Payday Lending Legal Narrative

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Date: March 24, 2016

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Introduction

In April 2016, the Manitoba Public Utilities Board (PUB) will conduct its third review of payday lending rates since the Federal government decided to delegate rate setting oversight to the Province. The Consumer Coalition (Coalition) has intervened in the past two hearings. It looks forward to presenting evidence at the third.

The Coalition is comprised of the Consumers Association of Canada (Manitoba Branch), Community Financial Counselling Services and Winnipeg Harvest.

Community Financial Counselling Services (CFCS) is a non-profit agency that provides free of charge credit counseling to individuals. CFCS also delivers education and financial literacy programs, seminars and workshops to community groups, other organizations and the general public. It advocates on behalf of Manitobans for fair practices in lending, debt repayment and financial services. CFCS partners with the Canada Revenue Agency to provide free income tax preparation services to 30,000 low income Manitobans annually.

Winnipeg Harvest is a non-profit, community-based organization committed to providing food to people who struggle to feed themselves and their families. It partners with more than 340 agencies to distribute surplus food to hungry families all over Manitoba. More than 63,000 Manitobans receive food from food banks each month. Winnipeg Harvest shares food through the Manitoba Association of Food Banks.

The Consumers Association of Canada (Manitoba Branch) or CAC Manitoba has over 400 members and donors. Through its consumer education and information centre as well as its research, CAC Manitoba interacts with roughly 14,000 consumers annually. Approximately 6,000 Manitoba consumers annually attend CAC Manitoba information sessions and workshops.

Coalition members are actively engaged with consumers in the Manitoba community. Given the services they provide, their clients are often members of vulnerable groups. The Coalition has seen firsthand the effects of repeated payday loans on consumers.

In presenting its evidence and recommendations, the Coalition seeks to ensure balance between the interests of consumers and the payday lending industry.

The core issues identified by the PUB in its *Notice of Public Hearing* were whether the maximum cost of credit should be reduced from 17$ per 100$ to 15$ per 100$ and whether the maximum proportion of income that can be borrowed should be reduced from 30% to 25%. The Coalition understands that other related matters may be included in the PUB report to the Minister.

Research conducted by the Coalition research team focused on the two central issues identified by the PUB. The underlying objective, however, was to better understand the consumer experience with payday lending and whether regulation and legislation should be changed to better reflect this experience.

The Coalition's research identified a number of complex issues intertwined with the core regulatory issues of the maximum cost of credit and the maximum proportion of income. Insight into these issues is integral to the effort to weave a more accurate picture of the payday lending industry and its consumers in Manitoba.

The legal narrative begins with the current legal framework in Manitoba. It describes the legal test and considerations adopted by the PUB in previous payday lending hearings in 2007-2008 and in 2013. It also provides a brief introduction to the Coalition's team of independent expert witnesses. Recognizing that the expert witness team has provided an executive summary of its work, the legal narrative focuses on policy issues flowing from the research including:

- practices from other provinces that may address data limitations;
- repeat borrowers and the high cost debt spiral;
- the increase in borrowing on non employment sources of income such as welfare;
- online lending,; and
- privacy concerns.

These specific issues may be the subject of further recommendations by the Coalition in closing arguments.

Payday lending legislation in Manitoba

In Manitoba, the *Consumer Protection Act* (the Act), Part XVII, sections 137-163.1 set out the law relating to payday loans. A payday loan is defined as

> an advance of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature, but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card.[1]

This legislation applies to loans of no more than $1,500 for no longer than 62 days and for replacement loans. All payday lenders operating in Manitoba are required to be licensed under s. 139-146 of the Act.

Section 147(1) of the Act addresses the maximum cost of credit. It states that a payday lender cannot charge more than the maximum allowed by regulation. The *Payday Loan Regulation* [the Regulation] at s. 13.1(1) indicates that the total cost of credit for a payday loan must not be greater than 17% of the principal amount of the payday loan.[2]

Section 151.1(1) of the Act addresses the proportion of a borrower's net income that can be taken out in the form of a payday loan. It provides that the loan agreement cannot exceed the proportion of the borrower's net pay set out in the regulation. The Regulation at s. 15.2(1) indicates that the prescribed proportion of the borrower's net pay is 30%. The formula to determine a borrower's net pay is found in s. 2.2(1) of the Regulation.[3]

1 *Consumer Protection Act*, CCSM, c C2900, s 137 [Act].
2 *Payday Loan Regulation*, CCSM, c C200, s 13.1(1) [Regulation].
3 Regulation, s. 2.2(1). Net pay = (MNI X 12) / 26, where MNI consists of the person's net income for the most recent

The maximum fee of 17$ per 100$ and the maximum proportion of income of 30% were both set by regulation in 2010 after the Manitoba government accepted the PUB's recommendation in its 2008 Report. They remained the same after the 2013 hearing.

It is worth noting a few additional provisions of the Act and the Regulation.

Under s. 149 of the Act, a borrower may cancel a payday loan with no penalty within 48 hours after receiving the initial advance.[4]

Section 152(1) of the Act provides that payday lenders must respect the limit set by regulation on extension or renewal of term or for a replacement loan.

Concurrent loans are prohibited by s. 154(1) of the Act A payday lender shall not offer, arrange or provide a payday loan to a borrower who is indebted to the lender under an existing payday loan, unless the new loan is a replacement loan and immediately after the initial advance under the new loan is made, the borrower is no longer indebted under the existing loan.[5]

A replacement loan is defined as “a payday loan arranged or provided by a payday lender as part of a series of transactions or events that results in the borrower's debt under another payday loan previously arranged or provided by that payday lender being repaid in whole or in part” and “a transaction or series of transactions specified in the regulation”.[6] The Regulation specifies that in addition to what is stipulated under the Act, a replacement loan is a payday loan “that advances an amount in excess of the borrower's debt under the payday loan previously arranged or provided by that payday lender”.[7]

The Regulation also sets out the total cost of credit for a replacement loan, which must not be greater than 5% of the principal amount of the replacement loan.[8] The Regulation limits the maximum amount of a replacement loan at 30% of the borrower's net pay, except “if the amount that is 30% of the borrower's net pay is less than the amount that the borrower owes under the payday loan previously arranged or provided by that payday lender, the prescribed proportion is 30% of the borrower's net pay plus whatever additional portion of the borrower's net pay is necessary to equal the amount that the borrower owes under the payday loan previously arranged or provided”.[9]

The Regulation also states that 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 payday loan previously arranged or provided, or if the payday loan is arranged or provided by a payday lender within seven days after the borrower repaid in full another payday loan previously arranged or provided by that payday lender.[10]

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previous calendar month where the person received income. This is calculated by adding all incomes received by a person from all sources during that month, minus all compulsory and voluntary deductions.

4 Act, s. 149.
5 *Ibid*, s. 154(1).
6 *Ibid*, s. 137.
7 Regulation, s 2.1.
8 *Ibid*, s 13.1(2).
9 *Ibid*, s 15.2(2).
10 Regulation, s 13.1(3).

The maximum amount payable for a default pursuant to s. 153(1) of the Act and s. 15.4(1) of the Regulation is a penalty of 2.5% of the amount in default, calculated monthly and not to be compounded[11]. There cannot be a default charge for a replacement.[12]

The Act goes on to specify the information that must be provided by payday lenders to consumers. Payday lenders must post signs at each location providing information regarding the payday loan products they provide.[13] The Regulation articulates the information to be posted at each licensed location as well as for Internet payday loans.[14]

The Act and the Regulations set out the information that must be provided in the payday loan agreement.[15] The Regulations also indicate the information that must be present in Internet payday loan agreements.[16]

Payday lenders are obligated to keep complete and accurate records of payday loans offered.[17]

The Act and Regulations establish that a notice of administrative penalty may be issued if a person fails to comply with provisions of the Act or the Regulations.[18]

Under s. 161.6(1) of the Act, the Financial Literacy Fund is established. It has been in place since 2011. Each licensed payday lender must pay an annual financial literacy support levy to the Fund.[19]

Public Utilities Board Orders

Amendments were made to the *Consumer Protection Act* in 2006 to permit the provincial government to regulate payday lenders. When those amendments were made, the Honourable Greg Selinger, then Minister of Finance, stated that the government's purpose for the amendments for licensing and regulating payday lenders "... was not to drive the companies out of business, because people are showing an interest in having this service, but to make sure that when they offer the service they do it in a way that's **just and reasonable**."[20]

The first "just and reasonable" rates for payday lenders were set by regulation in 2010 based upon a 2008 PUB Order.

Under s. 164(3) of the Act, within three years after the first regulation regarding the maximum cost of

11 Act, s. 153(1); Regulation, s. 15.4(1).
12 Regulation, s. 15.4(2).
13 Act, s 156.
14 Regulation, s. 16 and 16.1.
15 Act, s 148(1)(a); Regulation, s 14.
16 Regulation, s 14.0.1(1).
17 *Ibid*, s 17(1).
18 Act, s. 136(1); Regulation, s. 19.
19 Tourism, Culture, Heritage, Sport and Consumer Protection Annual Reports 2014-2015 and 2013-2014: In the past two years, the Fund has contributed to the following projects: the Legal Help Centre received a grant towards financial literacy programming; the Manitoba Financial Literacy Forum received a grant to conduct a baseline study on financial literacy in Manitoba; a grant was provided towards the financial literacy calendar through the Manitoba Financial Literacy Forum.
20 2008 PUB Order, p. 13.

credit for payday loans came into the force, the PUB was directed to conduct a review including public consultation.[21][22]

Every subsequent third year, the Minister must review the effectiveness of the legislation and the regulations and decide whether to require a further review by the Board and whether to recommend changes to the legislation or to the regulation.[23]

There have been two hearings on payday lending before the PUB. Both have been centered around the need for balance between the interest of consumers and the sustainability of the payday lending industry in Manitoba.

<u>*2008 PUB Order*</u>

The first Manitoba payday lending hearing took place in 2007-2008 with the PUB issuing its report on April 4, 2008.

The Order was premised on the view that government had not sought to abolish the industry but desired lower charges than were currently prevalent. The PUB recognized the legislative intent to protect consumers. It concluded there was no public interest basis for supporting inefficient payday lending.[24]

The PUB sought to achieve the balance between consumer protection and industry health by setting rates that would enable a reasonable return for an efficient payday lender. The PUB recognized that the maximum charges it was proposing would lead to many payday lenders potentially exiting the marketplace unless they became more efficient.

However, the PUB also understood that relatively efficient payday lenders would continue to operate at the authorized rate and those surviving firms would assume a portion of the market that became available with the closure of some of the existing payday lenders.[25]

In 2008, the PUB concluded that “the maximum charges to be set for payday loans should be such as to reduce the cost of credit for consumers while promoting **increased efficiency** within the industry.” (emphasis added).[26] It explicitly rejected the alternatives presented by the industry interveners as being too costly for consumers and concluded that the maximums it set would allow for the survival and continuance of business of efficient payday lenders. The PUB acknowledged the possibility of considerable consolidation in the industry and the exit of several firms and outlets.[27]

The concept of rates based on reasonable efficiency appears to be the key principle underlying PUB

21 Act, s 164(2).
22 *Ibid*, s 164(2).
23 *Ibid*, s 164.1(2). This review had to consider the meaning of “cost of credit” for the purposes of the Act, the maximum cost of credit that may be charged, required or accepted in respect of a payday loan and the maximum amounts, or the rates, tariffs or formulas for determining the maximum amounts, that may be charged, required or accepted for any component of the cost of credit for a payday loan, for the extension of renewal of a payday loan, for a replacement loan or for a default by the borrower under a payday loan.
24 2008 PUB Order, p 228.
25 *Ibid*, p. 10.
26 *Ibid*, p 217.
27 *Ibid*, p 233.

recommendations aimed at balancing consumer protection and sustaining the industry.[28]

2013 PUB Order

In 2013, the PUB confirmed that balancing the interests of consumers and payday lenders was key.[29] With this consideration in mind, the PUB concluded that "profitability for efficiently run payday lending operations is being achieved in Manitoba at the current 17% rate and in accordance with the loan amount restrictions existing under Manitoba regulations."[30] The PUB found this to be true even for small enterprises. The efficiency of payday lenders that was sought in the rate recommendation in 2008 was also a key consideration in keeping the rate constant in 2013.

In terms of the proportion of income that consumers can borrow, the PUB stated that "it is in the public interest to use this limit to avoid further financial problems and to, therefore reduce the attendant emotional and psychological harm that credit stress imposes."[31] The protection of consumers and the public interest while enabling efficient lenders to earn a reasonable return was once again the balance sought by the PUB.

The Coalition's Evidence

As in past hearings, the Consumer Coalition has retained a team of experts to conduct mixed methods research[32] to provide insight into the state of payday lending in Manitoba, and the impact of regulation on the industry and on consumers. The Coalition's experts bring together a vast range of experiences and knowledge. Their evidence provides valuable insight into the payday lending phenomenon in Manitoba.

The experts retained by the Coalition are independent. They have come to their findings and recommendations after careful research and analysis.

The Coalition's expert witnesses

Dr. Jerry Buckland is a Professor of International Development Studies at Menno Simons College in Winnipeg and Adjunct Professor in Economics at the University of Manitoba. He has done extensive research in the areas of micro-finance, financial inclusion, financial literacy and community-based development. Dr. Buckland has experience using both qualitative and quantitative research methods. Dr. Buckland was an expert witness in both the 2007-2008 and 2013 payday lending hearings before the PUB.[33]

As part of the evidence submitted for the 2016 hearing, Dr. Buckland has conducted a literature review, which identified and discussed key issues raised both in Canadian and international literature. Dr. Buckland also supervised the field research, the completion of a summary of pricing and practices of select payday lenders in Manitoba and the mapping of payday lenders over the years in Manitoba.

28 *Ibid*, p 244.
29 2013 PUB Order, p 63.
30 *Ibid*, p 65.
31 *Ibid*, p 67.
32 See Executive Summary for description of the research methodology.
33 Also see Dr. Jerry Buckland's statement of qualification, Appendix G .

Additionally, Dr. Buckland was instrumental in the coordination of a workshop focused on alternatives to payday loans and supervised the compilation of the summary and recommendations flowing from that workshop. Finally, Dr. Buckland also conducted a focus group with the emphasis on alternatives to payday lending.

Dr. Chris Robinson is an Associate Professor of Finance at the School of Administrative Studies at York University in Toronto. He is a Chartered Professional Accountant and a Certified Financial Planner and is one of the inaugural Fellows of Financial Planning Standards Council. Dr. Robinson's areas of expertise include accounting, personal financial planning, corporate finance, security valuation, financial statement analysis and ethics for investment managers and financial planners. Dr. Robinson provided expert opinion to the PUB in both the 2007-2008 and 2013 hearings.[34]

For the 2016 Manitoba hearing on payday lending, Dr. Robinson has conducted a financial analysis of the payday lending industry in Manitoba drawing on Canadian, US and international research. Dr. Robinson commented on the strength of the payday lending industry in the United States and in other Canadian jurisdictions[35] in order to compare these jurisdictions to the strength of the industry in Manitoba.[36]

Dr. Robinson analyzed the current payday lending industry in Manitoba using a financial model of the industry that he has developed and refined. Dr. Robinson provided an opinion on the phenomenon of repeat borrowers and the industry's reliance on this type of consumer. Dr. Robinson also discussed the recent development of longer-term installment loans provided by some payday lenders. Finally, Dr. Robinson commented on the limitation on the maximum proportion of income to be borrowed on a payday loan and whether an installment loan option would better fit consumers' needs.

Dr. Wayne Simpson is a Full Professor in the Department of Economics at the University of Manitoba. His areas of academic expertise include labour economics, applied econometrics, applied microeconomics, quantitative methods and economic and social policy analysis. Dr. Simpson provided expert opinion in both the 2007-2008 and 2013 hearings on payday lending.[37]

For the 2016 hearing, Dr. Simpson has conducted an analysis of the data from the two federal Canadian surveys that provide information regarding payday loan use: the Canadian Financial Capability Survey and the Survey of Financial Security. This data creates a picture of payday loan users in Canada and Manitoba.

Zoe St. Aubin received her Masters of Arts degree in Sociology in 2013 and currently works as a research associate for the Canadian Centre for Policy Alternatives. Ms. St. Aubin has extensive experience in mixed methods research, including surveys, interviews, focus groups and data analysis.[38]

Ms. St. Aubin's evidence in this hearing is in the form of a report on the field research she conducted,

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34 Also see Dr. Robinson's statement of qualification,Appendix G.

35 Research into the distribution of payday lending outlets by urban setting and company in Manitoba, Alberta and Nova Scotia is ongoing and can be made available upon request.

36 We noted that during 2013 hearing, MoneyTree Payday Lending stated it was “determined to close its doors if rates do not increase”. 2013 PUB Order, p 47.

37 Also see Dr. Simpson's statement of qualification, Appendix G.

38 Also see Zoe St. Aubin's statement of qualification, Appendix G.

under the supervision of Dr. Buckland. The field research included a survey of 130 payday loan borrowers, the largest survey of payday loan borrowers in Manitoba, in-depth interviews and a focus group.

Scope of the evidence filed by the Coalition

The financial analysis of Dr. Robinson directly comments on the two core issues identified by the PUB in the public notice of the hearing: whether the rate of 17$ per 100$ should be lowered to 15$ per 100$ and whether the cap on the proportion of income to be borrowed should be lowered from 30% to 25%.

However, the PUB indicated that other related matters could also be included in its report to the Minister. The Coalition believes that when examining the issue of payday lending, it is essential to examine other contextual issues that can provide valuable insight on how the industry is evolving as well as how the industry and consumers act and react to changes in the law, in the products offered and the overall environment in which these products are being offered.

In previous Orders on payday lending, it appeared that the PUB was also of the view that examining broader issues related to payday lending was important to get a full picture and provide informed recommendations to the provincial Government. For example, in the 2008 Order the PUB identified the need to engage banks and credit unions in discussion aimed at developing small balance short-term credit options for consumers who are reliant on payday loans.[39] The PUB also identified the need for consumer financial education starting in middle school.[40] The PUB made recommendations related to structural and other barriers that result in often vulnerable individuals turning to payday loans.[41] It also made recommendations on related amendments to the *Consumer Protection Act*.[42] The PUB further made recommendations on the *Code of Best Business Practices* for the CPLA.[43]

In 2013, the PUB made recommendations with regards to financial management education and discussed issues that it had identified in the first hearing.[44] It also made recommendations relating to data collection.[45] In addition. the PUB suggested further research into unlicensed payday lenders in Manitoba, the regulation of payday loan-like products and that a cumulative borrowing disclosure notice appear in every payday loan agreement.[46]

The aim of the research undertaken by the Coalition research team was to gain an better understanding of the current payday lending environment in Manitoba. This involved addressing issues related both to the cost of credit and the state of the marketplace, including repeat borrowing, online lending, privacy issues, the profile of payday lending consumers and mainstream alternatives to payday loans.

For the Coalition, the objective of the PUB intervention is to represent the interests of consumers recognizing the need for industry sustainability. The research objective was to seek a balance between protecting consumers while providing a regulatory environment in which reasonably efficient payday

39 2008 PUB Order, p 9.
40 *Ibid.*
41 *Ibid,* p 253-254.
42 *Ibid,* p 255-257.
43 *Ibid,* p 257-258.
44 2013 PUB Order, p 63.
45 *Ibid,* p 74.
46 *Ibid,* p 74.

lenders can earn a reasonable return on their investment.

Consumer Panel

In addition to traditional expert evidence, the Coalition hopes to present evidence in the form of a panel of payday loan consumers who will present their lived experiences regarding payday lending issues. At this point in time, the Coalition is in discussions with a number of consumers. In the event these consumers determine that they wish to share their perspectives, a brief outline of their expected oral evidence will be provided in advance of the oral portion of the hearing.

Lack of data

During the preparation of evidence, it became apparent that there remains a significant lack of publicly available data regarding the payday lending industry in Manitoba.

In 2013, the Coalition suggested that the Government of Manitoba should require registered lenders to report certain specific information within a six month period after the end of a company's fiscal year, including the number of loans granted, the total number of borrowers, the number of full-time and part-time employees and a copy of financial statements of the lender for the fiscal year.[47]

In its 2013 Order, the PUB recommended that the Consumer Protection Office require the provision of the statistics suggested by the Consumer Coalition in its submissions with the exception of the filing of actual annual financial statements.[48] The PUB also stated that the Manitoba Government should look at other Canadian jurisdictions for their statistical reporting requirements to determine the more efficacious data that are both "available for confidential filing by lenders and that will serve the interests of regulators including any future review by PUB or government itself."[49]

However, there does not appear to have been changes to the payday loan legislation mandating the Consumer Protection Office to collect this data from payday lenders in the province.

In undertaking its research in preparation for the hearing, the Coalition requested data from the Consumer Protection Office regarding the payday lending industry (see Appendix F**).** The CPO advised the Coalition that it does not have access to the data requested (see Appendix F).

The Coalition also requested disclosure of payday lenders' financial data from the Public Utilities Board and directly from the Canadian Payday Loans Association in order to conduct its financial analysis with the most accurate data which would lead to the most accurate findings and recommendations to the PUB (see Appendix F). In these requests, the Coalition offered to sign a confidentiality agreement and stated it would only refer to the data in aggregate form. The data would only have been examined by legal counsel and by the financial expert, Dr. Robinson, conducting the analysis, as well as a student researcher, if needed. However, the Coalition did not receive disclosure of any such data before the evidence filing deadline of March 24, 2016.

47 *Ibid*, p 24.
48 *Ibid*, p 71.
49 *Ibid*, p 71.

Recognizing the current information shortfalls, there is a clear need for additional data to be collected by the Consumer Protection Office. This will assist the PUB in better understanding the payday loan industry and providing recommendations to government.

Significantly more robust data on payday loans is currently being collected in other jurisdictions in Canada. Two examples are British Columbia and Nova Scotia.

In British Columbia, s. 4(2)(b) and 4(3) of the *Payday Loans Regulation* require all payday lenders licensed in the province to annually report aggregated loan data. According to the *Regulation*, an applicant for a payday loan license must provide

> "aggregate data from the last completed fiscal year of the applicant, in a form and containing the information required by the director"[50]; and
>
> "Without limiting paragraph (b) of subsection (2), the aggregate data submitted under that paragraph must include data respecting the number of loans, number of transactions, loan amounts, loan duration and number of default charges."[51]

The BC regulator, Consumer Protection BC, makes an Aggregate Data Form available on its website that is filled out by licensees to provide information on the most recently completed fiscal year.[52] In addition to the information specifically listed in the Regulation, information on the number of individuals who were given multiple loans is also collected by the regulator. Aggregate data is then reported publicly on the regulator's website.[53]

In Nova Scotia, s. 5 of the *Payday Lenders Regulations* stipulates that payday lenders must provide information on loans granted from the location specified in their permit for the 12-month period from July 1 to June 30 immediately before the date of the permit renewal.[54] Form A, attached to the Regulations, must be filled out by the payday lender. Form A collects information regarding the number of loans granted, the average size of loans granted, the number of defaults on loans granted, the average size of loans defaulted, the number of borrowers who have been granted more than one loan, the number of repeat loans granted, the total number of borrowers who have been granted repeat loans, and the number of borrowers who have been granted repeat loans 1, 2, 3, 4, 5, 6, 7 and 8 or more times.[55] This information in aggregate form is available from the regulator.[56]

Given the lack of available data on the payday lending industry in Manitoba, the Consumer Coalition looks forward to reviewing the evidence that will be filed by the industry interveners prior to the hearing which may inform its final recommendations to the PUB.

Repeat borrowing

The preamble to the Canadian Payday Loan Association Code of Best Business Practices states that "A

50 Payday Loans Regulation, BC Reg 57/2009, s 4(2)(b).
51 *Ibid*, s 4(3).
52 Payday Loan Aggregate Data Form, Consumer Protection BC, online: http://www.consumerprotectionbc.ca/images/pdl_aggdata_paperform.pdf.
53 See Appendix 1 to Dr. Robinson's Report, Tab 3.
54 Payday Lenders Regulations, NS Reg 84/2015, s 5.
55 *Ibid.*
56 See Appendix 7 to Dr. Robinson's Report, Tab 3.

payday loan is an unsecured short term loan to meet unexpected cash needs. Payday loans are for occasional use only and should not be used to cover continual shortfalls in a persons budgetary requirements."[57]

However, since 2008 the PUB has identified the particular risks associated with repeat borrowers[58]. As noted by the PUB, one ot its primary concerns was that "vulnerable consumers are being caught in a spiral of very high cost debt.[59]

In its 2013 Order, the PUB stated that "virtually all payday loan customers are frequent users of payday loans."[60]

The evidence of the Coalition confirms that enduring risk to repeat borrowers from the payday lending industry.

Repeat borrowing is an issue that was identified in the literature review undertaken by Dr. Buckland. In the US research, there appears to be a consensus that for a subgroup of payday loan clients, repetitive payday loan borrowing is the norm and can be very harmful given the high cost of credit. There is also evidence in Canadian literature that repeat borrowing is more common among poor and modest income and asset-holding Canadians as compared to the non-poor.

The financial analysis undertaken by Dr. Robinson demonstrates that the business model of the payday loan industry requires repeat borrowers, not one-time customers. The cost of providing a first-time loan is far higher than the cost of servicing a repeat borrower.

The evidence from both the BC regulator and the Nova Scotia regulator shows that the majority of payday loans are repeat loans. In BC, the average number of loans per borrower was 4.3 in 2014 and 5.4 in 2013. The data also shows that almost half the borrowers were taking out six or more loans per year and that a small number of borrowers were taking out more than 15 loans per year. In Nova Scotia in 2013-14, 52% of all payday loans were repeat loans of some type. Among repeat borrowers, 30% received 8 or more loans.

Out of the 130 survey respondents from the Manitoba field research, the majority had taken out more than one payday loan in the past 12 months: 45% had taken out 1-3 payday loans, 24% had taken out 4-6, and 31% had taken 7 or more loans in the past 12 months. In the second focus group conducted, four of the nine participants used payday loans 12 times a year and two participants used them 4-6 times a year.

Interview and focus group participants provided powerful insight into how the cycle of repeat borrowing can creep up on consumers and the difficulties in breaking this cycle.

One interview participants said:

> "Because, it's just that cycle or grabbing money and then that first time it's good

57 Canadian Payday Loan Association, Code of Best Business Practices, online: http://www.cpla-acps.ca/english/consumercode.php.
58 2008 PUB Order, p 38, 46, 237-238, 240, 251,
59 *Ibid*, p 241.
60 2013 PUB Order, p 44. Also see p 45, p 65.

> because you have extra money but then come payday, you have that extra bill to pay that you didn’t have before. And then, it’s kind of like, well now you pay that bill and you have less money for other stuff and then you kind of keep doing it, so once you’re even it’s best to just stay away from it...” Interview Participant 9.

Participants identified the difficulty of paying back the entire loan on the next paycheque, which would lead to them taking out another loan to pay back the existing loan:

> “If you borrowing money, say you borrow $700....Well now 2 weeks later you have to pay 700 back. But it might fall to your rent payment coming up, if you pay the $700 back, you just got no money to pay the rent, or money for gas or anything else. So you might have to re-borrow maybe 400 back just to tie you over. So you know the amount might be little overwhelming to pay them back in one pay cheque as opposed to dragging over two.” - Interview Participant 7

One participant's observation of other payday lender borrowers provides insight on the cycle of payday lending:

> “I can see people going in there [payday lender outlets] and they’re on welfare or they’re on unemployment, and they are literally getting what they’re getting from that office, but then two weeks later they don’t have anything else. They have to repay the whole thing back. So if they’re getting a 200 dollar loan, on 200 dollars that would be almost 250 bucks. So if they’re only getting 200 dollars they’re still in the hole for 250 bucks. So they’re always in the hole.” - Interview Participant 1.

For some, the repeat borrowing became a part of their lifestyle:

> “Why did I use both? Because I found that one was just not doing the job. And that’s for a lot of different reasons, not only in terms of living expenses, but also because I do sometimes like to spoil myself with luxuries. .... Cash Money was intended to only be for a couple of months. And Money Mart was only intended to be an addition for a couple of months, but I stuck with both places because it came to mesh with my lifestyle.” - Interview participant 5

One participant in the second focus group express that:

> “This pull they have, they make it so-called ‘easy’, which is a blind spot because of the interest you’re paying back [Focus group participant quote].”

One participant in the second focus group had been using payday loans for over two decades and reported a record high of engaging with ten payday lenders at the same time until he was forced to declare bankruptcy. Even now, he and his wife continue to use payday lenders and pawn shops about once a month.

By their very design, payday loans encourage repeat borrowing. When a borrower finds himself or herself not being able to repay the principal of the loan and the fee charged on their next pay period, they can be left with no choice but to borrow again. The evidence from the US, from Canada and from

Manitoba confirms that this is the reality. Taking out repeat payday loans, which are very high cost credit products, can lead to harmful effects on the consumers.

Borrowing on other sources of income

Payday loan legislation in Manitoba does not restrict the income on which payday loans can be taken. Neither does the CPLA Code of Best Business Practices.

Although the majority of Manitobans surveyed (58%) based their payday loans on their payroll cheques, the flip side is that the remaining 42% used other types of income. 10% of survey respondents indicated using their Child Tax Benefit cheque, 6% relied upon their Employment Income Assistance cheques, 6% used their Employment Insurance cheques and 21% presented other types of cheques (i.e. spousal support, CPP cheque, disability cheque, student loan bursary and GST cheque).

Interview participants indicated that the payment schedule for sources of income other than employment, such as CPP, EI or disability payments, could be a factor in influencing them to start or continue using payday lenders.

The Coalition's research team contacted a number of payday lenders in Manitoba and found that the majority of lenders provide payday loans on income other than employment, such as Canada Pension Plan, Child Tax Benefit, Disability, Band cheques, Employment and Income assistance, Old Age Security and Employment Insurance.

Providing payday loans on these types of income can be a significant issue especially where it is the only income received by the borrower.

Online lending

The literature identifies online lending as a relatively new innovation used by some payday lenders to deliver their products. In Ontario, it is estimated that 10% of the total market is online. In the US, it is estimated that online lending could encompass one-quarter to one-third of all payday loans.

The literature identifies many concerns associated with online payday loans. Regulation can be difficult given that these lenders can be located anywhere in the world. There is a risk that consumers can be dealing with unlicensed lenders. A 2015 Canadian study suggested that online lenders are less likely to follow regulation especially where they are unlicensed. US research found that unlicensed online lenders were the most abusive. In the US, troublesome consumer practice were identified with online payday lenders, such as more complaints to the Better Business Bureau, the sharing of personal information and unauthorized collections practices.

In the field research conducted for this report, only a small proportion of the survey respondents used online payday loans (6%). This may not be representative of the reality given the difficulties in reaching online borrowers. Borrowers at physical locations were more accessible given that research assistants could attend the payday lending outlets. Even with online and print advertising, reaching online borrowers proved to be significantly difficult.

The regulation in Manitoba sets the same licensing obligations for online payday lenders as for physical locations of payday lenders. There is a need for more research to be conducted on online payday lenders to determine whether regulation specifically targeting online lending concerns should be put in place.

Privacy concerns

Generally speaking, one feature particularly appreciated by fringe bank consumers is anonymity. Fringe banks often have fewer requirements in terms of personal identification. But privacy concerns can arise surrounding information provided to payday lenders and how this information is used. These concerns are accentuated online.

A particular privacy concern identified is that the majority of payday lenders contacted by the research team indicated that they request consumers' Social Insurance Number as part of the loan application proces.

Conclusion

Since 2008, the PUB has sought to protect the public interest and achieve balance between consumer protection and industry health by setting rates that would enable a reasonable return for an efficient payday lender. Efficient lenders, Manitoba consumers and the public interest have been well served by a regulatory approach emphasizing that “the maximum charges to be set for payday loans should be such as to reduce the cost of credit for consumers while promoting **increased efficiency** within the industry.”

While the core function of this regulatory process relates to the maximum cost of credit and the maximum proportion of income that can be borrowed, important policies issues exist with regard to:

- data limitations;
- repeat borrowers and the high cost debt spiral;
- the increase in borrowing on non employment sources of income such as welfare;
- online lending; and
- privacy.