**Order No. 176/19**

**MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION): COMPULSORY 2020/2021 DRIVER AND VEHICLE INSURANCE PREMIUMS AND OTHER MATTERS**

**December 3, 2019**

BEFORE: Irene A. Hamilton, Q.C., Panel Chair
Robert Gabor, Q.C., Board Chair
Carol Hainsworth, Member

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## EXECUTIVE SUMMARY

### Rate Decrease

The Public Utilities Board (Board or PUB) hereby orders an overall 0.6% rate decrease to Basic compulsory motor vehicle premiums (Basic or Basic Insurance) for the 2020/21 insurance year, effective March 1, 2020, for a thirteen-month period, for all major classes combined. There will be discontinuance of the anti-theft discount for newly insured vehicles, and no other changes in permit and certificate rates, the Driver Safety Rating System, vehicle premium discounts, service and transaction fees, or fleet rebates or surcharges.

The Board's order for a rate decrease of 0.6% results from the Board's approval of rates calculated in accordance with Accepted Actuarial Practice in Canada (AAP), based on a Naïve interest rate forecast, taking into account actual interest rates as at September 30, 2019.

The Board's order for a decrease of 0.6% does not mean that rates for all motorists within each major vehicle class decrease by that amount. Rates paid by individual policyholders within each Major Class are determined by their driving record and actual claims experience, the kind of vehicle (make and model and year) registered, the purpose for which the vehicle is driven and the territory in which the policyholder resides. As a result, some individuals will experience increases in insurance rates, and others will experience decreases.

### Interest Rate Forecast

The adoption of the Naïve interest rate forecast, which assumes no changes to interest rates, reduces the complexity of interest rate forecasting. Using rate indications derived in accordance with AAP (rather than Basic Net Income projections, as was done by the Corporation in the past) has shortened the length of the forecast. Notwithstanding this, uncertainty remains with respect to interest rate forecasting. To mitigate this uncertainty, in prior GRAs, the Board has routinely requested the Corporation to provide an update to its rate indications to reflect market interest rates at the end of September, which is shortly prior to the commencement of the public hearings.

In this Application, the Board accepted a new approach proposed by the Corporation. The Application and the public notice, filed and published in June 2019, were based on a provisional rate request derived in the usual manner by the Corporation. The Application and public notice made clear, however, that the Corporation would be updating its rate indication following September 30, 2019, based on market interest rates as at that date.

The provisional rate request was for an overall 0.1% rate increase, based on market interest rates as of February 28, 2019, which also included continuation of a 2.06% Net Capital Maintenance Provision. In Order 159/18, the Board had approved the Corporation's use of the Net Capital Maintenance Provision for the 2018/19 rating year only and directed the Corporation that in this Application, it bring forward a detailed Capital Management Plan. The Capital Management Plan was to encompass the entire Corporation and include, among other things, minimum, maximum, and/or target capital levels for all lines of business, a capital maintenance provision built into ratemaking, and capital build and release methodology based on the capital targets.

On October 4, 2019, the Corporation filed its update to reflect market interest rates as at September 30, 2019, along with a request to amend its Application, a request which the Board approved. Over the period from March to September 2019, the 10-year Government of Canada bond yield fell 58 basis points from 1.94% to 1.36%, pushing the Basic rate indication upwards to an overall 1.5% rate level increase. However, Basic's financial performance over the same period significantly exceeded expectations, which improved its financial position. The amended Application also removed the request for continuation of the Net Capital Maintenance Provision. Combined, these changes led to the amended rate request for an overall 0.6% rate level decrease.

The Board's approval of the use of the Naïve interest rate forecast follows its finding in Order 159/18, that this represents a best estimate for rate-setting purposes. In that Order, the Board observed that prior to the 2017 GRA, the parties applied the Standard Interest Rate Forecast (SIRF), notwithstanding eight years of flat interest rates. The Board also notes that there was inconsistency from year to year in the interest rate forecasts advocated by the parties. The Board is satisfied with the use of the Naïve interest rate forecast in the 2019 GRA and for this year, particularly considering the evidence of MPI in this hearing, that its financial position would have been worse, potentially resulting in rate increases, had the SIRF, or the 50/50 (representing the midpoint between Naïve and SIRF) interest rate forecasts been used for rate-setting purposes in the 2019 GRA.

**Rate Stabilization Reserve**

In prior GRAs, the Board has deliberated on and ordered the appropriate level of and methodology for setting MPI's Basic Rate Stabilization Reserve (Basic RSR) and Total Equity target capital range. 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.

Prior to the filing of this Application, the Government of Manitoba enacted the *Reserves Regulation*, M.R. 76/2019 (the Regulation), which set out the manner of determining the amount to be maintained by the Corporation in its reserves for the Basic, Extension and Special Risk Extension lines of business for the purposes of *The Manitoba Public Insurance Corporation Act*. The Regulation also restricted the use of any surplus reserve funds in the Basic RSR, requiring that any amounts in excess of the amount required by the Regulation be used only for the purpose of reducing the Basic rate indication in a subsequent year. The effect of the Regulation was to set the Basic RSR at a minimum level of the amount determined using a Minimum Capital Test (MCT) ratio of 100%, rather than having the Basic RSR set by the Board through the GRA process.

The Consumers' Association of Canada (Manitoba) Inc. (CAC), an Intervener in this GRA, filed a challenge to the validity of the Regulation, stating that it usurped the jurisdiction of the Board to set just and reasonable rates in the public interest. In accordance with the requirements of *The Constitutional Questions Act*, CAC gave notice of this challenge to the Attorneys General of Manitoba and Canada. The Board heard submissions from the Attorney General of Manitoba, in support of the validity of the Regulation. The Attorney General of Canada declined to participate.

Based upon Supreme Court of Canada authority, unless the statutory framework grants the Board the authority to decline to hear an issue, the Board is required to hear all issues properly before it, including the validity of legislation or regulations. The statutory framework for the Board does not grant it the authority to decline to hear the challenge to the validity of the Regulation, and therefore, the Board was required to deliberate on this issue.

The Board has carefully considered the positions of the parties and the relevant legislation and legal principles, and finds that sections 2(a) and 3 of the Regulation are invalid. As subordinate legislation, the Regulation derives its legal authority from legislation. In this instance, the Board finds that the Regulation is inconsistent and conflicts with the statutory framework in *The Manitoba Public Insurance Corporation Act*, *The Crown Corporations Governance and Accountability Act*, and *The Public Utilities Board Act*, which, together, grant the Board the jurisdiction to set rates for Basic that are just and reasonable and in the public interest. The level of the Basic RSR has been a central component of the rate indication and rate approval process since 1989. By setting the level of the Basic RSR, the Regulation has, without statutory authority, circumscribed the rate-setting jurisdiction of the Board. If the Board's powers are to be circumscribed or limited, the authority to do so must be set out in statute.

However, if the Board is incorrect in its finding, MPI's interpretation of compliance with the Regulation is incorrect. On its face, the words in the Regulation, "must maintain," can only be interpreted to mean that MPI must keep the Basic RSR at a minimum of 100%

MCT at all times, not that it must attempt to achieve 100% MCT once every five years. Under MPI's interpretation, the Basic RSR could be in compliance with the Regulation without it ever actually achieving 100% MCT, because the MCT ratio changes constantly.

As the Board has found that the Regulation is invalid, it is therefore not binding on the Board for the purposes of setting Basic's target capital level, or in its assessment of the merits of the Corporation's proposed Capital Management Plan. Nevertheless, the Board finds the proposed Capital Management Plan, and the proposed Basic target capital level reflecting a 100% MCT ratio, to be just and reasonable in the circumstances. The Board has therefore approved the Capital Management Plan as presented by MPI for a two-year trial period. Over this period, the Board will assess the impact of the Capital Management Plan on Basic ratepayers. The Board is of the view that the Capital Management Plan is consistent with the stated purpose of the Basic RSR, noting that the phase-in periods and capping levels effectively work to change the single target capital level into a target capital range, promoting rate stability. Furthermore, the Board has approved a 100% MCT Basic target capital level for this two-year trial period, in large part because Basic has substantially achieved this target without the necessity of any extra burden being placed on Basic ratepayers. This will allow the Board to fully assess the performance of the Capital Management Plan, and the Basic target capital level over the trial period, after which the Board will reassess its position. Should the Board ultimately revert to a scenario-driven Basic target capital range or level (which the latest evidence from the prior GRA suggests is below 100% MCT), the Board acknowledges the practical impact of the current decision on the Basic target capital level would be to defer the otherwise appropriate Capital Release, given the current level of the Basic MCT ratio.

The Board notes the Corporation’s efforts to provide details in support of the Extension financial forecasts to allow the Board to assess the reasonableness of forecasted transfers from Extension to Basic, a key determinant of a need for any Capital Build or Capital Release provision. As no Capital Build or Capital Release provision is being proposed in this Application, the Board is satisfied it has sufficient information to make this decision at this time. The Board anticipates that the Minimum Filing Requirements for the 2021 GRA will be expanded to include additional information requirements related to the Extension forecasts, building on the information provided in this regard through the current GRA process.

**Driver Safety Rating**

In the 2018 GRA, the Corporation applied for an increase to the premiums on the demerit side of the Driver Safety Rating system. The Board approved the Corporation's application in that regard but directed the Corporation to undertake further work toward the implementation of more actuarially sound DSR premiums and vehicle premium discounts. In this Application, the Corporation provided an update on its public consultation efforts and analysis of the cost of data collection for alternative rating models. The Board has directed that in the 2021 GRA, the Corporation provide its analysis of pricing, including the financial impact on premium revenue and the cost of modifying the system, for the implementation of the Registered Owner and Primary Driver models only. The Board's direction is based on the results of MPI's survey data, which show that the Registered Owner and Primary Driver models have the greatest amount of public support. The Board has also directed that in the 2021 GRA, MPI provide an update on which vehicle premium discount model it intends to implement, and whether it has collected data in order to recalibrate the amounts of driver premium and vehicle premium discounts to be more statistically sound, based on experience. MPI must also complete a review of best practices for rating models in other jurisdictions.

**Expenses**

The Board continues to support the Corporation's cost containment efforts, including its review of agreements with its service providers, and steps taken to reduce operating expenses and optimizing staff and contractor levels. The Board finds that the Corporation has approached its expenses with increased prudence in recent years and is continuing to move in a positive direction.

The Board also received the Corporation's updated IT Strategy, and understands that it will be updated annually. The IT Strategy is a key document and accordingly, the Board has directed the Corporation to file its updated IT Strategy in the 2021 GRA. The Board is encouraged by the Corporation's continued efforts to reduce reliance on IT consultants, and reduce the number of IT staff overall.

While the Corporation has made progress in reducing its reliance on IT consultants, further progress is needed in order to achieve optimization, minimize the use of consultants, and ensure the successful deployment and management of project development costs. The Board has therefore directed the Corporation in the 2021 GRA to file updated IT staff and consultant numbers, including titles and responsibilities, in order to provide clarity on the role of the IT staff and consultant complement.

The Board acknowledges that the Corporation is in a state of a transition in IT, with its new legacy modernization program, referred to as Project Nova, now underway. This is a significant undertaking with a budget of $106.8 million, inclusive of a 25% contingency. The Board understands that the Corporation has decided to move forward with Project Nova using an Agile Software Development methodology (Agile), and it has a significant need for external vendor and consultant support throughout its project lifetime. As such, the Board will require an update to Project Nova. The Board has directed the Corporation to meet with the Board Advisors to provide an update on Project Nova, no less than six months prior to the filing of the 2021 GRA, and file a further update on the project in the 2021 GRA. Given the significant changes and risks to Project Nova, in the interim meeting, the Board will require an update of Agile within Project Nova. In addition to Project Nova, there are other significant IT projects which will form part of the update and ongoing review by the Board.

The Board also notes that Project Nova is a multi-year initiative,that is significantly more complex than the pilot programs for which the Corporation has used Agile in the past. Those projects had total costs of less than $1.0 million. The Board has therefore recommended that Agile be tested by the Corporation on a larger-scale project (a cost of approximately $10 million), before the Corporation fully commits to Agile for all aspects of Project Nova.

The Corporation advised that it has ended its engagement with Gartner Consulting for IT benchmarking services, and a Request for Proposals for those services has been issued, with a new provider to be selected in 2020. The Board stresses the importance of ensuring that the Corporation has a third-party service provider in place as soon as practicable, and no later than the filing of the next GRA. The Board expects that the new service provider will be in a position to provide an update on IT benchmarking in the 2021 GRA.

**Service Delivery Model**

The Board received significant evidence in this Application regarding the Corporation's Service Delivery Model, primarily with respect to its agreement with the Insurance Brokers Association of Manitoba (IBAM) for commissions. IBAM was granted intervener status in this GRA, and provided evidence and sought directives from the Board regarding MPI's planned offering of online services. The Board's jurisdiction is to set just and reasonable rates. The Board evaluates MPI's expenditures through the lens of a prudence review, but it does not have the jurisdiction to direct the Corporation as to the terms and conditions of any agreements it enters into with service providers, including IBAM. Accordingly, the Board is not in a position to issue directives to MPI as to how to offer online services to the public. The Board is aware that MPI and IBAM will be engaging in a conciliation process in order to address an agreement for future service delivery, and intends to review the agreement that results from that process, and its cost consequences, at the relevant time.

**Investments**

The Board acknowledges that the recommendations of the Asset Liability Management (ALM) Study undertaken in late 2017 and early 2018 have resulted in significant changes to the Corporation's investment portfolios. Although preliminary results are favourable, the 2019/20 fiscal year has been transitional. The transition is expected to be fully complete in the first quarter of 2020/21. Accordingly, the Board intends to continue its review of the results of the Corporation's new ALM strategy in the 2021 GRA and directed that MPI file a post-implementation review of the ALM strategy in the 2021 GRA. The review shall provide an update on the progress of implementation of the new portfolios, the final disposition of the prior comingled portfolio to fund new investment classes, interest rate risk exposure changes, investment income reporting changes including the allocation methodology for balance sheet and investment income and any Investment Policy Statement changes.

In addition, the Board is concerned as to the disproportionate impact interest rate changes appear to have on the Motorcycle class. Accordingly, the Board has directed that the Corporation consider an investment or other strategies to ameliorate the effect of such changes, including the inclusion of equities or other growth assets in the reserves supporting long term liabilities, and report on the results of that review in the 2021 GRA.

In Order 159/18, the Board directed MPI to undertake a shadow portfolio exercise in order to assess the reasonableness of Basic Claims and Pension portfolios selected by the Corporation as a result of the ALM Study and, in particular, to determine how the inclusion of Real Return Bonds, or the removal of constraints, might affect those portfolios. As was made clear in the evidence in this Application, it will take some time, perhaps five years or more, before reasonable conclusions can be drawn as to the performance of MPI's new ALM strategy. At this time, the Board is satisfied that the current shadow portfolios are sufficient to provide it with a general sense of relative performance. In the meantime, the Board will continue to monitor the respective performance of the actual and shadow portfolios supporting Basic Claims and Pension and, therefore, orders the Corporation to file, in the 2021 GRA, a report comparing the returns of the shadow portfolios with those selected by MPI. The Board has also directed the Corporation to provide a comparison of investment returns with those of Saskatchewan Auto Fund, Insurance Corporation of British Columbia, the Workers' Compensation Board, Teachers' Retirement Allowances Fund and Civil Service Superannuation Board.

## Road Safety

In Order 130/17, the Board directed that a wide-ranging Technical Conference take place in early 2019, on the issue of road safety. The Technical Conference took place on April 4 and 5, 2019, and in this Application, the Board received a report and heard testimony from the facilitator of the Technical Conference, as well as testimony from MPI on the state of its road safety programming and budget. The Board finds that the Technical Conference was successful, and beneficial in advancing the issue of road safety in this Application. The Board continues to hold the view that road safety, being a complex and multi-faceted area, is best addressed through the use of a Technical Conference with periodic reviews in the GRA. Accordingly, the Board has directed that a further Technical Conference on road safety take place in early 2021, which shall be wide-ranging and cover issues such as the Corporation's road safety priorities and programming, budget, and the continued progress of its efforts to address road safety through engagement with other stakeholders. The Board also finds that there should be representation from First Nations leadership at the Technical Conference and therefore will be inviting participation from First Nations organizations. The issue of road safety will again be reviewed in detail in the 2022 GRA. In the interim, the Board has directed the Corporation to: (1) perform an analysis of whether larger vehicles, including pickup trucks, are disproportionately contributing to damage to smaller vehicles and to injuries to vulnerable road users; and (2) undertake an analysis of the data from its driver training and testing in order to identify the gaps in road safety knowledge among Manitoba drivers. The Board also encourages MPI to engage with First Nations to develop a First Nations road strategy, and to engage with Manitoba consumers on its road safety strategy generally.

## Procedure

In this GRA, the Board implemented two significant process changes. The first was with respect to the provisional rate indication as set out above, and the second was with respect to the treatment of commercially sensitive information. In order to increase the efficiency of the hearings, the Board accepted the proposal of the Corporation that it not be required to bring a separate motion under Rule 13 of the Board's Rules of Practice and Procedure for confidential status every time that it filed material claimed as such with the Board. Instead, the Corporation was required to file a single motion with the Board seeking an order for confidentiality, once it had filed all of the material for Application that it claimed as confidential. Prior to then, when the Corporation filed material claimed as confidential with the Board, it also provided copies of that material to Interveners and Board Advisors who had executed undertakings of confidentiality and confidentiality agreements, in forms approved by the Board. Publicly-available information was redacted by MPI, to prevent the release of confidential information.

The Board has made a number of directives in this Order. The Board hereby directs the Corporation to file with the Board, on or before April 1, 2020, a report advising as to the status of its compliance with each of the directives contained herein.

This Order reflects the Board's findings on matters which arose over the course of the proceeding through oral testimony and documentary evidence. Public access to the full transcripts of the public portions of the hearing, including cross-examination, presentations and closing statements, as well as documentary evidence, is available on the Board's website (www.pub.gov.mb.ca).

Interested parties may also review MPI's Annual Report and quarterly financial statements on MPI's website (www.mpi.mb.ca).

# 1. THE RATE APPLICATION

## *1.1. PROCEDURAL HISTORY*

On June 20, 2019, the Corporation filed with the Board the 2020 General Rate Application (GRA or Application) seeking approval of premiums for Basic, for a thirteen-month fiscal year, commencing March 1, 2020 and ending March 31, 2021, to align the Corporation's year-end with the Government's for summary budgeting purposes.

Prior to the filing of the Application, by letter dated March 28, 2019, the Board approved a new process proposed by MPI for this GRA, whereby MPI initially filed a rate indication based on the interest rate forecast as at February 28, 2019, with its rate request updated and finalized prior to the public hearings, based on an updated interest rate forecast as at September 30, 2019. The Board recognized that this process simply formalized that which has been employed in recent GRAs.

Also prior to the filing of the Application, the Board issued Interim Procedural Order 66/19, in which it approved an Issues List for the Application, on a preliminary basis. In doing so, the issues in the Issues List were placed in one of three categories: issues to be considered in the scope of the GRA in the normal course; issues requiring more detailed examination in the 2020 GRA; and issues deferred from the 2020 GRA to future applications, or which would be the subject of a technical conference or another process.

After the filing of the Application, by letter dated June 25, 2019, the Board set out a new procedure for the treatment of commercially sensitive information (CSI) in this hearing (the CSI Process). Pursuant to the CSI Process, MPI was not required to bring a motion for confidential status each time it filed material claimed as such with the Board. Rather, once all material claimed as confidential in this GRA was filed with the Board, MPI would file one omnibus motion, seeking a Board order approving the confidential status of all of the material. Prior to then, when MPI filed material claimed as confidential with the Board, it would also provide copies of that material to interveners and Board Advisors who had executed undertakings and confidentiality agreements. Publicly-available information was redacted by MPI, to prevent the release of any information claimed as confidential.

Following the pre-hearing conference, which took place on June 27, 2019, by Order 92/19, dated July 5, 2019, the Board approved the Issues List on a final basis, and granted intervener status to the following parties:

- Consumers' Association of Canada (Manitoba) Inc. (CAC);
- Coalition of Manitoba Motorcycle Groups (CMMG); and
- Bike Winnipeg (BW).

On August 2, 2019, the Board received a late application for intervener status from the Insurance Brokers Association of Manitoba (IBAM). The Board received written comments from MPI on IBAM's application. MPI did not oppose the application. The Board approved IBAM as an intervener by Order 115/19, dated August 16, 2019, finding that the intervention would serve to assist the Board in its examination of the MPI services performed or facilitated by brokers, as well as the costs associated with the provision of those services. The Board was concerned about delays to the process, and therefore granted IBAM only one round of Information Requests.

Thirteen days of public hearings took place, during which the Board heard evidence from witnesses appearing on behalf of MPI, CAC, and IBAM, as well as from Ward Keith, who facilitated the Road Safety Technical Conference on April 4 and 5, 2019. The Board also received oral and written submissions from presenters. The public hearings began on October 7, 2019, and concluded on October 29, 2019. During the course of the public hearings, in accordance with the CSI Process, the Board issued Order 154/19, in which it granted CSI status to certain documents and information filed as such by MPI in the course of the Application.

## 1.2. THE APPLICATION

The Board's jurisdiction applies to rate-setting for MPI's Basic insurance line of business, and not to MPI's other optional lines of business, namely, Extension and Special Risk Extension (SRE).

In its provisional rate request filed on June 20, 2019, the Corporation requested an overall 0.1% increase in Basic vehicle premium revenue, calculated in accordance with Accepted Actuarial Practice in Canada (AAP), based provisionally on the interest rate forecast as at February 28, 2019, to be updated to a final rate indication based on the interest rate forecast as at September 30, 2019.

In accordance with the process approved by the Board in its March 28, 2019 letter MPI filed an updated rate indication on October 4, 2019, along with a request to amend the Application, for an overall rate decrease of 0.6%.

With respect to the requested amendment, Rule 21 of the Board's Rules of Practice and Procedure provides that in any proceeding, the Board may:

a) allow any amendment to any document;

b) order to be amended or struck out, any document or any part thereof which may tend to prejudice, embarrass or delay the fair hearing of an application on its merits; and

c) order such other amendment as may be necessary for the purpose of hearing and determining the real questions and issues in the proceeding.

At the outset of the public hearings, the Board heard submissions from the interveners on the proposed amendment. Of those interveners who took a position on the amendment, CAC did not object, stating that it was not prejudiced by it and was anticipating an update to the rate indication following September 30, 2019. CMMG opposed the amendment on the basis that it would result in MPI increasing its applied-for rate for the motorcycle class from + 3.9% to +5.1%.

The Board allowed the amendment at the outset of the hearings. The Board found that it was just and reasonable in the circumstances to allow the amendment, given that it simply formalized the process that had been approved by the Board in its letter of March 28, 2019. Further, in the course of the public hearings, the parties had an opportunity to review MPI's evidence in support of the amended rate application and cross-examine MPI's witnesses on the rate request. Lastly, the Board's acceptance of the amendment did not affect the onus on MPI, as applicant, to demonstrate that the rate applied for was just and reasonable.

The vehicle premium rates put forward by MPI included experience-based rate adjustments largely ranging from -15% to +15%, based on adjustment rules. In addition, the Corporation combined classification offsets for all vehicles except off-road vehicles, to achieve revenue neutrality and implemented rate group, rate line and classification changes for 2021.

According to the Corporation's rate design, the change to Basic compulsory motor vehicle premiums for each major vehicle class at the rate requested by MPI would have the following average vehicle premium changes:

| **Major Class** | **-0.6% Experience Rate Change** |
|---|---|
| Private Passenger | -0.9% |
| Commercial | 0.7% |
| Public | 10.9% |
| Motorcycle | 5.1% |
| Trailers | -5.1% |
| Off-road vehicles | -11.0% |
| **Total** | **-0.6%** |

Rates paid by individual policyholders within each Major Class are determined by their driving record and actual claims experience, the kind of vehicle (make and model and year) registered, the purpose for which the vehicle is driven and the territory in which the policyholder resides. As a result, some individuals would experience increases in insurance rates, and others would experience decreases.

The Corporation also sought discontinuance of the anti-theft discount for newly insured vehicles, and no changes to miscellaneous permits and certificates, the Driver Safety Rating system, vehicle premium discounts, service and transaction fees or fleet rebates and surcharges.

A history of the percentage rate changes applied for by the Corporation and ordered by the Board is as follows:

| Year | Applied For (%) | Ordered (%) |
|---|---|---|
| 2020/21 | -0.6 | -0.6 |
| 2019/20 | 2.2 | 1.8 |
| 2018/19 | 2.7 | 2.6 |
| 2017/18 | 4.3 | 3.7 |
| 2016/17 | 0.0 | 0.0 |
| 2015/16 | 3.4 | 3.4 |
| 2014/15 | 1.8 | 0.9 |
| 2013/14 | 0.0 | 0.0 |
| 2012/13 | -6.8 | -8.0 |
| 2011/12 | -4.0 | -4.0 |
| 2010/11 | 0.0 | 0.0 |
| 2009/10 | -1.0 | -1.0 |
| 2008/09 | 0.0 | 0.0 |
| 2007/08 | -2.6 | -2.6 |
| 2006/07 | 0.0 | 0.0 |
| 2005/06 | 0.0 | -1.0 |
| 2004/05 | 2.5 | 3.7 |
| 2003/04 | 0.0 | -1.0 |
| 2002/03 | -1.2 | 0.0 |
| 2001/02 | 0.0 | 0.0 |

# 2. PROGRAM REVENUE

## *2.1. BASIC REVENUE REQUIREMENT*

The Corporation derives revenue from four main sources to fund Basic: vehicle premiums; driver premiums; service and transaction fees; and investment income. The Corporation's projected operating results for 2020/21 and 2021/22, the years affected by the applied-for 0.6% rate decrease, are as follows, based on the interest rate update as at October 4, 2019:

| | 2020/21 Applied for Rate Per October 4, 2019 Update ($ millions) | 2021/22 Projection Per October 4, 2019 Update ($ millions) |
|---|---|---|
| Motor Vehicle Premiums | $1,084.0 | $1,124.5 |
| Drivers' Licence Premiums | 71.3 | 73.2 |
| Reinsurance ceded | (14.4) | (14.7) |
| Total Net Premiums Earned | 1,1404.9 | 1,183.0 |
| Investment Income | 72.9 | 72.8 |
| Service Fees & Other Revenues | 28.2 | 30.2 |
| Total Earned Revenues | $1,242.0 | $1,286.0 |
| Claims Incurred | $940.7 | $987.7 |
| Claims Expenses | 139.4 | 139.5 |
| Road Safety Expenses | 13.5 | 13.4 |
| Operating Expenses | 74.2 | 75.5 |
| Commissions | 44.4 | 46.0 |
| Premium Taxes | 34.7 | 35.9 |
| Regulatory/Appeal expenses | 5.3 | 5.3 |
| Total Claims and Expenses | $1,252.2 | $1,303.5 |
| Net income (loss) – Basic | ($10.2) | ($17.5) |

The above forecast was based on a Naïve interest rate forecast (assuming no changes in current interest rates) as at September 30, 2019, which MPI requested the Board utilize for rate-setting purposes.

The Application as initially filed reflected a provisional rate request for an overall 0.1% rate level increase, based on market interest rates as of February 28, 2019. This also included continuation of the 2.06% Net Capital Maintenance Provision, approved by the Board in Order 159/18 for the 2018/19 rating year only, which the Corporation felt was necessary in transition to its new proposed Capital Management Plan.

Over the period from March to September 2019, the 10-year Government of Canada bond yield fell 58 basis points, from 1.94% to 1.36%, pushing the Basic rate indication upwards to an overall 1.5% rate level increase. As a result of this updated forecast, Basic's projected net income in 2020/21 would decrease from a net income of $8.9 million, to a net loss of ($10.2 million), and its net result in 2020/21 would change from a net income of $0.8 million, to a net loss of ($17.5 million).

MPI also updated its forecast for the current fiscal year, the subject of last year's GRA, for which it had forecast a net income of $29.7 million. This forecast was updated to a net income of $108.4 million based on a September 30, 2019 interest rate update, which included actual experience based on the second quarter six-month period, ended August 31, 2019. Because Basic's financial performance in 2019/20 significantly exceeded expectations and improved Basic's financial position, in its amended Application MPI removed the request for continuation of the 2.06% Net Capital Maintenance Provision. Combined, the revised 1.5% indicated rate and the removal of the 2.06% Net Capital Maintenance Provision led to the amended rate request for an overall 0.6% rate level decrease.

## *2.2. <u>VEHICLE PREMIUMS</u>*

Total written premiums earned are forecast to be $1.08 billion in 2020/21, growing to $1.12 billion in 2021/22. The revenue earned by Basic in respect of vehicle premiums may change due to four factors: rate changes as ordered by the Board; growth in the number of vehicles in the fleet (Volume Factor); changes in the average premium per vehicle caused by factors (other than rate changes) such as the gradual upgrade of the fleet (Upgrade Factor); and the impact on vehicle insurance premiums from changes in the average Driver Safety Rating (DSR) level of registered vehicle owners (DSR Upgrade Factor).

The Volume Factor is based upon the historical growth rate of HTA (*The Highway Traffic Act*) vehicles only (including the private passenger, commercial, public and motorcycle major classes, and excluding trailers and off-road vehicles), which account for 76% of the fleet and over 98% of MPI's total Basic written premiums. MPI is forecasting Volume Factor growth to be 1.40% for each of 2020/21, 2021/22 and beyond. It is forecasting Upgrade Factor growth to be 2.57% for 2020/21, 2.50% for 2021/22, and 2.55% for 2022/23.

The combined impact of the forecast premium revenue growth due to Volume Factor, Upgrade Factor and DSR Upgrade Factor is as follows:

| Year | Vehicle Upgrade Factor | DSR Upgrade Factor | Total Upgrade Factor | Volume Factor | Total Volume & Upgrade Factor |
|---|---|---|---|---|---|
| 2018/19 (Actual) | 2.48% | -0.15%* | 2.33% | 1.01% | 3.34% |
| 2019/20 | 2.45% | 0.09% | 2.54% | 1.40% | 3.94% |
| 2020/21 | 2.45% | 0.12% | 2.57% | 1.40% | 3.97% |
| 2021/22 | 2.45% | 0.05% | 2.50% | 1.40% | 3.90% |
| 2022/23 | 2.45% | 0.10% | 2.55% | 1.40% | 3.95% |
| 2023/24 | 2.45% | 0.13% | 2.58% | 1.40% | 3.98% |

*** Includes the introduction of Taxicab Vehicles-for-Hire DSR Upgrade of -0.12%**

## *2.3. <u>DRIVER PREMIUMS</u>*

The level of Driver Premiums paid by licensed drivers is set based on the DSR scale. In Order 130/17, issued after the 2018 GRA, the DSR scale was changed to a range from $15 at level 15 to $3,000 at level -20.

Driver Premiums are forecast to be $71.3 million in 2020/21, and to increase to $73.2 million in 2021/22. The forecast considers five components: the number of earned driver units by DSR level; the expected movement of drivers on the DSR scale; the average number of earned driver units by DSR level; the driver premiums by DSR level; and a percentage reduction in drivers' premiums from appeals.

## ***2.4. INVESTMENT INCOME***

The Corporation’s funds available for investment are primarily the assets supporting the unearned premium reserves and unpaid claims reserves. As a result of the implementation of the Corporation's Asset Liability Management (ALM) Study, these funds have now been separated into five investment portfolios. The funds within the investment portfolios support the payment of Basic Claims, the Basic Rate Stabilization Reserve and Employee Future Benefits, primarily the pension obligations of the Corporation (Pension). As well, the Corporation now has separate investment portfolios to support its extension lines of business.

The Corporation had short and long-term investments, including cash and equities, for the Basic Line of Business (the Basic Claims and Rate Stabilization Reserve) totaling $2.4 billion in 2018/19, which is forecast to grow to over $3.0 billion by 2023/24.

Investment income earned from the Corporation's investment portfolio reduces the revenue that it is required to collect through premiums. The Corporation’s investment income was allocated to the Basic line of business based on a monthly averaging of the funds available within each division. MPI realized $208.5 million in investment income in 2018/19, which was allocated to Basic. This included positive interest rate impacts of $14.2 million and realized gains on the sale of equities of $104.8 million, in preparation for the implementation of the recommendations from the Asset Liability Management Study, discussed in Section 9.3 of this Order.

Based on the September 30, 2019 Naïve interest rate forecast, MPI forecasted investment income allocated to Basic of $158.6 million in 2019/20, $72.9 million in

2020/21 and $72.8 million in 2021/22. Further discussion on MPI's investment portfolios and returns is found in Section 9 of this Order.

## ***2.5. SERVICE FEES AND OTHER REVENUES***

The Corporation reported that service fees and other revenues account for approximately 2.0% to 2.5% of annual revenues for the Basic program, and that there are approximately 25 to 30 service fees and revenue types that are allocated to Basic. These fees and other revenues include revenue from quarterly and monthly pre- authorized payment plans, late payment fees, motor vehicle transaction fees, dishonoured payment fees, pre-authorized default fees and other fee-related items.

Basic projects income from Service Fees and Other Revenues of $26.5 million in 2019/20, $28.2 million in 2020/21, and $30.2 million in 2021/22.

In the 2019 GRA, MPI filed the results of a Basic Service Fees review, which it completed in 2017/18. The review consisted of a jurisdictional scan, comparing its service fees to those of the Insurance Corporation of British Columbia (ICBC), Saskatchewan General Insurance (SGI), and Manitoba Hydro. At that time, the Corporation determined that no changes were yet required, explaining that it would be premature to seek changes to the Basic service and transaction fees prior to it knowing the outcome of any changes that might be made by the Government of Manitoba to *The Drivers and Vehicle Act* (DVA) service fees, which are collected by MPI on behalf of the Government.

In this Application, MPI did not apply for any change in Basic deductible, third-party liability coverage or service fee rates, and there were no new service fees indicated within the forecast. MPI advised that it will reassess Basic service fees upon approval of the DVA service fee arrangement with the Government of Manitoba.

## ***2.6. EXTENSION OPERATIONS***

In this Application, the Corporation filed historical financial information and forecasts for Extension operations in conjunction with its applied-for Capital Management Plan, which assumes the transfer of excess retained earnings from Extension to Basic, to assist with capital rebuilding of Basic capital:

| | 2020/21 Applied for Rate Per October 4, 2019 Update ($ millions) | 2021/22 Projection Per October 4, 2019 Update ($ millions) |
|---|---|---|
| **EXTENSION** | | |
| Motor Vehicles | **$162.1** | **$166.6** |
| Reinsurance ceded | **(2.0)** | **(2.1)** |
| Total Net Premiums Earned | **157.6** | **162.4** |
| Investment Income | **4.6** | **4.2** |
| Service Fees & Other Revenues | **12.8** | **13.5** |
| Total Earned Revenues | **$175.0** | **$180.4** |
| Claims Incurred | **$69.3** | **$71.0** |
| Claims Expenses | **10.8** | **10.7** |
| Road Safety Expenses | **1.0** | **1.0** |
| Operating Expenses | **9.2** | **9.3** |
| Commissions | **34.8** | **35.9** |
| Premium Taxes | **4.8** | **4.9** |
| Total Claims and Expenses | **$129.9** | **$132.8** |
| Net income (loss) – Extension | **$45.1** | **$47.6** |

MPI indicated that the operating results for Extension are relatively stable and profitable due to the nature of its products: with respect to premium income, the Corporation has a consistent market share, and due in part to the ease in the writing Extension coverages in conjunction with Basic, MPI holds 95% of the market for Extension products.

MPI provided information as to its Extension line profit margin, which was 25% in 2015, and increased to 32% in 2018. In addition to these profit margins, Extension has relatively stable claims costs due to the nature of its coverages. Approximately 60% of all claims costs are related to deductible buy-downs. Therefore, in the case of an individual with a

$200 deductible, the cost to Extension of a claim would be at most $300, representing the difference between the Extension lower deductible and the $500 Basic deductible.

MPI also noted that Extension's third party liability coverages for rental car insurance have not seen a lot of volatility in claims costs. Extension claims are very short in duration; claims are settled in an average of five to six months. Given these short durations, there is less interest rate sensitivity on Extension claims as compared to Basic, the latter of which holds long-term liabilities related to Personal Injury Protection Plan (PIPP) claims.

# 3. RATE INDICATIONS

## *3.1. ACCEPTED ACTUARIAL PRACTICE IN CANADA*

Ratemaking in accordance with AAP involves determining the indicated rate level such that, for a given future rating year, the present value of expected future revenue cash flows (i.e., premiums and fees) is equal to the present value of expected future expense cash flows (i.e., claims, adjusting expenses and non-claims-related costs, including any profit provision).

In Order 162/16, the Board approved the rate indication prepared by the Corporation based on AAP, and directed that the Corporation follow AAP as the basis for its rate indications in future rate applications. The Corporation commenced doing so in the 2018 GRA and continued in this Application.

The Corporation’s estimate of its overall rate requirement is sensitive to the methods and assumptions used in its derivation. In this Application, no significant changes have been introduced by the Corporation with respect to methodology or the basis of selection of assumptions in this regard. This includes the continued use by the Corporation of a Naïve interest rate forecast, for purposes of estimating the appropriate discount rate of interest for use in discounting expected future cash flows in accordance with AAP.

The Corporation derived the Basic rate indication assuming a 12-month rating year, even though the proposed rating period is 13 months long. The impact of this simplifying assumption is not significant, amounting to approximately one half month's worth of net trend for all coverages combined.

Two aspects of the AAP ratemaking methodology were explored in some detail through the GRA process: recognition of the expected return on investment assets supporting Basic Total Equity, and the choice of loss development assumptions in deriving rate indications by Major Use Class.

### 3.2. ***EXPECTED RETURN ON INVESTMENT ASSETS SUPPORTING BASIC TOTAL EQUITY***

In Order 159/18, the Board approved a 2.06% Net Capital Maintenance Provision, which included two components: recognition of the expected return on investment assets supporting Basic Total Equity, and a loading expected to maintain the MCT ratio unchanged over the proposed rating year. This approval was made conditional on the Corporation bringing forward a Capital Management Plan proposal in this Application, which was done.

As set out above, although a Net Capital Maintenance Provision was initially proposed by the Corporation, it was removed with the applied-for amendment on October 4th, leaving the proposed Capital Management Plan to address all capital-related adjustments.

Although it acknowledged that the expected return on investment assets supporting Basic Total Equity is a cash flow to Basic insurance operations, the Corporation prefers to use a 0% profit provision in deriving its AAP rate indication, grouping all capital related adjustments through its Capital Management Plan separate from the break-even rate indication. In taking this position, the Corporation asserted its preference that the Basic break-even rate indication only reflect cash flows relating to policies for the coming rating year, noting that Basic Total Equity relates to prior year policies.

In its evidence, the Corporation confirmed that AAP permits the derivation of rate indications either with or without recognition of this Basic cash flow. Specifically, the actuarial Standards of Practice indicate that "*The provision for profit, or other assumptions that are pertinent to its derivation, may be specified to the actuary under the terms of an appropriate engagement.*"

### 3.3. LOSS DEVELOPMENT ASSUMPTIONS FOR DERIVING RATE INDICATIONS BY MAJOR USE CLASS

In respect of Accident Benefits Other Indexed and Weekly Indemnity, the Corporation uses a common set of loss development assumptions in the analysis of Serious vs. Other losses for deriving rate indications for the Private Passenger, Commercial and Public Major Use classes. In its evidence, the Corporation agreed that there are observed differences in loss development patterns between Serious vs. Other losses, with Serious losses typically being slower to emerge, and that the Corporation's analysis approach does not fully recognize these differences.

While indicating that there may be limitations as to what remedies are possible to address this, due to sparseness of the data, the Corporation undertook to review its current approach in this regard for the 2021 GRA.

### 3.4. VEHICLE CLASSIFICATION SYSTEM

The Corporation classifies vehicle risk by considering insurance use, rating territories, and rate groups. Insurance use classifications categorize vehicles by the nature of the vehicle and its intended insurance use, which now includes rates for Vehicles for Hire, further to Order 11/18. There have been no changes in insurance use classifications in this Application.

Vehicles are assigned to one of five territories in Manitoba, including a commuter territory in the areas adjacent to the City of Winnipeg, based on the primary residence of the registered vehicle owner. There have been no changes to the rating territories in this

Application. For passenger vehicles and light trucks, the Corporation uses the Canadian Loss Experience Automobile Rating system (CLEAR) promulgated by the Insurance Bureau of Canada, which amalgamates data from Canadian insurers and creates rate groups (up to 99) by vehicle make, model and model year, for each of collision, comprehensive and accident benefits coverages. The Corporation combines those rate groups to produce a smaller number of rate groups for the single Basic coverage package. It then adjusts for its own experience by rate group, thereby re-calibrating the CLEAR indications.

## *3.5. __INTERVENERS' POSITIONS__*

**CAC**

Andrea Sherry appeared as a witness for CAC. Ms. Sherry is Vice-President, Insurance Solutions with the Wawanesa Mutual Insurance Company and in Order 92/19 was qualified by the Board as an expert in actuarial analysis with a particular focus on pricing, rate-making, and risk related to automobile insurers generally, including Crown-owned automobile insurers. Ms. Sherry provided evidence on her interpretation of AAP, among other things.

Ms. Sherry indicated that she supports recognition of the expected return on investment assets supporting Basic Total Equity in deriving AAP rate indications, viewing this as being generally consistent with industry practices. Ms. Sherry also confirmed that AAP permits the derivation of rate indications either with or without recognition of the expected return on investment assets supporting Basic Total Equity.

CAC recommended approval of the overall rate indication of -0.6% as amended by the Corporation on October 4th, provided that the Board found the Reserves Regulation to be invalid. In effect, this confirmed CAC's continuing support for AAP ratemaking being used as the basis for the Basic rate indications.

**CMMG**

CMMG noted that the evidence shows that the Motorcycle overall rate indication is more sensitive to interest rate movement than is true for the other Major Use classes. This sensitivity is attributable to the longer tailed nature of the typical Motorcycle claim (i.e., PIPP benefits) which accordingly makes the discounting of those claim cash flows more sensitive to the assumed discount rate of interest.

CMMG recommended that steps be taken to make the derivation of the rate indications less sensitive to movement in market interest rates, perhaps by incorporating equity investments in the Basic investment portfolio backing the claim liabilities, similar to the practice reportedly followed by Saskatchewan Auto Fund (SAF).

### *3.6. __BOARD FINDINGS__*

The Board hereby approves an overall rate decrease of 0.6% based on the Naïve interest rate forecast updated to September 30, 2019, as submitted by the Corporation on October 4th in MPI Exhibit #42.

The Board finds that the volatility in market interest rates, and the uncertainty in forecasting their movement, are self-evident. The Board approves of the use of the Naïve interest rate forecast going forward, until such time as compelling evidence is led indicating new circumstances necessitating a change in practice. The Board acknowledges that Basic insurance operations are less sensitive to interest rate movements because of the recent ALM initiatives, and that the use of AAP ratemaking has reduced interest rate forecasting risk by shortening the length of the interest rate forecast needed in the derivation of rate indications.

The Board's approval of the use of the Naïve interest rate forecast follows its finding in Order 159/18, that this represents a best estimate for rate-setting purposes. The Board notes that in Order 159/18 it also observed that prior to the 2017 GRA, the parties applied the Standard Interest Rate Forecast (SIRF), notwithstanding eight years of flat interest rates and there was inconsistency from year to year in the interest rate forecasts advocated by the parties. The Board is satisfied with the use of the Naïve interest rate forecast in the 2019 GRA and for this year, particularly considering the evidence of MPI in this hearing which indicated that its financial position would have been worse, potentially resulting in rate increases, had the SIRF, or the 50/50 (representing the midpoint between Naïve and SIRF) interest rate forecasts been used for rate-setting purposes in the 2019 GRA.

With respect to the means of recognizing the expected return on investment assets supporting Basic Total Equity, and with the implementation of an appropriate Capital Management Plan, the Board sees merit in the Corporation's position to group all capital related adjustments through its Capital Management Plan separate from the break-even rate indication. As such, the Board is accepting the Corporation's definition of the break-even rate indication such that it should only capture cash flows relating to policies for the coming rating year.

With respect to the choice of loss development assumptions in deriving rate indications by Major Use Class, the Board notes the Corporation's undertaking to review its approach in this regard and anticipates receiving a discussion of the findings in this regard with the next GRA.

# 4. RESERVES REGULATION

## *4.1. BACKGROUND*

In prior GRAs, the Board has deliberated on and determined the appropriate methodology for setting the target level of Total Equity to be retained by the Corporation to support the Rate Stabilization Reserve for Basic insurance (Basic RSR). The purpose of the Basic 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.

During the last several GRAs, the Board has stated its preference for utilizing an adaptation of Dynamic Capital Adequacy Testing (DCAT) to determine a target capital range for the RSR. Essentially, the DCAT methodology is a stochastic analysis of the Corporation's particular risk profile based upon the impact of the likelihood of various adverse events over a forecast period.

MPI, on the other hand, has repeatedly stated its preference for the use of the Minimum Capital Test (MCT) to determine a single target capital level for the Basic RSR. Essentially, the MCT is a solvency test of general application established by the Office of the Superintendent of Financial Institutions (OSFI) for private federally-regulated Property and Casualty Insurers, to ensure an adequate margin of assets over liabilities is maintained by the insurer. Although maintaining an appropriate MCT ratio is not a requirement for MPI, the Corporation believes that maintaining a 100% MCT ratio for the Basic RSR is reasonable and prudent. The Board also notes that in last year's GRA, the upper target level for the Basic RSR using the DCAT methodology, as approved by the Board, equated to 88% MCT. As such, the difference in the target capital levels under the two methodologies has narrowed.

The significance of the methodology chosen is that it has a direct bearing on the determination of just and reasonable rates for Basic insurance. The Basic RSR target has been an integral element of the Board's rate approval process since 1989. The Board has been granted broad authority with respect to the factors to be considered in its rate-approval exercise, and historically the Board has taken into account such factors as projected revenues and expenses for the rating year, the Corporation's prudence in managing costs and the overall health of the Corporation, including reserves. Setting the levels for the Basic RSR has been integral element of the rate approval function in determining: (1) the appropriate level of the Basic RSR for rate-setting purposes; (2) the appropriate methodology for the Basic RSR level; (3) whether additional premiums should be charged to bring the Basic RSR level within an appropriate range of capital target rate-setting; and (4) whether a rebate should be given to consumers. Over the past three decades, the Board has ordered rebates related to excessive Basic RSR levels, and has also ordered additional premiums related to low Basic RSR levels.

Prior to the filing of this Application, the Government of Manitoba enacted the *Reserves Regulation*, M.R. 76/2019 (the Regulation), which set out the manner of determining the amount to be maintained by the Corporation in its reserves supporting the Basic, Extension and Special Risk Extension lines of business for the purposes of *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215 (the MPIC Act). In particular, the Regulation set the minimum amount that must be maintained by the Corporation for the Basic RSR at 100% MCT. The Regulation also restricted the use of any surplus reserve funds in the Basic RSR, requiring that any amounts in excess of the amount required by the Regulation be used only for the purpose of reducing the Basic rate indication in a subsequent year. Accordingly, the effect of the Regulation was to set the Basic RSR at a minimum level of the amount determined using a MCT ratio of 100%, rather than having the range for the Basic RSR capital level set by the Board through the GRA process. Specifically, the Regulation states as follows:

> **Purpose**
>
> **1** This regulation sets out the manner of determining the amount to be maintained by the corporation in its reserves for the purposes of the Act and restricts the use of any surplus reserve funds.
>
> **Amount to be held in reserves**
>
> **2** For the purpose of section 18 of the Act, the minimum amount the corporation must maintain
>
> (a) in its rate stabilization reserve is the amount determined using a MCT ratio of 100%;
>
> (b) in its extension reserve is the amount determined using a MCT ratio of 200%; and
>
> (c) in its special risk extension reserve is the amount determined using a MCT ratio of 300%.
>
> **Use of surplus moneys in rate stabilization reserve**
>
> **3** The corporation may use amounts in the rate stabilization reserve that are in excess of the amount required under clause 2(a) only for the purpose of reducing the rate indication required for the plan of universal compulsory automobile insurance in a subsequent year.

CAC filed a challenge to the validity of the Regulation, stating that it usurped the jurisdiction of the Board to set just and reasonable rates in the public interest. In accordance with the requirements of *The Constitutional Questions Act*, C.C.S.M. c. C180, CAC gave notice of the challenge to the Attorneys General of Manitoba and Canada. The Board heard submissions from the Attorney General of Manitoba (the AG), in support of the validity of the Regulation. The Attorney General of Canada declined to participate.

## *4.2. POSITIONS OF THE PARTIES*

**CAC**

As the party challenging the validity of the Regulation, CAC bore the onus of establishing that the Regulation is invalid.

In summary, CAC's argument was that the purpose of the legislative scheme as set out in the MPIC Act, *The Public Utilities Board Act*, C.C.S.M. c. P280 (the PUB Act), and *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336 (the CCGA Act) is to grant the Board independent rate approval authority for Basic, free from political interference. In support of its position, CAC filed a number of non-judicial documents, such as Hansard excerpts from the Manitoba Legislative Assembly, government reports and historical legislation to establish the legislative facts surrounding the creation of the Corporation in 1971 and the origin of the Board's rate approval mandate in 1988. Chief among these was the report of Judge Robert Kopstein, Commissioner of The Autopac Review Commission in 1988 which, according to CAC, on noting public suspicions of political interference in rate-setting and the support by many members of the public for independent public scrutiny of rates resulted in the enactment of legislation to provide for Board approval of changes to Basic insurance rates.

CAC submitted that, since at least 1989, the Board has considered the magnitude and constitution of the Basic RSR an integral part of the fixing of rates charged by the Corporation. By interfering with, and being inconsistent with, the Board's independent rate approval authority, the Regulation is inconsistent with the legislative scheme and is therefore invalid. Further, by mandating that the Basic RSR be a minimum of a level equivalent to 100% MCT, the Regulation usurps the Board's authority in determining the appropriate level of the Basic RSR for rate approval purposes.

CAC argued that the Regulation is inconsistent with the legislative framework in that it:

a) usurps the jurisdiction of the Board to approve just and reasonable rates to determine an appropriate Basis RSR level for rate-setting purposes and to approve the appropriate methodology for the determination of the Basic RSR;

b) imposes a minimum Basic RSR level that had been rejected by the Board in prior orders as a maximum threshold;

c) prohibits the Board from drawing down reserves for the purposes of promoting rate stability in circumstances other than where the Basic RSR can be maintained at 100% MCT;

d) frustrates the purpose of the Basic RSR by requiring it be maintained at 100% MCT even where those funds are necessary to prevent rate shock or protect against rate increases necessitated by unforeseen events; and

e) restricts the Board from disallowing unreasonable costs if the effect would be to draw down the Basic RSR below 100% MCT.

CAC therefore asked the Board to find sections 2(a), 3 and 4 of the Regulation invalid, and submitted that the Board should continue to exercise its rate approval function consistent with its historical finding that the magnitude and constitution of the Basic RSR is an integral part of determining just and reasonable rates for Basic.

CAC took the position that the Board has the jurisdiction to determine questions of law. Tribunals that are empowered to decide questions of law are also empowered to decide whether subordinate legislation is valid.[1] By virtue of the PUB Act, the CCGA Act and the MPIC Act, the Board is required to set rates that are just and reasonable and in the public interest.[2] This empowers the Board to decide questions of law, as the interpretation of these enabling statutes is a question of law. CAC also referred to case law wherein it was held that determining the meaning of "just and reasonable" was a question of law.[3] Further, section 58(1) of the PUB Act provides that an appeal lies from any final order or decision of the Board, to the Manitoba Court of Appeal, including on "any point of law." Given this, CAC submitted, it must follow that the Board has the jurisdiction to decide questions of law and therefore the validity of the Regulation.

CAC stated that as subordinate legislation, regulations derive their legal authority from grants of authority by the legislature to the executive,[4] and regulations cannot conflict with their enabling or other legislation, unless other statutes so authorize.[5] To the extent that the Regulation is inconsistent with the statutory framework or contravenes statutory requirements, it is invalid and unenforceable. CAC acknowledged that the Regulation would benefit from a presumption of validity, as found by the Supreme Court of Canada in *Katz Group Canada Inc. v. Ontario (Health and Long Term Care)*.[6] As stated by the Court in *Katz*, the party challenging the validity of a regulation has a difficult legal burden to meet, and when challenging the regulation the focus of the inquiry must be on the objective of the enabling statute or the scope of the statutory mandate.

CAC argued that an exercise of statutory interpretation was required in order to determine whether the Regulation is invalid, an exercise which would require a review of the PUB Act, the CCGA Act, and the MPI Act as these three statutes work together to provide the framework for the Board's rate-approval authority for Basic.

[1] Brown and Evans, *Judicial Review of Administrative Action in Canada*, Vol. I, (Thomson Reuters Canada), pp.13-78.1 - 13-79.
[2] *Consumers' Association of Canada (Manitoba) Inc. et al v. Manitoba Hydro Electric Board*, 2005 MBCA 55, paras. 63-65.
[3] *Trans Mountain Pipe Line Co. v. Canada (National Energy Board)*, [1979] 2 FC 118, para. 9.
[4] *Giant Grosmont Petroleums Ltd v Gulf Canada Resources Ltd*, 2001 ABCA 174, para 17.
[5] *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 SCR 3, para. 42.
[6] 2013 SCC 64 ("*Katz")*, paras. 25-28.

CAC referred to the Manitoba Court of Appeal decision in *Public Utilities Board v. Manitoba Public Insurance Corporation*[7] in which the Court found that the Board's jurisdiction in respect of Basic arises from the interaction of each of the PUB Act, the CCGA Act, and the MPIC Act.

The predecessor to the CCGA Act was *The Crown Corporations Public Review and Accountability and Consequential Amendments Act*, S.M. 1988-89, c. 23 (the CCPRA Act), enacted on December 20, 1988. It amended section 33 of the MPI Act by making changes to the regulations for premiums charged for Basic subject to the approval of the Board:

> **33(1.1)** No regulation relating to premiums charged by the corporation for compulsory driver and vehicle insurance shall be passed pursuant to subsection (1) unless the Lieutenant Governor in Council is satisfied that the proposed change has been approved by The Public Utilities Board pursuant to Part IV of *The Crown Corporations Public Review and Accountability Act*.

The CCPRA Act also provided the Board with the authority to review and approve Basic rates:

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

In 2018, legislative amendments were enacted which, in CAC's submission, served to affirm the role of the Board to approve Basic insurance rates, remove the authority of the Lieutenant Governor-in-Council (LGIC) to prescribe Basic vehicle premiums as part of the Basic rate, and continued to limit the authority of the LGIC to prescribe Basic driver premiums. With the introduction of the CCGA Act, no substantive changes were made to section 26(1) of the CCPRA Act, with the exception being "notwithstanding" being replaced by "despite":

[7] 2011 MBCA 88, para. 33.

> **25(1)** Despite any other Act or law, rates for services provided by Manitoba Hydro and the Manitoba Public Insurance Corporation shall be reviewed by The Public Utilities Board under *The Public Utilities Board Act* and no change in rates for services shall be made and no new rates for services shall be introduced without the approval of The Public Utilities Board.

CAC stated that 2018 legislative amendments to the MPIC Act established that amounts for Basic vehicle insurance were to be set by MPI and subject to Board approval, without any role for the LGIC:

> **6.4(1)** The corporation's plan premiums for its plans of universal compulsory automobile insurance must not be changed, and no new plan premiums for such insurance may be established by the corporation, except in accordance with this section.
>
> **6.4(2)** The corporation must apply to The Public Utilities Board for approval before changing an existing plan premium, or establishing a new plan premium, for its plans of universal compulsory automobile insurance.
>
> **6.4(3)** The Public Utilities Board may either approve or vary the plan premiums applied for by the corporation, and must make its decision in accordance with Part 4 of *The Crown Corporations Governance and Accountability Act*.

As well, the 2018 amendments specifically removed from sections 33(1)(c) and 33(1.1) of the MPIC Act the ability on the part of the LGIC to make regulations with respect to premiums payable by owners of motor vehicles, restricting that regulation-making authority to base driver premiums and additional driver premiums. The significant wording that was removed is highlighted below:

> **33(1)(c)** . . . establishing classes and sub-classes of drivers, by regions of the Province of Manitoba, or otherwise, establishing such regions, establishing classes of motor vehicles or trailers, and **prescribing the premiums payable by** drivers and **owners of motor vehicles** according to the regions, or otherwise, and according to the classes;
>
> **33(1.1)** No regulation relating to premiums charged by the corporation for compulsory driver **and vehicle insurance** shall be passed pursuant to subsection (1) unless the Lieutenant Governor in Council is satisfied that the proposed change has been approved by The Public Utilities Board pursuant to Part IV of *The Crown Corporations Public Review and Accountability Act*.

CAC's position was that, while the rate approval function of the Board was broad prior to 2018, the 2018 amendments made it even clearer that the Board has broad authority for the approval of Basic premiums. CAC argued that the authority of the Board under the legislative scheme takes precedence over the Regulation, which conflicts with the legislative scheme. Further, the CCGA Act and the PUB Act contain conflict of laws clauses and, therefore, take precedence in the event of a conflict, whereas the MPIC Act contains no similar provision. Accordingly, there is clear legislative intent that the LGIC be subordinate to the Board in the Basic rate approval process.

### *4.3.* ***ATTORNEY GENERAL OF MANITOBA***

The AG argued that the Board has no authority to rule on the validity of the Regulation. It acknowledged that if an administrative tribunal has the jurisdiction to decide questions of law, it also has the jurisdiction to decide constitutional questions. It stated, however, that there is a "unique dynamic" at play where, as here, one statutory delegate (the Board) is being asked to negate the exercise by a different statutory delegate (the LGIC) of its own powers. The AG conceded that there is no case law directly addressing this point, but submitted that, in these circumstances, the courts are better positioned than an administrative tribunal to decide these questions. The AG argued that, on the basis of general principles of administrative law, the Board does not have the jurisdiction to extend beyond its own jurisdiction "by opining or ruling on the exercise by the LGIC of its authority to make delegated legislation." If CAC, or any other party with standing to do so, wished to challenge the validity of the Regulation, the AG submitted that the proper method of proceeding would be to have recourse to the Court of Queen's Bench of Manitoba.

Alternatively, the AG argued, that the Board has an inherent ability to decline from ruling on the validity of the Regulation and can direct the CAC to take its challenge to court.

As to the substantive challenge, the position of the AG was that the Regulation was made by the LGIC pursuant to statutory authority expressly delegated to it. In particular, section 18 of the MPIC Act, which requires MPI to maintain reserves to meet all payments as may become payable under that Act, along with the regulation-making authority of the LGIC in the preamble to section 33(1) and subsections 33(1)(a) or (o), provide the LGIC with the authority to enact the Regulation. Those sections read as follows:

> **18** The corporation shall establish and maintain reserves in such amounts that, at all times, it has sufficient funds to meet all the payments as may become payable under this Act and regulations.
>
> **33(1)** Subject to subsection (1.1), for the purposes of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations as are ancillary thereto and not inconsistent therewith; and every regulation shall be deemed to be part of this Act and has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations
>
> > **(a)** establishing, amending and revoking such plans of automobile insurance and plans of universal compulsory automobile insurance for the insurance within Manitoba of such losses, damages, injuries or deaths arising out of the perils and risks attendant upon or related to the use, operation, or ownership of motor vehicles and trailers as the Lieutenant Governor in Council may designate;
> >
> > …
> >
> > **(o)** respecting any matter considered necessary or deemed advisable by the Lieutenant Governor in Council for the effective carrying out of the intent and purpose of the Act and the regulations and any insurance plan established under this Act.

The AG argued that section 2 of the Regulation is rooted in section 18 of the MPIC Act and brings "numerical precision" to section 18. The LGIC has both broad and specific powers to make regulations under the MPIC Act and has the authority to enact the Regulation. According to the AG, the Regulation is neither inconsistent nor in conflict with other legislation. The Regulation fits squarely within the mandate of the MPIC Act.

Further, the "principal actor" under the MPIC Act is MPI and apart from the specific jurisdiction over Basic rates, nowhere else in the MPIC Act does the Board derive any jurisdiction over MPI. If the Board has been inquiring into the sufficiency of the Basic RSR, it has done so through its mandate under section 25(1) of the CCGA Act (and section 26(1) of its predecessor). Pursuant to sections 25(4) and (5) of the CCGA Act, there are many variables that can be taken into account by the Board in coming to its decision on rates:

> **25(4)** In reaching a decision pursuant to this Part, The Public Utilities Board may
>
> (a) take into consideration
>
> (i) the amount required to provide sufficient funds to cover operating, maintenance and administration expenses of the corporation,
>
> (ii) interest and expenses on debt incurred for the purposes of the corporation by the government,
>
> (iii) interest on debt incurred by the corporation,
>
> (iv) reserves for replacement, renewal and obsolescence of works of the corporation,
>
> (v) any other reserves that are necessary for the maintenance, operation, and replacement of works of the corporation,
>
> (vi) liabilities of the corporation for pension benefits and other employee benefit programs,
>
> (vii) any other payments that are required to be made out of the revenue of the corporation,
>
> (viii) any compelling policy considerations that the board considers relevant to the matter, and
>
> (ix) any other factors that the Board considers relevant to the matter; and
>
> (b) hear submissions from any persons or groups or classes of persons or groups who, in the opinion of the Board, have an interest in the matter.
>
> **25(5)** In the case of a review pursuant to this Part of rates for services of the Manitoba Public Insurance Corporation, The Public Utilities Board may take into consideration, in addition to factors described in subsection (4), all elements of insurance coverage affecting insurance rates.

However, the fact that the Board may consider a number of variables does not override the express legislation in the MPIC Act governing those variables, including reserves. According to the AG, sections 25(4) and (5) do not give the Board final say over the application of the entirety of the MPIC Act. Further, the Regulation will not eliminate the Board's annual approval of Basic rates, it simply means that the parties no longer need to litigate the issue of reserves within that annual process. The AG also argued that the 2018 legislative amendments referred to by CAC were enacted for the purposes of efficiency; they were not necessarily a statement on the Board's jurisdiction.

The AG relied on *Katz*, in which the Supreme Court of Canada held that the courts favour an interpretive approach to the challenge of the validity of a regulation that reconciles the regulation with its enabling statute.[8] The AG also argued that the Board must first look to whether there is any "inconsistency" between the Regulation and the MPIC Act in particular, rather than the legislative scheme as a whole. When it comes to the PUB Act and the CCGA Act, the AG submitted, CAC would need to establish that Regulation is in "conflict" with those Acts. This is more than a mere inconsistency, but rather needs to be established as a "conceptual impossibility that cannot be interpretively remediated by attempts to reconcile the actual wording of the statutes." In this case, according to the AG, there is neither any inconsistency between the Regulation and the MPIC Act, nor any conflict between the Regulation and the PUB Act or the CCGA Act.

## *4.4. <u>MPI</u>*

MPI adopted the position of the AG that the Regulation is consistent with the purposes and intent of the MPIC Act and the specific grants of authority in the preamble to section 33(1), and sections 33(1)(a) and 33(1)(o) of the MPI Act. MPI emphasized that section 18 of the MPIC Act requires MPI to maintain reserves so that it has sufficient funds to meet all payments as may become due and that the Regulation is consistent with that purpose.

## *4.5. <u>BOARD FINDINGS</u>*

The Board will first address the question of whether it has the jurisdiction to decide the issue of whether the Regulation is invalid, and if so, whether it has the jurisdiction to decline to answer the question.

[8] *Katz, supra*, para. 24.

The Board finds that it has the jurisdiction to determine the challenge to the validity of the Regulation. Further, with, the question having been properly put before the Board, the Board cannot decline to answer the question.

The Supreme Court of Canada, in *Nova Scotia (Workers' Compensation Board) v. Martin*[9] held that in determining whether an administrative tribunal has the power to find a provision invalid, one must ask "whether the administrative tribunal at issue has jurisdiction, explicit or implied, to decide questions of law arising under the challenged provision."

As explained in *Martin*, an administrative tribunal that has the power to decide questions of law will be presumed to have the power to determine the validity of a provision: "In other words, the power to decide a question of law is the power to decide by applying only valid laws."[10] *Martin* sets out the relevant factors to be considered as follows:

1. The statutory mandate of the tribunal in issue and whether deciding questions of law is necessary to fulfilling this mandate effectively;

2. The interaction of the tribunal in question with other elements of the administrative system;

3. Whether the tribunal is adjudicative in nature; and

4. Practical considerations, including the tribunal's capacity to consider questions of law.

The Board accepts the position put forward by CAC that by virtue of the PUB Act, the CCGA Act and the MPIC Act, the Board is empowered to decide questions of law, as the interpretation of enabling statutes is a question of law. The Board is required to decide questions of law as part of its mandate, in determining whether rates applied for are "just

[9] 2003 SCC 54, para. 35.
[10] *Martin, supra*, para. 36.

and reasonable." The Board is adjudicative in nature. Section 24(4) of the PUB Act provides that the Board, except otherwise provided, in respect of:

> …the attendance and examination of witnesses, the amendment of proceedings, the production and inspection of documents, the enforcement of its orders, the payment of costs and all other matters necessary or proper for the due exercise of its powers, or otherwise for carrying any of its powers into effect, has all such powers, rights, and privileges as are vested in the Court of Queen's Bench or a judge thereof.

Further, section 58(1) of the PUB Act provides that an appeal lies from any final order or decision of the Board, to the Manitoba Court of Appeal, including on any point of law, which implies that questions of law will be decided at first instance by the Board.

As to whether the Board has the jurisdiction to determine the validity of a regulation in particular, the Board finds that an administrative decision-maker that has the jurisdiction to decide questions of law includes the jurisdiction to decide the question of the validity of legislation.[11] Therefore, the Board has the authority to determine the validity of the Regulation.

The Board does not accept the AG's position that the Board can decline to decide the question of the validity of the Regulation and direct CAC to take the question to court. The Supreme Court of Canada, in *Tranchemontagne v. Ontario (Director, Disability Support Program)*[12], held that in order for a tribunal to be able to decline to hear an issue properly in front of it, the legislature must have granted the tribunal the power to so decline. The Board is not aware of, nor has it been directed to, any legislation that would permit it to decline to hear an issue properly before it. In Brown and Evans, *Judicial Review of Administrative Action in Canada*, the authors note that: "an agency with jurisdiction to determine constitutional challenges is obliged to exercise that power and, in the absence of any statutory provision to the contrary, it has no discretion simply to proceed on the assumption that the statute is valid, leaving it to a party to seek a ruling from a court."[13]

[11] *Chan v. Canada (Minister of Employment and Immigration)*, [1994] FCJ No. 45 (FCA).
[12] 2006 SCC 14.
[13] (Toronto, Ont.: Carswell) (loose-leaf at § 13:4100).

Further, the Board does not accept the AG's position that any party interested in challenging the validity of the Regulation ought to proceed directly to the courts. In *Enbridge Gas New Brunswick Limited Partnership et al v. The Attorney General in and for the Province of New Brunswick*,[14] Robertson J.A. expressed unease with the fact that Enbridge brought an application to court and asked for a declaration of invalidity of a regulation enacted under New Brunswick's *Gas Distribution Act* rather than raising it before the New Brunswick Energy and Utilities Board as a preliminary matter at a rate hearing.[15]

For all of the above reasons, the Board finds under the law that it has the jurisdiction to determine the validity of the Regulation, and it is required to do so.

The Board accepts the general principle that the LGIC may have the ability by regulation to circumscribe the powers of an administrative tribunal such as the Board, including its rate-setting authority, provided however that the regulation is authorized by, and not inconsistent with, its enabling legislation. The Board also accepts that considerable deference is accorded to the LGIC to adopt subordinate or delegated legislation that is within the powers conferred on it under the enabling legislation.[16]

The Board recognizes and has applied the presumption of validity of the Regulation as set out in *Katz*:

> Regulations benefit from a presumption of validity … This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations [,] and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, where possible, the regulation is construed in a manner which renders it intra vires[.][17]

[14] 2013 NBCA 34.
[15] See also: P. Daly, "Reviewing Regulations**",** Administrative Law Matters, May 21, 2013: https://www.administrativelawmatters.com/blog/2013/05/21/reviewing-regulations/; *Webber Academy Foundation v. Alberta (Human Rights Commission)*, 2018 ABCA 207.
[16] *Thorne's Hardware Ltd. v. R.*, [1983] 1 S.C.R. 106.
[17] *Katz, supra*, para. 25.

It is to be noted, however, that the references to vehicle premiums were deleted from the specific regulation-making provisions in section 33(1)(c) and 33(1.1) in the 2018 amendments to the MPIC Act. Moreover, the Board finds that the specific regulation-making provisions in section 33(1)(a) and (o) do not provide the LGIC with the authority to enact a regulation affecting the Board's mandate to approve any changes to existing premiums or the introduction of new premiums for Basic insurance.

As such, the AG's argument relies principally on the general regulation-making power in the preamble of section 33(1). In that regard, it is noted that section 33(1) is subject to section 33(1.1) which, again, is specific to driver premiums, the prior references to vehicle premiums having been removed in 2018, and requires Board approval:

> **Review by PUB**
>
> **33(1.1)** No regulation changing the amount of an additional driver premium, a base driver premium or a discounted driver premium — together being the premiums charged by the corporation for compulsory driver insurance — may be made under subsection (1) unless the Lieutenant Governor in Council is satisfied that the proposed change has been approved by The Public Utilities Board in accordance with Part 4 of *The Crown Corporations Governance and Accountability Act*.

If the Board's powers are to be circumscribed or limited, the authority to do so must be expressly set out in the statute. The present challenge is remarkably similar to that in *Reference re: Public Utilities Review Commission Act*[18], a decision of the Saskatchewan Court of Appeal. At issue in that case was the extent to which the Lieutenant Governor in Council could issue an Order-in-Council rescinding an order of the Public Utilities Review Commission (Commission), which set an upper limit for the rate stabilization reserve for SAF, directing the Commission not to establish, fix or determine the amount to be maintained in the rate stabilization reserve when determining whether premiums are reasonable and justified.

The Commission was empowered under the enabling legislation to fix automobile insurance premiums it considered reasonable and justified. Section 24(2) of the

[18] *Reference re Public Utilities Review Commission Act,* (1986), 52 Sask. R. 53 (CA).

legislation also stipulated that the Commission "shall comply with any general or special direction of the Lieutenant Governor in Council with respect to the exercise of any of its powers and duties." The Commission asked the Court of Appeal to determine whether the Order-in-Council was *ultra vires* in that it purported to limit the statutory powers granted to the Commission by the Act. SGI and the Attorney General of Saskatchewan sought to uphold the Order-in-Council.

In the decision, Tallis J.A. first observed that the Legislative Assembly for Saskatchewan sought to create an independent Commission to carry out the rate-setting task (para. 17):

> After examining the Act as a whole I conclude that the Legislative Assembly for the Province of Saskatchewan sought to create an independent rate-setter - a commission removed from the control of the Executive Council or individual Ministers of the Crown in charge of public corporations [.]. Since the rates are usually set by the Commission only after conducting public hearings, the process is subject to public scrutiny in much the same way as Court proceedings. If it were otherwise the process would be subject to the influence of lobbyists. When the parties or interveners wish to make an application or submission, they now must do so before the Commission created for that purpose. In addition the Legislative Assembly for the Province of Saskatchewan undoubtedly recognized that the increasing economic and accounting complexity of ratesetting requires a commission armed with sufficient professional staff to critically examine applications before it. With this background one can readily understand why the Legislative Assembly attempted to remove undue rate discrimination, potential political influence and activities on the part of lobbyists, by placing ratesetting in the hands of a commission, generally independent of the executive branch of Government and more particularly independent of individual Ministers of the Crown in charge of public corporations. Although the Commission is subject to the broad policy guidelines set forth in s. 6, there is no suggestion in the legislative history that the Legislative Assembly for the Province of Saskatchewan sought to eliminate the ratesetters' discretion. On the contrary the Legislative Assembly for Saskatchewan sought to create an educated and politically insulated commission to carry out the ratesetting task.

In concluding that the Order-in-Council purported to limit the statutory powers granted to the Commission, and was therefore *ultra vires*, he further noted the following (paras. 32-33):

> In the circumstances of this case, the Lieutenant Governor in Council now seeks to limit or override the Commission's powers by giving directions that conflict with what it is required to do under its statutory mandate. In effect, the Lieutenant Governor in Council is amending the provisions of s. 6(3) thereby bypassing the legislative process. In my opinion the Order-in-Council is ultra vires because it is an unauthorized encroachment by the executive branch of government on the powers and prerogatives of the Legislative Assembly for the Province of Saskatchewan. If the powers of the Commission are to be circumscribed and limited in the fashion contended for by the Attorney General for Saskatchewan, it can only be done by an amendment to the Act.
>
> Under s. 6(1) the Commission is required to fix rates which are reasonable and justified in the circumstances. If the Lieutenant Governor in Council can direct the Commission in the proposed way, then the Commission might be required by such direction to set rates which in its view are *unreasonable* and *unjustified*. This offends the spirit and expressed intent of the Act. It cannot stand [.]

In his concurring judgment, Bayda, C.J.S. noted (para. 6):

> If the Commission, acting judicially, finds that a proper level (arrived at by using an objective standard) of the stabilization reserve fund is one of the "matters affecting the premiums" and that in its opinion that level "ought to be considered" in determining whether the premiums are reasonable and justified, then the Commission has no choice but to consider the proper level. The Legislature through its statute (s.6(3)(d)) commands the Commission, in determining the reasonableness of the premiums, to consider the proper level. The Lieutenant Governor in Council has no power to override that legislative command. For this additional reason I think the answer to the second question in the stated case [is the Order-in-Council ultra vires] is "yes".

To similar effect is the New Brunswick Court of Appeal decision in *Enbridge Gas New Brunswick Limited Partnership et al. v. New Brunswick (Attorney General)*[19] which dealt with the issue of whether section 52(5)(a) of the *Gas Distribution Act, 1999*, which provided that the New Brunswick Energy and Utilities Board (NB Board) "shall adopt the methods or techniques prescribed by regulation", empowered the Lieutenant Governor in

[19] *Enbridge*, *supra* fn. 13;

Council to require through regulation, that the NB Board apply a particular revenue to cost ratio when fixing rates and tariffs for the sale of natural gas.

Section 4(1) of that regulation directed the Board to apply “the cost of service method or technique”. However, section 4(1) went on to direct the Board to apply a “revenue to cost ratio not exceeding 1.2:1” for any class of customers. Finally, section 4(1) also added a proviso that the rates and tariffs determined according to the “cost of service method or technique” were not to exceed those rates that would have been fixed had the Board adopted the “market based method or technique”.

The Court found that, although the directive in the regulation that required the Board to adopt “the cost of service method or technique” was consistent with the wording of section 52(5)(a) and the intent of the legislative scheme and, therefore, *intra vires*, the direction to apply a set revenue to cost ratio was *ultra vires* the regulation-making authority of the Lieutenant Governor in Council .

In concluding that the Lieutenant Governor in Council lacked the authority to prescribe a revenue to cost ratio as found in section 4(1) of the regulation, the Court noted the following (see paras 9-11):

> The Board, which is established under the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18, is a specialized and independent tribunal responsible for approving the rates that Enbridge may charge its customers. Section 52(5) of the *Gas Distribution Act, 1999* authorizes the Board to fix rates that are "just and reasonable". Prior to 2012, neither the *Gas Distribution Act, 1999*, nor the Regulations adopted thereunder, fettered the Board's authority to set rates based on those considerations it deemed relevant. Prior to 2012, the Board had been applying the "market based method or technique" when fixing rates. However, in 2011 the *Act* was amended to permit the LGC to fetter the Board's rate-setting powers through the former's regulation-making authority. The fetter is found in s. 52(5) which came into effect on April 16, 2012. As stated earlier, s. 52(5)(*a*) provides that in approving or fixing rates, the Board "shall adopt the methods or techniques prescribed by regulation." But s. 52(5)(*a*) is not the only fetter placed on the Board's independent authority to fix rates. Paragraphs (b), (c) and (d) provide that the Board is not to consider various matters relating to the utility's "deferral account", except in the circumstances and in the manner prescribed by regulation.

> If this Court were to adopt the broad interpretation which the Province places on s. 52(5)(*a*) of the *Gas Distribution Act, 1999*, it would have been unnecessary for the Legislature to include the statutory directives found in ss. 52(5)(b), (c) and (d). In other words, the LGC could have simply relied on paragraph (a) to adopt a regulation that also incorporated the matters dealt with in paragraphs (b), (c) and (d). Of course, it makes no sense to take the first of the four fetters and interpret it in a manner that eliminates the need to impose the remaining three. There is a presumption that legislatures are capable and intent on drafting legislation that embraces the qualities of rationality and internal coherence. There is also a presumption that legislatures do not intend "absurd" results. That is why the Province's interpretative argument is fatally flawed. And that is why it makes better sense to acknowledge that the phrase "methods or techniques" is a technical term whose meaning is best understood by those who must interpret and apply the legislation within a regulated industry. (On this point see para. 14, *infra*)
>
> If one looks to the *Act* and the *Regulation*, it is clear the Legislature was addressing itself to two known "methods or techniques" for fixing rates: (1) cost of service; and (2) market based. There may be others. But regardless, the phrase "methods or techniques" cannot be reasonably interpreted to include the right of the LGC to direct the Board to apply, for example, a designated "cost to service ratio". It may well be true, as suggested by counsel for the Province, that the Board has never exceeded the prescribed ratio of 1.2:1. But that is not a matter relevant to the task of statutory interpretation. The point is simply this. As the *Act* presently reads, it is for the Board to determine what the ratio should be and that is why the directive is *ultra vires* the regulation-making authority of the LGC.

Therefore, even a specific, as opposed to a general, regulation-making provision must not be inconsistent with the regulatory scheme.[20]

Taking all of the foregoing into consideration, the Board finds that the Regulation is inconsistent and in conflict with the Board's rate approval mandate in section 6.4 of the MPIC Act and the Board's powers under the PUB Act and CCGA Act. As set out above, the determination of the methodology and setting of capital target levels for the RSR is integral to the determination of just and reasonable rates. As such, any regulation which predetermines the methodology or level of the Basic RSR is inconsistent and in conflict with the Board's mandate.

[20] See also: *Gulf Canada Resources Ltd. v. Alberta*, 2001 ABQB 286; *Action Réseau Consommateur v. Quebec (AG)*, 2000 CanLII 19024 (QCCS).

Section 2(a) of the Regulation, in setting the level of the Basic RSR at 100% MCT, and section 3, in restricting the manner in which amounts in the Basic RSR in excess of 100% MCT are to be used, circumscribe the Board's rate-setting jurisdiction, in conflict with the relevant legislative framework.

Given the Board's determination that the Regulation is *ultra vires*, it is unnecessary to determine whether the Basic RSR, a reserve to provide protection against unexpected variances from forecasted results and due to events and losses arising from non-recurring events or factors, is considered a reserve to meet payments as provided in section 18 of the MPIC Act.

## 5. CAPITAL MANAGEMENT PLAN AND BASIC TARGET CAPITAL LEVELS

In Order 159/18, the Board approved a Basic Total Equity target capital range of $140 to $315 million for 2019/20, based on the Corporation’s scenario testing approach adapted from its Basic DCAT investigation.

For the 2020 GRA, Order 159/18 also directed the Corporation to bring forward a thorough Capital Management Plan, encompassing the entire Corporation and including:

- Minimum, maximum, and/or target capital level for all lines of business;
- A Capital Maintenance Provision built into ratemaking;
- A capital build and release methodology based on the capital targets;
- Clearly defined policy-based constraints on the speed and magnitude of the combined rate impact of rate changes, capital maintenance, capital build, and capital release provisions;
- Clearly defined rules on the transfer of capital from other lines of business; and

- Evolving the basis of estimating Basic's Net Capital Maintenance Provision in a manner consistent with the objective of promoting stability over time in this estimate.

The Corporation's proposed Capital Management Plan was designed prior to the challenge to the validity of the Reserves Regulation and therefore was based on the presumption that the Regulation is valid. As described above, the Regulation set a single Basic target capital level, reflecting a 100% MCT ratio. The Corporation's proposed Capital Management Plan reflected its interpretation of the Regulation, as the means and pathway to achieve 100% MCT for the Basic RSR.

From the Corporation's perspective, the requirements of the Regulation effectively severed the tie that previously existed between the Basic DCAT investigation and the setting of Basic target capital levels. Given this position, the Corporation indicated that starting with this Application and going forward, the Basic DCAT would no longer reflect assumptions determined based on the earlier collaborative discussions with Board stakeholders, and would instead reflect assumptions more closely aligned with the risk appetite of the Corporation's Board of Directors. The first evidence of this was the adoption of DCAT scenario testing at the 99$^{th}$ percentile outcome level (1-in-100-year event) rather than the 97.5$^{th}$ percentile outcome level (1-in-40-year event) adopted previously.

The Corporation indicated that it interpreted that it would be in compliance with the Regulation if the Basic MCT ratio is in excess of 100%, or the Corporation has an established plan to bring the Basic MCT ratio to at least 100% within a period of five years or less. Coincidentally, the Corporation reported that Basic had substantially achieved its 100% MCT ratio target as of the end of the second quarter of the 2019/20 fiscal year, for reasons unrelated to the Capital Management Plan.

The Corporation sought the Board's approval of the proposed Capital Management Plan, which incorporates:

- A single Basic target capital level based on a 100% MCT ratio (based on the Reserves Regulation);
- A commitment to transfer excess Retained Earnings from the Extension line to Basic, where excess is determined relative to the single Extension target capital level of a 200% Minimum Capital Test ratio as set by the Regulation;
- A phase-in approach to move towards the Basic target capital level over a number of years through Capital Build or Capital Release provisions;
- Determination of the need for any Capital Build or Capital Release provisions in each GRA after consideration of the Basic rate level change indication and the expected capital transfers from Extension;
- Use of judgmentally selected five-year and three-year phase-in periods for Capital Build and Capital Release provisions, respectively;
- Imposition of a judgmentally selected 5% cap on the combination of the overall Basic rate indication and any Capital Build provision; and
- Imposition of a judgmentally selected 5% cap on any Capital Release provision.

In its evidence, the Corporation conceded that there is no analytical foundation to demonstrate that the Capital Management Plan, as proposed, will improve rate stability. The Corporation indicated that the proposed phase-in periods and capping levels were selected judgmentally to limit rate changes in a manner broadly consistent with past decisions of the Board and the modelling assumptions for management / regulatory actions used previously in the Basic DCAT investigations. While the Corporation acknowledged that there are possible rate stability benefits that come from a target capital range rather than a single target capital level, the Corporation argued that it is the workings of the Capital Management Plan that promotes rate stability in gradually working towards the single target capital level set out in the Regulation.

The Corporation committed to transferring excess retained earnings over 200% MCT from Extension to Basic, regardless of the Basic MCT ratio at the time.

Based on the October 4, 2019 update, the Corporation has forecasted transferring $75.1 million in 2019/20, $42.5 million in 2020/21, and $44.5 million in 2021/22 from Extension to Basic RSR. The forecast of Extension equity and the transfers of excess retained earnings to maintain a 200% MCT for Extension is as follows:

**Extension Statement of Changes in Equity**

| | 2020P | 2021F | 2022F | 2023F | 2024F |
|---|---|---|---|---|---|
| **EXTENSION** | | | | | |
| *(C$ 000s,rounding may affect totals)* | | | | | |
| **Retained Earnings** | | | | | |
| Beginning Balance | 99,213 | 79,787 | 82,468 | 85,546 | 87,514 |
| Net Income / (Loss) | 55,707 | 45,182 | 47,560 | 50,905 | 52,771 |
| Premium Rebate | - | - | - | - | - |
| Transfer (to) / from Basic Retained Earnings | (75,133) | (42,501) | (44,482) | (48,937) | (48,444) |
| **Total Retained Earnings** | 79,787 | 82,468 | 85,546 | 87,514 | 91,841 |
| | | | | | |
| **Total Accumulated Other Comprehensive Income** | | | | | |
| Beginning Balance | (4,511) | (9,679) | (8,967) | (8,147) | (7,183) |
| Other Comprehensive Income for the Year | (1,866) | 804 | 880 | 1,027 | 1,342 |
| **Total Accumulated Other Comprehensive Income** | (6,377) | (8,875) | (8,087) | (7,120) | (5,841) |
| **Total Equity Balance** | **70,108** | **73,501** | **77,399** | **80,332** | **85,914** |
| | | | | | |
| **MINIMUM CAPITAL TEST (C$ 000s)** | | | | | |
| Total Equity Balance | 70,108 | 73,501 | 77,399 | 80,332 | 85,914 |
| Less: Assets Requiring 100% Capital | 4,091 | 5,739 | 7,355 | 8,079 | 7,574 |
| Capital Available | 66,017 | 67,762 | 70,044 | 72,253 | 78,340 |
| | | | | | |
| Minimum Capital Required (100% MCT) | 33,004 | 33,903 | 35,024 | 36,129 | 39,169 |
| **MCT Ratio %** | **200.0%** | **200.0%** | **200.0%** | **200.0%** | **200.0%** |

Recognizing that the MCT is periodically changed by OSFI and that the Regulation referred to the MCT, the Corporation indicated that it would not incorporate a revision to the MCT in its Capital Management Plan or when testing compliance with the Regulation until the MCT revision officially becomes effective for property-casualty insurance companies subject to OSFI's regulation.

## *5.1. INTERVENERS' POSITIONS*

**CAC**

Ms. Sherry and Dr. Wayne Simpson co-authored a report entitled "Protecting Consumers Against Risk: How Far Should It Go?". Dr. Simpson is a Professor of Economics at the University of Manitoba and was qualified by the Board in Order 92/19 as an expert in applied econometrics, applied microeconomics, and quantitative methods.

In their report, Ms. Sherry and Dr. Simpson submitted that:

- The Basic target capital range should continue to be set as an adaptation of the DCAT investigation, in line with the latest efforts of the collaborative review process;
- Holding capital at the 100% MCT level has no basis in the DCAT modelling completed by the Corporation and would lead to excessive levels of capital being held;
- Reverting to a target capital level (rather than a range) invites rate instability as premiums are driven by the inevitable deviations from that level; and
- In this Application, the risk appetite of motorists has been replaced with the risk appetite of the Corporation's Board of Directors.

Ms. Sherry and Dr. Simpson also drew two conclusions and made one recommendation, as follows:

- The proposed rate setting procedure under the Capital Management Plan with the 100% MCT capital target level represents a significant change in the procedure to establish target capital for Basic insurance and RSR, since the procedure has relied on the percentage of premium and DCAT methodologies to set a target capital range up until now;
- The proposed rate setting procedure under the Capital Management Plan with the 100% MCT capital target level represents a significant increase in the level of risk against which Basic ratepayers will be protected without new evidence of increasing downside risk to the Corporation and Basic rates; and
- The Capital Management Plan should continue to use the DCAT results with a 1-in-40 year adverse scenario as the benchmark (range midpoint) to determine a target range for the Basic RSR.

CAC also called Mr. John Todd as an expert witness. Mr. Todd is the founder of Elenchus Research Associates Inc., and holds a Masters in Business Administration in Economics and Management Science from the University of Toronto. CAC requested at the Pre-Hearing Conference on June 27, 2019, that he be qualified as an expert in regulatory principles and regulatory methodology, generally, as well as regulatory principles and regulatory methodology as they relate to Crown corporations and their ratepayers, specifically, including issues related to risk, capitalization, reserves and the relationships between regulated and un-regulated lines of business. MPI did not consent to Mr. Todd's qualifications at the Pre-Hearing Conference, advising that it wanted an opportunity to cross-examine Mr. Todd on his qualifications. In the public hearings, however, MPI chose not to challenge Mr. Todd's expertise. Having reviewed and considered his qualifications, the Board is prepared to accept Mr. Todd's areas of expertise as outlined by CAC.

Mr. Todd prepared a report, entitled “An Assessment of the Capital Management Plan of Manitoba Public Insurance for the 2020/21 General Rate Application Based on Generally Accepted Regulatory Principles."

Mr. Todd advised that the capital target levels for Extension and SRE should be limited to levels that reflect sound actuarial practices consistent with Basic, and that excess revenues or excess reserves in those competitive lines should flow as a benefit back to Basic customers. Mr. Todd stated that any excess that exists in the competitive lines is because of the association with Basic, and that therefore Basic has a legitimate claim on this excess, this being consistent with the way it is viewed in other jurisdictions where competitive services are being offered and intertwined with a monopoly business.

CAC argued that the Board should find that the Capital Management Plan, as currently framed, is not grounded in AAP, is not based on any directly relevant risk analysis, but instead is based upon the myth of competition in the Extension line of business, which raises significant doubts that the proposed 200% MCT target capital level for Extension reflects the prudent risks of Extension.

CAC characterized the Extension line as featuring:

- Long-standing market dominance at or over 95% of the market for over a decade, with over 85% of all Basic policyholders purchasing Extension coverage;
- Basic and Extension customers being substantially the same individuals;
- Extension receiving an inordinate benefit from its relationship with Basic, including a seamless shared service delivery platform;
- Extension receiving the same access to customer information as Basic insurance with no structural separation between the two lines of business;
- many Extension customers that are not aware whether they have competitive

options;

- stable Extension expenditures buttressed by the certainty that roughly sixty percent of its claim costs are associated with deductibles that will be limited to $300 per claim; and

- unusually high Extension target profit margins of about 32% in recent past years, falling to a range of 27% to 28% in the current and test years.

Considering this, CAC argued that Extension has excess profits due to its relationship with Basic and that the benefit of that relationship should flow back to Basic, consistent with good regulatory practices. CAC recommended that, given the benefits provided to Extension from Basic, the Board should determine that it also needs to examine the appropriate target capital level for Extension for purposes of Basic rate approval.

CAC recommended that, in the event that the Regulation was determined to be invalid, or valid but not binding on the Board for Basic rate approval purposes, the Capital Management Plan should be revised to reflect:

- that the 100% MCT target is inappropriate for the Basic RSR as it represents a significant cost to ratepayers without being linked to Basic's risk or experience;

- the collaborative process over past years as it relates to a risk and experience-driven level for the Basic RSR, including use of 1-in-40-year 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;

- the social wastefulness of excessive reserves; and

- that excess reserves should be reflected as rebates to consumers (as opposed to reducing the rate indication) and that reserve deficiencies should be reflected as surcharges to consumers (as opposed to increasing the rate indication).

## ***5.2. <u>BOARD FINDINGS</u>***

As the Board has found that the Regulation is invalid, it is therefore not binding on the Board in its assessment of the merits of the Capital Management Plan. Nevertheless, the Board finds the proposed Capital Management Plan, and the proposed Basic target capital level reflecting a 100% MCT ratio, to be just and reasonable in the circumstances. The Board is approving the 100% MCT Basic target capital level for this two-year trial period in large part because Basic has substantially achieved this target without the necessity of any extra burden being placed on Basic ratepayers. As noted in Section 4.1 above, in last year's GRA, the upper target level for the Basic RSR using the DCAT methodology, which the Board approved, equated to 88% MCT and, as such, the difference in the target capital levels under the two methodologies has narrowed.

The Board therefore approves the Capital Management Plan as presented by MPI for a two-year trial period. This will allow the Board to fully assess the performance of the plan, and the Basic target capital level over the trial period, after which the Board will reassess its position. Should the Board then revert to a scenario-driven Basic target capital range or level (which the latest evidence from the prior GRA suggests is below 100% MCT), the Board acknowledges the practical impact of the current decision on the Basic target capital level would be to defer the otherwise appropriate Capital Release, given the current level of the Basic MCT ratio.

The Board recognizes the need for judgment in setting the proposed phase-in periods for Capital Build and Capital Release provisions, and the proposed capping levels related to these provisions, and it is satisfied that these are just and reasonable in the circumstances. The Board finds that the Capital Management Plan is consistent with the stated purpose of the Basic RSR, noting that the phase-in periods and capping levels effectively work to change the single target capital level into a target capital range, promoting rate stability.

Despite severing the tie between the Basic DCAT investigation and the setting of Basic target capital levels, the Board encourages the Corporation to continue to annually undertake, and file with the GRA, the Basic DCAT investigation as a part of its prudent risk management and good governance processes.

The Board notes the Corporation's efforts to provide details in support of the Extension financial forecasts to allow the Board to assess the reasonableness of forecasted transfers from Extension to Basic, a key determinant of a need for any Capital Build or Capital Release provision. As no Capital Build or Capital Release provision is being proposed in this Application, the Board is satisfied it has sufficient information to make this decision at this time. The Board anticipates that the Minimum Filing Requirements for the 2021 GRA will be expanded to include additional information requirements related to the Extension forecasts, building on the information provided in this regard through the current GRA process.

While the Board recognizes that it does not have jurisdiction over Extension, given the anticipated transfers from Extension to Basic contemplated by the Capital Management Plan, the magnitude of Extension's reserves is of concern to the Board. The evidence is that MPI holds approximately 95% of the market share for non-compulsory insurance products. The transfers from Extension to Basic will be automatic under the Capital Management Plan for any amounts over 200% MCT held by Extension in its reserves.

Lastly, given the Board's finding on the validity of the Regulation, the Board is not required to determine whether the Corporation's interpretation of the Regulation is consistent with its wording. However, the Board would comment that the wording of the Regulation is very clear:

> **2** For the purpose of section 18 of the Act, the minimum amount the corporation **must maintain**
>
> **(a)** in its rate stabilization reserve is the amount determined using a MCT ratio of 100%...**[emphasis added]**

The Board finds that there is no reasonable interpretation of the Regulation that would contemplate compliance where MPI has a plan to reach 100% MCT within a period of five years. On its face, the words "must maintain" can only be interpreted to mean that MPI must keep the Basic RSR at a minimum of 100% MCT at all times, not that it must achieve 100% MCT once every five years. The wording of section 2 of the Regulation contains a reference to section 18 of the MPIC Act, which states:

> **Reserves**
>
> **18** The corporation shall establish and maintain reserves in such amounts that, **at all times**, it has sufficient funds to meet all the payments as may become payable under this Act and regulations. **[emphasis added]**

Under MPI's interpretation, it may never achieve 100% MCT because the MCT ratio changes constantly. This is inconsistent with the words "must maintain" in the Regulation, and "at all times" in section 18 of the MPIC Act.

## 6. DRIVER SAFETY RATING (DSR)

In Order 130/17, following the 2018 GRA, the Board directed that a Technical Conference take place on the availability and practicality of other analytical tools and ratemaking methodologies to better determine DSR rates and vehicle premium discounts based on principal driver rating rather than registered driver rating. The Board also directed the Corporation to file proposed driver premium rates more statistically consistent with the estimated average claims cost per driver for each level on the demerit side of the DSR scale in this Application, and, in the 2021 GRA, file proposed vehicle premium discounts that are actuarially indicated based on principal driver performance evaluation.

The Corporation applied for a review and variance of those aspects of Order 130/17, and by Order 29/18, the Board varied Order 130/17 as follows:

- With respect to the requirement for a Technical Conference, the Board directed that it be undertaken in order to review the availability and practicality of other analytical tools and ratemaking methodologies to better determine DSR rates and vehicle premium discounts based on principal driver rating rather than simply registered driver rating. The information shared in the Technical Conference was to be included in the 2019 GRA;

- The Board held in abeyance: (1) the requirement that in the 2019 GRA the Corporation file proposed driver premium rates more statistically consistent with the estimated average claims cost per driver for each level on the demerit side of the DSR scale; and (2) that, in the 2021 GRA, the Corporation file proposed vehicle premium discounts that are actuarially indicated based on principal driver performance evaluation. Those directives were varied such that they were to be held in abeyance until such time as the issues of driver premiums more statistically consistent with the average claims cost per driver for each level on the demerit side of the DSR scale, and vehicle premium discounts that are fully supported by actuarial indications based on principal driver performance evaluation, were reviewed and considered in the 2019 GRA.

In the 2019 GRA, the Corporation reported on certain models for driver premiums and vehicle premium discounts that might be considered in determining what changes should be made to the DSR system, and provided its views on each of the models. The Corporation advised that it was in the process of researching those models and that the next steps towards the implementation of more actuarially sound DSR premiums and vehicle premium discounts would involve public consultation efforts, along with further investigation and analysis of those rating models having limited or no additional IT costs. In Order 159/18, following the 2019 GRA, the Board directed that in this 2020 GRA, the Corporation report on the progress of its public consultation efforts, its preliminary research on the no or low cost options for rating models, as well as on its decision on whether to proceed with data collection for higher cost options.

In this Application, the Corporation provided a report on the findings of its public consultation process on the DSR system. The Corporation undertook public consultation via a public discussion paper, print and digital advertising, a telephone survey, a link on a DSR discussion paper website as well as through customer panels and stakeholder engagement.

The total number of respondents was approximately 2,900. The results of the consultation were reported by MPI as follows:

| **Model** | **Model Description** | **Customer Preference** | **Perceived Fairness** | | |
|---|---|---|---|---|---|
| | | | Complete | Somewhat | Total |
| **Registered Owner** | (Current model used in Manitoba) Vehicle's premium based on the DSR of the registered owner of the vehicle, regardless of how many other drivers drive the vehicle or the driving records of the other drivers | 44% | 32% | 50% | 82% |
| **Primary Driver** | Vehicle's premium based on the DSR of the primary driver of the vehicle (who drives the vehicle the most) | 21% | 40% | 43% | 83% |
| **All Household Drivers** | Vehicle's premium based on the DSRs of all the declared drivers listed on the vehicle's policy | 9% | 12% | 30% | 42% |
| **Declared Driver(s)** | Vehicle's premium based on the DSRs of all the declared drivers listed on the vehicle's policy | 8% | 24% | 42% | 66% |
| **Driver Premium** | People who hold a driver's licence but do not register or ensure a vehicle in their name would pay an additional "non-owner" driver premium, based on their DSR. The driver | 13% | 17% | 32% | 49% |

| | | | | | |
|---|---|---|---|---|---|
| | premium collected from these "non-owners" would be used to lower vehicle premiums for the pool of insured vehicles | | | | |

In addition to its public consultation efforts, MPI reported on its initial analysis of data collection costs for the rating models that were under consideration by it. The data collection costs for the models were as follows:

- Registered Owner: no data collection costs
- Primary Driver: $217,000 (primary driver information required)
- All Household Drivers: $1.18 million (to modify MPI's system to capture and maintain residence data)
- Declared Driver(s): $1.16 million (to capture data of regular drivers of the vehicle)
- Driver Premium: no data collection costs

MPI's position was that Manitobans are generally in favour of the current system (the Registered Owner model), which is seen as a fair way to establish rates to deal with the issue of risk. In MPI's view, most Manitobans appreciate that the current system achieves the objectives of fairness and appropriate pricing.

MPI advised that it would be providing a pricing examination of the Registered Owner, Primary Driver, and Driver Premium models in the 2021 GRA, at which time MPI would also provide its recommendation to the Board as to whether it intends continue with the Registered Owner model, or move to an alternate model.

## ***6.1. <u>INTERVENERS' POSITIONS</u>***

### CAC

CAC advised that MPI should be directed to conduct a number of further steps with respect to the DSR, namely:

- To conduct a pricing examination, including the financial impact on premium revenue and the cost of modifying the system;
- To complete a review of best practices in other jurisdictions;
- To conduct further engagement with consumers with respect to models that are priced, including relating to how to structure and implement any new model.

Further, in CAC's view, decision-making considerations with respect to the DSR should include consumer views, premiums that accurately reflect the risk that drivers of a vehicle pose, encouraging safe driving, and cost efficiency to the Corporation.

**CMMG**

CMMG took the position that a greater share of PIPP costs or premiums should be transferred to the driver's licence, given that motorcyclists do not pose the majority of risk on the road but are required to pay high premiums because of the greater risk of bodily injury associated with motorcycle collisions.

## *6.2. <u>BOARD FINDINGS</u>*

The Board expressed in Order 130/17 that it would like to see the Corporation strengthen its analytical tools in the determination of driver premiums, ultimately with a view to filing proposed DSR rates that are more statistically consistent with the estimated average claims cost per driver for each level on the demerit side of the DSR scale. The Board recognizes the Corporation's efforts to enhance its analytical tools as well as to assess public support for certain rating models. However, with two years having passed since Order 130/17, the Board finds that MPI should be in a position by the 2021 GRA to advise the Board of the direction it intends to take with respect to DSR premiums. The Board therefore directs that in the 2021 GRA, the Corporation file:

- information as to which rating model it intends to proceed with;

- a pricing examination, including the financial impact on premium revenue and the cost of modifying the system, of the Registered Owner and Primary Driver models; and

- information as to whether it has collected data to recalibrate the amounts of driver premium and vehicle premium discounts to be charged under the DSR system to be more statistically sound, based on experience.

The Board has directed the pricing examination be limited to the Registered Owner and Primary Driver models only, given that these two models have the greatest amount of public support and perceived fairness.

The Board accepts the position of CAC that it would be beneficial to review and consider best practices for rating models in other jurisdictions. Accordingly, along with the directives as set out above, the Board directs the Corporation to conduct a review of best practices for rating models in other Canadian jurisdictions and file the results of that review in the 2021 GRA.

## 7. PROGRAM COSTS

The costs associated with providing Basic insurance to Manitoba motorists fall into the following major categories:

| | Total Estimated Expense 2020/21 ($ millions) | Percentage of Total Program Costs |
|---|---|---|
| Net Claims Incurred | **$940.7** | **75.1%** |
| Claims Expenses | **139.4** | **11.1** |
| Road Safety/Loss Prevention | **13.5** | **1.1** |
| Operating Expenses | **74.2** | **5.9** |
| Commissions | **44.4** | **3.5** |
| Premium Taxes | **34.7** | **2.8** |
| Regulatory/Appeal expenses | **5.3** | **0.4** |
| Total Program Costs | **$1,252.2** | **100.0%** |

## *7.1. BASIC CLAIMS INCURRED*

Claims Incurred represent the costs that are paid or forecast to be paid to claimants for the various benefits provided under the Basic insurance program. Net Claims Incurred were $892.3 million in 2018/19, which was $61.3 million or 6.86% over the budget presented at last year's GRA.

Net Claims Incurred for 2019/20 in this year's Application were forecast to be $856.6 million. MPI revised its Net Claims incurred forecast for 2019/20 on October 4, 2019, based on the first six months' experience. The Net Claims Incurred forecast increased to $866.4 million. This increase consisted of a reduction in the forecast of claims incurred by $66.4 million and a decrease in the premium deficiency of $4.4 million. This was offset by an increase of $80.6 million related to interest rate changes. Interest rates had declined from 1.94% at Febraury 28, 2019 to 1.36% at September 30, 2019, a decrease of 58 basis points, resulting in an increase in the costs of longer duration liability claims.

The 2020/21 Net Claims Incurred forecast was revised from $950.7 million forecast last year to $927.3 million; a decrease of $23.4 million, primarily as a result of the following:

- A decrease of $27.4 million due to a lower forecast Collision and Comprehensive claims;
- A decrease in the forecasted Unallocated Loss Adjustment Expense of $9.0 million;
- Lower forecast property damage claims of $3.0 million;
- A decrease of $2.8 million from a lower forecasted Write Down DPAC/Premium Deficiency; and
- An offsetting increase of $18.9 million from a forecasted decrease in claims discount rate.

MPI updated its net Claims Incurred forecast to $940.7 million based on the October 4, 2019 update. Claims Incurred for the fiscal years 2015 - 2019 for the major coverages were as follows:

| **For years ending February 28/29 ($ millions)** | **2015** | **2016** | **2017** | **2018** | **2019** | **5 Year Change** | |
|---|---|---|---|---|---|---|---|
| Physical Damage - All Perils | | | | | | | |
| Collision | 315 | 354 | 409 | 426 | 406 | 91 | 29% |
| Comprehensive | 70 | 123 | 118 | 67 | 100 | 30 | 43% |
| Property damage | 38 | 41 | 43 | 49 | 42 | 4 | 11% |
| **Sub-total** | **423** | **518** | **570** | **542** | **548** | **125** | **30%** |
| PIPP Accident Benefits | 317 | 142 | 284 | 220 | 340 | 23 | 7% |
| Public Liability | 6 | 6 | 5 | 5 | 5 | (1) | (17%) |
| **Total Claims Incurred** | **746** | **666** | **860** | **767** | **892** | **146** | **20%** |

Overall Total Claims Incurred were $892.3 million in 2018/19, and are forecast to be $866.3 million in 2019/20, $940.7 million in 2020/21, and $987.9 million in 2021/22, for an overall increase of $96.7 million or almost 11% from 2018/19.

A major component of Total Claims Incurred are collision claims costs, which were $405.6 million in 2018/19. Relative to the long-term average, the last five accident years have had below average collision frequency. Some of the reduction in frequency over the last four years was attributed to mild winters; however, there has also been a reduction in summer collision frequency over the last seven years. The collision forecast had been reduced in the original application by $11.5 million as a result of lower severity trends, along with lower PST and frequency of claims.The collision claims forecast was further reduced by $66.4 million based on the October 4, 2019 update, reflecting lower claims experience during the first half 2019/20. In addition, MPI indicated that because of its renegotiation of its Light Vehicle Accreditation Agreement with the Automotive Trade Association and Manitoba Motor Dealers Association, the new agreement has resulted in a reduction in the claims forecast of $5.5 million in 2020/21.

The largest component of Total Claims Incurred is Accident Benefits, which are payable to claimants regardless of fault for a collision, including medical expenses, rehabilitation expenses, funeral expense reimbursement, death payments, impairment benefits, income replacement indemnity and personal care assistance. The estimated cost of Accident Benefits under the PIPP program are updated based upon actuarial reserving practices, taking into account changes in interest rates on long term claims liabilities.

Current fiscal period Claims Incurred are affected by the current year's claims activity, as well as prior years' claims activity. When a claim is first incurred, claims adjusters estimate the ultimate cost of that claim. Over time, as more is learned about the nature of the underlying injury and as partial claim payments are made, adjustments are made to the prior estimate of the ultimate cost of the claim. These adjustments, sometimes called "runoff", flow through Claims Incurred in the fiscal year in which the adjustments are made. MPI revised its claims forecast for 2019/20 based on the favourable collision experience during the first six months of the 2019/20 year.

## *7.2. <u>BASIC EXPENSES OVERVIEW</u>*

MPI's global corporate costs are to be allocated among the insurance and non-insurance categories of business and by automobile insurance lines of business in a way that does not give rise to cross subsidization. Costs are allocated to Basic through an integrated cost allocation methodology which was approved by the Board in Order 157/12. The cost allocation methodology distributes Corporate expenses to four lines of business, and then further segregates them into four expense categories: Claims, Road Safety/Loss Prevention, Operating and Regulatory/Appeal. There were no material changes to the integrated cost allocation methodology in the Application.

Total Corporate expenses were $288.3 million in 2018/19 and are forecast to grow to $303.6 million in 2019/20. MPI has forecasted total corporate expenditures to be $306.1 million in 2020/21, $309.1 million in 2021/22, and $310.6 million in 2022/23.

The details of Basic Operating expenses included in the Application and the relative percentage of total Corporate expenses are as follows:

| | For the Fiscal Year End | | | | |
|---|---|---|---|---|---|
| | 2019A | 2020FB | 2021F | 2022F | 2023F |
| **Total Corporate Expenses** | **$288.3** | **$303.6** | **$306.1** | **$309.1** | **$310.6** |
| **Basic Allocated Corporate Expenses** | | | | | |
| Claims Expense | 126.9 | 136.9 | 138.9 | 139.0 | 138.5 |
| Road Safety/Loss Prevention | 11.5 | 14.0 | 13.4 | 13.4 | 13.7 |
| Operating | 76.1 | 73.4 | 74.0 | 75.3 | 76.7 |
| Regulatory/Appeal | 4.3 | 5.3 | 5.3 | 5.3 | 5.4 |
| **Total Basic Allocated Corporate Expenses** | **$218.8** | **$229.5** | **$231.7** | **$233.0** | **$234.4** |
| Percentage of Corporate Operating Expenses | 75.9% | 75.6% | 75.7% | 75.4% | 75.4% |
| ** A = Actual FB = Forecast Budget F = Forecast | | | | | |

## *7.3. CLAIMS EXPENSES*

Claims expenses represent the administrative costs associated with processing and settling claims. Claims expenses were $126.9 million in 2018/19. In its October 4, 2019 update, the Corporation reflected both updated interest rates as at September 30, 2019 and favourable claims experience. The Corporation revised its forecast of Claims Incurred and the related claims expense lowering the forecast of claims expense from $136.9 million to $136.8 million in 2019/20, and revised its projections for both 2020/21 and 2021/22 to $139.4 million and $140.0 million in 2023.

## *7.4. OPERATING EXPENSES*

Total operating expenses allocated to Basic were $218.8 million in 2018/19, budgeted at $229.5 million in 2019/20, and revised in the October 4, 2019 update to $223.5 million. Based on the update, MPI is forecasting total operating costs to be $232.3 million in 2020/21 and $233.6 million in 2021/22; marginally higher than the original forecast.

The Corporation indicated that controlling expenses is an important contributor to rate predictability and stability. Expenses have historically maintained or trended close to the Consumer Price Index (CPI), despite mandatory contractual salary increases and other uncontrollable operating expenses. The Corporation's focus on industry best practices related to core business processes has, in effect, “renewed” MPI to focus on the key drivers to stabilizing and improving expenses and financial performance. Normal operational expenses will continue to be controlled and reduced where possible. The Corporation noted the following steps that illustrate financial prudence and ensure expenses do not contribute to rate increases:

- In 2018/19 Basic expenses were approximately 5.1% under budget compared to the 2019 GRA;
- The annual claims expense ratio and operating expense ratio declined on an average of 4.1% and 5.3% respectively from 2014/15 through to 2018/19;
- Average rating year (2020/21 and 2021/22) expenses were $5.4 million less than the 2019 GRA;
- Continued pursuit of building expense synergies, which led to non-renewal of MPI’s warehouse lease and the consolidation of warehouse services with the mailroom team at Cityplace; and
- A continued focus on cost containment, streamlining operations, sound financial practices, and the identification and elimination of unnecessary operational expenses.

Compensation expenses represent 58% of MPI's total operating costs. MPI incurred net compensation of $165.4 million in 2018/19, and has forecasted net compensation of $180.6 million in 2019/20, $185.6 million in 2020/21, and $188.9 million in 2021/22. Basic is allocated all operating expenses, including compensation costs, through the Corporation's integrated cost allocation methodology. Basic is allocated approximately

74% of Corporate compensation expenses. The allocation of compensation expenses to Basic has increased from $122.2 million in 2015/16 to $124.2 million in 2018/19, a compounded annual growth rate of 1.7% over the four-year period. Basic compensation expenses are forecast to be $133.7 million in 2019/20 and projected to be $137.2 million in 2020/21, and $139.6 million in 2021/22. This represents a compound growth rate of 4.0% over the forecast period.

The Corporation adjusts the gross salary budget by a vacancy allowance, on an overall basis, to reflect what it anticipates will be the actual salary expenditures in a given year. The Corporation has stated that, at a given time, there are vacant positions within its staff complement, referred to as a vacancy allowance, which reduce salary expenses. The Corporation incurred a vacancy allowance of $5.2 million in 2018/19, which equated to 70 vacant Full Time Equivalents (FTEs) and budgeted for a vacancy allowance of $1.5 million for years 2019/20 and 2020/21, reflecting 20 FTEs.

Staffing for 2018/19 was 1,789.3 FTEs overall, while the Corporation had last year forecasted staffing levels of 1,902.6 FTEs. MPI's total Corporate staff complement has decreased from 1,946.8 FTEs in 2009/10 to 1,789.3 in 2018/19, and is forecast to grow to 1,927.9 FTEs in 2019/20, an increase of 138.6 FTEs from 2018/19 actual levels.
The composition of MPI's staffing dedicated to Operations and Improvement Initiatives is as follows:

| Year | Normal Operations | Special Initiatives | Total Corporate |
|---|---|---|---|
| 2009/10 | 1,752.9 | 193.9 | 1,946.8 |
| 2010/11 | 1,822.8 | 48.6 | 1,871.4 |
| 2011/12 | 1,862.9 | 15.4 | 1,878.3 |
| 2012/13 | 1,894.7 | 17.1 | 1,911.8 |
| 2013/14 | 1,890.3 | 15.0 | 1,905.3 |
| 2014/15 | 1,874.8 | 10.7 | 1,885.4 |
| 2015/16 | 1,866.7 | 15.7 | 1,882.4 |
| 2016/17 | 1,898.9 | 21.2 | 1,920.1 |
| 2017/18 | 1,860.9 | 17.3 | 1,878.1 |
| 2018/19 | 1,772.7 | 16.6 | 1,789.3 |
| 2019/20 Budget | 1,911.0 | 16.9 | 1,927.9 |

MPI’s Normal Operations staffing levels increased from 1,752.9 FTEs in 2009/10 to 1,772.7 in 2018/19. The Corporation is budgeting for 1,911.0 FTEs in 2019/20.

MPI's actual Normal Operations staffing levels have been consistently below budgets as follows:

| Fiscal Year | Actual | Budget | Over/(Under) Variance |
|---|---|---|---|
| 2008/09 | 1,732.9 | 1,796.3 | (63.4) |
| 2009/10 | 1,752.9 | 1,783.8 | (30.9) |
| 2010/11 | 1,822.8 | 1,850.1 | (27.3) |
| 2011/12 | 1,862.9 | 1,926.5 | (63.6) |
| 2012/13 | 1,894.7 | 1,936.7 | (42.0) |
| 2013/14 | 1,890.3 | 1,934.7 | (44.4) |
| 2014/15 | 1,874.8 | 1,927.7 | (52.9) |
| 2015/16 | 1,866.7 | 1,898.7 | (32.0) |
| 2016/17 | 1,898.9 | 1,927.5 | (28.6) |
| 2017/18 | 1,863.5 | 1,910.0 | (46.5) |
| 2018/19 | 1,772.7 | 1,884.0 | (111.3) |
| 2019/20 Budget | | 1,911.1 | |

MPI is now forecasting an increase in Corporate compensation expenses (net of vacancy allowance) of 8.92% in 2019/20 and an increase of 2.74% in 2020/21 and 1.83% in 2021/22. The Corporation attributed the large growth in compensation in 2019/20 to the anticipated filling of a large number of vacancies during the year.

At the end of July 2019, MPI reported actual staffing of 1,808 FTEs compared to a budget of 1911.1 FTEs for Normal and Specialty program staffing, representing 102.3 vacant positions. MPI advised that there are currently 75 positions currently targeted for hiring.

The five-year Collective Agreement between MPI and the Manitoba Government and General Employees’ Union (MGEU) is in effect for the period from September 18, 2016 to September 26, 2020 and included a general economic increase of 1.50% effective September 17, 2017, and 2.00% effective September 16, 2018. The agreement provides for a 2.00% increase effective September 15, 2019 and a 0.0% increase for both 2020 and 2021, followed by a 0.75% increase September 24, 2022.

In addition to the economic increase, the Collective Agreement specifies a pay plan with salary ranges each of which has six "steps" within it for each in-scope position in the Corporation. An employee will be eligible for up to five annual 3.5% increases until the employee reaches the maximum salary for the position. Upon reaching the maximum salary, the employee will only be eligible to receive a general economic wage increase. MPI estimated that 50% of its employees are eligible for these annual step increases, which is the equivalent of an overall additional 1.75% annual wage increase. MPI forecasted an annual increase in compensation of 8.82% for 2019/20, of which 3.75% relates to economic and step-in-scale increases, while the balance, or 5.1%, relates to assumed changes in staffing levels.

MPI advised in this Application that it has implemented a new Performance Development Program, to align employee performance with business objectives and aligns employee rewards with results and levels of performance. The new merit-based program applies only to out-of-scope (non-unionized) staff. This program replaced the previous merit-based system, which allowed out-of-scope employees to receive increment step increases of 4.5% annually, regardless of performance. The in-scope staff are still subject to the step merit increments in accordance with the Collective Agreement.

MPI has not incorporated any changes in methodology into its compensation budgeting and forecasting processes. MPI will incorporate these changes into the compensation forecasts once MPI obtains a better understanding of their impact.

## ***7.5. <u>INFORMATION TECHNOLOGY EXPENSES</u>***

Over the next five years, MPI is forecasting to spend $130.7 million in capital expenditures for ongoing and future IT projects.

The major expenditure is the Corporation's Legacy Systems Modernization Project, which is now referred to as Project Nova. Project Nova relates to the replacement of dated legacy systems. The total budgeted cost for Project Nova was reported by the Corporation as being $106.8 million, comprised of an estimate of $85.4 million plus a 25% contingency of $21.4 million. This represents the current budget approved by the MPI Board of Directors, as MPI has not received final costing from product vendors.

Included within the Project Nova budget is $36.6 million in direct costs related to Driver and Vehicle Licensing (DVL) operations ($45.7 million with the 25% contingency). MPI has indicated that it is currently in discussions with the Province of Manitoba on how to fund this portion of the project. The expenditures for the DVL portion of Project Nova do not form part of the Basic expenses. The funding of the DVL portion of Project Nova, and its impact on Extension operations, has not yet been assessed.

### ***7.6. INFORMATION TECHNOLOGY STRATEGY***

In the 2018 GRA, the Corporation reported that it was expecting strategic direction from its Board of Directors in December of 2017, after which it would be in a position to implement a new IT strategic plan. The Corporation filed the 2018/19 IT Strategy in the 2019 GRA, and reported that the IT Strategy would be updated annually.

In this Application, the Corporation presented its 2019-2020 IT Strategy. MPI indicated that it continues to leverage Enterprise Architecture concepts to link business strategy to IT project investments, through the use of business and technical capabilities. The 2019-2020 IT Strategy focuses extensively on Project Nova, and its transformational effects on MPI's business. The annual IT Strategy is aligned to the key priorities, mission, vision, and values identified in MPI's 2019/20 Annual Business plan, and builds upon the 2018/19 IT Strategy.

MPI indicated that it has made significant changes and adopted new practices moving forward. In particular, six main streams are being followed:

- Move toward proven technologies;
- Identify all risks of a project prior to project initiation;
- The use of a project sponsor;

- Align when possible to industry best practices in vendor-provided software;
- Integrate the Value Management process in MPI culture and the project lifecycle; and
- Create IT capabilities to support business capabilities to solve a business objective.

Five major influences have been identified for this year. These are:

- *Project Nova* (formerly Legacy Systems Modernization): a corporate initiative aimed to modernize MPI core legacy systems, to deliver MPI products and services to personal and commercial customers with greater business agility, and improve customer experience while reducing MPI's technology risk.
- *Information Security and IT Risk Management Processes:* MPI has formed the Information Security Office (ISO), which manages three key governance functions: Information Security, IT Risk and Compliance management and Information Security Architecture.
- *Technology Risk Management Program:* The Technology Risk Management program provides regular investment in technology systems and processes.
- *Enterprise Architecture Process:* Enterprise Architecture (EA) is the discipline of proactively and holistically understanding business and IT capabilities by identifying and analyzing the execution of change toward the desired business vision and outcomes.
- *Agile Software Development Methodology (Agile):* MPI recognized that in replacing its core legacy systems, the way these systems need to be configured and delivered also needed to change. MPI has determined that adopting Agile is key to providing business value and to effectively work with any modern platform provider.

## 7.7. PROJECT NOVA

Last year, MPI performed a legacy modernization assessment of its in-scope IT systems, and confirmed that it is a candidate for modernization. This conclusion was based on two independent vendor assessments. The business case for Project Nova was presented to the MPI Board of Directors in early 2019 and received approval to proceed. This program will have a significant impact on all facets of the business, dramatically changing the delivery of corporate IT services including changes to people, processes, providers, and platforms.

Following the output of the 2018/19 legacy systems assessment initiative, MPI produced a business case to significantly upgrade and modernize its core applications. The initiative highlighted five main areas of risk and improvement, where MPI's existing systems are not positioned to support or meet future demands:

- *Technology Risk*: Existing capabilities are delivered via stale technology which cannot be enhanced to meet future needs and require very specialized skill sets to maintain and operate;
- *Online Supported Services*: Increased demand by customers to interact with solutions via an online environment;
- *Information Security*: Increased tightening of security protocols to maintain confidentiality, integrity, and availability in a modern software environment;
- *Future Business Agility*: Ability for MPI to be responsive to highly dynamic changes in business needs via digital delivery of solutions to customers and response to legislative and regulatory changes; and
- *Cost Savings and Efficiency*: Increased costs to maintain and / or replace existing aging technologies.

Project Nova is considered a core initiative classified to "run the business" and is expected to modernize how MPI delivers products and services to personal and commercial customers with greater business agility and increased customer experience.

Based on current estimates, Project Nova produces a Net Present Value (NPV) of $12.7 million utilizing a 7.5% discount rate, resulting in a 14-year payback period. To govern this large initiative, the Corporation reported that an enhanced governance structure, beyond the structure typically used by it, will be in place. This structure will also be evaluated by an independent program advisor.

MPI advised that it will be employing Agile for Project Nova, delivered via both external vendor solutions and internal resources. MPI is in the early stages of using Agile, having completing small pilots in 2018 to increase internal delivery capabilities. These two pilot projects had a total cost of less than $1.0 million. Project Nova is a multi-year initiative with estimated total costs of over $100 million, including a contingency of 25%. It is significantly more complex than the pilots and affects other strategic initiatives, including Customer Self Service and Technology Risk Management.

For Fiscal 2019/20, $10.0 million has been approved to solidify program governance, develop detailed technical architecture, initiate pilots to test architecture, and gather experience of different solutions. Many of the technical implementation plan details are still to be completed, as implementation vendors and software solutions have not been selected. Project Nova will be the largest and most complicated IT initiative undertaken by MPI to date.

### *7.8. <u>IT STAFFING</u>*

MPI uses both internal FTEs and external consultants to maintain MPI's IT systems and deliver on IT capital projects.

In Board Order 128/15, the Board directed MPI to assess opportunities for savings relative to external IT consultants, including bringing consultants in-house. In response, MPI undertook a comprehensive review and developed an approach to transition up to 27 positions from external to internal over the 2016/17 to 2019/20 fiscal years. MPI provided an update on this strategy, reporting that it has achieved this target, having converted all 27 positions between fiscal 2016/17 and 2019/20, with annual cost savings of $3.0 - $3.5 million. It advised that it will continue to evaluate additional conversion opportunities on a case-by-case basis. For 2019/20 and the following three fiscal years, the Corporation is budgeting to have 69 consultants working on IT projects. This number is exclusive of the number of consultants required for Project Nova.

In addition, MPI has issued a new request for service, which received responses from 32 qualified vendors for the purpose of supplying external resources to MPI. The Corporation reported that it is engaging with 30 of these vendors to enter into multi-year agreements, with estimated annual savings of $2.0 million.

### *7.9. __VALUE MANAGEMENT__*

MPI's Value Management (VM) approach emphasizes the use of business cases, consistent project financial governance and project management practices, and detailed project closures to validate costs, measure against project objectives, evaluate governance, and report on lessons learned. MPI is required to employ the VM process for IT initiatives whereby capital expenditures are equal to or greater than $500,000. For 2019/20 the following eight projects are being delivered via the VM process:

- Legacy Systems Modernization: $10.0 million;
- Technology Risk Management: $3.1 million;
- Finance Re-engineering: $2.9 million;
- Credit Card Strategy: $2.6 million;
- Information Security Maturity: $2.0 million;

- Total Loss Strategy: $1.3 million;
- High School Driver Education
    - Phase 3: $448,000
    - Phase 4: $1.03 million; and
- BI3/Fineos Upgrade 2020: $250,000.

### *7.10. PHYSICAL DAMAGE RE-ENGINEERING (PDR)*

Significant attention was devoted in recent prior Applications to a review of the Physical Damage Re-Engineering (PDR) program, a program in progress since 2010/11. The Corporation reported in the 2018 GRA that PDR was scheduled for completion in 2019/20, and, in the 2018 GRA it filed an evaluation of the PDR project prepared by Gartner Consulting. The Corporation had also previously filed an evaluation of the PDR program, prepared by Gartner, in the 2017 GRA.

In the 2019 GRA, the Corporation reported that management undertook a review of the PDR program in early 2018, applying the VM process, resulting in a restatement of the PDR costs and benefit projections. The total budget of the PDR program was changed to $57 million, from the originally projected $65 million, based on the reduction in scope of the project. Further, the updated analysis filed in the 2019 GRA drastically reduced the NPV of the project from $13.7 million previously reported to a negative NPV of ($49.9 million). The Corporation made the decision to cancel the Customer Claims Reporting System (CCRS) project, finding that the benefits of the project would not be supported by the costs to achieve them. There remained some smaller projects within the overall PDR program, all of which were forecast to be completed within fiscal year 2018/19. As part of its overall VM process review, MPI wrote off $20.5 million in deferred development projects, of which $18.5 million related to Basic projects. MPI reported a write-off of $15.6 million in deferred project costs associated with the cancellation of CCRS.

Given the state of the PDR project, in Order 159/18 the Board directed MPI to file an update, prepared by Gartner, to its previous PDR report, in this GRA. The 2019 Gartner Report filed in this Application covered, among other things, final project costs, final benefits streams and Gartner's current NPV calculation.

Gartner reported that MPI has declared the PDR program complete, with all capabilities being transferred to operations. In 2019, the Corporation completed the two remaining PDR projects, the CCRS cancellation and the PDR completion, for a total cost of $1.7 million, approximately $350,000 less than budgeted. The completed actuals and refined benefits result in a projected negative NPV of approximately ($50 million). Gartner reported that MPI has indicated PDR has provided intangible benefits including faster service through more complete and accurate estimates and lower costs through access to safe, lower cost used parts and accessories.

### *7.11. __BENCHMARKING__*

The Corporation again filed with the Board its benchmarking framework, reflecting four subject areas: Operational Efficiency, IT Service Delivery, Serving Manitobans and Community Impact. MPI uses the benchmarking results to identify opportunities to reduce costs, measure effective management approaches, and measure efficient resource allocation.

Benchmarking in IT Service Delivery measures how effective and mature the Corporation is in terms of IT organization, processes, and infrastructure. Historically, MPI has engaged the services of the Ward Group for benchmarking in Operational Efficiency, and Gartner for IT benchmarking. In this Application, MPI reported that it has discontinued the services of Ward and Gartner and, as a result, the Operational Efficiency and IT Service Delivery reports filed in this Application were the last iterations of those reports. MPI reported that it had issued an RFP for IT benchmarking services and expects to have a new IT benchmarking report available for the 2021 GRA.

With respect to Gartner's IT benchmarking, MPI maintained the same IT Score (3.1) from 2016/17 to 2017/18. IT expenses relative to operating expenses has continued to decrease annually. MPI's IT expenses as a percentage of overall operating expenses has stabilized to 5.4%. Further, MPI has formed a single consolidated unit overseeing the management of its major IT vendor contracts for the purposes of standardization and identification of opportunities for improvements and cost efficiencies. The IT staff FTEs as a percentage of company employees was reported as 17.2%, compared to the peer average of 13.6%. MPI's IT staff FTEs as a percentage of company employees ratio remains higher than the peer average, but MPI advised that this ratio should be considered within the context of the overall enterprise labour sourcing strategy and future-state objectives.

The proportion of MPI's IT contractors to in-house staff has decreased from that reported in the 2019 GRA, to 27.5%. The peer average is 30.4%. Historically, MPI has had a higher proportion of consultants than the peer group, but now, the peer group is trending upward in its usage of consultants: from 17% in 2015/16 to 30.4% in 2017/18. At the same time, MPI has been reducing its proportion of consultants. The lower consultant ratio is reflective of the transition of a number of consultant positions to in-house, as reported above.

In 2017/18, MPI's overall infrastructure and operations spending ($21.2 million) was higher than the peer group average ($20.1 million), with outsourcing costs being the main contributor. This component is comprised of labour and additional third party services, namely, IBM. MPI reported that it will continue to partner with IBM to optimize costs within this area.

MPI has reduced spending in infrastructure and operations by $2.8 million compared to 2016/17. MPI has eliminated spending in the unallocated costs category and continues to narrow the gap between its own performance and that of its peers to 5%. Hardware and software provide additional opportunities for cost savings. MPI's IT spending as a percentage of revenue has decreased by 13.6% year over year, and has decreased by

8.5% during the last five years. Its spending as a percentage of operating expenses has decreased by 1.5% year over year, and by 6.1% over the last five years.

## *7.12. <u>INTERVENERS' POSITIONS</u>*

**CAC**

CAC expressed that Project Nova is a highly ambitious undertaking, constituting the largest IT project in MPI's history. There are significant risks related to Project Nova, which include: (1) the complexity of addressing a number of MPI's major legacy systems; (2) MPI's relative inexperience with Agile; (3) budget uncertainties given the early stage of the process; and (4) the lack of clarity about whether MPI or the Government of Manitoba will be paying for the DVL costs associated with the project, in the amount of $36.6 million.

CAC recommended that:

- MPI undertake a survey of MPI employees regarding the implementation of Project Nova, with its results filed in the 2021 GRA;
- MPI be directed to report to the Board on Project Nova's risk status, budget and business case on a quarterly basis; and
- MPI be directed to confirm in the 2021 GRA whether the Government of Manitoba will pay for the DVL portion of Project Nova.

## *7.13. <u>BOARD FINDINGS</u>*

The Board has in the past characterized one of the key elements of its independent review function and rate-setting role as ensuring that actual and projected costs incurred are necessary and prudent, in the context of setting just and reasonable Basic rates. The Board's jurisdiction to do so is derived from *The Crown Corporations Governance and*

*Accountability Act*, and in particular, section 25 thereof. The Board continues to hold a keen interest in the Corporation's efforts to reduce and contain costs.

The Board continues to support the Corporation's cost containment efforts, including its steps taken to reduce operating expenses and optimizing staff and contractor levels. The Board finds that the Corporation is continuing to move in a positive direction.

The Board also received the updated IT Strategy and understands that it will be updated annually. The IT Strategy is a key document and accordingly, the Board directs the Corporation to file its updated IT Strategy in the 2021 GRA.

The Board recognizes the Corporation's continued efforts to reduce reliance on IT consultants, and reduce the number of IT staff overall. The Board notes that the Corporation achieved its intended consultant to employee conversion rate. While this goal was achieved, the Board continues to express concern over the number of IT consultants and staff currently used. The Board acknowledges that the Corporation is in a state of a transition with Project Nova, but further progress is needed in order to achieve optimization, minimize the use of consultants, and ensure the successful deployment and management of project development costs. The Board directs the Corporation in the 2021 GRA to file updated IT staff and consultant numbers, including titles and responsibilities, in order to provide clarity on the role of the IT staff and consultant complement.

The Board notes that MPI now has access to over 30 qualified vendors to provide IT consulting services. The Board finds that this is a significant improvement over the single source supplier arrangement previously employed by MPI.

The Board recognizes the Corporation has stated it will be vigilant in monitoring its outsourcing and consultant usage levels. The Board also acknowledges the progress the Corporation has made in applying the VM process to various projects, including Project Nova, and developing the IT business cases as needed.

The Board understands that the Corporation has decided to move forward with Project Nova using Agile. Project Nova is a large project with many unknowns and risks, with a very significant budget of $106.8 million, and significant need for external vendor and consultant support throughout its project lifetime. As such, the Board will require an update to Project Nova. The Board has determined that quarterly updates are not required, but directs the Corporation to meet with the Board Advisors to provide an update on Project Nova, no less than six months prior to the filing of the 2021 GRA, and file a further update on the project in the 2021 GRA.

The Board also understands that the Corporation has embarked on using Agile for Project Nova, which is different than the current IT development approach being employed by the Corporation. Given the significant changes and risks to Project Nova, in the meeting with Board Advisors, the Board will require an update of Agile within Project Nova.

As noted above, Project Nova is a multi-year initiative and is significantly more complex than the pilots previously undertaken by MPI. It also affects other strategic initiatives. Accordingly, the Board finds it would be prudent for the Corporation to test Agile further before it is fully deployed in Project Nova. The Board therefore recommends that the Agile methodology be tested by the Corporation on a larger-scale project (a cost of approximately $10 million), before the Corporation fully commits to Agile for all aspects of Project Nova.

In addition to Project Nova, there are other significant IT projects which would benefit from ongoing review by the Board. For the interim meeting, the following areas shall also be reviewed:

- IT staffing and consultant strategy, totals, progress towards reduction;
- IT Strategy;
- Progress on the following and related initiatives for IT modernization:
    - IT Information Security;

- IT Risk Management processes;
- IT Technology Risk Management;
- Enterprise Architecture;

- Agile:
  - Update on Agile implementation, training, key performance indicators and overall progress within MPI;
  - Discussion of additional pilot project using Agile;
- Project Nova:
  - Update on all aspects of Project Nova including but limited to resourcing, training, component progress, budget, and prototypes;
- Physical Damage Re-Engineering (PDR);
- High School Driver Education Redevelopment;
- Credit Card Strategy and related PCI DSS;
- BI$^3$/Fineos; and
- Finance Re-Engineering

The Corporation has indicated that it has ended its engagement with Gartner, and a RFP for IT benchmarking services was issued, with a new service provider being selected in 2020. The Board stresses the importance of ensuring the Corporation has a third-party service provider in place as soon as practicable, and no later than the filing of the next GRA. In addition, the Board expects that the new service provider will:

- Perform an IT review from the last completed Gartner benchmark report;

- Carry forward any prior recommendations, assess and provide a status on each of those recommendations for continuity; and

- Be prepared to provide results of the reviews in the 2021 GRA.

The Board acknowledges the Corporation's reductions in infrastructure and operations spending, and narrowing the gap with its peers. The Board would point out that the Corporation is required to continue to find saving opportunities.

## 8. SERVICE DELIVERY MODEL

MPI indicated that in 2018 it renegotiated compensation agreements with five of its key partners:

- Automotive Trades Association (ATA) and Manitoba Motor Dealers Association (MMDA) for labour rates and related compensation for light vehicle repair shops in Manitoba;

- IBAM for fees and commissions related to Basic, Extension and driver licensing and registration (this agreement was a two-year extension of the existing agreement to allow for defining the future service delivery model between MPI and IBAM) discussed further in this Order;

- Manitoba Car & Truck Rental Association for fees related to loss of use Extension coverage;

- Manitoba Chiropractors Association for fees related to chiropractic treatment for PIPP claimants; and

- Manitoba Commercial Vehicle Repair Association Inc.

MPI renegotiated the terms of the 2019/20 LVAA for a two-year term which expires on April 14, 2021. The LVAA sets labour rates and related compensation for light vehicle repairs. Some highlights of the new LVAA are:

- No increases in labour rates (including no CPI increase) for the duration of the new agreement's two-year term (rates remain as set out in the previous LVAA);
- Cancellation of the $81.00 Direct Repair (DR) Premium payable to all DR shops at the outset of the new term (with the exception of a short grace period for repairs already in progress prior to the start of the new term);
- MPI will no longer pay the ATA and MMDA an annual fee (previously $50,000.00 and proposed by the ATA to increase to $75,000.00), as it no longer does this for any other business partners and is not considered best practice;
- An increase in the North American Glass Standard discount in Southern Manitoba (from 10% to 20%) for each year of the term; and
- New standard compensation items (e.g. pre and post scanning, calibration and paint-related work such as blending).

MPI is also currently developing a Glass Strategy for glass-only claims. Payments on glass claims have been steadily increasing year over year. Glass replacement total claims payments have increased from $23.1 million in 2014 to $34.3 million in 2018. This increase is due to a number of different contributing factors such as technical advances in auto glass, such as Advanced Driver Assistance Systems, which utilizes various technologies. MPI is concerned that it will be difficult to control costs associated with glass industry advancements without making changes to the pricing model.

The new LVAA discontinues the Repair Only accreditation status of Glass-Only Shops and will require glass shops to have a permanent fixed location after December 31, 2019. Each glass facility must have repair and replacement capabilities to remain accredited.

### *8.1. BROKER SERVICE DELIVERY*

MPI primarily utilizes a broker network to distribute its products. MPI also operates 17 corporate Service Centres.

MPI has negotiated Broker Accord and Compensation Agreements (the Broker Accord) with IBAM for the services provided by brokers. Compensation under the Broker Accord, in the form of commissions and flat fees, are paid out to brokerages (approximately 300) across Manitoba, for selling MPI's Basic, Extension and SRE insurance products, as well as Driver Licensing and registration.

The principal Broker Accord was negotiated in 2008; however, in 2009 MPI changed the renewal requirements providing for a five-year cycle of renewals every five years and reassessments only in the intervening years. Generally, the broker of record is established when the ratepayer initially purchases, or renews, their Basic insurance policy. In the four reassessment years, before the fifth year renewal, the Broker of record receives a commission for the ratepayer's insurance purchase, even if the ratepayer has not purchased their insurance from that Broker - they may have gone to a different Broker or an MPI Service Centre. These commissions are referred to as "Trailing Commissions."

Prior to 2009, MPI compensated brokers with a commission of 5% on Basic premium costs, and 12.5% of Extension premium costs. When the renewal cycle was changed, the commission on Basic premiums was reduced to 3%, and Trailing Commissions were introduced for the reassessment years, regardless of whether the broker was involved in the insurance purchase. The commission on Extension premiums was increased to 19.75%.

In addition, brokers are paid flat fees for completing various types of transactions, including cancellations, buyouts, document replacement and midterm changes. Flat fees represent approximately 16% of compensation paid to brokers on the Basic program.

Actual and forecasted commissions and fees for the fiscal years ending in 2019 through 2022 are as follows:

**Basic & Extension Broker Commissions and Fees* ($Millions)**

| | **2018/19** | **2019/20** | **2020/21** | **2021/22** |
|---|---|---|---|---|
| Basic | | | | |
| Commissions | $33.5 | $35.5 | $37.2 | $38.7 |
| Flat Fee Transactions | 6.7 | 7.0 | 7.3 | 7.5 |
| **Total Basic** | **40.2** | **42.5** | **44.5** | **46.2** |
| | | | | |
| Extension | | | | |
| Commissions | 34.5 | 34.3 | 34.0 | 35.1 |
| Flat Fee Transactions | 0.7 | 0.8 | 0.8 | 0.8 |
| **Total Extension** | **35.3** | **35.1** | **34.8** | **35.9** |
| | | | | |
| **Total Commission Expense** | **$75.5** | **$77.6** | **$79.3** | **$82.1** |

*Excludes drivers licensing and registration fees.

Trailing Commissions in 2019 were $46.7 million, or 61.8% of the total annual commission and fees paid. Basic commission and fees paid represent 3.6% of MPI's Basic's total costs of operation.

**MPI Survey**

MPI provided evidence of a survey conducted on its behalf, which showed that brokers may not be advising customers of all non-compulsory and Extension products. According to the survey, customer recall as to discussions with customers about all products was low:

| **Additional Options and Extension Products Discussed*** | |
|---|---|
| Percentage of customers who indicated the following options and products was discussed by the agent: | |
| **Autopac Option & Extension Products** | **% indicated**** |
| Deductible amount | 48.1% |
| Third Party Liability | 38.9% |
| Extension Loss of Use | 27.8% |
| Off-Road Vehicle Coverage | 13.0% |
| Excess Value Coverage | 11.1% |
| Changing Insurance Use (e.g., pleasure, all-purpose, farm, ride share) | 7.4% |
| New Vehicle Protection | 7.4% |
| Leased Vehicle Protection | 5.6% |
| Changing Coverage Area (insurance rate territory) | 3.7% |
| Income Replacement Indemnity Extension | 1.9% |

* Asked only to those who indicated their agent discussed options and/or Extension products. Not all products are relevant for each customer (e.g., new vehicle protection, leased vehicle protection, excess value).

** As a customer may indicate that more than one option or product was discussed, the sum of percentages may add to more than 100%

**Online Service Delivery Model**

MPI is in the process of developing online capabilities with Project Nova, to allow customers to process online transactions, altering the current service delivery model where customers attend a broker's office to process insurance renewals. MPI's intention in modernizing its service delivery is to improve customer service, expand service delivery channels and reduce costs, although the nature of the new service delivery model has not yet been fully defined. The particulars of the online sales channel have yet to be determined and the technology is three to four years away from implementation. Neither MPI nor IBAM have developed a clear vision of how that future service delivery will be rolled out to customers, how it will affect MPI systems, or how brokers will participate in and adapt to the new system. MPI has stated that it is committed to a shared distribution channel, in which brokers remain a key component of delivery service to customers.

According to MPI's analysis, a shared delivery model that will allow customer transactions in-person at a brokerage or MPI Service Centre, and online through a brokerage or MPI, would result in broker commission savings of approximately $91.0 million over five years. The Corporation noted that this analysis was based on an assumed 50% uptake of online services by its customers. The Corporation also noted that a 50% uptake would not occur within a year, and, although difficult to estimate, assumes the uptake would occur incrementally starting at approximately 22.5% in the first year.

The current Broker Accord, which was to expire on February 28, 2019, was extended for two years from March 1, 2019 to February 28, 2021. The two-year extension will provide MPI and IBAM time to define the long-term service delivery strategy for MPI products and services inclusive of online, self-serve and mobile service options to meet the evolving needs and expectations of the customers.

MPI believes the optimal Basic insurance broker model for Manitobans will be based on providing customers with choice on where, when and how to conduct their insurance, registration and licensing business. This model will likely include the use of brokers, MPI's Service Centres, MPI’s Contact Centre, and on-line service options. MPI anticipates that customers in remote areas of the Province of Manitoba who must travel long distances to reach the nearest brokerage or Service Centre in order to conduct business will gain the option of conducting business online, if they so choose. The optimal model will focus on the customer: ease of doing business; effectiveness of the interaction; and customer feedback across all channels of service delivery.

MPI indicated it is committed to working collaboratively with brokers, through IBAM, to determine the service delivery strategies moving forward. The parties are now in conciliation to assist with the conclusion of a new broker accord.

MPI did not seek any directives or recommendations from the Board concerning its service delivery model, stating the Board had no jurisdiction over the business relationship with IBAM. For the purpose of transparency, MPI simply advised the Board that future service delivery will be different from what it is today. At the present time, decisions on the future of online services have not yet been made, and MPI takes the position that the Board has no role in making those decisions. At a future GRA, MPI will be seeking approval of rates that flow from the decisions that are made related to online services and, at that point in time, the Board will be considering the reasonableness of those rates.

## *8.2. <u>INTERVENERS' POSITIONS</u>*

### IBAM

In support of its intervention, IBAM filed testimony and at the hearing called as witnesses: Mr. Grant Wainikka, Chief Executive Officer of IBAM; Ms. Tara Chammartin, Past President of IBAM and Partner and Operations Manager of a brokerage in the City of Winnipeg; Ms. Valerie Hutsal, a member of IBAM's Board of Directors and a Co-Owner and Manager at a brokerage in the City of Brandon; and Mr. Brett McGregor, a member of IBAM's Board of Directors and President of a brokerage with six locations in the Province of Manitoba.

IBAM advised that it intervened in this GRA as a result of MPI's plans for future service delivery, and in particular online services, and the role of Brokers in the delivery of MPI services throughout Manitoba. In addition, IBAM was aware that CAC intended to examine the impact of future changes to the Broker Accord, and in particular costs relating to the services provided by brokers.

IBAM advised that its members are focused on ensuring that customers are informed about their choices, exposures and risk when purchasing any property and casualty insurance, including automobile insurance. All brokers are licenced pursuant to the provisions of *The Insurance Act* of Manitoba and provide professional assistance when guiding customers through their insurance and renewal decisions. IBAM noted that the consequences for improperly or underinsured individuals can be life changing and devastating. Brokers ensure that the purchase of insurance and assessment/coverage of risk is dealt with in a manner that ensures a consumer is protected. As well, IBAM and its witnesses noted that the brokers play a major role in establishing the identity of new customers, which has become a critical element to the issuance of driver licenses and identification cards.

IBAM's submission was that Manitobans have received a valuable service from brokers at a fraction of the cost paid by insurance providers in other jurisdictions and, as such, brokers should remain involved in any online service delivery model that may be implemented by MPI, to maintain consumer protection.

There are approximately 300 brokerage storefronts in 120 communities in Manitoba. These brokerages provide services in 31 languages. Brokers provide in-person services where MPI Service Centres are not located. As well, having a network of brokers provides customers with more choice and creates healthy competition among brokers. Brokers can also provide customers with non-compulsory insurance products.

The costs of brokers commissions to MPI for Basic insurance totalled $32.7 million in 2019, representing 2.28% of MPI's total expenses. In addition, IBAM pointed out that the average salary and benefits cost for MPI employees is $93,568.00. IBAM noted that Manitoba brokers are paid the lowest commission rates in the country for Basic insurance, while bringing in 99.4% of Basic premiums to MPI. Although total commissions and fees paid since 2010 have increased, they have not kept pace with the CPI. Moreover, Trailing Commissions are in place to compensate brokers for the work brokers perform which is not directly compensated, but commissions do not fully compensate brokers for all of the work they actually perform.

With respect to online services, IBAM advised that brokers welcome an online service delivery model, however, they believe that broker oversight over customer transactions is necessary to ensure consumer protection. IBAM points out that any changes that would remove brokers from the service delivery model would increase the involvement of government and MPI employees in the provision of advice and counselling with respect to complex financial products.

IBAM's view is that MPI has not fully contemplated the impact such a model will have on customer service and protection.

IBAM stated that MPI Contact Centre's customers experience unacceptable wait times. Advice and support will be required by online customers, but MPI has not budgeted for any increase in FTEs to support customer self-service, and MPI has difficulties with retaining employees including those employed in the Contact Centre.

IBAM stated that customer self-service without the oversight of a broker may result in an increase in underinsured drivers, and the consequences of being underinsured can be dire for Manitoba consumers. IBAM's member brokers are subject to regulation and training to assess and consult with consumers with respect to their coverages. Brokers also provide advice and access to other non-compulsory insurance products, which would not be available through MPI's online service. Manitoba is not unique; insurance is a complex product and most customers are busy in their work and personal lives. As such, direct customer online sales without broker involvement removes the ability to ensure that the insurance purchase is, in fact, in the best interests of the consumer.

In addition, IBAM stated that implementation of a direct-to-customer model has not been tested. IBAM noted that in other Canadian jurisdictions with Crown automobile insurance and licensing regimes, such as Saskatchewan and British Columbia, online services have been implemented as part of their current broker distribution channel. Both SGI and ICBC formally committed to a broker-based model in their jurisdictions.

IBAM took the position that MPI's planned implementation of a direct to customer model is expressly contrary to the repeated assurances by MPI executives in the past and is contrary to the 2008 Broker Accord which provides:

- MPI agreed to direct customers to brokers;
- MPI agreed that brokers will be the first point of contact for customers for new product launches; and
- MPI agreed not to endeavour to provide customers with the option of renewing services online.

The brokers emphasized that they have been the customer-facing presence of MPI's business since 1971. Brokers have provided exceptional coverage and service to Manitobans while adapting to meet evolving customer and industry needs. In its evidence, IBAM referred to prior testimony of several MPI executives who repeatedly confirmed the Corporation's commitment to independent brokers as the key distributor of MPI products. MPI previously considered online services and determined that it could not proceed for three primary reasons:

- Consumer protection would be negatively affected;
- The cost would exceed what was being paid to brokers; and
- MPI made a commitment to the broker network.

IBAM stated that MPI's commitment to brokers has been confirmed by the evolution of the Broker Accord and compensation agreements over the years. Notwithstanding this, current MPI management proposes instead to offer the purchase of insurance directly from MPI online.

IBAM also took the position that the Board has jurisdiction over the delivery of online services and is required to make orders fixing just and reasonable standards or practices in relation to the online services delivery model. This submission was based upon the combined application of Section 25 of the CCGA Act and Section 74 of the PUB Act. IBAM further argued that Section 77(b) of the PUB Act provides the Board with the power to fix just and reasonable standards or practices over MPI.

IBAM submitted that, as MPI's decision to provide online services directly to consumers will impair the extension market and the broker market, the Board has the ability to issue directives in this regard. As a result, IBAM requested the Board to make a number of orders, as follows:

- Order that MPI establish an online service delivery model that includes licensed insurance broker oversight of MPI customers' online files;
- Order that MPI establish an online service delivery model that requires customers to periodically attend to a broker, whether by telephone or in-person, in order for customers to receive advice from said broker, including in relation to non-MPI Extension products;
- Order MPI to fully disclose the allocation of Flat Fee revenues and reallocate said revenues to the appropriate line(s) of business;
- Order that MPI require that the purchase of insurance products be performed in consultation with a licensed professional broker;
- Order that MPI compensate brokers fairly for the value that brokers provide both to MPI and to the residents of Manitoba;
- Declare that MPI providing online services directly to consumers outside of the broker channel would be in breach of the Accord and representations made by MPI;

- Declare that MPI providing online services directly to consumers and without involvement of licensed insurance brokers would adversely affect existing consumer protection; and/or
- In the alternative, if it is determined by the Board that it does not have jurisdiction on the issue of the delivery of online services, that the Board issue the aforementioned directives as recommendations.

**CAC**

CAC pointed out that, in many areas of insurance, Manitobans have the choice of whether to purchase their insurance directly from a broker or from other institutions (i.e. travel health insurance, mortgage income replacement insurance, car loan income replacement insurance). As such, any exclusive service delivery model does not achieve the appropriate level of customer choice.

As well, CAC stated that the current Basic service delivery model is based on "bricks and mortar" resulting in significant service gaps in Northern Manitoba, in First Nations communities, and in certain other rural communities which might be ameliorated by online services or enhanced telephone options.

CAC believes there are creative options to maintain and enhance services for rural and remote communities including increasing compensation for remote broker locations, sending MPI staff into remote locations where there are no broker services, or using telephone options more creatively.

CAC further questioned IBAM's broker commission analysis noting that there are substantial differences in the type of service being offered by brokers with respect to both MPI's Basic and Extension products: there is an absence of the need to seek and filter competitive quotes with regard to the Basic program; an absence of time consuming traditional frontline underwriting function; the ease and convenience of placement of Extension insurance which leads to MPI Extension market dominance and reduces the demand for competitive quotes; and the simplicity and standardization of the Basic and compulsory insurance package.

In addition, CAC questioned IBAM's analysis between stand-alone Basic commissions and those of other jurisdictions because the unique five-year insurance renewal model (with annual reassessments) is structurally distinct from any other Canadian jurisdiction. Further, CAC took the position that 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; the service delivery model since 2008 was designed to maximize compensation based on professionally managing the customer's overall business portfolio; and comparing Basic commissions to overall corporate expenditures is not directly comparable to that of other insurance companies.

CAC also expressed concern that the Broker Accord may have stifled innovation in service delivery to customers and created barriers to entry to the broker industry. For example, the 2008 Broker Accord includes a commitment by MPI that it would not endeavour to provide customers with the option of renewing vehicle insurance or driver's licensing online, and that as of December 2013, MPI was no longer accepting applications for new broker licences or appointments. Furthermore, it is unclear whether consumers are being consistently advised of their opportunity to choose non-MPI non-compulsory service offerings or, indeed, that consumers are being consistently advised of all Extension offerings that are available from MPI.

CAC noted that while IBAM attempts to link the broker model with relatively low rates in Manitoba, a more reasonable hypothesis would be the impact of the no-fault PIPP. Moreover, CAC notes that the exclusive broker model in British Columbia has not been a defence against adverse financial issues for ICBC.

CAC further noted that MPI's evidence was that total annual brokerage costs were $85.0 million, whereas the total annual operating costs within MPI are $75.0 million.

Further, the evidence given was that in respect of the five-year renewal process, approximately 90% of reassessments are clean; that is, there are no changes to the policy or ratepayer information.

According to CAC, MPI's market dominance in Extension might be explained by the simplicity of the sale of MPI Extension products on the Insurance Work Station (IWS), which is the computer interface with MPI. Further, it might be more convenient for customers and brokers to have both Basic and Extension coverage through MPI. There appears to be some challenge to get other insurers to offer non-compulsory products in Manitoba, and the commissions for non-compulsory products set by those other insurers are typically less than those offered by MPI.

Finally, CAC submitted that there are grounds for concern that the practice of entering into industry-wide agreements by MPI may raise issues under the federal *Competition Act*.

## *8.3. <u>BOARD FINDINGS</u>*

The Board's jurisdiction is to set just and reasonable rates. The Board evaluates MPI's expenditures through the lens of a prudence review, but it does not have the jurisdiction to direct the Corporation as to the terms and conditions of any agreements it enters into with service providers, including IBAM.

While IBAM referred to sections 74.1(2) and 77(b) of the PUB Act as the authority for the Board to issue a number of directives to MPI as to the manner in which it provides online services, the PUB Act provides the Board with no such jurisdiction, as those sections of the Act address the Board's jurisdiction over a "public utility" as defined in section 1 of the PUB Act, as:

> …any system, works, plant, pipe line, equipment or service
>
> (a) for the transmission of telegraph or telephone messages; or

> (b) for the conveyance of persons or goods over a railway, street railway, or tramway, or by motor bus or truck; or
>
> (c) for the production, transmission, delivery, or furnishing of gas, whether natural or manufactured, oil or other fluid petroleum products, water, heat, light, or power;
>
> either directly or indirectly, to or for the public, and includes all such carried on by or for the owner or a municipality or the Government of Manitoba…[.]

Accordingly, as MPI is not a public utility, the Board is not in a position to issue directives to MPI as to how to offer online services to the public. The Board is aware that MPI and IBAM will be engaging in a conciliation process in order to address an agreement for future service delivery, and intends to review that agreement at the appropriate time.

The Board notes the evidence it heard regarding the integration of MPI's ISW software, which makes offering MPI Extension products to Basic ratepayers seamless and administratively simple, as compared to non-compulsory products from other insurance providers. While this may place MPI at a competitive advantage, the brokers' evidence was that they offer non-compulsory products from other insurance providers, something which is not available to customers who attend at MPI Service Centres. There was also anecdotal evidence from the brokers that they offer all available coverages to customers purchasing vehicle insurance, which contradicted the survey evidence presented by MPI. While the Board makes no particular finding in that regard, it would only comment that, assuming that brokers are providing customers with a range of options, they are providing a service above that which would be available at an MPI Service Centre.

With respect to IBAM's request for further disclosure of MPI's allocation of Flat Fee revenues, IBAM did not provide an adequate explanation to call into question MPI's evidence as to its allocation of service fees revenues and expenses which relate primarily to MPI's DVL line of business, which is beyond the jurisdiction of the Board in any event. The Board is satisfied with the evidence provided by MPI in this regard and, therefore, will not order any further disclosure.

# 9. INVESTMENTS

## *9.1. INVESTMENT PORTFOLIO*

As set out above, the Corporation's funds available for investment are primarily the assets supporting the unearned premium reserves and unpaid claims reserves. As a result of the implementation of the ALM Study, these funds have now been separated into five investment portfolios. The funds within the investment portfolios support the payment of Basic claims, the Basic RSR and Employee Future Benefits, which are primarily the pension obligations of the Corporation. As well, the Corporation now has separate investment portfolios to support its extension lines of business.

The Corporation's overall investment portfolios totaled over $2.9 billion in assets as at February 28, 2019. The Basic line of business investment portfolios (Basic Claims Portfolio and RSR) is projected to grow to $2.4 billion in 2019/20 and to $3.0 billion by 2023/24.

Historically, the Corporation's investment income has been a major component of its income and has offset its annual underwriting losses. MPI's forecast of investment income is sensitive to changes in interest rates due to having over $2.0 billion in interest rate sensitive fixed income securities.

MPI forecasts its investment income utilizing a Naïve Interest Rate forecast. The original filing was based on the February 28, 2019 Government of Canada 10 Year Bond interest rate of 1.94%, which was updated on September 30, 2019 at a rate of 1.36%.

## *9.2. INVESTMENT MANAGEMENT*

Basic premiums are not set to fully recover claims costs; rather, MPI typically depends on investment income to break even. MPI's substantial investment portfolios are managed jointly by the Corporation and the Province of Manitoba, through a committee known as the Investment Committee Working Group (ICWG), which is co-chaired by MPI's Vice

President of Finance and Chief Financial Officer, and the Assistant Deputy Minister (ADM), Treasury Division, Manitoba Department of Finance.

MPI's assets must be managed in accordance with the Transitional Investment Policy Statement, approved by its Board of Directors on July 31, 2018[21].

### *9.3. IMPLEMENTATION OF THE ASSET LIABILITY MANAGEMENT STUDY (ALM)*

The background and details of the ALM Study, conducted by Mercer (Canada) Limited (Mercer) are set out in Board Order 159/18.

MPI's adoption of recommendations flowing from the ALM Study resulted in the separation of the single commingled investment portfolio into the five unique portfolios as set out above in Section 9.1.

Changes based on the implementation of the ALM Study (the ALM Strategy) resulted in the portfolio backing Basic Claims consisting of 100% fixed income assets, the portfolios backing Extension, SRE and Basic RSR being balanced with 50% growth assets and 50% fixed income assets, and the portfolio backing Pension having a slightly higher allocation to growth assets at 60%. Because the portfolios no longer share assets, the asset allocations can be changed or adjusted in the future as necessary.

[21] The policy was designated "transitional" to provide for the implementation of the recommendations of the Asset Liability Management Study, discussed below.

The target asset mixes for the Basic Claims, Basic RSR and Pension portfolios as of the commencement of the 2019/20 fiscal year was as follows:

| Targeted Weights | Basic Claims | RSR | Employee Future Benefits |
|---|---|---|---|
| **Fixed Income** | | | |
| Provincial Bonds | 60.0% | 20.0% | 0.0% |
| Corporate Bonds | 20.0% | 10.0% | 20.0% |
| MUSH Bonds* | 20.0% | 0.0% | 0.0% |
| Private Debt | 0.0% | 20.0% | 20.0% |
| **Total Fixed Income** | **100.0%** | **50.0%** | **40.0%** |
| **Public Equities** | | | |
| Canadian Equities | 0.0% | 12.0% | 10.0% |
| Global Equities | 0.0% | 13.0% | 18.0% |
| Global Low Volatility | 0.0% | 10.0% | 7.0% |
| **Total Equities** | **0.0%** | **35.0%** | **35.0%** |
| **Alternatives** | | | |
| Canadian Real Estate | 0.0% | 10.0% | 15.0% |
| Infrastructure | 0.0% | 5.0% | 10.0% |
| **Total Alternatives** | **0.0%** | **15.0%** | **25.0%** |

** MUSH bonds are Manitoba rural municipality, school division and healthcare facility bonds and debentures which are not tradable in the fixed income market. MUSH bonds are held at book value and the portfolio's value does not vary with changes in interest rates*

MPI reported that separation of the portfolios commenced at the end of the 2018/2019 fiscal year, and was substantially complete by the end of the second fiscal quarter ending August 31, 2019. The remaining transition includes liquidation of a portion of infrastructure investments to target weights and additional investment in private debt. MPI now expects to complete the transition in the fourth quarter of 2019/20 and first quarter of the 2020/21 fiscal year.

In Order 158/19, the Board directed the Corporation to file a post-implementation review of the ALM Strategy in the 2020 GRA. However, the Corporation advised that, as the implementation of the new investment strategy was still in transition, it was too early to complete a post implementation review. MPI acknowledged that it will be in a position to file the post implementation review in the next GRA.

MPI noted that the ALM Strategy, including the de-risking of the Basic Claims portfolio, reduced the Corporation's capital requirements by almost $100 million.

## *9.4. **INVESTMENT RETURNS***

Historically, the Corporation's investment income has been a major component of its income and has offset its annual underwriting losses. Basic net income was $208.5 million in 2018/19, primarily as a result of the realization of gains on the sale of investment assets in preparation for the transition from the consolidated investment portfolio into the five dedicated portfolios.

In the initial filing of the 2020 GRA, using a Naïve Interest Rate forecast of 1.94% at February 28, 2019, Basic investment income was projected to be $72.8 million for 2019/20 and $74.2 million for 2020/21. Based on the September 30, 2019 update, using a Naïve interest forecast update of 1.36% (reflecting a decrease of 58 basis points from the 1.94% used in the initial filing), the Corporation projected Basic investment income of $158.6 million which, after offsetting a revised underwriting loss forecast at $50.2 million, resulted in a forecast net income of $108.4 million for 2019/20.

## *9.5. **SHADOW PORTFOLIOS***

In Order 159/18, the Board expressed concern that the Corporation may have foregone an opportunity to hedge against long-term risks by rejecting Real Return Bonds (RRBs) and reducing real assets for the Basic Claims and Pension portfolios. In particular, it was generally recognized that RRBs provide the best standalone protection against inflation risk. As a result, the Board directed the Corporation to develop shadow portfolios for those portfolios, effective March 1, 2019, with the inclusion of RRBs as part of an optimal bond portfolio mix. The Corporation was also directed to engage Mercer to develop similar but separate shadow portfolios for Basic Claims and Pension, without constraints imposed by the Corporation.

In this Application, MPI filed a report prepared by Mercer, setting out the development and composition of the four shadow portfolios. In the shadow portfolios selected by MPI, the Corporation maintained its overall target asset mixes for each of the portfolios; namely, 100% fixed income for Basic Claims and 40% fixed income, 35% public equities and 25% alternatives for Pension. In consultation with Mercer, the Corporation converted a portion of its Provincial Government Bond holdings for a total weighting of 24% RRBs in the Basic Claims Shadow Portfolio, and converted a portion of its corporate bond holdings for a total weighting of 10% RRBs in the Pension Shadow Portfolio.

Dave Makarchuk, Sales and Strategic Growth Leader with Mercer's Canada's National Wealth Leadership Team, was called as a witness by MPI to report on the Shadow Portfolios. Mr. Makarchuk is a Fellow of the Canadian Institute of Actuaries. In the 2019 GRA, the Board accepted Mr. Makarchuk as an expert in the area of institutional investment planning and asset and liability matching, and continues to accept his expertise in that regard.

Mr. Makarchuk advised that the selection of a weighting of 24% RRBs for the Basic Claims Shadow Portfolio resulted from practical constraints, given the relatively small size of the RRB market in Canada, the dollar value of the allocation (approximately $550 million) and the time that would be required to acquire such assets. The total Pension Shadow Portfolio RRB allocation of 10% was explained as a conversion of 50% of the liquid public bonds in that portfolio based on considerations of the overall allocation to fixed income, the desire to obtain fixed income return from private debt as well as bonds, and some pass through of inflation protection by other assets in the portfolio, such as equities, infrastructure and real estate.

With respect to the unconstrained Shadow Portfolios selected by Mercer, the principal difference in investment strategy implemented by Mercer was the inclusion of growth assets, namely public equities and alternatives such as private equity, as part of the Basic Claims Shadow Portfolio, and the inclusion of leveraged investment in RRBs in both shadow portfolios. Leveraged RRBs, in this case 3xRRBs, represent an RRB exposure of $3 for every $1 invested by borrowing to acquire three times the RRBs purchased; the leverage cost being incorporated into the expected return.

Mercer also conducted a "same return/same risk" analysis, relative to the return/risk associated with MPI's asset mix prior to implementation of the ALM Study. That is, to develop an optimal asset mix, Mercer conducted an efficient frontier analysis of all asset classes it selected and determined those points along the frontier which represented the same risk and the same return previously associated with MPI's asset mix. Mercer then selected a point along the efficient frontier midway between the same return and same risk points. This analysis resulted in the selection of a total weighting of 16% for 3xRRBs for the Unconstrained Basic Claims Shadow Portfolio and an allocation of 8.5% for 3xRRBs for the Unconstrained Pension Shadow Portfolio. As indicated above, the Unconstrained Basic Claims Shadow Portfolio also included investment in asset classes other than fixed income resulting in an overall asset mix of 73% Fixed Income, 13% Public Equities and 14% Alternatives. The Unconstrained Pension Shadow Portfolio has an overall asset mix of 72% Fixed Income, 14% Public Equities and 14% Alternatives.

A comparison of the asset mixes for the corresponding portfolios is as follows:

**BASIC CLAIMS PORTFOLIOS**

| | Pre-ALM | Post-ALM | MPI RRB Shadow Portfolio | Unconstrained RRB Shadow Portfolio |
|---|---|---|---|---|
| Fixed Income | 70.0% | 100.0% | 100.0% | 73.0% |
| Treasury Bills | -- | -- | -- | -- |
| Real Return Bonds | -- | -- | 24.0% | -- |
| Short-term Bonds (Prov) | 6.5% | -- | -- | 22.0% |
| Mid-term Bonds (Prov) | 12.0% | 28.0% | 27.0% | 10.0% |
| Long-term Bonds (Prov) | 29.5% | 9.0% | 9.0% | -- |
| Mid-term Bonds (Corp) | 2.0% | 9.0% | 9.0% | -- |
| Long-term Bonds (Corp) | -- | 11.0% | 11.0% | -- |
| MUSH Bonds | 20.0% | 20.0% | 20.0% | 10.0% |
| Private Debt - Universe | -- | -- | -- | 15.0% |
| 3X Real Return Bonds | -- | -- | -- | 16.0% |
| Public Equities | 15.0% | -- | -- | 13.0% |
| Canadian Equity | 10.0% | -- | -- | 13.0% |
| U.S. Equity | 5.0% | -- | -- | -- |
| Alternatives | 15.0% | -- | -- | 14.0% |
| Private Equity | -- | -- | -- | 5.0% |
| Real Estate | 10.0% | -- | -- | 6.0% |
| Infrastructure | 5.0% | -- | -- | 2.0% |
| Diversified Growth Fund | -- | -- | -- | 1.0% |
| Risk/Return Metrics | | | | |
| Expected 10-Year Return | 4.2% | 3.1% | 3.1% | 4.5% |
| Surplus Volatility | 3.8% | 4.5% | 3.2% | 3.1% |
| Information Ration (Excess Return/Risk) | 0.47 | 0.17 | 0.22 | 0.71 |

## PENSION PORTFOLIOS

| | Pre-ALM | Post-ALM | MPI RRB Shadow Portfolio | Unconstrained RRB Shadow Portfolio |
|---|---|---|---|---|
| **Fixed Income** | **70.0%** | **40.0%** | **40.0%** | **72.0%** |
| Real Return Bonds | -- | -- | 10.0% | -- |
| Short-term Bonds (Prov) | 6.5% | -- | -- | -- |
| Mid-term Bonds (Prov) | 12.0% | -- | -- | 20.0% |
| Long-term Bonds (Prov) | 29.5% | -- | -- | -- |
| Long-term Bonds (Corp) | 2.0% | 20.0% | 10.0% | -- |
| MUSH Bonds | 20.0% | -- | -- | 10.0% |
| Private Debt - Universe | -- | -- | -- | 15.0% |
| Private Debt - Long | | 20.0% | 20.0% | -- |
| 3X Real Return Bonds | -- | -- | -- | 8.5% |
| 3X Long-Term Bonds (Prov) | -- | -- | -- | 18.5% |
| **Public Equities** | **15.0%** | **35.0%** | **35.0%** | **14.0%** |
| Canadian Equity | 10.0% | 10.0% | 10.0% | 14.0% |
| U.S. Equity | 5.0% | -- | -- | -- |
| Global Equity (large cap) | -- | 18.0% | 18.0% | -- |
| Global Equity (low vol) | -- | 7.0% | 7.0% | -- |
| **Alternatives** | **15.0%** | **25.0%** | **25.0%** | **14.0%** |
| Private Equity | -- | -- | -- | 6.0% |
| Real Estate | 10.0% | 15.0% | 15.0% | 3.0% |
| Infrastructure | 5.0% | 10.0% | 10.0% | 5.0% |
| **Risk/Return Metrics** | | | | |
| Expected 10-Year Return | 4.2% | 5.6% | 5.5% | 5.0% |
| Return Volatility | 5.4% | 7.7% | 7.5% | 9.3% |
| Surplus Volatility | 4.9% | 8.4% | 8.0% | 3.2% |
| Information Ration (Excess Return/Risk) | 0.22 | 0.31 | 0.31 | 0.66 |

Mercer's report illustrated that, relative to a real liability benchmark which includes inflation risk, the portfolios selected by the Corporation pursuant to the ALM Study assume greater risk with a lower expected return than the asset mix prior to implementation. As well, the portfolios selected by the Corporation, pursuant to the ALM Study, assume greater risk than any of the corresponding shadow portfolios. Although the selected portfolios resulted in the same or a slightly better return than three of the corresponding shadow portfolios, the expected return of the corresponding Unconstrained Basic Claims Shadow Portfolio was greater by 1.4% annually.

MPI explained that the Corporation's risk appetite was chosen by MPI's Board of Directors on the basis of a nominal liability benchmark, which does not include inflation risk. According to MPI, there is no reason to believe inflation will rise above 2% for any prolonged period of time and, therefore, the nominal liability benchmark is the best benchmark. Furthermore, the Unconstrained Shadow Portfolios contain investment classes (some of the growth asset classes) and investment strategies (leveraging) that the MPI Board of Directors was not prepared to consider, given the primary objectives of the ALM Study. As such, the comparison would be of limited value.

In Order 159/18, the Board also directed MPI to file a report comparing the returns of the Shadow Portfolios with those implemented by the Corporation. In the initial filing, MPI was able to provide results for March and April, 2019 which were updated during the course of the hearing. However, in reviewing these results, it was noted that the implementation of the ALM Study's recommendations was not substantially completed until the end of the second fiscal quarter. In addition, Mr. Makarchuk advised that, although the Shadow Portfolios will help illustrate the performance of different investment strategy decisions over periods of time, because of the different perspectives on risk reflected in the different sets of portfolios, especially in the Unconstrained Shadow Portfolios, any reasonable conclusions to be drawn as to the relative benefits of one investment strategy versus the other requires at least a full market cycle, which is generally five years or more.

## 9.6. ***INTERVENERS' POSITIONS***

**CAC**

CAC was critical of the development of the Shadow Portfolios. CAC pointed out that they were not optimized along efficient frontiers as the corresponding ALM Study portfolios had been. As well, the Shadow Portfolios were established with a significantly lower level of real risk, rather than a comparable level of risk, to that of the corresponding ALM Study portfolios.

The Unconstrained Shadow Portfolios were not truly unconstrained, but rather, were constrained to only those asset classes approved by the MPI Investment Committee. In addition, the "same return/same risk" analysis was carried out relative to the MPI asset mix prior to the implementation of the ALM Study, rather than to the corresponding asset mixes selected by MPI after the implementation of the ALM Study. Again, the Shadow Portfolios were established with a significantly lower level of real risk rather than a comparable level of risk to that of the corresponding ALM Study portfolios.

As a result, CAC questioned whether the Shadow Portfolios achieved the Board's objective of being able to assess whether MPI has foregone an opportunity to hedge against long term risks by rejecting RRBs.

CAC recommended that MPI be directed to revise its Shadow Portfolios to compare the risk and return to MPI's current portfolios against a real liability benchmark, and file its proposed revised Shadow Portfolios with the Board by February 1, 2020 with interveners of record being provided an opportunity to file comments.

In addition, CAC expressed concern that, notwithstanding the assertion that the Basic Claims portfolio has been de-risked, the Basic Claims portfolio is too highly concentrated; the investments in provincial, federal and corporate bonds have relatively high correlation. From an asset perspective, this is risky because high correlations tend to impair the benefits of diversification for assets. In exchange for more stable average premiums, MPI appears to be prepared to accept lower returns and higher average premiums.

**CMMG**

CMMG echoed the need to better match longer lived liabilities with growth assets. It noted that PIPP claims make up 91% of the total loss cost for the motorcycle class as compared to 29% for private passenger vehicles. Given the length of PIPP claims, the motorcycle class is particularly vulnerable to reductions in interest rates.

CMMG proposed that MPI and the Board consider some model that would ameliorate the effect of changes in investment income on the Basic Claims reserve which occurs by the reduction in interest rates.

## *9.7. BOARD FINDINGS*

The Board acknowledges that the recommendations of the ALM Study have resulted in significant changes to the Corporation's investment portfolios and, although preliminary results are favourable, the 2019/20 fiscal year has been transitional. Although substantially completed by the end of the second fiscal quarter, the transition is not expected to be fully completed until the first quarter of 2020/21.

The Board further notes that the Corporation is forecasting an overall average rate of return of approximately 3.5% and is forecasting a net loss of $10.1 million for the 2020/21 fiscal year.

Accordingly, the Board intends to continue its review of the results of the Corporation's ALM Strategy in the 2021 GRA. Therefore, the Board directs that in the 2021 GRA, MPI file a post-implementation review of the ALM Strategy. The review shall provide an update on the progress of implementation of the new portfolios, the final disposition of the prior comingled portfolio to fund new investment classes, interest rate risk exposure changes, investment income reporting changes including the allocation methodology for balance sheet and investment income and any Investment Policy Statement changes.

In addition, the Board is concerned as to the disproportionate impact interest rate changes appear to have on the Motorcycle class. Accordingly, while the Board cannot direct the Corporation's particular investment strategy, the Board does direct the Corporation to consider an investment or other strategies to ameliorate the effect of such changes, including the inclusion of equities or other growth assets in the reserves supporting long-tail liabilities, and report on the results of that review in the 2021 GRA.

With respect to the Shadow Portfolios, as the Board previously stated in Order 159/18, the Board directed MPI to undertake the shadow portfolio exercise in order to assess the reasonableness of Basic Claims and Pension portfolios selected by the Corporation as a result of the ALM Study and, in particular, to determine how the inclusion of RRBs or the removal of constraints might affect those portfolios. An examination of the composition and design of the shadow portfolios necessarily follows, however, that examination must be proportional to and reflective of the purpose of the exercise, which was to provide the Board with a general sense of the performance of portfolios without constraints imposed by MPI.

As was made clear in the evidence, it will take some time, perhaps five years or more, before reasonable conclusions can be drawn. At this time, the Board is satisfied that the current Shadow Portfolios are sufficient to provide the general sense of relative performance it intended. In the meantime, the Board will continue to monitor the respective performance of the actual and Shadow Portfolios supporting Basic Claims and Pension and, therefore, orders the Corporation to file, in the 2021 GRA, a report comparing the returns of those shadow portfolios with those selected by MPI.

In addition, in order to continue to monitor the performance of the Corporation's investments the Board also directs that in the 2021 GRA, the Corporation provide a report comparing the returns of the Basic Claims, Pension and RSR portfolios with those of SAF, ICBC, Workers' Compensation Board, Civil Service Superannuation Board, and Teachers' Retirement Allowance Fund.

# 10. ROAD SAFETY

The Corporation acknowledged that successful loss prevention and road safety strategies can minimize economic and social costs to ratepayers.

The Corporation reported that it is forecasting to spend $13.9 million in Basic Road Safety and Loss Prevention programs in 2019/20. The largest component is spent on Driver Education including the High School Driver Education program at approximately $4.0 million. Impaired Driving prevention strategies are the second largest expenditure, at $2.8 million, followed by Speed Management at $0.9 million. The balance of the Road Safety expenditures are for Advertising and Sponsorships, Road Safety Programming, and RoadWatch, which is Enhanced Enforcement.

## *10.1. ROAD SAFETY TECHNICAL CONFERENCE*

The issue of road safety was reviewed in detail in this GRA, following the Board's direction as set out in Order 130/17, following the 2018 GRA. In Order 130/17, the Board commented that road safety and loss prevention is a complex, multi-faceted area involving multiple stakeholders, and that given this complexity, for the purposes of future GRAs, road safety and loss prevention would be best addressed by devoting a Technical Conference to the many issues involved in reviewing road safety and loss prevention. The Board directed that the Technical Conference take place in early 2019, so that the information generated from the Technical Conference could be filed in the 2020 GRA.

The Technical Conference was held on April 4 and 5, 2019, and was facilitated by Ward Keith, who was retained by the Board both to facilitate the conference, and to prepare a report following it. Mr. Keith was employed by MPI for 34 years before retiring on January 1, 2019. Mr. Keith's most recent position with MPI was as the Vice-President of Business Development and Chief Administrative Officer. Mr. Keith's report was filed by MPI as part of the Application, and Mr. Keith was called by the Board in the public hearings to testify about the Technical Conference.

The participants in the Technical Conference included MPI and a number of other stakeholders in the area of road safety, including CAC, BW and CMMG. The Technical Conference covered the current state of road safety in Manitoba, the current state of road safety governance, and MPI's road safety programs, priorities and initiatives. Input was received from stakeholders, and MPI committed to take on certain action items from the conference.

In the Application, the Corporation reported on its response to and progress on the action items. As a result, the Corporation advised that, among other things:

- It plans to use social costs of collisions in Manitoba when setting priorities, developing business cases, and allocating resources during program design and implementation;

- It should revisit its current measure of public support for its road safety efforts, and will continue to evaluate how it measures its road safety efforts to ensure they achieve intended outcomes; and

- The Provincial Road Safety Committee would engage with the City of Winnipeg and other municipalities to ensure alignment between municipal and provincial road safety strategies, principles, and objectives.

## *10.2. ROAD SAFETY PROGRAMMING AND PRIORITIES*

MPI is the co-Chair of the Provincial Road Safety Committee (the Committee), which has developed the 2017-2020 Manitoba Road Safety Plan, *Road to Zero*. In this Application, the Corporation filed the first progress report following *Road to Zero* and reported that in 2018, the technical working groups within the Committee provided recommended action items to the Government of Manitoba for consideration. The Government advised that it is moving forward on the priority action items, which include data availability for stakeholders, and passive speed enforcement. MPI advised that on the issue of passive speed enforcement, it intends to be a critical stakeholder in funding, strategy, and decision-making, and is willing to engage with the City of Winnipeg, the Winnipeg Police Service, and other government departments to share data and develop a program to target high-risk intersections.

The *Road to Zero* progress report showed that total crashes per 100,000 have been trending upwards in the past ten years in Manitoba, but fatalities have trended down in the past five years. Road deaths in Manitoba per 100,000 in 2008 were 7.6, and in 2017 were 5.4. However, the rate of serious injuries resulting from collisions had remained stable until recently, with the rate of serious injuries per 100,000 in Manitoba growing from 23.2 in 2014, to 30.5 in 2017. The Corporation advised that the causes or contributors to this recent trend are as yet unknown.

The Corporation's Road Safety Operational Plan sets out its high-level goals and plans, and is prepared every three years. The Corporation is currently working within the 2017-2020 plan, with the next plan to cover 2020-2023, which it anticipates filing in the 2021 GRA.

The Road Safety Operational Plan also contains a priority-setting framework that informs how the Corporation will allocate the funds within its road safety budget. For the 2017-2020 plan, the Corporation's top three priorities for programming were identified as Distracted Driving, Speed, and Impaired Driving. The Corporation reported in this Application that it is currently working on a number of initiatives using education, awareness and training initiatives, continued stakeholder engagement, enforcement (including automated enforcement and Enhanced Enforcement), and the use of engineering and technology. The latter includes research on the use of telematics to improve road safety, and partnering with key stakeholders to research the causes of collisions at high-risk intersections. The Corporation is also looking to improve its evaluation framework to clarify its objectives and ensure outcomes are measured.

The Corporation also reported that its 2019 Loss Prevention Strategy covered the following areas:

- "Save the 100" public awareness campaign;
- High School Driver Education Program Redevelopment (Driver Z);
- Bicycling Education and Skills Training (BEST) in schools, along with other education in elementary and secondary schools;
- Public awareness to reduce auto theft;
- Continued Enhanced Enforcement funding;
- Strengthening the Driver Improvement and Control program; and
- Addressing drug impaired and distracted driving.

The data demonstrate that distracted driving, impaired driving, and speed are the largest contributors to serious collisions. On the issue of drug impaired driving, in the 2018 GRA, the Corporation reported on the results of a September 2016 survey conducted to gather data on the prevalence of drugs in Manitoba drivers. That survey found that 124 out of 1,230 drivers in the survey (10%) tested positive for drugs. A follow-up survey was planned for 2019; however, in this Application the Corporation reported that this did not take place as a result of some feedback received from law enforcement on the methodology of the survey. The Corporation advised that it is waiting until a consistent methodology can be applied across the provinces before it undertakes further data collection.

The Corporation also advised that it recognizes that it has a role to play by focusing on the basics of vehicle registration and driver training and licensing, and has begun establishing greater access to these services in major northern communities, to serve First Nations communities.

### *10.3. <u>INTERVENERS' POSITIONS</u>*

**CAC**

CAC expressed concern over the increase in serious injuries resulting from collisions over the period from 2014 to 2017, as well as the disproportionate number of fatalities in rural areas, with failure to use seatbelts being a problem in rural Manitoba. It also expressed that there is currently no evidence that MPI is able to assess whether it is optimizing its road safety investments, and no provincial road safety budget has been issued as part of the Provincial Road Safety Committee. CAC expressed concern that no First Nations or Indigenous political organizations were involved in the Road Safety Technical Conference, nor is there any such representation on the Provincial Road Safety Committee.

CAC stated that the Board should give consideration to holding a Technical Conference on road safety every two years, to feed into the GRA process.

CAC made the following recommendations:

- That in order to demonstrate road safety portfolio optimization, MPI should be directed to engage with the Provincial Road Safety Committee to prepare a provincial road safety budget, listing Manitoba road safety initiatives, lead and other players, and associated budgets, which should be filed in the 2021 GRA;

- That MPI should be directed to engage with Manitoba First Nations political organizations and First Nations toward developing a First Nations road safety strategy and report back in the 2022 GRA on the progress of the strategy; and

- That MPI should be directed to engage with Manitoba consumers, in addition to stakeholders, as part of its road safety program development.

## BW

BW stated that MPI has become more transparent in its approach to road safety and has made improvements through *Road to Zero* and the use of social costs to measure the impact of collisions. It strongly supports the use of the Vision Zero methodology and is supportive of MPI's commitment to make use of that methodology in its next Road Safety Operational Plan.

BW expressed a concern that collisions are not on a downward trend for vulnerable road users, and that injury rates from collisions have trended upwards over the last decade. On the issue of the budget, in determining whether MPI has optimized its road safety budget, the consideration ought to be whether it is sufficient to enable a significant reduction in the cost of injuries to vulnerable road users in the short and long-term. BW was also critical of the fact that the road safety budget has remained relatively flat and stated that MPI needs to show results in reducing harm on the road, even if doing so will incur costs substantially more than what it has been spending. At the current level of spending, the road safety effort is not adequate. BW also took the position that greater resources need to be applied to road safety education and driver behaviour modification, in a manner that will achieve a decrease in collisions and injuries.

In BW's view, MPI needs to do a better job of data collection, to identify knowledge gaps in drivers, both with respect to new driver training and for problem drivers, and that knowledge gaps among drivers should be used as part of the priority-setting process. Accordingly, MPI should gather the data from a few thousand experienced drivers a year to understand the gaps in the road knowledge of these drivers.

BW made the following recommendations:

- That MPI be directed to commence to collate the data from its driver training and testing in order to identify the gaps in road safety knowledge among Manitoba drivers;

- That MPI be asked to clarify whether informational road signs are within its role or investigate their effectiveness as it relates to costs in increasing road safety;

- That MPI be directed to conduct a thorough analysis to determine whether larger vehicles, such as pickup trucks, are causing greater damage to other road users than smaller vehicles such as sedans, and if so, whether their rate fully reflects those additional costs; and

BW also commented that the Board should continue to use the road safety technical conferences as a method to push forward on the road safety file, but must also ensure that the file returns before the Board on a consistent and regular basis for proper oversight and direction, and not as infrequently as every three years, as MPI had suggested.

### *10.4. __BOARD FINDINGS__*

The Board acknowledges MPI's continued efforts to increase road safety and reduce claims costs accordingly. The Board was pleased to receive the report on the 2019 Road Safety Technical Conference. Based on the breadth and depth of the information in the report prepared by Mr. Keith, and the testimony received by the Board in the public hearings, the Board finds that the process was successful, and contributed to an efficient review of the issue of road safety in this Application.

In this spirit of efficiency, the Board intends to continue the process of periodic technical conferences that feed into the GRA process. Therefore, the Board directs that a Technical Conference on road safety take place in early 2021, with the results of the conference to be reported on in the 2022 GRA. The Technical Conference shall be wide-ranging and cover issues such as the Corporation's road safety priorities and programming, budget, and the continued progress of its efforts to address road safety through engagement with other stakeholders. The Board expects that, given the foregoing, the issue of road safety will not be reviewed in the same level of detail until the 2022 GRA. This will provide sufficient time to measure the effectiveness of programming. In the 2021 GRA, the Board expects to receive information about the expenditures for road safety and loss prevention programs.

The Board acknowledges CAC's comments that there is a need for representation from First Nations leadership in the Technical Conference and accordingly will ensure that broad representation from First Nations is sought.

The Board acknowledges the evidence in this hearing which points to the need for further engagement with consumers generally, and with First Nations in particular, on road safety issues. The Board encourages MPI to further engage with First Nations in order to develop a First Nations road safety strategy, and to engage with Manitoba consumers on the issue of road safety. The Board directs MPI to report back on its efforts in that regard in the 2022 GRA.

The Board also accepts that there is a potential benefit to MPI in conducting an analysis of the impact that larger vehicles, such as pickup trucks, are having on the proportion of damage to smaller vehicles and to vulnerable road users. The outcome of such an analysis could serve to factor in to the Corporation's road safety planning and programming in the future. The Board therefore directs MPI to conduct an analysis of whether such larger vehicles are causing a disproportionate amount of damage to smaller vehicles and vulnerable road users and report back on its findings in the 2022 GRA.

The Board finds that further data collection to identify knowledge gaps in new drivers and problem drivers would be beneficial to MPI's road safety priority-setting process. The Board therefore directs MPI to collect the data from its driver training and testing in order to identify the gaps in road safety knowledge among Manitoba drivers, and report on its progress in that regard in the 2022 GRA.

Lastly, the Board recognizes the ongoing work of the Provincial Road Safety Committee, which brings together input and perspectives from multiple stakeholders. While MPI may wish to explore with Committee members whether its road safety budget is optimized, and whether it should be increased, the Board is of the view that it is not its role within this process to direct that MPI lead an effort to have the Committee prepare a provincial road safety budget.

## 11. PRESENTERS

The Board received submissions from a series of presenters in the public hearings. The presenters are not sworn witnesses and were not cross-examined. As such, although the content of the presentations is not evidence, the Board, MPI and the interveners received the information presented for consideration only. As always, MPI will respond to each presenter in writing with respect to the presentation made to the Board and file a copy of the response with the Board.

**TappCar**

Mr. Cameron MacKay is the General Manager of TappCar Inc., a Transportation Network Company (TNC) operating in Manitoba. He appeared before the Board, together with Mr. Dhaval Patel, Controller, to make submissions about MPI's Vehicles for Hire (VFH) insurance model. TappCar has been operating in Manitoba for approximately one and a half years and has completed over one million rides and recruited over 1,200 full and part time drivers.

Mr. MacKay advised that TappCar believes the requested rate increases are manageable and fair. He advised that the MPI VFH insurance model provides four primary benefits for consumers: more competition and choice in the marketplace; increased safety on the roads; no cross subsidization of ridesharing insurance by the public; and drivers can adequately manage their insurance coverage with time bands.

With respect to competition, TappCar noted that other jurisdictions require large blanket insurance policies which create a barrier to entry for smaller TNCs. The flexibility of the MPI product has allowed 18 companies to enter the market. As well, such blanket policies have an impact on road safety as the coverage is not attributable to the individual driver and, therefore, permits a driver with a poor driving record to continue to drive without additional cost. Under the MPI insurance product, a poor driving record will directly impact the driver's insurance costs, thereby promoting road safety.

Finally, the flexibility of the different time bands for different drivers under the MPI product permits the driver to drive when they choose and to limit their cost by selecting those periods of time to drive.

TappCar also proposed to share data with MPI, to enable MPI to better manage the costs and understand how the industry is progressing. In turn, TappCar would like to be able to access information in real time to determine whether a driver's insurance is up-to-date, which would allow TappCar to prevent access to its platform, and thereby fares, by any uninsured driver. As well, TappCar would like to develop a brochure or postcard in conjunction with MPI, to explain the ridesharing insurance model, the time bands and what a driver should do in the event of an accident.

**Automotive Trades Association**

Ms. Theresa Jachnycky, Mr. Paul Lapointe and Mr. Joel Mc Phail appeared before the Board on behalf of Automotive Trades Association (1986) Inc. (ATA). ATA is a volunteer organization formed to promote and further the interests of its 150 members regularly engaged in the automotive repair industry in Manitoba. The ATA believes that an integrated system of insurance and repair delivery can only continue to benefit consumers with the investment, support and fair dealing of MPI. However, the representatives expressed concern that their members were experiencing challenges due to MPI's culture of not being fair and transparent and not being committed to common goals.

They expressed particular concern as to the affordability of the required training, equipment, technology and information to ensure driver, occupant and third party safety post-repair. Qualifying for I-Car Gold certification and MPI accreditation has become increasingly expensive. ATA gave details of these increased costs and stated that this price spike will place even more pressure on repairers' ability to retain accreditation leading to possible closures, consolidations or non-accredited repairers. Rural and remote locations are more at risk for losing accreditation.

The ongoing and increasing costs of obtaining crucial equipment, technology and information may lead to longer queues, longer cycle times and further travel distances for customers as fewer shops will be able to afford the specialty equipment required to retain the technical ability to perform safe repairs.

In addition, the use of after-market and recycled parts is resulting in diminished value of vehicles post-repair. MPI promises to pay for repairing vehicles to "pre-accident condition" but repairing without OEM parts, according to ATA, is misleading and not transparent. ATA questioned whether MPI has approached OEMs for better pricing as alternative to after-market prices and whether a customer can purchase Extension coverage for OEM parts.

Further, ATA members have experienced increasing red tape, inefficiencies and offloading of costs in their dealings with MPI and the systems MPI employs. This requires increased personnel and administrative workload for the repairers. By way of example, there is an issue with in-process and post-repair vehicle status as the Mitchell Connect system does not integrate with its own Mitchell Repair or other proprietary systems, requiring double entry.

Finally, ATA stated that there is an absence of stakeholder alignment. Primarily this relates to a refusal to release severity data to Mitchell International, as private insurance companies do, for benchmarking in Mitchell's industry trends.

ATA advises that they anticipate applying for Intervener status in the 2021 GRA.

**Doug Houghton**

Mr. Houghton is a motorcyclist and currently a director of CMMG. He has previously served as Vice-President and President of CMMG, however, he made clear that he appeared before the Board in his personal capacity, and not as a representative of CMMG.

Mr. Houghton began by noting that attitudes towards motorcycles and motorcyclists have change substantially for the positive, and motorcyclists are now recognized as vulnerable road users. CMMG now enjoys a more collaborative relationship with MPI and Manitoba Infrastructure, which mostly involves safety issues. Mr. Houghton believes that driver and motorcycle training is the best safety initiative. However, the cost of these programs, in addition to the insurance premiums for motorcycles, has resulted in minimal uptake.

Mr. Houghton expressed shock upon learning that MPI's request in this GRA for the motorcycle class increased from 3.9% to 5.1%. He also expressed the difficulty CMMG members have to understand and accept how an overall rate decrease could result in an increase for motorcyclists, while accident frequency in the classification has been declining.

Mr. Houghton further expressed concern as to what he considered unprecedented government interference by regulating the RSR level to $350 million and directing MPI to continue with private insurance brokers and not to move to service online. He also believes that PIPP premiums are not being applied equally as motorcycles are not involved in a greater percentage of accidents and there are a greater percentage of motorcycle owners with full DSR merits than automobile owners. A greater share of PIPP premiums should be allocated to larger vehicles and to driver licensing to avoid situations in which vehicles are transferred to family members with a better vehicle premium discount. Further, consideration should be given to multi-vehicle discounts, as are available in other jurisdictions. Motorcyclists, as a general rule, do not share their vehicles with other drivers and, as a result, their motorcycle is not in use while the owner is driving another vehicle.

**Janice Lukes**

Ms. Lukes is the City of Winnipeg Councillor for the Waverly West Ward. Her presentation focused on road safety and the importance of public engagement and that education and awareness campaigns should be sensitive to the language and cultural differences that exist within the City of Winnipeg.

Ms. Lukes advised that she had read Mr. Keith's report arising out of the Technical Conference. Although the Technical Conference included large stakeholders, representative of the public, she stated there was a missed opportunity to engage the general public in conversations on road safety. In her experience, there is a tremendous benefit in public engagement which not only educates the public, but also empowers the public, helping citizens to mobilizing in their communities.

She expressed the view that MPI has no tools for community engagement and will not send representatives to speak to residents at community meetings. Accordingly, she recommended that MPI appoint a public spokesperson to engage with communities on MPI's safety programs and to answer questions about road safety.

Ms. Lukes noted that Winnipeg's growth is by immigration, giving rise to her comments concerning language and cultural sensitivity. She strongly recommended that MPI act, in a timely manner, on aspects of the Technical Conference on Road Safety and to ensure education and awareness campaigns are sensitive to the language and cultural differences that exist within the City of Winnipeg.

**Duffy's Taxi and Unicity Taxi**

On October 17, 2019, the Board received correspondence from legal counsel representing Duffy's Taxi (1996) Ltd. and Unicity Taxi Ltd. (Taxi Companies), requesting an opportunity to make a presentation to the Board. Counsel advised that the Taxi

Companies had received representations from MPI in June 2019 concerning premium increases which caused the Taxi Companies not to seek intervener status in the current GRA. However, the Taxi Companies subsequently became aware that the premium increases being requested by MPI were substantially greater than they had understood.

Given the late date of receipt of this request, the Board permitted the Taxi Companies an opportunity to make a written presentation, with an opportunity for MPI to respond. The presentation and response letters were received by the Board for information purposes only.

The Taxi Companies advised that on June 20, 2019, representatives of MPI met with representatives of the taxi industry. The Taxi Companies say that at this meeting, MPI advised that the overall average insurance premiums for the Taxicab Vehicle-for-Hire class (Taxi VFH) would increase approximately $300, or an approximate 3% increase. They were also advised that this would represent an overall average increase for the Passenger Vehicle-for-Hire class (Personal Passenger VFH) of approximately 20%. However, on review of the amended Application, the Taxi Companies understood that the increase MPI was seeking would result in a $1,270.00 overall average increase for the Taxi VFH class, or about 12.3%. In turn, the requested increase for Personal Passenger VFH class was only $145.00 to $150.00, or about 10%.

In addition, on reviewing RM Appendix 11 - Vehicle-for-Hire Claims Experience, the Taxi Companies believed that the Taxi VFH class, with a loss ratio of 85.23%, is subsidizing the Personal Passenger VFH class, with a loss ratio of 129.82%.

In response, MPI advised that the June 20th meeting was a quarterly meeting between representatives of MPI and the taxi industry at which a number of topics were discussed. One topic was a proposed mid-term rate increase for the VFH Extension All-Perils coverage which was determined to be significantly deficient. Implementation of this increase will now not take place until March 1, 2020 and the proposed increase for this

Extension insurance coverage is specific to the Taxi VFH class (up to $300.00) and the Personal Passenger VFH class (20% for those with four time bands).

Accordingly, MPI stated that there was a misunderstanding, as a result of the taxi representatives' mistaken belief that the rate increase being discussed related to Basic insurance rates, rather than Extension All-Perils insurance rates. MPI went on to state that allowing the DSR vehicle premium discounts to be applied to taxi registered owners, commencing in 2018, resulted in an overall reduction in Basic insurance rates of 21% for the Taxi VFH class. At that time, it was anticipated that, due to competition from other VFH groups, the loss ratio for the Taxi VFH class would decrease. Unfortunately, the taxi class claims experience has not changed since implementation of VFH and, as a result, there is a need for the proposed 10.53% Basic rate increase for the Taxi VFH class for 2020/21. Finally, MPI stated that the Taxi Companies' suggestion that the Taxi VFH class is subsidizing the Personal Passenger VFH class is not accurate, as the Taxi VFH policy holders are not subsidizing the other VFH policy holders.

In reply, the Taxi Companies say that the June 20th discussion was in respect of the proposed rate increase in the 2020 GRA, and not about an interim increase. Further, this year's requested increase in premiums widened the gap between the Taxi VFH class and the Personal Passenger VFH class, rather than narrowing the gap to create a more level playing field. Therefore, the Taxi Companies submitted that the proposed increase in premiums was unreasonable, unfair and inconsistent with the relevant statistical data.

## 12. IT IS THEREFORE RECOMMENDED THAT:

**12.1** Agile be tested by the Corporation on a larger-scale project (a cost of approximately $10 million), before the Corporation fully commits to Agile for all aspects of Project Nova.

## 13. <u>IT IS THEREFORE ORDERED THAT:</u>

**13.1** There shall be an overall 0.6% rate decrease in compulsory vehicle insurance premiums for the 2020/21 insurance year, effective March 1, 2020, for a period of thirteen (13) months, for all major classes combined, which rate decrease BE AND IS HEREBY APPROVED. This rate decrease is as derived in accordance with Accepted Actuarial Practice in Canada, based on a Naïve interest rate forecast taking into account interest rates as at September 30, 2019.

**13.2** The Corporation shall file for approval by the Board, within five (5) business days from the date of this Order or such other time as may be agreed to by the Corporation and the Board, a table of indicated rate changes and approved rate changes (i.e., after capping and rebalancing) by Major Class (and overall) reflecting the overall approved 0.6% rate decrease.

**13.3** The Corporation's request that there be a discontinuance of the anti-theft discount for newly insured vehicles, and no changes to miscellaneous permits and certificates, the Driver Safety Rating system, vehicle premium discounts, service and transaction fees, or fleet rebates and surcharges BE AND IS HEREBY APPROVED.

**13.4** In the 2021 GRA, the Corporation shall bring forward its rate application derived in accordance with Accepted Actuarial Practice in Canada, based on a Naïve interest rate forecast.

**13.5** Section 2(a) and 3 of the *Reserves Regulation*, M.R. 76/2019, enacted pursuant to *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c P215, are *ultra vires* the regulation-making authority of the Lieutenant Governor-in-Council and accordingly are not binding on the Board.

**13.6** The Board hereby approves the Corporation's proposed Capital Management Plan as presented, including the 100% Minimum Capital Test Basic target capital level, for the 2020/21 and 2021/22 insurance years.

**13.7** With respect to the Driver Safety Rating (DSR) system, the Corporation shall:

(a) File information in the 2021 GRA as to which rating model it intends to proceed with;

(b) File a pricing examination in the 2021 GRA, including the financial impact on premium revenue and the cost of modifying the system, of the Registered Owner and Primary Driver rating models;

(c) File information in the 2021 GRA as to whether it has collected data to recalibrate the amounts of driver premium to be charged under DSR system to be more statistically sound, based on experience; and

(d) Conduct a review of best practices for rating models in other Canadian jurisdictions and file the results of the review in the 2021 GRA.

**13.8** In the 2021 GRA, the Corporation shall file its updated Information Technology Strategy.

**13.9** In the 2021 GRA, the Corporation shall file updated Information Technology staff and consultant numbers, including titles and responsibilities.

**13.10** The Corporation shall meet with the Board Advisors on a date to be agreed, but no later than six (6) months prior to the filing of the 2021 GRA, wherein the Corporation will provide the Board with an update on the following Information Technology (IT) initiatives:

(a) Project Nova, including an update on all aspects of the project including but not limited to resourcing, training, component progress, budget and prototypes;

(b) IT staffing and consultant strategy and progress towards reduction;

(c) IT Strategy;

(d) Progress on IT Information Security, IT Risk Management Process, IT Technology Risk Management, and Enterprise Architecture;

(e) Agile implementation, training, key performance indicators and overall progress within the Corporation, and discussion of an additional pilot project using Agile;

(f) Physical Damage Re-Engineering;

(g) High School Driver Education Redevelopment;

(h) Credit Card Strategy and related PCI DSS;

(i) $BI^3$/Fineos; and

(j) Finance Re-Engineering.

**13.11** In the 2021 GRA, the Corporation shall file a post-implementation review of its Asset Liability Management Strategy. The review shall provide an update on the progress of the implementation of the Corporation's new investment portfolios, the final disposition of the prior commingled portfolio to fund new investment classes, interest rate risk exposure changes, investment income reporting changes, including the allocation methodology for balance sheet and investment sheet income, and any Investment Policy Statement changes.

**13.12** The Corporation shall consider an investment strategy, or other strategy, to ameliorate the effect of interest rate changes on the Motorcycle Class, including the inclusion of equities or other growth assets in the reserves supporting long-tail liabilities, and report on the results of that review in the 2021 GRA.

**13.13** In the 2021 GRA, the Corporation shall file a report comparing the returns of the shadow portfolios for the Basic and Pension portfolios with those selected by MPI.

**13.14** In the 2021 GRA, the Corporation shall provide a report comparing the returns of the Basic Claims, Pension and RSR portfolios with those of Saskatchewan Auto Fund, Insurance Corporation of British Columbia, Workers' Compensation Board, Civil Service Superannuation Board, and Teachers' Retirement Allowance Fund.

**13.15** A Technical Conference shall be held on road safety and loss prevention in early 2021, which shall be initiated by the Board but on such dates as are mutually agreed as between the Board and MPI, with the results of the conference to be reported on in the 2022 GRA. The Technical Conference shall be wide-ranging, covering the Corporation's road safety priorities and programming, budget, and continued progress of its efforts to address road safety through engagement with stakeholders.

**13.16** In the 2022 GRA, the Corporation shall report on its engagement with First Nations and Manitoba consumers generally on the issue of road safety, as well as any progress made in the development of a First Nations road safety strategy.

**13.17** The Corporation shall conduct an analysis of whether larger vehicles, such as pickup trucks, are causing a disproportionate amount of damage to smaller vehicles and vulnerable road users, and report back on its findings in the 2022 GRA.

**13.18** The Corporation shall collect data from its driver training and testing program, in order to identify the gaps in road safety knowledge among Manitoba drivers, and report on its progress in that regard in the 2022 GRA.

**13.19** The Corporation shall file with the Board, on or before April 1, 2020, a report advising as to the status of its compliance with each of the directives contained herein.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Irene A. Hamilton, Q.C."
Panel Chair

"Darren Christle, PhD, CCLP, P.Log., MCIT"
Secretary

Certified a true copy of Order 176/19
issued by the Public Utilities Board

Secretary

## Appendix A

## Glossary of Acronyms and Terms

| | |
|---|---|
| AAP | Accepted Actuarial Practice in Canada |
| Application | 2020 General Rate Application |
| AOCI | Accumulated Other Comprehensive Income |
| Basic | Universal compulsory automobile insurance |
| Board | Public Utilities Board |
| CLEAR | Canadian Loss Experience Automobile Rating |
| CMP | Capital Maintenance Provision |
| Corporation | Manitoba Public Insurance Corporation |
| DART | Driving Ahead in Real Time |
| DCAT | Dynamic Capital Adequacy Testing |
| DR | Direct Repair |
| DSR | Driver Safety Rating |
| Extension | MPI's non-compulsory automobile insurance |
| FTE | Full-Time Equivalent |
| GRA | General Rate Application |
| HRMS | Human Resource Management System |
| HTA | Highway Traffic Act |

| | |
|---|---|
| ICWG | Investment Committee Working Group (MPI) |
| IT | Information Technology |
| LVAA | Light Vehicle Accreditation Agreement |
| MCT | Minimum Capital Test |
| MGEU | Manitoba Government Employees' Union |
| Monopoly | Policies that can only be sold by one corporation (MPI) |
| MPI | Manitoba Public Insurance Corporation |
| Naïve Forecast | Interest rate forecast reflecting no change in interest rates from current levels |
| No-fault | Accident benefits not related to the fault of the driver |
| NPV | Net Present Value |
| OSFI | Office of the Superintendent of Financial Institutions |
| PDR | Physical Damage Re-engineering |
| PIPP | Personal Injury Protection Plan |
| Province | Government of Manitoba |
| RoadWatch | MPI Initiative to target impaired driving through deterrence and detection including the use of enhanced enforcement |
| RSR | Rate Stabilization Reserve |
| SIRF | Standard Interest Rate Forecast |

| | |
|---|---|
| SRE | Optional Special Risk Extension motor vehicle insurance |
| TNC | Transportation Network Company |
| VMP | Value Management Process |

## Appendix B

## Appearances

| | |
|---|---|
| K. McCandless / R. Watchman | Counsel for the Public Utilities Board (the Board) |
| S. Scarfone / A. Guerra | Counsel for Manitoba Public Insurance Corporation (the Corporation) |
| B. Williams / K. Dilay | Counsel for the Consumers' Association of Canada (Manitoba) Inc. (CAC) |
| R. Oakes / J. Wood / C. Meek | Counsel for the Coalition of Manitoba Motorcycle Groups (CMMG) |
| C. Unfried / J. Sokal, Articling Student-at-Law | Counsel for the Insurance Brokers Association of Manitoba (IBAM) |
| D. Guenette | Counsel for The Attorney General of Manitoba (AG) |

**Appendix C**

**Witnesses**

**Witnesses for the Corporation**

| | |
|---|---|
| B. Graham | President and CEO |
| M. Giesbrecht | VP, Finance |
| L. Johnston | Chief Actuary and VP, Product and Risk Management |
| C. Wennberg | VP Customer Service and COO |
| B. Bunko | VP, Information Technology |
| C. Campbell | Director, Finance and Corporate Controller |
| L. Lazarko | Director, Information Technology |
| C. Hora | Director, Service Delivery and Broker Operations |
| J. Remillard | Corporate Business Architect |
| G. Dessler | Corporate Systems Architect |
| S. Mitra | Chief Transformation Officer, Project Nova |
| G. Bunston | Manager, Investments |
| T. Phoa | Manager, Pricing |
| C. Eden | Manager, Road Safety Program Development |
| D. Makarchuk | Mercer Canada |

## Witnesses for CAC

| | |
|---|---|
| Dr. W. Simpson | Professor of Economics, University of Manitoba |
| A. Sherry | Actuary |
| J. Todd | Consultant, Elenchus Research Associates Inc. |

## Witnesses for IBAM

| | |
|---|---|
| G. Wainikka | CEO |
| T. Chammartin | Insurance Broker |
| V. Hutsal | Insurance Broker |
| B. McGregor | Insurance Broker |

## Witnesses for the Board

| | |
|---|---|
| W. Keith | Facilitator, Road Safety Technical Conference |

## Appendix D

### Interveners

| | |
|---|---|
| Consumers' Association of Canada (Manitoba) Inc. | (CAC) |
| Coalition of Manitoba Motorcycle Groups | (CMMG) |
| Bike Winnipeg | (BW) |
| Insurance Brokers Association of Manitoba | (IBAM) |

### In-Person Presenters

| | |
|---|---|
| Cameron MacKay / Dhaval Patel | TappCar |
| Theresa Jachnycky / Paul Lapointe / Joel McPhail | Automotive Trades Assn. |
| Doug Houghton | Private Citizen |
| Janice Lukes | City of Winnipeg Councillor, Waverley West |