

**WRITTEN SUBMISSION OF
THE CANADIAN PAYDAY LOAN ASSOCIATION (“CPLA”)**

The following is the submission by the CPLA to the Manitoba Public Utilities Board (the “Board”) in respect of their consideration under the Consumer Protection Amendment Act (Payday Loans) of:

- (a) The meaning of “cost of credit”;
- (b) The maximum cost of credit – or any rate, tariffs or formula for determining the maximum cost of credit – that may be charged, required or accepted in respect of a payday loan; and
- (c) The maximum amounts, or the rates, tariffs or formulas for determining the maximum amounts, that may be charged, required or accepted
 - (i) In respect of any component of the cost of credit for a payday loan,
 - (ii) In respect of the extension or renewal of a payday loan,
 - (iii) In respect of a replacement loan, or
 - (iv) In respect of a default by the borrower under a payday loan.

Currently the Manitoba Payday Loan Regulation (“Regulation”) provide:

- (a) The total cost of credit for a payday loan must not be greater than 17% of the principal amount of the payday loan.
- (b) The maximum amount of the loan shall not exceed 30% of the borrower’s net pay.
- (c) The total cost of credit for a replacement loan must not be greater than 5% of the principal amount of the replacement loan;
- (d) the total cost of credit for a payday loan must not be greater than 5% of the principal amount of the payday loan if the payday loan is an extension or renewal

of a previous payday loan or is arranged or provided within seven (7) days after the borrower repaid in full another payday loan previously arranged or provided by that payday lender;

- (e) If a lender is charged a fee in the case of dishonour or stop payment on a cheque or pre-authorized debit, the lender may charge a fee to the borrower in the same amount by way reimbursement but in no case shall a fee charged by the payday lender to the borrower exceed \$20.00.
- (f) a penalty may be charged in relation to a default by a borrower under a payday loan of 2.5% of the amount of the default calculated monthly and not to be compounded.

On May 16, 2013 the CPLA filed its pre-filed evidence in respect of the Payday Loans Review. The submissions of the CPLA in pre-filed evidence are as follows:

- (a) Residents of Manitoba have a need for access to small short term credit and this type of credit is not provided by major financial institutions;
- (b) The growth of payday lenders in Manitoba and across the country since introduction of the payday loan product has been as a result of consumer demand;
- (c) It is in the public interest for Manitobans to have access to the payday lending product in a regulated environment regardless of their credit history or geographic location.
- (d) The lower the maximum fee and the more restrictive the regulations, the fewer the companies that will be able to operate on a profitable basis. Manitoba has the lowest maximum lending rate and the most restrictive regulations of any regulated province in Canada and unlike the rest of Canada where there has been modest growth in the industry, this has led to a contraction of the industry in Manitoba.
- (e) If consumers do not have access to payday loans from licensed lenders they will seek out credit from lenders that are not regulated at a higher cost and subject themselves to abusive collection practices.
- (f) The Board should consider raising the maximum allowable rate for a payday loan to an amount in line with the national average. This will allow borrowers a greater opportunity to obtain credit from licensed lenders.
- (g) There are stresses on any business to go from an unregulated to a regulated environment. There is significant period of adjustment to adopt policies, procedures, contracts, staff training etc. required by regulation in addition to all of the costs of licensing and compliance. Since introducing regulation Manitoba has passed numerous amendments to its Act or regulations. It takes time for industry to adopt and it takes time for regulators to assess the effectiveness of regulations.

(h) Industry is still adjusting to the legislation and amendments and for this reason the Board should not recommend any further amendments that negatively impact lenders. The industry which began in the mid 1990s has grown significantly over the past ten years.

Over that period the industry in Canada has matured, growth has plateaued and as a result of legislation companies are operating in a transparent and responsible manner.

Over the past six to eight years 7 different provinces have moved to enact legislation creating a standardized regulatory framework in which lenders are licensed and meet specific criteria in delivery of the payday loan product. Prior to introducing legislation, every province went through a process of due diligence and consideration to develop appropriate laws. This included extensive consultation with all stakeholders. The CPLA has supported the introduction of regulation and in fact has worked closely with many governments as they developed regulation. Most governments acknowledge that payday loans provide a necessary form of credit to consumers that is not provided by other institutions and there is a significant cost to providing loans of small amounts for very short terms.

Each province has certain regulations that are unique but for the most part there is very consistent legislation across the country in the area of disclosure of cost of borrowing, cooling off periods, prohibition of rollovers, default fees, collection practices and form of loan agreements. Once regulation was introduced, lenders were not only licensed but were subject to inspections and audits by regulators to ensure they were in compliance with regulations. We have been told by regulators in several provinces that they have seen very few complaints since legislation was enacted and that after a period of adjustment and education most lenders are fully compliant. This also appears to be the evidence of the Manitoba Consumer Protection Office. In answer to IR 4, they indicate they have issued no

compliance orders to licensed lenders except the Cash Store Inc., Instalozans Inc. and LoansAlberta, Inc.

Manitoba was the first province to introduce legislation (although it was not the first to enact it). Manitoba enacted legislation that from the industry's perspective is far more harsh than any other province.

The maximum rate in Manitoba is significantly lower than all other provinces

The amount Manitobans can borrow is significantly lower than all other provinces

The annual license fee is significantly higher than all other provinces

Manitoba is the only province to charge an annual levy for financial education

It is important for the Board to consider why the six other provinces that brought forward legislation after Manitoba introduced provisions that were significantly less harsh on the industry.

Professor Robinson referred to Ontario as providing "lax regulation". We disagree with this characterization. Each province went through a thoughtful, thorough and careful process to develop their respective Acts and Regulations and they proceeded to enact fair and balanced legislation that allows all lenders to operate and compete on a viable basis while protecting the consumer.

We believe the approach taken by the Manitoba PUB in the initial hearing was to treat payday lending like a utility. No other province or utility board has taken this approach. A payday loan is not a utility or product that is provided by one service provider that has a monopoly.

There are many different providers ranging from larger companies with multiple outlets to small “mom and pop” operations. All customers are different in terms of need and credit risk. Every company chooses the degree of risk they wish to accept in lending and develops their own credit assessment policies accordingly. No other financial product is regulated as a utility in Manitoba and there is no reason why payday loans should be. The maximum rate should be set as a ceiling that will allow competition among lenders based on price and service. That is the approach that has been adopted in other provinces and it has worked well. Professor Robinson notes that competition has developed in Ontario following introduction of regulation. We believe that is evidence of a well functioning marketplace.

Furthermore, Government should not, as an objective, seek to set or limit the number of payday loan outlets or providers in the province. The number of licensed lenders should be determined by a competitive marketplace.

We believe the goal and purpose of regulation should be to regulate the conduct of the lender. There is a demand for the product and through regulation government should ensure that the product is delivered in a safe and transparent manner. It should prevent unscrupulous lenders from taking advantage of borrowers by, for example, charging excessive fees or encouraging rollovers. It should not be the goal of regulation to regulate or attempt to regulate the conduct of borrowers. Borrowers are capable of making their own financial decisions. The industry has grown based on demand for the product and every borrower’s circumstances and needs are different. Government should not make those decisions for borrowers. Clearly no lender wants to make a loan to a borrower who cannot repay it. The lender, rather than government,

is in a better position to decide how much to lend a borrower. On the other hand, if a borrower requires a certain amount for an expense such as a car repair it does not help the borrower if government prohibits him from borrowing that amount. If government limits a borrower's access to credit from a licensed lender the demand does not disappear, only access to that credit from a licensed lender disappears.

If the Board has a concern about financial decisions some borrowers make, we believe this should be addressed by financial education, credit counselling and community assistance. The Hoyes Michaelos & Associates Inc. Report filed by the Board states that the average unsecured debt of an individual filing for bankruptcy is \$61,000 and while 12% of those have payday loans 98% have credit cards and the payday loan debt represents only a fraction of the overall debt. Bearing in mind this is only a small subset of payday loan borrowers, limiting their access to payday loan achieves nothing as it is only a small fraction of overall debt. Education on appropriate use of all financial products is necessary. The Province of Manitoba is the only province to levy an annual fee from lenders for Financial Education.

The PUB has asked the Coalition to provide information on the costs of operation of payday lending in the United States. We do not have evidence to submit to the Board but would argue that the U.S. is different from Canada in many ways. More importantly, we would submit that an analysis of the costs operation or a review of the state laws (which often change) is not the issue. It only provides half the picture. The other half of the picture is that (i) there is no stability and balance in that jurisdiction; (ii) the parties are polarized; and (iii) governments are plagued by complaints of abuse. The information on unlicensed internet and tribal lenders

provided in Schedule H & I of our pre-filed evidence and press releases of the Washington State Department of Financial Institutions filed in answer to IR 36 are examples of ongoing problems in the U.S. with unlicensed lenders providing payday loan products. In contrast, Canadian provinces have stable and balanced legislation, complaints are minimal and regulators are not faced with unlicensed offshore or local issues of tribal lending found in the U.S.

There is no doubt that regulation in Manitoba has been hard on the industry. This is demonstrated through the evidence of The Money Tree as well as CPLA answers to IR 38 wherein 310-Loan, Fast Cash Co. and Extra Cash all indicate that they cannot commit to remaining in business over the next 12 months. It is a reasonable assumption that the size of the industry will continue to contract in Manitoba as a result of the maximum rates. The evidence of The Money Tree and Fast Cash Co. indicate that the process of contraction is still ongoing.

The CPLA has presented evidence of the unintended consequences of restricting or extinguishing licensed payday lending that creates a vacuum or underserved market. This includes unlicensed internet lenders, tribal lending and alternative lending products. These alternatives potentially allow for higher lending costs, rollovers and other abusive practices that come with an unregulated environment.

It is important to set maximum rates and regulations correctly.

CONCLUSION

It is the submission of the CPLA that the rates and regulations recommended by the PUB in 2008 and introduced by the Government of Manitoba are too stringent. We believe the total cost of credit should be raised from 17% of the principal amount of the loan to 23% and the maximum amount of a loan should be raised from 30% to 50% of net pay.

- This would allow for a competitive market to evolve in which lenders provide credit competing on the basis of price and service.
- With a viable competitive marketplace, the demand for payday loan products will be met through licensed payday lenders.
- When the demand is met through licensed lenders this will limit or remove the opportunity of unlicensed lenders to serve the demand for short term credit.

As stated in our pre-filed evidence, we do not believe there should be any further changes or additions made to the regulations that would result in creating obstacles or adding further costs to lenders to provide the product.

Finally, the CPLA has always acknowledged the benefit of financial education. The CPLA is prepared to work with the Coalition to examine the need for and delivery of reasonable consumer financial education products. We believe the CPLA and the Coalition are in the best position to assess the needs in this area.