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**300 - 287 BROADWAY
WINNIPEG, MANITOBA
R3C 0R9**

TEL: 204.985.8540

FAX: 204.985.8544



E-MAIL: centre@pilc.mb.ca

Writer's direct line: (204) 985-8533
Email: bwilliams@pilc.mb.ca

September 3, 2013

The Public Utilities Board of Manitoba
Mr. Hollis Singh, Executive Director and Board Secretary
400-330 Portage Avenue
Winnipeg, MB R3C 0C4

Dear Mr. Singh:

Re: MPI 2014/2015 GRA

In a letter dated August 28th, 2013, MPI objected to the Consumers' Association of Canada, Manitoba Branch (CAC MB) and Bike Winnipeg's application for joint intervenor status at the upcoming 2014/2015 General Rate Application. Bike Winnipeg and CAC MB appreciate the opportunity to reply to these objections.

The appropriateness of the forum

At the outset, Bike Winnipeg would like to clarify that its initial application for intervenor status was prompted by PUB Order No. 157/12 from December 3, 2012, wherein the PUB ordered the following:

"A Road Safety Research Technical Conference take place to discuss Road Safety matter, involving interveners and community partners, to be held on or before March 31, 2013." (emphasis added).

Although the Technical Conference was subsequently rescinded in PUB Order No. 22/13 on March 7, 2013, Bike Winnipeg was nevertheless pleased with numerous findings within the Order, including the following excerpts:

"Further and as also expressed in [Order No. 157/12], the Board seeks the furtherance of MPI's goal, as reflected in its Corporate Strategic Plan, that it will become a community leader and act as the central repository to facilitate the sharing of data amongst stakeholders for research and making informed decisions, and to take a more active role in Road Safety research."

"At present, only 1.5% of Basic rates are dedicated to Road Safety initiatives which, in the view of the Board, may be too low."

"Instead, the Board identifies the following specific issues relative to

Road Safety that it will seek to explore with MPI at the 2014 General Rate Application hearing, to take place in the fall of 2013:

...Adequacy and effectiveness, or otherwise, of spending to reduce the severity and frequency of vehicle collisions with cyclists"

In addition, Bike Winnipeg noted the PUB's statements regarding the mandate of the Board to examine road safety within the GRA process:

"The Board finds that these issues relative to Road Safety fit within the Board's mandate regarding MPI for the following reasons:

- Road Safety expenditures comprise a portion of Basic's expenses;
- MPI has identified that it intends to become a leader in the area of Road Safety, which will entail changes to:
 - The nature of its Road Safety efforts; and
 - The amount of the expenditures incurred for Road Safety initiatives;
- MPI has already advised that it is reviewing the possibilities of revamping the Drivers' Education System and expending funds for infrastructure;
- Different and/or increased Road Safety expenditures carry with them the potential for claims cost savings for Basic;
- Changes to expenses and potential savings to Basic both directly affect Basic rates. "

(emphasis added)

It was based on these Orders that Bike Winnipeg submitted its application for intervener status in June of 2013.

On July 15, 2013, PUB Order No. 77/13 denied Bike Winnipeg's specific application for intervener status but recommended that it continue its participation in the GRA process through collaboration with other interveners:

"...Further, it is the Board's view that the issues identified as being of interest to BW could be brought forward and pursued together with one of the other interveners, be it CAC, CMMG or CAA." (emphasis added)

In addition, Order 77/13 re-affirmed the relationship between expenditures (such as those for road safety) and the rate base needed to meet those expenses:

"The Board believes that cycling safety is an issue of significant import and does relate to rates..."

Bike Winnipeg has been following the directions in Order 77/13 in good faith. Bike Winnipeg

met with CMMG and CAC. Based on their similar interests and goals,¹it was determined that a joint intervention between Bike Winnipeg and CAC would be both mutually beneficial and cost effective.

Consistent with the spirit and intent of Board Orders 157/12 and 77/13, the objectives of CAC MB and Bikes Winnipeg were to:

- shed further light on issues that the PUB had identified to be of “significant import”;
- do so in a cost effective manner; and,
- minimize the potential for conflict of interest for legal counsel for CAC MB given the potential that final positions on closing might differ for CAC MB and Bikes Winnipeg.

Efficiency & Cost

As originally stated in the August 15, 2013 letter, there are no additional costs associated with this joint intervention. The cost will be the same whether the work is done by counsel for CAC alone or between counsel for CAC and counsel for Bike Winnipeg. With regard to any time expended that exceeds designated expenses, both counsel for CAC and counsel for Bike Winnipeg intend to provide their services pro bono.

With regard to the issue of efficiency, it is anticipated that the expertise that Bike Winnipeg brings to the issue of cyclists' safety should reduce the time required in preparing for these matters. In addition, the time required for the proposed cross examination and closing submissions by Bike Winnipeg is expected to add no more than 1.5 hours to the proceedings.

Denial of Original Application

In the MPI letter of August 28, 2013, it is submitted that the CAC/Bike Winnipeg joint intervention should not be granted because Bike Winnipeg's application for intervener status was denied in Order 77/13 and because the Board's Rules of Practice and Procedure require that applications for intervener status be made on or before the date prescribed in the notice of public hearing.

Although it is true that Bike Winnipeg's original application for intervener status was denied, this does not prevent the PUB from granting the CAC/Bike Winnipeg joint intervention.

As articulated above, Order 77/13 states that:

“... it is the Board’s view that the issues identified as being of interest to BW could be

¹ Bike Winnipeg seeks to examine MPI’s ability and commitment to preventing accidents to vulnerable road users in order to reduce morbidity and mortality; CAC seeks to test MPI’s effectiveness in delivering prevention interventions that will reduce the need to raise rates in the short and long terms.

brought forward and pursued together with one of the other interveners, be it CAC, CMMG or CAA." (emphasis added)

In addition, Rules 3(2) and 21(c) of the Board's Rules of Practice and Procedure state the following:

3(2) "In any proceeding, the Board may dispense with, vary or supplement any of the provisions of these rules".

21(c) "In any proceeding the Board may, on condition or otherwise: ... order such other amendment as may be necessary for the purpose of hearing and determining the real questions and issues in the proceeding. "

Based on Order 77/13 and Rules 3(2) and 21(c), any limitations within the Rules which would prevent an application as a joint intervener were dispensed of or amended by the Board's direction in Order 77/13.

In the alternative, should it be found that the limitations on applying for joint intervener status were not lifted by Order 77/13, it is submitted that, based on Rules 3(2) and 21(c), the PUB has jurisdiction to dispense with these limitations and allow the CAC MB/Bike Winnipeg joint intervention.

Number of Information Requests

In terms of the number of information requests submitted by CAC MB/Bike Winnipeg, it is our view that the information requests submitted were relevant and, given the complexity of the issues, were reasonable in number. All questions relate to the central rate making question of whether the proposed road safety expenditures of Manitoba Public Insurance are prudent and necessary.

The information requests submitted regarding the number, cost and severity associated with accidents are relevant to establishing clear measures for ensuring quality program evaluation. In addition, an examination of the methodology used to direct and implement communications and marketing efforts is necessary to evaluate program effectiveness. The information requests submitted regarding data, including the requested formats, are an attempt to elucidate gaps, trends and ratios for the benefit of the Board's decision making.

Regarding the MPI objection that the number of information requests exceed those submitted by CMMG, these ratios are not relevant to the issues before the PUB. The parties have different interests, and require different information to properly address those interests. The information requests submitted are focused on matters which are directly relevant to the rate base which is derived from revenues and expenditures. Whether or not an information request is relevant and material to the matter before the PUB should be the deciding factor,

not whether one party requests more than another.

It also bears repeating, as originally stated in CAC's and Bike Winnipeg's August 15, 2013 letter, that the information requests were developed by CAC MB and Bike Winnipeg in conjunction. Counsel for CAC MB devoted 14 hours to the development of the information requests. CAC MB and Bikes Winnipeg jointly formed the opinion that they were relevant and necessary for the Board's determinations. Absent a compelling case that the proposed information requests are irrelevant or immaterial, MPI is obliged to provide full response to information requests from a party with full intervenor standing. Allowing MPI to avoid producing the information in time for consideration at the PUB hearing would unfairly curtail the ability of CAC MB to make a full presentation of its interests before the Board.

The Potential for Conflict of Interest for CAC MB Counsel

In Board Order 77/13, the PUB quite properly brought forward the possibility of Bike Winnipeg working "together with one of the other interveners":

"...Further, it is the Board's view that the issues identified as being of interest to BW could be brought forward and pursued together with one of the other interveners, be it CAC, CMMG or CAA."

Of course, those contemplating any collaborative or joint effort must be alert to the very real risk for legal counsel in circumstances in which she or he is asked to represent two parties who may have different perspectives on different issues. In the event legal counsel represents more than one party and these parties ultimately take different positions, there is a real risk that legal counsel will have to withdraw and that both parties will either be left without counsel or have to retain new counsel at a very late date. This is the dilemma posed by the request by the PUB that Bike Winnipeg consider pursuing its issues together with another intervenor.

In order to minimize the risk for conflict of interest, CAC MB and Bike Winnipeg developed the concept of the joint preparation of relevant and material information requests followed by a time limited cross examination and closing argument to be conducted by counsel for Bike Winnipeg. In their view, this is the best way to minimize the risk that counsel for CAC MB might have to withdraw in the event of a conflict.

The Test

The textbook cited by MPI is a general example of factors used in determining intervenor status; however, Bike Winnipeg notes that the tests for granting intervenor status are set out in Rule 27 of the PUB's own Rules of Practice and Procedure.

Taken together, the original application, the information presented during the pre-hearing conference, the CAC/Bike Winnipeg letter of August 15th and the above noted Orders regarding the relevance of road and cycling safety are sufficient to meet the test outlined in the PUB Rules of Practice and Procedure.

Should the PUB choose to follow the test in *Kadr*, the following points are offered in rebuttal:

1. Is the proposed intervener directly affected by the outcome?

Bike Winnipeg notes that MPI's rate base is necessarily derived from the revenues and expenditures of the organization, both in the short and long terms.

According to s. 74 of the *MPIC Act*,² MPI insures Manitoba residents. All cyclists and vulnerable road users who are Manitoba residents and involved in an accident with a motor vehicle are, *prima facie*, entitled to benefits.

In addition, the PUB has the authority to issue orders to fix just and reasonable individual rates and to fix just and reasonable standards or service. The issue before the PUB is not simply about rates; rather, it is rates for service.

Manitoba cyclists are therefore directly affected by the potential order by the PUB regarding the bodily injury benefit expenditures to victims and any expenditures made for the prevention of collisions, morbidity and mortality. These matters directly affect the rate base and are therefore appropriate for the current proceedings.

Bike Winnipeg notes that in the past the PUB has granted standing to the Manitoba Bar Association with a view to its intention to represent the perspective of accident victims.

2. Does there exist a justiciable issue and a veritable public interest?

CAC, Bike Winnipeg, and MPI are in agreement on this point. Yes, there is.

3. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?

It is agreed that the PUB may ask any question that any intervenor could ask itself; however, the PUB is faced with the challenge of becoming experts from the point of view of a stakeholder's interests. One purpose of interveners is to assist the Board in discovering these interests in order to come to a decision.

² The Manitoba Public Insurance Corporation Act, C.C.S.M. c. P215 74(1) Subject to this Part, a victim who is resident in Manitoba at the time of the accident, and any dependant of the victim, is entitled to compensation under this Part if the accident occurs in Canada or the United States. (emphasis added)

Bike Winnipeg has a particular expertise in area of road safety of cyclists and this expertise will assist the PUB in its deliberations.

4. Is the position of the proposed intervener adequately defended by one of the parties to the case?

MPI's statement that "road safety, as a general issue, has a marginal impact on the rates set by the Board" has already been implicitly rejected by the Board in a series of prior decisions including Order 157/12. However, the statement also suggests that MPI's road safety public education programs have a marginal impact on reducing the number and severity of accidents, and in turn, the expenditures required for PIPP benefits. On its face, such a statement appears to beg further exploration of whether the proposed road safety expenditures of MPI are prudent and reasonable.

With regard to cyclists, the collective interests of whom are not represented by another party, Bike Winnipeg aims to elucidate such apparent complacency towards the prevention of morbidity and mortality of vulnerable road users. To our knowledge, no other intervener has yet to emphasize this position.

5. Are the interests of justice better served by the intervention of the proposed third party?

To the extent that the rate base better reflects the interests of all insured residents of Manitoba, including the expenditures required for interventions that strive to minimize the number and severity of accidents to victims, fairer rates will be set with the admission of the CAC/Bike Winnipeg collaboration.

6. Can the Court hear and decide the case on its merits without the proposed intervener?

Whether Bike Winnipeg has participated in the past is irrelevant as to whether it can contribute in the present. As the PUB recognized in Order 77/13, there is clear value in finding an effective vehicle by which Bikes Winnipeg can participate in this proceeding.

Conclusion

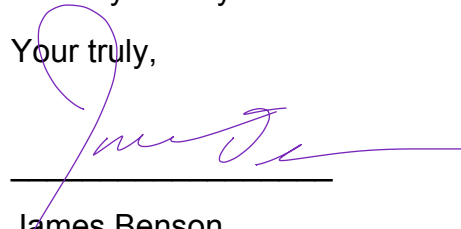
CAC MB and Bike Winnipeg ask that the PUB refuse MPI's objections to CAC MB and Bike Winnipeg's application as joint interveners in the 2014/2015 GRA and that it require MPI to respond in full to the information requests submitted.

In the alternative, Bike Winnipeg submits that CAC, as an accepted intervener in the GRA process, should not be prejudiced by a refusal of joint intervention with Bike Winnipeg. The information requests submitted included matters of relevance and materiality to CAC's interests and and affects CAC's ability to participate fully in the hearings.

Finally, regardless of the outcome of this particular matter, Bike Winnipeg respectfully submits that as we approach the 20th anniversary of the MPI no-fault regime, timely, plain language epidemiological and efficiency reports about road safety activities be required of MPI for the benefit of all Manitobans.

Thank you for your consideration of these comments.

Your truly,



James Benson
Barrister & Solicitor

&

BYRON WILLIAMS
DIRECTOR

BW/sk

Attachments

cc: CAC, Ms. Gloria Desorcy
MPI, Ms. Kathy Kalinowsky
Board Counsel, Ms. Candace Grammond
All other interested parties, by email only