

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-14-198**

**PANEL:** Ms Nikki Kagan, Chairperson  
Mr. Tom Freeman  
Ms Lorna Turnbull

**APPEARANCES:** The Appellant, [text deleted], was represented by  
[Appellant's representative];  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Matthew Maslanka.

**HEARING DATE:** June 8, 2016

**ISSUE(S):** Entitlement to reimbursement of legal fees incurred in  
relation to the motor vehicle accident of February 13, 2003.

**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**

The Appellant is seeking reimbursement for legal fees she incurred in relation to the motor vehicle accident of February 13, 2003, specifically:

- a) the Appellant is seeking reimbursement for legal fees incurred for counsel to represent her at the hearing before the Commission; and
- b) the Appellant is seeking reimbursement for legal fees incurred for counsel to represent her in communication with her case manager.

This was an appeal of a case manager's decision of July 2, 2014, which was confirmed by an Internal Review decision dated September 23, 2014.

[Appellant's representative] submitted that the Appellant appeared before the Commission on June 9, 2010 and June 10, 2010, and during these two days of hearings, was represented by the Claimant Adviser Office ("CAO"). Prior to the hearing, the Appellant met with the CAO and felt confident in the services provided by the CAO. However, during the hearings on June 9th and June 10th 2010, the Appellant determined that the CAO was not able to advance her case competently. The Appellant was of the view that her appeal was prejudiced because MPIC was represented by legal counsel and she did not have the benefit of legal counsel. She noted that that the lawyer from MPIC was assertive and aggressive in his approach, and her case was not put forth in a similar manner by the CAO.

The appeal was not completed on June 9 and June 10, 2010 and the matter was adjourned with further dates to be scheduled. It was during this time that the Appellant retained the services of a lawyer, [text deleted]. [Appellant's lawyer] represented the Appellant at the continuation of the appeal hearing on July 31, August 1, 2, 7, 8, 9 and 14, 2012.

By decision of the panel dated October 30, 2012 the appeal was partially successful. [Appellant's representative] submits that as a successful party, the Appellant should be reimbursed for legal fees that she incurred for representation before the panel.

After receiving the Reasons for Decision of the Commission dated October 30, 2012, it was necessary for the Appellant to meet with the case manager to process the benefits that were

awarded at the appeal. The Appellant provided written authority for [Appellant's representative] to represent her in discussions with the case manager. In spite of the Appellant's written authorization, [Appellant's representative] submits that he was advised that the case manager was unwilling to meet with him.

The Appellant determined that she must then retain the services of [Appellant's lawyer] to represent her in discussions with the case manager.

[Appellant's representative] stated in evidence that the legal fees for services rendered by [Appellant's lawyer] for representation at the hearing before the Commission were in the range of \$40,000.00. An invoice for these services was not produced.

The Appellant did produce an invoice for services rendered by [Appellant's lawyer] for communication with the case manager. This invoice provided for fees, disbursements and GST totaling the sum of \$3,953.03.

[Appellant's representative] advises that all invoices have been paid in full.

[Appellant's representative] submits that the Appellant recognizes that the legislation does not provide compensation for legal fees, but he argues that the legislation should be reviewed. [Appellant's representative] noted that if MPIC has legal representation, the Appellant must also have legal representation for a fair hearing to take place. [Appellant's representative] submits that MPIC has the advantage of having a lawyer retained specifically for the purpose of representing MPIC at the appeal whereas a layperson lacks legal training and the time and resources necessary to properly prepare for an appeal.

The Appellant was aware that the panel and the Courts have been asked to determine this issue in the past, and the precedent cases do not support her claim for compensation for legal fees. The Appellant argued that the precedent cases date back to the year 2003 and it is time for a review of the law on this issue.

Mr. Maslanka, counsel for MPIC, submitted that there is no jurisdiction in the law for the Commission to order reimbursement of legal fees. Counsel relied on prior decisions of the Commission as well as the decision of *Lejins v. Manitoba Public Insurance Corp.*, 2003 MBCA 95 and *Lejins v. Manitoba Public Insurance Corp.*, 2004 MBCA 171.

Twaddle J.A. in *Lejins v. Manitoba Public Insurance Corp.*, 2003 MBCA 95 stated:

“There is simply no basis for the applicant’s contention that he is entitled to funding for legal representation by virtue of a provision in the *Act*. The applicant referred me to no such provision. Nor have I found one.”

Justice Monnin in the decision *Lejins v. Manitoba Public Insurance Corp.*, 2004 MBCA 171 reiterated the words of the decision of Justice Twaddle J.A. as stated above.

In 1994, Manitoba adopted a pure no-fault compensation plan for victims of automobile accidents which is commonly referred to as the “no-fault system”. The no-fault insurance plan includes a fixed process for advancing a claim and appeal procedures. The no-fault plan was designed to streamline personal injury cases and provide a more systematic approach in determining compensation resulting from a motor vehicle accident. Disputed decisions of the Corporation are first reviewed by Internal Review and a further appeal can be made to the Automobile Injury Compensation Appeal Commission. The hearing before the Commission is

informal and the rules of evidence are not necessarily followed. The CAO was formed to provide assistance to Appellants free of charge.

In the reasons for decision of the appeal in AC-98-26, the Commission stated:

“... the object of the statute is to make the appeal procedure as relatively simple, speedy and inexpensive as possible. If we were to award costs to a successful applicant, justice would require us to award costs against an unsuccessful Appellant which patently would effectively discourage the overwhelming majority of victims from seeking the redress to which they feel entitled.”

The power to award costs must be specifically conferred by the empowering statute. The Commission is bound to decide the case based on the MPIC Act and interpretations in case law of the MPIC Act. There is no such provision in our law.

### **Summary**

Accordingly the panel finds that the Commission does not have the jurisdiction to award costs to the Appellant and the Appellant's appeal is therefore denied.

Dated at Winnipeg this 10<sup>th</sup> day of August, 2016.

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**NIKKI KAGAN**

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**TOM FREEMAN**

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**LORNA TURNBULL**