

MANITOBA) Order No. 19/04
)
THE PUBLIC UTILITIES BOARD ACT) February 5, 2004

BEFORE: G. D. Forrest, Chairman
E. Jorgensen, Member
D. Côté, Member

**APPLICATION BY THE CONSUMERS' ASSOCIATION
OF CANADA (MANITOBA) INC. AND MANITOBA
SOCIETY OF SENIORS FOR AN AWARD OF COSTS
FOR INTERVENING IN THE APPLICATION OF MANITOBA
PUBLIC INSURANCE CORPORATION FOR APPROVAL
OF ITS 2004 INSURANCE RATES**

The Public Utilities Board (the "Board") held a public hearing of the application by Manitoba Public Insurance ("MPI") for approval of its proposed driver and motor vehicle insurance rates effective March 1, 2004. The hearing was held at the Board's offices, in Winnipeg and concluded on October 31, 2003.

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 Draft Rules of Practice and Procedure ("Draft Rules") stipulate four main criteria for determining whether costs should be awarded to an intervenor. The Notice of

Public Hearing relative to MPI's application advises the reader of the Board's guidelines for awarding costs.

Pursuant to the Board's Draft Rules, Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors ("CAC/MSOS") applied to the Board, in a letter dated December 16, 2003 as amended in its letter of December 19, 2003 for an award of costs in the amount of \$47,760.36 (as per invoices) comprising:

Professional legal fees	\$24,130.35
(as per December 19, 2003 letter)	
Consultant Fees	23,630.01
Disbursements	1,447.86
Total Claim	<u>\$49,208.22</u>

CAC/MSOS noted that additional expert fees in the amount of \$3,518.55 were incurred but not submitted for recovery as the related documentation was not presented as evidence to the Board.

CAC/MSOS noted its long time participation in regulatory proceedings before the Board and reiterated how CAC/MSOS meets the Board's criteria for an award of costs. Based on CAC/MSOS' review of the Board's rate order, CAC/MSOS determined that the Board largely accepted their arguments regarding budgeting for deficits and rates of inflation. CAC/MSOS noted that the amount of the Application for costs was within the general range of past applications and that the hourly legal fee charged of \$150.00 is low compared to market rates and lower than the rate CAC/MSOS charges in other regulatory proceedings.

In a letter dated December 31, 2003 to the Board, MPI responded to the CAC/MSOS application for costs. While MPI accepts CAC/MSOS meets the criteria for an award of costs, MPI observed that counsel fees exclusive of disbursements had escalated over the \$12,754 amount charged for the 2003 GRA to \$22,792.50, an increase of close to 80%.

Noting the much more focused approach taken by CAC/MSOS in the 2004 GRA, MPI indicated that the amount of time spent by an intervenor ought not be the sole determination of an award of costs. MPI recommended that the application be reduced by \$5,000.00.

CAC/MSOS responded to MPI's comments in a letter dated January 28, 2004. CAC/MSOS indicated that the division of labour between Counsel and consultants varies from time to time and accordingly, comparability of billable hours needs to be considered carefully. The following is a historical summary of billable hours:

	Legal Counsel/Consultants
2004 GRA	298.95
2003 GRA	264.75
2002 GRA	341.7
2001 GRA	328.50
1999 GRA	458.8

While comparability is problematic, CAC/MSOS stated that the more important consideration is the reasonableness of the total hours billed in terms of the current proceeding. Based upon the above analysis, CAC/MSOS concluded that the billable hours were not unreasonable.

While the issues were fewer, CAC/MSOS advised that an in-depth examination was required on the issues identified in order to be successful in the 2004 General Rate Application.

Finally, CAC/MSOS advised that conscientious cost control is exercised and as in past years, a self imposed reduction in the Application for costs was filed this year.

Board Finding

The Board is satisfied that CAC/MSOS does qualify for an award of costs. CAC/MSOS did contribute to a better understanding of the issues before the Board. The Board is satisfied that the level of costs is reasonable and not materially out-of-step with past applications considering the matter before the Board.

IT IS THEREFORE ORDERED THAT:

1. The Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors be awarded costs of \$49,208.22 in making its intervention at the Manitoba Public Insurance Corporation's 2004 Insurance Rates Hearing.

2. Costs shall be payable by the Manitoba Public Insurance Corporation within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

Chairman

Acting Secretary