

MANITOBA

THE PUBLIC UTILITIES BOARD ACT

AND THE CONSUMER PROTECTION ACT

Order No. 25/14

March 7, 2014

Before: Karen Botting, B.A., B.Ed., M.Ed., Vice Chair
Al Morin, B.A. (Econ), ICD.D., Member
The Hon. Anita Neville, P.C., BA. (Hons.), Member

**MAXIMUM FEES FOR
CASHING GOVERNMENT CHEQUES**

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EXECUTIVE SUMMARY

By this Order, and in accordance with *The Consumer Protection Act (Manitoba)*, the Public Utilities Board (“Board”) reports on the review of the fee formula established by the Board for the cashing or negotiating of a government cheque.

The formula, providing for the maximum fee, commission or amount a cheque casher in Manitoba may charge for the cashing or negotiating of a government cheque, is to remain as originally established by Order 72/07 and continued in Order 51/10.

Additionally, the Board provides an overview of the matters it considered and the Board’s findings upon completion of the review, and an update as to government action on Board recommendations contained in Order 72/07.

Fees and Terms, Cashing Government Cheques

Government cheques include cheques of the Government of Canada, Province of Manitoba and any government agency listed in the provincial regulation.

Fee Tariff with certain exceptions, the maximum to be the sum of \$3.00 and

(plus) 2% of the face value.

Exceptions

1. For cheques on which a hold is placed and cash not then provided, the maximum charge to be levied shall be the lesser of \$5.00, or, the sum of \$3.00 and 2% of the face value;
and
2. For cheques cashed with a concurrent requirement that the person purchase goods or services aggregating 10% or more of the cheque, no fee may be charged.

Cheque cashers currently charging either no fee or fees less than the maximum as set out above are encouraged to continue to do so.

This Order follows the Board's review of the current government cheque cashing rates and related issues, a review that included notice to the public and interested parties and brought forward participation in the form of written submissions from two former interveners.

The Board remains of the view that its initial recommendations, as contained in Order 72/07 and as reviewed again in Order 51/10, remain in place and be subject to ongoing consideration by the government, as recommendations continue to be relevant to the objectives of this aspect of Manitoba's consumer legislation.

BACKGROUND

The Consumer Protection Act (Manitoba), ("Act"), directs the Board to set the maximum amount, or to establish a rate, formula or tariff, for cashing or negotiating a government cheque. The Board is required to make a just and reasonable Order based on the factors considered and available data. Section 169(5) of the Act requires that "The Board must review its existing Orders under this section at least once every three years". The Board has considerable discretion in the carrying out of this mandate.

In August 2013, the Board published a public notice of this review in the daily and weekly newspapers. On August 3, 2013 the same notice was issued to 32 firms, associations and individuals throughout the Province, including the Government of Manitoba ("government"). The public notice as published and circulated requested interested parties to make submissions in writing to the Board and advised that the Board would review the submissions and determine if a public hearing would be required.

In this second triennial review, the Board considered its understanding of the following:

- the current business and operating requirements of firms and persons who cash or negotiate government cheques for a fee;
- current market options for consumers seeking to cash a government cheque and the relative value of options available to consumers;
- the particular circumstances of both low-income consumers and those consumers lacking either mobility or access to alternative means (banks and credit unions) to cash a government cheque;
- the impact of the recent global recession on Manitobans, and a continuing low-inflation, low mainstream lending rate environment; and
- the public interest.

The Board considered the up to date report of the government respecting efforts aimed at implementation of many of the Board's original recommendations made in 2007. The Board also considered the submission of the coalition of Consumers' Association of Canada (Manitoba) Inc. and Winnipeg Harvest and the submission of the Canadian Payday Loan Association.

There is no applicant in this review proceeding and no onus is carried by any party.

SUBMISSIONS

On August 23, 2013, Consumers' Association of Canada (Manitoba) Inc. / Winnipeg Harvest requested a one (1) month extension to the deadline for submissions as set in the Board notice. The Board allowed the extension and advised all former hearing participants that all remaining submissions of any interested party were to be provided to the Board no later than October 5, 2013. The Board received no new public requests for participation.

Written submissions were received from Consumers' Association of Canada (Manitoba) Inc. / Winnipeg Harvest ("the Coalition") and the Canadian Payday Loan Association ("CPLA").

The Coalition supported the maintenance of the existing fees and terms applicable to government cheque cashing established by Order 72/07 and continued in Order 51/10. The Coalition also made a number of recommendations respecting the wider publication of cheque cashing rate information and a recommendation for enhanced monitoring and enforcement of the rate limits. CPLA submitted that the current rates require no further reduction, based upon its submissions respecting current market conditions and market offerings and the current business case for this product in Manitoba and the needs of consumers.

Consumers' Association of Canada (Manitoba) Inc. / Winnipeg Harvest

The Coalition noted that an inherent vulnerability exists among the users of government cheque cashing services. The Coalition stressed that consumers needing to cash government cheques are often people of low or fixed incomes who rely on these cheques as their sole source of income.

The Coalition's submission referred to concerns that were identified by a focus group held on September 26, 2013 to consider this service and issues surrounding delivery of the service. Two main concerns about government cheque cashing articulated by the participants included:

- A lack of knowledge and understanding of the legislative limits; and
- Possible non-compliance with the rate rules by vendor suppliers.
- The Coalition's recommendations include:

- The government should consider more effective methods to make the rate for cashing of government cheques known and understood, using the following tools:
 - Bus Advertisements
 - Social Media
 - An on-line rate calculator
 - A requirement for posted rate information by cheque cashers similar to what is presently required of payday lenders under Section 156 of *The Consumer Protection Act*.

- The government should empower and equip the Consumer Protection Office to proactively monitor and enforce the rate regulations.

The Coalition submitted that the rate should not be increased and that if the Board was inclined to consider increasing the maximums, an oral public hearing process should be instituted.

Canadian Payday Loan Association

The CPLA stated that since the Board's 2007 Order came into force there has been little change in the ability for Manitobans to access cheque cashing services and low cost accounts from banks and credit unions. CPLA submitted that the government cheque cashing service provided by CPLA members is still an important service to many Manitobans. While there is a cost associated with accessing the service, because of the costs to businesses to provide the service, there are also costs for the alternative of maintaining a bank account to deposit and negotiate a cheque, and in that case the customer is faced with a hold period on those funds that may delay access to the cash by up to ten days.

CPLA noted that the rate limits in Order 72/07 provided for savings to consumers when cashing government cheques, but submitted that under current market conditions in Manitoba for this service offering, it is important that no further rate reduction be considered. CPLA submitted that a further reduction in maximum fees would have the effect of further restricting or denying access to this service to those on social assistance without access to an alternative.

CPLA identified the reduction in the total number of cheques being processed by its members as a challenge to the business. The reduction is largely due to conversion of payments to direct deposit. In addition, the expansion of categories of cheques designated for regulatory coverage under the law has also impacted profitability. For these reasons, economies of scale for this service have been eroded. CPLA noted that the reduced fee chargeable for government cheques are in part subsidised by fees charged on regular cheques.

CPLA advised that should the Board determine that an oral hearing is required, CPLA would not be participating due to the expense involved.

Province of Manitoba

Order 51/10 issued by the Board on May 12, 2010 provided that the rates set by Order 72/07 remain in force with no amendments. Order 72/07 included nine recommendations for government consideration. In 2010, the government provided information to the Board regarding the 2007 recommendations, shown below for each recommendation. The government has again reported on developments since 2010 regarding the original recommendations, also shown below in italics for each recommendation.

**Order 72/07 Recommendation #1 -
Social Assistance recipients should be provided photo identification at no cost.**

The Province advised that in May 2009 the Manitoba Public Insurance Corporation began to offer a new photo identification card (the card is valid for up to five years and provides proof of identity, age and residency). The Province further advised that Employment and Income Assistance “ ... will provide funds to participants to obtain identification, including the Manitoba Identification Card, if required to open a bank/credit union account or access banking/credit union services”.

It is now an adopted policy and practice of Employment and Income Assistance to provide funding to participants for this purpose. MPI has a policy to waive the \$20.00 fee for the Manitoba Identification Card for low-income individuals.

**Order 72/07 Recommendation #2 -
Social Assistance recipients should receive counseling on the costs of cashing cheques and other financial matters, and be encouraged and assisted in opening a bank or credit union account.**

The Province advised that government has committed approximately \$800,000 to Supporting Employment and Economic Development (SEED) Winnipeg to “ ... work with low-income Manitobans to provide financial literacy training and to help grow their savings by supporting individuals to open Individual Development Accounts”, and that the funding will continue in the government’s 2010/11 fiscal year.

The Province further advised that Employment and Income Assistance staff “ ... provide counseling and assistance in opening bank or credit union accounts ... (and) referrals are also made to community programs such as Community Financial Counselling Services and The Community Financial Services Centre to assist participants with banking fundamentals”.

Funding support to SEED Winnipeg has been continued. Employment and Income Assistance Staff continue to provide counseling, assistance, and referral information to clients as described previously.

Order 72/07 Recommendation #3 -

Direct deposit of social assistance cheques into bank or credit union accounts should be proactively promoted by the Province (the Board understands that a substantial number of recipients of social allowance currently receive their support by direct deposit).

The Province reported that 63% of Employment and Income Assistance participants now receive benefits through direct deposit, up from 43% in 2007, and that Family Services and Consumer Affairs continues to explore measures to increase direct deposit, through the following measures:

- providing benefits one day earlier when by direct deposit than by cheque;
- issuing direct deposit promotional material;
- counseling participants on both direct deposit and opening bank/credit union accounts;
- providing funding to participants to obtain identification required to open a bank or credit union account;
- promoting the payment of income assistance by direct deposit with all new income assistance participants; and
- making referrals to community programs (such as Community Financial Counselling Services and Community Financial Services Centre).

The Province indicated ongoing consideration of further initiatives to assist increasing the employment of direct deposit rather than cheque issuance, these including:

- requesting participants with bank accounts to utilize direct deposit;
- providing website and printed material, or instituting a mail out campaign; and
- working with mainstream financial institutions towards develop opportunities to assist the currently “unbanked”.

Currently over 80% of Employment and Income Assistance benefits are paid by direct deposit. Of the remaining cheques that are issued, a recent analysis of cashed cheques showed that at least 65% were being deposited into the recipient's bank account through a bank branch or ATM. Direct deposits which offer the beneficiary immediate access to funds, will continue to be promoted.

**Order 72/07 Recommendation #4 -
Community Financial Services Centre, a pilot project serving North Winnipeg, should receive government support towards making the service permanent with expanded counseling and referral services.**

The Province reported that it has continued to provide financial support to assist the operations of the agency, which was "... initially supported through a \$150,000 Provincial contribution and a \$150,000 Federal contribution". The Province further reported that the "... (service) model was still in development" and that the Province had provided an additional \$256,400 to assist in model development "... within the context of an evolving financial services environment in (Winnipeg's) North End".

The Citizen's Bridge Pilot Project is the successor to the Community Financial Services Centre Program. It operates out of the Social Enterprise Centre at 765 Main Street and assists community members in obtaining government issued ID, facilitates financial literacy workshops throughout the community in partnership with SEED Winnipeg and provides driver training.

**Order 72/07 Recommendation #5 -
The Province should engage banks and credit unions into discussion towards the provision and marketing of low-cost accounts for social assistance families.**

The Province reported that eight large banks now offer low-cost bank accounts pursuant to a 2001 Memorandum of Understanding with the Federal Government, and that a number of Manitoba credit unions have established low-cost accounts.

The Province indicated that it is considering approaching financial institutions to explore opportunities to market financial services to low-income Manitobans, including low-cost accounts and financial literacy training.

Discussions with financial institutions have been initiated to explore opportunities to market financial services to low-income Manitobans.

Order 72/07 Recommendation #6 -

The Province should consider providing banks and credit unions with indemnification of Provincial Government cheques given adequate identification, with respect to cheques of \$1,000.00 or lower.

The Province advised that British Columbia and Alberta have indemnity agreements in place for cashing provincial government cheques, but that before entering into the agreements, the provinces decreased reliance on cheques through increasing direct deposit disbursement to the level of 80%. The Province advised that it is considering the experience of the other provinces, and may not implement provincial indemnification until direct deposits represent 80% of benefit payments.

This is still under consideration. Manitoba continues to promote direct deposit which offers the beneficiary immediate access to funds. Direct deposits are secure, reliable, and safe and the lowest cost payment option. Other provincial governments and the federal government are using the same approach.

Order 72/07 Recommendation #7 -

The list of Provincial Government agencies for which their cheques will be subject to the maximum fees set by (the Board) should be expanded to include all provincial and municipal agencies.

The Province indicated that all provincial agencies issuing large volumes of consumer cheques are designated as government agencies for the purposes of the legislation, and those discussions have been initiated with Manitoba Hydro to determine if there is a need to include it as a government agency.

The Province advised that municipal governments are not to be added to the list at this time, as discussions held with various municipalities have indicated that municipalities issue few cheques to individuals other than staff.

All government agencies that issue large volumes of cheques continue to be in scope of this recommendation. Most government agencies have been promoting direct deposit and some government programs such as Maintenance Enforcement and Student Aid have mandated direct deposit to enable better access to funds.

The majority of Manitoba Hydro's payments are made by direct deposit. They do not issue a lot of cheques to consumers. Municipal governments are increasing their use of direct deposit as they amalgamate and become more efficient. They continue to issue a few cheques to individuals.

**Order 72/07 Recommendation #8 -
The Province should bring about regulation to provide for the licensing of the near bank industry, including payday lenders and cheque cashers, pawn shops and rent-to-own firms.**

The Province reported that payday lenders, including pawn shops, which offer payday loans, will be licensed and that non-compliance with either cheque cashing or other similar legislation may result in the suspension or cancellation of their licenses. The Province also noted that regulation of pawn shop rates require amendment of the *Criminal Code*, and that existing cost of credit disclosure provisions apply to rent-to-own agreements, providing for a better informed consumer (enabled to comparison shop).

The province is currently taking additional steps to protect consumers through new legislation (Bill 35, amendments to The Consumer Protection Act) that will give the Consumer Protection Office greater authority to take action against businesses that break the rules. The recent Throne Speech stated that "new legislation will soon be introduced to address high-cost credit products that risk long-term ballooning debt for vulnerable people."

Order 72/07 Recommendation #9 -

The Consumers' Bureau, which will oversee adherence to the Board's determinations as to maximum fees for the cashing of government cheques, should consider the development of a code of conduct for cashers of government cheques, and the development of pamphlets and other information for general dissemination regarding the cashing of government cheques.

The Province reported that cheque inserts were included in approximately 50,000 cheques sent to Income Assistance and Manitoba Housing clients, and that the Workers Compensation Board and Manitoba Public Insurance were provided with electronic copies of the inserts and have indicated that they will include this information with hard copy cheques provided to their clients.

The Province also noted that a fact sheet on cheque cashing maximum rates is available through the Consumers' Bureau, and that the Consumers' Bureau also issues information on government cheque cashing fees as a regular part of its public education sessions. The Province further advised that as "... as few complaints have been received and random checks of retailers and cheque cashers have not revealed major issues of non-compliance, a Code of Conduct will not be developed at this time".

Information about cheque cashing maximum rates continues to be made available to consumers through the Consumer Protection Office, via fact sheets, website information, and public education session materials and presentations.

BOARD FINDINGS

As previously indicated, responses to the Board's invitation for submissions provided the Board with current information and recommendations. Based on the responses to its request for participation, the Board concluded there was no necessity for an oral public hearing. This conclusion took into account the cost of such a process which would be significant, the limited response to the Board's public notice and the subsequent

information provided to the Board. The Board therefore conducted a written hearing process.

Although coming from differing perspectives, both the Coalition and CPLA have recommended that the maximum rates established by Order 72/07 remain in place; the Coalition does not support an increase and CPLA does not support any reduction in the maximum rate. The Coalition reiterated in its recommendation that an oral public hearing be held only if the Board determined that it would consider an increase to the maximums set in Order 72/07.

The government provided an updated report of actions it has taken since the issuance of Order 72/07. Since 2010 there is no indication that there has been any significant problems or complaints arising from the continuing rate set by Order 72/07, or that the rate fixed had resulted in excessive charges to the public or a lack of service providers.

The question to be examined by the Board was: should the maximum government cheque cashing rate formula originally set by Order 72/07 and continued in Order 51/10 be changed? The Board considered not only the information and submissions it received but also the fact that of the 32 potentially interested firms, associations, groups and individuals that received direct notice of the Board's review, only two past participants and the government have responded. No case was made for changes to the current maximum rate schedule. The Board appreciates the efforts made by the Coalition and by CPLA in providing written submissions.

The Board has considered the current economic climate marked by the continuing struggles of global recession which has led to higher unemployment, lower increases in average wages/income, and in Canada also marked by continued low general price inflation and very low "mainstream" interest rates.

The Board finds that the rates set by Order 72/07 and continued in Order 51/10 should remain in force with no amendments. With this Order, the Board's continuing intention is to ensure consumers, who are intended to be protected and assisted by the setting of maximum fees for the cashing of government cheques, are not inadvertently harmed by the directions of the Board.

One of the identified risks in the setting of a maximum fee schedule relates to cheque cashers' forecast revenue from cashing government cheques. If the revenue recovered is below the sum of their costs and a reasonable rate of return or profit, some cheque cashers may withdraw from the market. This would reduce the availability of cheque cashing options to the public, particularly to the segment of the market that lacks bank or credit union accounts, or who live in areas where only one or a few cheque cashers are present.

As submitted by CPLA, the reduction of the number of cheques issued and the expansion of the categories of rate regulated government cheques have impacted the profitability of this service offering.

The Board recognizes that factors supporting the need and use of fee based government cheque cashing include:

- convenience – location of cheque casher, and days and hours of service;
- inability to cash cheques at a bank or credit union, due to either the lack of an account at any mainline financial institution or lack of adequate identification; and
- the practice of mainline financial institutions to place holds on cheques (the decision to place a hold apparently based on the size of the cheque, the payor, the person presenting the cheque for cashing, and the person's history with the financial institution, etc.).

Availability of mainline financial institutions to provide this and other services continues to be an issue which impacts consumers. The Board accepts the submission of the Coalition respecting the vulnerability of many recipients of government cheques which creates a market imbalance between buyer and seller as to the means by which these consumers seek to access their cash.

Cashing cheques at a fringe bank may be convenient and useful for some Manitobans, but for lower-income persons, it is a high-cost approach that may also lead to the receipt of other similarly high-cost services from companies such as payday lenders.

The Board understands that dealing with a fringe bank involves neither external credit checks nor the development or enhancement of a credit record; this may seem an advantage to some, but argues of potential difficulties for many others.

It was such circumstances and concerns that may have motivated government to provide the Board the mandate to set just and reasonable fees and terms for the cashing of government cheques. The clear intention of the government was to eliminate excessive fees and to protect consumers.

The Board acknowledges the significance of the industry risk identified in providing this service, and sets a maximum fee that in the Board's view will be sufficient to allow efficient cheque cashers within the fringe bank industry to remain in the market. The Board will conduct its next review in 2016 in accordance with the current legislation, assuming no major change occurs in the cheque cashing or general economic landscape that requires earlier reconsideration.

Finally, the Board acknowledges the government's ongoing efforts respecting the Board's recommendations made in 2007 and is pleased with the actions taken to-date. The Board encourages the government to continue to consider the problems faced by lower income households and individuals.

In 2012, the government added Manitoba Hydro as a regulated government agency under its cheque cashing regulation; Hydro cheques are therefore now subject to the rate maximum. Further, government regulations also contain administrative penalties for those who breach this rate law, ranging from \$1000 for a first contravention to \$5000 for a third or subsequent contravention.

The Board remains satisfied that continuation of the existing government cheque cashing rate formula strikes a fair and reasonable balance between the interest of consumers who out of convenience or necessity wish to use this product, and businesses who need to cover their cost and realize a profit from this service offering in the current Manitoba market.

The schedule of maximum fees and conditions for the cashing of government cheques is as follows:

Fees and Terms, Cashing Government Cheques

Government cheques include cheques of the Government of Canada, Province of Manitoba and any government agency listed in the regulation as follows:

- The Manitoba Housing Authority
- The Manitoba Housing and Renewal Corporation
- The Manitoba Public Insurance Corporation
- The Workers Compensation Board
- Manitoba Hydro

Fee Tariff with certain exceptions, the maximum to be the sum of \$3.00 and (plus) 2% of the face value.

Exceptions

1. For cheques on which a hold is placed and cash not then provided, the maximum charge to be levied shall be the lesser of \$5.00, or, the sum of \$3.00 and 2% of the face value; and
2. For cheques cashed with a concurrent requirement that the person purchase goods or services aggregating 10% or more of the cheque, no fee may be charged.

The recommendations for dissemination of rate information and for better monitoring of vendors, as well as for enforcement of the rate limits are all noteworthy. The Province has made significant strides in advancing the use of direct deposit for government payments and in supporting low cost bank account options. The results have been very successful, in that a combined 93% of government funds recipients either receive their funds by direct deposit or are depositing their cheques into a bank account.

While the Board will not make any new formal recommendations as part of this Order, the Board encourages the government to seek ways to spread the word with respect to cheque cashing rate limits, and to consider the options identified by consumers in the focus group conducted by the Coalition.

Of particular interest to the Board is the potential for an accessible online fee calculator. Without knowing the technical issues of making such a device available online, it is clear that this could be an relatively easy to use tool which would immediately empower consumers who want to determine the maximum fee that they may be charged for cashing a government cheque.

Further, the Board notes that administrative penalties may well cause offenders of the rate law to comply, but only if a program of monitoring and enforcement drives compliance.

The costs of such measures must be weighed against the benefits; information currently available to government does not suggest that businesses are failing to comply based on the limited number of complaints. The Board recognizes that while some vulnerable consumers may not come forward to complain, the statistics do not disclose evidence of wide spread non-compliance.

The Board is satisfied that both government cheque cashing and pay day loan issues remain under active consideration on the government's consumer agenda and the Board supports these initiatives as they are consistent with the intent of these aspects of Manitoba's consumer legislation.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure (Rules). The Board's Rules may be viewed on the Board's website at www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

The following schedule of fees and conditions, as initially established in Board Order 72/07, shall continue to be effective for the cashing of government cheques in Manitoba:

Fees and Terms, Cashing Government Cheques

Government cheques include cheques of the Government of Canada, Province of Manitoba and any government agency listed by regulation.

Fee Tariff with certain exceptions, the maximum to be the sum of \$3.00 and (plus) 2% of the face value of the cheque.

Exceptions

1. For cheques on which a hold is placed and cash not then provided, the maximum charge to be levied shall be the lesser of \$5.00, or, the sum of \$3.00 and 2% of the face value; and
2. For cheques cashed with a concurrent requirement that the person purchase goods or services aggregating 10% or more of the cheque, no fee may be charged.

THE PUBLIC UTILITIES BOARD

"Karen Botting, B.A., B.Ed., M.Ed."
Vice Chair

"H. M. Singh"
Secretary

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issued by The Public Utilities Board

Secretary