

MANITOBA) Order No. 177/05
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THE PUBLIC UTILITIES BOARD ACT) December 28, 2005

BEFORE: Graham F. J. Lane, C.A., Chairman
Dr. Len Evans, 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 2006 RATES AND FEES

Introduction

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, 2006. The hearing was held at the Board's offices in Winnipeg and concluded on October 17, 2005.

Arising out of that hearing and the process that proceeded it, the Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors (CAC/MSOS) applied to the Board for an award of costs.

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 criteria for determining whether costs should be awarded, and the Notice of Public Hearing advised as to these Draft Rules; the criteria are as follows:

1. 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;
2. participated in the hearing in a responsible manner and cooperated with other Intervenors who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
3. had insufficient financial resources to present the case adequately 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 the ratepayers.

In addition to these criteria, the Board has made it clear to Interveners, and reiterated its position subsequently, that it assesses applications for cost awards not only on the basis of the criteria. The Board also considers 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	\$21,454.00
Disbursements	1,844.24

Consulting Costs

Elenchus Research Associates (Elenchus):

Fees	12,425.00
Disbursements	997.75

InRoads, Road Safety Services (InRoads)

Fees	7,770.00
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Econalysis Consulting Services (Econalysis)

Fees	33,556.25
Disbursements	<u>7.10</u>

Total Claim	<u><u>\$78,054.34</u></u>
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CAC/MSOS indicated that it had not submitted a claim for certain legal and accounting fees and disbursements, totalling \$2,656.35, incurred in its intervention.

MPI's perspective

In a letter dated December 14, 2005, MPI noted that CAC/MSOS' application represented an increase of \$30,000 over the application made and approved for its intervention at the previous year's GRA hearing.

MPI opined that Elenchus had largely provided a historical review of previous Board Orders dealing with Rate Stabilization Reserve (RSR) targets, and being retrospective, did not add commensurate value for the costs incurred to the hearing. MPI recommended the Board reduce any award provided to the Intervener in recognition of this.

MPI noted that the work done by InRoads for the Intervener included the development of a case theory never presented at the hearing, and suggested a reduction of \$1,926.00 to the cost award on this account.

Further, MPI expressed concern that Econalysis' billing had increased by \$8,000 compared to last year, though the time charged was apparently primarily spent on drafting information requests, with the nature and volume of those requests substantially unchanged from that advanced by the Intervener in the previous year's GRA process.

On an overall basis, MPI questioned whether CAC/MSOS' \$78,000 cost award application was representative of a fair value contribution by the Intervener to the hearing.

CAC/ MSOS representation

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

In representing the interests of the combined over 8,000 members of the Intervener, 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 target range and level of the RSR;
- b) applicability of the MCT (Minimum Capital Test) to a Crown Corporation (MPI) operating in a monopoly environment;
- c) level of surplus dividend to be paid;
- d) MPI's Immobilizer Incentive Program;
- e) evaluation of MPI's loss prevention initiatives; and
- f) issues surrounding MPI's acquisition of Driver Vehicle Licensing functions from the Province.

Responding to MPI's comments, CAC/MSOS acknowledged their costs were higher than those of the previous GRA, and advised that this was due to their limited participation in the prior proceeding. In relation to InRoads' fees and disbursements, and MPI's criticism of costs incurred to develop a case theory, CAC/MSOS advised that while the theory was not presented directly at the hearing, it assisted the intervention by preparing CAC/MSOS for an effective cross examination and closing arguments presentation.

CAC/MSOS stated that their overall costs for their intervention

were largely the result of MPI's proposals with respect to the RSR. CAC/MSOS reported that most of Econalysis' charges related directly to assisting Elenchus develop CAC/MSOS's RSR target case.

CAC/MSOS opined that as MPI proposed an increased RSR target using methodologies not approved by the Board in past orders, MPI should pay for related costs incurred by CAC/MSOS to respond to MPI's proposal. CAC/MSOS stated: "The decision by MPI to ignore past decisions by the Board drove many of the costs incurred by the Board and Interveners in this proceeding."

Board Findings

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

CAC/MSOS have a substantial interest in the matters explored in its intervention, and the Intervener provided responsible and cooperative participation at the hearing. CAC/MSOS did make a substantial contribution to the proceedings and contributed to a better understanding of the matter before the Board.

The Board accepts CAC/MSOS' use of consulting services in the process and at the hearing.

The Board notes that it may be difficult to make a fair direct comparison of an Intervener's work effort from the hearing of one year to the next. Issues may be similar, but the approach taken to them by MPI, the Board and Interveners, and the context in which work is undertaken, may differ substantially. As CAC/MSOS

correctly notes, MPI did choose to propose a re-visitation to and an amendment of the Board-approved RSR levels and the methodology to be used to arrive at those levels. MPI proposals were in stark contrast to accepted positions and RSR levels established in past hearings. That said, the Board does not take issue with MPI raising the matter. MPI made a bona fide case for a change, notwithstanding that the Board rejected it.

The Board notes MPI's concerns over a 33% increase in fees being charged by Econalysis and, though deciding to accept the submission with respect to this CAC/MSOS' consultant, cautions CAC/MSOS to continue to be diligent in assuring that billable work effort is efficient and effective.

In relation to Elenchus, the Board finds the costs excessive:

1. While the Board accepts that Mr. Todd's familiarity with the issues minimized the time he spent on the issues, a \$350 hourly rate is well in excess of the rates that the Board is prepared to award, and CAC/MSOS is and was well aware of this.
2. The time incurred by Mr. Todd was largely in relation to the RSR proposal by MPI, and his report did, as MPI's noted, largely provide a review of previous Board Orders. CAC/MSOS was aware of the Board's previous position on the matter of the RSR, and could have anticipated, not only the Board's line of questioning, but also the questioning and positions of the other Interveners.

Notwithstanding the Board's reservations with respect to the retrospective review of past Board Orders, covering matters well known to the Board, the Board finds Mr. Todd an effective witness. While his work was somewhat redundant from the Board's perspective, it had a particular value in advancing and

confirming public understanding of the issues.

Accordingly, the Board will reduce CAC/MSOS' cost award with respect to Elenchus billings by 50%, solely related to the proposed billing rates which are twice the level the Board is prepared to accept. This reduction reflects the Board's continuing view that public hearings and interventions thereto are work of a public service nature, and commercial professional fee levels may be too high for these proceedings. Ratepayers incur, in the end, the costs of the regulatory process, including the fees paid to consultants and advisors of Interveners; with the Board taking a very active and public service perspective on application matters, Intervener budgets should be restrained.

That being said, the Board continues to appreciate the intervention in these proceedings of CAC/MSOS, and, accordingly, will award an additional \$2,500.00 toward the unbilled fees, services and purchases.

The Board's total award will be:

Legal Costs:

Fees	\$21,454.00
Disbursements	1,844.24

Consulting Costs

Elenchus Research Associates (Elenchus):

Fees	6,212.50
Disbursements	997.75

InRoads, Road Safety Services (InRoads)

Fees	7,770.00
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Econalysis Consulting Services (Econalysis)

Fees	33,556.25
Disbursements	7.10

Allowance for unbilled costs	<u>2,500.00</u>
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Total award	<u><u>\$74,341.84</u></u>
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IT IS THEREFORE ORDERED THAT:

1. Consumers' Association of Canada (Manitoba) Inc./
Manitoba Society of Seniors be awarded costs in the
amount of \$74,341.84.
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"
Secretary

Certified a true copy of Order
No. 177/05 issued by The Public
Utilities Board

Secretary