

M A N I T O B A) Order No. 91/07
)
THE PUBLIC UTILITIES BOARD ACT) July 13, 2007

BEFORE: Graham Lane, CA, Chairman
Monica Girouard, CGA, Member
Susan Proven, P.H.Ec., Member

REVIEW OF MAXIMUM CHARGES FOR
PAYDAY LOANS: GRANTING OF INTERVENER STATUS
AND SCHEDULE OF PROCEEDINGS

EXECUTIVE SUMMARY

By this Order, the Public Utilities Board (Board) grants intervener status for a fall Board hearing to establish maximum charges pertaining to payday loans.

The Board accepts:

- a) Assistive Financial Corp. (AF);
- b) British Columbia Payday Loan Association (BCPLA);
- c) Canadian Payday Loan Association (CPLA);
- d) Cash-X Inc. (Cash);
- e) A coalition of Consumers' Association of Canada (Manitoba) Inc., the Manitoba Society of Seniors (CAC/MSOS) and Winnipeg Harvest - the coalition may, with Board approval, expand to include the National Anti-Poverty Organization and the Social Planning Council of Winnipeg (Coalition);
- f) DirectCash Management Inc. (Direct);
- g) Progressive Insurance Solutions (Progressive);
- h) RentCash Inc. (RC);
- i) Sorensen's Loans 'til Payday (SL);
- j) Trans Global Insurance (TG); and
- k) 310-Loan (310).

And, also by this Order, the Board establishes a timetable for the upcoming proceeding and the exchange of information that will precede it.

INTRODUCTION

The *Consumer Protection Amendment Act (Payday Loans)* (Act) received royal assent in December of 2006, with section 3, enacting sections 137, 163 and 164 of the Act, proclaimed on June 5, 2007.

The Act confers onto the Board authority to set the maximum amounts that can be charged for payday loans, that is, loans on which the initial advance does not exceed \$1500 and for which the initial term is no longer than 62 days.

The Act establishes that the Board's mandate is to fix:

- (a) the maximum cost of credit, or rate, formula, or tariff for determining the maximum cost of credit, that may be charged, required or accepted in respect of a payday loan;
- (b) the maximum amount, or rate, formula, or tariff for determining the maximum amount, that may be charged, required or accepted in respect of either an extension or renewal of a payday loan or a replacement loan; and
- (c) the maximum amount, or rate, that may be charged, required or accepted in respect of borrower default of a payday loan.

Notice of the Board's payday loan proceeding was published in major Manitoba newspapers; the Notice advised of the following hearing dates and locations:

Thompson, Manitoba	November 5, 2007
Brandon, Manitoba	November 7, 2007
Winnipeg, Manitoba	November 13 to 28, 2007

Interested parties seeking intervener status at the hearing filed applications with the Board seeking to participate in the proceeding, and this Order approves those applications and establishes the schedule and process for the proceeding.

The Board received intervener applications from SL, RC, Progressive, CPLA, BCPLA, a Coalition representing consumer interests, Direct, 310, Cash, TG, and AF.

Intervention positions

SL (represented by Mr. Leo Sorensen)

SL reported an interest in representing the costs of providing payday loans and addressing the relevance of bad debts related to payday loans. SL indicated concern with a reported lack of access to the court system for recovery of bad debts.

SL also indicated concern that for loans cancelled within three days of issuance a lender may not be able to levy a charge, opining that such a restriction would be unreasonable and impact on the viability of the payday lending business.

RC (represented by its counsel, Mr. Antoine Hacault)

RC indicated an intention to cooperate with other interveners to narrow issues to come before the Board, so as to avoid duplication.

RC reported that it is a major player in the Canadian and Manitoba payday loan industry (being the largest in Manitoba), and that it is the only publicly traded Canadian-owned business within the payday loan industry. RC suggested it was in a unique position to inform the Board, with respect to its ability to provide customer profile information.

RC advised that it operates under a broker model, one that matches borrowers with third party arm's length lenders, and servicing a different sector of the market than some of the other proposed interveners.

RC further advised that it is not a member of the CPLA and, thus, may have a different view and perspective on certain issues than CPLA.

RC advised that it expects to assist the Board by providing information on all the matters noted in section 164 of the Act, particularly as to various payday loan business models. RC also noted that it expects to be able to provide the Board information on the practices of the industry in other provinces and in the United States. Furthermore, RC advised expecting to be able to provide customer profile information.

RC raised the issue of confidential filings, and suggested if such filings are proposed parties to the proceeding should confer prior to approaching the Board to make a determination on the request.

RC listed the following potential issues it intends to address at the hearing, pending receipt of the regulations under the Act:

- cost of credit and rates and structures for the cost of credit;
- industry operating models, including capitalization structures, and practises;
- loan rollovers and cross-subsidization issues;
- varied competitive rate structures;
- implications for consumers of various rate structures;
- loan renewal rates and structures; and
- investor expectations.

RC reserved the right to claim for costs.

Progressive

Progressive, reported to be a provider of optional credit insurance to the payday loan industry, was not represented at the conference. However, by written communication, Progressive offered to share its experience and expertise in the industry with the Board.

CPLA (represented by its counsel, Mr. Allan Foran)

CPLA noted that it is a federally incorporated not-for-profit association representing the payday loan industry. CPLA

reported that its membership is comprised of small, mid-size and large payday loan companies with both rural and urban operations, operating within a voluntary code of conduct.

CPLA indicated that it has prepared industry studies and has general industry economic and costing information, together with projections of social impacts that may be of interest to the Board.

CPLA advised of a history of working with federal and provincial legislators on regulatory issues, and being able to contribute to the Board's understanding of Canada-wide regulatory practices.

CPLA advised it would request a cost award, and that it would cooperate with the other parties to the proceeding to minimize duplication.

BCPLA (represented at the PHC by Mr. Kevin Isfeld).

BCPLA advised that it represents 27 companies operating 142 outlets, comprising over 65% of the British Columbia payday loan industry.

BCPLA reported experience assisting the British Columbia Government by providing statistical information with regards to the regulation of the industry, and indicated that it will be able to provide the Board with a perspective as to other

jurisdictions.

Coalition (represented by its counsel, Mr. Byron Williams)

The Coalition reported its members to presently include CAC/MSOS and Winnipeg Harvest, the latter a registered not-for-profit charity with a volunteer Board of Directors, and advised that the National Anti-Poverty Organization and the Social Planning Council of Winnipeg may join the Coalition representing consumer interests.

The Coalition reported an intention to address the following issues through the proceeding:

- maximum cost of credit;
- loan extensions and renewals;
- maximum costs upon default; and
- payday loan issues in other jurisdictions.

The Coalition advised it would review and provide evidence on industry operating expenses and revenue requirements, terms and conditions of payday loans, and the circumstances and financial risks of payday loan borrowers.

The Coalition indicated its intention to appear throughout the hearing, participate in the production of evidence, test evidence and present final argument. As well, the Coalition indicated it intends to engage and present two expert witnesses:

- Dr. Christopher Robinson (York University), and

- Dr. Jerry Buckland (University of Winnipeg).

The Coalition advised it would apply for a cost award, and provided a preliminary budget aggregating \$49,090.00 - \$70,640.00 for its intervention - a budget subject to future amendment given consideration of the number of interveners likely to be involved.

Direct

Direct, a payday lender, applied by way of written communication, indicating an interest in participating in all aspects of the Board's proceeding.

310 (represented by Mr. Nathan Slee)

310 advised being one of Canada's largest direct payday lenders, and reported that, in addition to two store-front outlets in the lower mainland of British Columbia, they provide over 95% of its loans by telephone or internet. 310 advised that, given its different business model, it expects to present a unique perspective to the matters that will come before the Board.

310 advised it would work with the other industry interveners to avoid duplication, and would provide data on the direct lending component of the industry.

310 also reported experience in the United States, and a willingness to offer evidence as to the merits and dangers of

relying on U.S. data and rate history in considering regulating the Canadian payday loan industry.

Cash

Cash was not represented at the PHC, and by written application reported that its significant industry experience would allow it to make a contribution to the proceeding, particularly with respect to identifying industry risks and costs and consumer protection matters. Cash also raised the issue of tax discounters, commenting on some similarities with payday loans.

TG

TG was not represented at the PHC, and their written application indicated an interest in the proceeding based on it being a provider of death and disability insurance to payday loan borrowers. TG expressed interest on all aspects of the proceeding related to the fixing of maximum costs for payday loans and suggested that it may call a witness.

AF

Not present at the conference, AF reported that as an arms-length third party lender to brokers of payday loans it would bring a different perspective to the Board's proceeding.

AF indicated operating under the broker model of financing payday loans, a model involving particular interests and costs.

AF reported an intention to work with the other parties to reduce duplication, so as to further the opportunity for an efficient proceeding, and reserved the right to apply for a cost award.

Scheduling Matters:

The proposed interveners responded to the suggested proceeding's timetable with suggestions for amendments. Generally, the perspective of the parties present was that the proposed timetable was not reflective of the summer season and that adjustments should be made to allow for more time through the initial process period as well as an opportunity for providing rebuttal evidence ahead of the hearing itself.

RC suggested the hearing timeline proposed to the conference required amendment if RC's internal circumstances, summer holidays and the availability of experts were to be taken into account. Further, RC was concerned that as the provincial regulations were likely only to be available by the end of July, the proposed schedule would not allow sufficient time for analysis and reaction to the regulations.

RC supported the proposed two rounds of information requests, but noted the proposed timetable did not provide for rebuttal, and suggested that provision for rebuttal would assist hearing efficiency.

CPLA supported RC's contention that the timetable required

amendment, holding that the end of August would not provide sufficient time to prepare and finalize first round evidence, and that September 15th would represent a more viable date. CPLA suggested that the Board reconsider the need for a second round of interrogatories and, instead, allow for further rebuttal information to be filed.

The Coalition concurred with the concerns of other interveners, and supported that amendments be made to the schedule and provision for rebuttal evidence.

310 also supported the suggestion that the timetable be amended.

BOARD FINDINGS

The Board will accept all applicants for intervener status and attaches an amended timetable that better reflects the particular circumstances of the summer season and allowance for rebuttal evidence following the information request process segment of the proceeding. A second round of interrogatories has been retained.

These proceedings are new and relatively unusual for the Board, albeit that the Board obtained an understanding of the alternative financial services industry (fringe banking) from a recently concluded cashing of government cheques proceeding.

Traditional hearings before the Board involve applicants seeking direction, rates, or relief in some form. In this proceeding, there is no applicant, and, therefore, no onus of proof is placed on any participant. The Board's responsibility will be

to discharge its mandate, and in so doing determine the public interest in the matters before it.

The Government of Manitoba has directed the Board to determine and establish maximum chargeable fees for payday loans. In order to do this in the Board's regular unbiased, well-informed and thoughtful manner, the Board will seek to have before it, and to share with interveners and the public record, information helpful to making its determinations.

While the Board expects to follow its Rules of Practice and Procedures (available on-line through the Board's website www.pub.gov.mb.ca), the Board will provide itself latitude. The Board intends to ensure, as best as possible, that adequate evidence is available to allow the Board to reach informed and reasonable decisions.

The Board notes that CAC/MSOS, the founding member of the Coalition (of consumer interests) has participated responsibly in previous Board hearings related to a variety of issues that have affected Manitobans, and, accordingly, will welcome not only the participation of Winnipeg Harvest but also the two other possible participants suggested by CAC/MSOS, if those parties do join the Coalition, to the proceeding.

In the end, this proceeding is intended to meet the public interest in the matters placed before the Board by the legislature, and the voice of Manitoban consumers needs to be

represented and heard; the breadth of the Coalition is important to this objective.

The Board recognizes that the other parties to be accepted as interveners are primarily representing either their own interests or those of the general payday lending industry and related businesses. The Board accepts these parties as interveners, as the industry as well as consumers need be heard and represented. Intervenors from industry are expected to bring forward information and perspectives related to payday lending to assist the Board in its task of making reasonable determinations.

With respect to the potential for awards of costs, the Board does not make pre-determinations of eligibility or of award quantum ahead of a proceeding. The Board will wait until after the proceeding and the filing of specific applications for cost awards before making a determination on these matters. The Board has full discretion in this matter.

That said, the Board is obliged to advise intervenors considering applying for costs to carefully review sections 43 and 44 of the Board's Rules of Practice and Procedure. The Board has rarely provided a cost award to an intervener with a commercial interest in the outcome of a proceeding, and, as well, has generally awarded costs to intervenors lacking the financial means to participate when the Board has found that the organization's participation was responsible, cooperative and of value to the Board's proceeding and the public interest.

The Board notes that following the conference, all parties that were present at the conference conferred and agreed to the revised timetable, attached hereto as Schedule "A" of this Order.

IT IS THEREFORE ORDERED THAT:

1. Intervener Status for the hearing in respect of Payday Loans is granted to:
 - a) Sorensen's Loans 'til Payday;
 - b) RentCash Inc.;
 - c) Progressive Insurance Solutions;
 - d) Canadian Payday Loan Association;
 - e) British Columbia Payday Loan Association;
 - f) a Coalition comprised of Consumers' Association of Canada (Manitoba) Inc., Manitoba Society of Seniors, Winnipeg Harvest and, if agreed to by the other parties of the Coalition, National Anti-Poverty Organization and the Social Planning Council of Winnipeg;
 - g) DirectCash Management Inc.;
 - h) 310-Loan;
 - i) Cash-X Inc.;

SCHEDULE "A"

**Public Utilities Board Hearings
 Maximum Fees for Payday Loans
 THE PUBLIC UTILITIES BOARD**

Timetable

Action	Dates
Proclamation of PUB mandate	June 5, 2007
Public Notice	June 16, 2007
Parties to Register	June 29, 2007
Pre-Hearing Conference	July 6, 2007
Regulations available and distributed (Estimated)	July 27, 2007
Parties to file evidence	September 17, 2007
IRs (1 st Round)	September 28, 2007
Responses to 1 st Round Irs	October 16, 2007
Reminder Notice	October 20, 2007
IRs (2 nd Round) and Rebuttal evidence	October 26, 2007
Responses to 2 nd Round Irs	October 31, 2007
Preliminary motions hearing day	November 1, 2007
Hearing - Thompson	November 5, 2007
Hearing - Brandon	November 7, 2007
Hearing - Winnipeg	Nov. 13, 14, 15 19, 20, 21, 28, 29, 30 Dec. 3 (closing argument)
Decision- order issued	December 28, 2007

SCHEDULE "B"

**PROCEDURES TO BE FOLLOWED FOR THE
PAYDAY LOANS HEARING**

1. Hearing Dates:
 - a) Winnipeg hearing will be held at the Board's office, 4th floor, 330 Portage Avenue, Winnipeg, commencing on November 13, at 9:00 a.m. and continuing thereafter as necessary.
 - b) Thompson hearing will be held at Council Chambers, 226 Mystery Lake Road commencing at 1:00 p.m.
 - c) Brandon hearing will be held at Council Chambers, 2nd Floor, 410 - 9th Street commencing at 1:00 p.m.
2. Hearing Times
Each Day (Winnipeg):

9:00 a.m. to 12:00 Noon
1:15 p.m. to 4:00 p.m. (amendments may be made by the Board at the hearing)
3. Assigned Sittings:

Presenters for the Winnipeg dates will be heard commencing at 1:15 p.m., Tuesday, November 13, 2007, and at 7:00 p.m., if necessary. Presenters at other locations will be heard as determined by the Board.

4. Opening Statements by Board Counsel, and Counsel or representatives of registered interveners.
5. (a) Parties to file their application and supporting evidence.

(b) Parties may introduce witnesses. Board Counsel and other interveners to cross-examine the witnesses (order to be determined).
6. All interrogatories (information requests) are to be filed and responded to using the prefixes as assigned by the Board when interveners are registered (set out in the body of the Order). The party requesting information is to use firstly their prefix followed by the prefix of the party being asked e.g. CPLA etc. Interrogatories (information requests) are to be numbered sequentially through 1st and 2nd rounds, e.g. CPLA 1-3, CPLA 2-7.
7. All pre-filed evidentiary material to be entered on the record at the commencement of the hearing by Board Counsel using assigned prefixes.
8. All witnesses giving oral evidence to highlight their pre-filed evidence.
9. All witnesses to be sworn or affirmed.

10. Daily transcripts will be available for the Winnipeg Hearings only. Parties wishing direct delivery to make arrangements with the Reporter. Transcripts can be found at www.pub.gov.mb.ca at no charge.
11. It is the Board's request that all motions be dealt with pursuant to the Board's Timetable.
12. The Board' Rules of Practice and Procedure (available on the Board's website) dealing with the Awarding of Costs will apply to all matters before the Board.
13. The Board indicates its willingness to be available for any problems that may arise during the exchange of information at any time, such time to be arranged through Board Counsel.
14. Seven (7) copies of material are to be submitted to the Board's offices and one copy to be submitted to Board Counsel at the following address: Attention: Anita Southall, Fillmore Riley LLP, 1700-360 Main Street, Winnipeg, MB R3C 3Z3.
15. Electronic copies of all material including the evidence of parties are required to be submitted to the Board's e-mail address: publicutilities@gov.mb.ca. Where schedules accompany an electronic file, that filing must be discrete and include only the item and schedules to which each refers. The electronic files shall be named in accordance with their parties prefix as per #6. All electronic filings shall be in Adobe Acrobat format,

without protection securities that might preclude them from being included in one Multiple Files Document.