COMMENTARY **ICBC**

MANITOBA GOVERNMENT CHARGED WITH INTERFERING WITH CROWN AUTO INSURER: OLD HAT IN BRITISH COLUMBIA

In recent months the government of Manitoba has been criticized for directing Manitoba Public Insurance (MPI), its Crown auto insurer, on two matters that may ultimately increase the price of insurance. In general, the auto insurance delivery and governance structures in the two provinces are very similar. Both utilize a Crown corporation to provide the monopoly compulsory Basic insurance, which is regulated by an independent third-party. The public insurers also provide additional optional insurance in competition with private insurers.

This paper will review the two instances of interference in Manitoba and compare them with the situation in this province.

Independent Regulation of Basic Insurance

Both jurisdictions use an independent utilities commission to regulate and approve rate changes for the compulsory program. In Manitoba the governing legislation prohibits the government from interfering with the Public Utilities Board (PUB), while in this province the legislation allows cabinet to issue directives to the B.C. Utilities Commission (BCUC). This provision has regularly been used by various governments to direct ICBC and the BCUC.

In Manitoba there has been a tradition that the governments do not interfere in the operational and policy decisions for the MPI. In fact, the government pays the MPI for the cost of administering the provincial drivers licensing program. ICBC is required to administer the drivers licensing program (which generates approximately $70 million in fee revenue for the government) with no reimbursement.

The Government Protects the Independent Broker Business Model

Both MPI and ICBC sell policies through independent brokers linked to the insurers' software. The insurers pay the brokers a commission based on the number of Basic sales, and a percentage of the value of the Optional sales.

The MPI had been planning to develop a capability to sale insurance electronically, which would respond to consumer demand and reduce costs. The independent brokers association objected to the direct sales concept, saying that such a move would jeopardize the jobs of the 2,600 independent insurance brokers.[1] The Progressive Conservative government of Brian Pallister told the MPI that that it must use the independent brokers when it develops its online sales functionality.

The government also protected the brokers by overriding the MPI's plan to freeze the sales tariff for two years. Instead, the government ordered the MPI to increase the commissions each year based on the consumer price index (CPI) until 28 February 2021.[2]

The public pressure for online renewals has also been growing in British Columbia. Attorney General David Eby, who is responsible for ICBC, has stated that online transactions are being planned for some time in the future. However, ICBC needed to stabilize its operations due to the change to the hybrid-tort model and the new rate design which came into effect this year.

ICBC relies on the approximately 6,000 staff operation from some 900 broker agencies to sell its Basic and Optional policies.[3] The approximately $490 million in commissions paid to the brokers last year for issuing the insurance includes a fee to collect outstanding provincial fines; but the government does not pay ICBC any fee for this fine collection function.

In December 2018, the attorney general was supportive of the eventual move to online transactions; "It is a very good idea," Eby said. "That is definitely the direction we are going with for ICBC. It is common sense for a lot of British Columbians."[4]

More recently, however, the attorney general made it clear that when online renewals and other transactions eventually do occur the direct channel will not be permitted. He said the brokers will continue to be central to the customer relationship sales function because of the complexity of the process, and if direct sales did occur ICBC would need to hire more staff to answer questions.[5]

The new Basic and Optional rate design formula instituted on 1 September 2019 has also added much more complexity to the rate calculation process, which supports the position that the front-end broker function will still be required. Attorney General Eby

[1]https://www.insurancebusinessmag.com/ca/news/breaking-news/worries-that-online-move-could-lose-brokers-jobs-163023.aspx?utm_source=Pinpointe&utm_medium=20190329&utm_campaign=IBCA-Morningnewswire&utm_content=D983809D-3C18-4C3F-B2CB-4900E2C97173&tu=D983809D-3C18-4C3F-B2CB-4900E2C97173

[2] https://www.winnipegfreepress.com/local/tory-meddling-could-cost-mpi-millions-boost-autopac-rates-511753682.html

[3] Of the $434 million paid by ICBC last year some $110 million was for Basic sales, and approximately $330 million was paid for Optional policies; see https://globalnews.ca/news/4725022/far-and-away-expensive-auto-insurance-brokers-charged-icbc-434-million-in-commissions-last-year/

[4] https://globalnews.ca/news/4725022/far-and-away-expensive-auto-insurance-brokers-charged-icbc-434-million-in-commissions-last-year/

[5] https://globalnews.ca/news/5239684/bc-online-car-insurance/

noted this factor as another reason why it is necessary to continue using the independent brokers when the online transactions occur.[6]

The attorney general did not say that he rejected the direct sales model because it would result in the loss of thousands of jobs. The funding for these eliminated jobs would have been returned to policyholders as lower insurance rates.

Establishing the Basic Capital Reserve Target

The Manitoba government is also being criticized for ordering the Public Utilities Board to adopt a capital (equity) reserve target for the MPI compulsory insurance. The capital reserve provides a buffer to protect ratepayers from rate volatility caused by unplanned adverse financial events. Private insurers regulated by the federal Office of the Superintendent of Financial Institutions (OSFI) must maintain a significant capital reserve ratio based on a minimum capital test (MCT) risk weighting formula.[7]

The governments of British Columbia and Saskatchewan adopted the OSFI model at an 100% MCT, and the MPI had been recommending the same target to its PUB for a number of years. The Manitoba regulator has not agreed to the 100% MCT minimum, and encouraged MPI to use Optional insurance profits to boost the Basic capital reserve.

In April the government ordered the PUB to accept the 100% MCT target.[8] The Manitoba consumers association is challenging this order, saying the higher target it will result in higher Basic insurance rates, or in no rebate when the MPI has net income.[9] A spokesperson for the attorney general said the government acted to bring an end to a "perpetual and prolific debate over the magnitude of MPI's reserves" by changing the regulation.[10]

The B.C. government set minimum MCT targets for ICBC's Basic and Optional insurance programs over 15 years ago. As Basic cost increases outstripped the increase in revenue (due to the government limit on annual increases) the government ordered ICBC to transfer Optional capital to keep the Basic MCT from falling below the 100% regulatory minimum. However, in 2016 (OIC 615/16) the government took away the BCUC's authority to establish the Basic MCT target for rate-setting. In 2018 (OIC 67/18) the government suspended the regulatory requirement for ICBC to maintain the 100% minimum ratio. This suspension recognized that most of ICBC's equity reserves had been depleted in subsidizing Basic rates.

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[6] https://globalnews.ca/news/6097754/b-c-wont-look-at-moving-icbc-broker-system-online-until-insurers-financial-mess-is-cleaned-up/

[7] For a discussion as to the appropriate MCT level for a monopoly insurer see page 6 in https://www.bcuc.com/Documents/Arguments/2015/DOC_43293_03-12-2015_McCandless_Final-Argument.pdf

[8] Manitoba Public Insurance Corporation Act Reserves Regulation 76/2019 specified 100 per cent MCT as the capital requirement for Basic program.

[9] https://www.winnipegfreepress.com/local/pcs-accused-of-breaking-law-on-mpi-file-561469642.html

[10] https://www.cbc.ca/news/canada/manitoba/mpi-reserves-cac-pallister-government-manitoba-1.5339903

Summary

The Manitoba government is extending its authority over the operation of the Basic insurance program through two recent directions to the MPI and the independent regulator. There has been a long-standing tradition in Manitoba that the government of the day should refrain from directing the operations of the Crown insurer and of the independent utilities board.

This new approach is of interest to the public in this province because it highlights the fact that the provincial government has been directing ICBC and the BCUC for many years. The NDP government inherited a financial crisis when it assumed power in July of 2017, and has been attempting to end the financial bleeding through adopting a hybrid-tort claims dispute model. But the NDP government has retained the previous government's tight restrictions on the rate-setting authority of the BCUC. The suspension of the capital reserve target ratio will continue because the government has yet to address how to rebuild ICBC's Basic and Optional capital.

 http://www.bcpolicyperspectives.com/

The writer is a retired senior BC government public servant whose paper describing the BC government's manipulation of the finances of BC Hydro from 2008 to 2014 was published by *BC Studies* in November 2016. *BC Studies* published his paper on the 40-year financial history of ICBC in 2013. He is an intervener in the BC Utilities Commission's current review of B.C. Hydro's rate request.