

MANITOBA ) Order No. 133/09  
)  
THE PUBLIC UTILITIES BOARD ACT ) September 25, 2009

BEFORE: Graham Lane, CA Chairman  
Leonard Evans, LL.D., Member  
Eric Jorgensen, Member

**MANITOBA PUBLIC INSURANCE – 2010 RATES HEARING  
MOTION OF MANITOBA BAR ASSOCIATION**

**Background**

On September 10, 2009, the Manitoba Bar Association (MBA) filed with the Public Utilities Board (Board) a motion (Motion for the following relief, in the context of the pending 2010 General Rate Application (GRA) by the Manitoba Public Insurance Corporation (Corporation or MPI):

1. An order against the Corporation that it make, file, and serve its full and substantive reply to the following information requests before September 24, 2009:

Round 1 Questions	Round 2 Questions
MBA (MPI) 1-5	MBA (MPI) 2-2
MBA (MPI) 1-18	MBA (MPI) 2-3
MBA (MPI) 1-19(c)	MBA (MPI) 2-4
MBA (MPI) 1-20	MBA (MPI) 2-7
MBA (MPI) 1-21	MBA (MPI) 2-8
MBA (MPI) 1-22	MBA (MPI) 2-9
MBA (MPI) 1-23	MBA (MPI) 2-10
MBA (MPI) 1-24	MBA (MPI) 2-11
MBA (MPI) 1-25	MBA (MPI) 2-12
MBA (MPI) 1-46	MBA (MPI) 2-13
MBA (MPI) 1-51	MBA (MPI) 2-14
MBA (MPI) 1-52	MBA (MPI) 2-15
MBA (MPI) 1-53	MBA (MPI) 2-18
MBA (MPI) 1-54	MBA (MPI) 2-19
MBA (MPI) 1-55	MBA (MPI) 2-21
	MBA (MPI) 2-22
	MBA (MPI) 2-23
	MBA (MPI) 2-24
	MBA (MPI) 2-25

2. An order permitting the MBA to make, file, and serve before September 26, 2009 supplementary information requests of the Corporation arising out of the Corporation's replies to the information requests listed in paragraph 1 above;
3. An order against the Corporation that it make, file, and serve before October 1, 2009 its full and substantive reply to such supplementary information requests made by the MBA;
4. An award of costs; and
5. Such further and other relief as counsel may advise and the Board permit.

***The Grounds for the Motion***

In support of its Motion, MBA relies upon the Board's Rules of Practice and Procedure (in particular Rules 15(2) and 16), which provide:

- 15(2)** *Where there is a dispute with respect to the adequacy of a response to an information request, the Board may orally or in writing direct all parties:*
- a) *to appear before the Board or a member of the Board at a specified time and place for a conference; or*
  - b) *to submit in writing their position and views on the matter for the purpose of assisting the Board.*
- 16** *A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response:*
- a) *where the party contends that the interrogatory is not relevant, setting out specific reasons in support of that contention;*
  - b) *where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response that the party considers would be of assistance to the party making the information requests;*

- c) *where the party contends that the information sought is of a confidential nature, setting out the reasons why it is considered confidential and any harm that would be caused by making it public; or*
- d) *otherwise explaining why such a response cannot be given.*

MBA also relies upon the following grounds in support of its Motion:

1. During the course of past hearings and in its past orders, the Board has frequently expressed an interest in the interaction between MPI and the Manitoba government (for example: Orders 157/08 and 89/09);
2. In some instances, the Board has sought MPI's cooperation to encourage the Manitoba government to allow the Board to have a fuller picture of the Corporation's operations, so that the Board may fully discharge its oversight and regulatory mandate;
3. In other circumstances, the Board has expressed a desire for greater insight into the way in which the Manitoba government and the Corporation communicate;
4. The Board's motivation has always been to understand better the operations of the Corporation and to fulfill its statutory mandate; and
5. Parties before the Board may request disclosure of all relevant information, except where statute, the common law of evidence, or the Board's Rules of Practice and Procedure preclude disclosure or admissibility.

### ***Intervenors' Positions***

The Motion was shared with the Intervenors participating in the upcoming GRA, namely the Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors, the Coalition of Manitoba Motorcycle Groups, the Canadian Automobile Association - Manitoba Division and the Manitoba Used Car Dealers Association.

The interveners were invited to make comments in response to the Motion on or before 2:00 p.m. on Wednesday, September 16, 2009. No such comments were received.

### ***Analysis and Board Findings***

The Board thanks MPI and MBA for their thoughtful submissions with respect to the Motion.

The Board notes that pursuant to *The Crown Corporations Public Review and Accountability Act* (Act), and in particular, subsections 26(1) and 26(2) thereof, the Board's mandate is to review the rates for service to be charged by the Corporation, and more particularly, the rate bases and premiums charged with respect to compulsory driver and vehicle insurance provided by the Corporation.

In reaching a decision, the Board is empowered to consider a number of factors, listed in subsections 26(4) and 26(5) of the Act, as follows:

**26(4)** *In reaching a decision pursuant to this Part, the Board may*

(a) *take into consideration*

- (i) *the amount required to provide sufficient moneys to cover operating, maintenance and administration expenses of the corporation,*
- (ii) *interest and expenses on debt incurred for the purposes of the corporation by the government,*
- (iii) *interest on debt incurred by the corporation,*
- (iv) *reserves for replacement, renewal and obsolescence of works of the corporation,*
- (v) *any other reserves that are necessary for the maintenance, operation, and replacement of works of the corporation,*

- (vi) *liabilities of the corporation for pension benefits and other employee benefit programs,*
  - (vii) *any other payments that are required to be made out of the revenue of the corporation,*
  - (viii) *any compelling policy consideration that the Board considers relevant to the matter,*
  - (ix) *any other factors that the Board considers relevant to the matter (emphasis added); and*
- (b) *Hear submissions from any persons or groups or classes of persons or groups who, in the opinion of the board, have an interest in the matter.*

**26(5)** *In the case of a review pursuant to this Part of rates for services of the Corporation, the Board may take into consideration, in addition to factors described in subsection (4), all elements of insurance coverage affecting insurance rates.*

**Crown Confidentiality**

**MBA (MPI) 1-5, MBA (MPI) 1-18, MBA (MPI) 1-19(c)**

**MBA (MPI) 2-2, MBA (MPI) 2-7 and MBA (MPI) 2-8**

These information requests relate to the events leading up to the enactment of Bill 36, which relates to accident benefits for the catastrophically injured, and Manitoba Regulation 13/2009, which relates to Driver Safety Rating.

MPI, in its refusal to answer the foregoing undertakings, relies in part upon the provisions of *The Freedom of Information and Protection of Privacy Act* of Manitoba (FIPPA), and, in particular, sections 5, 19 and 23 thereof.

MBA submits that only the Crown can rely upon the provisions of FIPPA and that the Corporation cannot so rely. In fact, sections 19 and 23 of FIPPA apply to a "public body", which term is defined in section 1 of FIPPA as a department, a government agency, the Executive Council Office, the office of a minister and a local public body, subject to exclusions which are inapplicable in this instance.

The definition of "government agency" under FIPPA, also found in section 1, includes any board, commission, association, agency or similar body, whether incorporated or unincorporated, all of the members of the board of directors of which (in the case of a corporation) are appointed by the Lieutenant Governor in Council.

Pursuant to *The Manitoba Public Insurance Corporation Act*, and in particular section 2(1) thereof, the members of the board of directors of the Corporation are appointed by the Lieutenant Governor in Council, and, as such, the Board finds that the Corporation is a public body as defined in FIPPA. As such, the Corporation can seek to rely upon the provisions of FIPPA where appropriate.

MPI submits that although the provisions of FIPPA have not been technically engaged on the Motion (given that an Application for Access on the statutorily mandated form has not been submitted), the FIPPA access principles should still apply on the Motion. The Corporation has not, however, submitted any specific authority to the Board in support of that submission.

The Board notes the Corporation's reliance upon section 5(2) of FIPPA, which states that if a provision of FIPPA is inconsistent or in conflict with other legislation, the provisions of FIPPA prevail unless the other legislation provides for an express exception to its application. In reply, MBA relies upon section 3(d) of FIPPA, which provides that FIPPA does not affect the power of a tribunal to compel a witness to testify or to compel the production of documents.

The Board accepts the submissions of MBA that section 5(2) of FIPPA does not derogate from the Board's powers as reflected in the Act, such that the Corporation cannot rely upon FIPPA as a basis to refuse to provide documents to the Board. The Board also notes that FIPPA applies to requests for records, defined in FIPPA as a "record of information in any form...".

It is the Board's view that MBA has not requested, in these information requests, a "record" from the Corporation as defined in FIPPA. Rather, MBA has requested information from the Corporation, without requesting meeting minutes or the like. MBA further submits that it has not, in each of these information requests, sought substantive information from the Corporation regarding its meetings with government, but rather has in some instances sought other information such as calendaring. The Board is satisfied that FIPPA, if it applied otherwise, would not apply to information requests that do not constitute requests for records.

In addition to its reliance upon FIPPA, MPI submits that the aforementioned information requests are irrelevant to the GRA. As set out above, pursuant to the Act, when deciding the GRA the Board can consider a multitude of specific factors, as well as "any other factors that the Board considers relevant to the matter". In other words, the Board has been given a significant level of discretion by the Legislature in terms of what it can consider when setting rates for compulsory driver and vehicle insurance.

The Board concludes, however, that these information requests are irrelevant to the GRA, because their substance relates to past events that unfolded between the Corporation and the Government of Manitoba. It is the Board's will that, in the future, the Corporation consult the Board with respect to its discussions with Government that will affect the Corporation in a material financial way, rather than informing the Board of significant changes after the fact.

The current approach hampers significantly the Board's ability to fulfill its mandate of protecting the interests of Basic ratepayers and the financial health of the Corporation that, together, represent the general public interest, particularly given the Corporation's monopoly over Basic insurance in Manitoba.

***Relevance***

***MB (MPI) 1-20, MBA (MPI) 1-21, MBA (MPI) 1-22, MBA (MPI) 1-23, MBA (MPI) 1-24, MBA (MPI) 1-25, MBA (MPI) 1-51, MBA (MPI) 1-52, MBA (MPI) 1-53, MBA (MPI) 1-54, MBA (MPI) 1-55, MBA (MPI) 2-9, MBA (MPI) 2-10, MBA (MPI) 2-11, MBA (MPI) 2-12, MBA (MPI) 2-13, MBA (MPI) 2-14, MBA (MPI) 2-21, MBA (MPI) 2-22, MBA (MPI) 2-23, MBA (MPI) 2-24, MBA (MPI) 2-25***



These information requests relate to both previous recommendations made by the Board that its jurisdiction be extended to the whole of the operation of the Corporation and to the Enhanced Drivers' License program. The Corporation's responses to MBA's information requests were that the information requested is either not germane to the GRA or is outside the scope of the Board's authority.

MBA has submitted, and its point is well taken, that pursuant to the Board's Rules of Procedure, and in particular Rule 16, the Corporation is obligated to set out specific reasons for its view that a particular information request is irrelevant to a proceeding. Over the last number of years, the Corporation has not adhered to this Rule, and has not been reminded to do so either by the Board or by any intervener. It is now so reminded.

With respect to the specific information requests at issue, the MBA also argues that if a question relates to a follow up on a Board recommendation, to any part of the GRA filing or to matters that have been cross-examined upon in the past, that information is necessarily relevant to the GRA. The Corporation argues, in the main, that these information requests do not relate to compulsory driver and vehicle insurance and, as such, their substance is beyond the scope of the GRA and the jurisdiction of the Board.

The Board again points to the provisions of the Act, which provides the Board a significant level of discretion in terms of what can be considered when the Board is setting rates for compulsory driver and vehicle insurance.

Although the Board has not been granted the jurisdiction to review the rates for service to be charged by the Corporation other than with respect to compulsory driver and vehicle insurance, there is a significant distinction between that over which the Board has jurisdiction to decide and the evidence that it can consider in making its decisions. Pursuant to the Act, the latter is very wide in scope.

As such, it is the Board's view that what is more material than what the Corporation may or may not have provided in the past in the way of information or evidence is the Board's clear power to review whatever evidence it deems relevant (within subsection 26(4) of the Act) in deciding the GRA.

MPI also argues that the information requests, if answered, would not supplement the financial information before the Board for the purposes of rate setting. The Board again notes that pursuant to the Act, the Board can consider more than the Corporation's financial information in setting rate bases and premiums charged with respect to compulsory driver and vehicle insurance.

In particular, the Act references specifically the inclusion of "compelling policy considerations" and "any other factors that the Board considers relevant".

The fact is that subsection 26(4) of the Act expressly refers to the consideration of information regarding the Corporation, as a whole, and does not restrict the evidence to be received by the Board to that which relates to the Basic insurance line of business. Moreover, there are many aspects of the overall Corporation's finances that can, have or will affect Basic, without restricting the generality of this view including overall retained earnings, reserves and provisions, cost allocations (including for such expenses as staffing costs), investment income allocation and the gross and net cost of DVL operations.

The Board is also mindful of the statutory provisions which prohibit the Government of Manitoba from utilizing MPI's funds, this in order to ensure that financial successes of the Corporation benefit ratepayers, and notes, as past records before the Board have reflected, that the competitive environment in which the Corporation once found itself, not only with respect to general insurance lines (which MPI operated at one time but later sold), but, with respect to Extension auto insurance in more recent years, has all but dissipated.

The Corporation is very close to being in a monopoly position on the Extension side as it is with respect to Basic insurance and, for that reason, the Board repeats the recommendation that it has made in each of the past five General Rate Application Orders; namely that the Corporation support the expansion of the Board's regulatory oversight to the whole of its operations, as to do so would be to serve the public interest.

The Board further notes that, historically, in an environment wherein the Extension and SRE lines of business were part of a much more competitive environment than is the case today, the

Corporation was forthcoming with the Board with respect to the earnings within the competitive lines and repeatedly transferred excess retained earnings from those lines to the Basic division.

At present, even in light of the near monopoly in which the Corporation finds itself in respect of those lines of business, it refuses to provide that information (beyond what is already on the public record), and has ceased the transfer of funds to Basic. The Board anticipates that this issue may, once again, be further discussed at the upcoming GRA hearing.

MPI also relies upon FIPPA with respect to these information requests. The Board's findings with respect to those submissions as set out above are equally applicable to these information requests.

It is the Board's view and conclusion that the following information requests should be answered by the Corporation, this on the basis that the same are relevant to the GRA, are admissible pursuant to the Act, and that it is in the public interest for MPI to do so:

Round 1 Questions	Round 2 Questions
MBA (MPI) 1-20	MBA (MPI) 2-9
MBA (MPI) 1-21	MBA (MPI) 2-10
MBA (MPI) 1-22	MBA (MPI) 2-11
MBA (MPI) 1-23	MBA (MPI) 2-12
MBA (MPI) 1-24	MBA (MPI) 2-13
MBA (MPI) 1-25	MBA (MPI) 2-14
MBA (MPI) 1-51	MBA (MPI) 2-21
MBA (MPI) 1-52	MBA (MPI) 2-22
MBA (MPI) 1-53	MBA (MPI) 2-23
MBA (MPI) 1-54	MBA (MPI) 2-24
MBA (MPI) 1-55	MBA (MPI) 2-25

***Third Party Secrecy***

***MBA (MPI) 1- 46, MBA (MPI) 2- 19***

These information requests relate to the production of minutes of two meetings of the FINEOS Group.

MBA argues that there is no basis for third party confidences to be maintained, and that the Corporation has filed no support for its position that the documents are confidential. MBA further argues that a private arrangement should not cause the exclusion of evidence in any event.

The Corporation relies upon section 18 of FIPPA, regarding a third party's business interests, and submits that at the FINEOS group meetings discussions are consistently treated as confidential, and that confidentiality is a requirement to be a member of the group. The Corporation further submits that if the minutes have to be disclosed, it will have to leave the FINEOS group, and states that it considers participation in the group very valuable.

MPI argues that sections 18(1)(b) and 18(1)(c) of FIPPA apply to this request. The Board's findings with respect to FIPPA, as set out above, are equally applicable to these information requests.

As such, it is the Board's view and conclusion that these information requests should also be responded to fully by MPI, this on the basis that the same are relevant to the GRA, are admissible pursuant to the Act, and that it is in the public interest for MPI to do so.

***Additional Information Requests***

***MBA (MPI) 2- 3, MBA (MPI) 2- 4, MBA (MPI) 2-15, MBA (MPI) 2-18***

MBA has, in its Notice of Motion, requested that MPI answer these four information requests. MBA did not, however, make any written submissions with respect to why these information requests should be answered, while the Corporation has not made any submissions as to why these information requests should not be answered.

In the absence of submissions from either side, the Board is not persuaded that these information requests should be answered at this stage.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website, [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca).

**IT IS THEREFORE ORDERED THAT:**

1. The Corporation provide written responses to the following MBA information requests on or before 4:00 p.m., October 1, 2009:

Round 1 Questions	Round 2 Questions
MBA (MPI) 1-20	MBA (MPI) 2-9
MBA (MPI) 1-21	MBA (MPI) 2-10
MBA (MPI) 1-22	MBA (MPI) 2-11
MBA (MPI) 1-23	MBA (MPI) 2-12
MBA (MPI) 1-24	MBA (MPI) 2-13
MBA (MPI) 1-25	MBA (MPI) 2-14
MBA (MPI) 1-46	MBA (MPI) 2-19
MBA (MPI) 1-51	MBA (MPI) 2-21
MBA (MPI) 1-52	MBA (MPI) 2-22
MBA (MPI) 1-53	MBA (MPI) 2-23
MBA (MPI) 1-54	MBA (MPI) 2-24
MBA (MPI) 1-55	MBA (MPI) 2-25

2. Any follow up to the now expected responses to the above listed information requests shall be dealt with by way of pre-ask or on cross-examination.

**IT IS THEREFORE RECOMMENDED THAT:**

1. The Corporation consult with the Board with respect to any ongoing discussions with Government that are expected to affect the Corporation in a material financial way.
2. The Corporation support the expansion of the Board's regulatory oversight to the whole of its operations, so as to allow the Board to ensure its understanding of MPI's financial situation, operations and prospects is sufficiently comprehensive and sound.

THE PUBLIC UTILITIES BOARD

"Grahame Lane, C.A."  
\_\_\_\_\_  
Chairman

"H. M. SINGH"  
\_\_\_\_\_  
Acting Secretary

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Acting Secretary