

**IN THE MATTER OF an Insurance Review
Hearing before the Board of Commissioners of
Public Utilities**

**AND IN THE MATTER OF an Application
by the Campaign to Protect Accident Victims
to question Aviva Canada Inc.**

BETWEEN:

THE CAMPAIGN TO PROTECT ACCIDENT VICTIMS

APPLICANT

AND:

THE BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

RESPONDENT

**REPLY SUBMISSION OF THE CAMPAIGN TO PROTECT ACCIDENT VICTIMS
TO THE RESPONSE OF AVIVA CANADA INC.**

In reply to the Response of Aviva Canada Inc. ("Aviva") in the within application dated July 17, 2018 (the "Aviva Response") the Applicant states:

1. As to paragraph 9 of the Aviva Response, the Applicant agrees that Public authorities, including the Respondent, have a duty to act fairly when making decisions and that the threshold for triggering procedural fairness in a proceeding before the Respondent is quite low. Further, the Applicant submits that the Respondent owes a duty of procedural fairness to the Applicant as well as to Aviva.
2. As to paragraph 11 of the Aviva Response, the Applicant disputes that it is seeking an order from the Respondent that would effectively force Aviva to be a party. The Applicant is simply asking that Aviva be required to answer questions in relation to its written submission and oral presentation. Aviva would not be required to remain engaged as a party in the proceeding for the duration of the hearing. Further, as the Applicant has already submitted, Aviva is in a much different position than other Presenters in the hearing. Aviva is the second largest property and

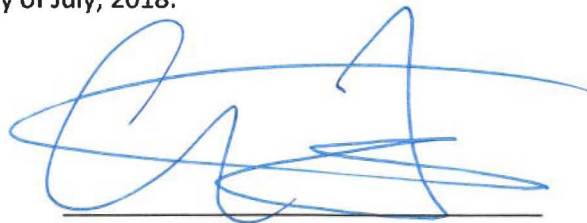
casualty insurance group in Canada and, while a member of the Insurance Bureau of Canada (“IBC”), it has purposefully chosen to depart from the submissions of the IBC on the issues before the Respondent in the Insurance Review, and put forward its own submissions. As a major automobile insurer in Canada, the Applicant submits that it is in the public interest that a fulsome opportunity should be provided for the examination of those submissions. This should include the opportunity of parties to ask questions on the Aviva submissions.

3. As to paragraphs 15-17 of the Aviva Response, the Applicant notes that any right of procedural fairness that exists which allows Aviva to put forward their “case” in the manner they so choose, necessarily requires a balancing right of procedural fairness to be afforded to other parties in the proceeding to ask questions of Aviva in relation to the case being put forth. To allow otherwise would mean that Aviva would effectively be dictating the entire process concerning the manner in which it provides information or evidence to the Respondent. If this is permitted, a distinct lack of fairness will arise in the proceeding.
4. As to paragraphs 18-24 of the Aviva Response, the Applicant notes that the *Doctrine of Legitimate Expectations* should also have application to the Applicant. That is to say, the Applicant has a legitimate expectation in the within proceeding that if the second largest property and casualty insurance group in the country is making submissions to the Respondent in writing and orally, there would necessarily flow from that, as a matter of fairness, an opportunity for the parties to ask questions on those submissions. It would not be reasonable for the Applicant to expect that it would only be permitted to ask questions of the IBC, while individual IBC member companies would be permitted to then put separate submissions and information before the Respondent on which the Applicant and other parties could ask no questions.
5. As to paragraphs 28-29 of the Aviva Response, the Applicant notes, as referenced by the Consumer Advocate in his response to the Applicant’s application to question Aviva, that Section 19 of the *Board of Commissioners of Public Utilities Regulations, 1996* (the “Regulation”), explicitly permits cross-examination of a “witness” by an Intervenor. The term “witness” is not defined in the Regulation. The Applicant submits, however, that Aviva would be considered a “witness” within the meaning of the Regulation. While the Respondent has the discretion under Section 2 of the Regulation to alter its process, that discretionary power extends to the ability of the Respondent to now designate it appropriate that Aviva be considered a “witness” for the purpose of the Insurance Review for the purposes of allowing, for reasons of procedural fairness and in the public interest of ensuring a full and robust examination of the information or evidence provided to the Respondent in the hearing, questioning of Aviva on its submissions.
6. As to paragraph 31 of the Aviva Response, the Applicant submits that Aviva has not adduced evidence or provided an explanation of how it will be prejudiced should the Respondent require that Aviva answer questions from the Applicant on its submissions to the Respondent. Treating Aviva differently by allowing the Applicant to question its representatives does not equate to

prejudice. The Applicant reiterates its submission that, in fact, Aviva is a very different kind of presenter. That is precisely what necessitates the requirement for permission to ask Aviva questions on its submissions.

7. As to paragraph 32 of the Aviva Response, the Applicant submits that as a matter of fairness Aviva should not be permitted to hide behind a threatened refusal to participate in the proceeding as a means of allowing it to make a presentation to the Respondent without the ability of the Applicant to ask questions. As submitted by the Applicant, procedural fairness dictates that the Applicant be permitted to ask questions of Aviva as a proponent of a "minor injury" cap in the Insurance Review, having chosen to make submissions outside of the IBC, and as a large, sophisticated, and major automobile insurer. That requirement of procedural fairness should not be dissolved simply by reason that Aviva feels it would prefer not to make a presentation if subject to questioning by the Applicant.
8. As to paragraph 33 of the Aviva Response, as the Applicant has already submitted in paragraph 5 of the within Reply, the Respondent has the discretion under the Regulation to allow questioning of Aviva based on the requirement of procedural fairness to all parties and to ensure that there is an open and fulsome examination of all submissions coming before the Respondent in the Insurance Review.
9. As to the whole of the Aviva Response, the Applicant reiterates its request for an order permitting it to question Aviva in relation to its written submission to the Respondent and any future oral presentation.

ALL OF WHICH is respectfully submitted this 31st day of July, 2018.



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