

MANITOBA) **Order No. 28/16**
)
THE PUBLIC UTILITIES BOARD ACT)
) **March 1, 2016**

PAYDAY LOANS REVIEW:
INTERVENER STATUS
AND
SCHEDULE OF PROCEEDINGS

BEFORE: Karen Botting, B.A., B.Ed., M.Ed., Acting Chair
Régis Gosselin, B ès Arts, M.B.A., C.P.A., C.G.A., Chair
The Hon. Anita Neville, P.C., B.A. (Hons.), Member
Susan Proven, P.H.Ec., Member
Allan Morin, B.A., ICD.D, Member

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1.0 Executive Summary

This procedural Order relates to an upcoming process to review charges and fees, along with, other matters respecting payday loans (“Review”),

By this Order, the Public Utilities Board (“Board”) grants intervener status to the following intervener applicant;

- (a) Consumers’ Association of Canada (Manitoba) Inc. (CAC), Winnipeg Harvest, and Community Financial Counseling Services (CFCS) (jointly).

This Order also establishes the procedure and a timetable for the Review and defines the scope of the Review.

2.0 Background and Procedural History

Pursuant to Sections 164(2) and 164.1(2) of *The Consumer Protection Act* (Manitoba) (the Act), the Board is required to conduct this Review, including public consultations, of specific aspects of amounts charged to consumers to obtain payday loans, and to make a report to the Government of Manitoba (Government) of the consultations containing the Board’s recommendations arising from the Review within six months of commencing the Review.

Man. Reg. 50/2010, the regulation setting the maximum cost of credit for a payday loan under the Act, came into force on October 18, 2010. Pursuant to section 164(2) of the Act, the Board was required to conduct a review on the same issues as set out above, within three years after Man. Reg. 50/2010 came into force. The Board submitted that report to the Government on September 23, 2013. This Review is conducted further to the report of September 23, 2013, as contemplated by section 164.1(2) of the Act, whereby every third year, the Minister must review the effectiveness of Part XVIII Pay Day Loans of the Act and the regulations under the same Part and decide

- (a) whether to require a further review by the board in accordance with section 164 of the Act; and
- (b) whether to recommend changes to the payday loans provisions of the Act or the regulations under Part XVIII.

By his letter received June 30, 2015, the Minister responsible asked the Board to review, no later than 2016, the maximum payday loan limits. The Board was specifically asked to analyze the impacts of reducing the maximum allowable rate that may be charged for a payday loan, from \$17 per \$100 borrowed to \$15 per \$100 borrowed and the impacts of reducing the proportion of a borrower's net pay, which is used to determine the maximum loan amount from 30% to 25%.

In anticipation of proceeding with the Review, the Board sent a letter to all interveners of record at the previous payday loans hearing and to all provincially licensed payday lenders requesting feedback on the process for the Review. The Board received responses on procedural and substantive matters from The Public Interest Law Centre (PILC) on behalf of the Consumer Association of Canada (Manitoba) Inc., Winnipeg Harvest, and the Community Financial Counseling Services (CFCS).

On January 9, 2016, the Board published a public notice of the pending Review throughout the Province in accordance with the Board's publications protocol and invited interested parties to seek intervener status or consider presenter status before the Board.

The Board received applications for intervener status from:

- (a) Consumers' Association of Canada (Manitoba) Inc. (CAC), Winnipeg Harvest, and Community Financial Counseling Services (CFCS) (jointly)

In addition to interveners, as permitted by the Board, presenters may also participate and make presentations either orally or in writing as part of the Review, in accordance with the timetable established by the Board.

Upon consideration of the initial process submissions and feedback and further submissions received from intervenor applicants in reply to the public notice, the Board has set its Review process and timetable as attached to this Order.

3.0 Board Findings

Intervener Status

The Board will grant intervenor status to the intervenor applicants (jointly), being satisfied that they collectively represent those who have a stake in the matters under review. The intervenors have expressed their intention to assist the Board with its review, and their proposed interventions are within the scope of the Review.

Usually, applicants heard by the Board seek direction, approval of rates or relief of some kind. In this hearing, on the other hand, there is no applicant, and therefore no onus of proof on any of the participants. The Board will be examining the information and evidence to be filed and will hear submissions, all for the purpose of making its report to Government in accordance with the legislation.

In accordance with its legislative obligations and authority, the Board, at its discretion, will inquire into matters respecting payday loans generally in order to make a report to Government which will encompass the matters the Minister asked the Board to review and other recommendations that the Board deems useful. In order to do this in a well-informed manner, the Board will seek to consider, and to share with all interested parties, information helpful in making its determination.

With respect to the costs of intervention, pursuant to section 164(6) of the Act the Board has the power to require that some or all of a participant's costs be reimbursed by the Government. CAC /Winnipeg Harvest/CFCS have jointly filed a costs budget with the Board. The Board expects to apply Rules 43 and 44 of the Board's Rules of Practice and Procedure (Rules) to any intervenors seeking costs.

Scope of the Review

Because the Minister has asked for a review of the pay day loan limits, the Board seeks to understand the issues related to pay day loan limits, Therefore, it will make a comprehensive examination of the issues so as to make fulsome recommendations to government in addition to reviewing charges and fees for payday loans, including consideration of the:

- impacts of possibly reducing the maximum allowable rate from \$17 per \$100 borrowed to \$15 per \$100 borrowed;
- impacts of reducing the proportion of a borrowers net pay, which is used to determine the maximum loan amount, from 30 percent to 25 percent.

Timetable and Procedures

The Board hereby establishes a timetable for the Review as Schedule “A” to this Order. The Board also establishes certain filing and hearing procedures to be followed in the Review as set out in Schedule “B” to this Order.

In this Review, as was indicated earlier, there is no applicant, and therefore no onus of proof on any of the participants. The Board will examine the information and evidence and will hear submissions in order to make its report to Government in accordance with the legislation.

In accordance with its legislative obligations, the Board will review the current situation respecting payday loan fees and charges and inquire into matters respecting payday loans as required by the Government and generally, at the Board’s discretion, in order to make a report to Government on certain mandatory components for review and other recommendations as the Board deems useful. In order to do this in a well-informed manner, the Board will seek to consider, and to share with all interested parties, information helpful in making its determination.

The Board must balance the interests of payday lenders and consumers in addressing the mandatory reporting requirements and developing recommendations. Given that there is no applicant in this process, the Board plans to gather currently available public information, literature and data on developments in the industry in general, including the status of legislation, regulation and rates and charges for payday loan products throughout other Canadian jurisdictions, if such information is not provided by the interveners. The Board will also seek a data-based report from The Consumer Protection Office of Manitoba on the current status of their regulation of payday lenders in Manitoba and compliance matters. All information gathered by the Board will be circulated to all interveners for their consideration and possible use.

The Board has the power to retain experts to assist it in the Review. At present, the Board has not engaged any experts. Based on the intervener application filed, the Board expects the intervener to provide expert and general evidence on the matters being examined to assist the Board such that Board experts will not be required.

The Board may establish its own procedures for this Review. The Board will follow its regular Rules of Practice and Procedure as adapted for the process and, to the extent they are applicable, in accordance with the legislation that governs this Review. The Board's Rules are posted on its website at www.pub.gov.mb.ca.

The Board's Review process calls for written evidence and one round of 'Information Requests' (written questions posed to the interveners on their filed evidence), followed by the receipt of oral evidence in the public hearing and written and oral submissions by interveners. Presenters may be allowed to participate by the filing of written presentations or oral presentations as permitted by the Board Panel.

The approach adopted herein will equip the Board with the information it needs to fulfill its mandate and make its report. Furthermore, as part of the report, the Board may choose to exercise its power to make recommendations to Government beyond the mandatory reporting items.

4.0 IT IS THEREFORE ORDERED THAT:

1. Intervener status for the Payday Loans Review is granted to:
 - (a) Consumers' Association of Canada (Manitoba) Inc. (CAC), Winnipeg Harvest, and Community Financial Counseling Services (CFCS) (jointly).
2. The timetable for the Review is as set out in Schedule "A".
3. Filing and hearing procedures to be followed for the Review are as set out in Schedule "B".

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.pub.gov.mb.ca.

THE PUBLIC UTILITIES BOARD

"Karen Botting, B.A., B.Ed., M.Ed."
Acting Chair

"Darren Christle, MPA, BA, CCLP, P.Log., MCIT"
Secretary

Certified a true copy of Order No. 28/16
issued by The Public Utilities Board

Secretary

Schedule "A"
Public Utilities Board
Payday Loans Review

Timetable

Item	Due
Publish Public Notice in Daily/Weekly Newspapers/ Interveners of Record	Saturday, January 9, 2016
Interested Parties to Apply for Intervener Status	Monday, February 29, 2016
Board Decision on Participation/Scope and process details	Tuesday, March 1, 2016
Written evidence of Interveners and expert reports to be filed on issues identified by the Board	Friday, March 11, 2016
Consumer Protection Office to file report	Monday, March 14, 2016
Board and Interveners to submit one Round of IR's to other Interveners on filed materials and reports	Friday, March 18, 2016
Interveners to file IR responses	Tuesday, March 29, 2016
Presenters to notify the Board of request for participation	Friday, April 1, 2016
Written submissions from public received by PUB	Friday, April 1, 2016
Public Hearing	April 12-15 & 18, 2016
Public Hearing - Public Presentations	Tuesday, April 12, 2016
Board issues report	
Cost Award(s) to Interveners	

Noted Dates:

Louis Riel Day: Monday February 15, 2016

Easter: Friday March 25 - Monday March 28, 2016

Manitoba Provincial Election: Monday April 19, 2016

Schedule “B”

PROCEDURES TO BE FOLLOWED FOR THE 2016 PAYDAY LOANS REVIEW

1. Hearing:

The oral hearing will be held at the Board’s office, 4th floor, 330 Portage Avenue, Winnipeg, commencing on April 12, 2016, at 9:30 a.m. and continuing thereafter as necessary.

2. Hearing Times Each Day:

9:30 a.m. to 12:00 Noon

1:15 p.m. to 4:00 p.m.

(amendments may be made by the Board at the hearing)

3. Parties to file their written evidence including responses to interrogatories (“Information Requests”) within the scheduled deadlines.

4. The following prefixes are assigned to the participants in this hearing:

PUB Public Utilities Board

CAC Consumers’ Association of Canada (Manitoba) Inc. / Winnipeg Harvest / Community Financial Counselling Service

5. All Information Requests are to be filed and responded to using the prefixes as assigned by the Board above. The party requesting information is to use firstly their prefix followed by the prefix of the party being asked e.g. an Information Request by the Board to *The Vender Payday Loans* would be labeled “PUB/VPL” etc. Information Requests are to be numbered sequentially.

6. All pre-filed evidentiary material to be entered on the record at the commencement of the hearing by Board Counsel using assigned prefixes.

7. Daily transcripts will be available for the Hearing. Parties wishing direct delivery to make arrangements with the Reporter. Transcripts can be found at www.pub.gov.mb.ca at no charge.
8. The Board's Rules of Practice and Procedure (available on the Board's website) dealing with the awarding of costs will apply to the Review.
9. The Board indicates its willingness to be available for any problems that may arise during the exchange of information at any time, such time to be arranged through Board Counsel.
10. Seven (7) copies of all written material are to be submitted to the Board's offices and one copy to be submitted to Board Counsel at the following address: Attention: Kathleen McCandless, Pitblado LLP, 2500-360 Main Street, Winnipeg, MB R3C 4H6.
11. Electronic copies of all material including the evidence of parties, are required to be submitted to the Board's e-mail address: publicutilities@gov.mb.ca. Where schedules accompany an electronic file, that filing must be discrete and include only the item and schedules to which each refers. The electronic files shall be named in accordance with their parties prefix as per #4. All electronic filings shall be in Adobe Acrobat format, without protection securities that might preclude them from being included in one Multiple Files Document.