

MANITOBA) Order No. 153/04
)
THE PUBLIC UTILITIES BOARD ACT) December 10, 2004

BEFORE: Graham F. J. Lane, C.A., Chairman
E. Jorgensen, Member
D. Côté, Member

**APPLICATION BY THE MANITOBA BAR ASSOCIATION
FOR AN AWARD OF COSTS FOR INTERVENING
IN THE APPLICATION OF MANITOBA PUBLIC
INSURANCE CORPORATION FOR APPROVAL OF ITS
2005 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, to be effective March 1, 2005. The hearing was held at the Board's offices in Winnipeg, and concluded on November 1, 2004.

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, and the Notice of Public Hearing relative to MPI's application advised as to these guidelines.

Pursuant to the Board's Draft Rules, the Manitoba Bar Association (MBA) applied to the Board for an award of costs in the amount of \$17,914.23, comprising:

Legal Fees	\$17,866.08
Disbursements	48.15
Total Claim	<u>\$17,914.23</u>

MBA supported its application for costs in its final submission to the Board at the close of the hearing on November 1, 2004, and the particulars of the costs were filed in an email to the Board dated November 2, 2004.

In its closing submission, MBA opined that it had addressed the issues upon which the Board granted intervenor status, and, further, upon which the Board sought comment. MBA suggested that it had co-operated with others during the process. MBA further suggested that the interests and mandate of The Public Utilities Board relate to the issues raised by the MBA. MBA reported that it is a non-profit organization, and was not in attendance to promote the financial interest of its members.

MPI, by a letter dated November 12, 2004, advised the Board that in its opinion the MBA had failed to meet the Board's criteria for an award of costs. MPI suggested that there was no evidence before the Board indicating that the MBA lacked the financial resources to present its case adequately without an award of costs. Based on its review of MBA's financial statements, MPI concluded that MBA had the financial resources to pay for its intervention.

MPI further suggested that MBA did not make a significant contribution to the proceeding as, for MPI, the issues raised by MBA relating to MPI's claim handling process and non-subrogated litigation rights (concerning uninsured drivers, extra-territorially insured drivers and negligent manufacturers of motor vehicles or parts) had been addressed previously either through the changes related to the new Claimant Advisor Office (CAO) or through the current recovery practices of MPI.

MPI opined that much of MBA's intervention, particularly at the beginning of proceedings, related to the learning requirements of MBA's new Counsel, and suggested that if an award were granted, the Board should make a significant reduction to the request, say in the range of 50%.

In reply to MPI's position, the MBA submitted while it acknowledges MPI's adoption of the CAO, that is only a small part of the MBA identified overall need for MPI to review the practices of the Workers' Compensation Board with respect to the handling of claims. With respect to non-subrogated litigation, MBA suggested that common sense suggested that such a legislative change would reduce the expenses of the Corporation. MBA further opined that these matters were within the Board's jurisdiction. MBA further indicated its view that its submission had addressed two matters as requested by the Board.

Regarding its professed financial need, MBA noted that the Board has never characterized the MBA as having sufficient financial resources. So, to disentitle it now to an award of costs, would unfairly deplete the funds now held in the financial reserves of MBA as reserves.

Finally with respect to its contribution to the hearing process, MBA assured the Board that the time represented by its proposed award of costs excludes the "learning curve," time spent by MBA members other than its Counsel, and furthermore, represents "below market rates".

Board Finding

The Board appreciates the contribution and co-operation extended by MBA during the hearing. In particular, the suggestions made by MBA with respect to pre-appeal assistance to claimants, customer surveys and third-party subrogation are worthy of consideration. The Board does not consider the MBA an inherently profit-orientated association. Notwithstanding the comments by MPI, which the Board has taken into account, the Board is of the view that MBA's efforts before the Board were in the public interest and contributed to a better understanding.

Accordingly, the Board will award the costs sought by MBA.

IT IS THEREFORE ORDERED THAT:

1. The Manitoba Bar Association be awarded costs of \$17,914.23 in making its intervention at the Manitoba Public Insurance 2005 Insurance Rates Hearing.

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. O. BARRON"
Secretary

Certified a true copy of Order
No. 153/04 issued by The Public
Utilities Board

Secretary