

**MANITOBA PUBLIC AUTO INSURER LOSES SUIT QUESTIONING
REGULATOR'S JURISDICTION**

On 19 October 2022, the Manitoba Court of Appeal rejected the request of the Manitoba Public Insurance (MPI), the Crown corporation that provides compulsory Basic auto insurance as well as optional additional coverage, to overturn an order of the Public Utilities Board (PUB).¹ In its rate request decision of 15 December 2021, the PUB had ordered the corporation to develop a plan to transition from its current registered owner based insurance model to one based on the primary driver.²

In Manitoba the PUB has statutory responsibility to regulate the compulsory Basic insurance. This is similar to the model in this province, where the BC Utilities Commission is responsible for the regulation of the compulsory Basic monopoly administered by ICBC.

Basis for Seeking Leave to Appeal the PUB Decision

Basic rates are calculated based on vehicle premiums which provides discounts of up to 37% based on the owners' safe driving record. The PUB order required the MPI to prepare a plan to shift the model to one based on the driving record of the primary driver of the vehicle. The PUB believed that the primary driver model provided a better indication of risk, and was in keeping with the standard employed by the for profit insurance industry.

In January 2022, the MPI appealed the directive. It argued that the PUB did not have the jurisdiction to direct MPIC to implement a new rating model or to direct it to make plans to implement a such a model.

The PUB rejected the appeal stating that it was not directing the MPI to implement the new model. Rather, it directed the MPI to in place a process to permit a detailed review of a primary driver model prior to the introduction of any new model.

The MPI then filed a notice of motion with the Court of Appeal seeking leave to appeal the PUB directive. The appeal was based on the belief that the PUB exceeded its jurisdiction by directing the MPIC to adopt or implement a primary driver model now,

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https://www.manitobacourts.mb.ca/site/assets/files/1036/manitoba_public_insurance_corp_v_manitoba_public_utilities_board_et_al_2022_mbc_a_86.pdf

² <http://www.pubmanitoba.ca/v1/proceedings-decisions/orders/pubs/21-orders/134-21.pdf>

or at some point in the future, or direct that it to plan for such a change.³ The PUB responded that it was not seeking to change the current model, rather it was only seeking information in the event that it wished to consider a change in the future.

The Court of Appeal accepted the PUB argument that it was only seeking information, rather than directing a model change.⁴ But Justice Steel went on to say that the PUB has the jurisdiction to order a change in the model because its statutory authority to determine fair and just rates incorporates the rating model used. “Currently, MPIC calculates the plan premium discount or additional amount based on the [...] rating of the registered owner of the vehicle. If the PUB was to require MPIC to charge plan premium discounts or additional amounts based not on the registered owner, but the primary driver of the vehicle, that would be a change in rate-setting methodology over which it has jurisdiction.”⁵

The MPI’s request for leave to appeal the PUB order was denied.

Pricing Perfection at ICBC

Basing the premiums on the driving history of the principal driver was a major issue with ICBC pricing beginning in September of 2019 after ICBC implemented a new rating model. It also used the “good drivers are subsidizing bad drivers” argument to justify a major change from the registered owner-based model to one that is based on the principal driver, as well as a secondary driver if they use the vehicle 25% of the time.

As I noted in a 2018 analysis when the changes were announced:

The government announcement emphasized that bad drivers will pay more. A close reading reveals that not just the “bad apples” that will pay more; younger less experienced drivers will face higher insurance costs.

In the current model the driver component combines factors for experience and for actual at-fault claims. The new system will lower the discount value of a clean driving year, increase from three to 10 years the “scan” period where an at-fault claim impacts rates, and severely restrict the number of at-fault crashes that are waived due to accumulated claims free driving.⁶

When the changes came into effect a year later there were many media stories highlighting the large price increases faced by young vehicle owners. The best that

³ <https://www.canlii.org/en/mb/mbca/doc/2022/2022mbca86/2022mbca86.html> para 19.

⁴ Ibid., para 44.

⁵ Ibid., 52.

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https://www.bcpolicyperspectives.com/media/attachments/view/doc/occasional_paper_no_59_16august_2018/pdf/occasional_paper_no_59_16august_2018.pdf p.3.

the minister responsible could offer was the suggestion that drivers should forego additional Optional collision coverage.⁷

Differing Approaches to Auto Insurance Regulation

In Manitoba the government has generally been content to allow the PUB to regulate the public auto insurer's compulsory Basic program without much political interference.⁸

In B.C., on the contrary, both the Liberal government and the NDP have been active in using cabinet directives to shape the decisions of the BC Utilities Commission (BCUC). For example, in 2018 cabinet ordered the Commission to review the new and complex driver based Basic auto insurance rate redesign with 45 days (when previous rate reviews took months to review).⁹

The current NDP government ordered the BCUC to approve the new no-fault liability model without review¹⁰, and still requires the regulator to limit rate changes based on a 2013 directive.¹¹

ICBC's new no-fault/enhanced care liability model was based on the model developed in Manitoba. Perhaps when confronted by a activist regulator (which is not an agent of the government) the government of Manitoba will be tempted to adopt the BC model, where the nominally independent regulator is tightly controlled by cabinet orders.

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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 was an intervener in the BC Utilities Commission's current review of B.C. Hydro's rate request.

⁷ In an interview on Victoria's CFAX radio, Attorney General David Eby suggested that policyholders facing large premium increases as a result of the new rating formula could moderate the initial cost increase by reducing their insurance coverage. Specifically, he suggested they forego purchasing collision insurance on their vehicle. See https://www.bcpolicyperspectives.com/media/attachments/view/doc/commentary_eby_s_advise_16_october_2019_2/pdf/commentary_eby_s_advise_16_october_2019_2.pdf

⁸ Although the Progressive Conservative government has become more interventionist with respect to the PUB's regulation of Manitoba Hydro, see <https://pressprogress.ca/manitoba-pc-hydro-bill-a-brazen-act-of-censorship-critics-warn/>

⁹ See OICs 458/18 and 459/18.

¹⁰ OIC 631/20.

¹¹ OIC 152/13.

