working two days per week and see how things went because she didn't like staying in bed and she thought that maybe seeing the customers and doing the job would make her feel differently and perhaps help her recover from the depression.

However, going to work in fact made her depression and bad dreams worse. She dreamed that the driver from her hit and run followed her, came to her house and grabbed her. The dreams further progressed to where she dreamt that she was dying in the MVA. On her return to work she continued to suffer from bad depression as well as physical pain in her neck, upper back and whiplash.

Subsequent to her return to work, the [text deleted] was robbed on August 21, 2010, at approximately 3:00 or 4:00 a.m. (when the store was not very busy). The Appellant was in the cooler during the robbery and while she did look through the glass door of the cooler, she was unable to see anything directly. After the robbery, her co-worker told her that he was sprayed with pepper spray and the robbers stole cigarettes (the cash registers are not able to be opened during a robbery). After the robbery, she felt bad for her co-worker because he had been pepper-sprayed. He couldn't open his eyes for two days.

The [text deleted] was robbed a second time, on September 3, 2010. Once again, the Appellant was inside the cooler stocking the shelves, although she was in a better position to see and she came out of the cooler while the robbery was in progress. In the second robbery, two robbers entered the store, pepper sprayed her co-worker and punched him when he tried to resist. The Appellant said that her co-worker forgot the store's instruction that he is supposed to listen and do what the robbers say. The Appellant saw her co-worker on the floor and she saw some blood from where he got punched. She felt sorry for him that he got hurt.

Both times after the robberies, after the robbers left the store, she and her co-worker called the manager and then kept working. They finished their shifts. The Appellant said that there were no previous episodes of theft at her store, although there were episodes of people driving off without paying for their gas.

The policy of [text deleted] was to give the staff three days off after a robbery, and so after the second robbery the Appellant did take three shifts off. She then worked three more shifts, but she was having a lot of problems. She said that she was quite shaken, and in addition, continued to have physical problems including whiplash, knee problems, foot problems, neck problems as

well as trouble with her eye (bumping into things). She also didn't feel recovered from her depression following the MVA. Even working two days a week, going back to the [text deleted] reminded her of getting struck by the car. She said that she would wake up sobbing and continue to have bad dreams. She didn't want to tell anyone about it, but it was very traumatic for her. Therefore, in September, 2010, she went to [text deleted], her family doctor, to discuss it with him. He recommended to her that she stop working and he referred her to [text deleted], a psychologist.

In late October, 2010, the Appellant began counselling sessions with [Appellant's psychologist]. The Appellant said that after a period of time, she felt [Appellant's psychologist] was no longer helping her and that going to [Appellant's psychologist] became a "waste of my time". [Appellant's psychologist] was always asking about her employer and was always talking about other things, rather than the MVA. She told [Appellant's psychologist] how she had been crying and had not been the same since the MVA.

The Appellant said that after she stopped seeing [Appellant's psychologist], some days she felt better but that was due in some respects to the cataract surgery, which improved her overall health due to the removal of the cataract. [Appellant's psychologist] had recommended that the Appellant sit outside more and when she did that, on some days she felt good. However, she then fell back into the depression.

She did not return to work at the [text deleted] because when she even thought of going to work, she dreamt again of being struck by the hit and run vehicle and that's why she decided to quit. She couldn't sleep and she was waking up two to three times per night. She can't think of returning to work at [text deleted] and can't even return to other [text deleted] stores because it is

too traumatic for her. She has only ever gone once to any [text deleted] store since the time of the MVA, and that was only for the purpose of going to a different [text deleted] store to provide food to a friend. On that occasion, she was only able to stay for a few minutes and her heart was racing the whole time, due to the feeling that a car was going to hit her.

The Appellant testified regarding her employment after ceasing work at [text deleted] in September of 2010. Subsequently, the Appellant did not work for a period of time. In 2011, the Appellant's husband connected her with a non-profit organization called [text deleted]. She began as a volunteer with that group. Through [non-profit organization], the Appellant received some counselling and vocational support beginning sometime around August of 2011. In September of 2012, [non-profit organization] connected the Appellant with [personal care home] and she became a volunteer there. On December 7, 2012, the Appellant became a paid employee in a full-time capacity with [personal care home]. She had a job there in the dietary and housekeeping department working with seniors. The Appellant described her duties at [personal care home]. These included housekeeping duties, taking the laundry and hanging it in the residents' rooms, and various cleaning duties.

The Appellant worked at [personal care home] from December 7, 2012 until the end of November, 2013. The position at [personal care home] ended because the person who was on sick leave came back, and there was no longer a place for her. The Appellant did not work anywhere else after that because she fell down the stairs and injured the same foot that had been injured in the MVA and she was no longer able to work. She is not currently working.

The Appellant said that the reason that she is no longer working is because she still has depression and her foot has never healed. She is currently going to physiotherapy and thinking

about getting a part-time job. She is taking an anti-depressant which was first prescribed to her after the MVA by [Appellant's doctor #1]. The Appellant said that it does help her, although she does still suffer from bad dreams and sometimes she can't stop crying, like after the MVA. Her dreams still relate to being chased by someone with a car and the car backing up and hitting her. She even gets fearful when someone pulls into her driveway.

Cross-Examination of the Appellant:

Counsel for MPIC questioned the Appellant regarding the details of the MVA. At the request of counsel, the Appellant drew a diagram of the MVA on a dry-erase board and, as she drew, described the features of the parking lot outside the [text deleted] and the circumstances of the MVA. Counsel asked the Appellant whether, after she was hit by the vehicle, she proceeded to work her shift at the [text deleted]. The Appellant said that she was crying after the MVA and she did not work; she went home directly after the MVA. When asked, the Appellant said that no ambulance was called to the scene, although she did go to the hospital the next day. She reported the MVA to the police after she went to the hospital, and [text deleted] also completed an incident report.

The Appellant was asked whether she had reported her depression to any of her healthcare providers. Counsel pointed to the notes made by the Emergency Department at the [hospital] on June 27, 2010 and observed that while those notes indicate physical complaints, there is nothing in them mentioning any mental health concerns and no mention of crying or that the Appellant was in distress. The Appellant responded that she tried not to cry in front of her doctors. When

asked, the Appellant said that nobody at the [hospital] suggested a referral to a psychiatrist or a psychologist.

Counsel asked the Appellant regarding file notes made by the case manager of a conversation with the Appellant on July 6, 2010, and pointed out that nothing in those notes indicated that the Appellant was distressed or crying uncontrollably. The Appellant responded that it may not be reflected in the notes, but she was crying.

The Appellant was asked why she would report to MPIC on July 6, 2010, that she had a fractured ankle when an X-ray taken on June 30, 2010, indicated that there was no definite underlying fracture. The Appellant responded that her ankle was hugely swollen and remains swollen still. She said she still has difficulty standing for long periods and she walks with a limp. Later, on re-examination by her own counsel, the Appellant noted that the technicians who took the x-ray that day did not explain the results to her right away.

She was questioned about her restrictions on returning to work. The Appellant said that she was told that she can't stand for eight hours. She was told to ask if she could put her foot up and she tried to do that occasionally, but it was often too busy. She noted that she wore an ankle boot on her right foot for five weeks after the MVA.

Counsel questioned the Appellant further regarding her claim of crying and depression, and pointed out that in the case manager's notes from July 6 and July 8, 2010, there is nothing recorded regarding those matters. Further, the case manager noted that the Appellant explained that she moved slowly but is able to do things for herself. The Appellant said that she told the case manager that she was having problems getting out of bed and that she was never like that

before, but that she didn't want anyone else to take care of her and she liked to clean and cook for herself, even if she had to sit down on a stool.

The Appellant was referred to her visit to [Appellant's doctor #2] on June 30, 2010. In the form completed by [Appellant's doctor #2], he had not ticked off the boxes indicating that the Appellant had anxiety or depression or any mood alteration. The Appellant acknowledged that she did not tell [Appellant's doctor #2] that she had depression, and she said that at that point in time, she had no idea that she was depressed. She said that it was not until she went to see [Appellant's doctor #1] that he advised her that her diagnosis was anxiety and depression. It was [Appellant's doctor #1's] recommendation that she cease working. When asked, the Appellant said that she hadn't seen a psychologist after the MVA until [Appellant's doctor #1] referred her to one.

Counsel for MPIC questioned the Appellant extensively regarding the details of the robberies. At the request of counsel, the Appellant drew a diagram of each robbery on a dry-erase board and, as she drew, described the features of the inside of the [text deleted] store and the detailed circumstances of each robbery. To a large extent, the Appellant had testified to these details in her direct examination.

She was asked what she and her co-worker did after the first robbery. The Appellant said that they called the police and the manager. They locked the doors of the store and counted the remaining cigarettes to determine how much was taken by the robbers. They also made coffee. The Appellant said that the police came very quickly. When they arrived, the police helped her co-worker with his eyes in order to recover from the pepper spray. The Appellant gave a statement to the police. Once the police and the manager were there and the details were

attended to, the store was reopened and the Appellant finished her shift. It was early in the morning and the store was busy. The Appellant said that she didn't have to go to Court because her co-worker was able give a description of the car and a licence plate number and the robbers were caught.

After the second robbery, she said, her manager came right away but the police took longer. The customers began coming in sooner, because it was a little bit later in the morning. The Appellant noted that once again she gave a statement to the police, and again she did not go to Court. This time, nobody was apprehended because the robbers had their hands and faces covered and they were not able to be identified. After the robbery, the manager said that he should get an electric door that could be locked from the inside. The Appellant acknowledged that the manager was upset that her co-worker forgot to lock the door.

Counsel asked the Appellant whether she sought any counselling other than with [Appellant's psychologist]. The Appellant said that when she was at the [non-profit organization] program, they helped her a great deal. She said that her heart was always racing and that the [non-profit organization] program helped her with exercises for depression and for relaxation and taught her how to heal her brain from trauma. Counsel asked whether she sought help from a counsellor or psychologist right after the robberies. The Appellant said that her workplace did provide counselling and she went to one session. She said that everybody at work who was present at the time of the robbery is provided with this option. The Appellant observed that the counsellor said that it was good that she had kept calm and that she performed well during the robberies. The Appellant said that she was feeling bad for her co-worker that he got hurt twice. Counsel asked whether this counselling was available only for the robberies, or whether it was available at any time. The Appellant responded that it was available at any time, but that she did not seek such

counselling after the MVA because she didn't realize she was depressed. When asked, the Appellant said that she did not file a Workers Compensation claim after the robberies.

A report of [Appellant's psychologist] dated November 23, 2010, was referred to by counsel. It states that the Appellant's depression "seems to be in partial remission". Counsel asked the Appellant whether she agreed that her depression had partly resolved. The Appellant said that some days she felt better and some days worse. The Appellant noted that if she stayed less in bed that was good.

Counsel also questioned the Appellant regarding a report of [Appellant's psychologist] dated August 22, 2014. (Although [Appellant's psychologist] had ceased treating the Appellant in 2011, she had been requested to provide an updated report in 2014.) In her August, 2014, report, [Appellant's psychologist] identified several places in her clinical chart notes where the Appellant made references to concerns that she had about her work environment both before and after the MVA and the robberies. When questioned, the Appellant responded that she didn't recall saying some of the things that [Appellant's psychologist] had written in her report, or that she felt that [Appellant's psychologist] had misinterpreted what she said. For example:

1. The chart notes from a session on January 5, 2011 state:

> "... You stated that you had been a very good employee and did not feel you deserved the treatment you got from [text redacted]. When I inquired about specifics, you mentioned several points of information that <u>preceded</u> the accident/robberies including: that he gave other people raises whom you felt didn't work as hard as you; ..." (emphasis in original)

The Appellant said that [Appellant's psychologist] didn't quote her correctly; rather, what she had told [Appellant's psychologist] was that the manager didn't treat new employees the right way and that she didn't like to see that some people got raises but others didn't.

2. The chart notes from the session on January 5, 2011 state further:

> "My notes further indicated that it was my impression that you had been thinking of leaving your job at [text deleted]. ... At this time, you informed me that you had been thinking of going to the [text deleted] to become a [text deleted] following your cataract surgery. In fact, you told me that you had already gone there and passed an initial test."

Counsel suggested to the Appellant that she was very upset with the management of the [text deleted] and that was why she began to plan a career change. The Appellant said that she did not discuss this with [Appellant's psychologist] and that she couldn't even think of a career change because she was so depressed.

3. The chart notes from a session on January 19, 2011 state:

> "My notes state that you said that a significant part of the "pain" you were experiencing seemed to come from your thoughts about your manager".

The Appellant responded that she didn't agree with this statement and she didn't know how [Appellant's psychologist] came to that conclusion. The Appellant said that [Appellant's psychologist] was always talking about her employer and was not helping with her depression. Her depression was so significant that she recalled waiting for a bus and wanting to cry and having very distressing thoughts, including thoughts of self-harm.

4. Counsel pointed to further references from the session on January 19, 2011. Counsel asked whether the Appellant recalled discussing with [Appellant's psychologist] the possibility of reporting her concerns to [text deleted] management. The Appellant

responded that she did not recall. Counsel also noted that [Appellant's psychologist] indicated in her report that the Appellant had told her that female co-workers complained to the Appellant about the manager. The Appellant said that she didn't remember this; the manager talked to people very kindly, like a family member, and treated people well.

5. In the chart notes from a session on February 17, 2011, [Appellant's psychologist] quotes the Appellant as follows "I even had a little depression before I was hit by the car and the robberies". The Appellant said that when [Appellant's psychologist] said this, she disagreed. She said she had never cried like this before the MVA.

The Appellant was asked whether she ever discussed with [Appellant's psychologist] her dissatisfaction with [Appellant's psychologist's] counselling. The Appellant said that she discussed this with her husband and she also told [Appellant's doctor #1] that she was not going to continue with her sessions. The Appellant said that she did not have depression before the MVA, because she had no problems before the MVA. She was able to go to work and she had a really good life. She was at the same job for 22 years, at the same store, with the same manager for many years. She said that every job has its stresses, but nothing impacted her more than the MVA.

Counsel referred to the chart notes of [Appellant's psychologist] from their last session on July 22, 2011. Those notes state that the Appellant is feeling much better and "I used to feel this way". There were several notations in the chart notes reflecting an "increased interest in life", "I feel much better" and "getting stuff done". Counsel noted that [Appellant's psychologist's] notes from that session indicated an increase in energy and a decrease in sleeping. The Appellant said that those notes are in reference to her cataract surgery, which took place on June

10, 2011. She said that her mood was lifted after the surgery and she was quite a bit happier. She was also taking medication, Citalopram, at that time, which helped her to feel good, rather than being depressed. The Citalopram was helping her and she was able to get out of bed earlier in the morning. Because she was up early and not staying in bed, she had energy and she was able to get more done.

The Appellant was discharged from physiotherapy on December 20, 2010. In the Discharge Report there is a notation that the status of her ankle condition is resolved. When this was raised by counsel, the Appellant said that she disagreed that her condition was resolved and she said that her ankle flared up again. The Appellant also testified that her neck pain sometimes increases, although it decreases with physiotherapy.

The Appellant was questioned further regarding her intention to go to [text deleted]. Counsel pointed to the case manager's file notes from July 27, 2011 which state as follows:

> "... she mentioned that she was going back to work. I asked her where. She said she is going to go to [text deleted] and thought we could pay for it. ..."

The Appellant responded that she didn't recall making this comment. She said that she was too depressed to think about a career change. Counsel then pointed to chart notes from the Appellant's appointment with her physician, [text deleted], on January 24, 2011, in which [Appellant's doctor #1] states that the Appellant is "thinking about taking [text deleted] Course at [text deleted] (sic) in March". The Appellant said that she didn't remember this.

Counsel put to the Appellant [Appellant's psychologist's] notes, the case manager's notes and [Appellant's doctor #1's] notes, which all refer to the Appellant's intention to take a course at [text deleted]. The Appellant did not seem to recall her intentions in this regard. She said that

she does not remember anything regarding this course and that she was crying a lot at the time. She did not ever take the course. Counsel also put to the Appellant that she had issues with her job at the [text deleted] because of her manager prior to the MVA and given those issues, along with the robberies and her fear of more robberies, she decided to stop working at the [text deleted]. The Appellant responded that this was not the case. The manager was treating her very well and she had no issues with him. The Appellant said that if she had not been hit by the motor vehicle, she would still be working at [text deleted].

Direct Examination of the Appellant's Husband:

The Appellant's husband, [text deleted], testified that they have been married for [text deleted] years. He said that he has noticed changes in his wife since the time of the MVA and that in his view, there has been a complete decline within the last six years from who she was then to who she is now. He has seen the Appellant experiencing difficulties with life and not being able to cope. She has no energy, and even her physical appearance is different. The Appellant's sleep is affected, she doesn't go out, and she doesn't even go to [text deleted] that often. He said the family has to encourage her to go out when they get invited. She is not herself and her confidence is not there. Even small things have been affected, and she is not able to do housework.

He said that immediately after the MVA, the Appellant's mobility was severely compromised. In addition, her personal outlook was very different than before. The Appellant was crying, meek, she had no energy, and she was quite pale. She didn't get out of bed. He, his daughter and his son were very concerned about what had happened to her. They tried to give her moral support and help her by telling her not to worry about things and suggesting that she take her

time. However, he said that she would cry even more. He said that it seemed that the Appellant went to pieces when she couldn't do things and she was almost mad at herself.

When the Appellant did go out, she was very inhibited and she was very cautious. She was afraid to go outside and she had difficulty navigating things, even though the family would try to support the Appellant and reassure her that nothing would happen. On outings, they would have to open the car door for the Appellant, because of her physical problems and also because she was fragile and very nervous.

[Appellant's husband] said that when the Appellant returned to work on August 5, 2010, she seemed worried. She expressed to him that she didn't feel that she could do her work. The panel questioned [Appellant's husband] regarding who advised the Appellant regarding how many hours she should work on her return. [Appellant's husband] said that she made the determination on her own, based on her own assessment of her capability and how much she could work while still not being well.

[Appellant's husband] said that when she returned to work in August, 2010, the Appellant seemed scared, and he said that it was unusual for her not to have confidence in her dealings with the public. He said that she seemed "shrivelled up". He said that the Appellant's facial expression appeared startled and it was a look which he had never seen before.

At that point they had been married [text deleted] years and he had only, on a few occasions, observed his wife crying or with an inability to sleep before, when his brother and then his father had passed away.

[Appellant's husband] testified regarding his impression of the Appellant's reaction to the two robberies at the [text deleted] in August and September, 2010. He said that she didn't appear to be nervous or concerned after these robberies.

With regard to the Appellant's treatment with [Appellant's psychologist], [Appellant's husband] testified that he didn't see any improvement in her emotional condition following these sessions. He said that he would pick the Appellant up from her appointments with [Appellant's psychologist] and she would cry in the car. He said that the Appellant stopped seeing [Appellant's psychologist] because the Appellant told him that:

1. [Appellant's psychologist] was not dealing with the MVA, she was just dealing with life in general; and
2. she was still depressed and [Appellant's psychologist] was not helping with her depression.

[Appellant's husband] noticed that after the Appellant stopped seeing [Appellant's psychologist], she continued to be distraught and meek. It appeared that she had no energy and she stayed in bed most of the time. The Appellant would tell him that she woke up often at 4:00 a.m. She still had trouble with daily tasks, such as cooking.

He and his wife went to their [text deleted] and talked to people there, thinking that being among people would help her feel better. He recommended that the Appellant join a group called [non-profit organization], where they offer counselling to [text deleted] and others, to assist with coping. [Non-profit organization] is essentially a support group that offers training and other services and [Appellant's husband] thought that since the Appellant had suffered a trauma from the MVA, it would be useful for her to talk to others who had also suffered trauma. The

Appellant attended at that support group for 9 or 10 months. The family did see improvements in the Appellant while she was attending [non-profit organization]. For a period of time she seemed to be doing better; however, she does seem to relapse from time to time. The Appellant started gaining some confidence while she attended the [non-profit organization] program and she was told to start volunteering. She was given a volunteer placement at a senior's home, [text deleted], which was uplifting for her.

The Appellant told [Appellant's husband] that she didn't return to work at [text deleted] because she was too afraid to go into the parking lot there. She told him that it reminded her of the MVA that happened to her there. She told him that she wondered if every young man who walked through the door was the young man who was driving the car that hit her, and that made it very difficult for her to work there. The Appellant continues to get very startled around cars and can freeze up around them. She also continues to have difficulty sleeping.

Cross-Examination of the Appellant's Husband:

Counsel for MPIC questioned the Appellant's husband regarding his marriage to the Appellant. Counsel asked [Appellant's husband] whether he and his wife had lived their entire married life, all [text deleted] years, together. He said that they were separated for one year, but it wasn't close to the time of the MVA. He also noted that he worked in the U.S.A. for three years, from 2006 to 2009. During that period, he came home to [Manitoba] every three months. While he was away, the Appellant was home in [Manitoba] with their son and daughter. When questioned about his current employment, [Appellant's husband] responded that he is currently employed with [text deleted] in [Manitoba].

[Appellant's husband] was asked for his recollections of the time period following the MVA. [Appellant's husband] acknowledged that he was working full-time, 40 hours per week at that time. He said that although he didn't keep notes of the Appellant's day-to-day functions after the MVA, he lives with the Appellant and the MVA was a traumatic event, and it was etched in his mind. He noted that in contrast, the robberies were insignificant. When asked whether the Appellant called him after either of the two robberies, [Appellant's husband] said that she did not.

Counsel raised the fact that the Appellant's co-worker had been physically hit and pepper-sprayed and [Appellant's husband] acknowledged that this occurred. [Appellant's husband] said that while they didn't want bad things to happen to anybody, the Appellant had been trained and she takes precautions. She was doing her job and she has gone through difficult situations at the store before, such as people driving away without paying for gas, and they expect that as part of the job.

[Appellant's husband] acknowledged that he knew that the Appellant had advised MPIC that she didn't need help with her day-to-day functions after the MVA. He said that the reason the Appellant would have advised MPIC in that way is because he and his children were in the home to assist her, and as well the community would assist them, and the Appellant didn't want to add to the burden. He said that the Appellant had also been prepared to use a stool to assist herself, which would be consistent with her desire not to add to the burden.

[Appellant's husband] was asked about the Appellant's intention to enroll in a course at [text deleted]. He said that when they submitted the claim to MPIC, they received paperwork from

MPIC. Included was a form which said that if the Appellant might be unable to return to work, MPIC is prepared to help. They thought they should pursue this, because if the Appellant may not be able to return to work, then she should get retrained. When asked, [Appellant's husband] confirmed that the family did have a discussion about this, although he did not recall when the discussion took place. The Appellant did not attend the college.

Evidence of [Appellant's doctor #1] – Preliminary Matter:

The Appellant's family physician, [text deleted], was qualified as an expert in family medicine. Prior to his testimony, counsel for MPIC raised an objection, and took the position that [Appellant's doctor #1] ought not to be permitted to testify, or if he is permitted to testify, then his testimony should be restricted. Specifically, counsel for MPIC submitted that [Appellant's doctor #1], being a family physician, does not have the expertise to provide an opinion on psychological conditions. Counsel submitted that therefore his opinion with respect to causation (i.e. the cause of the Appellant's psychological conditions) is not admissible opinion evidence.

The panel asked for the Appellant's position regarding MPIC's objection. Counsel for the Appellant submitted that [Appellant's doctor #1] is qualified to provide an opinion on mental health issues. Counsel submitted that in the vast majority of cases, the initial diagnosis of a mental illness comes from family physicians. They are the ones taking the history and they are perfectly qualified to make the diagnosis. In some cases, the family physicians may refer the patient to a specialist, but in some cases they may not. Counsel submitted that family physicians are capable of treating the patient and in many cases they do so. Counsel for the Appellant submitted that the panel can decide on what weight to give to the opinion of [Appellant's doctor #1].

The panel adjourned to consider the positions of the parties. On resuming the hearing, the panel advised the parties of our decision to permit [Appellant's doctor #1] to testify without restriction, for the following reasons:

1. [Appellant's doctor #1's] medical reports, which contain his written opinions, already form part of the indexed file in this appeal. The documents in the indexed file were prepared many months in advance of the hearing of this appeal, for the express purpose of being used as agreed documentary evidence at the hearing, and counsel for MPIC did not raise any objection to the inclusion of [Appellant's doctor #1's] reports in the indexed file. In the absence of [Appellant's doctor #1's] testimony, his written reports would still form part of the documentary evidence in this appeal. In fact, allowing his testimony would afford MPIC the opportunity to question [Appellant's doctor #1] regarding his reports.

2. Counsel for the Appellant would be given the opportunity to tender evidence regarding the qualifications of [Appellant's doctor #1] in the area of mental health issues and counsel for MPIC would be given the opportunity to cross-examine [Appellant's doctor #1] on those qualifications and, of course, on all of his evidence.

3. [Appellant's doctor #1] would be testifying as the Appellant's treating physician who had been treating her for over 30 years. He had firsthand knowledge of the matters about which he would testify. He would not necessarily be testifying as an expert in all medical matters.

4. The panel decided that it would, after hearing all of the evidence, determine the expertise of [Appellant's doctor #1] and what weight to assign to his opinion regarding psychological and other matters.

Subsequent to [Appellant's doctor #1's] testimony in direct and cross-examination, and after the hearing was adjourned for the day, the panel considered the evidence that had been tendered regarding [Appellant's doctor #1's] education and experience and the opinion evidence that had been offered. Based on the evidence (set forth below), the panel found that [Appellant's doctor #1] had considerable experience in the area of diagnosing and treating depression, but was inexperienced in the area of PTSD. [Appellant's doctor #1] had had an eight week rotation in psychiatry during his residency as well as subsequent education, together with over 30 years of experience in treatment, counselling and prescribing to patients with depression. However, he had limited experience in treating patients with PTSD and he had received limited education regarding that condition. The panel found that [Appellant's doctor #1] did have experience in making an initial assessment of the symptoms of PTSD and referring patients on for further treatment. The weight to be assigned to his opinion regarding these psychological conditions will be dealt with in the Discussion section of these Reasons further below.

Direct Examination of [Appellant's doctor #1]:

As noted above, [Appellant's doctor #1] was qualified as an expert in family medicine. [Appellant's doctor #1] testified that he is licensed to practice in Manitoba. He graduated from the University of [text deleted] Medical School in [text deleted]. He completed his residency in family medicine in [text deleted] and he opened his medical practice that year. He has been treating the Appellant as a patient since [text deleted].

[Appellant's doctor #1] said that during his residency, he had an eight week rotation in psychiatry. In addition, he noted that all wards have mental health issues and so he had formal training in all aspects of medical care for mental health conditions. He has also attended seminars on the recognition and treatment of depression and anxiety and he has treated patients with these conditions for 34 years. He has significant experience with these conditions. He said that he has not had much experience with patients suffering from PTSD, only three that he can think of. He has done one education session on PTSD and he has read up on it in the DSM (Diagnostic and Statistical Manual of Mental Disorders).

[Appellant's doctor #1] said that prior to the Appellant's visit to him on September 21, 2010, he had never treated her for depression or any other mental health issues that he can recall. [Appellant's doctor #1] referred to his chart notes from that September 21, 2010, visit. He noted that the Appellant was complaining of an injury to her left leg. She was also quite distressed over her condition and was crying profusely. He noted that the Appellant related her psychological symptoms to the MVA. [Appellant's doctor #1] testified he felt that she was suffering from PTSD. As he knew he wasn't an expert, he planned to refer her to someone else.

[Appellant's doctor #1] referred further to his chart notes and identified that the Appellant didn't mention the robberies until her next visit with him, on September 28, 2010. He knew that the MVA and the robberies were all traumatic events, but the Appellant was focused on the MVA as being the most traumatic. [Appellant's doctor #1] referred to the Appellant's comments in her Application for Compensation, which was completed prior to the robberies, and he said that these comments led him to the conclusion that the Appellant was having emotional difficulties preceding the robberies. He said that these emotional difficulties, including her crying and her

inability to focus on anything other than the MVA, would have caused her difficulty in performing some of her work duties, including relating to customers.

[Appellant's doctor #1] prescribed an antidepressant, Citalopram, to the Appellant, beginning in March, 2011. He believed that she also began to receive counselling sometime in 2012 and there was improvement such that she would have been able to return to work by December 2012.

[Appellant's doctor #1] was of the view that the Appellant had PTSD, based on the following symptoms:

1. She thought about the MVA a great deal, to the extent that she couldn't think about other things;
2. She was focussed on the MVA as being the cause of her ill-health;
3. She seemed to relive the MVA and had intrusive thoughts about it;
4. She was crying about the MVA a lot and she brought it up at several appointments; and
5. She had dreams about the MVA and had trouble sleeping.

[Appellant's doctor #1] said that based on those symptoms which he observed in the Appellant, he referred her to a psychologist. He did not receive a report back from the psychologist; however, he is aware of the diagnosis that was made, which confirmed his view.

Cross-Examination of [Appellant's doctor #1]:

Counsel for MPIC questioned [Appellant's doctor #1] regarding the extent of his training in mental health conditions. [Appellant's doctor #1] said that he had a formal rotation of eight weeks on a psychiatric ward during his residency in the late 1970's. This involved training in the

diagnosis and management of patients as well as interview skills and the recognition of what treatment the patient needs, not only medication but also psychotherapy, under the supervision of psychiatrists. When asked what kind of seminars he had taken regarding mental health issues, [Appellant's doctor #1] said that he had participated in lectures and discussions by psychiatrists on the subject of the diagnosis and treatment of mental health disorders, including depression and anxiety. [Appellant's doctor #1] noted that these were half-day sessions, although he could not recall how many such sessions he had attended. He did not receive any certifications. He acknowledged that he was not an expert in PTSD and that was why he referred the Appellant to a psychologist, for the clarification of the diagnosis and for treatment.

Counsel confirmed with [Appellant's doctor #1] that he did not see the Appellant immediately after the MVA. [Appellant's doctor #1] did not see her until after both robberies and he had not seen her in the intervening time. He also confirmed what he had written in his November 14, 2011 report: "I cannot objectively say how much the June 29 [26] (sic) MVA and how much the subsequent robberies contributed to her current condition". [Appellant's doctor #1] said that in his view, both the MVA and the robberies contributed to the Appellant's condition.

[Appellant's doctor #1] was asked about the Appellant's physical capabilities when she returned to work in August, 2010. He said that immediately after the MVA, the Appellant did have a lower leg injury, but the injury did eventually resolve.

He was questioned about the reference in his chart notes from January 24, 2011, relating to the Appellant's intention to take a course at [text deleted] in March. [Appellant's doctor #1] said that he would not have discouraged the Appellant from taking the course, although if the course had started right away, he is not sure that he would have supported it. As a goal, the course was

a good idea, but whether the Appellant was mentally able to be successful in the course, he couldn't say. He said that he didn't think about it at that time; however, now, looking at his chart notes he saw that at that time, the Appellant was still crying during appointments and going to counselling and he doubted that she would have been capable of successfully completing the course.

Counsel asked [Appellant's doctor #1] about a chart note written by another physician who was filling in at his practice while he was away on holidays. That physician appears to have provided the Appellant with a note to start looking for work on April 4, 2011. [Appellant's doctor #1] acknowledged that the implication of that note was that the Appellant was able to work at that time. However, he said that looking further on in his chart notes, there was a subsequent worsening in the Appellant's depression after that time. Later, in response to a question from counsel for the Appellant, [Appellant's doctor #1] said that in the same April 4, 2011, chart note, the other physician had assessed the Appellant at the same visit as having "post traumatic stress disorder ++". [Appellant's doctor #1] said even if that were the case, one would not discourage a patient who wanted to try to work, because to encourage them to focus on other things would be beneficial.

Counsel questioned [Appellant's doctor #1] regarding his opinion evidence with respect to the Appellant's depression and PTSD. In his report of November 14, 2011, [Appellant's doctor #1] stated that he could not objectively state how much the MVA and how much the robberies contributed to the Appellant's condition. In his report of December 16, 2014, [Appellant's doctor #1] stated that the Appellant's depression and PTSD prevented her from performing her pre-MVA employment as a clerk at the [text deleted]. [Appellant's doctor #1] said that he didn't feel that these two reports were contradictory. He said that the 2014 report indicated that both

conditions caused her impairment and that both conditions were related to all of the traumatic events. [Appellant's doctor #1] said in his view, the Appellant was focussed on the MVA as the main cause of her ill-health.

Direct Examination of [MPIC's psychologist]:

[MPIC's psychologist] was qualified as an expert in psychological injuries sustained in motor vehicle accidents and in determining the causation of psychological injuries.

He testified regarding his education and training. He has Bachelors and Masters degrees in psychology as well as a Ph.D. in clinical psychology. He has been a practicing psychologist for 22 years. He noted that psychologists do not prescribe medication, but do diagnose and treat patients, often with one-on-one therapy.

He discussed his work as a consultant to MPIC, which he has been doing since February, 2002. He said that in that capacity, he does what is known as a file review. A file review involves a review of psychological and other reports (including reports from physicians or anyone in the healthcare field) to determine causation. He does not see the claimant. [MPIC's psychologist] testified that he has spent a lot of time over the past 14 years doing such file reviews; he estimated that he did several hundred reviews per year.

[MPIC's psychologist] reviewed his report dated December 15, 2010, in which he approved further treatment sessions for the Appellant with [Appellant's psychologist]. He said that in approving those further sessions, he looked to the conclusions of [Appellant's psychologist] in her report dated November 23, 2010, as well as to [Appellant's psychologist's] diagnosis of the Appellant's condition. (As was later clarified on cross-examination, [MPIC's psychologist] had

agreed at this point in time with [Appellant's psychologist] that the Appellant's psychological condition was caused by the MVA.) He said he would usually review other reports as well and would likely comment in his report on material matters.

He also reviewed his report of April 5, 2011, which approved a further block of treatment sessions for the Appellant with [Appellant's psychologist]. He noted that there had been a recent progress report from [Appellant's psychologist], dated March 25, 2011. He said that he based his approval for further treatment on [Appellant's psychologist's] report. (As was later clarified on cross-examination, [MPIC's psychologist] had again agreed with [Appellant's psychologist] as to causation at this point in time.) When questioned by the panel regarding the following phrase in his report: "Based upon the medical documentation available during this review, including a recent progress report from [Appellant's psychologist] ...", [MPIC's psychologist] said that he did also look at other material in conducting his review.

[MPIC's psychologist] commented on his report dated June 2, 2011, in which he concluded that the Appellant's depression and PTSD were caused by the robberies and not by the MVA. He said that when he reviewed the relevant documents, he found that the Appellant had been cleared to return to work, subsequent to which the [text deleted] had been robbed, which would have been traumatic. [MPIC's psychologist] acknowledged that since the MVA and the robberies happened close together, it is not easy to distinguish what psychological conditions are related to which event, particularly since he has not seen the person, and as well since a person can have difficulties and be at work. However, [MPIC's psychologist] said that he is dealing with probabilities and as well he is reviewing the documentation. In this case, there seemed to be nothing highlighted in the documentation immediately following the MVA reflecting psychological difficulties. [MPIC's psychologist] said that the Appellant must have felt that she

was able to go back to work and there was no documentation indicating that she was unable to be there due to psychological reasons.

He said that if the Appellant had been suffering from psychological symptoms or from PTSD, including constant crying, he would have anticipated seeing something in the documentation from her medical providers. He said that even a physiotherapist would ask a patient something like "how are you doing emotionally" and they would not want to send someone back to work if they were not doing well. Even a case manager would make a note that perhaps someone could benefit from psychological treatment. [MPIC's psychologist] said that there was nothing in the Appellant's file documentation that he reviewed which gave any indication of this.

[MPIC's psychologist] acknowledged that his report of June 2, 2011, was a change from his earlier reports. He said the reason for the change was because he had more information to review at that time. He said his preference would be to get the claimant into treatment as soon as possible, rather than be too concerned about causation, because without early treatment problems can become entrenched. The idea is to give the claimant the benefit of the doubt. When questioned by the panel regarding his earlier reports and whether, in the reports of December 15, 2010 and April 5, 2011, [MPIC's psychologist] had been of the opinion that the Appellant's psychological condition was caused by the MVA, [MPIC's psychologist] acknowledged that initially he did think that there was causation, i.e. that the Appellant's psychological condition was caused by the MVA, based on the reports of [Appellant's psychologist], but he later changed his mind, as he testified: "based on further information that became available."

[MPIC's psychologist] reviewed his report of December 23, 2011, which considered [Appellant's doctor #1's] report of November 14, 2011. [Appellant's doctor #1] had opined that

the Appellant suffered from PTSD and that the Appellant was very focused on the MVA as the cause of the PTSD. [MPIC's psychologist] said that the patient's focus is not significant. He said that the report of [Appellant's doctor #1] did not change his opinion regarding whether the MVA was the cause of the Appellant's PTSD and depression.

[MPIC's psychologist] referenced his report of June 26, 2015, in which he reviewed the report and opinion provided by [Appellant's doctor #1] dated December 16, 2014, as well as the chart notes of [Appellant's doctor #1]. He also reviewed the chart notes of [Appellant's psychologist]. [MPIC's psychologist] said that in his view, [Appellant's doctor #1's] 2014 report was inconsistent with [Appellant's doctor #1's] own chart notes. He noted that while [Appellant's doctor #1] opined that the MVA was the cause of the Appellant's depression and PTSD, in his chart notes he said that the Appellant said that the store was "violently robbed" and she did not want to go back to the [text deleted] as a result. This is inconsistent with [Appellant's doctor #1's] opinion, because the Appellant in fact did go back to the [text deleted] after the MVA, when she returned to work there prior to the robberies. [MPIC's psychologist] testified that this would suggest to him that the Appellant did not have PTSD prior to the robberies.

He said that the reference in [Appellant's doctor #1's] chart notes to the Appellant's intention to take the [text deleted] course was a good indicator of someone who is mentally healthy. [MPIC's psychologist] said that he understood that the Appellant had taken a pre-test for the course.

[MPIC's psychologist] pointed to a referral letter from [Appellant's doctor #1] to [Appellant's psychologist's colleague] dated October 1, 2010, found in [Appellant's psychologist's] chart notes (she is a colleague of [text deleted] and saw the Appellant instead of [text deleted]):

> "[The Appellant] was hit by a car while in parking lot of [text deleted] June 29 [26] (sic), 2010. Was taken to hospital – recovered enough to RTW mid July. Then the store was violently robbed Aug 21 & Sep 3 – got more and more upset and off work since Sep 9, 2010. Cries a lot – thinks about the events – is afraid to return to the store and has decided she will never work there again."

[MPIC's psychologist] said that he relied on this paragraph from [Appellant's doctor #1's] letter to assist him in concluding that it was the robberies that caused the Appellant's PTSD and not the MVA.

He also reviewed the chart notes of [Appellant's psychologist] and he found them helpful. In his report, he noted [Appellant's psychologist's] initial conclusion, that the Appellant suffered a depressive disorder and symptoms of PTSD caused by the MVA, which became full blown following the robberies. [MPIC's psychologist] said that on reviewing [Appellant's psychologist's] chart notes, he noted that [Appellant's psychologist] had an impression subsequently that "robberies seem big issue now vis-à-vis work rather than accident?" He said that was a shift in [Appellant's psychologist's] opinion.

On his review, he also noted that [Appellant's psychologist] made notes regarding the Appellant's job dissatisfaction with her manager and her intention to pursue a new career through [text deleted]. He said that in March, 2011, [Appellant's psychologist] noted that the Appellant was making gains in terms of her mood state. It was at that time that [Appellant's doctor #1] had prescribed the anti-depressant medication Citalopram for her. [MPIC's psychologist] said that the Appellant may have had a relapse, however, because he was not sure why she couldn't take the course at [text deleted] at that time. [MPIC's psychologist] referred to [Appellant's psychologist's] notes from July, 2011, which say that the Appellant is feeling good, and said that this may mean her condition was possibly in remission. [MPIC's psychologist] said

that there are also chart notes indicating that the Appellant may have been intending to take the course in September, 2011.

[MPIC's psychologist] reviewed the references in [Appellant's psychologist's] chart notes to the Appellant's intrusive thoughts. He said that those types of thoughts are common in cases of PTSD, both during the day, and while sleeping, in the form of nightmares or bad dreams.

He said that the fact that the Appellant did not witness the robberies does not change his opinion that the robberies caused her PTSD. He said that it is not necessary to witness a crime in order for it to be a traumatic event. It is sufficient simply to be in the same vicinity and to be working with people who tell you about it. He said that the Appellant was in the vicinity when the robberies occurred, she had to make a police report, her co-worker had been pepper sprayed and assaulted and in his view that would be traumatizing.

[MPIC's psychologist] testified that in his initial reviews, he had felt, based on [Appellant's psychologist's] reports, that there was evidence of depression and PTSD caused by the MVA. However, he said that he changed his opinion based on additional information, which led him to a different conclusion. This information included [Appellant's psychologist's] chart notes and the chart notes of [Appellant's doctor #1], in which [Appellant's doctor #1] referenced the Appellant's comments that the [text deleted] was violently robbed, that she was afraid to return to the store and that she would never work there again. [MPIC's psychologist] said that with respect to the Appellant's ability to work as of September 10, 2010, apart from the Appellant's time off with respect to her cataract surgery, he is of the opinion that the evidence does not support an MVA-related psychological disability.

Cross-Examination of [MPIC's psychologist]:

Counsel for the Appellant questioned [MPIC's psychologist] on what information caused him to change his mind in his June 2, 2011, report and opine that the Appellant's depression and PTSD were not caused by the MVA. [MPIC's psychologist] said that it was a combination of all of the information that the case manager had collected. In particular, he referred to [Appellant's doctor #2's] report, the report of the physiotherapist and the analysis of the nature of the MVA. Counsel noted that the physiotherapist's report is dated August 5, 2010, and would have been provided to MPIC prior to [MPIC's psychologist's] initial report of December 15, 2010. [MPIC's psychologist] acknowledged that this was the case, and said he was not certain whether or not he reviewed it prior to that report. Counsel pointed out that [Appellant's doctor #2's] report is dated August 18, 2010, which is also prior to the date of [MPIC's psychologist's] initial report. [MPIC's psychologist] acknowledged that this is also the case, but was again not certain whether he reviewed it prior to his initial report.

Counsel asked him about the following paragraph from his report of June 2, 2011:

> "There is no information in the medical file regarding these robberies in terms of what happened, the claimant's involvement, or any reports regarding these events. Involvement in such an event could certainly explain the claimant's PTSD and depressive symptoms."

When asked, [MPIC's psychologist] confirmed that, at the time of writing that report, he did not have specific information regarding the robberies or the Appellant's involvement in them, but he did have information that the robberies took place. He was asked whether it was common to make a determination of causation with no information. [MPIC's psychologist] responded that generally, he would not do so. He acknowledged that he was making an assumption regarding whether such events could be traumatic, but he said it was an educated assumption based on his experience. Counsel questioned [MPIC's psychologist] as to whether, if he knew at the time of

writing the above comment that the Appellant did not witness the robberies, he would come to a different conclusion or possibly seek more information. [MPIC's psychologist] said that having that knowledge could possibly lead to a different conclusion, but that he would need more information and it would depend on the individual. If someone were in a weakened state, it could also have an impact.

Counsel pointed out that [Appellant's psychologist's] report of November 23, 2010, said that the MVA and the robberies all made a contribution to the Appellant's condition. [MPIC's psychologist] said that if he had to weigh these events, he would put more weight on the robberies. [MPIC's psychologist] agreed that he had no reason to believe that [Appellant's psychologist] is not competent and he said he did not disagree with her conclusions; however, he did disagree with her as to causation. He agreed that psychologists are trained to figure out the source of problems and that [Appellant's psychologist] is quite capable. Counsel pointed out to [MPIC's psychologist] that [Appellant's psychologist] had seen the Appellant for a number of sessions and [MPIC's psychologist] acknowledged that that was the case, that she saw the Appellant well over a dozen times. When questioned whether [Appellant's psychologist] would be in a better position than he to determine the source of the Appellant's problems, [MPIC's psychologist] acknowledged that this was the case. [MPIC's psychologist] said that in his view, [Appellant's psychologist] first thought that the cause of the Appellant's depression and PTSD was the MVA, but then she changed her mind.

[MPIC's psychologist] was asked about his comments in his June 2, 2011, report that there was no medical evidence that the Appellant was suffering emotionally subsequent to the MVA but prior to the first robbery. Counsel referred [MPIC's psychologist] to the Appellant's Application for Compensation, which was received by MPIC on August 16, 2010, and pointed to numerous

references by the Appellant to her emotional difficulties contained in the document. [MPIC's psychologist] acknowledged that these references were evidence of the Appellant's views of her difficulties, but said they were not medical evidence. Counsel asked whether, when these difficulties were subsequently confirmed by a psychologist, that confirmation provided sufficient evidence that the Appellant had been previously suffering. [MPIC's psychologist] said that this could raise the level of the evidence somewhat.

Counsel questioned [MPIC's psychologist] regarding the Appellant's return to work in August, 2010, and asked him whether it was his view that the Appellant's return to work meant that she was not having any emotional problems. [MPIC's psychologist] clarified that it did not mean that she was having no emotional problems, but rather that it was a good indicator of her mental health. When asked, [MPIC's psychologist] said he was not aware that the Appellant had returned to work two days per week. Counsel asked him whether that would have any impact on his opinion, given that the Appellant had been working full-time prior to the MVA. [MPIC's psychologist] said he was uncertain of the parameters of the Appellant's return to work, including whether the Appellant was only working part-time due to her physical restrictions. He did not indicate whether her working part-time would change his opinion.

When asked, [MPIC's psychologist] said that the Appellant's experience of the robberies fell within the diagnostic criteria for PTSD. He said that even though the Appellant did not witness the robberies, she was in the building at the time they occurred and she was told about the events. In his view, most people would consider the robberies to be a threatening event. [MPIC's psychologist] acknowledged that perception is very important. [MPIC's psychologist] noted that the Appellant had told [Appellant's psychologist] that she felt unsafe.

Counsel pointed out that after the robbery, the Appellant called the police and the manager and then proceeded to count the inventory and make coffee, and he questioned [MPIC's psychologist] as to whether this evidenced intense fear and helplessness, which are part of the criteria for PTSD. [MPIC's psychologist] said that this kind of behaviour sounded like evidence of a competent employee. He said that this doesn't mean that the Appellant did not have anxiety and that sometimes people go on autopilot.

[MPIC's psychologist] was asked about [Appellant's psychologist's] analysis of the DSM criteria for PTSD. Counsel pointed out that in the chart notes, all notations beside those criteria are references to the MVA. [MPIC's psychologist] acknowledged that this is the case; however, he said that he was commenting on somebody else's work and he suggested that it may be preferable to ask [Appellant's psychologist] regarding her own notes. When asked whether he considered that clinical chart notes are important in his forensic review of a file, [MPIC's psychologist] said that they absolutely are; however, he said that having the author of the clinical chart notes would be preferred.

Counsel questioned [MPIC's psychologist] regarding [Appellant's psychologist's] notes of the Appellant's first session on October 22, 2010. The Appellant described the MVA and [MPIC's psychologist] agreed that it was a perception of a very serious trauma. In her notes, [Appellant's psychologist] wrote "started to cry +++++". When questioned, [MPIC's psychologist] agreed that while she was talking, the Appellant was clearly very emotional. [MPIC's psychologist] agreed that [Appellant's psychologist's] notes reflect that the Appellant was still crying throughout the discussion of the MVA. He also agreed that there are no notations about crying in [Appellant's psychologist's] notes when the Appellant was discussing the robbery. Counsel asked whether the lack of crying during the discussion of the robbery could reflect that the

Appellant was not triggered into feelings of PTSD by the discussion of the robbery, whereas crying during the discussion of the MVA could reflect that the Appellant was triggered into feelings of PTSD by a discussion of the MVA. [MPIC's psychologist] responded that he could not comment on an interview that he didn't do. [MPIC's psychologist] agreed that it is one of his functions as a consultant with MPIC to comment on an interview done by someone else, but in this case he was being requested to give additional detail.

[MPIC's psychologist] was asked what would trigger PTSD. [MPIC's psychologist] said that various things could trigger PTSD, including discussing the details of the event. He said that from a purely physiological point of view, a person can only cry for a certain period of time and can't maintain that level of arousal for too long. He was asked whether, if the robberies were a trigger for the Appellant's PTSD, she would have had an emotional response to discussing them. [MPIC's psychologist] said that at this point in time, several years after the events, it would not be uncommon for the emotional response to diminish. He said that the passage of time will help people even without any treatment, so they will recall events but the emotional saliency will diminish. Counsel then asked [MPIC's psychologist] what explanation he could give for the fact that when the Appellant was discussing the MVA in her testimony, she broke down several times. [MPIC's psychologist] said that it could be more salient for her as she had a huge emotional investment in it.

Counsel questioned [MPIC's psychologist] regarding his interpretation of [Appellant's psychologist's] commentary in her chart notes "robberies seem big issue now vis-à-vis work rather than accident?" When asked whether the question mark could reflect that the phrase was a possibility or a theory, [MPIC's psychologist] said that that could be the case and he said that it is common for psychologists to question their theories. [MPIC's psychologist] agreed that

[Appellant's psychologist] gave her opinions in her written reports, and he agreed that this theory or query was not an opinion. When asked, [MPIC's psychologist] acknowledged that he did change his own opinion on the basis of [Appellant's psychologist's] theory.

Counsel asked [MPIC's psychologist] whether at any time [Appellant's psychologist] said that the Appellant's PTSD was in total remission. [MPIC's psychologist] said that she had not; she had said that the Appellant's PTSD had significantly improved. When asked whether it is good therapy for PTSD sufferers to put them back in the conditions that gave rise to the PTSD, [MPIC's psychologist] said that it depends on what is decided through the course of therapy and if the determination is made that they really want to get back to work. Counsel raised the Appellant's reaction to returning to a [text deleted] store, and advised [MPIC's psychologist] that she had only returned once and was shaking at that time. [MPIC's psychologist] said that it could be an indication of a negative effect. Counsel asked him about the Appellant's ability to return to work at the [text deleted], and observed that whether the PTSD is related to the MVA or to the robberies or both, all events took place at the [text deleted]. Counsel asked [MPIC's psychologist] whether it would be contra-indicated to put the Appellant back to work in the place that was the cause of the PTSD. [MPIC's psychologist] said that there is often an attempt to put a claimant back to work in the pre-event workplace, but it doesn't work all the time.

[MPIC's psychologist] was questioned by the panel regarding whether a person would have a greater reaction to an event that they experienced, rather than to an event that they hear about. He said that an experienced event would have more emotional saliency. The panel asked [MPIC's psychologist] whether, if the Appellant's MVA might have had more emotional saliency to her, the MVA could have initiated her PTSD symptoms. [MPIC's psychologist] said that he didn't see support for that in the medical documentation. He said that he considered the

fact that the robberies took place in her workplace and affected her work colleagues to have made them more traumatic to her than the MVA. When questioned whether anecdotal evidence would be important, [MPIC's psychologist] responded that it would be.

Direct Examination of [MPIC's doctor]:

[MPIC's doctor] was qualified as an expert in physical injuries that can be sustained in motor vehicle accidents and the determination of causation of those injuries.

He testified regarding his education and training. He has been a medical doctor since [text deleted]. After obtaining his degree, he did a four-year residency and a one-year rotating internship. He then obtained a one-year Diploma in Sports Medicine.

[MPIC's doctor] discussed his work as a consultant to MPIC, which he has been doing since 1996. He estimated that in that capacity, he has conducted approximately 35 to 40 file reviews per month. He said that in the course of those reviews, he has assessed many issues, including causation, impairment, functional capability and requirement for treatment.

[MPIC's doctor] said that he had the opportunity to conduct a number of reviews on the Appellant's file. He referred in particular to his report dated November 16, 2012, in which he considered whether the Appellant's cataract would prevent her from working at the [text deleted] and also whether it would entitle her to a permanent impairment benefit. He said that the cataract would not have prevented the Appellant from working. He said that even though (prior to surgery) the Appellant had limited vision in her right eye, her vision in her left eye was normal. Therefore, he said the Appellant's binocular acuity was good and it would not have impaired her ability to do work and leisure activity. [MPIC's doctor] said that he did not know

specifically what the Appellant's duties were, but he assumed them to be stocking and working the cash register. He said that when he reviewed the file, he found no evidence that a healthcare professional had advised the Appellant not to work. [MPIC's doctor] noted that he reviewed all documents surrounding the event (the cataract surgery), including documents from the Appellant's healthcare providers.

The Appellant would have required a period of recovery following the cataract surgery, he said. In order to determine that period, he relied on a report from [Appellant's eye doctor], dated July 28, 2011. That report referred to an examination of July 25, 2011, and indicated that the Appellant required new glasses, which could correct her vision back to 20/20. Based on that report, [MPIC's doctor] opined that the Appellant did not have any impairment and therefore would be able to perform her work duties as of the examination date.

[MPIC's doctor] referenced his report dated March 6, 2014. In that report he reviewed a further report from [Appellant's eye doctor] dated January 31, 2014, in which she commented that the Appellant would have had a loss of binocularity and it would have taken her a period of months to adapt to this loss. [Appellant's eye doctor] noted that this would have affected the Appellant's depth perception and efficiency but not necessarily her ability to complete her work tasks. [MPIC's doctor] reviewed his report and testified that his opinion did not change. He said that in his view, [Appellant's eye doctor's] report indicated that the Appellant's loss of vision did not lead to an impairment of her ability to work.

[MPIC's doctor] reviewed his final report on the file, dated February 26, 2015. [MPIC's doctor] said that following the MVA, the Appellant had a sprain of her ankle and there was a suspicion of a fracture. The ankle was eventually determined not to be fractured and the Appellant's ankle

did recover over time. No other physical findings were noted and when he reviewed the other medical reports and [Appellant's doctor #1's] clinical chart notes, he could find no other deterioration in the Appellant's physical function, and specifically none were noted after she went back to work in August, 2010.

Cross-Examination of [MPIC's doctor]:

Counsel for the Appellant questioned [MPIC's doctor] and referred to the chart notes of [Appellant's doctor #1] dated September 22, 2010, subsequent to the Appellant's return to work. [Appellant's doctor #1] had noted that the Appellant complained of pain in her left knee and he referred her for x-rays. [MPIC's doctor] agreed that the Appellant was having some symptoms after her return to work.

He was referred to the report of the Appellant's physiotherapist dated August 5, 2010, which was the date that the Appellant returned to work. Counsel noted the requirement under "work status" that the "patient is to take frequent breaks from standing". [MPIC's doctor] was asked whether this is an indication that the Appellant was not completely healed at that time. He acknowledged that the Appellant was still having symptoms at the time of her return to work.

Counsel raised the report of [Appellant's doctor #2] dated August 18, 2010, and pointed to the requirement under "work status" of "no standing greater than 10 minutes" and noted that at the time of the Appellant's return to work, both [Appellant's doctor #2] and her physiotherapist had put restrictions on her physical abilities. [MPIC's doctor] said that [Appellant's doctor #2's] report was based on an assessment made on June 30, 2010, but he agreed that as of her return to work, the Appellant did have restrictions. He said that he was not aware that the Appellant had returned to work on a part-time basis.

Counsel referred to [Appellant's psychologist's] chart notes from October 22, 2010, where she noted that the Appellant said "at [text deleted] no time to sit down when it's really busy so there's no break". When asked whether MPIC did any follow-up to assess whether any accommodations were made at [text deleted] for the Appellant's physical restrictions, [MPIC's doctor] said that he was not aware as to how the claim was managed.

[MPIC's doctor] said that he was not aware as to whether a Physical Demands Analysis was ever done. Counsel asked [MPIC's doctor] whether his opinion on the Appellant's ability to work was based on his assumption regarding the Appellant's duties. [MPIC's doctor] responded that that is not entirely correct. He said that people can report that they are sore, or tired, or having physical or other difficulties. What he looks for, though, in his file review is medical documentation of objective physical findings which would indicate that they may not have the ability to continue working. [MPIC's doctor] said that in this case, there were no physical findings (for example, no restricted range of motion) or anything in the file to lead him to believe that there was something to prohibit the Appellant from working.

Counsel referred to the report of the Appellant's physiotherapist from August 5, 2010, which did note objective physical findings of difficulties. [MPIC's doctor] agreed that this is the case, but pointed out that the Appellant did return to work on that date and that [Appellant's doctor #1's] subsequent chart notes don't reflect any deterioration in her physical condition after that point. [MPIC's doctor] said that just because someone has symptoms, it doesn't mean that they can't work or that they should stop moving. A person can have aches and pains and still carry on. He said that as a physician, his role is to advise them on how they can minimize further injury. It is good to keep moving and to keep active.

The panel questioned [MPIC's doctor] regarding how the cataract would have affected the Appellant's vision. [MPIC's doctor] responded that the Appellant's visual field would still have been intact. He said that most often, it is the central vision with the sharpness and clarity that is affected by a cataract and not the peripheral vision.

The panel asked [MPIC's doctor] about the Appellant's return to work and who would have been responsible for her graduated return to work program. [MPIC's doctor] responded that it is often the employer's responsibility. He noted that some employers won't take an employee back until they are 100% recovered. [MPIC's doctor] acknowledged that MPIC sometimes get involved, where the return to work is a more lengthy process. When questioned by the panel as to how to interpret the recommendations that were made to the Appellant by her healthcare practitioners such as "no standing greater than 10 minutes" and "patient is to take frequent breaks from standing", [MPIC's doctor] said they could be interpreted simply, as meaning that the Appellant should take breaks while working. When questioned regarding the fact that the Appellant returned to work at 2 days per week and this never increased, [MPIC's doctor] noted that no medical professional had ever told the Appellant that she couldn't work more than this. In his view, the fact that she didn't get worse should be regarded as a good sign.

Submission for the Appellant:

Counsel for the Appellant provided both written and oral argument. He submitted that the testimony at the appeal hearing, as well as the written evidence on the indexed file, demonstrates that the Appellant suffered both physical and psychological injuries as a result of the MVA, which rendered her incapable of working during the relevant periods.

Counsel reviewed the Appellant's description of the MVA and referenced how fearful the Appellant was of being killed or permanently injured. He noted the Appellant's testimony that following the MVA, she began to cry uncontrollably. Since she did not want to be crying in front of the doctor, she went home rather than to the hospital that evening and she went to the hospital the next morning.

The Appellant had testified that immediately following the MVA she began to experience bad dreams, involving being chased by the driver of the car. She testified that she was having those dreams prior to the robberies at the [text deleted].

When the Appellant returned to work after the MVA, on August 5, 2010, it was only on a part-time basis, 2 days per week, due to both physical and emotional problems. She had been given restrictions of not standing for long periods, but it was not possible to sit down very often because the store was very busy. As well, the Appellant continued to have problems with her right eye. In addition, she continued to have emotional problems. She found it difficult to walk through the parking lot and the bad dreams continued.

Counsel argued that it was significant that during the Appellant's testimony, she became emotional when discussing the MVA, but not when discussing the robberies. Counsel noted that when testifying regarding the MVA and her consequent problems, the Appellant cried several times. In contrast, there was no indication during her testimony, including detailed cross-examination regarding the incidents, that talking about the robberies was causing her any difficulty.

The emotional pattern shown in the Appellant's testimony was also reflected in [Appellant's psychologist's] clinical chart notes, counsel argued. In [Appellant's psychologist's] chart notes, beside the Appellant's description of the MVA, are notations that the Appellant was either crying or that she felt like crying. There are no such notations found in the clinical chart notes beside the Appellant's description of the robberies. Counsel said that based on the Appellant's emotional response, the cause of the Appellant's PTSD could not solely be the robberies, to the exclusion of the MVA. If this were so, the Appellant would have been more emotional when describing the robberies.

Counsel argued that the Appellant's husband, in his testimony, corroborated the testimony of the Appellant. [Appellant's husband] confirmed that following the MVA, the Appellant was having difficulty coping and she was crying frequently. He testified that her sleep was affected and sometimes she didn't get out of bed. He said that she had difficulty leaving the house, as well as doing even small things. His testimony was that he had not seen her like this before.

Counsel referred to the testimony of [Appellant's doctor #1] and his training and expertise in mental health issues. He addressed the issue of [Appellant's doctor #1's] opinion. He submitted that [Appellant's doctor #1] is a medical doctor qualified as an expert in family medicine, and qualified to diagnose and treat psychological problems, as family practitioners do this all the time. He argued that whether or not [Appellant's doctor #1] is an expert in this area, he was the first medical care provider to identify that the Appellant was likely suffering from depression and PTSD, and he referred the Appellant to [text deleted], a licensed psychologist, who confirmed this diagnosis. Counsel noted that [Appellant's doctor #1] opined that the MVA was most likely the primary cause of the Appellant's major depressive disorder and PTSD, with the robberies

also playing some role in exacerbating those conditions. [Appellant's psychologist] also confirmed [Appellant's doctor #1's] opinion.

Counsel referred to the clinical chart notes of [Appellant's psychologist], which form part of the documentary evidence in this appeal. In the chart notes from a session on November 2, 2010, [Appellant's psychologist] noted the Appellant's comments when discussing the MVA, as follows:

> "... "I had bad dreams"... 1 day it was so real
> Other dreams as well – e.g. of dying with CA [car accident]
> Dreams of own death – of friends & husband being there
> ...
> I feel scared when I had to walk in parking lot when there are cars. I feel shaky. I don't walk – I walk away/around so I can give them enough distance
> ...
> I walk away from cars – more distance – I'd rather walk in front of a car <u>not</u> in back – so they don't hit me." (emphasis in original)

It is significant, he argued, that during this session, the Appellant reflected only upon her concerns relating to the MVA and did not mention the robberies, apart from right at the beginning of the session, where [Appellant's psychologist's] notes indicate that the Appellant gave [Appellant's psychologist] the name of and permission to contact the employment assistant counsellor that she saw following the robberies.

Counsel referred further to [Appellant's psychologist's] chart notes, which contain photocopied pages from the DSM relating to the diagnostic criteria for PTSD. [Appellant's psychologist] had checked off the criteria that she found applicable to the Appellant and had written beside those criteria various comments and quotations from her chart notes relating to the Appellant. For example, the following is listed as the first criterion for a diagnosis of PTSD:

A. The person has been exposed to a traumatic event in which both of the following were present:

1. The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others.

2. The person's response involved intense fear, helplessness, or horror. ... (underlining made by [Appellant's psychologist] in chart notes)

Beside this criterion, [Appellant's psychologist] noted the following comments:

> Beside point 1: "Crying +++" and "I thought he was going to drive over me ... I quickly got up but I cudn't (sic) feel my body ..."
>
> Beside point 2: "Still crying ++" and "I feel like I cud (sic) have died ... my body feel so threatened"

Similar comments are found beside most of the listed criteria for PTSD. Counsel pointed out that all of the noted comments relate to the MVA. Some comments mention the [text deleted] parking lot, but there is no reference beside any of the criteria to the robberies. Counsel noted that [Appellant's doctor #1] also testified that the Appellant was focussed on the MVA. There is only one mention of the robberies in four years of his chart notes, from the Appellant's visit to [Appellant's doctor #1] of September 28, 2010.

Counsel referred to [Appellant's psychologist's] report of February 28, 2014, which was prepared in response to a letter from the Claimant Adviser Office. He acknowledged that [Appellant's psychologist] had qualified her previous opinion to a certain extent, regarding the reasons that the Appellant quit her job at [text deleted]. In her report, [Appellant's psychologist] confirmed her earlier opinion that the Appellant suffered from a major depressive disorder caused by the MVA and PTSD which became full-blown subsequent to the robberies. However, she noted that upon a review of her chart notes, she was also of the view that the Appellant was suffering from some pre-existing job-related stress and family-related stress prior to the MVA. In the February 28, 2014, report, [Appellant's psychologist] hypothesized that the job-related

stress and dissatisfaction with a new manager may have factored into the Appellant's decision to stop working at the [text deleted]. However, counsel pointed out that in her report [Appellant's psychologist] also stated that "my opinion remains the same for the most part". [Appellant's psychologist] did say that the context of the job-related stress is important to the manifestation of symptoms that the Appellant exhibited subsequent to the MVA and the robberies.

[Appellant's psychologist's] mention of the Appellant's stress related to a new manager was based on a misunderstanding of her own chart notes, argued counsel. In the report, [Appellant's psychologist] stated that the Appellant "had experienced a change in manager and did not seem as comfortable with or supported by him as with her previous manager". Counsel pointed out that the Appellant testified that she had worked for the same manager for 12 years at the [text deleted] store and for several more years prior to that at another store. She testified that he treated her like family and that she never had a problem with him herself, although she felt that he was unfair to some employees whom she felt deserved a raise. Counsel pointed out that this information is reflected in [Appellant's psychologist's] clinical chart notes, which also identify, from a session on January 27, 2011, that over that past two years people no longer wanted to work with that manager and had started to quit.

Counsel submitted that job-related stress and family-related stress are not uncommon. He noted that [Appellant's psychologist] did not say that either of these stresses caused or contributed to the Appellant's major depressive disorder or PTSD. Counsel pointed out that her chart notes from January 27, 2011, state: "Last 2 years of job are the backdrop to [the Appellant's] R [reaction or response] to the robberies & car accident".

All of our experiences, counsel argued, constitute a backdrop to the way that we respond to various events; however, a backdrop does not constitute causation. Further, counsel pointed out that the Appellant has suffered other life events, such as her separation from her husband many years ago, and [Appellant's doctor #1], who has been her family physician throughout these years, testified that he could not recall her suffering from depression or anxiety at any time prior to the MVA. The Appellant's husband also testified that he did not recall her response or her reaction being the same at any other time.

Counsel noted that [Appellant's psychologist] had been asked to comment regarding the Appellant's ability to work. In responding in her February 28, 2014 report, [Appellant's psychologist] noted that in her earlier, August 2011, report (following their last session on July 21, 2011), she had found that the Appellant's symptoms of depression and PTSD had improved significantly. Counsel pointed out that [Appellant's psychologist] had at no time indicated or opined that either condition was in remission.

In fact, said counsel, the evidence is that the Appellant's condition was not in remission after August, 2011. He referred to the chart notes of [Appellant's doctor #1] and identified the following SOAP notes (Subjective, Objective, Assessment, Plan) regarding the Appellant's condition:

> "**October 6, 2011:**
> S: depression worse ++ since August. Cries all the time – having headaches. Did feel better on the citalopram but stopped it.
> O: distraught – crying. ...
> A: major depression ...
> P: restart citalopram ...
>
> **November 4, 2011:**
> S: Feels exhausted all the time – only goes out of house occ'l. ... Crying less since taking the citalopram but still lethargic tired.
> O: depressed – flat affect

A: post-traumatic depression partially treated.
P: try increasing citalopram to 40 mg

December 13, 2011:
S: Feeling little better but sleep is still often poor ...
O: still quiet withdrawn. Less tearful ...
A: depression starting to improve – still ++ sleep disturbance ...
P: continue citalopram

March 29, 2012:
S: Can't take citalopram every day – makes her too drowsy – taking it on and off. Depression less though – cries less but still often.
O: less tearful and sad
A: depression – PTSD – partially improved.
P: reduce citalopram to 20 mg (40 not tolerated) ..."

Counsel argued that, based on [Appellant's doctor #1's] chart notes, as well as the testimony of the Appellant and her husband, the Appellant was still suffering from PTSD and depression at least until March 29, 2012. The Appellant's husband testified that she had joined the [non-profit organization] support group towards the end of 2011, and after several months she began to feel better, which corresponds to [Appellant's doctor #1's] chart notes. The Appellant testified that by September, 2012 she was ready to begin a volunteer placement at the [personal care home] and in December, 2012 she became an employee there.

Counsel reviewed the evidence of [MPIC's psychologist]. In his first report dated December 15, 2010, [MPIC's psychologist] noted that [Appellant's psychologist] had recently provided a report dated November 23, 2010. After referring to [Appellant's psychologist's] report, [MPIC's psychologist] stated as follows:

> "Based on this information, it appears that the claimant's depression and PTSD were present to some degree following the MVA and were subsequently exacerbated once she returned to work and experienced two robberies."

[MPIC's psychologist] then approved eight sessions for the Appellant with [Appellant's psychologist], with the requirement for a progress report after six of these eight sessions. In his

subsequent report dated April 5, 2011, [MPIC's psychologist] approved six more treatment sessions with [Appellant's psychologist]. Counsel submitted that it would be reasonable to infer from his approval that [MPIC's psychologist], at this point, continued to be of the view that the Appellant's condition was caused by the MVA.

A subsequent report provided by [MPIC's psychologist], dated June 2, 2011, was referred to. In it, [MPIC's psychologist] expressed the following opinion:

> "... it appears that the claimant's depression and PTSD symptomatology is likely a result of the robberies she experienced and not the MVA in question."

Counsel submitted that this opinion from [MPIC's psychologist] ought to be given very little weight, for the following reasons:

1. [MPIC's psychologist] based his review almost entirely on the early reports of the Emergency Room doctor, [Appellant's doctor #2] and the physiotherapist, all of whom had treated the Appellant shortly after the MVA. Counsel noted that all of their reports were available to [MPIC's psychologist] at the time of his first report (December 15, 2010). On cross-examination, [MPIC's psychologist] had acknowledged that this information was on the file previously, but he was not certain whether he had reviewed it earlier, when he had concurred with [Appellant's psychologist's] report regarding causation.

   [MPIC's psychologist] had relied on the fact that the Emergency Room physician, [Appellant's doctor #2] and the physiotherapist had failed to note any psychological symptoms in their reports. Counsel submitted that the fact that none of their reports noted psychological symptoms does not mean that the Appellant did not have any such

symptoms at the time. Counsel pointed out that the Appellant had testified that when she went to the [hospital], she was trying not to cry in front of the doctors.

2. [MPIC's psychologist] did not refer to the Application for Compensation, which was also available prior to [MPIC's psychologist's] first report. The Application for Compensation was received by MPIC on August 16, 2010, and counsel noted that the Appellant made many comments regarding her emotional condition at the time of her return to work, and prior to the robberies, as follows:

   On page 2: "... Have emotional trouble from the hit & run accident. Counciling (sic) required."
   On page 3: "Loss of wages & emotional setback as well as physical suffering."
   On page 8: "... I also have emotional difficulties from the trauma of the accident"

   Counsel said that in his testimony, [MPIC's psychologist] had acknowledged that it would be possible for an Appellant to return to work even though she still had psychological problems. Counsel submitted that [MPIC's psychologist] ought to have considered the Appellant's comments in her Application for Compensation as valid information. He pointed out that [MPIC's psychologist] admitted on cross-examination that this does constitute valid evidence of emotional difficulties, even if not at the same level as a medical report. Counsel said that if other information on the file served to lessen the weight of that information from the claimant, [MPIC's psychologist] could have given it less weight. However, counsel submitted that the information in the Application for Compensation was subsequently substantiated by the clinical chart notes from [Appellant's psychologist], as well as those of [Appellant's doctor #1].

3. [MPIC's psychologist] arrived at his new conclusion regarding causation in the absence of any information about the nature of the robberies, as is noted in the report:

> "There is no information in the medical file regarding these robberies in terms of what happened, the claimant's involvement, or any reports regarding these events. ..."
>
> Counsel noted that [MPIC's psychologist] acknowledged in cross-examination that such information would be important in determining causation. Counsel submitted that it was not appropriate for [MPIC's psychologist] to determine that the robberies, about which he knew nothing at that point, were the sole cause of the Appellant's PTSD and depression.

4. [MPIC's psychologist] ignored all of the evidence cited by [Appellant's psychologist] in her reports, which had earlier convinced [MPIC's psychologist] that the MVA was a significant contributor to the Appellant's depression and PTSD.

Counsel argued that the opinion of [Appellant's psychologist] regarding causation is to be preferred: that the MVA caused the Appellant's major depressive disorder and symptoms of PTSD, while the robberies triggered a full-blown PTSD condition. He argued that [MPIC's psychologist] never stated what he actually finds wrong about this opinion, although [MPIC's psychologist] was of the view that there was no corroborating evidence of a psychological problem prior to the robberies. Counsel submitted that [Appellant's psychologist] is a trained and licensed psychologist and that [Appellant's psychologist] based her conclusion on causation through an assessment of the diagnostic criteria for PTSD and all of those related to the MVA and none to the robberies, which [MPIC's psychologist] acknowledged on cross-examination.

Counsel referred to [MPIC's psychologist's] comment in his June 26, 2015, report as follows:

> "It would appear that if the claimant is considering taking a [text deleted] course at [text deleted] in March, 2011 then she would not probably be considered unemployable. ..."

This was not an appropriate conclusion by [MPIC's psychologist], argued counsel. Considering something is not the same thing as doing it, particularly since the evidence in this case is that the Appellant did not ever take the course. [Appellant's doctor #1's] evidence was that he did not believe that the Appellant was capable of attending school full-time in March 2011, given her ongoing psychological problems. [Appellant's doctor #1] did note that he would not have discouraged the Appellant from attempting the course, as he felt it would be a good distraction from her focus on the MVA, which was detrimental to her recovery. Counsel also pointed to [Appellant's psychologist's] clinical chart notes, where she gave the same opinion as to the Appellant's inability to return to work.

The issue of the Appellant's recollection, when questioned, regarding her intention to take a course at [text deleted] was addressed. Counsel said that the Appellant could not be expected to recall everything she said during counselling sessions six years ago. The fact that her testimony at the hearing may have been inconsistent with such statements should not be considered to reflect upon her credibility. Both [Appellant's doctor #1] and [Appellant's psychologist] felt that the Appellant was not capable of successfully pursuing such a course, given her psychological condition. Counsel argued that whether the Appellant is correct on some minor details isn't significant. Rather, the important point is that [Appellant's psychologist] made a diagnosis, that the Appellant suffered from a major depressive disorder and symptoms of PTSD subsequent to the MVA, which became a full-blown PTSD subsequent to the robberies and that this condition disabled the Appellant from work.

There was a conflict between the June 26, 2015, report of [MPIC's psychologist] and the chart notes of [Appellant's psychologist], counsel said. In his report, [MPIC's psychologist] referred to [Appellant's psychologist's] chart notes and quoted the following observation: "robberies

seem big issue now vis-à-vis work rather than accident?" [MPIC's psychologist] then went on to state as follows:

> "Based on this information, it appears to be [Appellant's psychologist's] opinion that the robberies are the more significant event in terms of her current psychological symptoms as opposed to the MVA in question. This opinion would appear to contradict that of [Appellant's doctor #1]."

Counsel argued that the observation of [Appellant's psychologist] is not an opinion and in cross-examination [MPIC's psychologist] agreed that an impression or query does not equal an opinion. [MPIC's psychologist] also agreed that [Appellant's psychologist] never provided an actual opinion that the robberies were more important in terms of causation than the MVA. Counsel submitted that it was [Appellant's psychologist's] consistent opinion that the MVA caused the Appellant's major depressive disorder and symptoms of PTSD and she developed full-blown PTSD after the robberies.

Counsel submitted that it is not the Appellant's position that the robberies had no effect on her. Counsel acknowledged that the Appellant had never previously been involved in a robbery at the [text deleted] store in 22 years and so two robberies may have been traumatic. However, it is also the case that the Appellant had never previously been run down by a car and this was also traumatic, and it happened prior to the robberies. Accordingly, it is the Appellant's position that the MVA was the first cause of her psychological condition.

Counsel argued that in addition to the Appellant's psychological injuries, she suffered physical injuries which contributed to her inability to continue working at the [text deleted] subsequent to September 9, 2010. Counsel noted that there is no dispute between the parties that the Appellant's right ankle problems and her right eye cataract were caused by the MVA.

The medical evidence shows that the Appellant was not physically capable of returning to full-time duties at the [text deleted] after the MVA. The Appellant had ongoing difficulties in her right ankle. Counsel referred to the report of the Appellant's physiotherapist, [text deleted], dated August 5, 2010, which states as follows:

> "[Patient] is to take frequent breaks from standing – time to elevate foot during shift if able."

He also referred to the report of [Appellant's doctor #2] from [text deleted] Clinic, dated August 18, 2010, who provided the following restriction:

> "No standing greater than 10 minutes at a time."

The Appellant testified that she was able to sit down and put her foot up once in a while when it was not too busy in the store, but that was not very often. [MPIC's doctor] testified that he was not aware as to whether the case manager followed up to determine if the restrictions on return to work were being followed. Further, no Physical Demands Analysis appears to have been conducted. [MPIC's doctor] acknowledged that he simply assumed what the Appellant's job duties were when he provided his medical opinion.

The Appellant also had problems in her right eye, due to a cataract. Counsel noted that the evidence was that the cataract rendered the Appellant's right eye essentially blind. The Appellant testified that she bumped into things and had difficulty performing some of her duties, such as keeping an eye out for shoplifters. She testified that when she was stocking the cooler in the back, she had to move very slowly and cautiously because of her vision problem and continuing ankle pain.

Counsel noted that the Appellant voluntarily returned to work on a part-time basis and the case manager was aware that she was only working part-time hours. Counsel submitted that the usual practice of MPIC, when someone is ready to return to work, is to write to the physician to get a follow-up report. The onus should not be on the Appellant; rather, the onus should be on the case manager to determine the Appellant's capabilities and whether work restrictions which were imposed by [Appellant's doctor #2] and by the Appellant's physiotherapist were in fact being complied with. There is no evidence on the file that MPIC did any investigation during the Appellant's return to work period, to determine whether or not she was physically able to return to her pre-accident duties on a full-time basis. Counsel submitted that the case manager was not effective in managing the Appellant's case. Counsel pointed out that MPIC did not seek an opinion from its Health Care Services team regarding the Appellant's vision problems until January, 2012 and regarding the Appellant's ankle problems until February, 2015.

It is the Appellant's position that neither her cataract, nor her ankle difficulties, taken alone, were sufficient to prevent the Appellant from performing her pre-accident duties, at least on a part-time basis as of September 10, 2010. However, the Appellant's ankle was being treated until November, 2010 and the cataract was not removed until June, 2011. Given that no Physical Demands Analysis was done and that opinions were not sought on these issues until 2012 and 2015, respectively, it is not possible to say how long those issues would have persisted and precluded a full-time return to work. However, counsel submitted that on a review of the chart notes of [Appellant's doctor #1] and [Appellant's psychologist], as well as the testimony of the Appellant and her husband, it is clear that the Appellant's physical injuries contributed to her psychological condition. It is therefore the Appellant's position that she should have received, at a minimum, partial IRI benefits for a period of time subsequent to her return to work.

Notwithstanding that, however, counsel submitted that it is the Appellant's position that subsequent to September 10, 2010, the main disabling condition preventing the Appellant from returning to work was her psychological condition. A compelling case has been made that the Appellant suffered both physical and psychological injuries as a direct result of the MVA and that she was in an emotionally weakened state when she returned to work on August 5, 2010 and when the robberies occurred on August 21 and September 3, 2010. Counsel said that this was the conclusion reached by [Appellant's psychologist] and that [Appellant's psychologist] never did retreat from that opinion. It was also the opinion of [Appellant's doctor #1], who continued to document the Appellant's emotional problems after she stopped seeing [Appellant's psychologist]. [Appellant's psychologist's] clinical notes document the Appellant's thinking processes as well as those of the doctor herself.

Counsel submitted that the opinion of [Appellant's psychologist] ought to be given more weight than the opinion of [MPIC's psychologist], who initially agreed with [Appellant's psychologist] and then changed his mind for reasons which were not well explained. Counsel argued that [MPIC's psychologist's] explanation, that in his experience some robberies are traumatic, which led him to conclude that these robberies must have been traumatic for the Appellant and were therefore the most likely cause of the Appellant's PTSD, was not a sufficient reason to rely on his opinion as to causation. [MPIC's psychologist] testified that [Appellant's psychologist] is a very competent psychologist and counsel submitted that her opinion ought to be given more weight and ought to be preferred.

Counsel acknowledged that [Appellant's psychologist] was not called as a witness. He noted that conflict had developed between the Appellant and [Appellant's psychologist], pointing to the Appellant's letter to [Appellant's psychologist] dated August 1, 2014, in which she asked

[Appellant's psychologist] to correct her personal health information. Counsel also noted the conflict that developed between [Appellant's psychologist] and former counsel at the Claimant Adviser Office. He pointed out that notwithstanding the conflict, [Appellant's psychologist] did not change her opinion, being that the MVA was primarily responsible for the Appellant's psychological condition. Counsel submitted that in any event, in the absence of [Appellant's psychologist's] testimony, there are several reports from [Appellant's psychologist], as well as her clinical chart notes, which form part of the documentary evidence in this appeal, which he submitted are clear and speak for themselves.

Counsel submitted, therefore, that the Appellant ought to be entitled to IRI benefits for the periods September 10, 2010 to June 9, 2011 and July 26, 2011 to December 6, 2012.

Submission for MPIC:

Counsel for MPIC provided both written and oral argument. She said that the issue to be determined is whether the Appellant is entitled to IRI for the periods from September 10, 2010 to June 9, 2011 and from July 26, 2011 to December 6, 2012. The Appellant did receive IRI for the period beginning from seven days following the MVA to August 4, 2010, the day before she returned to work. As well, the Appellant received IRI from June 10, 2011 (the date of her cataract surgery) to July 25, 2011. July 25, 2011, is the date of [Appellant's eye doctor's] eye examination, on which she subsequently reported that the Appellant had no visual impairment which precluded her from working. The Internal Review Decision dated March 26, 2013, found that the Appellant was not entitled to further IRI benefits after July 25, 2011 and counsel submitted that the onus is on the Appellant to show that the Internal Review Decision is incorrect.

Counsel argued that the Appellant's psychological injury was not caused by the MVA. She argued that when the MVA happened, although the Appellant did not see the vehicle coming towards her, she did hear the engine of the vehicle, and the vehicle was travelling slowly. Further, the Appellant was not taken to the hospital that evening. In addition, immediately following the collision, the Appellant was able to get up and walk around. Police did not attend at the scene, although the Appellant did make a police report the next day and the [text deleted] store did notify police of the incident.

Although the Appellant testified that she was crying uncontrollably after the MVA, there is no evidence of this in the reports of the medical professionals that she saw shortly after the MVA, or in the Appellant's conduct prior to her return to work on August 5, 2010:

1. In the [hospital] Emergency Room report of June 27, 2010, it is noted that the Appellant reported back pain, neck pain and bilateral leg pain. There is no mention of any mental health concerns or that the Appellant was crying.

2. In the report of [Appellant's doctor #2] at the [text deleted] Clinic from a visit on June 30, 2010, symptoms and signs related to the Appellant's right ankle are noted. There are places on the form to indicate signs and symptoms of mental health issues, but no such symptoms were recorded.

3. Notes were taken by the case manager on July 6 and July 8, 2010, of conversations with the Appellant, in which the Appellant described the MVA and discussed her injuries. In those notes, the case manager recorded the Appellant's description of the MVA and her physical injuries, but there is no mention of any mental health concerns, or that the

Appellant was crying or had any difficulty in speaking about the MVA, such as needing to take a break or needing to call back due to having to collect herself.

4. The Appellant returned to work at [text deleted] after the MVA on August 5, 2010, on a part-time basis. Prior to that time, she did not see any healthcare practitioners regarding any mental health issues. The Appellant had acknowledged that there was an employee assistance program available to her, with posters in her workplace offering counselling, but she didn't avail herself of this program in connection with the MVA.

Counsel submitted that if the Appellant were crying, there would be mention of this in the reports noted above. Therefore, the Appellant's testimony that she was crying uncontrollably after the MVA is not credible. Counsel did acknowledge that the Appellant had testified that she tried very hard not to cry in front of doctors and didn't know what depression was, and so was unable to identify that she was suffering from depression until [Appellant's doctor #1] diagnosed it. However, counsel argued that there would nevertheless be evidence of emotional distress (or trying not to cry) in the reports. Counsel submitted further that based on the foregoing, the MVA was not a traumatic event for the Appellant.

In contrast, counsel argued, the two robberies were traumatic events for the Appellant. The first robbery, on August 21, 2010, occurred when the Appellant was working in the [text deleted]. It was the first robbery to occur when she was present in the store, although she had worked there for 22 years prior to that date. Although the Appellant did not witness the robbery, she did see the aftermath. The Appellant's co-worker on the shift was pepper-sprayed and couldn't open his eyes for two days, and counsel submitted that this would have been significant to the Appellant. The police were called and the Appellant was required to give a statement to them. Counsel

submitted that although the Appellant may not have seen much, the Appellant must have discussed the incident with her co-worker, as she was able to provide a very detailed account of the incident.

Having a second robbery occur on September 3, 2010, in quick succession to the first, when none had occurred in the 22 years prior, was additionally significant to the Appellant, said counsel. The Appellant witnessed more of the second robbery than she did of the first. Two people robbed the store and they pepper-sprayed her co-worker and punched him in the face when he tried to resist. The Appellant was in the cooler at the beginning of the robbery, but came out of the cooler while the robbery was in progress. The Appellant testified that she was afraid that if the robbers saw her they would hurt her. Police were called and again the Appellant had to give a statement. The Appellant was again able to provide a very detailed account of the robbery. Counsel submitted that to witness someone hurting your co-worker and stealing things from your workplace would be traumatic.

The Appellant did attend one counselling session through the employee counselling services after the robberies. On September 9, 2010, within three shifts after the second robbery, the Appellant stopped work at [text deleted]. The Appellant told the case manager that this was on the advice of [Appellant's doctor #1], who had advised her on September 10, 2010 to stay off work until September 28, 2010, at which time he advised her to stay off work until further notice.

Counsel submitted that the opinion evidence of [Appellant's doctor #1] with respect to the Appellant's psychological condition ought to be disregarded, because he does not have the expertise required to provide such an opinion. He did complete an eight week rotation in

psychiatry while in medical school in the 1970's. However, his only additional psychiatric/psychological education was half-day seminars and some group learning sessions. Counsel pointed out that [Appellant's doctor #1] testified that he is not an expert in PTSD, and that [Appellant's doctor #1's] clinical chart notes do not reflect that he performed any psychological testing on the Appellant. [Appellant's doctor #1's] assessment did not consist of anything beyond accepting the Appellant's subjective reports.

Counsel noted that [Appellant's doctor #1] referred the Appellant to [text deleted], a licensed psychologist, for treatment, yet the Appellant chose to call [Appellant's doctor #1] as a witness and chose not to call [Appellant's psychologist] to testify on her behalf. Counsel argued that the panel should draw an adverse inference against the Appellant because of her failure to call [Appellant's psychologist] as a witness, when the main issue is that the Appellant's psychological condition prevented her from working during the periods in question.

Nevertheless, counsel referred to the reports and clinical chart notes of [Appellant's psychologist] and did not dispute their admissibility. She referred to [Appellant's psychologist's] November 23, 2010, report, which diagnosed the Appellant with a major depressive disorder and PTSD, caused by the MVA and exacerbated by the robberies. Counsel pointed out that [Appellant's psychologist] had only seen the Appellant after the robberies, and not in between the accident and the robberies. She submitted that [MPIC's psychologist] initially accepted [Appellant's psychologist's] diagnosis that the Appellant's condition was causally related to the MVA based on, as counsel put it: "the limited information provided to him".

Counsel referred to [MPIC's psychologist's] subsequent report dated June 2, 2011, in which he opined that there was no evidence of PTSD or depression prior to the Appellant's return to work in August, 2010 and that her depression and PTSD were related to the robberies and not to the MVA. Counsel submitted that this finding by [MPIC's psychologist] was supported in the documentary evidence as follows:

"a. Tab 7 - [hospital] report – June 27, 2010
   i. No mention of any mental health concerns

b. Tab 19 - Primary health care report from [Appellant's doctor #2] – August 18, 2010
   i. noted issues with the right ankle but did not check off any boxes re: anxiety or depression
   ii. Also indicated that the Appellant was noted to be at work and that there was no clinical condition that would prevent the Appellant from working

c. Tab 29 - PT therapy discharge report – December 24, 2010
   i. Noted that the Appellant was on short term disability secondary to post traumatic stress – held up at store – this is information that the Appellant provided to the physiotherapist, so clearly [the Appellant] was relating her PTSD to the robberies at that time.

d. Tab 32 - file note – January 3, 2011
   i. The Appellant advised the c.m. [case manager] that she quit her job at [text deleted] – since she was too scared to work at night after the robbery – after the robbery she would cry at home for hours and could not stop"

Counsel argued that the Appellant only reported symptoms of and sought treatment for depression and PTSD after the second robbery, and that there is no supporting evidence of any PTSD or depression prior to the robberies. She submitted that the Appellant's comments in her Application for Compensation, which was received by MPIC on August 16, 2010, are not objective and are not medical information and therefore are not significant.

[MPIC's psychologist's] opinion is to be preferred over the opinion of [Appellant's psychologist], counsel argued, since [Appellant's psychologist's] opinion is based only on the Appellant's report, while [MPIC's psychologist's] opinion is based on a review of the

Appellant's entire medical file, including the objective medical evidence that was gathered in the time immediately following the MVA and prior to the Appellant's return to work. Counsel submitted that since [Appellant's psychologist] did not see the medical reports from the time prior to the Appellant's return to work, she had based her opinion only on subjective reporting, which is an incomplete picture.

Notwithstanding this, counsel submitted that [Appellant's psychologist's] clinical chart notes and her report dated August 22, 2014, relating to those notes are helpful to MPIC's case, because they contain material which contradicts the Appellant's testimony. Counsel submitted that these contradictions reflect that the Appellant is not a reliable or a credible witness. Counsel noted several points, including the following:

1. The Appellant testified that she enjoyed working at [text deleted] and that she liked her work and her manager. However, according to [Appellant's psychologist's] August 22, 2014 report:

    a. the Appellant felt that her manager blamed her for the robberies;
    b. the manager gave other people raises that did not work as hard as the Appellant;
    c. [Appellant's psychologist] had the impression that the Appellant had been thinking of leaving her job at [text deleted];
    d. the manager discriminated against [text deleted] and [text deleted];
    e. people have quit in the past two years because they don't want to work with the manager; and
    f. some female co-workers complained about the manager.

2. The Appellant also testified that the robberies did not really affect her, but this conflicted with the findings of [Appellant's psychologist] as reflected in her August 22, 2014 report as follows:

    a. [Appellant's psychologist] quoted the Appellant as saying "I only work three days after on the day shift ... I told my manager, 'its too scary to work, even [redacted] got scared this time' "; and
    b. the Appellant was also quoted as saying "[redacted] said 'you got lucky, two times... you shouldn't work', because I was upset and scared ...".

Counsel argued that [Appellant's psychologist] had no reason to misrepresent, in her clinical chart notes, what the Appellant had told her. Counsel acknowledged that the Appellant did take issue with the report that [Appellant's psychologist] prepared, dated February 28, 2014, based on those notes. However, counsel pointed out that [Appellant's psychologist] reviewed her clinical chart notes and, apart from acknowledging an error that she had made regarding the fact that the Appellant had not witnessed the first robbery, [Appellant's psychologist] confirmed that her report reflected the content of her chart notes and her sessions with the Appellant.

Counsel referred to a file note dated March 1, 2011, which documents a conversation between the Appellant and MPIC's case manager. That note states as follows:

> "... I asked claimant if she is going to be missing work after her surgery. She said she has quit her job at [text deleted] – she said she went back to work after the MVA – the first or second week of August, but after a couple of weeks, she was robbed. She said she is just too scared to work at [text deleted] at night after the robbery. That is the second time she has been robbed – she said after the robbery, she would cry at home for sometimes hours – she couldn't stop. She said she can now talk about it a bit and it is helping to see [Appellant's psychologist] ..."

This note reflects, said counsel, consistent with [Appellant's psychologist's] notes, that in fact the robberies were significant to the Appellant, contrary to the Appellant's testimony.

One further area where the Appellant's credibility is in question, said counsel, relates to her testimony regarding her intention to take a course at [text deleted]. The Appellant testified that she did not discuss a career change, or going to [text deleted], with [Appellant's psychologist], notwithstanding that there are notes of a discussion of this in [Appellant's psychologist's] chart notes. The Appellant testified that she could not think about a career change at the time, because she was so depressed. Counsel pointed out that the Appellant had the same response when she was shown a file note regarding a telephone conversation with her case manager from July 27,

2011, when [text deleted] was discussed. [Appellant's doctor #1's] chart note from January 24, 2011, contains a similar reference to the Appellant's intention to take a course at [text deleted]. The Appellant responded, when shown [Appellant's doctor #1's] chart note, that she could not even think of going to work at that point in time. However, counsel pointed out that there is evidence of the Appellant applying for and being accepted to the course, specifically a letter from [text deleted] dated January 4, 2011, which indicates that the Appellant was accepted to enter the [text deleted] program as a full-time student with classes beginning March 14, 2011. It is acknowledged that the Appellant did not actually take the course.

Counsel submitted that given the inconsistencies between the Appellant's testimony and what she told [Appellant's psychologist], her case manager, and [Appellant's doctor #1], the panel should find that the Appellant is not a credible or reliable witness. Counsel submitted that these are more than minor inconsistencies that can be explained away with the passage of time. She argued that, as detailed above, it is significant that the Appellant denied wanting to quit the [text deleted] store prior to the robberies, notwithstanding detailed notes by [Appellant's psychologist] regarding the Appellant's feelings towards her manager. Counsel said that on a review of [Appellant's psychologist's] clinical chart notes, it is clear that the robberies had a significant impact on the Appellant and it is inconsistent and contrary to the evidence contained in those chart notes for the Appellant to testify that the robberies had no impact on her.

Counsel further submitted that the Appellant's husband did not keep notes of the events and was testifying six years after the fact. Counsel submitted that his observations and recollections cannot be relied upon so long after the MVA, particularly since there is a plausible alternative cause, i.e. the robberies, rather than the MVA, for the Appellant's behaviour.

Counsel argued that to be entitled to further IRI as a result of her psychological conditions, the Appellant has to prove that such psychological conditions are related to the MVA and that she could not work as a result of them. The Appellant bears the onus of proof. Counsel submitted that MPIC has demonstrated that the Appellant is not a credible or reliable witness; that the objective medical evidence does not support that the Appellant developed a psychological condition as a result of the MVA; and that the objective medical evidence does not support that the Appellant was rendered incapable of working as a result of any psychological condition. Counsel therefore submitted that the appeal ought to be dismissed with respect to the Appellant's psychological conditions.

Counsel then made submissions with regard to the Appellant's physical injuries. MPIC has accepted that the Appellant developed a cataract as a result of the MVA. As a consequence, the Appellant was entitled to PIPP benefits with respect to this condition, including IRI from the surgery date, June 10, 2011 and for a period of recovery thereafter, to July 25, 2011. Counsel submitted that the medical evidence does not support any further benefits with respect to the Appellant's cataract, in that the Appellant was not disabled from working outside of those dates.

Counsel referred to [Appellant's eye doctor's] report dated January 31, 2014, in which she provided the following opinion:

> "The vision in her left eye remained 20/25. The acuity in this eye alone would be sufficient to complete her daily tasks at work. The hindrance would be more related to the lack of depth perception. I don't believe this would leave her unable to complete the tasks, but more likely to reduce her efficiency.
> ...
>
> As it relates to the meaning of being unable to hold employment in paragraph 7, I do not believe she would be considered "*entirely or substantially unable to perform the essential duties of the employment*". There is a period of adjustment to take into consideration, but with the visual acuity remaining good in the left eye, she would be seeing well enough to perform her tasks."

Counsel noted that [MPIC's doctor], in his report dated March 6, 2014, opined that the Appellant would be capable of performing her work duties while she was adapting to the loss of her binocular vision. Counsel therefore argued that the Appellant did not meet the onus of proving that the cataract rendered her functionally incapable of working. Accordingly, counsel submitted that the appeal ought to be dismissed with respect to this condition.

Counsel also addressed the Appellant's right ankle injury. Counsel noted that [Appellant's doctor #2], in his report dated August 18, 2010, advised that the Appellant could return to work provided that she did not stand for more than 10 minutes at a time. [Appellant's doctor #2's] report also indicated, regarding the Appellant's work status, that her condition did not preclude a return to work and that a return to work would not adversely affect the natural history of her condition. Counsel submitted that it was up to the Appellant to advise the case manager as to whether or not she was being accommodated at her workplace. She said that it was further up to the Appellant to obtain support from her medical practitioners, if she determined to return to the workplace on a less than full-time basis.

Counsel pointed out that the Appellant was discharged from physiotherapy on December 20, 2010. The report by physiotherapist [text deleted] of the same date gives the reason for discharge as "condition resolved". Counsel referred to a letter which the Appellant wrote to her case manager dated December 30, 2010. In that letter, the Appellant stated as follows:

> "... my leg appears to have been rehabilitated for the moment. However, I do still have a limp that shows in my walk this will stay with me forever. ..."

So, counsel said, the Appellant's ankle injury had resolved. Counsel noted that there are very few references in [Appellant's doctor #1's] clinical chart notes to any physical impairments

suffered by the Appellant. She referred to a clinical chart note from April 4, 2011 which was signed by a colleague of [Appellant's doctor #1], [Appellant's doctor #3]. That chart note reflects that [Appellant's doctor #3] gave the Appellant a note to start looking for work. Counsel noted that the Appellant was permitted to use a stool at the [text deleted].

Counsel submitted that given that the Appellant was able to use a stool at [text deleted] and that the Appellant's employer advised MPIC that they would accommodate her work restrictions, there was no physical impairment of function that would prevent the Appellant from working at her pre-accident employment. Counsel therefore submitted that the appeal ought to be dismissed with respect to the Appellant's right ankle injury.

Discussion:

The onus is on the Appellant to show, on a balance of probabilities, that the decision of the Internal Review Officer dated March 26, 2013, is incorrect. In particular, the Appellant needs to show, on a balance of probabilities, that she is entitled to IRI benefits for the periods in question, being from September 10, 2010 to June 9, 2011 and from July 26, 2011 to December 6, 2012. The relevant provision of the MPIC Act is as follows:

> **Events that end entitlement to I.R.I.**
>
> 110(1) A victim ceases to be entitled to an income replacement indemnity when any of the following occurs:
>
> (a) the victim is able to hold the employment that he or she held at the time of the accident; ...

Manitoba Regulation 37/94 provides, in part, as follows:

> **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 phrase "caused by the accident" has been interpreted by the Commission to include "materially contributed to by the accident": see AC-11-133 and AC-09-055. See also *Athey v. Leonati*, [1996] 3 SCR 458.

Based on the foregoing, the onus is on the Appellant to establish, on a balance of probabilities, the following:

1. that she suffered a physical or a mental injury that was caused by the MVA or that was materially contributed to by the MVA; and
2. that such injury rendered her entirely or substantially unable to perform the essential duties of her pre-MVA employment during the periods in question.

After a careful review of all of the reports and documentary evidenced filed in connection with this appeal, and after hearing and giving careful consideration to the evidence of all of the witnesses and the submissions of counsel for the Appellant and counsel for MPIC and taking into account the provisions of the relevant legislation, the Commission finds as follows:

<u>Preliminary Matter – Credibility and Reliability of the Appellant and her Husband:</u>

MPIC submitted that the Appellant's husband was testifying to events six years after the fact and therefore may not be a reliable witness due to the passage of time. The panel notes that the Appellant's husband testified that the events following the MVA are etched in his memory. The

panel has no reason to doubt the recollections of the Appellant's husband and accepts his testimony.

More importantly, MPIC asked the panel to find that the Appellant was not a credible or reliable witness.

The well-known (and often-cited) test for reviewing the testimony of an interested witness has been articulated by O'Halloran, J.A. of the B.C. Court of Appeal in *Faryna v. Chorny* [1952] 2 D.L.R. 354, as follows (at paragraph 11):

> "The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ..."

The panel recognizes that there were certain inconsistencies between the Appellant's testimony and certain other evidence. There are three main areas at issue:

1. The Appellant testified that she couldn't think of taking a course at [text deleted] because she was too depressed. There is evidence that, in fact, the Appellant applied for and was accepted in a course at [text deleted] in January, 2011, to begin in March, 2011.

2. The Appellant testified that she enjoyed her job at [text deleted] and was happy with her manager. This is not entirely consistent with certain comments contained in [Appellant's psychologist's] chart notes.

3. The Appellant testified that the robberies did not have much of an impact on her. This is not entirely consistent with evidence found in the clinical chart notes of [Appellant's psychologist] and the case manager's file notes, which suggest that the Appellant may have been impacted by the robberies.

The panel finds that these inconsistencies are concerning; but, on further analysis, the panel has determined that these inconsistencies are understandable and do not detract from the reliability of the Appellant's evidence, for the following reasons:

1. Regarding the course at [text deleted]: while the Appellant did deny any recollection of her intention regarding this course, we find this to be an innocent misrecollection, which is not uncommon. The Appellant's husband testified that the paperwork regarding retraining was sent to them together with other paperwork from MPIC. The panel accepts that the Appellant may not have recalled completing this paperwork or even taking a pre-test, given that, as [Appellant's psychologist] opined and [MPIC's psychologist] concurred, she was suffering from a Major Depressive Disorder and PTSD at the time (January 2011). The panel notes that the Appellant's testimony on this point is objectively supported to an extent, in that the evidence is that the Appellant did not actually attend [text deleted]. [Appellant's doctor #1] testified that he did not think that the Appellant would have been able to successfully complete the course. [Appellant's psychologist] also opined, in a report dated March 25, 2011, that the Appellant was "not yet ready" to participate in a vocational rehabilitation program. Thus, although the Appellant's testimony was inaccurate insofar as it related to her initial intention to register for a course at [text deleted], we find that her testimony on this point, that she was too depressed to think about attending at [text deleted], is nevertheless "in harmony with the preponderance of the probabilities" (see *Faryna v. Chorny* above).

2. Regarding the Appellant's manager: while there is some evidence that conflicts with the Appellant's testimony, there is also objective evidence that supports it. Specifically, the Appellant worked at the same [text deleted] store on a full-time basis for 22 years. The panel finds that it is reasonable to accept that the Appellant was sufficiently satisfied with her job and the management at the store, such that she remained in the position for such a long period of time. In those circumstances, we find that her testimony on this point was "in harmony with the preponderance of the probabilities".

3. Regarding the impact of robberies: while the Appellant did appear to minimize the significance of the robberies in her testimony, as compared to her emphasis on the MVA, the panel notes that this is consistent with the objective evidence found in [Appellant's doctor #1's] chart notes, which contain only one reference (from September 28, 2010) in four years of notes to the robberies, compared to 7 references (September 21, September 28 and October 27, 2010, April 4 and December 13, 2011, April 17 and August 15, 2012) to the MVA. This reflects contemporaneous reporting by the Appellant and the panel notes the opinion of [Appellant's doctor #1] dated November 4, 2011, that the Appellant was "focused on the MVA". While this does not negate that the robberies may have had an impact on the Appellant, it does explain the relative importance of the events to the Appellant. Accordingly, we find that her testimony on this point was "in harmony with the preponderance of the probabilities".

Applying that same analysis to all of the Appellant's evidence, we accept that, at least on the fundamental issues, the Appellant was a credible witness. We also note that [Appellant's doctor #1], who was the Appellant's treating physician for over 30 years, found her to be credible. As

pointed out by counsel for MPIC, [Appellant's doctor #1] accepted the Appellant's self-reports without question. The inconsistencies in the Appellant's evidence are explicable and do not diminish the overall credibility of her evidence on the fundamental issues.

Accordingly, the panel finds that, on a balance of probabilities, the Appellant was a credible and reliable witness on the fundamental issues.

Did the Appellant suffer an injury caused by the MVA?

1. Psychological Injury:

The Appellant's position is that the MVA caused her to suffer depression and symptoms of PTSD, which became full-blown after the two robberies. In support of her position, she relies on her own testimony, the testimony of her husband and [Appellant's doctor #1] and the reports of [Appellant's doctor #1] and [Appellant's psychologist]. MPIC's position is that the Appellant's depression and PTSD were not caused by the MVA, but rather by the two robberies. In support of this position, MPIC relies on the testimony and reports of [MPIC's psychologist]. (Although it was not expressly stated at the hearing, it is apparent from the foregoing that both parties agreed that the Appellant did suffer from depression and PTSD; the dispute was as to causation.)

It is the Appellant's position that the MVA was traumatic for her, far more so than the subsequent robberies. While the Appellant acknowledges that the robberies may have also had an impact on her, it is her position that the MVA's impact on her was greater, and was the initial traumatic event. In her testimony, the Appellant outlined the physical and emotional impact of the MVA. She testified that the MVA caused her to cry a great deal, have bad dreams, and be

frightened of the parking lot at work. Her husband corroborated her testimony, and testified that after the MVA, the Appellant became withdrawn and did not seem herself.

As noted earlier in these Reasons, the Appellant outlined some of these concerns in her Application for Compensation, which was provided to MPIC on August 16, 2010. This document was prepared at approximately the same time as the medical reports completed by [Appellant's doctor #2] and the Appellant's physiotherapist, [text deleted]. [Appellant's physiotherapist's] report is dated August 5, 2010 and [Appellant's doctor #2's] report is dated August 18, 2010. MPIC argued that the absence of notation of psychological symptoms in those reports is an indication of the absence of the Appellant's symptoms at that time. The panel does not agree, particularly given the notation of symptoms in the Application for Compensation. The Appellant's visit to the physiotherapist and to [Appellant's doctor #2] were for medical appointments and the panel accepts the Appellant's testimony that she was doing her best not to cry in front of doctors. Further, [MPIC's psychologist] acknowledged that the Application for Compensation was pertinent information, even though it did not rise to the status of a medical report. [MPIC's psychologist] further acknowledged that a person could be suffering from symptoms and return to work; thus the Appellant's symptoms may not have been apparent at all times.

The Appellant told the case manager of the difficulties that the MVA caused her, during a conversation they had which was recorded in a file note dated October 1, 2010:

> "... Claimant indicated that she is unable to discuss the accident as she cries all the time. She has also been robbed twice in the last few weeks and is having a tough time with that. ..."

The Appellant went to see her family physician, [text deleted], and he referred her to [Appellant's psychologist], who treated the Appellant from October 22, 2010, to July 21, 2011. [Appellant's psychologist's] first report is dated November 23, 2010 and states as follows:

> "I saw [the Appellant] on three occasions for the purposes of this assessment (October 22nd, November 2nd & 16th, 2010). As communicated to [text deleted], her initial Case Manager, she seemed to be in a very fragile emotional state. Based on the information obtained in our meetings and her clinical presentation, she appears to have a Major Depressive Disorder in Partial Remission as well as a Post Traumatic Stress Disorder (PTSD). The Depressive Disorder and symptoms of PTSD seem to have occurred subsequent to the stated motor vehicle accident, whereas the full blown PTSD seems to have been triggered not only by her Depressed status, but also by two robberies she experienced as an employee on her job at a [text deleted] store.
>
> [The Appellant] reported that she was off work for approximately six weeks after the motor vehicle accident. She returned to work, still in a weakened emotional state, and within a short span of time the two robberies occurred at her work place while she was on her shifts. It appears that the combination of the accident and the robberies – all in a temporally contiguous time frame – were too much for her at a psychological level and served to enhance her Depression as well as trigger a full blown PTSD."

In order to arrive at her conclusions regarding the Appellant's psychological conditions, [Appellant's psychologist] appears to have reviewed the diagnostic criteria for PTSD. Her clinical chart notes, which form part of the documentary evidence in this appeal, contain a description of the diagnostic features of PTSD. Those features include recurrent and intrusive recollections of the event, avoidance of stimuli associated with the trauma, and persistent symptoms of anxiety or increased arousal that were not present before the trauma, including difficulty falling or staying asleep.

In [Appellant's psychologist's] report of November 23, 2010, she identified the Appellant's symptoms of PTSD, as follows:

> When she was involved in the motor vehicle accident, she reports that her initial reaction was "I thought he was going to drive over me.....I feel I could have died. My body felt so threatened." She seems to have recurrent and distressing recollections of the incident and "...I have pictures in my head". Recurrent dreams in which she dies as well as fear of being in the same parking lot in which the accident occurred were also

> shared. Clearly there was evidence of psychological distress upon exposure to external cues that remind her of the accident. She also tries to avoid stimuli associated with the event and has had thoughts suggestive of a foreshortened life/future and the fragility of life. Finally, she experiences several symptoms of increased arousal such as hypervigilance, difficulty concentrating, and an exaggerated startle response. None of these were reported to be present prior to the accident and robberies. She exerts much effort at trying to calm herself and "not be paranoid"."

Although at the time of her sessions with [Appellant's psychologist], in October and November, 2010, the Appellant had been subjected to both the MVA and the robberies, the panel notes that the analysis made by [Appellant's psychologist] in her report identifies the MVA as the initial trigger for the Appellant's symptoms. Further, as noted by counsel for the Appellant, all of the notations in [Appellant's psychologist's] chart notes alongside the diagnostic criteria for PTSD relate to the MVA and none of them relate to the robberies.

In her progress report dated March 25, 2011, [Appellant's psychologist] confirmed her earlier diagnosis:

> "As stated in my report of November 23rd, [the Appellant] developed the Depressive Disorder and symptoms of PTSD subsequent to the MVA. A fullblown (sic) PTSD seems to have been triggered when she witnessed two robberies."

As noted earlier in these Reasons, although [Appellant's psychologist] ceased treating the Appellant in July, 2011, she was asked to provide an updated report in 2014. The Appellant's former representative asked [Appellant's psychologist] the following question:

> "You provided your medical opinion to MPI in a report dated November 23, 2010. After reviewing MPI's Health Care Services review of June 2, 2011 and your chart notes has your opinion remained the same? Please explain fully."

[Appellant's psychologist] responded in a report dated February 28, 2014, as follows:

> "... My opinion remains the same for the most part. However, as stated above, review of my notes reveals that [the Appellant] seemed to have had some preexisting (sic) ambivalence and inner turmoil regarding changes in management at her workplace. She seemed to feel less comfortable and more vulnerable with her new manager and to have

> less job satisfaction. It is my impression that this context is relevant to the manifestation of symptoms she exhibited subsequent to the accident and the robberies."

The Appellant took issue with various matters contained in [Appellant's psychologist's] February 28, 2014, report and requested clarification of her health record. As noted earlier in these Reasons, [Appellant's psychologist] confirmed her findings, but did clarify that the Appellant did not witness the first robbery.

At the appeal hearing, counsel for MPIC asked the panel to draw an adverse inference due to the failure of the Appellant to call [Appellant's psychologist] as a witness. The Appellant's current counsel advised the panel that there had been a worsening of the relationship between the Appellant and [Appellant's psychologist], as well as a worsening of the relationship between [Appellant's psychologist] and the Appellant's former representative. This is apparent on a review of [Appellant's psychologist's] chart notes and does provide, to an extent, an explanation for why the Appellant did not call [Appellant's psychologist] to testify. In addition, the panel notes that the reports and clinical chart notes of [Appellant's psychologist] form part of the documentary evidence in this appeal, and had been agreed to as such several months prior to the hearing of this appeal. Both parties have relied on them in support of their own positions. The panel notes that it had been open to MPIC to request that the Appellant produce [Appellant's psychologist] for cross-examination, should MPIC have wanted to challenge anything in [Appellant's psychologist's] reports, or to reinforce anything from her chart notes upon which MPIC relies, but MPIC chose not to do so. Accordingly, the panel declines to draw an adverse inference from the failure of [Appellant's psychologist] to testify.

On a reading of [Appellant's psychologist's] February 28, 2014 report, it appears that [Appellant's psychologist] remained of the view that the Appellant's psychological condition

was triggered by the MVA and enhanced by the subsequent robberies. Her statement that the "context is relevant" does not detract from her opinion on causation. The Appellant testified that, in fact, her manager remained the same and there were no changes in management at her workplace. In any event, workplace stressors may have impacted the Appellant's reaction to the MVA, but this would not mean that the MVA was not traumatic for her.

[Appellant's psychologist] did note that both the MVA and the robberies were traumatic for the Appellant, in her later report dated August 22, 2014:

> "Thus, statements you made along with your doctor's letter of referral lead to my opinion that you were quite traumatized not only by the car accident but also by the robberies."

As noted above, it is the Appellant's position that the MVA is not the sole cause of the Appellant's psychological condition, but that it was the initial and primary cause and it materially contributed to the Appellant's inability to work.

[Appellant's psychologist's] conclusion was supported by the testimony and report of the Appellant's long-time caregiver, [Appellant's doctor #1]. Although [Appellant's doctor #1] acknowledged that he was not an expert in psychological matters, he had over 30 years of experience in treating patients with depression. He had been treating the Appellant for over 30 years and in fact prescribed the anti-depressant medication Citalopram to the Appellant. In his report dated November 14, 2011, [Appellant's doctor #1] stated as follows:

> "In summary [the Appellant] is a [text deleted] year old [text deleted] employee who developed PTSD after being hit by a car and after subsequent hold-ups. She continues to be depressed and has been unable to return to work. As I did not see her between June 29th, 2010 and September 3, 2010 I cannot objectively say how much the June 29th [26] (sic) MVA and how much the subsequent robberies contributed to her current condition. [The Appellant] seems focused on the MVA as being the cause of her stress, and since it is her perception of the traumatic stress which is important, it is likely that the MVA played the larger role in causing her PTSD."

Both [Appellant's doctor #1] and [Appellant's psychologist], in their clinical chart notes, noted that the Appellant was focussed on the MVA. As noted above, [Appellant's doctor #1's] clinical chart notes contain several references to the MVA. In the chart note from April 4, 2011, his associate, [Appellant's doctor #3], noted: "When telling me about the accident she became tearful." [Appellant's psychologist's] chart notes contain similar references to the Appellant becoming emotional when discussing the MVA ("crying++", as referred to earlier in these Reasons). As well, [Appellant's psychologist] identified that the Appellant suffered nightmares about the MVA and [Appellant's psychologist] related the Appellant's symptoms of PTSD to the MVA. In contrast, [Appellant's doctor #1's] chart notes contain only one reference to the robberies, and [Appellant's psychologist's] chart notes do not relate any of the Appellant's symptoms of PTSD to the robberies. The panel notes that MPIC's psychological consultant, [text deleted], agreed that anecdotal evidence is important in arriving at a correct diagnosis.

The panel notes that the Appellant's demeanour during her testimony was consistent with the diagnosis of PTSD relating to the MVA. When the Appellant described the robberies, although she described them in detail and said she was sorry for her co-worker who got hurt, she remained composed during that testimony, which took a fair amount of time. In contrast, when the Appellant testified about the MVA and its aftermath, she became quite emotional. She rambled a bit initially, and she became quite teary on a few occasions, at one point requiring a break in the proceedings to compose herself.

[MPIC's psychologist], in his report dated December 15, 2010, initially agreed with [Appellant's psychologist's] assessment. In that report, he stated as follows:

> "Based on the review of the medical documentation, including [Appellant's psychologist's] recent report, it is the writer's opinion that the request for the treatment sessions would be considered, on the balance of probabilities, causally related to the MVA in question. As such, these sessions would be considered medically required."

[MPIC's psychologist], in his report dated April 5, 2011, approved six further treatment sessions "for the claimant's psychological condition resulting from the MVA of June 26, 2010".

[MPIC's psychologist], in his report dated June 2, 2011, subsequently came to a different conclusion. He stated as follows:

> "Based upon the current review of the file documentation, it is now the writer's opinion that it does not appear that the claimant's current psychological difficulties would be considered MVA-related. As noted above, there did not appear to be any evidence of PTSD symptoms or depression resulting from the MVA in question prior to her return to work on August 4, 2010. Furthermore, there is a lack of information regarding the claimant's subsequent need to go off work at some point following the two robberies.
>
> Therefore it does not appear, as indicated by [Appellant's psychologist], that the claimant had depression and PSTD (sic) symptoms, resulting from the MVA which then became more "*full blown*" as a result of the two robberies. Specifically, it appears that the claimant's depression and PTSD symptomatology is likely a result of the robberies she experienced and not the MVA in question."

The panel does have some concerns regarding this opinion from [MPIC's psychologist]. We note that the medical information available for his review at the time of his June 2, 2011 report was the same information that was available to him at the time of his earlier reports. [MPIC's psychologist] commented that the absence of notation of psychological symptoms in the medical reports shortly after the MVA suggested to him that the Appellant did not suffer from such symptoms. The panel has addressed this above, and does not find this view to be persuasive, especially in light of the Appellant's contemporaneous Application for Compensation, which [MPIC's psychologist] acknowledged was relevant. Further, in the June 2, 2011, report, [MPIC's psychologist] noted that at that point in time, he had no specific information regarding the robberies, other than that they had occurred. It is therefore difficult to understand how

[MPIC's psychologist] could conclude that these robberies were more traumatic to the Appellant than the MVA, and further, traumatic to such an extent so as to exclude the MVA as a cause of the Appellant's PTSD.

[MPIC's psychologist] also provided a report dated June 26, 2015. In that report, he referred to an impression of [Appellant's psychologist] that "robberies seem big issue now vis-à-vis work rather than accident?" In cross-examination, [MPIC's psychologist] acknowledged that this was not a change by [Appellant's psychologist] of her opinion, but possibly rather a query or a theory that she was proposing in her clinical chart notes. The panel finds that [Appellant's psychologist] did not ever change her opinion that both the robberies and the MVA were causes of the Appellant's psychological injuries, with the MVA being the initial cause. [MPIC's psychologist] remained of the view that the MVA was not a cause at all but rather that the robberies were the sole cause. The panel does not accept this view. The panel finds that it is not a reasonable position to take that the MVA made no contribution to the Appellant's psychological condition.

In this case, the panel must weigh the evidence of [Appellant's doctor #1] and [Appellant's psychologist] against [MPIC's psychologist's] forensic assessment. Both [Appellant's doctor #1] and [Appellant's psychologist] had the opportunity to personally examine and treat the Appellant, assessing her credibility and obtaining her medical history. Both [Appellant's doctor #1] and [Appellant's psychologist] were consistent in their view that the Appellant's major depressive disorder and PTSD were caused by the MVA, with the PTSD becoming full-blown subsequent to the robberies, and [Appellant's doctor #1's] evidence supports this opinion. The panel has given greater weight to [Appellant's psychologist's] opinion and [Appellant's doctor #1's] evidence than to the opinion of [MPIC's psychologist], who did not have the opportunity to

examine the Appellant. In cross-examination, [MPIC's psychologist] acknowledged that [text deleted], as the Appellant's treating psychologist, would be in a better position than he to determine the source of the Appellant's problems.

The panel finds that, on a balance of probabilities, the MVA was the main cause of and materially contributed to the Appellant's depression and PTSD. The panel finds, therefore, that the Appellant has met the onus, on a balance of probabilities, of showing that her psychological injuries were caused by the MVA.

2. Physical Injuries:

There is no dispute that the Appellant's cataract was caused by the MVA. There is similarly no dispute that the Appellant's ankle injury was caused by the MVA. The parties do not agree, however, with respect to whether either or both of those injuries rendered the Appellant unable to work during the periods in question. That will be discussed further below.

Did the injury render the Appellant unable to work?

1. Psychological Injury:

The Appellant's position is that her psychological conditions, depression and PTSD, rendered her substantially unable to perform the essential duties of her pre-MVA employment. As noted above, MPIC does not dispute that the Appellant suffered from PTSD; MPIC argues, however, that the PTSD was caused by the robberies and not the MVA.

In the Internal Review decision, the Internal Review Officer stated as follows:

> "Based on my review, the medical information on file does not establish that you have an impairment of function (physical, psychological or visual) as a result of your motor vehicle accident that would render you entirely or substantially incapable of performing the essential duties of your pre-accident employment. Therefore, I agree with the case manager's decision, which is supported by the medical evidence on file and confirm your IRI benefits conclude as of July 25, 2011."

Notwithstanding that the issue of whether the Appellant was unable to perform her work functions due to the MVA would thus appear to be in dispute, very little time was spent by the parties dealing with this issue during four days of hearings in this appeal. Certainly, in their submissions, the parties did not deal with this extensively. Counsel for MPIC addressed it only at the very end of her argument; in wrapping up MPIC's submissions this issue was addressed as a final point, by simply stating that the Appellant was not unable to work. The Appellant, in her testimony, did address her emotional condition and how it affected her functionality. She testified that following the MVA, she was crying all the time and had difficulty getting out of bed. The Appellant's testimony was corroborated by the testimony of her husband, who testified that the Appellant was afraid to go out, did not participate in family outings and had trouble with daily tasks, such as cooking.

[Appellant's doctor #1] testified that he diagnosed the Appellant as having depression and his chart notes reflect that he prescribed the anti-depressant medication Citalopram to her beginning on March 7, 2011, which the Appellant testified that she is still taking. [Appellant's doctor #1's] chart notes reflect that the Appellant continued to exhibit symptoms of depression which were noted at her appointments at least until March 29, 2012 (see excerpts from those notes earlier in these Reasons).

[Appellant's psychologist], in a progress report dated March 25, 2011, commented on the Appellant's ability to work and perform her activities of daily living, as follows:

> "Her energy level is variable from day to day and could interfere with task completion and her social engagement is also variable ...
> Her energy level is variable and she is not yet able to do as much as she was able to prior to the MVA".

[Appellant's psychologist] noted in that report that the Appellant was "not yet ready" to participate in a vocational rehabilitation program.

[Appellant's psychologist's] assessment is supported by the report of [Appellant's doctor #1], dated December 16, 2014. In that report, [Appellant's doctor #1] stated as follows:

> "It is my opinion that the post traumatic stress disorder, major depressive disorder, and left leg injury did prevent [the Appellant] from performing her pre-MVA employment as a clerk at the [text deleted] store. Initially [the Appellant] was incapable of standing for any significant amount of time which prevented her from working at her usual occupation. The post traumatic stress disorder and major depressive disorder also prevented her from interacting with customers and coworkers and this, even without her left leg injury, prevented her from returning to her usual work at the [text deleted] store. This impairment of function included September 10, 2010 to June 9, 2011 and July 25, 2011 to December 6, 2012."

The panel notes that both [Appellant's doctor #1] and [Appellant's psychologist] were in a good position to assess the capabilities of the Appellant, as they were her treating physicians, and the panel accepts their assessments.

The panel also accepts the testimony of the Appellant and her husband regarding the Appellant's involvement in the support group [non-profit organization]. The Appellant's husband testified that he recommended that his wife attend at [non-profit organization] after she ceased her sessions with [Appellant's psychologist] in July of 2011. She attended there beginning sometime around August, 2011. The Appellant testified that the [non-profit organization]

program helped her with exercises for depression and relaxation, and located a volunteer placement for her in September, 2012, with [personal care home] as a means of re-entry into the workforce. She became an employee with [personal care home] on December 7, 2012, and the panel finds that it was not until that date that the Appellant would have been substantially able to perform her pre-MVA work duties.

Accordingly, the panel finds that the Appellant has shown, on a balance of probabilities, that her psychological injuries, which were caused by the MVA, rendered her substantially unable to perform the essential duties of her pre-MVA employment during the relevant periods, being September 10, 2010 to June 9, 2011 and July 26, 2011 to December 6, 2012.

2. Physical Injuries:

Given that the panel has determined that the Appellant would have been incapable of performing her work duties due to her psychological injuries, the panel finds it unnecessary to make a finding regarding whether the Appellant's physical injuries would have affected her ability to work during the periods in question.

Disposition:

For the reasons outlined herein, the Commission finds that the Appellant has established, on a balance of probabilities, that her inability to work between the periods September 10, 2010 to June 9, 2011 and July 26, 2011 to December 6, 2012 was a result of psychological injuries caused by the MVA. The Appellant is therefore entitled to IRI benefits for those periods.

The Appellant shall be entitled to interest upon the monies due to her by reason of the foregoing decision, in accordance with section 163 of the MPIC Act.

Accordingly, the Appellant's appeal is allowed and the Internal Review decision dated March 26, 2013, is therefore rescinded.

The Commission shall retain jurisdiction in this matter and if the parties are unable to agree on the amount of compensation, either party may refer this issue back to the Commission for final determination.

Dated at Winnipeg this 6th day of October, 2016.

JACQUELINE FREEDMAN

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