

(9:30 a.m.)

MR. SAUNDERS, PRESIDING CHAIRMAN: Good morning. Any preliminary matters?

MR. O'FLAHERTY: There is one matter, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, Mr. O'Flaherty.

MR. O'FLAHERTY: Yesterday Mr. Stamp had asked me to provide a reference for a particular piece of the evidence, was two pieces. First of all there was an issue about the trend discussion I had with Mr. Pelley, and as I was speeding through the conclusion yesterday I provided that reference, which was the reference to the 2001 filing here before the Board. The second issue was whether or not there was a reference that could be provided for the evidence, and I'm trying to find the actual reference in the loss trend. It's under the yearly versus half yearly data section. And I had indicated ... yes, here it is on page 36. "The Consumer Advocate submits that the evidence shows that the approach followed by Mercer is the approach used by the actuary for the IBC."

MR. SAUNDERS, PRESIDING CHAIRMAN: This was in your argument?

MR. O'FLAHERTY: Yes, and Mr. Stamp said that he wasn't able to find that reference. I'm a bit late here this morning because I was down using the search engine at the office. It's at December 20th and I think the pages may be a bit different on the email, but the reference I have is page 21, line 35. I'll see if that's the same on the printed format, and it isn't, so I'll just take a moment, if you don't mind, Mr. Chairman ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Sure.

MR. O'FLAHERTY: ... to find it in the ...

MR. STAMP, Q.C.: I believe now that we've been brought to this generally, I think it's at page 21 that the Consumer Advocate is probably referring to now, maybe lines 26, no, 22 to 25, and maybe 49 to 55 ...

MR. O'FLAHERTY: Yes, that's ...

MR. STAMP, Q.C.: ... he may be referring to now, I think, that I've ...

MR. O'FLAHERTY: Yes, thank you, Mr. Stamp. Yeah, that's correct. It says ... at 49, it is. "In fact, IBC provides an analysis of what they believe is the trend in the various, is in various provinces and I understand that their standard approach of their consulting actuary is to use half yearly data." So that's the reference that Mr. Stamp wasn't able to find. There was one other matter, Mr. Chairman. I did indicate in my opening that I would make reference to some recommendations, procedural recommendations, and I would ask, I know I was trying to get this completed as quickly as possible yesterday, there was only one issue that I ... I think I've covered most of it in my oral submission and the written submission. One thing I didn't cover was the fact that Mr. Pelley had indicated in evidence that there was strong and persistent evidence that accident benefits should probably be rated on a territorial basis in the Province of Newfoundland rather than on a provincial basis.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MR. O'FLAHERTY: And I just wanted to indicate that that's something that I support, and I think the reference for that evidence is at page 41, lines 55 to 63, of December the 13th. If I'm not dead on with the date, those are the actual page and line references, and I'll find that other date. My recollection is he testified on the 12th and the 13th regarding this issue. Thank you, Mr. Chairman.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay. Since you were rushed yesterday towards the end, I'm hoping that you got in everything you wanted to say. If not, then you have an opportunity now before we go to the other parties.

MR. O'FLAHERTY: Well, the only other issues that I was ... I mean, I've covered, I think I've covered them in a broad basis. You know, in terms of the procedural issues, they don't go to the substantive matters that much before the Board in this particular hearing, I did want to emphasize that I was, and following up on Commissioner Powell's comments and your own throughout the hearing, that it would be very helpful to have a clearer financial statement from Facility Association with respect to their operations in this province so that when there is an analysis or questioning is being done about these particular operations, because those costs are assigned to the rate payers here.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MR. O'FLAHERTY: That that sort of transparency would, in our view, be an appropriate and desirable thing for the Board to request. And, secondly, and this harkens to my other issue about having an appropriate witness to answer questions, you know, it's the same issue again. I think that the Facility Association, and this works in everybody's best interest, should be in a position to provide witnesses to answer questions about proposals. I'm thinking in particular about the issue of the proposed versus the indicated rate levels. I had understood that was something that was done by FA and in fact that's what Mr. Pelley indicated, but then when Mr. Simpson testified he said he didn't have that information, that Mr. Pelley had it. Now, you know, I think that that's an example of somewhere where, you know, FA could help us with, with providing a witness on issues like underwriting and rating that are done within their office, that can answer the questions so that we're not sort of fumbling around and saying, well, we should have asked Mr. Pelley that question or now we will ask the broker representative a question or now we'll ask somebody else a question. So that was, those were the two sorts of things that I thought would be helpful in how this thing might be handled on a go forward basis.

I think most of the things that I've discussed were covered yesterday and hopefully when you read the transcript, you know, they'll be clearer than perhaps they were as I was going fairly fast yesterday. Thank you very much.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, thank you, Mr. O'Flaherty. Ms. Newman?

MS. NEWMAN: Yes, good morning. As I mentioned yesterday, I do have a few issues to go over. Basically the format will be I'll run through the submission of Facility Association, some comments that I have on probably four or five references there, and then I'll go through a couple of references that I have to the Consumer Advocate's submission and then I'll speak to costs. I hope it'll take around 15 minutes but as I was anticipating rushing yesterday I might take a little bit longer than that and I seek your indulgence.

So I'd like to first mention, I don't have a specific reference, but I noted that throughout the Facility Association argument or submission they have at times referred to Mercer Financial as MMC. MMC,

members of the panel will recall, was the Board's actuary some time ago. There was actually a name change and it's actually Mercer Risk Financial Insurance Consulting, so just be careful when you're reading that the more recent reviews have been done by Mercer.

With that out of the way I'd like to refer to page eight. This is where there's some discussion about the approach of Eckler Partners last year and review by the Board's actuary of that approach last year versus this year's review. You will recall that the Eckler Partners did have some outliers they excluded in their previous filing and that the Board's actuary at that time found that approach to be reasonable.

I just wanted to clarify at page eight in the first paragraph there, the last sentence says, "For reasons that he," and he being Brian Pelley, "was unable to explain the approach which was found by MMC to be reasonable in 2001 was found to be unreasonable in 2002." We have had some discussion about that. The panel probably is aware of this but I did want to point out that it's somewhat misleading in that the Board's actuary did, in fact, explain the difference, and I want to give you the page references for that explanation, that is that the transcript for December 19th, page 30, line 66, and there's a further reference at the same transcript, page 31, line 44, and I think the substance of that has been gone through and that the actuary took exception to the fact that the approach was the same, she felt that it was different.

I'd also like to turn to page 10, a reference there on page 10, where in the second paragraph on that page there's some suggestion in that paragraph that the Board's actuary had adopted a rigid rule, and I like the ... the word "rigid" gets imparted in there. I don't think it was anywhere in the testimony of the witness, just in the cross-examination by counsel. "A rigid rule that no data point should be excluded, because each data point was part of the history and could therefore occur again."

You will recall that we went on for some time discussing this point and counsel made every effort to get the witness to agree with the fact that she had a rigid rule, but I would like to point out that there are several references through the pages of the transcripts outlining this discussion where the witness said over and over again, time and time again, in this case she felt it was appropriate, in this case she preferred a balanced approach. And I'd like to bring you to, actually I don't

1 know if you have your transcript. I'll read it. It's  
2 December 19th, page 28, line 30. Just so this issue is  
3 clear, line 30, December 19th, page 28, Ms. Elliott says,  
4 "Mr. Stamp, we have no objection for actuaries using  
5 balanced judgements to exclude outliers, high outliers,  
6 low outliers. We believe that that is appropriate, but if  
7 you look to the rate filing and if we only have the low,  
8 we're looking at the major coverages here, and if we  
9 have all the outliers that were selected to exclude, that  
10 FA has identified as outliers and they want to exclude  
11 them, they're all the low points."

12 And also on page 24 of that same transcript,  
13 there's a good discussion throughout that entire page,  
14 line 48, the whole page and the pages surrounding that  
15 page are a discussion of this topic if you're interested,  
16 but line 48 Ms. Elliott again says, "It's certainly  
17 possible that you would use your judgement and have  
18 outliers, but you want to look at the whole picture and  
19 make sure that you are balanced in your choice of  
20 exclusions." And then down at line 71, "There should  
21 be a balanced approach." 73, "That's why we didn't  
22 make any exclusion."

23 So I think it's a bit unfair to say that she  
24 adopted a rigid rule. I think she did make the analysis  
25 and in the circumstances felt that it wasn't justified to  
26 have any exclusion.

27 The next reference I'd like to take you to is on  
28 page 12. This is the discussion in the first full  
29 paragraph there about the charts that were presented  
30 by Paula Elliott in her testimony. You'll recall there was  
31 some confusion about the charts and having them  
32 coloured and we perhaps rushed through them quicker  
33 than we should have, and my apologies for that, but I  
34 think those charts are useful and the suggestion of FA  
35 in their submissions that those charts are not useful  
36 and you should only look to the charts provided by  
37 Brian Pelley, and I admit that the charts provided by  
38 Brian Pelley are coloured and they're lovely. They were  
39 prepared in advance of the hearing, so they perhaps are  
40 more complete, but you also note that the charts  
41 prepared by Brian Pelley and a graph represent, the red  
42 line represents the average as determined by Brian  
43 Pelley so that this is the average with exclusions. It's a  
44 straight average, once you take the points out.

45 That's important because the points aren't  
46 going to appear as far away from that red line as they  
47 would, a straight average without exclusion, because  
48 the line is skewed by the exclusion of this data, so I

49 would commend the charts provided by Paula Elliott as  
50 useful in the panel being able to see graphically how far  
51 from the true straight average these excluded points are.  
52 I would admit all the points are not on there because, as  
53 I said, they were prepared during the hearing process.

54 (9:45 a.m.)

55 Page 14, and this page was a discussion of the  
56 half year rule, the half year data versus the annual data,  
57 and on the last, in the last sentence there is a comment  
58 that I just wish to clarify. "If the MMC regressions are  
59 failing the seasonality T statistic, one wonders what is  
60 the intuitive justification for use of half year data at all,  
61 especially considering the associated concerns and  
62 risks identified by Mr. Pelley."

63 I'm surprised by the "one wonders" there  
64 because this question was actually put to the witness,  
65 Ms. Elliott, by counsel for FA and answered by her,  
66 and the question and the answer are at the transcript of  
67 December 19th, page 39, line 10. The 19th, page 39, line  
68 10.

69 The next reference that I'd like to go to is page  
70 16, and this is a discussion of the unemployment rate.  
71 You will recall there was some, a great deal of  
72 discussion during the hearing about whether it was  
73 proper to use the unemployment rate in the trend  
74 analysis and it was the opinion of the Board's actuary  
75 that it wasn't appropriate in the circumstances. One of  
76 the reasons for that was that the unemployment rate is  
77 based upon statistical information and forecast and in  
78 this case of the Conference Board of Canada, and that  
79 imparts yet another uncertainty into the analysis.

80 At page 16, counsel for FA ...

81 MR. STAMP, Q.C.: Which date, please?

82 MS. NEWMAN: We're at the, reference to the ...

83 MR. STAMP, Q.C.: Oh, I'm sorry, yes, okay.

84 MS. NEWMAN: ... submissions now. Page 16 of the  
85 submissions, paragraph 3, it says, "This seems a  
86 peculiar concern." And what he's talking about there is  
87 a peculiar concern that we should be worried about this  
88 additional uncertainty in the forecast by the Conference  
89 Board of Canada. "This seems a peculiar concern when  
90 the whole of actuarial process is itself nothing more  
91 than a forecasting exercise." And I want to draw your

1 attention to this, it's not a big point, but I did want to  
2 note that FA's own actuary admitted during testimony  
3 that it was a concern and that he was comfortable with  
4 it, but that, in fact, it is the weakest part of using the  
5 unemployment rate, and the reference for that is  
6 December 17th, page 25, line 74, and page 26, line 16.

7 The next reference in the submission is page  
8 27. The Consumer Advocate has brought us already to  
9 this page and I hope that you'll have patience with me,  
10 I think it's an important issue. I really took, personally  
11 took exception to the suggestion at page 27 by counsel  
12 for FA that Ms. Elliott was somehow biased, that seems  
13 to me that's the suggestion here, or somehow chose her  
14 approach to try and simulate a lower rate or suggest a  
15 lower rate as being appropriate in the circumstances. I  
16 don't think there's any suggestion of that throughout  
17 any of her testimony. The Consumer Advocate  
18 correctly pointed out yesterday that, in fact, the  
19 reference that probably is being made to was totally out  
20 of context and it's, I think it goes beyond what's  
21 reasonable to suggest in this hearing and I wanted to  
22 draw the Board's attention to that.

23 I thought to counter that I would bring you to  
24 some parts of her testimony that clearly explain her  
25 position on this and clearly, I think, put to rest that  
26 there was any attempt on her part to manipulate her  
27 suggestions to minimize the appropriate rates. So I  
28 would suggest that reference be had to December 18th,  
29 page 25, line 75, where she does say that seasonality is  
30 an important issue which demonstrates, which is  
31 demonstrated by her approach. In fact I put the  
32 question to her at line 22 of the next page, 26, and the  
33 question is, "But to get a better T test when you use  
34 more years, why didn't you use more years?" She said,  
35 "We like to use 10 years of data. For this particular  
36 coverage we feel that the loss experience in the older  
37 years, most have settled, they're reliable. We like to be  
38 consistent from year to year and use 10 years. We are  
39 quite comfortable that there is seasonality in the data.  
40 We wanted to measure that as one of the variables in  
41 the regression model, and have done so." So I think  
42 she clearly explained in her testimony the reasons for  
43 what she did and I think the suggestion is unfair.

44 Now I'd like to turn to the Consumer  
45 Advocate's submission, 43, page 43, in the last  
46 paragraph, the last full sentence, we're talking about the  
47 accident and conviction surcharge here. The last  
48 sentence says, "The accident and conviction surcharge  
49 changes are instead being proposed as an integrated

50 carrot and stick package by the Applicant in  
51 conjunction with the more salutary (phonetic) clean  
52 driver discount, but on a standalone basis it is clearly  
53 an arbitrary tool that will result in higher individual  
54 rates for consumers." I just want to clarify that that's  
55 for certain consumers clearly, obviously not all  
56 consumers.

57 And on the next page, the first full sentence  
58 there, "This is a proposal motivated by administrative  
59 convenience rather than the rate level need that the  
60 Board should not approve the increase, and the Board  
61 should not approve the increase." I just wanted to  
62 comment that the administrative convenience I believe  
63 the Consumer Advocate is referring there to the fact  
64 that administrative convenience in having more  
65 consistency across the jurisdictions in terms of, you  
66 know, these proposals have been suggested and will  
67 perhaps be adopted in other jurisdictions, so, but I did  
68 want to comment that consumers can potentially benefit  
69 from administrative convenience as well because it can  
70 reduce the costs, and also that it is within this board's  
71 jurisdiction to establish the rates for various consumers  
72 vis-a-vis each other, so certainly the Board does more  
73 than just establish the rate level need for the entire set  
74 of consumers. I think the authority is there to set up  
75 the structure within which consumers are charged  
76 within that rate level need. So those couple of  
77 comments on that.

78 I did also want to comment that I wasn't sure,  
79 based upon the Consumer Advocate's comments  
80 yesterday, on the discount, whether he is suggesting in  
81 his closing argument, might just be that I'm being a little  
82 stunned, but whether he's suggesting that the discount  
83 that's proposed of 10 percent be increased by 5 percent  
84 to 15 or whether he is suggesting just a 5 percent  
85 discount, so I don't know if you want to clarify that,  
86 rather than a 10 percent discount.

87 MR. O'FLAHERTY: It's the latter.

88 MS. NEWMAN: So it's a 5 percent rather than a 10  
89 percent, okay. Page 44, in the middle paragraph there  
90 the Consumer Advocate is talking about the percentage  
91 of drivers within FA who have clean driving records  
92 and that it's about or higher than 50 percent. In the  
93 middle of the paragraph he says, "This issue needs to  
94 be addressed by the Board and is an issue of great  
95 significance to consumers."

1 I draw your attention to this because the  
2 Consumer Advocate has not suggested how this issue  
3 get addressed by the Board and if, in fact, the Board  
4 has jurisdiction to deal with this issue, and those are  
5 two things that the Board may wish to consider if they  
6 don't hear further from the Consumer Advocate on this  
7 point.

8 Similarly, the Consumer Advocate has just  
9 most recently this morning suggested that the Board  
10 somehow address the financial statements that are  
11 prepared by Facility Association, and again he hasn't  
12 suggested under what authority the Board would  
13 regulate the financial statements of Facility Association  
14 and how he feels or suggests that this might be  
15 implemented, so those are two issues which the Board  
16 may wish to consider in its deliberations again.

17 (10:00 a.m.)

18 The last one I want to address, as I indicated,  
19 is the issue of costs. The issue of costs in these  
20 matters usually is an aside. We're all concerned about  
21 the substance of the issues and we kind of peripherally  
22 say, oh, we'd like to have costs or, you know, I don't  
23 think they should have costs, but I think in this case we  
24 need to have a more careful look at the cost issue  
25 because I think there are some complex issues  
26 surrounding an award of cost in this case and  
27 surrounding the appointment of the Consumer  
28 Advocate and the Board's authority to pay these cost  
29 and order them.

30 My view on it is, and I'd love to hear from the  
31 other counsel on this because I think we can all benefit  
32 by clarity, is that there are two ways for the Consumer  
33 Advocate's costs to be paid. One way really has little  
34 to do with this panel and the other way is completely in  
35 the panel's discretion. So the first way in which the  
36 Consumer Advocate's costs could be paid is pursuant  
37 to the order-in-council and the provisions of the  
38 *Automobile Insurance Act*. You will recall through  
39 testimony or through comments, I believe, of the  
40 counsel for Facility Association yesterday, that the  
41 *Automobile Insurance Act* amendment allowing the  
42 appointment of the Consumer Advocate and requiring  
43 the Board to pay his costs were given royal assent on  
44 December 16th. As I indicated, the appointment was  
45 officially made by order-in-council on January 6th. So  
46 one way in which the Consumer Advocate's costs  
47 could be paid, in my view, is that pursuant to the  
48 Board's administrative authority and its obligation

49 under the amendment to the *Automobile Insurance Act*.  
50 The Board would pay the Consumer Advocate's costs.  
51 There may be issues surrounding the timing of that.  
52 That's not for us to argue here, in my view, because I  
53 think it's an administrative decision of the Board.

54 Flowing from that decision of the Board is the  
55 two ways in which the Board may recover these costs.  
56 One, this panel may actually award costs, costs of the  
57 Board against FA. Section 92 of *The Public Utilities*  
58 *Act* allows the Board to pass on its costs of the hearing  
59 to an applicant. By virtue of the Board paying the  
60 Consumer Advocate's costs pursuant to the order-in-  
61 council and the provision of the *Automobile Insurance*  
62 *Act* as amended, the Consumer Advocate's costs would  
63 then be a cost of the Board. So the costs of the  
64 Consumer Advocate as determined and paid by the  
65 Board will be passed on to FA as a part of the Board's  
66 own costs.

67 If that doesn't happen, if the Board does not  
68 order these costs to be passed on to FA, then the costs  
69 of the Consumer Advocate as paid by the Board would  
70 be passed to insurers in the province by virtue of the  
71 assessment section. So that all is the first method in  
72 which the Consumer Advocate's costs may be paid.  
73 They become the costs of the Board and they get dealt  
74 with in the ordinary course of that.

75 The second method, I think, in my view, is that  
76 this panel could award costs to the Consumer  
77 Advocate. The Consumer Advocate was determined to  
78 be a party, made an intervenor's submission, and in the  
79 same way that the Board, pursuant to Section,  
80 Subsection 91 of *The Public Utilities Act*, could award  
81 costs in any hearing, could do the same for the  
82 Consumer Advocate. Those are my comments on costs  
83 and those conclude my comments in total on this  
84 matter.

85 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay. A  
86 number of issues there that you obviously invited the  
87 Consumer Advocate to comment on. There are a  
88 couple of issues in any case. How did you want to  
89 handle that in terms of, before we go to Mr. Stamp for  
90 final ...

91 MS. NEWMAN: Well, you know, it's a little bit out of  
92 order, Mr. Chairman, but I think that in light of the  
93 potential confusion that you might have in trying to  
94 write this, it might be helpful to hear ...

MR. SAUNDERS, PRESIDING CHAIRMAN: I think we should hear from the parties on your points. If they have any problem with what you've raised, I think now would be the best time to hear that, and then we'll move on to Mr. Stamp for his final rebuttal.

MR. O'FLAHERTY: Sorry, my partner was speaking to me at the same time and I didn't hear ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Well, take your time. We have all the time this morning. The weather is decent and ...

MR. O'FLAHERTY: What was it that you wished me to address, Mr. Chairman?

MR. SAUNDERS, PRESIDING CHAIRMAN: Well, Ms. Newman has raised a couple of issues in respect of both the argument of the Applicant as well as the argument of the Consumer Advocate, and she's also indicated how she thinks the Board can deal with the matter of costs, so I'm wondering if both the Applicant and yourself would wish to have an opportunity to comment on any of the matters she has raised at this stage.

MR. O'FLAHERTY: I think I've covered the issues that Board counsel has referred to the Facility Association Applicant's argument. I don't have any further comments on those points.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.

MR. O'FLAHERTY: She has raised a couple of issues, I think, regarding the accident and conviction surcharge issue and how the Consumer Advocate is requesting that the Board deal with that issue. I've already indicated that what the Consumer Advocate is requesting is a straight 5 percent clean driver discount in the same manner as I've set out in the written argument as the New Brunswick Board just imposed ... they were asked to bring in a 10 percent discount and they didn't do that. They said, no, we'll bring in a 15 percent discount and added on 5 percent extra. That was in the course of approving the accident and conviction surcharge schedule in addition to a clean driver discount. So what I'm suggesting is there should be no changes to the accident and conviction surcharge schedule, it should stay the way it is right now, and there should be a 5 percent clean driver discount, and the issue that I'm getting at is the evidence that was placed before the Board through DJS

No. 2, Illustration 5, which shows that this province has a greater than 50 percent number of persons already within Facility Association who do have clean driving records, and it's my submission, based on the evidence, that that number will grow rather than shrink. And I've went through it yesterday, the evidence that I'm pointing to is primarily the evidence of Mr. Hickey and the evidence of Mr. Anthony regarding the general industry, what's happening in the industry right now as the market tightens.

That's what I'm referring to when I say this issue needs to be addressed by the Board and is an issue of great significance to consumers. I'm suggesting that what's going to happen is if things continue the way they are, which is nothing to do with the rates that are being set by FA, it's to do with greater market conditions. What's happening is more and more persons are getting pushed off into Facility Association, including, it's my submission, more and more persons with clean driving records. In other words, the risks are getting creamed (phonetic). The best risks are staying in the voluntary market and the other ones are getting pushed off as a result of these other issues that I talked about. So what I'm asking is that a 5 percent clean driver discount be assessed across the board to reflect the fact that as better and better risks get put into the FA pool, okay, that there would then be a correspondingly lower risk to the entire pool of losses.

Now, I think the question that was posed to me was how does the Board's, how do I see the Board's jurisdiction in that regard. I see it as a matter of the Board's jurisdiction, clearly was a matter of the Board's jurisdiction in New Brunswick. They were able to do it. They just took a decision that, based on the evidence that was placed before them, there was a higher than 10 percent accident, sorry, higher than 10 percent clean driver discount called for. I'm following the same, what I hope to be, logic that was followed by the Board in New Brunswick.

Was there ... there was another issue about the accident and conviction surcharge, was there?

MS. NEWMAN: No, just the financial statements.

MR. O'FLAHERTY: Financial statements, yes. In terms of the jurisdiction of the Board, I would submit that the Board has, like any tribunal, has control over its own procedure, and I'm not suggesting that the Board order

1 the Facility Association to provide financial statements  
2 to them in such, you know, in a certain format. What  
3 I'm suggesting is that as a procedural matter, we spent  
4 a lot of time in this particular hearing speculating about  
5 what other off sheet, off balance sheet factors needed  
6 to be taken into consideration to arrive at a proper  
7 picture of what the actual situation was. I think Mr.  
8 Powell, Commissioner Powell commented that he hadn't  
9 seen so many off, you know, statements with off  
10 balance sheet factors, well I won't say it again.  
11 Anyway, he mentioned it on a couple of occasions.

12 What I'm suggesting is that it's in everyone's  
13 best interest, including Facility Association, that this  
14 be transparent. If there are costs that are being paid by  
15 the insurers that need to be taken into account here,  
16 and I think Mr. Morris' evidence is actually the same on  
17 this point, then let's get, let's bring them to the light of  
18 day and let's talk about what they are, and so we all  
19 understand what the situation is. So I guess I wasn't  
20 sort of looking at it from a jurisdictional perspective and  
21 saying there should be an order that this is the way you  
22 do your financial statements. I just think that an  
23 indication should be made in the decision that this  
24 would be helpful, and if, the next time that this matter  
25 comes before the Board, if the financial statements are  
26 in the same, you know, condition or they're presented  
27 in the same format, well, then, you know, then that's  
28 something that will have to be dealt with by the Board  
29 in that context. So it wasn't really an issue of, I wasn't  
30 seeing it as a matter that they should be directed to do  
31 this, more along the lines that that would be a matter  
32 from a procedural perspective that would be very  
33 helpful.

34 I see Ms. Newman's point though because I  
35 lumped it in with this issue about rating of accident  
36 benefits territorially as opposed to provincially, which  
37 obviously is a matter that I'm asking the Board to order  
38 or direct be done rather than the second issue.

39 Similarly, I don't think the Board can say at this  
40 stage I require the Facility Association to call this, that  
41 or the other witness. I just think that it would be a  
42 matter that would be helpful, if a person was made  
43 available, for example, Ms. Hepburn (phonetic) was  
44 here, I think, on the first day or second day of the  
45 hearing, who's an underwriter. If a person of her  
46 qualifications was made available to answer questions  
47 about underwriting, that's where I was leading with  
48 those points. So in a long-winded way I don't think it  
49 was a question that I'm asking the Board to order this,

50 I'm thinking it's a matter that might be helpful on a go  
51 forward basis.

52 In the issue of costs, and I don't want to ...  
53 obviously Mr. Stamp wants to have the last say on this,  
54 but it seems to me that some of my submissions may  
55 not be necessary on the issue of costs until I know  
56 particularly what is the situation of FA, so I'm  
57 wondering if I might get the last word on the issue of  
58 costs as it is something that I'm requesting as opposed  
59 to FA.

60 MR. SAUNDERS, PRESIDING CHAIRMAN: You mean  
61 after you hear Mr. Stamp?

62 MR. O'FLAHERTY: Yes. I mean, that might clarify  
63 things for me.

64 MR. STAMP, Q.C.: Mr. Chairman, we will need the last  
65 opportunity. We are the Applicant and we are entitled  
66 to have rebuttal to all of the other argument and so the  
67 case on the issue of costs is before the Board. The  
68 Consumer Advocate has put it before the Board on the  
69 issue of Section 61. Board counsel has also raised the  
70 issue. I think it's open to the Consumer Advocate to  
71 deal with it now and for us to deal with it when our turn  
72 comes for final rebuttal.

73 MR. SAUNDERS, PRESIDING CHAIRMAN: What do  
74 you have to say on that, Mr. O'Flaherty?

75 MR. O'FLAHERTY: Well, you know, I don't, I'd like to  
76 know what the position is of Facility Association, but  
77 if that's not what the Board prefers, then I can address  
78 it now.

79 MR. SAUNDERS, PRESIDING CHAIRMAN: Well,  
80 okay. I was going to offer this as a solution. We want  
81 to hear all of the argument. We want to hear what you  
82 all have to say and glean from you whatever assistance  
83 we can in terms of trying to come to a proper decision  
84 here. Mr. Stamp, if you proceeded and gave your  
85 argument in respect of costs, then we'll let Mr.  
86 O'Flaherty comment and go back to you for final  
87 comment. Is that ...

88 MR. STAMP, Q.C.: That's certainly fine, Mr. Chairman.

89 MR. SAUNDERS, PRESIDING CHAIRMAN: Would  
90 that be in order with you as well?

91 MR. O'FLAHERTY: Thank you, that's very fair.

MR. SAUNDERS, PRESIDING CHAIRMAN: So we'll give you all a fair chance.

MR. STAMP, Q.C.: Sure.

MR. SAUNDERS, PRESIDING CHAIRMAN: Now, have you completed, by the way?

MR. O'FLAHERTY: Yes.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay. It's quarter past 10. You said yesterday, Mr. Stamp, that you thought you'd be an hour, but if you had overnight you may be able to pare some time off that, and if it's still going to be an hour, I suggest we break now so we won't interrupt you.

MR. STAMP, Q.C.: Mr. Chairman, I did pare it down to some extent, but now I hadn't heard Board counsel when I pared it down, and so that does change the water on the bean/beam (phonetic), so to speak, but I will still, I think, you know, not be lengthy in my response, but if in the course of my rebuttal a break is desirable, I have no problem with that in any event.

MR. SAUNDERS, PRESIDING CHAIRMAN: Okay, alright.

MR. STAMP, Q.C.: So if you wish, I can ...

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, sure, go ahead.

MR. STAMP, Q.C.: ... carry on.

MR. SAUNDERS, PRESIDING CHAIRMAN: Proceed.

(10:15 a.m.)

MR. STAMP, Q.C.: And on that very point, Mr. Chairman, I propose that you set the clock now ... I'm going to answer Ms. Newman's remarks first so that the clock could be re-set when I start on the other issues. (laughter)

A couple of things, I guess, Mr. Chairman, and I say I do intend to try and deal with matters raised by Board counsel firstly. She mentioned, for example, the issue of, she brought up about the Consumer Advocate's procedural recommendations, I guess, dealing with, for example, accident benefits and I guess that they've been commented on to some extent again.

I guess I just want to say this about that point, Mr. Pelley and certainly Mr. Simpson testified that Facility Association doesn't want to be a, if you like, market leader in these things. It has to find somehow the proper niche in the market environment in which it's compelled to operate, so the danger with doing anything that is, if you like, inconsistent with general market practice invites the complication or danger, I guess, of anti (phonetic) selection and so on that you can have come into this. So if, for example, there is to be a mechanism where, you know, every cost truly is attributed to every single territory in a precise way that the analysis would require, then of course I suppose that could be a process to be directed, but then without the voluntary market following the same kind of crispness in that regard, then I think you do have a real danger of anti selection coming into this, and that was, for example, some of the concerns, I think, raised by Mr. Pelley in some of his evidence, that, you know, the Board could go this way or that way, and I forget the exact topics we're talking about, may have been CLEAR, may have been the clean driver discount and surcharges, the point being that you have to be reasonably within step of the market environment as well. So that's a feature, I mean, you don't operate in a vacuum, you operate in a market, and obviously this is a pricing decision that we're into now, but that pricing has to bear in mind certain, I guess, market considerations in terms of the issues of anti selection.

Now, she also raised the issue of financial statements and the Consumer Advocate responded to that just again, and I guess I think there is comment here that is required, and that is that Facility Association is a statutory entity. I mean, it's not a corporation under the *Corporations Act*, limited liability company, but it has, it's a person in law for purposes of this process and for every process in fact. So the suggestion that somehow this person, this entity, can re-configure financial statements that don't comply with generally accepted accounting principles, that don't follow the rules that govern how entities must present their financial, you know, affairs, to me, I just, I don't understand how that could be achieved. I mean, the point is, some of the expenses that are paid relative to this process are paid in the hands of ICON. Now there's no way that Facility Association can properly present financial statements as its financial statements that record on them ICON's expense. They just can't do it.



1 Now, I guess ICON could be directed to  
2 somehow record its expenses specifically as to this  
3 item, to break it down. I guess it's there in some way,  
4 because I presume some of these distribution  
5 statements that provide the data to individual  
6 companies as to what their share is in Facility, you  
7 know, might be a feature here, but the point is this is an  
8 entity, it prepares its statements in accordance with, I  
9 presume, generally accepted accounting principles.  
10 That's what I presume the audit letter that accompanies  
11 the statements would say about that from maybe  
12 Deloitte and Touche. But I don't know how they get  
13 around, and Mr. Power obviously is the expert in that  
14 regard, but how they get around that restriction that  
15 they would have and be obliged to report expenses or  
16 revenues or other activities taking place in some other  
17 entity's books and affairs as their own expenses. So I  
18 know it's a dilemma but this is the way the statute sets  
19 the process up, so we come here, you know, not as, I  
20 guess, equal participants in how this is done. The  
21 statute, the law is passed, we're here and we are  
22 confined by it, so I make that comment about that point.

23 Now, just let me stumble around bit as I find  
24 some of the various points that Board counsel referred  
25 to so that I can take you through some of these things  
26 as well. I think that, if I interpret her remarks correctly,  
27 her point was that we tried to get Ms. Elliott in her  
28 evidence, in her cross-examination, to admit that she  
29 had a rule that there wasn't really a judgement as to the  
30 refusal to exclude data points in loss development  
31 factor selection, and she said, you know, in this case  
32 and in this case. I think she said so many times she  
33 said that type of, made that type of comment.

34 But I think what I would bring you to, and I  
35 think actually she may have gone to some of this  
36 herself, is the evidence at December the 19th, and  
37 particularly at page 27 in the first instance, the point  
38 being, the point that's being offered, and in truth is  
39 what was offered by Ms. Elliott, so there's no, you  
40 know ... Board counsel is simply, I guess, rephrasing or  
41 re-adopting what Ms. Elliott said.

42 But what she said at page 27 of that particular  
43 transcript and starting at line 60, "Well, I'll have to refer  
44 here ... but the fact that is part of history. It did occur,  
45 that's the point, it's part of the data. It could possibly,"  
46 and then she stopped, and I say, "It did occur." She  
47 says, "It did occur," and I say, "Yeah." And she says,  
48 "And it possibly could occur again. That's the random  
49 nature of the data," and I say, "Sure, but what that tells

50 me then is that once it occurs you won't exclude it  
51 because it might occur again," and she says, "In this  
52 particular case, we don't know that it won't occur  
53 again." So that is the very conclusion she comes to.  
54 Since it did once occur, she seems to reason, then it  
55 could possibly occur again. Well, if that's the criteria  
56 on which you will decide I won't exclude a data point,  
57 well, I don't know how you ever do get to exclude a  
58 data point because, yes, of course it did occur. That's  
59 the whole issue we're talking about, should the data  
60 point that you're looking at be excluded as  
61 representative of what's going to take place in the  
62 future, and she says, "Well, it did happen. It could  
63 happen again."

64 And I think she emphasized the point really,  
65 the rigidity of the rule, as I put it, and I think it's just  
66 that, in the same volume at page 29 and at line 58 and  
67 through 66, she says, "Yes, I would agree in isolation  
68 that's the only factor. All the other factors are quite  
69 distant from it." At that point she's talking about a  
70 particular data point that we're looking at there. I say to  
71 her, "So it really comes down to, Ms. Elliott, that you've  
72 applied a rule across the board in loss development  
73 factors. You're going to include five years of history  
74 and you're going to exclude nothing from that." "Yes."  
75 Now, I invite the Board to consider that as a pretty rigid  
76 rule.

77 And as for the charts that Mr. Pelley prepared,  
78 you may recall actually he put in charts the first day of  
79 his evidence, which was the first day of the full hearing,  
80 I guess, we began the evidence. We didn't have these  
81 charts that Board counsel has now described as so  
82 colourful and pretty. He made those that night and he  
83 simply put in all the data that he was looking to present  
84 to the Board as an aspect of what he considered, so,  
85 yes, he did, he went back all those intervals, right back  
86 to the entire interval package in the loss development  
87 data, I guess, numbers in the filing, and he showed all  
88 the years that he looked at.

89 He did identify the five recent years and he  
90 identified those in blue dots if they were included, and  
91 he identified them in black dots if he thought they  
92 should be excluded, and he put in all those yellow  
93 points because he wanted to show the Board that, yes,  
94 I'm looking at an average out of these five years, but,  
95 and that's what I'll do, but as to how I decide what's,  
96 what might be excluded, some of the features that I will  
97 consider, some of my judgement will be based upon,  
98 not all of it but some of it will be based upon what has

1 history shown us on this. So, as he pointed out in the  
 2 most recent interval on bodily injury in the private  
 3 passenger setting, I think it was, we had the spot that  
 4 the Consumer Advocate and Ms. Elliott have both said,  
 5 you know, it's a high spot. He said, yes, it's high in  
 6 relation to the other blue points, but look at all of the  
 7 yellow data around that and above it. It is, in that  
 8 particular case, the most immature period, interval, we're  
 9 looking at. It has the most likelihood of being random  
 10 and for a lot of change to occur there and, most  
 11 especially, look at all of the times in the history that this  
 12 data point has been exceeded. So that's an example, I  
 13 think, of the chart presentation.

14 Ms. Elliott's charts, I point out in my written  
 15 argument, they don't even show all the intervals. They  
 16 don't even show the interval that excludes one of the  
 17 data points. It's a (inaudible) and confined, so if you  
 18 were to look at Mr. Pelley's chart, you'd have to sort of  
 19 take a little block and blow it up, and that's what she's  
 20 showing really, not anything like all the data that he's  
 21 trying to show to explain, of course, the very issue that  
 22 he's here to talk about, actuarial judgement.

23 I guess on the issue of the unemployment  
 24 variable, I guess the point I was trying to make and  
 25 Board counsel didn't mention this, but, I mean, in our  
 26 written argument we pointed out we understand Ms.  
 27 Elliott's point being that I don't, as I understand her,  
 28 you know, basically, I can try and find the exact  
 29 reference, but she doesn't approve of using the  
 30 unemployment variable because it, in part, depends  
 31 upon a forecast from some other source, but the point  
 32 I make in the argument of course is I take you to both  
 33 2002 benchmark and I think it's in 2001 benchmark, I'm  
 34 sure it is, the very same process is adopted by her. She  
 35 uses it. She cites the fact that she's using the  
 36 Conference Board of Canada unemployment forecast to  
 37 do trend. So how can it be okay when she comes  
 38 before this Board, in a broad sense, to do benchmark,  
 39 and be flawed, fundamentally flawed when Facility  
 40 comes here to do its rate filing? I don't get that.

41 I guess I wanted to try and just come to grips  
 42 with Board counsel's comment, which I guess perhaps  
 43 to put it as pleasantly as I can, that I went too far in my  
 44 written argument when I suggested that Ms. Elliott was  
 45 doing two things with the seasonality T statistic and  
 46 then the trend issue. I was really just trying to identify  
 47 what she had said herself though, and, as the Board  
 48 counsel has pointed out, this discussion is at pages 24,  
 49 25 and into 26, I think, on December the 18th, but so

50 what she's ... I'll just try and explain this in case I  
 51 haven't done it very well in the written argument. What  
 52 she's doing is trying to show that her approach that  
 53 seasonality will pass the seasonality T test criteria, and  
 54 she says that 98 percent ... she says this, by the way, at  
 55 page 24, the top of the page, lines 1 through 10, I can  
 56 get 98 percent. How I get 98 percent is I include the  
 57 data for two more years. Now I can ... my regression  
 58 passes and I pass the T test. The complication with it  
 59 is that when she uses that extra two years and then  
 60 passes a test, she doesn't get the trend percentage that  
 61 she's favoured that be adopted here, and I think she  
 62 said she's over the 7.5 percent.

63 (10:30 a.m.)

64 I forget how that was put but ... at page 25 she  
 65 comes back to this again, around line 70 and through 80  
 66 sort of thing. She says, "I want to show you this  
 67 graph. We can see seasonality and I went back to 1990.  
 68 That's the period of time that Mr. Pelley has started his  
 69 analysis. He used 12 years of data where we used 10  
 70 years of data year after year, we used 10 years of data.  
 71 When I go back to 1990, we have a value here, this is  
 72 the seasonality. This is a seasonality statistic," yeah,  
 73 statistic. "Now it's a statistic that then we reference  
 74 into T test tables, which I don't have here, but I will tell  
 75 you that the result of this test shows that seasonality  
 76 is significant and in fact at 98 percent level, which is in  
 77 excess of the 95 percent value that has been put forth  
 78 by FA." On the bottom of the page, "But also when  
 79 you go back these additional two years, the loss trend  
 80 is higher. FA estimates BI trend of 7.5 percent, we're  
 81 estimating 7.1 percent based on 10 years, so I too, if I  
 82 go back and use 12 years of data like FA, the trend we  
 83 estimate is higher, over 7.5 percent."

84 The point I'm making really is simply this, she  
 85 is prepared to use FA's data period to promote a pass  
 86 in the T statistic seasonality test and then move away  
 87 from that, chop off the last two years to come back to  
 88 look at trend percentages, because if she goes back and  
 89 includes those two years for that purposes and for all  
 90 the purposes, she gets the wrong trend rate. I'm saying  
 91 it's doing the two things, you know, at different times,  
 92 which ...

93 MS. NEWMAN: Sorry to interrupt but I just think it  
 94 probably wouldn't be fair to leave this point here,  
 95 because you had said because, and I don't think there's  
 96 a because in that quote. You have said that she's  
 97 prepared to do that because the rate is lower, and I

1 think that's an unfair characterization. I don't want to  
2 leave it on the record and I'm sorry to interrupt, I  
3 apologize.

4 MR. STAMP, Q.C.: I'll let you go ahead if you want to  
5 ...

6 MS. NEWMAN: Simply that, it's simply that you have  
7 said because and I don't see it in that quote, and if it's  
8 somewhere else, perhaps you could refer to it.

9 MR. STAMP, Q.C.: Well, the because, Mr. Chairman,  
10 that I'm referring to, this is ... she had a trend value  
11 which she felt was correct, 7.1 percent, and the criticism,  
12 I guess, or the concern raised by Mr. Pelley was, look,  
13 there's a lot of problem with the seasonality issue, and  
14 I've laid out all that in our written argument about what  
15 is the problem with the approach she's taken, using the,  
16 breaking the data down into half yearly periods,  
17 weaknesses in the reliability and stability of the data, all  
18 those kinds of concerns. It was the very thing they  
19 moved away from. That's why they used industry data.  
20 But the point is, this was his concern. We don't see  
21 this seasonality being intuitively there and it can, it  
22 introduces concerns and noise into the approach when  
23 you do this. In fact, when you look at the T test scores,  
24 it won't pass the T test scores for seasonality. That  
25 was the point he made.

26 So, as I understand Ms. Elliott, what she's  
27 saying is, well, if I go back two years, I can get a pass,  
28 I can pass the T test seasonality, by adding the two  
29 more years in, and I only go back to do that for that  
30 purpose. She doesn't then say, okay, well if I'm going  
31 to go back the two years and achieve a pass on my T  
32 test seasonality statistic, I'll stay there and do it all from  
33 there. She moves forward again and comes back to her  
34 initial position that 10 years is where she's going to be.  
35 So she has in a sense, I guess, the best of both worlds.  
36 I'll go back the 12 years that they do to get my T test  
37 pass but I'll adopt what I want to adopt, is the 10 years  
38 for trend, and I'll get a lower rate. So that's what I hear  
39 her saying, that's what I read her saying. If I've  
40 mischaracterized it, I apologize to Ms. Elliott, but that's  
41 how I read what she said.

42 Now, I'm going to go back, if I may, Mr.  
43 Chairman and Commissioners, to the comments that I  
44 was going to make in response to the Consumer  
45 Advocate, so this might be where you want to look at  
46 your clock again.

47 MR. SAUNDERS, PRESIDING CHAIRMAN: Are you  
48 suggesting a break?

49 MR. STAMP, Q.C.: No, I'm fine to go ahead.

50 MR. SAUNDERS, PRESIDING CHAIRMAN: Oh.

51 MR. STAMP, Q.C.: I'm just mentioning that the time  
52 I've spent so far, I didn't know about that yesterday.

53 MR. SAUNDERS, PRESIDING CHAIRMAN: Oh, I see,  
54 I see. Now, yes, okay. So your time officially starts  
55 now, is that what you're saying?

56 MR. STAMP, Q.C.: The clock really is ticking now  
57 perhaps. I guess I don't have a lot to bring to you on  
58 these points, but there are a number of issues that I will  
59 speak about. I'll try and be brief. The issue of the  
60 Consumer Advocate having engaged an actuarial expert  
61 to do a report and we don't have the report, I want to  
62 just mention to you that in his oral submissions the  
63 Consumer Advocate stressed, I guess, the  
64 appropriateness of the scope and duration of the  
65 hearing. As he said, I understand essentially that he  
66 said this, my client had to reach into their pockets and  
67 pay these rates and whatever time it takes is essentially  
68 justified, I believe is what he was implying, and they  
69 pay the expenses and that's appropriate. He said as  
70 well that based upon the complexity of what is before  
71 the Board, the Board needed to rely on expert evidence.  
72 We certainly don't disagree with any of that.

73 In fact, I guess, I make the point here as well  
74 that it's a bit difficult to suggest that this process is  
75 going to be "simple and understandable," which is  
76 what he said yesterday, when we require experts to help  
77 the Board and to help us understand what's going on  
78 here. I think it's a bit, well, I think it's a bit of a reach to  
79 expect that, you know, the average person can walk off  
80 the street and pick up the rates here and understand  
81 how this is all achieved. I certainly understand that the  
82 final rate should be simple. You know, if I'm in this  
83 category, a driver and I use my car for these purposes,  
84 that's my rate, and if I have some convictions, this is my  
85 surcharge, and if I live in Territory 1, it's this way, and  
86 in Territory 2 or whatever it's a different way. Those are  
87 the simple things, I think, that we need to understand,  
88 but, I mean, actuarial processes are very complicated  
89 and I don't certainly pretend to understand it fully, but,  
90 you know, so I think that it is a complex issue, it  
91 requires complex evidence and expert evidence, and the  
92 Board is looking to that, through the assistance of Ms.

1 Elliott and through the evidence of Mr. Pelley. So, as I  
2 say again, to suggest that it somehow has to be simple  
3 and understandable, anybody can walk off the street  
4 and sort of pick it up and understand it, simply is, I  
5 think, a reach that you can't expect.

6 But we do disagree, of course, and that's the  
7 whole focus of, I guess, really the issue as a, in a sense  
8 a bit of a competition between the two actuaries to  
9 some extent because, I mean, they haven't disagreed on  
10 a whole raft of stuff, they've disagreed on some, you  
11 know, finite points, six or seven or eight or, you know,  
12 whatever points. You can ... I think there are four  
13 issues really that gave rise, Ms. Elliott said, to 16 1/2 or  
14 17 points or something in private passenger and some  
15 16 or so in, and three points that she raised in  
16 commercial. So, you know, it's not like they're living on  
17 different planets. They obviously have the same  
18 training or essentially the same training, I suppose, and  
19 they approach it in some ways the same way. They  
20 have some differences and that's the real issue, I guess,  
21 the Board must grapple with. We certainly say that  
22 when the Consumer Advocate suggests in his initial  
23 submission, and which I think he perhaps modified  
24 somewhat in his written argument, he said in the initial  
25 submission there is no rate increase as presently ... I  
26 think he said there is no rate increase appropriate. Now  
27 I think it's, I may not be using the right word, but a  
28 modest increase is okay.

29 We disagree with that. I mean, we  
30 fundamentally disagree with that theory. We disagree  
31 with the theory that Ms. Elliott proposes on the  
32 selection of loss development factors. She has, as I  
33 have said this morning again, she has a pretty firm rule,  
34 across the board, she agreed, she won't do it.

35 Mr. Pelley says you have to do that, you have  
36 to look at the circumstances in each coverage and look  
37 at all of the history, look at all of the information you  
38 have and exercise your judgement. That's what he's  
39 doing. And I guess the point we're making is this is the  
40 very issue that we got into a bit yesterday about where  
41 was the Board's actuarial expert, and ... the Consumer  
42 Advocate's actuarial expert. This is the very reason we  
43 say that the Board is entitled to draw this adverse  
44 inference that we're proposing that they should draw.  
45 The Consumer Advocate could have had his own  
46 actuary support his theories, if she did support them.  
47 We don't know that. She could speak to these issues.  
48 That's a very issue that this panel is grappling with.

49 The Consumer Advocate's actuarial expert had  
50 our filing, had, I'm sure, the report of Ms. Elliott. She  
51 questioned our actuary, she asked for information and  
52 data and documentation. We provided that.

53 And it's not for us to notify the Consumer  
54 Advocate or to direct the Consumer Advocate as to  
55 which witnesses he should call, he will have to make  
56 that decision on his own, but it is very appropriate for  
57 us, we suggest, to comment on Ms. Canteen's  
58 (phonetic) absence. It would have been a very simple  
59 matter for him to have his expert come and adopt his  
60 theories or support what, the position that he's  
61 impressing upon the Board as to why Ms. Elliott's  
62 views are correct, and the suggestion that somehow  
63 there is a time concern or expense, we don't see these as  
64 answers at all. I mean, the Board has taken an  
65 appropriate amount of time to deal with all that has  
66 been here. Certainly if there was another day required  
67 or whatever was required to present that actuarial  
68 evidence, if it was appropriate, you know, that would  
69 have been found.

70 So the real inference, we suggest, is that the  
71 Board's actuary, or, sorry, the Consumer Advocate's  
72 actuary, has actually got a view that is comparable or  
73 close to that of Mr. Pelley, and Mr. Pelley is, to some  
74 extent, I guess, criticized as an advocate, and I liken  
75 that to saying that the accountant who issues an audit  
76 report for a company is an advocate, that somehow he  
77 is, you know, speaking only what they want to hear.  
78 This is not the role of an actuarial expert. I mean, the  
79 Board of FA does not control Mr. Pelley. He's an  
80 independent expert and he's engaged from outside, he's  
81 to do a rate filing based upon indications and he does  
82 that in his best professional judgement and following  
83 professional obligations.

84 I want to just make the point as well, Mr.  
85 Chairman, that, and this is in the transcript at, well, the  
86 first day of evidence, I guess, which is December the  
87 11th, and I'm referring to page, I think, yeah, well, 13, I  
88 guess, 13, 14 perhaps, and the Consumer Advocate is  
89 questioning Mr. Pelley and it's on qualification. "Thank  
90 you, Mr. Chairman. The Consumer Advocate accepts  
91 Mr. Pelley's qualifications and that he is an expert  
92 witness in the area of actuarial science. I'd like to follow  
93 up on one point, and that is that Mr. Pelley, do I  
94 understand your evidence to be that you have expertise  
95 both in the financial reporting aspect of actuarial work  
96 in the insurance industry as well as in assisting clients  
97 with rate making?" Mr. Pelley says, "I do have

1 expertise in both areas, yes." The Consumer Advocate  
2 says, "Thank you, those are all my questions." And he  
3 is accepted as well by Board counsel as an expert.

4 We asked that he be qualified as an expert and  
5 that qualification was granted. So to suggest that he's  
6 somehow no longer an expert or that his evidence is not  
7 reliable as an expert, I think bumps into this recognition  
8 on the part of the parties back on the first day and  
9 certainly bumps in, in any event, we say, to the  
10 thoughtful and careful and, way in which Mr. Pelley  
11 presented his evidence, to be sure that he answered  
12 every, you know, theory or concern that was addressed  
13 to him, and spoke frankly about where there were areas  
14 of actuarial judgement that are, you know, that are  
15 complicated, and where there is room for, you know,  
16 debate.

17 He suggests, the Consumer Advocate does,  
18 that the Board should only, the most, I don't know, he  
19 put it this way, but I understood him to say, you know,  
20 most compelling circumstances they would adopt their  
21 own board's, their own actuary's report.

22 (10:45 a.m.)

23 I don't think there's any evidentiary or  
24 procedural rule that would ever suggest that that's the  
25 case. The Public Utilities Board, you know, globally, I  
26 guess, engages Mercer's to provide advice to the  
27 Board. The panel here though is acting in a judicial  
28 role. It should not afford any particular preference to  
29 any one particular actuary based upon who hired the  
30 actuary, but it does again, I think, underscore again the  
31 absence of the Consumer Advocate's own actuary who  
32 could have presumably provided further insight for the  
33 panel on these complex issues.

34 Now, there was a discussion about the, how  
35 the legislation didn't provide, if you like, a methodology  
36 to calculate a rate of return and then I took it to be the  
37 suggestion that that was support for the view that the  
38 statutory requirement was for a break even rate. I think  
39 that this overlooks the fact that there is no, we submit,  
40 better direction as to the process the Board, Public  
41 Utilities Board, uses to set benchmark, or in fact to  
42 respond to specific rate filings by voluntary market  
43 insurers, which that occurs as well. Both, in both cases  
44 the benchmark, and in those cases where voluntary  
45 market insurers apply, they apply with a profit motive in  
46 mind. The Board doesn't restrict that because there is  
47 no mechanism in the *Automobile Insurance Act* to say

48 they'll have a profit. It's taken for granted. And I think  
49 the benchmark, I think, they plan around about 8 1/2  
50 percent as a return on equity, so that's very, I think, the  
51 same kind of issue, no better road map in those areas  
52 than in this.

53 Now, you also mention that this process, and  
54 the process, I guess, between Facility Association and  
55 its member companies and his clients, as he refers to  
56 them, and I suppose the public at large, we think, who  
57 drive and who are the other 96 percent perhaps, he said,  
58 "No one is intended to lose out." But I think, and I did  
59 allude to this briefly yesterday and I think the point he  
60 makes though that no one is intended to lose takes on  
61 further significance when you look at the fact that this  
62 filing is a filing based upon data up to December 31,  
63 2001. That is when both actuaries that you've heard  
64 from have looked at the data and said, okay, rate  
65 increases are required. One says 41 for private  
66 passenger, the other says 24 or something for private  
67 passenger. So for all of 2002, because that data that  
68 occurs after this data, for all that period of time, we  
69 submit, their rates are inadequate, and into 2003 they're  
70 inadequate, and they will go forward as inadequate  
71 until the Board completes its deliberation and issues an  
72 order and until rate adequacy is achieved.

73 So I think the suggestion that it's just the  
74 members who will lose here I think is, doesn't, isn't a  
75 proper, I guess, doesn't properly reflect what goes on  
76 in the marketplace and in the world. I mean, these  
77 insurance companies are there. They're there to make a  
78 profit and if they're restricted in one way, you know,  
79 they have to do what they can another way. Ms.  
80 Elliott, in fact, recognized and agreed with that in her  
81 own evidence. Again, this board is not concerned only  
82 with the four percent. As I've said in the first of my  
83 remarks, concerned with all the stakeholders.

84 Now, I will speak to this issue of, I guess, the  
85 appointment and, to some extent, the cost issues. As  
86 I mentioned yesterday when we spoke, we checked with  
87 the office of legislative council and been told, over the  
88 telephone at least, that there was no order-in-council.  
89 Obviously there's a document that now purports to be  
90 an order-in-council, I guess. We haven't seen it and it's  
91 a bit surprising that that's a rule, but I guess somebody  
92 has advised Ms. Newman that that is a rule and  
93 certainly, I'm sure, she's being guided by instructions in  
94 that regard, but I do have a couple of comments I want  
95 to make about this.

1 Yesterday evening, last night, I looked at the  
2 *Statute and Subordinate Legislation Act*, which is  
3 Chapter S27 of the revised Newfoundland statutes, and  
4 this is, as I understand it, the legislation that governs  
5 the process for subordinate legislation which is  
6 regulations, orders-in-council and ...

7 MR. SAUNDERS, PRESIDING CHAIRMAN: What did  
8 you call the act again, Mr. Stamp?

9 MR. STAMP, Q.C.: The name of it is, the cite for it is  
10 *Statutes and Subordinate Legislation Act*. As I say,  
11 it's Chapter S27. And just by way of, I guess,  
12 background for this process, one of the purposes  
13 stated in the act, Section 3(b), is, "To provide for the  
14 central filing and publication of regulations of a  
15 legislative nature made under a statute of the province  
16 and for the better distribution of information  
17 concerning both statutes and subordinate legislation to  
18 the public of the province."

19 In the second part of this act there is, deals  
20 with subordinate legislation, which is what we say this  
21 really is, and the registrar is defined to mean the  
22 legislative council, and that's the office we spoke to a  
23 couple of days ago, but, in any event, subordinate  
24 legislation is defined, it's a long definition, but it means,  
25 I'll read the first couple of lines, means, "A regulation,  
26 proclamation, rule, order, bylaw, or instrument that is of  
27 a legislative nature and made or approved under the  
28 authority of an act," and includes a whole lot of stuff.  
29 There's lots more discussion about that. There's five or  
30 six more lines to the definition, but that's what it ... I  
31 don't think there's any doubt that the order-in-council  
32 would be subordinate legislation. And there's a  
33 requirement under Section 10 of that act that that  
34 legislation be filed in a manner prescribed by the  
35 registrar, meaning the legislative council, and I read you  
36 10(2) of the act. "Unless another day is provided,  
37 subordinate legislation comes into force on the day it is  
38 published under Section 11, but in no case does  
39 subordinate legislation come into force before the day  
40 of filing unless it is provided in the act under the  
41 authority of which the subordinate legislation has been  
42 made or approved."

43 Now, I don't see anything in Section 61 or  
44 anywhere in the *Automobile Insurance Act* that  
45 suggests that Section 61 will have, you know, will have  
46 earlier application. And Section 3 of that Section 10  
47 says that, "Unless expressly provided to the contrary  
48 in another act, subordinate legislation that is not filed

49 as prescribed by the registrar has no effect." And I'll  
50 just come to Section 11. It says, "The registrar shall,  
51 within one month," this is 11(1). "The registrar shall,  
52 within one month of the filing of subordinate  
53 legislation, publish in the Gazette."

54 So I went back this morning and hunted up the  
55 Gazettes from the 2nd or 3rd of January, which even  
56 pre-dates the date of the order apparently, through till  
57 the latest one we have anyway, I think it was the 30th  
58 or something of January. I didn't find it. Now, you  
59 know, there may be an explanation. I just don't have it,  
60 the point being that if it, in fact, is an order-in-council,  
61 if it is subordinate legislation, then it needs to be, you  
62 know ... I mean, I think under the regulations to this  
63 particular act that I'm referring to, Section 12 of the  
64 regulations, "All subordinate legislation shall be  
65 available for inspection after its filing." So it's a bit of  
66 an anomaly, I guess, Board counsel is not, doesn't feel  
67 that it's permissible for this to be distributed.

68 I want to just refer to Section 12 of the act as  
69 well, and it talks about proof of filing in contents.  
70 "Production of a copy of subordinate legislation  
71 purporting to be printed by the Queen's Printer is, in the  
72 absence of evidence to the contrary, proof of the filing  
73 of that subordinate legislation in accordance with this  
74 act, and (b) the contents of the subordinate legislation  
75 and of the making of it and, where required, of the  
76 approval of the subordinate legislation." So the  
77 production of a copy would achieve these things  
78 absent evidence to the contrary.

79 All I can suggest on that point, Mr. Chairman,  
80 is this, that there may be an explanation. I don't have it.  
81 I would suggest that it be presumably something that  
82 the Consumer Advocate could be asked to provide to  
83 the Board in the next few days or something and in, of  
84 course, to provide us with a copy of it as well, some  
85 kind of confirmation from the registrar that this has  
86 been filed and it has been published and it is therefore  
87 covered within the requirements of the act. So that's  
88 the one point I make.

89 The second one I make is that even if it does,  
90 even if we do get, you know, clarity on this issue and it  
91 is, been properly (inaudible) as an order-in-council and  
92 it does comply with all these requirements under the  
93 *Statutes and Subordinate Legislation Act*, that by  
94 virtue of the act itself, this act itself, it has no  
95 retroactive perspective, so it is not available to the  
96 lieutenant governor in council to attempt to make

1 legislation retroactive by his order. The order is dated  
2 the 6th of January apparently and the most that the  
3 lieutenant governor in council can do is make the  
4 appointment effective from the date of the order,  
5 because otherwise he's bumping squarely into Section  
6 10 of the act which says effectively can't be retroactive  
7 unless the act says it can be retroactive.

8 (11:00 a.m.)

9 You don't look to the order-in-council to  
10 provide for the legality of retroactiveness, you look to  
11 the act on which it's, you know, authorized. So that's  
12 the two points I make about that point.

13 On the issue of the costs generally of course,  
14 that feature does obviously impact the cost discussions  
15 because if the Consumer Advocate is here, I mean,  
16 certainly obviously he's here, he's been appointed by  
17 the Crown to come here and he's attended and that's all  
18 very appropriate. The only question becomes, has he,  
19 is he here as a Section 61 consumer advocate or in some  
20 other status, and has he been here all the time, you  
21 know, looking at the January 6th discussion, in that  
22 capacity, if all these other concerns are dealt with.

23 So, you know, our view on it is that the Crown  
24 chose to decide, the Government chose to decide that  
25 the, that there should be a consumer advocate for the  
26 four percent presumably or for consumers generally, I  
27 don't know what to make of all that, and they have  
28 devised a specific process for costs to be dealt with  
29 directly in this issue, and either it's effective on the 6th  
30 of January or not effective at all, and I think that to  
31 suggest that you should go around to some other  
32 mechanism to deal with the cost issues is not the best  
33 view with the legislation dealing directly with that point  
34 having been created. So I would suggest that that  
35 should not be the case.

36 My view, Mr. Chairman, is of course this  
37 doesn't go to Consumer Advocate's and his counsel's  
38 right to compensation, of course it goes without saying  
39 he's entitled to that, but he's entitled to it from people  
40 that's he engaged by. I would submit to you that what  
41 should happen here is the same thing that happened in  
42 the last hearing where in that case the Superintendent  
43 of Insurance came, I guess, as a consumer advocate, if  
44 you like. Costs were ordered ... there was no order as to  
45 cost, everybody was responsible for their own cost,  
46 and I think that's the appropriate process and decision  
47 here as well, particularly, as I say, where the Crown

48 created specific legislation to deal with it and they  
49 either didn't follow up on it or followed up on it late or,  
50 you know, for whatever reasons they have. I mean, the  
51 Crown is a big machine and who knows what goes on  
52 in their minds all the time, I don't know. Those are my  
53 comments on that point.

54 I want to say one, maybe two last things.  
55 Commissioner Powell raised yesterday the issue of what  
56 this legislation really says, and I'm trying to find my  
57 legislation ... what the legislation says and I guess  
58 maybe the lack of clarity is the point he was  
59 commenting on. Just excuse me for stumbling around  
60 here.

61 I actually was going to make one further point,  
62 now that I look at my notes a bit more carefully. I was  
63 going to go back to the winter issue, because the  
64 Consumer Advocate did, I guess, express some further  
65 comments on this in his oral argument yesterday, and  
66 because we had asked you to look at the table on page  
67 50 of that material, if you recall, yesterday, and, you  
68 know, why don't the months with the big snowfall  
69 correspond to the months with the big accidents or the  
70 numbers of accidents, and if I, you know, hopefully I  
71 won't have insulted what he said too much by  
72 expressing what I understood him to say, that really it  
73 was because the snow came and stayed, was snow on  
74 the ground that really is the feature here. We never had  
75 any rain. It just came and it was the type of winter that  
76 we had, frequent storms but not of great magnitude, of  
77 smaller, and the snow just came and stayed and stayed  
78 and stayed, and so I invite you to go back to the chart  
79 on page 50 again with that in mind and look at, I guess  
80 my suggestion was to look at March, because as you  
81 get into March, you have now had the three worst  
82 winters in that period of time obviously, three worst  
83 months, I'm sorry, I misspoke, three worst months. You  
84 have 173 centimeters in December, 151 in January and  
85 122 in February, and you have the comparable average  
86 monthly snowfalls to the right of those, so, you know,  
87 that ... you get into March and include that. It's, I think,  
88 up around 490 or so total versus some 260 on average.  
89 But look at March, accidents, it's the lowest number of  
90 accidents. So if it's the snow coming and staying and  
91 you can't see around corners and you can't do  
92 anything, then you'd have to wonder about why by  
93 March it isn't getting worse rather than better.

94 Again I just make the observation that this is  
95 again, this is, it is attempting to use information, we  
96 suggest, that doesn't really get you to where the

1 Consumer Advocate wants to go. You can't link this  
2 information to the advisability of half yearly data. Mr.  
3 Pelley says himself that, you know, these, all the  
4 reasons why half yearly data is dangerous, and that  
5 when you use yearly data you don't see these as  
6 outliers, and the regression (inaudible) establish it. So  
7 I just make that point again in response to what the  
8 Consumer Advocate said yesterday.

9 Now, I will, I think, make my second last point,  
10 and that is again coming back to the point that was  
11 raised by Commissioner Powell yesterday as to, I  
12 guess, the discussion was surrounding the legislative  
13 requirements for, you know, break even rating, rate  
14 making and so on. Commissioner Powell said,  
15 struggling to try and put my mind around all these  
16 legislative requirements, he went on to discuss that.  
17 And the Consumer Advocate, you know, recognizes  
18 the point, the two differences, the two views is a point  
19 that he and I clearly disagree on. Commissioner Powell  
20 said, this is toward the end of it all, "You would agree  
21 that the legislation sort of doesn't point you," and he  
22 stopped, and the Consumer Advocate said, "I do agree  
23 it's not clear. It's, you know," and Commissioner said,  
24 "It's something that probably should be addressed."  
25 The Consumer Advocate said, "It's capable of argument  
26 and that's what Mr. Stamp and myself are doing." The  
27 Commissioner said, "That's right." The Consumer  
28 Advocate said, "It's not spelled out." The  
29 Commissioner said, "So there should be a little bit more  
30 clarity there," and he replied, "I agree and that if it was  
31 clearer then it wouldn't be as much uncertainty as to  
32 what the legislation does provide for, but I don't think  
33 that takes away from the argument that I'm making."  
34 And it's that point that I want to, I guess, that's the  
35 point I want to turn to, that uncertainty.

36 I want to refer you to, I don't have these cases,  
37 wasn't able to get them in time, I'm sure they could be  
38 provided if you wish, but a long-standing, long  
39 established rule that words of a statute, that unless the  
40 words of a statute so clearly demanded, a statute is not  
41 to be construed so as to take away the property of a  
42 subject without proper compensation, and we say, you  
43 know, the company's equity, company's working  
44 capital, company's retained earnings fits in that area.

45 And I'm going to refer you to a case called *The*  
46 *Attorney General and the Kaiser's (phonetic) Royal*  
47 *Hotel*. It's a 1920 decision of the Appeal Court, House  
48 of Lords, so it's [1920] AC 508, House of Lords, and the  
49 reference I was referring to was at page 542, and that

50 approach or that general rule of statutory interpretation  
51 was adopted, we suggest, by the Supreme Court of  
52 Canada in a case called *Manitoba Fisheries*. It's a 1979  
53 Supreme Court of Canada decision at 1979 SCR 101.  
54 And the point that they make in the *Manitoba*  
55 *Fisheries* case is that on the one hand, I think that's  
56 perhaps reading from, at that citation, I'm not sure what  
57 page it is, "On the one hand there would be the general  
58 principle accepted by the legislature and scrupulously  
59 defended by the courts that the title to property or the  
60 enjoyment of its possession was not to be compulsorily  
61 acquired from a subject unless full compensation was  
62 afforded in its place, acquisition of title or possession  
63 was taken, aspect of this principle are found in the rules  
64 of statutory interpretation devised by the courts which  
65 require the presence of the most explicit words before  
66 an acquisition could be held to be sanctioned by an act  
67 of parliament without full compensation being provided  
68 or imported. Intention to give compensation (inaudible)  
69 its assessing into any act of parliament that did not  
70 positively exclude it."

71 So the point, I guess, that I'm making is that,  
72 yes, we agree that this is unclear. We have a view, the  
73 Consumer Advocate has a different view, but the lack  
74 of clarity in the legislation is what the courts look to  
75 and say we won't take away, we won't presume that  
76 legislation takes away rights, takes away a right of  
77 return, for example, for a company who has capital at  
78 risk and engaged in the process, we won't presume that  
79 unless the language so compellingly provides for it in  
80 the statute, and we say the discussion yesterday really  
81 underlines the fact that it is not so compellingly  
82 provided.

83 So I guess it's safe to say that the Applicant  
84 and the Consumer Advocate have agreed on not too  
85 much, but we did agree on, do agree on one thing, and  
86 that is that the panel has been very attentive and we are  
87 pleased to have had an opportunity to present our case  
88 to you. Thank you for your attention and again we  
89 agree, concur with the Consumer Advocate that some  
90 of the staff that we have dealt with in the course of this  
91 have been quite helpful to us and we appreciate their  
92 assistance, the Board counsel, of course, and perhaps  
93 more especially Ms. Blundon, who has also been very  
94 helpful, so thank you.

95 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
96 you, Mr. Stamp. Mr. O'Flaherty?



MR. O'FLAHERTY: Yes, thank you, Mr. Chairman. I'm hoping that I'm going to have the last word here. I don't know if that will be the case.

MR. SAUNDERS, PRESIDING CHAIRMAN: I didn't promise you that.

MR. O'FLAHERTY: No, you didn't. I do have a couple of points that arise from what's been said by Mr. Stamp. In respect, I just point out in respect of the issue regarding the table that's found at page 50. I would ask the Board to consider of course the ...

MR. STAMP, Q.C.: Mr. Chairman, if we're going to go into another review of this, I will want an opportunity to rebut this evidence again.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes. As I said, I didn't ...

MR. STAMP, Q.C.: This is not what we thought we were talking about.

MR. SAUNDERS, PRESIDING CHAIRMAN: No. I thought he was going to comment on costs and ...

MR. STAMP, Q.C.: Thank you.

MR. SAUNDERS, PRESIDING CHAIRMAN: Yes.

MR. O'FLAHERTY: But I would like to have the opportunity to address a couple of things.

MR. SAUNDERS, PRESIDING CHAIRMAN: Then he has the final word, you know that.

MR. O'FLAHERTY: Sure, that's fine.

MR. SAUNDERS, PRESIDING CHAIRMAN: Sure, carry on.

MR. O'FLAHERTY: I just point out, and I'd ask the Board to recall the evidence which is found at Tab 2 of the pre-filed evidence of December the 3rd of Bruce Whiffen, which is at, in respect of the issue as to March's snowfall and why there was not a, such a marked difference in, you know, in the accidents if the snow depth was not, was the issue. Of course the evidence of Mr. Whiffen on that point was that January and February were the months with the snow depth records and that March actually had a higher than

average rainfall in March, so that's the point I'd like you to consider on that.

On the issue of the ... I'm going to get to costs now in one sec. On the issue of the adverse inference, without in any way wanting to give any more merit to that argument than we believe that it deserves, Mr. Stamp has now raised yet another consideration for the Board which is not in his written argument and was not mentioned previously, and that is this notion that somehow the Board should assume or consider the fact that the actuaries retained by the Consumer Advocate had in their possession a copy of the report of Mercer Risk. Now, once again that's not an assumption that you're in a position to come to, is our position, and it bumps squarely into, to use his terms, the difficulty that following December 3rd when we published our list of witnesses, he had an opportunity to discover that information, what information was provided to KPMG, did not do so and has simply lain in wait since then and not raised this until, as I said, Thursday past, so once again, same point is being made, that that's not something that the Board should assume. There's no evidence on that point.

(11:15 a.m.)

On the issue of costs, I would just ... I haven't had an opportunity to review the *Statutes and Subordinate Legislation Act*, I'll be frank with you on that, and I have no reason to suggest that that's not what the act says. I would point out, however, that Section 61 of this act, the *Automobile Insurance Act*, does give the lieutenant governor in council the right to appoint upon the terms and conditions that the lieutenant governor in council may determine a consumer advocate, and it appears to me that that's in fact what's happened here. The lieutenant governor in council has determined that the conditions and terms will be that the appointment will be effective November, I believe the date was November the 13th. I'm in the same boat here. I don't have a copy of this document that's been referred to in evidence, so I think it is November the 13th, if I'm correct.

MS. NEWMAN: It is, yes.

MR. O'FLAHERTY: Those are the terms and conditions that have been set by the lieutenant governor in council. Now, if the act said the lieutenant governor in council may appoint a consumer advocate, then maybe there would be more force to Mr. Stamp's argument that

1 this is not a permissible exercise of legislative power. In  
2 these circumstances I would submit that it is, the  
3 wording is there that does support them doing what  
4 they've decided to do in the circumstances and we  
5 would simply ask that the Board make a determination  
6 and an order for costs pursuant to that section and that  
7 order-in-council.

8 Now, one of the issues is, that we're grappling  
9 with, is whether or not, you know, because initially, as  
10 I say, in Mr. Stamp's, or not Mr. Stamp's, in the  
11 Applicant's argument, it says here that, "Expense is not  
12 an issue," which is why I wanted to go last, because I  
13 wanted to see if expense really was an issue here, and  
14 I gather now that it is. If it is going to be an issue as to  
15 the costs of the Consumer Advocate, we'd ask the  
16 Board to give some consideration to making a decision  
17 on that on a preliminary basis. I don't know if the Board  
18 is prepared to do that, but, you know, it is an issue that  
19 we would appreciate knowing the answer to sooner  
20 rather than later.

21 Those are my submissions and subject of  
22 course to Mr. Stamp's right of rebuttal to those. Thank  
23 you for your consideration.

24 MR. SAUNDERS, PRESIDING CHAIRMAN: Thank  
25 you, Mr. O'Flaherty. Anything further, Mr. Stamp?

26 MR. STAMP, Q.C.: As it turns out, Mr. Chairman, no,  
27 I don't think there is except to ask you to look at  
28 Section 10, Sub 2 of the act that I referred you to  
29 because I think it is, in my view, a huge stretch to  
30 suggest that the way the language is worded in 61  
31 allows for the going back in time for the legislation. I  
32 certainly don't agree with that at all. As I understand,  
33 that would be a place that the Consumer Advocate  
34 could reach for but I'm afraid he's not helped really by  
35 the wording of Section 10.

36 MR. SAUNDERS, PRESIDING CHAIRMAN: Yes, we  
37 will look at that, Mr. Stamp, as well as other legislation  
38 that's been referred to. Anything before we close, Ms.  
39 Newman?

40 MS. NEWMAN: No, I don't have any additional  
41 comments. Thank you, Mr. Chairman.

42 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
43 Well, we did get the transcript, I noticed, from last, from  
44 yesterday's session and I would assume that the final  
45 transcript will be available tomorrow?

46 MS. NEWMAN: Probably Monday.

47 MR. SAUNDERS, PRESIDING CHAIRMAN: We would  
48 hope tomorrow.

49 MS. NEWMAN: No, because this went longer than  
50 planned so we weren't able to arrange for overnight  
51 service.

52 MR. SAUNDERS, PRESIDING CHAIRMAN: I see.

53 MS. NEWMAN: But the transcriber has kindly agreed  
54 to get it to us as quickly as possible ...

55 MR. SAUNDERS, PRESIDING CHAIRMAN: Alright.

56 MS. NEWMAN: ... and we expect around Monday.

57 MR. SAUNDERS, PRESIDING CHAIRMAN: Uh hum,  
58 okay, very well. Thank you. Okay, I'd like to thank you  
59 all for your cooperation, for the orderly way in which  
60 you've all conducted your evidence and your witnesses  
61 and the Board, of course, will try and come to an early  
62 decision on the matters that we have before us, because  
63 there are a considerable number of matters, and I won't  
64 go out on a limb and say that we'll have a decision by  
65 any specific date but you can rest assured that it will be  
66 as early as we can facilitate it. So thanks again for your  
67 cooperation and anything by way of any questions that  
68 you gentlemen have, I forgot to ask you.

69 COMMISSIONER POWELL: No. I'll wait till next year.

70 MR. SAUNDERS, PRESIDING CHAIRMAN: Okay.  
71 Thank you.

72 *(hearing adjourned)*