



“When You Talk - We Listen!”



MANITOBA PUBLIC UTILITIES BOARD

Re: MANITOBA PUBLIC INSURANCE CORPORATION (MPI)

2020/2021 GENERAL RATE APPLICATION

HEARING

Before Board Panel:

Irene Hamilton, QC - Board Chairperson

Robert Gabor, QC - Board Chair

Carol Hainsworth - Board Member

HELD AT:

Public Utilities Board

400, 330 Portage Avenue

Winnipeg, Manitoba

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Pages 2989 to 3146

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1 --- Upon commencing at 9:00 a.m.

2

3 THE CHAIRPERSON: Good morning,
4 everyone. Ms. McCandless, are there any preliminary
5 issues we need to deal with this morning?

6 MS. KATHLEEN MCCANDLESS: I don't
7 believe so, Madam Chair. Today we're going to be
8 hearing from the Attorney General of Manitoba on the
9 issue of the validity of the reserves regulation.
10 Following Mr. Guenette's submissions, we will be
11 hearing from MPI on their reply, and then from CAC
12 counsel on their limited right of reply with respect
13 to the issue of the reserves regulation.

14 THE CHAIRPERSON: Thank you very much.
15 Mr. Guenette, please proceed.

16

17 CLOSING SUBMISSIONS BY MR. DENIS GUENETTE re Validity
18 of Reserves Regulation:

19 MR. DENIS GUENETTE: Good morning.
20 Thank you very much. I -- I'd like to say that I
21 appreciate having accommodated my schedule yesterday.
22 I had another matter that I had to attend to, and I
23 know that you didn't sit as a result of it, and I
24 appreciate the indulgence.

25 I'm not sure how long it's going to

1 take me to speak this morning. I'm hoping it won't be
2 too long, hopefully no more than an hour, but it's an
3 important question, and we do have a few things to
4 comment on.

5 We filed our brief. It's not my
6 intention to reiterate the brief, but I will make oral
7 submissions that tie into the brief, some of the
8 points, and try to highlight some significant points.

9 I don't know if you need to hear me say
10 this, but I'm certainly welcome -- welcome to take
11 questions at any time. There's no need -- I don't
12 feel any need that questions need to be deferred to
13 the end of my presentation, but I leave it to
14 yourselves to ask questions as you choose.

15 We did submit a brief. We submitted it
16 yesterday. It was somewhat late in that respect. I
17 had only gotten the brief from the CAC on Thursday,
18 had not realized that I could have seen it earlier on
19 Tuesday, but that explains part of the delay in
20 getting the brief to you.

21 I had been working on the brief prior
22 to getting that, because we've been working on the
23 notice of constitutional question that we received,
24 and so when you read our brief, sometimes there's only
25 a reference to the notice itself, and paragraphs in

1 the notice. I don't think anything significant is
2 going to turn on that, because the brief largely
3 mirrors what was already said in the notice of
4 constitutional question, in any event.

5 I do have an overriding theme to my
6 presentation, and the theme is going to be roles and
7 responsibilities. And we think that -- that's a theme
8 that's important to take into account. And it drives
9 much of the presentation that I'm going to be making
10 this morning. Some of it might get a little bit
11 tedious, but I think we need to do that, particularly
12 with respect to the issue that we are addressing,
13 which is the validity of the reserves regulation.

14 I do want to start with what I think is
15 a particularly important point. It is something that
16 didn't really come to my attention until the very end
17 of the CAC's presentation, which was that they are
18 actually sub -- here submitting that the Board should
19 uphold the MPI application generally. So MPI's made
20 the request for a 0.6 percent reduction in rates.

21 It was at the end of their submission
22 that I saw that they're supporting that overall
23 submission, and so it does raise a bit of my -- call
24 it an exit -- existential question about why are we
25 even dealing with this question in the first place

1 about the res -- validity of the reserves regulation,
2 because MPI itself, in coming to the proposal that
3 it's making here today, was based on a validity of the
4 regulation.

5 The validity of -- of course, is there.
6 It had -- there's an onus to strike it down. But they
7 reached that on the basis of what the regulation says.
8 And the ultimate outcome that's here before this Board
9 under the Act, as I read it, in any event, is does the
10 Board approve MPI's proposal? Does it vary that
11 proposal?

12 And the CAC is raising an issue that
13 has no bearing on its ultimate proposal for the panel.
14 In other words, whether you rule it as valid or not
15 isn't going to change that outcome. And we submit
16 that's an important point to be taking into account.

17 We're still going to go through our
18 submission, but it's something to be mindful about,
19 because when we're dealing with administrative
20 tribunals, administrative tribunals are all governed
21 by the legislation, just as the LGIC is governed by
22 its legislation, saying what it can and can't do in
23 regulations. Well, it doesn't say we can't do it, but
24 it sets parameters about what can be done.

25 PUB is also governed by a legislation,

1 and we have to be mindful about what the PUB's
2 jurisdiction is on the matter before it when a legal
3 issue is brought to it for potential remedy. And so
4 when I go back to the Act, I see that Section 25 of
5 this -- the CCGA Act, the Crown Corporations
6 Governance and Accountability Act, talks about the
7 Board either approving or varying the proposal that's
8 being made by -- by MPI.

9 That's the ultimate outcome. If we
10 look at 25(4), what it does is it says there's a
11 number of factors that can be taken into account
12 getting to that ultimate decision, and there is no
13 doubt those factors are broad and varied, and the
14 hearings demonstrate how broad and varied can -- that
15 can be. There's no shortage of factors and variables
16 that can be taken into account in coming to that
17 ultimate conclusion.

18 But when we go back to Section 25(1),
19 what we see is the ultimate decision is, is there
20 going to be an approval of the proposal, or is it
21 going to be varied? And we're not even seeing that
22 the position that's being advanced about the validity
23 of the regulation changes the needle in that respect.

24 And so it brings me back to that
25 existential question. Do we even really need to deal

1 with this question? Should the Board feel inclined to
2 go down that road, and we've addressed that
3 possibility in our brief, then the question is going
4 to be: what's the Board's remedial powers in relation
5 to that issue?

6 The Board isn't a court. The Board
7 doesn't have the ability to make binding declarations
8 like a Queen's Bench can. It doesn't have the ability
9 to declare legislation to be struck down.

10 The principles that are engaged for
11 administrative tribunals in this kind of context is
12 the principal called the adequate alternative remedy.
13 The adequate alternative remedy that can be granted to
14 somebody who raises an issue within the scope of the
15 decision-making tribunal's powers.

16 And so how do we craft a remedy that's
17 adequate and alternative, and meets the outcome that's
18 being encouraged with respect to that legal question
19 in the scope of the PUB deciding whether it's going to
20 approve MPI's application.

21 Well, the jurisdiction is that the
22 question is about the validity of the regulation, and
23 we submit if the validity of the regulation is upheld,
24 or if it's struck down, the submission remains the
25 same. The outcome would be, according to the CAC's,

1 which is the only party that's challenging the
2 validity of the regulation, the same outcome.

3 So how do you craft an adequate
4 alternative remedy? We submit that's a very important
5 point for this question to be taken into account in
6 deciding by this Board.

7 There's some significance to the fact
8 that this Board doesn't have the same powers as a
9 court. Going to court, you can go once. You can
10 challenge the validity of the regulation, and you can
11 come out with a decision by a Queen's Bench judge that
12 says the regulation is invalid, and that is a final,
13 binding decision in law, and it lives on.

14 So we will -- can apply next year. The
15 validity of the regulation has been struck down. The
16 only way to remediate that outside of legislative
17 correction, of course, would be an appeal to the Court
18 of Appeal, but those decisions are final and binding.

19 For administrative tribunals, they
20 don't have the same powers. In fact, there's a
21 principle that an administrative tribunal's decision
22 is not a stare decisis type of decision on the Board
23 itself. So if the -- even if the CAC succeeds in its
24 position this year, regardless of what the outcome
25 might be, how it might impact the outcome, but even if

1 it succeeds here, next year the issue is up for
2 litigation all over again, because there's no final,
3 binding decision that's been made to strike down the
4 regulation.

5 What you would do is -- a good parallel
6 would be in the human rights context. The outcome --
7 if the Human Rights Commission concludes that
8 legislation is contrary to human rights principles,
9 and under that Act, they feel that something is
10 contrary to the Human Rights Act, then they would
11 fashion a remedy by not declaring the legislation
12 that's impugned down, but crafting a remedy that
13 amounts to the same thing, which is giving the party
14 an outcome based on its view that the -- that the
15 legislative provisions that are impugned do not apply
16 and they do not govern. That's not a final, binding
17 decision that strikes down the validity of the
18 legislation. Again, it's only the Queen's Bench that
19 can do that.

20 So there is not even a precedential
21 effect here. Whether -- and we can -- we candidly
22 acknowledge that if -- if we succeed -- if the issue
23 gets decided and we succeed here, it's not a final and
24 binding decision and then we can re-litigate it all
25 over again next year. Presumably working with a

1 refined argument from the challengers, we might
2 respond to the refinements, all of that. No different
3 than there's no final --

4 Even on the issue of the RSR itself,
5 the rate stabilization reserve, the issue continually
6 gets re-litigated year after year, because there's no
7 final and binding decisions.

8 The Board -- I know from having the
9 brief review that I've done, I see that the Board
10 likes to give indicia about what it would like to see
11 next year, but at the end of the day, the issue still
12 comes up for grabs, and you might get somebody else
13 who's never spoken to the question show up and want to
14 have their viewpoint a -- argued as well. And so
15 there is no stare decisis effect, and any ruling that
16 comes to the validity of this regulation in this
17 decision won't live on.

18 In the meantime, if the CAC feels
19 strongly about the issue, and I suppose they do,
20 that's quite fine. They have every right to go to the
21 Queen's Bench and get a much more robust and profound
22 outcome than the one that could be here.

23 So I'm not -- we're not suggesting that
24 they're without an avenue. We're simply suggesting
25 the avenue ought not to be this one.

1 In fact, as I was thinking about this,
2 should the Board decide to make a ruling on this
3 question and come to a conclusion on the question of
4 law, then the next logical step is, well, what happens
5 next, ignoring what might happen next year. What
6 happens next is, in the Public Utilities Board Act,
7 that could be potentially appealed to the Court of
8 Appeal.

9 There's no doubt that avenue is there,
10 but in order to get there, the avenue is you have to
11 go first with an application for leave to appeal, and
12 in the Court of Appeal there's going to be a single
13 judge that will rule on whether that appeal is going
14 to go forward.

15 And one (1) of the things the Court of
16 Appeal is always mindful about is making sure that any
17 appeals are actually meaningful in the sense that they
18 have an impact on the case that was being decided
19 before the Panel -- by the Panel.

20 Well, if we're going to have a ruling
21 on this question in a theoretical way that doesn't
22 change the needle of the outcome that's being
23 proposed. What's even going to go to the Court of
24 Appeal?

25 The Court of Appeal is interested in

1 reviewing outcomes, not discrete findings that are
2 made along the way to the outcome. They're worried
3 about, does that ruling impact that outcome.

4 Now, I can't tell you what the answer
5 is going to be, whether leave to appeal would be
6 granted, but I can certainly tell you the pitch that
7 will be made at the Court of Appeal should it get
8 there. You don't need to hear this appeal because the
9 issue won't change the outcome of the decision that
10 was made. And again, the argument there would be
11 there's nothing preventing a challenge from being made
12 in the Queen's Bench in the ordinary course to the
13 challenge of the validity of the regulation.

14 But we are here. This is a very
15 important matter. The Attorney General does not
16 simply disregard the fact that somebody is challenging
17 the validity of a regulation that's been made. This
18 is a very important matter for the -- for the -- for
19 the Attorney General and for Cabinet as well, which
20 was delegated authority under the MPI Act to make
21 regulations.

22 There is no doubt this is not a
23 regulation other than subsection (a) in 33(1). But
24 there's -- this is not a regulation that was made
25 under a specific head of power that specifically talks

1 about reserves. It is a power that -- it was a
2 regulation that was made under the broad and general
3 authority of the LGIC to make regulations.

4 The fact of making a regulation under
5 the broad and general authority rather than a specific
6 authority that's iden -- identified in the act has a
7 risk, and the risk is demonstrating itself right here.
8 Somebody can try to challenge that.

9 But the Attorney General also has the
10 ability to respond to that, and the response that we
11 say is a ge -- a broad and general inter -- power to
12 make regulations under an act has meaning. It's an
13 important meaning. It is not limited by the remainder
14 of the list. It is an ability to make regulations
15 that fit within the broad parameters of the statute.

16 If the subject matter is already
17 specifically legislated in that, and there's no other
18 legislation saying anything to the contrary, the
19 regulation can be made. And that's -- that's the
20 point that's being defended here by the Attorney
21 General.

22 There is a challenge to the fact that
23 the regulation was made under the broad power, from
24 the fact that it doesn't arise from a specific list,
25 and the Attorney General says that the LGIC Cabinet

1 has no shortage of statutes under which that very kind
2 of provision can be found. There is meaning to those
3 provisions.

4 It might be difficult or a challenge to
5 figure out precisely what the meaning is, but we
6 submit here today, a regulation about reserves made
7 under that general power with respect -- under the
8 MPIC Act, fits squarely within the mandate of the MPIC
9 Act.

10 I -- we filed two (2) separate volumes
11 of authorities. I'm not going to go there right now.
12 I'm just going to explain the thinking behind the fact
13 that we separated it into two (2).

14 The first volume is the triumvirate of
15 statutes that's at issue here. So we have the MPIC
16 Act, we have the Crown Corporation's Governance and
17 Accountability Act, and we have the Public Utilities
18 Board Act.

19 And you're going to see as you go
20 through that -- I'll -- I'll bring the Panel through
21 it -- that I've made some markings in a number of
22 places. Those are my own markings and the idea is to
23 highlight certain points in there. And like I said,
24 I'll go through that.

25 The second volume is a more generalized

1 assembly of authorities, and I don't propose to go
2 into too much detail into any of those authorities,
3 but the authorities are there.

4 Where we saw that authorities had been
5 presented through the CAC's brief, we didn't make a
6 point of reproducing those as well. We've simply
7 allowed those authorities to be there in any event.

8 Perhaps the main argument that you find
9 from the CAC's brief and its notice of motion, but
10 more from its brief, is the suggestion that the three
11 (3) statutes -- the three (3) statutes at Volume 1 --
12 and this is my wording, but I -- this is how I
13 interpret it, they form a collective whole. They form
14 a collective whole over this issue of approval of
15 rates.

16 I don't disagree that they all have an
17 element to play in that discussion. There's no doubt
18 they're all germane, but it's important to understand
19 what they're all doing and not simply say the three
20 (3) statutes ought to be seen as a collective whole,
21 let's determine what the purpose and intent of those
22 statutes are -- is collectively, and then come to a
23 conclusion about what the PUB can do and what the LGIC
24 can do within that context. We submit that's not an
25 appropriate methodological approach to addressing this

1 particular question.

2 And in fact, to the extent that the
3 CAC's argument relies on a Court of Appeal decision to
4 support that, and this would have been at their slide
5 113, they refer to the Court of Appeal decision from
6 2011, and I'm simply -- part of it is reproduced in
7 their brief, but I'll -- I'll just read these two (2)
8 passages out.

9 Paragraph 32:

10 "Notwithstanding the fact that the
11 PUB has made its concerns known to
12 the Government on an annual basis
13 since 1989, the Government has not
14 made any changes to the PUB's
15 legislated mandate to expand its
16 jurisdiction."

17 Now, I'm kind of new to this
18 discussion, but what I'm taking that as understanding
19 is there's been a continual dis -- dialogue about
20 whether the PUB should get into the question about
21 reviewing extension rates, and it's clear from here
22 the Court recognizes that that -- those amendments
23 haven't been done.

24 It says:

25 "Clearly the Government must be

1 aware of the PUB's concerns, and
2 notwithstanding is either satisfied
3 with the PUB's existed -- existing
4 limited mandate or at least to date
5 has chosen not to act on those
6 concerns."

7 And then paragraph 33:

8 "With all party -- while all parties
9 agree that this man -- that its
10 mandate as set out in section 26" --

11 And I suspect that was an earlier
12 version of the Act. It would be section 25 now.

13 "Section 26 must be interpreted in
14 accordance with the scheme of the
15 legislation."

16 The PUB has looked as only two (2)
17 statutes, being the PUB Act and the CCAA.

18 In fact, that scheme also includes the
19 MPIC Act which legislate additional significant
20 controls by the government over the activities of the
21 MPIC. I'm going to highlight that last passage, which
22 is -- which that scheme also includes the MPIC Act
23 with -- which legislates additional significant
24 controls by the government over the activities of the
25 MPIC.

1 So, this is not saying that the three
2 (3) statutes are simply read as a collective whole.
3 We look for purpose and intent overall and determine
4 who can do what.

5 This is actually alluding to the very
6 point that we're making in our brief, which is you
7 need to understand who's doing what within the
8 statute. And at that point, then we can get to a
9 comprehensive decision about what the LGIC can do and
10 what the PUB can do in relation to one another.

11 In -- in the courts, they often talk
12 about administrative tribunals having home
13 jurisdiction, their home statutes. There's external
14 statutes. There's not a lot of refinement of those
15 principles.

16 But it's important to reme -- remember
17 that a single statute does not -- is not the exclusive
18 domain necessarily of only one (1) administrative
19 actor. And that's precisely what we see in Part 1 of
20 the MPIC Act.

21 By the way, I've only reproduced Part
22 1. I've not reproduced Part 2, which is about
23 personal injury for bodil -- for bodily harm. That
24 has its own roster of -- of administrative actors.

25 But we see in the MPI Act that you not

1 only have MPI whose home statute it truly is, you also
2 have the LGIC which I'll show you in a moment has a
3 number of responsibilities; it's not just making
4 delegated legislation.

5 And there's other tri -- there's other
6 actors, as well, the auditor general, for instance.
7 It's not a surprise, but they're there. And they're
8 supposed to be making an annual review about the
9 accounts of PUB.

10 There are some government
11 responsibilities. There's ministerial
12 responsibilities. So, a number of administrative
13 actors come into this statute.

14 And I don't think it's fair to say that
15 any one (1) of them can necessarily say they sit atop
16 all of the others in terms of everything that's going
17 in that statute.

18 We have three (3) principle actors here
19 under these Acts. We have the MPI itself. We have
20 the PUB. And we have the LGIC. I'm not going to
21 focus on the others, but they all each have their own
22 distinct roles.

23 And although there's three (3)
24 statutes, it's not as though one (1) of them is a
25 statute for one (1) and the other is a statute for the

1 other and the other one is a statute for the third.
2 There's an intermingling of roles and responsibilities
3 between these.

4

5 (BRIEF PAUSE)

6

7 MR. DENIS GUENETTE: And so, it's
8 important to be mindful about what the statutes
9 actually say about who is doing what in relation to
10 which issue.

11 And so, now I do invite reviewing our
12 Tab 1. I'll try to do this as quickly as I can.

13

14 (BRIEF PAUSE)

15

16 MR. DENIS GUENETTE: Again, this is
17 Part 1 of the MPIC Act.

18 BOARD MEMBER GABOR: Sorry, can I just
19 interrupt for a second?

20 MR. DENIS GUENETTE: Certainly.

21 BOARD MEMBER GABOR: And I'm just
22 doing this because you just spoke about it rather than
23 waiting until the end.

24 In your brief, you talk about different
25 statutory delegates and you do -- you compare the LGIC

1 to the PUB. Is there any other -- is there any case
2 law that deals with the LGIC as being a statutory
3 delegate versus an administrative tribunal?

4 Because the case law that I've read,
5 when they're talking about the differences, is the
6 differences between the administrative tribunal where
7 you have two (2) tribunals which may claim
8 jurisdiction or ho -- have overlapping jurisdiction,
9 and they're the human rights cases and -- and that.

10 But I -- I've never seen a case where
11 it put the argument forward that the LGIC is one (1)
12 statutory delegate and the administrative tribunal is
13 a different one.

14 Is there case law on that that's --

15 MR. DENIS GUENETTE: That's --

16 BOARD MEMBER GABOR: -- had this
17 discussion?

18 MR. DENIS GUENETTE: That's what we've
19 candidly said in our brief we haven't been able to
20 find.

21 BOARD MEMBER GABOR: Okay. Thank you.

22 MR. DENIS GUENETTE: So, the broader
23 category, we would submit, is statutory delegates. I
24 don't think we can qui -- we can have disagreement
25 about that.

1 The statute had delegated
2 responsibilities. One (1) category of responsibility
3 is to the LGIC without a doubt. It's not -- it's not
4 an administrative tribunal function in the traditional
5 sense like we have here where orders are going to come
6 out and they're going to bind people's rights as
7 between them.

8 So, that's -- that's the far end over
9 here where we are. But the LGIC is still a statutory
10 delegate because it's been given statutory authority
11 to make decisions about which regulations it's going
12 to make.

13 BOARD MEMBER GABOR: And the other
14 thing is on your stare decisis ar -- argument, if
15 you're in the Court of Queen's Bench, stare decisis
16 only applies to -- if there's a Court of Appeal
17 decision when Queen's Bench judge is not bound by the
18 decision of another Queen's Bench judge.

19 I mean, there's a desire to have
20 certainty so that they -- they work together. But as
21 I understand stare decisis, there isn't a binding
22 effect unless there's a decision of a superior
23 tribunal.

24 Is that not the case?

25 MR. DENIS GUENETTE: I'll resfec --

1 I'll respectfully voice a different viewpoint on that.

2 BOARD MEMBER GABOR: Okay.

3 MR. DENIS GUENETTE: I -- I strongly
4 believe, in fact -- in fact, I have to be arguing this
5 in a completely arguing this in a completely different
6 matter where I've had two (2) Queen's Bench judges
7 come to a different outcome based on the same test.

8 And we feel that stare decisis does
9 apply within the Queen's Bench. That's one (1) of the
10 fundamental principles within the Queen's Bench, is
11 that once the Queen's Bench has made a decision on an
12 issue, that is binding on the other judges of the
13 court and is only going to be overturned by the Court
14 of Appeal.

15 The -- the niceties of that comes up
16 with distinctions, of course. We're going to argue
17 about what's distinguishable, why our case should be
18 decided different.

19 But, no, I would submit that stare
20 decisis in the Queen's Bench actually does apply. And
21 I'll be raising that as a ground of appeal --

22 BOARD MEMBER GABOR: Thank you.

23 MR. DENIS GUENETTE: -- in a different
24 case.

25

1 (BRIEF PAUSE)

2

3 MR. DENIS GUENETTE: Okay. It seemed
4 like a great idea when I was going it; we'll find out
5 if it was. Let's start at page, not 1, but I'm going
6 to bring the panel to page 9.

7 The thrust of this point of this
8 exercise is going to be to highlight that different
9 actors have different roles and responsibilities under
10 this Act; the PUB has some, the LGIC has some, other
11 actors have others.

12 And the overriding point is to say it's
13 not just that the LGIC has the ability to make
14 regulations. The LGIC is actually an active
15 participant at certain levels of the things that are
16 occurring under the MPIC Act.

17 Now, some of this is not surprising,
18 some of it is pretty typical, but others get to some
19 fairly significant points. Less surprising is 2(1),
20 LGIC appoints directors to the Corporation. LGIC
21 appoints a chairman at 2(3).

22 And I'm going to try to have this flow
23 fairly quickly. An interesting one is at page 11.
24 Section 3, the LGIC is the one that determines where
25 the head -- the head office of the Corporation will be

1 And at paragraph 4, unlike typical
2 private law corporations, the CEO is appointed
3 directly by the LGIC, is not appointed by the Board of
4 Directors that's appointed.

5 That's actually not unusual for public
6 corporations like this, but it's different from what
7 we typically see in private corporations.

8 By contrast, Section 5, LGIC doesn't
9 have a role with respect to who -- figuring out who
10 the CEO is going to employ.

11 Section 6 at page 12, this is a very, I
12 think, I submit, significant point to understand, the
13 extent to which the LGIC does not simply sit passively
14 -- or sorry, the legislature does not have the LGIC
15 sit passively and allow MPI to do whatever it wants.

16 LGIC maintains certain fundamental and
17 basic controls. So, in (a) at 6(1), we can see that
18 if they're going -- if the Company's going to get into
19 generally automobile insurance, that's subject to LGIC
20 saying it can do it.

21 The same thing with universal
22 compulsory automobile ex -- insurance and Extension
23 insurance at (b). And then, if the Company's going to
24 get into other lines of insurance business, Clause C
25 says LGIC has to approve that, as well.

1 Once we get further down on page 13,
2 you see, "Other powers." Those do not include LGIC
3 approval. Very high level, very important, very
4 significant oversight by the LGIC.

5 So, you can see the legislature is
6 saying MPI is not just going to go out and do whatever
7 it wants, we're going to make sure that we tell them -
8 - them what they can and, by implication, what they
9 can't do.

10 When we turn the page and we get to
11 section -- page 14, subsection 62 talks about
12 additional powers. I've put some underlining there,
13 but I point out these are some of more of the details
14 about execution, and the LGIC's not part of that.

15 When we turn the page and get to
16 sixteen (16) -- and I know the CAC's commented about
17 what these provisions mean. It's section 6.1 to 6.4.
18 At the end of the day, these provisions were added
19 recently -- and yes to take the LGIC out of a
20 particular function that comes here before this
21 Board -- but really what that was was to change the
22 format so that it was no long -- no longer needs to be
23 a regulation by the LGIC that sets the automobile
24 insurance rates for compulsory.

25 Now the process is MPI applies, the PUB

1 makes the final decision, and then the rates are
2 published no longer by a long -- I'm told it's
3 hundreds of pages long it had been -- by a long
4 regulation -- but rather, it gets published on the
5 website, and you can actually see that it is published
6 on the -- on the MPIC website.

7 The title to that Act was the Red Tape
8 Reduction Tape, and I -- we would submit that the
9 significance about what this exercise was was
10 precisely that. To take out the need for a regulation
11 that doesn't add any further analysis beyond what the
12 PUB has already been doing.

13 And at 6.1(5), that's the nub of it.
14 It specifically says:

15 "For certainty, the Corporation's
16 plan premiums are not a regulation."

17 And therefore, they don't need to
18 published in the same way, but in the provision above,
19 you can see they need to be published somehow.

20 Turning the page now to section 6.4,
21 this is where the PUB has its role. This ties in to
22 section 25 of the CCGA Act. We're reproduced these
23 provisions in our brief, and the only other provision
24 in the MPIC Act that mentions the PUB directly -- I've
25 identified there at the bottom in handwriting, I say

1 "see also 33.1."

2 We did a review of the statute to see
3 whether we could find other mentions of the PUB. We
4 didn't see it. So as I called that in our brief,
5 there's a legislative portal from the CCGA Act that
6 brings the PUB into this Act, and it's over here.

7 THE CHAIRPERSON: So, Mr. Guenette,
8 are you going to comment further on 33(1.1) as you
9 move along, or is that it in terms of your reference.

10 MR. DENIS GUENETTE: I will.

11 THE CHAIRPERSON: Okay. Good. Thank
12 you.

13

14 CONTINUED BY MR. DENIS GUENETTE:

15 MR. DENIS GUENETTE: So the next few
16 pages are not necessarily the super exciting parts,
17 but I think they're actually quite germane because
18 they do speak about the financial health, the
19 financial doings, and the financial implications of
20 MPIC, and what the LGIC's role is in relation to that.

21 So section -- and this is the part
22 where we're going to submit that we can really see
23 that financial issues relating to MPIC -- I'm not
24 going to say with respect to the approval of rates --
25 but generally the financial health of the entity and

1 it's ongoing management of finances is definitely a
2 concern to the LGIC. It is made a concern to the LGIC
3 by the legislature.

4 So section 7 is about temporary
5 borrowings, and they need to be approved by the LGIC.
6 And down at the bottom of that provision -- another
7 theme that's going to come out of our presentation --
8 and the government may on such terms as may be
9 approved by the LGIC guarantee the payment of the
10 principle and interest on any borrowings of the
11 Corporation.

12 The government is lending its credit --
13 its guarantee obligations. It's -- it can stand as a
14 guarantor for the Corporation. It's a very important
15 point, and we submit it does in fact tie in with the
16 LGIC being concerned about reserves and the financial
17 health of the entity.

18 Advances from the consolidated fund is
19 simply if the government is going to give them an
20 advance from government revenue, then the
21 government -- then the LGIC has to approve that.
22 Similarly if the government is not going to do an
23 advance but give a loan, the LGIC is involved in that.

24 Turning the page to section 10(1),
25 generally the heading is "power to borrow," and you

1 can see right at the top "subject of the approval of
2 the LGIC."

3 The next page 10(3), the LGIC mentioned
4 at the bottom with respect to form of securities.

5 Page 11 -- sorry -- page 22,
6 section 11(1), the power of the government to
7 guarantee a further discussion where the LGIC is
8 involved if the government is going to guarantee the
9 Corporation.

10 Section 12 is about investments.
11 Interestingly, section 12(1) specifically talks about
12 reserves, and it talks about investments of the
13 Corporation. Here it's not the LGIC that's involved,
14 but there is still a government actor who's there, and
15 it's the minister -- the minister -- I believe it
16 would be of finance. Yes. It -- minister charged
17 with the administration of the Financial
18 Administration Act.

19 Again, section 13(1) when they employed
20 people, they don't need the LGIC approval.

21 Section 14 is another money provision.
22 This is something that's not unusual with respect to
23 crown corporations. It generally says all of the
24 property of that crown corporation belongs to the
25 government. Interestingly though in the middle --

1 section 14(2) -- the legislature safeguards the
2 automobile insurance component from the overall
3 operation of that, and there's actually mention in
4 section 14(2) about the reserves, and I've highlighted
5 that.

6 So while section 14(1) and
7 section 14(3) can have some direct control by the
8 government into the affairs of the Corporation,
9 section 14(2) actually sets a stop of sorts when it
10 comes to the automobile insurance program.

11 Section 15 on page 26 -- safekeeping of
12 uninvested funds -- LGIC has a role. I highlighted
13 some parts of section 16, although that actually
14 doesn't involve the -- the LGIC. Section 17 talks
15 about separate accounts.

16 Section 17(3) talks about an annual
17 role for the auditor general, and then turning the
18 page, section 17(4) talks about special audits that
19 could make by the -- the auditor general. So there's
20 no shortage of oversight mechanisms about different
21 parts of how MPIC is operating.

22 And of course, we get to section 18
23 which is the one that we submit is particularly
24 germane here. It is -- it is silent about who has a
25 direct oversight role about reserves. This provision

1 has been in there since I -- I don't know how long
2 it's been in there. You can see that there's a
3 notation in there that says it was amended in
4 1990/'91.

5 I actually checked it to see what that
6 was. It was a statute law amendment. It -- it was
7 purely typographical. The word "payments" in the
8 third line had been in the singular, and then they
9 amended it to add the 's'.

10 So this provision predates even that,
11 whether it came in with all the amendments that were
12 made at the Kopstein report. I -- I just didn't have
13 the time to do that additional level of sleuthing.
14 The bottom though is we -- I know that PUB's been
15 dealing with reserves since 1998 -- 1988, and this
16 provision has been there all this time.

17 That's the thick part of what I've been
18 trying to get through in terms of identifying what's
19 happening under the MPIC Act. I've highlighted other
20 provisions simply to say at this point, things trail
21 off. The LGIC doesn't have a lot more role to play,
22 although I will stop at page 37.

23 I'm less concerned about 29. I do
24 point out section 30, and this is a theme that flows
25 throughout section 30, and it's a role for the LGIC in

1 relation to the interaction between this statute --
2 the MPI Act -- and the Insurance Act. And different
3 provisions do different things, but essentially, it's
4 the LGIC that is the ultimate guardian about which po
5 -- components of the Insurance Act will apply or will
6 not.

7 And the LGIC does that by regulation.
8 So for some -- for the auto insurance, for example,
9 the presumption is that the provisions don't apply,
10 but the LGIC can make regulations making certain parts
11 of that act apply. And then for other areas, it's the
12 reverse. If en -- MPIC gets into other lines of
13 insurance -- which, by the way LGIC has to approve, as
14 we show -- saw earlier on -- they can then say the
15 Insurance Act doesn't apply for provision.

16 I have no idea which regulations have
17 been made in this line. I'm simply identifying that
18 the Legislature has made a key role for the LGIC in to
19 -- relation to these matters.

20 This is very helpful too for a point of
21 illustration, because the regulation that was made
22 here are the reserves regulation was made under the
23 general power at Section 33(1). We would doubt -- I
24 shouldn't say we would doubt. I would see that
25 there's an openness to a challenge if a regulation was

1 made under that general power to the same effect that
2 is being accomplished here in Section 30 if these
3 provisions weren't here.

4 So my point is this. This is an
5 example where the general regulation-making power
6 probably has limits, because we're now talking about
7 the dis -- the dialogue between the MPIC Act and
8 another external statute. And probably, the LGIC
9 wouldn't have the ability to make a regulation on
10 these matters without these specific powers, because
11 now we're moving beyond the four (4) cor -- corners of
12 this statute.

13 The same thing is occurring, by the
14 way, at pa -- at Section 68 with respect to the
15 Corporations Act. Section 68 -- that's at page 75.

16

17 (BRIEF PAUSE)

18

19 MR. DENIS GUENETTE: Same thing. LGIC
20 can make regulations about whether portions of the
21 Corporations Act will apply. So this is illustrative
22 about where supplemental regulation-making authority
23 really is necessary beyond what we have in the general
24 power.

25 Moving back now to page 40, we get to

1 the regulation making power. We've highlighted this
2 in our brief.

3

4 (BRIEF PAUSE)

5

6 MR. DENIS GUENETTE: And just so
7 there's no uncertainty, I included at our Tab 5 the
8 Order in Council under which the attorney -- the LGIC
9 actually said it was making the reserves regulation.
10 So in our brief, we reproduced these provisions, and
11 you can see this is the Order in Council that makes it
12 clear LGIC was pe -- specifically saying it made the
13 regulations under these provisions.

14 When we read these provisions, it does
15 say subject to subsection 1.1, and I'll get to that in
16 a moment. It says:

17 "For the purposes of carrying out
18 the provisions of this Act according
19 to their intent, the LGIC may make
20 such regulations as are ancillary
21 thereto and not inconsistent
22 therewith."

23 It's a very general, broad power.

24 "And every regulation shall be
25 deemed to be a part of this Act and

1 has the force of law; and without
2 restricting the generality of the
3 foregoing, the LGIC may make
4 regulations under... [the bulleted
5 point list]."

6 This is the crux of everything we're
7 talking about. Does the reserves regulation fall
8 within the meaning of this general provision? Is it
9 talking about something that is ancillary to the Act,
10 not inconsistent with the Act? And then when we get
11 to (o), it further con -- talks about:

12 "Respecting any manner -- matter
13 considered necessary and deemed
14 advisable by the LGIC for the
15 effective carrying out of the intent
16 and purpose of this Act."

17 So is it about carrying out the intent
18 and purpose of this Act and the regulations in any
19 insurance plan established under this Act?

20 So the connection between the LGIC and
21 the reserves is that a regulation can be made under
22 the general power so long as it meets those tests. As
23 we've seen, the reserves are specifically talked about
24 in the MPI Act. Section 18 establishes the reserves.
25 There's brief mentions in two (2) other provisions

1 under the MPIC Act, 12(4) and 14(1). Clearly, the
2 reserves is a matter that's governed by the Act.

3 And as we've pointed out in our brief,
4 what Section 18 does is it does three (3) things. It
5 tells MPI that it must establish reserves. It tells
6 MPI that the reserves must be at a certain minimum,
7 and we've identified this in our brief. The minimum
8 isn't a -- isn't numerically precise. The minimum is
9 set as a concept. It's about sufficiency, sufficiency
10 to meet all of its obligations over time.

11 And then the third thing it does is it
12 says it has to do this at all times. And what we've
13 talked about in our brief is that the concept of
14 sufficiency is not a specific and defined concept, and
15 we acknowledge that that has risen -- given cause to
16 considerable debate over thirty (30) years here about
17 what that sufficiency is.

18 We submit it might be that nobody
19 specifically fought about it in the context of Section
20 18. It appears as though maybe most of the discussion
21 and reference point as to why you're dealing with that
22 goes back to the Kopstein report.

23 But the Kopstein report was a
24 recommendation. The recommendation was acted on by
25 the Legislature. And the Legislature, whether

1 eighteen (18) was already there or whether it added it
2 at that time, legislated that concept as something
3 that regulates MPI.

4 So it is a subject matter that is in
5 that Act. By the way, I'll -- coming back to
6 paragraph -- to page 41 -- simply point out I
7 underlined (f) or put -- defining the -- for the
8 purposes of the regulations, words not defined in the
9 Act.

10 And I know CAC wasn't making an issue
11 of that in its oral submission, but in its notice, it
12 suggested it was going to challenge Section 4 of the
13 regulation, which was a definitions provision, and st
14 -- Clause (f) says the LGIC can make a regulation that
15 includes definitions.

16 I'm going to skip ahead to Section
17 33(1.1) now.

18

19 (BRIEF PAUSE)

20

21 MR. DENIS GUENETTE: It's not skipping
22 that far. Now, this is something that was changed, if
23 I understand it correctly, at the same time as six
24 point one (6.1) to six point four (6.4) were added.
25 As I understand it, before this cha -- this provision

1 read as it does, this provision would have applied to
2 both auto insurance premiums and driver insurance
3 premiums.

4 Having been amended, because of what's
5 happening at six point four (6.4) -- or, six point one
6 (6.1) to six point four (6.4), to take the LGIC out of
7 needing to make that final regulation to breathe life
8 into the rates -- or, I shouldn't say rates -- the --
9 the insurance premiums, this provision was amended to
10 recognize that red tape reduction goal, the red tape
11 reduction goal of getting LGIC out of the business of
12 having to take that next step after this Board makes
13 its annual decision in light of MPI's application to
14 either change its premiums or add new premiums. That
15 role was taken out.

16 But it was left there if there's going
17 to be a proposal to change driver premiums, driver
18 insurance. So the driver insurance side of it, it
19 remains an LGIC reg that has to breathe life into that
20 final conclusion even though it comes here. But that
21 same process no longer applies for automobile
22 insurance rates.

23 I candidly admit I don't know how often
24 these -- this process ever comes here. The Board will
25 know better than me, and MPI certainly would know

1 better than me.

2 That's the significance of what that
3 legislative change was, but I do want to highlight
4 something about this continuing role for the LGIC.
5 And the respective roles of who is doing what under
6 the MPI Act, which had been the role up until last
7 year. Also, for auto insurance.

8 So the role of -- the -- the process
9 sequences out that MPI makes its proposal to either
10 add premiums, new premiums, or change existing
11 premiums. It makes the application to this Board.
12 This Board receives the application and it does
13 whatever it does. It'll either approve it, or vary
14 it. The Act clearly says that that's -- that that's
15 an option; the CCGA says that.

16 And then finally, the matter gets
17 remitted over to the LGIC to do that last step of
18 breathing life into it. And so what we've highlighted
19 in one (1) of the paragraphs in our brief is that the
20 role of the PUB at that stage is a pre-conditional
21 actor to the LGIC making that regulation. It steps in
22 between MPI and the LGIC. It is a preconditional
23 actor.

24 So MPI wants to make changes. It has
25 to apply to this Board. This Board makes the

1 approval, and then the Act even says if the LGIC wants
2 to make the changes, it needs to be satisfied that
3 this Board has made the -- has approved them.

4 So hierarchically, in this stage, or
5 sequentially -- I won't say hierarchically, I'll say
6 sequentially -- you have it so that it's MPI, then the
7 PUB, then the LGIC.

8 So we submit that doesn't necessarily
9 mean the PUB is expected to then rule on the validity
10 of regulations that are being made.

11 BOARD MEMBER GABOR: But Mr. Guenette,
12 what happens if the LGIC is not satisfied, doesn't
13 like the PUB decision? I'm -- I -- following your
14 interpretation, what, the decision is void?

15 MR. DENIS GUENETTE: I don't know that
16 it's void, but it would seem to me if I read this, the
17 changes to the driver premiums, this is entirely par -
18 - it's entirely possible. I don't have enough
19 history. It's entirely possible that this is a
20 conundrum that's never should -- never come up, but if
21 it does, when I read this, those changes do not have
22 force of law until the end -- LGIC puts it in a
23 regulation.

24

25

(BRIEF PAUSE)

1 MR. DENIS GUENETTE: If the LGIC
2 disagrees, I honestly don't know what's going to
3 happen. There's going to be something that's going to
4 happen somewhere in the legislature, and there's going
5 to be a debate of some kind. The Act doesn't speak to
6 that.

7 But remember -- and I can -- I candidly
8 admit, this no longer is the role with respect to
9 automobile insurance premiums, which is what we're
10 dealing with here today. The LGIC no longer has that
11 role, but it had, and it was similar to this.

12

13 (BRIEF PAUSE)

14

15 MR. DENIS GUENETTE: So that raises a
16 good question about whether the legislative --
17 legislature's really intending to give the PUB the
18 jurisdictional mandate to inquire into whether or not
19 the LGIC had the ability to be making regulations
20 under this Act, and that's a point that we've made in
21 our brief. We've made that argument.

22

23 (BRIEF PAUSE)

24

25 MR. DENIS GUENETTE: There's other

1 oversight mechanisms that aren't as robust, but are
2 certainly there in the Act. At Section 43(1), there
3 is an annual report that goes to the LGIC, and it gets
4 published in the legi -- it gets tabled in the
5 legislature.

6 I'm going to do something I probably
7 shouldn't, and I'm going to go to page 62, but I've
8 highlighted this. And I will be -- and my only
9 specialty is in knowing that legislation says things,
10 and we bind -- we are bound by what they say. I don't
11 know what this is saying, but it's certainly saying
12 something about excess of assets. It has a role for
13 the LGIC that can make some kind of an order about
14 that. And then at the bottom, it has a limiting
15 factor with a percentage in it.

16 I am not competent to speak any more
17 about what this is saying. Maybe MPI does, if there's
18 questions, but it is an indication about a role that
19 cabinet has with respect to some of the things that
20 are being done at MPIC and that the legislature said -
21 - has said when it comes to that role, there is a
22 limit to what cabinet can do.

23 So that's my overview of Tab 1. The
24 Crown Corporations Governance Act is our Tab 2. That
25 has content -- that has provisions in there about

1 mandate letters. It has provisions there in about
2 directives. Both of those require the -- the LGIC to
3 approve those before their binding instruments on the
4 Corporation. I'm not going to sit here and suggest
5 that those directives are binding on the PUB. That's
6 not my submission here, because those mandate letters
7 are directed to the entity.

8 And then we get to Section 25, and I've
9 already made my pitch there. But this is really where
10 the legislature has given the PUB a role with respect
11 to things to do with MPIC. 25(1), the thing I wanted
12 to highlight in there -- and I don't know how much
13 significance it has for -- but it does talk only about
14 a role where there is a change in rates for services
15 or new rates for services.

16 So the PUB's role is really engaged
17 when there's a movement away from the status quo. And
18 I think the nature of automobile insurance is such
19 that it probably requires an application every year,
20 because new cars are made every year, and you have to
21 have new rates. And I used the word 'rates', but when
22 we see cause B in Section 25(2), rates is just a
23 shorthand to mean what actually is happening under the
24 MPI Act, which is that they're approved -- they're --
25 that MPI is imposing insurance premiums for compulsory

1 insurance.

2 I do want to highlight 25(4), because I
3 had talked about this, but I think it's helpful to go
4 and look at the actual words. 25(4):

5 "In reaching a decision pursuant to
6 this part, the PUB may a) take into
7 account considerations -- sorry --
8 take into consideration."

9 And it's a long list of factors. So
10 the decision is in the preamble at 25(4). Then it
11 says, "take into account," and that, we submit, is why
12 it is that these hearings are as broad ranging as we
13 see that they are, because there is no shortage of
14 factors that can have an impact.

15 Even 25(5) makes a point of saying, If
16 you didn't think 25(4) was broad enough, you can also
17 take anything into account -- all elements of
18 insurance coverage affecting insurance rates. So
19 that's -- we're not taking issue with the fact that
20 the PUB is looking at all of these factors, but it's
21 looking into these factors and needs to take into
22 account the legislative direction that is found in the
23 MPI Act.

24 And I found troubling one (1) of the
25 submissions that I heard, and it was Mr. Todd. I

1 thought part of his presentation actually was quite
2 illuminating. I do think his explanation about the
3 role of the Public Utilities Board as a substitute for
4 competition and the ultimate decision it has to make
5 very, very helpful. I don't have any reason to take
6 issue with that.

7 I did take issue where the suggestion
8 was made by him that as a regulator, the Public
9 Utilities Board could simply decide which laws it
10 thinks are helpful to it, and which ones it doesn't
11 need to recognize. I mean, we are all bound by rule
12 of law. Even the LGIC is bound by rule of law.

13 The LGIC only makes a regulation
14 because it's been delegated an authority to do that.
15 And there is no provision in the -- any of these
16 statutes that suggest the PUB has an ability to
17 disregard the legislation that's binding or to tell
18 one (1) of its regulated entities to disregard a
19 provision.

20 The CAC is arguing you don't need to
21 take that into account. You can make a decision and
22 it will be up to potentially MPI to figure out how
23 it's going to comply with the regulation that governs
24 it and this Board's ruling. We submit there's no
25 reason to go down that road.

1 I mean, the PUB is here. It's making a
2 decision on the issue that's before it, and one (1) of
3 the things that needs to be taken into account is the
4 legislation that governs the MPI, including the
5 reserves regulation, including section 18, and we
6 submit the reserves regulation that brings clarity
7 where section 18 was less than clear.

8 So I take -- sitting here as counsel
9 for the Attorney General, I take strong opposition to
10 any suggestion that suggests the Board can simply
11 choose to disregard valid and binding legislation
12 along its way to the decision it wants to make.

13 I accept there's a challenge that's
14 been made to the validity of regulation, and the Board
15 might disagree with our submissions about whether that
16 is valid, and the Board might come to a conclusion --
17 notwithstanding all my other concerns, might come to
18 the conclusion that the regulation's not valid.

19 I accept that the Board might go in
20 that direction and might come to that conclusion, and
21 on that basis, I tell MPI something I do not accept,
22 and I don't think the Board should accept, the
23 submission by an expert who is not an expert in law,
24 who's certainly not an expert in rule of law, to come
25 here and suggest you can find the regulation valid and

1 then simply disregard it. I think -- well, I simply
2 think that's not an appropriate approach.

3 If the CAC wants to raise a legal
4 argument, explaining why the PUB, somewhere in this
5 legislation or based on a common law principle, that
6 we can come to the same outcome, but in law, as a
7 proper appropriate legal principle, I'll respond to
8 that, and I'll find the authorities and I'll bring
9 them forward and I'll tell you why I probably think
10 that's not accurate.

11 But I strongly encourage the Board not
12 to go in the direction that Mr. Todd is suggesting,
13 that we can simply hold a legislation to be valid and
14 then expect a regulated entity not to live up to it.

15 And finally at tab 3 we've given -- oh,
16 sorry, I'll stay in tab 2 for now, at the very end,
17 page 25.

18 This is to breathe a little bit of life
19 into my submission about the importance of giving
20 meaning to general powers of authority -- grants of
21 authority to make regulations. You can see that under
22 this act, the LGIC at clause (g) has the ability to
23 make regulations of general application. I'm not
24 saying the regulation was made under this act at this
25 point. I'm simply saying that is there, helps explain

1 the tapestry of these provisions.

2 By contrast, when we go to tab 3, there
3 is no equivalent residual power or general power for
4 anybody to make regulations, and so that's a reality.
5 We accept that.

6 If we go to page 14, you see 27(1) I've
7 highlighted. This ties in, I submit, to section 25(4)
8 of the Crown Corporation's Governance and
9 Accountability Act.

10 "The Board may of its own motion,
11 and shall upon request of the LGIC
12 [I'm not focusing on that part yet
13 here] enquire into, hear, and
14 determine any matter or thing within
15 its jurisdiction."

16 So here the point is, it's got to be
17 within the PUB's jurisdiction if it's going to engage
18 in this.

19 There's actually a further provision
20 down at 107 that is not -- one before. Sorry, page
21 63.

22 That one is not constrained by the
23 jurisdictional limits of any act. So if the LGIC or -
24 - the legislature or anybody else wants to send
25 something to this Board, they can do it and they're

1 not constrained by legislative limitations.

2 And then this Board has powers at
3 section 44(1), which is at page 21.

4 "Upon any application to it, the
5 Board may make an order granting the
6 whole or part or only -- or part
7 only of the application and may
8 grant such further and other relief
9 in addition to or in substitutions
10 applied for."

11 That's the relief. The relief is
12 seeking approval. It talks about the application.
13 Section 25(4) clearly talks about an application being
14 made by the PUB to this Board; ties in with that
15 language.

16 This is not intended to expand the
17 scope of the Board, to include the ability to make
18 binding decisions about what the LGIC can or cannot do
19 with its regulation-making powers under the LG --
20 under the MPIC Act.

21 And so I know that that was longer than
22 we would want it to be, but I think it was important
23 because we had -- we can't just take the three (3)
24 statutes and say the PUB has a role with respect to
25 changes of the premiums to insurance -- to compulsory

1 insurance, and therefore it has the ability to do
2 whatever it wants, including making decisions about
3 the validity of regulations.

4 We need to know who's doing what, what
5 are the roles and responsibilities. And the roles and
6 responsibility of this is Board is to make that
7 ultimate decision on rate approval, on insurance ra --
8 premiums, in relation to all those factors that
9 regulate MPI. And we submit section 18, and the
10 regulation that's been made to bring clarity to that
11 provision, are one (1) of the factors that are taken
12 into account, that doesn't necessarily mean a binding
13 ruling to disturb the legislative significance of
14 those findings.

15 We submit firstly, the Board doesn't
16 have the jurisdiction to make that finding. We submit
17 that the legislation leads into that.

18 You might disagree. I've made my
19 pitch. I submit if you're going into the question,
20 though, and you're going to enquire into the validity
21 of it, you have to ask yourself a number of other
22 questions after that.

23 Should you even be making the call?
24 Should you may -- be make -- getting engaged in that
25 decision? One (1) of the reasons you might not want -

1 -

2 We submit that nobody can force you and
3 compel you to engage in this question if you don't
4 think it has any bearing on the outcome. Well, it
5 doesn't change the needle about what the ultimate
6 outcome is, which is the approval of the rates.

7 MPI is applying for 0.6 percent
8 reduction and the opposing party, the one that's
9 trying to get the regulation struck down, agrees with
10 that. You have the ability, we submit, to simply hold
11 off from that, and there's nothing wrong with that.
12 They still have the ability to go to court and seek
13 that very same declaration in a much more meaningful
14 and robust way, and if they succeed there, then they
15 succeed there.

16 Another reason you might not want to
17 get into that is what I'm calling administrative
18 comity. We've looked for cases on these things.

19 Two (2) competing delegates, each
20 having their own sphere of jurisdiction -- when we
21 look at Dunsmuir, the perspective of Dunsmuir is, what
22 happens when a tribunal rules on its own jurisdiction.
23 There's no discussion that we've been able to find
24 about when one administrative delegate is being asked
25 to rule on what another administrative delegate has

1 done. We simply haven't found anything about that.

2 So I'm now moving beyond into concepts
3 that you have to think about these questions if you're
4 going to go down that road, and one (1) of the
5 questions is, do you want to go down that road? Do
6 you feel as though -- does the PUB feel as though it
7 really wants to engage in a question that second
8 guesses what the LGIC has done with its own scope of
9 authority?

10 You might feel you want to. I accept
11 that. But before you do that, I submit, think about
12 it.

13 Maybe this is a good case where you
14 say, you know what, we won't get involved in that,
15 particularly because it doesn't change the dial or the
16 needle about what the outcome is going to be, and
17 we're going to accept that the LGIC had the abil --
18 has the ability to make regulations and we're not
19 going to second guess the extent to which they've made
20 them. It's a legitimate question to be asking before
21 you jump to the conclusion about whether -- you -- you
22 might jump to that conclusion anyway. We simply
23 submit think about that before you get along the way.
24 Do you really want to go down that road?

25

1 (BRIEF PAUSE)

2

3 MR. DENIS GUENETTE: I'm just going to
4 take a moment to make sure that I've got things
5 covered. I believe I've spoken already about the
6 wording that you see in the regulation making
7 authorities at preamble to 33(1), Clause O.

8 In addition to that, there's Clause A.
9 Principles of statutory interpretation are the same
10 for all the provisions, large and liberal
11 interpretation.

12 Yes, we give a large and liberal
13 interpretation to Section 25(4), but we also give a
14 large and liberal interpretation to these provisions,
15 Clause A. And Clause A says:

16 "Establishing, amending, and
17 revoking such plans of automobile
18 insurance and plans of universal
19 compulsory automobile insurance for
20 the insurance amendment."

21 The plan of universal compulso --
22 compulsory automobile insurance will include the
23 reserve. So, they can make a regulation that relates
24 to the reserves regarding that plan.

25

1 (BRIEF PAUSE)

2

3 MR. DENIS GUENETTE: It's not a
4 question about usurping jurisdiction, it's about the
5 use of the jurisdiction that's there. That's what's
6 happened here.

7 For thirty (30) years, there's been no
8 regulation that's been made. That doesn't mean it
9 couldn't have been made. For thirty (30) years, the
10 issue has played itself out here in front of the
11 Public Utilities Board.

12 I'm not sure whether it was
13 intentionally on the basis of Section 18 or whether
14 the mi -- the analysis simply mirrors Section 18
15 because it's a pretty understandable concept. You
16 want to make sure you have a sufficient amount, but it
17 wasn't clear in Section 18.

18 And now, if you turn -- the LGIC has
19 stepped in and simply said there's no need to continue
20 to argue about that. You don't need -- there's no
21 shortage of other variables that could continue to be
22 addressed year to year at the annual applications;
23 there's no doubt about that.

24 This one, there's no longer any need to
25 be arguing about it. We don't need to bring in

1 experts to figure out what sufficiency is. And what
2 we've done in the closing part of our brief is given
3 not so much technically legal arguments, but a pretty
4 good policy argument as to why the LGIC would be the
5 one to -- to do that.

6 Different interests come here and argue
7 about what their interest is, their perspective about
8 what a good sufficiency is. We submit there's no
9 doubt consumers are going to see it one way, MPI sees
10 it a different way.

11 This Board has seen it different ways
12 from year to year; that's varied. LGIC doesn't have
13 to send a delegate here to make submissions when, at
14 the end of the day, if it wants to, it can make the
15 regulation. And, finally, recently it did.

16 And the policy reason for it is the
17 reserve is about the financial wealth of the Company.
18 And if something happens to that financial health, the
19 entity that's going to be the one that's going to have
20 to figure out how to solve the problem is going to be
21 cabinet; it's going to be the LGIC.

22 We're nowhere near that. There's no
23 suggestion that we're near that. It sounds like
24 everything's going well and healthy.

25 But who gets -- who should be the one

1 who gets to put its risk tolerance in when it has the
2 ability to make a regulation, as well? The cabinet.
3 And we submit there's nothing wrong with that; it's
4 entirely appropriate.

5 And so, the cabinet stepped in, said we
6 don't need to have this debate anymore, this is what
7 we're comfortable with, we don't see any reason why we
8 need to actually continue to have that issue
9 litigated.

10 When we're talking about these
11 provisions and measuring the validity of the
12 regulation in relation to those provisions in Section
13 33(1) of the MPIC Act, what we're submitting is you
14 look first to that question, is it -- is the
15 regulation within the scope of the MPIC Act.

16 And, yes, there's the other two (2)
17 Acts. And what we're saying is, if you're going to
18 measure it in relation to those other two (2) Acts,
19 you're going to have to demonstrate an actual conflict
20 with respect to those other two (2) Acts.

21 I may have overstated the debate about
22 whether you call it an inconsistency or con --
23 conflict in our brief more than I probably should have
24 because the words can be used interchangeably. And
25 then you're focussing on trying to bring meaning to

1 words that probably mean the same thing.

2 What's more important is the analytical
3 stages. The first stage is LGIC has the ability to
4 make regulation under the MPIC Act; does it fit within
5 the parameters of that Act.

6 Then we go to the next stage, is there
7 a conflict with other statutes, including the PUB Act
8 and the Crown compre -- Corporation's Governance Act.
9 And what we submit is there is no conflict.

10 Everybody's -- we're -- when we're
11 searching for a conflict, you have to try to figure
12 out whether you can get to an interpretive harmony of
13 the provisions first before you come to the conclusion
14 of a conflict. And we submit there's no evidence of
15 that here.

16 We could have gone on at length about
17 that, but I didn't because I actually felt that the
18 most obvious point, that there is no conflict, and
19 we've identified that at pa -- paragraph 114 of our
20 brief, nobody's disre -- disagreeing that, if this
21 Board comes to the same conclusion that you see in the
22 reserves regulation, if this Board comes to that
23 conclusion, I didn't hear anybody disagreeing that
24 that's a problem.

25 So, to say that it's a conflict if it's

1 the LGIC that does it as opposed to the PUB doing it,
2 we simply submit is illogical. There -- it
3 demonstrates that there is no conflict. The same
4 outcome can occur under either.

5 So, there's no basis to -- to strike
6 down the regulation on the basis of a conflict with
7 the other two (2) statutes.

8

9 (BRIEF PAUSE)

10

11 MR. DENIS GUENETTE: There's no doubt
12 that his has been a dialogue that's been going on here
13 for thirty (3) years. There has been no regulation.
14 We submit the reason for the dialogue is the vagueness
15 in Section 18.

16 One of the arguments that's being made
17 is that is a demonstration that this is a subject
18 matter that is the exclusive preserve of the Public
19 Utilities Board. And we submit that that's not
20 accurate. That's not a proper representation of what
21 the legislation actually says.

22 Yes, the Board's been dealing with it.
23 But that doesn't establish a jurisdictional enclave
24 that is now beyond the capability of the LGIC to make
25 a regulation on the subject matter.

1 And the argument that I read and from
2 the history that I understand is that, when it comes
3 to the PUB dealing with the question, the root of it
4 all is based on the Kopstein report.

5 I would submit it's not the Kopstein
6 report; it's the legislation. The Kopstein report
7 guided legislation on how it was going to be drafted.
8 And it certainly is the -- a starting point for the
9 discussion, but the real issue is Section 18 of the
10 MPIC Act.

11

12 (BRIEF PAUSE)

13

14 MR. DENIS GUENETTE: We do have other
15 authorities. We have cases and authorities that we
16 identify in our brief about how to interpret and apply
17 these general grants of authority. I don't think I
18 need to restate that here.

19

20 (BRIEF PAUSE)

21

22 MR. DENIS GUENETTE: And I just have a
23 final set, I think. I may have already covered it.
24 But I had specific points from the CAC brief that I
25 wanted to address. And at that -- that'll be my

1 closing point.

2 So, the CAC brief at paragraph 28 --

3

4 (BRIEF PAUSE)

5

6 MR. DENIS GUENETTE: -- we agree with
7 this, there's no doubt. Starting on the third line it
8 says:

9 "Furthermore, when challenging a
10 regulation for being counter to the
11 legislative objective of its parent
12 legislation, considerations of the
13 efficacy -- efficacy or the policy
14 merits of the regulations to
15 determine whether they are
16 necessary, wise, or effective in
17 practice are irrelevant."

18 And we agree with that. So the -- all
19 of that discussion about what led to this process now
20 being here in front of the Public Utilities Board and
21 the discussion about the policy implications about why
22 that is, that's not relevant. What we're doing is
23 we're doing a true legal test. Are the regulations
24 valid under the -- the delegated provisions?

25

1 (BRIEF PAUSE)

2

3 MR. DENIS GUENETTE: There is a brief
4 paragraph at paragraph 85, and it simply says -- it
5 alludes to the fact that MPI has never went to court
6 to challenge the fact that the reserves were being
7 dealt with. I don't think any -- too much can be --
8 that's probably -- I'm sure it's true. I don't know
9 that there's a lot to read into that other than
10 section 18 was there, and presumably, it was fine with
11 doing everything and thinking it was in accordance
12 with section 18 no reserves regulation being in place.
13 Now, the debate, we submit, has simply been brought to
14 a close. The regulation's been made.

15 Paragraph 90 -- this might be going
16 into too much of the semantics but:

17 "MPI alleges that the PUB is bound
18 by the reserves regulation."

19 There's discussion about whether the
20 PUB is bound by these acts. I don't know that that's
21 really a focus that makes any significant difference.
22 The fact is legislation is valid, it's binding, and it
23 applies generally.

24 If somebody's going to be accepted from
25 having to recognize the validity of that, then they

1 will be. But until they aren't -- are accepted, the
2 legislation is there. It's not really a question of
3 whether it's being bound. MPI is bound by that
4 legislation, and what we submit is when MPI comes here
5 before this Board when it takes into account that
6 lengthy list of factors, we take into account the fact
7 that the MPI is bound.

8 And then that brings us back to the
9 rule of law argument. We don't see any reason why
10 you'd recognize that MPI is bound and then go into --
11 into a direction that puts it in a position where it
12 would no longer be where it would no longer comply
13 with that bound legislation.

14 Paragraph 91:

15 "Respectfully, MPI's position is
16 untenable. This argument fails to
17 recognize the legislation's
18 intention that the PUB has been
19 given exclusive jurisdiction to set
20 Basic rates."

21 And then that we extend that. There's
22 an inference.

23 Yes, it has the exclusive jurisdiction,
24 but that doesn't mean it has complete jurisdiction
25 over everything that's otherwise legislated. And so

1 MPI Act talks about reserves. The regulation has made
2 it that way.

3 Two final comments. On page 28,
4 point d) -- page -- oh. I might be -- I might be
5 going from an older version. The next page, please.
6 Keep going down just a little. Maybe up. I'm sorry.
7 There.

8 "The statutory purpose for which the
9 CCGA Act and its predecessor to the
10 legislation what enacted clearly
11 demonstrates a legislative intent
12 that the LGIC be subordinate to the
13 PUB and the rate approval process."

14 What we submit is after we've gone
15 through everything I've showed you in the legislation,
16 that argument is not made out. It's to the contrary.
17 Everybody has their own roles, and we submit those
18 roles have to be understood in light of what the
19 legislation says.

20 There was one argument that was made by
21 one of the experts when we talked about hanging on to
22 too many reserves and the social wastefulness of that.
23 I simply wanted to point out that if -- if section 18
24 as it's written without the reserves regulation is
25 imprecise, the concept of social wastefulness is even

1 more allusive to try to figure out. I'm not sure what
2 you can do with that.

3 At the end of the day, somebody has to
4 figure out what the reserves are. It's not about
5 social wastefulness. It's about who has the ability
6 to do what.

7 What we're submitting, with the
8 greatest of respect, is we show the legislation
9 doesn't give the PUB the ability to rule on the
10 validity of the legislation, and even if it does, it
11 should be upheld. And if it is upheld, then we
12 recognize that all of these legal instruments are
13 binding on MPI, and it's only appropriate that a final
14 decision is made on the basis of that recognition.

15 I'm sorry it took me twenty-five (25)
16 minutes longer than I had anticipated.

17 THE CHAIRPERSON: That's fine. Thank
18 you very much, Mr. Guenette. We're going to take a
19 break now. We'll come back at quarter to 11:00,
20 please.

21

22 --- Upon recessing at 10:25 a.m.

23 --- Upon resuming at 10:47 a.m.

24

25 THE CHAIRPERSON: Thank you very much.

1 I think perhaps I wasn't clear. We'll have some
2 questions for Mr. Guenette. So perhaps he can -- oh,
3 you're going to answer them from the back row? Fine?

4 MR. DENIS GUENETTE: It's fine.

5 THE CHAIRPERSON: Okay.

6 MR. DENIS GUENETTE: If that's okay
7 with you.

8 THE CHAIRPERSON: It's fine with us.
9 Thank you. The question that I have for you,
10 Mr. Guenette, is: What's your position with regard to
11 whether the rate stabilization reserve has an impact
12 on the rates that are set on an annual basis?

13 MR. DENIS GUENETTE: Well, I think our
14 position would be we recognize that there's a number
15 of variables and factors that go into that final
16 decision, and we wouldn't doubt that that's something
17 that can actually be a factor that impacts it.

18 So our position is we're not going to
19 shy away from that. We're simply going to say the
20 legislation now settles the question.

21 THE CHAIRPERSON: So further to that
22 if the rate stabilization reserve does have an impact
23 on rates, how does that reconcile with the preamble to
24 33(1) that says that the lieutenant governor makes
25 such regulations as are -- ancillary thereto and not

1 inconsistent therewith, being a reference to the Act,
2 and the interplay with section 6.4 that provides that
3 the Public Utilities Board has jurisdiction to
4 establish rates on an annual basis?

5 MR. DENIS GUENETTE: That, in all
6 likelihood, pushes us into the question of the general
7 and the specific. I don't have authorities that I put
8 into the brief, but general versus specific is one of
9 those interpreting animating factors that says if you
10 have something that's covered off in a general way and
11 then you have another thing that's come -- that comes
12 in and plays into that but is more specific, the
13 specific trumps the general.

14 Now, there is no shortage of pitfalls
15 that can come with that because it's an easy maximum
16 to say, it can be a difficult one to apply in
17 practice, and sometimes you're going to have different
18 people coming in and saying, well, this one is
19 specific versus this one is general, and people argue
20 the reverse.

21 But what I would submit is in this
22 case, the general is the ability to take into account
23 a wide array of factors that will have the impact.
24 And the specific is the fact that the reserves are
25 already legislated in the MPI Act. It already has a

1 minimum -- it's a conceptual minimum. And then the
2 regulation has come in to simply solidify that at a
3 specific number.

4 THE CHAIRPERSON: Well with regard to
5 the conceptual minimum -- I mean, certainly the Act
6 states there need to be reserves, but I think that the
7 question that we have is that those reserves can have
8 a significant impact on the rates, and by setting a
9 particular level, arguably the lieutenant governor and
10 council then could set it a level such that the Public
11 Utilities Board would not longer have any role in
12 setting rates. Is that not true?

13 MR. DENIS GUENETTE: That's a
14 possibility. It's not what's -- in play here. In
15 fact, what's in play here is the position that has
16 already been advanced to this Board and, as I
17 understand it, has in fact been implemented in one
18 decision, and I'm not going to pretend to say that I
19 know the full history about that. So we're not there.

20 What we are at is we're still in a
21 range that was -- is within the zone that we've seen
22 being dealt with here in this Board. So yes, that's a
23 possibility. It's not a possibility that
24 materialized.

25 I don't know whether that changes the

1 meaning of this concept here. It's entirely possible
2 that if that occurred, the remedy there is the same
3 remedy that would have occurred in 1998 -- 1988. You
4 need a legislative amendment to restrict it because
5 something has been done by Cabinet that went beyond
6 what is acceptable.

7 THE CHAIRPERSON: Thank you.

8 BOARD MEMBER GABOR: Just picking up
9 on that, Mr. Guenette. In your presentation at the
10 end, you said the PUB has the exclusive jurisdiction
11 to set rates. Is that correct?

12 MR. DENIS GUENETTE: I said the PUB
13 has the exclusive jurisdiction -- well, I don't recall
14 exactly what I said. I can clarify --

15 BOARD MEMBER GABOR: Well, that -- I
16 read -- that's what I wrote down when you said it.

17 MR. DENIS GUENETTE: Okay.

18 BOARD MEMBER GABOR: And it's your
19 position that the PUB has -- sorry -- that Lieutenant
20 Governor in Council has the authority to set out the
21 reserves regulation.

22 MR. DENIS GUENETTE: Yes. Obviously,
23 yes.

24 BOARD MEMBER GABOR: Okay. So if it
25 has the authority to set out the reserves regulation

1 as it did, does it have the authority to change the
2 reserves regulation to say that the minimum MCT for
3 Basic is not one hundred (100). We've decided to
4 change it to four hundred (400).

5 MR. DENIS GUENETTE: That comes to the
6 same question as -- I think as the Chair has asked.
7 Does it mean they can do that? In theory, potentially
8 it does. It hasn't been done that way, so thankfully
9 we're not in a position where we need to struggle
10 about that.

11 BOARD MEMBER GABOR: Well, it -- but
12 following your argument if it has the authority to set
13 these regulations and it established the hundred
14 percent for whatever reason it -- it chose, it would
15 have the authority to establish it at whatever level
16 it chose.

17 Are you -- are you suggesting that it -
18 - it is restricted as to what level of MCT it can set
19 for the regulation?

20 MR. DENIS GUENETTE: That's not said
21 directly in the Act. What we argue and I think what
22 the -- the Act says at section 18 is there's a
23 conceptual minimum.

24 BOARD MEMBER GABOR: But it could --
25 but it -- would it not have the authority to set the

1 conceptual minimum? Either it has the authority or
2 not --

3 MR. DENIS GUENETTE: Yeah.

4 BOARD MEMBER GABOR: -- and it chose
5 to set it at one hundred (100), is there anything in
6 the Act that restricts it from setting it at whatever
7 level it wants as a minimum?

8 MR. DENIS GUENETTE: I think that's a
9 great question. And we would have to go back to what
10 section 18 says, and section 18, as far as I can
11 tell -- I mean, other people might interpret it
12 differently -- but I see that that sets a conceptual
13 minimum.

14 Now if the amount ends up being so
15 significant -- which is what we're talking about --
16 that it actually no longer fits within the meaning of
17 section 18(1) in practice, then perhaps there may well
18 be a risk.

19 BOARD MEMBER GABOR: Sorry to
20 interrupt. Eighteen (18) -- I'm trying to figure
21 out -- 18(1)?

22 MR. DENIS GUENETTE: Sorry.
23 Eighteen (18) -- section 18.

24 BOARD MEMBER GABOR: Okay. Of 18.
25 Okay. Yeah. I was looking at 18, and I was trying to

1 see where 18(1) was.

2 MR. DENIS GUENETTE: Oh, I was --
3 sorry.

4 BOARD MEMBER GABOR: Yeah.

5 MR. DENIS GUENETTE: No. It's
6 entire -- so I haven't had to think about this. I'm
7 thinking about it...

8

9 (BRIEF PAUSE)

10

11 THE CHAIRPERSON: Thank you. Sorry.
12 Mr. Guenette, please continue.

13 MR. DENIS GUENETTE: Certainly. Thank
14 you. I actually think it's a great question, and I --
15 and I -- thank you -- hadn't thought about this
16 dynamic, and that's why it's very helpful.

17 We go back to the wording of
18 section 18, and it says that:

19 "The Corporation shall establish and
20 maintain reserves in such amounts
21 that at all times it has sufficient
22 funds to meet all the payments as
23 may become payable under this Act
24 and the regulations."

25 And so the conceptual question is: Is

1 there a point where a regulation that is made under
2 this stretches so far out that it's no longer within
3 the meaning of section 18?

4 Now, I'm going to submit we're not
5 there. I'm going to submit there's a reason why we're
6 not there. It's something that's been put forward as
7 a position, and we've seen that it's even been agreed
8 to at one point.

9 But let's go to the extreme, and I
10 don't want to be saying anything that's going to be
11 recorded and then used in a future proceeding should
12 the unexpected happen. So we're going to be on
13 theoretical discussion here.

14 But let's say we got to that point. I
15 think somebody could come up with an argument that
16 says the magnitude is so dramatic that it has
17 stretched the meaning of section 18 -- I'm creating
18 somebody's argument here -- that it has stretched the
19 meaning of section 18 so far that it is a regulation
20 that we cannot fit within the purpose, intent, and
21 meaning of section 18 as it's written. Where is that
22 limit going to be? I don't know.

23 BOARD MEMBER GABOR: Thank you.
24 Mr. Guenette, I want to take a look at 33(1.1), and I
25 asked you this -- this question before, and you said

1 that there are sort of different levels, and you
2 thought that -- that the top level was, if I could
3 say, LGIC rather than saying lieutenant governor and
4 council that the PUB would make a -- an order for a
5 change, but it was up to lieutenant governor and
6 council.

7 What's the difference with -- if you
8 read this section -- it may be made under
9 subsection sub (1) unless the lieutenant governor and
10 council is satisfied that the proposed change has been
11 approved by the Public Utilities Board versus may be
12 made under subsection sub (1) unless the lieutenant
13 governor and council is satisfied with the proposed
14 change as approved by the Public Utilities Board.

15 As I read that section, it's stating
16 that Lieutenant Governor In Council will only make the
17 change if it has been approved by the Public Utilities
18 Board, that the word "satisfied" is not whether it's
19 satisfied, it's whether the change has been made. Is
20 that not the way that section's read?

21 MR. DENIS GUENETTE: Well, it -- it's
22 been approved, not necessarily made.

23

24

(BRIEF PAUSE)

25

1 MR. DENIS GUENETTE: I do think it's a
2 precondition to the -- the regulation being made. The
3 PUB -- well, has to have approved it.

4 BOARD MEMBER GABOR: Right.

5 MR. DENIS GUENETTE: And then the path
6 has been cleared for the LGIC to make the regulation
7 that would be necessary. Of course, we're talking
8 about not the re -- not the process that we're in.
9 We're talking about the way the process used to be for
10 what we're talking about here. This is for the other
11 driver's side insurance.

12 BOARD MEMBER GABOR: Yeah. Okay.

13 MR. DENIS GUENETTE: I'm not sure
14 whether the scenario has ever materialized that the
15 LGIC, with the proposal -- with the matter having come
16 to it, that it has balked and said, we're not sure we
17 want to follow up on what the PUB has made. That's a
18 potential -- the Act doesn't speak to that. It
19 doesn't compel the regulation to be made. If the
20 experience has never materialized, thankfully, that's
21 a good thing.

22 BOARD MEMBER GABOR: Okay. The other
23 question, sir, is if you could go to the Crown
24 Corporations Governance and Accountability Act,
25 Section 25(1). You said that yo -- you can't read

1 these together, that you have to go through each
2 statute to see what the roles and responsibilities
3 are.

4 When I read 25(1), where it says,
5 "Despite any other Act or law, rates
6 for services awarded by them" --
7 -- what -- what do the words "despite
8 by any other act or law" mean? Doesn't that --
9 doesn't that say that in terms of setting the rates,
10 that this is the primary piece of legislation?
11 Otherwise, I don't know what the words mean.

12 MR. DENIS GUENETTE: Well, there's a
13 great debate. Usually, if there's a specific
14 provision that's being attacked, that's being said,
15 we're accepting this despite -- we might actually
16 state what the actual law is, this is a very general
17 concept. Di -- I don't -- we submit it's not intended
18 to mean that it creates a jurisdictional enclave for
19 the PUB. There's no conflict. This is an extension
20 of the conflict concept.

21 BOARD MEMBER GABOR: So are -- are you
22 suggesting that the words are throwaway words?

23 MR. DENIS GUENETTE: No.

24 BOARD MEMBER GABOR: Okay.

25 MR. DENIS GUENETTE: I'm suggesting

1 they're a continuation of the cons -- the concept of a
2 conflict.

3 BOARD MEMBER GABOR: Okay. Thank you,
4 sir.

5 MR. DENIS GUENETTE: I'll -- I'll just
6 add --

7 BOARD MEMBER GABOR: Yeah. Sure.

8 MR. DENIS GUENETTE: -- one (1) thing,
9 to reiterate. As long as we're going with the literal
10 words, they are about changes in rates in addition of
11 new rates. So a status quo would not require PUB
12 approval. So I don't think that's a realistic --

13 BOARD MEMBER GABOR: Sta -- sorry,
14 you're saying status quo is we're not asking for a
15 rate reserve -- rate -- for any rate.

16 MR. DENIS GUENETTE: Well, I don't
17 want to go too far down that road.

18 BOARD MEMBER GABOR: Okay, well,
19 that's --

20 MR. DENIS GUENETTE: I'm only at the
21 level of statutory interpretation --

22 BOARD MEMBER GABOR: Okay.

23 MR. DENIS GUENETTE: -- for the
24 purposes of responding to the fact that the reserves
25 regulation is being challenged. But when I go back to

1 the words, I see a dis -- I see that it's about
2 changes in rates, and I see about adding new rates.
3 What the status quo would be, I'm going to stop my --

4 BOARD MEMBER GABOR: Okay.

5 MR. DENIS GUENETTE: -- my
6 interjections there.

7 BOARD MEMBER GABOR: Thank you, sir.

8

9 (BRIEF PAUSE)

10

11 THE CHAIRPERSON: Thank you, Mr.

12 Guenette.

13 MR. DENIS GUENETTE: Thank you.

14 THE CHAIRPERSON: Mr. Scarfone...?

15 MR. STEVEN SCARFONE: Thank you, Madam
16 Chair. Panel members, good morning. And so, Madam
17 Chair, we are now day seventeen (17) since the hearing
18 commenced, and MPIC still has some exhibits that we'd
19 like to read into the record before I begin.

20 Exhibit number 105 will be MPIC
21 Undertaking number 39.

22

23 --- EXHIBIT NO. MPI-105: MPIC Undertaking 39.

24

25 MR. STEVEN SCARFONE: And Exhibit

1 number one to -- 106 is the reply presentation that
2 I'll be making this morning.

3

4 --- EXHIBIT NO. MPI-106: Reply presentation by
5 Steven Scarfone, October
6 29, 2019

7

8 MR. STEVEN SCARFONE: And lastly, for
9 the benefit of the -- of the panel, Exhibit number 107
10 is a decision of the Court of Queen's Bench, Smith v.
11 Roebeck, which we've put before this Board to help the
12 Board in -- in its -- in its look at the purpose of
13 the MPIC Act. It provides a good summary of what the
14 Act was intended for when it was first brought in by
15 the Legislature.

16

17 --- EXHIBIT NO. MPI-107: Court of Queen's Bench
18 decision in Smith v.
19 Roebeck

20

21 REPLY BY MPI:

22 MR. STEVEN SCARFONE: So with that, I
23 will -- I'd like to deal firstly with Undertaking
24 number 39, because it does relate to MPI's submission
25 on the reserves regulation.

1 So you recall, Madam Chair, that last
2 week, the Board was interested to know if there was
3 any jurisprudence concerning the reserves regulation,
4 MPIC's compliance with the regulation, and the build
5 and release provisions under the capital management
6 plan. And -- and of course, we see here this morning
7 why cases that interpret statutes are important,
8 because it doesn't have everyone guessing what certain
9 words mean. A court has analysed provisions and
10 provided an opinion on that.

11 Unfortunately, MPIC couldn't find any
12 cases directly on point as it concerns compliance with
13 the reserves regulation and the application of the
14 capital management plan. And that, I would suggest,
15 is not surprising. It's a very fine point. I can
16 tell you that I spent about three (3) hours on Sunday
17 looking for a case that might assist this panel. I
18 could find none.

19 But it's important to know, and it's
20 not all bad news. The Corporation, you'll see in that
21 response to that undertaking, takes the position that
22 the PUB Act provides all the authority that this Board
23 needs to allow MPIC to come into compliance with the
24 regulation through its capital management plan. And
25 I'll touch upon that in a second.

1 But you will recall, Madam Chair, that
2 the regulation, as I think Mr. Gabor pointed out, has
3 mandatory language. The regulation would say that
4 MPIC must maintain its capital level at 100 percent
5 MCT. That's mandatory language.

6 But you also heard Mr. Johnston testify
7 that it's only by chance that the Corporation would
8 ever be at 100 percent MCT. It would be a fluke, and
9 that's given all the factors that go into determining
10 the capital level of the Corporation. There's
11 interest rates, which is a big one. There's the
12 capital transfers. There's the retention of the RSR
13 income. All of these factors would mean only by
14 coincidence will the Corporation be at 100 percent
15 MCT.

16 And so a strict compliance
17 interpretation of that provision under the reserves
18 regulation isn't a fair one, in our view. And indeed,
19 it would offend the interpretation rule against coming
20 to an absurd result. If -- if the panel was to find
21 that MPIC had to always be at 100 percent MCT, that
22 would result in an absurdity, in our view.

23 And so that rule, that particular
24 absurdity rule, would say that you should favour an
25 interpretation that leads to a beneficial result. And

1 we say that this particular hearing and hearings of
2 the past have canvassed that benefit of having a
3 properly capitalized insurance company.

4 So you may also recall -- and this is
5 from the October 15 hearing date, at pages 1111 and
6 pages 1112, that the Corporation said that if it was
7 out of compliance with that reserves regulation, that
8 it would come before this Board out of compliance,
9 meaning not at 100 percent MCT, and MPIC would fully
10 expect this Board to say, MPI, what are you going to
11 do about it? You're not in compliance with your own
12 reserves regulation.

13 And MPIC said, at the transcript, that
14 it would say, well, we've got a plan. We've got a
15 plan to come into compliance with the reserves
16 regulation. And the Board would have to be satisfied
17 that the plan was a good one.

18 And that what -- that's what the
19 capital management plan is all about, Madam Chair, is
20 -- is ensuring that the Corporation can comply with
21 this new regulation.

22 And so, when I said at the outset that
23 this Board's own Act allows the Board to do that, I
24 would have you look to Section 74(2) and Section
25 78(1). 74(2) reads that:

1 "The Board shall conduct all
2 inquiries necessary for obtaining
3 complete information as to the
4 manner in which a public utility
5 will comply with the law."

6 And so, we say the -- the -- the
7 inquiries that that provision speaks to is this
8 Hearing. So, the -- the Board is making inquiries at
9 this Hearing about how MPIC is going to comply with
10 the law, and -- and before you is the capital
11 management plan.

12 And again, at 78(1) there's another
13 provision in -- in the PUB Act that speaks to that.
14 And it -- and it reads that:

15 "The Board may order that every
16 owner of a public utility comply
17 with the laws of the Province."

18 And so, we say when you read those two
19 (2) provisions together, 74(2) and 78(1), Madam Chair,
20 they contemplate the approval of a plan by a public
21 utility for bringing itself into compliance with
22 Provincial law.

23 So, as it concerns MPI in its capital
24 management plan for Basic, the mandatory language of
25 72 requires this Board to fully investigate the

1 details of the capital management plan as was done
2 during the course of this Hearing.

3 And so, look at those provisions, Madam
4 Chair. And we say you don't need any authorities, any
5 case law, because the authority to approve the capital
6 management plan for compliance with the reserves
7 regulations is found right in the Public Util --
8 Utilities Board Act.

9 And so, that -- that's our response to
10 that particular undertaking, and it's an important
11 one, obviously, for the purposes of MPIC's application
12 and seeking approval of its capital management plan.

13 So, with that, if Kristen could pull up
14 MPIC's response or reply presentation. Thank you.

15 So, that is the agenda, it's a short one. It's the
16 reserves regulation.

17 And as I promised on Friday, I won't
18 reiterated any of what Mr. Guenette has indicated
19 before this panel. I will touch upon a couple small
20 points that I think are important as it concerns the
21 reserves regulation.

22 And then we'll go through, as Madam
23 Chair recommended, each of the recommendations made by
24 the CAC, IBAM, and the CMMG.

25

1 (BRIEF PAUSE)

2

3 MR. STEVE SCARFONE: So, those we say
4 are the three (3) issues that are before this Board as
5 it concerns the validity of the reserves regulation.
6 And Mr. MR. Guenette touched upon the jurisdictional
7 issue. Secondly, is the regulation valid? And,
8 lastly, is the regulation binding?

9 So, on that first and what we would
10 submit is a threshold issues, MPIC adopts the position
11 taken by the Attorney General of Manitoba. And MPI
12 repeats and relies upon the specific basis for their
13 position as set out in the Attorney General of
14 Manitoba's written submission in its brief.

15 And so, we will limit our statements in
16 reply for the sake of expediency.

17

18 (BRIEF PAUSE)

19

20 MR. STEVE SCARFONE: As Mr. Guenette
21 indicated, those particular sections before you are
22 the relevant provisions, in our view, for the
23 determination that's before this Board, and that is
24 whether the reserves regulation was passed with the
25 requi -- requisite authority under the MPIC Act.

1 We've underlined what we think is the
2 important part of Section 33(1), and that is that it
3 has to be for the purpose of carrying out the
4 provisions of this Act according to their intent.

5

6 (BRIEF PAUSE)

7

8 MR. STEVE SCARFONE: So, the exhibit
9 that was filed, Madam Chair, 107, speaks to the
10 purpose of the Act. And it was identified by the
11 Manitoba Court of Queen's Bench in Smith v. Roebeck.

12 And in that particular decision at
13 paragraph 60, the court said that:

14 "All the authorities suggest that
15 the Act should be interpreted in
16 accordance with its purpose."

17 And that -- that shouldn't come as a
18 surprise. The court went on to quote from the purpose
19 -- or from the case in McMillan, which was one of the
20 first cases that was before the Court of Appeal that
21 interpreted the -- the MPIC Act under the new no-fault
22 scheme.

23 And that, the -- the Board may be
24 aware, was a case that involved a vehicle that had
25 occupants injured when a bridge collapsed, and so they

1 sued the municipality for personal injury.

2 And the court had to grapple with
3 whether that particular lawsuit was going to be
4 allowed or whether it was captured -- those injuries
5 were captured under the new personal injury protection
6 plan.

7 And at paragraph 54, you'll see it
8 there before you, the Court of Appeal said:

9 "I haven't -- I have concluded that
10 the legislature created an all-
11 encompassing insurance scheme to
12 provide immediate compensatory
13 benefits to all Manitobans who
14 suffer per -- bodily injuries in
15 accidents involving an automobile."

16 And so, that particular lawsuit failed.
17 They weren't allowed to bring the action against the
18 municipality because the court was of the view that
19 that type of scenario was captured by the new no-fault
20 injury scheme that came in in 1994.

21 He goes on to say that:

22 "I am of the view that the main
23 objective of motor vehicle insurance
24 legislation in Manitoba is the
25 reduction and the volume and costs

1 of litigation."

2 And so, that was the purpose behind
3 bringing in the no-fault scheme and which resulted in
4 the mass exodus of lawyers to Alberta, as I recall.

5 "The means to achieve that objective
6 is the limitation of access to the
7 courts.

8 And for that reason, I would agree
9 with the observations made in
10 another case, that the no-pulp --
11 no-fault provisions of the Act were
12 intended to constitute a
13 comprehensive code determining the
14 rights of injured persons against
15 their insurers and the insurers
16 against other insurers."

17 So, all of that to say, Madam Chair,
18 that the Act is an all-encompansy -- all-encompassing
19 insurance scheme to provide immediate compensatory
20 benefits to Manitobans that cannot operate if the
21 entity tasked with implementing that scheme, MPIC,
22 cannot meet all of its payments due under the Act and
23 the regulations when they become due.

24 And so, that is MPI's position on why
25 the Corporation feels that the reserves regulation is

1 consistent with the purpose and intent of the Act in
2 the regulations.

3 It's about having the money available
4 to pay the liabilities as they become due, having the
5 capital available. And -- and we've heard ad nauseam
6 the purpose of the reserves regulations, or the rate
7 stabilization reserve, sorry. And that is for those
8 unforeseen events that the Corporation is expected to
9 pay on behalf of its customers.

10

11 (BRIEF PAUSE)

12

13 MR. STEVE SCARFONE: So, this
14 particular slide speaks to a finding that this Board
15 may make, that the regulation was validly enacted, and
16 then, as Mr. Williams has advanced, whether it's
17 binding upon this Board in determining rates.

18 We see there that the Corporation takes
19 the position that this Board cannot direct MPIC to
20 hold an amount in its RSR that is less than 100
21 percent MCT.

22 And that is, again, based on a finding
23 that the regulation was passed with the requi --
24 requisite authority under the Act as advocated by Mr.
25 Guenette this morning.

1 It also reads there that:

2 "The Board cannot require MPIC to
3 use a method to establish the
4 minimum RSR target other than the
5 minimum capital test as set out in
6 the regulation."

7 And the last bullet there is one I want
8 to touch upon, and -- and Mr. Guenette did it, but he
9 didn't go to that extra step. And so if I might, it
10 creates a practical problem for MPIC if the regulation
11 is not followed by the Board. So again, we're talking
12 about a situation under issue 18 where the Board has
13 made a finding that it was valid, the regulation was
14 passed to the requisite authority, and now the issue
15 is whether they're going to follow it when setting
16 rates.

17 If they were to depart from the
18 regulation and come up with a different capital
19 target, for example, under the DCAT, a different
20 threshold, you're then leaving MPIC in a bind, between
21 a rock and a hard place, because you would have two
22 (2) competing targets pulling MPIC in different
23 directions. You would have a reserves regulation that
24 this Board has found is valid, that says the MP --
25 that the Corporation has to meet 100 percent MCT as

1 its target.

2 But if the Board was to say, well,
3 that's not binding upon us, and we favour the DCAT
4 approach, and a -- and the capital target is something
5 less than 100 percent MCT, then you have the Board
6 pulling us in another direction as it concerns its
7 capital. And so we say that's an untenable position.
8 That can't be the result at the end of this hearing.

9 The Corporation says there are really
10 only two (2) options available to this Board, and that
11 is to make a finding that the regulation is valid and
12 binding upon the PUB. As Mr. Guenette said, it's
13 binding upon everybody. It's a regulation.

14 Or the second option, as Mr. Guenette
15 said, would be to make a finding that the regulation
16 is invalid. But you can't have it where it's
17 determined to be valid, but not binding, in our view.

18

19 (BRIEF PAUSE)

20

21 MR. STEVEN SCARFONE: And we would
22 suggest that particular scenario would also contra --
23 contradict the provision that I mentioned earlier,
24 Section 78(1) of the Public utilities Board Act, which
25 gives the PUB the ability to issue an Order compelling

1 an entity to comply with the laws of the Province. So
2 a finding that -- that the -- the regulation isn't
3 binding upon the Board would contravene a provision of
4 the PUB Act, in our view.

5 And lastly, the question was put to
6 MPIC in an Information Request, you know, is this --
7 is this res -- reserves regulation binding upon the
8 Public Utilities Board? Well, that is for this panel
9 to determine.

10 What I do know, Madam Chair, is that
11 the -- the regulation is binding upon MPI. We have to
12 follow that regulation. And as you heard from Mr.
13 Graham, we filed the General Rate Applicat -- General
14 Rate Application this year under the framework that
15 exists, which includes a provision that says that the
16 Corporation has to hold 100 percent MCT capital in its
17 rate stabilization reserve. That's the framework
18 under which we applied before this Board this year.

19 Now I, too, enjoyed the -- the
20 presentation that Mr. Todd gave, but I also, like Mr.
21 Guenette, take issue with some of the statements he
22 made, including the suggestion when I put it to him on
23 cross-examination that this dilemma that -- that could
24 present itself to MPIC, he was of the view that was of
25 no concern to him; that in his words, the regulator is

1 God, and that we could choose to ignore what the
2 Government of Manitoba has done.

3 Well, that is a position that MPIC
4 cannot accept. And I might remind the panel that in
5 making those comments, the gentleman also suggested at
6 some point during his -- during his cross-examination
7 that the depletion -- the complete depletion of a rate
8 stabilization reserve was normal.

9 And we would submit we've heard lots of
10 evidence about how the DCAT will run different
11 scenarios to determine actually what is normal. And a
12 depletion of a -- a rate stabilization reserve, one
13 (1) every hundred (100) years. That's normal.
14 Certainly not normal to have what MPIC has had over
15 the past several years with the complete depletion of
16 its reserves, necessitating transfers of capital from
17 the Extension line of business. That's not normal
18 with respect to Mr. Todd.

19 So again, the Corporation is of the
20 view that it's bound by a validly enacted reserves
21 regulation, and it must follow the direction of
22 government and the regulation that is passed under --
23 or is enacted under its own home statute.

24 So that is essentially the -- the
25 Corporation's position with respect to the reserves

1 regulation. And I'm going to move on now to some of
2 the recommendations that we heard from the various
3 Interveners in this -- in this proceeding.

4 There is the -- the recommendations of
5 the Consumers' group. Concerning forecasting, Madam
6 Chair, this -- this particular issue is one where the
7 -- the CAC recommends that the expenditure forecast
8 not be relied upon. And you'll recall the reasoning
9 for that, as I understood it, was that the Corporation
10 based its -- its forecasting on six (6) months that
11 were, in the CAC's view, not indicative of where
12 things may go, meaning they didn't incorporate the
13 winter months, the increased accidents that might
14 occur, had the forecast incorporated a more lengthy
15 time frame. We see there that the projected year end
16 RSR levels are current best estimate, recognizing the
17 seasonal deterioration in claims experience.

18 If the Board was to reject the forecast
19 that was employed by MPIC, it would necessarily mean
20 the potential for triggering a bill provision under
21 the proposed Capital Management Plan.

22 So as you might expect, the amount of
23 capital that the Corporation requires, if the
24 forecasting as recommended by Mr. Williams is -- is
25 accepted, would mean -- would mean a bill provision,

1 or could mean a bill provision in the CMP.

2 The Consumers' group recommends on the
3 service delivery front that consumer engagement should
4 reopen the issue of the monthly credit card payment.
5 There is no evidence on the record of any customer
6 complaints in this regard, and monthly credit card
7 payments were eliminated after careful consideration
8 of the business case and customer implications.
9 Moreover, the regulation was amended to reflect the
10 elimination of the credit card payments.

11 So we say this -- this slide, sorry,
12 clearly identifies why the recommendations with
13 respect to the issue of cancelling -- the proposed
14 cancellation, and reinstating that is -- is not an
15 appropriate recommendation in our view. That ship has
16 sailed, essentially is the message concerning that
17 recommendation by the CAC.

18 On -- on information technology, the
19 Consumers' group recommends quarterly reporting on
20 Project NOVA. You heard evidence from the IT Panel
21 that MPI has provided unprecedented disclosure in this
22 General Rate Application, but MPI welcomes suggestions
23 from the PUB to exchange information. Governance of
24 vendor reporting, for example, could be made
25 available.

1 The one (1) thing that MPIC would
2 caution with respect to this recommendation is that
3 more information, Madam Chair, is not always better
4 information, and the PUB must balance its obligation
5 to ensure a sufficient prof -- process with its
6 obligation to investigate the basis for any request
7 for the approval of rates.

8 And so MPIC will provide whatever
9 reporting this Board feels will assist it in
10 determining whether Project NOVA is on pace and within
11 budget, and -- and leave that with the Board, but we
12 don't necessarily accept that quarterly reporting is -
13 - is the way to go.

14 THE CHAIRPERSON: On that point, Mr.
15 Scarfone, are you including reporting that can be made
16 available to Interveners, whether with or without a
17 CSI agreement, depending on the nature of the
18 information?

19 MR. STEVE SCARFONE: Sorry, with or
20 without a...?

21 THE CHAIRPERSON: A commercially
22 sensitive information agreement, whether that's --

23 MR. STEVE SCARFONE: No. I -- you
24 mean independent of this process?

25 THE CHAIRPERSON: As part of the

1 governance vendor reporting could be made available,
2 that comment.

3 MR. STEVE SCARFONE: Yes. So that I
4 expect contemplates reporting during the course of the
5 General Rate Application.

6 THE CHAIRPERSON: Thank you.

7 MR. STEVE SCARFONE: On benchmarking,
8 there were some recommendations made by the Consumers'
9 group. It recommended that MPIC report on IT
10 Benchmarking within six (6) months. As you heard from
11 Mr. Lazarko, MPIC intends to have a new benchmarking
12 vendor in place by fiscal year end.

13 So largely this -- this recommendation
14 we say should be looked at with some caution because
15 there are things that are outside the control of MPIC
16 as it concerns its new benchmarking partner. So we
17 can't commit, for example, to having a report done
18 within six (6) months, given that there's a -- an RFP
19 process that has to be undertaken, candidates that
20 will be applying for the -- for the benchmarking
21 duties.

22 So, while -- Corporation of course, in
23 its transparency mandate will be providing
24 benchmarking, at this stage, given the new vendor
25 that's on the horizon, we can't commit to doing that

1 within the six (6) months as recommended by the CAC.

2 A lot of Mr. Williams' closing was with
3 respect to investments. I think that largely for the
4 purposes of this reply, I don't want to reiterate
5 everything that I indicated in my closing on
6 investments, but it -- it mainly deals with the shadow
7 portfolios of course, Madam Chair, and the cour -- the
8 Consumers' group has taken issue with how the risk was
9 addressed in those shadow portfolios. That is the
10 essence of their -- of their recommendations and the
11 criticism of the shadow portfolios.

12 Again, the Corporation used a nominal
13 liability benchmark, we know that. Mr. Williams is
14 advocating for a real liability benchmark because he
15 says that constitutes what's happening in the real
16 world.

17 Well, we take issue with that because
18 although a nominal liability benchmark was used, we
19 still have a real investment portfolio that's coming
20 back with real returns, and you've seen those returns
21 and they compare favourably to the recommendation that
22 Mr. Williams is making on the -- on the real life
23 side, as he calls it.

24 So remember that and -- and remember
25 what we have there in our bullet and -- and as

1 acknowledged by this Board last year, that it's the
2 MPIC Board of Directors that determines the -- the
3 Corporation's risk tolerance, and unless it's found to
4 be unreasonable in some way, which the -- which again
5 this Board found last year was not -- the Board found
6 that they -- they had selected a reasonable
7 methodology in -- in -- under the ALM, and there's no
8 reason to look beyond what's already been done this
9 year on shadow portfolios.

10 The CAC argues for the PUB to intervene
11 in the extension marketplace. So firstly, Madam
12 Chair, Panel members will appreciate that the Board
13 has no particular oversight into the extension
14 marketplace. This Board is tasked with determining
15 the rates for basic.

16 The PUB cannot, in our view, direct
17 MPIC and its broker staff to notify customers about
18 extension options. The brokers and MPIC, as the slide
19 indicates, will sell what they sell.

20 So the recommendations of the
21 Consumers' group on this topic area relate solely to
22 extension products, and -- and we say that's outside
23 the -- the purview of this Board.

24 I think we've frozen.

25

1 (BRIEF PAUSE)

2

3 MR. STEVE SCARFONE: On the Capital
4 Management Plan, the CAC recommends that the Board
5 determine extension capital targets for basic rate
6 approval purposes. However, we would point out that
7 the CAC has provided no evidence or explanation of how
8 the PUB might go about this.

9 The reserves regulation, not unlike the
10 capital target for basic, determines the extension
11 capital target at 200 percent MCT. And the Capital
12 Management Plan, as established by the MP -- MPIC
13 Board of Directors, determines what happens with that
14 extension capital.

15 And you've heard a lot of evidence for
16 Mr. Johnston and other witnesses about the benefits of
17 the Capital Management Plan and how it deals with the
18 competition concerns raised by Mr. Todd, that you see
19 automatic transfers happening every year to prop up
20 basic, recognizing over the past number of years that
21 it's become obvious to the Corporation that basic is
22 not self-sustaining at this stage.

23 Those capital transfers that amounted
24 to approximately \$275 million over the past five (5)
25 years made it very clear to the MPIC Board of

1 Directors that they needed something -- they needed to
2 formalize what was happening at the Board of Directors
3 level, and they've done that in the Capital Management
4 Plan, which calls for automatic transfers into basic
5 every year, approximately \$40 million after -- after
6 we catch up this year with the \$70 million transfer
7 that's scheduled. So that CMP we say transparently
8 manages the excess extension reserves, and there's no
9 need for recommendations outside of what's proposed in
10 the Capital Management Plan by this Board.

11 Carrying on with the recommendations
12 for the Capital Management Plan, the Consumers' group
13 would recommend that the PUB make a finding that
14 competition in the extension marketplace is a myth.

15 We say the -- the Consumers' group
16 points only to three (3) things to support this
17 conclusion, that is market share, which MPIC has
18 acknowledged all along they -- they enjoy the market
19 share that -- I think the number was 95 percent,
20 around that area, the profit targets, and the point-
21 of-sale transactions.

22 Those are the only three (3) things
23 that -- that -- that CAC points to, to come to the
24 conclusion that this competition that the Corporation
25 asserts is really a myth. Corporation doesn't accept

1 that. It is a competitive line of business.

2 Customers have a choice.

3 And the point-of-sale transactions that
4 -- that are set out there deal with the enquiry that
5 was made by Panel Member Gabor about the screens --
6 recalled the screens that the broker looks at and -
7 and the advantage perhaps that that provides to MPIC
8 when selling its Extension products.

9 So the CAC, it seems, would invite the
10 PUB, rather than provide some evidence on this point,
11 to use its imagine -- imagination in place of a
12 rigorous and thorough analysis on whether the
13 extension line of business should be found to be a
14 non-competitive line of business.

15 Again, we said this in our closing
16 remarks, the PUB needs insight into extension, but in
17 our view it doesn't extend into oversight over the
18 extension line of business. They do need insight for
19 the purposes of determining how much capital is coming
20 over from extension under the Capital Management Plan.

21 I touched upon this already, but the
22 CAC recommends that the 100 percent MCT capital target
23 is inappropriate. We've heard evidence about how that
24 target is the industry best practice. It's also now
25 in a regulation as -- as we all know but Mr. Graham

1 said it's the minimum of the minimum.

2 CAC would advocate that setting MPI's
3 capital target on the strength of its shareholder,
4 which is the Government of Manitoba, arguing there is
5 no risk of insolvency. The regulation expressly
6 rejects that -- that premise.

7 So, that particular statement means
8 that, because the Corporation is backed, if you will,
9 by the Government, the Corporation shouldn't be
10 holding the amount of reserves that are commanded now
11 by 100 percent MCT.

12 You see that last slide there indicates
13 the regulators applied a standalone principle, and so
14 that particular counter argument, or flip side as it's
15 referred to there, was not offered by the Consumers'
16 group when deciding whether this Board should consider
17 the competitive lines of business in determining
18 MPIC's capital market -- or capital targets.

19 If -- again, if the Board was to make a
20 finding under issue 18 that the regulation was passed
21 validly under the authority of the Act but that
22 they're not going to follow it or it's not -- they're
23 not -- it's not binding upon the PUB, that -- that's
24 what this speaks to, is -- is they would come up, the
25 Board would, with some different target presumably

1 under the DCAT which there's no evidence of.

2 So, we struggle to see what the corp --
3 what the Consumers' group would recommend as an
4 alternative to the capital target that's before this
5 Board on this General Rate Application.

6 And it is, as I've said, contrary to
7 what's known as the standalone provision. I'm going
8 to skip through these next few slides, but I -- we
9 provided them there for the benefit of the panel, and
10 -- and they speak to the standalone principle, which -
11 - which essentially supports the proposition that --
12 that the Basic program should stand on its own and
13 that the capital targets are -- are -- should be
14 connected to Basic alone and not incorporate, other
15 than as -- as seen in the capital management plan, the
16 business or profit margins of Extension and special
17 risk Extension.

18 So those, I'm going to flip through
19 them. These are some findings on the standalone
20 principle from the Alberta Utilities Commission.

21 So, the -- that's just something for
22 this Board to consider on that particular
23 recommendation, Madam Chair.

24 Moving on to the recommendations that
25 were made by the Insurance Brokers Association. The

1 first one -- and it wasn't clear to MPIC why -- why
2 the -- the IBAM people were -- were -- seemed to be
3 questioning the credential of MPI executive.

4 That -- they, as we've indicated there,
5 Mr. Graham and Mr. Wennberg, in particular, have
6 adequate knowledge, as you heard. The evidence was of
7 MPI's history, its relationship with the Brokers
8 Association.

9 And -- and Mr. Graham and the executive
10 are bringing the best of private insurance practices
11 to the competitive broker industry. So, that seems to
12 be aligned concerning service delivery and -- and the
13 issues that were raised by the insurance brokers.

14 So, we -- we questioned why their
15 credentials were raised as an issue during the cross-
16 examination.

17 Five (5) of the seven (7)
18 recommendations made by IBAM apply to future online
19 service delivery. We note that no decisions have yet
20 been made on Project Nova systems to support online
21 service delivery.

22 We also note that no decision has been
23 made yet on retaining the property and casualty or the
24 DBA vendors. We do want to make note as it concerns
25 the recommendations that service delivery is in the

1 purview of MPIC management.

2 IBAM infers but has not provided any
3 evidence that customers will be harmed by direct
4 sales. And, lastly, it reads there that:

5 "The commitments of past MPI
6 executive, in our view, are of no
7 more."

8 So, you may recall that Mr. Unfried
9 went through some transfer -- transcripts from
10 applications past, quoting from Ms. Marilyn and -- and
11 from -- yeah, sorry, Mr. Guimond. Thank you.

12 We say that those past commitments,
13 Madam Chair, are -- are really just that, past
14 commitments. And so, when -- and a good example of
15 that would be the 2008 broker compensation agreement.

16 So, you'll recall that provision that
17 they pointed to that said there was -- there was an
18 agreement that the Corporation wouldn't provide online
19 services to its customers, but commitments and
20 promises made change with new executive.

21 That's essentially the message here,
22 Madam Chair. And -- and if you look to the very last
23 renewal of that broker agreement, it's indicated in
24 there that it was being extended on the advice of
25 government to allow the parties an opportunity to

1 explore online service delivery.

2 And so, those past commitments of Ms.
3 McLaren and Mr. Guimond are of no application. And
4 certainly, our -- the -- the Corporation isn't
5 committed to -- to those past promises if -- if this
6 Board is inclined to rely upon those transcripts.

7

8 (BRIEF PAUSE)

9

10 MR. STEVE SCARFONE: So, the -- the
11 last recommendation of the -- the Brokers Association
12 was that this Board ordered brokers be compensated
13 fairly.

14 So, we note that the -- the current
15 accord doesn't expire until 2021. So, that particular
16 recommendation we say is premature. And we also know
17 that there's a conciliation that's -- that's underway
18 and that MPIC will engage with the brokers to
19 establish the terms of that commercial relationship.

20 So, Mr. Gabor asked MPIC if the
21 Corporation was saying that they wanted this Board to
22 review the agreements that it enters into with its
23 service providers. And the answer to that is, no, of
24 course.

25 We don't need the agreements approved,

1 and I don't think the Board has any interest in -- in
2 doing so. What we do so -- say though is they do need
3 to be examined for fairness and to ensure that the --
4 the customers that are affected by the agreements are
5 paying fair rates where it concerns commissions or
6 where it concerns the repair of -- of motor vehicles,
7 chiropractic services, any of those.

8 Mr. Gabor...?

9 BOARD MEMBER GABOR: Sorry to
10 interrupt. By fairness, are you talking about
11 fairness for the customers? Because you said we -- we
12 would look at fairness. Are you talking about
13 fairness for the customers or are you talking about
14 fairness for the service providers?

15 MR. STEVE SCARFONE: So, it would be,
16 no, fairness for the customers. So, to the extent
17 that this Board's jurisdiction is engaged as it
18 concerns fair and reasonable rates, that's what I'm
19 talking about.

20 And, lastly, there were some
21 recommendations made by the motorcycle group, Madam
22 Chair, the first of which that there be a 0 percent
23 rate increase for the motorcyclists.

24 So, Mr. Johnston empathised with the
25 motorcycle groups, but he also indicated that there's

1 practical realities of being a motorcyclist, and --
2 and we've canvassed those.

3 Their rates will always be higher
4 because their liabilities are extended further than
5 most motorists because of the nature of their injury
6 claims.

7 And so, rates really must be based on
8 evidence and be consistent with AAP rate making and
9 PUB-approved methodology. So, we don't see any basis
10 for the motorcycle group just saying outright that
11 they should have a zero percent rate increase.

12 And then the second recommendation as
13 we understood it that was made by the -- the
14 motorcycling group was that -- backing claims
15 liabilities with equities. And this was also a
16 recommendation by the Consumers' group.

17 So I might first say that claims
18 liabilities right now are backed not by equities, but
19 under the new ALM, they're backed by fixed income
20 assets, and that was a decision that was made by the
21 Corporation on its risk tolerance and that they
22 weren't prepared to have the -- the risk associated
23 with an equity or growth asset under the Basic claims
24 portfolio.

25 But more to the point, MPIC is -- as

1 we've heard briefly in this application is conducting
2 an assessment of the new rule changes under the IFRs,
3 and so those will be forthcoming. And the Board of
4 Directors may explore the merits of backing claims
5 liabilities with equities once those rule changes are
6 fully understood and implemented by the Corporation.

7 So we're not entirely discounting that
8 possibility, but again, it's too early, given the
9 implementation of IFRs, I believe, in 2022.

10

11 (BRIEF PAUSE)

12

13 MR. STEVEN SCARFONE: And that is
14 MPIC's reply on the reserves regulation and the
15 various recommendations back the Interveners over the
16 course of the hearing.

17 THE CHAIRPERSON: Thank you,
18 Mr. Scarfone. Any questions?

19 BOARD MEMBER GABOR: Kristen, if we
20 could go to page 11 of the presentation?

21 Mr. Scarfone, when I look at this, are
22 you suggesting that the -- that the Board cannot
23 disagree with any items in the MPI expenditure
24 forecast?

25 MR. STEVEN SCARFONE: No. In fact, we

1 know that that's squarely within this Board's
2 jurisdiction, Mr. Gabor. What we're indicating there
3 simply is that the expenditure forecast that was
4 presented by Mr. Johnson, we say, is a reasonable one
5 and results in a lower rate indication and lower
6 capital requirements.

7 BOARD MEMBER GABOR: Thank you.

8 Page 8, Kristen?

9 I note here -- you said PUB cannot
10 direct MPI to hold an amount in its RSR that's less
11 than 100 percent MCT. Correct?

12 MR. STEVEN SCARFONE: If the -- if the
13 Board is of the view that it was validly passed.

14 BOARD MEMBER GABOR: Okay. And I
15 believe later on, you said the framework that MPI
16 filed was on the basis that it must meet a hundred
17 percent MCT because of the validly passed reserve
18 regulation. Is that correct?

19 MR. STEVEN SCARFONE: That's correct.
20 Within the framework of the -- presuming that the --
21 the regulation is valid. Correct.

22 BOARD MEMBER GABOR: But as I
23 understand your position, MPI can, next year for
24 example, put forward an application that doesn't meet
25 MCT one hundred (100).

1 MR. STEVEN SCARFONE: Yes. Yes. So
2 for the reasons that I indicated at the outset, and --
3 and I -- I urge the panel to look at the response to
4 that undertaking.

5 The CMP, as we've indicated, works in
6 conjunction with that reserves regulation. So the
7 reserves regulation is the anchor, and as I've
8 indicated, we won't always be at a hundred percent
9 MCT. That RSR will be -- will be drawn down, or we
10 might be in excess, and -- and it would engage
11 section 3 of the regulation.

12 But we won't always be at a hundred
13 percent MCT, so we'll come before this Board looking
14 for some direction on that front.

15 BOARD MEMBER GABOR: So while we can't
16 correct you hold it at an amount less than a hundred
17 percent, you can, as I understand it.

18 MR. STEVEN SCARFONE: Well, I don't
19 know if it would be a direction. It would just be --
20 the business would result in the target not being met
21 in any particular year.

22 BOARD MEMBER GABOR: Would you agree
23 that when we interpret legislation or regulations that
24 were to use the ordinary meaning of -- of the words in
25 the regulation or statute?

1 MR. STEVEN SCARFONE: I agree with
2 that. Yes.

3 BOARD MEMBER GABOR: Okay. So if the
4 word -- if the words say "must maintain," do the words
5 "must maintain" mean keep at a level, or do they mean
6 achieve at some point?

7 MR. STEVEN SCARFONE: I would suggest
8 the former.

9 BOARD MEMBER GABOR: Okay. So if you
10 must maintain at a hundred percent, how does it work
11 with the proposal that says we only need to be there
12 every four (4) or five (5) years. If we're not at a
13 hundred percent, we can increase it 20 percent a year.
14 We won't raise it by more than 5 percent at one time
15 in order to avoid rate shock.

16 How does that fit with "must maintain"?

17 MR. STEVEN SCARFONE: Well, I would
18 suggest, again for the reasons I have indicated --
19 and -- and the regulation perhaps in a perfect world
20 would have read, the Corporation shall be at or near
21 100 percent MCT. It doesn't it reads it must be at
22 that.

23 And so two (2) responses to that. One,
24 interpreting it that strictly, as I've indicated,
25 would result in an absurdity because we can never be

1 at a hundred percent. But moreover, this Board has
2 the statutory power to ensure that MPIC complies with
3 its laws.

4 So we would come before this Board and
5 say, we have a plan to achieve or -- or return to
6 100 percent MCT. And if the -- if the Board is
7 satisfied with that plan, then that, in our view, is
8 tantamount to compliance with that provision.

9 BOARD MEMBER GABOR: But -- but I -- I
10 guess how -- on the one hand you're saying we can
11 never be at a hundred percent, but you were at a
12 hundred percent this year.

13 MR. STEVEN SCARFONE: Well, we're at
14 97.6.

15 BOARD MEMBER GABOR: Okay. You
16 were --

17 MR. STEVEN SCARFONE: Close.

18 BOARD MEMBER GABOR: -- close. One
19 other way to meet a hundred percent is if the Board --
20 if you came here and said, we're not at a hundred
21 percent, and the Board said, well, the regulation says
22 you need to be at a hundred percent. We're going to
23 give you a rate increase that puts you at a hundred
24 percent.

25 MR. STEVEN SCARFONE: And -- and so

1 the Board could -- the Board could do that, Mr. Gabor.
2 What the Corporation -- we thought that having the
3 Corporation remove from that target by a substantial
4 amount would -- would be too onerous upon the
5 ratepayers. And so you see in there the bill
6 provisions that are spread out over five (5) years.

7 BOARD MEMBER GABOR: But that's the
8 CMP. That's not the regulation. From -- from what
9 I'm understanding is that you need flexibility to
10 reach a hundred percent MCT, and perhaps you were
11 hoping for a regulation that gave you the flexibility,
12 and what you got was must maintain. Is that correct?

13 MR. STEVEN SCARFONE: I think that --
14 that is a large part of what the capital management
15 plan is -- is trying to address. Yes.

16 BOARD MEMBER GABOR: Right. But
17 again, the capital management plan is not a statute or
18 a regulation. It's simply a proposal to this Board.

19 MR. STEVEN SCARFONE: Yes.

20 BOARD MEMBER GABOR: Okay.

21 MR. STEVEN SCARFONE: And so -- and I
22 don't want to repeat myself, Mr. Gabor. It comes back
23 to compliance, and this Board has to ensure that MPIC
24 is in compliance.

25 BOARD MEMBER GABOR: One final point

1 if I could ask you, Mr. Scarfone. If it's okay, I'd
2 like to ask you a question about your submission on
3 process improvements that you --

4 MR. STEVEN SCARFONE: Yes.

5 BOARD MEMBER GABOR: -- that were
6 filed that -- and I don't know if it's -- Mr. Guerra
7 was handling it at the -- at the end, so I don't know
8 which -- which counsel will handle the question.

9 MR. STEVEN SCARFONE: It'd probably be
10 Mr. Guerra 'cause I won't know the answer.

11 BOARD MEMBER GABOR: Mr. Guerra,
12 Mr. Scarfone's dumped it on you. Mr. Guerra, in -- in
13 our discussion, I talked about the issue of -- issue
14 and scope of the process. Kristen, if you could go to
15 page 2722 of the transcript.

16 And there was a discussion on 2721
17 where I asked, is there a suggestion that the kind of
18 process we run or the scope of the process relates to
19 the rate request by MPI. And you said -- you asked me
20 to rephrase the question.

21 And then I said, the number of issues
22 in the scope of the process -- is it a different
23 process if you are asking for a negative rate increase
24 versus a small rate increase versus a large rate
25 increase.

1 And your -- and I believe your comment
2 is, it's tempting to look at it. While I think
3 there's some merit to considering that, I think
4 overall that we have to do -- what we have to do is we
5 have to look at what are the issues that are most
6 pressing for rate payers at the current time. That's
7 your response? Correct? That was your response at
8 the time.

9 MR. ANTHONY GUERRA: Yes. Correct.

10 BOARD MEMBER GABOR: And if I could go
11 to page 105, I ask -- I think I put this to you at --
12 at the time, too. I asked -- Mr. Scarfone made
13 reference to Mr. Triggs' comments at the pre-hearing
14 conference. There seemed to be some sort of
15 suggestion that the scope of the hearing is dependent
16 on the rate requested. Is that the position of MPI?

17 And Mr. Scarfone said no. We think
18 that the investigation into the application should be
19 as robust. Whether it's a positive rate increase or a
20 negative rate increase, we're not debating that.
21 That's his response?

22 MR. ANTHONY GUERRA: Yes, I see that.

23 BOARD MEMBER GABOR: Can you take a
24 look at your submission on process improvements at
25 page 13? Six point three (6.3) -- your proposal

1 scaled the GRA with the rate increase and that the
2 kind of application or hearing or process we follow
3 depends on the rate increase. And I'm just trying to
4 understand the comments during the hearing in light of
5 the proposal in the -- in the su -- submission.

6 MR. ANTHONY GUERRA: You're seeking
7 some guidance, some reconciliation, correct?

8 BOARD MEMBER GABOR: Yeah, they do --
9 and -- and it's not that I'm opposed to it. I just
10 find some contradiction in them, and I'm trying to
11 figure out, at the end of the day, whether we're
12 supposed to go on what is said in the transcript, the
13 sworn testimony, or if we go on what is in submission.

14 After -- you know, after the hearing,
15 the Board will look at potential improvements. Now I
16 don't know which -- what MPI's proposal is or what
17 their -- their position is on -- on this.

18 Do we tie the hearing to the rate
19 increase requested, or do we look at the issues and --
20 and -- and that hearing by hearing with not relating
21 it to the rate increase?

22 MR. ANTHONY GUERRA: Fair enough, and
23 -- and I didn't appreciate that, perhaps, Mr. Scarfone
24 and I were under -- were under sworn testimony when we
25 were speaking. However, what I do want to do is I do

1 want to confer with Mr. Crozier and Mr. Triggs before
2 I answer this to make sure that everyone is on the
3 same page, because I do think it is important. So
4 just one (1) moment, please.

5

6 (BRIEF PAUSE)

7

8 MR. ANTHONY GUERRA: Thank you, panel
9 members, for giving us the opportunity to confer on
10 that. And so just so everyone is clear, because it
11 can appear from the -- the written submission and the
12 oral submissions that the -- you know, there's a
13 number of different positions MPI is taking. MPI is
14 taking the position in this case that there are a
15 number of different options and different ways to
16 approach this going forward, and -- and that everyone
17 should consider those options.

18 So to the extent that -- that a -- a
19 rate indication that is in the negatives or
20 significantly in the negatives might sug -- might
21 support a streamlined application, that might be the
22 case. We would caution, however, that we don't want
23 to sacrifice transparency for expediency.

24 But there may be times where we've gone
25 through an initial look at things and it's clear that

1 there -- there aren't issues of concern, significant
2 issues of concern. And so if that's the case, we
3 don't need a deep dive. We -- we may not need a deep
4 dive.

5 And so we should be able to determine
6 at -- at some point early on that we can have a
7 streamline process. And if we can have a streamline
8 process, we -- we probably should do that.

9 So the written submission, and I would
10 invite you to -- to take a look at the opening again,
11 which suggests that these are a -- a menu of options
12 that can be considered -- and they're mutually
13 exclusive. So we can go from application to
14 application and decide this is an appropriate
15 application to implement a streamline process, whereas
16 maybe the issues in the next year are -- are -- are
17 far more significant and complex and do require that
18 deep dive.

19 What we don't want to see, however, is
20 that there's a one-size-fits-all option for every
21 situation, because we clearly know that's not the case
22 and it's not appropriate to maybe use a robust
23 proceeding in one (1) case where there are few issues
24 in dispute but maybe streamline the process where
25 there really are some issues that MPI does want to

1 bring to the forefront, for example, the service
2 delivery model that was presented this year. I think
3 it was appropriate to talk about that. However, it --
4 that may not always be the case for those -- those
5 issues.

6 So that -- that would be our position
7 on that, and so that kind of reconciles some of what I
8 think is the concerns being raised by the panel here,
9 hopefully.

10 BOARD MEMBER GABOR: Thank you, Mr.
11 Guerra.

12 MR. ANTHONY GUERRA: Thank you.

13 MR. STEVEN SCARFONE: And I -- I might
14 just add, Mr. Gabor, all without compromising MPI's
15 commitment to transparency. So that was the main
16 message from, I -- I believe, even Mr. Graham. So if,
17 for example, we were back next year asking for a
18 negative 5 percent, we certainly wouldn't expect this
19 Board to give us a pass on investigating into how
20 Project NOVA is advancing.

21 BOARD MEMBER GABOR: Thank you, Mr.
22 Scarfone.

23 THE CHAIRPERSON: One (1) question for
24 you, Mr. Scarfone, which is really a -- a follow-up
25 from Mr. Gabor's question. In terms of actual

1 compliance with the regulation, would it not be an
2 easier regulation with which to comply if, in fact,
3 there were a range established or something that more
4 accurately reflected what's proposed now in the
5 capital maintenance plan -- capital management plan,
6 sorry?

7 MR. STEVEN SCARFONE: If there was a
8 range in the regulation?

9 THE CHAIRPERSON: A range in the
10 regulation as opposed to a specific numeric target, or
11 the regulation reflected what MPI is proposing in its
12 capital management plan.

13 MR. STEVEN SCARFONE: So I -- I guess
14 the short answer to that, Madam Chair, would be no,
15 because the Corporation has in the past, particularly
16 in -- in the last three (3) or four (4) years, gone
17 with that range under its DCAT and made
18 recommendations as to the sufficient amount of
19 capital. The -- the -- the regulation rejects that
20 particular methodology and says that a single point
21 target, which amounts to more capital than the range,
22 is a better option for MPI.

23 So if you're -- if you're saying, you
24 know, could the regulation have been drafted
25 differently? Perhaps. It could have included a

1 range, but it doesn't. And -- and so now, the
2 Corporation is -- is dealing with what the regulation
3 says and -- and how to achieve that target, and -- and
4 the capital management plan is the Corporation's
5 answer.

6 THE CHAIRPERSON: Thank you, Mr.
7 Scarfone.

8 Do you have any questions? No?

9 Mr. Williams, do you want to proceed,
10 or do you want to break?

11 DR. BYRON WILLIAMS: I'm entirely at
12 the judgment of the Board. I can -- I think our focus
13 will be on true reply on the constitutional issue or
14 the notice of constitutional questions, so inadvert --
15 maybe half an hour with questions, but in that range.

16 THE CHAIRPERSON: Okay, then let's
17 proceed. Thank you.

18 MR. DENIS GUENETTE: I know this is a
19 little bit out of step, but I -- I'm going to offer up
20 an answer to Mr. Gabor's question, if that's okay, or
21 not. It's very short. So Mr. Gabor's question --

22 BOARD MEMBER GABOR: I asked so many
23 questions, I can't remember --

24 MR. DENIS GUENETTE: I'll remind you.

25 BOARD MEMBER GABOR: Okay.

1 MR. DENIS GUENETTE: It was about the
2 meaning of the words --

3 BOARD MEMBER GABOR: Yeah.

4 MR. DENIS GUENETTE: -- "despite any
5 other Act or law" at Section 25(1). To the best of my
6 ability, based on the materials before us, the answer
7 may well be in our Tab 13, which is the Red Tape
8 Reduction Act. That's the provision that changed the
9 scope for the regulation making so that it's no longer
10 a regulation.

11

12 (BRIEF PAUSE)

13

14 MR. DENIS GUENETTE: And if we turn to
15 the page 26, it's the second sheet in.

16

17 (BRIEF PAUSE)

18

19 MR. DENIS GUENETTE: And I'm only
20 going to highlight this. You see that the amending
21 provision, Section 30(3), says:

22 "The following is added after
23 Section 6."

24 And that is six point one (6.1) to six
25 point four (6.4). So when I go back and I see

1 "despite and other Act or law," that is language that
2 predates these 2018 Red Tape Reduction Act.

3 When we went through my presentation,
4 we saw there wasn't a lot of mention about the Public
5 Utilities Board directly in the MPIC Act. These
6 provisions have now been added, but I would submit,
7 that opening stem reflects a time when these six point
8 one (6.1) to six point four (6.4) were not even in the
9 MPIC Act yet. And so that -- that is one (1) way to
10 contextualize what that meant.

11 BOARD MEMBER GABOR: So sir, you're
12 saying that if a statute has a provision that gives it
13 paramountcy, that paramountcy ends when other statutes
14 introduce new provisions. Is that correct?

15 MR. DENIS GUENETTE: No. What I'm
16 saying is when 25(1) predated the Red Tape Reduction
17 Act, it was at a time where the PUB didn't even have
18 this small amount of mention directly in the MPIC Act.
19 So in 25(1), the role is that there can be no rates
20 for services provided by Manitoba Public Insurance
21 Company -- Corporation shall be reviewed by the Public
22 Utilities Board and no change in rates for services
23 shall be made.

24 It says, "Despite any other Act." So,
25 to the extent that the MPIC Act would have previously

1 allowed rates to be changed because the PUB was not
2 directly mentioned in there, this was saying that
3 cannot be done under the MPIC Act even though it's not
4 being mentioned directly.

5 BOARD MEMBER GABOR: I'll have to
6 think about that, Sir. Thank you.

7 MR. DENIS GUENETTE: So --

8 BOARD MEMBER GABOR: No, thank you.
9 I'll have to think about that, so.

10 THE CHAIRPERSON: Mr. Williams...?
11

12 CLOSING SUBMISSIONS BY CAC

13 re Validity of Reserves Regulation:

14 DR. BYRON WILLIAMS: Yes. And thank
15 you. It's official good afternoon, so good afternoon,
16 members of the panel. Kristen, if you can pull up tab
17 12 of the CAC book of authorities.

18 Madam -- paragraph 17. Lovely. Madam
19 Chair, members of the panel, roughly one third (1/3)
20 of the briefs submitted by the Attorney General last
21 night focussed on whether the Public Utilities Board
22 had the jurisdiction to embark upon this Inquiry in
23 the course of its rate approval process.

24 And specifically, at paragraph 41, the
25 Attor -- Attorney General suggested it had located no

1 case law directly on point. Stay at paragraph 17,
2 please. Thank you.

3 And then, again in inquiries with the
4 Public Utilities Board this morning that similar
5 statement was made. This is a judgment by Mr. Justice
6 Rothstein of the Federal Court as he then was way back
7 when I was young, back in 1994, at least young as a
8 lawyer, clearly setting out in that specific context
9 immigration officers having the jurisdiction to
10 determine relevant questions of law, including
11 deciding questions as to the valid -- validity of
12 regulations pursuant to which decisions are made.

13 And if we go to Tab 52 of the book of
14 authorities of CAC (Manitoba), and specifically page,
15 at the bottom, 13-78.1, here we have, Madam Chair and
16 members of the panel, Brown and Evans, the Honourable
17 John Evans, judicial review of administrative action
18 in Canada setting out the well settled principle that
19 administrative tribunals have the authority to impugn
20 the validity of subordinate legislation on the ground
21 that, properly interpreted, the legislation did not
22 contain that necessary grant of authority.

23 And as you turn to the next page,
24 you'll see that they normally possess the power to
25 decide whether that subordinate legislation is valid.

1 And there are numerous notes in footnote 487
2 establishing that well-established principle dating
3 back a quarter of a century.

4 So, the essential thrust of the
5 fourteen (14) pages of the AG's submissions are based
6 upon a mistaken understanding of the law that has been
7 well settled.

8 And the -- the pi -- tribunal does --
9 this Board does not need to go there. But if you look
10 at pa -- Tab 14, we do not need to go there, Kristen,
11 or Tab 13 of our book of authorities, you'll actually
12 see the Supreme Court going one step beyond this,
13 saying that when a administrative tribunal is charged
14 with determining questions of law and has competency
15 over the remedies, it can actually discharge that duty
16 in determining whether legislation is constitutionally
17 valid or not.

18 That's a step beyond what we're doing
19 here. Brown and Evans, a well regarded authority, Mr.
20 Justice Rothstein, one (1) of the most imminent
21 jurists in the history of this country, and a number
22 of other cases establish that principle.

23 In multiple paragraphs -- moving to
24 another topic. In multiple paragraphs throughout its
25 submission, including paragraph 16, the Attorney

1 General inadvertently misstates CAC (Manitoba's)
2 argument by suggesting that CAC is arguing that the
3 regulation-making power under the MPI Act is somehow
4 insufficient to create reserves.

5 That assertion fundamentally misstates
6 our argument. It is not the power that is
7 insufficient. It is that the rate approval and rate
8 stabilization authority power has been given by the
9 legislature to an entirely different entity, the
10 Public Utilities Board.

11 And if one looks at -- at -- there
12 would be nothing stopping Manitoba Public Insurance
13 from doing an IBNR regulation, an inquired but not
14 reported regulation, an insolvency regulation.

15 But that would not be the end of the
16 discussion because that would be a regulation -- or
17 not a regulation; it does it just to create reserves.
18 That would not be the end of the discussion. It would
19 do that in its own interests or its own prism.

20 But when we're moving to the rate
21 approval authority of the Public Utilities Board, then
22 we're going to the PUB provision. Then we're going to
23 the PUB, not through MPI's world view, but the PUB in
24 its inherent balancing act, judging the different
25 interest, the different evidence in the public

1 interests from the standard of just and reasonable.

2 The egregious element of the impugned
3 provisions of the reserve regulation are they are
4 going right to the inherent authority of the PUB in
5 terms of approval of rates.

6 It's not called the insolvency
7 regulation provision as it relates to Section 2(a), it
8 is the rate stabilization reserve regulation, right in
9 the PUB's bailiwick, directly in conflict with the
10 authority the PUB was granted in 1988, '89, and as
11 exercised since then.

12 Go to the language of Section 3 in the
13 reserve regulation directing the PUB how to effect the
14 rate indication in the context of rate setting. That
15 is an egregious interference in this Board's
16 jurisdiction.

17 I'll -- I'm turning to another section,
18 and there are numerous references in the Attorney
19 General's brief, including paragraph 16, 62 through
20 66, paragraph 70 and paragraph 97 where the Attorney
21 General -- paragra -- where the Attorney General seeks
22 to narrow the analytic prism of the Public Utilities
23 Board in its rate approval function away from the
24 interplay between the Cow -- Crown Corporation's
25 Governance Act, the PUB Act, and the MPI Act.

1 And Chairperson Gabor put it more
2 succinctly than I just did. He put the question to
3 the Attorney General, you're saying they can't be read
4 together.

5 It is notable in the brief submitted by
6 the Attorney General that they -- the Attorney General
7 does not cite the two (2) leading authorities on the
8 interpretation of the MPI Act, the PUB Act, and the
9 Crown Governance and Accountability Act in determining
10 just and reasonable rates.

11 And those are not cited once. Those
12 are the CMMG decision versus the Public Utilities
13 Board appearing at Tab 30. And I'll have my --
14 Kristen turn there.

15 And the other reference is the 2011
16 decision of the Public Utilities Board versus MPI
17 which was briefly referred to, not in the written
18 brief, but in the oral submissions of the Attorney
19 General.

20 But CMMG, in particular, which is the
21 most robust and holistic interpretation of how we look
22 at the Board's analytic process when it's determining
23 whether it has that jurisdiction is not referenced
24 once.

25 And you could start, if you would, at

1 paragraph 14. And if you could make it bigger for my
2 aged eyes.

3 And here you'll actually see an
4 analysis that sounds uncannily like the analysis
5 presented in the legal brief of the Consumers
6 Association. Flagging first of all section 31, gave
7 that authority back in the olden days -- section 33(1)
8 of the MPI Act, gave MPI the exclusive authority for
9 the establishment of rates.

10 But then you see in paragraphs 15 and
11 16 the influence of the Accountability Act in terms of
12 setting just and reasonable rates. Keep scrolling
13 down to --

14 And, Madam Chair and members of the
15 Panel, again you see the -- the Court here
16 contemplating -- 18 and 19 slides for right now -- the
17 interplay between these pieces of legislation, and
18 then going on in paragraphs 20 and 21 to look at the
19 role of the Public Utilities Board.

20 And finally at paragraph 23, setting
21 out, based upon the reading of these three (3) pieces
22 of legislation, what is the authority of the Board as
23 it stood back in the mid 1990s, going back to its
24 basic authority of protecting consumers from
25 unreasonable charges but also ensuring the fiscal

1 health of the Corporation, read in a holistic fashion,
2 in accordance with the PUB Act, the Crown Governance
3 Act, Crown Corporations Public Review and
4 Accountability Act, as it then was, as well as the MPI
5 Act, which is adverted to in paragraphs 14 and 15.

6 The notable factor about this, this was
7 back in the days prior to the 2018 amendments to the
8 MPI Act. This was back in the days when there was
9 still a role for the P -- the MPI after the PUB had
10 approved the rates, in at least publishing the
11 regulation with regard to the -- to the vehicle
12 insurance rate.

13 Of course, as this Board has noted,
14 that authority has been expressly removed in -- in sec
15 -- in -- in the 2018 amendments.

16 Why does this analysis matter? Two (2)
17 reasons. First, it renders vain the efforts by the AG
18 to focus primarily on the MPI Act. What the Court has
19 told us, whether it's in CMMG, in -- in the 1990s, or
20 the 2011 MPI decision, is in the -- when we're looking
21 at the Board's jurisdiction in rate approval, it's the
22 interplay between these three (3) pieces of
23 legislation.

24 Don't start with a MPI prism, start
25 with a rate approval prism, because that is what this

1 Board is charged with doing.

2 What it also means when we read it in
3 that light -- in that holistic light, is it's
4 important to look when one does go to the MPI Act, not
5 just to the powers that were granted under section 33
6 or section 18, but the powers that were taken away.
7 Those powers were taken away in section 6 and in
8 section 33, those changes.

9 Our role -- our role -- your role, our
10 client would submit, in your independent rate approval
11 process, is to look within that rate approval prism,
12 and look at your authority within that prism, and look
13 at the legislation interplay holistically, not just at
14 what's been granted but what's been taken away, and
15 the message by the Manitoba legislature when it comes
16 to independent rate approval, when it comes to vehicle
17 rates, is that that is not the job of the Cabinet.

18 Thinking of it -- just to finish this
19 point, the question is not whether there is sufficient
20 authority under the MPI -- MPIC Act for the LG in
21 Council to enact the reserves regulation, rather the
22 question is who has the authority to make decisions
23 with respect to the rate stabilization reserve,
24 including the methodology and target, as an integral
25 element of the rate approval process.

1 That's the question. Who has the
2 authority as an integral element of the rate approval
3 process to make decisions with regard -- respect to the
4 rate stabilization reserves, including methodology and
5 target rate?

6 Rate stability is an integral element
7 of the rate approval exercise. It's a necessary
8 function of the process. The Public Utilities Board
9 cannot come to a just and reasonable rate without
10 making a determination as to the justness and
11 reasonableness of contributions of reserve. That's
12 its job and its job alone.

13 Kristen -- or for the Panel, you can
14 pull up the CAC decision, tab 16.

15

16 (BRIEF PAUSE)

17

18 DR. BYRON WILLIAMS: And paragraph 63.
19 That's fine, thank you.

20 At paragraph 129 -- we do not need to
21 go there, but at the Attorney General's decision,
22 there is this statement:

23 "It is submitted that it is entirely
24 appropriate that Cabinet therefore
25 set the magnitude of MPI reserves

1 prospectively in a way that suits
2 its preferred risk tolerance, and
3 then with due respect to the parties
4 who think their risk tolerance
5 profile is more relevant than the
6 others, it is entirely Cabinet's
7 prerogative."

8 That's paragraph 129 of the Attorney
9 General's brief. And that contains both a
10 misstatement, no doubt inadvertent, of our client's
11 position, and a misstatement, no doubt inadvertent, of
12 the law.

13 Our client has never said that its risk
14 tolerance should be more relevant than the others. It
15 acknowledges that the rate approval exercise is a
16 balancing exercise. Our client does believe that in
17 doing that balancing act, the Public Utilities Board
18 should take into account the perspective and interest
19 of our client, just as it should other Interveners,
20 and obviously the financial health of the Corporation.

21 It is not the judgment of MPI or our
22 clients that should be expected to prevail. Rather,
23 it is the Public Utilities Board exercising its
24 independent judgment in the public interest. It's up
25 to the Board to balance these different perspectives.

1 And that's what this provision, section 63 through 65,
2 of Mr. Justice Monnin's leave to appeal decision
3 speaks through -- to so eloquently. And this case,
4 one (1) of the other key leading cases, does not
5 appear in the Book of Authorities and is not
6 referenced in the Attorney General's submission.

7 And that, Madam Chair and members of
8 the Panel, in our client's view, is -- if you think of
9 the three (3) leading cases, the three (3) guiding
10 cases in terms of how this Board in the -- should look
11 at these issues with guidance from the Court of
12 Appeal, none of them inform the analysis of the
13 Attorney General.

14 In our client's views though, section
15 129 takes the gloves off. It makes palp -- palpable
16 an invalid effort of the Cabinet to a -- impose its
17 will and the will of MPI upon the independent rate
18 approval forecast process. It is a direct challenge.
19 But the legislature has not given that authority to
20 Cabinet; it has given that authority to the PUB.

21 It's -- the role of the P -- PUB is not
22 simply to accept the will of Cabinet or MPI, but to
23 independently balance different interests.

24 At paragraph 76 of its written brief,
25 the Attorney General argues that section 25 of the

1 Crown Governance Act is not a power of no constraints
2 which somehow grants the Public Utilities Board
3 illimited, I-L-L-I-M-I-T-E-D, direct control over all
4 variables that can impact changes to premiums, and our
5 client agrees totally that the PUB does not have
6 direct control over all variables that can impact
7 changes to premiums.

8 And our client agrees totally that the
9 PUB does not have direct control over all variables.
10 MPI management makes management decisions. However,
11 in approving rates, the Public Utilities Board has
12 oversight power to determine prudent and necessary
13 costs as well as the overhel -- overall health of the
14 Corporation, which includes the sufficiency of
15 reserves.

16 Do what you want, Manitoba Public
17 Insurance. If you choose, make imprudent and
18 unnecessary decisions, but for rate approval purposes,
19 the PUB does not have to take unreasonable, unjust,
20 unduly discriminatory factors into account in setting
21 the revenue requirement.

22 And this is hardly a radical
23 proposition. The Board just has to think back to the
24 dialogue about Manitoba Hydro. Manitoba Hydro can set
25 its financial targets, but when it comes to rate

1 approval, the Public Utilities Board has to go beyond
2 the interest and the prism and the world view of
3 Manitoba Public Insurance, it has to look at the
4 overall public interest.

5 The first fifteen (15) minutes of the
6 AG's submissions this morning, and then additional
7 later on, as well, at pages -- paragraphs 109 to 111
8 of its brief, the AG seems to argue that the Board
9 does not have to walk down this path because it
10 missed.

11 It -- it won't make a difference
12 because, ultimately, the -- the rate recommended by
13 our clients is the same as the rates recommended by
14 MPI. Oh, it's paragraphs 158 and 119. I misspoke.
15 And thank you to Ms. Dilay for correcting me.

16 Our client absolutely disagrees. Our
17 client's submissions were premised in support of a 0.6
18 rate decrease was -- were premised on the assumption
19 that the reserve regulation is invalid.

20 If the Board makes the determination
21 that the reserve regulation is valid, then the logic
22 of our client's argument is that there probably needs
23 to be a rate increase, and that goes to two (2)
24 points.

25 One (1) is this Board will reca --

1 recall my conversation with Mr. Johnston, noting that,
2 if we had to achieve 100 percent MCT, there is a
3 deficiency in the range of \$4 million in the rates.

4 Secondly, this Board will recall from
5 MPI slide 11 of this morning -- and if we could go to
6 slide 11 for a second. I missed -- that's not -- I
7 want to go to -- yeah, there it is. That's perfect.

8 Our client's observations about the
9 atypical approach for the 2019/'20 year in terms of
10 collision forecasts said it should not be relied upon
11 for forecasting the ultimate level of the capital
12 management plan.

13 The logic of that, in our client's
14 submissions, is that, if the reserve regulation is
15 valid, which our clients deny, then given the
16 unreliable collision forecast for 2019/2020, there's a
17 rate increase there.

18 So, from our client's perspective,
19 there is a fundamental difference. Our client's
20 arguments were premised on the invalidity of the
21 regulation.

22 As a final note, the logic of our
23 client's submissions and the logic of the regulatory
24 approach this Board has historically taken is that, in
25 getting to a just and reasonable rate, there has to be

1 a determination of the prudent and reasonable level of
2 reserves for the purposes of rate stabilization. That
3 is always at issue.

4 The dilemma in our client's
5 submissions, they did not argue for a rate rebate
6 because they anticipated that this decision of the
7 Board may be subject to appeal and because the
8 evidentiary record is not robust.

9 So, those are our client's submissions.
10 This is not an argument of high theory. From our
11 client's perspective, the argument and the logic that
12 flows from our client's argument is that, if the
13 regulation is invalid, a rate decrease is justifiable.
14 If it's valid, we're probably looking at a rate
15 increase of some magnitude.

16 A couple of short snappers just to
17 finish off, Madam Chair, and members of the panel. My
18 Learned Friend from the Attorney General talked about
19 -- and we don't need to go to there, but he talked
20 about Section 44 of the MPI Act and said he wasn't
21 quite able to understand how it fit.

22 The answer to that is to go back to
23 Section 14(2) of the res -- of the MPI Act which
24 prohibits transfers to government from the -- from
25 reserves related to the -- the -- earned in the

1 activity of automobile insurance.

2 Section 44 seems to speak of some
3 transfers. In our client's view, and the Board can
4 take judicial notice of this, our understanding of
5 that provision is it relates to the days back when
6 there was a general insurance line of business, home
7 insurance and otherwise, which might have allowed
8 profits from that line of business to be remitted back
9 to government.

10 But Section 14(2) makes it clear that,
11 when it comes to automobile insurance, those profits
12 are not to be remitted back.

13 A small point about legislative
14 interpretation. The -- my worth friend from the
15 Attorney General seems to argue that the legislative
16 history, the -- ad -- advanced by my clients are
17 irrelevant because it goes to policy.

18 This tribunal will be aware that in
19 making legal determinations and in interpreting
20 statutory provisions, legislative fact evidence is
21 adducible.

22 To su -- to give insight into the state
23 of mind of the drafters of the legislation at the time
24 the legislation was drafted. So, Hansard is relevant
25 to the state of mind of the legislators in 1970, in

1 1988, and in 2018.

2 And the Kopstein report is akin to a
3 government white paper, again giving insight into the
4 legislative context. So, contrary to my learned
5 friend's submissions, that is absolutely relevant and
6 informative of this Board's deliberations.

7 The Attorney General made an
8 inadvertent factual misstatement, suggesting
9 inadvertently that the hundred percent MCT had been
10 used as the lower range, or the minimum range of the -
11 - by the PUB.

12 Our client's understanding of the
13 record is that that is factually, albeit inadvertently
14 inaccurate. It was used at the upper end for at least
15 one (1) General Rate Application, the 2015/'16 year,
16 but was subsequently rejected, but it was never used
17 as a lower target.

18 Just a final couple comments about
19 Manitoba Public Insurance's submissions. Exhibit 107
20 rel -- relates to a case called Smith v. Roebeck. And
21 our client certainly came across this case in the
22 course of their research but concluded it is of no
23 relevance to the Board's deliberations.

24 The Board will be aware that there's
25 Part 1 of the MPI Act that -- that set up the

1 automobile insurance line back in ni -- the 1970s.
2 And then there's another part to the MPI Act which
3 speaks to the no-fault provisions -- the holistic no-
4 fault provisions that were brought in in the 1990s.

5 Upon review if the Board looks to
6 this -- this provision, it will see that it is
7 relating to the spirit and intent of the no fault
8 portion of the legislation. And the paragraph that's
9 paragraph 54 and 55 and 61 make it clear that it's in
10 that context of the no fault.

11 Finally, Manitoba Public Insurance made
12 argument this morning -- and perhaps, Kristen, we can
13 pull up the Public Utilities Board Act section 1 and
14 the definition of a public utility.

15 Manitoba Public Insurance made the
16 argument this morning that the Board's authority under
17 section 78 was some oversight authority as -- as the
18 regulator of a public utility to bring MPI into
19 compliance, and I -- one suspects suggesting that even
20 if they're not living up to the letter and the spirit
21 of the reserve regulation, the Board could help them
22 along using that general supervisory power.

23 With respect, that is a misstatement of
24 the law. Manitoba Public Insurance is not a public
25 utility within the meaning of the Public Utilities

1 Board Act. It is brought within the ambit of the
2 Public Utilities Board Act by virtue of the Crown
3 Governance Act sections 25(1) and 25(3) and by virtue
4 of the MPI Act section 6 and section 33.

5 Its authority resides within that rate
6 approval ambit granted to it by the Crown Corporations
7 Act, and it has robust authority under that Act in
8 setting rates for service. But the Public Utilities
9 Board as a supervisor of an entity like Centra Gas
10 would have a broader authority because Centra Gas is
11 truly a public utility.

12 And so that argument relies on the
13 mistaken proposition that MPI is a public utility.
14 MPI is regulated by the Public Utilities Board rates
15 for service -- so section 77 and 82 are in play;
16 section 44 are in play -- but that broader supervisory
17 power that goes beyond regulating and approving rates
18 for service, including the rate stabilization reserve,
19 does not exist.

20 Subject to any questions by the Board,
21 those are our client's submissions.

22 THE CHAIRPERSON: Thank you,
23 Mr. Williams. Do you have any questions?

24 BOARD MEMBER GABOR: Kristen, can you
25 pull up the Attorney General's volume 1?

1 Mr Williams, under the Manitoba Public
2 Insurance Corporation Act section 33(1.1)...

3

4 (BRIEF PAUSE)

5

6 BOARD MEMBER GABOR: No. I think
7 that's the wrong Act, Kristen. I want the Public
8 Insurance Corporation Act. That -- that's right.
9 Yeah, 33(1.1). Keep going. There it is. Right
10 there.

11 Mr. Williams, this is a section
12 about -- is this about driver's licences, or is this
13 about vehicle insurance?

14 DR. BYRON WILLIAMS: Thank you for the
15 question, Chairperson Gabor. Back in the '70s and up
16 until 2018, this provision related both to vehicle
17 insurance and driver's licences.

18 In the 2018 amendments, the language
19 related to vehicle insurance premiums was eradicated,
20 and -- and instead, the references were made in -- in
21 section 6 of the MPI Act.

22 So -- so the short answer is it's about
23 driver's premiums and still makes MPI subject to
24 approval of the PUB, but it is not about vehicles.

25 BOARD MEMBER GABOR: Right. You

1 talked about the reserves being an integral element.

2 The -- the government does not have the power to

3 establish rates. Is that correct?

4 DR. BYRON WILLIAMS: The --

5 BOARD MEMBER GABOR: Sorry. The

6 government does not have the authority -- yeah -- to

7 establish insurance rates. That -- that's the --

8 falls within the jurisdiction of the Public Utilities

9 Board.

10 DR. BYRON WILLIAMS: So just so I

11 understand your question, sir, the authority --

12 BOARD MEMBER GABOR: I'm not asking it

13 very --

14 DR. BYRON WILLIAMS: I understand the

15 question. The authority for the approval of vehicle

16 insurance rates rests entirely with the Public

17 Utilities Board by virtue of section 25(1), 25(3) of

18 the Crown Governance Act and section 6 of the MPI Act

19 if that's your question.

20 BOARD MEMBER GABOR: Right. So -- and

21 previously -- previously there was a regulation

22 whereby the Board would make an order, this huge

23 binder would go into rates for all of the vehicles,

24 and this is what the government would pass by way of a

25 rate regulation. Is that correct?

1 DR. BYRON WILLIAMS: That is, sir.

2 BOARD MEMBER GABOR: And under --
3 counsel for the Attorney General's department brought
4 forward the Red Tape Reduction and that -- that
5 resulted in the elimination of that regulation.

6 DR. BYRON WILLIAMS: Mr. Chair, the --
7 our interpretation of the regulation is -- or that --
8 that change is a bit different --

9 BOARD MEMBER GABOR: Okay.

10 DR. BYRON WILLIAMS: -- in that it was
11 also -- if you think back to that CMMG case that was
12 cited, I think, at perhaps tab 30 of our materials,
13 there the Court was talking about the conundrum. What
14 if the -- the PUB approves the rate for vehicles, but
15 the government doesn't pass it? And, you know, what
16 happens then?

17 And so in our clients' -- if one looks
18 at the legislative history, part of it might have been
19 a red tape reduction, but part of it would -- would
20 also be to address the conundrum that the Court of
21 Appeal was talking about in the CMMG decision. And
22 those paragraphs are 14 to 21, and I think, I'm going
23 to say, 17 to 19 might be relevant to your question.

24 BOARD MEMBER GABOR: Is it -- is it
25 your position that the government has no authority to

1 pass a regulation on anything that would constitute an
2 element of rates?

3 DR. BYRON WILLIAMS: Our clients'
4 position is that the government cannot bind the Public
5 Utilities Board and purport it to be valid. It cannot
6 interfere in the rate approval process.

7 So if the government were to, for
8 example -- or MPI were, for example, to say, I want an
9 incurred but -- an incur -- IBNR an incurred but not
10 reported reserve of some unreasonable amount, they can
11 do that. That implicates rates. But the PUB does not
12 have to accept it because then it flips over to the
13 Public Utilities Board in its rate approval process.

14 What is the fundamental conflict here
15 is that the government is with this -- the impugned
16 provisions of the reserve regulation, being 2(a) and 3
17 in particular, is diving right into the PUB authority
18 in terms of rate stabilization and the rate indication
19 for rate approval purposes.

20 It -- that's our client's position. I
21 hope it answers your question, sir.

22 BOARD MEMBER GABOR: And the RSR is --
23 is an element of setting rates.

24 DR. BYRON WILLIAMS: It is a
25 fundamental element of setting rates. A premium

1 surcharge may flow from the RSR. If -- if rates are
2 inadequate to meet that target, a rebate may flow from
3 it. So this Board has found repeatedly dating back to
4 1989 that it is central to its rate approval function,
5 and that -- that's cited in our paragraph.

6 And Mr. Johnston in cross-examination
7 made the same point. It's integral to the Board's
8 rate approval. It can't get to a just and reasonable
9 rate unless it's made a consider -- a determination of
10 rate stability and what's the -- are the reserves
11 adequate or not?

12 BOARD MEMBER GABOR: Okay. Broker
13 commissions -- that's a big ticket item that can
14 affect rates?

15 DR. BYRON WILLIAMS: Broker
16 commissions are a big ticket item that can affect
17 rates.

18 BOARD MEMBER GABOR: Okay. And there
19 is a regulation called the Agent Commissions
20 Regulation whereby the government essentially approves
21 the agreement between the public insurance company and
22 the brokers. Is that correct?

23 DR. BYRON WILLIAMS: That's my
24 understanding, sir. I'll defer to others in the room
25 who may know more about that, but yes, I'll accept

1 that.

2 BOARD MEMBER GABOR: And is it the
3 position of -- of CAC that the same position applies
4 as for the reserves in that the PUB should not be
5 accepting the validity of that regulation and should
6 be going in to determine whether or not the -- the
7 importance of that in terms of rates should be
8 examined?

9 DR. BYRON WILLIAMS: Mr. Chair, I -- I
10 think that's whether -- whether it's MPI's decision
11 or, like -- so to back up on the commissions, my
12 understanding of how those are arrived at are through
13 negotiations where MPI is leading the negotiation. So
14 it's not a -- it is not a government just -- just
15 setting a number. It is an agree -- a rate that is
16 negotiated.

17 But our clients would argue, as the did
18 in this hearing, that they are free to -- in their
19 management function and -- to negotiate those
20 commissions. If they're unreasonable, then the Board
21 does not have to im -- impute them all into rates, and
22 it would make the same argument saying that Manitoba
23 Hydro has the authority to make imprudent capital
24 expenditures, but the PUB doesn't have to impute them
25 all to rates. That's very consistent with what our

1 client has said across all regulated -- all entities
2 regulated un -- under the Crown Governance Act, sir.

3 BOARD MEMBER GABOR: And -- and Mr.
4 Williams, would that apply to all the other
5 regulations under the Public Insurance Corporation Act
6 which have a bearing on rates?

7 DR. BYRON WILLIAMS: I'm -- you'll
8 have to give me some examples, sir, because I'm
9 struggling to -- to find others, but -- but I'll say
10 this, sir. There was evidence on the public record
11 that the commercial vehicle rates were among the --
12 the highest in North America.

13 Whether or not that's actually --
14 affects Basic rates, I can't tell you right off the
15 top of my head. But if there were such evidence on
16 the record, our clients' position would be that it is
17 not obligatory for the PUB to take an unreasonable na
18 -- amount into rates.

19 BOARD MEMBER GABOR: Thank you. Those
20 are my questions.

21 THE CHAIRPERSON: Thank you very much.

22 Ms. McCandless, any final issues to
23 address?

24 MS. KATHLEEN MCCANDLESS: None that I
25 am aware of at this time, so I -- I think that's it

1 from our perspective.

2 THE CHAIRPERSON: Okay. Thank you
3 very much. That -- then this concludes the 2020
4 Manipo -- Manitoba Public Insurance Corporation
5 General Rate Application hearing. On behalf of the
6 Board panel, I would like to thank everyone for their
7 cooperation throughout and participation in this
8 hearing.

9 This includes the MPI witnesses and
10 their counsel, including Mr. Graham, Mr. Johnston, Mr.
11 Wennberg, Mr. Bunko, Mr. Giesbrecht, Mr. Bunston, Ms.
12 Campbell, Mr. Phoa, Mr. Eden, Mr. Lazarko, Mr.
13 Remillard, Mr. Dessler, Ms. Jatana, Ms. Hora, Mr.
14 Mitra, Mr. Scarfone, Mr. Guerra, and Mr. Triggs.
15 Also, Mr. Crozier and the MPI representatives who
16 attended in the back row from time to time.

17 I'd like to thank the Interveners and
18 their respective counsel. For CAC, represented by Ms.
19 Desorcy, counsel Mr. Williams and Ms. -- Ms. Dilay.
20 For CMMG, Ms. Meek and Mr. Wood. For Bike Winnipeg,
21 represented by Mr. Feaver, Mr. Monnin. And for the
22 Insurance Brokers Association of Manitoba, represented
23 by Mr. Wainikka, Mr. Unfried and Ms. Sokal.

24 The witnesses who testified before the
25 board, Mr. Keith, Mr. Makarchuk, Mr. Todd, Dr.

1 Simpson, and Ms. Sherry. Counsel for the Attorney
2 General of Manitoba, Mr. Guenette and Ms. Edkins.

3 The presenters who made submissions
4 this year, Secretary of the Board Mr. Darren Christle,
5 as -- Assistant Associate Secretary of the Board Ms.
6 Jennifer Dubois, and our document manager, Ms. Kristen
7 Schubert, along with Ms. Diana Villegas.

8 Our court reporter, Digi-Tran,
9 including Ms. Donna Whitehouse, Ms. Cheryl Lavigne,
10 and Ms. Wendy Woodworth. Our advisors, Mr. Cathcart
11 and Ms. Pelly, and Mr. Ming -- Mang -- Manktelow. And
12 our counsel, Ms. McCandless and Mr. Watchman.

13 The Board also appreciates the members
14 of the public who took time to sit in during the
15 course of the hearings and follow the proceedings via
16 our live streaming on the PUB website.

17 The panel will be meeting in the very
18 near future to deliberate and make our final
19 determinations on the matters before us. This
20 concludes the hearing. Thank you.

21

22 --- Upon adjourning at 12:55 p.m.

23 Certified Correct,

24 _____

25 Donna Whitehouse, Ms.