Automobile Injury Compensation Appeal Commission

Annual Report
2024/25

Manitoba

Indigenous Land Acknowledgement

We acknowledge that Manitoba is located on the Treaty Territories and ancestral lands of the Anishinaabeg, Anishininewuk, Dakota Oyate, Denesuline and Nehethowuk Nations.

We acknowledge Manitoba is located on the National Homeland of the Red River Métis.

We acknowledge northern Manitoba includes lands that were and are the ancestral lands of the Inuit.

Reconnaissance Territoriale

Nous reconnaissons que le Manitoba se trouve sur les territoires visés par un traité et sur les terres ancestrales des peuples anishinaabe, anishininewuk, dakota oyate, denesuline et nehethowuk.

Nous reconnaissons que le Manitoba se situe sur le territoire national des Métis de la Rivière-Rouge.

Nous reconnaissons que le nord du Manitoba comprend des terres qui étaient et sont toujours les terres ancestrales des Inuits.

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Minister of Public Service Delivery

Legislative Building, Winnipeg, Manitoba R3C 0V8 CANADA

Her Honour the Honourable Anita R. Neville, P.C., O.M.
Lieutenant Governor of Manitoba
Room 235 Legislative Building
Winnipeg, MB R3C 0V8

May it Please Your Honour:

I have the privilege of presenting, for the information of Your Honour, the Annual Report of the Automobile Injury Compensation Appeal Commission, for the fiscal year ending March 31, 2025.

Respectfully submitted,

Honourable Mintu Sandhu
Minister of Public Service Delivery

Ministre de la Prestation des services publics

Palais législatif, Winnipeg (Manitoba) R3C 0V8 CANADA

Son Honneur l’honorable Anita R. Neville, P.C., O.M.
Lieutenante-gouverneure du Manitoba
Palais législatif, bureau 235
Winnipeg (Manitoba) R3C 0V8

Madame la Lieutenante-Gouverneure,

J’ai l’honneur de vous présenter, à titre d’information, le rapport annuel de la Commission d’appel des accidents de la route pour l’exercice qui s’est terminé le 31 mars 2025.

Le tout respectueusement soumis,

Mintu Sandhu
Ministre de la Prestation des services publics

Manitoba
Public Service Delivery

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Honorable Mintu Sandhu
Minister of Public Service Delivery
Room 343 Legislative Building
Winnipeg, MB R3C 0V8

Dear Minister:

Subsection 180(1) of The Manitoba Public Insurance Corporation Act states that within six months after the end of each fiscal year, the Chief Commissioner shall submit an annual report to the Minister respecting the exercise of powers and the performance of duties by the Commission, including the significant decisions of the Commission and the reasons for the decisions.

I am pleased to enclose herewith the Annual Report of this Commission for the fiscal year ending March 31, 2025, which includes a summary of significant decisions.

Yours truly,

LAURA DIAMOND
CHIEF COMMISSIONER

Annual Report of the Automobile Injury Compensation Appeal Commission for Fiscal Year 2024/25

General

The Automobile Injury Compensation Appeal Commission (the commission) is an independent, specialist administrative tribunal established under The Manitoba Public Insurance Corporation Act (the MPIC act) to hear appeals of Internal Review Decisions (IRD) concerning benefits under the Personal Injury Protection Plan (PIPP) of Manitoba Public Insurance Corporation (MPIC).

Fiscal year 2024/25, which is April 1, 2024 to March 31, 2025, was the 31st full year of operation of the commission.

The staff complement of the commission is 10, including a chief commissioner, one 0.7 full-time equivalent (FTE) deputy chief commissioner, one 0.9 FTE deputy chief commissioner, a director of appeals, three appeals officers, a secretary to the chief commissioner and two administrative secretaries.

In addition, there are 22 active part-time commissioners who sit on appeal panels as required.

The Appeal Process

To receive PIPP benefits, a claimant must submit an application for compensation to MPIC. If a claimant does not agree with their case manager's decision regarding an entitlement to PIPP benefits, the claimant has 60 days to apply for a review of the decision. An internal review officer will review the case manager's decision and issue a written decision with reasons.

If a claimant is not satisfied with the IRD, the claimant may appeal the decision to the commission within 90 days of receipt of the IRD. The commission has the discretion to extend the time by which an appeal must be filed.

In fiscal year 2024/25, 160 appeals were filed at the commission, compared to 137 in the fiscal year 2023/24.

The Claimant Adviser Office

The Claimant Adviser Office (CAO) was created in 2004 by an amendment to Part 2 of the MPIC act. Its role is to assist appellants appearing before the commission. In the 2024/25 fiscal year, appellants selected CAO as their representative in 51 per cent of the 160 appeals filed, compared to 57 per cent in 2023/24.

Rapport annuel de la Commission d'appel des accidents de la route pour l'exercice 2024 - 2025

Renseignements généraux

La Commission d'appel des accidents de la route (« la Commission ») est un tribunal administratif spécialisé indépendant qui a été constitué en vertu de la Loi sur la Société d'assurance publique du Manitoba (« la Loi »). Elle est chargée d'instruire les appels interjetés relativement aux révisions internes de décisions sur les indemnités du Régime de protection contre les préjudices personnels (« le Régime ») de la Société d'assurance publique du Manitoba (« la Société »).

L'exercice 2024-2025, soit du 1er avril 2024 au 31 mars 2025, marquait la 31e année complète de fonctionnement de la Commission.

Celle-ci compte 10 membres : la commissaire en chef, une commissaire en chef adjointe, une commissaire en chef adjointe à temps partiel, la directrice des appels, trois agentes des appels, la secrétaire de la commissaire en chef et deux secrétaires administratives.

En outre, 22 commissaires à temps partiel siègent à des comités d'appel selon les besoins.

Le processus d'appel

Pour recevoir des indemnités du Régime, un demandeur doit présenter une demande d'indemnisation à la Société. Si cette personne n'est pas d'accord avec la décision de la ou du gestionnaire de cas relativement à son admissibilité à des indemnités du Régime, elle dispose de 60 jours pour demander une révision de la décision. Une agente ou un agent de révision interne examinera la décision de la ou du gestionnaire de cas et rendra par écrit une décision motivée.

Un demandeur insatisfait de la décision interne révisée peut interjeter appel devant la Commission dans les 90 jours qui suivent la date de réception de cette décision. La Commission peut, à sa discrétion, prolonger le délai pour interjeter appel.

En 2024-2025, 160 appels ont été interjetés devant la Commission, comparativement à 137 en 2023-2024.

Le Bureau des conseillers des demandeurs

Le Bureau des conseillers des demandeurs a été constitué en 2004 par une modification apportée à la partie 2 de la Loi. Son rôle est d'aider les appelants qui comparaissent devant la Commission. Au cours de l'exercice 2024-2025, 51 % des appelants l'ont choisi pour les représenter, comparativement à 57 % en 2023-2024.

Pre-Hearing Procedures & Mediation

Since February 2012, the notice of appeal (NOA) has indicated that appellants have the option to participate in the mediation of their appeal. Mediation services are provided by the Automobile Injury Mediation (AIM) Office. A mediation information sheet is also provided with the NOA. Of the 160 new appeals that were filed during the 2024/25 fiscal year, 126 appellants pursued the option of mediation.

Hearing Procedure

Once the mediation process concludes, unresolved or partially resolved appeals are returned for adjudication at a hearing before the commission. The commission's appeals officers prepare indexed files only for those unresolved appeals returned to the commission from the AIM Office. If mediation is not requested at the time the NOA is filed, an indexed file will be prepared. The indexed file is the compilation of documentary evidence considered relevant to the issues under appeal. It is provided to the appellant or the appellant's representative and to MPIC and will be referred to at the hearing of the appeal. Once the parties have reviewed the indexed file and submitted any further relevant evidence, a pre-hearing conference is held. Once all pre-hearing matters are attended to, a date is fixed for hearing the appeal.

File Status Conferences

Management of appeals by conference continues to be an important part of the commission's hearing schedule. The commission's experience has been that many appeals require additional case management by a commissioner. In addition, the commission has found it is useful to hold a pre-hearing conference prior to fixing a date for hearing the appeal. In keeping with past practice, the commission continued to initiate conferences in 2024/25. The commission finds that these file status conferences continue to assist in identifying sources of delay, resolving parties' impediments to scheduling a hearing date and facilitating mediation.

Hearings

For appeals that are not fully resolved at mediation, or where an appellant does not elect the option of mediation, the commission will adjudicate appeals by hearings.

Hearings are relatively informal in that the commission is not strictly bound by the rules of evidence followed by the courts. Appellants and MPIC may call witnesses to testify and may also bring forward new evidence for appeal hearings. The commission's procedural guidelines require each party to disclose documentary and oral evidence in advance of the hearing. The commission may also issue subpoenas, which require persons to appear at the hearing to give relevant evidence and to bring documents with them.

If required, the commission will travel outside of Winnipeg to conduct a hearing or, if it is appropriate and of benefit to an appellant, the parties or witnesses, a hearing may be conducted by teleconference or videoconference.

Procédures préalables à l'audience et médiation

Depuis février 2012, l'Avis d'appel indique que les appelants ont la possibilité de participer à la médiation de leur appel. Les services de médiation sont fournis par le Bureau de médiation relative aux accidents de la route. Une feuille de renseignements sur la médiation accompagne l'Avis d'appel. Sur les 160 nouveaux appels interjetés durant l'exercice 2024-2025, 126 appelants ont demandé des services de médiation.

Procédure lors des audiences

À la fin du processus de médiation, les questions qui ne sont pas réglées ou qui ne sont réglées que partiellement sont renvoyées à la Commission pour la tenue d'une audience visant à trancher l'appel. Les agents des appels de la Commission ne préparent des dossiers indexés que pour les appels non réglés que le Bureau de médiation relative aux accidents de la route renvoie à la Commission. Si des services de médiation ne sont pas demandés au moment du dépôt de l'Avis d'appel, un dossier indexé sera préparé. Le dossier indexé regroupe les éléments de preuve documentaire jugés pertinents pour les questions en litige. Il est fourni à l'appelant ou à son représentant ainsi qu'à la Société, et sert de document de référence lors de l'audience. Une fois que les parties l'ont examiné et ont soumis tout autre élément de preuve pertinent, une conférence préparatoire à l'audience est organisée. Lorsque toutes les questions préalables à l'audience ont été réglées, une date est fixée pour l'audience de l'appel.

Conférences sur l'état des dossiers

La gestion des appels au moyen de conférences préparatoires représente toujours une partie importante du calendrier des audiences de la Commission. L'expérience de la Commission montre que de nombreux appels nécessitent une attention additionnelle de la part d'une ou d'un commissaire. En outre, la Commission a constaté qu'il était utile d'organiser une conférence préparatoire avant de fixer une date d'audience de l'appel. Comme par le passé, la Commission a continué de convoquer des conférences préparatoires en 2024-2025. Elle estime que ces conférences sur l'état des dossiers contribuent toujours à déterminer des sources de retard, à résoudre des empêchements que rencontrent les parties pour fixer une date d'audience et à faciliter la médiation.

Audiences

Lorsqu'un appel n'est pas entièrement réglé durant la médiation ou qu'un appelant décide de ne pas recourir à la médiation, la Commission tient une audience afin de se prononcer sur l'appel.

Comme la Commission n'est pas rigoureusement liée par les règles de la preuve applicable aux procédures judiciaires, les audiences sont relativement informelles. Les appelants et la Société peuvent y appeler des personnes à témoigner et y présenter de nouveaux éléments de preuve. Toutefois, les lignes directrices de la Commission exigent des parties qu'elles divulguent leurs éléments de preuve documentaire et orale en prévision des audiences. La Commission peut aussi délivrer des assignations de témoin, qui obligent des personnes à comparaître à l'audience pour témoigner et à apporter les documents pertinents.

The commissioner(s) hearing an appeal weigh the evidence and the submissions of both the appellant and MPIC. Under the MPIC act, following an appeal hearing the commission may:

(a) confirm, vary or rescind MPIC's review decision; or
(b) make any decision that MPIC could have made.

The commission issues written decisions and provides written reasons for the decisions. The decisions and reasons are sent to the appellant and to MPIC. The commission's decisions and reasons are publicly available for review at the commission's office and on the commission's web site, http://www.gov.mb.ca/cp/auto/decisions/index.html. Decisions made available to the public are edited to protect the privacy of the parties, in compliance with privacy legislation in Manitoba.

The commission is committed to providing public access to the evidentiary basis and reasons for its decisions, while ensuring that personal health information and other personal information of the appellants and other individuals are protected and kept private.

Resolutions

In fiscal year 2024/25, appellants were successful in whole or in part in 35 per cent of the appeals heard by the commission, compared to 15 per cent in 2023/24. In addition, the work of the commission resulted in the resolution of six appeals through settlement or withdrawal and a formal hearing or decision was not required.

Eighteen days of hearings were scheduled but the appeals were withdrawn or settled prior to the commencement of the hearing.

Hearing Activity

The following identifies the number of hearings held in the last six fiscal years.

Fiscal Year	Hearings	Failure to Pursue Hearings	Conferences	Total Hearings
2024/25	17	0	47	64
2023/24	18*	13	65*	96
2022/23	10	4	75	89
2021/22	26	4	45	75
2020/21	15	0	52	67
2019/20	26	10	91	127

*Due to a reporting error, these numbers have been corrected from the 2023/24 annual report to reflect the additional two conferences that were incorrectly identified as hearings.

CAO represented appellants in 12.77 per cent of the 47 conferences and 35.29 per cent of the 17 hearings held before the commission, compared to 24.6 per cent of the 65 conferences and 16.1 per cent of the 31 hearings in 2023/24.

Au besoin, la Commission se rend à l'extérieur de Winnipeg pour tenir une audience ou, si les circonstances s'y prêtent et si cela est dans l'intérêt d'un appelant, des parties ou de témoins, une audience peut avoir lieu par téléconférence ou vidéoconférence.

La, le ou les commissaires qui entendent un appel évaluent la preuve et les représentations de l'appelant et de la Société. Conformément à la Loi, après la tenue de l'audience, la Commission peut, selon le cas :

a) confirmer, modifier ou rescinder la décision de la Société;
b) rendre toute décision que la Société aurait pu rendre.

La Commission rend des décisions écrites et en communique les motifs par écrit. Les décisions et les motifs sont envoyés à l'appelant et à la Société. Les décisions rendues par la Commission ainsi que les motifs les justifiant peuvent être consultés (en anglais) au bureau de la Commission ou sur son site Web, au www.gov.mb.ca/cp/auto/decisions/index.html. Les décisions rendues publiques sont modifiées de manière à protéger la vie privée des parties, conformément à la législation manitobaine en matière de protection de la vie privée.

La Commission s'est engagée à mettre à la disposition du public la preuve et les motifs de ses décisions tout en veillant à ce que les renseignements personnels concernant les appelants et d'autres personnes, notamment les renseignements sur la santé, soient protégés et demeurent confidentiels.

Résolutions

En 2024-2025, les appelants ont eu gain de cause, partiellement ou complètement, dans 35 % des appels entendus par la Commission, comparativement à 15 % au cours de l'exercice 2023-2024. En outre, les travaux de la Commission ont permis de régler ou de retirer six appels sans qu'une audience ou une décision officielle soit nécessaire.

Dix-huit jours d'audience ont été prévus, mais les appels ont été retirés ou réglés avant le début de l'audience.

Activités liées à l'audience

Le tableau récapitulatif ci-dessous présente le nombre d'audiences tenues au cours des six derniers exercices.

Exercice	Audiences	Audiences non poursuivies	Conférences	Nombre total d'audiences
2024-2025	17	0	47	64
2023-2024	18*	13	65*	96
2022-2023	10	4	75	89
2021-2022	26	4	45	75
2020-2021	15	0	52	67
2019-2020	26	10	91	127

The following identifies the number of days scheduled for hearings and conferences in the last three fiscal years.

Fiscal Year	Days of Hearings Held	Unused Hearing Days After Appeal is Resolved	Adjourned Hearing Days	Days of Conferences Held	Unused Conference Days due to Adjournments	Total Hearing Days Scheduled
2024/25	28	18	2	47	8	95
2023/24	35	27*	30*	63	9	164*
2022/23	16	4	15*	75	16*	126*

*These numbers have been corrected from what was reported in the 2023/24 annual report to reflect the appeals that were set down for hearing but did not proceed.

Statistics

The commission strives to hear and decide appeals fairly, accurately, and expeditiously. The commission has established the following service level parameters:

- For those appellants who do not request the option of mediation and request a hearing for the adjudication of the appeal, commission staff prepares the indexed file of material to be used at the hearing 25 business days after receipt of MPIC's file and all other additional material.
- For those appeals that request the option of mediation, commission staff prepares the indexed file five weeks after the commission is notified by the AIM Office that mediation is concluded and the appeal will continue to proceed at the commission to hearing.
- The commission's expectation is to schedule hearings within six to eight weeks from the time the parties are ready to proceed to a hearing.
- The commission's expectation for rendering written decisions is six weeks following the hearing and receipt of all required information.

The commission continues to experience a consistent volume of appeals filed resulting in the following average turnaround times for 2024/25:

- Files were indexed within 110 business days of receipt of MPIC's file compared to 102 business days in 2023/24 and 103 business days in 2022/23.
    - Note - From 2017 to 2024, the number of business days captured included administrative typing time which did not accurately reflect the process of indexing a file. Going forward, the numbers will be calculated to include the time by all commission staff to prepare an indexed file, including analysis of appeals officers and word processing by administrative secretarial staff. .
- Hearing dates were scheduled, on average, within 80 business days from the time the parties were ready to proceed to a hearing. This compares to 101 business days in 2023/24 and 115 business days in 2022/23.
- The commission prepared 17 written decisions in 2024/25, compared to 14 written decisions in 2023/24. The average time from the date a hearing concluded to the date the commission issued an appeal decision was 50 business days in 2024/25, compared to 55 business days* in 2023/24 and 55 business days in 2022/23.

*En raison d'une erreur dans la publication des résultats de 2023-2024, ces chiffres ont été corrigés de manière à compter deux conférences qui avaient été incorrectement comptées comme des audiences.

Le Bureau des conseillers des demandeurs a représenté des demandeurs dans 12,77 % des 47 conférences et 35,39 % des 17 audiences tenues devant la Commission, comparativement à 24,6 % des 65 conférences et 16,1 % des 31 audiences tenues en 2023-2024.

Le tableau récapitulatif ci-dessous indique le nombre de jours prévus pour les audiences et les conférences préparatoires durant les trois derniers exercices.

Exercice	Nombre de jours d'audience	Jours d'audience non utilisés après le règlement d'appels	Jours d'audiences ajournées	Jours de conférences tenues	Jours de conférence non utilisés en raison d'un ajournement	Nombre total de jours d'audience prévus
2024-2025	28	18	2	47	8	95
2023-2024	35	27*	30*	63	9	164*
2022-2023	16	4	15*	75	16*	126*

*En raison d'une erreur dans le rapport annuel 2023-2024, ces chiffres ont été corrigés de manière à tenir compte des appels qui ont été inscrits sans avoir été entendus.

Statistiques

La Commission entend et tranche des appels de façon équitable, précise et rapide. Elle a défini les paramètres de niveau de services suivants :

- Dans les cas où l'appelant n'a pas recours à la médiation et demande une audience pour le règlement de l'appel, le personnel de la Commission prépare le dossier indexé qui sera utilisé à l'audience cinq semaines après la réception du dossier de la Société et de tout document supplémentaire.
- Pour les appels demandant des services de médiation, le personnel de la Commission prépare le dossier indexé cinq semaines après que la Commission a été avisée par le Bureau que la médiation est terminée et que l'appel lui sera renvoyé en vue d'une audience.
- La Commission s'attend à ce que les audiences soient programmées dans un délai de six à huit semaines à partir du moment où les parties sont prêtes à se présenter en audience.
- La Commission a l'intention de remettre une décision écrite six semaines après la tenue de l'audience et la réception de tous les renseignements requis.

La Commission continue d'enregistrer un nombre constant d'avis d'appel, ce qui s'est traduit par les délais de traitement moyens suivants en 2023-2024 :

- In accordance with the commission's discretion under section 182.1 of the MPIC act for dismissal for failure to pursue an appeal or appeals, the commission has written seven decisions in 2024/25. These decisions were issued without the need for a hearing date.

* This number has been corrected from what was reported in the 2023/24 annual report.

The commission's appeals officers continue to provide substantial administrative support to the case management of appeals. The complexity of cases and the inclusion of multiple issues under appeal included in one MPIC IRD results in increased case management and larger volume bodily injury claim files.

- The commission completed 21 indexes in 2024/25, compared to 56 indexes in 2023/24 and compared to 52 indexes in 2022/23.
- The average indexed file included 70 tabbed documents for the 2024/25 fiscal year, compared to 119 tabbed documents in 2023/24 and 111 tabbed documents in 2022/23.
- Staff prepared 77 supplemental indexes in 2024/25, compared to 58 supplemental indexes in 2023/24 and 35 supplemental indexes in 2022/23. These indexes are for pre-hearing conferences, jurisdictional hearings and to supplement existing indexes where additional information is received.
- Staff prepared 156 case management memorandums for the 2024/25 fiscal year, compared to 140 in 2023/24 and 115 in 2022/23

Including supplemental indexes, appeals officers prepared a total of 98 indexes in 2024/25, as compared to 114 indexes in 2023/24 and 87 indexes in 2022/23.

As of March 31, 2025, there were 361 open appeals at the commission, compared to 360 open appeals as of March 31, 2024, and 395 open appeals as of March 31, 2023.

Appeals to the Manitoba Court of Appeal

A decision of the commission is binding, subject only to a right of appeal to the Manitoba Court of Appeal on a point of law or a question of jurisdiction, and then only with leave of the court.

There were no applications for leave to appeal in 2024/25.

In the commission's 31 years of operation, as of March 31, 2025, the Manitoba Court of Appeal has granted leave to appeal in 17 cases from decisions made by the commission.

Sustainable Development

The commission is committed to the applying the province's sustainable development principles and guidelines in its operations. Commission staff are aware of the benefits of sustainable procurement. The commission uses environmentally preferable products whenever possible and takes part in a recycling program for non-confidential waste. Staff have implemented practices to reduce the amount of paper used by the commission.

- Les dossiers ont été indexés dans un délai de 110 jours ouvrables après la réception du dossier de la Société, comparativement à 102 en 2022-2023.
    - Remarque : De 2017 à 2024, le nombre de jours ouvrables comptabilisé comprenait les heures consacrées à la dactylographie administrative, ce qui ne reflétait pas fidèlement le processus d'indexation d'un dossier. Dorénavant, les données seront calculées de manière à inclure le temps que consacre tout le personnel de la Commission pour préparer un dossier indexé, dont l'analyse des agents des appels et le traitement de texte exécuté par le personnel de secrétariat administratif.
- Les audiences ont été planifiées dans un délai moyen de 80 jours ouvrables après la date où les parties se sont déclarées prêtes à s'y présenter. Ce délai était de 110 jours ouvrables en 2023-2024 et de 115 en 2022-2023.
- La Commission a rédigé 17 décisions en 2024-2025, comparativement à 14 en 2023-2024. Le délai moyen entre la date de conclusion d'une audience et la date où la Commission a rendu sa décision était de 50 jours ouvrables en 2024-2025, comparativement 55* jours en 2023-2024 et 55 jours en 2022-2021.
- Conformément au pouvoir discrétionnaire de la Commission en vertu des dispositions prévues à l'alinéa 182.1(1) de la Loi, concernant le rejet de l'appel, la Commission a rédigé sept décisions en 2024-2025. Ces décisions ont été rendues sans qu'il soit nécessaire de fixer une date d'audience.

*Ce nombre a été corrigé par rapport au nombre rapporté dans le rapport annuel de 2023-2024.

Les agents des appels de la Commission continuent d'apporter un soutien administratif considérable pour la gestion des appels. La complexité des cas et l'inclusion de multiples questions en appel dans une seule décision interne révisée de la Société entraînent une augmentation de la gestion des cas et du volume des dossiers de demandes d'indemnisation pour dommages corporels.

- La Commission a indexé 21 dossiers en 2024-2025, comparativement à 56 en 2023-2024 et 52 en 2022-2023.
- Le dossier indexé moyen comprenait 70 onglets pour l'exercice 2024-2025, comparativement à 119 en 2023-2024 et à 111 en 2022-2023.
- Le personnel de la Commission a préparé 77 dossiers indexés supplémentaires en 2024-2025, comparativement à 58 en 2023-2024 et à 35 en 2022-2023. Ces dossiers indexés sont utilisés pour les conférences préparatoires à l'audience, les audiences relatives à une question de compétence et comme suppléments aux dossiers existants lorsque d'autres renseignements sont reçus.
- Le personnel a préparé 156 notes de gestion de dossier pour l'exercice 2024-2025, comparativement à 140 en 2023-2024 et à 115 en 2022-2023.

Si l'on tient compte des dossiers indexés supplémentaires, les agents des appels ont préparé en tout 98 dossiers indexés en 2024-2025, comparativement à 114 en 2023-2024 et 87 en 2022-2023.

En date du 31 mars 2025, il y avait 361 dossiers actifs à la Commission, comparativement à 360 le 31 mars 2024 et à 395 le 31 mars 2023.

The Public Interest Disclosure (Whistleblower Protection) Act

The Public Interest Disclosure (Whistleblower Protection) Act came into effect in April 2007. This law gives employees a clear process for disclosing concerns about significant and serious matters (wrongdoing) in the Manitoba public service and strengthens protection from reprisal.

A disclosure made by an employee in good faith, in accordance with the act, and with a reasonable belief that wrongdoing has been or is about to be committed is a disclosure under the act, whether the subject matter constitutes wrongdoing. All disclosures receive careful and thorough review to determine if action is required under the act and must be reported in a department's annual report in accordance with section 18 of the act. The commission has received an exemption from the Ombudsman under section 7 of the act. As a result, any disclosures received by the chief commissioner, or a supervisor, are referred to the Ombudsman in accordance with the exemption.

The following is a summary of disclosures received by the commission for the fiscal year 2024/25.

Information Required Annually (per section 18 of the act)	Fiscal Year 2024/25
The number of disclosures received, and the number acted on and not acted on. Paragraph 18(2)(a)	NIL

Appels interjetés devant la Cour d'appel du Manitoba

Les décisions de la Commission sont exécutoires, sous la seule réserve du droit d'interjeter appel devant la Cour d'appel du Manitoba sur une question de droit ou de compétence et, le cas échéant, uniquement avec l'autorisation du tribunal.

Aucune demande n'a été présentée en 2024-2025.

Au 31 mars 2025, en 31 ans d'existence de la Commission, la Cour d'appel avait accordé une autorisation d'appel des décisions rendues par la Commission dans 17 cas.

Développement durable

La Commission s'est engagée à appliquer les principes et les lignes directrices de la province en matière de développement durable dans le cadre de ses activités. Son personnel est conscient des avantages associés aux pratiques d'approvisionnement respectueuses du développement durable. La Commission utilise des produits écologiques autant que possible et participe à un programme de recyclage des déchets non confidentiels. Le personnel a adopté des pratiques visant à réduire la quantité de papier qu'utilise la Commission.

Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles)

La Loi sur les divulgations faites dans l'intérêt public (protection des divulgateurs d'actes répréhensibles) est entrée en vigueur en avril 2007. Cette loi procure aux membres du personnel une marche à suivre claire pour communiquer leurs inquiétudes entourant des affaires importantes et graves (des actes répréhensibles) observées dans la fonction publique du Manitoba et les protège davantage contre les représailles.

Une divulgation faite de bonne foi et conformément à la Loi par une ou un membre du personnel ayant des motifs raisonnables de croire qu'un acte répréhensible a été ou est sur le point d'être commis est une divulgation faite en vertu de la Loi, que l'acte en cause soit de nature répréhensible ou non. Toutes les divulgations font l'objet d'un examen minutieux et approfondi visant à déterminer si des mesures s'imposent en vertu de la Loi. En outre, elles doivent être déclarées dans le rapport annuel du ministère conformément à l'article 18 de la Loi. L'ombudsman a accordé une exemption à la Commission en vertu de l'article 7 de la Loi. Par conséquent, toute divulgation reçue par la ou le commissaire en chef ou un superviseur est renvoyée à l'ombudsman, selon l'exemption prévue.

Voici un résumé des communications reçues par la Commission pendant l'exercice 2024-2025.

Renseignements requis annuellement (en vertu de l'article 29.1(1) de la Loi)	Exercice financier 2024-2025
Nombre de divulgations reçues et nombre de divulgations auxquelles il a été donné suite et auxquelles il n'a pas été donné suite (alinéa 29.1[2] a)).	NÉANT

Significant Decisions

The following are summaries of significant decisions of the commission and the reasons for those decisions that were issued in 2024/25.

1. Failure to Pursue the Appeal

In cases where an appellant does not take active steps to pursue their appeal, the commission has the power to consider whether to dismiss the appeal. Subsection 182.1(1) of the MPIC act provides that “the commission may dismiss all or part of an appeal at any time if the commission is of the opinion that the appellant has failed to diligently pursue the appeal”.

There are several circumstances in which an appellant may fail to diligently pursue their appeal. For example, in some cases, the appellant has not taken active steps to communicate with the commission. In other cases, the appellant has failed to attend file status conferences and meet deadlines set by the commission.

The following cases illustrate factors the commission may consider in determining whether to dismiss an appeal due to the appellant’s failure to diligently pursue it.

Case #1

The appellant in this case did participate in their appeal initially; however, subsequently, they ceased to communicate with the commission.

The appellant was involved in a motor vehicle accident (MVA) in January 2019. They filed a NOA with the commission in November 2019, with respect to their entitlement to income replacement indemnity benefits. They were initially represented by the CAO but became a self-represented party when the appeal returned to the commission from mediation, unresolved, in May 2020.

In December 2020, the appellant advised the commission that they were still interested in pursuing the appeal, and that they had an upcoming medical appointment. The commission followed up with the appellant and eventually received an emailed response in March 2021, in which the appellant advised that they would be seeing a specialist in one month and had set a reminder to provide an update. The commission followed up further with the appellant by email, phone, and letter on numerous occasions, but no response was received. The commission also attempted to contact the appellant by sending letters to an alternate address provided by MPIC, but no response was received.

The commission wrote to the parties in November 2021, noting that this matter would now be dealt with through the commission’s process for cases where the appellant may have failed to diligently pursue an appeal. The letter enclosed a notice of withdrawal form in case the appellant no longer wished to pursue the appeal.

If the completed notice of withdrawal form was not received within three weeks, the appeal would be held in abeyance for six months. The appellant was advised that if they did not contact the commission in the next six months to take steps to pursue the appeal, or to provide an explanation as to why they were unable to do so, this matter would be scheduled for hearing to determine whether they had failed to diligently pursue the appeal and, if so, whether the commission would dismiss the appeal.

After six months passed without contact from the appellant, the commission wrote to the parties, advising that the commission would schedule a hearing as noted above. Notice of the hearing was sent to the appellant by regular mail to the address provided by the appellant in the NOA, pursuant to the provisions of the MPIC act. Notice of the hearing was also sent to the alternate address provided to the commission by MPIC. The commission also provided the hearing index to the parties by email. The appellant replied to the commission's email, one week prior to the hearing, stating that they had been unable to get a lawyer.

The appellant did not attend the hearing and the hearing proceeded in their absence. Counsel for MPIC attended and provided submissions.

The commission found that the appellant had been properly served with the notice of the hearing and had been given an opportunity to be heard in respect of the dismissal of the appeal, as required under the MPIC act.

The commission noted that the onus is on the appellant to show that they have diligently pursued their appeal and that the appeal should not be dismissed. The commission also noted prior decisions, which held that "diligence" is defined to mean "careful and persistent application or effort." Here, the appellant's conduct of their appeal over the past three years did not meet this definition. The appellant did not provide an update to the commission after their doctor's appointment in April 2021, as they had undertaken to do. They did not respond to the commission's many attempts to contact them (apart from one email just days before the hearing, discussed below). The appellant did not even advise the commission of their change of address; the commission only learned of what appeared to be their current address because of inquiries directed to MPIC.

With respect to the appellant's email to the commission prior to the hearing, which stated that they had been unable to get a lawyer, this was the first communication received from the appellant in over two years. The commission noted that this email reflected the first time that the appellant had expressed any desire with respect to seeking legal representation. More specifically, after the CAO withdrew representation, the appellant had proceeded, over the following ten months, to act as a self-represented party in their appeal.

In each interaction with the commission, the appellant proceeded without mentioning a desire to seek legal representation. The commission reasonably perceived that the appellant was prepared to proceed in the appeal as a self-represented party, as many appellants do.

The appellant was expressly advised by the commission that they could continue as a self-represented party. Specifically, the commission's procedural guidelines were delivered to the appellant with the notice for the hearing. Section 3.1 of the guideline states: "Parties to an appeal may represent themselves […]."

Appellants are entitled to seek and retain legal representation to pursue their appeals. The commission does afford appellants a reasonable period of time to seek such representation. In this case, the commission was satisfied that almost three years, from May 2020 (when the appellant's appeal returned to the commission from mediation) until the date of the hearing, was more than enough time for the appellant to have sought and retained legal counsel. No further delay for that purpose would have been reasonable.

As noted above, the appellant did not attend the hearing, and did not provide any written submissions, although they were provided with notice of the hearing and the opportunity to do so. The appellant did not provide any explanation for the failure to respond to the commission's attempts to contact them. Apart from the email, they did not provide any explanation for the failure to appear, or for the failure to pursue the appeal. The failure to retain legal counsel, notwithstanding a reasonable period of time in which to have done so, did not serve as a reasonable excuse for the failure to appear, nor was it a reasonable explanation for the failure to diligently pursue the appeal.

The commission therefore found that the appellant had failed to diligently pursue their appeal, and the appellant's appeal was dismissed.

Case #2

In this case, the appellant sporadically communicated with the commission but failed to respond to requests or provide promised medical reports and records without a reasonable explanation for the delay.

The appellant was involved in an MVA in December 2014. They filed their NOA in January 2015.

In October 2018, mediation services returned the file to the commission. In November 2018, the commission received telephone messages from an unidentified individual who stated the appellant would obtain further reports, and that the commission should contact the appellant using an email address provided by the caller.

Subsequently, the commission made several attempts to follow up with the appellant by phone, email, and letter to determine whether they would be submitting further medical reports, and to clarify the status of their representation. After some considerable difficulty, an authorized representative was appointed for the appellant, although they refused to provide contact information and asked that everything be sent to the appellant.

With respect to medical reports, in mid-November 2018, the commission called the appellant who advised that they were waiting on a referral to a medical specialist.

The commission requested a timeline on when to expect the report(s). In December 2018, the commission contacted the appellant and again requested a timeline on when to expect the medical report(s), which the appellant did not provide.

At the end of March 2019, the appellant advised the commission that they were compiling additional reports. In April and June 2019, the commission emailed both the appellant and the representative a form on which to record the anticipated reports and requested that it be completed and returned. The appellant did not respond.

In August 2019, the commission received an email from the appellant requesting another copy of the index and requesting that the commission communicate by mail because their access to email was sporadic. The appellant advised they were still waiting for medical appointments. The commission utilized Xpress post to deliver the index to the appellant and requested the appellant confirm receipt. The commission did not receive a response.

In March 2020, the commission reached the representative by telephone. They advised they would review the index and contact the commission the following week, which they did not. In August 2020, the representative left a voice mail with the commission advising they were still trying to get specialist reports and the appellant would contact the commission, which they did not. In February 2021, the commission telephoned the representative who advised that the appellant had obtained one report but was still trying to obtain more reports. The commission did not receive any report. In April 2021, the commission sent a letter to the appellant, utilizing Xpress post to inform them that the commission would schedule a case conference to discuss the status of the appeal.

In May 2021, Canada Post returned the Xpresspost package noting that the package was "unclaimed". The commission emailed the appellant to advise of the failed delivery and requested a response. The commission then spoke to the appellant who confirmed that the commission had the address correct. The commission advised it would resend the package and verbally advised the appellant of the pending conference stating that both the appellant and the representative must attend.

Throughout February 2022, the commission made attempts to contact both the appellant and the representative using various telephone numbers and email addresses, without receiving a response. The commission sent another Xpresspost letter that provided a choice of conference dates and advised that if the commission did not receive a response within three weeks, the commission would schedule the conference in March. [Subsequently, Canada Post returned the delivery with the notation "unclaimed."]

The commission both emailed and mailed to the appellant the Notice of Case Conference Hearing (NOCCH). Neither the appellant nor the representative attended the conference scheduled for March 2022. Shortly thereafter, the commission utilized regular mail, Xpresspost and email to deliver a letter to the appellant putting them on notice that the commission was considering the MPIC Act subsection 182.1(1) to dismiss the appeal for failure to pursue. The letter stated that if the appellant failed to respond within three months, the commission would set a hearing to determine whether the appellant had failed to diligently pursue the appeal. The appellant did not respond.

The commission notified the appellant that a Failure to Pursue Hearing would be scheduled for April 2023. Both the appellant and the representative attended the hearing. Although present, the appellant did not testify. The representative testified on the appellant's behalf and made submissions. The representative confirmed the appellant's receipt of the notice of hearing.

The representative said that the COVID pandemic delayed the appellant's ability to obtain medical reports and that this was relayed to the commission on numerous occasions. The representative said that MPIC was uncooperative, which delayed matters but admitted this took place prior to the date of the NOA. The representative said that the appellant lives in a rural area and cannot always get to the mailbox. In both direct and cross examination testimony the representative blamed the commission for not contacting the appellant for months at a time. The representative denied that they told the commission the appellant had obtained a medical report but also said that the appellant sent medical records to MPIC. The representative said that the process was confusing.

The commission noted that the onus is on the appellant to show that they had diligently pursued their appeal and therefore the appeal should not be dismissed. The commission noted MPIC's

submission that “diligence” means an appellant must show care and effort in pursuing an appeal, but in this case the appellant had not substantively responded or followed up on the appeal for over four years, nor provided a reasonable explanation for that delay.

The commission noted the appellant’s request that the commission send correspondence in the mail. Notwithstanding the commission’s compliance with this request, the appellant failed to carefully monitor their mailbox. The commission found that the appellant did not respond to the almost monthly requests from the commission, nor did the appellant maintain up to date contact information.

The commission found that there was a two-year time period before the COVID pandemic in which the appellant could have obtained appointments and reports. The commission found that the information form sent by the commission requesting information about medical reports including a time frame for receipt, obviously put the appellant on notice that medical records should be sent to the commission and not MPIC. The appellant did not provide any evidence that they were confused by the process, nor did the appellant contact the commission for any explanations about the process.

The commission concluded that the appellant failed to diligently pursue their appeal and dismissed the appeal.

2. Extension of Time Limit to file a Notice of Appeal

The MPIC act provides a time limit for appealing decisions to the commission. However, the commission could extend this time limit. Subsection 174(1) of the MPIC act states that a claimant may appeal an IRD to the commission within 90 days after receiving notice of the decision or within such further time as the commission may allow.

Case #1

This case illustrates factors that the commission may consider in exercising its discretion to extend the time limit.

MPIC issued an IRD to the appellant in March 2020. In February 2023, almost three years after the IRD was issued, the appellant filed a NOA with the commission. The appellant, being approximately 32 months passed the 90-day appeal deadline, asked the commission for an extension of time for filing the NOA.

The appellant’s evidence was that they were was uncertain of the appeal process. As well, they were discouraged and frustrated about the process, because when they filed the application for review, they had indicated that they were going to provide additional medical information. Notwithstanding this, the IRD was issued five days later and appeared to summarily dismiss the application. Therefore, they waited to file the NOA until they had procured the necessary medical reports. This took a long time, especially due to the pandemic.

The commission noted that the discretionary power to grant an extension under subsection 174(1) of the MPIC act is broad, being “within such further time as the commission may allow”. In exercising its discretion under this subsection in previous cases, the commission has considered various relevant factors, including the length of the delay, the reasons for the delay, prejudice, waiver, and any other factors which argue to the justice of the proceedings. As is often the case,

counsel for the parties focused most of their submissions on the appellant's reasons for the delay in filing the NOA, and particularly so given the significant delay here. The commission noted that the appellant bears the onus of providing a reasonable explanation for failing to file the NOA within the 90-day deadline.

While the commission accepted the appellant's evidence was that they became frustrated by the (apparently quick) dismissal of the application for review, it noted that this is a sentiment shared by many appellants on receiving an IRD that denies their application for review. Notwithstanding this, most appellants are able to file an NOA within the 90-day deadline. The commission therefore found that the appellant's frustration and sense of defeat were not a reasonable explanation for the late filing.

The appellant said that they were uncertain as to whether they would be entitled to provide further information after filing, and so they delayed filing the NOA until they had accumulated sufficient medical information to allow a decision to be made in their favour. The appellant also acknowledged that they had read in the IRD about the option of contacting the CAO and the contact information for the commission; however, they did not contact either of those entities, and the NOA was not filed until 32 months after the deadline.

The commission noted that had the appellant contacted either the CAO or the commission, the appellant would have been informed that filing an NOA does not close the door on submitting further medical information; rather, they would have been encouraged to file the NOA as soon as possible to comply with the 90-day deadline, and to submit medical information once an appeal had been opened. The commission found that the appellant had an obligation to become informed of the process; the failure to understand the process did not constitute a reasonable explanation for the late filing.

The commission therefore found that the appellant's decision to delay filing the NOA until they had accumulated new medical information did not constitute a reasonable explanation for the late filing.

Counsel for the appellant argued that if the appellant were to be unsuccessful in the proceeding for an extension of time, their intent would be to bring the new medical information to MPIC and apply for a fresh decision under subsection 171(1) of the MPIC act (which provides for such circumstances). Counsel submitted that accordingly, the justice of the proceedings would dictate that the extension of time should be allowed, to avoid a duplication of process and cost to all parties which would result from this future application.

While the commission appreciated that initiating an application under subsection 171(1) would require the appellant to start a new process, it noted that the test under that provision, specifically, what constitutes "new information", is very different from what was at issue in the extension of time proceeding. Further, the decision under subsection 171(1) is to be made at the case management level. Accordingly, the commission concluded that any possible future application that the appellant may make to case management under subsection 171(1) of the MPIC act was separate and apart from the present 90-day issue. Therefore, it cannot be a relevant factor when considering the justice of the proceedings.

Therefore, the commission concluded that upon a consideration of the relevant factors surrounding the delay, the appellant had not met the onus, on a balance of probabilities, of providing a reasonable explanation for failing to file the NOA within the 90-day time limit set out

in section 174(1) of the MPIC act. Accordingly, the commission declined to extend the time limit within which the appellant could file the NOA.

3. Whether there is a Causal Connection between the MVA and the Appellant's Symptoms

For an appellant to be entitled to PIPP benefits under the MPIC act, they must establish, on a balance of probabilities, that their injuries were caused by the MVA, pursuant to subsection 70(1) of the MPIC act. In the following cases, to determine the appellants' entitlement to benefits, the commission carefully considered the evidence and the reports of the medical experts to determine whether there was a causal connection between the MVA and the appellants' injuries and symptoms.

Case #1

The issue in this case was whether the appellant's right hip muscle tear, dyspnea (shortness of breath) and fatigue were caused by the MVA.

The appellant had an MVA in November 2013 and received chiropractic treatment for symptoms of neck pain and shooting pain to the right thigh. The appellant's treating chiropractor diagnosed cervical strain and lumbar strain.

In August 2016, the appellant applied for compensation for neck and right hip pain. The appellant also said their shortness of breath and a muscle repair surgery were MVA-related. MPIC denied PIPP benefits on the basis that the appellant's symptoms were not MVA-related. The appellant testified and relied upon their medical records and physician reports.

The panel carefully considered all the appellant's medical records, particularly those closest to the November 2013 MVA. A 2013 chiropractic report diagnosed cervical and lumbar strain.

Physical examinations of the appellant in 2014 recorded a history of hip pain but no pain to palpation of the right hip, noted the ability to walk without a limp and demonstrated good hip range of motion. The diagnosis was moderate arthritis of the hip, which appeared to be corroborated by an August 2014 MRI, which showed moderate degenerative changes in the right hip. One year later (2015), the appellant underwent surgery to repair a partially torn gluteus medius muscle. The surgeon's opinion on what caused the muscle tear was equivocal and inconsistent. Another physician's opinion stated that moderate effusion seen in the MRI was consistent with partial tearing. That physician's opinion did not speak to causation of the tearing.

MPIC's Health Care Services (HCS) medical consultant reviewed the appellant's medical records, as well as the August 2014 MRI, which showed the appellant's gluteus minimus and medius tendon intact, with the appellant able to manage the right hip symptoms until they worsened in April 2015. The HCS medical consultant considered the two opinions provided by the appellant. The HCS consultant concluded that the effusion was consistent with degenerative changes and concluded that the tear was not MVA-related.

The panel preferred the more thorough HCS medical opinion over those of the appellant's treating physicians and found that the medius gluteus muscle tear was not MVA-related.

The panel considered the appellant's medical records about shortness of breath and fatigue and noted that there was no diagnosis for these symptoms, with one physician suggesting a functional

cause such as anxiety or other psychosocial stressors. Other medical records showed that the appellant's shortness of breath improved, and another physician queried whether the shortness of breath was related to gastroesophageal reflux disease.

MPIC's HCS medical consultant, after reviewing all of the appellant's medical records and reports, concluded that the appellant's shortness of breath was likely functional and probably not MVA-related. The panel noted there were no contrary opinions and accepted the HCS opinion that the shortness of breath was not MVA-related.

The panel found that the appellant had not proven, on a balance of probabilities that the MVA caused their right hip muscle tear or their dyspnea (shortness of breath) and fatigue. The panel confirmed the IRD and dismissed the appeal.

Case #2

The issue in this case was whether the appellant's psychological condition was MVA-related, which would then entitle them to income replacement indemnity (IRI) benefits and retraining.

The appellant was involved in motor vehicle accidents in October 2004, February 2010, and May 2012. In December 2010, the commission dismissed the appellant's appeal for payment of psychological treatment expenses on the basis that there was insufficient evidence to prove an MVA-related psychological diagnosis, saying that the appellant had received psychological treatment as mandated by their professional association.

After the February 2010 MVA, the appellant again requested PIPP benefits, including IRI, stating that they were unable to work due to an MVA-related psychological condition. In January 2012, the commission again dismissed the appellant's appeal for IRI on the basis that there was insufficient evidence of an MVA-related psychological diagnosis.

After the May 2012 MVA, the appellant again sought PIPP benefits for expenses and IRI on the basis that they suffered an MVA-related psychological condition that prevented them from working.

During case management of the third appeal, the commission arranged an independent psychological assessment of the appellant that would include all of the appellant's past medical, psychological, and psychiatric records and reports, including MPIC's HCS psychological and neuropsychological assessments.

The independent assessor met with the appellant for the interview and assessment, which included some, but not all, validity testing. The independent assessment included a review of the appellant's medical documentation. The independent assessor concluded that the appellant suffered a diagnosed psychological condition that was probably related to all three MVAs.

MPIC's neuropsychological consultant provided a responding report that challenged the validity of the independent assessor's conclusions because the independent assessor did not perform all of the required validity tests.

The independent assessor rebutted those criticisms and explained that in order to establish a rapport with the appellant, who was quite suspicious of the whole process, the independent assessor excluded some testing. The independent assessor pointed to her review of the

documented medical history, her personal interviews with the appellant and her extensive clinical experience in dealing with this psychological diagnosis, to support the validity of her conclusion that the appellant's psychological condition was MVA-related.

The appellant did not attend nor participate in the hearing due to their fragile psychological state. The commission agreed to complete the hearing based upon the documentary evidence and written submissions.

The commission conducted an extensive review of the medical records dating back to the appellant's first MVA and analysed the reasons given in prior commission hearings for denying the appellant's benefits. The commission reviewed the curriculum vitae of the respective experts and found that the independent assessor demonstrated greater expertise of the psychological condition for which the appellant was diagnosed.

The commission found that the records and reports of the appellant's treating physician, psychologist and psychiatrist corroborated the independent assessor's diagnosis and conclusion that the appellant suffered an MVA-related psychological condition. The commission placed weight on the fact that the independent assessor met with and interviewed the appellant, which overcame any deficiencies in the validity testing.

The commission distinguished its prior appeal findings on the basis that there was new evidence sufficient to prove, on a balance of probabilities, an MVA-related psychological diagnosis that prevented the appellant from working. The commission rescinded the IRD and returned the matter to MPIC to calculate the appellant's PIPP benefits related to her MVA-related psychological condition.

4. Reimbursement of Expenses

The MPIC act and regulations contain many provisions dealing with the reimbursement of expenses. Paragraph 136(1)(a) of the MPIC act provides for the reimbursement of expenses incurred because of the accident for medical and paramedical care, as set out in the regulations. Section 5 of Manitoba Regulation 40/94 provides for the reimbursement of physiotherapy expenses, where they are medically required.

Case #1

In this case, the issue was whether the appellant was entitled to funding for further physiotherapy treatment.

The MVA occurred in August 2017, which the appellant said caused neck and back pain. An August 2017 x-ray revealed no broken bones. MPIC covered the cost of chiropractic treatments in August and September 2017, which the appellant said did not provide relief and created concern that the treatment may damage a pre-existing lumbar surgical site.

In 2019, due to worsening neck pain, the appellant received physiotherapy treatment that consisted of acupuncture and massage therapy. A 2019 MRI showed that the appellant had a T3 compression fracture. The appellant requested that MPIC fund further treatment, which MPIC denied on the basis that the appellant's current symptoms were not MVA-related. The appellant testified and relied upon their physician's medical opinion.

The panel carefully considered the appellant's longstanding medical history of spinal osteoarthritis. The appellant's physician ordered a 2019 MRI due to ongoing mechanical neck pain. The physician reported that the appellant's MRI revealed an undiagnosed T3 compression fracture, which the physician opined was consistent with a history of a flexion extension injury of the neck and also consistent with a motor vehicle injury.

Further, the panel noted that the physician ordered the MRI due to the appellant's ongoing mechanical neck pain issues. The panel could not reconcile the physician's diagnosis of an MVA-related T3 compression fracture when compared with the radiology report that, while noting a mild (15 per cent) T3 compression fracture, nonetheless concluded that the image showed multilevel degenerative changes.

The panel could not reconcile the treating physician's chart notes from 2017, which recorded pre-existing spinal osteoarthritis, and MVA-related neck and lumbar pain, with the physician's opinion two years post-accident of an MVA-related T3 (thoracic) fracture.

The panel also considered the appellant's 2019 physiotherapist's report, which diagnosed the appellant as suffering from a recurrence of post-MVA whiplash, and noted significant improvement from treatment, finally recommending ongoing home exercises. The panel noted the two-year gap between the 2017 MVA and the appellant's later pain, as well as the inconsistencies between the treating physician's medical report and the physiotherapy report.

The panel found that there was insufficient evidence, on a balance of probabilities, to link the appellant's current symptoms to their 2017 MVA. The panel therefore found that further physiotherapy treatment funding was not medically required in accordance with the regulations and the causation requirements in the MPIC act.

5. Entitlement to Income Replacement Indemnity (IRI) Benefits

Under the MPIC act, an appellant may be entitled to IRI benefits if they are unable to work after the accident for a period of time. Pursuant to paragraph 110(1)(a) of the MPIC act, an appellant will cease to be entitled to IRI benefits when they are able to hold employment that was held at the time of the accident. Manitoba Regulation 37/94 provides that an appellant is unable to hold employment when a physical or mental injury that was caused by the accident renders them entirely or substantially unable to perform the essential duties of the pre-accident employment.

Case #1

In this case, the issue was whether the appellant was prevented by MVA-related injuries from returning to their pre-accident employment.

The appellant was injured in an MVA in June 2018. At that time, the appellant was self-employed on a full-time basis as a cleaner. The appellant's injuries prevented them from performing the essential duties of employment and they began receiving IRI benefits from MPIC.

The appellant began a six-week multi-disciplinary rehabilitation program in June 2019. Upon discharge from the program in August 2019, their overall strength ability was deemed to be at a medium strength demand level.

Following reviews conducted by MPIC's HCS medical and psychological consultants, the appellant's case manager provided a formal decision advising that, based on the work hardening discharge report, the appellant's MVA injuries no longer prevented them from performing their work duties. The entitlement to IRI benefits was ended in October 2019. The appellant was provided with a four-week graduated return to work (GRTW) plan but did not undertake this program.

The issue before the commission was whether the appellant was entitled to further IRI benefits. Specifically, the panel considered and determined whether the appellant was prevented by MVA-related injuries from returning to their pre-accident employment as a cleaner.

The commission noted that the onus is on the appellant to show, on a balance of probabilities, that they are entitled to further IRI benefits.

The commission noted that the duties of the appellant's employment as a cleaner were reviewed and analysed by the occupational therapist (OT) who provided a job's demand analysis (JDA) and percentage of duties report. The OT conducted a thorough review of the appellant's job by interviewing the appellant and attending at one of their job sites, to understand and photograph the tasks and demands of the job. As a result, the OT determined that the job required a medium strength level.

The commission accepted this objective assessment of the demands of the appellant's employment and found that the job was classified as medium strength.

The appellant suffered from both physical and psychological injuries arising from the MVA. The commission accepted and found the following physical diagnoses: mechanical or nonspecific spinal pain syndrome, whiplash associated disorder, sprain/strain injuries affecting the cervical, thoracic, and lumbar spine and cervical arthropathy, and chronic pain syndrome with SI joint dysfunction. In terms of the psychological effects of the MVA, the commission accepted and found that the appellant suffered from an adjustment disorder resulting from the MVA.

The question which remained was whether the appellant's MVA-injuries, particularly the back pain that the appellant said limited them from working, rendered the appellant unable to perform the essential duties of their medium strength job.

The commission carefully reviewed the evidence and the submissions of the parties. Although the commission did not doubt the appellant's belief in the pain and disability that was expressed to their caregivers and to the commission, the appellant's evidence was found to be less reliable, because it was based in large part upon subjective reporting with a lack of documented findings.

The commission gave more weight to the functional assessments and conclusions of the rehabilitation team, the psychologist, and the HCS consultants. Those opinions relied upon the writers' established experience and expertise, as well as objective findings and assessments which were well documented in the medical evidence on file.

The commission found that the appellant's physical and psychological MVA-related injuries did not prevent them from returning to employment after October 2019. Therefore, after that time, the appellant was no longer entitled to receive IRI benefits.

However, the commission noted that previously the appellant was offered a four-week GRTW program. The appellant, being convinced as their inability to function at the job, declined to participate in this program. The commission found that the appellant should once again be offered an opportunity to participate in a GRTW program if they did so within nine months of the date of the commission's decision.

6. Jurisdiction of the Commission

Occasionally, issues arise where there is a dispute as to whether the commission has jurisdiction in connection with the appeal. For example, as noted above, to be entitled to PIPP benefits under the MPIC act, an appellant must establish, on a balance of probabilities, that their injuries were caused by an MVA, pursuant to subsection 70(1) of the MPIC act. In some cases, MPIC may dispute whether there actually was a motor vehicle accident. If there was no MVA, then the MPIC act would not apply.

In one unusual case, an appellant had signed and provided the commission with notices of withdrawal of appeal (NOW) for appeals that were resolved at mediation. The commission accordingly closed the appeal files. The appellant then sought to rescind the NOWs and reopen the appeals.

Case #1

The appellant suffered injuries in an assault, but also alleged they were struck by the vehicle driven by the assailant, which caused injury. The driver/assailant denied that they struck the appellant with a vehicle.

The appellant sought PIPP benefits for accident-related injuries consisting of a fractured eye orbital bone, fractured elbow, widespread bruising, and possible loss of consciousness in connection with an accident that occurred in July 2020. MPIC denied benefits on the basis that the bodily injuries were not caused by an automobile, but rather, by an assault.

The index contained the appellant's written statements, which set out the timeline of events and described both the assaults and being struck by the vehicle. The appellant testified at the hearing. Neither party called any other witnesses.

The appellant testified, and it was undisputed, that they attended a house party, that they and the assailant were intoxicated, and that they were involved in a severe and prolonged physical fight inside the residence in which they were knocked to the floor.

The appellant testified that shortly after the assault, the appellant and the assailant left the residence. While outside, the appellant angrily picked up and threw two, wheeled garbage bins at the assailant's vehicle, which was parked in the driveway. The assailant backed the vehicle out of the driveway, which struck the appellant, causing the appellant to fall backwards. The assailant drove away. There were no witnesses. Shortly thereafter, while the appellant was still on the ground, individuals from the residence came outside and further assaulted the appellant.

Police attended to the residence in response to a complaint. A police report records the appellant sitting on the ground and complaining of pain to their elbow. The police reported the appellant saying they were hit by a car. Police restrained the appellant, who was ultimately sedated and

taken by ambulance to the hospital because of elbow pain, where x-rays showed a fractured elbow that required surgery.

MPIC submitted, among other documents, a signed statement from the driver who denied hitting the appellant with the vehicle. MPIC documented a conversation with the owner of the residence at which the assault occurred, who stated that they had viewed a surveillance video recorded by the neighbour across the street, which showed the vehicle backing into the appellant, but not how the appellant fell. However, the neighbour did not want to become involved.

MPIC requested that the appellant submit the video but did not make its own efforts to obtain the video. The appellant was unable to obtain a copy of the video but did provide a screen shot that identified the neighbour's home security software. The appellant provided a signed statement from the owner of the residence confirming their statement to MPIC that they viewed of the surveillance video, showing the vehicle hit the appellant.

The panel found the appellant's testimony credible, notwithstanding some unreliable testimony that the panel attributed to the appellant's intoxication, sedation, and the passage of time. The appellant conceded that the bruising and right eye orbital fracture could have been caused by the assaults. The appellant provided testimony consistent with the written statements about the assaults and falling after being hit by the vehicle, which caused immediate elbow pain. The appellant's account was corroborated by the police records and medical records.

The panel considered the assault and fall inside the residence and whether this caused the appellant's elbow fracture. The panel found it unlikely that the appellant could subsequently pick up and throw two garbage bins with a fractured elbow. The panel considered and accepted the evidence about the surveillance video and found that the appellant fell after being struck by the vehicle. The panel considered and accepted the appellant's testimony that they remained on the ground after being hit by the vehicle. The panel also considered MPIC's HCS medical opinion, which stated that the fractured elbow was likely the result of falling directly onto the elbow.

The panel considered the definitions of "accident" and "bodily injury caused by and automobile" found in subsection 70(1) of the MPIC act to conclude that the appellant had proven on a balance of probabilities that the bodily injury, more particularly, the fractured elbow, was caused by an automobile. The panel did not find that the other injuries were caused by an automobile but were more likely the result of the assaults. The panel rescinded MPIC's IRD and returned the matter to MPIC to calculate the appellant's PIPP benefits.

Case #2

The appellant was injured in a MVA in April 2014, and reported numerous injuries to MPIC, seeking a variety of benefits. They filed applications for review, received IRDs from MPIC and filed appeals with the commission.

When they filed the appeals, the appellant was represented by the CAO. The appeal documents requested the option of participating in mediation at the AIM Office and the appellant attended mediation sessions with their CAO representative.

While several issues were not resolved at mediation and remained open with the commission and/or subject to case management, other issues (dealing with dental injuries and a Workers Compensation claim) were resolved at mediation. A memorandum of agreement was signed and

executed by the appellant and the MPIC injury management coordinator who attended the mediation. The appellant also signed and provided the commission with NOWs for the resolved appeals.

At subsequent appeal management conferences concerning their remaining appeals, the appellant mentioned the withdrawn appeals and was advised that these were no longer before the commission. The appellant then contacted commission staff and indicated that they wished to rescind the NOWs for the four appeals that had been resolved at mediation. At the commission's request, the appellant provided this request in writing with accompanying reasons. A copy was provided to counsel for MPIC for comment, who responded by noting that the onus is on the appellant to satisfy the commission that they are entitled to such relief.

A hearing was scheduled before a panel of the commission. The issue before the commission was to determine whether it had jurisdiction to hear the appeals which had been discontinued by the appellant. The onus was on the appellant to establish that factors and circumstances existed which would lead the commission to exercise its discretion and allow their request to set aside their withdrawal of the appeals.

The appellant testified at the hearing and was cross-examined by counsel for MPIC. Both parties made submissions.

The appellant's testimony addressed their state of mind at the time. The appellant described the trauma they experienced when their daughter had died suddenly at a young age, and their struggle to deal with this alongside a lengthy wait for her autopsy. The appellant described the impact of a human rights complaint they filed as a result, the loss of their source of employment and income, and their younger daughter's decision to move to another province. The appellant had expected that when this was all explained to their representative, the mediation would be delayed, although they did not make this specific request. When it was not, the appellant attended the mediation meeting but could not recall much about it.

The appellant took the position that, in the context of the stress and trauma they were experiencing, and because of the condition they were in while dealing with a life and death issue, their mind was not focused on the mediation, and they were not able to understand what was going on.

For the most part, the panel found the appellant's testimony to be credible and reliable, and no evidence was put forward to contradict their description of the events or the mediation.

MPIC provided case law to support its position that a withdrawal is a serious and unilateral act of terminating a proceeding and that the finality engendered should be strictly enforced in order to protect the process. A withdrawal should only be set aside in the presence of exceptional circumstances, which the appellant must establish and the possible resulting prejudice to MPIC and the interests of justice should be carefully considered.

The panel generally agreed with the overall summary of the case law provided by counsel for MPIC. A withdrawal is a serious and unilateral act of terminating a proceeding and the expectation of finality engendered by a withdrawal should be strictly enforced, to protect the effectiveness of the process. The party seeking the relief bears the onus of satisfying the commission that a withdrawal should be set aside.

The commission agreed that the interests of justice are an important consideration in such cases and that there must be finality to the mediation process such that the withdrawal of an appeal following a mediated memorandum of agreement is generally determinative of the issue under appeal. MPIC should generally be entitled to rely upon that.

The panel also agreed that an appellant's change of heart is not sufficient reason to set aside the withdrawal of an appeal. There must, as counsel submitted, be exceptional and serious circumstances which strike at the root of the appellant's decision to withdraw.

However, the panel accepted that the appellant was in a state of shock, grief and trauma which prevented them from being fully present or attentive to the mediation. The panel accepted the appellant's evidence that they were not capable of understanding and consenting to the settlement arrived at. The appellant lacked an understanding or awareness of what was transpiring in the meeting.

The panel was not convinced that allowing these appeals to proceed on the merits would cause MPIC to suffer sufficient prejudice to outweigh the findings regarding the appellant's state of mind. The panel placed greater weight upon the circumstances surrounding the withdrawal and the appellant's state of mind at the time, finding that the appellant established, on a balance of probabilities, that their state of mind in the months following the death of their daughter and during the mediation proceedings interfered with their ability to understand and provide full and informed consent to the settlement agreement and withdrawal documents.

The panel concluded that there were exceptional and serious circumstances striking at the root of the decision to withdraw the appeals and determined that the discretion of the commission should be exercised to set aside the withdrawals, allowing the appellant to proceed with these appeals, on the merits, before the commission.