

October 28, 2021

2022 GENERAL RATE APPLICATION
Legal Submissions

IN THE MATTER OF:

An application by The Manitoba Public Insurance Corporation to The Public Utilities Board of Manitoba for review and approval of its rate bases and premiums charged with respect to compulsory driver and vehicle insurance effective from April 1, 2022 to March 31, 2023, pursuant to s. 25(1) of *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336.

AND IN THE MATTER OF:

A special rebate application by The Manitoba Public Insurance Corporation to The Public Utilities Board of Manitoba for review and variation of the Directives contained in PUB Order Nos. 176/19, 146/20 and 1/21, pursuant to s. 44 of *The Public Utilities Board Act*, C.C.S.M. c. P280.

LEGAL SUBMISSIONS

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- IN THE MATTER OF:** **An application by The Manitoba Public Insurance Corporation to The Public Utilities Board of Manitoba for review and approval of its rate bases and premiums charged with respect to compulsory driver and vehicle insurance effective from April 1, 2022 to March 31, 2023, pursuant to s. 25(1) of *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336.**
- AND IN THE MATTER OF:** **A special rebate application by The Manitoba Public Insurance Corporation to The Public Utilities Board of Manitoba for review and variation of the Directives contained in PUB Order Nos. 176/19, 146/20 and 1/21, pursuant to s. 44 of *The Public Utilities Board Act*, C.C.S.M. c. P280.**

LEGAL SUBMISSIONS

1. The allegations of the Manitoba Branch of the Consumer's Association of Canada (CAC) that Manitoba Public Insurance (MPI) breached the trust of ratepayers and acted unlawfully are not only demonstrably false, but are also scandalous (in the sense that they are unfounded, inserted for colour and/or amount to inflammatory attacks on the integrity of MPI) and clearly run contrary to the evidence before the Public Utilities Board of Manitoba (PUB).
2. A companion to the Closing Submissions of MPI filed in the 2022 General Rate Application (GRA), and specifically MPI Exhibit No. 123, this document sets out the position of MPI in response to the above noted allegations.
3. Simply stated, MPI can lawfully use any moneys generated by its Extension line of business (Extension) to carry out a function under *The Manitoba Public Corporation Act*, C.C.S.M. (MPIC Act). Subsection 6(1)(c.1) of the MPIC Act expressly states that administering *The Drivers and Vehicles Act* (DVA), C.C.S.M. D104 is one of its functions. That Subsection reads:

Objects and powers

6(1) *It is the function of the corporation and it has the power and capacity*

...

(c.1) to administer The Drivers and Vehicles Act, and to perform the duties and exercise the powers described in subsection 2(2) of that Act;

4. The CAC allegations are based upon a claimed violation of Subsection 14(2) of MPIC Act, which reads:

Restriction on use of moneys by government

14(2)

No moneys, funds, reserves, investments and property, whether real or personal, acquired, administered, possessed or held by the corporation, nor any profits earned by the corporation in the activity of automobile insurance, may be taken, used or appropriated by the Government of Manitoba for any purpose whatever, except as provided under section 12 or in repayment of advances by or moneys borrowed from, the Government of Manitoba and interest thereon.

5. The CAC submissions do not identify whether their specific claim is that the Government of Manitoba (Government) “took”, “used” or “appropriated” any moneys, funds, reserves, investments and/or property held by MPI or the profits earned by it in the activity of automobile insurance. Further, the CAC produced no evidence that the Government took any of these specific actions.
6. In point of fact, the evidence before the PUB is that on, March 25, 2021, the MPI Board of Directors (not the Government), on the recommendation of its management, internally transferred \$60 million from one line of business (i.e. Extension) to another line of business (i.e. DVA). In his testimony before the PUB, the President and CEO of MPI, Mr. Eric Herbelin stated:

"THE CHAIRPERSON: No, but is it your view that MPI has the ability to use those funds for anything and that the issue is not what it's used for, the issue is when are they used?"

MR. ERIC HERBELIN: I would maintain that the intention is, to the extent that it is possible, and we have gone through eighteen (18) months of really unprecedented times, so it's very -- it's an unfortunate timing, but intention definitely is, whenever we can, and there are no other unforeseen circumstances, the excess capital from the Extension line of business would benefit the Basic ratepayer and be transferred to the RSR.

*And this is also reflected in the financial projections. So I -- I -- I can only reiterate, you know, that we regret these two (2) unfortunate events that **led MPI to make decisions to direct funds to other purposes.**"¹*

[emphasis added]

7. At all times material to the analysis, the \$60 million transferred from Extension remained entirely within MPI. Conversely, at no time did the Government have any possession, power or control over these moneys. Further, there is no evidence that the Government directed MPI to use these moneys for any particular purpose, or at all.
8. Instead, MPI understands that the claim of the CAC is that the \$60 million transfer amounts to what MPI would characterize as a *de facto* taking, use or appropriation, because MPI intends to use the moneys to carry out a "government purpose". The CAC does not define the term "government purpose" but nonetheless claims that this phrase can be found within s. 14(2) of the MPIC Act and that it captures the driver licensing and vehicle registration services which MPI administers pursuant to the MPIC Act and the DVA.
9. In point of fact, nowhere in Section 14(2) of the MPIC Act does the term "government purpose" appear. In fact, that term does not appear anywhere in the MPIC Act. Second, the CAC appears to base its argument on the decision of the Manitoba Court of Appeal in *Manitoba (Hydro-Electric Board) v. Manitoba (Public Utilities Board) et al.* 2020 MBCA 60.
10. As the PUB will recall, in the *Hydro* case, the Court of Appeal considered whether the PUB had jurisdiction to order the creation of a First Nations On-Reserve Residential customer class and direct that it receive a zero percent rate increase.
11. In considering the issue, the Court of Appeal stated at paragraphs 67 to 70:

"[67] The main issue engaged by these three grounds of appeal concerns the interplay between sections 2 and 43(3) of the Hydro Act, as well as factors that the PUB may take into consideration in reaching a decision regarding just and reasonable rates for services provided by Manitoba Hydro pursuant to section 25(4)(a) of the Crown Act.

¹ Transcript, October 12, 2021 page 277, line 7;

[68] *Manitoba Hydro is empowered to carry out the purposes and objects specified in section 2 of the Hydro Act:*

Purposes and objects of Act

2 *The purposes and objects of this Act are to provide for the continuance of a supply of power adequate for the needs of the province, and to engage in and to promote economy and efficiency in the development, generation, transmission, distribution, supply and end-use of power and, in addition, are*

(a) to provide and market products, services and expertise related to the development, generation, transmission, distribution, supply and end-use of power, within and outside the province; and

(b) to market and supply power to persons outside the province on terms and conditions acceptable to the board.

[69] *Regarding the allocation and use of Manitoba Hydro's funds, section 43(3) of the Hydro Act provides:*

Funds of government and corporation not to be mixed

43(3) *Except as specifically provided in this Act, the funds of the corporation shall not be employed for the purposes of the government or any agency of the government as that expression is defined in The Civil Service Act, [CCSM c C110] other than the corporation, and the funds of the government shall not be employed for the purposes of the corporation except as advances to the corporation by the government by way of loan or as a result of a guarantee by the government of indebtedness of, or assumed by, the corporation or liability for the repayment of which is an obligation of the corporation. [emphasis added]*²

12. Ultimately, the Court of Appeal concluded:

"[86] *A plain and purposive reading of section 43(3) of the Hydro Act evidences*

² Manitoba Court of Appeal in *Manitoba (Hydro-Electric Board) v. Manitoba (Public Utilities Board)* et al. 2020 MBCA 60, paragraphs 67 to 70;

*that funds and revenue of Manitoba Hydro are not to be used by the government to serve any purpose other than that of Manitoba Hydro.*³

13. The PUB considered factors such as social policy and bill affordability in approving and fixing rates for service which created customer classifications for the purposes of implementing broader social policies aimed at poverty reduction. This was a decision to use funds and revenue of Manitoba Hydro other than for its own purpose.
14. Contrast this to MPI, which decided to use Extension funds and revenue to serve a purpose of MPI, specifically, to administer the DVA.
15. Section 2(2) of the *DVA* states that:

“[MPI] must perform the duties that are imposed on it by this Act or another Act, or a regulation, and any other duties that the minister may require. [MPI] may exercise the powers conferred on it by this Act or another Act, or a regulation.”
16. The language of the *MPIC Act* and the *DVA* make it abundantly clear that the administration of the *DVA* is a purpose of MPI.
17. *The DVA* has 172 sections and 8 regulations. It is a function of MPI to carry out these duties (the recital here of all the duties would be a significant undertaking that cannot be completed in the restricted timeframe for submitting a reply) but by way of simple examples, these duties include:
 - a. the registrar, who is an employee of MPI, must issue driver’s licences when certain statutory conditions are met;
 - b. the registrar must cancel or suspend driver’s licences when certain conditions are met;
 - c. the registrar must conduct driving examinations;
 - d. the registrar must register motor vehicles for operation on the highway;
 - e. the registrar must issue licence plates of motor vehicles;

³ Manitoba Court of Appeal in *Manitoba (Hydro-Electric Board) v. Manitoba (Public Utilities Board) et al.* 2020 MBCA 60, paragraph 86;

- f. the registrar must issue identification cards;
 - g. the registrar must issue driver training school and instructor permits; and
 - h. the registrar must issue dealer, salespersons and recyclers' permits.
18. These duties and powers are assigned to MPI. They are not duties and powers assigned to the Government to be delegated to MPI. In fact, the only statutory authority in the *DVA* (i.e. Subsections 2(4) and 3(3) thereof) is the authority of MPI to delegate its duties or powers in order to allow its employees to perform the duties or exercise the powers of the Administrator.
19. In order to carry out of these duties, MPI requires, among other things, employees, office space, supplies, and infrastructure including IT systems. There are obviously costs associated with doing so. MPI has to pay its bills.
20. Neither the *MPIC Act* nor the *DVA* provide any specific sources of revenue to enable MPI to carry out its functions.
21. The evidence of Mr. Herbelin was that MPI had two sources of funding. MPI could make use of insurance moneys from Extension or Basic, or the Government could pay MPI for the costs associated with the DVA line of business. When the Government failed to fund the DVA shortfall, MPI had no choice but to transfer capital from Extension to DVA⁴.
22. As indicated at the start of the hearing, MPI cannot operate one line of business to the detriment of the other. In this case, MPI could not ignore the financial need of the DVA line of business by transferring \$60 million to its Basic line of business under the Capital Management Plan (CMP), particularly with Basic in good financial standing. Indeed, Mr. Herbelin stated in his evidence that leaving a projected deficit of approximately \$100 million in DVA with Extension having surplus capital available would not have been a prudent approach for either Project Nova or the overall financial strength of MPI⁵.

⁴ Transcript date October 12, 2021 page 218;

⁵ Transcript date October 12, 2021 page 220;

23. Section 16 of the *MPIC Act* authorizes MPI to spend its revenue and funds on its purposes:

Moneys of the corporation

16. All moneys required by this Act and the regulations, or any other Act or regulations, to be paid to the corporation and all premiums and other consideration payable for insurance provided by the corporation, and any other moneys that may become due and payable to the corporation by the regulations or otherwise shall be paid to the corporation, and may be retained by the corporation and **shall be used and dealt with for no other purpose than to carry out the powers of the corporation in accordance with this Act and the regulations.** [emphasis added]

24. MPI can only use moneys it has retained for the purposes authorized by the *MPIC Act*, and administration of the *DVA* is one of those purposes.

25. In addition to alleging a breach of public trust by MPI and its unlawfully transfer of moneys, the CAC also asks the PUB to grant relief that falls outside its jurisdiction under *The Crown Corporations Governance and Accountability Act (CCGA)*, C.S.S.M. c. C336. Pursuant to this Act, the jurisdiction of the PUB is limited to approving the rates for services for the Basic line of business of MPI.

26. The *CCGA* does not provide the PUB with any jurisdiction over the Extension or *DVA* lines of business. Nonetheless, the CAC requests that the PUB consider Extension (now *DVA*) funds in determining the amount that should be rebated to ratepayers after the PUB amends its prior orders to reflect what amount MPI should have collected.

27. MPI never transferred the impugned Extension funds to the Basic line of business. These moneys are therefore not within the jurisdiction of the PUB and must not be considered or deemed to be funds belonging or available to Basic when approving rates for services.

28. The CAC recognizes that since these funds are not within Basic, and therefore outside the jurisdiction of the PUB, they cannot be rebated. As such, the CAC requests that the PUB order MPI to rebate an equivalent amount from Basic. In order

to rebate this amount of money from Basic, MPI would need to withdraw amounts from its Rate Stabilization Reserve (RSR).

29. The purpose of the RSR is:

*"To protect motorists from rate increases that would otherwise have been necessary due to unexpected variances from forecasted results and due to events and losses arising from non-recurring events or factors."*⁶

30. As a result, the request of the CAC is, in effect, a request that the PUB direct MPI to use the RSR for a purpose other than for which it was intended.

31. An additional problem is that issuing a further rebate from the RSR would bring it below its 100% Minimum Capital Test (MCT) target and, as a result, force MPI to not be in compliance with the *Reserves Regulation*, Man. Reg. 76/2019. For the CAC, the solution to the problem is simple: the PUB must again find that it is not bound by the Reserves Regulation.

32. While the PUB may itself not be bound by the *Reserves Regulation*, MPI is bound by the law and would be forced to take immediate steps to return the RSR to its target level⁷.

33. Further, in Order 176/19, the PUB found a 100% MCT target level for the RSR to be just and reasonable.⁸ In fact, in the 2022 GRA, the CAC itself acknowledges the appropriateness of this target and recommends⁹ that the PUB maintain 100% MCT as a provisional target in the next fiscal year.

34. In summary, Section 14(2) of the *MPIC Act* has no application to the \$60 million transfer from the Extension to the DVA lines of business. Section 16 of the *MPIC Act* authorizes such transfers. The PUB has no jurisdiction over non-Basic lines of business and must not direct MPI to use monies in the RSR for an inconsistent purpose and/or in a manner that would force MPI to become non-compliant with the *Reserves Regulation*.

⁶ 2022 General Rate Application, Part VII, Rate Stabilization Chapter, RSR.3, page 5, line 2;

⁷ CAC (MPI) 1-96;

⁸ PUB Order No. 176/19, p. 61;

⁹ CAC Exhibit #13, recommendation 3 at page 1;

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ALL OF WHICH IS RESPECTFULLY SUBMITTED.

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