

MANITOBA ) Order No. 73/07  
 )  
THE PUBLIC UTILITIES BOARD ACT ) May 29, 2007

BEFORE: Graham Lane, C.A., Chairman  
Len Evans, B.A., M.A., LL.D. Member  
Eric Jorgensen, Member

APPLICATION BY  
THE CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) INC./  
MANITOBA SOCIETY OF SENIORS  
FOR AN AWARD OF COSTS FOR INTERVENING IN  
THE APPLICATION OF  
MANITOBA PUBLIC INSURANCE CORPORATION  
FOR APPROVAL OF 2007-08 RATES AND FEES

## Introduction

By this Order, the Public Utilities Board (Board) provides a cost award to the Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors (CAC/MSOS), with respect to the Board's public hearing of Manitoba Public Insurance's (MPI) application for driver and motor vehicle insurance rates, effective March 1, 2007.

The hearing was held at the Board's offices in Winnipeg and concluded on October 17, 2006.

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding. The Board's Rules of Practice and Procedure (Rules) stipulate four criteria for determining whether costs should be awarded, the criteria being that the applicant for a cost award 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 MPI's ratepayers (policyholders).

In addition, the Board has made it clear that it assesses

applications also considering other related matters, including the quantum of the claim, the underlying expenditures, hourly and per diem professional fee levels, and hours proposed to be charged.

**Application**

CAC/MSOS applied to the Board for an award of costs comprising:

Legal Costs:

Fees	\$28,710.00
Disbursements	639.30

Consulting Costs

Decom Consulting:

Fees	25,000.00
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Satyatas Consulting

Fees	5,475.00
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Econalysis Consulting Services (Econalysis)

Fees	34,300.00
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Disbursements	<u>18.48</u>
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Total Claim	<u>\$94,142.78</u>
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The application was submitted on April 4, 2007, six months after the hearing concluded and well beyond the 30-day limit suggested in the Board's Rules. CAC/ MSOS cited reasons for the overdue application, these being a busy litigation schedule and activities related to the Public Interest Law Centre's 25<sup>th</sup> anniversary. CAC/MSOS indicated that MPI's in-house legal counsel was consulted, and advised that MPI had suffered no prejudice as a result of the delay.

CAC/MSOS noted restraint in its cost application, advising it was

not seeking recovery of \$20,377.50 of legal and consulting fees and disbursements incurred. CAC/MSOS also noted that two of their witnesses, Professors Simpson and Hum, had chosen not to bill for three days of their attendance at the hearings.

### **MPI's perspective**

By a letter dated May 25, 2007, MPI observed substantial increases in CAC/MSOS' cost applications over the past three years. CAC/MSOS' submission for the 2007/08 rate proceeding represented an increase of \$20,000 over its claim for the 2006/07 rate application, and \$40,000 more than the claim made for 2005/06 proceeding.

As well, MPI suggested that Professor Hum and Simpson's consulting fees be reduced by 25%, asserting that the witnesses' contribution had little or no value to the discussion on the Rate Stabilization Reserve (RSR).

MPI accepted CAC/MSOS' late filing.

### **CAC/ MSOS' representation**

In support of its cost application, CAC/MSOS opined that its intervention had addressed matters of substantial interest to the Board, and that it met the financial need and responsible and co-operative participation criteria set by the Board.

In representing the interests of its combined substantial membership, CAC/MSOS opined it had contributed to a better understanding of the issues before the Board by addressing, in

particular, the following issues:

- a) setting the RSR;
- b) determining the applicability of the Minimum Capital Test (MCT) to MPI, a Crown Corporation and monopoly;
- c) reviewing the appropriateness of the Risk Analysis and the Value at Risk (VAR) models;
- d) discussing the concept of budgeting for a loss;
- e) reviewing major cost drivers of accidents and injuries;
- f) reviewing and testing road safety initiatives;
- g) considering MPI's efforts to reduce auto-theft;
- h) investment performance outlook periods;
- i) assessing the experience with graduated licenses; and
- j) discussing MPI's driver training and education practices.

### **Board Findings**

The Board is satisfied that CAC/MSOS met the criteria for an award as set out in the Board's Rules.

CAC/MSOS had a substantial interest in the matters explored in its intervention, and provided responsible and co-operative participation at the hearing. CAC/MSOS made a substantial contribution to the proceedings and contributed to a better understanding of the matters before the Board.

The Board accepts CAC/MSOS' use of legal and consulting services for the hearing, including the use of Econalysis Consulting and Satyatas Consulting in conducting a literature review, assisting in the preparation of Information Requests and briefs, and assisting with CAC/MSOS counsel's preparation for cross-examination.

While CAC/MSOS' costs have increased substantially over the past two proceedings, there have been several contentious and important matters that benefited from the intervener's involvement. The Board notes auto-theft, RSR, rate design and safety issues, in particular.

And, notwithstanding MPI's concern with respect to the contributions of Professors Simpson and Hum, the Board found their non-actuarial perspective of value with respect to a general understanding of risk analysis and the establishment of a prudent Rate Stabilization Reserve range.

The Board is concerned with CAC/MSOS tardiness in submitting its cost submission, but accepts CAC/MSOS's assertion that this experience was due to unusual, non-recurring circumstances. It also accepts MPI's assurance that it suffered no harm as a result.

Accordingly, the Board accepts CAC/MSOS' submission with the understanding that CAC/MSOS will make every effort to submit future claims within the prescribed 30-day deadline.

The Board's total award will be:

Legal Costs:

Fees	\$28,710.00
Disbursements	639.30

Consulting Costs

Decom Consulting:

Fees	25,000.00
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Satyatas Consulting

Fees	5,475.00
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Econalysis Consulting Services (Econalysis)

Fees	34,300.00
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Disbursements	<u>18.48</u>
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Total Claim

\$94,142.78

**IT IS THEREFORE ORDERED THAT:**

1. Consumers' Association of Canada (Manitoba) Inc./  
Manitoba Society of Seniors be awarded costs in the  
amount of \$94,142.78.
2. Costs shall be payable by the Manitoba Public Insurance  
within 30 days of the date of this Order.

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. 73/07 issued by The Public  
Utilities Board

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Secretary