

Evaluating Manitoba's Automobile Injury Mediation Pilot Project

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I. INTRODUCTION

In Manitoba, all residents have personal injury coverage for vehicular accidents through Part II of the *Manitoba Public Insurance Corporation Act*,¹ whether the resident owns a vehicle or not. On March 1, 1994 the Personal Injury Protection Plan (PIPP) was introduced. PIPP extends coverage to all Manitoba residents injured in automobile accidents anywhere in Canada or the United States. This means that all Manitoba residents carry PIPP coverage with them wherever they travel in Canada and in the United States.² The compensation that Manitobans receive focuses on specific economic losses from auto injuries and is available to all injured people, regardless of who was at fault; there is no reduction in the level of benefit based on the degree of fault for the automobile accident.

The Personal Injury Protection Plan (PIPP) compensates Manitoba claimants for financial losses related to their injuries sustained in automobile accidents. This can include lost wages, personal care expenses, rehabilitation, and other related costs. When a claimant disagrees with a Manitoba Public Insurance (MPI) case manager's decision on PIPP

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¹ *The Manitoba Public Insurance Corporation Act*, CCSM, c P215, SM 2014, c 15.

² Manitoba Public Insurance, "Claims", online:
<<http://www.mpi.mb.ca/en/Claims/Pages/claims.aspx>>.

compensation, the claimant can request that MPI do an internal review. A MPI Internal Review Officer will review the case manager's decision and issue a written decision with reasons. If the internal review decision does not satisfy the claimant, the claimant may launch an appeal with the Automobile Injury Compensation Appeals Commission (AICAC). Claimants may represent themselves, hire legal counsel, or utilize the Claimant Advisor Office (CAO) to assist with their appeal processes.

Manitoba claimants who choose to appeal MPI decisions regarding their injury compensation often wait a long time before they hear the results of their AICAC appeal; the average length of time is two and a half years. The Government of Manitoba asked AICAC, MPI and the CAO to consider a mediation option as an alternative to the traditional route of appeal. As a result, the Automobile Injury Mediation (AIM) Pilot Project was instituted. Through AIM, MPI hopes to increase claimants' satisfaction as well as injury claims efficiency.

The AIM Pilot Project enables a claimant to meet with a representative of MPI and have his or her disagreement over personal injury compensation mediated by a trained, neutral, third party mediator. The mediator assists the claimant and the MPI representative in voluntarily reaching their own mutually acceptable resolution of the issues in dispute.³ If the mediation fully resolves the matter, no further appeal to AICAC is necessary or allowed. Issues not resolved by mediation through the AIM Pilot Project are returned for appeal and hearing before AICAC.

II. METHODOLOGY

The AIM pilot project ran for two years, from July 1, 2011 to June 30, 2013. I was asked to evaluate and measure the overall satisfaction of claimants and their satisfaction with specific components of the mediation process during that time. Specifically, I evaluated whether or not the AIM Pilot Project met quantitative goals of decreasing (i) the number of appeals, (ii) the time or duration of appeals, and (iii) cost. I also measured qualitative indicia of success such as (iv) mediation participant satisfaction

³ Mediation is the intervention into a dispute by a neutral third party called the mediator who has no authoritative decision-making power (see Christopher Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2nd ed, (San Francisco: Jossey-Bass Publishers, 1996) at 15).

and (v) whether or not any cultural or attitudinal change occurred as a result of instituting the AIM Pilot Project.

I conducted an extensive literature review to support the design of my evaluation methodology⁴ and used a control group or baseline data set for comparison purposes, as my method to evaluate the effectiveness of the AIM Pilot Project required comparing claims processed before and during the pilot period.

Claims processed before the pilot period formed the baseline data set. The data for the baseline was gathered by taking the most recent closed appeals in the previous 2.5 years (January 2009 to June 2011) before the beginning of the pilot project. This data comprised the most recent 278 appeals that were closed before the pilot project began. The baseline data represents the appeal process as it existed before the introduction of mediation to the process.⁵

⁴ The literature I consulted includes: Manitoba Public Insurance, *Personal Injury Protection Plan Manual/Guide*; *Manitoba Public Insurance Corporation Act* CCSM c P215; PIPP Mediation Pilot Project Consensus Document, November 24, 2009; PIPP Mediation Model High Level Design Brief, Phase I, DRAFT, September 24, 2010; Evelyn Bernstein's Mediation Pilot Project Status Update, September 13, 2011; Marilyn McLaren's letter to the Mediation Pilot Steering Committee, May 26, 2011; Hann, Baar, Axon, Binnie & Zemans, (March 2001), "Evaluation of the Ontario Mandatory Mediation Program (Rule 24.1): Final Report - the First 23 Months" (Kingston: Ontario Ministry of the Attorney General); Hogarth & Boyle, (April 2002), "UBC Program on Dispute Resolution: Is mediation a cost-effective alternative in motor vehicle personal injury claims? Statistical analyses and Observations." Vancouver: Faculty of Law, UBC; M Keet & J Macfarlane, "Civil Justice Reform and Mandatory Civil Mediation in Saskatchewan: Lessons from a Maturing Program" (2005) 42:3 Alta L Rev 677; Austin Lawrence, Jennifer Nugent & Cara Scarfone, (2007), "The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta - Analysis" Ottawa: Department of Justice Canada; Julie Macfarlane, "Culture Change? Commercial Litigators and the Ontario Mandatory Mediation Program" (2001) for the Law Commission of Canada; Leslie MacLeod, (March 2002), "Assessing Efficiency, Effectiveness and Quality: An Evaluation of the ADR Program of the Immigration Appeal Division of the Immigration and Refugee Board" (Ottawa: Department of Justice); and Ellen Zweibel, Julie Macfarlane, & John Manwaring (March 2001), "Negotiating Solutions to Workplace Conflict: An Evaluation of the Public Service Staff Relations Board Pilot Grievance Mediation Project: Final Report" (Ottawa: Public Service Staff Relations Board).

⁵ The baseline data was gathered over a period of months in the Automobile Injury Compensation Appeals Commission (AICAC)'s offices. The files were manually searched on the computer system and information regarding each appeal in the

After the baseline data was collected, the pilot project was divided into two distinct phases. Phase I was July 1, 2011 (the start of the pilot) until February 6, 2012. Phase II was February 7, 2012 until June 30, 2013 (the end of the pilot). Phase II began on February 7, 2012 because a new appeal application form was introduced on that date whereby the option for mediation was incorporated in the appeal application and could be requested immediately by any claimant filing for appeal.

Part of the reason MPI decided to try to implement a pilot mediation program was to reduce the number of backlog cases waiting for appeal. The backlog cases comprised all the open appeals as of June 2011 when the pilot began. At that time, there were over 400 open appeals at various stages in the appeal process. At the beginning of the pilot, appeals in the backlog were reviewed and those that could benefit from mediation were identified. MPI's legal department and AICAC both reviewed the open appeal files and submitted a list of suitable cases to AIM's Project Manager, who further narrowed down the list.⁶ Appropriate backlog cases were then offered mediation (the rest continued on with the appeal process) and for those claimants who accepted mediation, their cases proceeded to mediation as Phase I cases.

Once the chosen backlog cases were disposed of, beginning on February 7, 2012 when new appeals were launched, claimants could choose mediation if they wanted to when filing their Notices of Appeal. Eighty-five percent of claimants requested mediation, but 57% actually sent in their mediation applications. Those claimants who sent in completed mediation applications were the mediation participants in Phase II. Those who did not were the non-mediation participants in Phase II. Leading evaluators note that it is very useful to compare average

baseline database was extracted. I was not involved in this process, so I do not know what the extraction process was. However, the data obtained was of sufficient size for useful comparison purposes.

⁶ It is important to note that I was not part of the selection process for the backlog or Phase I cases and I do not know what criteria were used in order to select the cases that were offered the option of mediation. As a result, the baseline cases used as a comparison group for the purpose of this evaluation are not necessarily a true "like with like" comparison. An anonymous reviewer of this article expressed the view that "it is unfortunate that this data was not collected and provided to the author for analysis as part of the evaluation of the effectiveness of the AIM Pilot Project."

processing times for mediation cases versus hearing cases,⁷ and thus the baseline data was compared with the results found for claimants who completed the appeal process without choosing mediation (non-mediation group) and claimants who chose mediation (mediation group).⁸

It is important to note that the types of cases in the backlog and in Phases I and II may not have been exactly the same types of cases in all instances. For example, the possibility exists that cases in the backlog were backlogged because they were difficult or prolonged in some way. Thus, as noted by an anonymous reviewer of this article,

if the baseline data gathered from closed appeals prior to the beginning of the pilot project consisted mainly of difficult, complex issues whose resolution had become protracted, then it would not be surprising that the percentages of positive feedback on various aspects of the survey from those baseline appellants are generally lower than the corresponding percentages from mediation participants.

Therefore, while this evaluation did not compare apples with oranges, in its comparison of apples with apples, it cannot be guaranteed that all of the apples were of the exact same variety.

In order to address this point and ensure a fulsome evaluation, quantitative data alone were deemed insufficient. Qualitative data was also necessary in order to provide a complete picture. The pilot project hired an independent agency called kiskward to collect data via telephone surveys of users of the AIM project. The telephone interviews were based upon a questionnaire. I was responsible for the content of the survey or questionnaire and I had final approval of the telephone survey design.⁹

⁷ Canada, Department of Justice, *Assessing Efficiency, Effectiveness and Quality: An Evaluation of the ADR Program of the Immigration Appeal Division of the Immigration and Refugee Board*, by Leslie MacLeod (Ottawa: Department of Justice, March 2002), online: <http://www.irb-cisr.gc.ca/Eng/ImmApp/Pages/ladSaiAdrMarGuideApp.aspx>.

⁸ Quantitative data gathered for my evaluation (baseline, non-mediation, and mediation) was compiled and put into a SharePoint Data Table by AIM staff (see Appendix 5). The role of AIM staff and the pilot project analysts was to gather the information and populate the fields in the SharePoint Data Table. It remained my role as an independent evaluator to interpret and analyze the quantitative data in the SharePoint Data Table.

⁹ The questionnaire, entitled "Claimant Satisfaction Survey," is available at Appendix 1.

Once I approved the final versions of the baseline, non-mediation, and mediation group surveys, kisquared conducted the telephone interviews.

The time period of the pilot project and therefore the official time period of my evaluation was July 1, 2011 to June 30, 2013. However, some mediation processes were commenced during the pilot period but were not concluded until after June 30, 2013. As such, and in order to see all pilot period mediations through to their conclusion, the last telephone survey was conducted by kisquared on September 20, 2013. My final expert evaluation was submitted in January 2014 and in 2017 I received approval to release it.

In my evaluation 355 telephone surveys were conducted. Of those, 84 were the baseline group, and calls were made before the commencement of the pilot project, in order to assess baseline respondents' satisfaction with the appeal process. This left 271 telephone surveys in the actual pilot period ($355-84=271$). Of those, 255 surveys were completed before June 30, 2013 (the last day of the pilot) and 16 surveys after June 30, 2013.¹⁰ The survey data gathered by kisquared was sent directly to me and thus my evaluation of the Automobile Injury Mediation Pilot Program was based upon the following data sources:

- the data reports generated by kisquared
 - SharePoint Data Collection Table
 - Claimant Satisfaction Surveys
 - AIM Office Reporting Criteria
 - PIPP Mediation Pilot Project Cost Metric
 - PIPP Mediation Pilot Project MPI Representative Feedback Forms (completed by each MPI representative who attended a mediation)
 - interviews with those “whose views, either personally or as representative of a particular constituency, appear important to the overall credibility and completeness of the evaluation.”¹¹
- I interviewed the AIM Pilot Project Manager (Ms. Evelyn

¹⁰ In the baseline group, 84 people of the 163 to whom the survey were sent completed them (response rate of 78%, refusal rate of 14%). In the non-mediation group, 162 completes of 296 (response rate of 76%, refusal rate of 14%). In the mediation group, there were 109 completed surveys of 261 attempted (response rate of 82%, refusal rate of 10%).

¹¹ Keet & Macfarlane, “Civil Justice Reform and Mandatory Civil Mediation in Saskatchewan: Lessons from a Maturing Program” (2005) 42:3 *Alta L Rev* 677 at 686.

Bernstein) and the Claimant Advisory Office (Mr. Phil Lancaster and Mr. Bob Sample) for the Claimant Advisors

- Attendance at 7 AIM mediation sessions.

III. QUANTITATIVE FINDINGS

A. Number: Did the number of appeals decrease?

Yes. There were 462 appeals in the backlog at the beginning of the pilot project. Part of the mandate of Phase I was to address this backlog of cases. One hundred and eighty-four Phase I cases were resolved, in whole or in part, by June 30, 2013 (the end of the pilot). As of November 30, 2013 there were only 141 appeals left from the original backlog. This suggests that the mandate of Phase I, to reduce the backlog of cases, was fulfilled.

Since the beginning of the pilot, there have been an additional 403 new appeals. This means that over the course of the pilot there were 865 appeals, either open at the time the pilot started, or opened later during the course of the project. As of September 30, 2013, 382 of the 865 appeals chose to participate in mediation. Of these 382, 302 completed the mediation process: 195 were fully resolved in mediation, 16 were partially resolved in mediation, and one clarified issues. Ninety cases did not reach resolution.¹² By contrast, as of November 30, 2013 there were 87 decisions given on files that proceeded through the appeal process to an AICAC hearing, and there were 41 decisions made on files that proceeded through the mediation process but then continued on to an appeal hearing.

My analysis of the baseline data shows approximately 119 files closed per year through the AICAC appeals process (combining actual hearings with withdrawn appeals).¹³ This can be contrasted with the total number of files closed through mediation. As at June 30, 2013, the end of the two year pilot, 252 mediations had been completed; 184 from phase I, 63 from

¹² The claim types that most often result in mediated resolutions are Income Replacement Indemnity (IRI), Medical/Personal Expenses (such as chiropractic or physiotherapy), and Permanent Impairment (PI).

¹³ AICAC hearings by fiscal year: in 2011/2012: 94 hearings; in 2010/2011: 81 hearings; and in 2009/2010: 120 hearings.

phase II, and 5 that bridged both phases. One hundred and seventy-two were fully resolved, 13 were partially resolved and one remained for clarification. Sixty-six were not resolved. A further 24 cases resolved or withdrew prior to their appeal hearings taking place.¹⁴

The pilot project concluded on June 30, 2013 and the numbers in the preceding paragraphs detail the results at the end of the pilot. However, because I also had access to more recent results, I can report that at December 31, 2013 there were 333 cases completely concluded via mediation. Of those, 218 reached full resolution, 15 were partially resolved, and one awaited clarification. Importantly, another five cases settled or withdrew after mediation but prior to the appeal hearing taking place. This can happen because claimants and MPI representatives work on the file in mediation and reach clarity on a number of points, even if they do not fully resolve the matter. Then, subsequently, it is not uncommon for the parties to decide to withdraw their appeal. These five cases can therefore be counted as successful mediations for the AIM pilot project as well.¹⁵

On December 19, 2013 I interviewed the AIM Project Manager and I asked her whether the number of appeals ultimately proceeding to an appeal hearing has decreased. This was her answer:

In Phase 1, over 80% of appellants requested mediation and this resulted in 73% of cases resolving. In Phase 2, close to 90% of appellants requested mediation and this resulted in over 65% of cases resolving. These percentages do not include a number of appeals which were withdrawn at some point between receipt of application and following the conclusion of an unresolved mediation. Hence, the number of matters actually proceeding to appeal has definitely decreased.

On January 17, 2014 Mr. Bob Sample, Director, Claimant Advisor Office and Mr. Phil Lancaster, Claimant Advisor, provided responses to my interview questions on behalf of the Claimant Advisor Office. They said, "It is clear that a majority of appeals referred to mediation result in

¹⁴ Cases where, for example, notices of withdrawal were filed after applications for mediation had been sent or received or where a response was received, but in all cases, before a pre-mediation session was attended.

¹⁵ In addition, as at December 31, 2013, there were 31 cases where notices of withdrawal were filed after applications for mediation had been sent or received or where a response was received, but in all cases, before a pre-mediation session was attended.

resolution. This clearly has resulted in a substantial decrease in the number of appeal hearings required for CAO appeals.”

B. Time: Is the mediation process faster than the appeals process?

Yes. The time or duration of the mediation process is not as long as the time or duration of the appeal process. At the end of the pilot the average number of days from when a mediation application was received until the date mediation concluded was 154 days, or approximately 5 months. The average number of days from the date the application was received until the date of pre-mediation was 112. On the other hand, the average duration of an appeal from the point of filing to completion was 1,036 days or more than 2.5 years.¹⁶ It is important to note that 5 months (to conclusion of mediation) is significantly less than 2.5 years (to conclusion of appeal). However, if a file does not resolve at mediation and must still go to an appeal hearing, then more time will be incurred.¹⁷

When asked how long the entire appeal or dispute resolution process should take, baseline and mediation participants have fairly similar expectations; more than half (56% and 55% respectively) said the process should take less than six months. Forty-one percent of the non-mediation participants agree that the entire process should take less than six months, and indeed, it does. Almost a quarter of all participants (20-24%) thought it would be acceptable if the entire process took 6 months to less than one year.

Although 10% of mediation participants feel the mediation process should take one week or less and 23% think it should take one month or less, when asked how long the mediation process should take, 67% of mediation participants felt that more than one month was acceptable, and

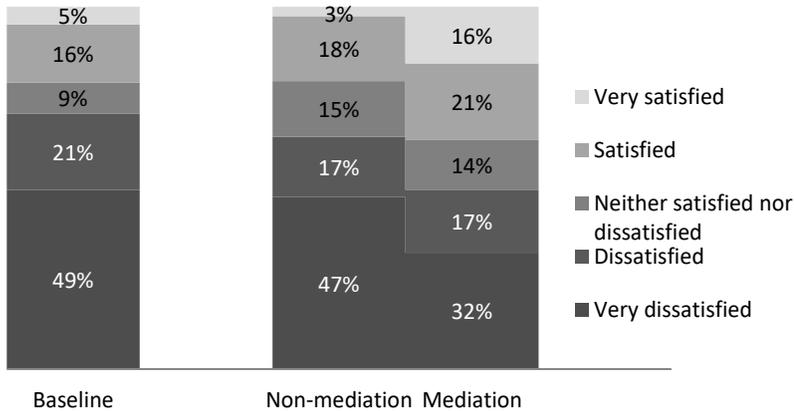
¹⁶ Statistics from October 8, 2013, indicate that the duration from the date the appeal is received to the hearing date averages 2.8 years. The shortest duration was 158 days or 5.6 months (still longer than mediation) and the longest duration was 4498 days or 12.3 years.

¹⁷ In the MacLeod Report, *supra* note 7, Leslie MacLeod notes that Immigration and Refugee Board cases in Ottawa that went to ADR/mediation were disposed of more quickly than the ones that went to a hearing. However, cases that were not successful at mediation and had to go to a hearing wound up taking longer than cases that never went to mediation in the first place.

those who agree their experience was positive are likely to be satisfied with a mediation process that takes more than one month.

The majority of all appellants and non-mediation participants are dissatisfied or very dissatisfied with the time it took to complete the entire dispute resolution process (see figure 1). Seventy percent of baseline appellants are dissatisfied or very dissatisfied, and 64% of the non-mediation appellants are dissatisfied or very dissatisfied with the time it took to complete their entire process. Forty-nine percent, or less than half, of the mediation participants were dissatisfied or very dissatisfied with the time it took to complete their entire dispute resolution process. Indeed, the mediation participants were much more satisfied with the time it took to complete the whole process than the non-mediation or baseline participants. Thirty-seven percent are satisfied with the time it took to complete the dispute resolution process as compared to 21% of the non-mediation and 21% of the baseline appellants.

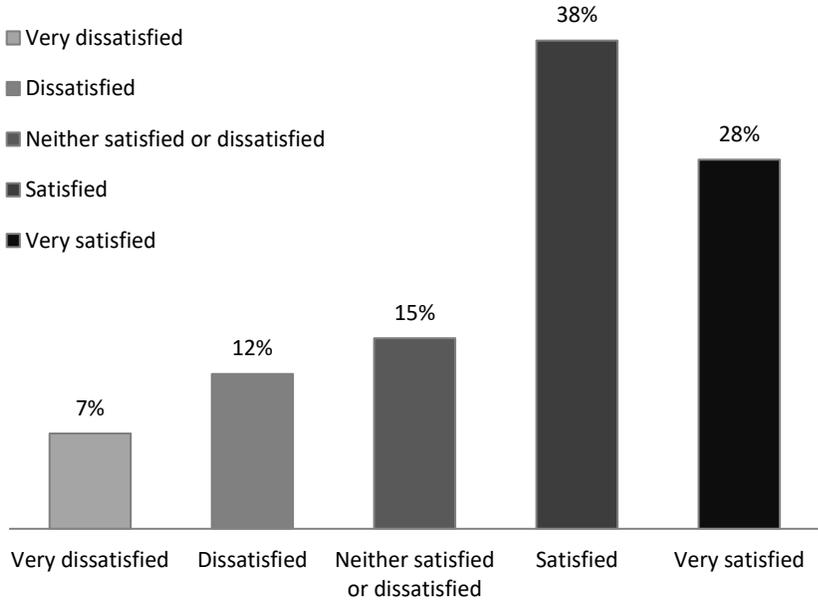
Figure 1 HOW SATISFIED ARE YOU WITH THE TIME IT TOOK TO COMPLETE THE ENTIRE DISPUTE RESOLUTION PROCESS?



Note: Data derived from Q4 and Q88. Baseline n = 81 non-mediation n = 78 mediation n = 109.

When asked to rate their satisfaction with the time it took to complete the mediation process, participants responded as follows:

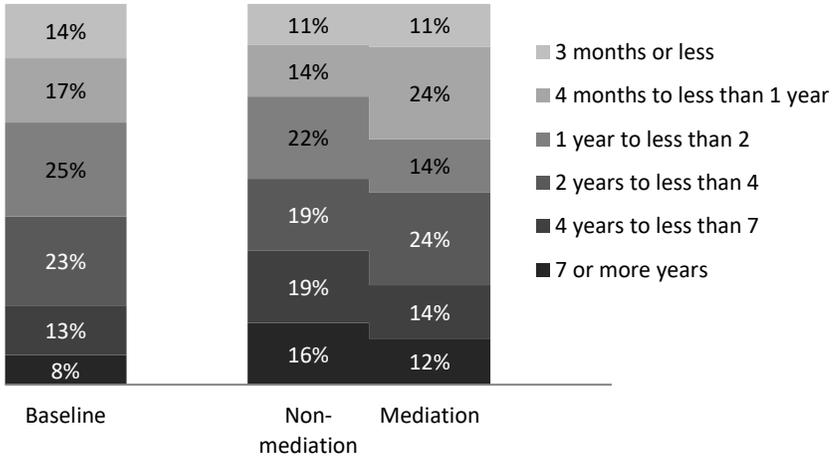
Figure 2 SATISFACTION WITH THE TIME THE MEDIATION PROCESS TOOK



Note: Data derived from Q6. Mediation n = 109

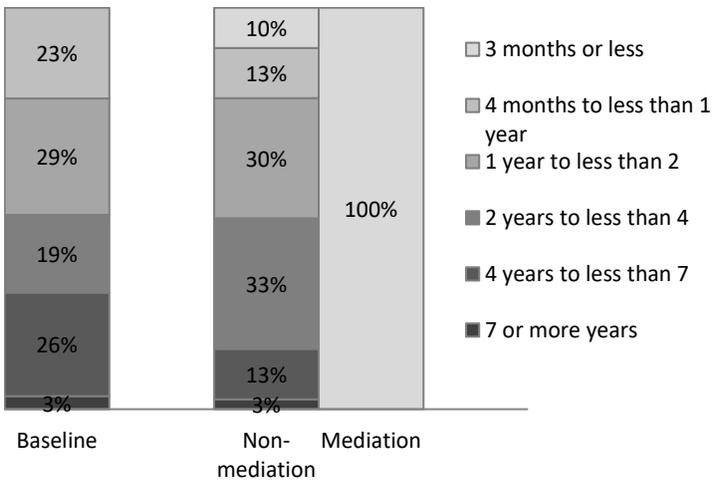
Interestingly, appellants and participants did not always have an accurate view of how long their entire process took. When asked how long the entire dispute resolution process took, survey respondents said one thing, while actual duration times as found using the information in appellant files differed. I therefore compared self-reported duration times with actual process duration times:

Figure 3 HOW LONG DID THE MEDIATION PROCESS TAKE?



Eleven percent of mediation participants said their mediation process took three months or less (figure 3). In actuality, 100% of mediation participants' dispute resolution processes were concluded in three months or less (figure 4).

Figure 4 ACTUAL DURATION – SURVEY RESPONDENTS



It is encouraging to discover that most mediation participants feel positively about the length of time the mediation process takes, even while

being disappointed with the duration of the entire resolution of their claim. The AIM mediation process is sometimes experienced as taking longer than it actually does, but its current duration of three months is very short, and even five months for the entire dispute resolution process (average number of days from when a mediation application is received until final completion) is much shorter than the time to completion for an appeal.

C. Cost: Is mediating cheaper than appealing?

Yes. I compared the costs of mediating with AIM and appealing with AICAC in two different ways, and using either method, mediation is cheaper. Before I outline them, it is important to note that mediation always takes place “in the shadow of the law.”¹⁸ That is to say, one of the reasons that mediation is effective is because disputing parties know that the law, or in the case of AIM, AICAC, is always available if mediation is not successful. This provides an incentive to parties to resolve their dispute in mediation, because if they do not, the ‘law’ will. Thus, a ‘back-up’ appeal process such as AICAC will generally be necessary and remain in place, even though it is more expensive than the mediation process.

The first method I used to compare costs was cost per concluded mediation versus cost per concluded appeal. I based my comparison upon total annual program costs in the July 1, 2012 to June 30, 2013 period (excluding any start up or evaluation costs) divided by the number of files concluded exclusively by each program. This enabled me to compare costs of AIM mediations and AICAC appeals in the same time period. Between July 1, 2012 to June 30, 2013 the AIM office concluded 187 mediations and AICAC concluded 127 appeals. The cost per concluded mediation was \$3,776.66 while the cost per concluded appeal was \$9,102.36.¹⁹ On this method of comparison mediation is \$5,325.70 cheaper per case than an appeal. This represents a significant cost savings over time.

¹⁸ Robert Cooter, Stephen Marks & Robert Mnookin, “Bargaining in the Shadow of the Law: A Testable Model of Strategic Behavior” (1982) 11:2 J Leg Stud 225. The phrase “bargaining in the shadow of the law” is attributed to Robert Mnookin.

¹⁹ See appendix 2, PIPP Mediation Pilot Project Cost Metric, for further details.

Another method of comparison would be to compare the average direct mediator cost of one mediation with the average direct appeal panel cost of one appeal. The average cost of each mediation in Phase I was \$1,737.00. The average cost of each mediation in Phase II was \$1,271.00. Thus the average cost (mediator's fees only) as of December 31, 2013 was \$1,560 per mediation. The average budgeted cost of mediation for the AIM pilot project was \$1,625 per mediation, so the AIM office is operating approximately \$65 under budget per mediation in terms of mediators' fees. The average cost of one full day AICAC appeal (direct cost of one panel which comprises one commissioner and two part-time commissioners) is \$1,607.00. On this method of comparison mediation is \$47 cheaper per case than an appeal.²⁰

IV. FINDINGS ABOUT PEOPLE

A. Satisfaction: are mediation participants satisfied?

Satisfaction measurements were recorded throughout the telephone surveys completed and the interviews I conducted. It is very clear that the human element is extremely significant when it comes to mediation participant satisfaction. Therefore, I will comment on participants' satisfaction with the key players in the mediation process: mediators in pre-mediation, mediators in mediation, AIM office staff, Claimant Advisors, and MPI representatives.

²⁰ Ms. Kathryn Durkin-Chudd, Director of Appeals, Automobile Injury Compensation Appeal Commission (AICAC) provided the following cost break-down in a January 30, 2014 email to the author: a one day hearing, heard by a panel of the commission, which consists of the chair and two part-time commissioners, costs approximately \$1607. This is the cost breakdown for one full day hearing:

chair of the panel (which is either the Chief Commissioner or a Deputy Chief Commissioner) \$67.00/hr (average of the hourly salary for Chief Commissioner and a Deputy Chief Commissioner) x 7 hours +

½ day preparation for the Chair (\$67 x 4 hours) +

½ day writing reasons for the decision for the chair (\$67 x 4 hours) +

full day hearing for 2 part-time commissioners (\$192 x 2 because part time commissioners' per diem rate of \$192 for a full day is set by Order in Council) +

½ day preparation for 2 part-time commissioners (\$109 x 2; ½ day prep rate is set by Order in Council) = \$1607.

B. Mediators in Pre-mediation

Mediation participants in Manitoba's Automobile Injury Mediation Pilot Project were very satisfied with the mediators in their pre-mediation sessions:

- 100% of mediation participants agree or strongly agree that mediators in the pre-mediation sessions were courteous and polite and 95% agree or strongly agree that mediators in pre-mediation were professional.
- 91% of mediation participants agree or strongly agree that they were treated fairly by the mediator in their pre-mediation session.
- 96% of mediation participants agree or strongly agree that the mediator in their pre-mediation session was knowledgeable about the mediation process and 98% agree or strongly agree that the mediator provided a promise of confidentiality.
- 89% of mediation participants agree or strongly agree that the mediators explained what the mediation participant's role would be in the mediation process, 90% agree or strongly agree that the mediators answered the participant's questions in pre-mediation clearly, and 91% agree or strongly agree that mediators in the pre-mediation sessions took the time to listen to their concerns.
- 83% of mediation participants agree or strongly agree that the mediator provided enough information at the pre-mediation session to prepare the participant for the mediation session. 8% disagreed or strongly disagreed, and 10% were neutral. 93% agree or strongly agree that the mediator clearly explained what to expect in the mediation session.

These are excellent results and they reveal that mediators in the pre-mediation stage are doing exactly what researchers, scholars, trainers and educators agree that mediators should be doing. This is an extremely successful area of the AIM Pilot Project.

Overall, 83% (n90) of participants agree or strongly agree that they are satisfied with their pre-mediations. Seven percent (n8) were neither satisfied nor dissatisfied, and 10% (n11) disagree or strongly disagree that they were satisfied. When asked what could have been done differently to provide better service during the pre-mediation session, 75% of mediation participants had no recommendations. The remainder gave recommendations which can be found in Appendix 3.

The fact that 83% of participants agree or strongly agree that they are satisfied with their pre-mediations is significant. Mediation research and literature stresses the importance of making disputing participants feel heard and Manitoba's program is successful in this regard. One of three threads that continuously emerged from my analysis of the data was how much "feeling listened to" is appreciated by participants. When disputants feel heard it leads to feelings of empowerment, which may assist disputants in coming to resolutions of their disputes. A second thread was that the mediators are effective, and the third was how difficult it is to find the AIM office. Thus, the pre-mediation stage of the AIM mediation process is delivering on one of the most important features of any mediation process: making participants feel heard or listened to. When coupled with the fact that AIM participants believe that their mediators were effective, this is a strong endorsement of the pre-mediation process. The third concern is logistical rather than substantive, and in my formal evaluation report I provided suggestions for addressing the difficulty of finding the AIM office, such as including a map with the package that all mediation participants receive and having clear directions and a map on the website.

C. Mediators in Mediation

One of the most classic definitions of mediation is Christopher Moore's: "Mediation is the intervention into a dispute or negotiation by an acceptable, impartial and neutral third party who has no authoritative decision-making power to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute."²¹ It was important to evaluate whether mediators in the AIM Pilot Project fit this definition. It was of course equally important to assess whether they were mediating well. Therefore, I designed a series of questions specifically

²¹ *Supra* note 3.

regarding the mediation experience. Kiskwaded asked those questions during their telephone surveys with over 100 hundred mediation participants and I closely evaluated the results.

Eighty-nine percent of mediation participants agree or strongly agree that the mediators made them feel that their participation in the mediation session was voluntary. This is an important finding because one of the hallmarks of mediation is that it be voluntary. Despite the increase in mandatory mediation programs in Manitoba's neighbouring provinces, Saskatchewan and Ontario,²² research demonstrates that voluntary mediation is generally preferred by disputants and generates better, longer lasting agreements.²³

Regarding the mediators in their mediation sessions, participants had the following to say:

- 94% agree or strongly agree that the mediators were professional.
- 87% agree or strongly agree that they were treated fairly by the mediator.
- 87% agree or strongly agree that the mediator was skilled at assisting the disputing parties to communicate in the mediation session.
- 89% agree or strongly agree that the mediator gave them clear answers to their questions.

²² Saskatchewan's Court Connected Mediation Program (see *The Queen's Bench (Mediation) Amendment Act 1994*, SS 1994, c 20, s 54.4 and *The Queen's Bench Revision Act*, SS 1998, c Q-1.1, s 44) and Ontario's Mandatory Mediation Program (see Rule 24.1. of the *Rules of Civil Procedure*, RRO 1990, Reg 194).

²³ Gemma Smyth, "Mediation", in Julie Macfarlane, ed, *Dispute Resolution: Readings and Case Studies*, 3rd ed (Toronto: Emond Montgomery, 2011); S Goldberg, F Sander, & N Rogers, 3d ed, *Dispute Resolution: Negotiation, Mediation, and Other Processes* (Gaithersburg, MD: Aspen Law & Business, 1999); C Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 3d ed (San Francisco: Jossey-Bass, 2003); Andrew J Pirie, *Alternative Dispute Resolution: Skills, Science, and the Law* (Toronto: Irwin Law, 2000) at 208.

- 90% agree or strongly agree that mediators made sure mediation participants were given the opportunity to present their issues.
- 88% agree or strongly agree that the mediators kept them informed and guided them through the mediation session.
- 98% agree or strongly agree that the mediators were courteous and polite.
- 83% agree or strongly agree that the mediator did everything possible to assist both parties in trying to reach an acceptable outcome. This finding is significant because not only does it indicate that mediators in the AIM project are doing a good job, but also that they are doing it with both claimant and MPI perspectives in mind.
- 78% of mediation participants agree or strongly agree that the mediator was skilled at assisting the parties to reach a resolution or closure. I deliberately asked about resolution or closure because resolving the dispute by reaching an agreement is not the only way to define a successful mediation. If the mediator is skilled and the parties communicate well, the parties may reach closure on some issues and experience that as a success. For example, claimants may finally understand why MPI did not provide compensation and appeals against MPI decisions might be withdrawn. Thus, closure can be as important as resolution so this finding of 78% is significant.
- 85% of mediation participants agree or strongly agree that the mediator ended the mediation session by clearly summarizing what issues had and had not been agreed to.

Mediation participants' overall satisfaction with their mediation experience is good. Seventy-three percent report they are very satisfied (n45) or satisfied (n33); however, almost a quarter, 24%, say they are very dissatisfied (n18) or dissatisfied (n8) with their mediation experience

overall. When comparing overall satisfaction with pre-mediation versus overall satisfaction with mediation, more participants are very satisfied with the pre-mediation process (57% - n62) than with the mediation session (42% - n45).

Overall, 73% of mediation participants report that they are satisfied (n33) or very satisfied (n45) with the mediation services provided by their mediators. They said things like, “Mediation is exactly what MPI needs to do with clients because it’s more personal. It feels like they care and clients get to speak to someone that matters,” and “They should promote the mediation process so that more people know about and benefit from this process.”

Twenty-four percent are dissatisfied (n8) or very dissatisfied (n18) with their mediation experience overall. Over half, 56%, had no recommendations for the mediators, answering “I don’t know, I don’t have any recommendations, or I had a good experience.” However, the remainder did have recommendations about what could have been done to provide better service during the mediation session:

- 6% were concerned that the mediation process and/or MPI’s process was too lengthy. One said, “It needs to be simpler and take less time,” and another said “MPI are not actually willing to change their mind. They’ll stall until you’re dead.”
- 5% of participants had concerns that the mediation process or the MPI representatives attending the mediation session were biased. One person said, “Stop MPI’s monopoly. They should not pay the mediator’s salary; it should be paid for by the government.”²⁴
- 3% wanted more information and better explanations about the process of mediation; “I didn’t understand what was going

²⁴ Mediators in the pilot project were paid by MPI but they were completely independent. It is a credit to the pilot project that it recognized the value of mediation and chose to remunerate its mediators. The author assumes that bias-free remuneration policies will continue once/if the Government of Manitoba institutionalizes the AIM program.

on. I wish I had someone there to help me,” and another 3% disliked mediation; “It was a waste of time.”

Finally, I note that according to the AIM Project Manager, AIM mediators enjoy working in the program:

The AIM Office operates utilizing a roster of mediators comprised of lawyers and non-lawyers (10 women, 6 men) who are all qualified and experienced mediators. They have been really happy with the evolution of the program; they have seen some changes over the life span of the program in terms of the engagement of the various MPI reps and that of the Claimant Advisors. They have provided invaluable input to me by providing feedback re participation of IMCs [Injury Management Coordinators] and Claimant Advisors. I think they are also really happy with the opportunity to get more work in this field.²⁵

Manitoba mediators, who practice in a jurisdiction with no court-connected mediation program, are pleased to have paid opportunities to mediate.

D. AIM Office Staff

The staff at the Automobile Injury Mediation office is comprised of one project manager (full time), one administrative assistant (full time), one clerk (full time) and one term employee (half time). Overall, the results of my evaluation demonstrate that AIM office staff are doing a very good job.

Eighty-three percent of mediation participants agree or strongly agree that the written information they received explained the mediation process clearly. Ninety percent of participants agree or strongly agree that AIM office staff are prompt in following up on any participant questions or issues, and 89% agree or strongly agree that staff provided clear answers to their questions. Similarly, 89% agree or strongly agree that AIM office staff keep them informed about the mediation process in a timely manner. Only one person out of 101 disagreed with this statement. These are all very positive results.

However, there was one shortcoming in terms of communications with the AIM Office or perhaps with AICAC and it relates to having the option to mediate at all. All non-mediation appellants were given the

²⁵ December 19, 2013 interview with Ms. Evelyn Bernstein, AIM Project Manager.

option to participate in mediation. Only 14 people chose not to, yet 74%, or 58 non-mediation appellants, believe they were not given the option to mediate. A further 8% answered that they did not know if they were offered the opportunity to mediate. This indicates a problem with participants' understanding of correspondence emanating from either or both of the AICAC and AIM offices. I reviewed the relevant letter from the AIM office and it was relatively clear, but I recommended revisions which will hopefully lower the high percentage, almost three quarters, of those who believe they were not given the option to mediate.

The rest of the findings as they pertain to AIM Office Staff are very positive. Ninety-three percent of mediation participants agree or strongly agree that AIM office staff are knowledgeable about the mediation process. Ninety-three percent agree or strongly agree that staff are professional, 89% agree or strongly agree that they were treated fairly by office staff, 89% agree or strongly agree that staff take the time to listen to their concerns, 89% agree or strongly agree that AIM staff are well organized, 91% agree or strongly agree that staff are efficient, and 96% agree or strongly agree that staff are courteous and polite. Overall, 82% of mediation participants agree or strongly agree that they are satisfied with the assistance they received from AIM office staff.

When we asked all three groups whether information in their files was handled appropriately during their process (either appeal or mediation), we found that over four out of five mediation participants agree or strongly agree their information was handled appropriately during the mediation process (85% - n91). This is to be contrasted with the non-mediation group (55% - n41) and the baseline group (54% - n42). Similarly, only 13% of mediation participants disagree or strongly disagree that the information in their file was handled appropriately, whereas the numbers were more than double for non-mediation participants (32%) and baseline (33%) appellants. This means that participants dealing with AIM office staff feel their information is handled better than participants who deal with AICAC staff.

Eleven percent of participants were neither satisfied nor dissatisfied with the assistance they received from AIM office staff and 8% were dissatisfied or very dissatisfied with the assistance they received. When questioning those 8%, we asked them for recommendations about what AIM staff could have done differently to provide better service. Eleven percent, or two respondents said: "The mediation office is not well

marked. They should send a map and address in the letter.” This is the same logistical concern mentioned many times throughout my evaluation. While frustrating for participants, it does not indicate a substantive service delivery concern.

E. Claimant Advisors

Claimant advisors work for the Claimant Advisor Office (CAO) and their role is to help people who are appealing bodily injury claim decisions issued by the Internal Review Office of Manitoba Public Insurance (MPI). Their services are provided free of charge and they are completely independent and separate from MPI and the Automobile Injury Compensation Appeal Commission (AICAC). Claimant advisors can assist claimants with filing notices of appeal, help claimants appeal, carry out investigations and inspections, attend with claimants at mediation, and represent claimants at AICAC appeal hearings.

Claimant advisors expressed concern that mediation might be happening too quickly. In an August 2, 2013 letter from the Claimant Advisor Office to the Mediation Pilot Project Steering Committee, Mr. Phil Lancaster wrote:

Claimant Advisors are unanimous in their opinion that mediation appears much more useful to claimants after there has been some, and occasionally, much, investigation. they would prefer to be able to bring claimants to mediation only when sufficient investigation has been undertaken which would allow the MPI mediation representatives...to take a second look at an appeal and to assess whether their discretion could and should be applied to provide additional PIPP coverage....Claimant Advisors wish to be clear that their experience with mediation has been very positive and that they are committed to full participation should the mediation pilot project be continued.

Mediation participants did not report the same concern that claimant advisors did about mediation happening too quickly. Rather, mediation participants talked about how helpful their claimant advisors were; 86% of mediation participants strongly agree or agree that their advisors were helpful in preparing them for their mediation session. Only 8% disagree or strongly disagree. Three quarters of all participants from all three groups (77% for baseline, 74% for non-mediation, and 79% for mediation) had someone assist them through the appeal or mediation process. When asked who assisted them, over half of baseline and non-mediation appellants were assisted by a claimant advisor, 52% and 57%

respectively. The number is much higher for mediation participants; 81% of mediation participants who were assisted were assisted by a claimant advisor. Thus, 81% of assisted mediation participants had a claimant advisor and 86% of them agree their claimant advisor was helpful. The most common other sources of assistance for all three groups were family or friends (29% for baseline, 21% for non-mediation, and 15% for mediation) and lawyers (28% for baseline, 17% for non-mediation, and 16% for mediation).²⁶

Also, in terms of bringing a helper or support person along, mediation participants made the most use of claimant advisors. Only 29% brought a family member or friend to their pre-mediation session, as compared to 80% who brought a claimant advisor, and 17% who brought lawyers. In their mediation sessions, mediation participants brought family or friends 31% of the time, claimant advisors 79% of the time, and lawyers 15% of the time.²⁷ Mediation participants are making more use of claimant advisors than either of the other two groups.²⁸

When baseline appellants were asked what they thought worked well during their appeal, the most frequent response was that the claimant advisor or AICAC was thorough and professional (21% - n17). When non-mediation appellants were asked what worked well during their appeal process their most frequent response (32% - n24) was also that the claimant advisor or AICAC was thorough and professional. When mediation participants were asked what went well during their mediation process the most frequent response was that the claimant advisor was thorough and professional (41% - n44). Thus, across the board, in all three groups, respondents thought well of claimant advisors. Having a free advisor attend to support participants through their dispute resolution process was experienced as very valuable by everyone.

A concern voiced by the AIM Project Manager was that:

²⁶ In some cases mediation participants gave multiple responses and/or had more than one type of representation. As such, total numbers were more than 100%.

²⁷ In some cases mediation participants gave multiple responses and/or had more than one type of support person along. As such, total numbers were more than 100%.

²⁸ Most baseline appellants brought a family member or friend (52%) with them to their appeal hearing. Thirty-six percent brought a claimant advisor, and 26% brought a lawyer. Non-mediation appellants brought a family member or friend to their appeal hearing (46%), a claimant advisor (39%) or a lawyer (21%).

As with the IMCs [Injury Management Coordinators or MPI reps] there is variability in the Claimant Advisors' approaches at mediation....If the advisor helps prepare the claimant for mediation (i.e. putting forth relevant documents, explaining mediation process, managing expectations, and is available for guidance and consultation and support) it is invaluable. On the other hand for those claimant advisors who find it challenging to "take off their advocacy hat," it is not as valuable and at times obstructive to the process.²⁹

This is a note-worthy observation and coalesced with my observations in some mediation sessions. Mediation is as much an art as it is a science, and some advisors understand it better than others. For those claimant advisors who find it difficult to provide advice as opposed to advocacy, their talents might better be utilized in different fora.

F. MPI Representatives

Sixty-seven percent of mediation participants felt that the MPI representative who attended their mediation session took the mediation of the case seriously while 24% disagreed or strongly disagreed with that statement. These numbers should be improved. All Manitoba Public Insurance representatives (case managers and internal review officers) must take Automobile Injury Mediation seriously. This is especially important for future buy-in to the mediation process. When mandatory mediation was instituted in Ontario,³⁰ not all stakeholders took it seriously. This greatly affected buy-in, especially amongst commercial litigators in Toronto, who were least on board with the idea of mandatory mediation.³¹ Over time, as experience with AIM increases, MPI representatives, like Ontario commercial litigators, will take mediation even more seriously, which will improve all parties' experience of mediation, increase the likelihood of agreements being reached, and will enhance mediation culture in the province of Manitoba.

²⁹ Interview with Ms. Evelyn Bernstein, AIM Project Manager, December 19, 2013.

³⁰ Pursuant to rule 24.1 of Ontario's *Rules of Civil Procedure*, RRO 1990, Reg 194.

³¹ Law Reform Commission of Canada, *Culture Change? Commercial Litigators and the Ontario Mandatory Mediation Program*, by Julie Macfarlane for the Law Reform Commission of Canada, (Ontario, 2001).

I examined the impressions of MPI representatives involved with mediation.³² The Claims Operations and Service Delivery department at MPI created a PIPP Mediation Pilot Project MPI Representative Feedback Form. All MPI representatives who attended an AIM mediation on behalf of MPI during the pilot program were required to fill out this form at the conclusion of the mediation they attended. Because there were over 300 completed mediations, there are over 300 forms and they are very interesting. The questions that provided particularly useful information for the purpose of my evaluation were:

1. Thinking about the entire end-to-end mediation process, how much time did you spend on this mediation?
2. In your opinion, what worked well? What didn't work? Do you have any suggestions for improvement?
3. Overall, do you feel mediation was of benefit to resolving the appeal?
4. Overall, what impact, if any, do you feel mediation had on the relationship between the claimant and MPI?

Answers to the first question ranged from a low of 3 hours to a high of 29.5 hours, though most MPI representatives report spending approximately 12 hours on the entire mediation process. This is an encouraging result. Pre-mediation meetings are usually approximately an hour and a mediation session can be three hours, which means MPI representatives are generally spending a significant amount of time preparing for mediation, outside of the actual time they spend in pre-mediation and mediation.

When reading the answers to questions 2 through 4, many positive impressions of mediation surfaced:

Mediation was of benefit to settling the appeal because the potential for Ms. x to get all of her requests was certainly there had it gone to AICAC.

³² These were case managers and internal review officers. Although MPI occasionally uses legal counsel in mediations (usually only in cases when claimants come with lawyers), these lawyers' impressions were not collected as 'lawyers' are not part of the category "MPI Representatives."

I absolutely believe the mediation process was beneficial. The customer expressed her gratitude for this process and was very much appreciative of the outcome.

Yes, mediation was good. The claimant expressed that this has gone on for five years and had consumed her life and wanted to resolve the matter so she could move forward.

The claimant has been an MPI claimant since 1996 and most of his dealings have been related to treatment and medical expenses. An in-person meeting to discuss his claim was beneficial at this point.

Mediation worked well to resolve all issues presented. The forum allows for open communication and gives both parties the ability to clarify issues and positions taken by both MPI and the claimant. The CAO was very helpful in coming to a resolution.

The claimant resides in Alberta and the mediation was done by Skype which did work out quite well.

The mediation process was definitely helpful in resolving the issues under appeal. The time taken to openly discuss the issues and get a better understanding from both sides lead to the resolution of both issues under appeal.

The mediation process for this family worked very well. Additionally, the CA on this was very instrumental in informing the family of the issue with respect to the medical opinion and the mediator's legal background was helpful for providing information regarding the legalities of medical information and how it is used in court proceedings and by insurers.

Many MPI representatives commented on the fact that because they listened to the claimants, it really made a positive difference:

In spite of no resolution, the claimant was very thankful for the time I took to listen to her, understand her living situation and explain what benefits of entitlement would be if she wins her appeal.

I believe it was positive, for all involved. This venue was definitely positive as x very much wanted someone to hear his story and to validate his experiences.

The claimant continues to suffer from PTSD and intense panic and anxiety from the MVA. She was extremely tearful throughout the mediation and when we resolved the appeal, she was grateful to have closure and said to me "for the first time she feels validated."

The claimant was able to communicate the ongoing symptoms he continues to experience and how it impacts him on a daily basis. The claimant gained a better understanding on how his impairment had been assessed based on the medical

information we had available at that time. The claimant produced new medical information prior to the mediation which I was able to review with HCS before the mediation session began.

The claimant advised that she was thankful that I would listen to her concerns and understand the impact the MVA had on her physical & psychological well-being.

Mediation was of benefit to settling the appeal. Based on the new medical information and discussion with the claimant, the permanent impairment issue was resolved.

The mediation was very positive. The claimant's husband stated that the best thing that happened in the mediation is that they got an explanation like they never had before. Although the appeal was upheld, the family was very much appreciative for the time spent explaining to them PIPP coverage and how entitlements work.

These comments, shared by MPI representatives, mirror the Project Manager's impressions, shared with me in her December 19, 2013 interview:

Claimants have expressed their satisfaction to mediators and to me that they were so thrilled to finally be heard, to be respected, as well as to gain a better understanding of MPI's perspective (stating this was not adequately explained to them before). I have even received positive feedback from claimants where the case did not resolve but the claimants still appreciated the opportunity to tell their stories, even though they may not have achieved the end result they were looking for.

When MPI representatives really listened to claimants, MPI representatives sometimes learned something new:

The most important part about this mediation was having the opportunity to hear the Appellant tell his story. Nowhere in the file notes was it documented about his pre and post MVA physical function. The Appellant appreciated being heard and validated. After hearing the change in his overall function it could not be denied that the MVA was a factor. The Thin Skull Rule was very much applicable. The Mediator and CAO were also both collaborative and helpful with my questions as well as resolving the mediating issue and understanding my limits and educating the Appellant on his expectations.

It was of real benefit to meet with the claimant and her family. I was able to get a better understanding of her level of function and determine that there was a language barrier during the PCA assessment that we based end of her entitlement on. As she is French language, arrangements were made to get an updated assessment by French speaking OT. The mediator and CAO were in agreement with obtaining further information and not trying to resolve the matter until the information was obtained.

The issue under appeal had to do with IRI calculation for self-employed. Having the IRI supervisor attend the pre-mediation and mediation hearing was extremely helpful as this is a complicated area and their expertise was integral to resolving the issue. I was also able to consult with the Manager of IRI during the hearing for guidance and input which was very beneficial.

A thread running through some comments suggests that some MPI representatives do not always understand the latitude and creativity that are the hallmarks of mediation. Mediation is an alternative to formal appeal and legal processes, and is, by definition, more flexible, more participant-driven, and more creative than those processes. Disputing parties fashion the resolution together; no third party decision-maker exists. As such, most mediators operate on the assumption that any resolution is possible during mediation, as long as it is mutually agreed-upon. Some MPI representatives, however, especially in Phase I of the mediation pilot, operated on the assumption that only resolutions explicitly and literally contemplated by the PIPP legislation could be reached. As the pilot project progressed, and especially in Phase II, MPI representatives began to develop a more refined understanding of the mediation process. Instead of characterizing an internal review decision as either right or wrong, MPI representatives began to take a more nuanced approach. They began to look at the claimant's file in its entirety and at the enabling legislation as a whole, and inquired whether perhaps a different decision could be made. MPI representatives also became better at explaining to claimants why certain resolutions would not be possible. Often claimants did not realize that some resolutions were simply not possible due to the PIPP legislation. When MPI representatives took the time to explain the reasons why a particular resolution would not be possible, claimants generally appreciated it. This was also noted by the Claimant Advisor Office:

Claimants consistently, and almost universally, expressed satisfaction following a mediated closure of their appeals. This was the case whether as a result of the outcome they received further benefits or not. One factor in increased satisfaction for claimants was the willingness and ability of the MPI representative in the mediation to explain the reasons for the denial of any specific benefit sought. A second factor was where the MPI representative in the

mediation was open to discussing and, where it seemed useful, exploring issues formally outside of, or peripheral to, the issues under appeal.³³

Over time, a greater understanding of how PIPP legislation and the AIM mediation program work together will allow for more opportunities to creatively resolve appeals in ways that satisfy claimants while remaining within the enabling legislation.

When asked about the impact mediation had on the relationship between claimants and MPI, MPI representatives' comments were occasionally neutral, but predominantly positive, such as, "Mediation had an impact on the relationship between the claimant and MPI because the claimant was just happy to be validated and have this matter resolved. The relationship between MPI and Claimant is improved due to this process." Other comments underscored the importance of apologies in mediation, such as: "It helped in that she felt she was heard and that she was now fairly compensated for an injury that has left her face disfigured for the rest of her life and causing her to avoid mirrors and getting her picture taken. Also, I apologized for the alleged comment made in IRO."³⁴ And one comment highlighted the power of good mediation drafting:

The claimant had a lot of concerns about the case management of his file in the past and is apprehensive about his future dealings with MPI. Assurances were provided to him in the mediation and some of those were included in the memorandum of agreement in order to satisfy the claimant. Both the claimant and his lawyer expressed their gratitude for the time spent in the mediation listening to the claimant's experience and concerns and explaining MPI's policies.³⁵

Based on my evaluation of the AIM pilot project and my attendance at seven mediation sessions, I am of the view that a good MPI representative makes an incredibly positive difference to both the flow and the outcome of mediation sessions. The AIM Project Manager agrees: "The ability to engage in mediation does not suit everyone; the program would be better

³³ January 17, 2014 interview with Mr. Bob Sample, Director, Claimant Advisor Office and Mr. Phil Lancaster, Claimant Advisor, on behalf of the Claimant Advisor Office.

³⁴ There is much research to support the fact that a genuine apology made during the course of mediation can go a long way toward paving the way for resolution.

³⁵ This is very interesting because it means that assurances that will help with the claimant's future perceptions of MPI were actually pro-actively included in the mediation agreement. This is a testament to the creative resolutions that can be achieved through the AIM mediation process.

served if there was consistency in the approaches by the various IMCs. Only those IMCs who have the required skill set and desire to participate should do so and MPI should not require the other IMCs to participate.”³⁶

Overall the people involved with the AIM Pilot Project – the mediators, AIM office staff, claimant advisors, and MPI representatives – are doing a good job and should continue investing time and energy into the mediation process to ensure its on-going success.

V. FINDINGS ABOUT PROCESSES

A. Expectations Met

When mediation participants were asked whether what they expected would happen in mediation is what they actually experienced, interesting results were obtained. Thirty-one percent disagreed or strongly disagreed, which means for approximately a third of mediation participants, results did not meet their expectations. Sixteen percent neither agreed nor disagreed, and 53% said they agreed or strongly agreed that what they expected would happen is what happened.

The cross-tabulations I had kiskquared undertake helped with interpreting these results as they indicate that the following groups of mediation participants are more likely to agree their expectations of mediation were what they experienced:

- Those who agree their experience overall was a positive one
- Those satisfied or very satisfied with the outcome
- Those who say they would recommend the mediation process to others
- Those satisfied with the overall process with respect to their injury claim
- Those who say MPI met or nearly met their expectations
- Men

In other words, if a participant got what he wanted, he would say his expectations matched reality. This means that in any future evaluation of the AIM Program, further inquiries should be made in order to determine

³⁶ Interview with Ms. Evelyn Bernstein, AIM Project Manager, December 19, 2013.

where the expectation gaps occur (what are the unmet expectations about?) and who might be best suited to fill those gaps or to provide more information (for e.g., mediators in pre-mediation or claimant advisors?)

B. Entitlement

Just over half of baseline appellants (52% - n44) strongly disagree they received what they were entitled to. This proportion is similarly high for non-mediation participants (54% - n41) and considerably lower for the mediation group (27% - n29). This means that mediation participants felt better about what they received than all other groups.

The proportion of baseline (30% - n25) and non-mediation appellants (23% - n17) who say they either agree or strongly agree they received what they were entitled to is lower than the proportion of mediation participants who say the same. Forty-five percent (n49) of mediation participants agree or strongly agree they received what they were entitled to.

C. Effective Way to Resolve Disputes

About half of baseline appellants agree (33% - n28) or strongly agree (21% - n18) that mediation is an effective way to resolve disagreements with injury claims, especially as an alternative to an appeal through the law courts or through the AICAC appeals process. Twelve percent (n9) of non-mediation appellants strongly agreed and 45% agreed (n35).

Many more mediation participants agree that mediation is an effective way to resolve disagreements with injury claims (81% - n88 - a combination of strongly agreed and agreed) while 6% strongly disagreed (n7). A smaller proportion of mediation participants (7% - n8) neither agree nor disagree that mediation is effective in resolving injury claim disagreements. In this case, answers of “I don’t know/refused” were included to demonstrate survey respondents’ unfamiliarity with the idea of mediation. Seven percent (n6) of baseline appellants and 19% (n15) of non-mediation appellants have no opinion regarding mediation’s effectiveness.

D. Final Outcome was Fair

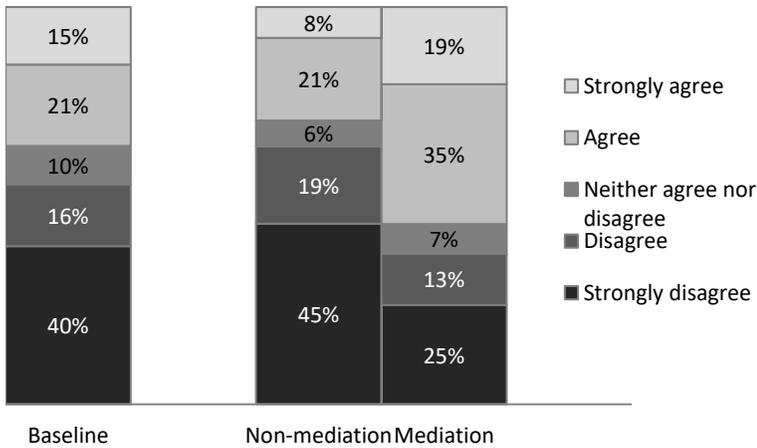
Over half (54%) of mediation participants agree or strongly agree that the final outcome of their case was fair. This is to be contrasted with 29%

of non-mediation participants and 36% of baseline appellants who felt their final outcomes were fair (see figure 5).

Although a quarter of mediation participants strongly disagreed that their final outcomes were fair (figure 5), the corresponding numbers were significantly higher amongst baseline (40%) and non-mediation participants (45%).

When one tallies those participants who disagree or strongly disagree that the final outcome was fair, we find 64% of the non-mediation group and 56% of the baseline group feel this way, as contrasted with 38% of the mediation group. It is therefore accurate to say that those participants who mediated their claims with MPI feel their final outcomes were fairer than those who did not mediate.

FIGURE 5 AGREEMENT... THE FINAL OUTCOME WAS FAIR



Note: Data derived from Q11 and Q91. Baseline n = 83 non-mediation n = 77 mediation n = 108.

I also asked interviewers to inquire about the mediation sessions themselves. Therefore, mediation participants were also asked to cite their agreement that the outcome received *as a result of the mediation session* was fair. Sixty percent agree or strongly agree that that was the case, while 28% disagreed or strongly disagreed that the outcome they received as a result of the mediation session was fair.

E. Bias

Participants were asked whether the dispute resolution process they undertook (appeal or mediation) favoured one party more than the other. The mediation participants had a much more positive response to this question, meaning fewer of them thought there was bias. Seventy-six percent of mediation participants agree or strongly agree that their dispute resolution process did not favour one party more than the other party. This is to be contrasted with those in the non-mediation group where only 26% agreed or strongly agreed that their appeal process did not favour one party more than the other party. Forty percent of baseline appellants agreed or strongly agreed that their appeal process did not favour one party more than the other party.

F. Respectful

The vast majority of mediation participants (88% - n96) agree that they were treated with respect throughout the mediation process. The proportion is notably lower among baseline appellants (66% - n54) and non-mediation appellants (56% - n44). Similarly, a much larger proportion of baseline (30%) and non-mediation appellants (29%) disagree or strongly disagree that they were treated with respect throughout the appeal process. Only 6% of mediation participants disagree or strongly disagree. These findings are in line with over a decade of research that demonstrates that the feelings of respect engendered by the mediation process are real and make a difference to disputants.³⁷

G. What Went Well

When baseline appellants, non-mediation appellants, and mediation participants were asked what they thought worked well during their process, the most frequent response across all three groups was that the claimant advisor or AICAC were thorough and professional (baseline: 21% - n17; non-mediation: 32% - n24; and mediation: 41% - n44).

³⁷ See: Julie Macfarlane, *supra* note 31; Leslie MacLeod, *supra* note 7; Julie Macfarlane & Michaela Keet, "Learning from Experience: An Evaluation of the Saskatchewan Queen's Bench Mediation Program: Final Report" (Regina: Saskatchewan Justice 2003); The Canadian Human Rights Tribunal Mediation Pilot (2000); and "Evaluation of the Alternative Dispute Resolution Pilot Project (2001), Nova Scotia: Human Resources and Development Canada.

Next, 16% (n13) of baseline appellants said the process was clear or fair, and 41% (n33) said they felt nothing went well during the process. Another 10% had other negative comments.

For non-mediation appellants, the next response, 31%, said nothing went well during the process and another 5% had other negative comments.

For mediation participants, the next most frequent answer was that the process was clear or fair (21% - n23), and then that “they listened to me” (17% - n18). This is a significant difference. It demonstrates that the AIM mediators are doing their jobs well, as “feeling heard” is one of the cornerstones of good mediation practice and contributes greatly to participant satisfaction and willingness to resolve disputes. As leading mediation scholars note: “Parties feel that they have a voice in the mediation and are being heard and understood by the mediator. This latter point is important as it is a strong indicator that participants’ procedural justice needs are being met.”³⁸ When participants feel they were listened to in a clear process, it means the mediation was properly conducted.

The fact that mediation participants feel heard is also significant because it is a top three result only with the mediation participants. This provides a qualitative and quantitative indication that mediation is experienced as a more “user-friendly” process than appealing. The mediation participants also had the lowest percentage of all three groups, 16% (n17), who said that nothing went well during the process, and only 5% (n5) made other negative comments.

The positive comments made by mediation participants underline the importance of feeling heard or being listened to:

- Autopac [MPI] was able to back off and not tell me what to do. Mediation took over and I felt comfortable.
- It was nice to feel like I was being kept in the know.

³⁸ Ellen Zweibel, Julie Macfarlane & John Manwaring, *Negotiating Solutions to Workplace Conflict: An Evaluation of the Public Service Staff Relations Board Pilot Grievance Mediation Project: Final Report* (Ottawa: Public Service Staff Relations Board, March 2001) at 39.

- I was able to talk to an MPI rep directly. It was good to have a third party there who was neutral, and able to keep us on track.
- I got to tell my side of the story.
- I was respected and got to talk to someone who listened.
- It was the only time I got a MPI manager to actually listen to me. It was great to finally be able to tell my side of the story.
- The people made it work. Everyone was kind and respectful.
- The office staff were helpful. I was assigned a Punjabi interpreter free of charge.

Scholars agree that clear, fair mediation processes wherein disputants feel heard are hallmarks of successful mediation programs.³⁹

H. What Did Not Go Well

In terms of negative feedback, the most frequent response from baseline appellants to the question, “what, if any, difficulties did you experience during the appeal process?” was that the appeal process took too long (22% - n18). A further 19% (n15) said that the process was biased in favour of MPI and 15% (n12) said they were treated disrespectfully. Nine percent (n7) said they had no difficulties.

The non-mediation appellants agreed that the process took too long (21% - n16) and that the process was biased in favour of MPI (18% - n14). Nine percent (n7) thought they were treated disrespectfully and 8% (n6) said they had no difficulties during the appeal process.

Of the mediation participants, only half as many, 11% (n12), said the process took too long and only 8% (n8) said the process was biased in favour of MPI. Only 8% (n8) thought they were treated disrespectfully and a much larger percentage than the other two groups, 32% (n34), said they had no difficulties with the mediation process. These findings reinforce my conclusions that mediation is experienced more positively than the appeal process.

³⁹ Julie Macfarlane, *supra* note 23; S Goldberg, F Sander, & N Rogers, *supra* note 23; C Moore, *supra* note 23; Andrew J Pirie, *supra* note 23.

I. What is a Successful Mediation?

How do mediation participants define a successful mediation? The largest group of respondents, 25%, indicate that reaching a mutually acceptable decision, where both parties are satisfied, is what defines a successful mediation. It is important to note that respondents' answers focussed on the satisfaction of *both* parties. Mediation participants in this group said things like:

- A successful mediation is with both sides coming into an agreement without taking any advantage of the other's weakness, but for both sides to put an effort towards fairness and justice.
- Where either party will not necessarily get everything they want, but both parties feel that what they got was fair.
- Both parties agree on a common resolution. It is not about winning but about mutual agreement.
- Where both sides express their opinions and make a decision together.

The next largest group, 19%, said a successful mediation is one that is fair and unbiased, and made comments such as:

- The mediator speaks up for both the claimant and the Autopac [MPI] rep equally so that what I said had equal weight to what Autopac said. I was told a mediator should be impartial and I agree that an impartial mediator would be part of a successful mediation.
- A process where both parties are heard and that the mediator does not favour any of the parties.
- Both parties are given opportunity to explain their side in front of an unbiased mediator.

The third largest group, 12%, said if the participants feel heard and are treated respectfully, that would be a sign of a successful mediation:

- Feeling like I was heard and respected listened to and believed.

- Everyone was prepared in advance. They gave us all the time we needed to talk to them; we felt respected and that we were being heard.
- That they really listen and give reasons for their process.
- Having an opportunity to thoroughly discuss your own side of the story makes for a successful mediation.

These findings are important because they are extremely well-aligned with the leading definition of mediation, namely that mediators should be impartial third parties without decision-making power who assist parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute.⁴⁰ AIM mediation participants further impress because they do not focus on themselves in terms of defining a successful mediation. Rather, they focus on the mediation process itself. Indeed, only 8% of AIM participants said that mediation was successful because “I got what I wanted.” Importantly, the largest group said that reaching a *mutually* acceptable decision, where *both* parties are satisfied, is what defines a successful mediation.

VI. OVERALL SATISFACTION

A. Pre-Mediation & Mediation

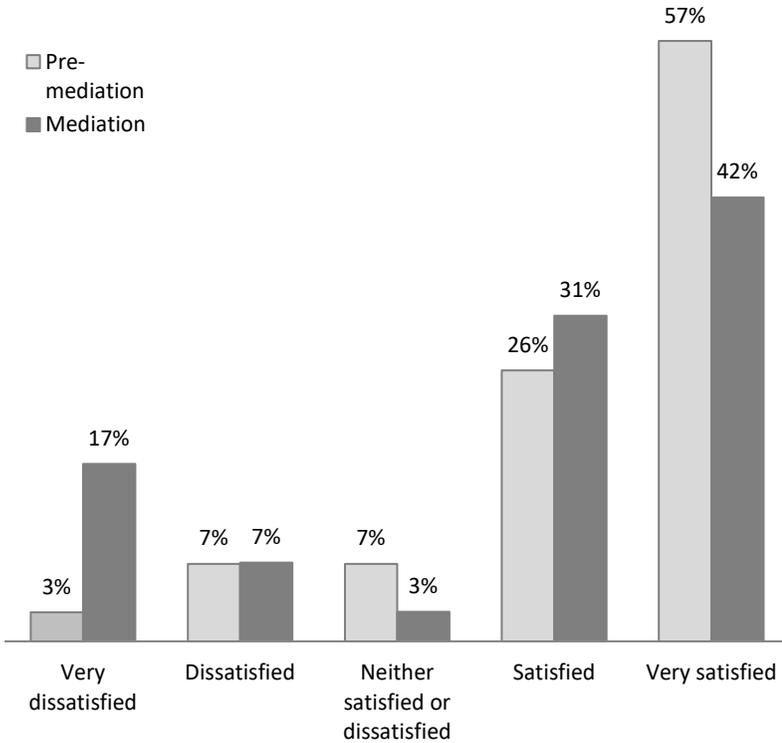
In terms of overall satisfaction with the pre-mediation and mediation experience, as shown in figure 6, over one half (57% - n62) of the mediation participants report they are very satisfied with their pre-mediation experience. A further 26% (n28) are satisfied which means that 83% are satisfied or very satisfied with their pre-mediation experience. Only 10% (n11) are dissatisfied or very dissatisfied with their pre-mediation experience.

The majority of mediation participants are also satisfied with their overall mediation experience (see figure 6). Seventy-three percent are satisfied or very satisfied (n78). Twenty-four percent (n26) say they are very dissatisfied or dissatisfied with their overall mediation experience. When almost three quarters (73%) of participants are happy with their AIM

⁴⁰ Christopher Moore, *supra* note 23 at 15.

mediation experience, that is a positive endorsement of the mediation pilot project.

FIGURE 6 OVERALL SATISFACTION WITH PRE-MEDIATION / MEDIATION EXPERIENCE

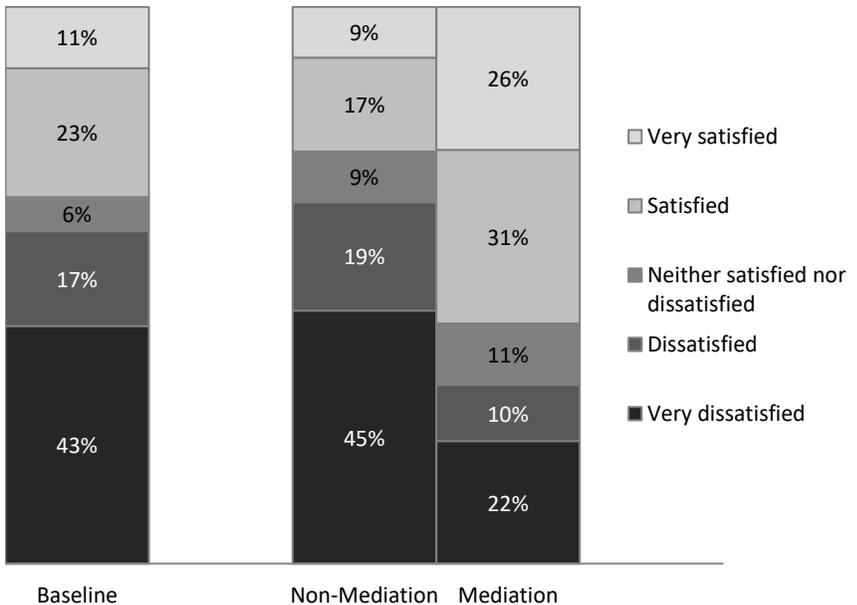


B. Final Outcome

In terms of satisfaction with the final decision or outcome in their cases, mediation participants have the highest proportion who say they are very satisfied (26% - n28); only about one in ten of both baseline (11% - n9) and non-mediation groups (9% - n7) cite very high satisfaction (see figure 7). When “satisfied” and “very satisfied” results are tallied, mediation participants are at 57%, baseline are at 34%, and non-mediation are at 26%. Thus, more mediation participants are satisfied with the final outcome of their cases than any of the other groups.

Significant proportions of each group are also very dissatisfied with the final decision or outcome (see figure 7). Twenty-two percent (n24) of mediation participants (the lowest percentage), 45% (n35) of non-mediation appellants, and 43% of baseline appellants (n35) are very dissatisfied with the final outcome of their cases.

FIGURE 7 **SATISFACTION WITH THE FINAL DECISION OR OUTCOME**



Note: Data derived from Q18 and Q98. Baseline n = 82 non-mediation n = 77 mediation n = 109.

C. Overall Experience

We asked participants whether they agreed with the statement: “my experience overall was a positive one.” Almost three quarters of mediation participants, 74% - n80, agree or strongly agree that their experience overall was positive. This is a very positive finding and is significantly higher than the results for the non-mediation group (32% - n25) and baseline group (36% - n30). Almost 60% of non-mediation and baseline

appellants disagree or strongly disagree that their experience overall was a positive one.

D. Willingness to Recommend

Sixty-eight percent of baseline appellants, 62% of non-mediation participants, and 81% (the highest percentage) of mediation participants are willing to recommend the process they used to another person in a similar situation. Also, the majority of mediation participants, 77% (n84) would use mediation if they were in a similar situation again. Eighteen percent (n20) would not use mediation again and 5% (n5) were unsure.

VII. CULTURE

A. Has a ‘cultural change’ occurred as a result of instituting AIM?

I wanted to evaluate whether AIM created any attitudinal shifts. In other words, did this mediation pilot project serve as a catalyst for any cultural change?

Indicia of success for a mediation program are broader than merely ‘resolution.’ They include changed and improved understandings, greater public awareness, the discovery of new information, and enhanced reputation of stakeholders. As Keet and Macfarlane put it: “we need to find reliable means of evaluating not only the achievement of primary program goals – such as settlement rates and client satisfaction – but also the impact of the local cultural context, historical factors and the nature of any systemic changes including the consciousness of [stakeholders].”⁴¹

It is very difficult to measure whether the consciousness of AIM Pilot Project stakeholders changed. However, based upon the two year evaluation I undertook, I can state that both claimants and MPI representatives care about their relationship with one another. Many claimants are very stressed and long for an improved relationship with their contacts at MPI. Equally, many MPI staff feel stressed and overworked. Any process that leads to both parties learning more about each other and understanding one another’s positions better, will help both parties, and will likely lead to greater mediation awareness. One

⁴¹ Keet & Macfarlane, *supra* note 11 at 702.

mediation participant said, “Mediation is exactly what MPI needs to do with clients because it’s more personal. It feels like they care and clients get to speak to someone that matters.”

Importantly, 75% (n81) of mediation participants say their experience with the AIM mediation process had a positive impact on how they currently feel about mediation generally. Of those, 38% (n41) say it had a very positive impact. Mediation participants’ positive impressions of their AIM mediations transferred over to their general views on mediation. Interestingly, and consistent with some of the research on gender and mediation, female mediation participants were more likely to say the mediation process had a very positive impact on how they feel about mediation generally.⁴²

I had the interview team ask further questions of all three participant groups about potential cultural change. The following results or answers to those questions relate to cultural change as a result of the AIM pilot project:

B. Understand PIPP

When we asked participants in all three groups if they understood what the Personal Injury Protection Plan (PIPP) covers, the mediation participants reported a slightly higher understanding than the other two groups (see figure 17). Sixty-three percent of mediation participants have a good or very good understanding of what PIPP covers. Fifty-four percent of non-mediation appellants report a good or very good understanding, and 57% of baseline appellants report a good or very good understanding of what PIPP covers. Twenty percent of baseline respondents believe they have a very poor or poor understanding of what PIPP covers. This response rate is similar among non-mediation respondents (22%) and mediation participants (17%). These results do not suggest a great understanding of PIPP coverage, so this is not an area of particular cultural change.

⁴² Deborah M Kolb & Judith Williams, *Everyday Negotiation: Navigating the Hidden Agendas in Bargaining* (San Francisco: Jossey-Bass, 2003); Carrie Menkel-Meadow, Lela Porter Love, & Andrea Kupfer Schneider, *Mediation: Practice, Policy, and Ethics* (New York: Aspen, 2006). Cross-tabulations examining gender were conducted throughout my evaluation, however gender was not found to be significant unless specifically mentioned in my report or in this article.

C. Understand Reasons Behind Decision

Only half of baseline (53% - n43) and even fewer non-mediation appellants (44% - n33) agree or strongly agree they understand the reasons behind why the final decision was made in their appeal. On the other hand, 75% (n81) of mediation participants agree or strongly agree they understand the reasons behind the final outcomes of their mediations. This indicates a significantly greater understanding amongst mediation participants than all other respondents.

Only one in five mediation participants (10% - n11) strongly disagree they understand the reasons behind why the final decision was made, compared to more than twice as many in the baseline (25%) and non-mediation groups (28%). Ninety-five percent of mediation participants agree or strongly agree that the letter or information package regarding the final decision in their mediation was easy to understand. This is to be contrasted with 69% of non-mediation and 76% of baseline appellants.

These findings suggest that claimants understand MPI's reasons for decisions better when those reasons are presented to them in mediation rather than through the appeal process. Claimants find reasons easier to understand when they are explained to them face to face, in the more informal setting of mediation, where they can ask questions. Developing greater understanding of the reasons behind important decisions made in one's life, especially as they relate to something as important as personal injury, is crucial for accepting and integrating those decisions. Acceptance and integration are essential for attitudinal shifts and cultural change, so these results indicate the potential for cultural change inspired by the AIM Pilot Project.

D. Understand Mediation

Most baseline (68% - n55) and non-mediation appellants (78% - n58) agree or strongly agree they have a good understanding of what is involved in mediation. Low proportions of both groups are neutral or disagree with the statement. Respondents who used mediation were asked about their agreement with a slightly different statement: "I have a better understanding of mediation now as compared to before my mediation session." Seventy-nine percent agree or strongly agree (n43 and n44).

It is important to note that baseline appellants' familiarity with mediation likely comes from previous experience with mediation: one in three baseline appellants (32% - n27) has had previous experience with

mediation in a situation not related to his/her appeal. The proportion with previous experience is smaller for both non-mediation (21% - n16) and mediation groups (26% - n28). Concurrent with common sense, these results indicate that the more exposure participants have to good mediation processes, the greater their understanding of mediation will be, which in turn may help to inculcate a more robust mediation culture.

E. Take Mediation Seriously/Treat Mediation with Importance

An encouraging finding, and one that suggests that the process of cultural change is underway, is that the majority of baseline (71% - n53) and non-mediation appellants (81% - n57) agree or strongly agree that mediation should be approached with the same level of seriousness as if the resolution was handled by an appeal court.⁴³ One quarter of baseline appellants (n19) neither agree nor disagree with this statement, while very few disagree (4% - n3, see figure 19). Historically, legal and court processes were granted more credence and respect by Canadians than 'alternative' processes such as mediation.⁴⁴ These findings indicate that those older views are changing and that Manitobans are taking dispute resolution processes such as mediation seriously.

Similarly, mediation participants agree that mediation should be treated with importance. Sixty-eight percent of mediation participants strongly agree (n28) or agree (n37) that cases that are resolved using mediation are treated with the same importance as those cases that are resolved using the appeals process. Four percent (n4) strongly disagree and 19% (n18) neither agree nor disagree. The fact that mediation is treated with importance is a signal that mediation is part of the current cultural understanding of available dispute resolution options.

⁴³ This was question 231 on the telephone survey, which asked about an 'appeal court.' The term 'appeal court' relates to AICAC, but we decided to use the term 'appeal court' on the telephone to lessen confusion for participants who would likely be unfamiliar with the AICAC acronym.

⁴⁴ Jennifer L Schulz & Jocelyn Turnbull, "Mediation: The 'Girly' Litigation?" (2012) 2:2 J Arbitration & Mediation at 43-74.

F. Stakeholder Opinions on Cultural Change

In my December 19, 2013 interview with the AIM Project Manager, I asked her whether the mediation pilot project served as a catalyst for cultural change. These are excerpts from her answer:

Unequivocally this mediation program has served as a catalyst for cultural change and attitudinal shifts. The more people are exposed to a process, the more familiar they will become with it, and if successful, the more people will buy into it as a preferred way to resolve disputes. I believe that this has already occurred with the implementation of this pilot mediation program.

...The public has certainly obtained a greater awareness and greater understanding of mediation now and this can only increase if the program becomes permanent.

...Of note, the cohort of the public that was introduced to mediation might have been a more difficult group than average to take to mediation. These were people who for the most part had issues with a government office, felt oppressed and felt unheard. Yet, we were able to win over the majority of this cohort to the merits of mediation. Think of how more broadly we can reach if we can extend mediation earlier in MPI cases and also to other government agencies.

...The public is more familiar with traditional tort application to cases and settlements; they don't fully understand that PIPP is a legislative scheme with limitations. Through discussion during the mediation process, the opportunity is available to educate the public about the legislation and that is very beneficial.

...As a result of the success of the program, the reputation of both MPI and the Appeals Commission is enhanced. People have the tendency to be sceptical and distrusting of MPI and other Crown Corporations. By not only offering this mediation program as part of the MPI dispute resolution process, but by fully engaging in the process, MPI is providing good customer service and therefore its reputation is bound to improve. Further, if people are made aware of the success the program, scepticism and distrust will be minimized.

In my January 17, 2014 interview with the Claimant Advisor Office, they responded as follows to the question whether the mediation pilot project served as a catalyst for cultural change:

One very impressive cultural change would appear to be at MPI. Through the Pilot, there has been an increased engagement by the MPI representatives in the mediation process. The MPI representatives have shown more empathy with the claimants in explaining MPI's position and a willingness to explore file reviews where it would appear to be appropriate.

...There is no doubt that for the majority of claimants, mediation has assisted in their understanding of their claim and their appeal. There is a cultural shift happening with the CAs also. To shift from the adversarial forum to the mediation forum has not been easy for all CAs. To change from advocate for the claimant in the investigation an adversarial hearing process, to simply an advisor in the mediation process, available when called upon, has not been easy....The cultural change is not complete yet but as CAs gain a greater understanding of the support role required in mediation, it will only enhance the PIPP dispute resolution process, especially as a supportive role does facilitate greater understanding on the part of the claimant.

Based on my two year evaluation of the AIM Pilot Project, I reported to the Government of Manitoba that the project instituted a process of cultural change at MPI, in the CAO, at AICAC, and with Manitobans generally. There is room to improve, but important initial attitudinal and cultural changes have begun. Voluntary mediation programs like AIM may be a much more powerful tool than mandatory mediation for changing disputing cultures.⁴⁵ “Dispute processing institutions do more than resolve disputes: they send messages to the community about how conflict is understood and valued; they set expectations; they both drive and reflect disputing culture.”⁴⁶ This is what AIM has begun in the province of Manitoba. There is now a nascent sense that MPI can be negotiated with, that injured drivers can receive timely compensation, and that disputing with a crown corporation need not be acrimonious, but rather, can be a positive experience. These cultural changes, begun by AIM, have the potential to flow beyond Manitoba Public Insurance. The successes of AIM could be implemented in other government departments; the Automobile Injury Mediation Pilot Project has the potential to be used as a model for dispute resolution by other government agencies.

VIII. CONCLUSIONS & SUGGESTIONS

From July 1, 2011 to June 30, 2013 I evaluated Manitoba’s Automobile Injury Mediation (AIM) Pilot Project. I measured quantitative and qualitative findings against five indicia of success:

⁴⁵ Nadja Alexander, ed, *Global Trends in Mediation*, 2d (The Netherlands: Kluwer Law International, 2006) at 25.

⁴⁶ *Ibid* at 35.

- (i) number of appeals
- (ii) time or duration of appeals
- (iii) cost
- (iv) participant satisfaction, and
- (v) culture change.

I found that the program was a success and I recommended that the Province of Manitoba formally institute it on a full time basis.

The AIM Pilot Project decreased the number of appeals and the duration or time required to resolve appeals. As of September 30, 2013 there was a 70% resolution rate for AIM mediations, which means that on average, 70% of the time there is a withdrawal or partial withdrawal of the original appeal.⁴⁷ AIM's overall resolution rate of 70% is very good and is comparable with other choice-based mediation programs in Canada.⁴⁸

Mediation is considerably faster than the AICAC appeal process. The average number of days from when a mediation application is received until the date mediation concludes is 154 days, or approximately 5 months. The average duration of an appeal from the point of filing to completion is 1036 days, or more than 2.5 years.

Mediation is cheaper than the AICAC appeal process. Between July 1, 2012 and June 30, 2013 the cost per concluded mediation was \$3,776.66 while the cost per concluded appeal was \$9,102.36. Mediation is thus \$5,325.70 cheaper per case than an appeal.

I also evaluated whether mediation participants were satisfied with AIM mediators, AIM office staff, claimant advisors, and MPI representatives. In all cases, mediation participants were satisfied or very satisfied with the people they encountered, dealt with, and worked with throughout the mediation process. In terms of overall satisfaction with the pre-mediation experience, 83% are satisfied or very satisfied with their pre-

⁴⁷ Phase I had a 69.72% resolution rate and phase II had a 64.04% resolution rate. The overall resolution rate at September 30, 2013 was 69.9% as reported in the AIM Office Reporting Criteria (see appendix 7).

⁴⁸ Ellen Zweibel, Julie Macfarlane & John Manwaring, *Negotiating Solutions to Workplace Conflict: An Evaluation of the Public Service Staff Relations Board Pilot Grievance Mediation Project: Final Report* (Ottawa: Public Service Staff Relations Board, March 2001) at iv.

mediation experience and 73% are satisfied or very satisfied with their mediation experience. These are very positive results.

I compared and contrasted mediation participants' impressions and perceptions about the mediation process with those who did not select mediation, and against a baseline appellant group. Almost three quarters of mediation participants, 74%, agree or strongly agree that their experience overall was positive. This is a very positive finding and is significantly higher than the results for the non-mediation group (32%) and baseline appellants (36%). Although a significant proportion, 31% percent, did not feel mediation met their expectations, these same participants thought that mediation was an effective way to resolve disputes, was fair, unbiased, convenient, and made them feel respected. These are important descriptors because they correspond exactly with what research and the mediation literature have highlighted as the best features of a good mediation program: one that is fair, unbiased, and respectful.

Along the same lines, when mediation participants were asked what they thought worked well during their process, the most frequent response was that "the claimant advisor was thorough and professional," followed by "the process was clear or fair," and "they listened to me." It is very important that a mediation process be described as fair and one in which participants feel heard as these are cornerstones of proper mediation practice.

When mediation participants describe a fair, unbiased process wherein they feel heard and respected, and they report that they are satisfied with the mediators in both the pre-mediation and mediation phases of the process, as participants did in my study, that comports with the literature describing successful mediation programs. For example, Lawrence et al. found, in their analysis of Canadian mediation programs, that in 10 of the 17 outcome measures they analysed, mediation programs demonstrated a positive impact. They note that, "In the following areas mediation is demonstrated to provide an improvement:

- measured staff hours saved
- measured case length
- perception of time savings
- proportion of cases successfully settled
- perceptions of fairness
- satisfaction with the outcome
- satisfaction with the process

- perception of compliance
- perceptions of cost savings
- measured costs saved.”⁴⁹

AIM also provides an improvement in those areas in Manitoba.⁵⁰

When asked what they thought did not work well in the mediation process, a much greater percentage of mediation participants compared to non-mediation and baseline groups said they had no difficulties whatsoever with the mediation process. The difficulties that were outlined included things like: the process took too long, the process was biased in favour of MPI, and the location of the AIM office was hard to find. Eighty-one percent of mediation participants were willing to recommend mediation to another person in a similar situation and 77% of mediation participants would use mediation if they were in a similar situation again.

AIM has begun to institute a ‘cultural change’ amongst stakeholders, but there is still work to be done. Manitobans who participated in the pilot project now understand mediation and the reasons behind the decisions on their appeals better, though they would still like to understand the PIPP legislation better. Mediation participants feel as if mediation is treated with as much importance as the AICAC appeals process. All stakeholders whom I interviewed believe the AIM mediation process should continue, as do I, which is why I recommended to the Government of Manitoba that the Automobile Injury Mediation Pilot Project be formally adopted. Additionally, I recommended a name change from AIM Pilot Project to AIM Program, and that the Program be made permanent either by revising or enacting legislation to formally establish it.

Further, I made twelve suggestions subject to the Province of Manitoba’s decision to implement AIM. These suggestions may also be useful for other provinces or government departments who are planning to institute their own mediation programs. Readers who are contemplating instituting a mediation program should read the following

⁴⁹ Austin Lawrence, Jennifer Nugent & Cara Scarfone, *The Effectiveness of Using Mediation in Selected Civil Law Disputes: A Meta-Analysis* (Ottawa: Department of Justice Canada, 2007) at v and 25.

⁵⁰ AIM provides an improvement in 9 of the 10 areas listed by Lawrence et al (see note 49 and accompanying text). I did not measure staff hours saved so I cannot comment on that, which is why AIM comports with 9 of Lawrence et al’s 10.

suggestions substituting the name of their organization wherever they see “AIM.”

1. AIM should establish time lines for each stage of the process and comply with them, and work on reducing the wait time to mediation to 60 days.

Appellants who submit notices to appeal and choose mediation should have their files turned over to AIM in a matter of days, not weeks. When AIM office staff review and open the mediation files, they then send out applications to the appellants. By the time the appellants also reply, a further six weeks can pass. If appellants have selected mediation on their original notice of appeal form, it would appear to be unnecessary for AIM to send out a further mediation application, which could result in time savings.

2. AIM, AICAC, and MPI should work together to ensure prompt dissemination of documents to all mediation stakeholders within days as opposed to weeks.

For example, the CAO feels it should have documentary disclosure from MPI earlier in the process, before mediation has begun.⁵¹ Other evaluations have noted the importance of information exchange in advance of the mediation session,⁵² thus, this is a goal to consider striving toward. Key documents should be exchanged no later than ten days before the pre-mediation or mediation session.⁵³

Claimant advisors and MPI representatives should do any necessary investigation and preparation as soon as possible after becoming aware of

⁵¹ January 17, 2014 interview with Mr. Bob Sample, Director, Claimant Advisor Office and Mr. Phil Lancaster, Claimant Advisor, on behalf of the Claimant Advisor Office.

⁵² Keet & Macfarlane, *supra* note 11 at 697.

⁵³ An anonymous reviewer of this article made the suggestion that relevant information which surfaces from either side after the mediation has been arranged should perhaps result in the matter being referred back to the case manager pursuant to s. 171 of the *Manitoba Public Insurance Corporation Act*. That, or rescheduling the mediation until all parties have a chance to review the new information, are options worth considering.

a file so that mediation sessions are of maximum productivity. Once a mediation date is set, all parties – claimants, mediators, MPI representatives, support people, and claimant advisors – are expected to be ready to meaningfully proceed on that date.

With the development of clear timelines, shared with all stakeholders (e.g. CAs and MPI reps) files will move through the mediation process as quickly and as efficiently as possible. Requests for postponements should be minimized if all parties are aware of the process timelines. AIM office staff should have reminder systems in place to ensure they are able to follow-up proactively and prevent time lags/delays.

Similarly, the arrangement whereby MPI's Health Care Services are required to conduct their review and provide a report within 4 weeks of submission of information in all cases where mediation is pending or in progress should be institutionalized.

3. AIM and AICAC should coordinate their application processes to standardize and use only one simplified application form, and they should review and revise all of their mediation-related correspondence to ensure that it is as succinct and clear as possible.

4. It would be worth considering relocating the AIM office to a new, easier to find location. If relocation is not possible, signage should be increased. All correspondence should include directions to the AIM office, a map, and parking information.

5. It will be important to create an AIM webpage linked to the PIPP website or featured on the PIPP webpage. The AIM information should include directions to the AIM office and a map as well as parking information. The mediation process should be described as an option in the PIPP resolution process, information about mediation should be included in the FAQs, and it should be made clear that the AIM office is completely neutral and has no advocacy role.

6. All AIM office staff should be independent, arm's length hires who have some prior knowledge of or experience with mediation. Consider the feasibility of hiring an AIM office case worker to assist mediation

participants by explaining the mediation process and helping them prepare for their mediation sessions.

7. Written criteria for mediation should be established that outline the case types appropriate for mediation. Written screening criteria, including for safety concerns, should also be established. These criteria should be shared with AIM office staff, MPI representatives, and claimant advisors. Consider the possibility that the CAO may then be able to refer appropriate cases to AIM.

8. More training should be provided for AIM mediators, MPI representatives, and claimant advisors. This training should stress the importance of actively listening to claimants (highly endorsed both in the literature and in the survey results) and allowing claimants to speak for themselves, even when represented (also a hallmark of effective mediation programs). Claimant advisors should be trained about the facilitative and supportive role (as opposed to advocacy role) that they have during the mediation process.

9. Designate specific Claimant Advisors who will do most of the mediation work on behalf of the Claimant Advisor Office. These would be claimant advisors who have been identified by the CAO as being well-suited to work in the AIM program.

10. Advisors and support people of any type (claimant advisors, lawyers, family or friends) should continue to be allowed to attend pre-mediation and mediation sessions.

11. Designate specific MPI representatives who are consistent in their philosophy and facilitative approach to mediation to represent MPI in mediation sessions. Continue to assign the majority of mediation cases to those injury management coordinators (there should be at least two) who have been identified by MPI as being well-suited to participating in mediation.

12. Continue to monitor and evaluate the AIM program over time.

Evaluation should occur on a regular and ongoing basis. For example, given that the signs of a maturing mediation program include: a preference for flexibility (making the program responsive), goal alignment (common views amongst stakeholders and participants), and increased legitimacy,⁵⁴ it would be useful to assess if these signs develop over time with AIM. It would also be useful to probe further in order to determine what mediation participants' overall satisfaction is actually based upon. Participant satisfaction could relate to different things – how empowered someone felt or how quick the resolution was – it would be useful to have a more detailed understanding of what participants liked.

Finally, it is possible that the more the AIM program is used, the more positive attitudes will develop (i.e. cultural change). If that is the case, increased positive attitudes will beget better mediation results.⁵⁵ These results will have to be gathered and evaluated because the key to a successful mediation program is continued monitoring, evaluation, and revision,⁵⁶ and thus AIM should continue to keep statistics on mediation results to enable ongoing reporting and future evaluations.

⁵⁴ Keet & Macfarlane, *supra* note 11 at 697-700.

⁵⁵ John Lande, "Getting the Faith: Why Business Lawyers and Executives Believe in Mediation" (2000) 5 Harv Negot L Rev 137 at 171-176.

⁵⁶ Ann C Hodges, "Dispute Resolution under the Americans with Disabilities Act: A Report to the Administrative Conference of the United States" (Winter, 1996) 9:4 Admin LJ Am U 1007 at 1091.

IX. APPENDICES

Appendix 1: Claimant Satisfaction Surveys

Baseline Group

Non-Mediation Group

Mediation Group

Appendix 2: PIPP Mediation Pilot Project Cost Metric

Appendix 3: Recommendations for better service during Pre-Mediation

Appendix 4: Recommendations for better service during Mediation Session

Appendix 5: Mediation Pilot Project SharePoint Data Collection Definition Table

Appendix 6: PIPP Mediation Pilot Project MPI Representative Feedback Form

Appendix 7: AIM Office Reporting Criteria September 30, 2013

Appendix 8: AIM Office Reporting Criteria December 31, 2013

APPENDIX 1

BASELINE GROUP

INTERVIEWER: _____ # _____

PHONE: _____ - _____ - _____ CUST. ID: _____

WAVE: 0 0 0 DATE (mm/dd/yy): ____ / ____ / ____

SURVEY: Baseline.....① Non-mediation2 Mediation3

INTRODUCTION

Hello, my name is _____, and I'm calling from kiskquared on behalf of the Automobile Injury Compensation Appeal Commission. We are conducting a survey with Manitobans involved with an injury claim. Sometimes, during an injury claim, the claimant will disagree with Manitoba Public Insurance's decision about the type or amount of benefits they should receive.

BASELINE & NON-MEDIATION INTRO

When this happens, there is a process where claimants can appeal the Internal Review decision to the Automobile Injury Compensation Appeal Commission (AICAC).

Your participation is important and the information you provide will be used to assess and improve how the process works. All of your responses will be kept in strict confidence and none of your answers will be linked to you personally. Participating in this survey will not affect your claim or benefits in any way.

IF THE RESPONDENT HAS QUESTIONS OR CONCERNS ABOUT THE LEGITIMACY OF THIS RESEARCH SAY: If you would like to confirm the legitimacy of the survey, I can provide you with the telephone number of the Automobile Injury Compensation Appeal Commission (AICAC). The number is: (204) 945-4155, ask to speak with the Director of Appeals. I would also like to provide you with our telephone number so you can call us back to complete the survey after you have had a chance to speak with the Director of Appeals at AICAC. The number is 1-888-950-8002, or we call again in a few days if we have not heard back from you.

Q1 Is now a good time to go ahead with the survey?

Yes (BASELINE AND NON-MEDIATION).....1 **GO TO Q87**

No (ARRANGE A CALL BACK TIME)2

F. NON-MEDIATION PROCESS (ONLY BASELINE AND NON-MEDIATION GROUPS)

Turning your attention to your most recent experience with Manitoba Public Insurance’s *appeal* process, I’d like to ask you a few general questions about your experience with the process.

Q87 From the time that you filed your injury appeal with AICAC (the Automobile Injury Compensation Appeal Commission), until a final decision was made, how long, do you recall, that the entire process took?

- Days 1 ___ ___
- Weeks..... 2 ___ ___
- Months 3 ___ ___
- Years 4 ___ ___
- Don’t know / refused 9

Q88 How satisfied are you with the time it took to complete the process? Would you say you are... **READ LIST**

- Very dissatisfied..... 1
- Dissatisfied..... 2
- Neither satisfied or dissatisfied..... 3
- Satisfied..... 4
- Very satisfied 5
- Don't know / refused 9

Q89 In your opinion, how long should the appeal process take?

- Days 1 ___ ___
- Weeks..... 2 ___ ___
- Months 3 ___ ___
- Years 4 ___ ___
- Don’t know / refused 9

I am going to read you several statements about the *appeal process*. After each statement, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree, or strongly agree with the statement. **ROTATE**

SERIES F

		Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q90	I received what I was entitled to.	1	2	3	4	5	9
Q91	The final outcome was fair.	1	2	3	4	5	9
Q92	The <i>appeal process</i> did not favour one party more than the other.	1	2	3	4	5	9
Q93	I understand the reasons behind why the final decision was made.	1	2	3	4	5	9
Q94	Overall, using the <i>appeal process</i> was convenient.	1	2	3	4	5	9
Q95	I was treated with respect throughout the <i>appeal process</i> .	1	2	3	4	5	9
Q96	Information in my file was handled appropriately during the process.	1	2	3	4	5	9
Q97	My experience overall was a positive one. Do you... READ LIST						
	Strongly disagree	1					
	Disagree	2					
	Neither agree or disagree	3					
	Agree.....	4					
	Strongly agree	5					
	Don't know / Refused.....	9					
Q98	Thinking about your <i>appeal</i> experience, how satisfied are you with the final decision or outcome? Would you say you are... READ LIST						
	Very dissatisfied.....	1					
	Dissatisfied.....	2					
	Neither satisfied or dissatisfied.....	3					
	Satisfied.....	4					
	Very satisfied	5					
	Don't know / Refused.....	9					

Q99 What do you think worked well during the *appeal process*? **PROBE**

Q100 What, if any, difficulties did you experience during the *appeal process*? **IF NO RESPONSE, ASK...**What do you think could have been done to improve the *Appeal process*? What about the *process* did not work well? **PROBE**

Q101 If another person were in a similar situation to yours, would you recommend using the appeal process that you followed?

- Yes1
- No.....2
- Don't know / refused9

Q102 After the process was complete, do you recall receiving a letter or information package that outlined the final decision that was made?

- Yes1
- No.....2 **GO TO Q104**
- Don't know / refused9 **GO TO Q104**

Q103 Please indicate the extent you agree or disagree with this statement: The letter or information package was easy to understand? Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Did not receive letter.....8
- Don't know / refused9

Mediation is sometimes used as an alternative to resolving disputes between two groups of people. A third person or mediator helps the parties come to an agreement. I'd like to ask you some

questions about what you think about using *mediation* as a way of coming to an agreement compared to other methods you may have experienced or heard of from others.

Q104 Mediation is an effective way to resolve disagreements with injury claims, especially as an alternative to an Appeal through the law courts or through the AICAC appeals process. Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

Q105 All groups should approach mediation with the same level of seriousness as if the resolution was handled by an Appeal Court. Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

Q106 I have a good understanding of what is involved in mediation. Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

Q107 Do you have any previous experience with *mediation* in a situation not related to your Appeal?

- Yes1
- No.....2
- Don't know / refused9

G. NON-MEDIATION CLAIMANT REPRESENTATIVE (ONLY BASELINE AND NON-MEDIATION GROUPS)

Now I'm going to ask you some questions about your experience with the *people* who may have assisted you through the *Appeal process*.

Q110 Did you have someone assist you through the *appeal process*?

- Yes1
- No.....2 **GO TO Q112**
- Don't know / refused9 **GO TO Q112**

Q111 Who was it that assisted you? **CIRCLE ALL THAT APPLY. CLARIFY POSITION IF RESPONDENT PROVIDES A PERSON'S NAME**

- Claimant Advisor1
- Lawyer2
- Appeal Officer3
- Family/Friend.....4
- Self-represented5
- Other (specify)8
- Don't know / refused9

Q112 Did anyone attend the *Appeal Hearing* with you?

- Yes1
- No.....2 **GO TO Q114**
- Don't know / refused9 **GO TO Q114**

Q113 Who went with you to the actual *Appeal Hearing*? **CIRCLE ALL THAT APPLY. CLARIFY POSITION IF RESPONDENT PROVIDES A PERSON'S NAME**

- Claimant Advisor1
- Lawyer2
- Family/Friend.....3
- Other (specify)8
- Don't know / Refused.....9

H. SUMMARY OVERALL SATISFACTION (ALL GROUPS)

We're nearly finished with the interview. I have a few summary questions and the survey will be complete.

Q114 Thinking about the entire process related to your injury claim, from the time you filed your claim with Manitoba Public Insurance until now; please rate your level of *overall* satisfaction with respect to your most recent injury claim. Would you say you are...**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4
- Very satisfied5
- Don't know / refused9

Q115 Taking *everything* into consideration, when you think about how your personal injury claim has been handled so far, would you say that Manitoba Public Insurance exceeded your expectations, met your expectations, nearly met your expectations or did not meet your expectations?

- Did not meet your expectations1
- Nearly met.....2
- Met3
- Exceeded4
- Don't know / refused9

Q116 After having had an injury claim with Manitoba Public Insurance, how well do you think you understand what Manitoba Public Insurance’s Personal Injury Protection Plan covers? Would you say you have a...**READ LIST**

- Very poor understanding.....1
- Poor understanding2
- Neither a poor or good understanding3
- Good understanding.....4
- Very good understanding.....5
- Don't know / Refused.....9

Q117 Please tell me the extent to which you agree with the statement: “I would speak highly of the services of Manitoba Public Insurance if I were discussing auto insurance with a friend living in another province.” Would you say that you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / Refused.....9

Q118 Compared to before the accident, would you say that your current health is... **READ LIST**

- Similar to what it was before the accident1
- Somewhat worse than before the accident.....2
- Much worse than before the accident3
- Don't know / Refused.....9

Q119 Not including your most recent claim, have you had any *other* injury claims in the last 10 years with Manitoba Public Insurance?

- Yes1
- No.....2 **GO TO Q122**
- Don't know / refused9 **GO TO Q122**

Q120 Not including the claim that we have just discussed, have you used the Appeal process in any of your other injury claims?

- Yes1
- No.....2 **GO TO Q122**
- Don't know / refused9 **GO TO Q122**

Q121 How many times did you use the *appeal process* in those other injury claims?

- # of claims....._____
- Don't know / no answer.....99

Q122 How many vehicles are owned or leased by residents of your household insured under your name in the last year? **READ LIST**

None	0
One	1
Two	2
Three or more.....	3
Don't know / refused	9

Q123 What was the last grade or level of schooling you obtained? **READ LIST**

0 - 9 grade school.....	1
10 - 11 some high school	2
High school graduate	3
Some university / College / Technical School	4
Completed College / Technical School	5
University Grad (B.A., B.SC.).....	6
Graduate School / Professional degree (Masters, PhD).....	7
Don't know / refused	9

Q124 Which of the following categories best describes your annual family income? That is, the total income before taxes for all persons in your household. Is it... **READ LIST**

Under \$20,000.....	1
\$20,000 to under \$40,000	2
\$40,000 to under \$70,000	3
\$70,000 to under \$100,000	4
\$100,000 to under \$125,000	5
\$125,000 or over.....	6
Don't know / refused	9

Q125 Are you an employee of Manitoba Public Insurance, an insurance company, or a market research firm?

Yes	1
No.....	2
Don't know / refused	9

Q126 In the future, we might want to conduct some group meetings to further discuss the topics we covered in the interview. Are you interested in being contacted to participate in such a group? The discussions usually last about two hours and you are paid for your time. **IF YES CONFIRM CONTACT INFORMATION**

Yes	1
No.....	2
Don't know	8
Refused	9

This concludes the survey. I would like to thank you for taking the time to participate.

NON-MEDIATION GROUP

INTERVIEWER: _____ # _____

PHONE: _____ - _____ - _____ CUST. ID: _____

WAVE: 0 0 0 DATE (mm/dd/yy): ____/____/____

SURVEY: Baseline.....1 Non-mediation**2** Mediation.....3

INTRODUCTION

Hello, my name is _____, and I'm calling from kiskquared on behalf of the Automobile Injury Compensation Appeal Commission. We are conducting a survey with Manitobans involved with an injury claim. Sometimes, during an injury claim, the claimant will disagree with Manitoba Public Insurance's decision about the type or amount of benefits they should receive.

BASELINE & NON-MEDIATION INTRO

When this happens, there is a process where claimants can appeal the Internal Review decision to the Automobile Injury Compensation Appeal Commission (AICAC).

Your participation is important and the information you provide will be used to assess and improve how the process works. All of your responses will be kept in strict confidence and none of your answers will be linked to you personally. Participating in this survey will not affect your claim or benefits in any way.

IF THE RESPONDENT HAS QUESTIONS OR CONCERNS ABOUT THE LEGITIMACY OF THIS RESEARCH SAY: If you would like to confirm the legitimacy of the survey, I can provide you with the telephone number of the Automobile Injury Compensation Appeal Commission (AICAC). The number is: (204)945-4155, ask to speak with the Director of Appeals. I would also like to provide you with our telephone number so you can call us back to complete the survey after you have had a chance to speak with the Director of Appeals at AICAC. The number is 1-888-950-8002, or we call again in a few days if we have not heard back from you.

Q127 Is now a good time to go ahead with the survey?

- Yes (**BASELINE AND NON-MEDIATION**).....1 **GO TO Q87**
- No (**ARRANGE A CALL BACK TIME**)2

F. NON-MEDIATION PROCESS (ONLY BASELINE AND NON-MEDIATION GROUPS)

Turning your attention to your most recent experience with Manitoba Public Insurance's *appeal* process, I'd like to ask you a few general questions about your experience with the process.

Q213 From the time that you filed your injury appeal with AICAC (the Automobile Injury Compensation Appeal Commission), until a final decision was made, how long, do you recall, that the entire process took?

- Days 1 ___ ___
- Weeks..... 2 ___ ___
- Months 3 ___ ___
- Years 4 ___ ___
- Don't know / refused 9

Q214 How satisfied are you with the time it took to complete the process? Would you say you are... **READ LIST**

- Very dissatisfied..... 1
- Dissatisfied..... 2
- Neither satisfied or dissatisfied..... 3
- Satisfied..... 4
- Very satisfied 5
- Don't know / refused 9

Q215 In your opinion, how long should the appeal process take?

- Days 1 ___ ___
- Weeks..... 2 ___ ___
- Months 3 ___ ___
- Years 4 ___ ___
- Don't know / refused 9

I am going to read you several statements about the *appeal process*. After each statement, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree, or strongly agree with the statement. **ROTATE**

SERIES F

	Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q216 I received what I was entitled to.	1	2	3	4	5	9
Q217 The final outcome was fair.	1	2	3	4	5	9
Q218 The <i>appeal process</i> did not favour one party more than the other.	1	2	3	4	5	9
Q219 I understand the reasons behind why the final decision was made.	1	2	3	4	5	9
Q220 Overall, using the <i>appeal process</i> was convenient.	1	2	3	4	5	9
Q221 I was treated with respect throughout the <i>appeal process</i> .	1	2	3	4	5	9
Q222 Information in my file was handled appropriately during the process.	1	2	3	4	5	9
Q223 My experience overall was a positive one. Do you... READ LIST						
Strongly disagree	1					
Disagree	2					
Neither agree or disagree	3					
Agree.....	4					
Strongly agree	5					
Don't know / Refused.....	9					
Q224 Thinking about your <i>appeal</i> experience, how satisfied are you with the final decision or outcome? Would you say you are... READ LIST						
Very dissatisfied.....	1					
Dissatisfied.....	2					
Neither satisfied or dissatisfied.....	3					
Satisfied.....	4					
Very satisfied	5					
Don't know / Refused.....	9					

Q225 What do you think worked well during the *appeal process*? **PROBE**

Q226 What, if any, difficulties did you experience during the *appeal process*? **IF NO RESPONSE, ASK...**What do you think could have been done to improve the *Appeal process*? What about the *process* did not work well? **PROBE**

Q227 If another person were in a similar situation to yours, would you recommend using the appeal process that you followed?

- Yes1
- No.....2
- Don't know / refused9

Q228 After the process was complete, do you recall receiving a letter or information package that outlined the final decision that was made?

- Yes1
- No.....2 **GO TO Q104**
- Don't know / refused9 **GO TO Q104**

Q229 Please indicate the extent you agree or disagree with this statement: The letter or information package was easy to understand? Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Did not receive letter.....8
- Don't know / refused9

Mediation is sometimes used as an alternative to resolving disputes between two groups of people. A third person or mediator helps the parties come to an agreement. I'd like to ask you some

questions about what you think about using *mediation* as a way of coming to an agreement compared to other methods you may have experienced or heard of from others.

Q230 Mediation is an effective way to resolve disagreements with injury claims, especially as an alternative to an Appeal through the law courts or through the AICAC appeals process. Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

Q231 All groups should approach mediation with the same level of seriousness as if the resolution was handled by an Appeal Court. Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

Q232 I have a good understanding of what is involved in mediation. Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

Q233 Do you have any previous experience with *mediation* in a situation not related to your Appeal?

- Yes1
- No.....2
- Don't know / refused9

NON-MEDIATION GROUP ONLY

Q234 As part of the formal dispute resolution process, some claimants have been given the option to participate in a Mediation Pilot Program. Were you offered *Mediation* as an alternative to the *Appeal process* you took to resolve the issue or issues with your injury claim?

- Yes1
- No.....2 **GO TO Q110**
- Don't know / refused9 **GO TO Q110**

Q235 Why did you choose not to proceed with *Mediation*? **PROBE**

G. NON-MEDIATION CLAIMANT REPRESENTATIVE (ONLY BASELINE AND NON-MEDIATION GROUPS)

Now I'm going to ask you some questions about your experience with the *people* who may have assisted you through the *Appeal process*.

Q236 Did you have someone assist you through the *appeal process*?

- Yes1
- No.....2 **GO TO Q112**
- Don't know / refused9 **GO TO Q112**

Q237 Who was it that assisted you? **CIRCLE ALL THAT APPLY. CLARIFY POSITION IF RESPONDENT PROVIDES A PERSON'S NAME**

- Claimant Advisor1
- Lawyer2
- Appeal Officer3
- Family/Friend.....4
- Self-represented5
- Other (specify) _____8
- Don't know / refused.....9

Q238 Did anyone attend the *Appeal Hearing* with you?

- Yes1
- No.....2 **GO TO Q114**
- Don't know / refused9 **GO TO Q114**

Q239 Who went with you to the actual *Appeal Hearing*? **CIRCLE ALL THAT APPLY. CLARIFY POSITION IF RESPONDENT PROVIDES A PERSON'S NAME**

- Claimant Advisor1
- Lawyer2
- Family/Friend.....3
- Other (specify) _____8
- Don't know / Refused.....9

H. SUMMARY OVERALL SATISFACTION (ALL GROUPS)

We're nearly finished with the interview. I have a few summary questions and the survey will be complete.

Q240 Thinking about the entire process related to your injury claim, from the time you filed your claim with Manitoba Public Insurance until now; please rate your level of *overall*

satisfaction with respect to your most recent injury claim. Would you say you are...**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied3
- Satisfied.....4
- Very satisfied5
- Don't know / refused9

Q241 Taking *everything* into consideration, when you think about how your personal injury claim has been handled so far, would you say that Manitoba Public Insurance exceeded your expectations, met your expectations, nearly met your expectations or did not meet your expectations?

- Did not meet your expectations1
- Nearly met.....2
- Met3
- Exceeded.....4
- Don't know / refused9

Q242 After having had an injury claim with Manitoba Public Insurance, how well do you think you understand what Manitoba Public Insurance’s Personal Injury Protection Plan covers? Would you say you have a...**READ LIST**

- Very poor understanding.....1
- Poor understanding2
- Neither a poor or good understanding3
- Good understanding.....4
- Very good understanding.....5
- Don't know / Refused.....9

Q243 Please tell me the extent to which you agree with the statement: “I would speak highly of the services of Manitoba Public Insurance if I were discussing auto insurance with a friend living in another province.” Would you say that you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / Refused.....9

Q244 Compared to before the accident, would you say that your current health is... **READ LIST**

- Similar to what it was before the accident1
- Somewhat worse than before the accident.....2
- Much worse than before the accident3
- Don't know / Refused.....9

- Q245 Not including your most recent claim, have you had any *other* injury claims in the last 10 years with Manitoba Public Insurance?
- | | | |
|----------------------------|---|-------------------|
| Yes | 1 | |
| No..... | 2 | GO TO Q122 |
| Don't know / refused | 9 | GO TO Q122 |
- Q246 Not including the claim that we have just discussed, have you used the Appeal process in any of your other injury claims?
- | | | |
|----------------------------|---|-------------------|
| Yes | 1 | |
| No..... | 2 | GO TO Q122 |
| Don't know / refused | 9 | GO TO Q122 |
- Q247 How many times did you use the *appeal process* in those other injury claims?
- | | | |
|-----------------------------|-------|--|
| # of claims..... | _____ | |
| Don't know / no answer..... | 99 | |
- Q248 How many vehicles are owned or leased by residents of your household insured under your name in the last year? **READ LIST**
- | | | |
|----------------------------|---|--|
| None | 0 | |
| One | 1 | |
| Two | 2 | |
| Three or more..... | 3 | |
| Don't know / refused | 9 | |
- Q249 What was the last grade or level of schooling you obtained? **READ LIST**
- | | | |
|---|---|--|
| 0 - 9 grade school..... | 1 | |
| 10 - 11 some high school | 2 | |
| High school graduate | 3 | |
| Some university / College / Technical School | 4 | |
| Completed College / Technical School | 5 | |
| University Grad (B.A., B.SC.)..... | 6 | |
| Graduate School / Professional degree (Masters, PhD)..... | 7 | |
| Don't know / refused | 9 | |
- Q250 Which of the following categories best describes your annual family income? That is, the total income before taxes for all persons in your household. Is it... **READ LIST**
- | | | |
|------------------------------------|---|--|
| Under \$20,000..... | 1 | |
| \$20,000 to under \$40,000 | 2 | |
| \$40,000 to under \$70,000 | 3 | |
| \$70,000 to under \$100,000 | 4 | |
| \$100,000 to under \$125,000 | 5 | |
| \$125,000 or over..... | 6 | |
| Don't know / refused | 9 | |

Q251 Are you an employee of Manitoba Public Insurance, an insurance company, or a market research firm?

- Yes1
- No.....2
- Don't know / refused9

Q252 In the future, we might want to conduct some group meetings to further discuss the topics we covered in the interview. Are you interested in being contacted to participate in such a group? The discussions usually last about two hours and you are paid for your time. **IF YES CONFIRM CONTACT INFORMATION**

- Yes1
- No.....2
- Don't know8
- Refused9

This concludes the survey. I would like to thank you for taking the time to participate.

MEDIATION GROUP

INTERVIEWER: _____ # _____

PHONE: _____ - _____ - _____ CUST. ID: _____

WAVE: 0 0 0 DATE (mm/dd/yy): ____/____/____

SURVEY: Baseline.....1 Non-mediation2 Mediation.....3

INTRODUCTION

Hello, my name is _____, and I'm calling from kiskquared on behalf of the Automobile Injury Compensation Appeal Commission. We are conducting a survey with Manitobans involved with an injury claim. Sometimes, during an injury claim, the claimant will disagree with Manitoba Public Insurance's decision about the type or amount of benefits they should receive.

MEDIATION INTRO

When this happens, there is a process where claimants can go through mediation to resolve their issue(s).

Your participation is important and the information you provide will be used to assess and improve how the process works. All of your responses will be kept in strict confidence and none of your answers will be linked to you personally. Participating in this survey will not affect your claim or benefits in any way.

IF THE RESPONDENT HAS QUESTIONS OR CONCERNS ABOUT THE LEGITIMACY OF THIS RESEARCH SAY: If you would like to confirm the legitimacy of the survey, I can provide you with the telephone number of the Automobile Injury Compensation Appeal Commission (AICAC). The number is; (204) 945-4155, ask to speak with the Director of Appeals. I would also like to provide you with our telephone number so you can call us back to complete the survey after you have had a chance to speak with the Director of Appeals at AICAC. The number is 1-888-950-8002, or we call again in a few days if we have not heard back from you.

Q253 Is now a good time to go ahead with the survey?
Yes1
No (ARRANGE A CALL BACK TIME)2

Q254 Did you participate in the Mediation Pilot Program?
Yes1
No (ARRANGE A CALL BACK TIME)2

IF RESPONDENT ANSWERS "No", RESTATE THE QUESTION. IF THE ANSWER IS STILL "No", SAY "We would like to verify our information. Can we set up a time to call you back?" GIVE THE CONTACT INFORMATION TO THE SUPERVISOR TO CONFIRM.

A. MEDIATION PROCESS

Turning your attention to the steps involved in mediating your case, I'd like to begin by asking you a few general questions related to your experience with the *Mediation* process.

Q255 From the time that you filed your injury appeal with AICAC (the Automobile Injury Compensation Appeal Commission), until the *Mediation* process was completed, how long did the entire process take?

- Days1 ___ ___
- Weeks.....2 ___ ___
- Months3 ___ ___
- Years4 ___ ___
- Don't know / No response9

Q256 How satisfied are you with the time it took to complete the *entire* dispute resolution process, including your time in *Mediation*? Would you say you are... **READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4
- Very satisfied5
- Don't know / Refused.....9

Q257 In your opinion, how long should the *entire* dispute resolution process, including *Mediation*, take?

- Days1 ___ ___
- Weeks.....2 ___ ___
- Months3 ___ ___
- Years4 ___ ___
- Don't know / No response9

Now please think about only the *Mediation* aspect within the dispute resolution process. This would be the time from when you submitted an Application for Mediation until the Mediation Session was concluded.

Q258 How satisfied are you with the time it took to complete the *Mediation* process? Would you say you are...**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4
- Very satisfied5
- Don't know / Refused.....9

Q259 In your opinion, how long should the Mediation process take?

- Days1 ___ ___
- Weeks.....2 ___ ___
- Months3 ___ ___
- Years4 ___ ___
- Don't know / No response9

I am going to read you several statements about your *Mediation* experience. After each statement, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree or strongly agree with the statement. The first statement is... **ROTATE**

	Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q260 The written information I received clearly explained the Mediation process.	1	2	3	4	5	9
Q261 The Mediation session was scheduled within a reasonable amount of time from when I submitted my application for Mediation.	1	2	3	4	5	9

		Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q262	I received what I was entitled to	1	2	3	4	5	9
Q263	The final outcome was fair	1	2	3	4	5	9
Q264	The Mediation process did not favour one party more than the other.	1	2	3	4	5	9
Q265	I understand the reasons as to how the outcome was determined	1	2	3	4	5	9
Q266	Overall, using the Mediation process was convenient	1	2	3	4	5	9
Q267	I was treated with respect throughout the Mediation process	1	2	3	4	5	9
Q268	Information in my file was handled appropriately during the process	1	2	3	4	5	9

		Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q269	My experience overall was a positive one.	1	2	3	4	5	9

Q270 Thinking about your Mediation experience, how satisfied are you with the outcome? Would you say you are...**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4
- Very satisfied5
- Don't know / Refused.....9

Q271 What do you think worked well during the *Mediation process*? **PROBE** Are there any other things about the process that worked well? **PROBE** Anything else?

Q272 What, if any, difficulties did you experience during the Mediation process? **PROBE** Are there any other difficulties you experienced during the process? **IF NO RESPONSE**

ASK What do you think could be done to improve the Mediation process, if anything?
 What about *the process* did not work well?

Q274 At the conclusion of the *Mediation session*, do you recall receiving a document that described the outcome of your *session*? **THE DOCUMENT OUTLINES THE AREAS WHERE AGREEMENT WAS REACHED AND THOSE WHICH WERE STILL OUTSTANDING]**

- Yes1
- No.....2 **GO TO Q25**
- Don't know / Refused9 **GO TO Q25**

I am going to read you two statements about the document you received following the outcome of your Mediation session. After each statement, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree, or strongly agree with the statement.

Q275 The document accurately reflected your understanding of the outcome from the Mediation session.

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Did not receive a letter.....8
- Don't know / refused9

Q276 The document was written in a way that was easy to understand.

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Did not receive a letter.....8
- Don't know / refused9

B. AUTOMOBILE INJURY MEDIATION OFFICE (ONLY MEDIATION GROUP)

Now I'm going to ask you some questions about your experience with *the staff* at the *Automobile Injury Mediation Office*. Specific questions about the mediator who you met with will come later in this survey.

I am going to read you several statements. After each statement, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree, or strongly agree with the statement. The *staff* I spoke to at the *Mediation office*... **ROTATE**

SERIES B		Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q277	Were prompt in following up on my questions or issues	1	2	3	4	5	9
Q278	Kept me informed about the Mediation process in a timely manner	1	2	3	4	5	9
Q279	Were courteous and polite	1	2	3	4	5	9
Q280	Were knowledgeable about the Mediation process	1	2	3	4	5	9
Q281	Were professional	1	2	3	4	5	9
Q282	Provided clear answers to my questions	1	2	3	4	5	9
Q283	Treated me fairly	1	2	3	4	5	9
Q284	Took time to listen to my concerns	1	2	3	4	5	9
Q285	Were well organized	1	2	3	4	5	9
Q286	Were efficient	1	2	3	4	5	9

Q287 Thinking about your experiences with the *staff* at the *Mediation office*, how satisfied are you with the assistance you received from them? Would you say you are...**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4 **GO TO Q289**
- Very satisfied5 **GO TO Q289**
- Don't know / refused.....9 **GO TO Q289**

Q288 Do you have any recommendations about what the *staff* at the Mediation Office could have done differently, if anything, to provide better service? **PROBE**



C. MEDIATION CLAIMANT REPRESENTATIVE (ONLY MEDIATION GROUP)

Now I'm going to ask you some questions about your experience with the people that may have assisted you through the mediation of your injury claim.

Q289 Did you have someone assist you through the Mediation process?

- Yes1
- No.....2 **GO TO Q39**
- Don't know / refused9 **GO TO Q39**

Q290 Who was it that assisted you? **CIRCLE ALL THAT APPLY. CLARIFY POSITION IF RESPONDENT PROVIDES A PERSON'S NAME**

- Claimant Advisor1
- Lawyer2
- Family/Friend.....3
- Self-represented4
- Other (specify)8
- Don't know / refused.....9

Q291 Did anyone attend the *Pre-mediation session* with you?

- Yes1
- No.....2 **GO TO Q41**
- Don't know / refused9 **GO TO Q41**

Q292 Who went with you to the *Pre-mediation session*? **CIRCLE ALL THAT APPLY. CLARIFY POSITION IF RESPONDENT PROVIDES A PERSON'S NAME**

- Claimant Advisor1
- Lawyer2
- Family/Friend.....3
- Other (specify)8
- Don't know / refused.....9

- Q293 Did anyone attend the actual *Mediation session* with you?
- Yes1
 - No.....2 **GO TO Q43**
 - Don't know / refused9 **GO TO Q43**

Q294 Who went with you to the actual *Mediation session*? **CIRCLE ALL THAT APPLY.**
CLARIFY POSITION IF RESPONDENT PROVIDES A PERSON'S NAME

- Claimant Advisor1
- Lawyer2
- Family/Friend.....3
- Other (specify) _____.....8
- Don't know / refused.....9

D. PRE-MEDIATION SESSION (ONLY MEDIATION GROUP)

Q295 For the next several questions, please think about the *Pre-Mediation session*; your initial meeting where you met with the Mediator alone. Please indicate your level of agreement with the following statement: The *Pre-Mediation session* was scheduled within a reasonable amount of time from when you began the mediation process. Would you say that you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

- Q296 Did the *Pre-Mediation session* start on time?
- Yes1
 - No.....2
 - Don't know / refused9

I am going to read you several statements about the Mediator at the *Pre-Mediation session*. After each statement, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree or strongly agree with the statement. The first one is, *the Mediator* ... **ROTATE**

SERIES C

	Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q297 Was courteous and polite	1	2	3	4	5	9
Q298 Was professional	1	2	3	4	5	9
Q299 Explained what my role would be in the mediation process	1	2	3	4	5	9
Q300 Provided clear answers to my questions	1	2	3	4	5	9
Q301 Treated me fairly	1	2	3	4	5	9
Q302 Took time to listen to my concerns	1	2	3	4	5	9
Q303 Provided a promise of confidentiality	1	2	3	4	5	9
Q304 Was knowledgeable about the Mediation process	1	2	3	4	5	9
Q305 Clearly explained what to expect in the Mediation Session	1	2	3	4	5	9
Q306 Provided me with enough information at the pre-mediation session to prepare me for the Mediation session	1	2	3	4	5	9
Q307 Thinking about the <i>Pre-Mediation session</i> , overall how satisfied are you with that experience? Would you say you are..... READ LIST						
Very dissatisfied.....						1
Dissatisfied.....						2
Neither satisfied or dissatisfied.....						3
Satisfied.....						4
Very satisfied						5
Don't know / refused.....						9
Q308 Do you have any recommendations about what could have been done differently, if anything, to provide better service during the <i>Pre-Mediation session</i> ? PROBE						

Q309 Is there anything else that you have not already mentioned that you would like to tell me about your experience during the *Pre-Mediation session*? **PROBE**

E. MEDIATION SESSION (ONLY MEDIATION GROUP)

For the next several questions, please think about the actual *Mediation session* where you and someone from Manitoba Public Insurance met with the Mediator.

Q310 Please indicate your level of agreement with the following statement: The *Mediation session* was scheduled within a reasonable amount of time from when you began the Mediation process. Would you say that you... **READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / refused9

Q311 Did the *Mediation session* start on time?

- Yes1
- No.....2
- Don't know / refused9

I am going to read you several statements about the Mediator at the *Mediation session*. After each statement, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree, or strongly agree with the statement. The first one is, *the Mediator...* **ROTATE**

SERIES D		Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q312	Was courteous and polite	1	2	3	4	5	9
Q313	Was professional	1	2	3	4	5	9
Q314	Provided clear answers to my questions	1	2	3	4	5	9
Q315	Kept me informed and guided me through the Mediation session	1	2	3	4	5	9
Q316	Treated me fairly	1	2	3	4	5	9
Q317	Made sure that I was given the opportunity to present my issues	1	2	3	4	5	9
Q318	Did everything possible to assist both parties in trying to reach an acceptable outcome	1	2	3	4	5	9
Q319	Was skilled at assisting the parties to communicate	1	2	3	4	5	9
Q67b	Was skilled at assisting the parties to reach a resolution or closure	1	2	3	4	5	9
Q320	Made me feel that my participation in the session was voluntary	1	2	3	4	5	9
		Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q321	Ended the session by clearly summarizing what issues had and had not been agreed to.	1	2	3	4	5	9

Q322 Thinking about the mediator, *overall* how satisfied would you say you are with the way the *Mediator* conducted the session? Are you...**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4
- Very satisfied.....5
- Don't know / refused.....9

Q323 If another person were in a similar situation to yours, would you recommend using the *Mediation process* that you followed?

- Yes1
- No.....2
- Don't know / refused9

Q324 If you were in a similar situation again would you personally choose to use the *Mediation process* again?

- Yes1
- No.....2
- Don't know / Refused9

Q325 Please indicate the extent you agree or disagree with this statement: The outcome I received as a result of the *Mediation session* was fair. Do you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / Refused.....9

Q326 Thinking about the *Mediation session, overall* how satisfied are you with that experience? Would you say you are.....**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4
- Very satisfied.....5
- Don't know / Refused.....9

Q327 Do you have any recommendations about what could have been done differently, if anything, to provide better service during the *Mediation session*? **PROBE**

Q328 Is there anything else that you have not already mentioned that you would like to tell me about your experience during the *Mediation session*? **PROBE**

Q329 How would you define 'a successful mediation'? **PROBE... IF RESPONDENT MENTIONS, "I got what I wanted" OR "it worked out for me" ASK:** Are there things, other than getting what you wanted, that make for a successful mediation?

Next I'd like to ask you some questions about using *mediation* as a way of reaching an outcome in comparison to other methods you may have experienced or heard of from others. After each

one, please tell me whether you strongly disagree, disagree, neither agree or disagree, agree, or strongly agree with the statement. The first one is... **ROTATE**

SERIES E

	Strongly disagree	Disagree	Neither agree or disagree	Agree	Strongly agree	Dk/ref
Q330 Mediation is an effective way of reaching resolution especially as an alternative to going through the appeals process.	1	2	3	4	5	9
Q331 Cases that are resolved using Mediation are treated with the same importance as those cases that are resolved using the appeals process.	1	2	3	4	5	9
Q332 I have a better understanding of <i>mediation</i> now as compared to before my <i>Mediation session</i> .	1	2	3	4	5	9
Q333 What I expected to have happen in the <i>mediation</i> is what I experienced.	1	2	3	4	5	9
Q334 The Manitoba Public Insurance representative took the mediation of my case seriously.	1	2	3	4	5	9
Q335 My advisors in my case were helpful in preparing me for my <i>Mediation session</i> .	1	2	3	4	5	9
Q336 What impact did your experience with the <i>Mediation process</i> have on how you currently feel about mediation generally? Please rate on a 1 to 7 scale, where 1 means very negative and 7 means a very positive impact on your feelings.						

- Very negative impact01
-02
-03
- No impact.....04
-05
-06
- Very positive impact.....07
- Not applicable / Never used.....08
- Don't know88
- No response.....99

Q337 What impact did your experience with the *Mediation process* have on how you currently feel about Manitoba Public Insurance? Please rate on a 1 to 7 scale, where 1 means very negative and 7 means a very positive impact on your feelings.

- Very negative impact01
-02
-03
- No impact.....04
-05
-06
- Very positive impact.....07
- Not applicable / Never used.....08
- Don't know88
- No response.....99

Q338 Do you have any previous experience with *Mediation*?

- Yes1
- No.....2
- Don't know / Refused9

GO TO Q114 INTRO

H. SUMMARY OVERALL SATISFACTION (ALL GROUPS)

We're nearly finished with the interview. I have a few summary questions and the survey will be complete.

Q366 Thinking about the entire process related to your injury claim, from the time you filed your claim with Manitoba Public Insurance until now; please rate your level of *overall* satisfaction with respect to your most recent injury claim. Would you say you are...**READ LIST**

- Very dissatisfied.....1
- Dissatisfied.....2
- Neither satisfied or dissatisfied.....3
- Satisfied.....4
- Very satisfied5
- Don't know / refused9

Q367 Taking *everything* into consideration, when you think about how your personal injury claim has been handled so far, would you say that Manitoba Public Insurance exceeded your expectations, met your expectations, nearly met your expectations or did not meet your expectations?

- Did not meet your expectations1
- Nearly met.....2
- Met3
- Exceeded.....4
- Don't know / refused9

Q368 After having had an injury claim with Manitoba Public Insurance, how well do you think you understand what Manitoba Public Insurance’s Personal Injury Protection Plan covers? Would you say you have a...**READ LIST**

- Very poor understanding.....1
- Poor understanding2
- Neither a poor or good understanding3
- Good understanding.....4
- Very good understanding.....5
- Don't know / Refused.....9

Q369 Please tell me the extent to which you agree with the statement: “I would speak highly of the services of Manitoba Public Insurance if I were discussing auto insurance with a friend living in another province.” Would you say that you...**READ LIST**

- Strongly disagree1
- Disagree2
- Neither agree or disagree3
- Agree.....4
- Strongly agree5
- Don't know / Refused.....9

Q370 Compared to before the accident, would you say that your current health is... **READ LIST**

- Similar to what it was before the accident1
- Somewhat worse than before the accident.....2
- Much worse than before the accident3
- Don't know / Refused.....9

Q371 Not including your most recent claim, have you had any *other* injury claims in the last 10 years with Manitoba Public Insurance?

- Yes1
- No.....2 **GO TO Q122**
- Don't know / refused9 **GO TO Q122**

Q372 Not including the claim that we have just discussed, have you used the Appeal process in any of your other injury claims?

- Yes1
- No.....2 **GO TO Q122**
- Don't know / refused9 **GO TO Q122**

Q373 How many times did you use the *appeal process* in those other injury claims?

- # of claims..... _____
- Don't know / no answer.....99

Q374 How many vehicles are owned or leased by residents of your household insured under your name in the last year? **READ LIST**

None	0
One	1
Two	2
Three or more.....	3
Don't know / refused	9

Q375 What was the last grade or level of schooling you obtained? **READ LIST**

0 - 9 grade school.....	1
10 - 11 some high school	2
High school graduate	3
Some university / College / Technical School	4
Completed College / Technical School	5
University Grad (B.A., B.SC.).....	6
Graduate School / Professional degree (Masters, PhD).....	7
Don't know / refused	9

Q376 Which of the following categories best describes your annual family income? That is, the total income before taxes for all persons in your household. Is it... **READ LIST**

Under \$20,000.....	1
\$20,000 to under \$40,000	2
\$40,000 to under \$70,000	3
\$70,000 to under \$100,000	4
\$100,000 to under \$125,000	5
\$125,000 or over.....	6
Don't know / refused	9

Q377 Are you an employee of Manitoba Public Insurance, an insurance company, or a market research firm?

Yes	1
No.....	2
Don't know / refused	9

Q378 In the future, we might want to conduct some group meetings to further discuss the topics we covered in the interview. Are you interested in being contacted to participate in such a group? The discussions usually last about two hours and you are paid for your time. **IF YES CONFIRM CONTACT INFORMATION**

Yes	1
No.....	2
Don't know	8
Refused	9

This concludes the survey. I would like to thank you for taking the time to participate.

APPENDIX 2

PIPP Mediation Pilot Project Cost Metric

Conditions

Metric reflects the measured period July 1, 2012 to June 30, 2013

- Final full active year of the two year evaluation period of the PIPP Mediation Pilot Project.
- First year not included, the pilot had periods of low activity due to start up.

Data source PIPP mediation pilot project data collection table

- Contains all AICAC registered unconcluded appeals at the start of the pilot project plus quarterly updates including new appeals and appeal status throughout the pilot and ongoing
- Reconciled against MPI legal department review and appeal data base for same measured period

Methodology

Use a metric of cost per concluded appeal (mediation) based on total annual program costs (excluding any start up or evaluation costs) divided by the number of files concluded exclusively by each program to compare costs of mediation and the AICAC appeals. Appeals concluded entirely by mediation would not be attributed to the AICAC program.

Rationale

Each program has files in process. The ultimate goal of each program is to conclude the file.

Concluded Mediations

Recorded per the Automobile Injury Mediation (AIM) Office

Count	Category
126	Fully resolved - Withdrew from AICAC
6	Partially resolved - continued with AICAC
55	No resolution - continued with AICAC
187	Total mediations concluded

Concluded Appeals

As supplied by AICAC

- Note that a timing difference exists between when AIM office fully resolves a mediation and AICAC records the appeal as withdrawn

Count	Category
115	Concluded via mediation and withdrawn
4	Withdrawn post mediation but before AICAC hearing
119	Appeals concluded due to mediation
14	Mediation appeals proceeding to AICAC hearings
35	Appeals proceed to AICAC hearings
78	Appeals withdrawn prior to AICAC hearings not participating in mediation
127	Total non mediation concluded appeals heard or withdrawn
246	Total appeals concluded

Automobile Injury Mediation Office Costs per Concluded Mediation

Forecasted Total PIPP Mediation Pilot Costs

- Forecast to outright pilot project conclusion, December 31, 2014,
 - As at January 31, 2014

Amount \$	Category
39,900.00	Start up (design consultant)
148,680.00	Evaluation (evaluator and survey)
2,066,702.01	Automobile Injury Mediation Office operating costs (mediators, PM, AIM staff, lease and miscellaneous)
\$2,255,282.01	Total

Amount/Count	Category
\$33,467.70	Automobile injury mediation (AIM) office monthly operating costs (2.5 FTE, PM and office expenses)
\$1,630.00	Average direct mediation charge per file life to date as at June 30, 2013
15.6	Average mediations concluded per month over measured period
\$25,400.83	Average direct mediation cost per month
\$58,868.53	Total monthly operating costs AIM office
\$706,422.35	Annual operating costs AIM office (excludes evaluation and start up)
\$3,777.66	COST PER CONCLUDED MEDIATION

AICAC Costs per Concluded Appeal

AICAC Fiscal Year Costs (March 1 to February 28)

- Per AICAC year end reports

Amount \$	Year	Category
\$1,156,000	2012-2013	8.5 FTE and operating expenditures (11 staff and 27 part-time commissioners)
\$1,046,000	2011-2012	8.5 FTE and operating expenditures (11 staff and 23 part-time commissioners)
\$1,034,000	2010-2011	6.4 FTE and operating expenditures (10 staff and 24 part-time commissioners)

Assume fiscal 2012-2013 reflective of measured period of July1/12 to June 30/13

Amount/Count per Project Data Table	Category
*246	Appeals concluded per AICAC
119	Less appeals fully concluded that are attributed to mediation resolution or the mediation process
*127	Net appeals concluded
\$9,102.36	COST PER CONCLUDED APPEAL (AICAC)

*An additional 61 appeal closures, 41 of which could be attributed to the appeal process (non mediation) have incomplete record status in the PIPP Mediation Pilot Project Share Point data table at the time of this report and are therefore not included. Inclusion of these records would reduce the AICAC cost per appeal to \$6,880.95.

Notes to the preceding:

The methodology used to produce this cost metric comparison is based on the number of appeal mediations conducted by the AIM office without regard to resolution, and on the number of appeals closed by AICAC, excluding those entirely resolved at AIM, without regard to whether the appeal proceeded to a formal hearing or the appellant withdrew the appeal prior to hearing or abandoned the appeal. This essentially compares the cost of the two processes overall, based on the conclusion of files in each process, without regard to outcome.

Other cost metrics such as those looking strictly at cost of appeals that proceed to an AICAC hearing (versus those proceeding to mediation) would result in a greater cost difference.

APPENDIX 3

Figure 4 DO YOU HAVE ANY RECOMMENDATIONS ABOUT WHAT COULD HAVE BEEN DONE DIFFERENTLY TO PROVIDE BETTER SERVICE DURING THE PRE-MEDIATION SESSION?

Response	Frequency	Count
Better preparation: <ul style="list-style-type: none"> Have all documents ready ahead of time. The mediator should have been better prepared. She had not really read my file and did not know what my issues were. 	2%	2
Provide more information and better explanations: <ul style="list-style-type: none"> Lay out people's options properly, so they understand what is expected from them and what other options there are beyond mediation. The explanation didn't match what actually happened during the mediation session. The information pamphlet should be better organized so it is easier to understand which sections you're supposed to fill out. They should have told me MPI could subpoena my medical records. I used to go to a counsellor, which is classified as mental health, so MPI decided I was mentally ill. The mediator should have explained more about what to expect throughout the mediation process. The mediator, the MPI rep and the advisor were all familiar with the mediation process; I was the only one in the room that was not. The mediator and the advisor should have informed me of the process, what I should expect 	6%	6
MPI needs to hire honest noble people who have good morals.	1%	1
Skip it altogether. I don't even know why they had a meeting. It had no purpose.	1%	1
The system is against me.	1%	1
The whole thing was a waste of time. MPI was dragging their heels.	1%	1
I didn't know her style of mediation and was confused. I didn't know what areas or disputes she handled.	1%	1
I was expecting a separate strategizing session before the actual mediation, which did not happen.	1%	1
The mediator was good and explained things clearly.	1%	1
If MPI had just paid for my medication like they said they would, none of this would have had to happen. They were supposed to be paying the drug store directly, but the store didn't send the bills. I got stuck with the cost.	1%	1
They should have provided an independent and neutral counsel for consultation.	1%	1
The mediator listed injuries, so the most important matters before she cut the mediation short.	1%	1
When MPI sends out appointment booking letters, they need to include a very detailed map showing clearly how to get to the building, plus how to get to the mediator's office inside the building. It's a maze.	1%	1
The mediator should have provided concise information about the case to my claimant advisor for easy reference.	1%	1
The mediator should be in a neutral position when hearing both parties and not show any signs of being biased.	1%	1
Mediators should be trained on discussing the issues using common terms so as to be easily understood by both parties.	1%	1

If the venue took place close to my home that would be more beneficial.	1%	1
It would have been nice if it could have been completed before one year.	1%	1
Keep the three people; the mediator, the claimant advisor and the MPI representative that were involved in my mediation. They were great.	1%	1
Teleconference should be an option to physically attending sessions.	1%	1
There was a miscommunication on the scheduling of the two appeals I submitted. I was not told in advance that only one of my two submitted appeals would be discussed.	1%	1
Nothing / I don't know / I had a good experience	75%	82

Note: Data derived from Q56. Mediation n = 109.

Appendix 4

Figure 5 DO YOU HAVE ANY RECOMMENDATIONS ABOUT WHAT COULD HAVE BEEN DONE TO PROVIDE BETTER SERVICE DURING THE MEDIATION SESSION?

Response	Freq.	Count
<p>Concerns of biased process:</p> <ul style="list-style-type: none"> The government can't fight the government. The mediator is paid by MPI. They can't ever solve anything. The MPI rep seemed to miss the point of mediation. He was biased and confrontational, unwilling to answer my questions and seemed unprepared. The unfairness of the mediator should be corrected. Stop MPI's monopoly. They should not pay the mediator's salary; it should be paid for by the government. There are laws, but it always seems to turn out the way MPI wants. 	5%	5
<p>Create a faster process:</p> <ul style="list-style-type: none"> It was too lengthy. They should give breaks so I can consult with my advisor during the session. It should never have been dragged on for 14 years. Files were destroyed in the interim and I could not present my case properly. It was such a long time from the accident that it was very important to keep paper work so I could remember. It needs to be simpler and take less time. 	4%	4
<p>Dislike mediation in general:</p> <ul style="list-style-type: none"> I felt a little pressured to use mediation although I didn't really want to. Skip mediation altogether. I do not know how it got to this point. MPI should have treated me fairly the first time. It was a waste of time. 	3%	3
<p>Provide more information and better explanations:</p> <ul style="list-style-type: none"> Offer more information. I might have been expecting a different style of mediation than what this mediator offered. I would have liked if she clarified her role or approach before the session. I didn't understand what was going on. I wish I had someone there to help me. 	3%	3
The mediator should have backed me up better and advocate for my concerns.	1%	1
They should have all their documents organized.	1%	1
Hire honourable people.	1%	1
If MPI would give people what they need and not take years to do it.	1%	1
Mediation is exactly what MPI needs to do with clients because it's more personal. It feels like they care and clients get to speak to someone that matters.	1%	1
MPI are not actually willing to change their mind. They'll stall until you're dead.	1%	1
MPI representatives need to be friendly and respectful.	1%	1
MPI should reveal their interest calculation process and they should pay the same rate they charge. MPI should have been able to tell me at the mediation about how much interest they owed me on the money they should have paid in the first place.	1%	1
Autopac should pay for my lawyer.	1%	1
The process is fine, it's MPI's policies that are a problem.	1%	1
I did not feel I was being heard, but felt like they were trying to get rid of me. More support would be good.	1%	1
We need more time in the sessions; there is a lot of talking to do.	1%	1

Response	Freq.	Count
Better signage to help people find the place.	1%	1
Don't have MPI attend the session.	1%	1
I should have been allowed to hire a lawyer as they allowed the other party to do.	1%	1
I was kept in the dark. The mediator and my claimant advisor left the room to talk without me.	1%	1
I didn't get what I deserved. I had to live off of credit cards when I wasn't working. I have so much debt, and MPI won't pay for it.	1%	1
I wish I could review with the claimant advisor before proceeding with the mediation.	1%	1
If they continue implementing the mediation process, it should be done right after the injury claim.	1%	1
Mediator should have repeated what I said to Autopac the same way she explained what the Autopac rep said to me.	1%	1
Advise me of the specific date of mediation in order for the claimant to prepare all the supporting documents needed.	1%	1
Ergonomic requirements should be taken into consideration. They should have better chairs, especially for physically challenged people.	1%	1
It was actually a good experience, however I was thinking if I used the appeal process maybe I should have received more money. I don't know, the appeal process could have been more painful.	1%	1
The mediator should have listened to my side. The mediator should have communicated properly to clearly understand the decision.	1%	1
Their hands are tied. There's nothing more than they can do. The mediator was good, but he does not control the length of time to have the case resolved.	1%	1
It should have been a win-win situation if MPI was supportive and cooperative with regards to my claim.	1%	1
MPI should send adjusters that behave professionally. Everything went well aside from that.	1%	1
The definition of mediation should be made clear. The representative should come with an open mind and be prepared to solve issues.	1%	1
The mediator should have more knowledge about the case.	1%	1
The MPI representative should act professionally and take the issue or case seriously. They should be cooperative to the needs and requirements of the case.	1%	1
The MPI representative should have taken the case seriously. Although the outcome was on my side, I should have received more compensation	1%	1
All parties should be familiar with the process. The claimant will be more comfortable dealing with the issues being fully informed and educated of the process.	1%	1
There should be a third session, about one and a half hours in length, to discuss things that were not covered in the first two sessions.	1%	1
They should promote the mediation process so that more people know about and benefit from this process.	1%	1
I don't know / I don't have any recommendations / I had a good experience	56%	61

Note: Data derived from Q75. n = 109. Total may not equal 100% due to rounding; multiple responses were accepted.

Appendix 5

Mediation Pilot Project SharePoint Data Collection Definition Table

This table contains the following:

- list of all the columns in the Mediation Tracking Pilot
- description for each column
- list of what type of data is required to enter in each column (date, choice, number, text)
- list of all the choices for the columns that are drop-down lists, checkboxes, and radio buttons. Note – drop-down menus and radio buttons allow one selection per column. Checkboxes allow multiple selections and/or fill in fields (if that is specified).

Name of Column	Type of Data in Column	Description
Appeal Status	Choice (dropdown) <ul style="list-style-type: none"> • Open • Closed 	Whether appeal is open or closed.
File Class	Choice (dropdown) <ul style="list-style-type: none"> • Baseline (closed up until May24, 2011) • Backlog Appeal (Open as of May 24, 2011) • Backlog Mediation (Open as of May 24, 2011) • Phase 1 Appeal (Opened after May 24, 2011) • Phase 1 Mediation (Opened after May 24, 2011) • Phase 2 Appeal (Opened after Feb 7, 2012) • Phase 2 Mediation (Opened after Feb 7, 2012) 	<ul style="list-style-type: none"> • Baseline - appeal closed prior to pilot • Backlog Appeal – part of appeal backlog that existed as of May 24, 2011 that continues through the appeal process • Backlog Mediation - part of the appeal backlog that existed as of May 24, 2011 that participates in Mediation. • Phase 1 Appeal- appeal received post May 24, 2011 that continues through the appeal process • Phase 1 Mediation – appeal received post May 24, 2011 that participates through mediation. • Phase 2 Appeal – appeal received after Feb 7, 2012 • Phase 2 Mediation – appeal received after

		Feb 7, 2012 participating in mediation.
Claim Number	Single Line of Text	Enter claim number of file
Name	Single Line of Text	Enter claimant's name (last, first).
Address	Single Line of Text	Street Address (1234 Street)
Ph #	Single line of text	Telephone number (###)###-###
City/Town	Single line of text	City/Town of residence
Province	Single line of text	Province of residence
Postal Code	Single line of text	Postal Code (A#A#A#)
Country	Single line of text	Country of residence
DOL	Date and Time	Enter Date of Loss.
Appl. for IRO Rec'd	Date and Time	Enter date the application for review is received.
IRO Decision #	Number	Enter IRO decision number.
IR Decision Date	Date and Time	Date of the IR decision.
Appeal #	Number	Enter Appeal # assigned to file.
Multi Issue Appeal	Yes/No	Indicates whether appeal includes multiple issues
Issue Category	Choice (checkboxes) <ul style="list-style-type: none"> • Income Replacement Indemnity • Personal Care Assistance • Caregiver Expenses • Permanent Impairment • Treatment • Rehabilitation • Death Benefits • Medical & Personal Expenses • Ent. To PIPP Benefits • Late Filing • Section 160 • Section 149 • Subrogation 	Select the covers that apply to the corresponding issues.
Appeal Issue Count	Number	Number of issues
App Rec Date	Date and Time	Enter the date the appeal is received by AICAC.
Mediation Requested	Yes/No	Select whether mediation is requested by appellant (only applies to those sending in the new appeal form)

MPI Not. of Appeal	Date and Time	Date MPI was notified an appeal has been made.
File Rec'd fr MPI	Date and Time	Date File was received from MPI
Index Date	Date and Time	Enter the date the initial indexing was complete.
Subs Indexing	Choice (checkboxes) <ul style="list-style-type: none"> • Supplemental • 90 Day • Case Conf. 	Check each type of subsequent indexing that has occurred.
Subs Index Date	Date and Time	Enter most recent indexation date i.e. all info received.
Current Rep	Choice (dropdown) <ul style="list-style-type: none"> • Self Representation • Claimant Advisor Office • Advisor/Representative • Legal Representation (Lawyer) 	Enter type of representation.
CAO Rep.	Choice (dropdown) <ul style="list-style-type: none"> • CAO #1-#9 • Former Employee 	Select which CAO rep. involved.
Former Rep	Choice (dropdown): <ul style="list-style-type: none"> • Not Applicable • Self Representation • Claimant Advisor Office • Advisor/Representative • Legal Representation (Lawyer) 	Enter type of representation if formerly represented.
Authorization Request Made (Backlog only)	Date and Time	Date authorization request mailed or made
Authorization Response Received (Backlog only)	Date and Time	Date authorization response received
Med Eligible	Choice (dropdown) <ul style="list-style-type: none"> • BLANK (default value) • Yes • No 	Check if appeal meets criteria and is eligible for mediation.
Med Ineligible Reason	Choice (dropdown) <ul style="list-style-type: none"> • Conference or hearing scheduled • Late filing of notice of appeal • Statutory/Legal Interpretation req'd • Maximum PIPP benefit already received 	Code reason the authorization request (backlog) could not be made to the claimant. Or if authorization received, the claimant's request for mediation could not be met (backlog or new appeal subject to mediation office review)

Mediation Application Mailed	Date and Time	Date mediation application mailed or made
Mediation Application Received	Date and Time	Date mediation application received back
Acc/Rej Med Offer	Choice (dropdown) <ul style="list-style-type: none"> • Accept • Reject 	Select whether claimant accepted or reject the mediation offer.
Rej Desc	Multiple lines of text	Describe why mediation was rejected by claimant.
Mediation File #	<ul style="list-style-type: none"> • Number 	Number assigned to mediation file. Two digit month mediation application received, two digit year, dash, sequential number. ####-##
MPI Notified of Mediation	Date and Time	Date MPI notified of mediation
MPI Response Received	Date and Time	Date MPI response received
Mediation Issue Category	Choice (checkboxes) <ul style="list-style-type: none"> • Income Replacement Indemnity • Personal Care Assistance • Caregiver Expenses • Permanent Impairment • Treatment • Rehabilitation • Death Benefits • Medical & Personal Expenses • Ent. To PIPP Benefits • Section 160 • Section 149 • Subrogation 	Select the covers that apply to the corresponding issues.
Mediation Issue Count	Number	Number of issues going to mediation
Pre-Mediation Date (claimant)	<ul style="list-style-type: none"> • Date and Time 	Pre-mediation meeting date with claimant
Pre-Mediation Date (MPI)	Date and Time	Pre-mediation meeting date with MPI
Mediation Date	Date and Time	Date of Mediation
2 nd Mediation Date	Date and time	Additional Mediation date
Mediation Adjourned	Yes/No	Check if mediation is adjourned
Mediation Adjournment Date	Date and Time	New mediation date
Med Resolution	Choice (checkboxes) <ul style="list-style-type: none"> • Not resolved – appeal cont'd 	Select the outcome of the mediation process.

	<ul style="list-style-type: none"> • Agreement – Some issues resolved, appeal partially withdrawn • Agreement – all issues resolved, appeal withdrawn • Notice to withdraw appeal filed – decision not to proceed • Agreement - Issues Clarified 	
Mediation Issues Resolved	Number	Number of mediation issues resolved
Med Issues Clarified	Number	Number of mediation issues clarified and continuing to appeal.
Med Res Date	Date and Time	Date the Memorandum of Agreement signed.
MPI Rep	Choice (Drop-down menu): <ul style="list-style-type: none"> • MPI Rep #1 • MPI Rep #2 • MPI Rep #3 • MPI Rep #4 • MPI Rep #5 • MPI Rep #6 • MPI Rep #7 • MPI Rep #8 • MPI Rep #9 • MPI Rep #10 • MPI Rep #11 • MPI Rep #12 • MPI Rep #13 • MPI Rep #14 • MPI Rep #15 	
Mediator	Choice (drop-down menu): <ul style="list-style-type: none"> • Mediator #1 • Mediator #2 • Mediator #3 • Mediator #4 • Mediator #5 • Mediator #6 • Mediator #7 • Mediator #8 • Mediator #9 • Mediator #10 • Mediator #11 	Select the Mediator who was conducting the mediation.

	<ul style="list-style-type: none"> • Mediator #12 • Mediator #13 • Mediator #14 	
Mediator Cost	Number	Cost associated with mediation of this file.
Case Conf	<ul style="list-style-type: none"> • Yes/No 	Check if a case conference occurred.
App Hearing Date	Date and Time	Enter the date of the appeal hearing.
Adjourned	Yes/No	Check if the hearing was adjourned
Adj Desc	Multiple lines of text	Describe reason for adjournment and provide new date of hearing. (History of adjournment dates and reasons).
Adj. Hearing Date	Date and Time	Enter the most recent hearing date if initial hearing date was adjourned.
Abandoned	Yes/No	Check if appeal had been abandoned.
Appeal Decision	Choice (dropdown) <ul style="list-style-type: none"> • Rescinded • Varied • Confirmed • Withdrawn 	Select the outcome of the appeal hearing (settlement before hearing = withdrawal. Please check settlement box). Rescinded – rule in favor of claimant Varied – decision is varied Confirmed – decision is upheld
Appeal Withdrawn Primarily Due to Mediation	Yes/No	Select if it has been determined that the appeal has been withdrawn primarily due to the mediation process.
Closed By Settlement	Yes/No	Check if appeal was settled.
App Hearing Decision Date	Date and Time	Date of the appeal decision.
AICAC Comm	Choice (dropdown) <ul style="list-style-type: none"> • AICAC Commissioner #1 • AICAC Commissioner #2 • AICAC Commissioner #3 	Select the AICAC Commissioner.
File Closed Date	Date and Time	Enter date the file is closed.
Survey Letter Sent	Date and Time	Enter date survey letter was mailed.

Appendix 6

Claims Operations & Service Delivery

PIPP Mediation Pilot Project

MPI Representative Feedback

The following form should be completed by each PIPP mediation MPI representative

Date of Loss:

Internal Review Decision Date:

Date Form Complete:

Mediation File No:

Mediation Date:

MPI Participant: IMC Solicitor Other (specify)

Mediation Issue Categories (please check all that apply):

- Income Replacement Indemnity
- Personal Care Assistance
- Caregiver Expenses
- Permanent Impairment
- Treatment
- Rehabilitation
- Death Benefits
- Medical and Personal Expenses
- Entitlement to PIPP Benefits
- Section 160
- Section 149
- Subrogation

Mediation Resolution (please check all that apply):

- Not resolved – continued with appeal
- Agreement – issues clarified
- Agreement – some issues resolved
- Agreement – all issues resolved
- Notice to withdraw appeal filed
- Notice to partially withdraw appeal filed

Please think about the entire end-to-end mediation process including your personal preparation, pre-mediation meetings and the mediation session(s).

5. Thinking about the entire end-to-end mediation process, how much time did you spend on this mediation?

Hours

6. In your opinion, what worked well? What didn't work? Do you have any suggestions for improvement? (Please keep in mind that information shared during mediation is confidential)
[Insert comments here]

7. Overall, do you feel mediation was of benefit to resolving the appeal? (Please keep in mind that information shared during mediation is confidential)
[Insert comments here]

8. Overall, what impact, if any, do you feel mediation had on the relationship between the claimant and MPI? (Please keep in mind that information shared during mediation is confidential)
[Insert comments here]

9. If the mediation resulted in agreement on any or all issues, please provide the following:

a. Reason/s agreement was reached (please check all that apply)

Communication clarification

- Claimant satisfied with entitlement/coverage explanation
- Claimant felt they had been heard

New information presented by claimant

Additional investigation undertaken by IMC

Revised decision by IMC

- Please indicate reason for revised decision
[Insert comments here]

Other

- Please indicate reason
[Insert comments here]

b. If the agreement resulted in a change in the PIPP coverage paid or incurred on the file, please indicate the coverage impacted and the ultimate amount of change

COVERAGE

AMOUNT +/-

- IRI & RIB
- MED/REH
- PI
- DB & Funeral
- PCA

Appendix 7

AIM OFFICE REPORTING CRITERIA

As at September 30, 2013

	PHASE I	PHASE II	PHASE I / II	TOTAL
1. CASES TO DATE				
a) Number of appellants sent notice/Consent form by AICAC/New NOA	345	292 ¹		637
b) Number of consent forms received by AICAC/Mediation requested	284	246 ²		530
c) Number of application forms sent by AIM	259	198	13	470 ³
d) Number of application forms received by AIM	237	172	13	422
e) Number of response forms sent out to MPI	236	171	13	420
f) Number of response forms returned	232	166	13	411
g) Total Number of Mediations				
i. Concluded	200	94	8	302
ii. Completed (awaiting MOA/NOW to be prepared/signed)	0	2	1	3
iii. In progress (pre-mediation has occurred)	3	24	1	28
iv. In progress (1 mediation session occurred)	10	12	2	24
v. Scheduled/Scheduling in progress	7	17	1	25
2. OUTCOME OF MEDIATIONS				
a) Number of full resolution – MOA and Notice to Withdraw	132	59	4	195
b) Number of partial resolution	13	2	1	16
c) Number of clarification issues	1	0	0	1
d) Number of no resolution	54	33	3	90 ⁴

e) Number of NOW filed after Mediation File is opened but prior to Appeal Hearing taking place	9	16	1	26 ⁵
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	PHASE I	PHASE II	TOTAL
3. NUMBER OF MEDIATION SESSIONS			
a) Number of completed cases where more than 1 mediation session was required	41	7	48 ⁶
b) Factors that lead to second mediation			
Additional Medical Reports to be provided and reviewed, existing medical reports to be re-reviewed, financial documents to be provided and reviewed			
	PHASE I	PHASE II	TOTAL
4. ARE OUTCOMES IMPACTED BY TYPES OF ISSUES			
Types of Issues			
a) IRI:			
i. MOA	80	29	109
ii. Clarification	1	0	1
iii. NR	41	24	65
b) PI:			
i. MOA	35	30	65
ii. Clarification	0	0	0
iii. NR	13	4	17
c) PCA:			
i. MOA	16	5	21
ii. Clarification	0	0	0
iii. NR	6	1	7
	PHASE I	PHASE II	TOTAL
d) Medical/Personal Expenses (I.e. chiro, physio):			
i. MOA	81	26	107
ii. Clarification	0	0	0
iii. NR	32	16	48

e) Caregiver:			
i. MOA	0	0	0
ii. Clarification	0	0	0
iii. NR	0	0	0
f) Rehabilitation:			
i. MOA	7	0	7
ii. Clarification	0	0	0
iii. NR	4	1	5
g) Fatal Accident/Death Benefits:			
i. MOA	1	1	2
ii. Clarification	0	0	0
iii. NR	1	0	1
h) Entitlement to PIPP Benefits:			
i. MOA	12	5	17
ii. Clarification	0	0	0
iii. NR	7	3	10
i) Fraud/Misrepresentation/Subrogation:			
i. MOA	11	0	11
ii. Clarification	0	0	0
iii. NR	1	0	1
5. OTHER FACTORS THAT INFLUENCE MEDIATION PROCESS/ OUTCOME OF MEDIATION			
	PHASE I	PHASE II	AVERAGE
6. IMPORTANT TIME PERIODS			
a) Length of time for case to go through mediation (# of days)			

i.	Date application received – date of pre-mediation	114	130	119 ⁷
ii.	Date application received – date mediation concluded	170	163	168
	(i.e. date of MR or MOA)			
b)	Does date of accident impact settlement rate?			
	Are older cases more likely to settle?			
7. COST OF MEDIATION				
a)	Actual average cost to date	\$1,725	\$1,277	\$1,574
b)	Budget proposal \$ 1,625			

1. Of the 292 new NOA filed, 20 Appellants filled out the NOA incorrectly. AICAC is waiting to clarify whether the Appellants will request mediation.
2. See (1) above. This number will likely increase.
3. Of the 470 Application Forms sent, 21 files were closed as the Appellant did not return the Application.
4. In 5 cases that did not resolve at mediation, NOW was filed after Mediation concluded.
5. There were 13 cases where NOW was filed after both an Application and Response were received. There were 3 cases where NOW was filed after Application was received. There were 10 cases where NOW was filed after Application was sent.
6. 1 mediation included both Phase I & Phase II Appeals.
7. Since June, 2013 the average number of days from Date of Application to Date of Pre-Mediation has decreased to 61.

Appendix 8

AIM OFFICE REPORTING CRITERIA

As at December 31, 2013

	PHASE I	PHASE II	PHASE I / II	TOTAL
8. CASES TO DATE				
h) Number of appellants sent notice/Consent form by AICAC/New NOA	361	339 ¹		700
i) Number of consent forms received by AICAC/Mediation requested	279	277 ²		556
j) Number of application forms sent by AIM	260	225	13	498 ³
k) Number of application forms received by AIM	237	201	13	451
l) Number of response forms sent out to MPI	236	199	13	448
m) Number of response forms returned	232	197	13	442
n) Total Number of Mediations				
vi. Concluded	206	115	8	333
vii. Completed (awaiting MOA/NOW to be prepared/signed)	0	4	0	4
viii. In progress (pre-mediation has occurred)	1	14	1	16
ix. In progress (1 mediation session occurred)	9	17	3	29
x. Scheduled/Scheduling in progress	2	23	0	25
9. OUTCOME OF MEDIATIONS				
f) Number of full resolution – MOA and Notice to Withdraw	137	77	4	218
g) Number of partial resolution	12	2	1	15
h) Number of clarification issues	1	0	0	1
i) Number of no resolution	56	40	3	99 ⁴

j) Number of NOW filed after Mediation File is opened but prior to Appeal Hearing taking place	14	16	1	31 ⁵
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	PHASE I	PHASE II	TOTAL
10. NUMBER OF MEDIATION SESSIONS			
c) Number of completed cases where more than 1 mediation session was required	42	7	49 ⁶
d) Factors that lead to second mediation			
Additional Medical Reports to be provided and reviewed, existing medical reports to be re-reviewed, financial documents to be provided and reviewed			
	PHASE I	PHASE II	TOTAL
11. ARE OUTCOMES IMPACTED BY TYPES OF ISSUES			
Types of Issues			
j) IRI:			
iv. MOA	83	39	122
v. Clarification	1	0	1
vi. NR	42	28	70
k) PI:			
iv. MOA	37	34	71
v. Clarification	0	0	0
vi. NR	14	5	19
l) PCA:			
iv. MOA	17	10	27
v. Clarification	0	0	0
vi. NR	6	2	8
	PHASE I	PHASE II	TOTAL
m) Medical/Personal Expenses (i.e. chiro, physio):			
iv. MOA	82	34	116
v. Clarification	0	0	0
vi. NR	34	17	51

n) Caregiver:			
iv. MOA	0	0	0
v. Clarification	0	0	0
vi. NR	0	0	0
o) Rehabilitation:			
iv. MOA	8	2	10
v. Clarification	0	0	0
vi. NR	4	1	5
p) Fatal Accident/Death Benefits:			
iv. MOA	1	1	2
v. Clarification	0	0	0
vi. NR	1	0	1
q) Entitlement to PIPP Benefits:			
iv. MOA	13	6	19
v. Clarification	0	0	0
vi. NR	8	7	15
r) Fraud/Misrepresentation/Subrogation:			
iv. MOA	12	1	13
v. Clarification	0	0	0
vi. NR	1	1	2
12. OTHER FACTORS THAT INFLUENCE MEDIATION PROCESS/ OUTCOME OF MEDIATION			
	PHASE I	PHASE II	AVERAGE
13. IMPORTANT TIME PERIODS			
c) Length of time for case to go through mediation (# of days)			

iii.	Date application received – date of pre-mediation	114	126	118 ⁷
iv.	Date application received – date mediation concluded	175	169	173
	(i.e. date of MR or MOA)			
d)	Does date of accident impact settlement rate?			
	Are older cases more likely to settle?			
14. COST OF MEDIATION				
c)	Actual average cost to date	\$1,737	\$1,271	\$1,560
d)	Budget proposal \$ 1,625			

1. Of the 339 new NOA filed, 28 Appellants filled out the NOA incorrectly. AICAC is waiting to clarify whether the Appellants will request mediation.
2. See (1) above. This number will likely increase.
3. Of the 498 Application Forms sent, 21 files were closed as the Appellant did not return the Application.
4. In 5 cases that did not resolve at mediation, NOW was filed after Mediation concluded.
5. There were 19 cases where NOW was filed after both an Application and Response were received. There were 3 cases where NOW was filed after Application was received. There were 10 cases where NOW was filed after Application was sent.
6. 1 mediation included both Phase I & Phase II Appeals.
7. Since June, 2013 the average number of days from Date of Application to Date of Pre-Mediation has decreased to 68.