

M A N I T O B A
THE PUBLIC UTILITIES BOARD ACT

Order No. 38/13

April 18, 2013

Before: Régis Gosselin, B.A., M.B.A., C.G.A., Chair
The Hon. Anita Neville, P.C., B.A.(Hons.), Member
Susan Proven, P.H.Ec., Member

PAYDAY LOANS REVIEW:
INTERVENER STATUS
AND
SCHEDULE OF PROCEEDINGS

TABLE OF CONTENTS

1.0.0	EXECUTIVE SUMMARY.....	3
2.0.0	BACKGROUND AND PROCEDURAL HISTORY.....	4
3.0.0	BOARD FINDINGS	6
3.1.0	Intervener Status.....	6
3.2.0	Scope of the Review	7
3.3.0	Timetable and Procedures	9
4.0.0	IT IS THEREFORE ORDERED THAT:.....	10

1.0.0 EXECUTIVE SUMMARY

By this Order, the Public Utilities Board (“Board”) grants intervener status, with respect to an upcoming public process to review charges and fees and other matters respecting payday loans (“Payday Loans Review” or “Review”), to the following intervener applicants;

- (a) Consumers’ Association of Canada (Manitoba) Inc. (CAC) and Winnipeg Harvest (jointly);
- (b) Canadian Payday Loans Association; (CPLA)
- (c) 5117951 Manitoba Ltd. (dba.) Parkland Payday Loans and The Pas Payday Loans (PPL); and
- (d) The Moneytree Payday Loans (MPL).

This Order also establishes the procedure and a timetable for the Review and defines the scope of the Review.

2.0.0 BACKGROUND AND PROCEDURAL HISTORY

Pursuant to Section 164 of *The Consumer Protection Act* (Manitoba), the Board is required to conduct this Review, including public consultations, of specific aspects of amounts charged to consumers to obtain payday loans, and to make a report to the Government of Manitoba (Government) of the consultations containing the Board's recommendations arising from the Review within six months of commencing the Review.

The Review is to be commenced within 3 years after the first regulation respecting cost of credit comes into force. Reg. 50/2010, the relevant regulation setting the maximum cost of credit, came into force on October 18, 2010.

In anticipation of proceeding with the Review, the Board sent a letter to all interveners of record at the previous payday loans hearing and to all provincially licensed payday lenders requesting feedback on the process for the Review. The Board received responses on procedural and substantive matters from a number of individual payday lenders, from The Canadian Payday Loans Association, and from The Public Interest Law Centre on behalf of the Consumer Association of Canada (Manitoba) Inc. and Winnipeg Harvest.

The Board further published a public notice of the pending Review throughout the Province in accordance with the Board's publications protocol and invited interested parties to seek intervener status or consider presenter status before the Board.

The Board received intervener applications from:

- (a) Consumers' Association of Canada (Manitoba) Inc. and Winnipeg Harvest (jointly);
- (b) Canadian Payday Loans Association;
- (c) 5117951 Manitoba Ltd. (dba.) Parkland Payday Loans and The Pas Payday Loans; and

(d) The Moneytree Payday Loans.

Presenters may also participate and make presentations to the Board as permitted by the Board and as part of the Review, either orally or in writing, in accordance with the timetable established by the Board.

Upon consideration of the initial process submissions and feedback and further submissions received from intervener applicants in reply to the public notice, the Board has set its Review process and timetable as attached to this Order.

3.0.0 BOARD FINDINGS

3.1.0 Intervener Status

The Board will grant intervener status to all of the intervener applicants, being satisfied that all have a stake in the matters under review. The interveners have expressed their intention to assist the Board with its review, and their proposed interventions are within the scope of the Review.

Usually, applicants heard by the Board seek direction, approval of rates or relief of some kind. In this hearing, on the other hand, there is no applicant, and therefore no onus of proof on any of the participants. The Board will be examining the information and evidence to be filed and will hear submissions, all for the purpose of making its report to Government in accordance with the legislation.

In accordance with its legislative obligations, the Board will review the current situation respecting payday loan fees and charges and inquire into matters respecting payday loans generally, at the Board's discretion, in order to make a report to Government on certain mandatory components for review and other recommendations as the Board deems useful. In order to do this in a well-informed manner, the Board will seek to consider, and to share with all interested parties, information helpful in making its determination.

The Board may establish its own procedures for this Review. The Board will follow its regular Rules of Practice and Procedure as adapted for the process and, to the extent they are applicable, in accordance with the legislation that governs this Review. The Board's Rules are posted on its website at www.pub.gov.mb.ca.

With respect to the costs of intervention, the Board has the power to require that some or all of a participant's costs be reimbursed by Government. The Board will not make a pre-determination of costs eligibility, instead will wait until after the proceeding to determine any award of costs sought. Having said that, only CAC Manitoba / Winnipeg Harvest has filed a costs budget with

the Board. The Board expects to apply Rules 43 and 44 of the Board's Rules of Practice and Procedure (Rules) to any interveners seeking costs.

3.2.0 Scope of the Review

The scope of this Review will be fairly broad, as envisioned by the provisions of the applicable legislation. Under Section 164(2) of *The Consumer Protection Act*, the Board must examine the following points:

- (a) the meaning of "cost of credit" for the purposes of the relevant part of the statute;
- (b) the maximum cost of credit — or any rate, tariff or formula for determining the maximum cost of credit — that may be charged, required or accepted in respect of a payday loan; and
- (c) the maximum amounts, or the rates, tariffs or formulas for determining the maximum amounts, that may be charged, required or accepted
 - (i) in respect of any component of the cost of credit for a payday loan,
 - (ii) in respect of the extension or renewal of a payday loan,
 - (iii) in respect of a replacement loan, or
 - (iv) in respect of a default by the borrower under a payday loan.

The Board also expects to address the following aspects of the payday loans industry and related consumer issues as part of the Review:

- The current Manitoba financial landscape and economic issues for consumers and lenders;

- General developments and changes in the payday loans industry since the completion of the Board's last payday loans hearing in 2008, including related service offerings;
- Competition and related market issues in the payday loans industry;
- The financial viability and profitability of the payday loans industry and lender issues respecting cost of credit and related matters;
- The development and enforcement of standards in the payday loans industry;
- A review of the implementation of the relevant aspects of *The Consumer Protection Act* and its regulations;
- Consumers' current perspectives with respect to payday loans and cost of credit and related issues respecting debt, short term lending and related matters;
- A payday loans landscape review of the current payday loans industry and legislation and regulatory practices in other Canadian provinces and U.S. states;
- A financial industry landscape review of other short term lending providers and products offering options similar to payday loans and their effect on the payday loans industry and consumers.

The Board must balance the interest of payday lenders and consumers in addressing the mandatory reporting requirements and developing recommendations. Given that there is no applicant in this process, the Board plans to gather currently available public information, literature and data on developments in the industry in general, including the status of legislation, regulation and rates and charges for payday loan products throughout other Canadian jurisdictions, if such information is not provided by the interveners. The Board will also seek a data-based report from The Consumer Protection Office of Manitoba on the current status of their regulation of payday lenders in Manitoba and compliance matters. All information gathered by the Board will be circulated to all interveners for their consideration and possible use.

The Board has the power to retain experts to assist it in the Review. At present, the Board has not engaged any experts. Based on the intervener applications filed, the Board expects that interveners will provide expert and general evidence on the matters being examined to assist the Board such that Board retainer of experts will not be required.

3.3.0 Timetable and Procedures

The Board hereby establishes a timetable for the Review as Schedule “A” to this Order. The Board also establishes certain filing and hearing procedures to be followed in the Review as set out in Schedule “B” to this Order. The Board’s Review process calls for written evidence and one round of ‘Information Requests’ (written questions posed to interveners on their filed evidence), followed by written submissions and oral submissions by interveners. Presenters may be allowed to participate by the filing of written presentations or oral presentations as permitted by the Board Panel. In fixing this process, the Board considered the request by certain intervener applicants for oral evidence and cross-examination to test the evidence and the competing concerns voiced by others as to the length and costliness of a full regulatory process such as was followed in the previous payday loans hearing and which involved oral evidence and cross examination of witnesses.

The Board is satisfied that the process adopted here will allow the Board to adequately consider the issues relating to payday loans as prescribed by the legislation, while not placing undue cost burdens upon interveners. The approach adopted herein will equip the Board with the information it needs to fulfill its mandate and make its report. Furthermore, as part of the report, the Board may choose to exercise its power to make recommendations to Government beyond the mandatory reporting items.

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. The Board’s Rules may be viewed on the Board’s website at www.pub.gov.mb.ca.

4.0.0 IT IS THEREFORE ORDERED THAT:

1. Intervener status for the Payday Loans Review is granted to:
 - (a) Consumers' Association of Canada (Manitoba) Inc. and Winnipeg Harvest (jointly) (CAC);
 - (b) Canadian Payday Loans Association (CPLA);
 - (c) 5117951 Manitoba Ltd. (dba.) Parkland Payday Loans and The Pas Payday Loans (PPL); and
 - (d) The Moneytree Payday Loans (MPL).
2. The timetable for the Review is as set out in Schedule "A".
3. Filing and hearing procedures to be followed for the Review are as set out in Schedule "B".

THE PUBLIC UTILITIES BOARD

"Régis Gosselin, B.A., M.B.A., C.G.A. "
Chair

"Hollis M. Singh"
Secretary

Certified a true copy of Order No. 38/13 issued
by The Public Utilities Board

Secretary

SCHEDULE "A"

Public Utilities Board Payday Loans Review

Timetable

Item	Due
Board to circulate letter inviting comments on process	Tuesday, February 12, 2013
PUB received submissions	Monday, February 25, 2013
Publish Public Notice in Daily/Weekly Newspapers	Saturday, March 23, 2013
Interested Parties to Apply for Intervener Status	Friday, March 29, 2013
Board Decision on Participation/Scope and process details	Thursday, April 18, 2013
Consumer Protection Office to file report	Wednesday, May 8, 2013
Written evidence of Interveners and expert reports to be filed on issues identified by the Board	Thursday, May 16, 2013
Board and Interveners to submit one Round of IR's to other Interveners on filed materials and reports	Wednesday, May 29, 2013
Interveners to file IR responses	Wednesday, June 12, 2013
Presenters to notify the Board of request for participation	Monday, June 17, 2013
Written submissions of Interveners to be filed	Wednesday, June 26, 2013
Public Hearing for Presentations and Interveners Oral Submissions – (no oral evidence)	Wednesday, July 3 and (if necessary) Thursday, July 4, 2013
Board issues report	
Cost Award(s) to Interveners	

Noted Dates:

Louis Riel Day: Monday February 18, 2013

Easter: Friday March 29 - Monday April 1, 2013

Victoria Day: Monday May 20, 2013

Canada Day: Monday, July 1, 2013

SCHEDULE "B"

PROCEDURES TO BE FOLLOWED FOR THE 2013 PAYDAY LOANS REVIEW

1. Hearing:

The oral hearing will be held at the Board's office, 4th floor, 330 Portage Avenue, Winnipeg, commencing on July 3, 2013, at 9:00 a.m. and continuing thereafter as necessary.

2. Hearing Times Each Day:

9:30 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. Parties to file their written evidence including responses to interrogatories ("Information Requests") within the scheduled deadlines.

4. The following prefixes are assigned to the participants in this hearing:

PUB Public Utilities Board

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

CPLA Canadian Payday Loans Association

PPL 5117951 Manitoba Ltd. (dba.) Parkland Payday Loans and
The Pas Payday Loans

MPL The Moneytree Payday Loans

5. All Information Requests are to be filed and responded to using the prefixes as assigned by the Board above. The party requesting information is to use firstly their prefix followed by the prefix of the party being asked e.g. an Information Request by the Board to The Moneytree Payday Loans would be labeled "PUB/MPL" etc. Information Requests are to be numbered sequentially.
6. All pre-filed evidentiary material to be entered on the record at the commencement of the hearing by Board Counsel using assigned prefixes.
7. Daily transcripts will be available for the Hearing. Parties wishing direct delivery to make arrangements with the Reporter. Transcripts can be found at www.pub.gov.mb.ca at no charge.
8. The Board' Rules of Practice and Procedure (available on the Board's website) dealing with the awarding of costs will apply to the Review.
9. 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.
10. Seven (7) copies of all written 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.
11. 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 #4. All electronic filings shall be in Adobe Acrobat format, without protection securities that might preclude them from being included in one Multiple Files Document.