PRE-FILED EVIDENCE OF

THE CANADIAN PAYDAY LOAN ASSOCIATION ("CPLA")

INTRODUCTION

Pursuant to *The Consumer Protection Amendment Act (Payday Loans)* (the "Act"), the Public Utilities Board (the "Board") has convened this proceeding to review charges and fees for payday loans and consider the impacts of possibly reducing the maximum allowable rate from $17.00 per $100.00 borrowed to $15.00 per $100.00 borrowed and the impacts of reducing the proportion of the borrower's net pay which is used to determine the maximum loan amount from 30 percent to 25 percent. These and other related matters are reviewed pursuant to Section 164 of the Act which provides:

> 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
>
> (iv) In respect of a default by the borrower under a payday loan.

The Payday Loan Regulation ("Regulation"), among other things, 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 (section 15.2).

By Board Order No. 30/16, dated March 8, 2016, 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) and (b). The CPLA's evidence includes evidence of the cost to provide a payday loan by lenders in the Province of Alberta, evidence of borrowing decisions by borrowers, provided by Grant Thornton a study conducted by the Consumers Council of Canada on online lending, a comprehensive study and profile of the typical payday loan customer in Manitoba which was submitted to the Board in our evidence in the 2013 Hearing, a comparison of payday loan legislation in other jurisdictions across Canada 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) Manitoba has the lowest maximum lending rate and the most restrictive regulations of any regulated province in Canada and unlike the rest of Canada 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) If the province reduces the maximum allowable rate for a payday loan or reduces the maximum amount of a loan from 30 percent to 25 percent of net pay, this will have a direct impact on the profitability of the remaining licensed payday lenders operating in Manitoba leading to store closures.

(g) Further reducing access to credit from licensed lenders will drive borrowers to unlicensed lenders and foster growth in the unlicensed lending market in Manitoba.

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. It provides an important voice to represent the interests of the industry and inform stakeholders, governments and regulators on all aspects of the product and industry.

The CPLA has worked closely with each province as it developed and reviews 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 and the unintended consequences of over regulation.

Today the CPLA has 19 member companies that hold lending licenses for approximately 940 stores and online lending platforms. This represents 67% of the industry in Canada. The CLPA has six (6) 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 eight 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 "A" is a graph showing the change in the number of store locations in Manitoba since January 2007.

CONSUMER SURVEY

Attached as Schedule “B” is a study conducted by Environics Research Group in May, 2013 of payday loan users in Manitoba. This study was filed in our submission to the Board in 2013. 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. Because of a lack of time and resources, we have not been able to update the study however we do not believe there has been any material change in the demographic of borrowers since that time.

GOVERNMENT LEGISLATION ACROSS CANADA

Today there are seven provinces that have enacted and proclaimed legislation to license payday lenders and set maximum fees. New Brunswick has passed the Cost of Credit Disclosure and Payday Loan Act and has prepared and obtained stakeholder comment on draft regulations. Attached as Schedule “C” is a chart setting out the maximum lending rates and other regulations in each province.

Schedule “C” 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 licensed lenders leave the market. Demand for credit remains and the market becomes a target for unlicensed lenders.

While there has always been the option to obtain credit from unlicensed lenders, if licensed lenders exit the marketplace then unlicensed lenders are the only 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 “D” is a sample of web pages found from doing a scan conducted in March, 2016 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.

In August, 2015 the Consumers Council of Canada released a report entitled “Consumer Experiences in Online Payday Loans” funded by Industry Canada attached as Schedule “E“. The purpose of the report was to provide objective information about the marketplace consumers are likely to encounter in provinces across Canada when they attempt to secure a payday loan online. This is no dispute that the online lending sector is growing. The Report states on page 21 "Figures show payday lenders in other countries are moving online, and Canadian lenders and regulators observe the same in Canada." The Report found:

> "Manitoba has the lowest allowable fees and some other unique restrictions. Manitoba also has higher licensing costs than over provinces. At least one leading online firm does not offer loans online in Manitoba because it cannot do so profitably. The largest chain, Money Mart, does not offer online in Manitoba. Of the twelve sites in the Manitoba audit just two were licensed lenders. That may suggest that one of the unintended consequences of Manitoba's more strict measures is that online borrowers are more likely to encounter unlicensed lenders."

In reviewing the sites of licensed and unlicensed lenders, the report determined:

- Licensed lenders show a high level of compliance with regulation.
- Unlicensed lenders show virtually no compliance with regulation.
- There was no middle ground. The study did not find licensed lenders that do a poor job of compliance nor did it find unlicensed lenders that were broadly compliant.

In respect of the existing laws in Manitoba, Ken Whitehurst, Project Supervisor for the Report and Executive Director of the Consumers Council of Canada stated in a news article attached as Schedule "F":

"You are not safer in provinces with more regulation," said Ken Whitehurst, executive director of the Consumers Council of Canada.

He is calling the situation an "unintended consequence" of Manitoba's stringent payday loan regulations.

Attached as Schedule “G” is a study commissioned by the CPLA and conducted by Deloitte LLP dated March 23, 2016 looking at the cost of lenders to offer a payday loan in the Province of Alberta. The study was based on data provided by four companies that in total operate 185 payday loan outlets and 2 internet licenses in that province. The study determined that the weighted average costs to loan each $100.00 was $20.74. The CPLA was not able and did not have sufficient time to obtain a similar study for Manitoba however we believe the study provides much relevant information on the cost to provide the product.

Manitoba is already far more restrictive than any other province in Canada in limiting how much a borrower can borrow as a payday loan. If a borrower has a specific need and is limited to how much he or she can borrow, the borrower will simply seek a loan elsewhere from another licensed or unlicensed lender putting the borrower into the situation where they now have two loans to manage. Reducing the proportion of the borrowers net pay which is used to determine the maximum loan amount from 30% to 25% will only cause more borrowers to seek multiple loans. Attached as Schedule “H” is a report letter provided by Grant Thornton LLP. Grant Thornton received information from three payday lenders, National Money Mart Company, Cash Money Cheque Cashing Inc. and Cash 4 You Corp. on all transactions conducted by those companies in 2014 to look at specifically when a borrower provides information in a loan application process and is approved for a loan how much they specifically choose to borrow. The report found that 62% percent of borrowers do not borrow the full amount of the loan they were approved for and on average they chose to borrow only 68.1% of the amount they were eligible to borrow. This indicates that borrowers are aware of their financial circumstances and seek to borrow the specific amount they need.

We assume the policy objective of restricting the proportion of a borrower's net pay that an individual can borrow is to ensure the borrower is able to repay the loan when it becomes due. In originally initiating this policy objective and in the years following, Manitoba has not, like other provinces, collected any data to determine whether this is an issue. There is certainly no data to determine whether there is a need to reduce it even further. On the other hand, in the event that the percentage of net pay lent was reduced to 30% to 25% this would represent a 16.7% of reduction in gross revenue to lenders which could result in further store closures.

CONCLUSION

The intention of the Payday Loan Act and regulations is to protect the consumer. Manitoba has the most restrictive regulations and lowest rates of any province in Canada. The Act and Regulations will not however diminish demand. Consumers can and will obtain such credit elsewhere at higher costs and at great risks if need be. Lowering the maximum rate or reducing the maximum percentage of net pay borrowers can access will have direct and significant effects on the profitability of licensed lenders in Manitoba. This will result in more outlet closures, reducing options for consumers to access credit from licensed lenders.

Individuals that access credit from payday lenders do so because they have specific needs for the funds. To further reduce the amount that they can obtain by way of a payday loan does not reduce their borrowing. It just forces them to obtain additional credit elsewhere. If this is the result, then the policy objectives of the government have failed because consumers will ultimately be obtaining credit elsewhere at higher costs and greater risks in an unregulated environment.

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.