

C11 A1 Financing & Loans

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Attn: Darren Christle, MPA., B.A., CCLP., P.Log., MCIT, Secretary
The Public Utilities Board – Payday Loan Review

Re: C11 A1 Financing & Loans Submission for the Payday Loans Review Hearing

Prior to Manitoba Regulations 50/2010, Intervener Submissions clearly outlined;

- A) An accounting firm's Financial Report outlining cost to operate a high risk payday loan business
- B) The demographics and average income of employed workers using the services of pay day lenders

To re-introduce financial reports from what was submitted prior to 2009/2010 is redundant and serves no purpose for this review, we all know costs have increased over the past years. To review the demographics and average incomes of clients using the services of pay day lenders has not changed over the past years therefore there is no purpose to discuss this further.

For our Submission today, we had planned to have for you a video taken by pay day loan users to express their views on the Boards recommended changes. Unfortunately we could not convince clients to take the time required for either one; doing a short video or writing a short comment, which is unfortunate for all of us. One explanation for the lack of enthusiasm for involvement by pay day users is that the availability of on-line and un-licensed pay day lenders has become much more convenient and in use which makes proposed regulations changes just another hurdle in their everyday lives.

What has changed in the past years is the increase need for pay day loans. It is important to note, pay day lenders are not the cause for the needs of pay day users, pay day lenders exist to fill the void of financial assistance that many working people find themselves in.

What has also changed in the past years is access and services offered by on-line and un-licensed lenders not only in the pay day field but also in the larger loan installment field who lend under the radar and therefore do not operate under the same rules as licensed companies. With regulation of 30% of net pay for licensed pay day lenders, people needing more than what licensed companies can lend will use on line services to borrow the balance of what their financial needs are. Further to this, lending rates of 5% for a second loan or for those who may need financial help before their 7 day waiting period has expired cannot borrow from a licensed lender at a 5% rate. It is financially impossible for licensed pay day lenders to sustain a low rate of 5% when taking in the risks associated with such loans thus further pushing clients away from licensed lenders and making on-line unlicensed lenders their only option when it comes to a second loan or a loan required before the mandatory 7 day period.

We want to bring to your attention to the "Cost of Credit" as defined in Subsection 147(1) of the Act and Subsection 14.3 (1) and 14.3 (2), "Timing and delivery of payday loan advances"

- Delivery of the loan in cash in this day and age is unsafe for borrowers and lenders alike and is not a desirable method for a borrower to receive their loan and then walk out of a lenders office
- Delivery of the loan by e-mail money transfers is a safer way for borrowers to receive their loans. The downside to e-mail money transfers are that the banks limit the amount of money a lender can send, the limits are limited in dollar value to daily, weekly and monthly transaction limits. The other restriction to e-mail money transfers is that many clients do not have access to do e-mail money transfers or refuse their loan by e-mail money transfers for fears that their bank will hold their transfer if their bank account is in arrears or overdrawn
- Delivery of the loan by cheque in most cases is not acceptable for borrowers as in most cases their banks will hold their loan cheque for 5 business days before releasing and making their loan amount available to them
- Delivery of their loan by Electronic Funds Transfers contravenes section 14.3 (1) as it takes 3 business days for the banks to complete an Electronic Funds Transfer. As with the same predicament as with e-mail money transfers, clients do not want this type of transfer with having fears that their bank will not release their Electronic Funds Transfer loan if their bank account is in arrears or overdrawn
- Delivery of the loan using a cash card is safe, quick and convenient for the borrower. Therefore cash cards are the safest and most widely used and sought after by consumers. Fees for use of cash card transactions are controlled by the card providing companies and by bank or individual ATM owners. Cash card providing companies charge \$3.25 per card load and ATM fees vary in cost from \$3.75 per transaction for bank ATMs to \$9.00 per transaction for privately owned ATM machines. In rural and small communities there may not be access to banks but there are always privately owned ATM machines available and therefore cash cards are the only means of borrowers to receive their loan. At a loan rate of \$17.00 per \$100.00; a \$60.00 loan will hardly cover the cost of card provider fees and ATM fees.

As per Subsection 147 (1), lenders under the current regulations are not allowed to pass on the cost of cash cards even when the client request to have their loan on a cash card and even when the borrower refuses any other means to receive their loan other than on a cash card. Therefore we request that regulations be reviewed and allowances be made to exempt cash card fees from the cost of credit for cases when a client requests their loan on a cash card with the understanding of the fees involved or refuses any other means of receiving their loan other than on a cash card, again with the understanding of the fees involved.

In respect to people who need to make a 2nd loan or borrow before the mandatory 7 day waiting period, the long standing argument has been that people need to learn to manage their money better. Try and tell this to a mother who has sick children in need of another pharmacy prescription. In small towns or villages out of the major cities where emergency shelters are either not available or are inadequate, try and tell a family who finds themselves in need of emergency shelter in a domestic abuse case that no financial help is available to them to help them get thru their ordeal. Try and tell this to an employee who has been sick or has had their hours cut back to stop spending money on necessary living expenses until their next pay. Try and tell this to a mother who wants to support their son or daughter from attending a sports event or function that was suddenly dropped on her on the last minute. What we are describing are facts of life, life as we all know it is unpredictable and to state that people need to manage their money better is true, as true as it may be it is not reality, has never been reality and never will be. No one in this industry will argue about rules and regulations being required, what can be argued is that we (pay day loan companies) are on the front lines and sometimes such restrictive rules and regulations dramatically hurt and in some cases endanger the lives of people we try to serve. Lives that are dramatically affected by what we have described in the examples we have just given you are cases of employee sickness, pharmaceutical prescription needs and domestic abuse cases, emergency and expected travel and so on.

In summary, if life's up and downs cannot be avoided, then there needs to be a way of assisting people when life's up and downs require financial assistance between pay days. Changing the loan amount to 25% will only hurt the ones who need to borrow money and will only push them to further use of on-line and un-licensed lenders who do not abide by 25 or 30% rules. Further to this, dropping the lending rate to 15% will have very little effect for consumers; however dropping the rate will further erode the financial stability of licensed lenders. We recommend that if consideration is made to drop the lending rate to 15% than an increase from the existing 5% be made for a second loan or a loan required before the mandatory 7 day period at a rate that is realistic with the risks undertaken by the lenders.

We realize that as Board members you have many opinions presented to you to sway your decisions for one way or another. We do not envy your position and the decisions you must make, we can only thank you for considering our position and the positions of people we are serving.

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146(2) A notice, decision or other document sent to a person in accordance with clause (1)(b) is deemed to have been received on the date shown on the confirmation of delivery obtained from the Canada Post Corporation or the other service.

Actual notice is sufficient

146(3) Despite the fact that a notice, decision or other document is not given or served in accordance with this section, it is sufficiently given or served if it actually came to the attention of the person for whom it was intended within the time for giving or serving it under this Part.

S.M. 2006, c. 31, s. 3; S.M. 2012, c. 18, s. 8.

OBLIGATIONS AND PROHIBITIONS**Limit re cost of credit**

147(1) No payday lender shall, in relation to a payday loan,

(a) charge, or require or accept the payment of; or

(b) arrange for or permit any other person to charge or to require or accept payment of;

any amount or consideration that would result in the total cost of credit, or any component of the cost of credit, of the loan being greater than the maximum allowed by regulation.

Consequences of failure to comply

147(2) If a payday lender contravenes subsection (1),

(a) the borrower is not liable for any amount charged as a cost of credit for the payday loan; and

(b) the lender must reimburse the borrower, in cash, immediately upon demand by the borrower or the director, for

(i) the total of all amounts paid, and

(ii) the value of any other consideration given,

in respect of the borrower's cost of credit for the payday loan, including any amount paid or consideration given to a person other than the payday lender.

This is in addition to any penalty that the lender may be subject to under any other provision of this Act or the regulations.

S.M. 2006, c. 31, s. 3; S.M. 2009, c. 12, s. 13.

Documents to be given at time of initial advance

148(1) At the time of making the initial advance under a payday loan or providing the borrower with a cash card or other device that enables the borrower to access funds under a payday loan, the payday lender must give to the borrower

(a) a document, in a form satisfactory to the director, that

(i) states the date and time of day that the initial advance is being made or the card or other device is being provided,

(ii) states that the loan is a high-cost loan,

(iii) gives notice of the borrower's right to cancel the loan within 48 hours after receiving the initial advance or the card or other device,

(iv) includes a form of notice that the borrower may use to give written notice that he or she is cancelling the loan, and

(v) includes a form of receipt that the lender must use to acknowledge receipt of what was paid or returned by the borrower upon cancelling the loan; and

(b) any other documents or information required by regulation.

This is in addition to any other document or information the lender must give to the borrower under this Act.

Documents and information must be clear

148(2) Documents and information required to be given under subsection (1) must be clear and understandable, and the required information must be prominently displayed in the document.

Interpretation of ambiguous statement

15 Section 14.2 is replaced with the following:

No oral consent for credit checks and employment verification

14.2 Despite section 7 of the *Personal Investigations Regulation*, Manitoba Regulation 392/87 R, if a borrower chooses to consent to a "personal investigation" as defined in the *Personal Investigations Act*, that consent must be given in writing, including by electronic means, but not orally.

16 The following is added after section 14.2:

→ **Timing and delivery of payday loan advances**

14.3(1) A payday lender must ensure that the initial advance of money under a payday loan is delivered to the borrower immediately after the payday loan agreement is entered into.

→ **Timing and delivery of Internet payday loan advances**

14.3(2) In the case of an Internet payday loan or other payday loan not obtained by the borrower in person, the payday lender must deliver instructions to its financial institution to transfer the amount of the initial advance under the payday loan to the borrower's account with a financial institution on the same day on which the borrower and the payday lender enter into the payday loan agreement.

Cancellation of Internet payday loans

14.4 Despite subsection 149(1) of the Act, a borrower may cancel an Internet payday loan within 48 hours — excluding Sundays and other holidays — after the payday loan agreement was entered into.

17 The following is added after section 15.1:

Maximum amount of a loan

15.2(1) For the purpose of subsection 151.1(1) of the Act, the prescribed proportion of the borrower's net pay is 30%.

15 L'article 14.2 est remplacé par ce qui suit :

Consentement à l'égard des vérifications en matière de solvabilité et d'antécédents professionnels

14.2 Malgré l'article 7 du *Règlement relatif aux enquêtes sur les particuliers*, R.M. 392/87 R, tout consentement de l'emprunteur relativement à une enquête sur les particuliers au sens de la *Loi sur les enquêtes relatives aux particuliers* doit être donné par écrit, notamment par des moyens électroniques, et non verbalement.

16 Il est ajouté, après l'article 14.2, ce qui suit :

Versement de l'avance prévue par un prêt de dépannage

14.3(1) Le prêteur veille à ce que l'avance initiale prévue par le prêt de dépannage soit versée à l'emprunteur dès la conclusion du contrat.

Versement de l'avance prévue par un prêt de dépannage par Internet

14.3(2) Dans le cas d'un prêt de dépannage par Internet ou d'un prêt de dépannage qui n'est pas obtenu par l'emprunteur en personne, le prêteur donne des directives à son établissement financier en vue du transfert de l'avance initiale prévue par le prêt de dépannage au compte de l'emprunteur dans un établissement financier le jour de la conclusion du contrat de prêt de dépannage.

Résiliation des prêts de dépannage par Internet

14.4 Malgré le paragraphe 149(1) de la *Loi*, l'emprunteur peut résilier un prêt de dépannage par Internet dans les 48 heures — exclusion faite des dimanches et des jours fériés — suivant la conclusion du contrat de prêt de dépannage.

17 Il est ajouté, après l'article 15.1, ce qui suit :

Montant maximal du prêt

15.2(1) Pour l'application du paragraphe 151.1(1) de la *Loi*, le pourcentage réglementaire de la rémunération nette de l'emprunteur correspond à 30 %.