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MANITOBA PUBLIC UTILITIES BOARD

Re: TO DETERMINE MAXIMUM FEES
FOR PAYDAY LOANS

Before Board Panel:

- Graham Lane - Board Chairman
- Monica Girouard - Board Member
- Susan Proven - Board Member

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
December 18th, 2007
Pages 3219 to 3460

APPEARANCES

1
2
3 Anita Southall) Board Counsel
4
5 Leo Sorensen (np)) Sorensen's Loans Till
6) Payday
7
8 Antoine Hacault) Rentcash Inc.
9 Michael Thompson)
10 Mona Pollitt-Smith)
11
12 Allan Foran) Canadian Payday Loan
13 Lucia Stuhldreier) Association
14
15 Byron Williams) CAC/MSOS
16
17 Nathan Slee) 310-Loan
18
19 Robert Dawson) Assistive Financial
20) Corporation
21
22 Steve Sardo (np)) Cash X
23
24 Kent Taylor (np)) Progressive Insurance
25) Solutions

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1	LIST OF EXHIBITS		
2	Exhibit No.	Description	Page No.
3	PUB-27	Letter received from the Insurance	
4		Council of Manitoba, dated December	
5		11, 2007, specifically from Aaron	
6		Pearson, a response to inquiry made	
7		to the Insurance Council on behalf	
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11	PUB-28	Two (2) paged document entitled	
12		"Loans."	3377
13	RENTCASH-24	Cover page, Dr. Line Gravel, Clerk,	
14		Standing Senate Committee on	
15		Banking Trade and Commerce, dated	
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17		pages attached.	3381
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	LIST OF UNDERTAKINGS	
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3	85	Dr. Jerry Buckland determine what
4		the \$188 billion non-mortgage debt
5		from Coalition Exhibit is comprised
6		of
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7	86	Coalition to provide further
8		information for the benefit of the
9		consumer when applying for a payday
10		loan.
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11	87	For the panel to advise if they
12		have any views on how that gets
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14	88	Coalition to compare for Rentcash the
15		information obtained through the
16		telephone surveys of Mr. Osborne
17		producing Table 3; to cross-reference
18		that to the loan taking inquiries
19		of Ms. Friesen, five (5), six (6),
20		seven (7), and eight (8), and see
21		first of all whether they're
22		comparable and then secondly,
23		whether there's any revisions based
24		upon that (Taken under advisement)
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1 --- Upon commencing at 9:10 a.m.

2

3 THE CHAIRPERSON: Good morning, everyone.
4 There are some difficulties with Professor Berry's
5 presentation so I think what we are going to do is we are
6 going to leave Mr. Gaudreau with the effort of getting it
7 going and proceed with some of the other people in
8 attendance today. So, we won't lose too much time.

9 MS. ANITA SOUTHALL: Good morning, Mr.
10 Chairman. And we have present with us this morning Mr.
11 Jim Scalena who, as I understand it, is the
12 Superintendent of Financial Institutions for the Province
13 of Manitoba.

14 At the Board's request, I've contacted Mr.
15 Scalena and asked him to attend today to answer some
16 specific questions to further inform the Board on matters
17 related to -- specifically to creditor insurance and
18 regulation in Manitoba. So Mr. Scalena would be sworn.

19 And the questions, with respect to these
20 Board witnesses, will be limited to the Board panel
21 members themselves just as a point of procedure for those
22 in attendance today. Thank you.

23 THE CHAIRPERSON: Thank you. Welcome,
24 Mr. Scalena. As you may know, the panel is charged with
25 responsibility of setting the maximum rates and charges

1 for payday lending in Manitoba.

2 So we have been conducting Hearings that
3 began, it seems like it is a very time ago, but it has
4 been going on now for a couple of months and will
5 probably be going into January.

6 Earlier in the proceedings, we had a
7 Intervenor before us that gave evidence with respect to
8 creditor's insurance. And we thought it might be helpful
9 to ask you some questions so that we can have it on the
10 record and understand the business a little bit better.

11 So if you do not mind, sir, we will just
12 proceed and ask you the few questions that we have for
13 you.

14 MS. ANITA SOUTHALL: Mr. Chairman, could
15 I just ask that the witness be sworn?

16 THE CHAIRPERSON: Yes, Mr. Singh, would
17 you swear Mr. Scalena.

18

19 JIM SCALENA, SWORN:

20

21 THE CHAIRPERSON: Good morning again.
22 Mr. Scalena, does the province regulate the practices of
23 insurance companies offering creditor insurance in
24 Manitoba?

25 MR. JIM SCALENA: Yes, they do.

1 THE CHAIRPERSON: Could you elaborate a
2 bit?

3 MR. JIM SCALENA: Well in the Province
4 of Manitoba we've got what we call a regulator --
5 regulatory framework that regulates all insurance in the
6 Province of Manitoba. It -- it's involved the Act, the
7 regulations, the Insurance Council of Manitoba, which was
8 set up under the legislation.

9 The Insurance Council of Manitoba, through
10 delegated authority, licenses set standards and
11 investigates discipline and disciplines agents, brokers
12 and adjusters.

13 They also have a number of rules that are
14 -- they set that agents and adjusters have to follow,
15 plus they have codes of conduct.

16 In addition, we work closely with a number
17 of -- a number of insurance industry associations to --
18 to provide the full regulatory framework for insurers.

19 In Manitoba all insurers that sell group
20 creditor insurance have to be licensed. In general it
21 has been generally accepted that individuals that enroll
22 consumers in group creditor insurance do not require an
23 insurance licence.

24 When faced with any questions about group
25 insurance or group creditor insurance, we take the

1 position that the insurance companies are responsible for
2 all aspects of the insurance, from manufacturing the
3 product right down to the sale of the product.

4 THE CHAIRPERSON: Thank you, sir. Are
5 there any limits on the commissions that insurance
6 companies may provide to the lenders and/or brokers
7 related to creditor insurance?

8 MR. JIM SCALENA: No, there's no limits
9 on any of the commissions that are offered.

10 THE CHAIRPERSON: Are there any
11 guidelines regarding the pricing and marketability of
12 such insurance products?

13 MR. JIM SCALENA: The only guidelines
14 that -- that are out there are industry guideline. And
15 the guideline is by the -- the Canadian Life and Health
16 Insurance Association. They outline best practices for
17 insurers to -- to adhere to when they're -- when they're
18 distributing their group creditor insurance product.

19 THE CHAIRPERSON: Are there any
20 guidelines with respect to acceptable claims ratios for
21 creditor's insurance?

22 MR. JIM SCALENA: No, we've always taken
23 the position that the claims ratios will dictate the
24 profitability. And there's a number of participants in
25 the market, and we -- we generally assume that the market

1 will control the pricing and the -- and the commission
2 rates.

3 THE CHAIRPERSON: Do you get any reports
4 with respect to the claims ratios on the various products
5 being sold?

6 MR. JIM SCALENA: All insurance companies
7 have to have at least annual filings that they provide to
8 regulators, very detailed on an annual basis and not as
9 detailed on a quarterly basis.

10 There's a lot of exhibits to support their
11 financial statements. And it's -- it's grouped into
12 classes of business such as life insurance, accident and
13 sickness insurance, individual insurance, group
14 insurance.

15 However, many of the exhibits do not
16 relate specifically to group insurance. They're -- the
17 financial information that is generally provided by
18 insurance companies on a -- on a routine basis
19 accumulates group insurance to other lines of business.

20 THE CHAIRPERSON: So it would not break
21 out a line of insurance products sold through a
22 particular group of financial institutions?

23 MR. JIM SCALENA: No, it wouldn't unless,
24 the -- unless the insurer was only in that business. And
25 then -- and then it would probably be fairly evident, the

1 results of that line of business.

2 THE CHAIRPERSON: So you could have a
3 product being sold that has a loss ratio of, say, 10
4 percent?

5 MR. JIM SCALENA: We could.

6 THE CHAIRPERSON: And you would not
7 necessarily know about it?

8 MR. JIM SCALENA: No, not unless -- it
9 wouldn't be our -- wouldn't normally be our position that
10 we'd go looking for that type of information.

11 If there was a complaint, we could request
12 specific information from an insurer, and they would be -
13 - there's provisions in the legislation that they have a
14 duty to provide information to us.

15 So we could request that information and
16 it could be that there could be low claims ratios.

17 THE CHAIRPERSON: But if there were low
18 claims ratios, if there is no guidelines or regulations,
19 do you have any authority to cause the policy to be
20 amended?

21 MR. JIM SCALENA: No.

22 THE CHAIRPERSON: Just one (1) last
23 question. You mentioned the Insurance Council of
24 Manitoba. It sounded, the way you were describing it, it
25 was mainly related to the marketing of insurance products

1 rather than insures themselves.

2 Is that fair?

3 MR. JIM SCALENA: That's fair. We're --
4 the Insurance Act covers all insurance through delegated
5 authority. All distribution of insurance products has
6 been delegated to the Insurance Council for all
7 regulatory oversight.

8 THE CHAIRPERSON: Who in general would
9 comprise the insurance council?

10 MR. JIM SCALENA: Pardon me?

11 THE CHAIRPERSON: Who would comprise the
12 insurance council?

13 MR. JIM SCALENA: Well, under the Act and
14 regulations there are three (3) insurance councils.
15 There's a life insurance council, a general insurance
16 council, and an adjusters' council. Each council has six
17 (6) members, and they're all appointed by the Minister of
18 Finance.

19 And then there's a fourth council, which
20 is the administrative council. And two (2) of -- there's
21 two (2) individuals from each of the other three councils
22 that comprises this fourth council that oversees the
23 administration of the -- the full Insurance Council of
24 Manitoba.

25 THE CHAIRPERSON: Does OSFI have

1 responsibility for the solvency in the provinces through
2 the Superintendent's other matters?

3 MR. JIM SCALENA: We rely heavily on OSFI
4 currently. For example, the life insurance companies,
5 there's no life insurance companies that are incorporated
6 in Manitoba.

7 Most of them are federal -- most, if not
8 all, are federally registered. I guess there are a few -
9 - a few provincial life insurers, but most of them are
10 fedally -- federally registered.

11 And by being federally registered, they're
12 the primary regulator for -- for their business, their
13 solvency. The prudential matters falls with the Office
14 of the Superintendent of Financial Institutions with is -
15 - which is OSFI, the federal regulator.

16 THE CHAIRPERSON: Has your office
17 received any complaints with respect to creditor's
18 insurance in Manitoba over the last year?

19 MR. JIM SCALENA: Yes. We -- we take
20 consumer complaints in -- in all -- on all lines of
21 business. Yes, we do.

22 THE CHAIRPERSON: Would they ever relate
23 to the pricing of the product?

24 MR. JIM SCALENA: Not that I'm aware of.
25 Most -- most, I think, deal with preexisting conditions.

1 THE CHAIRPERSON: Thank you very much for
2 attending. I appreciate your evidence.

3 MR. JIM SCALENA: Thank you.

4

5 (WITNESS STANDS DOWN)

6

7 THE CHAIRPERSON: How did we make out
8 with the screen?

9

10 (BRIEF PAUSE)

11

12 MS. ANITA SOUTHALL: Thank you, Mr.
13 Scalena. You're permitted to leave if you wish to do so.

14 MR. JIM SCALENA: Thank you.

15

16 (BRIEF PAUSE)

17

18 THE CHAIRPERSON: Professor Berry, we do
19 have your presentation on this way, so I suppose we could
20 proceed this way, without the lights and sound, so to
21 speak. It makes sense. I am sure it would be
22 delightful, but I think we can follow it this way.

23 So Mr. Gaudreau is going to distribute
24 copies of your presentation to the other parties.

25 MS. ANITA SOUTHALL: Professor -- pardon

1 me, Professor Berry is appearing as a presenter today, so
2 she will not be sworn. And we'll just take a moment to
3 allow that paper to be distributed, if -- if we could,
4 Professor Berry, and then we'll allow you to introduce
5 yourself. And at that point, you can proceed through
6 your presentation.

7 The Board may have a few questions of
8 clarification for you. There will be no questions from
9 other Intervenors or counsel.

10 So good morning, and thank you for
11 attending.

12 THE CHAIRPERSON: Yes, good morning. I
13 believe it has been distributed, so you can begin with
14 your presentation at any time.

15

16 PRESENTATION BY PROFESSOR RUTH BERRY:

17 PROFESSOR RUTH BERRY: Thank you. Good
18 morning. My name is Ruth Berry. I've been a professor
19 at the University of Manitoba for forty (40) years. It
20 seems like I can't be that old, but there you are.

21 And I've always been interested in
22 financial issues related to individuals and families.
23 And my teaching and research over that period of time, in
24 the faculty of human ecology, has been related to those
25 issues.

1 consumers who don't have many assets and have a great
2 need for funds in the short term.

3 So just to provide some background to
4 that, of course I reviewed the literature in Canada and
5 the US, found that consumers using payday loans tend to
6 be younger, they're urban, they live in western
7 provinces, tend to have post-secondary education, and
8 household incomes lower than thirty thousand (30,000) a
9 year.

10 And 92 percent of them are -- had
11 favourable attitudes toward their payday loan experience.
12 They aren't very enamoured with the mainstream banks and
13 credit unions, find them invasive and not convenient.
14 And they were pleased with the service and locations and
15 extended hours that were provided by payday loan
16 services.

17 The Financial Consumer Agency of Canada
18 study showed that fewer than one (1) in ten (10) users of
19 payday loans reported having filed for bankruptcy. And
20 that was pretty close to my data, actually. But over one
21 (1) in ten (10) reported that they actually have borrowed
22 to repay their payday loan.

23 So my research questions are on the next
24 page. And I won't go into all of those, because I can't
25 discuss all of those here in the short period of time

1 that I have. And most of those involve all of the census
2 metropolitan areas that I surveyed, which were weighted
3 for the proportion of the total sample that they
4 encompassed.

5 The -- slide 6 -- and if I'd known that
6 was all you were going to have, I would have made them a
7 little larger -- but shows the incidence of payday loans
8 in the files.

9 And on the top there's the summary
10 administrations, which are the straight bankruptcies, and
11 then the Division 2 proposals, which are the ones that
12 consumers pay back over a period of time.

13 And you can see that Winnipeg -- which of
14 course I did in brighter font which, now on your paper
15 turns out to be not readable -- is -- for both of the
16 years surveyed had the highest number of payday loans in
17 both the summary administration files and the Division 2
18 proposal files, considerably higher than any other census
19 metropolitan area in Canada.

20 So 20.4 percent of the files contained
21 payday loans in 2005 and 23.7 in 2006. I couldn't use
22 the data before that. There weren't enough e-filed forms
23 before 2005 to be able to use that. I wanted to use a
24 little bit longer sample time.

25 The sample for the study was selected

1 randomly from records, so throughout the year they
2 weren't just picked in one particular time. And the
3 names of payday lenders, what we classified as the payday
4 lenders, were the ones included on the Statement of
5 Affairs Form, the Form 79.

6 These were primarily -- 80 percent of them
7 were members of the Canadian Payday Loan Association and
8 others that were identified by the Bankruptcy Office as
9 payday lenders. And we know there are many, many other
10 payday lenders that don't identify. Credit counsellors
11 tell us this, but we didn't have any record of those.

12 We asked Statistics Canada to give us a
13 list of payday lenders, but they refused to do that. So
14 -- so we've used the members of the CPLA and others that
15 were identified by the Office as payday lenders.

16 So the Winnipeg sample included three
17 hundred and twenty (320) files for each of the years of
18 2005 and 2006, those were the straight bankruptcies; and
19 a hundred and forty-four (144) files in 2005, that was
20 the payday loan files; and one hundred and twenty-eight
21 (128) in 2006, which were proposals. So those were the
22 ones that get paid back.

23 And incidentally in -- in all of the data,
24 including Winnipeg, there was really no difference
25 between proposals and summary administration bankruptcies

1 in the number of payday loans.

2 So the results from Winnipeg, just a few
3 of these that you might be interested in. Winnipeg had
4 the highest proportion of payday loans reported in all
5 seven (7) CMAs I surveyed.

6 In 2005 the number of payday loans held by
7 consumers range from one (1) to nine (9) in Winnipeg,
8 with the mean number of two point two seven (2.27) loans
9 held by one (1) person, a single payday lender. In 2006
10 the range was one (1) to seven (7) payday loans that
11 people held, with the mean of two point six two (2.62).
12 So most people had more than two (2) payday loans.

13 The dollar amount of payday loans held in
14 2005 in Winnipeg was an average of one thousand three
15 hundred and forty-seven dollars (\$1,347). And the range
16 was between twenty-five (25) and ten thousand dollars
17 (\$10,000), and you see a wide range.

18 And in 2006 it was a little less,
19 actually, one two eight seven (1,287). And the range was
20 between seventy-five (75) and sixty-five hundred dollars
21 (\$6,500).

22 And I looked at the -- the income, the
23 monthly income of bankrupts. In 2005 and 2006 Winnipeg
24 had the lowest incomes of any CMA in my survey. And I
25 looked at both the bankrupts mean monthly income and the

1 mean monthly income for the entire household. And you
2 could see those figures there.

3 In Winnipeg, therefore, insolvent
4 consumers with payday loans owed on average 80 to 82
5 percent of their monthly income to payday lenders. And
6 on a household income basis, they owed 57 percent of the
7 total household income to these loans. So you can see
8 it's pretty hard to operate your household if you owe
9 over 80 percent of your income to payday lenders, makes
10 it almost impossible to repay the payday loan.

11 Some of the statistically significant
12 results in my study, age -- and probably none of these
13 are -- are very revolutionary to you. But payday holders
14 are -- loan holders are significantly younger, more
15 likely to be single. And of course you have to be
16 employed to have a payday loan, so we had fewer -- well,
17 almost no disabled, students, people working doing
18 household work, or retired.

19 Monthly income was quite a bit higher for
20 pay -- significantly higher for payday loan holders than
21 it was for non-payday loan holders.

22 And some of the reasons for bankruptcy,
23 they were more likely to report gambling and addiction
24 problems and credit overuse as reasons for their
25 bankruptcy. They often had filed a previous bankruptcy

1 if they had a payday loan. And they went bankrupt with
2 lower debt-to-income ratios than other insolvents which,
3 you know, might be a good thing, because it probably
4 shortens the agony and misery of -- of waiting to go
5 bankrupt.

6 And they also have lower amounts of long-
7 term and short-term debt than other non-payday loan
8 holders.

9 So do payday loans contribute to
10 bankruptcy? Well, we know that from the literature and
11 from this survey about one (1) in ten (10) bankruptcies
12 includes a payday loan.

13 And if they were small loans, I think they
14 wouldn't exacerbate the consumers' financial situation,
15 because -- if they were truly a payday loan of one
16 hundred (100) or three hundred (300) or five hundred
17 dollars (\$500).

18 But since the average payday loan in the
19 study was over fifteen hundred dollars (\$1,500) and the
20 average number of loans held was over two (2), it's
21 unlikely that those could be repaid on the terms
22 expected, by the terms of the payday lender.

23 And payday loan holders went bankrupt
24 earlier than those without payday loans. And perhaps the
25 pressure of holding that amount of debt with -- with very

1 tight terms on when it should be paid back would be
2 encouraging to people to selee -- select some relief from
3 their situation through the route of declaring
4 bankruptcy.

5 So my thoughts -- and of course I'm -- I'm
6 only speaking for myself and my research. Although I
7 have been a member of the Consumers' Association and
8 still am a member of the Consumers' Association, I don't
9 speak for them or anyone other than myself and my study.

10 I've always found -- in reading literature
11 and my experience with wage and price controls, with
12 usury rates in the US -- that whenever you restrict
13 interest rates, the price of loans always goes to the
14 ceiling, even for the most credit-worthy borrower. So
15 whenever you restrict rates you do tend to get a pretty
16 sticky situation where -- where everyone goes to that
17 highest rate.

18 And I know the payday loan industry uses
19 the taxi analogy. And I -- I do see some worthiness in
20 that, that, you know, may people do need some instant
21 cash for a short-term loan, for taking a taxi from
22 Winnipeg to the University to Manitoba.

23 It's expensive for that small trip, but
24 you wouldn't take the taxi to go to -- to Brandon. And
25 they are useful in the short-term, not too expensive for

1 the short-term, and borrowers really like them.

2 But what I would like to see are
3 restrictions on the number of -- of loans carried at one
4 (1) time and the length of time that they are allowed to
5 be held.

6 An example is some Illinois legislation
7 which mandated that only one (1) payday loan should --
8 could be held at one (1) time, and it could not be rolled
9 over.

10 And I thought we had a fairly good model
11 in Manitoba. The drug -- the Pharmacy Information
12 Network, which when you go to take your prescription to
13 the pharmacist, ever -- all the data is online and they
14 can check to make sure that you haven't double doctored
15 or received the same prescription in a -- a period of
16 time.

17 And I thought perhaps some type of
18 database might be helpful so that we could check to see
19 how many payday loans people had and enforce the rule
20 that one (1) payday loan would have to be paid before
21 another payday loan was taken out.

22 So those are my thoughts, and I thank you
23 very much for allowing me to be here today. And the --
24 the full study, I'm sure you can get from the
25 Superintendent of Bankruptcy. It will probably be up on

1 the website some point, but it's early days yet, and --
2 and it -- it hasn't. And that's where you can find me.

3 THE CHAIRPERSON: Thank you, Professor
4 Berry. One (1) question.

5 In the first page of your slides here, and
6 your research questions, are they holding more short-term
7 debt than others?

8 Do they owe more than 25 percent of their
9 net monthly income to payday lenders?

10 PROFESSOR RUTH BERRY: You know, I only
11 did that on the total sample. I didn't do it on just
12 Winnipeg, because Winnipeg had -- some of the sales were
13 too small that I couldn't do that. But I can give you
14 that.

15 THE CHAIRPERSON: What was it on the
16 total sample?

17 PROFESSOR RUTH BERRY: It -- certainly
18 there was a large group that was holding more than 25
19 percent. I --

20 THE CHAIRPERSON: The selection is of the
21 group that went bankrupt, correct?

22 PROFESSOR RUTH BERRY: Either bankrupt or
23 proposal --

24 THE CHAIRPERSON: That's your survey,
25 bankrupt or proposal?

1 PROFESSOR RUTH BERRY: -- right. Yes.
2 They were all people who had either fed -- filed for
3 bankruptcy or had a consumer proposal.

4 Okay.

5

6 (BRIEF PAUSE)

7

8 PROFESSOR RUTH BERRY: 2005, 19 percent
9 of the insolvents with payday loans owed more than 25
10 percent of their monthly income to payday lenders, while
11 in 2006 the percentage increased to 25 percent of the
12 insolvents reaching this threshold.

13 Household monthly incomes were even more
14 severely impacted by payday loans, with 25 percent of
15 household monthly income in 2005 and twenty-nine point
16 five (29.5) in 2006 being owed to payday lenders.

17

18 (BRIEF PAUSE)

19

20 THE CHAIRPERSON: Again, this is of the
21 sample of the people who went bankrupt or made a
22 proposal?

23 PROFESSOR RUTH BERRY: Right. All my
24 data came from the depart -- from the Office of the
25 Superintendent of Bankruptcy.

1 MS. SUSAN PROVEN: Ms. Berry, I have a
2 question about the length of time.

3 You suggested that you wondered about how
4 long the loan should be taken out for. We've heard from
5 the industry that if the length of time is too long,
6 people tend to, maybe not forget about the loan, but it
7 goes on the back burner, so that, you know, it's not
8 pressing. It's not as pressing.

9 Do you feel the two (2) week loan is too
10 short a time? Is that -- do you have any thoughts on
11 what ideal time would be for households?

12 PROFESSOR RUTH BERRY: Mm-hm. Well, I'm
13 assuming that -- it depends when your payday is. And it
14 depends on the size of the loan, I think, a great deal.

15 But if there was some kind of -- you know,
16 the small loan -- what we think of as payday loans, we
17 don't think of fifteen hundred dollar (\$1,500) loans as
18 payday loans, or the large proportion of your paycheque
19 being a payday loan. And obviously it isn't one (1);
20 it's two (2) or three (3).

21 But I think for what we would think of as
22 a normal payday loan, which would be some percentage of
23 your paycheque, then the two (2) week -- if you're paid
24 on a two (2) week basis, or monthly, would be reasonable.

25 And I think -- you know, avoiding the

1 rollovers, because those are the -- what makes the loan
2 so costly to the consumer and also, I guess, profitable
3 to the industry, because there are less charges for
4 rolling it over with -- since a lot of the administration
5 has been absorbed all ready in the original setting up of
6 the loan.

7 MS. SUSAN PROVEN: Thank you.

8 THE CHAIRPERSON: Thank you very much for
9 coming. We appreciate your --

10 PROFESSOR RUTH BERRY: Thanks.

11 THE CHAIRPERSON: -- your information.
12 Thank you.

13 MS. ANITA SOUTHALL: For the record, I
14 wanted to introduce one (1) further exhibit. And this is
15 a letter which has been received from the Insurance
16 Council of Manitoba, dated December 11, 2007,
17 specifically from Aaron Pearson, P-E-A-R-S-E -- pardon
18 me, S-O-N, Assistant General Manager of the Insurance
19 Council, directed to the Board.

20 And this is a response to inquiry that
21 I made to the Insurance Council on behalf of the Board
22 with respect to the role of the Insurance Council in
23 regulation of creditor insurance.

24 And I'll -- pardon me, we will mark that
25 as PUB-27 for the record.

1 THE CHAIRPERSON: Thank you.

2

3 --- EXHIBIT NO. PUB-27: Letter received from the
4 Insurance Council of
5 Manitoba, dated December 11,
6 2007, specifically from Aaron
7 Pearson, a response to
8 inquiry made to the Insurance
9 Council on behalf of the
10 Board with respect to the
11 role of the Insurance Council
12 in regulation of creditor
13 insurance

14

15 MS. ANITA SOUTHALL: That -- the letter
16 will be available for circulation to the Interveners and
17 counsel and any interested parties as it forms part of
18 the record. I just want to note the second paragraph of
19 the letter, which says:

20 "With respect to regulation of the
21 providers of creditor insurance, the
22 enrollment in a creditor insurance
23 program is not currently an activity
24 for which an insurance agent licence is
25 required or administered by the

1 did, I've --

2 THE CHAIRPERSON: Thank you.

3 STAFF SERGEANT LARRY LEVASSEUR: -- been
4 following it a little bit.

5 THE CHAIRPERSON: Okay. We just have a
6 few questions for you that we would appreciate your
7 responses to.

8 Has the Winnipeg Police Service
9 investigated any complaints related to a breach of
10 Section 347 of the Criminal Code?

11 STAFF SERGEANT LARRY LEVASSEUR: As a
12 supervisor of the Winnipeg Police Service, Commercial
13 Crime Unit, since April of 2005, I have had occasion to
14 oversee one (1) of two (2) investigations completed by
15 the unit. I can tell you that in both instances charges
16 were authorized by the Attorney General's office to
17 proceed.

18 The first came -- the first case came to
19 the unit's attention in the summer of 2001 by form of a
20 written letter by a small claims hearing officer who
21 felt, upon review of several claims submitted by Money
22 Instantly Services on people who had defaulted of
23 repayment of these loans, that the company was actually
24 charging criminal rates of interest.

25 The investigation required the services of

1 an actuary who calculated the interest being charged was
2 in the area of 10,000 percent. The company's principal
3 was ultimately charged but died unexpectedly in the fall
4 of 2003, prior to the matter proceeding to preliminary
5 inquiry.

6 The second case was a proactive
7 investigation by the unit, as no findings of culpability
8 had been made in the first matter, and the industry
9 appeared to be flourishing in the city of Winnipeg.

10 This matter commenced in the fall of 2004
11 and focused on Paymax (phonetic) Canada Incorporated.
12 Again, the services of a secondary actuary were used, and
13 the findings mirrored that of the first investigation.
14 By the end of 2005 charges were authorized by the
15 Attorney General's office, and in early 2006 they were
16 criminally charged.

17 By May of 2007 an agreement was reached
18 between Crown and defence counsel, which resulted in a
19 stay of proceedings against the two (2) principals of
20 Paymax, but the corporation entered a guilty plea to
21 criminal rates of interest.

22

23

(BRIEF PAUSE)

24

25

THE CHAIRPERSON: So I think you have

1 answered the other question. So the police service acts
2 on such allegations?

3 STAFF SERGEANT LARRY LEVASSEUR: Yes, in
4 those two (2) instances.

5 THE CHAIRPERSON: Are you aware of any
6 lending activities in Winnipeg that involves rates in
7 excess of 60 percent per annum, other than payday
8 lending?

9 STAFF SERGEANT LARRY LEVASSEUR: No, I am
10 not, I'm not aware of that. The criminal code requires
11 that an actuary be used to figure out the criminal -- the
12 -- the rates of interest actually being charged. And in
13 those two (2) cases we employed two (2) different
14 actuaries to -- to make those findings for us.

15 THE CHAIRPERSON: Are you aware of any
16 monitoring of pawn shops related to their lending
17 practices?

18 STAFF SERGEANT LARRY LEVASSEUR: The pawn
19 unit actually falls outside of my area of responsibility.
20 And I -- I would encourage you to contact the supervisor
21 of the pawn unit.

22 THE CHAIRPERSON: Thank you. Are you
23 aware of any lending in the city that would be considered
24 loan sharking?

25 STAFF SERGEANT LARRY LEVASSEUR: To me,

1 loan sharking really conjures up visions of gangsters and
2 back alley exchanges and -- and over threats of violence
3 for recouping monies loaned.

4 Having said that, the Provincial Judges
5 Court in the Paymax Canada Incorporated file recognized
6 that that business was charging criminal rates of
7 interest.

8 THE CHAIRPERSON: So then you are not
9 aware of any active lending that is involved with threats
10 and violence and things of those particular nature?

11 STAFF SERGEANT LARRY LEVASSEUR: I would
12 suggest that that goes, probably, largely unreported, if
13 at all, to police. I can tell you in the drug culture
14 that there are many lines of credit extended. But again,
15 those -- those types of things are not reported to us.

16 THE CHAIRPERSON: Thank you very much, we
17 appreciate your attendance.

18 STAFF SERGEANT LARRY LEVASSEUR: You're
19 welcome.

20 THE CHAIRPERSON: The information helps
21 us, thank you.

22

23

(WITNESS STANDS DOWN)

24

25

(BRIEF PAUSE)

1

2 MS. ANITA SOUTHALL: Mr. Chairman,
3 members of the panel, we also have in attendance today to
4 testify Mr. Norman Glass of the Manitoba pawn brokers
5 Association. And so I'll just ask Mr. Glass to come
6 forward and be seated near a microphone so that he may be
7 sworn.

8 And again, the panel, I understand, has
9 some questions of him with respect to matters related to
10 small loans and pawn broking. Thank you.

11 THE CHAIRPERSON: Welcome, Mr. Glass.
12 Mr. Gaudreau...?

13

14 NORMAN GLASS, SWORN

15

16 THE CHAIRPERSON: Thank you for
17 attending. To begin with, would you kindly indicate your
18 involvement and responsibilities with respect to pawn
19 shops?

20 MR. NORMAN GLASS: My involvement is that
21 I'm the President of the Manitoba pawn brokers
22 Association. I've been active in it for almost twenty-
23 five (25) years.

24 THE CHAIRPERSON: And you are an owner of
25 pawn shops too, are you not?

1 MR. NORMAN GLASS: That's correct.

2 THE CHAIRPERSON: We asked you to come,
3 basically, so that we could have the opportunity to
4 better understand the rudiments of pawning so that we
5 could put the practice in a broader context. That is why
6 we asked.

7 To begin with, are there any laws,
8 regulations, or licensing requirements regulating the
9 fees or interests that are charged by pawn shops?

10 MR. NORMAN GLASS: Not -- not that I'm
11 aware of. Over the years, my understanding is that they
12 -- they have a criminal interest rate of 60 percent per
13 annum.

14 However, it's my understanding that these
15 laws were originally developed to protect society against
16 the gangsterism that we spoke about earlier with the
17 police officer.

18 It -- my understanding is that it -- it
19 exists, but it hasn't -- hasn't been enforced over the
20 pawn brokers or other similar industries.

21 THE CHAIRPERSON: Do pawn shops make
22 loans?

23 MR. NORMAN GLASS: Well I guess you
24 consider each transactions of ours a loan.

25 THE CHAIRPERSON: I sort of mean an

1 unsecured loan, one that isn't secured by someone pawning
2 something.

3 MR. NORMAN GLASS: We do not.

4 THE CHAIRPERSON: Do not do that. So
5 then you do not make payday loans in the sense that
6 payday lenders make them where there is no basic security
7 other than the promise to pay it?

8 MR. NORMAN GLASS: I understand some
9 shops are doing so, but I -- I'm not aware of the
10 ongoings.

11 THE CHAIRPERSON: So you do not know what
12 rates that they may be charging, whether they would be
13 equivalent to what the payday lenders are doing?

14 MR. NORMAN GLASS: No, I don't know.

15 THE CHAIRPERSON: Just to help us in our
16 understanding, with respect to a pawn, what's the charge
17 to reclaim the merchandise, and how long does a person
18 have?

19 MR. NORMAN GLASS: The pawns are
20 generally one (1) month. The charges will relate to the
21 item. Generally, they represent a 5 percent interest
22 charge and a storage charge related to the item itself.

23 THE CHAIRPERSON: How much would the
24 storage charge be, in rough terms? Like percentages?

25 MR. NORMAN GLASS: In rough terms, it

1 generally equates to about 25 percent, the overall
2 charges.

3 THE CHAIRPERSON: The overall together is
4 25 percent?

5 MR. NORMAN GLASS: That's right, yes.

6 THE CHAIRPERSON: Including the five --

7 MR. NORMAN GLASS: That's correct.

8 THE CHAIRPERSON: Okay. Can a pawn be
9 extended? You say they have a month to reclaim it.

10 MR. NORMAN GLASS: Yes.

11 THE CHAIRPERSON: Is there extensions
12 involved?

13 MR. NORMAN GLASS: Well you extend or
14 renew the pawn.

15 THE CHAIRPERSON: Oh.

16 MR. NORMAN GLASS: You -- it's just like
17 basically, effectively picking the pawn up, and then re-
18 pawning it again.

19 THE CHAIRPERSON: So that the same 30
20 percent would be applied at that point?

21 MR. NORMAN GLASS: No, 25 percent.

22 THE CHAIRPERSON: Oh, I see. Not --
23 twenty-five (25), okay.

24 MR. NORMAN GLASS: It would be like -- it
25 would be a new transaction.

1 THE CHAIRPERSON: A new transaction,
2 okay.

3 Just roughly, again, what percentage of
4 merchandise pawned is not reclaimed?

5 MR. NORMAN GLASS: Not reclaimed? I
6 would say that seventy-five (75) to 80 percent is
7 claimed.

8 THE CHAIRPERSON: Just --

9 MR. NORMAN GLASS: I -- I -- often I
10 think that the -- the term is misunderstood. The term
11 "pawn," I think if you -- by dictionary definition it's a
12 collateral loan. By street definition, it might be, I'm
13 just pawning it off on somebody.

14 So the -- the -- people misunderstand the
15 term, and think they're selling it, when they in -- you
16 know, the -- those items that are not picked up, I -- I
17 believe that the people who brought them in initially had
18 never intended to pick them up, because of their
19 misunderstanding of the term "pawn."

20 THE CHAIRPERSON: They considered it was
21 a sale, basically?

22 MR. NORMAN GLASS: Exactly, yes.

23 THE CHAIRPERSON: But 75 to 80 percent of
24 the time, the person does come back and --

25 MR. NORMAN GLASS: Yes.

1 THE CHAIRPERSON: -- pay the fee and
2 collect.

3 Just a general question, how can the pawn
4 shop be assured that the merchandise being pawned is
5 owned by the person that is pawning?

6 MR. NORMAN GLASS: Well, there's no
7 assurances. Often we -- you know, if you do it long
8 enough, you get a feel for your customers, and it's a gut
9 thing. It's not something that's -- I mean, if you're
10 taking in a vehicle, they produce documentation that
11 would --

12 THE CHAIRPERSON: Right, right.

13 MR. NORMAN GLASS: -- like a registration
14 or something of that nature. However, if they bring in a
15 DVD player, there's no title that goes along with it. So
16 it's a -- it's a bit of a crapshoot for the pawn broker.

17 THE CHAIRPERSON: Right. I do not know
18 whether you said in jest or you were serious. Someone
19 pawn a vehicle?

20 MR. NORMAN GLASS: Oh, often, yes. Yeah,
21 it's quite -- it's not uncommon.

22 THE CHAIRPERSON: Not uncommon. Just a
23 general question.

24 Are pawn shop volumes growing?

25 MR. NORMAN GLASS: No, actually I think

1 the payday loan industry has cut into our business a
2 little bit.

3 THE CHAIRPERSON: That was the question.
4 I was wondering whether the business had been affected by
5 payday lenders.

6 MR. NORMAN GLASS: Oh, I think it has
7 been, yes.

8 THE CHAIRPERSON: Thank you very much for
9 attending. We appreciate your comments and forthcomings.

10 MR. NORMAN GLASS: My pleasure. Thank
11 you.

12 THE CHAIRPERSON: Thank you.

13 Okay, Ms. Southall, we are back to the
14 regular agenda.

15 MS. ANITA SOUTHALL: Thank you, and thank
16 you, Mr. Glass. You're permitted to leave now, and --
17 and we appreciate your attendance.

18 Now I believe we have the return of the
19 Coalition panel, so we'll give them a moment to take
20 their places.

21 MR. BYRON WILLIAMS: Yeah, and if I
22 might, Mr. Chairman. This is my fault. I had told Dr.
23 Simpson and Dr. Robinson that 10:00 would be just given
24 the presenters, so I apologize if there's an
25 inconvenience to the Board.

1 THE CHAIRPERSON: No problem. We were
2 more efficient than you probably expected. Okay. Well,
3 we will have our break then. We will come back shortly
4 after 10:00.

5

6 --- Upon recessing at 9:52 a.m.

7 --- Upon resuming at 10:05 a.m.

8

9 COALITION PANEL:

10

11 WAYNE SIMPSON, RESUMED

12 JOHN OSBORNE, RESUMED

13 JERRY BUCKLAND, RESUMED

14 ANITA FRIESEN, RESUMED

15 CHRIS ROBINSON, RESUMED

16

17 THE CHAIRPERSON: Okay, welcome back
18 everyone. Before we turn the mic over to Mr. Foran so he
19 can continue with his cross-examination, I just have a
20 followup question for Dr. Buckland.

21 Dr. Buckland, you were kind enough to
22 provide us this information on mortgage and non-mortgage
23 debt the other day -- which is Coalition Exhibit Number
24 30 I believe -- indicates that non-mortgage debt in 2005
25 was \$188 billion.

1 My question is: Do we know what exactly
2 this comprises? Like is it, you know, bank debt? Does
3 it include credit cards, lines of credit, all those
4 things, Citi Financial, Wells Fargo? I could go on and
5 on.

6 DR. JERRY BUCKLAND: There -- that number
7 is broken down into a variety of categories, including
8 credit card debt and several other categories, one of
9 which is "Other." And that would capture sort of the
10 residual. And I can certainly make that data available
11 to you.

12 THE CHAIRPERSON: Please. So you say
13 the other would include outfits like Wells Fargo and Citi
14 Financial and things like that?

15 DR. JERRY BUCKLAND: The -- the other is,
16 I think, not well defined. It's more a residual and,
17 therefore, would likely include some of those sub-prime
18 lenders.

19 Now if it's a credit card through Wells
20 Fargo or Citi Financial, that likely would be captured
21 under the credit card component.

22 THE CHAIRPERSON: Very good. Well we
23 will look forward to that, thank you.

24 DR. JERRY BUCKLAND: Okay.

25

1 --- UNDERTAKING NO. 85: Dr. Jerry Buckland determine
2 what the \$188 billion non-
3 mortgage debt from Coalition
4 Exhibit is comprised of

5

6 THE CHAIRPERSON: Mr. Foran...?

7

8 (BRIEF PAUSE)

9

10 MR. BYRON WILLIAMS: Mr. Chairman,
11 there's one (1) housekeeping matter I have to do for Mr.
12 Foran. And there were a couple of -- I'm not sure if I'd
13 call them undertakings. But there were a couple that we
14 have ready to respond to.

15 But given Dr. Simpson's limited time this
16 morning because he has to meet at -- he has to leave at
17 11:30 I believe, I'm going to hold off on those
18 undertakings until My Friend, Mr. Foran, has had his way
19 with Dr. Simpson.

20 THE CHAIRPERSON: It sounds like a wise
21 choice.

22 MR. BYRON WILLIAMS: And if you'll just
23 give me one second, I'll -- I'll do some housekeeping for
24 Mr. Foran.

25

1 (BRIEF PAUSE)

2

3 CONTINUED CROSS-EXAMINATION BY MR. ALLAN FORAN:

4 MR. ALLAN FORAN: Thank you, Mr.
5 Chairman, members of the Board. Good morning, Dr.
6 Simpson.

7 DR. WAYNE SIMPSON: Good morning.

8 MR. ALLAN FORAN: Yesterday in the
9 presentation of the Coalition evidence, Dr. Buckland read
10 a series of recommendations. Did you have input into
11 those recommendations, sir?

12 DR. WAYNE SIMPSON: I was -- the
13 recommendations were sent to me, and I -- I commented on
14 them, yes.

15 MR. ALLAN FORAN: Yes, and did you
16 approve of those recommendations?

17 DR. WAYNE SIMPSON: Generally speaking,
18 yes.

19 MR. ALLAN FORAN: Okay. And one (1) of
20 the recommendations, Dr. Simpson, was recommendation
21 Number 6, which was to improve access to mainstream
22 financial services for under- and unbanked.

23 Do you agree with that?

24 DR. WAYNE SIMPSON: It sounds like a
25 motherhood statement, yes.

1 MR. ALLAN FORAN: And it's one (1) of the
2 motherhood statements that -- that you approve of, sir?

3 DR. WAYNE SIMPSON: Yes.

4 MR. ALLAN FORAN: And that recommendation
5 is designed, as I understand it, to promote an
6 alternative to payday lending to payday lending
7 customers, correct?

8 DR. WAYNE SIMPSON: Yes. More choice is
9 better.

10 MR. ALLAN FORAN: And you would agree,
11 sir, that banks are an alternative to payday lenders?

12 DR. WAYNE SIMPSON: Yes. For loans?

13 MR. ALLAN FORAN: Yes.

14 DR. WAYNE SIMPSON: In -- in principle
15 they could be, yes.

16 MR. ALLAN FORAN: Yes, and one (1) of the
17 -- the reason I ask this, sir, is one (1) of the
18 questions that was asked by the Chairperson in your
19 original evidence is that you were asked to provide
20 comments on payday loan companies earning more than
21 banks' rate of returns.

22 Do you recall that discussion?

23 DR. WAYNE SIMPSON: I see where this is
24 going, yes.

25 MR. ALLAN FORAN: And in that response,

1 you -- you actually, to -- to my mind, didn't answer the
2 question.

3 And I think the question really was this:
4 When comparing payday loan companies, is it a fair
5 comparison to compare them to banks for the purposes of
6 rate of return?

7 And I have the transcript, and I'll tell
8 you that that's -- that's the question I perceived, but
9 the transcript indicates this -- and this is a direct
10 quote from you, Dr. Simpson. Your one (1) comment would
11 be that:

12 "No one has claimed that banking is a
13 competitive industry. In fact, it's --
14 it's an oligopoly by legislation."

15 Do you recall that response?

16 DR. WAYNE SIMPSON: If that is the
17 transcript, yes.

18 MR. ALLAN FORAN: So, if I could just
19 maybe go back to the Chairman's comment to you and maybe
20 put the question this way.

21 Given that one (1) of the recommendations
22 of the Coalition is to improve access to mainstream
23 financial banks, would you agree that banking rate of
24 returns would be a comparison that the Board could look
25 at for the purposes of payday loan operations as well?

1 DR. WAYNE SIMPSON: Yes, with the
2 understanding that it -- the Banking Act -- the Bank Act
3 does provide for some degree of what I would call
4 oligopoly power.

5 MR. ALLAN FORAN: Okay. Thank you. Is
6 it your view that the market for payday loans in Manitoba
7 can be characterized as oligo -- oligopolistic?

8 And now I'm -- now I'm going to struggle.
9 And I should just tell everybody that Dr. Simpson likely
10 taught me. I have a degree in economics, but he did such
11 a good job that I went to practising law. So if I
12 butcher the words, you'll jump right in.

13 The question being, sir: Is it your view
14 that Manitoba is characterised as oligopolistic?

15 DR. WAYNE SIMPSON: It has -- the -- the
16 industry has characteristics of an oligopoly, yes.

17 MR. ALLAN FORAN: And you'd agree with
18 me, sir, that an oligol -- oligopolistic market may be
19 characterised by competition, correct?

20 DR. WAYNE SIMPSON: It -- it may behave
21 competitively, yes.

22 MR. ALLAN FORAN: So the existence of
23 market concentration does not preclude competition, even
24 on price, correct?

25 DR. WAYNE SIMPSON: No.

1 MR. ALLAN FORAN: You disagree with me?

2 DR. WAYNE SIMPSON: I said no. It -- I
3 agree with you.

4 MR. ALLAN FORAN: Okay. Thank you. You
5 haven't identified any evidence on collusion on pricing
6 in the Manitoba marketplace yourself, have you, sir?

7 DR. WAYNE SIMPSON: No. I've -- I've in
8 fact invited others to suggest evidence that there is
9 price competition.

10 MR. ALLAN FORAN: Okay. And that --
11 that's your conclusion. You believe there is price
12 competition?

13 DR. WAYNE SIMPSON: No, I don't believe
14 there is, and I'm looking for evidence that there is.

15 MR. ALLAN FORAN: If there was collusion,
16 you would expect the two (2) largest players in the
17 industry to charge very similar prices, correct?

18 DR. WAYNE SIMPSON: Some models would
19 predict that, yes.

20 MR. ALLAN FORAN: And are those models
21 models that you use when you teach economics at the
22 University of Manitoba, sir?

23 DR. WAYNE SIMPSON: Well, there are
24 various models of oligopoly which involve strategic
25 behaviour, where firms typically would -- would typically

1 have different prices at any point in time. But -- well,
2 I'll leave it at that.

3 MR. ALLAN FORAN: So -- so generally
4 though, you don't disagree with me that that's one (1)
5 indicia, or one (1) sign of collusion, and that's price
6 collusion? Charging the same or similar pricing?

7 DR. WAYNE SIMPSON: When you say
8 collusion, I'm -- I've not implied that there is any form
9 of implicit or explicit collusion between the companies.
10 There may be strategic behaviour by
11 companies that have a dominate market share, which make
12 it difficult for other firms to compete.

13 MR. ALLAN FORAN: But you haven't
14 included in the evidence that you prepared -- which I
15 understand is Section 3, primarily, of the Coalition's
16 evidence of September 17th.

17 You haven't included any suggestion that
18 that's taking place in the Manitoba marketplace, have
19 you?

20 DR. WAYNE SIMPSON: What is Section 3's
21 title?

22 MR. ALLAN FORAN: "Who are Payday Loan
23 Clients?" I -- I -- and I'm sorry, maybe I missed it,
24 but that's the only section I understand that you
25 participated in.

1 DR. WAYNE SIMPSON: The -- the discussion
2 of market structure comes out of -- primarily out of the
3 rebuttal material. "The Supply Side of Payday Lending in
4 Manitoba" response to Intervenor's reports 30 October,
5 '07, would be the primary source of that, which I did
6 participate in.

7 MR. ALLAN FORAN: Okay. And then maybe
8 my question --

9 DR. WAYNE SIMPSON: Though not the
10 exclusive author of.

11 MR. ALLAN FORAN: Okay. Appreciate that.
12 Then maybe I'll just direct your attention to that
13 document then, the rebuttal.

14 Do you suggest in there that there is
15 strategic or tactical coordination between the two (2)
16 largest payday loan operators in Manitoba to fix prices
17 somehow?

18 DR. WAYNE SIMPSON: No.

19 MR. ALLAN FORAN: In your rebuttal
20 evidence, sir, that you just referred to and that's the
21 evidence that was filed, I believe, dated October 31st,
22 you take the position that price dispersion in the
23 Manitoba marketplace is an indication that there's no
24 meaningful price competition amongst payday lenders;
25 correct?

1 DR. WAYNE SIMPSON: That wouldn't be my
2 words, no.

3 MR. ALLAN FORAN: You participated in the
4 preparation of the rebuttal evidence?

5 DR. WAYNE SIMPSON: Yes, I did.

6 MR. ALLAN FORAN: And do you disagree
7 with that statement?

8 DR. WAYNE SIMPSON: I would phrase it
9 differently, yes.

10 MR. ALLAN FORAN: Okay. Perhaps phrase
11 it for me differently.

12 DR. WAYNE SIMPSON: I think the -- the
13 price dispersion suggests that the -- the information
14 consumers have make it difficult for them to determine
15 what the costs of loans are and the choices they're
16 making are not as much on price as I would like to see in
17 a competitive market.

18 MR. ALLAN FORAN: Does any part of the
19 conclusions on price dispersion depend on whether the
20 product is homogenous or not?

21 DR. WAYNE SIMPSON: One would think that
22 the more homogenous the product -- the -- the lower the
23 degree of price dispersion because price dispersion would
24 have two (2) elements: One would be some strategic
25 behaviour by firms in the market to which consumers would

1 respond, in other words, they would sometimes take higher
2 prices from one firm than another; and the other would be
3 differences because the -- the product differs.

4 MR. ALLAN FORAN: And in your view payday
5 loans are, and I'll paraphrase, I think you said this was
6 a simple business and these were homogenous products that
7 are being offered?

8 DR. WAYNE SIMPSON: I don't think I used
9 the word "simple," I think I said it was relatively
10 straightforward as -- at first glance because a loan is
11 simply -- you get money now and you promise to repay
12 later.

13 MR. ALLAN FORAN: Okay. And I -- I
14 think, I've got a couple of follow-up questions on that.
15 Is that, from my perspective anyway, if we apply that
16 same definition to a bank, does that apply to a bank as
17 well offering money --

18 DR. WAYNE SIMPSON: Yes.

19 MR. ALLAN FORAN: -- now?

20 DR. WAYNE SIMPSON: Yes.

21 MR. ALLAN FORAN: You'd agree?

22 DR. WAYNE SIMPSON: Mm-hm.

23 MR. ALLAN FORAN: Okay. And in terms of
24 the homogenous product, so apart from whether this is a
25 reasonably straightforward business or not, you'd agree

1 that the product being offered is homogenous?

2 DR. WAYNE SIMPSON: Yes.

3 MR. ALLAN FORAN: And the result of that
4 is that because there is a price dispersion you allocate
5 the dispersion to consumer understanding?

6 Is that what I take your evidence to be?

7 DR. WAYNE SIMPSON: I think that's one
8 (1) possible explanation, yes.

9 MR. ALLAN FORAN: And many of the
10 recommendations that are made by the Coalition's panel
11 that we have before us relate to access to information,
12 correct?

13 DR. WAYNE SIMPSON: Yes, that's correct.

14 MR. ALLAN FORAN: And the theory is that
15 the more information that's available to the consumer,
16 the more the consumer can then go to the payday loan
17 company that's offering the homogenous product at the
18 lowest price, correct?

19 DR. WAYNE SIMPSON: In theory, yes.

20 MR. ALLAN FORAN: And do you understand,
21 sir, that the regulations that have been passed by the
22 province of Manitoba that will come into effect do
23 standardize information that must be disclosed to
24 consumers?

25 DR. WAYNE SIMPSON: Yes.

1 MR. ALLAN FORAN: And in your --

2 DR. WAYNE SIMPSON: To some degree.

3 MR. ALLAN FORAN: To some degree.

4 DR. WAYNE SIMPSON: Yes.

5 MR. ALLAN FORAN: And --

6 DR. WAYNE SIMPSON: Which I -- I would --
7 I would approve of as -- as one (1) step, yes.

8 MR. ALLAN FORAN: Okay. And so -- so you
9 agree with those?

10 DR. WAYNE SIMPSON: Yes.

11 MR. ALLAN FORAN: Now in terms of
12 differentiation of product, I just want to understand,
13 you've indicated that from -- from your perspective this
14 is a homogenous product. Is there no way, however, that
15 the payday loan companies can differentiate themselves by
16 way of, for example, service?

17 Is that not a significant factor in
18 pricing?

19 DR. WAYNE SIMPSON: Yes, of course. And
20 -- and so can banks.

21 MR. ALLAN FORAN: Okay. And so again the
22 analogy to banks and payday lenders it's something that
23 you would expect to see, service, hours of operation and
24 convenience, correct?

25 DR. WAYNE SIMPSON: You would -- you

1 would expect that -- that firms would compete in all
2 dimensions and the two (2) specific dimensions are price
3 and non-price from an economist standpoint to focus on
4 the fact that price competition is important to all
5 being.

6 MR. ALLAN FORAN: And I -- I hope to boil
7 this down to -- to simplicity in a moment but how about
8 risk? How about a risk profile that a customer may have
9 that would induce a payday lender to lend or not lend.

10 Would that be a differentiation between
11 different payday loan providers? Could -- could you
12 comment on that?

13 DR. WAYNE SIMPSON: I -- I think there is
14 -- there is some -- some degree of difference there, yes.

15 MR. ALLAN FORAN: Repayment terms as
16 well? Some payday loans are --

17 DR. WAYNE SIMPSON: Repayment terms in
18 terms of price?

19 MR. ALLAN FORAN: Length. Say --

20 DR. WAYNE SIMPSON: Twelve (12) days
21 versus fourteen (14)?

22 MR. ALLAN FORAN: Sure or months.

23 DR. WAYNE SIMPSON: There -- there would
24 be some differences then in loan length, sure.

25 MR. ALLAN FORAN: So for all those things

1 we just described and -- and if you disagree with me,
2 you'll let me know of course, but customer service, hours
3 of operation, repayment terms, risk profiling, risk
4 profiles on lending criteria, those could all be factors
5 that relate to price dispersion and explain why there
6 might be a price dispersion in the Winnipeg marketplace?

7 DR. WAYNE SIMPSON: Yes, they could.
8 Although the price dispersion that was specifically
9 discussed was for a specific amount of a loan over a
10 specific period of time.

11

12 (BRIEF PAUSE)

13

14 MR. ALLAN FORAN: Okay, I'd like to refer
15 you to page 32 of the -- the original evidence if I could
16 for a moment. And that's the evidence of September 17th.

17 DR. WAYNE SIMPSON: Okay.

18 MR. ALLAN FORAN: And again, this is the
19 section I believe we started at section -- this is
20 contained in -- in Section 3 which is what I understand
21 from your counsel's opening comments was a section that
22 you participated in preparing, sir?

23 DR. WAYNE SIMPSON: Yes.

24 MR. ALLAN FORAN: Now, is it your
25 evidence that only the FCAC survey provides information

1 on the frequency of the use of payday loans in Canada?

2 DR. WAYNE SIMPSON: To this point, yes.

3 MR. ALLAN FORAN: And in your view that
4 survey supports the conclusion that 25.9 percent of
5 payday loan borrowers use the service at least twelve
6 (12) times per year, correct?

7 DR. WAYNE SIMPSON: Yes, there's --
8 there's a bit of ambiguity in the questions but that's
9 how I've interpreted it, yes.

10 MR. ALLAN FORAN: And that, just for the
11 purpose of reference to the Board and to the panel that's
12 contained in figure 4 as well, that's what we're talking
13 about in terms of frequency of use?

14 DR. WAYNE SIMPSON: Yes.

15 MR. ALLAN FORAN: You've noted that the
16 survey, the FCAC survey, does not distinguish payday
17 loans from cheque cashing services, correct?

18 DR. WAYNE SIMPSON: That's correct, yes.

19 MR. ALLAN FORAN: And so the 25.9
20 percentage figure of frequent use represents people who
21 use payday loans but not cheque cashing services, people
22 who use cheque cashing services but not payday loans as
23 well as people that may use both, correct?

24 DR. WAYNE SIMPSON: That's correct.

25 MR. ALLAN FORAN: And in fact the final

1 report of the FCAC survey states that users of the
2 services are more than twice as likely to report using
3 cheque cashing services than payday loan services,
4 correct?

5 DR. WAYNE SIMPSON: That may be in their
6 report, yes.

7 MR. ALLAN FORAN: Okay. And subject to
8 check, you -- if you can just -- my understanding is it
9 is and if your information is that that's not the case,
10 you'll just let me know.

11 The conclusion of the authors of the FCAC
12 report is that the use of payday loans and cheque cashing
13 services tends to be infrequent, correct?

14 DR. WAYNE SIMPSON: Seventy-five percent
15 don't do it twelve (12) times a year, if that's
16 infrequent.

17 MR. ALLAN FORAN: I'm just talking to
18 their conclusions. That's their conclusion, correct?

19 DR. WAYNE SIMPSON: Without further
20 elaboration, that's their conclusion, yes.

21 MR. ALLAN FORAN: Yes, thank you. And in
22 fact on page 15 of the report, it's indicated that among
23 the respondents who had used a cheque cashing outlet or a
24 payday loan company, 57 percent reported having used
25 cheque cashing services and only 25 percent reported

1 using payday loan services, correct?

2 DR. WAYNE SIMPSON: I'll take that as
3 true, yes.

4 MR. ALLAN FORAN: Okay.

5 DR. WAYNE SIMPSON: As correct from their
6 report, yes.

7

8 (BRIEF PAUSE)

9

10 MR. ALLAN FORAN: Now, as I understand
11 it, during your presentation you referred to the FCAC
12 survey for some data concerning the consequences of
13 payday loans in terms of bankruptcy, credit counselling,
14 and borrowing money to repay the payday loan.

15 That data in fact comes from Question 8 of
16 the FCAC survey, correct?

17 DR. WAYNE SIMPSON: Just a moment,
18 please.

19 MR. ALLAN FORAN: And if it helps, the
20 FCAC survey is contained at Tab 64 and it's
21 CPLA/COALITION-1-64 and I'm referring specifically to
22 page 29, sir.

23 DR. WAYNE SIMPSON: Okay.

24

25 (BRIEF PAUSE)

1 DR. WAYNE SIMPSON: Yes. Okay. Which
2 question? Number 8? Yes, okay.

3 MR. ALLAN FORAN: Okay.

4

5 (BRIEF PAUSE)

6

7 DR. WAYNE SIMPSON: Yes.

8 MR. ALLAN FORAN: And so your
9 conclusions, in effect, come from the data that's
10 contained in Question 8, correct?

11 DR. WAYNE SIMPSON: I've replicated that
12 result, yes.

13 MR. ALLAN FORAN: And just to be clear,
14 that question did not ask whether respondents attributed
15 the bankruptcy or credit counselling experience to the
16 fact they'd taken out a payday loan, correct?

17 DR. WAYNE SIMPSON: No.

18 MR. ALLAN FORAN: When you say "no" is
19 that in agreement with me?

20 DR. WAYNE SIMPSON: That is in agreement
21 with you, yes.

22 MR. ALLAN FORAN: Thank you. And the
23 FCAC report does not draw a causal connection between
24 payday loans and bankruptcy, correct?

25 DR. WAYNE SIMPSON: No, it does not.

1 MR. ALLAN FORAN: And you haven't done
2 any separate investigation to determine if there's any
3 causal link, have you?

4 DR. WAYNE SIMPSON: No.

5 MR. ALLAN FORAN: Now, the base sample
6 for Question 8 consisted of eighty-nine (89) respondents,
7 correct?

8 DR. WAYNE SIMPSON: That's the number in
9 front of us, yes.

10 MR. ALLAN FORAN: And from the material
11 you reviewed, are you able to tell us how many of those
12 eighty-nine (89) respondents came from Manitoba?

13 DR. WAYNE SIMPSON: No.

14 MR. ALLAN FORAN: Now, page 15 of the
15 FCAC report...

16

17 (BRIEF PAUSE)

18

19 DR. WAYNE SIMPSON: Yes?

20 MR. ALLAN FORAN: At the very bottom,
21 sir, of that report it suggests that 41 percent of the
22 eighty-nine (89) respondents we just referred to were
23 from Saskatchewan or Manitoba; do you see that?

24 DR. WAYNE SIMPSON: Yes.

25 MR. ALLAN FORAN: And by our calculations

1 that would mean that approximately thirty-six (36) or
2 thirty-seven (37).

3 DR. WAYNE SIMPSON: Mm-hm.

4 MR. ALLAN FORAN: And I'll give you the
5 thirty-seven (37) --

6 DR. WAYNE SIMPSON: Yes.

7 MR. ALLAN FORAN: -- respondents came
8 from either one of those two (2) provinces; do you agree
9 with me?

10 DR. WAYNE SIMPSON: Yes.

11 MR. ALLAN FORAN: You've read the
12 transcripts of the evidence that's been adduced on behalf
13 of CPLA, sir?

14 DR. WAYNE SIMPSON: Yes, I have, yes.
15 I've tried to read it all.

16 MR. ALLAN FORAN: And -- okay. And
17 you're aware that one (1) of the pieces of evidence that
18 was produced was a Pollara survey? Are you aware of
19 that, sir?

20 DR. WAYNE SIMPSON: Right, yes.

21 MR. ALLAN FORAN: And that contained a
22 much larger sample of Manitoba payday loan customers than
23 that referred to in the FCAC report, correct?

24 DR. WAYNE SIMPSON: Yes, it did.

25 MR. ALLAN FORAN: And you'd agree with me

1 that -- that the Pollara sample would be much more
2 statistically relevant as a result because it focussed on
3 the Manitoba marketplace?

4 DR. WAYNE SIMPSON: Did it not survey
5 CPLA members?

6 MR. ALLAN FORAN: Yeah, and perhaps you
7 could explain to me why there'd be a distinction between
8 CPLA payday loan customers and payday loan customers
9 generally?

10 DR. WAYNE SIMPSON: I don't know that
11 there would or wouldn't. I'd want to know the evidence.
12 I -- remember earlier there was a -- a question about why
13 in the mapping CPLA and non CPLA members were
14 distinguished. I would think that information that
15 distinguishes between them would be useful but you seemed
16 to take issue with that at the time.

17 MR. ALLAN FORAN: Okay. And -- and
18 again, just -- I want to come back to the question and --
19 and focus on the question and maybe I'll put it a
20 different way.

21 You've got no evidence to suggest that by
22 virtue of the fact the Pollara survey related to CPLA
23 borrowers, that there's anything that's not statistically
24 relevant as a result of that, do you?

25 DR. WAYNE SIMPSON: The CPLA borrowers,

1 are you saying that they are borrowing from a cross-
2 section of all providers?

3 MR. ALLAN FORAN: I'm saying you don't
4 have any evidence that it's not the case, do you, sir?

5 DR. WAYNE SIMPSON: I don't have any
6 evidence that it's not the case, no.

7 MR. ALLAN FORAN: And just -- maybe just
8 to go at this one (1) more way.

9 You'd agree that having more people in a
10 sample that used payday loan facilities from Manitoba,
11 rather than less, would give you better results, correct?

12 DR. WAYNE SIMPSON: If it were drawn in a
13 fashion that led me to believe that the sample was
14 representative of the general population and payday loan
15 users, such as for example the survey of Financial
16 Security.

17 MR. ALLAN FORAN: Sure, and in fact, I
18 think part of your evidence too, when we looked at it,
19 actually included a previous CPLA survey, did it not?

20 DR. WAYNE SIMPSON: I drew comparisons
21 between it -- the FCAC survey, and the survey of
22 Financial Security by Stats Can, yes.

23 MR. ALLAN FORAN: Correct -- correct, and
24 as part of your evidence, you used a previous CPLA
25 survey?

1 DR. WAYNE SIMPSON: That's correct.

2 MR. ALLAN FORAN: And there's an update
3 focus survey on Manitoba marketplace that is in evidence
4 now. You're aware of that?

5 DR. WAYNE SIMPSON: It is now in
6 evidence, yes.

7 MR. ALLAN FORAN: And that was in
8 evidence prior to preparing your rebuttal, sir?

9 DR. WAYNE SIMPSON: Yes.

10 MR. ALLAN FORAN: And the rebuttal does
11 not deal with that, does it?

12 DR. WAYNE SIMPSON: No.

13 MR. ALLAN FORAN: If I could, I'd like to
14 take five (5) minutes.

15 THE CHAIRPERSON: Very good.

16

17 --- Upon recessing at 10:30 a.m.

18 --- Upon resuming at 10:38 a.m.

19

20 THE CHAIRPERSON: Welcome back.

21 Mr. Foran...?

22 MR. ALLAN FORAN: Thank you very much.

23 I've had a chance to review my notes. Dr. Simpson, I
24 appreciate your -- your answers that you've provided. I
25 have no further questions of you. Thank you, sir.

1 DR. WAYNE SIMPSON: Okay. Thank you.

2 MR. BYRON WILLIAMS: Mr. Chairman, just -
3 - just in terms of Dr. Simpson's schedule, and I'm not
4 sure how long Mr. Foran will take with the rest of the
5 panel, but he does have an appointment at the University
6 that I think I've dragged him away from all ready this
7 morning, so if he might be excused with the permission
8 of --

9 MR. ALLAN FORAN: Yes.

10 THE CHAIRPERSON: Okay. That's fine.
11 Thank you, Dr. Simpson. See you another date.

12

13 (WAYNE SIMPSON RETIRES)

14

15 CONTINUED BY MR. ALLAN FORAN:

16 MR. ALLAN FORAN: Ms. Friesen, one (1) of
17 the recommendations that was provided to the Board is
18 that consumer personal information should be limited and
19 standardized, correct?

20 MS. ANITA FRIESEN: Correct.

21 MR. ALLAN FORAN: And as part of the
22 original serving or exploiting report, there's a sample
23 of a confidentiality provision on a payday loan
24 agreement, correct?

25 MS. ANITA FRIESEN: That's right, yes.

1 MR. ALLAN FORAN: That's appendix 7. And
2 in response to one (1) of the Information Requests that
3 was asked of the Coalition by CPLA, that's
4 CPLA/Coalition-1-104, there is a response that offers an
5 opinion on the scope of the consent that's given by this
6 wording, correct?

7 MR. BYRON WILLIAMS: We'll perhaps allow
8 Ms. Friesen just to see the Information Request.

9 MS. ANITA FRIESEN: Sorry.

10 MR. BYRON WILLIAMS: CPLA-104.

11 MS. ANITA FRIESEN: CPLA-104. I don't
12 have...

13

14 (BRIEF PAUSE)

15

16 MS. ANITA FRIESEN: Yes.

17

18 CONTINUED BY MR. ALLAN FORAN:

19 MR. ALLAN FORAN: Is that meant to be a
20 legal opinion?

21 MS. ANITA FRIESEN: I'm -- I don't have
22 legal expertise. It was meant to be an opinion from
23 probably a consumer's point of view.

24 MR. ALLAN FORAN: Is that your opinion?

25 MS. ANITA FRIESEN: That would be, yes.

1 I am the researcher.

2 MR. ALLAN FORAN: Now when preparing
3 that, did you take into account the fact that under
4 Federal Privacy Legislation limitations that are set out
5 on the purposes for which information is collected or
6 disclosed are considered legitimate?

7 MS. ANITA FRIESEN: Can you rephrase that
8 please? I don't understand --

9 MR. ALLAN FORAN: Okay. I -- I'll try --

10 MS. ANITA FRIESEN: -- for me please --

11 MR. ALLAN FORAN: -- do this in a way and
12 I'll try and make this as simple as I can.

13 MS. ANITA FRIESEN: Thanks.

14 MR. ALLAN FORAN: When you prepared that
15 answer --

16 MS. ANITA FRIESEN: Yes.

17 MR. ALLAN FORAN: -- did you have any
18 knowledge, first of all, of the Federal Privacy
19 Legislation?

20 MS. ANITA FRIESEN: I know that it
21 exists. I have not read it.

22 MR. ALLAN FORAN: Okay. And if I
23 suggested to you that it contains provisions that allows
24 for the collection of information so long as the purpose
25 or use of how that information is to be collected and

1 used; would you be able to agree or disagree with me?

2 MS. ANITA FRIESEN: I'm not -- I'm still
3 not sure on your question. What is --

4 MR. ALLAN FORAN: The question -- I'll
5 just -- I'll put it straight out to you. The laws in
6 Canada allow people to collect this information as long
7 as you tell consumers what the purpose is for the
8 collection.

9 Are you aware of that?

10 MS. ANITA FRIESEN: Oh, okay, yes, I am
11 aware of that. It -- the problem was that it isn't -- it
12 seemed very unclear and vague to me from a regular
13 consumer's point of view as opposed to some of the other
14 comparable statements in other -- other payday loan
15 contracts which were able to -- to sort of make it more
16 clear who exactly would be seeing the information and how
17 it would be handled.

18 So I know it is possible for that to occur
19 with payday lenders.

20 MR. ALLAN FORAN: Okay. You're not
21 suggesting that there's a hole in the laws that govern
22 privacy right now, are you?

23 MS. ANITA FRIESEN: I would not have an
24 opinion on that.

25 MR. ALLAN FORAN: Okay. Now one (1) of

1 the things, Ms. Friesen, that -- that comes out of the
2 reports is the questioning of the practice of requesting
3 customers' social insurance numbers, correct?

4 MS. ANITA FRIESEN: Yes.

5 MR. ALLAN FORAN: And in the reports
6 provided, there's a notation that three (3) mystery
7 shopping visits, there was a discussion regarding whether
8 it was absolutely necessary and why, correct?

9 MS. ANITA FRIESEN: That's correct.

10 MR. ALLAN FORAN: And were these all part
11 of the loan taking visits?

12 MS. ANITA FRIESEN: That's correct, yes.
13 Because I was not told in the inquiry visits that my
14 social insurance number would be required.

15 MR. ALLAN FORAN: And was the mystery
16 shopper in each of those three (3) incidences you?

17 MS. ANITA FRIESEN: Yes.

18 MR. ALLAN FORAN: Now some aspects of
19 those discussions are contained in the attachment to CPLA
20 Coalition 1-95. I'm just going to reference you to that.

21

22 (BRIEF PAUSE)

23

24 MS. ANITA FRIESEN: Okay.

25 MR. ALLAN FORAN: So there's notes of

1 discussions in some instances but not in other notes,
2 correct?

3 MS. ANITA FRIESEN: That's correct, yes.

4 MR. ALLAN FORAN: Are you aware that
5 banks and credit unions are actually required by law to
6 obtain social insurance numbers of customers who open up
7 an interest bearing deposit account?

8 MS. ANITA FRIESEN: I -- I wasn't aware
9 of that, no.

10 MR. ALLAN FORAN: Are you re -- are you
11 aware that credit unions are required to obtain a social
12 insurance number for members because membership dividends
13 are taxable?

14 MS. ANITA FRIESEN: I wasn't aware of
15 that, no. As I said, I didn't do research into the
16 banking area.

17

18 (BRIEF PAUSE)

19

20 MR. ALLAN FORAN: Dr. Buckland, in your
21 evidence last week, you spoke -- in fact I have to tell
22 you something quite candidly. I've quite forgotten
23 whether it was last week or this week.

24 But in your evidence, you spoke about the
25 growth of payday lending and you compared payday loans

1 with pawn shops and micro credit, correct, sir?

2 DR. JERRY BUCKLAND: I did, yes.

3 MR. ALLAN FORAN: And with respect to
4 pawn shops, would you agree that they differ from payday
5 loans in that the pawn broker holds items of personal
6 property as security for the advance?

7 DR. JERRY BUCKLAND: I think that pawn
8 loans, payday loans, other forms of micro credit, yeah,
9 they use different mechanisms to ensure repayment.

10 MR. ALLAN FORAN: And just to -- we'll
11 make this very broad brush, payday loans are unsecured,
12 correct?

13 DR. JERRY BUCKLAND: Payday loans, as I
14 said in my presentation, I think are cleverly designed
15 because they are hinged on the -- the pay that the
16 person's going to receive and -- and they are unsecured,
17 yes, but they're cleverly designed because they do have
18 this connection to the person's paycheque.

19 MR. ALLAN FORAN: And so there's no
20 misunderstanding for the record, you mean clever in a
21 positive way, do you not?

22 DR. JERRY BUCKLAND: Yeah. Yeah. I -- I
23 mean clever in, yeah, it's -- it's a clever system to
24 ensure repayment.

25 MR. ALLAN FORAN: It's a -- it's a way --

1 somebody has spent a lot of time thinking about this as
2 to how it would work and if -- has come to a conclusion
3 that there's no security?

4 DR. JERRY BUCKLAND: Yeah, I mean, I -- I
5 think as others have said, the -- the concept of a payday
6 loan has been around a long time. Maybe it's been more
7 informal in the past, maybe it's been employers or third
8 parties who turn up at the employer's workplace on
9 payday.

10 I mean, I think the concept's been out
11 there and what we see in the '90s is individuals taking
12 this concept and, essentially, turning it into a more
13 semi-formal kind of industry and I think that explains
14 the rise of -- of payday lending in the last ten (10)
15 years.

16 MR. ALLAN FORAN: So to bring you back to
17 the pawn shop analogy -- it was actually interesting to
18 hear from Mr. Glass today about payday lenders cutting
19 into his business. And that would -- did you find that
20 intriguing as well?

21 DR. JERRY BUCKLAND: I did.

22 MR. ALLAN FORAN: Generally the value of
23 the pawned items exceeds the amount of the advance; would
24 you agree with me?

25 DR. JERRY BUCKLAND: I understand that

1 that's the case.

2 MR. ALLAN FORAN: And one of the things
3 that I believe you mentioned in your evidence is that
4 payday lenders reduce risk by tying repayment to the
5 customer's next payday; and that's one of the things you
6 just explained, correct?

7 DR. JERRY BUCKLAND: Yes.

8 MR. ALLAN FORAN: And that's one of the
9 clever aspects of it?

10 DR. JERRY BUCKLAND: Yes. Yeah.

11 MR. ALLAN FORAN: But you're not
12 suggesting, are you, that that gives a payday lender the
13 same degree of protection as somebody that receives an
14 item in return for a pawn, are you?

15 DR. JERRY BUCKLAND: No, I'm not because
16 the pawn broker has that item and if the repayment is not
17 made the broker can simply sell the item whereas the --
18 the payday lender faces the possibility of -- of non
19 repayment.

20 MR. ALLAN FORAN: So from your
21 perspective a -- a pawn broker, in fact, is in a far
22 better position than a payday lender, they actually have
23 something of value to cover off the loan, correct?

24 DR. JERRY BUCKLAND: I don't know if I
25 would say they're in a far better position. I guess I

1 would say that these are two (2) clever ways to
2 essentially promote a -- a decent level of repayment and
3 I think that's what -- what loans need to do, they need
4 to provide a mechanism to get credit out to the consumer
5 plus ensure some decent level of repayment.

6 MR. ALLAN FORAN: So if we just compare
7 the two (2), however, pawn shop transactions and payday
8 loans, you'd agree with me that pawn shop transactions
9 have security and payday loans do not?

10 DR. JERRY BUCKLAND: Yes. Correct.

11 MR. ALLAN FORAN: Now, also in your
12 evidence you've mentioned that micro credit with APRs
13 ranging from 5 percent to 60 percent is offered through
14 NGOs and banks, correct?

15 DR. JERRY BUCKLAND: That's correct.

16 MR. ALLAN FORAN: Would you agree with me
17 that many of these micro credit programs are non profit
18 programs?

19 DR. JERRY BUCKLAND: At the present time
20 it's actually an area of quite a bit of flux and quite a
21 bit of interesting change. Up until probably five (5) or
22 ten (10) years ago micro credit was dominated by non-
23 governmental organizations or quasi government agencies,
24 the Grameen Bank being one of the most prominent
25 examples, but in the last five (5) to ten (10) years

1 increasingly commercial banks have been entering in to
2 the micro credit market.

3 And so now there's, I think, quite an
4 interesting transition taking place where now commercial
5 banks are seeing that there's a market for small loans,
6 not payday loans, these are not two (2) week loans, these
7 are more commonly several month or several year loans.

8 Micro credit is -- micro credit loans are
9 payday loans but commercial banks are seeing them as a --
10 a profitable venture and so now increasingly these
11 commercial banks are getting into it.

12 MR. ALLAN FORAN: Can you name me one (1)
13 bank doing that in Winnipeg?

14 DR. JERRY BUCKLAND: I should have
15 clarified, when I talked about this flux I meant in the -
16 - in the global south, by that I mean Africa, Asia, Latin
17 America. Unfortunately or fortunately, I -- yeah, it's
18 not unfortunate, I mean, the situation in Canada and --
19 and in northern countries is very different. We have far
20 more extensive mainstream bank systems.

21 So the -- that gap, that non-governmental
22 organizations plugged or helped to plug in places like
23 Bangladesh and Bolivia and Indonesia, simply hasn't
24 existed to the same extent as in Canada.

25 So in Canada we don't have big players in

1 micro credit. But I mean, the one (1), you know, sort of
2 example in Winnipeg would be the Community Financial
3 Service Centre, which is based in the North End. And it
4 does a few different types of financial services in -- in
5 the North End of Winnipeg.

6 MR. ALLAN FORAN: Okay. And so just to
7 come back to this, you can't name me one (1) bank doing
8 this in Manitoba right now?

9 DR. JERRY BUCKLAND: I can't name you one
10 (1) bank that I would describe as being involved in micro
11 credit, yes, that's correct.

12 MR. ALLAN FORAN: Among the social and
13 institutional factors that you reviewed in your evidence,
14 Dr. Buckland, were growing income and equality, correct?
15 This is -- these are consumer trends now, growing income
16 and equality.

17 It's one (1) of the factors you've
18 highlighted?

19 DR. JERRY BUCKLAND: Yes, one (1) of the
20 factors I highlighted to explain why some people seem to
21 be searching for more basic financial services, yes.

22 MR. ALLAN FORAN: And you've also
23 highlighted the fact there's stagnating income at the
24 lower end of the spectrum, sir?

25 DR. JERRY BUCKLAND: The data I presented

1 in the serving or exploiting report did identify this as
2 a problem in the 1990s -- for a period in the 1990s.

3 MR. ALLAN FORAN: And you've also
4 highlighted a growing trend towards consumerism, Canadian
5 consumers' spending, correct?

6 DR. JERRY BUCKLAND: In my direct
7 presentation, and I think in the "Serving or Exploiting"
8 report I -- I did make reference to consumerism as a
9 concern that I have that feeds into high levels of debt.

10 MR. ALLAN FORAN: You also identified the
11 withdrawal of mainstream financial institutions from
12 providing certain kinds of financial services, correct?

13 DR. JERRY BUCKLAND: That's correct.

14 MR. ALLAN FORAN: And in your view all
15 these factors help explain the rise of the payday lending
16 industry, correct?

17 DR. JERRY BUCKLAND: I believe they do
18 help underlie the social changes that, in addition to the
19 clever application of a business idea -- that is payday
20 loans -- help explain its rise, yeah.

21 MR. ALLAN FORAN: And you're not
22 suggesting, are you, sir, that the maximum cost of credit
23 for providing payday loans in Manitoba, that in setting
24 that, rate this Board has the ability to reverse any of
25 those social factors I just identified?

1 DR. JERRY BUCKLAND: I don't think the
2 Board can correct underlying social factors. But I'm
3 very pleased that the Board is interested in
4 investigating and hearing about those underlying social
5 factors, because I think the -- the reality is what we
6 see on the surface -- using a metaphor that someone used
7 recently, what we see on the surface is payday loans and
8 the rise of a lot of -- a very rapid rise of payday
9 lenders.

10 But in a sense it's the surface of the
11 iceberg. There's a lot of stuff going on below that,
12 that tip, and -- and it's important to understand what's
13 going on there.

14 MR. ALLAN FORAN: In connection with the
15 one (1) factor of income stagnation you gave an estimate
16 that as many as -- or as much as 40 percent of Canadians
17 may be affected by this, correct?

18 DR. JERRY BUCKLAND: I did, yes.

19 MR. ALLAN FORAN: But the percentage of
20 Canadians using payday loans is far lower, correct?

21 DR. JERRY BUCKLAND: Yeah. The -- the
22 number I gave was an estimate of the number of people who
23 were facing stagnant income, not the number who were
24 using payday loans.

25 MR. ALLAN FORAN: And in fact that number

1 is something like 2.7 percent, according to the SFS
2 survey, correct?

3 DR. JERRY BUCKLAND: That's what I
4 understand. At the same time I think that there is the
5 scope for the payday loan market to grow, considering
6 that a 40 percent share of the population has faced
7 stagnant income. So the -- the market possibilities for
8 payday lenders, I think, are -- are significant.

9

10 (BRIEF PAUSE)

11

12 MR. ALLAN FORAN: Now, just -- just
13 sticking with this theme of the -- the fact that
14 mainstream financial institutions are -- are not in the
15 business of offering short-sum, short-term loans, I
16 understand one (1) of your conclusions is that these
17 kinds of loans accordingly are less accessible for some
18 members of society, correct?

19 DR. JERRY BUCKLAND: I'm sorry, are you
20 saying that payday loans are less accessible for some
21 members of society?

22 MR. ALLAN FORAN: No, mainstream
23 financial institutions are not offering small-sum, short-
24 term loans?

25 DR. JERRY BUCKLAND: Yes, that's correct.

1 MR. ALLAN FORAN: And, so they're
2 becoming less accessible to some members of society?

3 DR. JERRY BUCKLAND: Yes.

4 MR. ALLAN FORAN: And in your evidence, I
5 understand that you've indicated that access to small
6 loans is an important financial service for lower-income
7 people who are unable to obtain credit cards, or -- or
8 lines of credit, and prefer small loans, correct?

9 DR. JERRY BUCKLAND: I think access to
10 reasonably priced loans that have within them a repayment
11 period and maybe repayments every couple of weeks, that
12 that kind of loan is important for -- for many people,
13 including low-income people.

14 MR. ALLAN FORAN: And you'd agree that if
15 Manitobans did not have access to payday loans, there'd
16 be few alternatives for them accordingly, correct?

17 DR. JERRY BUCKLAND: The alternatives, I
18 think, we can look at in the mainstream banking system,
19 and then in the informal financial system.

20 Like, I think there are alternatives
21 there, but I -- I -- my argument is that they are not
22 sufficient.

23 MR. ALLAN FORAN: So let's stick with
24 those alternatives. One (1) would be a pawn shop,
25 correct?

1 DR. JERRY BUCKLAND: Yes.

2 MR. ALLAN FORAN: And to obtain a pawn
3 loan, you'd have to have something that you could give in
4 return as security, correct?

5 DR. JERRY BUCKLAND: That's correct.

6 MR. ALLAN FORAN: Or you could turn -- we
7 heard some evidence today from the City of Winnipeg
8 Police Department, is that although unreported, I suppose
9 there's other less savoury areas that people could turn
10 to if they didn't have access to payday loans, correct?

11 DR. JERRY BUCKLAND: Now, that's an
12 interesting question. I mean, I've heard that quite a
13 bit, and in my research, I have asked that question of
14 people. Like, when we survey people in -- in our -- in
15 various research projects, I have asked about this kind
16 of loan shark phenomenon.

17 And in all the research I've done -- and,
18 you know, I can think of several surveys I've done --
19 I've only come across one (1) person who's -- who's made
20 a reference to a loan shark experience in Winnipeg.

21 So I'm not really familiar with that
22 particular option.

23 MR. ALLAN FORAN: Given the preference of
24 something less savoury and something legitimate, like a
25 payday loan, you'd prefer consumers to use payday loans,

1 wouldn't you?

2 DR. JERRY BUCKLAND: Over and above a
3 loan shark, yes.

4 MR. ALLAN FORAN: And -- fair enough. In
5 a number of the responses to Information Requests posed
6 by CPLA, the Coalition expressed the view that there's a
7 real possibility that they'll be entering into the small
8 loan market for mainstream financial service providers,
9 such as credit unions.

10 You're aware of that?

11 DR. JERRY BUCKLAND: I am.

12 MR. ALLAN FORAN: And in each case that
13 response is identified as that of the Coalition. You're
14 aware of that?

15 DR. JERRY BUCKLAND: I -- I believe so.

16 MR. ALLAN FORAN: They have not been
17 identified as responses that come from you, Dr. Buckland.

18 DR. JERRY BUCKLAND: I'm not clear of the
19 question. I believe that there are mainstream banks and
20 credit unions who have some interest in this small credit
21 loan market.

22 MR. ALLAN FORAN: Do you share the
23 Coalition's assessment, is that there is a real
24 possibility that credit unions will enter the mainstream
25 financial service of providing small loans?

1 DR. JERRY BUCKLAND: I think that credit
2 unions -- credit unions and mainstream banks might do so.
3 I think we need to wait. We need to look. We need to
4 see what credit unions and mainstream banks are going to
5 do.

6 The evidence in the US, I believe -- where
7 payday loans have been around longer and they're more
8 extensive -- the evidence is that more credit unions have
9 gotten into the market.

10 I mean the one (1) credit union I'm
11 familiar with is Vancity, and they have piloted what they
12 call "My Best Interest," which is a kind of payday loan
13 equivalent. They don't use "payday loan" as a term, and
14 it's actually different in configuration to a payday
15 loan.

16 But they've taken that very seriously.
17 They've taken very seriously the -- the phenomenon of the
18 rise of payday loans to develop My Best Interest, which
19 is essentially a six (6) month loan for, I believe, two
20 hundred (200) to a thousand dollars (\$1,000). And it's
21 got special features to make it more accessible and speed
22 up processing.

23 So that's the -- the one (1) credit union
24 I'm -- I'm familiar with that provides something quite
25 similar to a payday loan.

1 MR. ALLAN FORAN: It's my understanding
2 that Vancity, the Van stands for Vancouver?

3 DR. JERRY BUCKLAND: That's correct.

4 MR. ALLAN FORAN: Does Vancity operate in
5 Winnipeg?

6 DR. JERRY BUCKLAND: They don't.

7 MR. ALLAN FORAN: And I understand, from
8 what you've just indicated, is that what you're
9 encouraging the Board to do is to wait and see, take some
10 time, see if this happens, see if credit unions enter
11 into the Manitoba marketplace.

12 But for the time being, you'll agree that
13 what we're going to be dealing with are payday lenders
14 dealing with Winnipeggers that need access to small-sum
15 loans, correct?

16 DR. JERRY BUCKLAND: Well, no, actually
17 that's not what I'm saying, because I think the
18 recommendations that -- that I have made -- and -- and I
19 think they're supportive or -- or consistent with the
20 recommendations of Dr. Robinson, that a viable payday
21 loan industry is something that Manitobans want.

22 And so I believe the recommendations that
23 we're proposing will allow for a viable payday loan
24 industry.

25 MR. ALLAN FORAN: And -- and so that's

1 really the key for you. You want to make sure there's
2 access to Manitoba consumers to payday loans firstly,
3 correct?

4 DR. JERRY BUCKLAND: Well firstly, I
5 think the -- the most important thing is that for those
6 consumers who want access, that they can gain access to
7 what I would think of as sort of longer-term both credit
8 and savings options.

9 So payday loans, I think, are -- are
10 necessary right now, because many people are using them.
11 However, for the longer term and the more deeper needs of
12 consumers, I think it's mainstream financial services
13 that are going to ultimately benefit them.

14 MR. ALLAN FORAN: So in -- in fact, if we
15 just take that one step further, can you ask you, do the
16 existing credit alternatives provided by banks and credit
17 unions, are those what you're looking to have offered to
18 those customers that use payday loans now?

19 DR. JERRY BUCKLAND: The -- the existing
20 set of services, for instance credit cards and lines, are
21 important. And at the same time the -- the concept of
22 the -- the small loan, I think we've made the case that
23 mainstream banks and credit unions have moved out of that
24 area. And -- and yet it's important, and I think for
25 many people, those small loans are important.

1 And there is another -- going back to the
2 Community Financial Service Centre in Winnipeg's North
3 End, now that's -- that is a Winnipeg experiment. And
4 they do a variety of things there.

5 One of the things is a micro loan fund.
6 So they do have a micro loan fund. And it provides
7 loans, I believe, starting at a hundred dollars (\$100).
8 And these loans then will be repaid in a longer term than
9 -- than a payday loan. But they do provide their --
10 their clients access to credit. So it is a Winnipeg
11 example doing that.

12 The other thing is Assiniboine Credit
13 Union, I think, is a Winnipeg-based credit union that's
14 doing some -- some very interesting work. I've spoken
15 with some of the people there, and I know they're in
16 discussion about setting up a payday loan alternative. I
17 can't comment on where they're at on that. But -- but I
18 do know that that's something they've talked about.

19 They do have a secure credit card. And
20 that's another option, the secured credit card option,
21 where the client would put money -- a certain amount of
22 money in an account that's secured. And then they have
23 access to that using their credit card. The credit card
24 limit would be based on the amount of money they put in a
25 secure account.

1 MR. ALLAN FORAN: Maybe I'll come back to
2 this a little bit later. But the example you've just
3 given of the Assiniboine Credit Union would be that they
4 would have some security for their -- for their loan?

5 DR. JERRY BUCKLAND: With the secured
6 credit card, yes.

7 MR. ALLAN FORAN: Yes. So really cutting
8 back now to what you just explained to the Board, the
9 kinds of products that you just described would include
10 credit cards and lines of credit, correct?

11 DR. JERRY BUCKLAND: Yes, and small
12 loans.

13 MR. ALLAN FORAN: And you'd agree with me
14 that many of these products can't be accessed by
15 customers that currently use payday loans, correct?

16 DR. JERRY BUCKLAND: Could you clarify
17 the -- the term "can't be accessed now"?

18 MR. ALLAN FORAN: They wouldn't qualify
19 for a credit card.

20 DR. JERRY BUCKLAND: Actually, I believe
21 that the secured credit card idea is specifically
22 designed and tailored for people who don't necessarily --
23 they're not able to get a -- a regular credit card.

24 And the idea is that you -- you get into
25 the secured credit card relationship, and you build a

1 positive credit rating. You, you know, you repay your
2 bills on time and you -- you establish, essentially, a
3 credit record.

4 And from that, you can move into a -- a
5 more regularized type of credit card. So it -- it is
6 quite accessible, I believe.

7 MR. ALLAN FORAN: Right now, today?

8 DR. JERRY BUCKLAND: The secured credit
9 card is an option that is, from what I understand, is
10 offered by Assiniboine Credit Union.

11 MR. ALLAN FORAN: So that's in the
12 marketplace to your understanding? Payday loan customers
13 can go and get a secured credit card from the Assiniboine
14 Credit Union? Is that your evidence, sir?

15 DR. JERRY BUCKLAND: No I -- what I said
16 is that my understanding is that Assiniboine Credit Union
17 presently offers a secured credit card. Whether payday
18 loan customers can -- can go there and immediately get
19 one, I'm -- I can't comment on that.

20 MR. ALLAN FORAN: Okay.

21

22 (BRIEF PAUSE)

23

24 MR. ALLAN FORAN: So, let's take a look
25 at credit unions then. If I could refer you to page 25

1 of the original evidence, September 17th.

2

3

(BRIEF PAUSE)

4

5

MR. ALLAN FORAN: And you -- you've embarked on this discussion on the provision of some products from what I understand to be credit unions. So let's start with the Assiniboine Credit Union.

9

10 If I understand your evidence, the Assiniboine Credit Union product that's referenced on page 25 is a secured credit card, correct?

12

DR. JERRY BUCKLAND: That's correct.

13

14 MR. ALLAN FORAN: And the customer, in effect, deposits money into an account as security for indebtedness incurred on the card, correct?

16

DR. JERRY BUCKLAND: That's correct.

17

18 MR. ALLAN FORAN: And it wouldn't be available to customers who couldn't post that security or deposit -- the funds up front, correct?

20

21 DR. JERRY BUCKLAND: Yeah, that's right. What they're trying to do is set up a system that is arguably beneficial in the long-run interests of the client.

24

25 So instead of continuously running to the creditor for a small time, or a -- a small loan -- like,

1 for instance a payday loan -- and paying high fees, what
2 they're trying to do is say, Okay, let's back up here.

3 Let's set up a new kind of system where,
4 okay, it's going to cost you fifty bucks (\$50), a hundred
5 bucks (\$100), two hundred fifty bucks (\$250) now. But
6 you set that aside, and then when you get into some --
7 some difficult situations you can access that and -- and
8 you won't pay big fees for this.

9 MR. ALLAN FORAN: The evidence that
10 you're aware of, Dr. Buckland, indicates that a good many
11 payday loan customers will not be in a position to do
12 this, correct?

13 DR. JERRY BUCKLAND: A good many payday
14 loan clients, if they have a credit repair problem, I
15 think could do this. I don't know the exact criteria of
16 getting a secure credit card.

17 But the whole idea of the secure credit
18 card is it's for those people with a credit problem.
19 They've had some credit difficulties and they can't get a
20 regular credit card.

21 MR. ALLAN FORAN: And do you know,
22 actually, maybe I'll just be more specific again. So if
23 they can't post the security, they don't have the funds
24 to put on deposit, they're not going to access the
25 Assiniboine Credit Union product that --

1 DR. JERRY BUCKLAND: Oh, --

2 MR. ALLAN FORAN: -- you're referencing?

3 DR. JERRY BUCKLAND: Yes. Correct.

4 MR. ALLAN FORAN: Are you aware, sir,
5 that the payday loan exemptions to the criminal code does
6 not apply to secured loans?

7 DR. JERRY BUCKLAND: I understand the
8 exemption to the criminal code has to do specifically
9 with payday lenders.

10 MR. ALLAN FORAN: So you're -- up until
11 my mentioning it to you, you were not aware that the
12 exemption will not apply to loans that are secured?

13 DR. JERRY BUCKLAND: No I -- I knew that
14 the exemption applied to payday lenders.

15 MR. ALLAN FORAN: So you're agreeing with
16 me that you did not know -- and just if I could just have
17 an answer to the question, other -- and -- and please, I
18 want to be very fair to you on this.

19 DR. JERRY BUCKLAND: Okay.

20 MR. ALLAN FORAN: Because I think it's
21 very important.

22 DR. JERRY BUCKLAND: Yeah.

23 MR. ALLAN FORAN: In putting your
24 evidence before this Board, were you aware that the
25 exemption to the criminal code limit does not apply to

1 secured loans?

2

3

(BRIEF PAUSE)

4

5

DR. JERRY BUCKLAND: I -- I believe I

6

did.

7

MR. ALLAN FORAN: Okay. Thank you.

8

And so when preparing your evidence for
9 the Board you had that in the back of your mind, that the
10 kinds of things that the Board was going to be dealing
11 with in terms of payday lending were things that did not
12 apply to secured loans?

13

DR. JERRY BUCKLAND: Well, when I
14 presented my -- put together my report, I was thinking
15 broadly about what are the credit alternative -- saving
16 alternatives for people, including payday loan clients.

17

MR. ALLAN FORAN: And anything that is
18 secured is not a direct comparable then, correct?

19

DR. JERRY BUCKLAND: No, it's not a
20 direct substitute. It's -- it's a -- it is a kind of
21 substitute, but it's not the same -- it's not a
22 homogenous product, going back to an early -- earlier
23 conversation.

24

MR. ALLAN FORAN: Okay. Thank you.

25

Going to your next example, the Vancity

1 Credit Union, you'll see that there's a reference in the
2 evidence that that is a, again, a secured credit card?

3 DR. JERRY BUCKLAND: In the report, yeah,
4 because, yeah, the -- the report came out before I had
5 the conversation with Vancity about their My Best
6 Interests. So that does refer to a secured credit card.

7 MR. ALLAN FORAN: And the secured credit
8 card is only offered at the Pigeon Park Savings the
9 Downtown Eastside? You're aware of that?

10 DR. JERRY BUCKLAND: I'm not aware of
11 that, no.

12 MR. ALLAN FORAN: Are you aware that the
13 Pigeon Park Savings is a partner project with PHS
14 Community Services Society?

15 DR. JERRY BUCKLAND: Yes, yes.

16 MR. ALLAN FORAN: The new product that
17 you referenced, is that what you've just described? This
18 -- and I'm sorry -- the name -- the name one --

19 DR. JERRY BUCKLAND: My Best Interest.

20 MR. BYRON WILLIAMS: There's a reference
21 in the Information Request, Mr. Foran. I'm not sure if
22 it's -- I'm going off of vague memories -- but CPLA,
23 perhaps 1-61?

24

25 CONTINUED BY MR. ALLAN FORAN:

1 MR. ALLAN FORAN: Is the My Best Interest
2 card currently available?

3 DR. JERRY BUCKLAND: Okay. I think -- I
4 think I may have confused things here. My Best Interest
5 is a loan that Vancity offers. And they have just put
6 that onto the market, I believe, in October.

7 My Best Interest is like a six (6) month
8 loan. I believe the range is two hundred (200) to a
9 thousand dollars (\$1,000).

10 It's not a secured credit card. It's --
11 it's a product that's -- Vancity is putting together as a
12 kind of alternative to payday loans.

13 MR. ALLAN FORAN: I have to stop for just
14 a moment, because this will help.

15 I'm just looking at your evidence. Is
16 that what you're referencing in your evidence on page 25?
17 Is that the alternative to a payday loan?

18 DR. JERRY BUCKLAND: My reference right
19 now -- My Best Interest is in the interrogatory
20 responses. This is referencing in -- on page 25 is res -
21 - referencing a secured credit card.

22 MR. ALLAN FORAN: It is, okay.

23 DR. JERRY BUCKLAND: Yes.

24 MR. ALLAN FORAN: I'll come back to that
25 then.

1 that.

2 MR. ALLAN FORAN: So you won't be aware
3 of the following then.

4 In reviewing the transcripts of that
5 proceeding, are you aware of the fact that Alterna
6 launched the project in May of 2006?

7 DR. JERRY BUCKLAND: No.

8 MR. ALLAN FORAN: Is that it has three
9 (3) phases to it?

10 DR. JERRY BUCKLAND: No.

11 MR. ALLAN FORAN: That it included a --
12 an effective forced savings program, were you aware of
13 that?

14 DR. JERRY BUCKLAND: I wasn't.

15 MR. ALLAN FORAN: That it would not
16 require an exemption from the Criminal Code?

17 DR. JERRY BUCKLAND: No.

18 MR. ALLAN FORAN: That the examination of
19 viability would be restricted solely to Alterna members,
20 were you aware of that?

21 DR. JERRY BUCKLAND: No.

22 MR. ALLAN FORAN: And that it had not
23 been tested?

24 DR. JERRY BUCKLAND: No.

25 MR. ALLAN FORAN: And you don't know if

1 the testing has moved forward?

2 DR. JERRY BUCKLAND: I don't know.

3 MR. ALLAN FORAN: Are you aware that as
4 if -- as of March 1st, Alterna was not in the field yet
5 with this product?

6 DR. JERRY BUCKLAND: No.

7 MR. ALLAN FORAN: Were you aware that
8 Alterna, in recognizing risk tolerance, considered the
9 fact that the product would be offered to members only
10 who have their paycheques deposited at the credit union
11 as being a significant factor in making a decision to go
12 ahead?

13 Were you aware of that?

14 DR. JERRY BUCKLAND: I was not.

15 MR. ALLAN FORAN: You'd agree with me,
16 however, that if what I've indicated is accurate, that
17 the credit union has built in security for its loan?

18 DR. JERRY BUCKLAND: Yes.

19 MR. ALLAN FORAN: Were you aware that in
20 providing evidence before the Senate, Mr. Whitelaw
21 (Phonetic), who was there with a representative of -- of
22 Alterna, advised the senators that there was no mechanism
23 in place to offer immediate cash in the form of a five
24 hundred dollar (\$500) loan?

25 Were you aware of that?

1 DR. JERRY BUCKLAND: I wasn't.

2

3 (BRIEF PAUSE)

4

5 MR. ALLAN FORAN: The next item that
6 you've mentioned as an alternative on page 25 is the --
7 the product offered through -- offered through the
8 Federation Des Caisses Desjardins du Quebec.

9 Do you see that sir?

10 DR. JERRY BUCKLAND: That's correct.

11 MR. ALLAN FORAN: That product you
12 described is offered through mutual assistance funds.
13 Were you aware of that?

14 DR. JERRY BUCKLAND: It's offered through
15 their Solidarity fund.

16 MR. ALLAN FORAN: Okay. And is
17 Solidarite what we would refer to as mutual assistance?
18 Completely giving away my superb French for the record.
19 That was a real question.

20 DR. JERRY BUCKLAND: Pardon me?

21 MR. ALLAN FORAN: That was a question.
22 Are we talking about the same thing? Mutual assistance
23 and Solidarity?

24 DR. JERRY BUCKLAND: I think we are.

25 Yes, I think we are.

1 MR. ALLAN FORAN: Thank you. That
2 product's not listed in Desjardins' general offering of
3 credit products on its website.

4 Are you aware of that?

5 DR. JERRY BUCKLAND: I'm not aware of
6 what's on their website exhaustively. I -- I do have
7 some information about the program.

8 MR. ALLAN FORAN: Perhaps this will work
9 out well for us then. So let me put some things to you,
10 and you can respond.

11 DR. JERRY BUCKLAND: Okay.

12 MR. ALLAN FORAN: Is the product as
13 described in Desjardins' 2006 social responsibility
14 report? Have you reviewed that?

15 DR. JERRY BUCKLAND: No, I haven't but
16 I've had a long conversation with the head of the
17 Solidarity project at Desjardins.

18 MR. ALLAN FORAN: Okay, great. Now the
19 statistics from the report that I just referenced
20 indicate that in 2006 it had been in operation for five
21 (5) years, since 2001.

22 Was that confirmed in you discussion?

23 DR. JERRY BUCKLAND: That's what I
24 understand.

25 MR. ALLAN FORAN: That two hundred and

1 forty-five cases were participating, was that confirmed
2 in your discussion? And that's as of 2006, I should say.

3 DR. JERRY BUCKLAND: My -- my data is
4 slightly larger, twenty-six (26) projects according to my
5 conversation.

6 MR. ALLAN FORAN: Okay and I actually I -
7 - I thought what I had indicated is there was two hundred
8 and forty-five (245) cases that were participating, so...

9 DR. JERRY BUCKLAND: Thank you, no. The
10 projects would include more than one (1) case, so I would
11 accept two forty-five (245), yeah.

12 MR. ALLAN FORAN: Okay. And can you tell
13 me how that compares to the number of credit unions
14 operating in Manitoba?

15 DR. JERRY BUCKLAND: I don't know how
16 many credit unions are operating in Manitoba.

17 MR. ALLAN FORAN: If I -- if I suggested
18 to you fifty-four (54) credit unions with a hundred and
19 eighty-one (181) locations as of July 12th, 2007, would
20 you disagree with me?

21 DR. JERRY BUCKLAND: No, I wouldn't.

22 MR. ALLAN FORAN: In your discussions
23 with the -- the individual that runs the Solidarity
24 program at Desjardins, did you -- were you able to
25 confirm that there's a total of one thousand seven

1 hundred and ninety-two (1,792) loans that had been issued
2 since the program's inception in 2001?

3 DR. JERRY BUCKLAND: The data I have from
4 February '07 is that there were one thousand nine hundred
5 and forty-nine (1,949) loans, so we're -- we're very
6 close.

7 MR. ALLAN FORAN: Okay. So we won't
8 quibble about numbers. We're -- we're within the
9 ballpark.

10 DR. JERRY BUCKLAND: Yeah, yeah.

11 MR. ALLAN FORAN: And that a total of
12 approximately \$964,989 had been loaned since 2001?

13 DR. JERRY BUCKLAND: It's a bit up from
14 then. Just over a million.

15 MR. ALLAN FORAN: Is that after five (5)
16 years in operation this entire program has issued fewer
17 micro loans than a single payday loan outlet in Manitoba
18 issues over one (1) to two (2) years?

19 Are you aware of that?

20 DR. JERRY BUCKLAND: Could -- could you
21 tell me the number of payday loans per outlet in
22 Manitoba, just to remind me?

23 MR. ALLAN FORAN: I thought you'd be
24 impressed with all the statistics I've given you today.
25 If I'd suggested to you that that was true --

1 DR. JERRY BUCKLAND: Yeah, I accept that.

2 MR. ALLAN FORAN: You'd accept that.

3 DR. JERRY BUCKLAND: Yeah.

4

5 (BRIEF PAUSE)

6

7 MR. ALLAN FORAN: In your discussions,
8 were you able to confirm that the average repayment rate
9 in the Solidarity program is 88 percent?

10 DR. JERRY BUCKLAND: Yes.

11 MR. ALLAN FORAN: And that it's not being
12 actively pursued as a business opportunity by Desjardins?

13 DR. JERRY BUCKLAND: That's my
14 understanding, that this is one (1) component of their
15 work where they're trying to focus on reaching out to
16 unbanked people, people who are not members of Caisses
17 Populaire, and to bring them into the Federation, into a
18 Caisses Populaire in a regular -- regularized
19 relationship.

20 So they're seeing this as a way of
21 bringing new members into the Caisses system.

22 MR. ALLAN FORAN: So and I -- I don't
23 mean in this in any pejorative sense at all, but it's a
24 marketing opportunity in addition to anything else.

25 It's -- it's giving people an opportunity

1 to join the Desjardins family of funds?

2 DR. JERRY BUCKLAND: I understand that in
3 2000, just to back up a second, I think the Caisses
4 Populaire system in Quebec is quite interesting and quite
5 unique and -- and possibly quite different from the
6 credit union system on -- on the prairies and in
7 Manitoba.

8 One (1) of the differences that the
9 Federation Desjardins is a overarching organization that
10 seeks to work with all the Caisses Populaires in -- in
11 the Province of Quebec.

12 And -- so the Federation has one (1) of
13 its mandates from 2000, when they went through a kind of
14 revisiting their mission and their mandate, they decided
15 that they wanted to increase their efforts to bring in
16 unbanked people into the Caisses Populaire system.

17 So one (1) of the things they did was they
18 set up this Solidarity program and hired staff and
19 basically were able -- because they're a Federation they
20 were able to then put together some significant resources
21 and set up a series of projects, one (1) of which is the
22 one we're talking about right now, this micro loan
23 program. But they do have some other projects as well.

24 MR. ALLAN FORAN: Now, in the rebuttal
25 evidence that was filed by the Coalition there's a report

1 or -- I guess I should be -- I should be careful here.
2 There's something that's labelled a report. And I -- I
3 guess I'm going to get your comments in it, but it's
4 something that's prepared by Mr. Bob Whitelaw.

5 Are you familiar with that document?

6 DR. JERRY BUCKLAND: Yes, I am.

7 MR. ALLAN FORAN: And my understanding is
8 that this -- and I'm -- I'm actually going to not use the
9 word "report." I'm just going to call this
10 "information," but let's come to that.

11 It -- it contains information that credit
12 unions are considering the feasibility of offering close
13 substitutes to payday loans.

14 And it's a real possibility this will
15 materialize, correct?

16 DR. JERRY BUCKLAND: I -- yeah, I believe
17 that's the case it's -- it's making.

18 MR. ALLAN FORAN: And that report's been
19 filed in response to PUB/COALITION-2-7-B, correct?

20 DR. JERRY BUCKLAND: Yes.

21 MR. ALLAN FORAN: And you've read that
22 document?

23 DR. JERRY BUCKLAND: The report?

24 MR. ALLAN FORAN: Yes.

25 DR. JERRY BUCKLAND: Yes, I have.

1 MR. ALLAN FORAN: Do you agree with Mr.
2 Whitelaw's report?

3 DR. JERRY BUCKLAND: I agree that the
4 report -- I agree with the -- the basic thrust of the
5 report, that there are a growing number of credit unions
6 in the US that are looking to provide payday loan
7 alternatives.

8 MR. ALLAN FORAN: Did you, Dr. Buckland -
9 - and I know you've been very busy. But did you take any
10 independent research or perform any tasks of what was
11 contained in Mr. Whitelaw's document?

12 DR. JERRY BUCKLAND: No, I -- I read the
13 document but I did not do further work with it.

14 MR. ALLAN FORAN: The document indicates
15 it's a -- it is titled "A Report Prepared for the
16 Manitoba Public Utility Board Hearing," correct?

17 DR. JERRY BUCKLAND: That's correct.

18 MR. ALLAN FORAN: But the report doesn't
19 mention a single Manitoba credit union, does it?

20 DR. JERRY BUCKLAND: No, it doesn't.

21 MR. ALLAN FORAN: And it doesn't provide
22 any specific information relevant to the Manitoba
23 marketplace, does it?

24 DR. JERRY BUCKLAND: I think the -- the
25 main purpose of that report was to look at what was going

1 on in the US.

2 MR. ALLAN FORAN: So you'd agree with me
3 that this document doesn't attempt to assess how likely
4 it is that Manitoba credit unions will be offering close
5 substitutes in the next three (3) years, for example,
6 correct?

7 DR. JERRY BUCKLAND: I think it's saying
8 that because the US seems to be further along, in terms
9 of the number of payday loans and the number of states
10 where payday loans are common, that we can probably learn
11 from the experience in the US in terms of how mainstream
12 banks and credit unions might respond.

13 MR. ALLAN FORAN: So it's providing
14 information, but the information isn't information that's
15 going to give us, in this Hearing process, comfort that
16 there's going to be close substitutes in Manitoba in the
17 next three (3) years, does it?

18 DR. JERRY BUCKLAND: I don't know the
19 time frame when credit unions in Manitoba and Canada
20 would respond in the same way that they are in the US. I
21 can't really comment on the time frame. It's -- it's
22 hard to say.

23 MR. ALLAN FORAN: Okay. Do you
24 understand from that document that Mr. Whitelaw is saying
25 that credit unions are able to offer close substitutes at

1 rates under 60 percent APR?

2 DR. JERRY BUCKLAND: I believe that he is
3 saying that there can be substitutes offered in that way,
4 yes.

5 MR. ALLAN FORAN: So you'd agree with me
6 there's no legal impediments that would prevent them from
7 doing that now, correct?

8 DR. JERRY BUCKLAND: That's correct.

9 MR. ALLAN FORAN: So there must be
10 another reason why credit unions are not currently in the
11 marketplace, correct?

12 DR. JERRY BUCKLAND: That goes back to my
13 point about mainstream banks and credit unions not really
14 seeing the small-sum loan being a very lucrative business
15 as compared with their other options.

16 MR. ALLAN FORAN: When we look around
17 this room, do you see any banks intervening in this
18 process, sir?

19 DR. JERRY BUCKLAND: No.

20 MR. ALLAN FORAN: Do you see any credit
21 unions intervening in this process?

22 DR. JERRY BUCKLAND: No.

23 MR. ALLAN FORAN: Are you aware of any
24 presentations from banks in this process?

25 DR. JERRY BUCKLAND: No.

1 MR. ALLAN FORAN: Are you aware of any
2 presentations from credit unions in this process?

3 DR. JERRY BUCKLAND: No.

4 MR. ALLAN FORAN: So let's go on
5 speculation a little bit. Knowing that these products
6 can be currently offered, is it possible the current
7 business models of credit unions and banks aren't
8 conducive to providing this kind of a loan, payday loan?

9 Is it possible -- will you -- let's dream.
10 Let's dream --

11 DR. JERRY BUCKLAND: Yeah.

12 MR. ALLAN FORAN: -- a little bit as to
13 what might be happening, because we don't have the
14 information.

15 DR. JERRY BUCKLAND: Right.

16 MR. ALLAN FORAN: But you'd agree with me
17 that it's possible?

18 DR. JERRY BUCKLAND: Well, I think that
19 credit unions probably -- I mean personally, I think that
20 credit unions can't, probably, provide cre -- payday
21 loans at something other than 60 percent APR. I -- I
22 don't think that's possible.

23 And I think -- I -- I'd agree with Dr.
24 Robinson that -- that really, these are costly loans.
25 And I think mainstream banks and credit unions haven't

1 gotten into the area because of the fact of the criminal
2 rate of interest.

3 MR. ALLAN FORAN: Okay. You're aware
4 that the exemption from the Section 347 does not apply to
5 banks?

6 DR. JERRY BUCKLAND: Thank you for -- for
7 that. I -- I was aware.

8 MR. ALLAN FORAN: Okay, and you were
9 aware of that at the time you prepared your evidence that
10 was submitted to this Board on September 17th?

11 DR. JERRY BUCKLAND: Yes, I was.

12 MR. ALLAN FORAN: Okay. So let's go back
13 to dreaming a little bit about why banks and credit
14 unions -- and let's stick with credit unions for a moment
15 -- why -- why they're not offering these services in the
16 Manitoba marketplace, speculation.

17 Is it possible that it's because they're
18 not able or willing to abandon traditional con --
19 consumer credit checks?

20 DR. JERRY BUCKLAND: That's possible.

21 MR. ALLAN FORAN: Or they're not willing
22 or able to transition credit approval decisions to the
23 branch or teller level as payday lenders are able to?

24 DR. JERRY BUCKLAND: I think that in fact
25 they've gone the opposite direction by automating those

1 credit checks and making it even more removed from the
2 client.

3 MR. ALLAN FORAN: Okay, so it could
4 happen if it was automated. But if it was from an
5 institutional perspective, you're not sure if that would
6 work out.

7 DR. JERRY BUCKLAND: That's correct.

8 MR. ALLAN FORAN: In some areas of
9 Winnipeg -- and I know from previous discussions with
10 you, which have always been very interesting, I must tell
11 you.

12 But in your specific research on the -- on
13 the North End, is it possible that in some areas of the
14 city credit unions may lack bricks and mortar outlets to
15 offer the products and that's a limitation as well?

16 DR. JERRY BUCKLAND: Yes.

17 MR. ALLAN FORAN: There's no information
18 before this Board as to whether credit unions in Manitoba
19 are prepared to change their business models to
20 accommodate the kinds of issues or factors I've just
21 described, are there?

22 DR. JERRY BUCKLAND: The -- the one (1)
23 piece would be the Community Financial Service project.
24 I think that's a concrete example that's now been
25 operating, I believe for approximately a year that does

1 open -- offer micro loans.

2 MR. ALLAN FORAN: Okay, and that's on a
3 limited basis, I understand.

4 DR. JERRY BUCKLAND: That's correct.

5 MR. ALLAN FORAN: So the only information
6 before the Board is a document that contains Mr.
7 Whitelaw's conclusions that if credit unions were
8 prepared to reconsider the things that I've just
9 identified they could offer a substitute product,
10 correct?

11 DR. JERRY BUCKLAND: Well, there -- there
12 is the Vancity My Best Interest Loan, which is actually
13 in operation now. I think that's an important thing to
14 consider.

15 MR. ALLAN FORAN: Right, and that's in
16 operation in Van' --

17 DR. JERRY BUCKLAND: Correct.

18 MR. ALLAN FORAN: -- not in --

19 DR. JERRY BUCKLAND: Yes.

20 MR. ALLAN FORAN: 'Peg. I may have
21 missed it, is Mr. Whitelaw part of your panel?

22 DR. JERRY BUCKLAND: He's not.

23 MR. ALLAN FORAN: Is he going to be
24 arriving at some point today?

25 DR. JERRY BUCKLAND: Not as far as I

1 know.

2

3

(BRIEF PAUSE)

4

5

MR. ALLAN FORAN: One of the things that's set out in the document that Mr. Whitelaw evidentially prepared is there's reference to the North Carolina State Employees Credit Union as being a possibility for Manitoba credit unions, correct?

10

DR. JERRY BUCKLAND: Yes.

11

MR. ALLAN FORAN: That model, however, as I understand it -- and since we don't have Mr. Whitelaw to ask, Dr. Buckland -- and you'll thank him later for, this I'm going to have to ask you -- but that model requires prospective borrowers to become members, correct?

17

DR. JERRY BUCKLAND: I will accept that point.

19

MR. ALLAN FORAN: And it requires direct deposit of paycheques into a member's account at the credit union, correct?

22

DR. JERRY BUCKLAND: I accept that.

23

MR. ALLAN FORAN: And it requires forced savings, correct?

25

DR. JERRY BUCKLAND: I -- I accept that.

1 MR. ALLAN FORAN: And you'll agree that
2 all those things offset some of the risk of loss that
3 might be taken by a credit union offering such a product,
4 correct?

5 DR. JERRY BUCKLAND: They offset the
6 risk, and they also set up, I think, a completely
7 different type of loan situation that characterize a
8 loan, I think, in a -- what I would argue -- a healthier
9 kind of way, where instead of people are going to the
10 payday lender last minute -- desperate circumstances,
11 paying high fees. Payday lenders face high costs and so
12 they have to, you know, turn around in many cases and
13 charge those high fees.

14 Instead of having that kind of system,
15 what about turning it around and trying to create loan
16 products that are more beneficial to the consumer, both
17 in the short and the long run? So this -- the kinds of
18 things that you're pointing to, I think, are trying to
19 develop a loan with characteristics that I think would be
20 more beneficial to the consumer.

21 MR. ALLAN FORAN: Would you agree with me
22 when I use the word "forced savings," that means
23 something that would take the product out of the
24 exemption from the criminal code because that would be
25 security?

1 DR. JERRY BUCKLAND: Yes.

2 MR. ALLAN FORAN: Now, with all those
3 things I just indicated -- requirement to be a member,
4 direct deposit of paycheques, and forced savings -- are
5 you aware, sir, that the loan losses in the North
6 Carolina State Employees Credit Union model is still
7 calculated at 4 percent?

8 DR. JERRY BUCKLAND: I accept that.

9 MR. ALLAN FORAN: And so that 4 percent
10 loan loss takes into account all the security to which
11 the credit union has access, correct?

12

13 (BRIEF PAUSE)

14

15 DR. JERRY BUCKLAND: I -- I accept that.
16 Yeah.

17

18 (BRIEF PAUSE)

19

20 MR. ALLAN FORAN: In your evidence, Dr.
21 Buckland, you indicated that critics claim that payday
22 lenders prey on, exploit, or trap their clients.

23 Are you cognizant of that? Do you recall
24 that?

25 DR. JERRY BUCKLAND: Yes.

1 MR. ALLAN FORAN: Do you agree with those
2 critics?

3 DR. JERRY BUCKLAND: The conclusions that
4 -- that I reached, based on my reading of the literature
5 and looking at the data, is that it's a -- it's a very
6 mixed bag, that there's service and there is an element
7 of exploitation, using the definitions that I drew on
8 from Robert Mayer.

9 So specifically the sufficiency
10 exploitation and the relative advantage exploitation
11 concepts, I think -- I think they coexist in the payday
12 loan market.

13 MR. ALLAN FORAN: And again, sometimes it
14 doesn't connect with me. So can I just have you just
15 confirm: Do you agree with those critics?

16 DR. JERRY BUCKLAND: No, I don't agree
17 with the critics that claim payday lenders prey on the
18 poor. No, I don't agree with that.

19 MR. ALLAN FORAN: Thank you.

20 DR. JERRY BUCKLAND: I -- I think that
21 payday lending industry is -- is a pretty complicated
22 industry, and we need to look at the -- the big picture.
23 And -- and there's a number of factors.

24 MR. ALLAN FORAN: Now you also indicated
25 that the proponents of payday lending claim it provides a

1 valuable service without which many clients would either
2 not have access to credit or would have to resort to
3 underground resources.

4 Is there any truth to that?

5 DR. JERRY BUCKLAND: Yeah. As I just
6 said, I think it's a mixed reality. There's -- there's a
7 coexistence of service and exploitation.

8 MR. ALLAN FORAN: And so you agree with
9 that, that it is a valuable service?

10 DR. JERRY BUCKLAND: For some clients,
11 yeah. The clients who are not low income and the clients
12 that don't repeatedly use the loan, like, going back to
13 Mayer's definitions of exploitation.

14

15 (BRIEF PAUSE)

16

17 MR. ALLAN FORAN: When we speak about the
18 Robert Mayer's sufficiency exploitation and relative
19 advantage exploitation, I understand that in respect of
20 these that while there's some information to suggest that
21 payday lending may involve sufficiency exploitation,
22 there's really not enough data at this point to reach a
23 definitive conclusion, correct?

24 DR. JERRY BUCKLAND: The -- the data and
25 my reading of the data -- Dr. Simpson is the expert but

1 my reading of the data is that average income of payday
2 loan clients in Canada, drawing on the study of the
3 survey on financial security, is that average income is
4 lower than -- than the Canadian average and that the --
5 the groups in the below thirty thousand dollars
6 (\$30,000), the -- the proportion of payday loan clients
7 that fit there, are higher than the Canadian average.

8 And therefore, there is evidence that on
9 average, payday loan clients are not as well off as the
10 rest of the population.

11 MR. ALLAN FORAN: The catch to my
12 question was that I asked whether there was a definitive
13 conclusion.

14 Can -- can you confirm whether you've made
15 a definitive conclusion on whether there is sufficiency
16 exploitation?

17 DR. JERRY BUCKLAND: Definitive
18 conclusion, I don't make. What I make is based on
19 probability. Social sciences is really about
20 probabilities. We -- we can comment. We can qualify.
21 We can characterize. We can try and understand cause.
22 But my conclusion is that both exploitation and service
23 coexist.

24 MR. ALLAN FORAN: Now I just had the
25 opportunity of act -- asking Dr. Simpson some questions,

1 and if -- if we just change this slightly.

2 If I asked you to look at the Pollara
3 results, would your answer change?

4 DR. JERRY BUCKLAND: The -- yeah, the
5 results from the Pollara survey were -- were different
6 from the FCAC and the Survey on Financial Security and
7 the -- the previous CPLA-sponsored Environics survey.

8 We focused on the latter -- those three
9 (3).

10 MR. ALLAN FORAN: Sure, and -- and if you
11 focussed on the first, which as I understand it is a
12 survey that focuses on -- and I guess we should just
13 clear this up.

14 The -- the Pollara survey focused on the
15 Manitoba marketplace. You're aware of that?

16 DR. JERRY BUCKLAND: Yeah, I'm aware of
17 that.

18 MR. ALLAN FORAN: And it's the very
19 current information? A polling conducted, my
20 understanding is, throughout September. You're aware of
21 that?

22 DR. JERRY BUCKLAND: I'm aware of that.
23 My question about that particular survey has to do with
24 the method. And I guess I would like to know more
25 clearly, you know, the method that was used.

1 And -- and it kind of goes back to a
2 conversation we had yesterday about, you know, Census Can
3 -- Statistics Canada, census data versus business-based
4 data.

5 I believe from -- from my perspective as a
6 -- as a prof, that the data needs to be very carefully
7 collected. And I think Stats Can has a very high
8 reputation -- not just in Canada, but internationally --
9 a reputation of doing high-quality data collection.

10 And, so my preference would be to lean on
11 Stats Can and their data, even when their region of focus
12 is Canada as -- as opposed to Manitoba.

13 MR. ALLAN FORAN: If you were trying to
14 give the best, most current information, would it be fair
15 for me to suggest that you'd want to focus on -- first of
16 all, for the purposes of this Hearing, Manitoba-based
17 information, correct?

18 DR. JERRY BUCKLAND: No. No. I would
19 want to focus on the highest quality, most recent data
20 set. And I was actually very glad to see that the survey
21 on financial security came out just before this
22 proceeding began in September, because I -- it's the
23 first nation -- national data set that includes a
24 question on payday lending.

25 So I was -- I think that's a very high

1 quality data set.

2 MR. ALLAN FORAN: There's no -- really no
3 issue that the fact that it was commissioned by CPLA
4 though, is -- is it?

5 That's not a factor that plays into your
6 assessment on whether to rely on it or not?

7 DR. JERRY BUCKLAND: I think the
8 commissioning needs to be taken into account, but more
9 importantly, the method, if we could understand what was
10 the method used.

11 And the other question is: Who is doing
12 it, what organization? Like for instance, CPLA in '05
13 hired Environics to do a survey. And as Dr. Simpson
14 points out, we do draw on that data.

15 MR. ALLAN FORAN: Sure. And -- and, so
16 if the Board is satisfied that Pollara has, you know,
17 done this in a professional way, just as Environics did,
18 you wouldn't have any difficulties with referring to that
19 evidence then, would you?

20 DR. JERRY BUCKLAND: I would -- I would
21 want to know more clearly the method that they used to
22 select their sample. That -- that would be important for
23 me.

24 MR. ALLAN FORAN: Did you have any input,
25 by the way, into Information Requests on the Pollara

1 report?

2 DR. JERRY BUCKLAND: I had very limited
3 input.

4 MR. ALLAN FORAN: But you did have the
5 opportunity to provide input?

6 DR. JERRY BUCKLAND: I -- I did have the
7 opportunity.

8 MR. ALLAN FORAN: And so all those things
9 you were concerned about, you could have conveyed to your
10 counsel to put into Information Requests?

11 DR. JERRY BUCKLAND: Yes.

12 MR. ALLAN FORAN: Thank you.

13

14 (BRIEF PAUSE)

15

16 MR. ALLAN FORAN: One (1) of the examples
17 that you provided to the Board that relates to, as I
18 understand it -- I hope I have this correct -- relative
19 advantage exploitation was an illustration involving a
20 car repair?

21 DR. JERRY BUCKLAND: That's correct.

22 MR. ALLAN FORAN: That was illustration
23 of -- of that concept, relative advantage exploitation?

24 DR. JERRY BUCKLAND: I'm trying to
25 remember. In -- in the original "Serving or Exploiting"

1 report, I don't believe the car repair was the story
2 there.

3 I -- I absolutely stand to be corrected.
4 I'm thinking it was my direct evidence that I used the --
5 the car repair example. Is that -- am I understanding
6 you correctly?

7 MR. ALLAN FORAN: My -- my recollection
8 is that you were in a position to amplify on the example
9 in your evidence, on your written evidence in your oral
10 evidence. And you expanded upon the tables and provided
11 some background on what I would call the car repair
12 example.

13 So -- let me just refer to that, because I
14 think we're on the same page. That's what I'd like to
15 take you to now.

16 You showed us in that example an extension
17 from Elliehausen & Lawrence, which was intended to
18 illustrate what happens to the benefit of a family
19 deriving from a payday loan of two hundred dollars (\$200)
20 to cover car repairs, if it quickly -- which evaporates
21 quickly if the loan's not repaid on payday, correct?

22 DR. JERRY BUCKLAND: What the example
23 showed was, yeah, that there's a benefit to the consumer
24 with -- with the thirty dollar (\$30) fee to -- to repair
25 the car.

1 MR. ALLAN FORAN: And in your extension
2 in your oral evidence, you indicated while there may have
3 been savings during the initial term of the loan -- in
4 terms of transit fare and commuting time -- these would
5 not continue after the loan is extended, correct?

6 DR. JERRY BUCKLAND: They'd not continue
7 because the person could have repaired the car upon
8 receipt of the payday -- the paycheque on payday.

9 MR. ALLAN FORAN: And I'm just going to
10 follow through, because in fact the next question that I
11 had for you is that you indicated the reason for that is
12 that they would have got the car fixed at that time, even
13 without taking a payday loan, correct?

14 DR. JERRY BUCKLAND: That's correct.

15 MR. ALLAN FORAN: With the paycheque
16 they're expecting on the day of the payday loan was due,
17 correct?

18 DR. JERRY BUCKLAND: Correct.

19 MR. ALLAN FORAN: But if you're assuming
20 they're unable to pay back the loan, aren't you also
21 assuming they're unable to pay for the car repairs?

22

23 (BRIEF PAUSE)

24

25 DR. JERRY BUCKLAND: That's a very good

1 point. I'd like to consider that. The scenario that I
2 was trying to -- to demonstrate was how a repeat loan
3 could ultimately lead to a negative net present value for
4 the household.

5 MR. ALLAN FORAN: Okay. Why don't you
6 consider that? Will you give me the small concession
7 that I've made a point?

8 DR. JERRY BUCKLAND: Yeah, you've --
9 you've made a point.

10 MR. ALLAN FORAN: Would you give me a
11 larger concession that I've made a larger point?

12 DR. JERRY BUCKLAND: Can I stick with the
13 small one for now?

14 MR. ALLAN FORAN: Again, with leave of
15 the Board, if it's possible at your convenience, could I
16 -- could I take the lunch break now?

17

18 (BRIEF PAUSE)

19

20 THE CHAIRPERSON: That is fine. We will
21 come back at 1:00.

22 MR. ALLAN FORAN: Thank you.

23

24 --- Upon recessing at 11:45 a.m.

25 --- Upon resuming at 1:03 p.m.

1 THE CHAIRPERSON: Everybody seems to be
2 in place, Mr. Foran.

3

4 CONTINUED BY MR. ALLAN FORAN:

5 MR. ALLAN FORAN: Thank you, Mr.
6 Chairman, members of the Board.

7 Dr. Buckland, one (1) of the
8 recommendations that was made on behalf of the Coalition
9 in your evidence yesterday was fair disclosure, fee and
10 loan rules, which was your first recommendation.

11 Do you recall that?

12 DR. JERRY BUCKLAND: I do, yes.

13 MR. ALLAN FORAN: Where they numbered in
14 any order? Is that the most important recommendation
15 that you've made?

16 DR. JERRY BUCKLAND: I wasn't ranking
17 them. That was the first one (1) I presented.

18 MR. ALLAN FORAN: Would you agree with me
19 that in view of the concerns that have been expressed
20 throughout the Coalition material that a fee mechanism
21 that is simpler to understand by a consumer would be
22 better than a more complicated fee mechanism?

23 DR. JERRY BUCKLAND: I think what's most
24 important for the consumer is fair disclosure so that the
25 total lump-sum cost of the loan is -- is clear to the

1 consumer.

2 MR. ALLAN FORAN: And would you agree
3 with me that the easier it is for the consumer to
4 calculate what they're paying, the better it's going to
5 be for the consumer?

6 DR. JERRY BUCKLAND: Yes. I think that a
7 -- a simple formula will lead to a -- a more
8 straightforward calculation for the consumer.

9 MR. ALLAN FORAN: Given the -- the
10 possibilities -- and I'll give you two (2) of them.

11 Given the two (2) possibilities that have
12 been provided to the Board by Dr. Robinson, one (1) would
13 be a flat percentage of the amount borrowed, as compared
14 to a tiered approach, where percentages would change as
15 different dollar amounts were borrowed.

16 What -- what would you prefer out of those
17 two (2)?

18 DR. JERRY BUCKLAND: You know, I've
19 thought about that. And I agree with Dr. Robinson, that
20 both of these would be worthwhile caps.

21 I think with the tiered cap it's important
22 that that information be provided to the consumer in a
23 concise bit of information. So in other words, something
24 along the lines of the regulation as they stand -- or as
25 they will stand, that the payday lender provide the APR

1 for a certain type of loan, certain time period.

2 So I think that the -- the tiered system
3 can work. It is, I think, slightly more complicated for
4 the consumer. So there is a slight disadvantage.

5 On the other hand, there is a slight
6 advantage, I believe, in the sense that Dr. Robinson's
7 tiered cap gives a slightly lower fee to the -- the
8 larger loans. So he's imbedded within his formula the --
9 the cost, like the -- the basic cost of the transaction.

10 So I see that there's sort of advantages
11 and disadvantages, and I -- I think both are good
12 recommendations.

13 MR. ALLAN FORAN: Given the option
14 between the two (2), you'd prefer a flat fee. Is that
15 correct?

16 DR. JERRY BUCKLAND: Given the options
17 between the two (2), I think that -- it's a hard -- it's
18 a tough call, and I -- I think both are good.

19 I think that -- again, there's advantages
20 and disadvantages. And -- and, so I -- I think either
21 one (1) would be a good choice for the Board.

22 MR. ALLAN FORAN: I -- I guess the -- the
23 thing ultimately, if I can get you to -- to agree with me
24 on this, is what's simpler for the consumer is better for
25 the consumer. You'd agree with me?

1 DR. JERRY BUCKLAND: Simple --

2 MR. ALLAN FORAN: Simpler to understand.

3 DR. JERRY BUCKLAND: Simplicity is
4 important, as well as cost.

5 MR. ALLAN FORAN: Okay.

6 DR. JERRY BUCKLAND: So the -- the simple
7 -- I mean in a sense, the -- the time it takes to
8 understand a payday loan, there's a cost involved.
9 There's an opportunity cost.

10 So I think we need to kind of think of all
11 the various costs. The time it takes to figure out how
12 much this loan is actually going to cost me is -- is one
13 (1) of those costs.

14 So I think you have to weigh simplicity
15 along with the -- the actual cost the consumer is facing.

16 MR. ALLAN FORAN: Would you agree with me
17 that one (1) of the barriers to entry into the Manitoba
18 marketplace has been the uncertainty, or the -- the
19 prospect of possible litigation involving payday loans?

20

21 (BRIEF PAUSE)

22

23 DR. JERRY BUCKLAND: I don't know if
24 payday lenders have felt constrained by that. As we
25 heard this morning from the -- the presentation by the --

1 the police constable, that there have been efforts to
2 prosecute payday lenders in the past. So that clearly
3 has taken place.

4 I don't know if payday lenders have felt
5 constrained on -- on that basis. The data seems to
6 suggest that they're growing in numbers. So if there is
7 a constraint to them based on the criminal rate of
8 interest, it doesn't seem to be particularly binding.

9 MR. ALLAN FORAN: You -- you would expect
10 though or you'd agree with me that with regulation it
11 would facilitate the entrance to Manitoba marketplace of
12 competitors. For example we've got these -- we've got
13 Advance America as a recent entrant?

14 DR. JERRY BUCKLAND: Yes, I would agree
15 with that.

16

17 (BRIEF PAUSE)

18

19 MR. ALLAN FORAN: I'd like to refer to
20 page 17 of your initial evidence of September 17th.

21

22 (BRIEF PAUSE)

23

24 MR. ALLAN FORAN: The first paragraph
25 contains a description of some of the different types of

1 products that are in the marketplace. What I'm going to
2 refer you to, though, is the last sentence, in which you
3 define what you mean to be a mainstream bank.

4 And what I understand you to have said is
5 that it's a -- it's an entity or a financial institution
6 that's been more formally regulated.

7 Do you see that?

8 DR. JERRY BUCKLAND: Yes, that's correct.

9 MR. ALLAN FORAN: Once -- once the Board
10 issues its fee for this industry, will payday lenders
11 stop being a fringe bank and now become a mainstream bank
12 according to your definition?

13 It's -- it's going to be more formally
14 regulated?

15 DR. JERRY BUCKLAND: Well, my definition
16 is really coming from the -- the work in the US. And --
17 and I especially draw on John Kasky (phonetic). And --
18 and his definition has to do with the level of
19 regulation, but also the placement of this category of
20 fringe financial service providers in the context of the
21 whole. And the -- the point that -- I mean, actually
22 Kasky talks about two (2) fringes.

23 On the one hand, there are certain kinds
24 of financial services that are more focused on the very
25 wealthy. And apparently some banks have special services

1 that very wealthy people can take advantage of, where
2 their staff person will go to their home and provide very
3 extensive financial services in a -- in a very convenient
4 way. So that's one fringe that John Kasky identifies.
5 So that's for the very wealthy.

6 The other fringe are the category of
7 service providers focusing primarily on lower income.
8 And with payday lenders it would also include middle
9 income -- modest middle income people. And so that's
10 another sense of the definition fringe -- fringe bank.

11 MR. ALLAN FORAN: So you're not
12 suggesting, however, that if mainstream banks started
13 offering payday loans, they'd become a fringe bank?
14 You're not saying that, are you?

15 DR. JERRY BUCKLAND: I don't think -- no
16 I -- I don't think mainstream banks are -- are in the --
17 the market to offer payday loans.

18 MR. ALLAN FORAN: Okay, thank you. So
19 Mr. Kasky's definition of a -- a fringe bank is something
20 that -- that you have adopted.

21 Do you have your own definition or do you
22 just rely on Mr. Kasky?

23 DR. JERRY BUCKLAND: I -- I like his
24 definition, yeah.

25 MR. ALLAN FORAN: In August of 2003, Dr.

1 Buckland, you published a report with Thibault Martin
2 entitled "The Rise of Fringe Financial Services in
3 Winnipeg North -- North End," correct?

4 DR. JERRY BUCKLAND: Yes, that's correct.

5 MR. ALLAN FORAN: And in that report you
6 considered a variety of alternative financial services,
7 correct?

8 DR. JERRY BUCKLAND: That report looked
9 primarily at the factors behind people using fringe banks
10 based on a qualitative study of the North End.

11 MR. ALLAN FORAN: And one of the things
12 you studied was payday lending, correct?

13 DR. JERRY BUCKLAND: The focus wasn't
14 payday lending. The focus was fringe banks more
15 generally. And just to put that one in context -- and I
16 think maybe I've talked to the Board about this in a
17 previous hearing.

18 I think the North End of Winnipeg is a
19 very particular neighbourhood. And if I could spend --
20 say a little bit about the -- the characteristics -- the
21 context of the North End. We focus primarily on the
22 southern part of the North End.

23 And the southern part of the North End has
24 gone through a very significant change in the last twenty
25 (20) to fifty (50) years, with a lot of people moving out

1 into -- moving into other neighbourhoods.

2 And a lot of newcomer Canadians and in --
3 actually in the -- in the southern part of the North End
4 many Aboriginal people from First Nations communities,
5 many of these people are moving in. So the southern part
6 of the North End is actually a very low-income
7 neighbourhood.

8 That report is based on a qualitative
9 study of folks in that particular neighbourhood. Not --
10 payday loans were certainly one (1) of the services that
11 they used, but pawn loans, cheque cashing services, rent-
12 to-owns were other services that they used.

13 MR. ALLAN FORAN: One of the things that
14 you did in that report -- thank you for the information
15 by the way.

16 But one of the things that you did in that
17 report is to devise a hypothetical example for a
18 community-based alternative to payday lenders, one that
19 would charge lower fees, correct?

20 DR. JERRY BUCKLAND: Not in the article
21 that you've just quoted, no. I think you're referring to
22 an article I did with Blair Hamilton and Brendan Reimer.

23 MR. ALLAN FORAN: Okay. And I'm just --
24 I'll tell you what I'm looking at is something called
25 "The Rise of Fringe Financial Services in Winnipeg's

1 North End." And I've got an excerpt for it, so I'll just
2 -- I'll provide it to your counsel, and he can give you
3 what I'm about to refer to.

4 DR. JERRY BUCKLAND: Sure.

5

6 (BRIEF PAUSE)

7

8 DR. JERRY BUCKLAND: Okay. I've very
9 briefly skimmed the page that -- that you've provided.

10 MR. ALLAN FORAN: That is your report, do
11 you recall that?

12 DR. JERRY BUCKLAND: Yeah. This -- now
13 it -- now I'm understanding. This is the -- the final
14 report that we undertook with the Winnipeg Inner City
15 Research Alliance, and there were multiple authors
16 actually.

17 MR. ALLAN FORAN: Right. And so you've
18 disagreed with me, you didn't create a hypothetical
19 example of a community-based alternative to payday
20 lenders?

21 DR. JERRY BUCKLAND: For this study we
22 did. I don't disagree with you. I thought you were
23 referring to the article I did with Thibault Martin,
24 which was published through the Canadian Journal of Urban
25 Research. But you're referring to another study. So I

1 was confused.

2 MR. ALLAN FORAN: Okay. And I'm sorry to
3 have confused you. And now I am confused, because I'll
4 tell you -- so you've agreed with me, you've changed your
5 answer, but what you've told me is that I've got the
6 wrong title for the report?

7 MR. BYRON WILLIAMS: Let me just be
8 clear. The -- the reference that you originally made was
9 to the document, the one that was published in the urban
10 studies one, or at least that was my understanding.

11

12 CONTINUED BY MR. ALLAN FORAN:

13 MR. ALLAN FORAN: I'm just looking at a
14 report on "The Research Study into Fringe Financial
15 Services in Winnipeg's North End," by Jerry Buckland, PhD
16 and Thibault Martin -- Thibault Martin, PhD. That -- and
17 I'm sorry, it may be -- and Nancy Barber, Amelia Curran,
18 Rena McDonald, and Brenda -- Brendan Reimer, August 2003.

19 DR. JERRY BUCKLAND: That's what confused
20 me. When you said Buckland and Martin, we had published
21 an article in 2005 in the Canadian Journal of Urban
22 Research. And I think I've referred to that in some of
23 my reporting.

24 MR. ALLAN FORAN: Okay.

25 DR. JERRY BUCKLAND: And so when you

1 said, "Thibault Martin and Buckland," that's immediately
2 what -- where my mind went.

3 MR. ALLAN FORAN: Okay. But I'm back now
4 on the right track with you, it --

5 DR. JERRY BUCKLAND: Yeah.

6 MR. ALLAN FORAN: -- still is the
7 Buckland, Thibault Martin, and et al --

8 DR. JERRY BUCKLAND: Yes.

9 MR. ALLAN FORAN: -- document?

10 DR. JERRY BUCKLAND: Yes.

11 MR. ALLAN FORAN: And so coming back to
12 my question then, it sounds like we're now back on track.

13 One of the things you did in that report -
14 - the one I've just shown you from 2003 -- is to devise a
15 hypothetical example for a community-based alternative to
16 payday lenders that would charge lower fees, correct?

17 DR. JERRY BUCKLAND: That's correct. And
18 this work was undertaken by Blair Hamilton, who was
19 contracted to work on this pre-assessment or pre-
20 feasibility model for a Community Financial Service
21 project, which then turned into the business plan -- or
22 sorry, he worked on, then, the business plan that led to
23 the development of the Community Financial Service
24 project in the North End.

25 MR. ALLAN FORAN: And the -- your name

1 being on this report, you agreed with what was in the
2 report, you vetted it, you oversaw it?

3 DR. JERRY BUCKLAND: That's correct.

4 MR. ALLAN FORAN: Okay. On page 169 of
5 the report I provided you with an excerpt.

6

7 (BRIEF PAUSE)

8

9 MR. ALLAN FORAN: And I'll just -- I'll
10 put it to you, and we'll -- we'll provide copies to the
11 Board as well.

12 In respect to the hypothetical service for
13 payday lending, you wrote this:

14 "While such a competitively priced
15 service may prove popular with payday
16 loan clientele, it is unlikely to meet
17 the mandate of a community-based
18 service provider. The payday loan
19 client is employed and has a bank
20 account, but does not have an account
21 overdraft or a useable credit card.
22 Given this established access to
23 mainstream financial services, the need
24 for the short-term loan can usually be
25 attributed to poor financial discipline

1 or bad credit history. The interests
2 of this consumer are likely best served
3 by education rather than access to
4 cheaper credit."

5 Those were your views in 2003, Dr.
6 Buckland?

7 DR. JERRY BUCKLAND: Once again, this was
8 written by Blair Hamilton, and it was included in our
9 report, so I do take full responsibility for -- for that
10 statement.

11 MR. ALLAN FORAN: Yeah. Right, and those
12 were your views in 2003?

13 DR. JERRY BUCKLAND: Those were the views
14 of Blair Hamilton in -- in 2003, and I -- I supported --
15 I supported those -- those views at that time.

16 MR. ALLAN FORAN: Do you still support
17 those views today?

18 DR. JERRY BUCKLAND: I think that some
19 people who use payday loans -- and who use other credit
20 products as well -- face difficult credit circumstances.

21 And I think the -- the data that Dr.
22 Simpson has referred to does point out that for some
23 payday loan clients, there is a credit crunch. There is
24 a -- a problem that they're facing with their credit
25 situation.

1 MR. ALLAN FORAN: And I missed it. Do
2 you still hold the views today that you expressed in
3 2003, that -- and I -- just maybe we'll focus you on this
4 part of it:

5 "The need for a short-term loan can be
6 -- usually be attributed to poor
7 financial discipline or bad credit
8 history. The interests of this
9 consumer are likely best served by
10 education rather than access to cheaper
11 credit."

12 Do you still hold those views today, sir?

13 DR. JERRY BUCKLAND: My views would be
14 that that's a part of what is needed -- financial
15 literacy, financial capability. And in addition to that,
16 there is a definite need for access to -- to credit.

17 I don't think payday loans are necessarily
18 the right product in all cases, but -- so yeah, I -- I
19 guess my views have -- have changed.

20 MR. ALLAN FORAN: Would you be concerned
21 if a decision of the Board resulted in payday lenders
22 consolidating operation, shutting down outlets, and
23 making it less easy for consumers -- say in the inner
24 city -- to access?

25 Would that be a concern for you?

1 DR. JERRY BUCKLAND: It would be a con --
2 concern to me if the outlets that were being shut down
3 were high quality, following good business practices, and
4 providing payday loans at reasonable rates.

5 On the other hand, if the payday lenders
6 that are being -- sort of exiting the market are -- are
7 less competitive, less able to provide services at a
8 decent fee, and maybe have some less -- business
9 practices with less fair disclosure, then no, I -- I
10 don't think that would be a -- a great -- a concern for
11 me.

12 MR. ALLAN FORAN: And so you'd be
13 concerned about the unintended consequence of good payday
14 lenders going out of -- out of business as a result of a
15 rate that was set, for example, too low for them to
16 continue operating?

17 DR. JERRY BUCKLAND: Well, I think Dr.
18 Robinson presents a plausible argument, that in the --
19 for the benefit of the largest number of consumers, a
20 rate cap of either the tiered starting at seventeen (17)
21 or the full seventeen dollar (\$17) rate cap can protect
22 the largest number of consumers.

23 And those consumers who then can't access
24 payday lenders because they're shut down, there are some
25 alternatives.

1 MR. ALLAN FORAN: Like pawn brokers?

2 DR. JERRY BUCKLAND: For low-income
3 people, pawn brokers are an important source of credit.
4 And I -- I think that they can provide a -- a loan, an
5 important service. You need collateral, but then you get
6 that collateral back.

7 So the costs -- if you exclude the storage
8 costs -- in calculating the APR on a pawn loan, if you
9 exclude the storage costs -- and I have to confess that
10 in this particular project that Mr. Foran has referred to
11 we didn't exclude the storage costs.

12 But if we exclude the storage costs, then
13 I believe the -- the fee for a pawn loan and the APR is
14 lower than payday loan fees, at least at a quite a number
15 of payday lenders.

16 MR. ALLAN FORAN: And I didn't really
17 mean to -- to result on this back -- getting back to a
18 technical discussion.

19 But you've heard to today from Mr. Glass,
20 a presenter, that there really is no regulations in
21 Manitoba that would restrict storage fees, for example,
22 for pawn shops, correct?

23 DR. JERRY BUCKLAND: The -- the
24 regulation on pawn brokers has to do with, first of all
25 they need a licence, and they get that from the -- the

1 city. And then there is a regulation of their receipt of
2 pawn merchandise so that they do have to submit to the
3 police on a regular basis the serial numbers for the
4 merchandise they -- they receive. So there's not a
5 regulation on their -- their fee.

6 Interestingly -- I find this very
7 interesting. At least in 2002, 2003, when we did our
8 research, we found a very wide spread in prices among
9 payday lenders. And as I recall -- and I'm going to have
10 to wing it here a bit -- seems to me APRs ranged from two
11 fifty (250) up to over a thousand (1,000), so not that --
12 not that different from what we found this time for a --
13 for a two (2) week loan, for payday loans. It's quite a
14 wide variation in -- in prices.

15 And similarly, I did a -- a kind of a
16 quasi mystery shop back then. I called it "Outlet
17 Followup." So I went in to -- to various payday lenders
18 at the time. And similar to our results from the mystery
19 shopping this time, I found it very difficult to get the
20 fees. There were no posters. There were no pamphlets.

21 When I went to the teller, the best -- the
22 best I could typically do was the teller would be willing
23 if I gave her -- her or him a piece of paper, the teller
24 would write the -- the fee that would be due in a couple
25 weeks on the piece of paper. That was the amount of fee

1 information I got, and that was in '02/'03 when I did
2 that research.

3 Pawn brokers, on the other hand, were very
4 different. They had a standard fee. All pawn brokers
5 charge the -- the same fee. Now I haven't checked that
6 recently, but there was a common price. And everybody --
7 well I shouldn't say everyone.

8 When we spoke with North Enders about the
9 pawn shop fees, they knew what they were. And, you know,
10 is it the same at this one, and that one? Yes it's the
11 same. So they had an understanding of the fee and it was
12 a common fee. So I thought that was a very interesting
13 juxtaposition between pawn brokers and payday lenders.

14 MR. ALLAN FORAN: And -- and my question
15 really started down the path of access and your concerns
16 over access by -- by rates the Board might make.

17 Is it fair for me to -- to suggest then
18 that so long as the Board is cognizant that there be
19 alternatives in the event the payday lenders close, that
20 you'd be satisfied with whatever rate the Board set?

21 DR. JERRY BUCKLAND: I don't recommend
22 the -- that the -- the Board adopt a rate that would
23 lead to a significant decline in the number of payday
24 lenders. And I think the recommendations that are coming
25 out of the Coalition would not lead to that.

1 If there was a significant decline --
2 decline in the number of payday lender outlets, yeah, I
3 think that would be a consequence that could cause
4 problems.

5 MR. ALLAN FORAN: Going back to your
6 report of August 2003, "The Rise of Fringe Financial
7 Services in Winnipeg's North End," my understanding is
8 that one of the recommendations that was contained in it
9 -- that you either drafted or had -- had other
10 participants working with you on -- was a -- a notion
11 that it would be sensible for community agencies to work
12 with fringe banks to offer best rates and practices.

13 Do you recall that?

14 DR. JERRY BUCKLAND: I don't recall that
15 particular one, but that's actually something I included
16 in my recommendations just this -- yesterday.

17 MR. ALLAN FORAN: How would that look?
18 How --

19 DR. JERRY BUCKLAND: So --

20 MR. ALLAN FORAN: -- how would fringe
21 banks -- and let's just change the wording for a moment.

22 How would payday lenders accomplish that?
23 What would you see payday lenders doing with community
24 agencies to develop best business practices and rates?

25 DR. JERRY BUCKLAND: Well, the same way

1 banks and credit unions are working with community
2 organizations. It seems to me that part of the issue, in
3 terms of addressing the -- the unbanked -- I mean, I
4 think we're kind of shifting here a bit, in the sense
5 that we're -- we're talking maybe more about the
6 unbanked, folks who simply don't have a bank account.

7 And we know payday lender clients do have
8 bank accounts. So it seems to me we're -- we're shifting
9 a bit which is fine. But banks -- for instance, RBC in
10 Toronto and credit unions, such as Van City in Vancouver
11 and ACU here in Winnipeg -- are interested in why low-
12 income people are not banked. What's causing that? And
13 what are mechanisms to help them to become banked?

14 And so it seems to me that fringe banks
15 have some -- some real experience and interests there. I
16 think they have something to offer.

17 And for instance, I made the comment the
18 other day about noticing in Ontario a payday lender was
19 advertising that by some type of relationship with that
20 payday lender, they could improve their credit rating.

21 So I don't know how they're doing that. I
22 -- I'm very interested to -- to look at that. Now that's
23 not the unbanked question. That's becoming, I think,
24 moving from underbanked to becoming more banked. But
25 it's -- it's an example.

1 So yeah, I think why can't payday lenders
2 and -- and other fringe banks -- they've got a lot of
3 experience. Why can't they work with community
4 organizations, and -- and banks, and credit unions? And
5 why can't we break down further the walls that seem to
6 segment people into different types of financial
7 services?

8 MR. ALLAN FORAN: Thank you. Those are
9 my questions, Dr. Buckland. Thank you.

10 DR. JERRY BUCKLAND: Thank you.

11

12 (BRIEF PAUSE)

13

14 MR. BYRON WILLIAMS: Mr. Chairman, if --
15 if we could stand down for about three (3) minutes. I
16 have a couple undertakings. Or perhaps if you give us
17 five (5). I just want to make sure that I can check with
18 my witnesses and that I can assist the Board in terms of
19 responses.

20 THE CHAIRPERSON: Very good. Okay.

21

22 --- Upon recessing at 1:30 p.m.

23 --- Upon resuming at 1:36 p.m.

24

25 THE CHAIRPERSON: Okay, sir.

1 MR. ANTOINE HACAULT: I believe Mr.
2 Williams has a couple comments before I begin my
3 questioning.

4 THE CHAIRPERSON: Yes, I think so, and Ms.
5 Southall has something too. Mr. Williams...?

6 MR. BYRON WILLIAMS: Just -- there was a
7 question, and -- and frankly whether -- whether it was
8 from the Chair or from Ms. Proven, I -- I can't remember
9 anymore.

10 But from the -- the mystery shopping
11 exercise, in terms of the actual loan when Ms. Friesen
12 went in to take out a loan, there was some discussion
13 about insurance and whether or not Ms. Friesen took out
14 a policy or not.

15 So Ms. Friesen, I'll give you a -- a
16 chance to elaborate on that. And if I feel the need to
17 ask a couple questions, I will on that point.

18 MS. ANITA FRIESEN: Hi. I felt like the
19 answer I had given you at the time was kind of
20 inadequate, and it was more based on my recollection of
21 what was actually stated in -- in the agreement that I
22 had signed. And I couldn't remember if it had said
23 policy on it exactly.

24 And, so I looked back at it, and it
25 doesn't. It -- it's an application for payment

1 protection. It does state that there is a group policy
2 and then a number after it, but this, I believe, is just
3 an application.

4 And I actually -- I had to -- I checked
5 with Dr. Carter first to see if he could just figure out
6 if it was a policy or not. And then I had to check with
7 Mr. Williams as well.

8 And upon reading it closer I realized that
9 there was a certificate of insurance, that it says,

10 "The certificate of insurance is
11 provided hereunder."

12 And I never did receive it. I -- I have
13 kept very close to me all of the documents that I
14 collected in my visits, and I know that I did not receive
15 one.

16 And because my confusion too -- and I
17 think the question was asked whether I understood the
18 insurance pol -- or the -- what I had signed. And I was
19 unclear, because it does not state the terms and
20 conditions. So it doesn't say under what circumstances
21 the insurance plan would kick in.

22 I was told verbally -- and again this is
23 just on my memory, because I didn't put into my notes,
24 unfortunately. But it was something along the lines of
25 when my -- if I was -- if I lost my employment, if I was

1 injured and was not earning my full pay and could not pay
2 back -- but that's not -- none of those terms are
3 included in here, again.

4 So that's -- that's as much, I think, as I
5 can tell you.

6 MR. BYRON WILLIAMS: If I could just
7 summarize. You -- you signed a document which -- which
8 was an application, and there was reference to a
9 certificate of insurance. Is that right?

10 MS. ANITA FRIESEN: That's right, yes.

11 MR. BYRON WILLIAMS: And to your
12 knowledge you did not receive a certificate of insurance?

13 MS. ANITA FRIESEN: I'm absolutely sure I
14 did not, yeah.

15 MR. BYRON WILLIAMS: Okay. In terms of
16 the other -- it wasn't really an undertaking, but Mr.
17 Hacault had been kind enough to ask whether the written
18 notes provided by the -- the witnesses could be made
19 available in addition to the -- what, I would argue, are
20 extensive typed notes that have -- have already been
21 provided.

22 And I -- I'm going to provide an -- a
23 response, but it's going to be a -- ultimately the answer
24 is yes, Mr. Chairman. But I -- I want to -- I want to be
25 clear about, first of all, what I'm agreeing to provide.

1 And -- and I do have some -- some issues in terms of --
2 you're going to have to bear with me in terms of whining
3 for just a -- a second or two (2), but it will be fairly
4 quickly.

5 As I understand it, in terms of mystery
6 shopping or quasi mystery shopping, there will be forty
7 (40) different transactions that took place. Twenty (20)
8 were by telephone, which Mr. Osborne conducted and for
9 which there are -- there is -- there is a writeup, but
10 there are also some handwritten notes.

11 There are also from the bricks and mortar
12 visits, there are an additional four (4) which Mr.
13 Osborne conducted as Mystery Shopper A. So that's
14 twenty-four (24) by Mr. Osborne.

15 There are twelve (12) by Ms. Friesen: the
16 first four (4) inquiry visits, the next four (4) loan
17 visits, and then the next four (4) in which she attempted
18 to take out a re-loan or extension.

19 And there also would be four (4) visits by
20 Mystery Shopper C, who is -- whose name is not known to
21 you.

22 Of those -- so there's forty (40) sets of
23 notes. Four of those are already filed, because in -- in
24 her extension visits Ms. Friesen went immediately from
25 the extension visit and -- and literally typed the

1 results right into the -- the September 17th report. So
2 four (4) of those are already available.

3 So there's -- there's thirty-six (36) that
4 are in terms of written notes that -- that we will
5 endeavour to provide to the Board.

6 When I spoke to the Board yesterday, I
7 said I would talk to Mr. --

8 MR. ANTOINE HACAULT: Sorry, there's only
9 three (3) on the extension visit. I don't know whether
10 we're missing one (1), but the fourth one was never
11 provided.

12 MR. BYRON WILLIAMS: I misspoke, because
13 there was no re-loan pre -- presumably in -- in -- terms
14 -- so I misspoke. There's thirty-nine (39) sets of
15 notes.

16 When I spoke to the Board last night, I
17 said I would to talk to Mr. Hacaault last night and then
18 speak to the Board this morning. And it's probably a
19 good thing I didn't speak to him last night, because I
20 probably would of said no.

21 And I'll tell you why I would have said
22 no. One is just in terms of the notes, remember that we
23 have to edit these for confidentiality. And it's not
24 just by Ms. Friesen or Mr. Osborne. Dr. Buckland will
25 want to check. And as legal counsel, I will check as

1 well.

2 Now, it's not -- it's not a hundred (100)
3 hour job, but maybe it's legal counsel is lazy -- I'll
4 admit to that -- and so I had a certain reluctance to do
5 so. And of course, there's cost consequences as well,
6 although they're not insurmountable by any means.

7 The other reason, just so I'm clear, is
8 because if you think of the process that Mr. Osborne
9 undertook or Ms. Friesen undertook, Mr. Osbor -- Mr.
10 Osborne went into the -- the store, took some notes, went
11 and had a cappuccino while he smoked his cigarette --
12 he's got some addictions that I -- I should -- elaborate
13 on those notes and then type them.

14 And the best and most complete information
15 would be in the typed version, because it reflects his --
16 the memory triggers in the process of typing it up.

17 Ms. Friesen, perhaps not being a smoker,
18 wrote memory cues and notes and then went immediately to
19 type up her notes.

20 So my second reluctsa -- my third
21 reluctance, apart from cost and apart from time, was just
22 that my view was that the best information was already on
23 the record, with the exception of the documents which Ms.
24 Friesen certainly would love to share with the Board.
25 But only Money Mart has given us express authority to do

1 so.

2 So that was my thinking last night. This
3 morning, as I reflected upon -- and I realize that apart
4 from information that might help the Board, Mr. Hacault
5 might be looking for this information. He may wish to
6 test the credibility or the -- the process.

7 And I would -- could see that -- of the
8 mystery shoppers. So I could see why those handwritten
9 notes might be relevant for that. So certainly for that
10 purpose, we're -- we're happy to provide them.

11 And also I'm hoping that if we provide
12 these handwritten notes at some pain to myself will
13 encourage industry players who haven't given us authority
14 to disclose documents, perhaps to disclose those
15 documents.

16 In terms of the -- so we've -- we've got
17 thirty-nine (39) sets of notes. Mr. Osborne and Ms.
18 Friesen are responsible for thirty-two (32) of those.
19 And they have them. And we'll -- we'll go through them
20 and certainly provide them. And we'll try and get them
21 to Mr. Hacault as an early Christmas present.

22 In terms of the Mystery Shopper C, we have
23 her typewritten notes. I -- at this point in time, I'm
24 not sure if she can locate her handwritten notes. We
25 will ask her to locate her handwritten notes if that's

1 possible. We will also explicitly instruct her that
2 she's not to recreate any notes, obviously.

3 So I can certainly agree to provide Mr.
4 Hacault with thirty-two (32) of the -- the thirty (30) --
5 thirty-six (36), and we'll make best efforts to provide
6 the -- the other four (4).

7 And the -- the last point I wish to -- to
8 make is that the twenty (20) -- I haven't seen Mr.
9 Osborne's notes from his telephone, but I believe it's on
10 spreadsheets or some sort of sheets. So I'm not quite
11 sure what form that will appear in, but -- so certainly
12 we'll be happy to assist Mr. Hacault. It may take us a
13 couple of days though. Okay?

14 THE CHAIRPERSON: Mr. Hacault, does that
15 meet with your satisfaction?

16 MR. ANTOINE HACAULT: Just as a matter,
17 Mr. Chairman and Board members, this was part of an IR
18 that had been asked at the very outset that we just
19 wanted the handwritten notes and details of what had been
20 recorded at these visits.

21 So I just wanted to clarify it's not a new
22 request. It's -- we just wanted what was recorded by
23 these people. And we thought it made sense, because if
24 they went in and made notes, hopefully it would help the
25 process and the Hearing.

1 THE CHAIRPERSON: Mr. Williams mentions
2 costs. And somewhere in my background being an
3 accountant I'm curious, what kind of costs are we talking
4 about?

5 MR. BYRON WILLIAMS: I'm just worried
6 about -- and, Mr. Chairman, it's not a big cost. I want
7 to be clear. There are -- there's time. I -- I will
8 have to pay the witnesses, and I'll either eat the costs
9 or have to bill for them.

10 THE CHAIRPERSON: Well, I am just
11 wondering, Mr. Hacault, if it is possible to do a test
12 sample, or do you want them all?

13 MR. BYRON WILLIAMS: I'd suggest, Mr.
14 Chairman, we'll -- we'll, if you wish us to, but we're
15 happy -- you know, it'll take a while. But not -- it's
16 not going to take a hundred (100) hours or anything like
17 that. It's probably twenty (20) or so, so we'll be happy
18 -- maybe less, maybe much less.

19 THE CHAIRPERSON: Yeah, think less.
20 Okay, Mr. Hacault, over to you if you want to begin. Oh,
21 I am sorry, Ms. Southall has something to put in.

22 MS. ANITA SOUTHALL: We're all having an
23 opportunity to jump in, if only briefly. I -- I wanted
24 to introduce a new PUB exhibit. And this is a result of
25 the Board asking its staff member to do a bit of

1 research. To be honest, it -- it fills in the record a
2 little bit.

3 And it is a two (2) paged document with
4 the heading on the first page, simply, "Loans." And what
5 it consists of is the staff member having gone to the
6 Yellow Pages, hardcopy, for the city of Winnipeg, and
7 list out the names of the entities that exist under the
8 heading "Loans."

9 On the second page of the document it also
10 references other places you could go in the Yellow Pages
11 for this topic area. And it shows banks, Caisse
12 Populaire, credit unions, mortgages.

13 Followed by that, there are three (3)
14 separate headings for three (3) different -- of the
15 companies who were extracted from the first page, with
16 some information associated with the staff member's
17 inquiries with regard to borrowing.

18 And they consist of, as -- as participants
19 will see on review, information on Citi Financial, Wells
20 Fargo, and HSBC Finance.

21 So if we could just -- I'll ask Mr.
22 Gaudreau to circulate that. And we're identifying it as
23 PUB-28, for the record. Thank you very much.

24

25 --- EXHIBIT NO. PUB-28: Two (2) paged document

1 -- or have information which is not useful. So I thank
2 you for the cooperation of all.

3 With respect to the introduction of -- of
4 my questioning -- and I guess I'll start with Dr.
5 Buckland, because I perceive that you were kind of the
6 lead of the project and of the evidence.

7 Am I right in understanding that?

8 DR. JERRY BUCKLAND: For the "Serving or
9 Exploiting" report, I guess I would say that I had my
10 hand in many -- most parts of -- of that report.

11 MR. ANTOINE HACAULT: Okay. The reason
12 I'm asking that in a very general way is I wanted to know
13 if there was any kind of general direction or meetings
14 with the client to give you a general direction as to
15 what had to be accomplished or what you were trying to
16 achieve, at least under your report for this Hearing?

17 DR. JERRY BUCKLAND: Yes. The -- the
18 preliminary meeting was -- was with Mr. Byron Williams,
19 and initially Tom Carter and Anita Friesen, and I believe
20 John Osborne was involved at the beginning.

21 Because of Wayne Simpson's schedule and
22 being at the University of Manitoba, I -- and the fact
23 that his research was really focused on statistical
24 analysis of surveys we were getting, he was not involved
25 in kind of setting up the field research component for

1 Winnipeg.

2 MR. ANTOINE HACAULT: Okay.

3 DR. JERRY BUCKLAND: Does that answer
4 your question?

5 MR. ANTOINE HACAULT: Well, yes it does.

6 What I'm slowly getting to is the purpose
7 and the focus. And I'll just go through a couple options
8 that I've considered might have been a purpose, or an
9 option. And then perhaps you can tell me where you think
10 you fit in this. Or if it doesn't fit in one of the four
11 (4) that I'm suggesting, you can perhaps let me know
12 that.

13 The first option that some provinces have
14 chosen, including Newfoundland -- and I've circulated a -
15 - a letter to your counsel and to other parties here.
16 And I think for the Board, perhaps we can have that
17 marked as an exhibit so I can proceed with the
18 questioning.

19 MS. ANITA SOUTHALL: Yes, that document
20 with a cover page, Dr. Line, L-I-N-E, Gravel, G-R-A-V-E-
21 L, Clerk, Standing Senate Committee on Banking Trade and
22 Commerce, dated March 6th, 2007, with four (4) pages
23 attached as submitted by Rentcash will be Rentcash-24 for
24 the record.

25

1 --- EXHIBIT NO. RENTCASH-24: Cover page, Dr. Line Gravel,
2 Clerk, Standing Senate
3 Committee on Banking Trade
4 and Commerce, dated March
5 6th, 2007, with four (4)
6 pages attached.
7

8 CONTINUED BY MR. ANTOINE HACAULT:

9 MR. ANTOINE HACAULT: By way of general
10 information, this part of the rebuttal. I just thought
11 it would be useful to pull it out so that we didn't have
12 to -- try to follow the Board counsel's lead here on some
13 things.

14 Do you have that document before you now?
15 There -- the one that I want to refer to firstly is a
16 letter dated March 16, 2007, the last two (2) pages of
17 that document. And it's addressed to the Chair of the
18 Standing Senate Committee on Banking.

19 DR. JERRY BUCKLAND: I -- I have the
20 document now.

21 MR. ANTOINE HACAULT: Okay. First, is my
22 understanding the same as yours, is that the legislative
23 amendment to Section 347 of the Criminal Code was as a
24 result of lobbying by the payday loan sector?

25 It wasn't consumers who were lobbying for

1 that change; it was the payday loan sector who wanted it?

2 DR. JERRY BUCKLAND: Well, my
3 understanding is that there were a number of actors that
4 were looking for changes. And -- and I believe that
5 Finance Min -- Minister, Greg Selinger, from Manitoba,
6 was someone who was working for that exemption. And I --
7 I'm not aware of other organizations or people that were
8 -- were looking for that exemption.

9 I do wonder if the Consumer Measures
10 Committee, which is a Federal Provincial Territorial
11 Joint Committee, if they maybe had some input. But I
12 don't know that.

13 MR. ALLAN FORAN: Okay. So, in addition
14 to the payday loan sector, your information is that
15 Minister Selinger wanted some changes, and there was also
16 this Consumers Measure Committee -- it's a -- it was a
17 committee put together of all representatives of the
18 consumer departments -- loosely called -- across Canada,
19 were also looking at this issue.

20 Is that right?

21 DR. JERRY BUCKLAND: Yeah, the Consumer
22 Measures Committee looks at a number of issues to do with
23 consumer -- consumers. And the -- the rationale is that
24 consumer issues and regulation is a provincial
25 responsibility.

1 So the Consumer Measures Committee, my
2 understanding, is that they are seeking to kind of
3 address these issues and kind of harmonize them.

4 They do have some subcommittees. And one
5 of their subcommittees I believe is referred to the --
6 referred to as the Alternative Credit Subcommittee. And
7 they're the -- the committee, I believe, that put forward
8 the idea of fair disclosure for fees regarding any type
9 of credit as being an important thing to include in
10 regulations.

11 MR. ANTOINE HACAULT: And we'll be going
12 through that. And that's a recommendation I think
13 everybody is agreeing at at this Hearing, is that good,
14 concise information for the consumers is a good thing
15 overall.

16 Now this letter was written by Diane
17 Whalen, by the looks of it. And in the first paragraph
18 she indicates midway through the paragraph, and I'm
19 quoting:

20 "I am responding, as my department is
21 responsible for comu -- consumer
22 affairs and the regulation of financial
23 institutions in Newfoundland and
24 Labrador."

25 And then further in the letter, in the

1 third full paragraph, second sentence. I'm reading:

2 "Consumers in this province appear to
3 be satisfied with the service, as my
4 department has received no complaints
5 with respect to payday lo -- payday
6 loan companies."

7 Do you have any evidence to suggest that
8 that might be inaccurate?

9 DR. JERRY BUCKLAND: No, I -- I think for
10 that jurisdiction I -- I'd have to accept that statement.

11 MR. ANTOINE HACAULT: And in Manitoba the
12 only information we've been able to get from the
13 Consumers' Bureau is that, I think, there is four (4),
14 maybe, over a little bit more than a year, something like
15 that?

16 MR. BYRON WILLIAMS: I'll, just in terms
17 of that statement, I just want to be careful, because it
18 appears to me that the record's a little bit unclear.

19 Your -- if Dr. Buckland has independent
20 information -- and the only reason I say this is -- is it
21 seems to me that there was some inconsistency between Mr.
22 Reykdal's information and the -- the additional
23 information put on the Consumers' Bureau -- on the
24 record.

25 So if, Mr. Hacault, if you want to put the

1 Consumer Bureau's letter before Dr. Buckland, I'm not
2 sure how much he can help you in terms of consumer
3 complaints.

4 But I just want to -- and maybe it's just
5 my mind that's confused on this point. But there seemed
6 to be some confusion between the statements that
7 attributed to the Consumers' Bureau and their statement.

8 So that might help Dr. Buckland, if it is
9 indeed something he has any knowledge of.

10 MR. ANTOINE HACAULT: We'll get to that
11 later on. And if I don't, remind me, okay?

12

13 CONTINUED BY MR. ANTOINE HACAULT:

14 MR. ANTOINE HACAULT: Now, the long and
15 short of it is also at the bottom of that third paragraph
16 of the letter dated March 16, 2007. This particular
17 department representative -- actually the Minister; it's
18 Dianne Whalen; she's the Minister for that department --
19 concluded:

20 "Since we have received no complaints
21 from consumers with respect to payday
22 loan companies and a study commissioned
23 by the Consumers Measures Committee..."

24 That would be the committee we were
25 talking about, is that correct?

1 DR. JERRY BUCKLAND: I -- I believe so,
2 yeah.

3 MR. ANTOINE HACAULT:

4 "Concluded the fees charged are
5 generally reasonable."

6 Were you aware that this federal committee
7 had studied the issue and came to the conclusion that the
8 fees charged were generally reasonable?

9 DR. JERRY BUCKLAND: I'm -- I'm not aware
10 of this report. So if I could see that report, I -- I
11 would prefer to see the primary document as opposed to a
12 letter that refers to a primary document, if that's
13 possible.

14 MR. ANTOINE HACAULT: But in any event
15 you weren't aware of this Minister's views and her
16 summary of this report, being that "this committee
17 concluded that the fees charged are generally
18 reasonable"?

19 This is the first time in these Hearings
20 that you had -- you've been made aware of this?

21 DR. JERRY BUCKLAND: That's correct.
22 I've heard much more coming from Minister Selinger and
23 his concerns about at least some payday lenders charging
24 too much. So I -- I haven't heard this particular
25 Minister's comments.

1 MR. ANTOINE HACAULT: Okay. Now that
2 then brings me to what I would call a second option.
3 We've looked at the first option, which is you just leave
4 the companies compete, and there is no regulation.
5 That's one way to deal with this industry.

6 And some provinces across Canada are
7 choosing to deal with the industry in that way. Is that
8 correct?

9 DR. JERRY BUCKLAND: I understand that
10 there's a -- there's been a variety of responses to the -
11 - their exemption to the Criminal Code. But I'm -- I'm
12 really not up to date on the different strategies that --
13 that provinces have taken.

14 MR. ANTOINE HACAULT: Okay. Now, I'll
15 put to you that there's two (2) or three (3) more levels
16 that could occur. The other extreme would be a
17 prohibition of any such activity. So then on one extreme
18 you have no intervention at all; on the other extreme you
19 have a total prohibition.

20 And then, so would you agree that those
21 would be two (2) possible extremes?

22 DR. JERRY BUCKLAND: Yes.

23 MR. ANTOINE HACAULT: And then I'll
24 suggest to you that there's two (2) other options, at
25 least, in the middle. The first one would be -- and I'm

1 referring to the February 22 letter written by Minister
2 Selinger.

3 If I go to the second page of his
4 letter...

5

6 (BRIEF PAUSE)

7

8 MR. MR. ANTOINE HACAULT: And I'm not
9 saying -- I'm just choosing this to illustrate what I
10 perceive to be one of the possible approaches in the
11 middle.

12 And in the second full paragraph -- or the
13 first full paragraph on the second page, Minister
14 Selinger says:

15 "Manitoba appreciates the fact that the
16 regulation of an industry is a
17 significant responsibility. The
18 decision to move forward with this
19 legislation was made after careful
20 consideration of the existing industry
21 in Manitoba. As a result, the
22 legislation represents a deliberate
23 effort to balance..."

24 So he's balancing what? I continue:

25 "...the desire of payday lenders to

1 provide their services and to compete
2 for a market share. And the second
3 thing is to the right of consumers to
4 be protected from excessive charges."

5 And he continues further in the next
6 paragraph -- and I'm going midway through, although the
7 whole letter is there for the record and can be dealt
8 with as required. I'm quoting:

9 "Accordingly, the Board will have the
10 ability to consider the broad range of
11 issues for both lenders and borrowers
12 and must issue an order that is just
13 and reasonable. We believe that this
14 process will result in rates that
15 protects -- protect consumers from
16 excessive charges."

17 So he's used the word "excessive" twice,
18 and then:

19 "Setting maximum rates will allow
20 lenders to fairly and freely compete
21 and will have a levelling effect in the
22 industry by prohibiting..."

23 And here he uses a different adjective.
24 Instead of "excessive" he used "extreme rates."

25 So would you agree that somewhere between

1 allowing full competition and prohibiting it that this is
2 another option?

3 DR. JERRY BUCKLAND: Well, if I could
4 just request a clarification, because I thought our two
5 (2) extremes were to leave the market alone and to
6 completely prohibit payday lending. But then when you
7 asked the question, you -- you mentioned something about
8 full competition and prohibition.

9 Because in my mind the way the market
10 operates right now is not consistent with perfect
11 competition. And therefore, it seems like there is
12 probably some other models or other structures that exist
13 or that are possible.

14 But I guess to answer your question, yeah,
15 I think that Minister Selinger is presenting a particular
16 approach, and it seems to me that's what we're struggling
17 with right now.

18 MR. ANTOINE HACAULT: Thank you. I know
19 there's a lot of discussion about whether it's perfect
20 competition and perfect competition, oligopolistic
21 competition. But regardless of what term we use, in
22 Newfoundland they decided whatever type of competition
23 there is, we'll live with that. So that's one (1)
24 extreme, whatever it is.

25 So I think you've agreed with me that

1 Minister Selinger's approach is one (1) possible option
2 between the two (2) extremes -- his approach?

3 DR. JERRY BUCKLAND: Yeah, I -- I believe
4 that he's saying that neither prohibition nor the status
5 quo is -- is acceptable.

6 MR. ANTOINE HACAULT: Okay. And there
7 are numerous articles out there. And in addition to this
8 particular approach there is another option that's put
9 forward by some of the writers.

10 And that option is to not only prohibit
11 extreme rates and prote -- protect consumers from exte --
12 excessive charges, but to actually intervene in the
13 market and make an analysis of what somebody considers to
14 be an efficient model, and then base rates on what
15 somebody thinks an efficient model is.

16 Are you aware of those type of ideas and
17 suggestions by some of the writers?

18 DR. JERRY BUCKLAND: I think that in --
19 in any way in which government wants to engage in a
20 marketplace, understanding the -- the costs that firms
21 face is an important factor to consider.

22 So whether they regulate with a cap or
23 regulate through simple licensing or through fair
24 disclosure, the knowledge of what the -- the cost the
25 firms face in that industry would be useful in -- in

1 their determinations.

2 MR. ANTOINE HACAULT: But do you under --
3 do you understand the distinction that some of these --
4 at least I understand some of these writers -- and I'm
5 going to say philosophers on economic approaches -- are -
6 - are looking at?

7 They're -- they -- one (1) view is the
8 intervention suggested by the Minister in this letter.

9 Another view is a more extreme
10 intervention in what's happening in the market. And that
11 view, you actually limit the type of products that are
12 available, because you fix a fee that fits a certain box.
13 And you assume that they're going to be open so many
14 hours, that they're going to have, say, a 3 percent
15 default rate.

16 You assume a whole bunch of things and
17 make the industry fit in that box. That is an entirely
18 different approach. Do you understand what I'm trying to
19 get at?

20 DR. JERRY BUCKLAND: I think that my
21 reading very -- you know, just right now, of Minister
22 Selinger's letter is -- I mean, he's saying, There needs
23 to be regulation, and one of the things I want to happen
24 is for the PUB to set a cap. You know, let them struggle
25 with how they determine that cap.

1 need to protect customers through the
2 regulation of this industry and to do
3 so in a timely way."

4 And then he explains how he proposes to do
5 that.

6 "Our legislation provides a
7 comprehensive approach to regulation."

8 So as you said -- and he's going to bring
9 up the disclosure issue:

10 "That includes a licensing regime..."

11 So we know the Consumers Bureau is setting
12 up some people, and they're going to use a fifty-five
13 hundred dollars (\$5,500) licensing fee to cover the cost
14 of doing that, and -- and in making sure the industry is
15 acting ethically. And I think we're in accordance with
16 the regulation, so that's one (1) thing.

17 "Cancellation rights," so there's forty-
18 eight (48) hour cancellation rights. So if a customer
19 decides that he goes to Money Mart, which is close to
20 here on one (1) side of Portage Avenue, and then takes a
21 minute to walk on the other side, he can cancel and
22 decide to go to the competitor if he wants.

23 "Disclosure obligations," and we'll have
24 more discussion about that. You've really emphasized the
25 importance of that, and that's great.

1 "Prohibitions on wage assignments, and the
2 taking of security; rights of inspection; and the ability
3 to set maximum fees," so he does take a comprehensive
4 approach to try and deal with the issue.

5 I'm not so sure you've answered my
6 question, though, on whether or not you understand my
7 suggestion that -- in the literature at least -- they're
8 suggesting that in the middle of these two (2) extremes,
9 there's two (2) possible approaches.

10 And one (1) such approach is the one (1)
11 given by justice -- by Minister Selinger. And the other
12 one (1) is an interventionist approach, where you
13 actually take a utility-based approach and -- and do
14 certain parameters that would assume that -- well so on -
15 - these -- these numbers of companies can continue to
16 exist based on an efficiency argument, knowing full well,
17 though, that a lot of companies won't be able to exist.

18 And that's a -- a very different approach,
19 because it's a interventionist approach, knowing that
20 you're going to knock out some companies that offer
21 different services to different clients.

22 Do you understand what I'm getting at and
23 -- and that that, what I've just been talking about, is a
24 second way we could approach this problem?

25 DR. JERRY BUCKLAND: I -- I think I

1 understand your description. I am -- the -- the fact
2 that Minister Selinger has asked the PUB to establish a
3 cap on payday loan fees suggests to me that the two (2)
4 models that you've constructed are -- are not so clearly
5 separable.

6 Like it seems to me that in -- in some
7 ways your two (2) models are a little bit fuzzy. And the
8 -- the question of setting a rate cap, seems to me, can -
9 - at least according to Minister Selinger -- can be
10 consistent with an effort to promote consumer protection.

11 MR. ANTOINE HACAULT: Okay. Can you tell
12 me where in this letter the Minister is of the view that
13 what we have to do is to model our maximum rate on the
14 most efficient companies that could operate at a
15 particular risk rate and that the lowest cost?

16 Where does the Minister indicate that we
17 should be that interventionist?

18 DR. JERRY BUCKLAND: I -- okay, I haven't
19 read the arti -- or the letter carefully. I don't think
20 it's there. I don't think he says that here. But I
21 think he gives the mandate to the -- the PUB to -- to
22 make that decision. And it's the PUB's responsibility to
23 figure out, Okay, on what basis do we make this decision?

24 And that's why we're here. We're
25 presenting different views and making different, you

1 know, cases for, what -- what's the best way to make this
2 decision?

3 MR. ANTOINE HACAULT: Okay. So, am -- am
4 I understanding implicitly in your answer, then, is that
5 the mandate you had was not to allow full and fair
6 competition in the existing industry and to only protect
7 consumers from excessive charges?

8 Was your mandate that?

9 MR. BYRON WILLIAMS: I'm going to
10 actually, just for a second -- Mr. Hacault, you're always
11 welcome to ask Dr. Buckland about the letter of retainer.
12 And just if -- if it will help you in -- certainly in
13 other appearances before the Board, Dr. Buckland talked
14 about the idea of a just and reasonable rate. And he
15 also talked about concepts of assist -- efficiency
16 associated with it.

17 If you -- if you want to ask him what his
18 mandate was, you're -- you're welcome to do that, and you
19 can certainly also refer to his letter of retainer.

20

21 (BRIEF PAUSE)

22

23 CONTINUED BY MR. ANTOINE HACAULT:

24 MR. ANTOINE HACAULT: Would you agree
25 with me that in the assigning this task to the Public

1 Utilities Board there is a section in the Public
2 Utilities Boards Act that talks about competition and not
3 interference, not interfering at all, if -- if we're
4 going to be referring to the legislation?

5 MR. BYRON WILLIAMS: I just want to be
6 clear here, Mr. Hacaault. If you -- you can ask, I guess,
7 Dr. Buckland if he's read Part II of the Public Utilities
8 Act section relating to forbearance. But my
9 understanding is that Part I of the Public Utilities
10 Board Act applies to the Board and the exercise of its
11 jurisdiction as well as its determination that it set a
12 just and reasonable rate.

13 So let -- let's in -- in terms of a fair -
14 - what question that's fair to the witness, I think that
15 would be more fair.

16

17 CONTINUED BY MR. ANTOINE HACAULT:

18 MR. ANTOINE HACAULT: Yeah, I wasn't
19 intending to get into the legislation. But I want --
20 what I did want to focus on before your counsel provided
21 his comments was I wanted to be clear on what your
22 mandate was and whether your mandate was as I perceive it
23 anyways. I see the evidence coming across.

24 You said you supported the number that Dr.
25 Robinson provided. We're looking at efficient operation

1 at an assumed default rate and that -- and we don't know
2 what the Coalition position is yet.

3 What was your mandate? Was it that?

4 DR. JERRY BUCKLAND: Okay. If I could
5 just go to my letter of retainer, my mandate was to
6 basically cover over three (3) points: first of all,
7 discussion of demands. Oh sorry, if I can back up.

8 My mandate was:

9 "To concentrate on the consumer side of
10 the payday loan industry in addressing
11 the following issues as they relate to
12 low-income consumers, including..."

13 And then, Summary of Professional
14 Qualifications.

15 But the -- the three (3) key points are,
16 first of all:

17 "The discussion on the demand side
18 issues, socioeconomic characteristics
19 of clients, clients and indicators of
20 financial inclusion."

21 And then secondly:

22 "A discussion on the supply side that
23 have more direct impact on consumers,
24 including business practices and
25 location of outlets; data from Winnipeg

1 and Manitoba, including methods,
2 mapping, pricing, and results from
3 mystery shopping of payday lenders in
4 Winnipeg.

5 And then finally:

6 "Any recommendations and conclusions
7 you may be able to provide to the Board
8 as to what payday lending rates would
9 be appropriate."

10 MR. ANTOINE HACAULT: Okay. Thank you.
11 Now, there's one (1) word here which I don't fully
12 understand, or two (2) words, "Low income."

13 Did you have any discussions with Mr.
14 Williams as to how that's defined?

15 DR. JERRY BUCKLAND: We didn't have a big
16 discussion on that. I think, the way I interpreted it
17 was to pay special attention to issues that relate
18 particularly to low and modest middle-income consumers.

19 MR. ANTOINE HACAULT: So did your mandate
20 change from what you just read?

21 DR. JERRY BUCKLAND: No, it did not.

22 MR. ANTOINE HACAULT: Okay. So can you
23 help me understand, because low income can mean a lot of
24 different things to a lot of people.

25 In the context of panhandlers or social

1 assis -- assistance people, low income has a totally
2 different meaning than what we have in this Hearing,
3 because in this Hearing there's ninety-five (95) -- or I
4 forget what the number is of -- people are employed. And
5 although they have a lower income thresholds they
6 certainly don't fall in the category of social assistance
7 incomes.

8 So what was your understanding in
9 proceeding in this project as to which sector of the
10 consumers you were representing?

11 DR. JERRY BUCKLAND: My understanding was
12 that in looking at the consumer issues we were to take
13 particular care to ensure we looked at the -- the issue
14 of low and modest middle-income consumers.

15 MR. ANTOINE HACAULT: But I still don't
16 know what that means. Does it mean people under twenty
17 thousand dollars (\$20,000)? Under eighteen thousand
18 dollars (\$18,000)?

19 Can you give me a sense of the -- the
20 group of people you were trying to represent or you're
21 trying to represent in this Hearing?

22 MR. BYRON WILLIAMS: Just, the -- Dr.
23 Buckland's job is to provide objective evidence. You --
24 if you're looking for who I'm representing, you're more
25 than welcome.

1 And -- and I'm certainly -- Dr. Buckland
2 can assist you in any way in terms of what -- what he
3 means by those words. But in terms of who he represents,
4 presumably he's providing his objective opinion based on
5 the evidence.

6 Dr. Buckland, to assist Mr. Hacaault, any
7 definitions that you wish to use, please, I just -- I
8 took issue with the word "represent."

9 DR. JERRY BUCKLAND: Yeah, it was not
10 defined. I -- I took it more as an issue that we needed
11 to take care, when we're looking at consumer aspects of
12 payday lending, that we take care to ensure that we
13 investigate how low and modest middle-income people are
14 involved and/or affected by payday loans.

15 That's -- we did not define what, you
16 know, What do we mean by low-income people? It was more
17 a general principle that we needed to include in our
18 research and reporting.

19

20 CONTINUED BY MR. ANTOINE HACAULT:

21 MR. ANTOINE HACAULT: You see the reason
22 why I'm asking these questions, I'm trying to get a sense
23 of the focus of your evidence and what you are asked to
24 provide an opinion on. And -- and Mr. Williams is quite
25 right. You provide your opinion and -- and don't

1 necessarily represent a particular group of people.

2 But if you are asked to provide an opinion
3 and some -- and -- and an explanation to this Board, I
4 want to determine the gaps, because if you've been asked
5 to focus on low income, well does that mean that we
6 really don't have an accurate picture of...

7 And if you had been asked to deal with
8 moderate income or if you had been asked to deal with the
9 higher sector of income of consumers, you've got
10 different categories of consumers that use payday loans.

11 And I want to know what pie of those
12 consumers you've been asked to provide a picture of.

13 DR. JERRY BUCKLAND: Well, I -- I guess
14 maybe I'm sounding repetitive. What we did was we -- we
15 tried to identify, what are the key consumer issues?

16 First of all looking at the literature,
17 you know, surveying the literature -- and I've mentioned
18 that it's kind of overwhelmed by American studies, but
19 they're very useful.

20 By doing mystery shopping -- and our
21 mystery shoppers, we -- we actually had at least -- I --
22 I think our mystery shoppers were representative of more
23 middle-income Canadians, young -- I -- I can look to my
24 left and -- and see two (2) of them. And so we -- we
25 represented maybe younger and middle-income Canadians

1 there.

2 The survey research that was completed by
3 Dr. Simpson looked at the complete data sets regarding
4 payday loan clients.

5 So I -- I believe that I'm fair in saying
6 that we looked at consumer issues, again, with a -- to
7 take care to examine particular problems or challenges
8 faced by low and modest middle-income people.

9 MR. ANTOINE HACAULT: Okay, thank you.
10 I'm still not sure I have an answer on what -- what -- in
11 this letter, when they asked you to "look at the
12 following issues as they relate to low-income consumers,"
13 I can -- I see what's -- what the result was.

14 But you still haven't given me an answer
15 on -- on what that was.

16 DR. JERRY BUCKLAND: Can I -- can I try
17 one more time?

18 MR. ANTOINE HACAULT: Give me numbers.
19 It'll help me understand.

20 DR. JERRY BUCKLAND: Well, we don't have
21 numbers, because I -- I don't think we used it as -- we
22 didn't have a definition, and we didn't use a definition
23 to constrain our research. We wanted to look at consumer
24 issues, and we wanted to be sensitive to the particular
25 concerns for low and middle-income people.

1 I don't think that we -- or, I mean, I
2 don't think that that hugely shaped the direction of --
3 of the research -- that -- that adjective, "low."

4 MR. ANTOINE HACAULT: Okay, fair enough.
5 Thank you very much for trying to answer my question.

6 The next thing that I'd like to get in to
7 is the series of recommendations that you did make. And
8 those are found, at least in part, in your September 17
9 filing.

10

11 (BRIEF PAUSE)

12

13 MR. ANTOINE HACAULT: I have it at page
14 12, and you have substantially repeated those with very
15 minor revisions the -- the other day when you made your
16 presentation.

17

18 (BRIEF PAUSE)

19

20 MR. ANTOINE HACAULT: Now, with respect
21 to fee disclosure -- and I think Ms. Friesen may be able
22 to answer this -- do we know how much time was spent in
23 the initial visits with each customer under the mystery
24 shopping?

25

MS. ANITA FRIESEN: Are you asking for

1 the exact time spent or a general idea?

2 MR. ANTOINE HACAULT: I guess, what can
3 you provide me?

4 MS. ANITA FRIESEN: I can provide you
5 with a -- a general idea, and we did in the
6 interrogatories.

7 MR. ANTOINE HACAULT: I know you provided
8 your answers, but I don't think we have any answers from
9 other people. I have asked -- I asked the question a
10 couple of times in the interrogatories, and I think we
11 got answers from you but not from with respect to the
12 other mystery shoppers.

13 I guess that wasn't something you looked -
14 - you had thought about being important in this mystery
15 shopping?

16 MS. ANITA FRIESEN: It -- at the outset
17 it wasn't something that we had identified. It's not
18 until -- it wasn't until your questions that we realized
19 that would be a point that you would recognize as being
20 important.

21 But my answers that I provided in the
22 interrogatory represented the other two (2) mystery
23 shoppers, too. I consulted with them when coming up with
24 that.

25 MR. ANTOINE HACAULT: Because the answer

1 that was provided related specifically to four (4)
2 different identified lenders, so perhaps you'd just want
3 to check.

4 MS. ANITA FRIESEN: Oh, okay.

5 MR. BYRON WILLIAMS: And if I -- and I
6 think, Mr. Hacault, it's very -- we'll dig up the
7 questions, but if I --

8 MS. ANITA FRIESEN: Okay.

9 MR. BYRON WILLIAMS: -- recall the
10 responses, they were focused on the -- the second -- the
11 -- the loan taking --

12 MS. ANITA FRIESEN: Oh, the actual loan
13 taking.

14 MR. BYRON WILLIAMS: -- and the
15 extension. But, Mr. Hacault, if you'll just give us a
16 second, and I -- to -- we'll dig up the -- the questions
17 for you and for Ms. Friesen, just so that she can make
18 sure that that was her intent.

19 MS. ANITA FRIESEN: Yeah.

20

21 CONTINUED BY MR. ANTOINE HACAULT:

22 MR. ANTOINE HACAULT: Okay. You see why
23 I'm asking the question? It's come out in the hearing
24 that -- for example, we had Wayne Vantassel (Phonetic),
25 who actually didn't appear, but who provided a letter to

1 the Board and initially thought he was going to appear,
2 who explained from his perspective how important it was -
3 - even on repeat loans -- that he could spend a long time
4 speaking to the store representative, and that had value
5 for him.

6 Now, your mystery shopping didn't gather
7 information with respect to that item of value for
8 consumers, did it?

9 MS. ANITA FRIESEN: We didn't record that
10 in detail, but we can use our memories to -- isn't there
11 another...?

12

13 (BRIEF PAUSE)

14

15 MR. ANTOINE HACAULT: It's RC-22, I
16 think, revised.

17

18 (BRIEF PAUSE)

19

20 MS. ANITA FRIESEN: Okay. I -- I thought
21 that we had responded to that at -- at some point, but it
22 was approximately -- in the inquiry visits, on average, I
23 would say about twenty (20) minutes was spent. I -- we
24 can get more specifics on each one (1) of those twelve
25 (12) visits, if you would like.

1 And then -- because I was the only one (1)
2 that did the further visits at the four (4) outlets, we
3 have an estimate of time spent at each one (1) of those.

4

5 CONTINUED BY MR. ANTOINE HACAULT:

6 MR. ANTOINE HACAULT: Okay, but on the
7 initial loan taking --

8 MS. ANITA FRIESEN: Yes.

9 MR. ANTOINE HACAULT: -- then did you
10 keep any notes? I know you provided a response with
11 respect to outlook five (5) -- or Outlet 5, it took
12 approximately ten (10) minutes; and outlook -- Outlet 6
13 took about thirty (30) minutes; Outlet 7 took about five
14 (5) minutes; and Outlet 8 took about twenty (20) minutes.

15 So there was a significant difference in
16 the quality of service, as far as the length of time the
17 companies spent with you to explain loan documents and
18 process of the loan.

19 Is that correct?

20

21 (BRIEF PAUSE)

22

23 MS. ANITA FRIESEN: I would say that the
24 factors there that determine the length of the visit were
25 more in terms of the number of documents that were

1 required to be explained to me or -- or to go through.

2 And also at the one (1) outlet I waited on
3 the side reading documents while the -- the teller was
4 phoning my references. So that's why it was considerably
5 longer than the others.

6 MR. ANTOINE HACAULT: And which one was
7 that, where you sat down and looked at the documents?
8 Was that the thirty (30) minute one, Outlet 6?

9 DR. JERRY BUCKLAND: Can I just jump in
10 there? There is a -- an anonymity issue regarding that
11 question. And the anonymity issue is that, as far as I
12 know, not many payday lenders let you sit down. And so
13 if we explained what time it took for the -- where we --
14 where the shopper sat down, then that would give a tip-
15 off as to which company that is.

16 So we'd rather...

17 MS. ANITA FRIESEN: Sorry, it's not the
18 issue of sitting down, it's the issue of phoning while
19 I'm there at -- at the lender. And I believe that others
20 in the room would know which lender that was in
21 particular --

22 DR. JERRY BUCKLAND: Okay.

23 MS. ANITA FRIESEN: -- and so I'm sorry
24 about that. But it was one of the longer ones, yes.

25 MR. ANTOINE HACAULT: So is there

1 anything else, apart from explaining the documents and
2 the process, that took longer at one outlet as compared
3 to the other?

4 Because if we have five (5) minutes on one
5 hand, we know we have one that asked you to sit for a bit
6 while they phoned. And we don't know whether that's the
7 thirty (30) minute one or the twenty (20) minute one.

8 But there's one that's taking twenty (20)
9 minutes and there's no phoning happening?

10 MS. ANITA FRIESEN: Yes.

11 MR. ANTOINE HACAULT: Is that right?

12 MS. ANITA FRIESEN: And that's -- that
13 was because of the volume of documents and forms that had
14 to be filled out and signed, agreements that had to be
15 explained to some degree, yes.

16 The -- the others that were quite a bit
17 shorter had very few agreements or documents that I was
18 required to sign.

19 MR. ANTOINE HACAULT: Okay.

20 MS. ANITA FRIESEN: Or understand.

21 MR. ANTOINE HACAULT: Now, do you think
22 it's a good thing that a payday loan company has a
23 business model that may be more expensive but allows them
24 to have a consumer representative spend twenty (20)
25 minutes with you explaining documents?

1 Do you think that's a good thing or a bad
2 thing?

3 MS. ANITA FRIESEN: I'm -- can you say
4 that again? I'm not -- just -- see, to me --

5 MR. ANTOINE HACAULT: Let me try put it
6 another way.

7 MS. ANITA FRIESEN: Okay.

8 MR. ANTOINE HACAULT: If you had the same
9 amount of documents, --

10 MS. ANITA FRIESEN: Okay.

11 MR. ANTOINE HACAULT: -- because the
12 regulation requires a certain amount of disclosure --

13 MS. ANITA FRIESEN: Mm-hm.

14 MR. ANTOINE HACAULT: -- and one company
15 spends five (5) minutes explaining those documents and
16 the company -- other company spends twenty (20) minutes
17 explaining those documents, do you have any views as to
18 whether or not one is better than the other?

19 MS. ANITA FRIESEN: If -- if, as you
20 clarified, they had the same number of documents, I think
21 that it would be very advantageous to the consumer to
22 have more time to spend with the -- the lender in
23 explanations, yes.

24 MR. ANTOINE HACAULT: Okay. And -- and
25 we'll go through the documents, but you've had -- there's

1 two (2) levels of criticism, at least that I've gleaned -
2 - and perhaps incorrectly. So one was "information
3 overload."

4 Do you recall those types of comments in--

5 MS. ANITA FRIESEN: I -- I do, yes. At
6 one (1) lender it did seem like information overload,
7 yes.

8 MR. ANTOINE HACAULT: Okay. And did we
9 have the other extreme, where it appeared that perhaps
10 there wasn't enough information provided?

11 MS. ANITA FRIESEN: During the inquiry
12 visit or the loan taking visit?

13 MR. ANTOINE HACAULT: The loan taking
14 visit.

15 MS. ANITA FRIESEN: The information
16 overload wasn't at the loan taking visit. That -- it was
17 at the inquiry visit, yes.

18 And there -- I'm not sure that it -- it
19 was under information at the others in -- because I left
20 feeling that I clearly understood what I owed,
21 approximately when I had to pay it back, and thought at
22 the time that I understood the fees.

23 So I felt that they were -- and I don't
24 think that was a time constraint. I think it was perhaps
25 in the way that the fee calculation was explained to me.

1 So I don't -- I don't know necessarily that it's about
2 time-- the time spent with me, but in the clarity of the
3 information pro -- provided to me.

4 MR. ANTOINE HACAULT: Okay.

5 MS. ANITA FRIESEN: That help?

6 MR. ANTOINE HACAULT: But, unfortunately,
7 with respect to the inquiry, unless your notes reveal
8 when you started the visit and when you end -- exited the
9 store -- and that may be one of the purposes of seeing
10 those notes -- we don't have any accurate records of how
11 much time all the various payday lenders spent on -- with
12 the consumer on the inquiry visit.

13

14 (BRIEF PAUSE)

15

16 MS. ANITA FRIESEN: Well, it seems like
17 Mystery Shopper A does have the very detailed time
18 notes --

19 MR. ANTOINE HACAULT: That will be great.

20 MS. ANITA FRIESEN: -- on his. I'm sorry
21 about that. Myself, I didn't keep -- and that wasn't one
22 of the requirements, so again went above and beyond.

23 MR. ANTOINE HACAULT: That -- that -- Mr.
24 Osborne, you don't have to whisper in her ear. Do you
25 have an answer?

1 MS. ANITA FRIESEN: I thought I was
2 perfection.

3 MR. ANTOINE HACAULT: Is it -- so would
4 your notes -- is that going to be one of the uses that
5 we're going to be able to get from your notes, is that
6 we're going to be able to find out how much time you
7 spent at the various inquiry visits and -- and how long,
8 whether that varied?

9 MR. JOHN OSBORNE: It's been a long time
10 since I looked at the notes, but I remember not even
11 recording duration, but actual time I entered the store
12 and time I left the store.

13 MR. ANTOINE HACAULT: Well, so then maybe
14 the Chairman and the Board's concerns will be alleviated
15 if we can have some information that's useful.

16 MR. JOHN OSBORNE: That could be provided
17 by, you know, other means, but it...

18 MR. ANTOINE HACAULT: One of the
19 criticisms is that total fees are not easily comparable.
20 And that is in the summary at page 6. Sorry, I had kind
21 of jumped ahead. I had a couple questions with respect
22 to your summary.

23 And -- and what I wanted to do, because
24 we've got a Rentcash rate proposal, that kind of sets out
25 everything that this proposed to be disclosed. And we've

1 got the regulation.

2 And I wanted to know whether you had any
3 recommendations -- it could be as a group, Dr. Buckland,
4 Mr. Osborne, or Ms. Friesen -- as -- as to in what
5 respect, if any, the Rentcash proposal or the reg --
6 regulations are deficient, because I think we all want to
7 help the consumer know what the loan is about and what
8 the costs are.

9 So perhaps we can start with the -- what's
10 in -- the Rentcash rate proposal act -- actually has the
11 regulation and it has -- and it has the actual proposal
12 where it -- where we set out all -- all the numbers on
13 page 8.

14 MR. BYRON WILLIAMS: Mr. -- Mr. Hacault,
15 could I interrupt for just one second? Just for the
16 witnesses, if you're able to assist Mr. Hacault right
17 now, that's lovely. If you would appreciate a few
18 minutes to review this lengthy document -- if -- if that
19 would assist you, Mr. Hacault, we could certainly take a
20 -- a brief break.

21 MR. ANTOINE HACAULT: Perhaps it might be
22 an appro -- an appropriate time to take a short break.

23 THE CHAIRPERSON: Very good.

24

25 --- Upon recessing at 2:42 p.m.

1 --- Upon resuming at 3:05 p.m.

2

3 THE CHAIRPERSON: Your team seems to have
4 reassembled, Mr. Williams.

5

6 (BRIEF PAUSE)

7

8 MR. BYRON WILLIAMS: Sorry, Mr. Chairman.
9 Yes. And -- and thank you for the -- the time.

10 I just -- I would note that, thanks to the
11 revelation by Mystery Shopper A, that he actually
12 recorded the times going in and out of his inquiry
13 visits. There is one (1) Interrogatory Response, CPLA 1-
14 98(c), that we will provide a revised response to because
15 my clients -- or excuse me, the witnesses had originally
16 indicated that they had not recorded the time so we
17 apologize for that oversight and we certainly will
18 correct that response once I consult with Mystery Shopper
19 A.

20 The witnesses are -- are prepared to --

21 MR. ANTOINE HACAULT: Okay.

22 THE CHAIRPERSON: Okay, Mr. Hacault.

23

24 CONTINUED BY MR. ANTOINE HACAULT:

25 MR. ANTOINE HACAULT: And when we had

1 taken a break because one (1) of the issues your report
2 was looking at, Dr. Buckland, and your team, was the
3 disclosure and what should be in the documents.

4 I had asked whether or not -- because we
5 have spent a couple weeks now, talked a lot about this
6 industry, probably a lot more than the people who drafted
7 this regulation.

8 Having read Section 14 of the regulation
9 that require -- puts out the information required in a
10 payday loan agreement, there -- is there anything at this
11 point -- and if you have any answers later on too, that's
12 okay -- which you think the drafters missed and that we
13 should be adding for consumer protection and consumer
14 information?

15 That's at -- at the end here because, see,
16 one (1) of the criticisms you've levelled is that they
17 don't have enough information and they're not properly
18 informed and the government has taken its stab at it.

19 We've had a couple of weeks of Hearings,
20 we've seen a whole lot of documents. Is there anything
21 you think they've missed?

22 DR. JERRY BUCKLAND: Well, I guess a
23 couple of things came in our discussions.

24 The -- the question of if there was a
25 sliding scale of fees that -- as the cap, that the -- the

1 existing regulation of setting out the APR for one (1)
2 loan size would -- would not be sufficient.

3 So if there's a 17 percent to two fifty
4 (250) and 10 percent to five hundred (500) and 2 percent
5 beyond that, then just having the three hundred dollar
6 (\$300) loan APR listed, I don't think would be adequate
7 to inform all consumers.

8 So I guess the -- the Board's decision
9 about the kind of cap will have implications on that --
10 on other regulations which maybe that wasn't thought of
11 beforehand.

12 MR. ANTOINE HACAULT: So is it your
13 recommendation -- and I guess then this gets complicated,
14 because Section 14 firstly just sets out all the items
15 that have to be put in. So thank you for that answer but
16 I'd like to kind of refocus you on Section 14. It's a
17 complete listing of things that have to be put on there.

18 One thing that isn't on there, and I'm
19 just doing this as a measure of assistance, it -- it
20 doesn't talk about optional insurance because that's
21 excluded.

22 Now, for example, do you think even though
23 it's optional the government missed the boat and they
24 should at least be informed of that as our proposal in
25 the previous pages?

1 And when I say our -- Rentcash's proposal
2 sets out, it actually sets that out, which is more than
3 what the regulation requires.

4 But do you think that's a good idea?

5 DR. JERRY BUCKLAND: I think it's a good
6 idea to include all the -- the fees that the consumer
7 will face, that that be included in the -- in the
8 information.

9 The -- the one thing that I was a little
10 confused on in terms of the Rentcash proposal has to do
11 with, for instance, the purchase of the debit card or the
12 -- the optional purchase of the debit card or the
13 optional cheque cashing fee, that those would be included
14 as value given, and I would have thought -- I -- I wasn't
15 quite clear on -- on the thinking there, on why those
16 would be included as value given.

17 MR. ANTOINE HACAULT: Well, value given,
18 as I understand it, and I'm only a lawyer, is what you
19 give. So if you're going to give a cheque for a total of
20 -- and that's what you do when you've done this
21 particular loan. If -- if the facts match up with what's
22 here, you'll be leaving a cheque for a hundred and sixty-
23 one dollars and thirty-two cents (\$161.32).

24 So what this example does is it breaks it
25 down in detail to provide the consumer on a line-by-line

1 basis how that one sixty-one thirty-two (161.32) is
2 comprised of.

3 So is that useful for the consumer?

4 DR. JERRY BUCKLAND: Yeah, I think the --
5 the full disclosure of the information is useful. I'm
6 just not clear on why the -- the debit card would be
7 considered value given if -- it seems to me it's a fee
8 that the consumer needs to pay in order to access the
9 payday loan.

10 MR. ANTOINE HACAULT: I don't -- I don't
11 know if I -- I may be kind of pushing this a little bit
12 further.

13 We maybe both agree on whether it's value
14 given with respect to the payday loan but it is a value
15 given.

16 Or at least -- are we at least in
17 agreement with that?

18

19 (BRIEF PAUSE)

20

21 DR. JERRY BUCKLAND: Okay. Yeah. That --
22 - I -- I agree with that.

23 MR. ANTOINE HACAULT: Okay.

24 Now getting back to Section 14. Another
25 thing which I'm drawing to your attention, and I

1 appreciate this is perhaps hoisted on you but there's a
2 last statement which says:

3 "If you have any questions or concerns
4 about payday loans, cancellation rates
5 or collection practices, contact the
6 Consumers' Bureau."

7 And it also talks about benefit of debt
8 counselling.

9 Do you think there's anything else that we
10 need to warn consumers of on the main agreement so that
11 they're fully informed and that they can properly shop
12 for fees and that they don't feel that they're being
13 pressured; that they have options that they can go to --
14 debt counselling? It says they can cancel.

15 Is there anything else we should be adding
16 to make them feel really comfortable?

17 MR. BYRON WILLIAMS: And, Mr. Hacault,
18 hopefully it will be satisfactory. I'm happy certainly
19 if the witnesses want to give some preliminary thoughts
20 and if they have any subsequent ones they would certainly
21 undertake to provide those to you.

22 Would that be helpful?

23 MR. ANTOINE HACAULT: Sure it would be.
24 I think we're all trying to get information on how to
25 make it better for consumers and make sure if they go in

1 that they're properly informed.

2 And Rentcash has additional pamphlets
3 which have been produced, which are not requirements in
4 the legislation but...

5 And you may want to look at those and, you
6 know, we will be going through them. You may think that
7 some of the ideas that Rentcash has in consumer
8 protection which add to this regulation are good things.

9 But do you have any answers right now
10 or...?

11

12 --- UNDERTAKING NO. 86: Coalition to provide further
13 information for the benefit
14 of the consumer when applying
15 for a payday loan.

16

17 DR. JERRY BUCKLAND: Just a very
18 preliminary point. My colleague, Ms. Friesen, has
19 mentioned that, yeah, it looks good. I mean, this looks
20 very useful but we're certainly put more thought into it
21 and think of other ideas.

22 On -- on the other hand, part of our
23 mystery shopping seemed to -- seemed to find that it
24 would be useful to have this information up front.

25 Now, of course, you can't provide all the

1 information at the beginning because of the time
2 requirements but that's part of the concern from the
3 mystery shopping; that it seemed that much of the
4 information was sort of back- end loaded.

5 So that you kind of get into this -- you
6 get in the door and you get some basic information and
7 then you -- you kind of, you know, when you eventually
8 move into the loan agreement then a whole bunch of
9 additional information is required and -- and you have to
10 read a lot of material.

11 So this -- this looks -- I think, you
12 know, preliminarily it looks good but it would be useful
13 that that information be available up front: pamphlets,
14 posters, tellers that are knowledgeable that can speak,
15 you know, in simple terms about what -- you know, what is
16 the APR or how does this compare with, you know, other
17 forms of credit.

18 That kind of thing I think would also be
19 very useful.

20

21 CONTINUED BY MR. ANTOINE HACAULT:

22 MR. ANTOINE HACAULT: Okay. And -- and
23 actually if you go on page 11, the next thing that the
24 government has provided for in its comprehensive plan is
25 a poster.

1 And again, the poster -- something that
2 the Rentcash agreements actually say now, well in advance
3 of these regulations, is that they are high-cost loans.
4 And that's at the top, so the consumers are well advised
5 at the beginning.

6 Now you raised some issues with respect to
7 the sliding scale. This poster requires an example of a
8 three hundred dollar (\$300) loan.

9 Do you think that causes a problem?

10 How do we address your concerns about
11 consumer information in this poster?

12 Is there anything that we should change in
13 this poster?

14 DR. JERRY BUCKLAND: I had made reference
15 in my recommendations about the fair disclosure question
16 in a sense that it's -- it's a complex balancing act, I
17 think, because on the one (1) hand you want to provide
18 the consumer with sufficient information to make a -- a
19 good decision, but you don't want to overwhelm the
20 consumer so that the consumer glosses over.

21 In fact, I think it was Dean Carlin
22 (phonetic) and some others who did an interesting study
23 on some bank -- a bank loan experiment in South Africa.
24 And, you know, they did some -- some changes to the
25 configuration of the letter that was sent out to

1 different borrowers. And they found that the letter --
2 the configuration of the letter and the complexity or
3 simplicity of the information in the letter had an effect
4 on the kind of loans that people chose to -- to accept.

5 So, yeah, I think that this is definitely
6 a good start, but there needs to be, you know, further
7 kind of looking at balancing that amount of information
8 for the consumer.

9 MR. ANTOINE HACAULT: So do you have any
10 recommendations or did they get it right?

11 When these posters are going to be out,
12 did they get it right?

13 If -- if they're going to be doing in
14 seventy-two (72) point font -- example "Three hundred
15 dollar (\$300) loan for fourteen (14) days" -- is that --
16 I think they chose -- I'm speculating -- I think they
17 chose that because most of the loans are about three
18 hundred dollars (\$300) -- that's what we had in this
19 Hearing, in that range -- and most of them are about
20 fourteen (14) days.

21 And then it talks about how much it will
22 cost you, a listing of each fee, charge and penalty, and
23 interest.

24 Now you've seen the detail that's provided
25 on page 8 of the Rentcash proposal. Is there -- is that

1 sufficient detail or is that information overload for the
2 client?

3 We just want to know if we've got it
4 right.

5 DR. JERRY BUCKLAND: Well, my sense is
6 that it's -- I mean, again, you know, this is based on
7 more instinct than research, but I mean my instinct is a
8 little bit more information might be useful.

9 I mean, the -- the three hundred (300) APR
10 and then a table at the bottom that gives a couple other
11 examples, you know, in smaller font.

12 That -- but that's just an instinct; I
13 can't, you know, say that that's based on my research.

14 MR. ANTOINE HACAULT: Yes, Mr. Robinson.

15 DR. CHRIS ROBINSON: Okay, because I
16 did --

17 MR. ANTOINE HACAULT: Sorry, Dr.
18 Robinson, I apologize.

19 DR. CHRIS ROBINSON: That's okay. To me,
20 Dr. Robinson's the guy who cures my health.

21 If I could advise the Board. I also wrote
22 specifically about the items to be included and excluded.

23 So I take it that your question here is
24 only talking about disclosure of what we're doing rather
25 than how we're counting certain things in terms of the

1 fee regulation. But that given -- so I'm looking at your
2 page 8. And so as you already heard from Dr. Buckland we
3 have some disagreements and it would be on the value
4 received side.

5 And we agree with you that insurance
6 should be disclosed as -- as well. And the Regulation 14
7 only requires insurance to be incorporated if it's -- if
8 the loan is contingent upon it.

9 Now one (1) point of disclosure -- and I
10 cannot advise you how to do this, but it did come up
11 during the mystery shopping -- is that it has to be
12 clearly disclosed to the customer which things are -- are
13 optional and which are not.

14 And our understanding from the mystery
15 shopping is that they felt that the insurance, the way it
16 was explained was that the insurance was in fact a
17 requirement and that virtually everybody had to take the
18 insurance.

19 However, in terms of sixteen (16), you
20 know, going to the required content on the sign, I have a
21 strong opinion on that. And this is based on my work as
22 a personal finance professor and also upon Bloom's
23 Taxonomy of Learning. That is that different people learn
24 and absorb information in different ways.

25 And so if I were the consumer or somebody

1 who learns as I do, the example of a three hundred dollar
2 (\$300) loan would not be useful unless I was exactly
3 borrowing three hundred (300). I would want to know how
4 the fee is calculated.

5 And so my advice to the Board is that --
6 and this is where Dr. Buckland said, It's contingent on
7 what your decision is -- but the sign itself should
8 include how the fee is calculated, so that a consumer who
9 learns and does things as I do -- and we have been told
10 that some of these consumers are very sophisticated; at
11 least that has been the claim of some of the evidence --
12 would in fact be able to reproduce the loan fee and
13 consequently would be able to decide, Well, I can afford
14 to borrow this much but not this much more, or...

15 You know, the -- these sorts of decisions
16 are also part of the consumer budget decision, and so I'd
17 like to see that information included. And that's what I
18 would recommend.

19 And, of course, this is not exactly part
20 of the mandate that we've been given. We're talking
21 about a just and reasonable rate.

22 But in order to understand that the
23 consumer should have the ability to reproduce it I give
24 the example of Money Mart, where you can reproduce it off
25 their website.

1 My extensive research over a number of
2 years has led me to the point where I'm virtually never
3 able to reproduce it off anybody else's website, okay.
4 But Money Mart's I can because they, in fact, put the
5 loan contract in and the loan contract specifies the
6 formula. And --

7 MR. ANTOINE HACAULT: Are you still on --
8 on the poster and how we might improve the poster?

9 DR. CHRIS ROBINSON: Yeah, that's the
10 poster. It might be as an alternative, though, for the
11 Board to consider that -- that they want this to be
12 information, which is readily available but is not on the
13 poster, that in fact you have this information so that
14 the customer can, before they have to make decisions --
15 maybe even before they go to a teller -- that they can
16 actually get the formula.

17 I'm -- you know, I mean, at that point
18 we're getting into very detailed things where it's very
19 difficult to say what would be the ideal way to provide
20 it. But I think that -- that information needs to be
21 available.

22 I would also point out to the Board,
23 however, that though we are talking about very specific
24 fee caps, different structures of loans could meet a fee
25 cap.

1 I mean, some of them, of course, would not
2 seem very sensible. For example, if you use a sliding
3 rate, if -- if somebody charges their loans only at 10
4 percent, they would meet my sliding rate recommendation.
5 But differently if they decided to charge a fee in the
6 form that your client charges now or the form that Money
7 Mart charges, where there's this complex fee, something
8 which I've decided that we should move away from. But
9 this is a regulation for maximum.

10 It -- you know, you could perfectly,
11 easily devise a fee that would stay under the maximum for
12 all loans but would in fact have an interest component, a
13 fixed rate and so on. I mean, such things -- you know,
14 there's an infinite number of such calculations you can
15 make.

16 And in that case a disclosure of the
17 details would become more important.

18 MR. ANTOINE HACAULT: Thank you very much
19 for that answer.

20 I think the poster, when it says how much
21 you have to repay followed by the total of three hundred
22 dollars (\$300) and the amount of fees, I gather that
23 whoever drafted this regulation was hoping that say, for
24 example, if it's three hundred dollars (\$300) for the
25 loan and your total fees you see at the bottom the number

1 sixty dollars (\$60), that he would then be able to walk
2 in and see if that's Money Mart.

3 And then he goes across to Rentcash and he
4 sees three seventy-five (375), the total, then the
5 customer has it on a big poster -- it's all detailed --
6 but he sees the total amount and he can make a -- a
7 decision.

8 I don't know if -- it's like -- do you --
9 I know we've been talking about high school education and
10 everything else.

11 Do you have any sense of what level of
12 education somebody would need to understand the
13 difference between three hundred and sixty dollars (\$360)
14 and three hundred and seventy-five dollars (\$375) if that
15 was on a poster. Anybody?

16 DR. CHRIS ROBINSON: I mean, of course,
17 you're making a very good point, Mr. Hacault.

18 The problem he's pointing out is that in
19 some sense giving them more information doesn't help
20 compared to how much are you paying on three hundred
21 (300).

22 If everybody is -- charging the identical
23 fee schedule all the way up and down on their fees,
24 whether it's sliding or not, then of course it doesn't
25 really matter what you're disclosing. If it's a fixed

1 that additional piece of information available, the
2 actual fee schedule schedule.

3 And to calculate a sliding scale or a
4 fixed scale is within the competence of people who pass
5 high school. It is not going to be something everybody
6 will do or can do; that's not the problem for the payday
7 lender. But otherwise you're not providing the
8 information for those who can do it.

9 MR. ANTOINE HACAULT: So the bottom line
10 is that how do we amend this poster or do we provide five
11 (5) or six (6) different posters?

12 DR. CHRIS ROBINSON: No. What I'm saying
13 is the formula. I mean, go to the -- Slide Number 35 in
14 my presentation. Read the top line. It says:

15 "Seventeen (17) percent on the first
16 two hundred and fifty (250) plus 12
17 percent on the next two hundred and
18 fifty (250) plus 10 percent on
19 subsequent amounts."

20 Not everybody will do that, will actually
21 make that calculation. Not everybody will even read the
22 poster. We can't do perfect disclosure, because we don't
23 have consumers who are going to read everything in any
24 area, not just payday loans.

25 But what I'm saying is that there will be

1 a number of consumers -- unless the claims of the various
2 Intervenors that there are a significant number of people
3 with jobs and education and so on is -- is incorrect -- a
4 large number of the consumers are capable of making those
5 decisions.

6 They have been unable to because except
7 for -- in my experience except for Money Mart, that
8 evidence is not available to them in any disclosure that
9 they can get until they have basically -- as the mystery
10 shoppers have said -- have basically been standing in
11 line and are virtually committed to taking a loan.

12 So I'm saying revise the poster or provide
13 a different form of disclosure such as a second poster,
14 put it in the leaflet that anybody can pick up about the
15 loan before they go into the teller line. And that's
16 all. I'm just suggesting that addition.

17 MR. ANTOINE HACAULT: Do you agree with
18 that recommendation, Dr. Buckland?

19 DR. JERRY BUCKLAND: Yeah, I think that
20 the -- the idea of more information earlier into the --
21 the process, like entering into the building -- posters,
22 pamphlets, that kind of information.

23 I think one (1) of our mystery shoppers
24 discovered a pamphlet called "The Cost of Payday
25 Lending," and I -- I might -- I may be off on the title.

1 If -- if it's the one I'm thinking of it's produced by
2 Financial Consumer Agency of Canada with their mandate to
3 educate financial consumers.

4 And so they've actually come up with a
5 pamphlet that looks at the cost of payday loans. So even
6 something like that would be useful to have on a desk,
7 you know.

8 And so if we can get more information at
9 the beginning of the process, that's not too complicated
10 but that provides the essential issues -- for instance,
11 the -- the price. Like the -- the complete price in a
12 lump-sum fee and/or APR, I think it would be useful to
13 have it at...

14 If there's a -- if it's a fixed percentage
15 cap, I think it would still be useful to have the three
16 hundred dollar (\$300) and then a table with a couple more
17 options at the bottom in a small font.

18 If it's a variable then it -- it does need
19 to I think be revised so that there would be an example
20 of the APR in each of the three (3) sets of the -- the
21 sliding scale.

22 MR. ANTOINE HACAULT: Okay. So we're
23 getting from simple to more complicated, but if that's
24 required in order to make sure that people can properly
25 shop and know what they're getting -- and have you

1 actually surveyed consumers to -- to see if that would
2 satisfy their needs?

3 Because, you know, the purpose would be to
4 make sure. And if the answer is no, then it may be that
5 the recommendation is that the Consumers Bureau prepare
6 one (1) of these pamphlets in conjunction with -- with
7 your department. I don't know.

8 DR. JERRY BUCKLAND: Well, FCAC,
9 Financial Consumer Agency of Canada, has done research
10 and developed a pamphlet on payday lending. And they do
11 this for a variety -- they do it for a variety of
12 different credit -- sources of credit.

13 So they have credit cards and they have
14 bank accounts, and they're increasing the number of sort
15 of accessible, readable pamphlets on various types of
16 credit products. So they've certainly done some research
17 on that and so there are sources that have looked into
18 this question.

19 And as I mentioned, there have been
20 studies that have, you know, looked at how people behave
21 in terms of choosing credit based on the information
22 they're given. So there certainly has been research
23 done, and I think this is a very good start.

24 MR. ANTOINE HACAULT: Okay. Well, if you
25 have any other recommendations on the type of information

1 obviously this is, I think, a really good venue to do
2 that.

3 The government is going to look for
4 recommendations, if we can, on how to best help
5 consumers.

6 MS. ANITA FRIESEN: Sorry, I just have
7 one (1) quick recommendation that I thought of. I -- I
8 would like some more time to look at this over the
9 holidays and make sure that we've included it all.

10 Under "Required Content," 16© and then .2,
11 it states -- and that's on page 11, sorry -- in at least
12 65-point font, the words, "How much it will cost you,"
13 followed by a listing of each fee, charge, penalty,
14 interest, etcetera, etcetera.

15 I think that it would be important to note
16 here also what is required fees and what are optional
17 fees, because in the example you gave, perhaps, the one
18 hundred and sixty dollar (\$160) charge for a loan, or and
19 -- and cost of a loan does -- that you're comparing to
20 the one hundred and eighty-five (185) at the other store
21 -- or one hundred and seventy-five (175) -- may not --
22 the one hundred and sixty (160).

23 There may be additional optional costs
24 that, given a particular customer's circumstance, are not
25 actually optional in -- in their position. And they

1 would have to pay them in order to get that -- that money
2 in the time frame that they require in the form that they
3 require.

4 That was --

5 MR. ANTOINE HACAULT: So if you look at
6 page 8, flip back, --

7 MS. ANITA FRIESEN: Mm-hm.

8 MR. ANTOINE HACAULT: -- and do you have
9 -- it might not end up on the poster exactly this way,
10 but do you have the word immediately before "insurance
11 optional," but everything's added and you get a total
12 amount?

13 So if -- if they're saying if they want
14 the product the way it's set out here, even though it's
15 optional, you get a total amount, but you also have right
16 before the description of the product the word
17 "optional."

18 Do you think that's satisfactory? Or do
19 you have a recommendation on a change in the wording?

20 MS. ANITA FRIESEN: I -- I haven't
21 thought this through a great deal, obviously, but I would
22 imagine that on the poster you could have the -- the
23 total cost and the total cost including optional costs,
24 just so that there's two (2) different amounts that the
25 customer can be aware of.

1 MR. ANTOINE HACAULT: Well, this one --
2 the way this one's done up, it's got the total cost. And
3 it has everything that's optional and everything that's
4 not optional listed is -- is -- should it -- should we
5 take out the optional items in one example then?

6

7 (BRIEF PAUSE)

8

9 MS. ANITA FRIESEN: Are you -- so
10 according to your reading of this on page 11, any cost,
11 how much it will cost you would include all optional
12 costs?

13 MR. ANTOINE HACAULT: No.

14 MS. ANITA FRIESEN: Oh.

15 MR. ANTOINE HACAULT: I'm just saying if
16 a poster is done up and if we put on the poster the
17 information that's here on the top of page 8, is there a
18 different way to put it?

19 Or is there a better way to put it?

20 MS. ANITA FRIESEN: I think that's a lot
21 of detail to provide on a poster. Perhaps in a pamphlet
22 you could provide that as additional information. But I
23 think a quick, snappy, simple total cost without optional
24 costs and a total cost with the optional costs would be
25 much simpler.

1 MR. ANTOINE HACAULT: Okay. Well, if you
2 can -- if you've got some further thought on that, and
3 specifically looking at -- at this example, that would be
4 great.

5 Did you have a comment, Mr. Osborne?
6 Everybody else has had a chance, you've...

7 MR. JOHN OSBORNE: I would just like to
8 point out something relevant from -- from the -- we
9 haven't discussed the -- the fee calling aspect that I've
10 done. I -- I'm concerned about the -- word "optional" as
11 well, not just the -- a word, but how it's treated by the
12 firm, because I -- I can give you a couple instances on -
13 - on, again I have to be careful of ethics here, but a
14 certain optional fee as it was portrayed.

15 One company, I was -- I was told that
16 almost everyone does it this way, and I was basically
17 told to do it this way.

18 Another one gave me the exact same
19 product, as I understood it was, I was counselled not to
20 take it that way because it adds an -- a great -- an
21 extra amount of -- of cost to the overall loan when it is
22 an unnecessary thing to have.

23 So I guess you could say that it was
24 optional for both firms, but I guess there's different
25 ways of -- of portraying that option to the customer.

1 MR. ANTOINE HACAULT: And I understand
2 your concern. And, in fact, we've heard evidence that a
3 lot of people choose the card fees, and this example
4 lists all the card fees. And although it indicates
5 optional, it gives a total cost at the bottom.

6 So if the client decides, Well, this is
7 what's going to happen, he's got the full number at the
8 bottom, so...

9 MR. JOHN OSBORNE: That's I was -- I was
10 -- I -- I'm just, off the top of my head, I'm happy to
11 see that -- that certain fees that are set as optional
12 here are included in the -- in the price. That's...

13 MR. ANTOINE HACAULT: Okay. Now, there's
14 one part of this proposal also dealt with optional, I
15 guess, cheque cashing fees if the loan was due before the
16 payday. And some provinces actually legislate that any
17 such fees have to be shown or included.

18 Do you have any issues with that being
19 included, and have -- being a requirement that if the
20 loan is due before the payday and then there's a cheque
21 cashing fee on the payday that that be included? Because
22 that is part of this example on page 8.

23 DR. JERRY BUCKLAND: If I understand the
24 question -- and I -- I might not. But if I understand
25 the question, I absolutely think that a cheque cashing

1 fee for a payday loan that only kicks in if you don't
2 repay by payday is not optional. So I don't think it
3 should be termed optional if the cheque cashing fee is
4 automatically charged in -- in that event. But maybe I
5 misunderstood you.

6 MR. ANTOINE HACAULT: No, well, that's
7 what I wanted to have your views on. Now this leads to a
8 question to Ms. Friesen.

9 Part of your mystery shopping, I think,
10 involved some notes and some comments with respect to
11 going in on a particular in -- for an unidentified payday
12 loan lender and on the day itself, wanting to pay off
13 that loan.

14 Do you recall that mystery shop?

15 MS. ANITA FRIESEN: Yes, I do.

16 MR. ANTOINE HACAULT: Okay, and do you
17 remember at what time of the day, on payday, you had gone
18 back to make payment on that loan? Was it in the morning
19 or afternoon?

20 MS. ANITA FRIESEN: I believe it was
21 about 4:00 in the afternoon.

22 MR. ANTOINE HACAULT: Okay, this just by
23 way of help, I think is around page 61 of your evidence.
24 Your notes aren't as complete as what's at page 61.

25

1 (BRIEF PAUSE)

2

3 MS. ANITA FRIESEN: I didn't write the
4 time on that one, but...

5 MR. ANTOINE HACAULT: You think it was in
6 the afternoon?

7 MS. ANITA FRIESEN: I'm pretty sure it
8 was, yeah.

9 MR. ANTOINE HACAULT: And your notes or
10 the explanation seems to suggest that, by that time, the
11 process wasn't ready? And was it irreversible? It was -
12 - is that right?

13 Could you explain what the scenario was?

14 MS. ANITA FRIESEN: That's right. They -
15 - the lender indicated to me that my post -- my postdated
16 cheque had been -- already been deposited.

17 MR. ANTOINE HACAULT: Okay, so if you
18 didn't have money in your account and you came to explain
19 at 4:00 that you wanted to do something, your
20 understanding was that the cheque would of already been
21 deposited and it would of already had incurred a -- a
22 default -- or a default fee or a default charge.

23 Is that right?

24 MS. ANITA FRIESEN: An NSF charge, I
25 believe, yes, at that point.

1 MR. ANTOINE HACAULT: So this is
2 something that's raised in the proposal under default
3 fees. Do you have any comments? We -- or the Rentcash
4 had some comments with respect to those types of
5 situations.

6 We've seen a -- a fairly wide range of
7 information in this proceeding, but some instances of
8 about 20 percent of default, even though it's
9 subsequently collected -- we do get a fair amount
10 collected.

11 If there's a business practice which is -
12 - it makes it such that it's irreversible and even though
13 you come in at four o'clock on that day you would incur
14 an NSF fee without any discretion.

15 Do you have any views on how that gets
16 treated in the charges?

17 MR. BYRON WILLIAMS: Mr. Hacault, I don't
18 think that's one I referred the witnesses to. It was a
19 lengthy document so if they can answer now, that's fine.

20 On that one specifically, because I had
21 focussed them on the poster and also the -- also the page
22 -- you're -- you're complete with the disclosure, so
23 certainly if the witnesses want to answer now, if not --
24 if they wish to undertake a response, if that would be
25 satisfactory?

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CONTINUED BY MR. ANTOINE HACAULT:

MR. ANTOINE HACAULT: Sure. I just was again just trying to see because we've -- unfortunately when you've got business models you've got as many variations in that business model as there are businesses practically, and I think it would be useful if the Board gave some guidance as to how it thought its Order was being applied so that people had some kind of certainty.

So if you have some recommendations to provide to the Board in that, because we know it is a fact situation that exists, that would be appreciated.

(BRIEF PAUSE)

DR. JERRY BUCKLAND: We'd -- we'd actually prefer to talk about this a little bit more and -- and come back to that at some point, if possible. We -- we don't really feel prepared to comment on that particular point right now.

MR. ANTOINE HACAULT: Thank you very much.

--- UNDERTAKING NO. 87: For the panel to advise if they have any views on how

1 suggested to you that in the 2006 annual report of the
2 Credit Unions that they showed an additional eight (8)
3 branches opening net, subject to check, would that be
4 something that would appear to be reasonable?

5 DR. JERRY BUCKLAND: That sounds
6 reasonable.

7

8 (BRIEF PAUSE)

9

10 MR. ANTOINE HACAULT: With respect to the
11 issue of the number of stores, payday loan stores, that
12 open and close, did you conduct any analysis of that in
13 Manitoba for that same time period?

14 DR. JERRY BUCKLAND: For the 2003/2005
15 time period?

16 MR. ANTOINE HACAULT: That's correct.

17 DR. JERRY BUCKLAND: No, we -- we didn't.
18 We -- the -- the bank branch closure data came from the
19 FCAC data set. So we were drawing on their data for that
20 material. We just collected information on the number of
21 payday lenders today from the -- the Yellow Pages was our
22 base of information.

23 MR. ANTOINE HACAULT: Because -- and I
24 guess that might just be missed -- we had Mr. Sardo, who
25 came here, who said he had two (2) stores: one (1) that

1 opened I think in 2005 and then 2006 or about then that
2 he closed those because he couldn't make a go of it.

3 There was another illusion in Mr.
4 Reykdal's evidence that three (3) out of the four (4)
5 complaints related to -- this is to the Consumers Bureau
6 -- related to a company that's no longer in business.

7 Unfortunately, we don't know who that is,
8 but there hasn't been any kind of study to see how many
9 payday lenders were in the market and actually had to
10 exit because they couldn't compete on the price and make
11 a go of it. Is that right?

12 DR. JERRY BUCKLAND: Yeah, I'm not aware
13 of -- of that study or studies like that. The -- the
14 only data I seen is the number of payday lender outlets
15 over time and -- and that's a bit spotty. What I know is
16 that the numbers have increased quite significantly in
17 the last five (5) to ten (10) years.

18 MR. ANTOINE HACAULT: Now with respect to
19 the tables, and I'm just going -- flipping through the
20 presentation here -- there were tables setting out the
21 various fees of the various firms that were done by
22 telephone interviews.

23 And I think that was you, Mr. Osborne?
24 Did you --

25 MR. JOHN OSBORNE: Yes.

1 MR. ANTOINE HACAULT: -- collect any of
2 the agreements underlying those potential loans? Or was
3 the information solely based on the telephone call?

4 MR. JOHN OSBORNE: That -- that
5 information was strictly telephone-call-based, so it was
6 all information we received over the phone.

7 MR. ANTOINE HACAULT: Okay. Now do you -
8 - and this might be Ms. Friesen -- do you agree with me
9 that -- that what was provided over the phone wasn't
10 necessarily consistent with what actually ended up being
11 the cost once the agreement was completed and filled out?

12

13 (BRIEF PAUSE)

14

15 MS. ANITA FRIESEN: I remember comparing
16 what I had learned -- what had been learned at the
17 inquiry visits to what had been learned on the phone
18 interviews, and that was pretty much the same information
19 with a few minor variations.

20 And then I can only speak to what I
21 learned at the inquiry visit and then what I further
22 learned during a loan visit. In my experience -- yes, so
23 I would say that that is the case that I -- there was
24 additional information that I had not been -- that would
25 not have been gathered through the phone -- a phone

1 inquiry, that if that was the way that I had first done
2 my inquiry visit was through a phone call.

3 There was additional information that I
4 was given during the loan visit that wasn't included
5 then.

6 MR. ANTOINE HACAULT: Okay, and -- as --
7 as I understood the -- the your evidence in -- in the
8 paper and the IRs -- I don't know if it was only your
9 evidence -- is that there weren't any cases where if we
10 look at the amount that you got in the inquiry and
11 compared it with the amount that you actually had to pay,
12 where you paid less than what the inquiry was?

13 MS. ANITA FRIESEN: That's correct.

14 MR. ANTOINE HACAULT: In all instances,
15 if anything the phone call leaded to an amount that under
16 -- underestimated in some instances the actual cost to
17 the consumer?

18 DR. JERRY BUCKLAND: Well -- well
19 actually the -- the phone call was -- was, sort of,
20 separately done to the in-person mystery shopping. We --
21 we did do some cross-comparing.

22 One of the specific questions we added to
23 the phone call was, What would I have to pay in -- in my
24 payday, which would be eleven (11) or twelve (12) days
25 away -- what would I have to pay for a two hundred and

1 fifty dollar (\$250) loan? And so that specific question
2 was asked continuously in the -- the telephone call.

3 But in -- in the in-person mystery
4 shopping, I think we used a hundred dollars (\$100) as the
5 -- the figure.

6 MR. ANTOINE HACAULT: Okay. And see,
7 what I was trying to get at is Dr. Clinton used these
8 numbers, and I wanted to -- I think you've answered my
9 question that in no instances were the numbers that you
10 gathered too low in -- or I mean, that they overestimated
11 the actual cost.

12 So if -- if they said it was going to cost
13 sixty dollars (\$60), in no case was it less than sixty
14 dollars (\$60). In some cases the actual cost, according
15 to your mystery shopping, Ms. Friesen, was actually
16 higher than the amount you understood, based on the -- or
17 it wasn't your phone interview -- it was Mr. Osborne's
18 interview.

19 Is that correct?

20 MS. ANITA FRIESEN: When you compare what
21 I gathered -- I can really only speak to what I gathered
22 in the inquiry visit compared to the mystery shop -- yes,
23 that's the case. All costs that were...yeah, the -- the
24 costs were higher than what they had stated at the
25 inquiry visit.

1 MR. ANTOINE HACAULT: So Dr. Clinton
2 shouldn't have a concern that if he uses your table and
3 shows twenty-five dollars (\$25) per hundred, that he
4 should have used twenty-three (23).

5 If anything, the numbers that he's used in
6 his table, based on the specific numbers you had, might
7 in one (1) or two (2) instances have been too low?

8 DR. JERRY BUCKLAND: The -- the only
9 basis we have to really kind of comment on that is the
10 mystery shopping, where Ms. Friesen went in in person and
11 found that she was given one (1) set of fees for her four
12 (4) inquiry/ probe mystery shops. And then when she
13 actually undertook the loan, the fees were a little bit
14 higher, a little bit higher. So that was the in-person
15 mystery shop experience.

16 Mr. Osborne undertook the telephone
17 mystery shops, and now they were -- they were very
18 similar. The one (1) difference would be that, well, Mr.
19 Osborne was on the phone, and he was using two hundred
20 and fifty dollars (\$250).

21 And just being on the phone creates a
22 different kind of situation. And if you read the script
23 that Mr. Osborne used, you know, he had a pretty
24 elaborate story about who he was and -- and why he was
25 looking for a payday loan, and he had, well, a similar

1 number of questions.

2 So I don't know if it's -- if we can
3 really generalize from what happened in the in-person
4 mystery shop about the telephone results. I'm not saying
5 we can't, but I'm just not that confident that -- that we
6 can.

7 MR. ANTOINE HACAULT: Well, I was just
8 trying to find out two (2) points: Number one, whether
9 you thought the information was fairly accurate, and I
10 think you've answered that.

11 Yes, you believe it was fairly accurate,
12 is that correct?

13 DR. JERRY BUCKLAND: Yeah. That's
14 correct. I --

15 MR. ANTOINE HACAULT: Yeah.

16 DR. JERRY BUCKLAND: I believe that the -
17 - the information that we -- we received in the telephone
18 mystery shops were -- were quite reflective of the -- the
19 real fees that people would be paying for a two hundred
20 and fifty dollar (\$250) loan at the end of the period.

21 MR. ANTOINE HACAULT: Thank you.

22 MR. JOHN OSBORNE: If -- if I can just
23 add, like, the purposes of the two (2) were somewhat
24 different in that for the fee collection, it was to --
25 the -- it was for the ultimate goal of producing Table 3.

1 So I had to account -- I had to do a bit more probing for
2 the fee schedules and so on so we could get a better
3 Table 3.

4 So my -- I -- I have two (2) different
5 stories or -- or personal profiles. I -- I have a
6 profile for the mystery shopping, and I had a separate
7 profile for the fee calling, because I had to account for
8 a higher level of knowledge to give me a reasonable
9 history of -- with payday loans to account for my knowing
10 a little bit more to be able to use the probing
11 questions.

12 Because as I said in my evidence, I had to
13 pro-actively elicit these responses. I had to call
14 multiple times to multiple outlets, and I even had to
15 call multiple times to the same outlet for a smaller firm
16 that didn't have the option of multiple outlets.

17 MR. ANTOINE HACAULT: I'll maybe put it
18 this way, because all I'm trying to do is find out
19 whether the information Dr. Clinton used was accurate
20 enough for him to rely on.

21 If there is anything in that table which
22 requires an upward adjustment as a result of the further
23 inquiries, would you be able to provide the revised
24 upward adjustment that's required so that that table is
25 accurate?

1 MR. BYRON WILLIAMS: And, Mr. Hacault, as
2 I understand your question and just so -- so I'm clear,
3 you're asking the witnesses to compare the information
4 obtained through the telephone surveys of Mr. Osborne
5 producing Table 3. And then essentially looking for them
6 to cross-reference that to the actual loan taking
7 inquiries of Ms. Friesen, five (5), six (6), seven (7),
8 and eight (8), and see first of all whether they're
9 comparable and then secondly whether there's any
10 revisions based upon that.

11 Is -- is that fair, sir?

12 MR. ANTOINE HACAULT: Well, I'll -- I'll
13 just use the Rentcash example. Nathan Slee called and he
14 put twenty dollars (\$20) per hundred (100) and twenty-
15 five dollars (\$25) per hundred (100), which was a correct
16 answer based on the loaned amount. But if you do the
17 APR, as was explained in the evidence, you get a higher
18 amount and that's -- the higher amount is the one which
19 has to be considered under the regulations.

20 I want to know if there's any other
21 instances where -- that you've discovered where that's
22 the case and -- and that upward adjustments should be
23 made in that table. That's as -- as about as easy as I
24 can --

25 MR. BYRON WILLIAMS: Yeah.

1 MR. ANTOINE HACAULT: -- try to describe
2 it, I guess.

3 MR. BYRON WILLIAMS: We can undertake to
4 examine whether we can do that. I'm -- I'm hearing some
5 method -- methodological differences, but we'd be happy
6 to -- I'll discuss that with the witnesses.

7 Just for clarity sake though I'm not
8 suggesting that Rentcash would of -- either of their
9 firms would have been involved in either of the surveys,
10 but would it be possible if they -- are we -- do you have
11 any instructions from Rentcash in terms of whether we
12 could share the actual information from Rentcash -- but
13 certainly we'll -- we'll do it on a generic basis.

14 But if you could come back to us in terms
15 of whether Rentcash -- if it was part of the inquiries --
16 would be willing to share the re -- the -- allow us to --
17 to share any results that might have been possible, that
18 would be helpful.

19 MR. ANTOINE HACAULT: Sure, I'll have a
20 discussion with you after and we'll iron those things
21 out.

22

23 ---- UNDERTAKING NO. 88: Coalition to compare for
24 Rentcash the information
25 obtained through the

1 telephone surveys of Mr.
2 Osborne producing Table 3; to
3 cross-reference that to the
4 loan taking inquiries of Ms.
5 Friesen, five (5), six (6),
6 seven (7), and eight (8), and
7 see first of all whether
8 they're comparable and then
9 secondly whether there's any
10 revisions based upon that
11 (Taken under advisement)

12
13 MR. ANTOINE HACAULT: I think I can cover
14 another area in -- in five (5) or ten (10) minutes, but
15 that's up to the wish of the Board as to whether it wants
16 to break now.

17 THE CHAIRPERSON: How much longer do you
18 feel that your cross-examination require in total?

19 MR. ANTOINE HACAULT: I probably have
20 another two (2) hours.

21 THE CHAIRPERSON: Well, then we might as
22 well save it till we come back then. Four (4) minutes
23 won't make much difference, Mr. Hacault.

24 MR. ANTOINE HACAULT: And -- and that I'm
25 saying, you know, I haven't asked any questions of Dr.

1 Robinson either yet, so.

2 THE CHAIRPERSON: No, we understand that.

3 MR. ANTOINE HACAULT: And -- and that may
4 be a gross under -- underestimation. Sorry, no dis --
5 disrespect to you, Dr. Robinson, but if I ask a question
6 I get a very lengthy answer.

7 THE CHAIRPERSON: Okay. Well, then we
8 will adjourn for the holidays. And Ms. Southall will
9 talk to various parties involved and try to determine
10 another schedule for the new year. As I understand we
11 have January 10th and 11th scheduled, but undoubtedly we
12 will require more days than that. So, I will leave that
13 to the good graces of all of you.

14 So, happy holidays. We will see you in
15 2008.

16 MS. ANITA SOUTHALL: Thank you, Mr.
17 Chairman and panel.

18

19 (WITNESSES RETIRE)

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21 --- Upon adjourning at 3:59 p.m.

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1 Certified correct,

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7 Wendy Warnock, Ms.

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