

M A N I T O B A

THE PUBLIC UTILITIES BOARD ACT

THE MANITOBA PUBLIC INSURANCE ACT

**THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT**

Order No. 44/11

March 31, 2011

Before: Graham Lane, CA, Chairman
Len Evans , Member

**MANITOBA PUBLIC INSURANCE:
APPLICATION TO REVIEW AND VARY ORDER 122/10**

Background

On December 8, 2010 the Public Utilities Board (Board) issued Order 122/10 (Order), this with respect to Manitoba Public Insurance Corporation's (Corporation or MPI) General Rate Application (GRA) for rates and premiums for compulsory vehicle insurance, driver insurance premiums and vehicle premium discounts (effective March 1, 2011).

On January 7, 2011, the Corporation filed an application (Application) with the Board pursuant to subsection 44(3) of *The Public Utilities Board Act*, to review and vary two aspects of the Order.

The Application

In particular, MPI requested the following:

1. the deletion of Section 9 of the Board Directives of Order 122/10, which provides: "*MPI shall allocate PIPP costs associated with claims by extra-provincial truckers and bus drivers to a non-Basic line of business*"; and
2. approval of the MPI's proposed Cost Allocation Methodology for rate making purposes for Basic automobile insurance.

The Corporation reflected in its Application two broad reasons why the Application should be granted, namely:

- A) that the Board exceeded its jurisdiction by ordering that PIPP costs (Personal Injury Protection Plan, no fault accident benefits) associated with claims by extra-provincial truckers and bus drivers be allocated by the Corporation to a non-Basic line of business; and
- B) That the Corporation has provided sufficient information to the Board with respect to the Cost Allocation Methodology such that the same should be implemented.

MPI also provided submissions with respect to each of its reasons, summarized as follows:

PIPP Costs

With respect to interprovincial trucking/bus PIPP costs, the Corporation refers to section 74(1) of *The Manitoba Public Insurance Corporation Act* wherein entitlement to PIPP benefits are established for Manitoba residents, and, as well, to section 119 of *Automobile Insurance Certificate and Rates Regulation 24/2010*, wherein it is provided that certain vehicles, including interprovincial trucks, are exempt from the requirement to pay for MPI's Basic insurance.

MPI asserts that whether it or the Board perceives this arrangement to be inequitable is irrelevant and PIPP costs incurred for interprovincial truckers and bus drivers are costs of Basic insurance and must be included in Basic rates. The Corporation states further that the Board does not have jurisdiction to choose which costs of the Basic program should be considered when setting Basic rates; rather that all PIPP costs must be borne by Basic, regardless of the type of expense or claimant.

MPI also asserts that the inclusion of these costs in Basic rates is actuarially sound, on the basis that rate making and risk classification are constrained by legislation.

Cost Allocation

With respect to MPI's Cost Allocation Methodology, the Corporation notes that there is no financial impact of this aspect of its Application upon individual rates, given that the Board in Order 122/10 approved the 4% rate decrease requested by the Corporation.

MPI states that the Board, to properly set rates, must know the costs of operating Basic, including those costs to be allocated between Basic and other lines of business.

The Corporation states, with respect to its Cost Allocation Methodology, that it sought to fulfill the requests of the Board (as reflected in Order 161/09, which followed the hearing of the 2010 General Rate Application), and, as well, that it sought to fulfill the requests of the Board over the course of the most recent GRA process.

MPI suggested that the Board is not concerned with the structure of the four levels or the formulae used in the Cost Allocation Methodology, but rather, the Board's concern is the adequacy of the information provided by the Corporation about the data inputted into the formulae.

The Corporation states that it is frustrated and discouraged by the portion of Order 122/10 wherein the Board set out its view that the Cost Allocation Methodology cannot be implemented because the Board has not been assured that the costs subject to allocation are prudent, efficacious, fair and/or reasonable, or that the costs incurred for non-insurance purposes have, are, or will be billed to Government. MPI also states that it has provided the Board with all information requested, except for a "very limited class of information", and that no explanation has been provided (by the Board) on how any information not provided could assist the Board in deciding to approve MPI's proposed Cost Allocation Methodology. The Corporation states that none of the areas of concern listed are allocated at Level D of the Cost Allocation Methodology, but are addressed in other levels of the Methodology.

In conclusion, the Corporation states that it has refuted each of the purported reasons for the Board's decision on Cost Allocation Methodology, as reflected in Order 122/10, and asks that the Board approve the Cost Allocation Methodology as a methodology, and address concerns regarding its application as may arise from time to time.

Intervenors' Positions

The Application was shared with the interveners which participated in the GRA, namely Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors (CAC/MSOS), Coalition of Manitoba Motorcycle Groups (CMMG), Manitoba Bar Association (MBA), and Canadian Automobile Association - Manitoba Division (CAA).

CAC/MSOS filed comments with the Board in respect of the Application on February 25, 2011, wherein the intervener expressed the position that:

- The Board should dismiss the Corporation's request to approve the proposed Cost Allocation Methodology, In their view, MPI has failed to raise a substantial doubt regarding the correctness of the Board's order; and
- The Board should grant the application to delete section 9 of the Board Directive. It appears that the Board has acted in excess of its jurisdiction.

Cost Allocation

With respect to the issue regarding the Cost Allocation Methodology, CAC/MSOS surmises that the Corporation may be seeking greater direction from the Board on what is required for approval of the proposed Methodology. CAC/MSOS also states that the Corporation is seeking to substitute its own Judgment for that of the Board, in terms of deciding what information the Board requires, and that the Corporation does not substantively address the Board's underlying lack of confidence that the rates it is setting are just and reasonable. CAC/MSOS also states that the Corporation does not acknowledge the historic challenges that the Board has faced with respect to the Cost Allocation Methodology.

CAC/MSOS submits further that MPI has failed to raise a substantial doubt as to the correctness of the Board's Order regarding the Cost Allocation Methodology, pursuant to Rules 36(4) and (5) of the Board's *Rules of Practice and Procedure*, by failing to address core aspects of the Board's decision (including issues related to MPI's Business Process Review), as well as the failure of the Cost Allocation Methodology to address the value of benefits conferred by the core service of Basic upon the adjacent lines of business.

CAC/MSOS states that the Corporation has failed to recognize the standard regulatory truism that the adequacy of a particular mechanism cannot be adequately ascertained unless it has been tested through the application of all appropriate inputs.

PIPP Costs

With respect to the interprovincial trucking issue, CAC/MSOS states that the Corporation has demonstrated that the Board exceeded its jurisdiction by excluding PIPP costs associated with claims by interprovincial truckers from Basic insurance rates.

CAC/MSOS begins their analysis by examining whether PIPP is wholly within Basic, which analysis it characterizes as a question of statutory interpretation. CAC/MSOS reviews a number of legislative provisions, including from *The Manitoba Public Insurance Corporation Act*, *The Crown Corporations Public Review and Accountability Act* and two regulations enacted under the *Manitoba Public Insurance Corporation Act*, and concludes that the Government understood PIPP to be part of Basic.

CAC/MSOS states that the Board is correct in that PIPP was placed within Basic as a public policy decision (of the Government) that does not reflect insurance principles, but CAC/MSOS states that it has been unable to identify any point within the legislative debates wherein a discussion took place as to the unfairness of “saddling” Basic customers with the full costs of running a social welfare scheme for the benefit of all Manitobans.

CAC/MSOS states that the next issue to be considered is whether the Board has the authority to override a social welfare plan legislated by Government, and notes that the Board, as a creature of statute, has all of the powers conferred upon it expressly by legislation or by necessary implication, and no others. CAC/MSOS states that the Board used the “just and reasonable” standard to override what it considers to be the flawed or inadequate public policy objectives behind the government’s decision to introduce PIPP within Basic.

CAC/MSOS concludes that the Board does not have the jurisdiction to do so, and states further that the Board’s focus on interprovincial truckers may be questioned as being arbitrary, as the truckers represent a small subgroup of non-contributing beneficiaries of PIPP.

Other Interveners

None of CMMG, MBA or CAA, other interveners to the GRA proceedings, took any position with respect to MPI’s Application.

Board Findings

The Board thanks the Corporation and CAC/MSOS for their thoughtful submissions with respect to the Corporation’s Application.

Interprovincial Trucking/PIPP Costs

The Board recognizes that the Corporation is required by law to offer PIPP benefits. The governing legislation establishes a framework whereby:

- PIPP benefits are funded by Manitoba drivers and vehicle owners who register vehicles in Manitoba; and
- PIPP benefits are paid out to those who are involved in motor vehicle accidents in Manitoba, as well as those who are involved in motor vehicle accidents outside Manitoba (if the injured person is a Manitoba resident).

However, some vehicle owners who qualify for PIPP benefits are exempt from the requirement to pay insurance premiums to the Corporation in respect of these benefits, as follows:

- Manitoba vehicle owners whose vehicles are concurrently registered and licensed under the laws of another jurisdiction; who use their vehicles for interprovincial or international carriage of persons or goods; and the owner is otherwise insured against bodily injuries or death caused to others as a result of their operation of their vehicle (s. 119(1) of the *Automobile Insurance Certificate and Rates Regulation*, Man. Reg. 24/2010);
- owners who have the benefit of reciprocity provisions that are applicable to insurance exemptions (s. 119(2) of the *Automobile Insurance Certificate and Rates Regulation*); and
- owners who have the benefit of vehicle registration exemptions pursuant to ss. 34 and 37 of *The Drivers and Vehicles Act*, C.C.S.M. c. D104.

In addition, s. 52(p) of the *Automobile Insurance Coverage Regulation*, Man. Reg. 290/88, exempts most large trucks that are registered in Manitoba (but which operate extra-provincially) from the Basic third-party liability coverage regime.

Basic rates are supposed to be set at a level that generates enough income to offset Basic's costs, or to enable Basic to operate at a financial break-even level over the long term. Basic's

costs are largely driven by the benefits it pays out and, as such, higher Basic costs will and do lead to higher Basic rates.

The Board has jurisdiction to review and approve Basic rates pursuant to *The Crown Corporations Public Review and Accountability Act*, C.C.S.M. c. C336 (Crown Corporations Act) and in particular s. 26 thereof, which provides, in part:

26(1) Notwithstanding any other Act or law, rates for services provided by Manitoba Hydro and the Manitoba Public Insurance Corporation shall be reviewed by The Public Utilities Board under The Public Utilities Board Act and no change in rates for services shall be made and no new rates for services shall be introduced without the approval of The Public Utilities Board.

26(2) For the purposes of this Part, "rates for services" means

(c) in the case of the Manitoba Public Insurance Corporation, rate bases and premiums charged with respect to compulsory driver and vehicle insurance provided by that corporation.

The mandate of the Board is to set just and reasonable rates (also characterized as fair and reasonable rates) for Basic policyholders. To determine whether proposed rates are just and reasonable, the Board requires a broad view of MPI's operations and a perspective on the prudence of its operations.

Pursuant to the Crown Corporations Act, when the Board reviews Basic rates, it may have regard to the factors that are set out in ss. 26(4) and (5) of that Act, which factors include:

26(4)(a)(viii) any compelling policy considerations that the board considers relevant to the matter ...

So, the Board can consider the policy associated with the allocation of interprovincial trucking costs, but only to the extent that certain cost allocations to Basic are not just or fair and reasonable, and to the extent that these cost allocations, if made, would produce unjust or unfair and unreasonable Basic rates. Because of the connection between Basic costs and Basic rates discussed above, the Board has jurisdiction to deny those cost allocations. This includes the allocation of the cost of PIPP benefits paid to interprovincial truckers to Basic, if the same are properly characterized as an allocation that is unfair or unjust to other Basic ratepayers.

In addition, the power of the Board to allow or disallow costs to Basic is necessarily incidental to its Basic rate review function. If the Board has the power to approve (or deny) Basic rates, which power it clearly has, then it must also have the power to approve (or deny) the practices that ultimately shape those rates.

It would appear that the Corporation agrees with that approach, at least in general terms, as the Board notes that the Board's decision to disallow the Corporation's proposed allocation to Basic of the costs associated with the King Street property donation to Basic (a matter considered at the most recent GRA hearing) was not a subject of the Application.

Moreover, the Board must set Basic rates that are actuarially sound and statistically driven and, as such, the Board has jurisdiction to disallow cost allocations to Basic that are not actuarially sound (again, because of the connection between Basic's costs and its rates).

As the Board stated in Order 122/10, MPI's current practice is neither fair nor reasonable nor actuarially sound, as the costs presently borne by Basic are not related to passenger vehicles or insurance *per se*. Rather, an economic development or trade measure has been taken by government. As such, while, preferably, government would absorb these costs, an allocation to non-insurance services would at least improve the actuarial soundness of MPI's rate setting model.

See also Board Order 145/10 (at page 26):

In addition, MPI's current practice does not provide for a matching of expenditures to the premium base to which those expenditures relate, and as such the practice is not actuarially sound.

The Board is also mindful of s. 14(2) of *The Manitoba Public Corporations Act*, C.C.S.M. c. P215 (MPIC Act), which restricts government's ability to appropriate funds collected by the Corporation on account of automobile insurance as follows:

14(2) No moneys, funds, reserves, investments and property, whether real or personal, acquired, administered, possessed or held by the corporation, nor any profits earned by the corporation in the activity of automobile insurance for which

premiums are prescribed in the regulations, may be taken, used or appropriated by the Government of Manitoba for any purpose whatever, except as provided under section 12 or in repayment of advances by or moneys borrowed from, the Government of Manitoba and interest thereon.

The parties to the Application acknowledge that the exemption of interprovincial truckers from the requirement to pay Basic insurance premiums is reflective of a government-driven policy decision.

And, it is the Board's view that this policy issue gives rise to a "use or appropriation by the Government of Manitoba" of Basic funds, for the purpose of furthering an ulterior policy objective that is not related to automobile insurance. And, as such, the costs thereof cannot be allocated to Basis pursuant to the spirit of the MPIC Act.

The Corporation argues that the Legislature has set up the Basic premium and benefit framework, and it is not for the Board to interfere with that framework. For clarity, the Board does not suggest that interprovincial truckers should not be entitled to PIPP benefits; rather the Board has stated that the costs of those benefits may not be borne by Basic policyholders.

In other words, there are two separate questions at play; benefit entitlement and cost allocation. The Board does not take issue with the former; only the latter.

MPI's argument is based on the premise that interprovincial truckers are entitled to PIPP benefits even though they don't pay for them (a situation which the Board's Order does not purport to change), as well as the premise that these benefits must be allocated to Basic because "*Basic rates = Basic claims incurred and expenses*". The Corporation also states that "*All statutory benefits are to be included in [Basic] rates*".

Despite the Corporation's best arguments, there is no specific authority for these propositions in the applicable legislation. Moreover, if a statutory benefit produces unreasonable or unjust Basic rates, is that benefit simply to continue to be included in Basic rates?

The Board answers in the negative, and notes that there is no authority in the legislation for the proposition that the Board cannot allocate certain costs outside of Basic. MPI accepts that the

Board has the jurisdiction to allocate assets, liabilities, income and costs among the lines of business; the same surely should be true in respect of the issue at hand.

Moreover, the Board's decision in this matter has not interfered with government's public policy objectives in any way; rather, pursuant to the Order, interprovincial truckers would continue to receive PIPP benefits without paying for insurance coverage, which is precisely what the applicable legislation provides. What the Board has sought to avoid is the payment by Basic ratepayers/policyholders of higher than justified premiums to enable government to further a public policy objective that, essentially, "pushes" the costs of that objective onto ratepayers in a compulsory insurance program.

Pursuant to Order 122/10, those costs will either be borne by the Corporation's voluntary ratepayers, reducing non-Basic retained earnings if not reflected in non-Basic policy rates, or, if the Board's recommendation was to be accepted by government, by government – the party the Board asserts should accept responsibility for the costs.

Historical Anomaly

Unfortunately, the practical effect of the legislation as currently drafted, and specifically the dollar impact to Basic over the years since PIPP was implemented, 1994, was unknown to the Board prior to the most recent GRA.

If the Board had been aware of the full extent of this issue prior to the GRA, it is likely that the Board's Order with respect to the allocation of interprovincial trucking PIPP costs would have been made much earlier. The Board is of the view that the annual and accumulated cost associated with the issue has and is quite material, and has, in effect, resulted in Basic ratepayers paying higher premiums than those that would fairly be considered just and reasonable.

The Board orders, therefore, that the Application is denied with respect to the interprovincial trucking issue.

Cost Allocation Methodology

The Board accepts the submissions of CAC/MSOS that, within this portion of the Application, the Corporation is seeking to substitute its own judgment for that of the Board in terms of deciding what information the Board requires.

MPI acknowledges that the Board must know the costs of operating Basic to fulfill its role of rate review, but states that the Board has all of the information it needs to approve the implementation of its proposed Cost Allocation Methodology.

Whether or not the Corporation believes that the Board has all of the information that it needs is not the issue; rather it is the Board that, pursuant to the Crown Corporations Act, is empowered to consider any factors that it deems relevant to the issues to be decided.

As the parties are aware, there is, at present, a Stated Case pending in the Manitoba Court of Appeal, wherein the Court was asked to clarify the meaning and extent of provisions within the Crown Corporations Act that reflect the details of what information the Board can compel from the Corporation.

The fact is that there has been no change in the Board's view with respect to the Cost Allocation Methodology since the issuance of Order 122/10, and the Corporation has failed to raise a substantial doubt on the Application as to the correctness of the Board's Order regarding the Cost Allocation Methodology.

It is the Board's view that its own thoughts on the information to be submitted to it regarding cost allocation and those of the Corporation are simply diametrically opposed at the present time, and, accordingly, the Board orders that the Application is denied with respect to the Cost Allocation Methodology issue.

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

IT IS THEREFORE ORDERED THAT:

1. The Application is dismissed such that Section 9 of Order 122.10 shall not be deleted from the Board Directives section of the Order.
2. The Application is dismissed such that the Cost Allocation Methodology shall not be implemented until such time as the Board has had the opportunity to review all underlying expenses to be allocated.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."

Chairman

"HOLLIS SINGH"

Secretary

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The Public Utilities Board

Secretary