

M A N I T O B A                    )     Order No. 40/08  
  )  
THE PUBLIC UTILITIES BOARD ACT    )     April 7, 2008

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

**CANADIAN PAYDAY LOAN ASSOCIATION:  
APPLICATION FOR AN AWARD OF COSTS  
PAYDAY LOAN HEARINGS**

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### **Summary**

The Canadian Payday Loan Association (CPLA) participated as an intervener in the Board's 2007-08 hearing towards the establishment of maximum rates for payday loans for Manitoba. Subsequent to the hearing, CPLA applied to the Board for an award of costs.

By this Order, the Board denies the application; CPLA has not satisfied the Board's criteria for financial need, representing a component of the industry.

### **Introduction**

The Board conducted a public proceeding related to the setting of the maximum cost of credit for payday loans and components thereof. Pursuant to Section 164(10) of *The Consumer Protection Act* (CPA), the Board has jurisdiction to award costs incidental to the payday loan proceeding.

In the public notice in advance of the hearing, the Board advised that the proceeding would be conducted in accordance with the Board's Rules of Practice and Procedure (Rules). The Rules indicate the four main criteria by which the Board determines whether costs are to be awarded to an Intervener:

1. made a significant contribution relevant to the proceeding, and contributed to a better understanding by all parties of the issues before the Board;
2. participated in the hearing in a responsible manner and cooperated with other Interveners with common objectives to avoid duplication of intervention;
3. had insufficient financial resources to present the case adequately without an award of costs; and
4. had a substantial interest in the outcome of the proceeding,

and represented the interests of a substantial number of customers.

CPLA was granted Intervener status by the Board following the pre-Hearing conference, and then, while having been advised by the Board of its criteria for cost awards, reserved its right to apply for a cost award. Following the hearing, CPLA applied to the Board for an award of costs, comprised of:

Legal Fees			\$ 60,000.00
Consulting Fees	Deloitte & Touche	\$ 58,549.10	
	Pollara	\$ 19,080.00	
	Dr. Larry Gould	\$100,000.00	\$177,629.10
Total			\$237,629.10

**CPLA's Application**

CPLA asserted that it assisted "the Board not only by presenting evidence but also by testing the extensive evidence presented by other interveners".

With respect to meeting the four criteria, the CPLA stated:

- a) "The CPLA has made a significant contribution to these proceedings by providing the Board with substantial evidence regarding the operating expenses and revenue requirements of payday lenders in relation to their payday lending business in Manitoba, the circumstances of payday loan borrowers generally, as well as the other factors identified in the CPA for the Board's consideration."

CPLA further submitted that it made significant contributions through the evidence presented by its three consultants.

- b) "Throughout the hearing, the CPLA has participated in a responsible manner and attempted to avoid duplication with other Interveners."
- c) "The CPLA is a non-profit organization that is only able to initiate and maintain a comprehensive intervention when it receives special funding from its members. The CPLA membership includes many small businesses who lack the resources to pay for the services to be adequately represented."
- d) "The CPLA's members have a substantial interest in the outcome of this proceeding. The positions advanced by the CPLA in this hearing were balanced and represented the interests of all Manitobans in facilitating a regulatory environment that allows for a viable, competitive, fair payday lending industry in Manitoba."

CPLA submitted that the Board is not bound to strictly apply the four guidelines in making its determination, and noted that Section 56 of *The Public Utilities Board Act* does not apply to the costs of an intervener in the proceedings under part XVIII of the CPA. The CPLA opined that the "criteria set out in Section 43 and 44 of the Board's Rules were clearly designed in the context of the Board's general jurisdiction over public utilities and the more usual type of proceeding ...".

CPLA suggested that the hearing was unique in that there was no applicant in the proceedings and that all parties that participated did so as interveners; CPLA also suggested the Board was learning about a new industry, and for the first time.

CPLA further submitted that the costs of the hearing should be equitably shared and recovered from all businesses being regulated. In this regard, CPLA suggested that its participation was not only on behalf of its own members but on behalf of all other operators, non-members of CPLA, which could not afford to participate in the process and therefore did not incur costs. On this basis, the CPLA suggests that all the costs associated with the hearings before the Board should be met through the licence fees to be paid by all payday lenders in Manitoba.

### **Board Findings**

By procedural Order 91/07, in approving status for interveners, the Board advised:

*"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."*

With respect to the consideration of application for cost awards, in Order 91/07, the Board stated:

*"the Board is obliged to advise interveners 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 interveners 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 accepts that the information provided by CPLA represented a broad industry perspective on the payday loan industry, while concluding that CPLA's intervention was focused on the interests of its members.

The members of CPLA are payday lenders, and the representations made by the CPLA were primarily directed to advancing their commercial interests. CPLA is, to the Board's understanding, entirely funded by the contributions from its members, which are in business to make a profit. And, these firms are well positioned to make the necessary contributions to support the costs of participation in these proceedings.

The Board takes no issue with the contributions of CPLA and its counsel through the proceedings. The Board also acknowledges and appreciates the co-operation displayed by CPLA's counsel and its witnesses throughout the proceeding.

**IT IS THEREFORE ORDERED THAT:**

The Application of the Canadian Payday Loan Association for an award of costs in making its intervention at the hearing to establish maximum rates for payday loans BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."

Chairman

"G. GAUDREAU, C.M.A."

Secretary

Certified a true copy of Order  
No. 40/08 issued by The Public  
Utilities Board

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Secretary