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
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APPEARANCES

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Steve Sardo (Np)	) Cash X
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--- Upon commencing at 9:05 a.m.

THE CHAIRPERSON: Okay, good morning everyone. Today and tomorrow we have closing statements for the Payday Loan Hearing and the order was provided when we met last week. I believe everybody knows what it is.

So we're going to begin with Ms. Southall for the Board.

Ms. Southall...?

CLOSING STATEMENTS BY MS. ANITA SOUTHALL:

MS. ANITA SOUTHALL: Thank you and good morning.

Amendment to the Consumer Protection Act of Manitoba requires the Public Utilities Board of Manitoba to fix the maximum amounts to be charged for payday loans as defined in the legislation and related regulation.

The legislation also states that the Board may make recommendations to the Province in respect of these matters. The payday loans provisions of the Consumer Protection Act provide assistance to the Board by setting out a number of factors that the Board may consider in fixing payday loans charges or establishing a rate formula or tariff.

And those factors include the operating expenses and revenue requirements of payday lenders in relation to their payday lending business; the terms and conditions of payday loans; the circumstances of and credit options available to payday loan borrowers generally. and the financial risks taken by payday lenders; the regulation of payday lenders and payday loans in other jurisdictions and any data that the Board considers relevant; and, finally, any other factors that the Board considers relevant and in the public interest.

The Board appeared in two (2) centres outside of Winnipeg as part of its public hearing process including Thompson, Manitoba and Brandon, Manitoba. The Winnipeg public hearing process got underway by publication of a public notice of the hearing process followed by the pre-hearing conference on July 6, 2007 to establish the procedures for the Winnipeg portion of the hearing.

With eight (8) active Intervenors and their witnesses in an extensive pre-oral hearing process and oral hearing process, numerous presenters and a variety of further witnesses, along with the Board's own research, there has been significant accumulation of information on the subject matter of payday loans upon completion of the evidence portion of the Winnipeg hearing on February 15th, 2008.

The administrative decisions required to be made by the Board have led the Board to consider varied circumstances and facts, both as to the demand side of the equation, including consumer needs and desires, and also as to the supply side, including the business requirements of payday lenders.

Societal impacts of such supply and demand have also come to the attention of the Board along with some fundamental philosophical matters of social welfare and ethics.

Participants to the Board's Winnipeg proceeding drew the Board's attention to a variety of issues, some of which were payday loan consumer characteristics, more particularly the circumstances of low and lower middle income consumers of payday loans and their particular characteristics:

The historic reasons for growth of the industry in a number of jurisdictions and the concomitant historical development of credit legislation in a number of jurisdictions including, of course, Canada and Manitoba.

Supply side changes to traditional bank and credit union lending and the relationship of such changes to the introduction and growth of payday lenders.

Payday lenders costs of doing business.

Risks associated with payday loans for payday lenders and brokers.

What constitutes a fair rate of return for the investments made in and by payday lenders?

Payday lending operating models focus particularly on direct and brokerage models and various operational differences, variability of fees, interest and other charges by payday lenders, availability of clear, comprehensible consumer information respecting payday lending terms and charge.

Practicalities associated with the implementation and subsequent adherence to maximums, as to be set by the Board:

Risks for consumers and the economy associated with the Board's ultimate decisions in carrying out its mandate.

Availability of information related to payday lenders and their customers.

Ethics with respect to payday lending and business practises.

And finally, varying approaches as to the Board's first order, including a perceived need for caution, this proceeding being the first of its kind.

The Winnipeg Public Oral Hearing has proceeded for twenty-one (21) days of evidence. Transcripts of the evidence are located on the PUB's website.

We now conclude the oral hearing process here in Winnipeg with closing submissions of the Intervenors directly or by their Counsel, which submissions are also being recorded and form part of the record.

Thanks both to Counsel and the Intervenors for their active reasoned participation in this process. I commend also all of the other participants who shared their experiences, views and evidence with the Panel.

And now on to the schedule for closing submissions occurring today, February 19th, and tomorrow, February 20th as follows -- just briefly, although as the Chairman noted, this has been circulated to the Intervenors and their Counsel.

Today's schedule for February 19th, I'm just going to check, I believe that we have a break today from 11:45 a.m. -- no, that's changed? Okay. Thank you. I just got my indication from the Panel. So we're operating under a normal timetable today.

So, following my comments, I believe will be put onto the record the written submission of Cash X which has been circulated and provided to the panel. We still await the written submission of 310-Loan, of Mr. Slee, and we understood that we were to receive it by now, but it -- but possibly it will come in today and will also be circulated and transcribed into the record.

We will then receive oral submissions, as I understand it, from the Coalition representing Consumers Association of Canada, Manitoba Inc., Manitoba Society of Seniors and Winnipeg Harvest, that comprise the Coalition, followed by Assistive Financial, and Mr. Dawson is present today as their counsel to make closing submissions.

Also present today, Mr. Leo Sorensen who will provide closing submissions for Sorensen's Loans 'Til Payday. And, finally, today, in terms of oral submissions, we will hear from Mr. Kent Taylor of Progressive Insurance Solutions.

I believe that some participants will be presenting written submissions. I know Coalition has circulated written submissions, and they will speak to and introduce any written submissions at the time that they present them, and they will be circulated at the time when the presentation -- their part of the presentation comes up.

And then, finally, tomorrow, February

20th, commencing also at 9:00 a.m., we will hear, first tomorrow morning, from CPLA through its counsel, Mr. Foran, followed by Rentcash Inc. through its counsel, Mr. Antoine Hacault.

Thank you very much, Mr. Chairman, those are my comments this morning.

THE CHAIRPERSON: Thank you, Ms. Southall. And we do note, for the record, receipt of CashX's closing statements and we will have them added to the transcript.

(CASH X CLOSING STATEMENTS BELOW)

MR. STEVE SARDO: Given the mandate of the PUB is to set a rate for Payday loans in Manitoba. I will set out the Cash-X recommendation along with the supporting arguments.

Assumptions

1. Regulation needs to provide protection to consumers.

2. Regulation needs to not unreasonably disrupt the competitive market, unnecessarily eliminate jobs or have a negative impact on the Manitoba economy.

3. Regulation must consider firms and not

volumes since in order to maintain some market stability we cannot look solely at one large volume firm and translate their results to the other firms.

4. We must use reliable data not guesstimates or averages of loan volumes, expenses et cetera since these types of calculations could result in massive layoffs, entrepreneurs going bankrupt, landlords losing tenants and all the ripple economic impacts of large industry closures.

In order to finalize my conclusions I start with Dr. Robinson's spreadsheet and try to enhance the accuracy of some of the numbers.

1. I adjust Money Mart's volume to include the fact they offer no payday loans in Quebec.

2. I allow for store size using 24 hour stores, and the hours stores are open to approximate the distinction between small, medium and large stores. This should eliminate the problems of using store averages.

3. I assess Rentcash's costs comparing them to Money Mart's using their most recent financial statements and then adjust their operating costs accordingly.

4. I compare rent cash locations in proximity to Money Marts and then use this date to estimate large medium and small Rentcash store volumes.

5. Finally, I break down a set of actual costs (such as those used by Dr. Robinson) only work at threshold volumes and below such volumes you cannot use a cost loan.

Once I have adjusted all the numbers to hopefully more accurately reflect the reality of a multi-firm industry I make my final recommendation at $30/hundred.

The analysis clearly demonstrates that virtually only Money Mart survives at the rates Dr. Robinson suggests and that would create a US company monopoly which I cannot see benefitting customers over time. Disruption in massive closings could cost customers more in travel (cabs or buses) as well as the economic impact of thirty-five (35) stores closing in Winnipeg and the loss of approximately a hundred and twenty (120) jobs in the province. In order for any entrepreneurs to survive or even Rentcash small locations the PUB would need to set a rate of $30/hundred.

SPREADSHEET EXPLANATIONS

1. Money Mart Estimated Store Volumes. This uses Money Mart's Winnipeg store hours as a proxy for store size. The twenty-four (24) store is separate and the remainder are broken down into five (5) teller,

four (4) teller and three (3) teller location proportionally allocating loan volumes based on teller size.

2. Rentcash Estimated Store Volumes. This uses Rentcash stores in proximity to Money Mart's ans assumes that three (3) teller money location corresponds with a three (3) teller Rentcash. In essence, location determines store size.

3. MM Montreal Quebec. Utilizing the Money Mart web site it was determined that there are thirty-two (32) locations in Quebec. This is later used to calculate average loan volumes per store and finally adjusted loan volumes based on store size.

4. Rentcash Small, Medium and Large. These are projections for each size of Rentcash stores using provided average store volumes and adjusting for three (3) teller, four (4) teller and five (5) teller (small, medium and large) stores. In addition, Rentcash and Money Mart public financial statements are used to calculate the average operating cost/loan of a Rentcash location.

5. Money Mart costs. As provided by Dr. Robinson.

6. Money Mart Adjusted. This adjusts Money Mart volumes for their smallest location (3

teller).

7. Cash-X Recommendation. This uses a breakdown of costs based on actual operations, a Single store operator would incur operating in Winnipeg. (Based on Cash-X knowledge of costs). It then assumes a Rentcash small volume store (which may be overstating volume for many small operators). Finally demonstrates that an average operating cost per loan is not a valid number at small volumes and an actual breakdown of costs is more realistic.

(END OF CASH X CLOSING SUBMISSIONS)

THE CHAIRPERSON: And I believe we are still expecting 310, as Ms. Southall has mentioned.

So we'll move on now to Mr. Williams for the Coalition.

Mr. Williams...?

CLOSING STATEMENTS BY COALITION:

MR. BYRON WILLIAMS: Yes, good morning, Mr. Chairman, Board Member Proven and Board Member Girouard.

I do have a -- before the break, a outline of argument. I don't know if it's been distributed by

Mr. Gaudreau. It has?

And just for the Board's comfort, I've given you one (1) sided pages. Everyone else has got double sided copies. So we're trying to pay at least some homage to the principles of sustainability.

I do want to -- after giving you an outline, of course, I do have to depart from it right off the bat. I do want to make sure that you're aware that in the audience, as she has been for much of this hearing, is the Executive Director of the Consumers Association, Ms. Desorcy.

With her today up one (1) row and on -- in the -- I'm not sure if it's purple -- but Ms. Kendall (phonetic) from the Consumers Association, and in the back row, from Winnipeg Harvest, is Mr. Donald Beddam (phonetic). So we're pleased to have them here today.

And again, departing from my outline, and sometimes we forget to do this, so I thought I'd better get it done at the start. I do have a few thank you's that I -- that I -- that I wish to offer on behalf of the Coalition.

To Board Counsel and Board Advisors, and I'll talk in a few minutes about how this has been a novel hearing and a challenging one. And I think they've done -- certainly speaking on behalf of my clients -- a fabulous job in their typical objective fashion. So we -- we thank them for that.

And it's been a demanding hearing, and I -- I do want to thank my clients, who have sat through many long sessions trying to get their heads around the -- the complex issues relating to the payday loan industry and the consumer perspective on that.

And they've also spent a lot of time, and I give credit to the industry participants with groups such as Mr. Slee and, I believe, perhaps, Mr. Hacault and certainly they've shared information with the CPLA as well in terms of trying to get some common ground on where we can agree in terms of rules for disclosure.

So, I thank my clients for that time as well as the -- the other interested parties. And, finally, I'd be remiss if I didn't thank my witnesses. I conned my witnesses into this hearing. I said, Well, Dr. Simpson, it'll only be a day or two (2); Dr. Carter, just a day or two (2); Dr. Robinson, only one hundred (100) hours; same for you, Dr. -- Dr. Buckland.

And so perhaps I owe them an apology. By my count, I think my witnesses were on the stand or the Coalition's witnesses were on the stand for about eleven (11) days -- ten (10) or eleven (11) days -- and so I thank them for their attention, and I hope they'll forgive me and perhaps work with me again in the future.

Moving to the outline. And just starting on -- on page 1, I've suggested that this is a novel and complex regulatory issue for Canada and for Manitoba.

And someone wise, at page 2858 of the transcript -- it might be the Chairman -- described this as "a unique process." We've never had a hearing quite of this specific nature.

And I -- I may be wrong on this, but as we look for precedent across Canada, the only hearing that's even similar in terms of the issues that we've found is, of course, the cheque cashing hearing that this Board embarked upon; it seems so long ago, but I believe it was just in December of 2006.

But to our knowledge, apart from the cheque cashing proceeding, there is no Canadian regulatory precedent. The other thing that's made this not only novel, but complex, is the issue of proprietary information, commercial confidentiality.

And I don't mean that in a critical way, but it's -- it's been a challenge in terms of just and reasonable rates tend to be cost based rates. And how do we determine an appropriate cost based rates when so much of the information is proprietary? So I think that's been a complex part of this hearing.

And one (1) of the points I want to make by that is, given the novelty and the complexity of the hearing, certainly, our inclination is to look for guidance from -- from other sources.

And I think it's important to recall and to be aware that much of our guidance in this hearing has, should and must come from the United States.

The industry has its roots in the United States. It's more developed in the United States than in Canada, and I've given you some authority for that. And the debate has been hot and heavy and longstanding in the United States. Is this a service for consumers or is it exploitation or perhaps -- a more nuanced approach -- perhaps a bit of both? There's much more American literature and there's much more regulatory experience in the United States.

So that's a point about, given the novelty, I would suggest that we do have to look to the American experience. I think, by our count, there's somewhere between thirty (30) and forty (40) states that are regulating payday loans in terms of the fee cap, and there's some guidance that we can take from the experience of those states.

The complexity comes in though in recognizing that the regulatory experience in the United

States is rapidly evolving. Just, if you look at what's happening in North Carolina or in Oregon or in the US Military, federal legislation over the -- the past couple of years with the drive towards a 36 percent APR.

So we have a lot of experience from the United States, but we do have a moving target. And that's even in Missouri; and if you read through the literature, Missouri really appears to be where the payday lending industry in the United States started. And even in Missouri, in 2007 we had the Attorney General call in for a 36 percent APR. So, again, we have a -- a moving target.

Moving towards the bottom of page 1; with these novel issues, with these complex issues, you're going to have challenges in weighing the evidence and in understanding the evidence. And I'm going to suggest to you on behalf of the Coalition that there are really two (2) different approaches in terms of the presentation of the evidence that you'll see, and certainly that I will discuss over the course of this morning and perhaps into the early afternoon.

One (1) is what I would characterize as a more traditional adversarial approach. I'll call it a "self-reinforcing approach" by some of the witnesses in this proceeding. Don't acknowledge your bias, approach from one (1) only theoretical basis -- Dr. Buckland talked about this at the transcript of page 2684 -- tightly delineate your areas of inquiry, and focus on material which directly supports your analytical approach and stop looking. Don't look -- don't look towards anything that might test the premise on which you're advancing within that adversarial context.

So we'll suggest that that's one (1) approach that's become apparent in this hearing.

And the other approach, which we'd say is best represented by the -- the evidence presented by Dr. Buckland, Dr. Simpson, and Dr. Robinson in collaboration, is what I would describe, on behalf of the Coalition, as an "inquisitorial, interdisciplinary approach." I'll call it the "self-testing approach."

And how I would describe that, and the approach that those learned professors have done in this hearing, is recognize that this is a relatively new area, acknowledge your bias, deal with them, explore the context, expressly identify and consider ethical issues, draw on as many sources of information as possible, and employ and test a variety of theoretical approaches to understand the consumer and the marketplace, and, perhaps most importantly, expressly include and address material which may run in a different direction from your ultimate conclusions.

And I would suggest what Drs. Buckland, Simpson, and Robinson done -- have done, with the support of the Dr. Carter team, is internally test and retest for consensus. I'll call it a "continually testing approach." If anyone's familiar with the -- the work of the great philosopher of science, Karl Popper, "critical rationalism" might be another name for this.

So I want to turn now -- and I'm on page 3 of the outline -- to the -- the context for this hearing. And I'm going to spend quite a bit of time on this, because, just like in Charter issues, I think context in the course of this hearing, the factual basis, is -- is all important.

And for the purpose of context, I want to just outline the fact that I'm going to draw heavily upon the report of Buckland et al, but draw support from other witnesses such as Dr. Gould, Mr. Reykdal, who's here today, and Dr. Clinton.

And when you look at the Buckland approach, just as an -- an introduction to it, there's two (2) key points I want to make about it. One (1) is their heavy use of triangulation. They don't just find some supportive facts and accept them; they test it from different -- from different observations, from different sources of inquiry, and then they retest it.

And I'm giving you an example of mystery shopping. It builds on the prior works of Dr. Buckland and Dr. Robinson. There was a mys -- a mystery shopping exercise, but then it was supplemented and retested by the phone survey by Mr. Osborne.

The other thing notable about the work of Dr. Buckland et al is an express examination of the ethical issues, the really profound issues that are raised by the phenomena -- the recent phenomena -- of payday lending. Dr. Buckland advises, and as does Dr. Robinson, be express about these ethical issues and address them head on.

From Dr. Buckland's perspective, two (2) of the core issues are: One is that the -- the high rates and there's no doubt they are high rates, there may be a reason and there certainly are some reasons why they are high -- but they challenge our basic notions of fairness when we look at comparing them to lines of credit or to credit cards, et cetera.

So that's something. There's something that I -- I'm sure you've heard in your coffee shop conversations, something about this issue that strikes a chord with many people; it challenges our notions of fairness.

The other important ethical issue that Dr. Buckland points out, in particular, is that the phenomena of payday lending has to be understood within the institutional context of the decline in -- in mainstream banking services for low income persons, coupled with the economic stagnation for the bottom two (2) quintiles of the population.

So that's some of the -- some of the important ethical parameters that Dr. Buckland is looking at. And some might accuse Dr. Buckland, Dr. Robinson, Dr. Simpson; maybe they're being a little academic. Maybe it's, you know, maybe ethical considerations are not properly part of a discussion of just and reasonable rates.

And I read with interest, and I refer you to it from the -- the most recent exhibit that the Public Utilities Board presented, PUB-33, Tab 2, which was a survey by Compass (phonetic) of CEOs of Canada of their ethic survey. And it's interesting to note that those CEOs seem to be struggling with some of the same questions that Dr. Buckland and Dr. Robinson are.

The conclusion of the survey is that Canadian CEOs are preoccupied by ethical dilemmas. A majority of Canadian CEOs believe that ethics have become more important over the last twenty (20) years, especially in the eyes of CEOs from larger companies and those that are heavily regulated.

So you might accuse Dr. Buckland or Dr. Robinson of being unduly academic, but, if so, they're in -- in good company with many of the leading business leaders in Canada.

So turning to page 4 of the outline: What's the Debate? And Dr. Buckland surveys this in his review of the literature, but at the two (2) extremes, there's critics of the industry who argue that payday lenders prey on, exploit or trap their clients, whether through high fees, on low income or credit-constrained customers, or unfair business practices or the phenomena of rollover or repeat loans.

On the other hand -- and Mr. Hacault, on behalf of his client, has enunciated this perspective quite strongly. Their proponents argue that payday loans are a product that helps consumers with short-term financial crisis'; they are service to people with a particular need. And there's an argument that without these loans, many clients would either have no option or have to go to underground options.

And I'm not going to dwell on this, but I think it's important to understand when you use the word exploitation at least what Dr. Buckland means by it. He describes it -- I won't go into Marxist exploitation, I don't think that anyone's arguing that here -- but he offers three (3) perspectives of it, and it's important to understand.

He first of all uses the classic or neoclassical approach, basically of imperfect competition where the marketplace is an inadequate safeguard for consumers. And he argues, and it's standard in neoclassical theory, the consumers may face exploitation via a higher price when the market isn't perfectly competitive. And that's central to the analysis, I think, as we go along, of Dr. Simpson.

Another key issue, and I really think this is at the heart of -- of Dr. Buckland's concerns with the payday loan industry -- relates to relative advantage exploitation. What happens then when the one (1) or two (2) short-term loans is converted week after week into a multi- week, medium-term loan?

And Buckland describes the exploitation, within -- within that context, resulting from the rapid escalation of fees in the fact of stagnant benefits. And then there's sufficiency exploitation that we can debate whether or not it exists in the course of this hearing. Dr. Buckland, I -- I think would say the jury's still out on that one.

I -- I talked about different theoretical approaches, and I'm going to get off theory right away, but I think it is important to understand that there are different ways of looking at consumer behaviour.

Because it's -- it's difficult for many of us in this room to understand why consumers would pay so much for this service. And the three (3) theoretical perspectives that Dr. Buckland explores and employs:

One is the neoclassical -- good old neoclassical -- the one that Dr. Clinton so clearly subscribes to. The people are rational economic actors. They act in a way that maximizes the personal self-interest.

And Dr. Buckland would say that that's a valuable insight but it's not a perfect insight, and the analysis starts to break down when you look at the payday loan industry.

A second theory of the consumer is the New Keynesian or institution approach. Context is not, perhaps, everything because people are rational actors, but they are constrained by the institutional boundaries.

And that's an important avenue that I want to explore for a couple of minutes. And then there's behavioural economics, as well. And I just note that in another of the tabs in the most recent PUB exhibit, PUB-

33, there's an actually interesting discussion of -- of some of these theories.

Certainly, the neoclassical one as well as the bounded rationality one, so I've just put that cite in there. So I want to turn to page 5, and I want to put this in some sort of institutional context.

And why does the institutional context matter? Because we're trying to understand what's going on in a marketplace. And the social and economic structure of that marketplace is reflected in income distribution which then shapes the markets.

So it's -- to un -- to understand the market, you have to look at the context. As Dr. Buckland pointed out, you'd have a very different discussion if we were looking at the --the market in South Africa with a very tiny middle class versus the market in -- in Canada.

So a starting point in terms of the institutional context, and my source for this is Dollar Financial Group, and it's repeat -- reported in the Money Mart parent company, in the transcript at page 2696, is that a core source of business for payday lenders is lower and middle income earners.

That doesn't mean that that's all they serve, but that is a core source -- a central market demographic that they're focused on.

And you can see it in some of the language of Rentcash, but certainly, most expressly, in -- in the language of Dollar Financial Group.

So what do we know about what's going on with that core, that key demographic? Well, we know that for this group, there's been a clear increase in any quality in Canada.

And Canadians are increasingly unequal in their capacity to mitigate negative incomes shocks in bad times. And that's particularly the case for the bottom 40 percent -- 30 to 40 percent -- of the marketplace who have seen both their incomes and their assets stagnate over the last twenty (20) years, particular in the 1990's.

So that's one (1) thing we know about what's going on in the Canadian marketplace.

We also know and -- that consumer debt is high and -- and rising. And the Chairman asked some very interesting questions about -- about that of Dr. Buckland in terms of how much mortgages had to play and -- and the rise in -- in equity.

But -- but I think that Dr. Buckland's conclusions remain the same; that there's high and rising levels of consumer debt; and that's particularly the case -- and debt income ratios are higher for the young and for those with low incomes.

Another key dynamic within the marketplace is the phenomena of consumerism, and I won't dwell on that.

So that's, from the consumer perspective, what's going on in the marketplace. What about the supply side? What's going on there?

And I would argue and -- and I think there's support -- on behalf of the Coalition, there's support for this from Dollar Financial Group. There's support for this from -- from other sources as well, that there's been a decrease in mainstream banking services for low income people.

And Dollar Financial Group says this expressly. Access to banks has become more difficult over time for many consumers, and they talk about closings and typically those have occurred in lower income neighbourhoods. There's support for this from Mr. Osborne, in terms of inner city residents seeing a reduction in traditional banking sector options, and there's support for this from Dr. Buckland, who -- who -- his general analysis is that the overall trend is that payday lenders are disproportionately located in economically disadvantaged and vulnerable areas of the city.

So do these issues matter? Does this context matter? Dr. Buckland says it does. Why are income and banking charges important critical structural issues to consider regarding payday lending? Because I think they are affecting low and modest middle income consumers and the financial services they have access, so that instead of payday lending maximizing consumer welfare, as neoclassical economic theory might suggest, payday -- payday lenders may be reinforcing underlying economic inequality. And that's a particularly key concept when we look to the demographic of repeat borrowers.

So on to page 6. Who are payday loan consumers? Now, Dr. Simpson speaks to this, and he makes some general observations about the Canadian population, which I think are quite relevant for Manitoba as a whole. He finds -- and this is statistically significant -- that payday loan customers in general tend to be younger, less educated, in larger families and have lower family income than the rest of the population.

And that difference between the payday lending population -- statistically significant difference between the payday lending population and the -- and the general population is particularly enhanced or exacerbated when we look at frequent users of payday loans.

Frequent users tend to be more vulnerable than the payday loan population at large, and there's some -- an ongoing debate between Mr. Hacault and Dr. Simpson in terms of whether it's 26 percent or 24 or 23 percent. But frequent users are a large percentage of the payday loan population. And based upon the SCAC data, 52 percent of those using payday loans at least monthly have had incomes under thirty thousand (30,000). And that compares to only 32 percent of all payday loan users.

So when you look at the people who are using this service most frequently; when you look at the individuals upon who the real business case for payday lending, which is really built upon repeat use, who are those people? Those tend to be, in terms of income, more disadvantaged, not only than the general Canadian population, but even -- even as compared to the payday lending population.

What else does Dr. Simpson tell us about payday -- payday loan customers? And I -- I don't think that this is pretty -- very contentious. I think Mr. Marzolini agrees with them. Other financial options tend to be more limited for payday loan customers.

Forty-three percent live in a family

without a credit card as compared to 17 percent of the rest of the population. Forty-eight percent stated they had no one else to turn to when they had financial difficulties, compared to 32 percent of the population.

And as Dr. Simpson highlights, when the sense of vulnerability, when they're hit with a negative income shock -- shock - S-H-O-C-K, for the record - then the options they have are obviously fewer.

I want to just talk for a second about the methodology of -- of Dr. Simpson. And Dr. Simpson has appeared before this Board before, and he -- he enjoys a peerless reputation. But it's important to understand what he was doing and perhaps contrast that with, for example, what Mr. Marzolini was attempting to do.

Two (2) of the key data sources from -- used by Dr. Simpson, both the Stats Canada and the FCAC data sources, very high quality data, the reputation is unparalleled for -- for those sources and it's -- there's a long tradition, a reliable methodology.

And they allow for direct comparison of the payday loan population with other Canadians. And Dr. Simpson expressly contrasts that with some of the work that the CPLA has done; indeed, some of the work he used, such as the data source of Environics, which was a study for the CPLA.

And certainly, it had some value. It's more information. But Dr. Simpson expressly questioned its representativeness as a comparison of the entire payday loan population versus the rest of the population.

The other thing I want to highlight about -- one (1) of the two (2) other things I want to highlight about Dr. Simpson is when he came up with his conclusions about lower income, about less education, he just didn't pull the numbers out of -- out of the FCAC and the Statistics Canada.

He did what I would call a -- a -- in layperson's terms -- an "econometric double check." He tested these against other variables. His language is a multi-varied analysis to see whether they were still significant or important. So that goes back to that triangulation approach that I was speaking of earlier.

And the other point I wanted to make about Dr. Simpson, and I guess this is in anticipatory reply to Mr. Hacault.

Both Dr. Simpson and Dr. Buckland cite the FCAC study on frequent users. And they do not cite statistics lightly; they're professional academics who would not put this information before the Board if they did not think it was significant in the statistical meaning.

And Dr. Simpson spent considerable time with Mr. Hacault, both off-line at -- I believe at his offices at the University of Manitoba, and also on-line in cross-examination.

And there seemed to be a mis-communication between the -- the two (2), because and -- and I want -- and it's clear on the record, but just to hopefully to assist Mr. Hacault -- the debate they were having in terms of the statistical significance of the FCAC study on -- on frequent users.

Mr. Hacault was talking in language such as what percentage of the population is this -- is this information drawn from. But the -- the truism and the essential reality from the statistical perspective is that it's not the size of the sample as compared to the population, but the absolute size of the sample which allows one to make statistical observations.

And -- and that comes clear in the transcript, but I wasn't sure if Mr. Hacault had -- and Dr. Simpson had had a meeting of minds on that point.

So, for example, Dr. Simpson wouldn't use a sample of six (6). But, as we all learned in kind of first or second year stats, once you get up to thirty (30), forty (40), you're starting to get a sample that you can -- you can draw some conclusions from.

Six (6) is not a sample that you can -- you can draw conclusions from; thirty (30) is, ninety-two (92) definitely is. So that's just a sidebar in anticipation on Dr. Simpson.

A little bit later today, I'm going to talk about my favourite case from the US Supreme Court which is Nebbia - N-E-B-B-I-A - versus New York. It's a seminal Supreme Court decision from the 1930s.

One (1) of the -- the language that that case uses to -- to -- determine when regulatory intervention is required into the marketplace is when the market is an inadequate safeguard for consumers.

And I thought that would be a -- a nice heading for -- as we turn at page 8 of the outline, because I'm going to describe, on behalf of my clients for the next few minutes, why they think that this is a marketplace that is in -- that isn't an adequate safeguard for consumers.

And it speaks directly to and puts my client's position in sharp contrast to the position of Dr. Clinton, who clearly believes that, in general terms, that the market is working.

In terms of this, I want to start with noting again that the evidence comes from the team approach -- the Simpson, Buckland, Robinson team -- and that's set out in the transcript at page 2839.

What do we know about payday loans within the Manitoba marketplace? Well, we know that rates are very high compared to other sources of credit. The simplest way of putting it, in terms of APR, is that the -- the report, the famous Table 3 from Buckland et al, had the unweighted average APR of being 771 percent.

By contrast, we have some credit cards are 28 percent and I put in some additional information in from -- in terms of what other non-profit micro lending institutions or American credit card users pay in terms of APR.

What else do we know about the marketplace, both in Canada and in term -- and, anecdotally, in terms of Manitoba? We know that repeat loans are a very significant element of the payday loan business, and we've seen this captured in a variety of sources.

Ernst & Young, in their important work, four (4) or -- three (3) or four (4) years ago, suggested that there were fifteen (15) repeat or rollover customers to every one (1) new one. We've seen from the FCAC that about 24 to 26 percent of the population of payday loan users were using them at least once a month during the course of the year.

And in Coalition Exhibit number 40, which came into the hearing relatively late in the proceeding, Dr. Simpson, in his cautious, careful fashion, estimated that the categories of those who take out a loan about once a month or more frequently, account for about 85 percent of all loans that may be taken by payday loan customers.

So that's really national data. We don't have, to my knowledge, Manitoba data. Mr. Marzolini, amazingly, didn't ask that question in his survey. My understanding is that there may be some data on that from the Bannister surveys done by Rentcash, but, to my knowledge, those do not appear on the record.

Anecdotally, we have Mr. Hansford, and I was so happy to see him appear on the February 13th, and, again, he's -- his was not a scientific study. It was an observational study, and it was only at a few locations, and I think he only saw somewhere between fifteen (15) and seventeen (17) customers. But the key point that he made -- and I underscored that in cross-examination, I hope -- was of the approximately sixteen (16) loans observed, at least fifteen (15) were repeat customers. So that's anec -- anecdotal support for what we're seeing more empirically in the Canadian data.

And Dr. Clinton and, again, he commented about Bannister data a couple of times, and the inference I drew from his comments about it was that there -- there was a very high representation of -- of frequent users within the Rentcash population, but you'll have to go back to the transcript and explore that for yourselves.

The conclusion that Dr. Buckland draws from this is that payday lenders encourage and need repeat loans in order to thrive. And I'm quoting almost directly from him from pages 2680 and 81 of the transcript:

> "Continuous repeat loans demonstrate that payday loan -- payday lenders are not in the market for short-term loans, but only attract customers that way. Many customers get trapped into back-to-back loans because they cannot repay the loan. The results for consumer is a costly multi-week, medium-term loan."

And we -- we put in a few observations from elsewhere in the record which speak to the issue, and it's a challenging one from a regulatory perspective, or, perhaps more appropriately, from a legislative perspective, about frequent users of loans. And maybe we can't solve that here, but I do want to talk about it because it goes to the issue of relative advantage exploitation.

There is some evidence of firms in Manitoba offering preferential rates for repeat customers. Repeat loans are relatively easy to obtain and that they're few barriers in success in -- accessing repeat loans.

What else do we know about repeat loans? That their very high costs are expressly for those taking repeat loans. And Dr. Buckland had an excellent illustration of this in the transcript when he compared a person taking twelve (12) payday loans over the course of a year versus some with -- with taking -- using a credit card and paying off their -- their credit card amount on a monthly basis.

And the example he used, you were looking at costs of seven hundred and sixty-eight (768) for the person using twelve (12) payday loans in a year versus twenty-four dollars ($24) for someone using a credit card.

And you can see insight into that also from the estimates of Simpson and Robinson in Coalition Exhibits 40 and 41. And in his cautious careful conservative way, Dr. Buckland says:

> "The repeat nature of payday loan borrowing is concerning."

What else do we know about the marketplace? And this is through the mystery shopping exercises as triangulated with other -- other data.

I guess I want to start with first of all, what were mystery shop-- what was the mystery shopper; what were they trying to determine? They want to know how much it will cost before they could -- they want to know what information they needed to get a loan, how much it would cost and what happens if they can't pay.

What were the conclusions of the mystery shopper, Ms. Friesen? There was not full disclosure of all that a potential consumer might need to know in order to accurately assess the cost and ramifications of taking a payday loan.

Going down a couple of bullets.

> "With the information provided during the enquiry visit, it seems unlikely that a customer would be able to make quick, accurate comparisons between the different lenders of the full cost of taking a loan."

Even after she'd taken out a loan, Ms. Friesen, who is a gifted woman, found it difficult to easily replicate calculations of the amount owed. And in one (1) case at least, firm number 8, optional services were not explained to her orally as being optional.

And we saw this confusion and inaccurate information particularly pronounced when we got to default fees. Mr. Osborne -- this is in his phone surveys -- noted they became very confusing and jumbled almost. In some cases, he was referred to a different section of the company for information.

And I make this -- this point, and I emphasize this because you're going to hear, I guess in writing from Mr. Slee, and he's going to candidly admit -- and I give a lot of credit to Mr. Slee -- that the marketplace, as it stands or as it stood in 2007, was flawed.

He'll talk about concentration, he'll talk about some barriers to entry and he'll talk about inadequate information. And Mr. Slee, and perhaps others, will argue well, you don't need an aggressive regulatory approach, you don't need a -- one that's really focused on a just and reasonable rate, because with these other changes, with better information we're going to hit the new Jerusalem of com -- competition.

We're -- you know, with better disclosure with a few more posters, we're going to have -- we're going to have the market solving it's own problem; the problems that I've started to enunciate based upon the work of Dr. Simpson.

And, certainly, from my client's perspective, more information is already -- is always better and it's helpful, and they've worked hard with Mr. Slee and others to try and come up with better disclosure rules.

But I think Dr. -- on behalf of my clients, I would suggest that Dr. Buckland hit the nail on the head when, based upon the results of mystery shopping, he said: A poster's not going to do it. A bit more legislation is not going to do it. There is a need for a profound cultural shift. And I'm paraphrasing, but I think I have his words -- words accurately. That was, to me, one (1) of the most important comments that he made in this Hearing.

The problems, in terms of access -- fair access to the marketplace for consumers, are not going to be solved by another poster or in the short term. There is a need for profound cultural shirt.

What else did we learn about through the mystery shopping process? And a couple of these points came out through questioning from panel members.

What about this debt management process? We heard so much about how the industry is so aggressive in trying to deal -- make sure that giving consumers every opportunity, through repeated phone calls, to -- to pay -- pay on time so that there's not these high default rates and bad debt loads.

Well, in Ms. Friesen's case, in no -- in none of the four (4) mystery shops that she undertook loans, were reminder calls given before the due date, or given at all. And there were reference checks, but surprisingly, those reference checks took place after the money was -- was given.

And the inference we draw from this is that there's probably a bit more efficiency that might be available to the -- to the industry in terms of addressing issues of bad debt.

In fairness -- and I think everyone says that -- payday loan staff tended to be respectful and polite. And I've got Mr. Sorensen sitting -- sitting to my right here. I hope he's not glowering at me. I got a smile out of him; that's good.

I did want to know while -- while I do have him here; is the Board was aware -- in terms of we did ask some industry players whether they would allow us to share their names in mystery shopping, and Money Mart did and we thank them for that. And I -- I had knew Mr. Sorensen had been interested in that, but the fact that we'd actually got written permission from him, I didn't understand until today.

So Mr. Sorensen was one (1) of the other firms -- the only other firm -- that was prepared to offer that information and -- and I'll -- subject to check, his firm was number 6. So I thank him for that, because it's helpful information.

And -- and certainly, his payday loan staff were among the most helpful in the inquiry stage, so -- and -- and that's a point, in fairness, I wanted to -- to point out.

There's another interesting insight that I think we can gain, both through mystery shopping and also anecdotally, through the work of Mr. Hansford; and that is that larger firms appear to offer at least as high quality of a service as small firms.

And I asked this of Mr. Hansford in cross-examination -- again, it's anecdotal -- but he -- he clearly distinguished between the stores where there's a high volume of customers and stores where he had to wait around a long time to have someone take out a loan.

And -- and I'm paraphrasing here, but my understanding of his comments is that high-volume stores appear to offer as good of a service as low-volume stores.

Mr. Osborne, at least in terms of

information, I would suggest would go further. He generally -- and there are exceptions -- but he said that large firms in general offered greater amounts of fee information and that there was a greater varia -- he observed as well that there's a greater variability in the amount of information available at the smaller firms.

And Ms. Friesen pointed out that in terms of less onerous requirements for consumers, the lender which required the least information is a large, well-established payday loan company and one of the Big 3.

And the other interesting point from the work of Mr. Osborne actually in mapping, and I'm not sure quite what to do with it, but he does note that smaller firm outlets demonstrate greater inner city concentration and there's probably some significance to that.

I want to -- to talk about mystery shopping methodology just for a couple of -- couple of seconds, because Mr. Foran asked some, I think, very legitimate questions in terms of how reliable is this approach. And I believe my -- I should say My Friend, Mr. Foran -- and -- and as well I believe Mr. -- My Friend, Mr. Dawson, and Mr. Hacault asked some questions as well.

So I do want to talk about mystery -- mystery shopping, because it's -- there -- there certainly was in my view, some scepticism from the industry perspective.

And there's a few things I want to make clear about the approach. In the mystery shopping exercise there are actually two (2) distinctive approaches. Ms. Friesen, who comes from an anthropological background, certainly was approaching those issues in that way, and Dr. Buckland was really basing his approach on what he'd read from the literature about the financial and retail industry.

So there was an interdisciplinary approach, which I think is a good and healthy one -- cross-pollination.

There was a very experienced survey team when we deal with mystery shopping, and we went through extensively the qualifications of Ms. Friesen and Mr. -- Mr. Osborne, and Mr. Osborne, who at one (1) point in time, apparently was running to be mayor of Kampala. And -- but people who have got a lot of experience in qualitative research in very difficult environments.

So it was an experienced research team and it was drawing up again, which I think is valuable, on interdisciplinary traditions: anthropological, geographical, economic, and finance.

And it was well documented -- not

perfectly, and Mr. Hacault pointed that out -- but certainly if you compare it to Dr. Clinton's adventures in -- in trying to get pricing data, and I went through that in cross-examination, it was a much better documented and -- and carefully thought out procedure. There was customer profiles created, there was an outline of questions and there was a fair degree of documa -- documentation.

It used the approach of triangulation, and probably your eyes are going to start to roll by the end of the day, but I think it's important. It built on previous by Buckland and Robinson. It had a lot of steps; there was a -- a trial run, inquiry visits, loan taking, recalculation, extensions, recalculations, and then it was retested through the phone surveys.

So I think there's a lot of reliability we can put at it and it was very successful. What the witnesses learned in the mystery shopping in person allowed them to refine their techniques for -- for their phone surveys. Table 3, which came out in the Buckland et al report, in -- in terms of pricing information and which I think even Dr. Clinton admitted, is the best data on the record in terms of pricing information.

And the mystery shopping exercise was very helpful, I think, in -- in pointing out some anomalies in our understanding of how Rentcash was charging rates, and I think it -- its success -- the proof is in the pudding.

Now, I enjoyed this -- Mr. Foran's cross on mystery shopping, and I note that he started out with Ms. Friesen and -- and he said -- and she explained that she came from an anthropological background and that methodology, so he quickly moved to Dr. Buckland, which I thought was quite -- quite clever. And he went through a couple of articles; he didn't seem to want to go down that anthropological path.

But he did want to quote -- he raised two (2) useful quotes from a couple sources, one from Jesson (phonetic) and one from Norris (phonetic), and these articles, and Mr. Foran pointed this out in cross-examination, identified some limitations in mystery shopping and I thought that was a -- a valuable contribution.

In my submission, on behalf of my clients, it might have been more valuable if he would have went to the conclusions of Jesson and Norris, and -- and these conclusions are on the record. They're in that voluminous pile of material back there which has been filed with the Board. Because, ultimately, both Jesson and Norris conclude that mystery shopping is commonly used, and if well designed offers important insights on industry practice.

Going to page 12, Norris concludes:

"I think that well designed mystery shopping studies can provide useful data on service quality in a range of settings."

Jesson talks, a couple points down, about triangulation and how it's an important way to improve reliability and that, of course, is what Dr. Buckland did. And, again, I've -- I've got a couple more quotes there from Jesson and Norris.

So I just want to be -- be clear, in terms of mystery shopping, again, the proof is in the pudding, but it's -- it's also, lest you be distracted by the -- the cross-examination of Mr. Foran, My Friend, even those articles, I would submit, in some, are very supportive of the process and the reliability if well done.

We talked a fair bit about consumers. I'd like to -- to talk about the industry context and there's some important issues here. And being a kid from Souris, urban/rural issues are important to me, for the -- for the farm boy in me. I think Mr. Osborne felt the same way.

So I want to talk expressly about some of these urban/rural issues and the insight that we -- that we've got from the evidence. And again, I have to emphasize that this information that I'm going to present excludes Advance America, because it just wasn't in the marketplace until, to my understanding, October of 2007.

So what do we know about the -- the payday lending industry in Manitoba? First of all, we know that it has a heavy urban -- in fact, a heavy Winnipeg concentration. Of the sixty-nine (69)locations mapped by Mr. Osborne, fifty-one (51) of those were in Winnipeg in September of 2007, and another eight (8) were in southern urban centres, such as Brandon and Portage.

So that leaves about ten (10) payday lenders for the north; Flin Flon and Thompson are some locations. I think Mr. Sorensen may have one (1) up on Thompson -- Russell, and there's a smattering in southeastern Manitoba as well, leading Dr. Robinson to conclude this is a highly concentrated market for payday loans, and it' mostly concentrated in the cities. And this an important consideration when we look at some of the tradeoffs that you, as regulators, may have to make.

And I guess I would point out, when we look at this issue -- and really it's -- it's an important argument made by the CPLA -- well, don't forget about the rural payday lenders when you're setting rates, and it is important. But it's also important to understand that much of rural Manitoba is not served directly by in -- in-town bricks and mortar payday lenders.

When you look at the -- the information, there is -- leaving aside Brandon, Portage, and Winnipeg, there are not many payday lenders out there in -- in the countryside. So that's an important contextual point as well.

What do we know about the cost price structure for rural and urban payday lenders? And I thought this was very informative, and CPLA provided some Undertakings, I believe, on Friday.

Undertaking 21 expressly said there is no evidence to suggest that costs would be higher outside Winnipeg. And I went through this with Mr. Reykdal as well, and that's at the transcript at page 2093.

And I think this is pretty close to quote, but certainly My Friend, Mr. Hacault, can check it.

> "No suggestion that costs for Rentcash operations higher in rural than in urban. There are no notable extra costs associated with rural stores as compared to Urban stores."

And a third -- if we're talking triangulation, a third source of information, I think, which offers insight is the -- the famous fast cla -- Fast Cash Flower Store in Steinbach, Manitoba, which has among the lowest price -- which is among the lowest price payday loan providers in the province.

So I think that's important information suggesting that -- giving insight into the cost structure in rural areas.

I want to talk a little bit about models of payday lenders. And this is a point that a number of witnesses have made. It's -- there are challenges because the industry is diverse.

The first point I wish to make -- and we're going back to the flower store in Steinbach -- not all payday loan providers are stand-alone. Some of them have sought to achieve economies of scope through rather creative typical rural Manitoba fashion.

There is the Fast Cash Flower Shop in Steinbach. Dr. -- Dr. Robinson always talks about the hawk -- whatever -- the Laundromat and the hawk shop in -- in Ontario. So there is examples of payday loan providers who are not stand-alone, who, perhaps if they cannot get enough volume directly through payday loans, have opportunities to achieve economies of scope otherwise.

There's also evidence that not all rural payday loan len -- providers are full-time. And some of that was provided in Coalition Exhibit 43. So those are, at one (1) extreme, kind of mixing a payday loan business with another business or operating a payday loan business part-time.

At the other extreme, I would suggest, are the Money Marts of the world. Highly efficient, high volume, multi-service fringe banks. Two (2) key -- three (3) key characteristics: they are very efficient, high volume, which as we know dramatically reduces costs per hundred (100), and also economies of scope, because their multi-service businesses like cheque-cash are an important part of their business.

New on the market, the Advance America, which is highly efficient based upon the American data, but really modest volumes. About one half of what we have in MoneyMart. Still making a handsome go of it in the United States. And it's a -- essentially a mono-service provider. No economies of scope through cheques cashing.

And another player in the Manitoba market -- and I'm going to talk about this in -- a bit later -- is what I've called the "Rentcash-in-transition model." And Rentcash has been hard for all of us to analyze.

You know, there was a rapid expansion

including absorption of major competitors. There were major changes to its debt management practices, and I went through that in cross with Mr. Reyknal -- Reykdal. And I've got a -- a word error here. I -- I put "renunciation of broker fees" and that should say "renunciation of rollover fees," which presented some challenges.

And there's some evidence, based upon Mr. Reykdal's speech of September 2007 in New York, that it may be reconsidering the broker model. And again, I've misspelled "model." And -- and let's not forget the other player in the marketplace are the Internet providers.

And an interesting dynamic of lower operating costs, and that's how Mr. Sardo stayed in business. He couldn't make it as a bricks and mortar operations, so he moved to an Internet. But I'm -- I can't pro -- use the word that miss Salva used earlier, but at the same time a higher debt ratio, given the -- the absence of face-to-face interactions.

So that's important to understand.

Now, Mr. Chairman, if I might, I have a fair bit to go, although things will pick up a bit. But I have something I have to check with my clients, so I wonder if now might be an appropriate time.

THE CHAIRPERSON: Okay. We'll take ten (10) minutes.

--- Upon recessing at 10:08 a.m.
--- Upon resuming at 10:34 a.m.

THE CHAIRPERSON: You ready to go, Mr. Williams?

CONTINUED BY MR. BYRON WILLIAMS:

MR. BYRON WILLIAMS: As ready as I'll ever be, Mr. Chairman. I think, in terms of the outline, I'm on about page 15, and I'm going to depart from it for two (2) more seconds and -- and just going back to my clients.

I neglected to advise the Board -- Ms. Hunter from the Society of Seniors is not here, and the reason is -- sad news for me -- but she's moved on to the Manitoba Special Olympics. So I'm -- on the record, I'm going to miss her.

She's been a thorn in my side as a client for a number of years and been a tremendous client, so we've appreciated her insight on this. And the other point I should have made earlier is part of the coalition of the -- for the first time is Winnipeg Harvest and certainly Mr. Benham (phonetic) being here, but also the insight they've offered has been very helpful.

I'm on page 15 of the outline, and I -- and I want to talk a little bit about the cost structure and characteristics of payday lenders in terms of some horses, being operating costs, some ponies being bad debt, and some rabbits being the cost of capital. And I don't have any pretty diagrams of horses, rabbits or ponies, but I'm sure the -- Dr. Robinson's PowerPoint presentation is seared into your memory for all time.

When we look at the cost structure and characteristics of payday lenders, these really are relatively small stores. We took a look at loan volumes, some less than a million, some of the larger ones being over 4 million, and perhaps in the Toronto area, a few of them getting up to 7 million.

And, really, when you look at the number of loans per day, really, a small amount -- and I had a bit of a discussion with the witnesses for the Rentcash panel, and the transcript of page 2089, and, at least in my calculation through -- with them through cross-examination, they were averaging about a loan transaction an hour in 2007 and 2006, which suggests that there may be some opportunities if it makes the point with the high fixed costs structure, that if volume increases, cost per hundred (100) should go -- or there's a real chance it will go down.

And again, in terms of the relatively small individual stores, I've noted the -- the relatively modest range in revenues and that's including cheque cashing and other services.

But horses. The big issue in this hearing, at least in my client's submission, are operating costs. And the -- we think the evidence on that is really -- there's consensus around it. 75 percent of the costs are operating costs; salary, heat, light, et cetera.

And I think there's also consensus -- on behalf of my clients, I would submit that there is -- that these costs are relatively fixed, therefore, an increase in volume may result in a significant increase in profit.

And what are the sources for this? Well, E & Y, Dr. Gould's presentation from November, PowerPoint slide number 10. And Gould, in my cross-examination of him, agreed that this was a fair statement.

What Ernst & Young show is that operating costs are by far the largest cost component representing nearly three-quarters (3/4s) of the total cost. And he again confirmed that in -- in rebuttal under cross-examination by Counsel for the Coalition, who would be me.

So Dr. Robinson's conclusion, and it's one we -- we think there should -- should be consensus around, is that operating costs of a store are the bulk of the costs.

The second highest cost -- and -- and it's a pony -- in the submission of my clients are -- are bad debt costs, which we would suggest are much less than half of the operating costs.

And Ernst & Young, in their analysis -- and I confirmed this in cross-examination with Dr. Gould -- bad debt costs were about 21 percent of the total costs versus operating costs being 75 percent.

And Robinson makes his point about Money Mart. Of course, Money Mart has a -- tends to have a lower bad debt ratio, but if you look at their operating costs based upon PUB-13 Revised, you're looking at eight dollars and fifty-one cents ($8.51) per hundred (100) versus a bad debt cost of less than two dollars ($2).

So, in Dr. Robinson's colourful language, debt default is not the big story. This is our pony. Still significant and we should pay attention to it. And perhaps more significant for the Internet lenders.

A question that's come up in this hearing and Mr. Hacault has pressed this forcefully in cross-examination; there's no doubt that there's a wide variance in bad debt ratio. And, again, I'm anticipating that he'll suggest to you that when you -- if you compare the -- the bad debt ratio of Rentcash versus Money Mart, it's simply a difference of the client characteristics.

So the question we've brought to the Board's attention is: Is the wide variance in bad debt ratio simply different client characteristics, or is there an element of insufficiency in -- in -- in the handling of -- of clients.

Now I don't think that there's any dispute that there is a wide variance in bad debt costs. Ernst & Young found that. They found that of the nineteen (19) firms for which they had data, about fourteen (14) of them had bad debts rates of 4.2 percent or lower and, indeed, seven (7), including some smaller stores, were at 2 percent or below.

And we know that Money Mart is -- is consistently at or below 2 percent, and it's -- it's important to note that when you look at the Ernst & Young data, Money Mart's definitely in there.

They never did rollovers, so there's no rollovers in their -- in the mix at the time of Ernst & Young. Well, what about the new kid in town -- the big new town in town -- Advance America?

From the -- from the transcript, we have evidence suggesting that they have some variance in their bad debt ratio, perhaps impartial result of closing down operations in Pennsylvania and North Carolina and Oregon.

But you see in the range, 2.7 to 4.7 percent. And we also see Rentcash which is higher, although declining. And I -- I think there's an observation in Ernst & Young which I put to Dr. Gould which I -- I think is important, and they weren't speaking of Rentcash.

I think they were speaking, in general, about the wide variation. And they observed that the wide variance in bad debt experience among payday loan providers may indicate that some providers are not simply as successful at screening customers for risk of bad debt.

And this is a point in which Dr. Robinson strongly echoes Ernst and Young. And -- and he does this effectively, I would suggest, at pages 2904 and 2905 of the transcript. He says, Look at Advance America, look at MoneyMart. Low cost operators, they're asking for less credit information and they're making decisions fast.

And Money Mart, in particular, has got

really, really low debt rate -- debt default rate. And he's raising the point again that the large quantity of information requested by other payday lenders doesn't seem to lead to anything.

So -- one (1) of the points I think -- again this goes to the efficiency argument --- you can do -- that there are different abilities within the -- within the corporations. And even Dr. Gould was open to this possibility in my cross-examination of him at transcript page 1667.

He was open to the possibility that wide variance might suggest inefficiency. Common sense, said Dr. Gould, would suggest that there are probably -- that there probably are some operators that are less efficient than other operators.

And perhaps the most compelling refutation of the -- the scenario, which I expect will be advanced by Mr. Hacault, that different bad debt rates are simply different client characteristics, is offered by his own client, Mr. Reykdal, in his September 2007 speech.

Because Mr. Reykdal said in his September 2007 speech -- and we went though it -- this at the transcript -- that Money Mart is moving from a high risk model to a low one. We're adding quite significantly to --

THE CHAIRPERSON: You meant Rentcash?

CONTINUED BY MR. BYRON WILLIAMS:

MR. BYRON WILLIAMS: Oh, excuse me, I misspoke. Thank you, Mr. Chairman. I'm glad someone's listening. He -- he noted that Rentcash was moving from a high risk model to a lower one. It was added, it has added quite significantly to its infrastructure, changing the underwriting criteria, starting to look at customers with multiple loans from multiple lenders.

He spoke, as well, about changes in store operations in the context of managing his corporation in a different way; Instituting an audit department, and a significant increase in training and development in the last year. And this was a key point that Mr. Reykdal -- and I give him credit for his candour -- made in September 2007. He confirmed this under cross-examination. We've made a fundamental change in our business in terms of how we deal with our business practice as well as our lenders underwriting criteria.

And he made the point, it's unfair to look at us a year ago as compared -- I misspelled that -- to today because that would be an oranges-to-apples comparison.

And he also noted that they were starting to see an impact, as a result of these efficiencies, on the bottom line.

So Dr. Robinson suggests that, in terms of a bad debt ratio, 2 to 4 percent is the reasonable expectation, and over the long-term, certainly, my clients con -- concur with that.

Rabbits, or cost of capital. Dr. Robinson makes the observation, or he suggested, variations in the -- estimating the rates for cost of capital have only small effects on total costs.

And for much of this hearing and, in fact, until February the 15th, I thought Dr. Gould agreed with him. If you look back, for example, at the PowerPoint presentation that Dr. Gould made to this Board in -- in November 2007, slide 14, he makes the statement:

"Assumptions for the return on equity and interest on debt have little effect on the estimate of the total cost."

And he confirmed last Friday that he made the same statement in No -- in Nova Scotia on January 14th, 2008 in his written evidence. And if you go to Dr. Gould's evidence in terms of cost of capital back in November, which is not that long ago, slide 12 is a great illustration of why he came to this conclusion.

What he did in slide 12 -- and you can

certainly review it at your leisure -- he looked at dropping a -- an equity before tax rate of return from 20 percent down to 10 percent; after tax 12.8 to 6.4, and concluded that it made barely three-quarters (3/4s) of 1 percent difference in the average per hundred (100).

So pretty dramatic drop and a pretty modest change in the cost of capital which is why, presumably, in November and January, Dr. Gould was concluding that the cost of capital was not that significant.

And Mr. Reykdal actually made this point with me in his rebuttal evidence -- he made it with Mr. Hacault -- he and -- and I put that quote in that transcript reference in this outline.

And here's a statement that Dr. Gould made under cross-examination. This was in late November, 2008 and it appears at the transcript at page 16 -- or 1634. He agreed with the statement that:

> "The choice of rate of return on equity and interest rate on debt does not make a significant difference in this analysis and reason. For this [and I'm missing a word] and the reason for this is that operating costs are by far the largest cost faced by payday loan

providers while the cost of capital is relatively small. Choice of rate of return on equity does not make a significant difference."

This begs the question of why Dr. Gould led off his rebuttal evidence by focussing on two (2) rabbits related to the cost of capital.

What else do we know about the industry? We know that there are opportunities for economies of scale and scope. We know that high volume and multi service payday lenders tend to have significantly lower costs; that volume is the key.

And in fact the largest risk faced by any payday lender is that they won't develop enough volume. What else do we know -- and this is important, these next two (2) points because one (1) of the challenges my clients have faced, in fact they were still facing it over the coffee break, goes to this.

When -- when we look at the actual rate structure, should we go for a -- a simple one, which is easier for consumers to look at. or should we go to one that is more reflective of the -- the cost that various consumers bring to the industry, because cost causality has always been a central concern to my clients.

And so there's a couple of important

points that they wish to make in terms of fairness between different consumers. One (1) is that the cost to provide a five hundred dollar ($500) loan is not significantly more than the cost to provide a hundred dollar ($100) loan.

This is a business driven by operating costs. The time you spend with a consumer does not differ appreciably given this range of loans.

The other point -- and again it goes later on when we debate -- when I try and share my client's angst over cost causality versus simplicity -- the other point they make is that -- Ernst & Young does this -- is that first transactions are much more expensive than repeat loans. And that's because they're more time intensive.

The cost for repeat loan is much less than the cost for first time loan. And that's supported by Ernst & Young and -- and confirmed by Dr. Gould at page 1654 of the transcript. And it's supported by the mystery shopping evidence of Ms. Friesen who talked about how much longer it took for the first loan versus her quite rapid repeat or rollover loans.

And I think this observation was also made by Mr. Hansford on February 13th. Again, anecdotal; but again, he was talking almost exclusively, or perhaps exclusively, about repeat loans. And he said they were in and out really quick and the range he used was a little more than Ms. Friesen. He said ten (10) to twelve (12) minutes.

Earlier on, I spoke of the neoclassical concept of exploitation; really a market that's imperfectly competitive and fails to safe -- adequate safeguard the interest of consumers harking back to the language of Nebbia -- N-E-B-B-I-A versus New York.

And -- and I wand to talk about limitation with the -- the marketplace drawing heavily upon the evidence of Dr. Simpson, but also of the evidence of Dr. Reykdal -- Dr. Reykdal. I'm not sure if I promoted him or demoted him. He certainly has stellar qualifications, but Mr. Reykdal as well.

So I want to start first with the market in theory, and this was a point made by Dr. Simpson. When economists talk about competition they may talk about a variety of things but they're -- at the heart they're talking about price competitiveness. And Dr. Simpson's advice to the Board is that the notion of price competition is an important factor in the sense of thinking about regulation and fee regulation.

If there's adequate competition, and I'm not -- I'm trying to put it in my own simplistic terms --

the market's there to protect people. You don't need rate regulation. If there's not, especially if there's not price competition in a meaningful way, then consumers are paying too much, and in the context of payday loans where there's a high frequency by particularly vulnerable people, vulnerable people are paying too much.

What does Dr. Simpson tell us about the market? He tells us that perfectly competitive markets tend to protect consumer interests. The price is set by competition amongst the suppliers in the market and they're anonymous attempts to attract consumers by adjusting their prices, and total welfare is maximized.

He goes on to say that under perfect competition, what tends to happen is that there's free entry and exit of firms and they tend to respond to prices in the market. If they can't earn a normal profit -- another way to describe that is the "opportunity costs of capital" -- they will not enter the market and may, in fact, leave the market.

And I wanted to assist My Friend -- and he is my friend -- Mr. Slee. I want to talk about this point for just a minute more because Mr. Slee had an interesting discussion with Dr. Simpson in -- in cross -- in cross-examination about barriers to entry. And, again, I think there may have been a -- they may not have been speaking on the same plane, or there may have been a miscommunication between Mr. Slee and Dr. Simpson.

One (1) of -- and I guess the point I would make is -- is this: Mr. Slee was, in my understanding, asking, Well why aren't all these people exiting the firm, exiting the -- the marketplace if there's all these barriers to entry?

And Dr. Simpson's point was that there wasn't price competition, so that barriers to entry and exit are predicated on the existence of price competition.

And I brought a quote in of Dr. Simpson's from the transcript at page 2844, hopefully to assist Mr. Slee to understand this point. Dr. Simpson says:

> "If you're a small firm hoping to enter the market, that it would be difficult to compete if it cost you twenty-two eighty-eight (22.88) for a hundred dollar ($100) payday loan and other firms can charge yet less than seventeen (17) bucks. Unless those firms are not willing to compete on price and, in fact, are able to earn what we -- we consider above normal returns."

So, the discussion was premised on -- barriers to entry was premised on price competition.

Well, what do you know about -- instead of the market in theory, what do we know about the market in practise? And, on behalf of my clients, I would strongly suggest to you that what we have in practise is oligopolistic - O-L-I-G-O-P-O-L-I-S-T-I-C - market structure.

Currently -- and again, we don't know what's going on with Advance America -- the market is heavily concentrated both in terms of number of stores and, more importantly, volume of business.

And Mr. Reykdal confirmed this -- now that I promoted him to Dr. Reykdal -- he said, In terms of stores, the marketplace is dominated by major players. And he went on to confirm that in terms of volume, the major players have an even more dominant position.

Dr. Simpson agrees with his colleague, Dr. Reykdal -- no, I'm just teasing -- with Mr. Reykdal. Dr. Simpson says there are two (2) dominant sellers in Manitoba: Money Mart and Rentcash.

About two-thirds (2/3s) of the store location -- and I should emphasize, just under -- were either Money Mart or Rentcash, and he conservatively estimated, in terms of volume, that these two (2) firms had over 70 percent.

My clients would say and submit, respectfully, that a more likely estimated volume is over 80 percent between the two (2) firms, and that's provided by Robinson in the -- on the transcript.

And to -- to my recollection, neither Dr. Simpson or Dr. Robinson were challenged on their volume estimates, although, if I'm wrong, I'm sure one (1) of my Learned Friends will point that out.

And there is some -- in terms of their estimates, I would note that Mr. Reykdal and Dr. Robinson provide some support to the conclusions of Dr. Robinson and Dr. Simpson.

Robinson estimates that Money Mart has 53 percent of the Manitoba market. Reykdal agrees that Money Mart stores would tend to have higher store volumes than average. He also noted that Rentcash stores have a slightly, in his view, higher than -- than the average. Dr. Robinson notes and suggests that Rentcash has about 31 percent of the Manitoba market by volume.

What does Dr. Simpsons confir -- conclude from this? These observations led him to con-- conclude that this is consistent with the notion that there are dominant firms in the market. It's consistent with the ideas of oligopolistic market structure, where the dominant firms can influence a market in terms of prices and output.

There's another important point of this, especially when we get to a -- a critical analysis of the recommendations and the analysis of Dr. Clinton and also Dr. Glue -- Gould. This is a market that is very heavily weighted, in terms of two (2) players; somewhere between 70 and perhaps upward of 80 -- 80 percent.

So this dominant position -- this heavy -- heavy weight in terms of volume -- raises some questions about those who are, for example, analysing costs on an unweighted basis, as Dr. Gould is, or analysing prices on an unweighted basis, as Dr. Clinton is.

And I would respectfully suggest, on behalf of my client, raises fundamental questions about their methodology; to use unweighted averages in circum -- to assess costs or assess volume -- prices in circumstances where the market place, at least up to October 2007, was so heavily dominated by two (2) firms.

I should note -- and this perhaps goes to the argument of Mr. Slee -- that the heavy dominance of two (2) or three (3) major players in the Manitoba and the Canadian marketplace can be contrasted with what's going on in the States. And Advance America -- and this is in -- it's 2005 10K, but also in the subsequent 10Ks -

- notes that in the United States -- and this is one (1) differen -- difference between the market place -- the payday cash advance services industry is highly fragmented.

And Advance America notes that in -- in 2005, there were about twenty-three thousand (23,000) total outlets in the US marketplace, and Advance America, which is the biggest player in the US market, had only about 11 percent. Dr. Buckland made the same point on a number of occasions in his evidence.

Going on with the -- the analysis of the market place, and the market in practice. We've dealt with an oligopolistic market structure. What about barriers to entry? And Dr. Simpson concludes that there are economies of scale in the provisions of loans which would constitute a barrier to entry in the event -- going back to the miscommunication he had with Mr. Slee -- of meaningful price competition.

He states there are economies of scale in the provision of these loans, and the larger outlets and larger firms can provide them more cheaply. And my Learned Friend, Ms. Southall, went through this with Dr. Robinson and Dr. Simpson in her cross-examination of them on February 14th.

They talked about some of the advantages of the economy scale in terms of information technology and information management training, advertising, including spillover effects -- which I hadn't been aware of until that date -- regulatory costs and, to a lesser extent, cost of capital.

But if you don't believe the witnesses of the Coalition, believe Advance America. They're quite explicit about economies of scale. We believe our scale provides us with a leadership position in the industry.

They talk about levering their brand name, which I -- I think Money Mart's been very successful in doing -- and entering into a creative favourable relationship with landlords, strategic vendors and other suppliers, and centralized support functions including marketing and advertising, accounting, finance, human resources - I misspelt it - information technology and customer support systems.

And that's a central message that they're selling and send in their 10K's. And again this point was made by E & Y, and I think Mr. Sardo had an interesting point on that.

Money Mart, of course, disagrees with him but he -- he suggested they had a huge advantage in terms of bad debt because of their voluminous information about consumers across Canada.

There are also economies of scope. Money Mart's the most vivid example of that which would constitute a barrier to entry in the event of meaningful price competition.

And Simpson concludes that there's evidence of economies of scope. And it's interesting to note, of course, that Rentcash -- it's not on my outline, but Rentcash is quite prudently trying to expand into those areas recognizing the -- the advantage that Money Mart enjoys through its cheque cashing business and assorted other lines of revenue.

Simpson concludes that there's a significant entry cost in advertising as well. Dr. Simpson, looking objectively at the industry and considering the evidence as a whole, also makes a -- a point about -- that this is a relatively homogenous product.

It's a simple product and, although My Learned Friend, Mr. Hacault, valiantly has tried to advance the argument of differen -- differentiation, Dr. Simpson certainly wasn't persuaded that it was anything more than assertion.

What did he say about product?

"This is a relatively homogenous product. Everyone's selling the same

thing. Money now for the promise to
replay in the future."

And if you're looking for evidence of differentiation, well, where is it? Well, it's not -- certainly not in hours of service. The lowest cost producer, or among the lowest cost producer, is Money Mart, has the longest hours. The hours are shorter outside of Winnipeg.

And I've got a few other points here from Dr. Robinson on this point. Well, what - what else do we know about the marketplace? And we've gone through this in mystery shopping but it's central to Dr. Simpson's analysis.

He's talked about an oligopolistic market structure, he's talked about barriers to entry, certainly in economies of scale, scope and advertising. He's talked about a relatively homogenous product.

From the demand side, there's also a significant problem in the marketplace in terms of imperfect information. And Ms. Friesen and Mr. Osborne have gone through this but Dr. Simpson concludes:

"Consumers cannot easily shop for the
best prices without posted and
comparable prices."

And I think he supported in this

conclusion by some of the industry participants as well. Mr. Slee was quite frank about his challenges in -- in getting accurate information about the market.

And Dr. Clinton was not only frank, but quite enjoyable, at -- it the transcript at pages 2312 and 2327, when he talked about the many challenges he had in getting accurate information about priced within the marketplace.

And I -- I think this is -- this point of imperfect information is important for two (2) key reasons. One (1) is that it -- it identifies a fundamental limitation in the marketplace.

The other thing it does, and I'll come to this shortly, is it really undermines Dr. Clinton's whole analysis and -- and his whole proposal to set the maximum fee based upon pricing information given the inherent unreliability, certainly, of -- of his -- the data that he collected.

And again, I went through this for about fifteen (15) pages with Dr. Clinton. It's -- it's quite enjoyable when you look at his little adventures in -- in Ottawa and elsewhere in terms of collecting price data, and I -- I recommend that to you.

Dr. Robinson and Dr. Simpson conclude that there is some evidence of high profits. Most fundamentally, though, Dr. Simpson looks at the oligopolistic market structure, the significant barriers to entry, the imperfect information, and he concludes that there is little evidence of price competition within the -- the meaning that economists use.

And perhaps the best evidence of that is Coalition Exhibit 17, the famous Table 3, from Buckland et al, when -- when we look at a range from forty-four dollars ($44) to a hundred and nine dollars ($109) on a two hundred and fifty dollar ($250) loan. And in a perfectly competitive market, you would not expect a spread of that -- of that magnitude.

And while the Table 3 is probably the best source of that information, Ms. Friesen's adventures in mystery shopping provide some interesting insight into it as well. She only took out four (4) loans, some for a hundred (100), some for a hundred and twenty (120).

There was a major range in -- in charges for the loans. She -- one (1) she paid twenty dollars ($20) for a hundred and twenty dollar ($120) loan, about 17 percent per hundred or 17 percent.

On another, she paid forty-eight dollars ($48) for a hundred dollar ($100) loan, which roughly amounts to about 48 percent. So just in a very small sample, a tremendous range.

And Dr. Robinson weighed in on the absence of price competition as the economists or finance professors would understand it, in January of 2008. And he noted that one (1) of the big two (2), Money Mart, has among the lowest rates, while one (1) of the big (2), Rentcash, has among the highest rates -- maybe not the highest, but certainly among them.

What did Dr. Simpson find? A price spread range of 40 percent, and he identified this in the transcript at page 4825.

Now, Ms. Southall, in her cross-examination of Dr. Robinson and Dr. Simpson, I think it was last -- it might have been Valentine's Day -- it seems a long time ago, February 14th -- I didn't get a valentine that day -- she -- she asked -- she put to Dr. Robinson and Dr. Simpson the suggestion by Dr. Clinton, Well, in a market it's normal that you'd -- you'd see a spread of -- of 20 percent. And Dr. Simpson and Dr. Robinson took strong umbrage with that -- that suggestion.

First of all, Dr. Simpson -- or, and I'm not sure if it's first of all, but at page 4825 he did note that the price spread was, in his view, was much more than 20 percent.

But they also suggested that Dr. Clinton was using the wrong analogy in terms of comparators, and that he should be comparing the price ranges exhibited in the payday lending market with what you might find in the market for financial services.

And both Dr. Simpson and Dr. Robinson made this point. In that you're often talking of prices and differentiations, not of 2 percent or 10 percent or 20 percent or 30 or 40 percent, but in the range of one-half (1/2) to three-quarters (3/4s) of a point, and that's at pages 4822 to 4826.

And this is an important typo. I should just note: On that the third -- fourth bullet on that page, "Where we often talk of prices in the range of," and it should be "one-half (1/2) to three quarters (3/4s) of a point," not two (2) to three quarters (3/4s) of a point."

What does Dr. Simpson conclude about this market, harkening back to the language of Nebbia? Competitive models predict that entry of firms will induce price competition and that the high cost firms will in fact leave the market. Instead, in this market, prices appear to be high, as he noted earlier, there was little, although some, evidence of exit.

And it was interesting that Dr. Buckland presented some very interesting findings from the UK

Competition Commission on the -- the home credit business in the transcript at 2969. And from a different jurisdiction, but there's findings at echo Dr. Simpson's conclusions.

And in -- in the US competitio – or the UK Competition Committee's studying home credit identified firms as earning excess profits, and what was the basis for that? The weakness of price competition with the home credit industry was due fundamentally to insensitivity of consumers to price and failures of lenders to compete on price.

So it may seem so long ago to the Board, but near the start of this -- this submission, I did talk a little bit about the big debate. Is there exploitation, is it service, is it more nuanced? And -- and I think Dr. Buckland offered a nuanced observationally and -- and he said it's not necessarily all exploitation or all service.

But, in terms of the issues of exploitation, clearly, in terms of -- there's a clear case in the submission of the Coalition has been made that some payday loan customers are experiencing exploitation within the marketplace.

It's not just about providing a service. And you can do it as Dr. Clin – Dr. Simpson has from the neoclassical approach where the markets are imperfectly competitors, consumers may face exploitation via higher price than a competitive market would allow it. Dr. Simpson's evidence on that, I think, is very persuasive.

Dr. Buckland, looking at the issue, really sees it, I would suggest, that there's clear evidence of relative advantage exploitation. Not for all consumers, but where the one (1) or two (2) short-term loans are converted week after week into multi-week, medium-term loan resulting a rapid escalation of fees in the space of stagnant benefits.

In terms of sufficiency exploitation, Buckland, I would suggest, believes the jury is still out. But, certainly, the Coalition's view that -- is that a clear case has been made for exploitation in the neoclassical and relative advantage sense.

At page 27 of the outline, I make some reference to the US experience and what -- what can we -- what insight might we gain from the American marketplace. And I'll talk about this a bit later on as well, but there are some important points, and some of them have been provided by the parties in the hearing.

At page 2140 of the transcript, Mr. Reykdal confirmed:

"Many jurisdictions in the United

States have set maximum payday loan rates. The average rate caps range from fifteen dollars ($15) to seventeen (17) per hundred (100) borrowed."

And there's some insight into this, or some information about this is actually found in Coalition Exhibit 13 which is actually a -- a study from Ontario, or information from Ontario, which was cited by Rentcash. So -- and again I pointed to the page 9 where that quote is presented.

We also, from the US experience, Exhibit 33, Rentcash -- excuse me, I mis-spoke, Interrogatory RC Coalition, I believe it should be 2-33. Now that data was, admittedly, not perfect, but it's probably the best we have on the record.

And it suggests that there's eight (8) states with regulated fees of less then 15 percent, nine (9) at 15 percent, eight (8) from 15.5 to 20 and three (3) over 20, two (2) with no limit and seven (7) could not be determined.

We made a slight addition to that -- that information I believe was either Coalition Exhibit 42 of 43. What else does US information tell us? US studies suggest -- and this is again in the Ontario -- report of the Ontario Government -- that rates in -- in a rate ceiling environment are likely to rise towards the rate ceiling.

We also know that there's an ongoing tension in the United States, even jurisdictions which have implemented rate caps, there are some who are certainly moving to the 36 percent APR or bans.

And again, Coalition 13 has some information about that, as does the Coalition Undertaking regarding Missouri which notes that the Attorney General of Missouri has called for a rate cap of 36 percent APR. And that's quite significant coming as it does really in the heartland of payday -- payday lending in the United States.

(BRIEF PAUSE)

MR. BYRON WILLIAMS: Mr. Chairman, if I could just get some water? I'm just going to stand down for one (1) second.

THE CHAIRPERSON: Okay. Take five (5) minutes. We will take less than five (5) minutes.

(BRIEF PAUSE)

CONTINUED BY MR. BYRON WILLIAMS:

MR. BYRON WILLIAMS: Mr. Chairman and Members of the Board, I can't tell you that the end is near, but we are making lots of progress, so do not despair.

I'm going to, in -- in a few minutes, get to comparing the -- the major analytic approaches to the evidence but -- but I think before we do that it is important to -- to look at -- at the approach of the different witnesses and the -- and the different groups, whether it's the CPLA or Rentcash or the Coalition.

And right near the start, I talked about two (2) different approaches in -- in terms of presenting evidence to this panel, and others may take issue with it, but I described one (1) as a "self-reinforcing approach" and the other as a "self-testing approach."

And what I -- I thought might be one (1) of the problems in this proceeding, from the Coalition's perspective, is that there is important information which they would have liked to have seen other parties address which -- which wasn't, one (1) which would have been helpful because obviously the issue of -- of rural Manitoba and the -- whether payday loan providers in small -- small locations will continue to exist is an important one, and certainly the Board, I'm sure, will struggle with that.

But one (1) of the -- one (1) piece of evidence that was never asked or provided, at least to my knowledge, by any of the Intervenors was what's going on in rural Manitoba from the perspective of these different business models.

The fact that the Steinbach flower shop -- I forget what it's called, Lindy's (phonetic) or whatever, is making a go of it as a payday lender and a flower shop creating economies of scale -- excuse me, economies of scope.

That's an important piece of information which the Coalition managed to dig up, but we would respectfully suggest would have been helpful to come from the industry which could have been in a better position to present that; the fact that it appears that some payday loan providers are -- are minimizing their costs in rural Manitoba by working part/time hours. A question not asked by -- by the -- or information not provided by the industry.

Another piece of information the Coalition certainly believes would have been very helpful to this proceeding; what's going on in terms of frequency of loans?

Now, we have certainly American experience, which suggests a high frequency of loans. We have Ernst & Young with its fifteen (15) to one (1) ratio, and we have some limited data by the FCAC. But where's the information on frequency by the industry?

And we would respectfully suggest that that's a question they didn't want to ask, because they didn't want to know the answer to. And, certainly, you look at the survey of Pollera, and Mr. Marzolini was quite happy to sample the political preferences of payday loan shoppers -- borrowers -- but information about frequency was sadly lacking.

Bannister, on behalf of Rentcash, apparently has done some work there; certainly Dr. Clinton has seen it. But, again, to my knowledge, certainly the coalition has not.

What about what's going on in the States? How much information in terms of the US regulatory approach, how it's affecting firms in the States; how much of that has come on the record from the industry players?

Again, a question generally -- and I'm speaking in broad strokes here -- we would respectfully suggest has not been asked or answered by the industry, perhaps because they don't want to know the answer.

I -- I certainly attempted to ask Mr. Reykdal and Dr. Clinton if they'd looked at this issue, and they were not able to share anything with me. And, tellingly, on Friday, Ms. Southall, in her cross-examination of Dr. Gould, asked him, Can you help us? You know, have you informed yourself of the regulatory ex -- experience of the US? And Dr. Gould had not.

Have you done your own research on whether there's comparability with respect to the product between the US market and the Canada market? Again, he had done -- had not. And we'd suggest that there's an inference that might be drawn from this, that the industry is -- has chosen not to ask these questions because there's information that might run contrary to their self-reinforcing model.

And I -- I think it's important to point out, and certainly this is my view, that the coalition's witnesses have been more open to inquiry -- moving to page 29 of the outlet -- of the outline -- than -- than others. And I -- I hear a chuckle from -- from at least one (1) Learned -- of my Learned Friends, so there may be a -- a difference of opinion there, but I want to give you some examples.

In terms of assisting Mr. Hacault in understanding the statistical information in the FCAC study, Dr. Simpson met with them offline, out of office, to assist them and it -- was quite appropriate of Mr.

Hacault to ask, and, in my view, quite appropriate for Dr. Simpson to agree.

What did Dr. Robinson do with his spread sheets? Transcript page 2928. He -- he provided them and he invited the Board to use it and decide from all the evidence you've received what you actually think should be in there.

And the most telling example of this is his work with Mr. Slee. The weekend after -- and this is in the transcript at page 2993 -- the weekend after he provided this information, he was on -- on the phone or the Internet with Mr. Slee assisting with technical questions, which Mr. Slee then used in his cross examination of Dr. Robinson.

And this is an important point, because in the Coalition's submission, it really undermines the alleged concerns of Dr. Gould about the -- an inability to verify Dr. Robinson's work. Because it really begs the question -- Dr. Robinson's work was presented in December of 2007. Dr. Gould was not back on the stand until two (2) months later, February 15, 2008.

It begs the question, if he's concerned regarding verification, what was he doing in those two (2) months between December 14th and February 15th? As a colleague, certainly the invitation was open from the

Coalition. He could have done What Nathan Slee did in the very weekend that Dr. Robinson's evidence was presented. So we think that's an important point.

Again, and there -- I'm -- I'm putting in the middle here a few themes that I wasn't sure where they fit. But I think they're important, so here they are.

My understanding, and perhaps this is more directed at the evidence of Mr. Sardo and Mr. Slee, but others as well -- to a certain degree, Mr. -- or Dr. Gould -- the concern that I've heard expressed by the industry in terms of the efficiency model proposed by Dr. Robinson and Dr. Buckland is that it will result in a significant exist from the marketplace from at least some payday lenders.

Now, this is not -- and the point I'm trying to make on page 30 of the outline is this is not a novel argument. This was made in the cheque cashing proceeding back in 2006.

Buckland expressly advocated an efficiency model in the cheque cashing proceeding. In fact he drew the work of Dr. -- Dr. Robinson in that proceeding quite extensively.

And companies in that proceeding were expressing the concern. They would be unable to earn a reasonable rate of return and that there would be a withdrawal from the market, thereby reducing the availability of cheque cashers to the public.

Now, what did the -- the PUB do in that decision? And certainly I'm not suggesting that it's -- it's bound by this in this proceeding. But it set maximum fees for cheque cashing sufficient to allow efficient cheque cashers within the fringe bank industry to remain in the marketplace.

At least in that one (1) particular decision, as the Coalition interprets it, an endorsement of the efficiency model. But what happened? This is back in the spring of '07. Have there been stampedes of cheque cashers out of the Province fleeing the marketplace? I'm -- the Coalition's not aware of this.

They do know that there's been no evidence brought forth by the CPLA or Rentcashers that cheque cashers have been fleeing the market.

In fact the evidence would appear to the -- the opposite at least in terms of Rentcash. They seem to be -- to be attempting to expand their business in -- in this market, and Mr. Reykdal talked a little bit about their presence in the marketplace for government cheque cashing in the transcript at 2145.

In terms of this kind of the all-lenders-will-flee argument, we also think it's telling that after the cheque cashing decision was issued, after the Board, at least in that decision, spoke of an -- sufficient to allow efficient cheque cashers to remain in the market, what did Advance America do? Did they decline to enter the market? No, in -- in fact they came in rather aggressively in October of 2007?

So in terms of these -- these issues, and -- and the Coalition certainly accepts that it's legitimate for payday lenders to -- to be concerned about the -- the maximum imposed by the -- by the regulator, and they certainly have a right to -- under this legislation, to earn a competitive return on their capital, provided they're efficient.

At the same time, the Coalition wishes to emphasize that -- that the concerns which they anticipate will come from Mr. Slee or Mr. Sardo, should be tempered a little bit with a reality check.

Look at what's -- what's gone on in the American marketplace. Look at what's gone on in Manitoba itself after PUB Decision 7207.

And it's not -- the Coalition would strongly suggest to the Board that the cost of these organizations are not frozen in time. Most importantly, if they expand volume, cost per hundred (100) will decrease. But there's clear evidence on this record -- excuse me -- there's clear opinions on this record that there are opportunities for efficiencies within the -- the current -- current players in the marketplace.

The CPLA talked about tightening its -- certain payday lenders tightening their belts in it's public statements and, again, in cross-examination by myself. But perhaps the best reputation of the -- any suggestion that all payday lenders will flee or that's there's no efficiencies to be had, comes from Mr. Reykdal.

And I have to say, I found Mr. Reykdal a -- a very forthcoming and -- and helpful witness on this -- this issue. And I want to spend a little time on Rentcash because a -- fair bit of time with them on this point.

And because it's a submission of the Coalition that a -- that a central piece of information provided by Rentcash is that there -- there are real opportunities for industry players under regulation and that there are efficiencies to be gained in their current operations.

And to set up that argument I have -- I have to step back a -- a second and talk about Rentcash's role or place in the -- in the Manitoba marketplace, and that's at page 31 of the -- the outline.

One (1) of the points Mr. Reykdal made, and this is certainly in his speech of September 2007 but also in the transcript, is that the Canadian market is not as saturated as the US.

Currently Rentcash has 40 percent of the stores in Manitoba and Mr. Reykdal's evidence is that future growth is likely to occur in Manitoba, and growth in -- in a coup -- two (2) or three (3) ways. First of all, that there's potential for expansion but also in the fact that there's a number of immature stores. I don't mean that in a derogatory way but newer stores in the Manitoba marketplace.

Nine (9) of the twenty-six (26) stores in operation have less -- have been in operation for less than three (3) years. Five (5) out of twenty-six (26) have been in operation for less than twelve (12) months.

And Mr. Reykdal made the point that it takes about eight (8) months for -- for a store to break even on a monthly basis and that you can expect a second-year store to have higher volumes than a first and a third-year store to have higher volumes than a second.

So his evidence at page 2119 of the transcript is that there was significant room for in-store growth. Volumes are not frozen in time.

And I've neglected to mention that Ms. Bland is here, but she was also helpful on this point. She said when you're looking at new stores because stores don't grow -- get to maturity until three (3) or four (4) years out, you'd expect the volumes in these stores to increase significantly over time.

Well Mr. Reykdal also -- and I misspelled his name there, I apologize, also indicated that the cost structure for these stores is, in quotation marks, "relative fixed." And he confirmed that assuming you're running your business efficiently a significant increase in volume given relatively fixed costs results in a significant contribution to your bottom line.

So there's opportunities for growth, both in terms of stores but also in terms of in-store volumes, which we think are very significant. And so it's -- for those who are painting the Doomsday scenario remember the marketplace is not fully saturated; remember that these stores are not yet mature. There's evidence of that from Deloitte as well.

A number of their stores were coming in to the marketplace in 2005. Remember that if prices go down as Dr. Simpson has observed, a demand is likely to rise. Elasticity of demand.

Now, it is fair to say, and this is a

second key point that the Coalition wishes to make about Rentcash, they've had some -- some real challenges, but out of challenges come opportunities for efficiency.

So what are -- what are those challenges?

Well they had some pretty dramatic growth between 2004 and 2005, and I believe the evidence suggests they added close to a hundred and seventy (170) stores within a fairly short time period.

And Mr. Reykdal confirmed that there's growing pains and a learning curve involved in rapid growth and rapid change. And he noted that just in April of 2005 he added ninety-nine (99) -- just -- just one second, the mic just came off for a second but you've been hearing me okay? I don't want to lose any of these pearls.

He noted that in 2005 Rentcash added ninety-nine (99) Instaloan stores, quite a -- quite a number and quite a challenge, because they were operating under a different business model, different risk tolerance which goes to the bad debt issue, and different collection procedures which again goes to the bad debt issue.

So a huge influx of new stores, different model, different procedures but also opportunities for efficiencies over time.

But Mr. Reykdal candidly acknowledged that he certainly had faced significant challenges in merging the two (2) organizations and cultures.

How about the other big change in 2005, the old no rollover policy for which Rentcash is certainly to be commended, but the consequence was again significant -- excuse me:

"Experienced unforeseen significant challenges."

And those are Mr. Reykdal's words, his candid words.

So I want to go to his speech of September, 2007, because in the respectful submission of the Coalition it really reinforces the opportunities for efficiencies, the opportunities that -- or the reality that these are not businesses frozen in time and that there are active/proactive steps that could be taken. Rentcash is doing it, others can and one would expect, are.

What did he talk about in his September 2007 speech?

"A fundamental change in a business structure moving from a high-risk model to a lower one, adding significantly to infrastructure, changing the underwriting criteria, changes in store operations, institute an audit department, significantly increase in training and development, closing inefficient stores."

And I've read this quote before but it think it's important.

"We have made a fundamental change in our business in terms of how we deal with our business practices as well as our lenders' underwriting criteria, so it's unfair to look at us a year ago as compared to today."

And they're starting to see those impacts on the bottom line, although perhaps not as quickly as -- as they might like.

Well what is -- again, I commend Mr. Reykdal for his candour, what does he say about regulation? What does Rentcash anticipate about regulation?

And -- and to be fair to Mr. Hacault, Rentcash, to my understanding, has not been presenting these doomday scenario -- Doomsday scenarios, but others have and I think Mr. Reykdal offers an effective impeachment of them.

What do -- what do they say about regulation? Well, what does Rentcash, what's their -- what do they anticipate? Well, first they anticipate volume gains at the onset of regulation and they -- some opportunity to -- to take market share from other operators; specifically, to some degree, in the context of those who are still doing rollovers.

And what do they say about rate caps? If there's downward pressure or any rate compression, we feel that we can offset that by cost reduction. Although, again, this is a rabbit as Mr. Reykdal later indicated to me, they expect they may be able to reduce their costs of loan capital.

And -- and, again, this is not carved in stone, they could be advancing its own capital and reducing the costs significantly by eliminating the third party lender; moving to a different model. Now they chose the word "significantly," I didn't. Mr. Reykdal did clarify that in re-direct.

Two (2) final points, Mr. Chairman, that I wish to make before getting to the much promised analysis of the -- the different themes.

I do want to talk to you for just a couple of minutes about the concept, and members of the Board as well, about the concept of a just and reasonable rate and

-- and Mr. Gaudreau, has that -- that document been handed out?

And I also, after that's done, want to talk a little bit more about your considerations and weighing the evidence of the Coalition witnesses.

But the Board should have before it a memo titled "What is a Just and Reasonable Rate?" Under my supervision it was written primarily by my very able articling student, Ms. McCandless. So if you like the material she gets all the credit; if you don't like it, we'll put it down to poor supervision.

And I'm not going -- don't worry, I'm not going to read you this whole memo, but we think that there's some important points that the memo makes in terms of what is a just and reasonable rate.

And just -- and there's a few paragraphs that I'll direct your attention to.

Turning to page 4, and lest -- lest I engage in a debate with my Learned Friend, Mr. Dawson, about Roman law, what -- what we've essentially tried to do in this memo is look at the American and Canadian case law, as it might inform the discussion about a just and -- and reasonable rate, and given the fact that this is a relatively unique issue for the Canadian regulatory marketplace. And I'm actually moving to -- to page 5 actually, my favourite case Nebbia v. New York.

And I won't bore you with the details of this case, I'll -- but I would note that Nebbia was a -- is an interesting case because it's really a case which is about the regulation of prices in the dairy industry.

And this appears kind of -- in the -- the last paragraph of page 5 and the next paragraph of page 6 -- not your typical public utility and not your -- your typical marketplace that regulators are -- are familiar with. Certain -- not the payday lending marketplace either but it is a marketplace with a number of suppliers and not a -- a natural monopoly.

And -- and what the court said in Nebbia, and you can read it at your leisure, but it -- it made this point that I'd made earlier. Even if it's in a -- a marketplace where there are -- that's not a natural public utility, it's still appropriate in certain cases to have regulatory intervention and it's -- those cases where it's appropriate to have regulatory intervention is where the market is an inadequate safeguard for the public or a group of the public.

And the last line of the first paragraph on page 6:

> "The Court stated that the Constitution does not secure to anyone liberty to

conduct business in such a fashion as
to inflict injury upon the public at
large or upon any substantial group of
people."

And certainly given the evidence in the neoclassical sense of the dearth of price competition; given the evidence in terms of relative advantage exploitation, certainly it's the submission of the Coalition that consumers are not being well served by the marketplace as it currently stands and that regulatory intervention as has been recognized by the provinces is required.

And not just cautious regulatory intervention. Consumers, in the submission of the Coalition, are paying far too much; they're paying far too much because the market is imperfect. And in particular frequent borrowers, the most vulnerable of the payday lending population, are paying far too much.

And so that's one (1) of the -- the arguments that they would suggest would run counter to the suggestion that the Board should be cautious. We think the Board should be prudent, that the Board should be careful, but that consumers require some relief because the marketplace has failed them.s

And further to that point, if you go to

page 8, again we're -- we're looking through some case law and some learned language and -- and some -- some learned discussion about marketplaces and regulation in circumstances where there are some indicia or elements of competition.

And at the bottom of page 8 we would suggest is a direct refutation of Dr. Clinton:

> "This principle that the market will not necessarily create just and reasonable rates may help to explain why the standard of the unregulated marketplace [which is essentially in our submission what Dr. Clinton is regula -- is proposing] is not an acceptable just and reasonable standard. Absent, express statutory authority, a regulatory authority is without jurisdiction to defer to the prices that prevail in the marketplace when setting a rate standard."

There's an important section on efficiency but I've already talked about the Board's decision and the cheque cashing decision so I -- I won't belabour that or cost of service. But I will direct your attention to -- to page 11 of Ms. McCandless' excellent memo in terms of maximum rates. And in particular -- and we're citing from -- from a learned text here, the bottom paragraph. And it...

(BRIEF PAUSE)

MR. BYRON WILLIAMS: May I proceed, Mr. Chair? In particular what they're talking about in terms of maximum rates is that although there's certainly differences, but there is some experience in the American regulatory environment dealing with this.

So how do they treat it?

Well when an admin -- I'm directing your attention to the last paragraph on this page:

> "When an administrative agency is charged with the task of setting only the maximum rate to be charged, the regulator certainly permits the company to charge less than the maximum to customers.
>
> However, one (1) potential weakness with this form of rate regulation is the temptation for the administrative agency to extend [in quotation marks] "over broad umbrella" over the less

efficiency companies or to set the
maximum level so high that there is
little or no effective regulation over
the earnings of any company."

We think that quote speaks both to the recommendation of Dr. Gould who we would suggest is -- is stretching an over broad umbrella over less efficient companies, as well to the recommendation of Dr. Nick -- Dr. Clinton who we would respectfully suggest is recommending setting the maximum level so high there's little or no effective regulation.

We think a conclusion, if you do a careful review of the American experience, is -- and I don't think it's on your text but in setting a just and reasonable rate, the rate should not be set high enough to guarantee a profit to the least efficient companies. This would either discourage efficiency or produce excessive profits for the more efficient companies.

For what it's worth at page 12, we try and -- Ms. McCandless and myself try and state out some -- our advice to the Board in terms of some considerations in setting a just and reasonable rate. There's five (5) bullets there that I'll go through very quickly.

It's no big surprise that just and reasonable rate is a balancing act. There's fairness to the consumer on the one (1) hand and also a need to provide a fair rate of return to efficient service providers on the other.

So that balancing act is the -- the challenge that this Board is facing.

The assumption that the market will create just and reasonable rates breaks down for certain industries or for certain class of customers within competitive industries.

What is a just and reasonable rate? Something that will allow efficient businesses to earn a fair rate of return. The fact that less efficient companies may be -- may not be able to continue in the industry does not necessarily mean that the rate is not just and reasonable in the circumstances.

A proper balance of interest may require not the automatic acceptance of a middle ground but rather a full understanding and analysis of each party's position.

Well we wouldn't expect this Board to -- to take a middle ground position anyways; we expect it will do what it considers right.

But that's -- these are some -- from the American experience some information that may prove helpful. And the Canadian experience as well.

THE CHAIRPERSON: Mr. Williams, this -- this paper is part of your closing statement?

MR. BYRON WILLIAMS: Yes, sir.

THE CHAIRPERSON: Okay, we'll enter it in the -- into the transcript.

MR. BYRON WILLIAMS: Time is -- is passing, Mr. Chairman and Members of the Board.

In pages 36 to 40, those five (5) pages -- and my understanding is that this outline is before the Board. Is that right, Mr. Chairman? Okay.

(COALITION PAPER INSERTED BELOW)

What is a Just and Reasonable Rate?

INTRODUCTION

The Public Utilities Board has been charged with the task of setting a just and reasonable rate for the maximum amount chargeable for payday loans. Specifically, section 164(5) of the Consumer Protection Act C.C.S.M. c. C200 holds:

> "An order made under this section must be one that the Board considers just and reasonable in the circumstances, having regard to the factors and data

considered by it."

The "just and reasonable rate" is a legal term of art and is difficult to define. However, with guidance from the case law and texts on rate setting, a clearer picture of a just and reasonable rate can be drawn.

Certain cases have touched directly upon the definition of a just and reasonable rate, while others provide some insight into the considerations that should be looked at in rate-setting. A constant theme of many maximum rate decisions has been that a finding of a just and reasonable rate requires the balancing of interests. Through reaching a balance the fairness and reasonableness of the rates can be assured.

The following discussion will first touch upon some of the more relevant decisions. Next, it will move on to look at some of the key principles of a just and reasonable rate that come into play in the present hearing. Finally, it will look at how the jurisprudence and literature might guide the Board in reaching its decision.

ISSUES

A. Origins of the Just and Reasonable Rate

B. Case Law

I. American case law

ii. Canadian case law

C. Considerations for a Just and Reasonable Rate

I. Competition

ii. Efficiency

iii. Cost of Service

iv. Maximum Rates

D. Conclusion

A. ORIGINS OF THE JUST AND REASONABLE RATE

Fairness is seen as a fundamental value in social institutions, including regulatory institutions. Themes that emerge in economic regulation, such as the just and reasonable price, the obligation to serve, the need to attract capital, the recognition of risk and reward have developed over many years.

Price regulation in Western societies traces its origins to the "just price" doctrine of early Christian thought. The just price was contrasted with the "natural price" which, under Roman law, was the price agreed to by willing buyers and sellers. The natural price was considered to be unjust because economic necessity, such as a shortage of supply during a famine, could coerce the willing buyer and lead to unjust enrichment of the seller. The just price doctrine contemplated the trader paying a "just price" to the producer and, on resale, adding only as much as was by custom sufficient for the trader's economic support.

As the following case law demonstrates, the growing support for individual freedom and an economy based on individual initiative in Canada and the United States has not displaced the idea that some industries are affected by a public interest.

B. CASE LAW

I. American Case Law

There are several notable early American cases that deal with the idea of setting a just and reasonable rate. The following American cases each draw on a different consideration for rate setting. The first focuses on the reasonable rate of return for a business, while the second one focuses on the need to address the public interest.

In Bluefield Water Works Co. v. Public Service Commission, 262 US 670 (1923) the court considered the issue of a reasonable rate of return for a business. The court held that rates which are not sufficient to yield a reasonable return on the value of property used to render a service are unjust and unreasonable. The decision of Justice Butler suggests that a reasonable rate of return for a business is one of the key components of setting a just and reasonable rate. In the decision he provides a quote from Coal & Coke Ry. Co. v. Conley, 67 W. Va. 129:

> "It seems to be generally held that, in the absence of peculiar and extraordinary conditions, such as a more costly plant than the public service of the community requires, or the erection of a plant at an actual, though extravagant, cost, or the purchase of one at an exorbitant or inflated price, the actual amount of money invested is to be taken as the basis, and upon this a return must be allowed equivalent to that which is ordinarily received in the locality in which business is done, upon capital invested in similar enterprises."

The case of Nebbia v. New York, 291 U.S. 502(1934) involved state legislated controls on milk production, distribution and prices. While the Court agreed that the use of private property and the making of private contracts are, as a general rule, free from government interference, they are subject to public regulation when the public need requires. At pages 536-537, Justice Roberts held,

> "...a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare...and the laws giving effect to the policy will be valid if they...have a reasonable relation to a proper legislative purpose and are neither arbitrary or discriminatory..."

This decision is an example of regulation occurring in a private industry. The law was upheld despite the fact that milk producers and distributors were not dependent on public franchises or other grants to carry out their businesses. The court accepted that the dairy industry was not, in the accepted sense, a "public utility" and agreed that there was no suggestion of a monopoly or a monopolistic practice. The Court stated that the Constitution does not secure to anyone liberty to conduct business in such a fashion as to inflict injury upon the public at large, or upon any substantial group of people.

ii. Canadian Case Law

The early Canadian cases dealing with regulation provide some insight into the determination of a just and reasonable rate. The picture that emerges demonstrates that both the interests of the business and the interests of the public need to be considered in setting a just and reasonable rate.

In Northwestern Utilities Limited v. Edmonton (City of), [1929] S.C.R. 186, the Board had the task of fixing a just and reasonable rate for gas. Justice Lamont held that this task involves a consideration of what would be fair to the consumer on the one hand, and what would be a fair rate of return for the company on the other hand. Elaborating on a fair rate of return, Justice Lamont explained that a company will be allowed as large a return on the capital invested in its enterprise as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise.

The Court in Northwestern emphasized the fact that a Board may use its discretion when considering the evidence before it to set rates. It should be left to the discretion of the Board to say in what manner it should obtain the information required for the proper exercise of its functions.

Thirty years after the Northwestern case, the Supreme Court of Canada in British Columbia Electric Railway Co. Ltd. v. British Columbia (Public Utilities Commission), [1960] S.C.R. 837 took the same approach toward setting a just and reasonable rate, explicitly following pages 186-193 of the Northwestern decision. The court also affirmed the Bluefield case, stating that it set out an approach to establishing fair and reasonable rates that had been "followed universally."

Justice Locke held that the Commission had the obligation to approve rates which would produce a fair return to the utility. He explained that this does not mean that the Commission is discharged from its duty to have due regard to the protection of the public. He explained at 844-845 that it is not a matter of considering priorities between the interests, but to consider all things which it deems relevant as affecting the rate in light of the obligation to approve rates which will give a fair and reasonable return. Both the fairness to the consumer on the one hand and a fair rate of return to the utility on the other hand should be of primary importance in the fixing of rates.

These leading cases provide the framework for setting a just and reasonable rate. The principles set out in these early cases have been reiterated by the courts in subsequent decisions. For instance, in Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission), [1989] 1 S.C.R. 172, Justice Gonthier cited both the Northwestern and B.C. Electric Railway in reiterating that the fixing of a just and reasonable rate necessarily involves a balancing of the interests of customers with the necessity of ensuring that the regulated entity is entitled to make sufficient revenues to finance the cost of services to the public.

C. CONSIDERATIONS FOR A JUST AND REASONABLE RATE

Since Northwestern and B.C. Electric Railway, the courts and tribunals have elaborated on the principles involved in setting a just and reasonable rate. Particularly, decisions have had to consider such issues as competition, efficiency and cost of service, as well as the particular situation where an administrative tribunal is charged with the task of setting maximum fees. The following section will discuss each of these issues in turn.

I. Competition

One issue that often comes up in rate-setting tribunals is whether or not competition is present within a given industry. When one or a handful of companies have a dominant position in the market, the market may be characterized as monopolistic or oligopolistic respectively. In terms of regulation of monopoly or oligopoly, the government attempts to prevent operations that are against the public interest. Monopoly and oligopoly power may lead to consumers being exploited. For instance, prices may be charged above the true marginal cost of supply, which leads to excess profits being made by suppliers in the market.

The presence or absence of competition often affects whether regulation of an industry is required. In many cases, legislators have considered the mere presence of competition a sufficient basis for weakening or removing agency jurisdiction to control maximum rates. An assumption often persists that the market will create just and reasonable rates. However, according to Goodman, experience has shown that the assumption that the market will create just and reasonable rates breaks down for certain industries, such as the insurance and cable television industries, or for certain classes of customers within competitive industries like the health industry.

This principle, that the market will not necessarily create just and reasonable rates, may help to explain why the standard of the unregulated marketplace is not an acceptable "just and reasonable" standard.

Absent express statutory authority, a regulatory agency is without jurisdiction to defer to the prices that prevail in the marketplace when setting a rate standard.

ii. Efficiency

One potential risk in setting maximum rates for a given industry is that some industry players may not be able to survive if forced to operate below the maximum rate. The argument of the industry will be that a rate set too low will drive some industry players out of the industry. They will argue that such a rate is not just and reasonable. As this section will show, a just and reasonable rate will allow efficient industry players to earn a reasonable rate of return.

This issue was addressed in the Cheque Cashing Decision: Order 72/07 of the Manitoba Public Utilities Board, delivered on May 28, 2007. Industry players argued that if the revenue recovered was below the sum of their costs and a reasonable rate of return or profit, some cheque cashers may withdraw from the market. They argued that this would reduce the availability of cheque cashers to the public, particularly to the segment of the public that lacks bank or credit union accounts or who live in areas where only one or a few cheque cashers are present. However, the Board, while acknowledging that this risk was identified, set a maximum fee that it deemed sufficient to allow efficient cheque cashers within the fringe bank industry to remain in the market.

This decision demonstrates two important principles with respect to setting just and reasonable rates. First, a just and reasonable rate will allow efficient businesses to earn a fair rate of return. Second, the fact that less efficient businesses may not be able to continue in the industry does not necessarily mean that the rate is not just and reasonable in the circumstances. The public interest may be better served by lower rates rather than the availability of more variety in the industry. This consideration will be based on the circumstances in the given industry.

iii. COST OF SERVICE

The Court in City of Dartmouth (1977), 17 N.S. R. (2d) 425 elaborated on what needs to be considered when looking at a just and reasonable rate. Specifically the Court held at page 432:

> "In determining a just and reasonable rate, the objective of the Board is to protect both the consumer and utility, and to safeguard the overall public interest. The actual determination of rates is a complicated exercise. One must keep in mind the "cost of service"

concept as the utility is concerned. The concepts of 'value of service' and 'quality of service' are both of importance to the customers of the utility."

In Brandon Transit Consumers Association Inc. v. Brandon (City), [1985] M.J. No. 131, the Court looked at the issue of setting bus fares in the City of Brandon. Consumers questioned the quality of service and their submission was not considered by the Board before it reached its decision. Justice O'Sullivan held that while the City in proposing fare rate increases need not have regard to any criterion other than cost, the Board must in considering approval have regard to quality of service as well as rates in order to determine what, in its opinion, is just and reasonable.

These cases reinforce the concept that setting a just and reasonable rate involves a balancing of interests and an exercise in discretion on the part of the administrative agency. Certainly, the cost of service will be a factor that a board will consider in setting a just and reasonable rate, but it need not be the only consideration.

iv. MAXIMUM RATES

In the case of hearings to set maximum rates, an administrative agency is often persuaded to adopt the midpoint between the parties' positions as a reasonable solution to the matter, particularly when the agency is satisfied that opposing views are well supported in the record. However, a review of the important issues and an exercise in discretion does not necessarily produce only a middle ground position between opposing views. For instance, an agency may need to outright reject positions outrageously stated or unfounded in logic or the evidence. In these instances, the agency should substitute its reasoned analysis, having regard to the issues involved and the parties affected. Therefore, a proper balance of interests may require, not the automatic acceptance of a middle ground, but rather a full understanding and analysis of each party's position and, if necessary to reach a fair result, the full acceptance of one party's position on a given issue.

When an administrative agency is charged with the task of setting only the maximum rates to be charged, the regulator permits the company to charge less than the maximum to customers. However, one potential weakness with this form of rate regulation is the temptation for the administrative agency to extend an "overbroad umbrella" over the less efficient companies or to set the maximum level so high that there is little or no effective regulation over the earnings of any company. In setting a just and reasonable rate, the rate should not be set high enough to guarantee a profit to the least efficient companies.

D. CONCLUSION: HOW TO SET A JUST AND REASONABLE RATE?

As we have seen from the previous discussion, some of the key findings that the Board may want to consider in the present hearing are:

- Both the fairness to the consumer on the one hand and a fair rate of return to the utility on the other hand should be of primary importance in the fixing of rates.

- The assumption that the market will create just and reasonable rates breaks down for certain industries or for certain classes of customers within competitive industries.

- A just and reasonable rate will allow efficient businesses to earn a fair rate of return.

- The fact that less efficient companies may not be able to continue in the industry does not necessarily mean that the rate is not just and reasonable in the circumstances.

- A proper balance of interests may require, not the automatic acceptance of a middle ground, but rather a full understanding and analysis of each party's position.

The determination of a just and reasonable rate requires the balancing of interests. In the present hearing, the Public Utilities Board has been charged with the task of setting a just and reasonable rate for the maximum amount chargeable for payday loans. The order must be one that the Board considers just and reasonable in the circumstances, having regard to the factors and data considered by it. From a canvass of court and tribunals decisions, we know that this necessarily involves a balancing of the public interest on the one hand and the industry earning a fair rate of return on investments on the other hand. However, the weight to give various factors will depend on the particular circumstances of the payday lending industry.

(END OF ARTICLE)

MR. BYRON WILLIAMS: We do talk about some considerations that the Board may wish to have in weighing the evidence of the witnesses. And -- and given that -- that time is moving fairly quickly I'm not -- I'm not going to go through this in -- in the detail I might have liked, but I do want to highlight a few -- a few points about this.

I've -- and one (1) point appears on page 36 and it's under "Triangulation Robinson." And I spoke of this concept of triangulation before. And -- but I want to emphasize for the Board what Dr. Robinson has actually done with what I'm going to simplistically call his "17 percent recommendation," because it -- it wasn't the product of just one (1) set of analysis or two (2) or three (3); this is what he has done:

He's focussed on an efficient mono-line provider with modest volumes, 1.6 million per store, and his recommendations would allow them to earn a modest excess profit.

He's tested that against the Money Marts of the world; an efficient, multi-service provider with high volume, 3 million per store, and his analyses revealed that that's got a significant excess profit but that's part of the balancing act.

He's tested it against the US regulatory experience; what US regulators are doing. He's tested it against US data for Advance America average fees.

He's tested it against US data for Dollar

Financial Group average fees, and he did that in -- on -- in an undertaking last Friday.

And it's also been internally tested and considered within the Coalition witnesses decision-making process.

And you will recall, in January, Dr. Buckland was quite explicit about this; that he was endorsing the 17 percent proposal of Dr. Robinson. And I think that's important for a couple reasons because it speaks to the internal testing and re-testing and discipline within the Coalition witnesses.

But if the Board turns its mind back to Dr. Buckland in the cheque-cashing proceeding he wasn't actually prepared in that proceeding, given his cautious approach, to endorse an actual number because in his view it wasn't clear whether excess profits were in play or not.

So I think it's very important when you look at Dr. Robinson's work -- we would submit has been insightful, rigorous work on its own but it's been tested and re-tested and internally re-evaluated within the Coalition, and we think that's an important point to make.

Moving to page 37 of the outline, I've put in brief summaries of the witnesses so -- and the tremendous qualifications that the Coalition team brought from economics, from geography, from finance, from microeconomics, there's just two (2) points that I wanted to draw to the -- the Board's attention.

I remember My Friend, My Learned Friend, Mr. Foran, in his opening statement, taking a bit of a back-handed shot at the Coalition witnesses, saying they were all academics. And I do want to remind the Board that if you look at this impressive list of witnesses they didn't appear orally but there's some important insights offered from the private sector as well.

Marilyn Brennan, MBA, PhD soon at the Asper (phonetic) School of Business, brought to her analysis, and she played an instrumental role in the rebuttal evidence, twenty-five (25) years of experience with banks, she was most recently the Vice-President Regional for CIBC, and has been doing a lot of work in her PhD work researching bank efforts at financial inclusion.

The Coalition witnesses were also guided with insight by Bob Whitelaw, a former, I think the proper title is ED or Executive Director of the Canadian Payday Loan Association, with extensive experience in the development of alternative financial services in the credit union industry, knowledge of the US industry and of -- of what's going on in Canada. So that's an important point.

We're very proud, on behalf of my clients, of the tremendous skill set that the academic witnesses brought, but they were flavoured and influenced by individuals with extensive private sector experience.

And I'd also note on that point, that especially when you look at Dr. Simpson, Dr. Robinson, and Dr. Carter, their resumes speak for themselves in terms of their outside work and the many times that they have brought in by organizations in terms of consultation.

Turning to page 38 of the outline. Right -- right at the bottom there's an interesting statement by Dr. Simpson and it appears at the transcript page 4748. Dr. Simpson is a cautious careful academic but he's not retiring; he certainly does not lack in self confidence. And I -- I think there's an interesting statement that he made about Dr. Robinson that he volunteered at no urging of mine.

And what did he say about Dr. Robinson?

> "Dr. Robinson who knows more about the industry that I ever will."

And certainly we think that's a tremendous testament from a very reputable academic to the tremendous skills that Dr. Robinson brought to the table.

And pages 39 and 40, I will not go through this, although I know one (1) of my colleagues from -- from the CPLA might be interested in the -- the comments about critical rationalism.

But, Mr. Chairman, at the start of my submissions I made some comments about there's two (2) different analytical approaches to this hearing in terms of evidence.

There's the adversarial self-reinforcing approach and then there's the inquisitorial self-testing approach.

And what we detailed on these two (2) pages is a couple of examples of how the Coalition witnesses approached this case analytically, because we think it buttresses their -- their credibility and gives insight into their -- their learning process that was evident throughout this hearing.

Mr. Chairman, I've got a big section yet to come. I -- I assure you it's pretty close to the last before my recommendations.

I'm not sure where the Board is in terms of time. I'm guessing that I have about an hour and this is a new theme so I don't know if this is an appropriate to break or not.

THE CHAIRPERSON: Okay, we'll take the lunch now. We'll come back at 1:00 and I think we're -- we should be in good shape. Thank you.

--- Upon recessing at 11:50 a.m.
--- Upon resuming at 12:58 p.m.

THE CHAIRPERSON: Well, we're all here, Mr. Williams. You can probably start anytime you want.

CONTINUED BY MR. BYRON WILLIAMS:

MR. BYRON WILLIAMS: Mr. Chairman, just I -- I believe that Mr. Gaudreau has shared with the Board three (3) documents. One (1) was the outline, one (1) was Ms. McCandless' brief, and the third is a three (3) page document, "Objectives of Consumer Information on Payday Loans."

And this is really a document that's been drafted by my clients. And it goes to -- to some disclosure issues, and they've certainly taken insight from Dr. Buckland and Ms. Friesen and Mr. Osborne, and also from industry players. It's my clients own views on the issue.

And this would appear near the end of my recommendations for consideration, but I was hoping that the Board might take this as -- as read. It's not something that I intend to focus on in my oral comments except for that note my clients truly appreciate the advice of the Coalition witnesses and also the industry players. And they hope that that kind of collaboration might continue in the future.

THE CHAIRPERSON: We'll put that into the record, Mr. Williams.

(ARTICLE INSERTED BELOW)

OBJECTIVES OF CONSUMER INFORMATION ON PAYDAY LOANS

The Manitoba Society of Seniors, Winnipeg Harvest, and the Manitoba branch of the Consumers' Association of Canada (referred to as the Coalition) have been asked for input regarding improved disclosure for consumers when purchasing payday loans.

The following are a list of objectives indicating the type and quality of information we feel consumers should receive to help them make more informed choices regarding payday loans.

In addition, we endorse many of the specific recommendations made by our panel of experts during the PUB hearing to set a maximum fee for payday loans (Recommendations for Disclosure about Payday Loans).

1. Consumers should have access to sufficient information before making a decision to take a payday loan.

   a. A package of information should be provided in print to first time loan customers.

   b. This package should explain all key aspects of the loan, including but not limited to:

      I. A clear description of what a payday loan is and the procedure consumers must follow to apply.

      ii. Total cost of the loan in dollars and expressed as an annual percentage rate.

      iii. Terms and conditions for obtaining the loan, including requirements for qualification et cetera (see 2(c) of Recommendations for Disclosure about Payday Loans submitted by Coalition expert panel)

iv. All pieces of personal information and identification that consumers will have to provide to get the loan.

v. Information that will be solicited about the consumer from other sources, such as a credit check.

vi. All areas where the consumer must give consent for the gathering and use of information.

vii. The lender's privacy policy (as required by federal legislation), including how long information will be kept and how it will be safeguarded.

viii. Information about the regulation, consumers' rights and where they can go for redress if they have a concern, including but not limited to:

(1) The cooling-off period

(2) The role of the Consumers' Bureau in licensing lenders and

in addressing consumer concerns.

(3) The fact that they do not have to surrender their Social Insurance Number.

(4) Their right to information regarding the purpose for collecting personal information and the storage and eventual destruction of personal information.

ix. The cost to the consumer if they do not repay the loan on time.

x. An indication that this is a competitive industry and that consumers can compare prices.

xi. Information regarding the availability of money management and credit counseling.

c. Consumers should have an opportunity to review this information at a space provided, away from the employee, before they sign a loan agreement.

2. All information provided in print should be accessible to the widest range of customers possible.

a. All information intended for consumers should be in plain language (reviewed by a plain language expert), including legal documents and contracts. Guidelines for the use of plain language in financial documents already exist. (eg. Federal Government plain language guidelines and models for financial agreements can be found on the internet at www.fin.gc.ca/news01/01-028e.html.

b. All information should be in a reasonable font size (not less than 12) and colour for the largest number of consumers to access easily (eg. red font is not clearly visible for consumers with aging or impaired eyesight; contract between font and paper is important.

3. Printed information is not accessible for all consumers, therefore, oral information should also be provided, whether staff provide it to customers over the phone or in person prior to signing the agreement (staff should be trained to provide it) including:

a. Clear description of a payday loan.

b. The total cost in dollars and expressed as an annual percentage rate.

c. All information that will be required from the consumer.

d. All consent forms and other agreements that the consumer will have to sign

e. The cooling-off period for payday loans.

f. The penalty for failure to repay in a timely manner.

g. Where they can call for redress or information about their rights.

4. To verify that the above information has been disclosed, lenders should ask consumers to sign a form indicating that the lender has disclosed the above information to them. The form should clearly state the topics that are to be disclosed.

5. In order to allow customers to easily figure out the cost of a loan, posters required by regulation should list the cost of every loan amount from $50 to $500 in increments of $50, expressed both in terms of dollars and APR.

6. On the Internet, the information made available and plain writing benchmarks should be the same as noted in numbers 1 and 2 above. This information should be accessible through a clearly visible menu of topics.

The topics listed in number 3 above are so essential to consumers' understanding of this translation, that these information screens should come up automatically when consumers click on the loan application screen. Also, consumers should have to click an "agree" or "accept" or similar icon on each of these screens to continue the application process.

(END OF ARTICLE)

MR. BYRON WILLIAMS: Thank you. Moving on, I -- I had promised for some time before the lunch break that I'd get to the competing analytical themes. And -- and there's five (5) that I want to -- to address -- or competing approaches. One (1) is the -- the approach of -- I'm gonna start with the approach of Dr. Clinton and -- and Rentcash. And then I'm gonna move to the approach of Mr. Slee of 310-Loan, and then to the -- the approach of Dr. Gould, and I would suggest somebody offer my clients the CPLA, then to the Dr. Buckland, Dr. Robinson, et al approach.

And then, finally, an -- an interesting one which my clients have monitored with same interest; the -- I'll call it the "36 percent APR approach."

But I am gonna start with the -- the Rentcash and Dr. Clinton, and if I've misstated their approach, then I apologize, but this is how certainly my clients un -- understand it. This is at page 41, approximately, of the outline.

What -- what Dr. Clinton is arguing on behalf of Rentcash or -- recommending, really we would say -- say the logic of his analysis is that the marketplace ain't really broke. Therefore, with the exception of some really rouge -- rouge, rouge outliers, set rate caps close to the status quo is using pricing information in the marketplace.

And -- and we would sugg -- suggest that, generally, this is consistent with the traditional neoclassical approach; the assumption that the market's functioning well, and that they're competitive, and that the proper price signals are being sent, and that consumer welfare is being maximized.

Some of the -- some of the key assumptions in Dr. Clinton's work is the assumption that demand and supply curves are in equilibrium and, therefore, observed prices are the right ones. They're the equilibrium prices. That's really the -- the thrust of his argument.

And then the last four (4) bullets on this page really go with a -- the second part of Dr. -- the second part -- part of Dr. Clinton's argument that this -- that the -- the results of this -- of the allowing the market to take its course will work to the ultimate benefit of consumers and society in general. And, the -- we would suggest that there's -- there's four (4) key components to that analysis. The second part of his analysis.

One (1) -- and it's a bit of an outlier analytically -- is the assumption that demand is price inelastic. And I'll talk about how that's probably inconsistent with neoclassical thought.

Secondly, that a fee cap in the range of 35 percent provides a greater surplus in -- in terms of public welfare than lower fee caps. And, Dr. Clinton also makes reference to a couple of studies.

1. The Dartmouth Study of Carlin of some South Af -- African micro lend -- lenders commercial micro lenders and also Mr. Morgan. And he's arguing that the -- the logic, as we understand it, that having the industry in play results in a net benefit to consumers.

In -- in terms of the -- the Coalitions assessment of Dr. Clinton's argument; essentially, it all hinges on one (1) key assumption -- two (2) key assumptions -- that the marketplace is working well, and that demand and supply curves are in equilibrium. That we have the right prices, that the right prices are being set in the marketplace, and there -- thereby, we're maximizing everyone's welfare.

And I won't belabour this point, but this essentially the first point and the foremost point and the central point in which Dr. Clinton's analysis falls down. And -- and I've already set up the argument in terms of what Dr. Simpson has observed about the marketplace. As Dr. Robinson points out, he should be demonstrating that the marketplace is competitive, but Dr. Clinton is simply assuming it; standard, neoclassical analysis.

So that's really the most fundamental flaw. It's a tautology. We'll set the -- the rate cap using market rates because the market is working properly. So that's the first key point.

A second key point in terms of the actual data, the mechanism that -- that Dr. -- that Dr. Clinton is using, is, unlike Dr. Gould and unlike Dr. Robinson, he's not using cost data or modeling of cost data or actual store data. He is using price data.

And one (1) of the criticisms of that is he is using an unweighted average. And the problem with that -- and I've alluded to it earlier -- is you're using an unweighted average of all observed rates, but two (2) firms account for 80 percent of the market and one (1) of those firms, Money Mart, has about 50 percent of the market in terms of volume, and its prices are much lower so that unweighted average is really not, in the respectful submission of the Coalition, reflective of the marketplace.

A second problem with the pricing data that he uses, and he's got really three (3) sets of pricing data; two (2) by Clinton, which we would suggest are more inherently unreliable, and then some data from the Coalition Table 3. But what he's done with it is he's tried to take the data for -- for Coalition loans, for example, for two hundred and fifty dollars ($250) and simply divide it by two point five (2.5) to get down to a hundred (100).

And the problem is that that works pretty well when you're looking at flat fees, but when you're looking at sliding scales, as is reflective of a number of players in the industry, it doesn't work. And I won't go into the burdensome detail of my cross-examination of Dr. Clinton talking about Chochy's and Elvis's payday lenders. But if you back to my cross-examination of him, he implicitly admitted this in that cross-examination.

So that's really the -- the two (2) key problems with the status quo recommendation. It rests on the assumption that the marketplace is working well and -- and we -- we think that the evidence of Dr. Simpson has refuted that. It also relies upon very questionable pricing data. Well, what about his -- the -- the other argument made by Dr. Clinton that overall public welfare, consumer welfare, are both advantaged by a relatively high fee cap?

And there's one (1) fundamental problem with -- an inconsistency, really, in Dr. Clinton's analysis there and it's a strange assumption to make for someone versed in the neoclassical economic arts. And his assumption is that demand is perfectly inelastic. And that's absolutely inconsistent with -- with Dr. Clinton's training and his analysis elsewhere on the record.

And Dr. Buckland, in his very polite fashion, pointed this out at page 2689 of the transcript. And he -- and he did it nicely, but he said: This is a situation where the neoclassical assumption seems to be broken.

And Chris Robinson -- Dr. Robinson -- in a little more blunt language said: He's assuming that demand is pricing elastic, but it isn't. More people would demand payday loans if the prices are lower.

Dr. -- and I -- I won't go into detail on this. We have some concerns with the -- the welfare analysis employed by Dr. Clinton, and I've set out the transcript references for that.

But I -- but I think the last kind of heading on page 43, "Little evidence to support his welfare theory."

You'll recall that Dr. -- Dr. Clinton spoke quite highly of the Dartmouth Study, the -- you know, prepared by Dean Carlin (phonetic) from Yale University, at least in part. And there's been some criticism of Dr. Clinton's analysis of that, but the Coalition would submit that the best criticism of Dr. Clinton, in this regard, comes from Dean Carlin himself and his quotes -- and I'm missing a "P" there -- but this is drawn from PUB-33, Tab 6. It's an article from Business Week called, "The Ugly Side of Micro Lending."

And what does Dean Carlin (phonetic) say? We're strikingly devoid of evidence that tiny amounts of credit lift up poor people as a group," says Dean Carlin, an economist at Yale.

Jonathan Mordock (phonetic), an economist at New York University says:

"Well, economic theory [which Dr. Clinton is largely relying upon] suggests micro lending has benefits,

rigorous evidence that shows it
happening just doesn't exist."

So that's Dr. Clinton, and I don't want to spend a lot more time on him.

There's -- moving to page 44 of the outline, there's been an interesting argument advanced in cross-examination by Dr. -- excuse me, I've promoted him as well, or demoted, I'm not sure -- Mr. Hacault about signature loans and suggesting that there's a higher risk associated with signature loans.

And rather than dwell on that, I've just put Chris Robinson's analysis of signature loans there and Dr. Robinson simply makes the point that, while although he may not accept it, let's accept for argument's sake that there might be a higher risk associated with a signature loan, you're making it up on the other side in terms of operating costs. But the horse is the operating costs, so you may have a few more bad debts but do you ever make a lot more money on, you know, 15 percent of fifteen hundred dollars ($1,500)?

And you'll recall that it's not much more expensive in time to process a one hundred dollar ($100) loan than a five hundred dollar ($500) loan.

Page 45, we move to the argument of Mr. Slee and 310-Loan Company. And Mr. -- Mr. Slee has a really interesting take on -- on the issue and he made it clear right in his opening statements, and certainly in his evidence before the Board. Unlike Dr. Clinton, he would appear to acknowledge that the market is flawed -- not broken, but that there are imperfections in the marketplace, substantial ones, and he outlined three (3) in his direct evidence upon which he was cross-examined by Mr. Peters.

So, how I've simplified Mr. Slee's analysis is to say the market is kind of broke, but it's gonna to be fixed and we're gonna to fix it by new rules, we're gonna to have -- remove some of those barriers to entry. We've already got new entry in terms of Advance America, and the other magic bullet is improve disclosure.

And so, Mr. Slee recommends relatively high rate caps and he points to Missouri, and he says, well, look at -- look what has happened in that one (1) American example. There's no rate caps and the average APR is 422 percent or sixteen point one (16.1) of the principal on average. It's a more interesting argument in many ways; a novel one, in fact.

Now, in terms of the Coalition's analysis of Mr. Slee's argument, they certainly concur with him that there are flaws in the current marketplace, but they

-- they depart from him in that they observe that they believe that these flaws are unlikely to be fixed in the short term within the marketplace, and they query whether, given the dynamics of this marketplace and the disadvantage of some of the consumers, that they will -- that the market will ever be an adequate safeguard in this regard.

And the Coalition's bullets in terms of their analysis of 310 appear at page 46 of the outline.

In their view he overstates the impact of disclosure rules, and Dr. Buckland said this better, he talked about a profound cultural shift. And he -- in their view, he overstates the impact of removal of a few entry barriers such as legislation, when more profound barriers exist, such as concentration in the marketplace, significant economies of scale.

One (1) of the challenges or the difficulties with Mr. Slee's argument, when you -- when you look to his Missouri example, is it -- it doesn't acknowledge the very different -- deep difference in terms of market concentration between the two (2) jurisdictions.

There's a lot of similarities between the Canadian and American market, but they do -- the American market is simply much less concentrated, and I've spoken about that so I will not burden you with additional details.

And Mr. Slee is quite -- quite right that Advance America entering the marketplace will change the dynamic. Problem is, we don't know how. I've said it cutely, I hope:

"One more oligopoly does not a competitive market make,.

And you might note the -- and ask yourself whether Rentcash's presence in the market has really led to a competitive market where it matters most when it comes to price.

Slee fails to acknowledge the US experience that rates tend to rise towards the cap, and we would respectfully submit, on behalf of the Coalition, that he fails to learn the true experience of Missouri.

What's the truth of Missouri? There's still -- rates there are still higher than the rate cap regulated states that surround it. There are major demands for lower rates, and consumers are still paying too much.

And there are some interesting facts about Missouri. There's a huge number of payday lenders -- about twenty (20) times the number in Manitoba -- and the largest player in the market is only 5.4 percent of the market share by -- in terms of store, as opposed to Money Mart's dominant position in the Canadian and Manitoba marketplace.

Missouri is surrounded by states with rate caps and, in fact, some of their cities; for example, Kansas City, the Twin Cities -- part of it is regulated and part is not. Even look at America -- Advance America's rates in Missouri -- 19 percent have principal in Missouri versus their average in 2006 of 15.4 percent.

And the Centre for Responsible Lending in 2005 suggested that the average rate charged in Missouri was higher than that charged in thirty-two (32) other states.

At page 47, the -- the outline -- we deal with -- the coalition deals with CPLA and Gould. And, again, I think that simplified their analysis a great deal, but this is how I would characterize it: "an unweighted average approach in terms of costs." There -- and I think the CPLA has admitted that there's a few service providers who are taking advantage of vulnerable consumers.

But their proposal -- the essence of the -- the recommendation of Dr. Gould -- is setting rates to allow, in quotation mark, "the average payday lender to operate will ensure high levels of competition and enhance [and this is an important point in the argument] a more diverse geographic presence of lenders."

Now, it is important to have a bit more discussion about what Dr. Gould is actually doing, and one (1) thing that's important to note is that he doesn't actually perform his own cost analysis of any firm or he certainly does not rely upon it.

The coalition would submit that he relies on the cost figures from two (2) sources; Ernst & Young and Deloitte & Touche, and that tries to set a -- an unweighted average based upon those.

Now, last Friday I was a little surprised to hear from Dr. Gould that he was not relying on Deloitte. And that was interesting to me, and so I went back to his November submission to the Public Utilities Board, slide 26, and I've shortened it, but -- I've got a typo there -- he indicates, "The E&Y estimates are reasonable but understate the true cause."

And he comes up with reason 1 why they understate it, then reason 2, and then the reason -- the third reason is Deloitte & Touche:

> "The Deloitte report indicates that costs have increased since the publication of the E&Y report."

So certainly, the coalition would submit that it's quite clear that Dr. Gould is relying on Deloitte in concluding that costs have increased since E&Y. And you can look at his Manitoba evidence from November of 2007, and look at a couple of other slides -- slides 24 and 22 -- and we would suggest that he's putting that information on the record for much more than information; that he is, indeed, relying upon it.

At page 48 we offer a critical analysis of Dr. Gould, and the -- I want to deal with Deloitte first, and Deloitte -- I think it's generally acknowledged in this room that there's a lot of problems with the Deloitte study. First of all, they excluded 80, 90 percent of the marketplace. Clearly, they excluded the big two (2), Rent Cash and Money Mart. And Mr. Schinkel, who was a candid witness, also indicated that the study was not representative of the smaller private companies.

What about E&Y? Well, E&Y's a very valuable study and you've seen it cited by the Coalition on a number of occasions. But there is one (1) ana -- analytical problem with the cost data and that it's really frozen in time. They took an observation of costs and divided it by the volume at the time. And it was an industry that was expanding rapidly.

And I've got some discussion on page 48 here that -- that details this. But, cutting to the chase, the one (1) piece of information we put in reply was Dr. Robinson's comment on -- on this issue of E&Y being frozen in time.

And this appears at the transcript at page 4856 and 4857. And I'm not going to read the -- the whole quote but starting about the -- the third line down:

> "The data is a snapshot at a specific point in time of an industry that was still expanding rapidly. The cost figures lumped together stores that were just starting up with those that had an established clientele. Since EY presented its results on the basis of dollars per hundreds of loan, stores that are in a startup will show almost full cost but less than full volume and hence, biased the costs upward -- tremendously biased the costs upward."

So that's the -- the challenge with E&Y.

A couple other comments about Dr. Gould and these appear at page 49 of the outline.

One (1) is the fact that he's simply not explored the US experience and the lessons that could be learned from that. And we would suggest that he's ignored the recent Manitoba experience with the deficiency regime put in place for cheque cashing.

A final and it's a significant criticism of Dr. Gould is in terms of his cost data -- the use of unweighted cost datage -- data, and I've made the same argument in terms of prices for Dr. Clinton, so I won't belabour it.

But think what Dr. Gould is doing. He's got this giant of Money Mart, approximately 50 percent of the volume, and in this unweighted cost average, he's given the same weight to its costs, as the smallest low-volume producer. Simply one (1) data point.

And the example I've used is let's look at a marketplace with ten (10) stores. One (1) with 50 percent of the market and the cost of nine dollars ($9) per hundred (100). The other nine (9) with the market share of 50 percent and a cost of twenty-five (25) per hundred (100).

If you use a weighted average, assuming my math is right, you get a cost of seventeen dollars ($17) out of a hundred (100). If you use an unweighted average, you get a cost of twenty-three forty (23.40).

And we would suggest that that is a gross under weighting of the experience of many Manitoba consumers in terms of the cost of a service that they're purchasing.

And I did explore this -- the final point about this, and I explored this with Dr. Gould in cross and he was candid enough to admit it. Assuming that my assumptions were correct; assuming that the price -- that prices do tend to rise towards the rate cap, as some American experience has shown, what happens for those consumers who are paying lower rates because they're -- they're buying from Money Marts of the world? They'll pay more and efficient firms will enjoy excess profits.

Final point about Dr. Gould; he doesn't study efficiency and he expressly indicated that in my cross-examination of him.

At page 50, I move to the Buckland -- what I've called the Buckland/Robinson/Simpson approach. Let's -- let's judge that the market is an inadequate safeguard for consumers like -- like Dr. Simpson.

Let's assume, like Dr. Buckland, that better consumer information is necessary but won't solve the market imbalance. Then let's recommend, like Dr. Buckland and Dr. Robinson do, that the best balance is one that allows an efficient service provider to earn a competitive return.

And I've got some comments here about Dr. Robinson that I won't dwell upon, although I will go down to -- some of his advice going back to horse and rabbit stew that he gives us.

"Don't get distracted by the rabbits, i.e., cost of capital, pay some attention to the pony bad debts. The big focus should be on a hor -- the horse, which are operating costs."

And Dr. Robinson applies the concept of a just and reasonable rate and, as I read him, he's the one who actually speaks of a balance between consumers and the industry. And he does that at pages 2870 of the -- the trans -- the transcript.

And, Dr. Buckland -- or Dr. Robinson both at -- and this is appears under "Ethical Implications" at page 50 of my outline as well as at the "Core Tradeoff" at page 51. He's not -- he's aware that there are some tradeoffs in play here.

There's an issue -- the Board, in making it's determination, will be balancing between some consumers or many consumers paying excessive rates and some individual firms leaving the marketplace. And he also realizes that there's a challenging issue in terms of small communities.

Well, I get into the theory behind his recommendations in a minute, but I just want to make sure that at page 51 you see what -- in terms of the structure of his rate recommendations, what he's done.

And first of all he's listened to the comments of consumers and also industry players and -- and recognized that simplicity may be a virtue, and if the Board considers it is for the -- under the act in terms of the maximum rate cap, it might look at a across-the-board 17 percent. And the advantage of that model certainly is it -- would facilitate cross firm comparison.

But going back to the concept of a just and reasonable rate, and recognizing that cost causality and making sure that consume -- the fees paid -- paid by consumers approximate the cost they bring to the system, Dr. Buckland has also -- Dr. -- excuse me, Dr. Robinson has also looked at a -- a more complex fee structure, really reminiscent of what they do in Indiana.

And I want to talk about cost causality for just a -- a second, because it's something my clients have tremendously struggled with. That's why I had to take the coffee break in the morning, to try and get some instructions on it. And -- and Dr. Buckland says if you want to have a greater emphases on cost causality, there's two (2) things you should recognize.

First of all, a single percentage right

across the board does not capture the relatively greater costs for a small loan versus a larger loan. And that's why he says you might want to look at a -- a sliding scale.

The other thing that a single percentage does not capture is the fact that a -- a repeat loan takes much less time to process than an original loan. And that's why you might want to look at a upfront first time loan fee. If you're gonna go that route, I've set out his recommendations on -- on page 51 and 52.

The last point in terms of Dr. Robinson's recommendations, and -- and I think it became apparent -- apparent in the last week of the hearing -- this is on page 52 -- and it flowed out of some questions raised by The Chair.

Dr. Robinson's recommendations in December were in terms of replacement fees, which he defines at page 2876 of the transcript; a 10 percent flat fee, plus a 1 percent per week. When The Chair was asking questions of him though, he admitted that he was struggling with making that 2 percent a week, and that, I think, is where is evidence is -- is left off. He's kind of teetering between the 1 percent a week or 2 percent per week.

Moving to page 53 of the outline, and I

had hoped not to go into this, given that Dr. Robinson went through ninety (90) pages of evidence explaining his methodology and PowerPoint presentation. But Dr. Gould appeared to be troubled or confused by some of it, and so I don't want to dwell on it, but there's some important points of clarification that I think have to be made about Dr. Robinson's methodology.

A core objective -- and that's at line 49 of his spreadsheet -- excess profit, i.e., in excess of costs of capital should be relatively close to zero.

He -- he does an analysis of Money Mart, and I've talked about that in Points 2 and 3, and I've given you the references in the transcript where he refers to it. And the point I would simply make, that in terms of Money Mart's operating costs and the analysis for the -- the larger store, he actually uses some pretty conservative assumptions.

But the core -- and -- and this is where Dr. Gould seems to misunderstand Dr. Robinson, at least in one (1) area -- the rate recommendation that Dr. Robinson is making really is designed to allow a just and reasonable return for an efficient mono-line payday lender. And that's in the transcript at page 3053.

For an efficient, high-volume, multi-service payday lender like Money Mart, Dr. Robinson's conclusion is that his recommendation will actually them to earn an excessive return.

Again, in point 5 on page 53, I -- I point out some of the conservative assumptions to do with Advance America.

And in point 6, I just again make the point that even with a bad debt rate of 3 percent, and Money Mart's is certainly far below that, they would earn an excess profit under his recommended fee structure, assuming that they charged at the maximum.

I've made this point before on -- so I won't dwell on it, but on pages 54 through 56, I talk about triangulation and the fact that Dr. Robinson, with the assistance of Dr. Buckland, has checked his conclusions using a variety of sources including the American regulatory experience.

And on page 54 I'd simply draw your attention to the conclusion that most of the American states, including states with small populations and small densities, are regulating at rates at or below what my recommended single point is.

And at page 55 there's an important point. Advance America is expanding under the existing rate caps and perhaps the best example of that is Indiana, which has a sliding scale lower than the one recommended by

Robinson. And Advance America has grown in size by over 30 stores in the past two (2) years.

At page 56, I put another check in that Dr. Robinson has put in, basically, the American fees of the percentage of loan of Advance America and Dollar Financial Group. I've discussed that before.

And the question was put to Dr. Gould last Friday: Is American experience relevant? Based on his work in public utilities, I -- I guess he seemed to suggest that it was not. But I think it's important to understand that we don't have the wealth of regulatory precedent or experience that we do for payday lenders in Canada that we might have under a public utilities model.

So, certainly, we would suggest that US experience is tremendously relevant. And I note at page 58 that there's been internal double-checks as well of -- of Dr. Robinson's work.

(BRIEF PAUSE)

MR. BYRON WILLIAMS: Before going to some of the criticisms of Dr. Robinson's work, I do just want to go back to the point of smaller communities because I think it's important. It certainly -- it was important to the small town boys, Dr. Robinson and Mr. Williams.

As the evidentiary record has developed, we've learned that there are different options, especially in small communities, for payday lenders to stay in business and to offer the services which some consumers may choose or be obliged to purchase.

There's really two (2) key ways to do that: one (1) is to gain -- find different ways, perhaps innovative ways, of gaining economies of scope, and another is to establish different cost models. And, again, I'll go back to the Steinbach flower shop, but I think that's an innovative way to achieve economies of scope.

There's also different ways to reduce costs. And again, rural Manitobans, innovative people that they are, are doing that and, again, there's the part-time payday lender out there keeping the store open for less hours, keeping some of those salary figures and heating and lighting bills down.

So that's just a -- a point -- another point about smaller communities.

At page 60 I address some of the criticisms of Robinson. And I think he was quite prescient in his direct evidence to talk about, let's make sure we distinguish between the -- the horses and the rabbits. Because a couple of the -- the criticisms of Dr. Robinson, in fact some of the what appear to be the key ones, are really rabbits.

And I've put in a little comment here about installment loans, because Mr. Foran correctly pointed out that Dr. Robinson's analysis of -- of install -- of Advance America did include some information -- some installment loans.

But just to give the Board a sense of the magnitude of installment loans as versus payday advance -- advances. In -- in the PUB 26, the 10K from the 2005 year, there were only -- Advance American reported only sixty-eight thousand (68,000) loans versus eleven million six hundred and twenty thousand (11,620,000) payday advances.

And I did this observation myself. I could certainly dig it up for the Board. As you go farther out into 206 and 207, the percentage of installment loans compared to payday advances gets even lower, and in the respectful submission of the Coalition, is quite trivial.

Dr. Gould identifies what he considers to be three (3) conceptual problems with Dr. Robinson. And two (2) of them -- numbers 1 and 2 -- really deal with the cost of capital. And I've dealt with this already. It's a puzzling argument, and it's, perhaps, indicative of the -- the lack of depth in Dr. Gould's criticism that he deals with two (2) rabbits right off the start.

And Dr. Gould has said this himself on a number of occasions, and I've repeated the transcript reference from page 1634, November 28th; "The choice of rate of return on equity and the interest rate on debt does not make a significant difference in this analysis."

And he made that -- a similar statement in Nova Scotia in January. So it really undermines Dr. Gould's criticism on these points. And I've dealt with this previously, so I won't dell -- dwell on it.

Dr. Gould identifies -- suggests an incorrect treatment of bad debt loss by Dr. Robinson, and -- and with respect on this point, it's a respectful submission of the Coalition, that Dr. Robinson -- excuse me -- that Dr. Gould has simply misread the evidence. And it -- it doesn't appear in the outline, but I'm just gonna try and help the Board with this.

At -- and really, how Dr. Robinson discusses bad debt appears in the transcript at page 3024. But the calculation is also readily apparent from looking at the spreadsheet of Dr. Robinson and, in particular, lines 3, 34, 47, 37, and 39.

And, rather than boring the Board with the details, the simple fact is -- and it can go back to the transcript is it -- if it wishes -- the bad debt cost is entirely captured by Dr. Robinson's model and if the de -- bad debt expense were to be calculated as Dr. Gould recommends the oppor -- opportunity cost of the loss revenue would be included twice.

Dr. Gould also alleges in his rebuttal that Dr. Robinson's model is based on Money Mart loan volumes, but costs are not based on actual Money Mart costs. And the -- hopefully my brief overview of the transcript a couple pages previously has given the Board some insight into this.

But I just urge the Board to go back to those ninety (90) pages of transcript in which Dr. Robinson goes through this fairly clear -- clearly, and I've tried to highlight it for the Board's information.

Turning to page 62; the Coalition has its own analysis of its witnesses' evidence -- the evidence of Robinson, Buckland, and Simpson. They certainly consider it by far the most credible and, if anything, overstated. They see the recommendation of 17 percent by Dr. Bock -- Buckland and Dr. Robinson as being a conservative analysis with a lot of conservative assumptions.

And again I've detailed some of those previously in my outline. And it really doesn't take into account the dynamic effect of volume that was set out in the reply evidence of Dr. Robinson. And Mr. Reykdal confirmed this in cross-examination as well.

And the Coalition also observes that the 17 percent is conservative when you look at what Advance America and Dollar Financial operating -- are doing in the US. They're operating, on average, in the US at 15 or 16 percent per hundred (100).

So they think it's a strong analysis, a well rounded analysis and pro -- quite properly, a conservative analysis. If anything, the Coalition would tilt a little lower than the numbers presented by Dr. Buckland and Dr. Robinson.

Turning to page 36 -- excuse me, page 63 -- there's been actually an interesting bit of evidence that's gone on the record in terms of jurisdictions which allow for only a 36 APR.

And it's less germane for this hearing, but my clients are quite intrigued by this -- this area, and it's certainly an area that -- that they're going to look at for future study.

But they certainly recommend for the Board's reading, from PUB Exhibit-33, Tab 4, a really interesting study and survey by the UNC Centre for Community Capital. And I'm just going to highlight three

(3) or four (4) points of their study which assess consumer views in the aftermath of the closure of payday lending stores in North Carolina in 2006.

And this was a survey of low and middle income North Carolina -- Carolinas. What did researchers conclude? They concluded that the absence of storefront payday lending has had no significant impact on the availability of credit for households in North Carolina.

More than twice as many former payday borrowers reported that the absence of payday lending; it had a positive rather than a negative effect on their household. And there's some other observations from this survey there which I -- I bring forward for your interest.

That's not on the table from the Coalition's perspective in this proceeding. The Coalition is certainly bound by the legislation which speaks to a just and reasonable rate.

And, certainly, in this proceeding, the evidence is that -- and it's clear that payday loan providers could not make a go of it with an APR of 36 percent. And currently there aren't the alternatives in the marketplace for consumers who are either obliged to or who choose to buy payday loans.

In the future, perhaps in a -- you know, if credit unions get as involved as they do in North Carolina and elsewhere, maybe this will be a different marketplace.

But -- so the 36 percent is off the table for the purposes of this hearing from my client's perspective. But they think it's an important perspective, and they have some hard questions to ask themselves about where the maximum benefit for consumers may lie in the future.

Page 64, what are the short term recommendations of the clients? The clients were heavily guided by the work of Robinson and Buckland, but in terms of the -- the actual fee, if you're looking at a -- a simple charge -- an across the board charge -- they're taking a lot of guidance from the US experience and -- and recommending 15 percent for first and repeat loans.

And if you're looking at a more complex fee to -- to give greater credence to the princi -- principles of cost causality, again, we've set it out there. They'd replaced the number 17 percent in Buckland and Robinson, and replace it with 15 percent.

I have to tell you, in terms of the -- the -- whether to recommend a simplified fee or one that's more representative cost causality; my clients find themselves in a very similar condition to the -- the US

Democratic Party after Super Tuesday.

They are split right down the middle, and I had to take coffee break to see if I could get anymore advice from the clients. And -- and, frankly, and I'm allowed to share this with you, even within the organizations, there was a strong debate in terms of whether cost causality or simplicity is the better value for the Board to adopt.

And, as you know, the Consumers Association has been a longtime -- supportive of making sure that there's not only fairness between consumers and the industry, but fairness among consumers. So they hold the principles of cost causality near and dear.

And if you had to get a vote, it'd be, like, 51 percent to 49 percent in favour of cost causality from the Consumers' Association which has to be weighted against the other organisations leaning slightly in the other way. So I have no advice to give you on -- on that.

I do recommend to you the -- there's some tremendous work, I think, that in terms of providing better disclosure on the record that has been provided to the Board in a separate document, and it's written in plain language, so I had no part in it, which is probably a good thing, and I recommend that for the Board's reading.

And again, my clients do help -- do thank the industry for their -- their helpful advice. It's my clients' own thoughts, but they certainly were informed by the work of the industry and by Buckland et al.

Going to page 65, and these are long-term recommendations for legislative consideration. And my clients, I want to be clear here, are not taking positions on these recommendations, but these are two (2) or three (3) key issues that have really drawn their attention and they think that we should all be debating in the future.

One (1) is where is the consumer benefit? Where does it best lie? Does it best lie with the just and reasonable rate in the range of 15 to 17 percent, or are there benefits from the -- from the North Carolina and the Oregon and the Quebec approach?

It's an open question with my clients, but one that they will look at seriously in the future.

At the bottom of page 65 I put in some interesting commentary about -- again this is more for legislative consideration rather than this Board, but looking at introductions of loan limits as a percentage of income and the extension of repayment periods.

And I -- I want to be clear on that.

These are issues that my clients are recommending deserve further study. They're not taking positions on these three (3) at this point in time.

It's been a long hearing. It's been a long argument, as well, for which I apologize. But my client believe that it's -- it's an important hearing, and they thank the Board for its considerations and wish them luck in their deliberations and, subject to any questions, that concludes our submissions.

THE CHAIRPERSON: Thank you, Mr. Williams.

MR. BYRON WILLIAMS: And, Mr. Chairman and Members of the Board, I don't mean to be rude to any of the other parties, but as you may know, I have another hearing in which evidence and interrogatories are due, so we'll be reviewing and reading the transcript with great interest. But I -- with your permission, if I might be excused from the Hearing?

THE CHAIRPERSON: Certainly. Thank you for your participation.

We move now to Mr. Dawson for Assistive Financial. Mr. Dawson, are you ready to begin, or do you want a short pause?

MR. ROBERT DAWSON: I'm ready to proceed, Mr. Chairman.

THE CHAIRPERSON: Okay. Then please proceed.

CLOSING STATEMENTS BY ASSISTIVE FINANCIAL:

MR. ROBERT DAWSON: Good afternoon, Mr. Chairman, Members of the Board.

It caught my eye over the weekend that there's a 2006 survey that talks about the leading cause of divorce in Italy as being mothers-in-law. And I think to myself, what could possibly be the reason for that and I then turned to the stereotype of what a mother-in-law might be and that includes someone who's very negative, someone who always finds fault, someone who's always there to say you just haven't done good enough.

And then I think to myself, well, what one (1) of the number 1 recommendations to lawyers who appear before a tribunal is try not to be negative. Try not to merely attack but try to put forward recommendations.

Sadly, as my label from Mr. Williams in the first opening submissions was that I was impish, today I shall be the mother-in-law of closing submissions. And, in part, that's because my client, Assistive Financial, is -- is really a small player in the overall hearing process.

Our function here has -- has largely been to leave the heavy lifting, if I can put it that way, to the parties such as Rentcash and the Canadian Payday Loans Industry -- Association, rather.

These are the parties that primarily will be presenting and considering the alternatives and these are the parties that have the experts on staff to launch a considered and detailed attack that would be useful to the Board when it comes to some of the evidence in detail that the Coalition of Social Groups has put forward.

So what can Assistive Financial do for the Board? Well, there are two (2) things I'm going to suggest.

First, because of its unique role within the Manitoba payday loans industry, the -- one (1) of the functions that Assistive Financial hopes to fulfill in its participation before the Board has been to essentially remind the Board that there are lenders -- parties such as Assistive Financial that do exist.

And as I'll indicate throughout the course of my comparatively brief submission, these are issues and considerations that seem to have been forgotten by many of the Coalition's witnesses.

And the second is more in line of a public policy argument, and that is to consider the question of what constitutes a just and reasonable rate or formula as may be put down.

So having said that that's the function of what we're trying to do here, let me turn then to simply indicate -- we know that the -- the task, of course, of the Public Utilities Board in these set of hearings is to set a just and reasonable cost of credit for Manitoba's payday loan industry. And, of course, the big question is: Well, what does a just and reasonable cost of credit entail?

Well, Mr. Williams, through his assistant, has put together a paper which is helpfully entitled "What is a Just and Reasonable Rate?" and I'll certainly be returning to deal with that in part.

But as far as I can understand what the Coalition is putting forward before this Board, having listened to Mr. Williams this morning, it seems that he primarily is emphasizing the role of the Board as a protector of consumers from unreasonable charges.

In fact, if we could measure it, I suppose three (3) of the four (4) water bottles that he was drinking were spent to give him the saliva to speak words to protect all the consumers, only about a quarter of his time actually dealt with giving consideration to the needs of payday loan industry.

And, indeed, the picture that Mr. Williams has painted is rather dyer. He tells us that the interest rates currently charged are higher than a credit card or a line of credit, and he tells us that there were also fees that are being charged for services that are rendered. And he also tells us that storefront locations and their hours are being structured in such a way and in locations to particularly lure certain kinds of customers.

And as a result of that, he leads us through to the conclusion that the cost of credit for the consumers of Manitoba's payday loan industry is neither just nor reasonable.

And then we get to their proposed solution, as far as I can understand it, and I'm just going to use the abbreviation -- I call it "the 15 percent solution," even though, of course, I recognize and I'm not trying to trivialize what Mr. Williams has just gone through, but I just don't feel like repeating in detail that entire structure that he said.

So -- and -- and I think Mr. Williams would agree, and then we're going to go through this in some detail, his 15 percent solution is very much based upon, I'm going to suggest, estimates and guesses. It lacks the necessary information that would be required in order to set up that kind of a solution.

And I'm also going to go even further and suggest that the people who have actually formulated the 15 percent solution are inherently biassed, not only against the payday loan industry, but possibly even against the entire capitalist system on which our society actually functions.

So, let's turn to this question, then, of what constitutes a just and reasonable cost for a cost of credit. Now, my client certainly is the first to admit that protecting consumers from unreasonable charges is indeed part of that picture. But it's only a small part of what it means to set a just and reasonable cost of credit.

I go very quickly to the handout that Mr. Williams had sent and this, for the record, I'm referring to a document that's headed "What is a Just and Reasonable Rate?"

And I find it very interesting when I have the chance to look through this, that he primarily relies upon United States case law and he does not bother in this paper to set out any reason why he points to American case law.

Not only, of course, is their's a very different legal system, not only is it usually traditional in Canada to accept foreign jurisprudence only if there's a particular compelling reason to do so, but the reality is, is as this paper goes on to indicate, there are plenty of Canadian cases on point.

One (1) of the most interesting things about the cases that have been, shall we say, very selectively selected in this paper, is that it leaves out all the cases that would relate to Manitoba. And as this Board undoubtedly knows, there's one (1) particular case that's very helpful.

And I suspect possibly the reason why Mr. Williams decided to leave it out is it was his own clients, the Consumers Association of Manitoba, which, in 2005 -- well, actually it was in 2003, but the decision was released in 2005 -- appeared before the Court of Appeal in Manitoba to challenge a rate that this Board had set in the context of Manitoba Hydro hearings.

And that, of course, is just for the record, is the Decision of Consumers Association and Manitoba Hydro Board. And that was an application for judicial review of the Public Utilities Board order for a hydro rate increase.

And I'm not gonna provide that case for the Board, because I'm sure the Board is very familiar with it, but I do want to extract certain elements from it.

Mr. Justice Monnin, writing for the -- the Court of Appeal in Manitoba, indeed stated at paragraph 64 what we all accept; namely, he agrees that, and I'll quote:

> "The role of the Public Utilities Board under the Crown Corporations Public Review and Accountability Act is to protect consumers from unreasonable charges".

Yes, of course. But then he goes on to add that it's also to ensure the fiscal health of Hydro. At paragraph 65 of that decision, Mr. Justice Monnin continues:

> "The Public Utilities Board has two (2) concerns [two (2) concerns] when dealing with a rate application; the interests of the utilities rate pairs and the financial health of the utility. Together, and in the broadest interpretation, these interests represent the general public interests".

And, indeed, prior to saying, that at paragraph 63, Mr. Justice Monnin had also written:

> "The attempt of the legislation is to

approve fair rates taking into account such considerations as costs and policy or otherwise as the Public Utilities Board deems appropriate. Rate approval involves balancing the interests of multiple consumer groups with those of the utility."

Now even though My Learned Friend, Mr. Williams, had spent time telling us that a -- a fair or just and reasonable cost of credit involved protecting the interests, he also, of course, did make mention -- but I'm suggesting to you not in the proper balance -- the need to take into consideration the concerns of the industry.

He might, and others might, distinguish the case that I've just made reference to on the grounds that well, that's a rate setting application dealing with a monopoly, specifically Hydro.

But I do wish to point out to the Board that, of course, payday loan hearings -- these hearings themselves -- are proceeding pursuant to Section 164(5) of the Consumer Protection Act, which also uses, just as the Public Utilities Board does -- Public Utilities Board Act does -- the magic phrase "just and reasonable." And both sections of both legislation direct this Board to essentially set down those just and reasonable rates.

So I'm going to suggest that "just and reasonable" in the Manitoba Hydro case has the same meaning as it would before this Board in these proceedings. And it follows from that, it is submitted that this Board needs to consider the interests of payday loan consumers, but also, and in equal consideration, the financial health of payday loan industry members.

And to the extent that the Coalition has over emphasized the former; that is the interests of payday loan consumers, it's our submission that the Coalition is wrong.

The Consumer Protection Act is also very helpful because it sets out a number of factors that this Board has to consider when it tries to define what constitutes a just and reasonable cost of credit.

Section 164(4) sets them out, and I'd like to focus on three (3) specific of those factors. I'll leave the others, as I say, to other Intervenors who will do what I'm calling "the heavy lifting."

Clauses A and C direct this Board -- that's Clauses A and C of Section 164(4) -- direct this Board to focus on the operating expenses and revenue requirements, and it also directs this Board to consider the financial risks that are taken by payday lenders.

It's interesting, in the course of its evidence, that there was very little to be put on the record from the Coalition when it came to these points. Now, of course, they might respond. But we are the Coalition. We wouldn't want to put this evidence forward. We are happy to sit back and attack any evidence you will put forward.

I'll suggest, however, that a complete case would indeed require that kind of evidence had been put forward. In the context of my own client, that is Assistive Financial, this Board will remember it seems now I think three (3) months ago, on the very first day of hearings, when Mr. Schiffner, the President of Assistive Financial, appeared, he gave evidence on all of these issues.

And I'll remind the Board that in the course of cross-examination by Mr. Williams and indeed any other party, there was no contradiction of any of the following points.

First, we remember that Assistive Financial describes itself as putting together a pool of money which it lends to the payday loan industry. So it's not a storefront operation and it's only the person that's -- or the party rather, that supplies the money. And that appears in Mr. Schiffner's testimony at page 69 of the transcript, line 7.

Mr. Schiffner also tells us, at page 72, line 1, that it's a high risk business. And the immediate reaction may be, yes, but who is this Mr. Schiffner. And we know from the evidence of payday -- of Assistive Financial at Schedule 'A' of the evidence -- that was actually submitted in the written evidence, the written submission -- we find a CV where we find that he has thirty-four (34) years of experience in finance. And I will get to it in a moment.

Mr. Williams pointed out that he's presented to us mostly academic witnesses, but he does tell us that lurking in the background were two (2) people of considerable experience in the banking industry and I'll talk about that in a moment.

But the reality was that is that Mr. Schiffner's the only one who appeared here before the Board with thirty-four (34) years of experience in banking and finance, in a directly relevant way and submitted himself to cross-examination.

So when he tells us in his thirty-four (34) years of experience that it's a high risk business, it's our submission that that carries considerable weight.

Mr. Schiffner also indicated, at page 71, line 16 of the transcript, that the 59 percent interest rate that his company requires those who are lending out the money on its behalf to charge is necessary. And he justifies it -- we won't go through it all because it's in the transcript -- he justifies it by pointing out that his investors alone are expecting a return of 18 to 19 percent on their money.

He also draws to the connection that approximately 35 percent of that 59 percent reflects money that could be lost as a result of the high risk.

Mr. Schiffner also reminded the Board at page 76, line 1 of the transcript, that the brokers, that is in this case companies like Rentcash, need to have enough of their own fee generation so that it can afford to pay what were described as retention payments.

And again, I don't want to tread through what the evidence actually read, but you'll recall the retention payments were somewhat regular payments made by companies like Rentcash to Assistive Financial, to essentially top up its capital, where the mere interest and paid back on -- on lent out money was inadequate to sustain the actual capital fund.

And then something very critical, Mr. Schiffner pointed out at page 73, line 24 of the transcript, was that quite simply if the rate of return were diminished because of any rates or costs of credit that this Board might fix, and if the rate of diminishment was so significant, the ultimate reality would be that Assistive Financial would simply have no choice but to pull out of operations in Manitoba.

So when it comes to dealing with Section 164 Subsection 4's requirement that this Board look for evidence relating to operating expenses and revenue requirements, we have that evidence from Mr. Schiffner here. We also know, based on his thirty-four (34) years of experience, that it's a high risk of business and that deals with the financial risks that are taken by payday lenders.

There are other factors that Section 164 Subsection 4 sets out. For example, the circumstances and credit options that are available; that's set out at Sections -- or clause (c). And clause (e) has the catchall: other factors that are relevant and in the public interest.

The Board will recall that I opened my cross-examination of Professor Robinson with perhaps a flippant discussion of an eight thousand dollar ($8,000) pen. And of course the Board was very polite and didn't interrupt me but I'm sure that they withdrew and thought well Dawson's clearly lost it.

But of course the reality of why I was talking about such an expensive pen, which as we discussed in the scenario that I presented to Professor Robinson, is that it was -- on an -- objective terms that expensive pen would operate like a pen, just as if it were a cheap pen, was the point that there was a subjective value that was attached to spending the eight thousand dollars ($8,000).

And that discussion, just for the record, appears at page 3996, line 8 of the transcript.

I secured from Professor Robinson certain admissions that, shall we say, state paternalism, state interference, was not called for simply to control the way in which consumers use their money. Here a man who frankly self-described himself as an expert, or self-described his words as being expertise in more ways than could be counted in two (2) digits in the course of his own testimony.

Told us at page 3998, line 10 that the mere fact that the cost of the pen was eight thousand dollars ($8,000) was not enough to trigger interference by the State. He also told us that if you used a credit, line of credit, or credit period to buy this ridiculously expensive pen, that too wasn't enough to excite the interest of the State.

And that appears at line or trans -- page trans -- page 3998, line 24 of the transcript.

So that whole discussion of the ridiculously expensive pen was to point out that, using the expertise that we had here, that people will spend money and they will derive their own subjective pleasure or benefit as they themselves define it, and that when this happens the State in this case ought not to interfere, but in my view would we might say ought to be slow to interfere, to challenge the subjective decision of a consumer in how that person uses money.

And that then is one (1) of the circumstances I'm going to suggest under Section 164 Subsection 4 clause (c), that this Board out to keep in mind when it tries to regulate the way in which the payday loan industry operates. Are -- is this Board comfortable with the role of essentially dictating to consumers the ways in which they ought to be allowed to access credit, which they will then use to spend in a way that they themselves find useful?

And we tie that -- further on when I spoke to Professor Buckland about the way in which he had focused when he did his analysis on objective values. This Board will remember that one (1) of the examples that Professor Buckland gave in the course of his direct evidence related to the family that took out a payday loan for the purposes of repairing the car.

And Professor Buckland went through an explanation of how that process of taking out a payday loan to repair the car could actually result in a detriment if in fact that loan weren't immediately repaid.

In the course of my cross-examination of Professor Buckland, however, I wish to draw out the fact that his analysis didn't include the subjective consideration, namely even though objectively the family was paying money on a payday loan, they derived the subjective benefit of having a vehicle that's repaired, which gave them the feeling of either satisfaction, or the feeling of being able to act or drive in places.

And we have -- we have Dr. Robinson's admission at page 4002, line 25 that indeed his objective analysis did indeed leave out it's -- it's -- the actual lines is he ignored the family's subjective feeling at having a repaired vehicle at their disposal.

Why am I going through the -- the pen example and the -- the Buckland example? It's again to remind the Board that this is not merely a question of what objectively and perhaps rationally ought to happen, but rather there are circumstances that relate to the subjective value of having a line or a -- having credit available even when the cost of that credit may not objectively be justified.

In terms of the -- the recommendations that the Coalition has put forward, it's the submission of my client that it actually is dangerous to rely upon the recommendations that we've heard.

And I'm going to go through this is four (4) parts.

First, I'd like to point it by way of example to Coalition Exhibit 25 which the board will remember was a spreadsheet entitled, "Spreadsheet of Final Recommendations" that Professor Robinson brought forward. And you'll remember that this set out the revenues and expenses that a payday loan, a fictional payday loan company might incur as a result of its financial operations.

And that analysis began in the transcript at page 4033, line 23.

When I cross-examined him, Professor Robinson described that as his best estimate of the costs and expense and revenues of that fictional payday loan company. He agreed with me, however, that the industry was not a homogenous set of companies. So in coming to his best estimate of cost, expenses and revenues, he necessarily had to make certain subjective choices, certain selections that, in fact, affected the presentation that we saw.

Complicating the matter, as Dr. Robinson indicated at page 4038, line 11, he didn't have access, obviously, to the financial data of all of the companies, and even the access that he did have either was not current or complete. So when he tried to put together his best estimate of costs and expenses and revenues, this was -- shall we put it bluntly -- one (1) man's attempt to put together what one (1) man thinks, based on incomplete evidence, of how that industry actually performs.

And on the basis of that, he had, shall we say, the courage to come before this Board and call it a spreadsheet of final recommendations; recommendations, that, as I think Professor Robinson would agree, were intended to be received by this Board and ideally implemented to affect the entire industry in Manitoba.

With respect, if we're going to have that kind of impact upon payday loan industry in Manitoba, a potential impact that according to the evidence of my client, could result in having it being forced to withdraw from the market because the rate of return is no longer adequate, we respectfully submit that we need more than a best estimate of costs, expenses and revenues, and it really is inappropriate to put forward any attempt at recommendations on the basis of that kind of lack of information.

Indeed, Professor Robinson agreed with me at page 4039, line 12 of the transcript, that, quote:

> "Either because of missing information or a mistake provided with the -- or a mistake with the provided information, the fiddling [as was the term that we had used] -- the fiddling of that spreadsheet leading to the recommendations might be suspect."

That was the actual line that he agreed with: "it might be suspect."

So we've got the key spreadsheet, which in itself is troubling. Now I'm going to turn to something even more interesting, which is Professor Robinson himself. This is not going to be a personal attack, but this a man who's put himself before this Board as a self-labeled expert, and indeed in -- in all fairness, an expert that this Board has recognized, but I'm going to submit that the evidence shows that he's a man of tremendously-fickled opinion. And from this I'm going to go to the conclusion that if he changes his mind as often as I'm about to go through, should we really be looking to him for advice on how this industry is going to unfold in the future years? Who's to say his mind won't change again?

The Board with -- of course, it will be familiar, because it was produced as part of Public Utilities Board information request with the ACORN report. And we also remember the initial submission that Professor Robinson made to this Board, which he later changed.

I remember distinctly very early on in the hearing, My Learned Friend, Mr. Hacault, correctly complained that the whole information request process might have been useful as an information -- or as a discovery process to find out what the case was supposed to be, and we arrived here only to find that Professor Robinson had changed his mind.

And he told us at the line 4049 -- or, sorry, page 4049, line 14 of the transcript:

> "I have these quite complicated fee schedules, where you have a fixed fee, you have a percentage of the principal and then you have an interest rate on the principal."

Indeed, that's exactly what his initial

submission was, but he threw all of that aside, even while this Board was hearing that evidence.

I also took him through a paper that he had written. That paper appears as the first attachment to Rent Cash's second round co -- second round information request of the Coalition, number 35. That paper was entitled, "Payday Loans, an Ethical and Socially Responsibility Industry."

It's important to remember that I, as asking him these questions in January of 2008; this paper was submitted into evidence before this Board shall we say in early fall of 2007. So roughly a year earlier he had written this paper, which he tells us he wrote in 2006, that's at page 4020, line 11 of the transcript.

And I had him read into the record the conclusion that his own paper stated with respect to applying conventional ethical standards against the way in which payday loans -- payday loan industry unfolds.

And this is what he read into the record at page 4031, line 23:

> "Society does not appear at this point to have raised any major objection to the practices taking place. And the significant number of users of payday loan services suggests that the service

is considered to be not only morally acceptable, but highly desirable if not necessary."

Now I'm not going to deal with the substance of that particular quote, even though I think it's rather useful to remember that 2006, the very expert that My Learned Friend just finished telling us in great detail is peerless without rec -- without others around, is telling us at least back then that the conventional ethical standards are that its morally acceptable and highly desirable.

But let's put aside the substance of that and focus on the fact that in 2006 Professor Robinson wrote that. When I asked him do you still agree with that, his line at page 4 -- 4032, line 22 was "I don't think we should of said that at that time."

This is rather troubling I would suggest that a man puts forward what one assumes are considered opinions, that are published in learned journals, on such significant and clear points and that he would then immediately retreat, without explanation to this Board, as to that particular issue.

Given that second problem that I have with Coalition, I now am not too surprised to hear that My Learned Friend, Mr. Williams, puts forward a recommendation that really is not the recommendation that its own expert had put forward.

Essentially, there at page 64 of the handout of the outline that My Learned Friend gave to the Board as he went through his argument today, has dumped his expert Professor Robinson and is not using 17 percent anymore, now he's using 15 percent.

So maybe he's doing this because he agrees with me that Robinson will change his mind over time.

The problem here is, is that to use the words of My Learned Friend the Coalition is teetering; he kept using the word they're teetering on recommendations. And I have to wonder if the reason that they're doing this is because they realize that join indeed with the comments that I anticipate My Learned Friends, the other Intervenors will put forward, namely, their own evidence, is rather precarious at best and ought not to be the basis of any recommendation that this Board considers. It is very simply dangerous.

I'm going to turn now to the most difficult issue for my client to deal with and that is the slogan. That I imagine if there was a souvenir stand in the reception desk of the Public Utilities Board area there would be t-shirts now being sold "Get Out or Change." This Board will remember that Professor

Buckland at page 3551 of the transcript had the nerve to tell any business that didn't conform to his understanding of the way in which it should perform to get out or change.

And not surprisingly, Professor Robinson at page 4048, and indeed he continued right through to the end of my cross-examination, kept agreeing with him saying, Yes, you ought to get out or change.

Let's start very bluntly by saying that any witness who appears before this Board and has the nerve to say that businesses that don't agree with him should get out of the industry or comply with what he's saying, simply doesn't understand that this Board is in the business of two (2) things.

1. It's not only in the business of emphasizing consumer interests when it sets the just and reasonable rate, but it also has the obligation to consider the industry, and the health of the industry, and the financial well-being of the players.

I remind the Board that my client, Assistive Financial's president comes before it with thirty-four (34) years of experience. This is not a -- a man who has taken up payday lending or the supplying of funds as a mere hobby.

This is not a man who has appeared before this Board without a rather thorough understanding, and I don't say this in any way to -- to belittle the point but he spoke in times in such confusing percentages that when My Learned Friend, Ms. Southall, had difficulty following, I thought, oh yes, I -- I've been there; it took me many months to figure out what my own client was saying to me.

But then of course the Chairman being an accountant immediately grasped it and I was able to sit back and relax and let the two (2) of you talk and I had no idea what was actually happening.

But this is a man who has thirty-four (34) years of experience who's able to baffle people like me and -- and Ms. Southall with his abilities. And -- and certainly it really seems inappropriate that we should brandish a slogan of "get out or change" in his face.

Now of course buffering or bolstering that -- that -- that slogan, I suppose the Coalition would point to what it's described today as the qualifications of the people who appeared before.

Well let's not mince words. Not a single one (1) of the people who appeared as a witness before this Board on behalf of the Coalition has ever worked in the payday loan industry; has ever actually worked in the banking industry. Yes, they've read many books.

But this would be like me, for the sake of the transcript, a fat man telling you how to run a marathon. Yes, I might very well have the notion of how it should be done; put one (1) foot in front of the other, but I'll never be able to tell you from personal experience, which probably is important, how it ought to be done.

Indeed, the only two (2) individuals who might have come forward with some direct experience are individuals who lurked in the background and came forward in writing only, in advice to the Coalition, and we're not actually subjected to cross-examination by any of the Intervenors.

And I really don't know what to make of Professor Simpson's comment that Dr. Robinson knows more about the industry than he ever will. I -- I regret to say that would be like me pointing to Carl Sagan and saying he'll know more about space than I will ever will.

Who knows what Professor Simpson actually means by that. I mean that Professor Simpson is a respected economist. I know that he has general comments that he frequently makes on numerous subjects before this Board.

But I'm not sure that that says anything more than that Professor Robinson is the person that has read more than Professor Simpson. So I don't know why that line keeps appearing in the handout that Mr. Williams has put together, in bold, frequently.

So let's return here. When I cross-examined Professor Robinson, he admitted to me that he did not really carefully consider the notion of the brokerage model that exists between Rentcash and Assistive Financial.

He did however say it is my expert opinion, one of the many times where he self-labeled his opinion as expert, that this model of doing business is less efficient and leads to higher costs when the two (2) are taken together. And that appears at page 4048, line 2 of the transcript.

Even so, his brokerage model that leads to his recommendation completely ignores the possibility that this kind of a relationship could exist. And he says rather brashly at page 4052, line 1 of the transcript, "Assistive Financial should not exist."

But then he goes on rather troublingly to almost contradict himself and he says:

> "That it may in fact be somewhat premature to make that assertion."

Here are several quotes that he makes of the course of his cross-examination.

"These are very short term things. We don't know what it will be in the long run. It may well be that I'm incorrect in that over time that relationship can be profitable."

But apparently if we're to accept the word of Dr. Buckland, now's the time to change or now's the time to get out. With respect, these are not submissions that this Board can make use of.

Now of course as I said and I know that we're -- we're coming up on break time so I can console the Board by saying that I'll be done very, very shortly.

As a small player really, my client Assistive Financial is not taking a position on what exactly the cost of credit should be. Our only purpose here has been to point out some of the concerns, profound concerns, and problems that we find in the evidence that the Coalition has presented.

And it's also to remind the Board that not by way of a threat certainly, but by way of actual fact, that one of consequences of getting it wrong could be that companies will leave the industry, including Assistive Financial.

By way of closing, I'd like to thank the Board, of course, both for granting Intervenor status to my client as well as for the attention that it has given throughout.

I normally don't thank Board Counsel but I think in this case it is especially due. This has been, I think, a difficult hearing. As somebody who -- as the past Chair of Administrative Law for the Canadian Bar Association's National Section, I see a lot of the problems theoretically that cross, and know that this has been very difficult for scheduling.

We've had unrepresented parties, which in of itself is a difficult issue. We've had numerous parties, which in itself is a problem. We've had of course the issues of non-disclosure and how to handle that kind of stuff, as well as the rebuttal issues.

So my thanks to Ms. Southall who has done a very good job.

I also should thank, of course, the Board Staff, Mr. Gaudreau and Mr. Singh, especially Mr. Gaudreau, who has entertained most of my dumb questions with patience as usual, and we should also thank the transcriptionists who are putting up with my long-winded words.

And I'd like to thank also the other Intervenors for their cooperation, and even especially, frankly, My Learned Friend, Mr. Williams, who has always

-- has been helpful.

So, as the Board's rules do require me to say this, I should signal that my client will be making an application for costs, and on that subject just one parting, shall we say foreshadowing of the submission that will come.

This -- the nature of this Hearing may be one (1) that this Board should consider. Departing from its usual practice pronounced, I think, three (3) or four (4) years ago in one of its orders relating to MPI's hearings, as to the rate of -- hourly rate of lawyer fees that it will reimburse.

And the reason that I suggest that it may be time to depart from that and to pay a higher than normal fee has to do with a number of things.

First of all, the appearances of the Intervenors in this matter is not really, by way of a public service as it might be, where Intervenors object or participate in a rate application by monopoly of the Crown Corporation. Here, people have come forward largely and to some extent because they feel compelled to because their livelihood of their business is at stake; and secondly, may I be blunt about it, I suspect that the Board has derived special help from some Intervenors in the way that they've brought issues that may not have come to their attention.

And the reality is, is that with many of these parties both being from out of province, as well as retaining what, I will exclude myself necessarily, but out of -- out of modesty, but experienced counsel like My Learned Friends, Mr. Hacault and Mr. Foran, the problem becomes that if we signal to these people by assessing a lower than adequate reimbursement fee for hourly rates, the danger will be that in three (3) years or whenever this Board reconvenes this subject, the parties that are being helpful may be unable financially to reappear.

So on that, failing any questions, that concludes the submission of my client, Assistive Financial. Thank you Mr. Chairman and Members of the Board.

THE CHAIRPERSON: Thank you, Mr. Dawson.

I think what we will do is we will take a short break now and then we will come back with Mr. Taylor and wind up with Mr. Sorensen for the day.

Thank you. We will be back in ten (10) minutes.

--- Upon recessing at 2:27 p.m.

--- Upon resuming at 2:41 p.m.

THE CHAIRPERSON: Okay, welcome back to those that have returned for the last sessions this afternoon. I have -- 310-Loans' submission has come in, so, we will ask that it be put on the transcript onto the record.

(310-Loan FINAL WRITTEN SUBMISSIONS INSERTED BELOW)

INTRODUCTION

310-LOAN would like to thank the Board and all of the participants in these hearings for their hard work and their patience as this process has stretched out over several months. Regulating a market with many competitors presents many challenges and we appreciate the fact that the Board has taken the necessary time to obtain the evidence it needs to render a fair and effective order.

To repeat the statement that we made in our pre-filed evidence, we applaud the Province of Manitoba's leadership role in bringing regulations to the payday loan market. We support the legislation and regulations that have been put forth and have been pleased to offer our input in regards to restrictions on payday loan rates.

In our pre-filed evidence, we presented

our view that the age of the payday loan market and the existence of legal and regulatory risks were preventing it from reaching a level of maturity that would allow consumers to enjoy the full benefits of a competitive market. As the hearings progressed, we heard evidence of how difficult it is to compare rates between lenders and we recognized this as another factor that was distorting the way the market was operating.

We have asked the Board to be cognizant of the changes that will be brought about through regulations and through the issuance of their order. In particular, a Board order will alleviate the legal and regulatory risks that we have repeatedly spoken of. In addition, pending regulations call for uniform disclosure policies that will make it easier for consumers to compare rates across the industry. If, as we suggest, these two factors have had a significant effect on the state of the market, the Board must be sensitive to how the market will react to these changes.

In regards to their order specifically, we also recommend that the Board be wary of the unintended consequences that could result from an overly restrictive maximum rate. One of the concerns that was raised by the Consumer Measures Committee (CMC) in their 2002 industry consultation was that shutting down the alternative consumer credit market may lead "consumers to less desirable credit options associated with loan-sharking and organized crime." While the CMC was referring to the complete shutdown of the industry, it has to be expected that the higher risk borrowers who will be excluded from the payday loan market under lower rates, may still face this exposure to less desirable credit options. The cost of these credit options in the United Kingdom has been well documented by the research firm Policis, who determined that high risk borrowers who use licenced lending sources for short-term credit (similar to Canada's payday loans) paid an average of 26.67 pounds for a 100 pound loan while borrowers who used illegal lenders paid approximately 200 pounds for the same loan.

Finally, we would like to ask the Board to consider the benefits that a healthy and competitive market would deliver to consumers. Few would argue that as firms fight for scarce market share, consumers are the ultimate winners. While the Coalition is recommending that you give up on the hope of a functioning market that will deliver substantial benefits to consumers, we take the opposite position. We recommend that the Board make every effort to facilitate sufficient competition, monitor the progress of the market over time and make adjustments as necessary. It is our view that this approach will deliver the best possible long-term results for consumers.

We have heard evidence in these hearings on a whole range of subjects relating to payday loans. As the Board's mandate relates primarily to the setting of a maximum allowable rate, we have attempted to focus specifically on this topic. We are pleased to present our careful analysis of the evidence before the Board as it pertains to rates and would like to thank the Board, once again, for taking the time to consider our input.

THE STATE OF THE MANITOBA PAYDAY LOAN MARKET TODAY

SUPPLY AND DEMAND

One way to look at the state of a market is to evaluate the number of consumers who wish to use the product, the demand, in relation to the extent to which the product is being provided in the marketplace, the supply.

Neoclassical economic theory predicts that over time, firms will build enough capacity to fully meet the demand for a given product. If there is more capacity in the market than there is demand for the product (supply exceeds demand) then there will be downward pressure on price as firms compete for scarce market share. Price wars will force some firms out of business to the point where equilibrium between supply and demand is restored. At this equilibrium point, firms will offer their product at the lowest possible price that will allow them to earn the lowest acceptable return on investment. In the event that there is not enough capacity to fully meet demand, existing firms will increase their prices and/or new firms will enter the market to capture available profit. This will continue until prices are high enough to decrease demand for the product and/or enough firms enter the market to restore the equilibrium between supply and demand.

In the Manitoba payday loan market, there is some evidence to suggest that supply and demand are facing divergent pressures that may be preventing the market from behaving in an optimal manner.

Speaking first about the demand for payday loans in Manitoba, two factors suggest that consumers' desire for payday loans has increased in recent years and is continuing to rise:

1. Because payday loans are a relatively new product in Manitoba, demand will grow as more consumers gain a better understanding of the product.
2. Stagnating incomes and rising levels of consumer debt amongst Manitobans is increasing the demand

for sub-prime credit.

On the supply side, 310-LOAN and others have identified the presence of legal and regulatory barriers that are preventing new firms from entering the market, limiting the extent to which existing firms invest in growing their business and restricting the flow of outside investment into the industry. These factors are likely putting downward pressure on the supply of payday loans and preventing enough investment, both by new and existing firms, from flowing into the industry.

While the supply of payday loans has grown significantly, particularly from 1999 to 2003, it may not have increased enough to fully satisfy a growing demand. In this scenario, firms will have little pressure to decrease their prices and may in fact be able to raise them without losing significant market share.

CONCENTRATION

While there are at least 17 firms serving Manitoba consumers, evidence from several interveners in these proceedings has illustrated that the majority of market share in Manitoba is held by two firms: Money Mart and Rentcash. As a result, the market can be described as highly concentrated and the market form resembles an oligopoly.

An oligopoly is likely to exist for one of two reasons:

1. There are not enough profits available in the market to support more than a small number of firms.
2. There are barriers to entry that prevent firms (new or existing) from taking market share from the dominant market leader(s).

PRICE

There have been varying opinions presented in these hearings in regards to how prices have changed over time. Dr. Buckland compared data from 2002 and 2007 to suggest that the average market rate has increased over that time frame while 310-LOAN has used the same data to demonstrate that the typical rate charged for a payday loan in Manitoba has in fact gone down.

While there is no agreement on how prices have changed over time, surveys of market rates presented by 310-LOAN, Dr. Buckland and Dr. Clinton show that current prices vary from as low as 18 percent of the loan amount to as high as 43 percent. Some presenters even provided anecdotal evidence of rates above 50 percent.

REASONS FOR THE WIDE RANGE OF PRICES

Explanation for this wide divergence in

price is required in order to fully understand the state of the market and what regulatory steps, if any, should be taken. Large divergence in price with no explanation would point to significant market distortions that may call for dramatic regulatory action. On the other hand, justification for price divergence, where it exists, is important for regulators to understand if they are to optimize the extent of regulations and avoid unintended consequences.

In these proceedings, we have seen at least four explanations for price divergence in the Manitoba payday loan market:

1. RISK PROFILES

   Each firm in the payday loan industry uses its own unique criteria to evaluate who they will extend credit to. Unlike banks and credit unions who rely heavily on standard credit scores from credit reporting agencies, payday lenders use a diverse set of criteria that varies widely from one firm to another. Some of the criteria that senders may consider includes source of income, level of income, form of payment (cheque or direct deposit), length of employment, bank statement content, pay stub information and age. How lenders treat all of these pieces of information when making a credit decision also varies widely. As a result, different lenders accept different ranges of credit risk depending on the model that they feel will yield the best return on their investment.

Ernst & Young and others, draw a connection between a lender's risk tolerance and the rate that they must charge to earn a sufficient return on their investment. Lenders who accept higher risk customers, must charge higher fees in order to earn a profit. The fact that Rentcash has a significantly higher default rate than Money Mart suggests that they accept higher risk customers. This is one explanation why Rentcash's fees are higher than those charged by Money Mart and why fees vary so widely within the industry.

2. DISCLOSURE

It is widely accepted that with no standard fee disclosure, it is very difficult for consumers to compare rates between lenders. Dr. Simpson agrees that this is not because consumers are unsophisticated, but because the rates themselves are difficult to compare, even for academics and industry insiders. Because it is difficult for consumers to identify differences in rates, there will be some scenarios where a firm may charge a higher fee without losing significant market share. This example also explains why we see different rates between Rentcash and Money Mart.

3. ECONOMIES OF SCALE

Ernst & Young have identified a correlation between the size of a lender and its cost of issuing a loan. Larger lenders, in most cases, can issue loans at a lower rate than smaller lenders, demonstrating the existence of some degree of economies of scale. The extent to which larger firms hold a cost advantage over smaller firms in Ernst & Young is skewed somewhat by the inclusion of Money Mart amongst the five large firms surveyed. As the first significant firm to offer payday loans in Canada, they enjoy several benefits that are unique to first-movers. They are also able to exploit their dominant position in the cheque cashing industry to further lower their cost of issuing a payday loan.

While the degree to which economies of scale exist in the Manitoba payday loan market may be in question, there is no doubt that in order to achieve a reasonable rate of return on their investment, the average small firm will need to charge rates that are at least somewhat higher than those of the average large firm.

4. GEOGRAPHIC CONSIDERATIONS

Finally, depending on where a lender is situated, they may incur higher (or lower) costs that will affect the rates that they require in order to earn a reasonable return on their investment.

THE DESIRED STATE OF THE MANITOBA PAYDAY LOAN MARKET

OBJECTIVE

There appears to be a broad consensus amongst both the participants in these hearings and the Minister responsible for these regulations regarding the desired state of the Manitoba payday loan market. The following is a summary of what we have heard:

"The intention is not to drive the companies out of business, because people are showing an interest in having this service, but to make sure that when they offer the service they do it in a way that's just and reasonable." - Mr. Greg Selinger (Minister of Finance)

"... a viable payday loan industry is something that Manitobans want. And so I believe the recommendations that we're proposing will allow for a viable payday loan industry." - Dr. Jerry Buckland

"If the Board enacts rates that prevent efficient lenders from earning a fair rate of return, consumers may benefit in the short run from lower fees, but we may lose more as a society because there is insufficient competition to drive innovation and further cost reduction." - Dr. Chris Robinson

"I think that this range would allow firms to function at more than the large-firm basis, and through competition and innovation make [payday loans] a more beneficial source of capital for consumers." - Dr. Lawrence Gould

"... the regulatory scheme should allow

a viable, competitive, payday loan
industry, albeit under a more
transparent, more borrower-friendly,
framework." - Dr. Kevin Clinton

"... we believe that it's important to
have competition, innovation, and allow
market forces to prevail, which would
ensure that consumers would be able to
access the lowest cost and best service
provider. And (in that) we believe
that consumers would be better
protected than by lowering the fees
dramatically and perhaps driving the
majority of reasonable businesses out
of business and having that business go
underground." - Mr. Scott Hannah
(Credit Counselling Society)

Two terms recur throughout participants' comments: "viable" and "competition." From our reading of the evidence before the Board, we conclude that participants in these hearings are seeking a Board order that will result in a viable and competitive payday loan market.

MEASURING POTENTIAL OUTCOMES

The evidence in these proceedings suggests several lenses through which the Board could look to estimate the likelihood that their decision will achieve the viable and competitive market desired by participants.

SUPPLY AND DEMAND

Earlier, we described the possibility that the demand for payday loans may be growing faster than the supply. Supply may be restricted by the fact that new firms are reluctant to enter the market and existing firms are reluctant to invest due to uncertainty around the legal and regulatory status of payday lending. Demand may be growing due to an increased understanding of the payday loan product and socio-economic factors that are leading more consumers to seek sub-prime credit. The result may be a situation where firms are not facing pressure to innovate or lower rates.

If this is in fact the case then a Board order should aim to facilitate either an increase in the supply of payday loans or a decrease in demand for them. While the Board has limited power to affect the number of consumers who desire a payday loan, the very issuance of their order will remove the legal and regulatory uncertainty that exists today. For their order to be effective through the supply and demand lens, it must not itself act as a new barrier to prevent entry and investment in the industry.

If the Board's order is effective at restoring a closer balance between supply and demand, we should expect to see downward pressure on price and upward pressure on firms' incentive to innovate.

Measurement Criteria:

A Board order that encourages greater investment in the industry from both new and existing firms would be considered an effective order through the Supply and Demand lens.

CONCENTRATION RATE

The concept of market concentration describes the extent to which market share is held by a small group of firms. If concentration is high, this indicates that a small number of firms control a large percentage of market share. In a market where concentration is low, market share is distributed widely amongst many firms.

A common measurement of concentration is the four-firm concentration ratio. This ratio measures the percentage of market share that is held by the four largest firms in an industry.

The four-firm concentration ratio is a tool that can be used to measure the level of concentration in a market and describe the market form. Table 1 describes the various market forms and their corresponding four-firm concentration ratio.

TABLE 1

MONOPOLY

A monopoly is a persistent situation where there is only one provider of a product or service in a particular market. Monopolies are characterized by a lack of economic competition for the good or service that they provide and a lack of viable substitute goods.

Four-Firm Ratio: Nearly 100 percent.

OLIGOPOLY

An oligopoly is a market form in which a market or industry is dominated by a small number of sellers (oligopolists). Because there are few participants in this type of market, each oligopolist is aware of the actions of the others. The decisions of one firm influence, and are influenced by the decisions of other firms.

Four-Firm Ratio: Greater than 40 percent.

MONOPOLISTIC COMPETITION

The characteristics of a monopolistically competitive market are almost the same as in perfect competition, with the exception of heterogeneous products, and that monopolistic competition involves a great deal of non-price competition (based on subtle product differentiation). A firm making profits in the short run will break even in the long run because demand will decrease and average total cost will increase. This means in the long run, a monopolistically competitive firm will make zero economic profit.

Four-Firm Ratio: Less than 40 percent.

PERFECT COMPETITION

Perfect competition is an economic model that describes a hypothetical market form in which no producer or consumer has the market power to influence prices. According to the standard economical definition of efficiency (Pareto efficiency), perfect competition would lead to a completely efficient outcome. The analysis of perfectly competitive markets provides the foundation of the theory of supply and demand. Perfect competition is a market equilibrium in which all resources are allocated and used efficiently, and collective social welfare is maximized.

Four-Firm Ratio: Very Low.

From a consumer interest perspective, the benefits of a competitive market are enhanced as the four-firm ratio decreases. The four-firm ratio in the Manitoba payday loan market today, by number of outlets, is approximately 74 percent, reflecting the characteristics of an oligopoly. In order for consumers to enjoy the optimal benefit of a competitive market, the Board should set for itself, the medium-term goal of reducing the four-firm ratio towards 40 percent and encouraging the development of a monopolistically competitive market.

Measurement Criteria:

A Board order that encourages a decrease in market concentration over time would be considered an effective order through the Concentration Rate lens.

NUMBER OF FIRMS

Another measurement that can be used to predict whether or not the Board's order will achieve the viable and competitive market that participants are advocating for is the number of firms that we can expect to see in a regulated market. Of the lenses listed here, this is the least sophisticated. In cross-examination, Dr. Buckland and Dr. Robinson provided the number of firms that they believe would be required to achieve a viable market. Unfortunately we do not have any evidence to support or refute the numbers that they provided.

Dr. Buckland has indicated that five to ten firms would represent what he would call a viable payday loan market. Dr. Robinson has projected that five to seven firms will exist under his recommendations. If we are to assume that Dr. Robinson believes his recommendations reflect a suitable level of competition then taking the two experts' opinions together, we can conclude that a market of five to ten firms would satisfy the Coalition experts that the industry is viable and competitive.

Measurement Criteria:

A Board order that encourages the existence of five to ten firms in the Manitoba payday loan market would be considered an effective order through the Number of Firms lens.

SETTING RATES: THE ROBINSON FRAMEWORK

DESCRIPTION

In his recommendation to the Board, Dr. Robinson has set out to identify a rate that will allow those lenders that he identifies as efficient to "earn a reasonable profit, but not earn an excess profit."

He has developed a spreadsheet model that uses inputs such as loan volume, operating costs and bad debt rates to identify the economic profit (or loss) that a firm with those inputs would experience under a particular rate or rate schedule.

Using data from a combination of sources, but primarily from the public filings of Dollar Financial (Money Mart's parent company) and Advance America, he has recommended the following fee schedule:

- 17 percent of the first $250
- 12 percent of amounts from $251 to $500
- 10 percent of amounts over $500
- A fixed fee of $10.00 for a new customer

INPUTS

In order to calculate the predicted outcomes from Dr. Robinson's model, we must identify the following inputs for each of the classes of firms in Manitoba: operating costs per $100 loan, annual loan volume per store and bad debt rates. Dr. Robinson has identified these as "the variables that have the greatest effect on the profitability of the firms in the model that [he uses]."

Several different sources of data have been presented in these hearings. Unfortunately, there has not been a comprehensive study of Manitoba lenders that would provide the Board with a truly representative picture of lenders' actual operating costs, loan volume and bad debt rates. Instead, we are left with a collection of different data sources, each with their own limitations. The major data sources that have been presented are filings from publicly traded companies, the Ernst & Young study and the Deloitte study.

PUBLICLY TRADED COMPANIES

Dr. Robinson has provided the data from Money Mart's Canadian operations in 2007 and Advance America's global operations for the nine months ending September 30, 2007 in Canadian dollars. In addition, Rentcash has provided data in response to information requests. The following is a summary of the public company data that has been submitted in these hearings:

OPERATING COSTS

Money Mart - $8.51

Advance America - $10.96

Rentcash - n/a

LOANS VOLUME PER STORE

Money Mart - $2.644 million

Advance America - $1.577 million
Rentcash - $1.431 million

BAD DEBT

Money Mart - 1.65 percent
Advance America - 3.10 percent
Rentcash - 5 to 6 percent

ERNST & YOUNG

Using 2003 data, Ernst & Young concluded that payday lenders' operating costs were as follows (total annual loan volume in parenthesis):

EY 2003-1

Large Businesses (over $20 million)	$12.21
Medium Businesses (between $2 million and $20 million)	$14.69
Small Businesses (less than $2 million)	$17.21

The Ernst & Young study contained five participants in the Large Business category and one of those participants was Money Mart. From Coalition Exhibit 21, we know that in 2003, Money Mart's operating costs were $6.12. We also know that Dr. Robinson calculated operating costs using the same methodology as Ernst & Young. With this information, we can deduce the average operating cost of the other four lenders in the large business category. With this information, the Ernst & Young data suggests the following:

EY 2003-2

Money Mart	$6.12
Large Businesses other than Money Mart	$13.73
Medium Businesses	$14.69
Small Businesses	$17.21

From 2003 to 2007, the operating costs of Money Mart's Canadian operations have increased by a total of 39 percent from $6.12 to $8.51. If this rise in operating costs is representative of the rising costs in the entire industry then in 2007 the operating costs of the firms in the Ernst & Young study would have been as follows:

EY 2007-1

Money Mart	$8.51
Large Businesses other than Money Mart	$19.08
Medium Businesses	$20.42
Small Businesses	$23.92

The change in Money Mart's operating cost from 2003 to 2007 is significant enough to suggest that all firms have faced rising costs of some kind over this time frame. If the Board does not wish to use Money Mart's cost increase as a proxy for the rest of the industry, then it could consider the average inflation rate as a more conservative predictor of how costs have changed. Assuming an average inflation rate of 2 percent, the Ernst & Young data would look like this:

EY 2007-2	
Large Businesses other than Money Mart	$14.86
Medium Businesses	$15.90
Small Businesses	$18.63

Ernst & Young does not provide any average numbers for per store loan volume. What they do provide is a chart that plots the cost of providing payday loans against the per store volume (see Ernst & Young Figure 6 below). In this chart there are two outliers with per store loan volume above $3.5 million and seventeen grouped into two distinct clusters:

- 52.6 percent of all respondents have per store volume of less than $1 million
- 36.8 percent of all respondents have per store volume between $1 million and $2.5 million

As is the case with loan volume, Ernst & young does not provide any average numbers relating to bad debt. Again, they plot each of the individual responses (see Ernst & Young Figure 8 below). In this case, the data points are provided and it is possible to calculate an unweighted average of bad debt amongst all participants. Excluding the one outlier with a bad debt rate of 14.1 percent, the unweighted bad debt of the remaining respondents is 2.86 percent. The average bad debt rate of all respondents is 3.45 percent.

DELOITTE

In 2007, Deloitte conducted a survey of the Manitoba payday loan market that was similar in nature to the Ernst & Young study. They received survey responses from five firms that were considered to be small and possibly medium in size according to the Ernst & Young definitions. The results were as follows:

Operating Costs	$20.95
Loans Volume per Store	$715,732
Bad Debt	3.5 percent

SUMMARY

Table 2 summarizes the range of current data that the Board could use in its calculations.

OUTCOMES

During his testimony, Dr. Robinson explained that a fair return for the lender would be represented by an economic profit that was at or near zero. He provided some scenarios where firms would experience an economic profit (or loss) in the range of a profit of $1.62 to a loss of $2.26. He described this range of profits and losses as insignificant and close enough to zero to be considered acceptable. He provided another scenario where a firm would experience an economic loss of $6.16 and described this level of loss as "significant."

In cross-examination, Dr. Robinson explained that an economic loss in the range of $6.16 would likely represent a firm that was breaking even in accounting terms. He explained that there may be circumstances where businesses would continue to operate at a break-even level over the long-term, but suggested that this would only be in the case where owners had long-term contractual agreements that were costly to get out of or had limited prospects for employment, such as alcoholics. We have deduced from this testimony that a typical firm in the Manitoba payday loan market would not continue to operate if they were experiencing an economic loss at or above $6.16.

With this information in mind, Table 3 uses the best possible data that is before the Board (as summarized in Table 2) to illustrate the economic profit (or loss) that is expected under Dr. Robinson's model and rate formula.

Remembering that a typical firm will not operate if they sustain an economic loss of $6.16 or more, the data in Table 3 illustrates that, in no uncertain terms, no firm other than Money Mart and possibly Advance America will remain in the Manitoba market under Dr. Robinson's recommended maximum fee structure.

A NOTE ON ADVANCE AMERICA

Is order to be financially viable under Dr. Robinson's fee structure, Advance America must achieve the same cost, volume and bad debt numbers that they have accomplished in the United States. Their ability to do this is in no way certain and the Board should consider the following when trying to anticipate if Advance America would be viable under Dr. Robinson's recommendations:

- Costs such as rent, wages and taxes will all be significantly different in Canada than the United States.
- Advance America built an established brand in the United States and was an early entrant into that market. As a late entrant in Canada, there is no guarantee that they will be able to achieve the same level of brand awareness here.
- As a new entrant to an established

market, they will have to incur significant marketing costs to build up their loan volume to a level where they can sustain their operations, let alone earn a reasonable return.

- Credit screening tools and borrower profiles are much different in Canada than they are in the United States and Advance America will need time to adapt their credit decision-making practices to the Canadian market.

There is no reason to believe that Advance America will not be successful in Canada as they have been in the United States. That being said, whether their cost, volume and bad debt numbers from their American operations are reflective of what their future Canadian operations will look like is highly speculative and, in our view, highly unlikely.

A NOTE ON DIRECT LENDERS

In his testimony, Dr. Robinson suggests that communities whose bricks and mortar payday loan outlets cannot continue to operate under his rate formula, will still have access to payday loans through direct lenders such as 310-LOAN who serve customers by phone or online. In response to this, it is important to note that the Board has received data from two direct lenders in these proceedings demonstrating that they will not be able to operate at an average rate of 17 percent of the loan amount, roughly in the range of Dr. Robinson's recommendation. The data in front of the Board shows that at a rate of 17 percent, 310-LOAN would earn a return on investment of minus 20.14 percent and Cash-X would earn a return on investment of minus 20.74 percent. There has been no evidence presented to the Board to identify any direct lenders serving Canada, let alone Manitoba, who could operate with average fees of 17 percent or less.

SETTING RATES: THE RAMSAY FRAMEWORK

DESCRIPTION

Professor Iain Ramsay, formerly of Osgoode Hall Law School at York University, was the first academic to thoroughly study the Canadian payday loan market when he was commissioned to do so by Industry Canada in 1999. Since that time, Professor Ramsay developed what he terms his "third way" approach to consumer credit regulation. He has advocated for this approach at conferences in the United States, Australia and Britain. In November of 2006, his "third way" approach was published as a chapter in "Consumer Protection in the Age of the Information Economy", a law textbook from Ashgate Publishing.

In his work, Ramsay has identified two consumer protection philosophies that prevail today:

1. "the liberal model of the 'responsible consumer' for whom an information model of consumer protection is the primary policy"
2. "the social model that is based on the 'presumption of the hasty and needy consumer, forced into contractual relations by social circumstances he cannot control; someone lacking in concentration and in need of protection [where it is] the duty of the State to protect consumers by controlling the market."

Rather than recommending one of these two philosophies, he proposes a third option that:

> "recognises the market as a central institution and attempts to empower individuals to make responsible choices within the market [while] at the same time ... attempts to achieve social policy goals through a wide variety of techniques."

At the core of Professor Ramsay's approach are eight recommendations that were included in our pre-filed evidence. On the matter of rates, he recommends: "Regulating prices through interest rate ceilings established at a rate significantly above the competitive rate for that market that are designed to be a proxy for overreaching behaviour ..."

Following a survey of rates in Manitoba in September, 2007, we concluded that a rate in line with Professor Ramsay's "third way" approach to payday loan regulation would be a flat fee equal to 25 percent of the loan amount.

INPUTS

In order to determine a maximum allowable rate under Professor Ramsay's framework, we must determine the "competitive rate" in the market. This could also be referred to as the market rate. Fortunately, Dr. Buckland, Dr. Clinton and 310-LOAN have all conducted surveys of the rates being charged in the Manitoba market at different points in 2007. This data is summarized in Table 4. The market rates in this table are presented as unweighted averages because the objective is to set a rate that will allow all but the most overreaching firms to continue to operate. Using a market rate that was weighted by number of locations or loan volume would show the average rate that a typical consumer would pay, but would not be useful for identifying the outlying rates in the market.

SOURCE	MARKET RATE
(as a percentage of loan amount)	
Buckland (2007)	24.28 percent
Clinton (2007)	27.63 percent
310-LOAN (2007)	23.07 percent
AVERAGE	24.99 percent

To identify a maximum allowable rate that is sufficiently above the market rate to only eliminate lenders whose rate is outside the normal range, we need to plot each of the rates that were identified in the available surveys (see Figure 1, Figure 2 and Figure 3).

OUTCOMES

As mentioned above, Professor Ramsay's approach aims to enhance consumer welfare through market forces, while acknowledging that some adjustments are necessary to ensure that the market works for all consumers. At the core of this philosophy is the acknowledgement that market forces drive the innovation that can deliver both better service and better prices. This is along the same line as Dr. Robinson's comments, quoted earlier, that suggest society will lose if "there is insufficient competition to drive innovation and further cost reduction."

As mentioned earlier, 310-LOAN has identified a flat rate of 25 percent of the loan amount to be an appropriate rate ceiling under Professor Ramsay's "third way" framework. Using the data from Figure 1, Figure 2 and Figure 3, Table 5 shows how many firms are likely to remain in the Manitoba market under this maximum allowable rate.

NUMBER OF FIRMS ABOVE 25 PERCENT RATE	
Buckland (2007)	3
Clinton (2007)	3
310-LOAN (2007)	1
NUMBER OF FIRMS AT OR BELOW 25 PERCENT RATE	
Buckland (2007)	14
Clinton (2007)	11
310-LOAN (2007)	10
PERCENTAGE OF FIRMS AT OR BELOW 25 PERCENT RATE	
Buckland (2007)	82 percent
Clinton (2007)	79 percent
310-LOAN (2007)	91 percent

ACCOMPANYING RECOMMENDATIONS

It is important to note that Ramsay's rate recommendation does not stand on its own. It is accompanied by seven other recommendations that make up his "third way" approach to regulation in the payday loan industry. Specifically, he recommends facilitating increased competition, both directly within the industry and through alternative credit products. He also recommends the introduction of disclosure policies and monitoring of the industry "through the collection of regular data."

FRAMEWORK COMPARISON

Earlier we demonstrated that the majority of participants in these hearings desire a Board order that will result in a viable and competitive payday loan market in Manitoba. We then presented three lenses that can be used to predict if the Board's decision will in fact achieve this desired outcome. Table 6 illustrates the possible outcomes that the Robinson and Ramsay frameworks could yield through these three lenses. As the table illustrates, the Ramsay framework suggests favourable outcomes under all three scenarios where the Robinson framework does not.

TABLE 6

SUPPLY AND DEMAND

GOAL: Increase the number of firms or

decrease the demand for the product in order to achieve equilibrium between supply and demand.

ROBINSON FRAMEWORK: Setting the maximum rate below the competitive rate in the market will drastically reduce the number of firms in the market and will act as a barrier to entry that will limit the number of new firms that enter the market.

Alignment with this goal: LOW

RAMSAY FRAMEWORK: Setting the maximum rate well above the competitive rate will force only a few "overreaching" lenders to leave the market and will not act as a barrier for new firms considering entry.

Alignment with this goal: MEDIUM over the short-term; HIGH over the long-term.

CONCENTRATION

GOAL: Diversify market share beyond the four largest lenders in order to achieve a four-firm concentration ratio below 40 percent.

ROBINSON FRAMEWORK: A drastic reduction in the number of firms will lead to a higher concentration rate. A rate that serves as a barrier to entry reduces the possibility that new firms will enter the market to diversify market share and decrease the concentration.

Alignment with this goal: LOW

RAMSAY FRAMEWORK: A rate that encourages greater competition will result in more firms (new and existing) aiming to take market share from the largest firms. Consolidation of existing firms, new investment from existing firms and the entrance of new firms will result in a lower concentration ratio.

Alignment with this goal: HIGH

NUMBER OF FIRMS

GOAL: Five to ten firms operating in the Manitoba market.

ROBINSON FRAMEWORK: Using the inputs that Dr. Robinson has recommended, no conclusive evidence has been presented to suggest that there are five, let alone ten, firms in the Manitoba market today that would be financially viable. The only conclusive evidence that has been provided by Dr. Robinson indicates that Money Mart and possibly Advance America will remain viable under his recommendation.

Alignment with this goal: LOW

RAMSAY FRAMEWORK: A cap above the competitive rate will allow at least ten firms to continue operating in Manitoba and encourage new firms to enter. The total number of firms in the market over the long-term will likely be affected by consolidation of small to medium-sized lenders as competition intensifies. As a result, it is unlikely that the number of firms will grow substantially over the long-term.

Alignment with this goal: HIGH

CONCLUSION

The evidence before the Board points unequivocally to the fact that under Dr. Robinson's recommendations only one firm in the market today is certain to continue operating. We have heard from almost all participants in these hearings that this is not the outcome they are seeking. While Dr. Robinson is clearly committed to an outcome that will be beneficial to consumers, his approach to setting a maximum rate is not in their best interest.

Professor Ramsay has provided a thoughtful and well-rounded approach to payday loan regulations. He was the first scholar to study the Canadian industry and he did so at the bequest of Industry Canada. His approach allows for both the welfare enhancing benefits of a competitive market and the consumer protections afforded by a social policy approach.

As an intervener to these hearings we have attempted to provide input that would assist the Board to make a decision that is in the best interest of consumers. We have acknowledged that what is best for the consumer is not always best for 310-LOAN. One of the risks that we face in our business is from competitors who challenge us for market share. To have an industry where we are one of only a small number of firms would be particularly beneficial to us. Despite this, we have advocated for a competitive market because we believe it will deliver the greatest benefit to consumers.

With all of the data that is available today, the only responsible recommendation that we can make to the Board is to follow Professor Ramsay's approach and set a maximum allowable rate that is above the market rate. We believe that this approach will deliver the greatest possible long-term benefit to consumers and minimize the risks associated with eliminating large numbers of firms from the market.

And we will turn our attention now to Mr. Taylor. Welcome back.

CLOSING STATEMENTS BY PROGRESSIVE INSURANCE SOLUTIONS:

MR. KENT TAYLOR: Thank you very much.

Good afternoon distinguished Members of the Board Panel, Board Counsel and fellow Intervenors.

I would like to thank you for allowing myself the opportunity to speak in front of you all once again, as I present my closing remarks with respect to the hearings on maximum fees for payday loans; specifically loan -- Payday Loan Group Credit Insurance.

When I first received the e-mail inviting any parties interested in being an Intervenor, I thought to myself, that really has nothing to do with me; my program is optional; it's underwritten by a licensed insurance company and because of its structure it's exempted in calculation of the 60 percent maximum annual percentage rate allowable under Section 347.

But then I reflected on all the work I've done to create this program and what it's -- what I've seen this program do for good paying customers over the past almost six (6) years, I felt compelled to participate in these hearings and provide all possible intricacies of the program so you could understand this program to its core and how positively it affects all participants in this industry; most importantly the consumer.

I respectfully request that when you sit down to finalize maximum fees allowed for pay -- payday loans in the Province of Manitoba, that all optional loan protection left -- is left outside the maximum amount so the customers that wish to protect their debt have the option to do so.

To further support and -- and close my participation in these hearings, I wish to justify my position on three (3) key points: consumer need, customer service, and lastly transparency and industry guidelines.

It's been my experience the past six (6) years that I've been involved in this industry that customers that participate in taking out a payday loan to satisfy immediate or short-term need for a fixed amount of money to cover unexpected expenses, do not have a rainy-day fund, nor do they have access to unsecured means of credit which is reserved or accessible for cash emergencies.

With absolutely no disrespect for the consumers participating in payday loans, these people typically rely on their group health benefits of their employ, if there are any to begin with, to replace their income should they become ill and unable to work, or God forbid, they pass away.

Furthermore, their benefits, if they have any, provide no financial protection should they be laid off.

I mention this because good benefits, if they have one at all, will cover only two-thirds (2/3s) of the regular income. Based on the existing financial obligations that prompted a need for a payday loan in the first place, two-thirds (2/3s) of their income will create a significantly shortfall and ultimately the inability to repay this loan, which now creates additional fees in the form of late fees and a collection problem for the lender.

I have one (1) significant lender whose credit supervisor has quoted to me in the past at least 25 percent of all customers that cannot make their payments on time is because they're unemployed or disabled.

The supervisor, Catherine, wasn't able to get permission from the lender to use their name in time for this presentation.

Is there a consumer need to have an option of protecting their debt when their existing plans fall short? I do believe so.

The very foundation of why optional loan insurance should be available to customers of payday lenders is customer service.

After careful consideration of the payday loan customer, the challenge is to create a program that was easily explainable in a full-disclosure and optional environment, but most importantly a program that met the expectation of its insureds at the time of claim.

What would -- what would -- what would a customer expect to receive should they become involuntarily unemployed? To have their minimum payment of interest made until they found another job, and then have this loan due along with all their other obligations? No. They wanted to know that if they are laid off and they've paid to protect their loan against involuntary unemployment, that their loan is paid off.

We listened and created to the -- we listened and created a program that meets expectations; paying 50 percent of their entire obligation immediately, and paying off the balance if they're still laid off in thirty (30) days.

This is important to note because in traditional insurance that's out in the marketplace, if there's any kind of unemployment insurance available, involuntary unemployment insurance available, typical waiting periods range from thirty (30) to sixty (60) days.

Under this program, we've brought it down to the timeframe that -- that payday lenders and payday loan customers deal in and have it completely taken care of in thirty (30) days if they're still unemployed.

This mentality followed through on our other coverages, as disclosed to you on November 15th.

This optional product has been met with skepticism of the insurance industry in general, with approximately 40 percent of customers electing not to participate in the payday loan insurance.

But to the 60 percent who listened to this optional program being offered and the benefits that it paid, should they become disabled, involuntarily unemployed, critically ill or pass away, the service has been greatly appreciated by both the lender and most importantly the customer.

And it is -- I'd like to note as well, as Mr. Williams had requested in -- in -- in my presentation that there -- there might be the word "involuntarily" added into our prescribed word scripting for -- for lenders that we have as clients, and since then we have inserted "involuntarily" to better, or more clar -- more clearly describe the benefits of the customers who are participating.

I would like to -- to read quotes that we've received from both the customer and lenders. Obviously I'm not going to bore you with all of the ones that we've received, but I'll just sample a couple.

There's Riel Levesque (phonetic), payday loan customer:

"My claim was handled quickly and professionally, helping me through a difficult time while I was injured. I will definitely make sure all my loans are protected in the future, and would highly recommend the loan protection to anyone using payday loan services."

Just as a note, that particular individual operated heavy equipment in Northern BC and crushed his hand and was unable to work. So there was definitely a shortfall of cash; there was no benefits that even provided for lost employment either.

Wil -- Winston Alphont (phonetic), payday loan customer:

"I would recommend the loan protection for insurance purposes in the case you were injured. The procedure was professional and my claim was covered. I was completely satisfied and will be sure to purchase it again."

From one of our -- one of our clients, Dana Nicholson (phonetic), District Manager Speedy Cash, CPLA and BCPLA member:

"Progressive Insurance Solution enables

us to provide our clients with the
benefits of optional loan protection.
The incredible high claims approval
rate has allowed us to help countless
clients have their loans paid down over
the last five (5) years.
It is a great pleasure to inform every
new client about the loan protection
service. Our clients are very
impressed and comforted by the
reassurance that your service
provides."

Christine Ballantyne (phonetic), Regional Manager for Easy Cash, Advance CPLA member.

"On behalf of Easy Cash Advance, we
would like to thank you for your
service of loan protection that we
offer to our customers. And based on
the result, we consider it to be one of
our most important customer retention
and customer satisfaction tools. This
service helps our customers and their
family in their most time of need for
financial relief.
If you have any questions, we'd be

happy to respond."

Does payday loan insurance, whereas a condition of being granted a loan, have a place in the payday loan industry? Certainly not.

But both the insurance industry and the payday loan industry in the form of the CPLA have created guidelines far in advance of any regulation to this industry to prevent and punish lenders from such acts.

I know, firstly, tied selling is addressed under two (2) specific Federal Acts. The Competition Act C-34 and the Bank Act of 1991, C-46.

Under the Competition Act 77(1):

"A tied selling means any practice whereby a supplier of a product, as a condition of supplying the product [the 'tie-in product'] to a customer to (1), acquire any other product from the supplier or the supplier's nominee."

The Bank Act restricts tied selling under Section 459.1(1) of the Bank Act:

"A bank shall not impose any undue pressure on, or coerce, a person to obtain a product or service from a particular person, including the bank or any of its affiliates, as a

condition of obtaining another product
or service from the bank."

Furthermore, Manitoba Insurance Council has the right to take remedial action it deems appropriate against any insurance company which allows its products to be marketed to the public in an inappropriate fashion.

The Insurance Council in conjunction with the Superintendent of Insurance regulate an insurance company's ability to carry on its business in the Province.

Secondly, the CPLA took it upon themselves to ensure that CPLA members were acting in complete transparency and optional conduct through its Code of Best Business Practice.

I cite "Selling Other Goods or Insurance":

"A member is prohibited from requiring
a customer to obtain insurance as a
condition of taking out a payday loan."

I find that important to know. Because we have had our clients that are members of the CPLA mystery shop with respect to the -- how loan protection is being issued.

And to date, to the best of my knowledge, there hasn't been any lender that -- that we deal with that's been found guilty of inappropriately offering that coverage.

Lastly, Progressive Insurance Solutions in partnership with ACE Life Insurance Company have insured complete transparency.

If the borrower elects to purchase insurance through the lender, such election is entirely done at the borrower's option and is a separate and distinct component of the transaction.

We have reinforced this statement with action: By providing a complete lender's manual outlining coverage details; acceptable, transparent and optional disclosures; and a full-time contact to answer any questions the lender or the customer may have. And that was provided when I sat in front of you on November 15th.

Requiring lender -- the lenders to present the cost of insurance on a distinct and separate line of the contract so the customer knows exactly what they're paying.

Requiring a detailed disclosure outlining that their loan insurance is optional and participation is not required to get a payday loan.

Furthermore, the disclosure must be -- must be placed prior to the customer's signature to ensure that it's not placed amongst terms and conditions later in the document.

Providing a detailed certificate of coverage with a contact to discuss any questions pertaining coverage or eligibility if a customer has a question as to their eligibility.

And finally, is offering the customer the ability to cancel the coverage for a full refund for up to ten (10) days after enrolling in the coverage.

That is over twenty-four (24) to sixty (60) times longer than a traditional loan -- than traditional loan protection on a -- on a traditional consumer loan, depending on the term.

In closing, I would like to, once again, thank you all for allowing me to present this carefully prepared statement, and hope it provides the distinguished Board security in knowing that this product is closely policed by the industry, provincial insurance councils, industry associations, and the insurance providers themselves.

Progressive Insurance Solutions, along with our underwriter Ace Life Assurance Company, look forward to working with the province of Manitoba, payday lenders, and, most importantly, the payday loan customers in this new era of the payday loan industry.

THE CHAIRPERSON: Go ahead.

MR. KENT TAYLOR: Oh, I was just gonna make a note that I mentioned to Ms. Southall earlier that we have -- just as I got off the plane to come here today got the response from the insurance company for one of the questions, so by the end of the week I should have to Ms. Southall the undertakings completed for yourselves.

THE CHAIRPERSON: Thank you very much, Mr. Taylor.

So, Mr. Sorensen, I guess it -- it comes to you to complete this day's sitting.

CLOSING SUBMISSIONS BY SORENSEN'S LOANS TILL PAYDAY:

MR. LEO SORENSEN: Thank you, sir. First off, I have been coming to this Board since November of '06 when I drove up to Thompson and met with you on the cheque cashing incident. I wish you would hold your meetings in nicer weather. This is ridiculous.

THE CHAIRPERSON: It's one of our warmer days, Mr. Sorensen.

MR. LEO SORENSEN: Yes, much warmer. But I would like to thank you for putting up with me and listening to me at these things.

Some of the things that have been said to this Board, they seem to be very selective of what they are saying. They talk about the U.S. quite a bit, but they forget to mention the population ratio. We, I believe, get somewhere around 8 to 12 percent of a population will use our services to all of us. So it's quickly to say in the United States - who has ten (10) times our population - have a much broader base to do business on. That seems to be forgotten all the time.

The other thing that sort of gets me is I -- I never heard of it before is someone is suggesting that we have to be efficient. If I open a grocery store, and I want a dollar thirty ($1.30) for a pound of carrots instead of about seventy cents ($.70), am I -- because of my inefficiency does somebody want to shut me down? I don't think so. I -- I think that the relevance of efficiency is put up by, basically, my bank book and my banker. If I become too inefficient, I will quickly close down.

Mr. Williams went on to say that most of his people were academics. And then he said, well, that's not quite true, but then he quoted three (3) other people who had either MBAs or et cetera. I -- I -- but none of them had been in the payday loan industry or, basically, had worked in private enterprise; that didn't seem to be a -- a part of it.

The other part of it, when Mr. Williams

spoke the last time I was here, he said a fair and reasonable cost. So I spoke to a man that was a member of Parliament forty (40) years ago and who I know quite well, and I said Hughie, just how do I explain a fair and reasonable cost?

I mean, if I ask forty (40) people to give me hard figures on that, I'm most likely gonna get at least thirty-five (35) different answers. So he said, a fair and reasonable cost, in a proper definition, is what it costs you to operate and what you should get a fair return for your investment. That seems to be significantly different.

I started ten (10) years ago in this business. Ten (10) years ago I charged twenty dollars ($20) for a hundred (100) and found out that over time I now charge twenty-five dollars ($25), and I have a -- a broker fee type of arrangement where I charge twenty-five dollars ($25) a hundred (100), and I charge sixteen (16) cents a day; two (2) different companies that operate that way.

And last time Mr. Williams was here, I offered him the keys to three (3) of our stores, and I'll certainly offer him, again, two (2) of the stores that I have left, the keys, on the condition that he operates for one (1) year at this seventeen (17) cents -- 17 percent that he's talking about, because it's just not real.

You can't pay wages and can't pay your rent on 17 percent of what you loan out, unless you do a million dollars a week. Absolutely, you don't have a problem then if you have that volume, and I mentioned it the last time. There's a big difference with the bank who only makes 1 1/2, 2 percent when they have $250 million out on mortgages. They can have some room to play with.

I don't believe there are many people -- maybe one (1) exception here which is owned by a large financial company in the United States, Dollar Finance -- that has anywhere near the ability to go much lower.

In fact I -- although I charge twenty-five (25), I would like to see if you're gonna put a cap on it, in the range of thirty-dollars ($30). Because in five (5) years I had to increase five dollars ($5) -- a little over five dollars ($5) actually -- works about to be about six dollars and sixty cents ($6.60) that I've increased it since the ten (10) years that I started.

Everybody's talking about what our costs are today, but I'll guarantee you my rent's gonna go up this year, some of my stores. Wages -- my loyal opposition in British Columbia is asking for a minimum of ten dollars ($10). That's a two dollar ($2) increase. So my staff will want a two dollar ($2) increase. It's normal situation.

So if -- if I have to pay more money, pay more rent, pay more wages, and I've got more competition when I fir -- than when I first started and, you know, people just there.

The other part that nobody seems to be talking about is the money that I, and everyone else in the industry does; we pay rent to a huge number of places, and which are profit to the problems because of the economical money going around, plus our receiver general for wages, et cetera, that never seems to be brought in as incidental.

In fact, Mr. Williams quoted one (1) of the doctors of saying that our default rate is insignificant. Well, that's true, but I wish you'd buy my $3 million of bad debt, you know, if it's insignificant. It's certainly significant for me, and I agree that maybe it's only a few hundred dollars per store per month, but at the end of the year, it's a fair amount of money. And, yes, it's -- percentage-wise it is not -- we've kept going because we have changed and done things differently.

Now to -- the other thing that the public interest group or they seem to think that there's no competition.

Well, Gordon, who is in this room, has a number of stores; either he's put them beside mine or I have put them beside him, or I'm close to Money Mart, yet we all charge different.

And to tell me that there's no competition, I -- I find is -- I don't know where they're getting this from. Money Mart charges considerably less than I do to start with. If you default, that's a different cup of tea. But I still operate right beside them without a problem.

I think a lot of the statements that were made by Mr. Williams is confusing, un-validated in any sense, and most of his statements were really confusing because one (1) time he was referring to this Dr. as an expert, the next minute he was referring to him as he was making a mistake.

It remind me once of sitting in a committee much similar to this; I wanted to export water out of Canada and everybody got upset about it. And they brought in an expert and the expert said, Well you can't do that because you will increase the saline content of the Pacific Ocean.

So when I cross-examined him and I asked him, You're the expert on this, could I check your data -- I have a couple of people that are great on that -- to know how many cubic metres of water is in the Pacific Ocean that we would affect. Oh, I don't have any data, but was considered an expert. And I suggest that he was as much an expert as these three (3) doctors that I heard that seemed to be arguing and don't have any validation to them.

I would like to continue to do business in Manitoba. You seem to want five thousand dollars ($5,000) per store from me, and that doesn't seem to be in question that that is going to come down.

Most likely one (1) of our stores don't make that much money a year so we'll just shut it down. Again, I won't be paying rent on that store, so I know someone else will, but I won't be paying wages neither for it.

I think that five thousand dollars ($5,000) per store to have you look after it; I think that the industry could do a much better job, much easier and a lot more economical or efficient, if you want to use that word, because that's a lot of money to operate a business, and I was going to find out what an escort service in Winnipeg would cost me for licensing. And I don't believe it's five thousand dollars ($5,000).

So it's obviously what the Government thinks of us and, again, the last time I was here I said, Please, tell me if you have a complaint from any of the clients for Sorensen's Loans Till Payday. I don't get them.

Yes, I get one (1) -- once in a while somebody is irrate, we solve the problem right away, not a problem. And would continue to do that. I don't want my clients mad at me. That's not a way to continue on to business.

You can't, in my opinion, can't get your customers made at you and stay in business next week. This is not -- not the way it -- it works.

I just wish that we could come to a more desirable -- I'm almost twice as much as the Coalition wants to -- Mr. Williams is projecting, because I would like to see -- if anything less than thirty dollars ($30) means that we're going to be coming back to the Board very quickly and asking to increase it, because we're not going to pay -- one (1) of the company's representatives that I was hearing this morning made it very clear to me and he done an excellent job at it. If we're not allowed to make money, we're gone; it's that simple. The services won't be here.

Now, when you talk about the poor and the unfortunate people, hey, there is no question, but I notice nobody is talking about the people that don't manage their money right. I don't think that that's against the law. I've never found a law that -- to be crude, that stupidity was a crime.

But, yes, there are people out there that make bad choices on money, but it's their choice; that's their freedom. As far as I know that's what the Constitution of Canada allows them to do; is to make mistakes and to be in business. We don't have to be efficient to be in business; we're allowed to go broke, if that happens; but nothing else.

And I think that I've said enough. I want to thank you all and I hope you come up with a solution.

THE CHAIRPERSON: Thank you, Mr. Sorensen.

Okay. I think that we will probably bring it to a close today and we will be back tomorrow with the last two (2) Intervenors who are going to provide their closing statements; Mr. Foran for the CPLA, and Mr. Hacault for the Rentcash.

So with that we stand adjourned. Thank you. Oh, Ms. Southall...?

MS. ANITA SOUTHALL: Just something that came up during the day. Mr. Foran inquired as to whether we could start at 9:30 tomorrow morning, and I've checked with the panel and that's satisfactory.

So for anyone present who plans to attend today -- pardon me, tomorrow, we will commence at 9:30.

THE CHAIRPERSON: Very good.

MS. ANITA SOUTHALL: Thank you.

MR. ANTOINE HACAULT: Sorry. That discussion hadn't occurred with me and I don't mind it at all, but I want the record to note that I had spoken to Board Counsel and explained I have a 5:30 flight to Yellowknife tomorrow, so that I don't want to be caught in a situation where I only have a very restricted amount of time, and I have to leave at four o'clock to catch my flight.

So I don't mind at all accommodating the parties as long as we're mindful of that.

THE CHAIRPERSON: If it looks like we are going to get into problems with your deadline, I am sure Mr. Foran will cooperate and let you finish. Thanks.

(BRIEF PAUSE)

THE CHAIRPERSON: Mr. Foran, if you have any objections maybe what we will do is at 9:30 we will start with Mr. Hacault. Is that all right with you?

MR. ANTOINE HACAULT: Sure.
THE CHAIRPERSON: And then you will be certain to be able to catch your plane at 5:30.

--- Upon adjourning at 3:12 p.m.

Certified Correct,

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Cheryl Lavigne, Ms.