Citation: Manitoba Public Insurance Corp v Manitoba (Public Utilities Board) et al,
2022 MBCA 86
Date: 20221019
Docket: AI22-30-09746

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

	)	***S. M. Scarfone*** *and*
	)	***A. L. Guerra***
	)	*for the Applicant*
THE MANITOBA PUBLIC INSURANCE CORPORATION	)	
	)	***R. A. Watchman***,
	)	***K. A. McCandless*** *and*
Applicant	)	***K. D. J. Moore***
	)	*for the Respondent*
- and -	)	
	)	
THE PUBLIC UTILITIES BOARD	)	***J. B. Williams***
	)	*for the Intervener*
Respondent	)	*Consumers' Association*
	)	*of Canada (Manitoba)*
- and -	)	
	)	***C. Meek***
CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) and COALITION OF MANITOBA MOTORCYCLE GROUPS	)	*for the Intervener*
	)	*Coalition of Manitoba*
	)	*Motorcycle Groups*
	)	
Interveners	)	*Chambers motion heard:*
	)	***July 7, 2022***
	)	
	)	*Decision pronounced:*
	)	***October 19, 2022***

STEEL JA

[1] This is a motion by the applicant, the Manitoba Public Insurance Corporation (MPIC), for leave to appeal Order Nos. 134/21 and 21/22 of the respondent, the Manitoba Public Utilities Board (the PUB), which involved

changes to the driver safety rating (DSR) system. MPIC argues that these orders were issued outside the jurisdiction of the PUB. All PUB orders referred to herein are accessible online: *The Public Utilities Board*, <pubmanitoba.ca/v1/proceedings-decisions/orders/mpi.html> (date accessed 3 October 2022).

Facts

[2] MPIC administers a universal compulsory automobile insurance scheme to all Manitobans pursuant to *The Manitoba Public Insurance Corporation Act*, CCSM c P215 (the *MPIC Act*). That compulsory scheme is referred to as the "basic" line of business (*Public Utilities Board v Manitoba Public Insurance Corp et al*, 2011 MBCA 88 at para 5) and is subject to PUB oversight with respect to the rates charged (i.e., premiums) for such insurance. The PUB is constituted pursuant to *The Public Utilities Board Act*, CCSM c P280 (the *PUB Act*). No change in rates may be introduced without PUB approval.

[3] MPIC filed the 2022 general rate application (GRA) with the PUB in 2021, in respect of proposed changes in rates for universal compulsory automobile insurance for the period of April 1, 2022 to March 31, 2023. Following 10 days of public hearings, the PUB issued Order No. 134/21. Included among the issues heard and decided by the PUB were changes to the merit scale and corresponding vehicle premium discounts under the DSR system.

[4] With respect to basic insurance, MPIC charges two different types of premiums: one to drivers, called "driver premiums" and one to owners, called "plan premiums". Driver premiums are the amounts that drivers must

pay MPIC to obtain a driver's insurance certificate (i.e., the document that establishes proof of basic insurance coverage while driving a motor vehicle).

[5] Plan premiums or vehicle premiums is the annual rate that a customer pays for their vehicle insurance. Vehicle insurance premiums are calculated according to the classification methodology underlying the DSR system. The DSR system is a form of customer classification which groups them based on several factors such as where in Manitoba they live, the type of vehicle they drive and the vehicle's use. The goal is to fairly allocate automobile insurance costs between customers of MPIC.

[6] Currently, vehicles are also classified based on their registered owner's driving risk. Depending on the driving record of the registered owner, their DSR may lead to a discount or no change in the vehicle's premium. MPIC currently determines whether a named insured (i.e., the person who owns the vehicle) is entitled to a discount on their vehicle insurance premiums (and amount of any discount) by using the driving record of that owner. This is commonly referred to as the registered owner rating model.

[7] MPIC introduced the DSR system in 2010 to replace the merit discount program. It was first approved in PUB Order No. 89/09 in response to an application by MPIC. Since then, the DSR system has undergone changes designed to improve the system, mainly relating to the charging of rates based on driver risk. The DSR system was designed by MPIC with three primary goals: (1) to provide reduced premiums for the safest drivers, (2) to provide incentives for higher risk drivers to improve their driving behaviour, and (3) to improve drivers' understanding that their driving behaviour can

affect the amount they pay for auto insurance (see PUB Order No. 89/09 at p 11).

[8] In recent years, MPIC and the PUB have discussed various approaches to match driver risk more closely with vehicle and driver premiums—that is, whether the ratemaking methodology should be based on the driving experience of the primary driver of the vehicle (the primary driver model) rather than the current system which assigns risk based on the registered owner of the vehicle (the registered owner model). The primary driver model differs from the registered owner model, in that it determines the additional premium or discount using the driving record of the person declared to be the primary driver of the vehicle, who may differ from its registered owner. The soundness of the DSR system in ensuring that premiums appropriately reflect risk has been debated in numerous MPIC GRA hearings. As noted by the PUB in Order No. 21/22, only MPIC and Saskatchewan Government Insurance (and Insurance Corporation of British Columbia in a modified form) assess risk and premiums using a registered owner model, whereas private North American automobile insurers employ the primary driver model (see p 22).

[9] In the 2022 GRA, MPIC advised that it intended to continue to use the registered owner model and would not be considering any changes to its model for the next five years. It felt that any significant change to this model would create large rate dislocation and require significant regulatory changes, as well as significant information technology (IT) changes.

[10] After hearings, the PUB issued Directive 11.13 of Order No. 134/21 in response to the GRA. Directive 11.13 directs MPIC to develop a five-year

plan for the implementation of the primary driver model if it were to be approved by the PUB.

[11] More specifically, Order No. 134/21 provides (at pp 86, 92-93):

> . . .
> The [PUB] held that, given the evidence of MPI[C]'s Chief Actuary, that the Primary Driver model would more accurately reflect risk, [in the 2022] GRA [MPIC] was to bring forward a plan, including timelines, major milestones and implementation date, for any changes to the DSR model, including a date by which MPI[C] file an application for any such changes with the [PUB]. . . .
> . . .
>
> . . . Over the last three GRAs, the [PUB] has thoroughly canvassed the DSR, including alternative models, the actuarial soundness of the DSR system, and public opinion of the rating models. After the 2021 GRA the [PUB] found that MPI[C] should be in a position to take steps towards a more actuarially sound model, and the [PUB] still finds this to be the case. The [PUB] is perplexed as to why MPI[C] is adamantly opposed to implementing a Primary Driver model. . . .
> . . .

[12] Further, the PUB directed MPIC as follows in Directive 11.13 (at p 122):

> . . .
> 13. In the 2023 GRA, [MPIC] shall bring forward a five-year plan for the implementation of the Primary Driver rating model. The five-year plan shall address such issues as:
>
> a. Required regulatory changes and a timeline for the initiation of the regulatory changes;
>
> b. Required IT changes and a timeline for the implementation of the IT changes;

> c. The process [MPIC] will employ to obtain the necessary primary driver information from ratepayers; and
>
> d. [MPIC's] communications plans in order to educate ratepayers about the rating model change.
>
> . . .

[13] The PUB also stated that MPIC had failed to comply with several previous directives. In particular, it noted (at p 21):

> . . .
> It is of concern to the [PUB] that [MPIC] failed to comply with a number of the directives in Order 1/21. When the [PUB] issues directives [MPIC] may choose to file a request for variance or seek leave to appeal from the Manitoba Court of Appeal. [MPIC] may not simply refuse or fail to comply with the directive.
>
> For the purposes of transparency and accountability, in this and in all future orders the [PUB] will include a list of any directives with which [MPIC] has not complied. The list is found at Appendix A to this Order and will be posted on the [PUB's] website.
> . . .

[14] Appendix A is found in Order No. 134/21 (at pp 126-27) and contains the following references to Directive 10.12 of Order No. 1/21 (at p 127):

> . . .
> In the 2022 GRA [MPIC] shall bring forward a plan, including timelines, major milestones and implementation date, for any changes to the Driver Safety Rating model, including a date by which [MPIC] will file an application for any such changes with the [PUB].

[15] In January 2022, MPIC filed an application to the PUB pursuant to section 36(1) of the PUB Rules of Practice for review and variance of certain

aspects of Order No. 134/21, including Directive 11.13, as well as certain aspects of Appendix A, including Directive 10.12 of Order No. 1/21 (the R & V application). In that application, MPIC argued that the PUB does not have the jurisdiction to direct MPIC to implement a new DSR model or to direct it to make plans to implement a new model.

[16] In February 2022, the PUB issued Order No. 21/22, which dismissed MPIC's R & V application.

[17] In Order No. 21/22, the PUB states (at pp 21, 24):

> . . .
> It was not the [PUB's] intention to peremptorily direct MPI[C] to implement a new DSR program based upon the Primary Driver model. Rather . . . Directive [11.13] puts in place an appropriate process to permit a substantive review preparatory to the introduction of any new model for the DSR program.
> . . .
>
> Directive 11.13 was necessary given MPI[C]'s reluctance and unwillingness over the past five GRAs to carry out necessary steps to permit the proper evaluation of a DSR program that will provide for just and reasonable rates based on risk. As such, Directive 11.13 directs MPI[C], in no uncertain terms, to carry out the requisite foundation for such a change if it is approved by the [PUB].
> . . .

[18] Order No. 21/22 referred to Appendix A as "a factual finding that MPI[C] did not file the analysis directed" (at p 25) and, therefore, dismissed MPIC's R & V application.

[19] MPIC has now filed a notice of motion seeking leave to appeal Order Nos. 134/21 and 21/22 on the grounds that the PUB exceeded its

jurisdiction by finding that it possesses the requisite jurisdiction to direct MPIC to adopt or implement a primary driver model now, or at some point in the future, or direct that it plan to do so. As well, it erred in law by failing to rescind, change, alter or vary Appendix A to remove the reference to Directive 10.12 of Order No. 1/21.

[20] In both written and oral arguments before me, when referring to the lack of jurisdiction of the PUB to direct MPIC to adopt a primary driver model, MPIC always refers to it as an undefined and/or ambiguous model. In oral argument, it was clarified that the objection is to the lack of jurisdiction, regardless of whether the direction could be considered undefined or ambiguous. MPIC would object to the orders whether they were, in its view, less ambiguous. The overarching issue is whether the PUB has the jurisdiction to direct MPIC to develop a plan designed to adopt the primary driver model instead of the existing registered owner model.

The Test for Leave to Appeal

[21] The parties agreed on the test for leave to appeal and the applicable standard of review.

[22] Pursuant to section 58 of the *PUB Act*, an appeal may be taken from the decision of the PUB only when leave to appeal has been granted by a judge of this Court. Leave to appeal a PUB order may be granted on questions of jurisdiction, law or fact. Sections 58(1)-58(2) provide as follows:

> **Grounds of appeal**
> **58(1)** An appeal lies from any final order or decision of the board to The Court of Appeal upon

(a) any question involving the jurisdiction of the board; or

(b) any point of law; or

(c) any facts expressly found by the board relating to a matter before the board.

Leave to appeal
58(2) The appeal shall be taken only
(a) by leave to appeal obtained from a judge of The Court of Appeal;

(b) within one month after the making of the order or decision sought to be appealed from, or within such further time as the judge under special circumstances shall allow; and

(c) after notice to the other parties stating the grounds of appeal.

[23] In addition to demonstrating that the grounds of appeal fall within one of the three criteria stipulated in section 58(1) of the *PUB Act*, the applicant must show that the point raised has a reasonable prospect of success or arguable merit and will assist in deciding other similar disputes which may arise in the future. "A question of jurisdiction or of law will have a reasonable prospect of success where, taking into consideration the relevant standard of review, the issue cannot be dismissed on a preliminary examination; it requires a more thorough inquiry by a panel of the Court of Appeal" (*Cann v Director, Fort Garry/River Heights*, 2020 MBCA 101 at para 29).

[24] At the end of the day, the granting of leave always remains discretionary (see *Consumers' Association of Canada (Man) Inc et al v Manitoba Hydro Electric Board*, 2005 MBCA 55 at paras 9-10 (*Consumers' Association*); *Re The Cash Store Financial Services Inc*, 2009 MBCA 1 at

para 25; and *Manitoba Public Insurance Corp v Public Utilities Board*, 2011 MBCA 87 at paras 17-20 (*MPIC PIPP*)).

[25] Assessment of whether the issue has a reasonable prospect of success must be done in light of the standard of review on which the merits of the appeal will be judged (see *Manitoba Hydro-Electric Board v Public Utilities Board (Man) et al*, 2019 MBCA 54 at para 9 (*Hydro-Electric 2019*)). This is a statutory appeal, therefore, appellate standards of review will apply (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 17, 33, 37). Questions of statutory interpretation should be reviewed on a standard of correctness. Questions of fact, or questions of mixed law and fact are to be reviewed on the more deferential standard of palpable and overriding error where pure questions of law are not readily extricable (see *Housen v Nikolaisen*, 2002 SCC 33 at para 37; and *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60 at paras 23-25 (*Hydro-Electric 2020*)).

[26] MPIC applies for leave to appeal the two orders on the grounds that Directive 11.13 is not simply an information-seeking directive but, rather, a mandatory order which goes beyond the jurisdiction of the PUB. It also argues that the PUB erred in law by failing to remove the reference to Directive 10.12 contained in Appendix A, which stated that the MPIC had failed to comply with previous directives of the PUB.

[27] The question of whether the PUB has the jurisdiction to direct MPIC to bring forward a plan for the implementation of the primary driver model for DSR involves issues of statutory interpretation and should be reviewed on a standard of correctness.

[28] Appendix A listed PUB directives from prior GRAs which were allegedly not complied with by MPIC. The question of whether MPIC fulfilled a prior directive is a factual one or, at best, one of mixed fact and law which should be reviewed on the more deferential standard of palpable and overriding error.

Discussion and Analysis

Should Leave to Appeal Order No. 134/21, Appendix A, in Respect of Directive 10.12 of Order No. 1/21 Be Granted?

[29] Starting with this proposed ground of appeal, I do not find that this warrants the attention of the Court. While section 58(1) of the *PUB Act* allows for an appeal on a finding of fact, the point raised by MPIC is not arguable and, more particularly, is not significant enough to merit the attention of the Court.

[30] MPIC submits that the PUB erred by including a reference to Directive 10.12 in Appendix A. Directive 10.12 was issued by the PUB in Order No. 1/21 dated January 5, 2021, and required MPIC to bring forward a plan for any changes to the DSR model, including a date by which MPIC would file an application for any such changes with the PUB. In Appendix A, that directive was listed as outstanding.

[31] The PUB made a finding in Appendix A that, in the 2022 GRA, MPIC did not comply with Directive 10.12. It considered MPIC's argument that it had indeed complied with Directive 10.12 and rejected it. Finding that it was simply stating a fact that MPIC did not file the analysis as directed, it stated in Order No. 134/21 (at p 91):

> . . .
> In this hearing, MPI[C] argued that it complied with Order 1/21 because it advised the [PUB] that it will remain with the Registered Owner model for five years. Yet, the [PUB] commented specifically in Order 1/21 that;
>
> > *(. . .) given the evidence that the Primary Driver model would more accurately reflect risk, in the 2022 GRA [MPIC] must bring forward a plan, including timelines, major milestones and implementation date, for any changes to the DSR model, including a date by which MPI[C] file an application for any such changes with the [PUB]. The timeline for MPI[C]'s major Information Technology initiative, Project Nova, requires that MPI[C] move forward on DSR changes without delay.*
>
> By simply stating it will not make any changes to the rating model, MPI[C] has completely disregarded the [PUB's] directive.
> . . .

[32] A statement by MPIC advising the PUB that it would remain using the registered owner model is not compliance with an order to develop a plan for changes to the DSR model. Instead, it disregarded the PUB's directive.

[33] In any case, it is a finding of fact (whether or not MPIC complied with the directive) which does not raise an arguable point that the PUB committed a palpable and overriding error, nor is it a sufficiently important issue to merit a review of this aspect of Order Nos. 134/21 and 21/22.

Should Leave to Appeal Directive 11.13 Be Granted?

[34] The general principles of statutory interpretation are well-settled. Every statute must be given a "fair, large and liberal interpretation that best ensures the attainment of its objects" (*The Interpretation Act*, CCSM c I80 at section 6). Statutes are to be "read in their entire context and in their

grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (*Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 26, quoting Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87. Where the provisions in question are part of a larger statutory scheme, "harmony, coherence, and consistency between statutes" is to be presumed (*Bell ExpressVu* at para 27, quoting *R v Ulybel Enterprises Ltd*, 2001 SCC 56 at para 52; see also *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21).

[35] The PUB's role in the determination of rates for compulsory automobile insurance is based on three interrelated statutes—the *MPIC Act*; *The Crown Corporations Governance and Accountability Act*, CCSM c C336 (the *CCGAA*); and the *PUB Act*. The jurisdiction of the PUB must be interpreted in accordance with the scheme of the legislation contained in these three Acts. As a result of these three Acts, the PUB is required to set rates for basic policy holders that are just and reasonable in the public interest (see *Consumers' Association* at paras 63-65; and *MPIC PIPP* at para 14).

[36] Section 25(1) of the *CCGAA* provides that MPIC shall not make any changes to its rate bases and premiums charged with respect to compulsory driver and vehicle insurance without the approval of the PUB. Section 25(2)(b) defines the term "rates for services" to mean "rate bases and premiums charged with respect to compulsory driver and vehicle insurance". The *CCGAA* grants the PUB broad authority in deciding an application by MPIC for changes to basic rates and premiums (see section 25(4)). The jurisdiction of the PUB, in respect of setting those rates, includes all aspects of the rates (see *Coalition of Manitoba Motorcycle Groups Inc v Manitoba (Public Utilities Board)*, 1995 CarswellMan 433 (CA) (*Coalition*)).

[37] Section 44(1) of the *PUB Act* gives the PUB, on an application before it, the power to grant the relief requested, in whole or in part, or to grant other relief in addition to or in substitution of the relief sought. In *Hydro-Electric 2020*, this Court held that section 77(b) of the *PUB Act* permits the PUB to fix just and reasonable classifications for Manitoba Hydro (Hydro) while section 82(1)(c) prohibits the making or imposition of any unjust or unreasonable rates or classifications (see paras 37-40).

[38] MPIC argues that, although the PUB has jurisdiction with respect to the above-noted matters, the jurisdiction of the PUB is limited to fixing just and reasonable rates that accord with the existing legislative scheme. MPIC contends that the PUB cannot direct MPIC to disregard the established scheme and adopt the primary driver model. Further, it submits that the PUB cannot direct MPIC to remove any legal impediments that only the Lieutenant Governor in Council (LGC) can remove. In this case, it is contended, the *MPIC Act* provides that MPIC may establish plan premiums and discounts "based on the driver safety rating system established by the regulations" (at section 6.1(3)).

[39] In fact, MPIC questions whether the model it uses to determine plan premium discounts qualifies as a "classification" since, it is submitted, the transition to a primary driver model may result in the imposition of fundamentally different legal obligations on owners and drivers. This is a change in the nature of the relationship, not a change in the classification. However, even if it is accepted as a "classification", it must comply with existing legislation. MPIC relies on *Hydro-Electric 2020* at paras 27, 38-41. In that case, the Court confirmed that the PUB had authority under the *PUB Act* to review classifications and to fix just and reasonable ones;

however, in doing so, the PUB had to act within the limits of the applicable legislation.

[40] MPIC also submits that the PUB has mischaracterized its directive. In Order No. 21/22, the PUB characterized Directive 11.13 as a directive designed to "permit the proper evaluation of a DSR program that will provide for just and reasonable rates based on risk" (at p 24). MPIC argues that this is not an information-seeking directive designed to assist the PUB with discharging its mandate. Rather, the true purpose of the five-year plan is to start MPIC along a path that will ultimately end with its transition to a primary driver model. The language employed is mandatory. This, it is submitted, is an unreasonable intrusion into the manner in which MPIC conducts its affairs.

[41] The PUB responds in two ways.

[42] First, the PUB submits that the intent of Directive 11.13 is not to require MPIC to bring forward an application for approval of a change to the DSR model. Rather, its intent is to seek information in the event it wishes to consider a potential change at a later time. There is no question that the PUB has the jurisdiction to issue a directive that seeks information. Recently, this Court held, in the context of an application for leave to appeal filed by Hydro, that the PUB did indeed have the jurisdiction to issue information-seeking directives. In that case, Hydro had not fully complied in providing the PUB with asset condition information. The PUB issued a directive which required Hydro to retain an independent consultant to assess Hydro's development of its asset management. This Court held that it was an information-seeking directive to help the PUB discharge its mandate and the PUB was within its legislative mandate to do so (see *Hydro-Electric 2019* at paras 3, 35-39).

[43] Second, the PUB argues that, in any case, it has the jurisdiction to order the change to the DSR system.

[44] I accept the argument of the PUB that Directive 11.13 is an information-seeking directive. There is no doubt, given the history of this matter, that the PUB strongly favours the change to a primary driver model. But that is not to say that, given the receipt of information it has requested, the change is a foregone conclusion. The directive asks that a plan be developed, and a foundation laid in the event it wishes to consider a potential change at a later time. It does not order the change at this point in time. Given the receipt of the information desired, it may decide not to order the change. The PUB has the jurisdiction to issue this directive, as it may take into consideration all elements of insurance coverage affecting insurance rates, and any other factor it considers relevant to the matter (see section 25(4) of the *CCGAA*; and *Hydro-Electric 2020* at para 81).

[45] In dismissing MPIC's R & V application, the PUB confirmed in Order No. 21/22 (at p 21):

> . . .
> It was not the [PUB's] intention to peremptorily direct MPI[C] to implement a new DSR program based upon the Primary Driver model. Rather . . . Directive [11.13] puts in place an appropriate process to permit a substantive review preparatory to the introduction of any new model for the DSR program.
> . . .

[46] However, even if I were to accept MPIC's argument that Directive 11.13 was not a directive simply seeking information but, rather, a

directive requiring MPIC to make the change, I find that it is within the PUB's jurisdiction to do so.

[47] As I explain below, the PUB has jurisdiction to approve, deny or vary MPIC rate applications. The PUB's rate approval mandate includes jurisdiction over the DSR system, including the authority to examine and designate the specific methodology by which customers are grouped in order to ensure premiums are just and reasonable. This allows the PUB to impose premiums, discounts, surcharges and classifications, including through the DSR system, which differ from those sought by MPIC.

[48] Sections 1(1), 6.1(2)-6.1(3) of the *MPIC Act* incorporate the DSR system into plan premiums for compulsory automobile insurance. The definition of plan premiums under section 1(1) specifically contemplates DSR discounts. It provides:

> **Definitions**
> **1(1)** In this Act, unless the context otherwise requires,
>
> . . .
> **"plan premium"** means a premium paid or to be paid for an owner's certificate under a plan of universal compulsory automobile insurance or extension insurance, and includes any discount or additional amount established under subsection 6.1(3) . . .
> . . .

[49] Section 6.1(2) authorizes MPIC to establish different plan premiums for classes of vehicles and regions taking into account the "type, use, operation and age of motor vehicles". Section 6.1(3) enables MPIC to establish "discounts from the plan premiums otherwise payable" based upon "the driver safety rating system established by the regulations." Section 6.4 of the *MPIC*

Act requires MPIC to obtain PUB approval for all plan premiums charged with respect to its compulsory driver and vehicle insurance. Section 6.4(3) specifically states that the PUB "may either approve or vary the plan premiums applied for" by MPIC and must make its decision in accordance with Part 4 of the *CCGAA*.

[50] There is, therefore, clear statutory authority for the PUB to approve, deny, or vary an application by MPIC for plan premiums, including the discount or additional amount payable on the plan premium based on the DSR. As noted by Twaddle JA in *Coalition*, if the PUB has the discretion to set any rate that is fair and reasonable upon the evidence and in the public interest, then all aspects of the rate are in issue (see para 25).

[51] Standard rate-setting practice, which is reflected in the PUB's statutory framework, involves establishing rates that are just and reasonable and ensuring that any differential treatment is not unjustly discriminatory. Rate approval involves balancing the interests of multiple consumer groups with those of the utility (see *Consumers' Association* at para 63). This necessarily involves grouping customers into "classes" or classifications to ensure like customers are treated alike. James C Bonbright, Albert L Danielsen & David R Kamerschen, *Principles of Public Utility Rates*, 2nd ed (Arlington, VA: Public Utilities Reports, 1988) characterizes the legal concept of ratemaking as requiring rates to be fair and equitable between sellers and buyers, as well as between and among buyers. The purpose of the DSR system is to group customers to ensure they bear an equitable share of MPIC's costs. The intent of the DSR system is to apportion costs based on the risk of making an insurance claim.

[52] Currently, MPIC calculates the plan premium discount or additional amount based on the DSR rating of the registered owner of the vehicle. If the PUB was to require MPIC to charge plan premium discounts or additional amounts based not on the registered owner, but the primary driver of the vehicle, that would be a change in rate-setting methodology over which it has jurisdiction.

[53] PUB's jurisdiction over MPIC customer classifications for ratemaking determination purposes is consistent with the PUB's statutory authority over customer classification. For example, this Court held in *Hydro-Electric 2020* that "the setting of customer classifications is an inherent part of the setting of rates" (at para 40) with the PUB holding the "authority to fix just and reasonable rates, charges and classifications (at para 41). The Court stated (*ibid*):

> In summary, a purposive approach to the interpretation of the legislation supports the ability of the PUB . . . to review the classifications created by Manitoba Hydro to ensure that they are not unjust or unreasonable. Similarly, it has the authority to fix just and reasonable rates, charges and classifications. . . .

[54] Similarly, the *MPIC Act* states that the PUB is to exercise its rate approval role in accordance with Part 4 of the *CCGAA*. Part 4 confirms that the *PUB Act* "applies with any necessary changes to a review pursuant to this Part of rates for services (at section 25(3)). As well, Part II of the *PUB Act* authorizes the PUB to, by order, "fix just and reasonable . . . classifications . . . to be furnished, imposed, observed, and followed thereafter" (at section 77(b)).

[55] Consequently, in exercising its authority, the PUB is not restricted to approval or denial of the premiums, discounts, surcharges or classifications proposed to it by MPIC. As set out at section 6.4(3) of the *MPIC Act* and section 44(1) of the *PUB Act*, the PUB has the statutory authority to vary applications before it. The power to vary must contain within it the power to approve relief other than what is sought by MPIC.

[56] As noted previously by this Court in *Coalition*, the PUB's power to vary MPIC rate applications prevents the Crown monopoly and the PUB being caught in a "stand-off" with MPIC making repeated applications and the PUB rejecting those applications (at para 20).

[57] However, MPIC argues further that the PUB cannot fix classifications for MPIC that do not accord with the applicable legislative scheme, and the DSR system established by regulation does not allow for the establishment of such a scheme. MPIC submits that neither the PUB nor itself can initiate or direct regulatory changes. It is contended that this is a power that rests with the LGC and not within the power of MPIC or the PUB.

[58] In this case, it is submitted that the *MPIC Act* expressly provides that MPIC must establish plan premium discounts "based on the driver safety rating system established by the regulations" (at section 6.1(3)). MPIC further submits that the *Driver Safety Rating System Regulation*, Man Reg 13/2009 (the *DSR Reg*) establishes the method MPIC uses to assess DSRs generally and that the requirement to use the DSR level of the registered owner (for the purpose of determining entitlement to and amount of plan premium discounts) arises from a combination of specific provisions of the *DSR Reg* and the *Automobile Insurance Plan Regulation*, Man Reg 49/2019 (the *AIP Reg*). It

contends that the language of the *AIP Reg* does not allow for the establishment of the primary driver model.

[59] I note in passing that MPIC has acknowledged that section 33 of the *AIP Reg* allows for the determination of entitlement to a plan premium discount based on the DSR level of someone other than the registered owner.

[60] However, I agree with the interveners that the right granted under section 6.4(3) of the *MPIC Act* to vary the plan premiums applied for by MPIC counters that argument. Plan premiums expressly include DSR discounts (see section 1(1) definition of "plan premium" of the *MPIC Act*). Consequently, the scope of any MPIC regulation regarding customer classes or the DSR system is constrained by the language of sections 6.4(3) and 33(1). Regulations are subordinate legislation. Section 33(1) states: "Subject to subsection (1.1), for the purpose of carrying out the provisions of this Act according to their intent, the [LGC] may make such regulations as are ancillary thereto and not inconsistent therewith".

[61] As Twaddle JA noted in *Coalition*, the PUB and the LGC work together, in concurrence with each other (see para 18). Moreover, it is not enough to ascertain the meaning of a regulation when read in light of its own object and the facts surrounding its making. It is also necessary to read the words conferring the power in the whole context of the authorizing statute. "The intent of the statute transcends and governs the intent of the regulation" (*Bristol-Myers Squibb Co v Canada (Attorney General)*, 2005 SCC 26 at para 38, quoting Driedger at p 247).

[62] It should be noted as well that, as recently as Order No. 134/21, MPIC applied for a change to the DSR scale. The PUB approved those

changes on December 15, 2021, and the regulatory amendments necessary for MPIC to enact these changes were registered by the LGC on February 18, 2022 (see *Driver Safety Rating System Regulation, amendment*, Man Reg 10/2022).

[63] MPIC raises a number of other objections to the primary driver model such as the possibility of privacy concerns if required to obtain the identities and driving records of the primary drivers. There may well be a number of difficulties involved in implementing this new model. Order No. 134/21 refers to a five-year plan and laying the foundation of such a model if approved by the PUB. In Directive 11.13(a), the PUB itself acknowledges that regulatory changes may be necessary. With respect to the privacy of information, I would point out that section 6(2) of the *MPIC Act* gives MPIC the power and capacity to do all acts and things necessary for the carrying out of its functions, including the power to "prescribe the information and detail required to be set out on any form" (at section 6(2)(d); see also section 36(1)(b) of *The Freedom of Information and Protection of Privacy Act*, CCSM c F175).

Conclusion

[64] The statutory framework and past decisions of this Court demonstrate that the PUB's rate approval mandate includes jurisdiction over the DSR system, including the authority to examine and designate the specific methodology by which customers are grouped to ensure premiums are just and reasonable. The DSR system is a form of customer classification over which the PUB holds authority. If the PUB were to require MPIC to change plan premium discounts or additional amounts based not on the registered

owner, but on the primary driver, that would be a change in rate-setting methodology over which the PUB has jurisdiction. The challenge to the PUB's jurisdiction over the methodology underlying the DSR system has no reasonable prospect of success.

[65] Leave to appeal PUB Order Nos. 134/21 and 21/22 is denied. The MPIC motion does not demonstrate a reasonable prospect of success and, therefore, does not meet the requirements for granting leave to appeal.

[66] The PUB and the interveners did not request costs, so I will not assess costs unless a written submission is made to the contrary within 14 days of the receipt of these reasons.

JA