

MANITOBA ) Order No. 51/08  
 )  
THE PUBLIC UTILITIES BOARD ACT ) April 29, 2008

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

THE CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) INC./  
MANITOBA SOCIETY OF SENIORS/  
WINNIPEG HARVEST:  
AWARD OF COSTS - PAYDAY LOAN HEARING

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## Introduction

By this Order, the Public Utilities Board (Board) approves an application for a cost award to the Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors/Winnipeg Harvest (Coalition), with respect to the Coalition's intervention in the Winnipeg based hearing to establish maximum rates for payday loans, and awards the Coalition \$150,621.72.

The proceeding took place over the course of six months, extending from a pre-hearing conference held in the summer of 2007 to and including February 2008.

Pursuant to Section 164(10) of *The Consumer Protection Act* (CPA), the Board has jurisdiction to award costs of, and incidental to, the payday loan proceeding. The Board's Rules of Practice and Procedure (Rules) stipulate four criteria for determining whether costs should be awarded, the applicant must have:

1. made a significant contribution that was relevant to the proceeding and contributed to a better understanding by all parties of the issues before the Board;
2. participated in a responsible manner and cooperated with other Interveners with common objectives in order to avoid a duplication of intervention;
3. had insufficient financial resources to participate in the proceeding 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 consumers.

**Application**

By an application submitted March 31, 2008 with supplementary schedules filed on April 28, 2008, the Coalition applied for an award of costs of \$150,621.72, comprised of:

Legal Costs:

Public Interest Law Centre	Fees	\$58,608.00
	Disbursements	4,747.49

Consulting Costs

Ms. M. Brennan	Research	5,000.00
Dr. T. Carter & Associates	Fees	8,494.48
Mr. R. Whitelaw	Fees	7,000.00
Dr. J. Buckland	Fees	14,040.00
Dr. W. Simpson	Fees	16,605.00
Dr. C. Robinson	Fees	29,400.00
	Disbursements	<u>6,726.75</u>

Total Claim		<u>\$150,621.72</u>
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The Coalition noted that it was not seeking recovery of certain legal and consulting fees, and that their application with respect to their witnesses involved preferential rates, lower than what the witnesses would otherwise charge were it not for the public service aspect of Board matters.

**Coalition's representation**

In support of its cost application, the Coalition provided the following commentary:

*Budget overrun:*

The Coalition noted that the application exceeded the original pre-hearing conference budget estimate, for the following reasons:

- "Ms. Brennan's participation was necessitated when legal counsel and experts were becoming overwhelmed with the preparation of information responses and were not in a position to fully review the evidence of other interveners";
- "the volume of information requests posed of the Coalition (by the Board and other interveners) was far greater than anticipated ... Coalition witness were asked to respond to hundreds of interrogatories ... ";
- the hearing ran longer than anticipated. The original schedule contemplated a November to December time frame ... a number of additional (hearing) days were added ...";
- "Coalition witnesses were asked to testify for much longer than anticipated ... (while) the original budget contemplated just a few days of testimony from Coalition witnesses ... Dr. Robinson appeared for 11 days ... (and) Dr. Buckland appeared for many more days than originally budgeted";
- Coalition counsel was required to cross examine at least 10 witnesses presented by other parties;
- "the costs associated with examining new materials filed during the course of the oral hearing were higher than expected"; and
- "additional consulting assistance was required to respond to the unanticipated information requests and time demands as well

as to provide additional information on the new or unanticipated evidentiary developments."

*Cost award criteria*

1. "The Coalition provided extensive evidence to the Board on issues relating to:
  - the characteristics of consumers of payday loans;
  - the nature and market structure of the payday lending industry in Manitoba, Canada and the US;
  - the experience of Manitoba consumers and mystery shoppers in the payday lending marketplace;
  - the financial and business organization of payday lenders in the Manitoba, Canadian and US marketplaces;
  - the academic literature regarding consumer behaviour and the payday lending industry;
  - a model for determining a just and reasonable maximum ceiling for payday loans;
  - recommendations regarding an appropriate fee structure and proper consumer disclosure.

Coalition counsel also engaged in cross examination of the witnesses of all industry participants and presented an extensive closing argument."

2. "Despite the challenges associated with the length of the hearing ... (the Coalition's) witnesses ... were cooperative, helpful, patient and pleasant.

With the exception of the written evidence and information responses of Dr. Robinson, the Coalition met all filing deadlines associated with the proceeding. ... Dr. Robinson (made) ... at least four trips to and from Manitoba to assist the Board in its consideration of the evidence."

"The Coalition also engaged in extensive off line discussions with other parties in order to facilitate their participation."

3. The Coalition operates as non-profit organizations, and lack sufficient financial resources to participate in this proceeding in the absence of a costs award.
4. "The Coalition directly represent the interests of their many members some of who are payday loan users. ... Given the high costs of payday loans and the disproportionate vulnerability of payday loan customers, the Coalition has a significant financial interest in this proceeding."

The Coalition included in their cost award request, a billing for 45 hours for an articling law student, this related to the student's memo on "just and reasonable rates", filed as part of the Coalition's closing argument. The Coalition noted that the student spent close to 350 hours associated with this hearing, the vast majority not billed.

"The Coalition believes that all of its witnesses presented very reasonable time claims ... the times actually billed by Dr. Buckland and Dr. Robinson would have been higher if not for the reality of their prior extensive research on related issues. The Coalition observes ... the very low hourly rate charged by Dr. Carter's team (\$16) as a consequence of the cost recovery model employed by the Canada Research Chair at the University of Winnipeg."

### **Board Findings**

The Board is satisfied that the Coalition meets all of the criteria for an award.

The Coalition represented consumers with a substantial interest in the matters explored and determined through the proceeding. The Coalition's counsel and witnesses provided responsible and co-operative participation, each making a substantial contribution to the proceedings and each having contributed to a better understanding of the matters before the Board.

The Board accepts the Coalition's use of legal and consulting services for the hearing, and recognizes that the breadth and the depth of the matters considered required the specific expertise brought forward by the Coalition.

While the Coalition's cost application exceeds the initially proposed budget, the proceeding lasted much longer than anticipated, the time required to allow numerous witnesses to be extensively cross examined. As well, the interrogatory process and undertakings during the hearing itself required extensive involvement of the Coalition's witnesses.

The Board is satisfied that the participation of the Coalition through its witnesses and the information and perspective it conveyed through the proceeding was of considerable value.

The Board expresses its appreciation to the Coalition and its witnesses for the cost restraint exercised with respect to the hours of service and billing rates represented in the Coalition's cost application.

Accordingly, the Board will grant the Coalition's request for costs as submitted.

**IT IS THEREFORE ORDERED THAT:**

Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors/Winnipeg Harvest be awarded costs in the amount of \$150,621.72.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, C.A."  
Chairman

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

Certified a true copy of Order  
No. 51/08 issued by The Public  
Utilities Board

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Secretary