PRE-FILED EVIDENCE OF

THE CANADIAN PAYDAY LOAN ASSOCIATION ("CPLA")

INTRODUCTION

Pursuant to Section 164 of *The Consumer Protection Amendment Act (Payday Loans)* (the "Act"), the Public Utilities Board (the "Board") has convened this proceeding to conduct a review of the regulations in respect of payday lenders and payday loans specifically:

> 164(2) Within three years after the first regulation under clause 163(1)(f.1)(maximum cost of credit) comes into force, the board must commence a review of
>
> (a) The meaning of "cost of credit" for the purpose of this Part;
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> (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
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> (c) The maximum amounts, or the rates, tariffs or formulas for determining the maximum amounts, that may be charged, required or accepted
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> (i) In respect of any component of the cost of credit for a payday loan,
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> (ii) In respect of the extension or renewal of a payday loan,
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> (iii) In respect of a replacement loan, or
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> (iv) In respect of a default by the borrower under a payday loan.

We understand that the Board's report may also include any other recommendations about the regulation of payday lenders and payday loans.

The Payday Loan Regulation (“Regulation”) provides:

(a) The total cost of credit for a payday loan must not be greater than 17% of the principal amount of the payday loan (13.1).

(b) The maximum amount of the loan shall not exceed 30% of the borrower’s net pay (15.2).

(c) The total cost of credit for a replacement loan must not be greater than 5% of the principal amount of the replacement loan (13.2);

(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 (13.1(3));

(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 (15.5).

(f) a penalty may be charged in relation to a default by a borrower under a payday loan of 2% of the amount of the default calculated monthly and not to be compounded (15.4(1)).

By Board Order No. 38/13, dated April 18, 2013, the Board granted intervener status to the Canadian Payday Loan Association (“CPLA”). The CPLA is providing -pre-filed evidence to assist the Board in its review of the matters in 164(2)(a)(b) and (c). The CPLA’s evidence includes specific information on the locations of payday lending outlets in Winnipeg, a comprehensive study and profile of the typical payday loan customer in Manitoba, a comparison of payday loan legislation in other jurisdictions across Canada, evidence of the change of the payday loan industry since regulation and information on unlicensed payday loans.

It is the CPLA's submission that:

(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 CANADIAN PAYDAY LOAN ASSOCIATION

The Canadian Payday Loan Association was formed in early 2004, by responsible financial service companies who offered the payday loan product. Because the payday loan product was unregulated at that time, members of the CPLA recognized that it was important to create and adhere to industry standards of business practices to protect consumers and the reputation of the industry.. It was also important to have a voice that could represent the interests of the industry and inform stakeholders, governments and regulators on all aspects of the product and industry.

The CPLA worked closely with each province as it developed regulation for the industry. Our goal is to advocate for the right balance between adequate consumer protection and an economically viable industry for our members. We continue to work with governments, stakeholders and regulators in each province to inform them on the impact of regulations to consumers and the companies who serve them..

The CPLA created industry standards of business practices for our members to protect consumers in absence of regulation. To foster and ensure compliance with the standards which were embodied in its Code of Best Business Practices, the CPLA established the Office of the Ethics and Integrity Commissioner, an independent and arm's length entity whose primary mandate was to monitor compliance with the Code. By 2009 the vast majority of Canada by population (excluding Quebec) had been regulated. Regulation in those provinces has replaced the Code of Best Business Practices and provincial consumer protection offices have assumed responsibility to ensure compliance with those regulations. Therefore in 2009, the CPLA dissolved the Office of Ethics and Integrity Commissioner and has put in its place the Consumer Response and Resolution Bureau ("CRRB") which receives and addresses questions and complaints of payday loan users in respect of payday loans they have taken from both CPLA members and non-members. Customers can contact the CRRB by way of 1-800 toll free number or by email.

Today the CPLA has 20 member companies, that hold lending licenses for approximately 800 stores and online lending platforms. This represents 52% of the industry in Canada. The CLPA has five (5) members holding in total 30 licenses to provide loans through outlets or over the internet in Manitoba.

THE PAYDAY LOAN PRODUCT

History

The payday loan industry first emerged in Canada in the mid-1990's in response to an unfulfilled consumer demand for small-sum short-term credit. These types of small unsecured loans are typically unavailable through banks or other conventional financial services institutions.

Under *The Consumer Protection Act* of Manitoba, (and similar to other provinces across Canada) payday loans may not exceed $1,500.00 and the initial term of a payday loan may not exceed 62 days. The average term of a payday loan is 10 days. Most commonly, payday loans are to be repaid at the customer's next payday.

Payday loans were first introduced in Canada around 1995. The industry grew rapidly for the first decade in response to consumer demand. Over the past five years growth has plateaued as the industry has matured and become regulated. Attached as Schedule “A” is a graph showing the growth of the industry in Canada since 2007. The exception in Canada is Manitoba. In Manitoba the number of licensed lenders has declined sharply since regulations and maximum rates came into effect. Based on the CPLA’s outlet survey of January, 2007 there were 71 outlets offering payday loans in Manitoba. Today there are 40 licensed outlets and 3 internet lenders. Attached as Schedule “B” is a graph showing the change in the number of store locations in Manitoba since January 2007.

CONSUMER SURVEY

Attached as Schedule “C” is a study conducted by Environics Research Group in May, 2013 of payday loan users in Manitoba. To conduct the study, the CPLA obtained a list of all the licensed payday lenders in the Province of Manitoba from Consumer Protection Manitoba and provided the list to Environics. Environics then contacted every lender and requested them to provide their customer lists on an anonymous basis for the study. Records were provided directly to Environics by licensed lenders on a confidential basis and the names or number of participants is not known to the CPLA. The study was conducted through 250 interviews of borrowers randomly sampled from 8800 records. The survey provides information on the demographics of payday borrowers, their reasons for obtaining a payday loan, the awareness of fees and the awareness that the industry has been regulated.

GOVERNMENT LEGISLATION ACROSS CANADA

Today there are six provinces that have enacted and proclaimed legislation to license payday lenders and set maximum fees. Prince Edward Island has passed legislation and requested formal designation from the federal government to be exempted from S.347 of the Criminal Code (which is expected within two (2) months) whereupon its payday loan legislation will be proclaimed into force. Attached as Schedule "D" is a chart setting out the maximum lending rates and other regulations in each province.

Schedule "D" discloses the following:

- 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

It is important to set maximum rates and regulations correctly. There are unintended consequences of regulatory provisions that are too harsh. If regulations are too onerous and maximum rates too low, then good credible lenders leave the market. Demand for credit remains and the market becomes a target for unlicensed lenders. This has been the experience in other jurisdictions. This may, or possibly already has become, Manitoba's experience. In particular, if bricks and mortar outlets close, those who require credit will go elsewhere.

Attached as Schedule "E" are maps setting out payday loan outlet locations today and payday loan outlet locations that existed in 2007. While there has always been the option to obtain credit from unlicensed lenders, if licensed lenders exit the marketplace then unlicensed lenders are the <u>only</u> options for borrowers. Furthermore when a significant number of licensed lenders depart a jurisdiction creating a vacuum, unlicensed lenders knowing that demand is underserved, target that market aggressively knowing there is little competition.

Attached as Schedule “F” is a sample of web pages found from doing a scan conducted on May 9th, 2013 of internet lenders who offer to provide payday loans in Manitoba that to our knowledge are not licensed in Manitoba. In most cases neither the address or the jurisdiction in which the lender operates is disclosed. Our experience suggests that these sites are constantly changing and one can expect that a search a month from now will garner a very different list of sites.

Attached as Schedule “G” is a copy of a loan agreement and related documents entered into on May 10, 2013 by a Manitoba resident who obtained a payday loan from an internet company called “Paydayhere.com” for the sum of $200.00 for a term of six (6) days to be repaid on May 16, 2013 by pre-authorized debit. Under terms of the contract:

- A loan fee of $21.00 per hundred borrowed was paid by the borrower
- The borrower agreed to a waiver of rights to participate in a class action
- The borrower granted authorization to the lender in the event of default to charge a “blank” to the account. This would allow the lender to debit the account for any amount it wishes.
- Authorization to charge interest on arrears at 1.6% per day
- The borrower has the option to make this a “consecutive loan”. In other words a “rollover”

In order to obtain this loan, the borrower had to provide the lender with their social insurance number, email, bank, bank transit number and bank account number. This is just one example of an internet loan that was easily obtained by a borrower in Manitoba which would appear to be in violation of several regulations under the Act. We were advised of a prospective Manitoba borrower that attempted to obtain a payday loan from one of the websites listed on Schedule “F”. The borrower found that in order to obtain the loan they would be required to provide their online banking log in and password for their bank account to the lender in the application form.

Unlicensed lenders are often located out of the country. We are attaching as Schedule “H” extracts from a number of articles and hearings that discuss the practices of unlicensed internet lenders in other jurisdictions. These extracts give examples of practices such as removing unauthorized amounts well in excess of what is owing from the borrower’s account as well as abusive and threatening collection practices. Regulators are by and large helpless to control this behavior.

There is a phenomenon that has grown rapidly in the United States known as “tribal lending”. Online lending operations have been set up on Indian reservations in several states. The tribes assert their sovereign immunity and take the position that state legislation, maximum lending rates and consumer protection regulations do not apply. Loans fees charged are in excess of permitted rates. Attached as Schedule “I” are several articles describing this practice. The Los Angeles Times indicates that this is often a “rent-a-tribe” scheme where “tribes are being paid to offer their sovereign immunity to non-Indian payday lenders that are trying to dodge state regulations.” To our knowledge this practice has not yet developed in

Canada. A major reason for this in other parts of Canada is the market is already well served by licensed lenders and the market opportunity is not there.

The other result of overly restrictive regulations is that some lenders in the province may continuously change their lending programs and products to circumvent regulations forcing Manitoba Consumer Protection Branch and legislators to constantly play a game of “whack-a-mole”. Regulators pursue correction of a practice only to find the program has changed the next month in a way that forces government to start the enforcement process all over again.

HISTORY OF LEGISLATION IN MANITOBA

Seven provinces have now passed payday loan acts and regulations. In most cases provinces have made no amendments to their legislation. Manitoba, on the other hand, has introduced numerous amendments. Attached as Schedule “J” is a summary of the amendments to the Manitoba legislation since it was first introduced.

In relative terms legislation has been in place for a short time. Lenders have experienced significant dislocation to their business in moving in to a regulated environment. In all cases the lenders have had to reduce the amount they charge and the amount they can lend to borrowers. There are requirements for signage and disclosure. Lending contracts have had to be amended. Collection practices have changed as well as the fees recoverable in the event of default. Borrowers have had to post a bond or a letter of credit in order to obtain a licence and the significant license fees are payable annually. All of this impacts the cost to providing the loan product in Manitoba. As long as regulations as they exist today are diligently enforced the consumer will be protected and there is no need to introduce further changes that add additional costs or restrict availability to the product.

CONCLUSION

In our submission to the Board in 2007 we stated:

> "Earlier this year, the CPLA publicly took the position that a maximum charge of $20.00 per $100.00 borrowed would be appropriate (see Appendix K)...Our members made it clear that this recommendation would require significant belt tightening and cost control on their part, including denial of credit to some customers with a poor credit history. **The CPLA's recommendation represents what our members agreed was the charge at which they could continue to provide payday lending services and below which a significant majority of the industry could not...**"

The Minister accepted the PUB's recommendation and set the maximum lending rate at $17.00 per hundred. We believe their decision made the operations of many lenders in Manitoba no longer financially viable and as a result the number of lending outlets in the province has been reduced.

Setting rates too low provides a disservice to the consumer because it creates the potential for unintended consequences, including evasion of regulation, reduction of bricks and mortar outlets which restricts geographic access to credit, denial of credit to consumers with poor credit history, forcing consumers to obtain credit from unlicensed internet lenders or obtain other more costly credit products.

We believe the rate of $17.00 has been set too low and respectfully recommend the Board raise the maximum lending rate to be in line with the national average

The intention of the Payday Loan Act and regulations is to protect the consumer. The number of fully compliant licensed lenders from which Manitobans have available to them has steadily diminished. The Act and Regulations have not diminished the demand. Consumers can and do obtain such credit elsewhere at higher costs and greater risks. The Act and Regulations fail to protect those consumers. A higher lending rate would result in a reasonable expansion of the number of licensed lenders such that it would remove the opportunity for growth of unlicensed lenders.

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.

The CPLA appreciates the opportunity to participate in this review and to provide written evidence on behalf of our members.