



A Hard Path:

Captive Consumers, the Independent Rate Approval Process and the 2020/21 MPI General Rate Application

Closing submissions of the Public Interest Law Centre on behalf of the Consumers' Association of Canada (Manitoba)

October 24, 2019

What is all the fuss about a hearing involving an average rate reduction?

- ▶ Challenge by the Provincial Cabinet to the legislatively granted Independent Rate Setting Role of the Public Utilities Board (PUB) which has been exercised since 1989;
- ▶ Challenge by Manitoba Public Insurance (MPI) to the traditional industry-wide agreements with the automotive trades and with other service providers;
- ▶ Challenge to the traditional “bricks and mortar” service delivery model by unmet needs, consumer demand, technological developments and broader industry developments;
- ▶ Challenges to the legacy systems of MPI (AOL, CARS and DVA) which presage the largest information technology investment in MPI history;

What is all the fuss about a hearing involving an average rate reduction? (cont.)

- ▶ Challenge of the ongoing toll of fatalities and serious injuries suffered by all Manitobans but disproportionately by rural Manitobans;
- ▶ Challenge to the “myth” that there is true competition in the extension market; and,
- ▶ Challenge to the historic view of MPI that the benefits offered to extension (non utility services) by its relationship with the statutory monopoly are not relevant to setting of basic rates.

To consumers, there is no such thing as an average rate reduction

- ▶ Each consumer experiences an individual impact;
- ▶ Amidst the media headlines of a modest rate reduction, there are significant impacts both up and down for many individual consumers with over 90,000 private passenger vehicles receiving rate increases of between 4% and 5% and an additional 60,000 facing increases of between 3 and 4% (MPI Exhibit 91, p. 4);
- ▶ So while rate stability is a convenient myth in the corporate boardroom or the legislative briefing note, it is not the lived experience of many Manitoba consumers

This hearing matters for consumers

- ▶ We face a choice:
 - ▶ to honour the legislative commitment to an independent rate approval process; or
 - ▶ to walk down the ICBC path of cabinet interference in the rate setting process.
- ▶ There are significant grounds for concern that the traditional industry wide agreements are not delivering value for consumers and risk running afoul of the *Competition Act*.

This hearing matters for ratepayers

- ▶ In the face of inevitable disruption of the “bricks and mortar” service delivery model and consumer expectations of choice, there is a need to ensure in a cost efficient manner that:
 - ▶ access to important “bricks and mortar” services is maintained for rural consumers with enhanced access to on line service opportunities for all Manitobans especially those currently under served in rural and remote issues;
 - ▶ that all Manitobans, who choose to do so, can access important on line MPI services in a consumer friendly manner; and
 - ▶ that urban Manitoba consumers, who choose to do so, can receive “bricks and mortar” service in a manner that does not deny them the choice of being served by MPI or by brokers.
- ▶ There are significant risks related to the modernization of legacy systems particularly given the complexity of the relationship between the insurance and driver vehicle administration sides of the business.

This hearing matters for Manitobans

- ▶ There is no Indigenous road safety strategy notwithstanding evidence of a disproportionate number of fatalities and serious injuries in rural Manitoba as well as MPI observations of unlicensed drivers and vehicles and unmet service needs in First Nation communities;
- ▶ In the face of overwhelming evidence of excess profits and concern of market failure in extension, it is critical to ensure that monopoly rate payers receive an appropriate transfer of all excess profits consistent with an evidence based risk analysis of the monopoly and non utility lines of business.

The Two Sides of MPI

There are two sides to MPI displayed in this proceeding:

Side 1)

Our clients see evidence of good intentions and transparency when it comes to:

- ▶ the MPI concession of the appropriateness of the transfer of excess profits from extension reserves to the basic program;
- ▶ good practice consumer engagement with regards to the Driver Safety Rating review; and
- ▶ efforts to improve reserving and case management with regard to the personal injury protection plan.

The Two Sides of MPI (cont.)

Side 1) continued

Our clients see evidence of good intentions and transparency when it comes to:

- ▶ attempts to implement value management practices with regard to certain information technology projects;
- ▶ the bench marking exercises undertaken with regard to vehicle repair and other service industry benchmarks;
- ▶ attempts to address the failure to achieve value for money in industry agreements and potential risks of non-compliance with the *Competition Act*; and
- ▶ efforts to maintain and enhance consumer choice and ensure value for money in the face of the inevitable disruption of the “bricks and mortar” service delivery model.

The Two Sides of MPI

Side 2)

But our clients cannot endorse:

- ▶ side stepping the inherent balance in the independent rate approval process and attempting to impose the risk tolerances of the MPI Board of Directors on captive monopoly subscribers through the *Reserves Regulation*;
- ▶ failing to comply with the intent of the Shadow Investment portfolio which was to examine the foregone opportunities in terms of “higher return by taking on different risks in a prudent fashion” and instead establishing shadow portfolios that assumed lower real risk than the MPI selected comparator;
- ▶ the significant risks associated with the current approach to the implementation of Legacy Systems Modernization (Nova); and
- ▶ the revision to the collision forecast for the last six months of the 2019/20 year achieved by taking into account the unusually low collision experience over five of the first six months of 2019/20.

Despite efforts of current MPI leadership – there is significant evidence of imprudence embedded in the current rate application

Captive monopoly customers continue to bear significant current and future costs associated with:

- ▶ the failure to reasonably manage complex Personal Injury Protection Plan cases especially between 2010 and September 2018;
- ▶ the failure to properly manage the Physical Damage Re-engineering Project resulting in a negative Net Present Value of \$50 million;
- ▶ an adventurous approach to information technology projects resulting in over \$20 M in write-offs in 2017/18 and 2018/19;
- ▶ higher than peer information technology full time equivalent positions (internal and consultant);
- ▶ imprudent industry wide agreements leading in some cases to higher than Canadian average rates; and
- ▶ a questionable business case relating to the Driver-Z program, where the budget was revised from \$5M to \$7.1M, there was initially no full Net Present Value analysis and the project now has a negative Net Present Value of \$1.6M. (Wennberg, Transcript, October 10, p. 801-803)

These costs are not only financial but human especially in the case of complex personal injuries.

Outline of Submission (Part 1):

- ▶ We are all captive (basic and extension)
- ▶ Overview of the Hard Path
- ▶ Just and Reasonable Rate Considerations
 - ▶ forecast reasonableness
 - ▶ prudent and reasonableness of expenditures and investments;
 - ▶ the significance of consumer engagement
 - ▶ overall health of the corporation including prudent reserves and the Capital Management Plan

Outline of Submission (Part 2):

- ▶ *Reserve Regulation* analysis – A Clear Path
 - ▶ Is the *Reserve Regulation* lawful?
 - ▶ Is the *Reserve Regulation* binding?
 - ▶ If the *Reserve Regulation* is lawful but not binding, what is its relevance to the independent rate approval process?
 - ▶ If the *Reserve Regulation* is lawful and binding, what are the implications for the MPI capital management plan?
- ▶ Recommendations

Outline of Submission (Part 3):

- ▶ Confidential Submissions

We are all captive

- ▶ Traditionally basic customers have been described as captive and the extension market as competitive
- ▶ Calling the extension market competitive does a fundamental injustice to that word:
 - ▶ MPI has held a 95% market share at least since 2008 (CAC (MPI) 1-5c);
 - ▶ MPI is earning excessive profit margins (PUB (MPI) 2-11);
 - ▶ extension receives an inordinate benefit from its relationship with basic including seamless renewal and reassessment transactions (MPI Exhibit #92);
 - ▶ extension receives the same access to customer information as basic insurance with no structural separation between the two lines of business;
 - ▶ there is some evidence in written MPI statements in 2014 of efforts to “inoculate” the competitive lines of business from competition (CAC 1-1, Appendix 3).
- ▶ The *de facto* extension monopoly raises questions of profound importance for independent rate approval.

The Path is Clear

- ▶ Part 2 legal submissions rest on the following critical premises:
- ▶ the PUB has been granted independent rate approval authority over the rates and services of basic insurance by the Manitoba legislature;
- ▶ the PUB has made the RSR an integral element of its rate approval function by considering and determining:
 - ▶ the appropriate level of the reserve for rate setting purposes;
 - ▶ the appropriate methodology for determining the RSR level;
 - ▶ whether additional premiums should be charged to rebuild the RSR; and,
 - ▶ whether a rebate should be given to consumers due to excess reserves in the RSR.

(Johnston, October 15 Transcript, p. 1208-10)

The Path is Clear

Part 2 legal submissions also rely on the reality that:

- ▶ the *Reserves Regulation* usurps the legislatively granted authority of the PUB to determine an appropriate Basic insurance RSR level for rate setting and to approve an appropriate methodology for the determination of the RSR levels; and
- ▶ Cabinet's *Reserves Regulation* effectively impacts vehicle insurance rates, a power that was expressly removed from Cabinet in the 2018 legislative amendments to s. 33 of the *MPIC Act*.

The Path is Clear – but Hard

No one likes the position we are in,

but the legislative will as it comes to independent rate approval cannot be overturned, sidestepped or undermined by cabinet.

Just and Reasonable Rate Rates

- ▶ The PUB is an independent, quasi judicial administrative tribunal entrusted with approving just and reasonable rates for MPI basic (<http://pubmanitoba.ca/v1/aboutpub/index.html>) (CCGAA, s. 25(1)(3); PUB Act, s. 77a)
- ▶ In approving just and reasonable rates, “(t)he PUB has two concerns when dealing with a rate application; the interests of the utility’s ratepayers, and the financial health of the utility. Together, and in the broadest interpretation, these interests represent the general public interest.”

Consumers' Association of Canada (Man.) Inc et al v Manitoba Hydro, Electric Board, 2005 MBCA 55, at para 65.

Elements of the Just and Reasonable Rates

- ▶ ensuring forecasts are reasonably reliable;
- ▶ ensuring activities are necessary and prudent;
- ▶ assessing the reasonable revenue needs of the Corporation in the context of the overall general health of MPI;
- ▶ determining an appropriate allocation of costs between classes and lines of business; and
- ▶ setting just and reasonable rates in accordance with statutory objectives.

(PUB Order 98/14, p.28)

Forecast Reasonableness

Overall recommended findings

- ▶ On the expenditure side, CAC Manitoba generally accepts the reasonableness of the Corporation's 2020/21 GRA forecasts although there are sources of uncertainty related to:
 - ▶ interest rate direction during the test year;
 - ▶ a recent history of unfavourable experience related PIPP variances; and
 - ▶ the possibility that unusually high vacancy rates will extend into the 2020/21 test year potentially dampening expenditures.

Forecast Reasonableness

Overall recommended findings

- ▶ In terms of expenditure forecasts for the 2019/20 year, the revision to collision claims forecasts for the second half of the 2019/20 year to take into account unusually favourable experience in the “non-winter” months appears atypical and should not be relied upon in any determination of the projected level of the basic Rate Stabilization Reserve for the 2019/20 year end.

Forecast Reasonableness

Overall recommended findings

- On the revenue side, CAC Manitoba generally accepts the reasonableness of the Corporation's 2020/21 GRA forecasts with one exception:
 - while there are grounds for genuine interpretative dispute in the applicable actuarial standards, CAC Manitoba prefers the opinion of Ms. Sherry that the investment income from the RSR should be taken into account in the determination of the Actuarially Accepted Rate (AAR);
 - such a determination would appear to be more generally consistent with industry practices and would be particularly appropriate in the event that the extreme conservatism represented by the *Reserves Regulation* is found to be lawful and binding (which CAC Manitoba denies).

Unfavourable Experience Related Run-off related to the PIPP lines of coverage

- ▶ External Actuary- February 2019
 - ▶ after excluding methodological and interest rate impacts, unfavorable experience related run-off of \$40 M between the three long-term Personal Injury Protection Plan (PIPP) coverages with most of the unfavourable development in the 2016/17 and 2017/18 year
- ▶ Unfavourable experience primarily attributable to:
 - ▶ (1) claims persistency and (2) inadequate and inconsistent case reserving. (Figure EAR-5, PUB (MPI) 1-9)
- ▶ Struggles with the accuracy and consistency of claims reserving resulted in significant adverse developments in longer term PIPP claims (2010 – 2016) as a result of inaccurate case reserving in a timely manner.

(CAC (MPI) 1-36 from 2019/20 GRA, Attachment A, p. 6)

Unfavourable Experience Related Run-off related to the PIPP lines of coverage (cont.)

- ▶ New centralized case reserving methodology implemented for long-term PIPP claims files is suggested to have led to greater consistency and reliability of reserving adequacy.
(Part VIII – AR Appendix 3, p. 18 of 44)
- ▶ Unfavourable variances also have been impacted by long standing failure to reasonably manage complex claims which is related to staff reductions and challenges in the case management of complex claims.
(CAC 1-36 from 2019/20 GRA, Attachment A, p. 8)
- ▶ Impact, if any, on claims persistency of standardized case management and increased case management staff cannot be fully measured until after the 2019 loss year develops beyond the 24-60 month period.
(CAC (MPI) 1-30) (PUB 1-9)

Unusually High Vacancies May Persist into 2020/2021 Test Year

- ▶ Very large vacancy rate driven by higher than normal retirements, and higher than normal turnover.
(Campbell, Transcript, October 8, p. 393-396; Giesbrecht, Transcript, October 8, p. 447-480)
- ▶ The disconnect between budgeted FTEs and a significantly larger unfilled positions may spill over into 2020/2021:

DR. BYRON WILLIAMS: Is it likely that this extended level of vacancies will carry over into 2020/21?

MR. MARK GIESBRECHT: I think it's fair to say that there'll be some effect. We know that we do have a large number of postings for recruitment. It will depend on how fast we can fill those roles.

(Transcript, October 8, p. 480-481)

Favourable experience in 2019/20 baked into second half collision forecast

- trend in terms of frequency collisions in the first half of the year has been reflected in outlook for the second half of the year

(Johnston, Transcript, October 15, p. 1241)

MR. LUKE JOHNSTON: [...] Collision, we've effectively recognize. . . I believe five (5) of the first six (6) months of collision frequency were at the lowest levels we've ever seen. So we've recognized favourable collision frequency in a second half of the year, so we've assumed it will continue. Not liking our chances so much for this month, but hopefully for the rest -- rest of the year.

(Transcript, October 15, p. 1089)

But Winter is Coming with Substantial Risks

DR. BYRON WILLIAMS: And testifying under oath before the PUB today, you cannot predict with certainty the severity of the pending winter, can you?

MR. BENJAMIN GRAHAM: I -- I mentioned earlier today that I am not Mother Nature, but again, we've put processes in place to hopefully mitigate those risks.

DR. BYRON WILLIAMS: And, sir, you cannot predict with certainty the frequency of collision claims --

MR. BENJAMIN GRAHAM: No.

DR. BYRON WILLIAMS: -- that may flow from the winter of 2019/20?

MR. BENJAMIN GRAHAM: That's correct.
(Transcript, October 7, p. 270-271)

- 1 in-40 Adverse Winter Collision Frequency approximately \$66 M (Part VIII – AR Appendix 4, Scenario Analysis - 2019/20 Budget Base to Scenario Summary – CORPORATE)

Don't count your chickens before they are defrosted!

Prudence and reasonableness of expenditures and investments

Shadow Investment Portfolios – What was the issue?

- ▶ “That said, the Board recognizes that it may be the case that the Corporation has **foregone an opportunity** to hedge against long term risks by rejecting Real Return Bonds and reducing real assets in its new portfolio. To that end, the Board has directed that the Corporation run shadow portfolios to be evaluated against the portfolios selected by the Corporation . . . The Board expects that the shadow portfolios and the post implementation review will serve to inform it, and the Corporation, as to whether the Corporation's ALM strategy is reasonable. If a review in the 2020 GRA indicates that the Corporation did not employ a reasonable strategy, the Board will comment further at that time.” (emphasis added)

(Order 159/18, p. 89)

How would one reasonably test the hypothesis

- ▶ Objective Shadow Portfolio 1 to test the hypothesis that in the real world (rather than nominal world) the MPI-selected portfolio has foregone an opportunity to hedge against long term risks by rejecting Real Return Bonds.
 - ▶ At the very least, it should compare an optimized shadow portfolio against the MPI selected portfolio at a comparable level of real risk;
- ▶ Objective Shadow Portfolio 2 to test the hypothesis that in the real world (rather than nominal world) the MPI-selected portfolio has foregone an opportunity to hedge against long term risks by unduly constraining the portfolio;
 - ▶ At the very least, should compare an optimized unconstrained shadow portfolio against the MPI selected portfolio at a comparable level of real risk.

What are the issues with the Basic Shadow Portfolios:

- ▶ Shadow portfolio 1 was not optimized while the MPI selected portfolio was;
- ▶ Shadow portfolio 1 was established with a significantly lower level of real risk than the MPI selected portfolio rather than a comparable level of risk;
- ▶ Mysteriously, Shadow portfolio 2 (unconstrained) was compared against the rejected 2017 MPI portfolio rather than the MPI selected portfolio;
- ▶ Shadow portfolio 2 (unconstrained) was established with a significantly lower level of real risk than the MPI selected portfolio rather than a comparable level of risk;
- ▶ Shadow portfolio 2 (unconstrained) was constrained by limits imposed by the MPI Board of Directors

The Result was an Analytic Abyss

MR. STEVEN SCARFONE: So just a couple questions, Mr. Makarchuk. I just want to maybe pull you out of the abyss somewhat and ask you some basic questions on the advice that your firm provided to MPIC.

(Transcript, October 16, p. 1457)

Shadow 1 was not Optimized

DR. BYRON WILLIAMS: And, sir, this is not an optimized portfolio?

MR. DAVID MAKARCHUK: No. No.

DR. BYRON WILLIAMS: No. It's Just - -

MR. DAVID MAKARCHUK: It wasn't -- it wasn't on an efficient frontier.

DR. BYRON WILLIAMS: Yeah. It's just another asset mixed constrained to move money fr[o]m one bucket to another with no other buckets in play. Would that be fair?

MR. DAVID MAKARCHUK: Right.

(Transcript, October 16, 2019, p. 1430; see also p. 1398-1400)

Shadow 1 has significantly less real risk as measured in surplus volatility than the MPI preference

DR. BYRON WILLIAMS: So in terms of the shadow portfolio, you actually selected a portfolio for comparison purposes that has less $\text{ris}(k)$ as measured in surplus volatility than the MPI preference. Agreed?

MR. DAVID MAKARCHUK: Yes. If they're -- if the viability benchmark is a real one shifting to one with more Real Return Bonds, it will reduce the surplus volatility.

DR. BYRON WILLIAMS: And it's a significant reduction in surplus volatility as compared to the MPI selection as measured in real terms, sir?

MR. DAVID MAKARCHUK: Yeah. I'd say a move from four point five (4.5) to three point two (3.2) is significant.

(Transcript, October 16, 2019, p. 1431-32)

This ain't apples to apples (for Shadow 1 or Shadow 2)

DR. BYRON WILLIAMS: But in neither Shadow Portfolio 1 or Shadow Portfolio 2, sir, did you start from the same level of risk as measured in surplus volatility as the MPI selected portfolio?

MR. DAVID MAKARCHUK: Correct. . . .

DR. BYRON WILLIAMS: So if one were wanting to conduct an apples to apples comparison, sir, on this slide, the same risk as the MPI selected volatility, that is not done by any of the shadow portfolios you selected?

MR. DAVID MAKARCHUK: That's right.

(Transcript, October 16, 2019, p. 1450-53)

The Mysterious Comparator of Shadow Portfolio 2

DR. BYRON WILLIAMS: So when you use the term 'same risk' on this slide, you're comparing it to the rejected 2017 portfolio?

MR. DAVID MAKARCHUK: Right. These were working papers from the work we did in 2017, when "same" meant same as 2017.

DR. BYRON WILLIAMS: Just going to the right, you're not comparing it to the same risk as the selected MPI portfolio?

MR. DAVID MAKARCHUK: Right.

...

DR. BYRON WILLIAMS: And the term "same return" means that you are comparing it to the rejected 2017 portfolio, with an expected ten (10) year return at 4.2 percent?

MR. DAVID MAKARCHUK: That's right.

DR. BYRON WILLIAMS: So again, you're not comparing it to the selected MPI portfolio, sir, in terms of return?

MR. DAVID MAKARCHUK: That's right.

(Transcript, October 16, 2019, p. 1447-48)

Unconstrained does not mean Unconstrained

- ▶ Even the unconstrained Shadow portfolio 2 only included asset classes approved by MPI's investment committee:

MR. ROBERT WATCHMAN: So when we talk about unconstrained, really we're speaking about unconstrained within what the MPI investment committee proved.

MR. DAVID MAKARCHUK: Unconstrained within this set. Correct.

(Transcript, October 16, p. 1375-76; see also p. 1444-46)

MPI and Mercers are right that the portfolios must be observed over time

MR. DAVID MAKARCHUK: The -- the shadow portfolios will help illustrate the performance of different strategy decisions over periods of time. As to what their utility, is there's different perspectives one might have on that. It's one of those situations where, from our perspective, because of the different perspectives on risk, especially in the unconstrained pieces, one really needs to look to a full-market cycle, which is generally five (5) years or more, before you can start to draw reasonable conclusions as to the relative benefits of one versus the other. In the very short term, while there will be differences, it's extremely difficult to draw any strong conclusions in that regard.

(Transcript, October 16, p. 1335-36; see also October 8, p. 499-500)

MPI has selected a portfolio of different risks

MR. ROBERT WATCHMAN: Would it be overly simplistic of me to suggest that the nominal liability benchmark is not taking into account inflation volatility?

MR. DAVID MAKARCHUK: That would not be overly simplistic. That would be fair.

MR. ROBERT WATCHMAN: And whereas the real liability benchmark does take into consideration inflationary -- or the volatility of inflation?

MR. DAVID MAKARCHUK: Correct.

(Transcript, October 16, p. 1370)

MPI has selected a portfolio of different risks

- ▶ The basic portfolio is highly concentrated

MR. GLENN BUNSTON: I would say the provincial, Federal, and corporate bonds have relatively high correlations. Yeah.

(Transcript, October 8, p. 508)

- ▶ High correlations tend to impair the benefits of diversification for assets

DR. BYRON WILLIAMS: Thank you. It's fair to say that the benefits of diversification are bigger in terms of assets when the correlations are lower among assets? They're in an in -- inverse relationship? Would that be fair?

MR. DAVID MAKARCHUK: That would be fair.

(Transcript, October 16, p. 1454-55)

While the level of risk is debatable – the long term costs are not

In coldly objective cost of capital language:

- The overall average investment return on the entire investment portfolio in 2017/18 was 5.1% and over the last four years was 5.4%. MPI's forecasted average investment return on fixed income securities was 3.5% for the next four years (2019/20 to 2022/23). The forecasted total return for the entire investment portfolio is 4.2% over the same time period. . . . MPI's total investment portfolio is a conservative portfolio with approximately 80% invested in fixed income bonds as a result of the Asset 8 Liability Study completed in 2018.

(Appendix 14: MPI Determination of Cost of Capital for Value Management Business Cases – January 2019, 3. Cost of Capital (Discount Rate))

The Implications of lost opportunity and foregone diversification may be long term

In exchange for more stable average premiums, Manitoba Public Insurance appears prepared to accept lower returns and higher average premiums:

MR. LUKE JOHNSTON: . . . So as we've discussed here, we're trying to minimize interest rate risk, make certain that we can pay claim liabilities as they come due. . . . We created a separate Basic claims portfolio, very low risk, for that purpose. SGI puts their claims in buckets based on how long there -- until their -- those -- those payments are due. For the long tail lifetime claims that are paid out for twenty (20) years and beyond, they match those liabilities through investment pool of purely growth assets. And they also discount those liabilities at the appropriate equity discount rate.

(Transcript, October 8, p. 503-07)

Recommended Finding

- ▶ The purpose of the shadow portfolio was to assess whether MPI was foregoing opportunity for a comparative level of risk.
- ▶ That purpose has not been achieved.
- ▶ MPI has not complied with PUB directions with respect to Shadow Portfolios.

Recommended finding – Personal Injury Protection Plan

Personal Injury Protection Plan (PIPP) – There are excessive, imprudent and unreasonable costs built into PIPP which are impacted by:

- unreasonable agreements with certain service providers which will be addressed in the CSI Portion of the submissions;
 - MPI has shown candour in identifying these challenges and exploring alternative models to retain service providers;
- the ongoing struggles of MPI to manage complex claims which have been exacerbated by imprudent staff reductions between 2009 and 2017 and challenges in developing appropriate case management skills, practices and metrics
(CAC (MPI) 1-36 (2019/20 GRA), Attachment A, p. 8; Transcript, October 15, p. 1185)
 - MPI has shown candour in acknowledging these challenges and is attempting through increased and better trained staff, standardized case management and metrics to address them.

(CAC (MPI) 1-30)

Recommended Findings - Physical Damage Re-engineering (PDR)

- Historic, current and future rates of Manitoba consumers have been adversely affected by the imprudent roll-out of the PDR project;
- while the PDR project appears to have been relatively favourably received by consumers, it failed to deliver value for money resulting in a negative Net Present Value in the range of \$49 M to \$50 M.

(MPI Exhibit 22, p. 11)

- This included a \$16 M write off of the investment in the Customer Claim Report System or CCRS. PDR Final Evaluation.

(MPI Exhibit 22, p.14)

- MPI has shown candour in admitting the challenges with program delivery and prudence in writing off CCRS expenditures during the 2017/18 and 2018/19 years.

(CAC (MPI) 1-54, Figure 1 and PUB (MPI) 1-74 a))

- These write-offs from prior years are reflected in reduced retained earnings for MPI.

Recommended Finding – Collision Repair Costs

- There appear to be excessive and unreasonable costs built into certain industry agreements that cannot be explained by the market realities of a smaller province such as Manitoba or differences in service quality (ie ICAR Gold) in MB. These conclusions will be elaborated on in the CSI submissions.
(Transcript, October 18, p.1797-1802)
- There are grounds for concern that the practice of industry wide agreements historically undertaken by MPI may raises issues under the federal *Competition Act* and practical barriers to competition.
(Transcript, October 18, p. 1792-94, 1797-1802; PUB 1-50);
- MPI has shown prudence in undertaking bench marking exercises with regard to vehicle repair and other service industry benchmarks.
- MPI has shown reasonableness in removing the 5 repair a week minimum for the Direct Repair Program which flowed from an industry agreement and posed an unfair barrier to access to repair shops in rural Manitoba.
(PUB 1-50)
- MPI should report back during the next General Rate Application on industry best practice in ensuring compliance with *the Competition Act*, value for money and quality service availability including viable alternatives to industry wide agreements which may include the Irish Messenger Model, rate cards and requests for proposals.
(Transcript, October 18, p. 1795-1802)

Potential adverse consumer implications from industry wide agreements

MR. BENJAMIN GRAHAM: . . . But if you pull the -- the covers back on that premium, the concern could be that partners could be colluding almost as a monopoly- versus-monopoly type of situation to say, here's what we expect you to pay us versus us unilaterally saying, here is the value of the service that you provide. . . So from a -- from a consumer perspective, it is probably that they could be paying more under a negotiated contract. I believe that that is where ICBC were going with this.

(Transcript, October 18, p. 1797-1802)

MR. CURTIS WENBERG: . . . we have felt some of the pressure in some of these negotiations, because when you're dealing with a -- what could be seen as a pseudo-monopoly that controls all of our distribution channel or all of our ability to -- to repair cars, for example, if we take the commercial repair rates that we pay . . .

And essentially, MPI gave them a very -- a very solid deal, not dissimilar to what you saw in SGI, where there was 10 percent, 10 percent, 10 percent, but we moved from the high nineties (90s) per labour hour for commercial repair to a hundred and thirty -- a hundred and thirty-three (133), I believe it is today.

This rate that we pay on commercial vehicles is the highest rate in North America,

. . . So it's not just on the rates we pay, but we've seen examples of the rates going high. It's -- it's -- it's also very much a supply and serving our customers. So this gives us a -- a great cause for concern, and -- and is something that we're looking at.

(Transcript, October 18, p.1797-1802)

Consumer Choice is not achieved Exclusively through Broker Delivery Models

- ▶ In many areas of insurance, Manitobans have the choice of whether to purchase their insurance directly from a broker or from other institutions (ie travel health insurance, mortgage income replacement insurance, car loan income replacement insurance).

(Transcript, October 22, p. 2454-2457)

- ▶ Historically, captive customers of basic and extension services have been generally well served by a mixed “bricks and mortar” delivery model which relies primarily on brokers but which provides consumers with the choice of receiving services directly from MPI.
- ▶ This model is prudent and superior to the broker exclusivity model employed by ICBC which denies consumers choice and leaves the Corporation inordinately vulnerable to economic and other pressures.
- ▶ However, there are significant existing “bricks and mortar” service gaps in Northern Manitoba, in First Nation communities and certain other rural communities which might be ameliorated by on-line services or enhanced telephone options.

(Transcript, October 17, p. 1736, 1739-42; October 22, p. 2470-72)

There are creative options to maintain and enhance services for rural and remote communities

- ▶ There are options to support more vulnerable rural “bricks and mortar” services including:
 - ▶ potentially increased compensation for “towns where there may be a single broker location, and there's no alternative within fifty (50) kilometres”;
 - ▶ sending MPI staff into remote communities with no broker services (i.e. Island Lakes);
 - ▶ employing innovative payment options in remote communities which also experience financial inclusion challenges;
 - ▶ assisting brokers to make periodic visits to communities that have no “bricks and mortar service”.

(Transcript, October 17, p.1739 – 1742; October 22, p. 2470-72)

- ▶ using the telephone option more creatively;

(Transcript, October 17, p. 1738; October 22, p. 2472)

- ▶ **MR. CURTIS WENBERG:** We will not abandon those markets, and we will be as creative as we possibly can with our partners to make sure something happens there.

(Transcript, October 18, p. 1776-82; see also October 17, p.1739-42)

Comparative broker commission analysis on the record is analytically suspect

Caution should be exercised in reviewing allegedly comparative private sector comparisons of broker commissions:

- ▶ there are substantive differences in the type of service delivered by brokers in Manitoba to captive basic and extension customers. These distinctions relate to:
 - ▶ absence of the need to seek and filter competitive quotes with regard to the basic program
(Transcript, October 17, p. 1631-32);
 - ▶ the absence of the time consuming traditional “front line” underwriting function exercise (in contrast to the competitive market or for products like SRE)
(Transcript, October 17, p. 1697-1700; October 22, p. 2445-2449);
 - ▶ the ease and convenience of the extension form which leads to MPI extension market dominance and reduces the demand for competitive quotes from extension;
 - ▶ the simplicity and standardization of the basic and compulsory insurance package.

These fundamental differences in the complexity of basic and extension services, make comparisons with broker commissions in the competitive market unreliable.

Comparative broker commission analysis on the record is analytically suspect (cont.)

Caution should be exercised in reviewing stand alone basic commissions with any jurisdiction because:

- although there is dispute between brokers and MPI about the actual volume of reassessments done in brokers offices, Manitoba's unique five year insurance renewal model (with annual reassessments) is a structurally distinct from any other Canadian jurisdiction.

It is analytically inappropriate to review basic commissions in isolation from extension in Manitoba because:

- basic and extension commissions have historically been negotiated as a package;

(Hora, Transcript, October 17, p. 1707-08; see also October 22, p. 2474) and;

- the new (2008) service delivery model was designed to maximize compensation based on professionally managing the customer's overall business portfolio;

(Transcript, October 17, p. 1708)

- comparing basic commissions to overall corporate expenditures is an apple to grapefruit type of comparison.

(Transcript, October 22, p. 2488)

MPI/Broker agreements may exacerbate certain market concerns

There is some evidence to suggest that MPI/Broker agreements, operating procedures and practices have sometimes stifled innovation in service delivery to consumers and created barriers to entry to the broker industry:

- ▶ 2008 agreement includes commitment by Manitoba Public Insurance as part of this agreement that it would not endeavour to provide customers with the option of renewing vehicle registration, insurance, or driver's licence online;

(Transcript, October 17, p. 1712)

- ▶ “As of December 2013, both IBAM and the Corporation believe the Province of Manitoba is well served by the existing size and scope of our broker force. As such, the Corporation will no longer be accepting applications for new licenses or Appointments”.

(CAC (MPI) 1-1 (m) Appendix 11, s. 19; see also CAC (MPI) 1-1 (n); Transcript, October 18, p. 1784-1786)

MPI/Broker relationships may exacerbate certain market concerns

There is some evidence to suggest that MPI/Broker agreements, operating procedures and practices have created barriers to entry to the broker industry and to the extension market:

MR. CURTIS WENNBERG: Once again, though, it's a -- it's a theoretical process that hasn't been used. And once we've shut down that there is any appetite for -- for obtaining these licences or dealing with them, it -- it really becomes a paper exercise.

And so no. And -- and whether the CEO is on top of that, if we never actually convened it because we're not open for business, it's not -- it's not really a -- a functioning process, right?

(Wennberg and Hora, Transcript, October 18, p. 1809-12)

- Management saw this as a good opportunity to demonstrate its commitment to the broker distribution channel as well as inoculation against competitive threats by aggressive insurers like CAA that do not depend on the broker distribution channel. IBAM had proposed a joint marketing strategy that Management believed was a legitimate initiative to foster the broker relationship and jointly address a risk to our extension business. (emphasis added)

(CAC (MPI) 1-1 Appendix 3, 2014 Board of Directors Recommendation)

- In addition, the unwavering commitment of the Association in supporting the marketing and promotion of Manitoba Public Insurance products and services has been a critical factor in the Corporation's ability to retain majority market share in the competitive Extension and SRE environments in Manitoba. (emphasis added)

(See also CAC (MPI) 1-1 Appendix 4, 2016 Board of Directors Recommendation)

- It is unclear whether consumers are being consistently advised of their opportunity to choose non MPI extension service offerings.

(Transcript, October 17, p. 1744-45; October 22, p. 2458)

- It also is unclear that consumers are being consistently advised of all extension offerings from MPI.

(MPI Exhibit 62, slide 19; Transcript, October 22, p. 2596, 2611-12)

Exclusive Broker Models are no guarantee of Financial Success

- ▶ While IBAM tries to link the broker model as the cornerstone of relatively low rates in Manitoba, a more reasonable hypothesis is the contribution of the no-fault plan.

(Transcript, October 22, p. 2466)

- ▶ Certainly, the exclusive broker model in British Columbia has been no defence against the financial travails of ICBC.

(Transcript, October 22, p. 2466-2468)

The Bricks and Mortar Service Delivery Model is worthy of scrutiny

The bricks and mortar service delivery model of basic and extension is worthy of regulatory scrutiny:

...the 85 million that we spend on brokers (basic and extension) is not a small component of the overall cost. Like, when you think about it, my area alone for operations -- so including the contact centre, but then including the cust -- the service centres -- everything in operations is 75 million...

...the total cost, 85 million over our premiums is -- is a higher percentage than the entire operations team of 1,200 folk at MPI.

(Transcript, October 18, 2019, p.1898-1900)

As is the current composition of basic and extension service offerings

- Brokers have made a persuasive case for the need for periodic review.

Recommended Findings – Bricks and Mortar Broker Service Delivery Model

- In light of five year renewals and 90% clean reassessments, there is fundamental dissatisfaction on the part of both MPI (trailing fees, the \$71 M guarantee) and brokers (are all services compensated?).

(Wennberg, Transcripts, October 17, p. 1688-89; McGregor, October 22, p. 2426)

- This tension is compounded by disruption in the broader marketplace related to consumer choice, technology, and rapidly changing insurance operational dynamic.

(Transcript, October 17, 1696-97)

MR. CURTIS WENNBERG: It -- it won't be people who are uncomfortable with the insurance transaction. They'll still go through a broker . . . And what I think we're missing sometimes in this debate is we need to satisfy all the segments of our population, that we can't force a strategy of in-person and broker visitation on everybody when the vanguard -- and there's a number of people that want that choice, and there's -- there's -- there's robo-advisors, there are other things that can allow them to work through that choice.

(Transcript, October 18, p.1912-15; see also October 17, p. 1747-49)

Brokers and MPI Market Dominance in Extension

- ▶ The IWS system makes sale of MPI Extension products considerably easier than those of other providers.
(Transcript, October 22, p. 2597-2599)
- ▶ It may be more convenient for customers and brokers to have both Basic and Extension coverage from the same provider (MPI) than from different providers (ie one claim rather than two claims).
(Transcript, October 22, p. 2600-2601);
- ▶ “Sometimes the challenge has been getting other insurers to offer the product.”
(Transcript, October 22, p. 2396-2397)
- ▶ Extension commissions set by other insurers are typically less than the commissions offered by MPI.
(Transcript, October 22, p 2599)

Recommended Findings – Bricks and Mortar Service Delivery Model

Manitoban ratepayers will not be well served by a service delivery model that seeks to inflexibly lock in the status quo or ignore the realities of rapidly changing consumer, market and technological dynamics

Manitobans will be well served by a service delivery model that commits in a cost effective manner to:

- ▶ maintaining and enhancing options for consumers northern, rural and remote communities;
- ▶ enabling all Manitobans to access on line MPI services; and
- ▶ ensuring all customers, who wish to access MPI services through a “bricks and mortar” option, where available, have the choice between MPI and broker options .

Recommended Findings – Bricks and Mortar Service Delivery Model

While simply high level estimates, certain delivery models which preserve consumer choice for brick and mortar services have potential significant commission cost savings:

DR. BYRON WILLIAMS: Okay. And the shared delivery which would preserve choice in person at the broker or MPI and online, that was expected to result in broker commission savings over five (5) years of \$91 million, sir?

MR. BENJAMIN GRAHAM: Correct.

DR. BYRON WILLIAMS: And, again, on the -- the middle row on the far right if MPI did all the online transactions, it was expected that broker commission savings would be in the range of \$237 million, sir?

MR. BENJAMIN GRAHAM: Yeah. Based on the assumption that 50 percent of customers would transact with us online. So you'll see that the -- the broker commission savings were exactly half of it was a hundred percent MPI.

(Transcript, October 17, p. 1733-35)

Recommended Findings – Bricks and Mortar Broker Service Delivery Model

- ▶ The package of broker commissions offered in Manitoba are not easily comparable to other jurisdictions given five year renewals, the absence of competition in basic and extension and the absence of “front-line” underwriting for basic and extension;
- ▶ There are grounds for concern that the practice of industry wide agreements historically undertaken by MPI may raises issues under the federal *Competition Act*;
- ▶ There are grounds for concern that the practice of industry wide agreements historically undertaken by MPI may raise practical barriers to competition;
- ▶ Consumers should be entitled to notice of the existence of competitive alternatives to MPI extension.

Recommended Findings – Bricks and Mortar Broker Service Delivery Model

- ▶ MPI should be directed to report back on the prudence and reasonableness of existing compensation packages especially in light of evolving consumer needs, and technological disruption and the need to preserve and enhance service in rural and remote communities;
- ▶ MPI should be directed to report back on alternate agreement model which might deliver better value for captive rate payers, ensure compliance with the *Competition Act* and reduce barriers to entry for competitive services; and
- ▶ A review of existing basic and extension service offerings would be consistent with a recognition of evolving consumer needs and ongoing market dynamics.

MPI Information Technology endeavours continue to demonstrate a mixed record

- ▶ MPI demonstrates candour and learnings from the physical damage re-engineering project:

We are now adopting proven mainstream technologies and not creating new and unproven technologies. We identify risk prior to project initiation and incorporate them into the project decisions. . . . Next, we align MPI's process to industry best practices, which means making software customization an exception, not the norm.

(Transcript, October 16, p. 1467-68)

- ▶ MPI's IT service delivery processes are more mature than peer organizations in every domain with the exception of Enterprise Architecture.

(Part IV – Benchmarking Attachment A: MPI Annual IT Benchmark Executive Summary p. 4)

MPI Information Technology endeavours continue to demonstrate a mixed record

- ▶ Despite its overall maturity, MPI continues to have more IT FTEs as a percentage of total company employees than peers.

(Annual IT Benchmark Executive Summary, Part IV(i) – BMK Attachment A, p. 10; see also Transcript, October 8, p. 483-84)

- ▶ Outsourced spending at \$10.2M is 94% higher than the peer group average, reflecting MPIs operating model.

(Annual IT Benchmark Executive Summary, Part IV(i) – BMK Attachment A, p. 13; Transcript, October 8, p. 485)

- ▶ a benchmark for the IBAM agreement is being undertaken

(Transcript, October 16, p.1545-47)

- ▶ Maintenance costs at 5.8 M are 421% higher than the peer group average.

(Annual IT Benchmark Executive Summary, Part IV(i) – BMK Attachment A, p. 13; Transcript, October 8, p. 485-86)

Project Nova – Calculated Risk or Leap of Faith

- ▶ Project Nova is a highly ambitious project constituting the largest IT project in MPI history.
- ▶ Its high level business case has undergone thoughtful preliminary review by two well regarded firms.
- ▶ Significant internal and external project oversight is contemplated with interesting user and consumer engagement suggested.

Project Nova – Calculated Risk or Leap of Faith (cont.)

For the purposes of the public record discussion, major risks associated with the project(s) include:

- ▶ the complexity of addressing a number of major legacy systems including Driver and Vehicle Administration, AOL, CARS and SRE;
- ▶ the relative inexperience of MPI with the agile methodology:

MR. BRAD BUNKO: . . . we haven't built a lot of business cases around the agile methodology;

(Transcript, October 16, p. 1508-09, 1578-81)

- ▶ substantial budget uncertainties given the early stage of the process;

MR. GARY DESSLER: . . . So yes, until that time, there is definitely a risk to that \$106.8 million.

(Transcript, October 16, p.1501-02)

- ▶ the reliance of the business case on reductions in broker commissions;
- ▶ there was also some lack of clarity about whether MPI would be held hold by the Provincial Government for the risks and costs associated with the project.

(Transcript, October 16, p. 1558-60; October 17, p. 1594-95)

Recommended Findings

- ▶ MPI continues to demonstrate some challenges with IT expenditures especially related to IT FTEs and operational and maintenance expenditures;
- ▶ Project Nova is an important but extremely high risk project with significant uncertainties related to implementation and budget risk;
- ▶ Given the magnitude of the project and the potential impacts on service delivery of MPI and Government services, regular updates on the risk status, budget and business case should be delivered to the PUB;

Road safety is important to all Manitobans

- ▶ but there are grounds for concern with an increase in serious injury over the period from 2014 to 2017, as well as higher than Canadian average in terms of fatalities and the number of pedestrian deaths to date in 2019

(Transcript, October 10, p. 580-81, 748-750, 747-48, 786-87)

- ▶ Rural Manitobans experience a disproportionate share of fatalities with seatbelt use being a problem

(Transcript, October 10, p. 657-62)

- ▶ The Social cost of collisions in Manitoba is \$2B annually or about three percent of Manitoba's gross domestic product.

(Transcript, October 10, p. 632-33)

Road Safety is Important to the Rate Approval Process

- ▶ Successful road safety efforts ultimately impact claims, claims costs, and the premiums required to fund the Basic compulsory program.

(Transcript, October 10, p. 632-33)

- ▶ Historically, an important issue for the PUB is whether the value of road safety programs is maximized.

(Transcript, October 10, p. 759-76)

But this provincial road safety budget has not yet been developed – and it is not clear if this is a priority

- ▶ There is no evidence to conclude that MPI is able to assess whether it is optimizing its investment as part of the broader road safety system.

(Transcript, October 10, p. 766-69)

- ▶ No provincial road safety budget has been issued as part of the overall road safety strategy.

(Transcript, October 10, p. 766-69)

But this provincial road safety budget has not yet been developed – and it is not clear if this is a priority

- Currently, MPI's road safety priority-setting process is conducted in a vacuum without the full picture of road safety programs in Manitoba.

(Transcript, October 10, p. 769-70)

MS. KATRINE DILAY: Generally and without elaborating, you'll agree that MPI's priority-setting process regarding road safety, as described on this page, is currently being applied without reference to a spreadsheet of Manitoba road safety programs and associated budgets and their resp -- their respecting -- their respective funding, correct?

MR. CLIF EDEN: Correct.

MS. KATRINE DILAY: Because as I believe we just heard, this document does not exist yet, correct?

MR. CLIF EDEN: That is correct.

(Transcript, October 10, p. 769-70)

- So, what this methodology does it determine what -- what issues we want to focus on from the Corporation's perspective, not what the priorities of the Provincial road safety committee in terms of action items are.

(Transcript, October 10, p. 769-70)

The absence of an First Nation/Indigenous Road Safety Strategy is Troubling and Inconsistent with our duty of reconciliation

- ▶ No First Nations or Indigenous political organizations were invited to participate in the Technical Conference, despite playing a role with respect to road safety issues
- ▶ There is currently no First Nation representation on the Provincial Road Safety Committee level
- ▶ Based on an observational visit, MPI suggests that in the Island Lake region:
 - ▶ MR. CURTIS WENNBERG: ... There's -- there's maybe even eighty (80) -- up to 80 percent of the people are unlicensed. A number of the cars -- over half of them don't have insurance and -- and don't have plates even, in terms of driving around. And it seemed like roads were in rough conditions, and some of the signage wasn't there. . .

(Transcript, October 10, p. 781-85)

Road Safety Findings

- ▶ Recognizing the importance of road safety to all Manitobans including ratepayers, road safety issues should remain a regular, periodic feature of PUB hearings.
- ▶ A provincial road safety budget would assist the PUB in determining whether MPI's portfolio is truly optimized, not only within its own budget, but in the context of managing scarce resources and optimizing the monies being spent on road safety initiatives in Manitoba.
- ▶ Following good practice engagement, MPI should report back to the PUB at its next General Rate Application regarding its progress in developing a Canadian best practice First Nation/Indigenous Road Safety Strategy.

Denial of Consumer Choice regarding the monthly credit card option

Elimination of the monthly credit card pre-authorized payment option was done without consultation with consumers:

- ▶ the monthly credit card preauthorization payment option was eliminated affecting about 10 percent of the customers of Manitoba Public Insurance;
- ▶ prior to making its decision MPI engaged in a discussion with the Insurance Brokers Association of Manitoba and the Government of Manitoba.

DR. BYRON WILLIAMS: So there's a reference to engagement with the brokers and to the province. Can you outline the type of engagement that was undertaken with consumers directly, if at all?

MR. JOHN REMILLARD: With consumers?

DR. BYRON WILLIAMS: Yes.

MR. JOHN REMILLARD: So meaning Manitobans? Good question. To that -- to that effect, we'll acknowledge that we did not directly go to customers to seek their input as to how they would feel about eliminating this option.

(Transcript, October 16, p.1552-56)

Denial of Consumer Choice regarding the monthly credit card option without choice – has real impacts on real people

- ▶ This is an unfair burden on vulnerable consumers who cannot afford to make a larger payment at once, or charge now and pay their bills later. They are losing a viable payment option that helps them make ends meet, while those who can afford a three or four payment cost are still able to use credit as their form of payment.

The regulatory price of monopoly is about 0.5% of total claims costs

- ▶ Regulatory appeal costs, including both the PUB and Automobile Injury Compensation Commission constitute about one (1) half of 1 percent of total claims costs, percentage-wise.

DR. BYRON WILLIAMS: . . . In effect, I'll suggest to you that the price of monopoly, the price of accountability is about half of 1 percent of claims costs. That's the math?

MR. MARK GIESBRECHT: That's one (1) way to look at it.

(Transcript, October 8, p. 467-469)

Adequate consumer engagement can lead to better results

- ▶ Best practice consumer engagement suggests that consumers should be engaged often and should be informed about options.
 - ▶ **Service delivery:** engagement with Manitoba consumers about MPI's future operating model, including the provision of online services, the role of brokers, the role of MPI, service delivery options in urban versus rural and remote areas can assist the Corporation in forging a path forward which will both benefit ratepayers and be more likely to be successful.
 - ▶ **Road safety:** While MPI consults with consumers in evaluating its programs, there is room for improvement in program selection and development by engaging consumers earlier in the process. Given the experience in other jurisdiction and the fact that the majority of serious collisions happen in rural areas and on gravel roads, there would be merit for MPI to engage with Manitoba First Nations toward developing a First Nations Road Safety Strategy
 - ▶ **Driver Safety Rating:** CAC Manitoba was pleased with MPI's engagement with consumers to date and looks forward to receiving results of further engagement which will serve to inform the decision-making process.

Part 4: Assessing the reasonable revenue needs of an applicant in the context of its overall general health

Six critical question for the setting of the Rate Stabilization Reserve and the consideration of the Capital Management Plan?

1. What do we know generally about the overall health of the insurance lines of business and the relationship between basic, extension and SRE?
2. What do generally accepted regulatory practice suggest?
3. How does the proposed Capital Management Plan and underlying *Reserves Regulation* compare to generally accepted regulatory practice?
4. To the extent that the Capital Management Plan of MPI does not appear to be consistent with regulatory good practice, what are the options of the Public Utilities Board (is the regulation lawful and binding)?
5. If the *Reserves Regulation* is neither lawful or binding, what weight, if any, should be given to the document?
6. If the *Reserves Regulation* is lawful and binding, is the Capital Management Plan consistent with it?

1) What do we know generally about the overall health of the insurance lines of business and the relationship between Basic, Extension and SRE?

- ▶ The overall health of the Corporation is strong, underpinned by a statutory monopoly in basic and market dominance in the allegedly competitive extension and SRE lines of businesses.
- ▶ The characteristics of the MPI Extension line of business include:
 - ▶ long standing market dominance at or over 95 percent of the market for over a decade and with over 85% of all Basic Autopac policy holders purchasing extension coverage;
(Transcript, October 15, p. 1205-06; October 7, p. 255-256)
 - ▶ stable expenditures buttressed by the certainty that roughly sixty percent of its claims costs associated with deductibles will be limited to \$300 per claim;
(Transcript, October 15, p. 1156-1158)
 - ▶ unusually high profits in the range of 32% in its most recent year with profit targets in the range of 27% to 28% in the current and test years.
(Transcript, October 7, p. 285-286)

The strength of the Extension line of business is its relationship with Basic

- ▶ For the most part, Basic and Extension customers are the same people.
(Transcript, October 11, p. 942)
- ▶ Core elements of the market dominance of MPI extension include:
 - ▶ shared customer information,
 - ▶ seamless shared screens and service delivery platforms,
 - ▶ ease of claim, and
 - ▶ price.
(Transcript, October 7, p. 281; October 15, p. 1227-29; October 18, p. 2060-2063; October 21, p. 2181; MPI Undertaking 35 (Exhibit MPI-92))
- ▶ It is unclear whether many Extension customers are aware whether they have competitive options.
(Transcript, October 7, p. 287-289)

The strength of the Extension line of business is its relationship with Basic

- Extension is benefitting from its close association with Basic:

MR. JOHN TODD: . . . the presumption is that competitive -- the competitive services are benefitting from the close association.

MR. ROBERT WATCHMAN: You see here the target -- profit 15 targets for the Extension line of business, and you see that as of 2018, it was just over 32 percent.

MR. JOHN TODD: Correct.

MR. ROBERT WATCHMAN: And it -- in 19 your mind, is that an indication of anti-competitive behaviour?

MR. JOHN TODD: Again, I mean, I haven't conducted any detailed analysis to have an expert opinion on that, but that would be a reasonable starting assumption for any analysis.

(Transcript, October 21, p. 2310-2311)

2) What do generally accepted regulatory practice suggest in terms of process and how have they been applied in MB regarding the RSR?

- ▶ See, generally, Mr. John Todd.
(Transcript, October 21, p. 2124-2137)

Substitutes for Competition and Prudency

- ▶ As a legislated monopoly, basic fits the mold of a regulated utility.
(Transcript, October 21, p. 2121)
- ▶ The purpose of rate regulation is to protect the customers, and to serve as a substitute for competition.
(Transcript, October 21, p. 2121)

The starting point of independent rate setting is balance

- ▶ In approving just and reasonable rates, “(t)he PUB has two concerns when dealing with a rate application; the interests of the utility’s ratepayers, and the financial health of the utility. Together, and in the broadest interpretation, these interests represent the general public interest.”

Consumers' Association of Canada (Man.) Inc et al v Manitoba Hydro, Electric Board, 2005 MBCA 55, at para 65.

Balance requires a prudence consideration including for reserves

- ▶ MR. JOHN TODD: (...) Regulators such as yourselves are focussed on identifying what's often referred to as just and reasonable rates for monopoly services. In simplest terms, the purpose is to set rates that recover prudently incurred costs. Those prudently incurred costs are fully recovered but are not to be over-recovered. This implies, in the MPI context, that rates should be sufficient to achieve the required reserves but not more than sufficient.

(Transcript, October 21, p. 2123)

With non-utility services issues of fairness to monopoly consumers and avoidance of anti-competitive behaviour arise

MR. JOHN TODD: It is assumed normally that a service that a utility offers that is not regulated because it's in a competitive market has a rate that's set by market forces.

The concern for regulators is the fair treatment and pricing of the utility services as it interplays with revenues that are generated by the competitive services. We can't apply those principles directly. We can only sure -- ensure that -- or -- or seek to ensure that customers of the monopoly services are fairly treated.

(Transcript, October 21, p. 2123-2124)

The Concept of Subsidy often extends beyond the cost allocation to the recognition of benefits

- ▶ It is open to regulators to adopt a broad interpretation of subsidy meaning that anything that affects the competitive position of the competitive services can be viewed as a subsidy.

- ▶ Excess benefits are generally returned to the monopoly consumer:

MR. JOHN TODD: So most regulators say those benefits flow from the monopoly customers and therefore the value of those benefits would flow back to them. This statement assumes that the goal is to benefit monopoly customers. The goal of having competitive services is to benefit monopoly customers, not to benefit the Utility, and not to benefit the customers of the competitive services.

(Transcript, October 21, p. 2126)

Excess profit from non-utility services is typically credited back to monopoly consumers

- ▶ 100 percent of excess profits in excess of prudent cost recovery including prudent reserves of the non utility service are flowed back to monopoly consumers.

Application to MPI requires consideration of appropriate reserve levels for the non utility service

- ▶ Whatever the Board decides is the appropriate reserve structure, if you're generating revenues in excess of what's needed for that, this concept says the only reason they can get excess revenues is because they're benefitting from being associated with Basic.
- ▶ And that excess revenue becomes the way you define the benefit of the joint operation of competitive and Basic services.
- ▶ And again, without the benefit, competitive pricing would not result in excess benefits. Therefore -- the logic says, therefore, excess earnings are a direct consequence of this relationship.
- ▶ Therefore, they should accrue back to Basic customers.

The Implications for the Capital Management Plan

- ▶ Number 1, recognize the benefit that Extension and SRE derive from Basic has legitimate value for Basic to recover.
- ▶ Second, it follows that you would limit the capital target for Extension and SRE to a level that reflects sound actuarial practices. So the competitive services won't retain the benefit of the joint operations as a subsidy from Basic, but rather would flow it back to the benefit of Basic.
- ▶ Whatever's excess would be flowed back to Basic systematically.
- ▶ A lump-sum rebate concept is what economists love, because it lets you keep the price signal on the premiums for insurance at a cost base level that reflects the risks. And a one (1) time annual rebate would -- could be designed in a way that doesn't skew the -- that pricing.

(Transcript, October 21, p. 2124-2137)

Historic PUB Practices with regard to the relationship between extension and basic and the RSR Target

Grounded in independent rate approval authority its broad policy latitude under the CCGAA, prior PUB decisions have:

- ▶ endorsed the concept of the RSR as vehicle for protecting consumers from rate instability from one time only events or significant variances;
- ▶ considered the adequacy of basic reserves within a broader conversation of the overall health of the corporation;
- ▶ adopted an evidence based approach to the approval of RSR levels grounded in a 1/40 risk tolerance and the recognition that excess conservatism in risk tolerances is inconsistent with fairness and social utility;
(Transcript, October 15, p. 1212-13; see also Simpson, Transcript, October 22, p. 2339)
- ▶ expressly rejected the 100% MCT as an upper RSR target;
(PUB Order 162/16 at 16)
- ▶ asked whether the benefit provided to extension from basic is fully reflected in cost allocation principles;
(see Todd evidence);
- ▶ established cost allocation rules to prevent more narrowly defined subsidies;
- ▶ sought express statutory authorization to regulate extension; and
- ▶ questioned the utility of excess reserves in the extension and SRE lines of business

Historic PUB Practices with regard to the relationship between extension and basic and the RSR Target

To date, the PUB has not:

- ▶ imputed excess profits from non utility lines of business into its basic rate calculation;
- ▶ recommended mechanisms to improve competitive outcomes for the extension line of business.

PUB discomfort with the Basic/Extension Relationship and with extreme risk intolerance

Questions arise as to the “wisdom” of allocating costs on a basis that ignores the centrality of Basic and the value that Basic brings to Extension, SRE and DVA operations. In other words, the costs of Extension, SRE and DVA operations would be much higher if each of those operations were allocated costs on the basis of each of those operations being “stand-alone” operations. When excess retained earnings of Extension and SRE were transferred to the Basic RSR, there was some protection for Basic policyholders that they would not be taken advantage of by higher than necessary Extension premiums; but now, with Extension and SRE net earnings subject to use for purposes other than “insurance”, there is a reasonable apprehended need for Extension, SRE and DVA operations to be the subject of the Board’s oversight.

(PUB Order 145/10 at 18-19 (emphasis added))

For purposes of setting the upper threshold of the Basic target capital range, the Board withdraws its support of the use of the MCT and a threshold MCT ratio of 100%. The Board is concerned that the degree of conservatism implied by the Corporation’s proposal may be excessive based on the Corporation’s scenario testing at the more extreme percentile levels of possible outcomes, potentially giving rise to a risk of moral hazard.

(PUB Order 162/16 at 16)

There are many sources suggesting that in the context of rate stability, the concept of insolvency is of questionable relevance for a Crown owned monopoly with annual access to an independent rate approval process

These sources include:

- ▶ Kopstein;
- ▶ Dr. Simpson;
(Transcript, October 21, p. 2103-2106)
- ▶ Ms Sherry; and
- ▶ Ernst and Young

Ernst & Young

- ▶ Whereas a sole private insurer would face bankruptcy in the event of insufficient capital, leaving policyholders and claimants at risk of not being fully indemnified for their losses, a government insurer is implicitly backed by the government, meaning this risk is minimal in comparison.
- ▶ Consideration should also be given to whether the OSFI MCT ratio is the appropriate framework for setting capital for the Basic product.

(PUB(CAC) 1-1, footnote 3, , "ICBC Affordable and effective auto insurance – A new road forward for British Columbia, p. 85-86)

3) How does the proposed Capital Management Plan and underlying *Reserve Regulation* compare to generally accepted regulatory practice?

There is an analytic recognition of the concept of excess profits

- ▶ Although MPI does not demonstrate rigour in its assessments of the risks faced by Extension, the transfers in excess of its Extension RSR target is consistent with the concept of excess profit
- ▶ MPI has not acknowledged though that:
 - ▶ extension profits are excessive;
 - ▶ the transfer of excess profits is consistent with both good regulatory practice and the ambit of the CCGAA

But the Concept of Balance has been undermined because the Risk Tolerance of MPI has been substituted for the risk tolerance of prior PUB Orders

DR. BYRON WILLIAMS: And without asking you to elaborate, to your knowledge does a one (1) in one hundred (100) year risk tolerance more closely align with the risk appetite of the MPI Board of Directors?

MR. LUKE JOHNSTON: Yes. Because we have been targeting a 100 percent MCT as our capital, not just in this application but in -- in previous applications.

As you're aware, we didn't get the hundred percent MCT. We had a one (1) year order on that. But the 100 percent MCT aligns with -- with this risk tolerance, and that's -- that's to the comfort level of our Board.

(Transcript, October 15, p. 1214-1216)

- From the lower bound of the RSR target based upon a 1/40 risk tolerance to a 1/100 year risk tolerance there is an increase in the range of \$200 M

(Transcript, October 15, p. 1218)

But where is the evidence?

- ▶ MPI has not adduced evidence suggesting a material increase in risk as compared to 2019/20.

There appear little grounds for the claim that the reserve target for Extension and SRE is based on evidence rather than the myth of competition

DR. BYRON WILLIAMS: And again, just focusing on the board of directors's deliberations as represented here, sir, when we go to the 200 percent MCT target, that would be analogous to a -- a target adopted by a number of firms in -- in the private sector, and in competitive markets, sir, agreed?

MR. LUKE JOHNSTON: Agreed.

(Transcript, October 15, p.1234-36)

DR. BYRON WILLIAMS: And Mr. Johnston, given the 95 percent market share in Extension extending back over a decade, a 208 -- a 2018 profit target in excess of 30 percent, and flat expenses, as you confirmed with My Learned Friend, would it not be fair to describe the assertion that Extension is a competitive market is a myth? . . .

MR. LUKE JOHNSTON: I -- I wouldn't call it a myth. I can tell you on the commercials -- trucking side, we have a large percent of the market, too, and there's no question that competition exists there as well. We -- we obviously, as you know, have 95 percent of -- of the market, but competition does exist, and customers have their reasons for choosing MPI.

(Transcript, October 15, p. 1236-7)

MR. JOHN TODD: The kinds of risks that you see with the Basic policies are not being observed here --

(Transcript, October 22, p. 2322-3)

Do excessive reserves in extension and SRE further taint the competitive balance in these lines of business?

Target versus Range

- ▶ Like the Revenue Cost Coverage Ratio in Hydro, a range is more consistent with the objectives of rate stability than a target which invites annual average volatility even with the circumscribed rules of the MPI Capital Management Plan.

(Transcript, October 22, p. 2327-2329; see also October 21, p. 2109)

4) To the extent that the Capital Management Plan of MPI does not appear to be consistent with regulatory good practice, what are the options of the Public Utilities Board (is the regulation lawful and binding)?

5) If the *Reserve Regulation* is neither lawful nor binding, what weight, if any, should be given to the document?

- ▶ Legislative amendments to clarify the respective roles of government, the corporation and the PUB was passed in 2017;
- ▶ the express power of the Cabinet with regard to vehicle insurance under s. 33 of the *MPI Act* was removed; and,
- ▶ the *Reserve Regulation* is not a Mandate Letter to the Corporation (s. 6) or a Directive to the Corporation (s. 13(1)) within the meaning of the *CCGAA*.
- ▶ The PUB did not create the dilemma imposed by the Cabinet action nor did Manitoba ratepayers.
- ▶ It is open to Cabinet to propose a legislative bill which seeks to turn back the clock on independent rate approval in Manitoba but that action has not been undertaken as of yet

6) If the *Reserve Regulation* is lawful and binding, is the Capital Management Plan consistent with it?

- If the *Reserves Regulation* was validly enacted and is binding on the PUB for rate approval purposes, MPI's current capital position and its proposed Capital Management Plan are not in compliance with the *Reserves Regulation*. Mandatory language in the *Reserves Regulation*: the “minimum amount the corporation must maintain” in its Basic insurance RSR is “the amount determined using a MCT ratio of 100%”
(Reserves Regulation, s 2(a))
- MPI's interpretation (outlined in PUB(MPI) 1-100 and expanded upon in Undertaking 18 (Exhibit MPI-72)) cannot be reconciled with the mandatory language used in the *Reserves Regulation*.
- MPI has not adduced legislative fact evidence that unambiguous regulatory language

In the event that the *Reserves Regulation* is invalid or is valid but not binding on the PUB, the Capital Management Plan should be revised to better reflect:

- ▶ The collaborative process over past years as it relates to the appropriate level for the Rate Stabilization Reserve, including the 1-in-40 DCAT scenarios,
- ▶ the benefits of a range, with a minimum and a maximum threshold, which is more likely to encourage rate stability, versus a target, which is more likely to encourage rate volatility, and
- ▶ accepted regulatory principles with respect to the intimate relationship between Basic and Extension, which can help inform appropriate evidence-based transfers from the unregulated line of business to the regulated monopoly.

The *Reserves Regulation*: Recommended Findings

- ▶ the PUB has been granted independent rate approval authority over the rates and services of basic insurance by the Manitoba legislature;
- ▶ the PUB has made the RSR an integral element of its rate approval function;
- ▶ the *Reserve Regulation* frustrates the legislative framework underlying the independent rate approval process by usurping the jurisdiction of the PUB to determine an appropriate Basic insurance RSR level for rate setting and to approve an appropriate methodology for the determination of the RSR levels;
- ▶ by directly interfering in the independent rate approval process with direct impacts on vehicle insurance rates, the Cabinet is seeking to exercise a power that was expressly removed from it in the 2018 legislative amendments to s. 33 of the *MPI Act*

Overview of argument relating to the validity of the *Reserves Regulation*

- Public Utilities Board jurisdiction over questions of law
- Regulations are subordinate legislation
- Brief discussion of principles of statutory interpretation
- PUB jurisdiction over rates for MPI's Basic
- PUB has made the RSR an integral element of its rate approval function
- The *Reserves Regulation* conflicts with the legislative framework underlying the independent rate approval process
- Remedy sought

Public Utilities Board has the jurisdiction to determine the validity of regulations

- ▶ Tribunals who are empowered to determine questions of law are also empowered to decide whether subordinate legislation is valid.

Brown & Evans, Chapter 13:4300, page 13-78.1

Martin v Nova Scotia (Worker's Compensation Board), 2003 SCC 54 at para 36, [2003] 2 SCR 504

- ▶ Determining just and reasonable rates is the PUB's responsibility by interpreting the statutes setting out the legislative scheme.
- ▶ The scheme of the legislation includes the interaction of the *Public Utilities Board Act (PUB Act)*, the *Crown Corporations Governance and Accountability Act (CCGA Act)* and the *Manitoba Public Insurance Corporation Act (MPIC Act)*

Public Utilities Board v Manitoba Public Insurance Corporation, 2011 MBCA 88 at paras 31-33, 275 Man R (2d) 1

- ▶ The PUB is necessarily empowered to decide questions of law: **the interpretation of enabling statutes is a question of law.**

Canada (Attorney General) v Mossop, [1993] 1 SCR 554 at para 25, 100 DLR (4th) 658

- ▶ The Federal Court of Appeal has held that determining the meaning of "just and reasonable" was a question of law.

Trans Mountain Pipe Line Co v Canada (National Energy Board), [1979] 2 FC 118 at para 9.

Regulations are subordinate legislation

- The *Reserves Regulation* is a regulation enacted by the Lieutenant Governor in Council. It is a law created by the executive branch.
- Regulations such as this are subordinate legislation, which means they derive their legal authority from grants of authority by the legislature to the executive.

Giant Grosmont Petroleums Ltd v Gulf Canada Resources Ltd, 2001 ABCA 174 at para 17

- As a general rule, subordinate legislation **cannot conflict with either the statute that authorized its creation or other statutes of the Legislature.**

Katz Group Canada Inc v Ontario (Health and Long Term Care), 2013 SCC 64 at para 24. See also *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3 at para 42.

- To the extent that a regulation is inconsistent with the statutory framework or it contravenes the statutory requirements, it is invalid and unenforceable.

Katz Group Canada Inc v Ontario (Health and Long Term Care), 2013 SCC 64 at para 24.

- While regulations are typically presumed to be valid, the focus of the inquiry must be on the objective of the enabling statute or the scope of the statutory mandate.

Principles of statutory interpretation:

- The PUB's determination of whether the *Reserves Regulation* is invalid requires an exercise of statutory interpretation because it must “be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate.”

Katz Group Canada Inc v Ontario (Health and Long Term Care), 2013 SCC 64 at para 24.

- It is necessary to examine not only the purpose of the *MPIC Act*, but also the *PUB Act* and the *CCGA Act*, which together, provide the framework for the PUB's independent rate approval authority for MPI's Basic insurance.
- “The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole.”

Canada Trustco Mortgage Co. v. Canada, 2005 SCC 54 at para 10, [2005] 2 SCR 601.

- Context is especially important “where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme,” in which case “the surroundings that colour the words and the scheme of the Act are more expansive.”

Bell ExpressVu Ltd Partnership v Rex, 2002 SCC 42 at para 27, [2002] 2 SCR 559.

- In such circumstances, the established principles will give rise to “the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter.”

R v Ulybel Enterprises Ltd, 2001 SCC 56 at para 52, [2001] 2 SCR 867

PUB jurisdiction over rates for MPI's Basic insurance

- ▶ The Manitoba Court of Appeal has recognized that the PUB's jurisdiction to approve the rates for service charged by MPI to consumers of Basic insurance arises from the interplay between three acts: the *PUB Act*, the *MPIC Act* and the *CCGA Act*.

Public Utilities Board v Manitoba Public Insurance Corporation, 2011 MBCA 88 at para 33.

PUB jurisdiction over rates for MPI's Basic insurance – 1970 to 1988

- ▶ *The Automobile Insurance Act* (the “1970 Act”) was passed in 1970 in response to perceived challenges in the private insurance marketplace including rising rates and a failure to provide adequate coverage and benefits to consumers.
- ▶ The solution was a Crown corporation to be incorporated and compulsory auto insurance to be operated in a manner comparable to a public utility.
- ▶ Under s. 29(1)(a) of the 1970 Act, the Lieutenant Governor in Council (LGiC) was given broad authority to make regulations respecting driver and vehicle premiums including the power to prescribe driver and vehicle premiums.
- ▶ This authority continued to be exercised by the LGiC in the years between 1970 and 1988.
- ▶ On February 1, 1988, as part of the re-enactment of Manitoba’s statutes, the *MPI Act* replaced the 1970 Act. Section 33(1)(c) maintained the power of the LGiC relating to driver and vehicle premiums.

PUB jurisdiction over rates for MPI's Basic insurance – 1988 Kopstein Report

- ▶ In the aftermath of disastrous financial results and amidst a public backlash against significant rate increases and unprecedented increases in deductibles in the mid-1980s, Judge Robert Kopstein was appointed as the Commissioner of the Autopac Review Commission.
- ▶ Judge Kopstein's Report was filed in 1988.
- ▶ Noting public suspicions of political interference in rate setting and the support by many members of the public for independent public scrutiny of rates including PUB approval of Basic insurance rate increases, Judge Kopstein recommended that MPI management and its board of directors be granted the authority to finalize rates subject only to review by the PUB.
- ▶ On December 20, 1988, the Manitoba Legislature enacted *The Crown Corporations Public Review and Accountability and Consequential Amendments Act* (the CCPRA Act) the direct predecessor to the CCGA Act.

PUB jurisdiction over rates for MPI's Basic insurance – 1988-2017

- The *CCPRA Act* was intended to respond to concerns relating to alleged mismanagement and political interference in Manitoba's Crown Corporations including MPI.
- The PUB was granted authority to provide independent third-party rate approval for a number of Crown monopolies including MPI's Basic insurance.
- The *CCPRA Act* amended section 33 of the MPI Act by expressly limiting the LGiC's ability to set rates: any changes to the regulation related to the premiums charged for Basic insurance were subject to the approval of the PUB.
- Section 26 of the *CCPRA Act* granted the PUB the authority to review rates for service for Basic insurance under the *PUB Act*.
- Since 1988, MPI has had an annual hearing before the PUB to have its rates for Basic insurance approved.
- The rate approval function of the PUB was broad, with its function “not only to protect consumers from unreasonable changes, but also to ensure the fiscal health of the Corporation and fairness between different classes of consumers.” Its broad power included being able to approve a different rate than the one sought by MPI.

Coalition of Manitoba Motorcycle Groups Inc v Public Utilities Board (Man), [1995] 102 Man R (2d) 155 at para 23

- While the sole authority for the establishment of rates for Basic insurance rested with the LGiC from 1970 to 1987, the 1988 *CCPRA Act* expressly conferred rate approval jurisdiction on the PUB.

PUB jurisdiction over rates for MPI's Basic insurance – strengthened in 2018

- ▶ The *CCPRA Act* was replaced by the *CCGA Act* in 2018. Part 4, which sets out the rate approval function of the PUB with respect to MPI Basic insurance rates was largely unchanged.
- ▶ Amendments were made to sections 6 and 33 of the *MPIC Act* in 2018:
 - ▶ Amendments to s. 6, through the addition of section 6.4, establish that the amounts charged for plan premiums, which includes the amounts charged for Basic vehicle insurance, were to be set by the Corporation, subject to the approval of the PUB in accordance with the *CCGA Act*. No provision was made by the Manitoba legislature for the LGiC to have any role in the rate approval process for Basic vehicle insurance;
 - ▶ Amendments to section 33(1)(c) expressly removed the ability of the LGiC to make regulations with respect to premiums payable by owners of motor vehicles.
 - ▶ Section 33(1.1) also was amended to reaffirm the obligation to obtain PUB approval for any Basic driver premium.
- ▶ For purposes of MPI, the effect of the 2018 amendments was to:
 - ▶ affirm the central role of the PUB in the Basic insurance rate approval function;
 - ▶ expressly remove the authority of the LGiC to prescribe Basic vehicle premiums as part of the Basic rate; and,
 - ▶ continue the limit on the LGiC authority to prescribe Basic insurance driver premiums by maintaining its subjugation to PUB approval.

A single statutory framework for MPI rate approval

- ▶ Together the *MPIC Act*, the *CCGA Act* and the *PUB Act* establish a single statutory framework authorizing the PUB to approve the amount of money MPI charges Basic insurance customers.
- ▶ While the rate approval function of the PUB was broad prior to 2018, the 2018 amendments made it even clearer that the PUB has broad authority with respect to approval of the amounts charged for plan premiums, which includes the amounts charged for Basic vehicle insurance. It also expressly removed any role for the LGiC in setting vehicle rates.

PUB jurisdiction over rates for MPI's Basic insurance – the RSR is an integral part

- ▶ Since 1988, the PUB has regularly exercised this authority to review and approve the proposed rates for service of MPI. It has done so by taking into account projected costs and revenues for the test year, the prudence and reasonableness of MPI in managing those costs and revenues and the overall health of the corporation including any necessary reserves.
- ▶ Among those reserves is the Rate Stabilization Reserve.
- ▶ From the onset of its Basic insurance rate review function, the PUB has considered itself authorized to consider the appropriateness of the RSR. It has expressly found that: “the **magnitude and constitution of the Rate Stabilization Reserve is an integral part of the due and proper fixing of rates** charged by the Corporation pursuant to the Manitoba Public Utilities Corporation and Crown Acts.”

(PUB Order 192/89, p. 33 – 34)

PUB jurisdiction over rates for MPI's Basic insurance – the RSR is an integral aspect (cont.)

- ▶ Over the past three decades, the PUB has made the RSR an integral element of its rate approval function by considering and determining:
 - ▶ the appropriate level of the reserve for rate setting purposes within the context of the overall health of the corporation;
 - ▶ the appropriate methodology for determining the RSR level including appropriate consumer and corporate risk tolerances. This analysis has involved the consideration of methodologies such as the Percent of Premium, Risk Analysis, MCT and Dynamic Capital Adequacy Testing (DCAT);
 - ▶ whether additional premiums should be charged to bring the RSR within appropriate levels for rate setting; or
 - ▶ whether a rebate should be given to consumers because the RSR was above appropriate levels for rate setting. (Johnston, October 15, pages 1208-1210)
- ▶ The link of the RSR to rate stabilization and its consequent impacts on rate approvals necessarily require PUB consideration of the target range and the methodology underpinning the target range.
- ▶ **The PUB can not ensure that the RSR contribution components of rates, which it has the authority to approve, are just and reasonable without assessing those contributions against the RSR range itself.**

The *Reserves Regulation* conflicts with the legislative framework underlying the independent rate approval process

- ▶ Sections 2(a), 3, and 4 of the *Reserves Regulation* unlawfully interfere with the objective, scope and application of the statutory framework granting the PUB independent rate approval authority for MPI Basic insurance. The impugned provisions inexorably frustrate the legislative framework underlying the independent rate approval process by:
 - ▶ usurping the jurisdiction of the PUB in approving just and reasonable rates in a public process to determine an appropriate Basic insurance RSR level for rate setting;
 - ▶ usurping the jurisdiction of the PUB in approving just and reasonable rates in a public process to approve an appropriate methodology for the determination of the RSR levels;
 - ▶ imposing a minimum Basic insurance RSR level (the 100% MCT) that had been expressly rejected by the PUB, in the context of an independent rate approval exercise, as a maximum target;
 - ▶ requiring the PUB to impose rate increases in circumstances where the Basic RSR (which “must” be maintained at an amount determined using a MCT ratio of 100%) is below 100% and no drawdown from other lines of business is feasible or possible;
 - ▶ prohibiting the PUB in its rate approval process from drawing down reserves for the purpose of promoting rate stability in any circumstances other than when the RSR can be maintained at its mandatory minimum level at or above 100% MCT;
 - ▶ frustrating the purpose of the RSR by requiring the maintenance of funds equal to 100% MCT in the RSR, even in situations where drawing down or depleting the RSR is necessary to mitigate rate shock or to protect against rate increases occasioned by unforeseen events; and,
 - ▶ restricting the ability of the PUB in its public rate approval process to disallow unreasonable costs if the effect would be to draw down the basic RSR below the mandatory 100% MCT.

Any conflict between the statutory framework and the Reserves Regulation must be resolved in favour of the independent rate approval of the PUB

- ▶ The authority of the PUB under its governing statutory scheme takes precedence over the ability of the LGiC to make regulations:
 - ▶ the authority of the PUB to set just and reasonable rates and to regulate the size of the RSR flows from inter-related statutory enactments within a statutory framework. As subordinate legislation, the *Reserves Regulation* cannot conflict with its parent statute or another statute of the Legislature and it cannot overwrite the obligations imposed on another body by statute;
 - ▶ both the *CCGA Act* and the *PUB Act* contain conflict of laws clauses that provide in the event of a conflict, that those enactments are to be preferred; the *MPIC Act*, under which the LGiC created the *Regulation*, does not;
 - ▶ the *CCGA Act* was enacted more recently than the other Acts and is presumed to take precedence over the other Acts in the event of conflict; and,
 - ▶ the statutory purpose for which the *CCGA Act* and its predecessor legislation was enacted clearly demonstrates a legislative intent that the LGiC be subordinate to the PUB in the rate approval process.

Remedy sought

For the purpose of exercising the independent rate approval authority of the PUB and consistent with the statutory framework, CAC Manitoba asks the PUB to:

- ▶ find that sections 2a), 3, and 4 of the *Reserves Regulation* are invalid;
- ▶ continue to exercise its rate approval function consistent with the statutory framework and its long standing finding that “the magnitude and constitution of the Rate Stabilization Reserve is an integral part of the due and proper fixing of rates” for Basic insurance.

(PUB Order 192/89, p. 33-34)

Even if the *Reserves Regulation* was validly enacted, it is not binding on the PUB for rate approval purposes

- ▶ Even if the PUB finds that the *Reserves Regulation* was validly enacted, it is not binding on the PUB for rate approval purposes because it interferes with the PUB's independent rate approval process.
- ▶ Since at least 1989, the PUB has considered that: “the magnitude and constitution of the Rate Stabilization Reserve is an integral part of the due and proper fixing of rates charged by the Corporation pursuant to the Manitoba Public Utilities Corporation and Crown Acts”

(PUB Order 192/89 at 33 – 34)

Driver Safety Rating - 44% of Manitobans preferred the current model (registered own model), but this model has its weaknesses, which many Manitobans recognize

- ▶ MS. SATVIR JATANA :. . . Forty-four percent of Manitobans prefer the current model known as the registered owner model with the primary driver model being the second preferred option chosen by about -- by 21 percent of Manitobans.
- ▶ MS. SATVIR JATANA: While we recognize the current model is well understood by Manitobans, it also has its weakness particularly with accounting for multiple drivers and for most accurately pricing risk.

(Transcript, October 11, p. 866-67)

Important Consumer Reservations

- ▶ MS. KATRINE DILAY: . . . You'll agree that this report demonstrated that at least some consumers in Manitoba find that the current model of setting insurance premiums may not reflect the real risk that drivers bring to the system?
- ▶ MR. SCOTT PATTON: That is correct.
- ▶ MS. KATRINE DILAY: So you'll agree that it was reported from the public consultation that primary weaknesses of the registered owner model or concerns were that this model is subject to people gaming the system or using the system to their own advantage, that is, registering a vehicle in the name of a driver with a better driving record, resulting in a premium discount even though they may not be the primary driver of the vehicle, if they drive it at all, correct?
- ▶ MR. SCOTT PATTON: That is correct. That was a concern going in that we -- we know that that happens, and it was a concern that Manitobans basically fed back to us.
- ▶ MS. KATRINE DILAY: And just to follow -- still on the same page, the -- the second paragraph: "The most recurring theme as to why this practice is considered not fair or why it is not completely fair is that it allows households to manipulate the system to obtain a lower premium by registering the vehicles under the person with the highest DSR regardless of their use of the vehicle." Correct?
- ▶ MR. SCOTT PATTON: That is correct, yes.

(Transcript, October 11, p. 887-888, 890-891)

Further public engagement is required

- ▶ MS. KATRINE DILAY: So just to confirm, you would anticipate future public engagement with Manitobans before a final implementation of a new system is made?
- ▶ MS. SATVIR JATANA: We do recognize that further engagement with the customers and stakeholders would be necessary. What that looks like, it would be difficult to commit to at this point.

(Transcript, October 11, p. 891-893)