

***PROTECTION, ACCESS AND SUSTAINABILITY:
VULNERABLE CONSUMERS, REGULATION AND
A FLAWED MARKETPLACE***

OPENING SUBMISSION OF THE PUBLIC INTEREST LAW CENTRE (PILC)
ON BEHALF OF THE CONSUMER COALITION

April 12, 2016

The Coalition

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Community Financial Counselling Services (CFCS)

- non-profit, community-based - free of charge credit counseling to individuals
- delivers education and financial literacy programs, seminars and workshops
- advocates on behalf of Manitobans for fair practices in lending, debt repayment and financial services
- CFCS partners with CRA - free income tax preparation
 - 30,000 low income Manitobans annually

The Coalition

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Winnipeg Harvest

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

The Coalition

Consumers' Association of Canada (Manitoba Branch)

- non-profit, community based - over 400 members and donors
- interacts with roughly 14,000 consumers annually through research and consumer education and information centre
- about 6,000 Manitoba consumers annually attend information sessions and workshops

The Coalition – Active Within and Outside Hearing Room

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- 07/08 and 2013 PUB hearings
- *Creating Community Options for Financial Services* September 2011
- Privacy and the Internet (OPC research 2014/15)
- Consumer focus groups 2015 and 2016

The Coalition – an Unprecedented Voice for Manitoba Consumers

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- National surveys

- 130 interviews
 - 9 longer interviews
 - 2 focus groups (over and apart from client led focus groups)

- Consumer Panel

Client Objective

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- Three realities:
 - Important Product (access to credit)
 - Vulnerable Consumers
 - Flawed Marketplace
- Balance consumer access and consumer protection with industry sustainability in a transparent, publicly accessible process

The PUB – A Principled Approach

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- the maximums it will set herein will be adequate to allow for the survival and continuance in business of **efficient payday lenders**, though it acknowledges that the approach may result in considerable consolidation in the industry and will likely result in the exit from the industry of several firms and outlets (39/08, p. 233)
- rejects the premise that existing competition within the industry is sufficient to protect consumers and will lead to competitive and efficient payday lenders offering lower rates. The industry is highly concentrated and operates with a symbiotic relationship amongst the firms in the industry (39/08, p. 233)

The PUB – A Principled Approach

- 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 (2013 Review, p. 65)
- 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 (2013 Review, p. 67, regarding proportion of income borrowed)

Well Accepted Regulatory Approach in Manitoba

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- Just and reasonable rate
 - regulatory compact
 - reasonable opportunity for efficiently run company to earn risk-adjusted return for comparable companies of similar risk
 - BCUC, *Generic Cost of Capital Proceeding*, (2013, s. 2.2)
 - *PUB Order 5/12*, p. 26
 - *PUB Order 84/14*, p. 28
 - *2008 Payday Lending Review*
 - *2013 Payday Lending Review*

Weighing the Evidence - Lots of Information, Limited Time, Unusual Process

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- Coalition – Expert Evidence
 - oral evidence
 - written evidence
 - DFG 10 K
 - PEW
 - information responses
- Coalition – Consumer Panel
- CPLA
 - written reports
 - information responses
 - internet searches
- C11
 - written report
 - information responses

PUB Rules of Procedure

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Evidence

17. (1) The Board may receive evidence by:
- a) sworn testimony or testimony solemnly affirmed; or
- (2) Witnesses at a hearing shall be examined orally under oath or affirmation unless otherwise directed by the Board.
- (5) Pre-filed written evidence may be received in evidence at the hearing with the same force and effect as if it were stated orally by the witness, provided that the witness shall be present at the hearing and that the witness:
- a) testifies as to his/her **qualifications**;
 - b) confirms that the written material was prepared under his/her direction and control and is accurate to the best of his/her knowledge and belief; and
 - c) submits to **cross-examination** on the same.
-

Weighing Evidence

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Oral Opinion Evidence by Qualified Expert and Written Evidence by Qualified Expert

- intent of Rule 17
- based upon pre-filed expert report
- written report which can be accepted with same weight as oral evidence if witness presents for cross examination
- tested by information requests
- expertise of witness confirmed before PUB in *voir dire* (testing of qualifications) – independence can also be tested
- open to be tested by cross examination
 - including reports relied upon in written report
- Coalition panel (assuming judged qualified)

Weighing Evidence

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Oral Lived Experience Evidence by Borrowers

- not based on pre-filed expert report or tested by information requests
- “can say” provided
- witnesses have lived experience
 - offers insight into personal choices and consequences
 - care must be taken in extrapolating their experience and opinions beyond their personal situation
- can be tested by cross examination and judgements made as to credibility and to bias
- example: community witness panel

Weighing Evidence

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Written Evidence by alleged expert but not presented for cross examination

- based on pre-filed report filed by alleged expert
 - qualifications of witnesses not established through *voire dire*
 - witnesses not made available to be tested by cross examination in terms of accuracy, credibility or bias
- only one round of information request
 - effective immunity from follow up if do not present for cross examination
- example Deloitte and Environics

Weighing Evidence

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Written Evidence by Firm

- based on pre-filed report filed by firm
 - insight from particular experience of their particular firm
 - care must be taken in extrapolating to broader industry
 - witnesses not made available to be tested by cross examination in terms of accuracy, credibility or bias
- only one round of information request
 - effective immunity from follow up if do not present for cross examination
- example – C11

Presentations are not Evidence

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Written or Oral Presentation by Community

- not evidence and cannot be used as basis for evidentiary findings
 - can give insight into research questions or particular opinion
- not presented under oath or by affirmation
- no ability to ask information questions
- no ability to hold *voire dire* into qualifications or bias
- no ability to cross examine for accuracy, credibility or bias

Policis

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- would have loved to have Policis filed as evidence with opportunity to assess in rigorous process
- no pre-filed evidence
- no information requests
- not subject to *voir dire*
- not subject to cross examination
- will seek confirmation by PUB of Policis role as presenter – not evidence

Research versus Lobbying

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- Open examination of core issues or are there questions that “dare not be asked”?
- Evidence or assertions?
- Are the calculations, conclusions and sources transparent?
- Wide ranging and robust or results driven?
- Credibility of past research:
 - Deloitte Manitoba 2007/08
 - \$26.87/\$100 Loan (PUB/CPLA 1-15, p. 1)

Coalition Approach

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- Interdisciplinary
- Mixed Methods
 - *using both methods can boost ability to understand*
- Triangulation
- Open access to Coalition model

Coalition Process

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Core Questions

- What does the lived experience of Manitoba consumers tell us?
- What are consumer dynamics?
- What are the industry dynamics?
- What are regulatory dynamics?
- What are the implications for:
 - cost per hundred dollar loan?
 - maximum amount of income to be borrowed against?

What do our experts conclude?

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Consumer Dynamics

- Borrowers population disproportionately vulnerable compared to non-borrower population
- Part of a broader dialogue of social exclusion and inequality

This division of the market may appear to meet the needs of poor people but, it is argued by critics, this bifurcation leads to a small and expensive services being provided to poor people while large and less expensive services are offered to the non-poor

What do our experts conclude?

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Consumer Dynamics

- Pushed to payday loan industry by barriers in mainstream marketplace and welcomed by “non-judgemental, convenient service”

The hours are flexible, there's no doubt about it. Especially the ones at 24 hours is pretty awesome because you know when you come from out of town you want to do something. They're all over. They're accessible all over, like there's just one right behind here. Actually, there's two in this area

What do our experts conclude?

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Consumer Dynamics

- Evidence of harm to some consumers especially those using repeat loans

Repeat borrowing is harming vulnerable consumers

- Payday loans are expensive

We're paying higher interest because we're poor

What do our experts conclude?

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Industry Dynamics

- Volume critical
- Reliance on repeat borrowers
- Key cost considerations:
 - operating costs
 - bad debt
- Opportunities for efficiencies in scale, scope and risk management

What do our experts conclude?

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Not a well functioning marketplace

- ❑ lower wealth and income
- ❑ fewer mainstream choices
- ❑ (disproportionately) insufficient income to meet needs
- ❑ challenges in understanding product
- ❑ tunneling – bounded rationality
- ❑ rates follow regulation
- ❑ industry dominated by a few players with economies scale, scope

Our networks of retail locations in the United Kingdom and Canada are the largest of their kind by revenue in each of those countries (DFC Global Corporation 2013)

What do our experts conclude?

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Regulatory Environments and the Marketplace

- 3 general typologies of regulatory environments (restrictive, hybrid and permissive)
- evidence of a sustainable payday lending industry in US jurisdictions with rates in the range of \$15/100
- reliance on internet payday lenders is not more (somewhat less) in hybrid US regulatory environments vs permissive US regulatory environments
- operating margins for DFG in Canada quite handsome compared to the US (2013 10K)

What do our experts conclude?

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- \$15/\$100
- instalment loans rather than 25% of monthly income (maintain 30% maximum)

There'd be a light at the end of the tunnel

Four Questions for the CPLA

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- 1) Given evidence of industry reliance and that “repeat borrowing is harming vulnerable consumers”, where is your research on the use and implications of repeat loans? (the question that “dare not be asked”?)
- 2) Given 3 year cycle of regulatory review, where is Manitoba industry evidence?
- 3) What is driving reluctance to share confidential industry data under confidentiality agreements?
- 4) Why isn't Deloitte here to defend its 2016 Alberta report?

A Manitoba Success Story

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- Evidence based
- Public
- Enhanced consumer protection while incenting efficiency

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THANK YOU!