

Order No. 25/20

**APPLICATION FOR AWARD OF COSTS
BY INSURANCE BROKERS ASSOCIATION OF MANITOBA
FOR INTERVENTION IN MANITOBA PUBLIC INSURANCE CORPORATION'S
GENERAL RATE APPLICATION FOR THE 2020/21 INSURANCE YEAR (GRA)**

February 14, 2020

BEFORE: Irene A. Hamilton, Q.C., Panel Chair
Robert Gabor, Q.C., Chair
Carol Hainsworth, Member

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1. INTRODUCTION

By this Order, the Public Utilities Board (Board) hereby awards the Insurance Brokers Association of Manitoba (IBAM) costs of \$89,858.43, for its intervention in the General Rate Application (GRA) of Manitoba Public Insurance (MPI or the Corporation) with respect to compulsory driver and vehicle insurance premiums for the 2020/21 insurance year.

The Board has declined to award IBAM the full amount sought in its Application for an Award of Costs, for the reasons as set out below.

2. BACKGROUND

By Procedural Order 115/19, dated August 16, 2019, the Board granted an application for intervener status filed by IBAM. IBAM had filed a late application for intervener status, after the Board had issued its Procedural Order 92/19 following the Pre-Hearing Conference.

In its application for intervener status, IBAM indicated that it intended to address a number of issues in the GRA, summarized as follows:

- The role played by brokers in providing MPI services and the value provided by brokers;
- The costs associated with the provision of MPI services by brokers and commissions paid for those services compared to other industries and jurisdictions; and
- The effect of the change in the timing of MPI's fiscal year-end on current broker agreements, and the effect of rate changes on brokers.

In Order 115/19, the Board stated that it expected that IBAM's intervention would assist the Board in its examination of the services performed or facilitated by brokers and the costs associated with the provision of those services. The Board stated that it expected

that MPI's costs of operations and cost containment measures, and MPI's IT expenses and projects, would be issues relevant to IBAM's intervention.

The Board also referred IBAM to Order 92/19 (and the Schedules thereto) for direction on matters including the approved rates for counsel for interveners. The Board made reference to its Intervener Cost Policy, and the criteria applied by the Board in determining whether to award costs to an intervener.

On August 26, 2019, IBAM filed a projected budget of \$134,736.00 with the Board (Projected Budget). Board staff reviewed the Projected Budget and on August 27, 2019, requested an amended budget from IBAM, which would be more reflective of the scope of IBAM's intervention and comparable to budgets of other interveners. Board staff also reminded IBAM that if its budget was anticipated to exceed 10% at any time during the GRA process, IBAM was required to file a budget amendment without delay.

On September 3, 2019, IBAM filed an amended projected budget of \$69,552.00 (Amended Budget) with the Board.

3. APPLICATION

On January 9, 2020, IBAM filed with the Board its final Application for an Award of Costs for its intervention (Cost Application). The fees and disbursements claimed in the Cost Application were set out as follows:

Description	Tariff Rate	Hours	Total
<u>Discovery:</u>			
Senior Counsel 1	\$300	82.8	\$24,840.00
Senior Counsel 2	\$300	4.7	\$1,410.00
Articling Student	\$105	41.7	\$4,378.50
<u>Preparation of Evidence:</u>			
Senior Counsel 1	\$300	38.9	\$11,670.00
Articling Student	\$105	7.5	\$787.50
<u>Prepare/Attend Oral Hearing:</u>			
Senior Counsel 1	\$300	116	\$34,800.00
Senior Counsel 2	\$300	0.3	\$90.00
Articling Student	\$105	94.8	\$9,954.00
<u>Prepare Written/Oral Argument:</u>			
Senior Counsel 1	\$300	61.7	\$18,510.00
Articling Student	\$105	43.7	\$4,588.50
Sub-Total:		492.1	\$111,028.50
Disbursements:			\$522.25
GST:			\$5,577.54
PST:			\$7,808.55
Total:			\$124,936.84

IBAM advised that its actual costs incurred were \$163,503.32, based on the market rates charged by counsel. The amount claimed by IBAM in the Cost Application was based on the Board's allowable tariff rates for counsel.

IBAM provided an explanation for the Cost Application, stating that while it had provided the Amended Budget of \$69,552.00, in its view the Projected Budget of \$134,736.00 was more realistic. IBAM stated that it had made a significant contribution to the GRA and provided the parties with a better understanding of the issues before the Board.

IBAM also noted that it was required to respond to 206 pages of Information Requests, which caused it to incur several more hours in the discovery stage of the GRA than it had anticipated.

Although the Cost Application exceeded the Amended Budget by significantly more than 10%, at no time following the provision of the Amended Budget did IBAM file a budget amendment with the Board.

4. MANITOBA PUBLIC INSURANCE'S COMMENTS

MPI provided comments to the Board about the Cost Application by letter dated January 22, 2020. MPI noted that while significant time and effort was put in to IBAM's intervention, the Board found in a number of instances that it did not have the jurisdiction to address issues raised by IBAM. IBAM's intervention focused on its contractual relationship with MPI.

MPI expressed the view that the Board would need to address what significant contributions IBAM made to the GRA, to provide guidance for its future interventions (or for the interventions of other service providers). MPI also stated that caution would be necessary in determining whether to award costs for the advocacy for narrow business interests of an intervener, bearing in mind that costs are ultimately borne by ratepayers.

On February 3, 2020, IBAM filed with the Board a reply to MPI's letter. IBAM stated that, while the contractual relationship between IBAM and MPI was a component of IBAM's intervention, the intervention also addressed protection of the public and the importance of having an insurance broker involved in vehicle insurance transactions. IBAM also stated that it provided a comprehensive analysis of the costs incurred by insurers in public

and private vehicle insurance jurisdictions, showing that MPI pays the lowest rates of commissions to brokers in Canada. IBAM also addressed the impact that removing brokers from MPI's service delivery model would have on customer service and protection. IBAM referred to submissions made by MPI and by another intervener, Consumers' Association of Canada (Manitoba) Inc. (CAC) at the Pre-Hearing Conference, wherein they indicated that the GRA would include an examination of MPI's plans for future service delivery, and the impact any changes would have on ratepayers. IBAM also stated that it did not raise issues outside the jurisdiction of the Board, but it was necessary for IBAM to provide the Board with a complete picture of the impact of changes to MPI's service delivery model. IBAM stated that its Cost Application was reasonable, given the amount in its original projected budget and the scope of its intervention.

5. BOARD FINDINGS

Pursuant to section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding before the Board.

The Board's Intervener Costs Policy (the Policy) applies to this GRA. The Policy sets out interveners' eligibility for costs awards and the principles applied by the Board in determining whether to grant an award of costs:

3.1 In any proceeding the Board may award costs to be paid to any Intervener who has:

- a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board;
- b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;

- c) represented interests beyond their sole business interest; and
- d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.

3.2 In determining whether the Intervener should receive the amount of costs sought in a costs application, the Board may consider whether the Intervener did one or more of the following:

- a) made reasonable efforts to ensure that the intervener's evidence was not unduly repetitive of evidence presented by another intervener;
- b) made reasonable efforts to cooperate with other interveners to reduce the duplication of evidence and questions to combine the intervener's submission with that of similarly interested interveners;
and
- c) needed legal or technical assistance to take part in a proceeding.

3.3 The Board may award an amount of costs that is less than the amount sought in a costs application, including an award of no costs, where the Board determines that the Intervener did one or more of the following:

- a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another intervener;
- b) presented in oral evidence significant new evidence, not previously provided in the proceeding, that was available to the intervener at the time that the intervener pre-filed its written evidence;

- c) failed to comply with a direction of the Board, including a direction on the filing of the evidence;
- d) submitted evidence and argument on issues that were not relevant to the proceeding;
- e) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
- f) incurred costs that did not assist in the Board's consideration and adjudication of the issues in the proceeding and/or did not contribute to an advancement of the Board's understanding of the issues;
- g) the Intervener failed to provide notification of a material difference in the amount of the Intervener's cost estimate or the scope of the Intervener's participation at the time the material difference should reasonably have been anticipated; or
- h) such other factor(s) as the Board considers relevant.

The Board finds that IBAM made a significant contribution that was relevant to the GRA and contributed to a better understanding of the issues before the Board. In particular, IBAM's intervention served to assist in an examination of the services performed by brokers related to vehicle insurance, the costs incurred by MPI for broker services, and the impact that changes in MPI's service delivery model might have on ratepayers. In that regard, IBAM represented interests beyond its sole business interest and represented a substantial number of ratepayers. The Board would not have awarded costs if this were purely a contractual dispute between MPI and a supplier of services. The Board also finds that, generally, IBAM participated in the GRA in a responsible manner, such that there was little duplication in its intervention with that of other interveners.

Nevertheless, Section 3.3 of the Policy provides that the Board may reduce the amount of costs sought by an intervener where, among other things, the intervener submitted evidence and argument on issues that were not relevant to the proceeding, unduly lengthened the proceeding, or incurred costs that did not assist in the Board's consideration and adjudication of the issues in the proceeding. The Board finds that Section 3.3 applies to part of IBAM's intervention. In particular, a significant amount of IBAM's participation in the evidentiary portion of the public hearings was focused on its contractual dispute with MPI. This is an issue that is the subject of the conciliation currently underway with MPI regarding future service delivery.

In addition, in closing submissions, IBAM sought a number of orders from the Board directing MPI on how to offer online insurance services to the public. IBAM requested that the Board:

- order that MPI establish an online service delivery model that includes licensed insurance broker oversight of MPI customers' online files;
- order that MPI establish an online service delivery model that requires customers to periodically attend to a broker, whether by telephone or in-person, in order for customers to receive advice from said broker, including in relation to non-MPI Extension products;
- order MPI to fully disclose the allocation of Flat Fee revenues and reallocate said revenues to the appropriate line(s) of business;
- order that MPI require that the purchase of insurance products be performed in consultation with a licensed professional broker;
- order that MPI compensate brokers fairly for the value that brokers provide both to MPI and to the residents of Manitoba;

- declare that MPI providing online services directly to consumers outside of the broker channel would be in breach of the Accord and representations made by MPI; and
- declare that MPI providing online services directly to consumers and without involvement of licensed insurance brokers would adversely affect existing consumer protection.

The Board does not have the jurisdiction to issue such orders. Further, if the Board did have such jurisdiction and had granted the orders sought by IBAM, this would have circumvented and rendered moot the conciliation process directed by the Government of Manitoba.

Lastly, Section 3.3(g) allows the Board to reduce a costs award where an intervener has failed to provide notification of a material difference in the amount of the intervener's cost estimate or the scope of the intervener's participation at the time the material difference should reasonably have been anticipated. IBAM filed the Amended Budget of \$69,552.00 on September 3, 2019. At no time prior to the filing of its Cost Application did IBAM notify the Board that there would be a material difference between the Amended Budget and the Cost Application. Board staff advised IBAM on August 27, 2019, that if its budget was anticipated to exceed 10% at any time, it was required to file a budget amendment without delay.

An intervener does not have the option of going back to its original budget estimate after having amended its estimate, nor does the intervener get to determine how many hours it believes is appropriate. In determining an appropriate cost award for IBAM, the Board has taken into account a comparison of the scope of intervention of other interveners and the and cost awards granted to those interveners.

The Board notes as well that part of the Cost Application includes time incurred by other senior counsel who did not participate in the hearings, and whose time was not included in either the Projected Budget or the Amended Budget.

For all of these reasons, while the Board will grant an award of costs to IBAM, it is not prepared to award IBAM the full amount in the Cost Application. The Board will reduce the allowable costs for lead senior counsel for discovery and preparation and attendance of the public hearings by 50%, and will not allow the costs sought by other senior counsel.

Accordingly, the Board awards costs to IBAM as follows:

Description	Tariff Rate	Hours	Total
<u>Discovery:</u>			
Senior Counsel 1	\$300	41.4	\$12,420.00
Senior Counsel 2	\$300	-	-
Articling Student	\$105	41.7	\$4,378.50
<u>Preparation of Evidence:</u>			
Senior Counsel 1	\$300	38.9	\$11,670.00
Articling Student	\$105	7.5	\$787.50
<u>Prepare/Attend Oral Hearing:</u>			
Senior Counsel 1	\$300	58	\$17,400.00
Senior Counsel 2	\$300	-	-
Articling Student	\$105	94.8	\$9,954.00
<u>Prepare Written/Oral Argument:</u>			
Senior Counsel 1	\$300	61.7	\$18,510.00
Articling Student	\$105	43.7	\$4,588.50
Sub-Total:		387.7	\$79,708.50
Disbursements:			\$522.25
GST:			\$4,011.53
PST:			\$5,616.15
Total:			\$89,858.43

6. IT IS THEREFORE ORDERED THAT:

1. An award of costs to Insurance Brokers Association of Manitoba in the total amount of \$89,858.43 BE AND IS HEREBY ORDERED.
2. Manitoba Public Insurance shall pay Insurance Brokers Association of Manitoba the costs awarded herein within 15 days of the date of this Order.

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.pubmanitoba.ca.

THE PUBLIC UTILITIES BOARD

"Irene A. Hamilton, Q.C."

Panel Chair

"Dr. Darren Christle, PhD, CCLP, P.Log., MCIT"

Secretary

Certified a true copy of Order No. 25/20
issued by The Public Utilities Board



Secretary