MANITOBA PUBLIC UTILITIES BOARD

Re: TO DETERMINE MAXIMUM FEES
FOR PAYDAY LOANS

Before Board Panel:

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

HELD AT:

Public Utilities Board
400, 330 Portage Avenue
Winnipeg, Manitoba
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--- Upon commencing at 9:30 a.m.

THE CHAIRPERSON: Okay, well good morning everyone. Our numbers are depleted somewhat, but -- Mr. Foran, you look like you wanted to say something. I don't think that's a problem. Totally frozen.

Mr. Hacault, anytime you're ready to begin.

MR. ANTOINE HACAULT: Actually, Mr. Foran says he's not going to be taking longer than lunch and if that's the case, he thinks he's going to be finished before.

THE CHAIRPERSON: Okay. Well then we'll go back to the original schedule.

Mr. Foran, you can start any time.

CLOSING STATEMENTS BY CPLA:

MR. ALLAN FORAN: Okay, thank you. Good morning, Mr. Chairman, Members of the panel.

In our opening statement we indicated what we thought this hearing was about, and what CPLA indicated was that we believed this was a rate hearing. And we tailored our evidence to deal with the factual circumstances of providing the Board with sufficient information to establish a rate.

Over the course of twenty-three (23) days of evidence, we have delved into a number of issues. There has been extensive cross-examination; the transcript will speak for itself, the panel has heard all of the evidence but we have, on many occasions, dealt with issues that are not rate related.

And I'm just going to suggest to the panel, it's perfectly appropriate to have that information before you. I know that this is a novel and the word "challenging" has come to mind process.

We have voluminous documentation that the Board, itself, has been able to obtain and then, through the assistance of the various Intervenors, there's been other information.

At the end of the day however, the mandate of this Board is to set a rate, and my comments today are going to be focused on that.

I'll start off by indicating what CPLA intends to do is to rely on the expert evidence of Dr. Larry Gould. And Dr. Gould appeared before you today and, in fact, -- or -- I'm sorry, in this hearing -- and, in fact, in previous hearings and his expertise has been accepted by this Board.

And what he said is that, in his judgment, a fee should not be set below twenty dollars ($20). And he further went on, and I'm just going to specifically quote his evidence, he recommends that the Board set the maximum fee for payday lending in the range of twenty ($20) to twenty three dollars ($23) per hundred dollars of payday loan.

And he further went on to say that a fee of twenty-three dollars ($23) would allow smaller companies to operate in Manitoba and allow the forces of competition to operate more fully.

I'm going to give you the end of my presentation right up front and then I'll take you back through it.

The position of CPLA is that the Board should set a rate of twenty-three dollars ($23) plus an allowance for regulatory costs of eighty-eight (88) cents. And that calculation has been determine by Deloitte & Touche as being the approximate amount that will be incurred by payday lenders by virtue of the five thousand five hundred dollars ($5,500) per outlet fee that will be assessed, plus the anticipatory costs of obtaining a bond.

And there was a lot of discussion on -- on how the bond would be obtained and the kinds of assets that would have to be put up by various payday lenders to -- to obtain that bond. But all told, about eighty-eight

(88) cents.

I have the specific number which I'll refer you to, but, in addition, there's the cost of this process and as at November, the CPLA had anticipated costs of about six hundred and fifty-six thousand dollars ($656,000) in terms of its appearance. And that was through to November, some three (3) months ago.

We further are going to submit that there be an allowance to take into account that there will be a three (3) year period before we have the opportunity of seeing you again and explaining how the decision that this panel makes has effected the payday lending industry.

And also, at that point in time, you'll have more information available to you on the impact to consumers and to payday lenders. But in the interim, some allowance just to cover off that three (3) year period.

I heard the argument yesterday that was filed on behalf of the Coalition, and what I'd like to do is I'd like to contrast the CPLA position to the Coalition position.

The Coalition called evidence; it purported to include experts, and the Coalition took advice from its experts and then ignored it in coming to its final recommendation. And I'll come to that a little bit later, but all the evidence you heard from the experts was ignored when you heard what the Coalition was suggesting be the rate.

By contrast, CPLA called experts, they were tested under cross-examination, and CPLA is following its experts' advice.

There's two (2) different views, I think, that I can fairly put to you that have been advanced in this hearing.

The first view is that of my client, and what my client believes is that competition benefits consumers. And my client also believes is that it brought forward unbiased cost information and further brought forward Dr. Gould's conclusions as to the benefits of competition in the marketplace. That's the first view.

The second view that has been advanced to this Board is the view of the Coalition. And the Coalition uses a code word; they use the word "efficiency" and if we strike out the word "efficiency" and insert the word "monopoly" then we have, I am going to submit, the Coalition position.

And what they have suggested is that consumers would be better served with a monopoly service provider regulated by the Board and, in support of that, they have built a model -- a fictitious thing -- using the best of the best. And I think they've conceded that.

They've taken what they say is the operator with the lowest costs and then put in the operator with the highest volumes and presented that as a package as being what the ideal would be for the Board.

In my submission, the ideal is not what is real or exists. And so, again, we have two (2) different visions, and what we have attempted to do at CPLA is provide you with facts: What is in the marketplace in Manitoba; what Manitoba consumers specifically think about payday lending; and we would like to contrast that to the Coalition's models.

Now, I -- I know you will have the opportunity to read the transcript later, and I'm going to just run through, very briefly, where my client -- and that, by the way I think, very succinctly, is where we're at. I've now given you our recommendation, I've told you why it is that we think our recommendation should be accepted by the Board, and now I'm going to take you through what I think are the facts and circumstances that should be considered.

I don't need to tell you -- you have able counsel and guidance from your own experts -- but the

Board's mandate is set out in the Consumer Protection Act. It was enacted in 2006, and it's to establish the maximum cost to credit for payday loans, the maximum charges for renewals, extensions or replacements of payday loans and the maximum charge that may be levied when a customer defaults on a payday loan.

The Manitoba legislation is the result of a long process that began with the work of the Consumer Measures Committee. And that committee was comprised of a representative of each province and territory and Industry Canada.

Recognizing the rapid growth in payday loans that was occurring in response to strong consumer demand, the Consumer Measures Committee began studying the need for regulation of the payday loan industry as far back as 2000. It recognized that the first obstacle to regulation was Section 347 of the Criminal Code which provided that it was an offense to charge more than 60 cent -- percent per annum interest inclusive of all fees and charges related to the advancing of credit on loans.

Now I think it's important, because this is the starting point for how this hearing took place, but acting on the advice of the Consumers Measure Committee and recognizing that annual interest rates are not an appropriate measure for a small sum, short term loan, Parliament passed Bill C26 which took effect on May 3rd, 2007.

I believe we're on the same page; Bill C26 defined a payday loan as an "unsecured loan." I stress that, because part of the cross-examination that I undertook was with respect to alternatives and secured alternatives. And I just want it to be noted that a secured alternative will not meet the definition.

It was also for a sum of not more than fifteen hundred dollars ($1,500) and for a term of not more than sixty-two (62) days, and the legislation provided that in the event that a province introduced regulations and set maximum fees governing payday lenders, then upon designation from Industry Canada, Section 347 of the Criminal Code would not apply to payday lenders in that province.

And that actually opened up the process that allowed the province of Manitoba to take steps to provide this Board with the jurisdiction to set the maximum rates.

I think we're all on the same page that the Government of Manitoba made a determination that payday lending should be treated as a legitimate enterprise in this Province, and that the service provided by payday lenders should be available to consumers in Manitoba.

We know that from the legislation itself where it mandated the Board to set a maximum below which all payday lenders must operate. I again want to stress something here. It didn't ask the Board to fix an exact rate that must be charged by all. It could of done that, but it didn't.

In this respect, the Board's mandate in relation to payday lending differs from that in which it exercises in relation to public utilities. Public utilities must charge those rates that are approved by the Board; no more, no less.

Payday lenders, on the other hand, will be prohibited from charging, accepting, or arranging for amounts in excess of the maximum established by the Board. And implicit in this is the Government's choice that -- and the recognition -- that the industry is diverse, it operates on different business models, and we believe is a clear signal the competition and market forces should continue to operate below the regulated maximum.

The Manitoba legislation represents, we believe, in the words of Minister Salinger:

"A deliberate effort to balance the desire of payday lenders to provide

their services and to compete for a
market share and the right of consumers
to be protected from excessive
charges."

Just on that, we did, in the pre-filed evidence, on pages 23 and 24, provide two (2) excerpts from Minister Salinger which I'd just like to bring to your attention one (1) more time. And it's going to play into two (2) themes that I will address in my argument throughout the course of the next short while.

And it's under the heading "Principles of Regulation." And the first was a quote from Minister Salinger on second reading of Bill -- Bill 25 of May 24th, 2006, where Mr. Salinger indicated this:

"Because of the demand for these loans
and the gaps left by traditional
financial institutions in serving the
community, it is clear there is place
for services of this nature."

Secondly, we made reference to an interview that Minister Salinger had with CBC where he indicated this in terms of legislation:

"If you over do it and wipe out the
possibility of this kind of activity
without the banks and the credit unions

or the case populares (phonetic) moving into field, people will seek out credit and other venues which are maybe more underground venues, and what we don't want to do is create a whole market for organized crime in our jurisdiction."

There was some discussion yesterday about dooms day scenarios. I'm not going to provide you with any dooms day scenarios.

I'd like to make this a positive submission, and the positive submission is, the competition in market forces will allow those things that Minister Salinger indicated that he thought, in any event --and we have to surmise; he -- he wasn't here, he didn't give evidence -- but what he thought was the goal.

And the goal was to protect consumers from excessive charges, but still to make sure that the service was provided by virtue of the fact there is a gap. There is no other alternatives, and I'll come to that in a little while, as well.

Who is the CPLA? Well, I was thinking back this morning wondering if I'd worn the same tie on the first day I appeared before you in late June or early July. But you had a chance, back then, to hear a little about CPLA, who we were and what we thought we would --

we would be able to bring to bear in terms of this hearing.

We are formally known as the Canadian Association of Community Financial Service providers. We were formed in early 2004, and I have to tell you, my clients believe they are responsible financial service companies who offer a payday loan product.

Because the loan product was unregulated, the members of CPLA recognized that it was important to create industry standards; business practices to protect consumers and the reputation of the industry.

We had a panel here, they were cross-examined and I don't think there was any irony or self-doubt or -- they were not evasive at all when they told you that what CPLA was designed to do was to do both of those things. Help progress the industry, but also help the consumer.

CPLA is a voice to represent the interests of the industry to sectors of government and to ensure that its members adhere to national standards.

We'd like to remind the Board that CPLA has been an industry leader in consulting with governments, credit counseling agencies and consumer interest groups in developing best business practices that its members would be required to comply with in the absence of government legislation.

And it was completely unprompt -- unprompted yesterday, but you even heard from Progressive Insurance Solutions when they identified that one (1) of the codes of conduct of CPLA was something that they were advancing in their argument.

And they talked about mystery shopping and audits and all the things that -- that tended to show that CPLA members took their task very seriously.

Many of the legislative provisions recently enacted by the Province of Manitoba to protect consumers who use payday loans mirror the requirements of CPLA's Code of Business Practices.

I won't take you through the Code; it's at Tab "C". You have heard evidence, however, about some of the various components of the code and how that has effected consumers and has helped consumers.

I'm going to be very general for a minute, and sometimes that gets me into trouble. But even you heard the Coalition evidence on mystery shopping -- and by the way, I'm about to dissect mystery shopping -- but even if you accept everything at face value, the general things that you heard were that the CPLA Code of Conduct was something that was understood and, in fact, was mentioned, maybe in a colloquial way as, Oh, we can't do that, we'll lose our license.

But, in any event, it was well understood that this code of conduct existed and that it was followed.

Why intervene in this proceeding? Well, CPLA believed that it could provide this Board with an industry perspective, details on the cost of operating a payday loan business in Manitoba, information about payday loan borrowers in Manitoba, an analysis of what constitutes a competitive rate, details on our members and information on regulatory regimes in other jurisdictions.

We believe we've done that. We actually believe that every component of what we told you we would intervene on and provide evidence to the Board for, has been followed through.

We provided you with the evidence of Dr. Larry Gould. We provided you with a Manitoba-specific report of Deloitte & Touche. We provided you with a specific study commissioned for Manitoba by Pollara.

Mr. Marzolini was here and cross-examined over the course of a full day as to what consumers in Manitoba think about payday lending and their circumstances.

We also provided you with details of a

national study -- the Ernst & Young report -- on the cost of operations which was relevant to the year 2004.

We believe that the evidence of CPLA addressed the factors which the legislation indicates that the Board may and should consider, and these include: The operating expenses and revenue requirements of payday lenders -- that's the first thing, that's -- that's the legislation; the terms and conditions of payday loans; the circumstances of and credit options available to payday loan borrowers generally -- we believe we've done that; and the regulation of payday lenders and payday loans in other jurisdictions.

There's a few other areas you've been given some general discretion. You could take into account other relevant factors in the public interests and any other data that the Board considered relevant. And you did that.

In fact, there are several volumes of PUB-produced documentation which has made its way into the record that the parties have referred to quite extensively.

Ultimately, the Board's mandate is to set a rate that is just and reasonable in the circumstances, having regard to the information before you.

I'm going to specifically deal with the US experience a little bit later, but I'd like to start off by just noting something. We don't believe there is a US experience. What you've had placed before you is a lot of information, none of it expert, relating to a multifaceted approach, state by state by state, that gives you some sense that some states go APR and some states go fixed sum and some states want a data bank and some states want to ban it outright and some states let you charge whatever you want. You've got it all.

What you don't have is a specific and rigorous analysis of the fifty (50) various jurisdictions that may exist out there, how they deal with these circumstances and, in fact, I believe the Chairman asked a specific question -- I believe he asked it of Dr. Robinson: Could some examples be provided as to the public hearing process in the evidence that gave ground to some of the various decisions that had been made by the States?

We don't believe that was provided to you. And it may well be that that's an appropriate question.

But for the purposes of this hearing, we have focused, for the first time, on setting a rate in a Canadian jurisdiction. And we have focused on those things that we think are most relevant to Manitobans; that's what CPLA attempted to do.

So, firstly, what is the appropriate maximum? Well, just addressing the legislative requirements, we looked at the operating expenses and revenue requirements of payday lenders.

Much of the evidence that was placed before you related to this factor and I'm going to submit that there is a general consensus. I believe it is uniformly agreed by the Coalition witnesses, by the CPLA witnesses, by Rentcash and all the other Intervenors, that in order to continue to provide payday loan products to customers in Manitoba, payday lenders must be able to recoup their expenses and earn a reasonable return while operating within the maximum set by the Board. That's the issue. We believe that ultimately that's where we end up.

Where we diverge quite significantly is what are the operating expenses and revenue requirements that are actually being experienced by payday lenders in Manitoba? And to what degree should the Board intervene in the marketplace to eliminate higher cost and less than optimally efficient operators?

Again, I'm just going to go back to one (1) of my themes. When you see the word "efficiency" put into argument on behalf of the Coalition, that is equivalent to a monopoly. What we talk about in terms of efficiency is operating in a manner that's reasonable.

And I'm gonna come to some of the specific factors. And this is actually a bad tendency that probably is going to scare you, but I often say, I'll get to it later. I do -- I do have themes that I have set out, and I will go through all of these. And, by the way, if you have questions or you -- you'd like to specifically ask me to identify something, I will come back to it.

So what are the operating expenses and revenue requirements in the context of regulating an industry.? Well, Dr. Gould, presented evidence on behalf of the CPLA, highlighted the particular challenge the you face, and that is to establish a maximum cost of credit for the payday loan industry in Manitoba, but by regulating an industry comprised of many different companies, with many different cost structures, and different fair rates of returns.

This is completely at odds with regulating a public utility that is essentially a monopoly.

A payday loan company's cost structure will be influenced by a variety of factors. We brought evidence on this; location, for example, hours of operation. These can have an impact on increasing operating costs, but, by the way, we don't agree that they render a business inefficient. It's just a different way of doing business. Each company may have a different fair rate of return based on a particular risk in capital structure.

You received a lot of information from Mr. Schinkel of Deloitte & Touche when he spoke to you about the different ways that people funded their operations, and the different kinds of activities that took place.

Was an operator buying a job -- in effect, being a full time operator or, I believe Mr. Sardo referred to franchises as being an option, or you have other Internet service providers, or you have bricks and mortar. For our purposes, however, CPLA provided you with information on bricks and mortar operations within the Province.

Unlike the process involved in approving rates by a public utility, the regulation of the maximum cost of credit for all payday loan companies in the Province does not include a correction mechanism that permits after-the-fact adjustments for payday loan companies with a reasonable cost structures above that assumed in the Board's decision.

We -- we're trying to give you a solution, but there also is a warning here. And the warning is that if the Board misjudges what constitutes a reasonable cost structure, these companies will be forced out of the market, and that was the evidence of Dr. Gould. I just made a note to myself -- you can't unscramble an egg. Once the business shuts, it's not going to be an easy task for it to reopen.

I also want to just, again, somatically confirm to the Board that there is a regular review process that's been created by the Province, and we believe that it was anticipated that there would be some leeway to allow the Board to take a look at how it's order has impacted the Manitoba marketplace.

Dr. Buckland, one (1) of the Coalition witnesses, agreed that payday lending is an important source of credit for some consumers, and the Board's order needs to allow for a viable payday lending industry in Manitoba. It's all in transcripts; that's located at 3449 to 3500.

My recollection of Dr. Buckland as well was that he did focus on education as being an important criteria. In fact, I believe he focussed on that more than the price. I had the opportunity of cross-examining Dr. Buckland in one (1) of his previous articles where he said lowering the price or increasing the price, I believe, really wasn't the answer. The answer was consumer education. That was his view.

Now, what did we provide to the Board to assist you in your determination of an appropriate rate? Well, we provided a 2004 CPLA commissioned study from Ernst & Young that provided details of the cost of providing payday lending services to customers. This was the first study of its kind in Canada and contained the most reliable information on the cost of providing payday loans in Canada.

Ernst & Young found that payday loans were provided both by mono-line businesses who only offer payday loans, as well as multi-line businesses who offer an array of financial products.

Although Ernst & Young noted the presence of Internet-based lenders, its study was limited to lenders who service their customers through physical store fronts.

Ernst & Young found that the unweighted average cost of all firms of providing payday loans was twenty dollars and sixty-six cents ($20.66) per hundred dollars ($100) lent.

The weighted average for all firms, although lower, was significantly influenced by the very large share of total payday loan volumes represented by the largest payday lenders.

According to the Ernst & Young study,

small businesses, providing less than $2 million of payday loans per year, experienced total average costs of twenty-two dollars and eighty-eight cents ($22.88) per hundred dollars ($100) lent.

For medium-sized businesses handling loan volumes over $2 million but less than $20 million annually, they found that the total average cost was twenty dollars and seventy-nine cents ($20.79) per hundred dollars ($100) lent.

Ernst & Young also found there was a considerable variance in the cost of providing first-time loans as compare to that of providing repeat or rollover loans. And more specifically, the unweighted average total cost of providing first-time payday loans for all firms was thirty-nine dollars and forty-five cents ($39.45).

I want to just stop for a moment. I was surprised yesterday when I heard the Coalition submission because, very unhelpfully, they didn't you with guidance on one (1) of the fundamental cornerstones of what they were submitting, and that was the Dr. Robinson evidence where he actually tried to construct some tables that had inducements for cost recovery for first-time lenders.

In fact, what was submitted to you was that the Coalition couldn't agree on whether the costs should be allocated specifically to those first-time customers as compared to averaging this out over all customers.

If the Board finds favour with that portion of the argument, then I just want to bring to your attention the Ernst & Young conclusions that providing first-time loans is an expensive venture. And we're talking somewhere in the vicinity -- at least for that study -- of thirty-nine dollars and forty-five cents ($39.45) per hundred ($100) lent. Later I'm going to tell you why it will be a bad idea to do that.

Now, Dr. Robinson expressed some doubt about the Ernst & Young report during the course of his evidence in this proceeding. But we did have the opportunity to look at what Dr. Robinson thought about Ernst & Young when he reported to Industry Canada, the Federal Government, when he was retained.

And here's what he had to say about the Ernst & Young report when he commissioned or was commissioned to provide his advice to Industry Canada. Ernst & Young gathered its data carefully, and Dr. Robinson did not believe there was likely to be serious errors.

Although he disagreed with some of Ernst & Young choices in its work, none of the disagreements were significant.

Dr. Robinson, in fact, thought that Ernst & Young had been too vigilante in rooting out over compensation and that the report may have understated costs by Ernst & Young's diligence.

And, in addition, because the Ernst & Young work was a sample data that was voluntary, Dr. Robinson believed there was a selection bias and that would tend to select the more efficient companies so that the data may represent the best in the industry -- not the average, but the best.

In preparing for this proceeding, CPLA endeavoured to obtain more current data for the Board's consideration and to focus on the costs of operating in Manitoba.

CPLA was advised that Ernst & Young was no longer available to provide this type of consulting service and accordingly retained another reputable consultant, Deloitte & Touche, who agreed to conduct a survey of payday lenders in Manitoba who were not publicly traded and to prepare an analysis of the cost of providing payday lending services specific to the Manitoba marketplace.

Mr. Schinkel provided the Board with a written report and oral evidence concerning the results of the study. He was cross-examined at length as to whether there was any bias in the Deloitte -- Deloitte & Touche retainer, as to what he did, as to how he conducted his survey, as to who he attempted to con -- consult -- which was everybody but the publicly traded companies -- and then how he treated the results of his inquiries.

We submit that the Deloitte & Touche report is the only evidence before this Board that deals specifically with the cost of operating a small or medium- sized payday lending business in the Province of Manitoba.

Here's what Deloitte & Touche concluded. An average cost of providing a hundred dollar ($100) loan in Manitoba is twenty-six dollars and eighty-nine cents ($26.89). And then they had a range, based on the respondents, from twenty-four dollars and seventeen cents ($24.17) to thirty dollars and eighty-eight cents ($30.88).

Deloitte & Touche also touched upon the additional costs that operators will encounter as a result of the provincial legislation. This includes the annual licensing fee of five thousand five hundred dollars ($5,500) per outlet and the cost of posting a bond of $25 thousand per outlet.

Based on an estimated bonding cost of eight hundred dollars ($800) per year, Deloitte & Touche calculated these requirements would add another eighty-eight cents ($.88) to the cost of providing a hundred dollar ($100) loan.

And, as I've indicated, it doesn't include the cost of participating in this hearing. And in answer to one (1) of the Information Requests, CPLA estimated that to be one thousand three hundred and eleven dollars ($1,311) per outlet, and that's over all the -- the outlets, five hundred and one (501) various outlets that CPLA operates as at November 5th. And, as I say, that number's about six hundred and fifty thousand dollars($650,000) as of November 3rd.

While, Dr. Robinson, providing evidence for the Coalition, included certain assumptions about small and mid-size lenders costs in his models, he did not gather any Manitoba-specific data. Dr. Robinson's assumptions about the cost of small and mid-size lenders changed over the course of this proceeding. And we submit the Board was not provided with any data to explain why these assumptions changed.

Now, specifically, on November 9, 2007, Dr. Robinson provided a spreadsheet to illustrate his single store model for a small operator with annual loan volumes ranging from five hundred thousand dollars ($500,000) to $3 million. That was in response to PUB Coalition 215. In this model he assumed operating expenses of fifteen dollars and ten cents ($15.10) per hundred dollar ($100) loan principle, which he characterized as reasonable for a single store operation.

On December 13th, the Coalition entered its Exhibit 26 prepared by Dr. Robinson in which he assumes operating costs as low as twelve dollars ($12) per hundred dollars ($100) loan principle. The change in assumptions was not a matter of incorporating newer or more update to date information to his model.

There was no factual evidence provided to the Board supporting this change. And there was nothing, we submit, that leads to the conclusion that operating costs in this range are achievable by small and mid-sized business operators in Manitoba.

The two (2) lowest cost operators who participated in the Deloitte & Touche study had operating costs of fourteen dollars and eighty-seven cents ($14.87) and fifteen dollars and forty-three cents ($15.43), respectively, per hundred dollars ($100) lent. And that's the answer to Undertaking number 19.

The unweighted average operating costs of small operators in the Ernst and Young 2004 study were seventeen dollars and twenty-one cents ($17.21) per hundred dollars ($100) lent. And that's contained in Table 5A on page 29 of that report.

What is clear from the evidence that was placed before the Board, is that small businesses with reasonable costs in this range will require a rate significantly in excess, of not only what Dr. Robinson recommended, but what the Coalition then took by ignoring Dr. Robinson's advice and coming out with a rate recommendation that was even lower.

Dr. Robinson's own spreadsheets illustrate that any small business in this category could not earn a reasonable rate of return, or any return, at the various rates or rate formula which he was proposing. By implementing any of Dr. Robinson's conclusions or recommendations this Board will, in effect, shut down small to mid-size operators in Manitoba. We submit this is not just, reasonable or in the public interest.

The results of Ernst & Young and Deloitte & Touche support Dr. Gould's observations that there's a significant cost variance in the payday loan industry, with costs of individual companies ranging from ten dollars ($10) to thirty-five dollars ($35) per hundred dollars of payday loans.

Dr. Gould concluded that setting a rate at the level the industry's average cost would eliminate a number of higher cost payday lenders and would make it more difficult for new firms to enter the market, reducing competition and innovation.

Even Dr. Robinson -- how do you like that? This is -- this is actually multidimensional here, I can use my Blackberry and read from the page at the same time.

Dr. Robinson, in his recommendation, Coalition Exhibit 27, also says this, and I can scarcely believe I'm referring in a positive way to one (1) of Dr. Robinson's conclusions, but I MR. WILLIAM CARTER:

> "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. Gould concluded that setting the maximum fee for payday loans at twenty-three dollars ($23) would allow smaller companies to operate in Manitoba and allow entry of new companies. While a maximum, closer to seventeen dollars ($17), would render an increasing number of companies unable to operate in Manitoba.

Dr. Gould recommended that the Board set the maximum fee for payday lending in the range of twenty (20) to twenty-three dollars ($23) per hundred of payday loans plus an adjustment of regulatory expenses, such as licensing and bonding costs and costs of regulatory hearings.

Now, I just want to briefly touch upon the Coalition evidence in relation to operating expenses and, again, want to make the -- the note for the Board that the Coalition did not present evidence of actual costs. What it did is it relied on Dr. Robinson to develop a factitious model to simulate costs and revenues of payday lender.

The evidence relating to Dr. Robinson's participation in attendance at press conferences and at public protests organized by groups opposed to the payday lending industry as a whole calls into question his independence as an expert witness.

And I need to stop for a moment, because we -- we can't say these things lightly. But I spent several hours cross-examining Dr. Robinson on his background, and I have to tell you, I was nonplussed, I don't know I'd you can tell when I'm nonplussed or -- but

I was nonplussed when, even in the course of his testimony, he agreed, on cross-examination, that even while he was in this proceeding, he contacted ACORN, a consumer advocacy group, to alert them to his evidence.

Not only was he participating in these kinds of activities before, but he was dealing with ACORN on a regular basis while he was under oath.

Dr. Robinson showed a tendency to stray into subject matters clearly outside the areas for which the Coalition Counsel sought to qualify him as an expert in order to provide additional justification for his recommendations. On numerous occasions, he offered hearsay evidence of last minute telephone conversations with unnamed individuals to bolster evidence previously given.

We submit Dr. Robinson spoke as an advocate as frequently as he testified as a witness, and we encourage the Board to take this into account when assessing or comparing the evidence of Dr. Robinson as it may relate to Deloitte & Touche or Dr. Larry Gould.

I don't want to overlook something. Again, I was modestly surprised yesterday when, in the submission for the Coalition, there was reference to all of the witnesses that had been produced by the Coalition in this proceeding.

The reason I was surprised is because there were names on a list that I'd never met, never seen, have no idea what their evidence was, I didn't test it.

Mr. Whitelaw, for example, was often quoted as a source of information with respect to credit unions. My client knows Mr. Whitelaw; he was formerly the head executive director of CPLA.

We would have welcomed the opportunity to cross-examine Mr. Whitelaw on some of his knowledge, but he wasn't called as a witness.

Much was made about industry experience. A lady by the name of Ms. Marilyn Brennan was indicated as somebody who had provided information to the Coalition that was placed before this Board.

But I'm not sure I can tell you exactly what it is or whether we can accept it or not accept it, because I didn't have the chance to cross-examine her.

All I know is the five (5) witnesses, the panel, that were produced by Mr. Williams. And I think, fairly speaking, if the Board is going to rely on evidence, that it should rely on evidence that has been tested by cross-examination. So that's another caution I'd like to leave with the Board.

Now, I don't want to forget where I was, and where I was, was Dr. Robinson's model. Now, Dr. Gould identified several technical problems with the model developed by Dr. Robinson.

I'm going to identify three (3) for the Board. The Robinson model incorrectly calculates the cost of capital on a real instead of a nominal basis.

Dr. Gould explained in his rebuttal evidence that providing a fair rate of return to an investor in an inflation -- inflationary environment requires adding a premium for inflation to the real rate of return, and confirmed that in a regulatory hearing, rates of return are commonly set on a nominal rather than on a real basis.

Secondly, the Robinson model failed to include the effects of corporate tax. Dr. Gould testified that all of the indices commonly use to determine the cost of capital are done on or after corporate tax basis and that accordingly, to provide for returns comparable to those benchmarked by these indices, the pretax rate of return must be grossed up for corporate tax.

Now, I just want to stop there because the suggestion was made is that Dr. Gould had changed his evidence in this specific area. Well, in fact, he was asked on cross-examination whether he had changed his evidence and he said, No. He said this was not necessarily a material factor, but for the fact that Dr. Robinson had said that we're not going to take into account corporate tax.

He said at that stage it does become something of significance that he felt he needed to provide evidence on to the Board.

The third area is that the Robinson model incorrectly calculates bad debt loss. And Dr. Gould provided a simplified example to illustrate that an accounting for bad debt cost it's necessary to include a cost to capital component for debts which the payday lender is unable to collect.

I'm going to keep going because I have more things to say about Dr. Robinson's model. In addition to these technical problems, Dr. Gould identified other difficulties.

And specifically, he noted that the model is based primarily on Money Mart, largely ignores Rentcash, the other large Canadian chain operating in Manitoba. He testified that the Rentcash information was available, he looked at it, he assessed it, he referred to it in his report and I can't answer the question why Dr. Robinson didn't do the same thing. The information was there.

Dr. Robinson's model also uses cost assumptions that are not based on any actual cost data, and his wide-ranging recommendations couldn't be explained on the basis of new information. I cross-examined him, and I -- I don't know, sometimes, you know, what impact the question and the answers have on the Board.

I can tell you what I was trying to do. I was trying to get to the bottom of how could you come up with a new recommendation and, if you did come up to that conclusion, what new data was there?

Because once I know what the new data is, as legal counsel or as an association, we can then assess it and come back and say, Well, here's why it's inappropriate or appropriate or here's the mistakes. But we couldn't find out what the new data was that drove the new results.

We made do, by the way, with the time frames that the Board set, and we made do with the late production of information. And I won't belabour this, but the Board had before it in the motion for rebuttal evidence that I filed on behalf of CPLA, the timetable of when things should have been produced in terms of evidence and when, in fact, they were produced.

And, again, I -- I don't know how the

Board thinks about these things, but you saw fit to allow us to call rebuttal evidence.

So, I -- I don't want to belabour this except to say that a lot of the information that was received in this hearing was -- was information that we couldn't test through the Information Request or interrogatory process. And so, we made do. We asked questions in the hearing and we cross-examined and here we are.

But, through cross-examination, Dr. Robinson, in relation to the model, clearly indicated that the model contains a series of assumptions that are not based on actual data but are, in fact, guesses -- informed guesses, otherwise guesses or impressions. And these include: Operating costs for single store operators, average terms and defaults, cash on hand and initial store losses; just to give you some examples. And I'm just referring back to my cross-examination.

As Dr. Gould noted, many of Dr. Robinson's inputs could simply not be verified. Now, Mr. Williams suggested, peculiarly, in my view, that Dr. Gould acted inappropriately by not raising this problem with Dr. Robinson immediately after receiving Dr. Robinson's December 13th, 2007 spreadsheet.

I find that unusual, because we have expert witnesses called by parties and it hasn't been my practice to say to my expert: Why don't you go talk to the other expert, sort things out, see if you can get rid of all these inaccuracies, don't worry about the cross-examination, you know, we'll sort this all off -- outside and we'll just explain it to the Board.

But even more so, what we suggest is that there was an email that was sent by Dr. Robinson where he indicated that he would only deal with technical question concerning the working of the spreadsheet, and that everything else was to be dealt with on the record. So I want to speak for a moment on the integrity of the process.

We believe we followed the integrity of the process. You supply evidence, you answer questions about it, and you show up to take your licking before the Board in cross-examination. Somehow it's been suggested that it would have been far more fair to Dr. Robinson to have had these discussions not before you, the Board, but somehow sort this all out in an academic way. We disagree.

Dr. Robinson's analysis of Advance America does not provide the Board with any reliable or even relevant evidence. The analysis is based on short-term financial data and makes no attempt to assess potential differences in the cost of American operations and the costs that Advance America will incur in providing payday loans in

Manitoba.

We submit that the Robinson model is designed to permit only the most efficient, i.e., monopolistic, large lenders to continue to operate in Manitoba, and that Dr. Robinson has provided no data to support his speculation concerning what specific lenders would continue to operate and what the respective market shares would be. The Board has no evidentiary basis for trusting his conclusions.

The CPLA submits that the recommendation of Dr. Gould represents a more appropriate maximum which allows efficient operators of all sizes to continue to offer services in Manitoba, and he's given you his range.

We, not surprisingly, say the higher end of the range at twenty-three dollars ($23) is where the Board should end up, because that will allow the maximum amount of competition as concluded by Dr. Gould.

Now if you wanted to break -- I can keep going. I'm just moving to a different subject matter now.

THE CHAIRPERSON: Okay, we'll take a ten (10) minute break now, thanks.

--- Upon recessing at 10:25 a.m.
--- Upon resuming at 10:40 a.m.

THE CHAIRPERSON: Whenever you're ready, Mr.

Foran.

MR. ALLAN FORAN: Thank you, Mr. Chairman.

CONTINUED BY MR. ALLAN FORAN:

MR. ALLAN FORAN: The next area I'd like to then deal with is the second area that the Board was requested to look at in the legislation, and that is the terms and conditions of payday loans.

The payday loan industry first emerged in Canada in the mid-1990s in response to an unfulfilled consumer demand for short-sum, short-term credit which is typically unavailable through banks or other conventional financial service institutions.

The evidence provided to this Board illustrates the wide diversity of terms and conditions pursuant to which payday lenders in Manitoba offer their services. What they have in common is, pursuant to the legislation, they are small, short-term loans, typically a three hundred dollar ($300) advance for a period of eight (8) to -- I'm sorry, eight (8) to fourteen (14) days that coincides with a payday lender's next payday.

A payday loan is not a long-term financial product, but is intended to meet unexpected emergencies or short-term financial needs. These loans are unsecured and are repayable on the payday loan customer's next pay date.

To obtain a payday loan, the payday loan customer will go to a payday loan outlet, provide proof of employment and residence and bank account. At the time of the advance, the payday loan customer will provide the lender with a post-dated cheque or pre-authorized debit of the amount of the loan and the loan fee, which is dated for the payday loan customer's next payday.

When the loan comes due, the lender deposits the cheque or obtains funds through the pre-authorized debit. The payday loan customer does not need to return to the loan outlet to repay the loan. A payday loan customer can obtain a payday loan quickly and without having established a long-term financial relationship as would be required with the bank, trust company, or credit union.

The regulatory regime adopted by the Province of Manitoba will have the effect of adding certain mandatory terms and conditions; more specifically, customers will have a statutory right to rescind a payday loan transaction within 48 hours, excluding Sundays and other holidays, after receiving the initial advance. There'll be a prohibition on a lender from issuing concurrent loans to the same customer.

Extensions, renewals, and replacement loans will only be permitted if they comply with the separate maximum charge set specifically for each such transaction. The disclosure requirements will be standardized and expanded, and payday lenders will be required to post a sign of prescribed size and colour, displaying the content prescribe by the regulation which includes cost or credit information, for an example, a loan of three hundred dollars ($300) with a term of fourteen (14) days.

Many of these requirements are similar to those established by CPLA and its Association Code of Best Business Practices.

For the first time, this additional protection will be available to customers of all payday lenders in the Province, and will assist consumers in comparing prices among payday lenders, as well as between payday loans and other forms of credit. These measures are tailored to address specific concerns and specific potential abuses in these areas, and represents significant change for consumers in Manitoba.

Complying with these provisions will require many lenders to make significant adjustments.

I'm going to move to one (1) of the next factors that the Board is to consider, and that's the circumstances of and credit options available to payday borrowers.

With respect to the circumstances of Manitoba payday loan customers, the CPLA commissioned to Pollara to conduct research specific to the Manitoba marketplace.

They surveyed the attitudes and opinions of a statistically relevant number of payday loan customers in the Province and obtained information regarding their circumstances and use of payday loans.

Pollara is a leading Canadian market research firm which has provided expert advice in numerous regulatory proceedings. For example, and just to be fair -- this is public -- the Consumers Association of Canada has used Pollara and CRTC hearings, for example, in 2006 with respect to polling of consumers.

The findings from the Pollara survey that has been provided to the Board include the following. The average age of payday loan customers in Manitoba is thirty-eight (38) years old. 77 percent of payday borrowers are employed full time. Approximately one-half (1/2) have completed a program of post secondary education at a community college, a university or a post graduate professional program.

Overall household income reported for payday loan customers tends to be either on par with or ahead of the general Manitoba population. Only 13 percent of payday loan customers reported household income of less than twenty-five thousand dollars ($25,000) compared to 28 percent of the general Manitoba population.

Thirty-nine (39) percent of payday loan

customers reported household income in the twenty-five thousand (25,000) to fifty thousand dollar ($50,000) range compared to 30 percent of the general Manitoba population.

And another 39 percent of payday loan customers reported income of fifty thousand dollars ($50,000) or more compared to 42 percent of the Manitoba population with the same household income.

According to the majority of respondents, the attraction of payday loans has to do with the process being quick and easy -- 51 percent -- while about two (2) in five (5) say the most important reason for the requiring of a payday loan is that they have more convenient locations -- 20 percent.

I'm sorry, more statistics. Only 15 percent of respondent payday loan customers indicate that they use payday loans because they have no other alternative sources for borrowing.

Approximately one-half (1/2) of payday loan customers in Manitoba currently have a major credit card, and 41 percent have overdraft protection at their bank.

When asked what they would do if they needed a three hundred dollar ($300) loan for a few days before their next payday, 56 percent responded that they would us a payday advance or payroll loan company, and 40 percent indicated that they would borrow the money from a family member or friend, while 22 percent they would use a bank overdraft protection or a line of credit.

A full 26 percent indicated they would expect to pay ten dollars ($10) or less in interest and administrative charges if they needed to borrow one hundred dollars ($100), suggesting that they have access to lower cost credit.

Customers had high satisfaction levels with respect to payday loans; 83 percent were satisfied with their understanding of the terms of payment requirements of the loan, 79 percent were satisfied with the way they were treated by a customer service representative, 75 percent were satisfied with the overall customer service experience.

The vast majority of respondents indicated that they paid either all -- 79 percent -- or most -- 18 percent -- of their past payday loans back on time.

In response to a request by the Coalition, Pollara provided a cross reference of these figures with annual household income of the respondents.

That cost tabulation, which is at Undertaking number 12, clearly demonstrates that the distribution of reasons for choosing a payday loan rather than another source of financing in each of the income brackets up to one hundred thousand dollars ($100,000) is virtually identical to those of the overall sample.

In other words, respondents from households with incomes between seventy-five thousand dollars ($75,000) to less than one hundred thousand dollars ($100,000) were just as likely as those with annual household incomes below twenty-five thousand dollars ($25,000) to identify the quick and easy process as the most important reason for choosing payday loans in the past.

Respondents from households with annual incomes of less than twenty-five thousand dollars ($25,000) were no more likely to identify the absence of another source of borrowing as the most important reason for choosing a payday loan than were respondents from households with incomes between seventy-five thousand dollars ($75,000) and one hundred thousand dollars ($100,000).

The percentage of respondents who listed bad credit or the absence of a required credit check as the most important reason was in fact the lowest amongst respondents and the lowest annual household income bracket.

The Pollara study supports these conclusions. Payday loan customers in Manitoba have annual family incomes similar to those of the general population; that they are satisfied with their understanding of the terms of payday loans. They understand that payday loans are high-cost loans. They're no less educated than Manitobans, generally. They typically have access to credit options other than payday loans, and they typically pay back most or all of their payday loans on time.

The Coalition had the opportunity to ask detailed questions about the methodology used by Pollara during the IR process, but chose not to do so. Rather than critiquing specific aspects of Pollara's methodology on its merits, the Coalition witnesses confined themselves to vague suggestions that Pollara's evidence may not be reliable because the Coalition witnesses didn't know enough about the methodology used. They haven't provided the Board with any reasonable basis for rejecting Pollara's evidence.

Mr. Marzolini was cross-examined on the process that Pollara followed. He testified that the survey involved a sample of three hundred and fifty (350) Manitobans who had used the services of a payday lender in the province within the preceding three (3) months; page 652 of the transcript.

He further testified that a sample of three hundred and fifty (350) is considered large for the Province of Manitoba; page 682 of the transcript.

He further indicated that the results were accurate plus or minus 5.2 percent, nineteen (19) times out of twenty (20); page 63 -- 653 of the transcript.

And he further testified that the sample was drawn from a base of seven thousand nine hundred and fifty-nine (7,959) records; page 652.

The sample was selected randomly based in proportion on the market share of the companies who provided the records and reflects their regional distribution in Manitoba; page 715.

And what I found interest is with respect to telephone calls, the percentage of not in service dispositions was comparable to that experienced by Pollara in other general surveys. In other words, he tracked through, and followed, and made sure that they could connect with the people they were trying to connect with.

The testimony of the Coalition's witnesses did not identify any flaws with any aspect of Pollara's methodology. Although Coalition witnesses have argued that the Pollara survey should not be relied upon, since it surveyed only customers of CPLA members, under cross-examination, they were unable to offer any suggestions as to how these customers differ for Manitoba payday loan customers generally.

So you may recall the suggestion was made that some how the Pollara survey, because it was specific to CPLA members, was flawed. There was no example as to why there would be a flaw as a result of that.

Now, significantly, the Coalition witnesses included in their own evidence results of the 2005 study prepared -- prepared by Environics, which also surveyed only customers of CPLA.

We submit that the results of the Pollara survey are the most relevant, the most current, and the most reliable evidence before the Board with respect to the circumstances of Manitobans who use a payday loan product.

Now how has this contrasted with what you heard from the Coalition? Well, in its pre-filed evidence, the Coalition relied on three (3) areas of evidence to portray to the Board who a typical payday loan customer in Manitoba was.

Statistical evidence from other surveys, maps aimed at providing spacial relationships between payday lending outlets in the City of Winnipeg, and the result of a mystery shopping exercise conducted by two (2) of the Coalitions witnesses and a third individual, whose identity was not disclosed.

The statistical evidence provided by the Coalition concern that demographic characteristics of payday loan customers comes from three (3) sources; SFS, FCAC and the Environics study, all of which were completed in 2005.

These studies differ from the Pollara survey in that they're national surveys, not specific to Manitoba. For both the FCAC and the SFS studies, the subgroups of payday customers surveyed were substantially smaller than the Pollara sample -- ninety-two (92) respondents in the FCAC study and approximately one hundred and thirty-five (135) in the SFS study.

According to Coalition Exhibit 38, only six (6) Manitobans were part of the payday loan sample in the FCAC study. Coalition witnesses did not disclose how many Manitobans were included in the SFS payday loan subgroup.

More caution. In the case of the FCAC study, the report specified a margin or error of plus or minus 10.3 percent for questions relating to the subgroup identified and specific cautions that, quote:

> "Margins of error among regional and demographic subgroups are higher throughout the survey."

That's on page 2 of the FCAC report.

In the case of the SFS study, no accuracy measure were provided in relation to the subgroup data on which the Coalition relies, but, interestingly, the report indicates that Statistics Canada considers estimates based on a sample size of less than thirty (30) observations unacceptable, and cautions users to flag these estimates with the following warning.

So you heard a lot about Stats Canada. Here's what Stats Canada says you must indicate if you're using the statistic and it's a subgroup of thirty (30) observations, quote:

"Please be warned that these estimates do not meet Statistics Canada quality standards. Conclusions based on these data will be unreliable and most likely invalid." End quote.

That's page 19 of the SFS report provided in response to CPLA Coalition 165, page 19.

Where does that leave us? The Coalition has not presented any reliable statistical evidence regarding the circumstances of payday loan customers in Manitoba, period.

Actually, I want to -- I want to just contrast this one (1) more time. Pollara took three hundred and fifty (350) Manitobans that used the service at or about the period of time that we're looking at for the purpose of this hearing.

Mr. Marzolini was cross-examined for almost a full day. His clients include Fidel Castro and Sponge Bob Square Pants. By contrast, we have small subgroups of small groups of Manitobans with huge cautions and warnings from other statistical surveys.

I'll move along. The Coalition also put into evidence maps illustrating spacial relationships between the location of payday loan outlets in the City of Winnipeg and the demographics of surrounding neighbourhoods.

In response to Information Request, the Coalition conceded that if the payday loan outlets in the inner city, all but two (2) are located at or very near principal roads.

Of those outside the inner city, all but one (1) were located on or near principal roads or in other high traffic areas such as Polo Park.

No maps were presented to illustrate the relationship of the location of payday lenders to the availability of commercial retail space, or to the level of rental payments at such space commands in various neighbourhoods within the city.

Coalition witnesses mapped the location of bank branch closures in relation to payday loan outlets, but provided no information with respect to the location of financial institutions that remain in operation to provide services to customers in Winnipeg neighbourhoods.

We submit that the mapping evidence provided by the Coalition does not provide the Board with any reliable information concerning the financial circumstances of payday loan customers or their ability to access other forms of credit.

Mystery shopping. This exercise was conducted by Coalition witnesses and focussed on a customer understanding of the charges, terms, and conditions associated with payday loans. The exercise involved three (3) mystery shoppers, and in the case of consummated loan transactions, only one (1) individual posing as a customer.

Dr. Buckland was careful to indicate that the mystery shopping was structured as qualitative rather than quantitative research, and it was aimed at a deeper understanding of a smaller number of transactions rather than as a measurement that reflects the experience of borrowers generally.

He indicated that his team had provided the Board with a valid snapshot of consumer experience; page 4394 of the transcript. He further suggested, Dr. Buckland, that the combination of telephone calls to lenders and a small sampling of personal visits by three (3) individuals lends some level of representativeness to the mystery shopping results.

Ms. Friesen herself described her findings as a snapshot of these different experiences that can be used to perhaps represent a particular portion of the customers that would shop payday loans and to supplement the more objective part.

It is clear, however, that the experience of the three (3) mystery shoppers as bona fide borrowers, and that of Ms. Friesen in particular, is at odds with the responses obtained in the quantitative study completed by Pollara. That study included the observations of three hundred and fifty (350) actual payday loan customers.

With the greatest of respect, while the Coalition witnesses and Ms. Friesen may not have been satisfied that they adequately understood the terms of the four (4) transactions they entered into, the Pollara study indicates that 83 percent of actual Manitoba payday loan borrowers were satisfied with their understanding of the terms of their payday loan.

The results of the mystery shopping exercise are simply not representative of the larger population of payday loan customers in Manitoba.

I'm going to move ahead. The regulation of payday lenders in other jurisdictions. As part of the evidence in this proceeding, the CPLA provided the Board with an overview of the current status of payday loan regulation across Canada.

Manitoba was the first province to convene regulatory hearings to set the maximum permitted charge for payday loans. The Coalition has presented the Board with some information concerning US experience and is now suggesting that the Board should base its order on US precedent.

The information that was provided was placed into evidence as a summary table purporting to set out regulatory regimes in force in various US states. None of the Coalition witnesses professed familiarity with these regimes.

Dr. Robinson, the only Coalition witness who referred to regulatory caps in place in US jurisdictions, repeatedly -- repeatedly acknowledged his lack of expertise in this area. Following cross-examination, Dr. Robinson conceded that the information he initially provided to the Board concerning regulation in at least one (1) state was incorrect.

The Coalition's evidence points to numerous relevant differences between Canada and the United States. And the reason I -- the reason I need to do this is as far as I can understand it -- maybe this is day twenty-five (25) of the hearing, twenty-four (24), I'm going to be pretty close -- but as far as I can understand it, up till yesterday, we were focussed on Dr. Robinson's model and recommendation for a rate, and then as of yesterday the Coalition's now indicated that the Board should -- should now implement a rate and be guided by the US experience.

So -- so let's talk a little bit about the differences, please. Demographic studies of US payday loan borrowers and US consumers generally show that unlike in Canada ethnicity is a significant predictor of the use of payday loans, and that a significantly greater proportion of Americans than Canadians are unbanked. Dr. Buckland provided that information to us through direct and cross-examination.

The payday lending industry is more mature in the US than it is in Canada and has been the subject of a greater volume of research and academic study.

I actually, before the Hearing, didn't know that the Federal Reserve Bank of any particular state spent a lot of time on it, but the studies kept coming and coming and coming. And they -- they obviously are very interested in what's happening down there and there's studies and counter-studies and critiques and there is a body of academic literature but that is US oriented.

It was conceded that there's a far greater market concentration among payday lenders in Manitoba than in United States. Regulatory regimes, including maximum permitted charges, vary widely from one (1) US jurisdiction to the next, and there is less market concentration in the banking sector in the United States than in Canada.

Now, again, part of what I'm doing is -- is cautionary, because I've already indicated to you freely that this whole Hearing wasn't focused on the United States; it's information that we believe has been placed before you but there wasn't one expert on the US regulatory scheme, or the models, or the various states that's been provided by any of the parties.

But -- but here's one (1) of the cautions. The evidence that has been presented, regarding the US regulatory regimes, falls short of clarifying any of the following:

The cost of providing payday loans in various US jurisdiction compared with the cost of providing payday loans in Manitoba; for example, in relation to tax structures and the level of wages and benefits provided to employees.

Whether state legislation that expresses maximum charges as a percentage requires the permitted maximum to be calculated on the principal loan amount, or on the total amount the customer must repay, including charges.

The impact of permitted rollovers at the same regulated rate as initial loans in some US jurisdictions, in differences amongst those states with respect to the maximum number of rollovers permitted.

The impact that restrictions on the initial loan term or on the maximum amount that may be borrowed have on the cost of providing payday loans, and the manner in which payday loans are used by US consumers.

The levels of market concentration and price competition amongst payday lenders at the time when regulatory limits were put into place.

And, I think very importantly, the availability of mainstream financial service alternatives at the time when current regulatory limits took effect.

What the limited evidence the Board's received does disclose is that there is a patchwork, a different and widely divergent regulatory approaches.

With the greatest of respect and, again, this is in within your knowledge, not mine, but I'm going to suggest to you that the Board has virtually no information regarding the social and market factors to which the various US state governments responded to in adopting their different regimes, and extensive expert evidence would be required to enable the Board to properly consider the context within which each state set its maximum rates.

We submit the Board does not have any evidentiary basis to support the conclusion that the approach taken in the more restrictive US jurisdictions would be just and reasonable or even workable for Manitobans.

Other factors. The Board was provided with considerable evidence and submissions relating to competition. Both the Coalition and Intervenors representing industry participants clearly consider the effect of competition amongst credit providers in the

Manitoba market a relevant consideration in the exercise of your mandate.

The various Intervenor representatives that have spoken to the payday loan industry in Manitoba have provided ample evidence of competition in the marketplace. The witnesses for the Coalition have noted that the Manitoba payday loan market is highly concentrated, allowing dominant firms to influence prices and output, and submitted that while there may be competition generally there is insufficient price competition, and that competition can therefore not be relied upon to discipline lenders who charge excessive prices.

The Coalition provides comments on the dangers of an oligopolistic market structure, but we say that they are misplaced. There's no evidence of collusion or anti-competitive market practices.

Significantly the rates charged by the firms with the largest market share are among the lowest.

The Coalition's position on price competition is based on the erroneous assumption that payday loans are a homogenous product. The Board heard evidence of a variety of ways in which payday lenders differentiate the services they offer, including the lending criteria they use to determine whether and how much they will lend to a particular customer.

Failing to take such differences into account will result in an order that precludes customers with higher risk profiles, for example, from accessing payday loans.

So I'd like to stress that risk factor, we think or submit, is something that provides for a product that is not homogenous. We've got price differences, we have got risk differences and we've got service issues.

We can debate whether hours are longer or shorter or service is better or poorer; in fact the Coalition cross-examined and in fact got the mystery shoppers to say consistently that the service they received was excellent, for the most part. But those are examples we submit of things that the Board can consider in determining this is not a homogenous product.

Dr. Simpson, who provided evidence for the Coalition as to the competitiveness of the payday lending market in Manitoba, acknowledged that the current price dispersion amongst different payday lending operators in Manitoba is largely a measure of customers' inability to readily compare prices between different lenders.

The standardized disclosure required under the new regulations will significantly alleviate any problems that may currently exist in this area. All customers will be able to compare the cost of a typical payday loan, both as a lump sum and expressed as an APR, to facilitate the comparison with other forms of credit. This can only heighten price competition.

The recent appearance of Advance America in the Manitoba market, coinciding with the commencement of the Board's hearing process, suggests that the legal uncertainty that currently surrounds the application of the Criminal Code to payday lenders acts as a barrier to new entrants. The Board's order will remove that barrier, and provided it does not set the maximum cost of credit too restrictively is likely to increase competition amongst payday lenders in Manitoba.

Even if the Board accepts the Coalition's position that there is currently insufficient price competition among payday lenders, there is ample evidence to conclude that the regulatory steps taken by the Government of Manitoba are likely to increase the level of price competition.

The Board's order, for example, can either counteract that effect by introducing a new barrier to entry in the form of a maximum that discourages new entrants and results in further market concentration, or it can permit an increase in competition to occur.

One (1) of the submissions that was made was through Credit Counselling Association of Canada. And in his overview to the Board, Mr. Hannah told the Board that a maximum that allows for competition and market forces to operate offers better protection to consumers than lowering the fee so dramatically that reasonable operators are driven out of business.

Just as an aside, Mr. Hannah, for Credit Counselling, endorsed the recommendation of CPLA in his presentation to the Board.

Who else is offering the product? Mainstream financial institutions, banks and credit unions, have been conspicuously absent from these proceedings. They have provided no evidence to the Board that would allow the Board to conclude that they are currently offering credit products comparable to payday loans, or that they intend to do so in the near future.

What is clear is that whatever the bank's ability is, in relation to providing alternatives, that ability will not be affected at all in any way by the Manitoba legislation or by an order of this Board.

No product offered by a federally regulated bank will qualify for the criminal code exemption in respect of payday loans, nor have any of the Intervenors presented evidence that would support the view that by issuing its order or by issuing any certain by type of order, the Board could influence the bank's cred -- credit product offerings. While, all may agree that the banks have a social responsibility to serve all Canadians, that agreement is irrelevant if the service isn't provided.

Witnesses for the Coalition has suggested that credit unions in particular could provide alternative credit options for consumers, but none of the expert witnesses called by the Coalition conducted their own study of the issue themselves, or were in a position to offer firsthand evidence based on their own review or analysis of available data. Instead, they relied heavily on a document prepared by an individual who was not called to testify and whose qualifications or lack thereof were not disclosed and could not be questioned upon.

Specific examples were provided to the Board by Coalition witnesses, with respect to credit unions, and that included Alterna, Van City Credit Union, Desjardins and Assiniboine Credit Union. Of these, only the Assiniboine Credit Union operates in Manitoba.

We observe that the secured credit card which Assiniboine Credit Union appears to offer is not comparable to a payday loan because it requires the borrower to post and maintain security to cover any indebtedness incurred using the credit card. By contrast, payday loans, under the Manitoba legislation, are by definition unsecured.

The Coalition provided no date on the current status of any alternatives considered by Alterna Credit

Union, and the evidence suggests the credit options offered by Van City and Desjardins also incorporate aspects, such as forced savings, that would provide the lender with security for the borrower's indebtedness.

Significantly, secured loans and credit in the form of overdraft protection or credit cards is specifically excluded from the statutory definition of a payday loan. As a result, the Board's order will neither prevent credit unions from providing such products on a broader scale, nor give them an incentive to do so.

There is no legal impediment now for credit unions to offer such alternatives to payday loan customers generally, and the fact they are not doing so, we submit, reflects the reality that their current credit processes are incompatible with an approach that would enable them to truly compete with payday lenders.

Many of the Canadian examples identified as potential alternatives to payday loans appear to be in the nature of community service or outreach initiatives aimed primarily at those who do not have a credit account -- I'm sorry, do not have a bank account or any meaningful relationships with the financial institution. The target population at which these programs are aimed is not representative, we submit, of the average Manitoba payday loan borrower.

Evidence of what is available from US credit unions which operate under different regulatory regimes and in different markets is irrelevant, unless there's a real basis for concluding that similar developments will occur in Manitoba within the very near future. No such evidence has been presented to the Board.

One (1) of the alternatives open to payday loan customers in Manitoba is the use of pawn shops. And they've seen their volume of business decline since the advent of payday lenders; we know that from Mr. Glass' presentation of December 18th.

Coalition witnesses testified that pawn shops are more frequently relied upon by consumers with lower or less stable incomes. Page 35 -- I'm sorry, 3553 of the transcript.

The evidence provided by Mr. Norman Glass was that the amount charged by pawn shops, including mandatory storage fees, is typically 25 percent of the amount loaned, and a further 25 percent for each extension, page 3257.

The CPLA submits that the cost of consumer -- to consumers of using this alternative, which includes storage charges, is higher than the fees currently charged by many payday lenders in Manitoba. In addition, pawning requires the customer to pledge personal property of a value that significantly exceeds the amount of the loan.

The Board heard evidence, for example, that it is not uncommon for consumers to pledge vehicles, and that 20 to 25 percent of pledged merchandise is never reclaimed by it's owners. Page 3258 of the transcript.

If the Board sets a maximum that has the effect of significantly reducing the number of payday loan outlets in Manitoba, or prompting lenders to adopt strict -- stricter lending criteria, in an effort to reduce bad debt losses, we can speculate the pawn shops, not credit unions, will be the alternative for lower income borrowers.

I'd like to speak for a few minutes on -- on structure, the structure of the Board's order. In exercising its mandate to establish the maximum cost of credit, the Board may set a flat rate or establish a formula or tariff for determining the maximum cost of credit.

The CPLA submits that fixing the maximum by determining a flat fee per hundred dollars ($100) is preferable to a tiered or sliding scale structure for a number of reasons:

Simplicity. The Board has heard much evidence in this proceeding regarding the importance to consumers of a clear and understandable fee structures that facilitate price comparison. The CPLA submits the same considerations apply to setting the maximum cost of credit.

Consumers should be able to tell whether the rates they are being offered are in compliance, as should every service provider. And they should be able to do so without resorting to a complicated formula involving several calculations.

I don't know why it just occurred to me, but Dr. Robinson indicated on several occasions that it was mind boggling, some of the numbers, and some of the things that he had to do, and -- and -- I don't know why it's a favourite quote of mine, but Dr. Robinson advised the Board that he would attempt to dare to do calculations no other expert would.

And I'm going to suggest that Dr. Robinson, as an educated professor, who indicated to you that in some instances trying to figure out the rate structure in and of itself, he, as well, said simpler is better.

Dr. Buckland recognized the benefits of a simple dollar per hundred (100) rate structure. A simple flat rate structure will facilitate compliance and enforcement. The CPLA submits that this is in the public interest from the point of view of the circumstances of payday loan borrowers, the cost of providing the service, and the cost and ease of enforcement.

Maybe that's again, one (1) reason why I'm surprised about the submission we heard yesterday from the Coalition, where we went back to a possible tiered rate structure. It -- it again, seems to me, to not be in conformance with the evidence that's actually been produced to the Board.

Suffice as it may, the Board will make its determination. We are encouraging something that is simpler.

Now that was reason A. There's other reasons though.

Higher chargers for low income borrowers. Under a tiered structure that reduces the amount that may be charged, as the amount borrowed increases, lenders will be forced to increase their charges for smaller loans in order to remain viable. Customers with higher incomes are the borrowers that can qualify for higher loans, and conversely, those with lower incomes will only qualify for smaller amounts.

As a result, with a layered rate, borrowers with lower incomes who generally obtain smaller loans are paying more for credit than those with higher incomes. I'm just stating the obvious.

Another reason: multiple loans at higher cost. Lower rates of return for loans -- for loan amounts in a second -- second and subsequent tiers will result in lenders adopting more stringent lending criteria for larger loans.

If, for example, a lender can charge 26 percent of the loan for the first three hundred (300) and 20 percent for the next three hundred (300), the lending criteria will be more restricted for that portion of the loan over three hundred (300).

Take any example where a borrower requires six hundred dollars ($600) for a car repair; if the borrower qualified for a six hundred dollar ($600) loan the cost would a hundred and thirty-eight dollars ($138).

However, in many cases based on credit history, a borrower may only qualify for a loan up to three hundred dollars ($300). The borrower requires six hundred dollars ($600) for the repair and is therefore forced to take out two (2) payday loans at a higher rate. The cost is a hundred and fifty-six dollars ($156).

If the rate was set at twenty-three dollars ($23) per hundred the total cost of the loan would be a hundred and thirty-eight dollars ($138). As a result, we submit, a layered rate hurts consumers.

One (1) of the options put forward by the witnesses for the Coalition involves increasing the amount that may be charged to a first-time customer in recognition of the fact that the costs involved in providing service to a new customer tend to be higher than those providing service to a repeat customer.

Structuring the maximum cost to credit in this manner would tend to require some smaller or otherwise higher cost operators to implement a first-time customer fee in order to earn a reasonable return. Rather than fostering competition among payday lenders, such a fee structure would discourage comparison shopping by consumers. It would inhibit the volume growth that smaller operators and prospective new entrants may require in order to become more efficient or to successfully enter the market.

We're close to the end. I do, and I would like to comment on a couple of the other things the Board is being asked to do through the legislation.

The first is to set a maximum fee for extension, renewals and replacement loans. And on that point I just want to, again, bring to your attention that the CPLA has not made a formal recommendation to the Board. Since the term of any extension, renewal or replacement is not regulated by the Act or the Regulations, the CPLA submits that it would be appropriate to structure this maximum to include an interest component.

In addition, the CPLA submits that there should be a fixed fee that is capable of providing lenders with an incentive to extend an existing loan rather than treating the borrower's failure to pay on the original due date as a default.

Maximum fees on default. The Board is required to fix the maximum Manitoba rate that may be charged, required or accepted, in respect of a payday loan customer default. The CPLA believes there are two (2) elements that the Board should address:

First, reimbursement of administrative time, charges, cost and expenses incurred by the lender, where the customer defaults.

And secondly, interest on the outstanding amount from the date of default until the date of payment.

The CPLA has currently set for its members, the maximum amount that may be charged on default, at forty dollars ($40), plus interest at an effective annual rate of 60 percent for the first thirteen (13) weeks and 36 percent thereafter.

The CPLA submits that the maximum fee of forty dollars ($40) is consistent with NSF fees currently charged by major banks in Canada and that the effective annual interest rate of 60 percent per annum, currently permitted under the criminal code, would be an appropriate maximum for the interest component of amounts payable on a loan that is in default.

I am going to conclude by coming back to the CPLA's recommendation and where we started. The Board's order will the be the first of its kind in Manitoba, quite possibly in Canada. It will govern the payday loan industry in the province for the next three (3) years. Regardless of what adjustments are made three (3) years from now any lender who is unable to operate within the terms of the Board's first order in the interim will no longer be in business.

Some lenders will have little time in order to make significant changes to their business operations. Many may have insufficient resources to commence and participate in a hearing for an adjustment within the -- the three (3) year period; for example, a special request to account for inflation or increased costs.

The CPLA submits that these are factors that the Board should consider and encourages the Board to exercise some caution. The CPLA recommends that the Board set the maximum cost to credit as a flat rate of twenty-three dollars ($23) per one hundred dollars ($100) borrowed, plus an adjustment for regulatory costs of eighty-eight (88) cents per hundred dollars ($100) to account for licensing and bonding fees, as is set out in the evidence of Deloitte & Touche, plus an allowance for the next three (3) years, plus an allowance for the participation in this regulatory hearing.

This recommendation is consistent with the position the CPLA has taken throughout this proceeding. And again I want to stress, unlike the Coalition who have discarded their experts the CPLA recommendation follows the conclusions of its expert, Dr. Gould.

I'm gonna be shameless for a moment, but I recall one (1) year ago appearing before this very panel, and making a presentation that encouraged the panel to not set a fee limit that was so tight that it couldn't encounter unanticipated circumstances. And the wisdom that came back in response was good regulation allows for flexibility and that's -- stuck with me. Yeah, and I -- I think that that was a wise statement -- flexibility.

The maximum recommended by CPLA will require a considerable number of operators to improve their business practices or to exit the business. The CPLA's recommendation will allow efficient operators, as we defined efficient -- not a monopoly, but somebody that is out there working under the maximum fee schedule -- it will allow them the opportunity to recoup their operating expenses and earn a fair return.

The CPLA recommendation will ensure that payday loan services remain a credit option available to customers throughout Manitoba as we submit is envisaged by the government of Manitoba. It will allow new companies to enter the marketplace. It will provide payday lenders with an incentive to become more efficient and to increase their per store volumes and to lower their costs. And we believe it will protect consumers against excessive rates.

With all that in mind we submit that that is the just and reasonable rate, having regard to the circumstances.

Two (2) small point. I have referred to the cost of the regulatory process. CPLA intends to make a submission on costs. We -- we indicated that in our intervention application. We've provided you with some sense of the -- the enormous costs that have been incurred through to November of six hundred and fifty thousand dollars ($650,000), give or take. And the costs have not slowed down since then I can assure you, and that at some point in time when appropriate and when the Board asks, we will be making a submission with respect to reimbursement.

And I would, as a salutation, like to thank the Board for allowing the intervention, allowing us the opportunity to participate. It has been thoroughly fascinating.

We appreciate the courtesy the Board has shown to CPLA and its witnesses. I'd like to thank the Board advisors, the Board counsel, the court report, and my colleagues who have participated. Thank you.

THE CHAIRPERSON: Thank you, Mr. Foran. Thank you for your participation.

Mr. Hacault, I imagine it would be best to give you an opportunity over lunch to consider Mr. Foran's comments. Are you ready to go at 12:30 or 1:00? Your choice, sir.

MR. ANTOINE HACAULT: If you wish we could we --

THE CHAIRPERSON: Taking into account your travel times.

MR. ANTOINE HACAULT: If you wish we could take a five (5) minute break and I could go until lunch and then -- it's up to the Board. I'm ready to proceed, so it -- whatever is convenient to the Board. And while the Board is making the decision, I --

THE CHAIRPERSON: We'll --

MR. ANTOINE HACAULT: -- also like to take the opportunity as my colleague has to thank everybody, Board counsel, Board secretary, all Board staff, the court reporter, all my colleagues, and everybody who participated in this Hearing, also the Consumer Group people who have been assisting every day and representatives of the CPLA, and of Rentcash, of whom again Nancy Bland and Mr. Reykdal are present. Thank you.

THE CHAIRPERSON: I've just conferred. I think our preference would be to hear your closing statement straight through. So what we're gonna do is take the lunch-break now and come back at 12:30 and then you could commence.

So I hope that works for everyone. It won't give you a lot of time to look for a restaurant, but I'm sure there's not a lot traffic out there right now.

--- Upon recessing at 11:34 a.m.
--- Upon resuming at 12:35 p.m.

THE CHAIRPERSON: Okay, Mr. Hacault. Do you want to begin your closing statement now?

CLOSING STATEMENTS BY RENTCASH:

MR. ANTOINE HACAULT: Yes, thank you, Mr. Chairman and Members of the Board. To start off, I'd like to just put this thing into context.

Rentcash, for example, charges twenty-five dollars ($25) per hundred (100) on some types of loans and close to thirty dollars ($30) per hundred (100) -- it's twenty-nine eighty-seven (29.87) -- on its signature loans.

And the evidence is that it earns about half of what the banks do. So what's the fuss about? You have the three hundred dollar ($300) loan after the regulations, you'll have posters, and at Tab 8 of your material, I've shown you some of the font -- the word processing doc --

program on my computer only went to seventy-two (72).

It's going to require a font that is one forty-four (144) -- payday loans are high cost loans. What's all the fuss about not understanding it. In my cross-examination I said, Well, you know, it's going to be on the poster that costs you three hundred and sixty dollars ($360) or three hundred and ninety dollars ($390). What level of education do you need to understand the difference between those two (2) amounts?

I would suggest to this Board, not very much. I don't think you could find very many people who take payday loans, if any at all, who wouldn't understand the difference between three and sixty ($360) and three hundred and ninety dollars ($390).

Now again, what's the fuss about, because there's no general outcry by the consumers, there's no complaints flooding into the Consumers Bureau.

The survey show that clients are very satisfied with the service they get. They know their options and there seems to be some erroneous assumptions out there. My colleague, Mr. Dawson, preferred to -- I wouldn't have dared go -- go into the mother-in-law thing because -- but there are problems, and I'm sure the Board -- I have sat as a Board member, are cognisant of them.

When we go out in the population and I speak to people they say, oh you prey on -- you're acting for the people who prey on the poor.

Well, that's the evidence. In fact, when I cross-examined, you may remember, that Dr. Buckland said, No, that's not the profile of payday loan consumers. They go to the pawn shops, those -- that profile, but he's agreed on cross-examination that it's really the middle class people and there's some lower income and some higher income people in there.

I think part of the fuss is the press releases that come out; the high APRs and the suggestions and the implications in the media -- and this is fostered by the consumers groups -- that payday loans are directed to low-income people only, and they're charging outrageous fees -- thousands of percent.

Well, even Dr. Robinson, in his report to Industry Canada, says APRs are really meaningless for a short term loan like this.

So, I guess, in a sense, the consumer groups are perhaps influencing banks and credit unions not to provide the product. That wouldn't surprise me. Why would I, as a manager of a bank and a manager of a credit union, want to offer a product where I'm going to be criticized by consumers group as preying on the poor and charging outrageous fees and being unethical about it? Because the ethics were raised.

So, in that kind of general context, we have presented evidence as to what the purpose of introducing this legislation was, and I'd like to get into that presentation. I won't be repeating what's in this volume. I will be highlighting certain parts of it. It doesn't mean that I don't think the other parts aren't important, some of them may have been covered by my colleague so I won't repeat those to the extent that I can avoid doing that.

But the one (1) thing that's on the first page and nobody has really talked much about is that you're going to be setting a maximum for loans -- and this is in paragraph 1 -- the loan is for fifteen hundred dollars ($1,500) or less and the term of the agreement lasts for sixty-two (62) days or less.

Why is that important? Because you'll see in my presentation that there is different products out there -- or there are, rather -- and some of them are longer term loans, and not much has been said about those. They haven't been analysed by anybody, and the only evidence on those loans comes from Rentcash. It's the signature loans for people who earn the monthly wage, and there was a description of the various professions that are customers of Rentcash, for that particular product.

And the evidence, unchallenged in any way, is that this is a higher risk product, there's higher loan losses and it has been priced accordingly and the price difference is nearly five dollars ($5) per hundred.

Now, it leads me also to a general theme, is that the one thing that surprised me in this hearing was that the Coalition, which is comprised of consumers groups, didn't speak to the consumers. We had no consumers testify here. We had no surveys of the consumers by the consumers groups. The surveys of the consumers groups were conducted by the CPLA and by Rentcash.

Now is that because they didn't want to hear that consumers are happy with the product and want the product? I don't know. But they didn't ask the people who use the product, and that seems really odd to me, because if you're a consumer group, why would you not talk to the people who are going to be affected by the decision of this Board?

The other thing that seemed really odd to me is in presenting evidence to this Board, none of the experts presented by the Coalition took time to meet and speak to management of the payday lenders.

As I've indicated in my introductory remarks, the profits of Rentcash don't send out any alarm bells. Why should they? They're half of what banks generate.

But nobody has sitten -- sat down with Rentcash, or any other company, to say, Well this is where you should cut costs, this is what you should do. And, in fact, you may recall when I asked the question of Dr. Robinson, when he's assuming these percentage of loan loss rates, I said, Well, can you give me a list of the things I would have to do to achieve that loan loss rate? And he couldn't answer. He couldn't answer, not because he didn't want to; it's because he really knows nothing about this industry.

And yet, the Coalition has asked this Board to make a leap of faith in somebody who knows nothing about the industry, and fix a maximum rate -- and I say a maximum, not a specific rate -- that will effect the industry.

The Chairperson asked Mr. Robinson, you know, what he would do if he was thinking about investing in that business, and he said, I'd put a -- I don't know his exact words, but there is a risk premium there.

So he recognizes that its risky, and yet, even his model makes no mention or really doesn't recognize that. He wouldn't do it himself. He wouldn't put his money where his mouth is, but he's asking the Board, in my respectful submission, and this is not a scare tactic, to say, Believe me, I think I've got it right. I've changed my mind five (5) or six (6) times, but this time I've got it right.

And I don't know -- and I'll refer to some pieces of evidence -- how many people are going to be affected by this. I can't tell you that. I can't tell you why I think they're inefficient, how they could change their service, but accept this model.

So I'm gonna go to points in my written presentation. At page 3, paragraph 9, I simply restate that the Coalition rejects the recommendations of its own expert and proposes a cap rate of approximately fifteen (15) per hundred (100), ostensibly on American experience. And -- and my colleague, Mr. Foran, has spoken about the American experience. I'll have a couple extra comments, but there is no evidence and no analysis and no support on which to make a decision based on the American experience.

Next, it brings me to the recommendation by Dr. Robinson. And in paragraph 10 of my presentation, I just refer to some of the huge variances which have occurred in his evidence.

He starts with a report to Industry Canada, and I'm submitting that he was pretty sure that we weren't going to see that report. He was pretty surprised when we saw it. And I was pretty surprised at what he said in that report.

And so I'm not particularly surprised that he said, Whoa, I didn't think it was gonna be presented to this Board, because in there he starts with a range of eighteen dollars ($18) per hundred (100) to twenty-one dollars ($21) per hundred (100) -- and that's going back nearly three (3) years now -- plus interest. And he acknowledged in that report that that would knock out people in the industry.

Then he gets retained by ACORN, and we've heard some evidence on how aggressive they are. They really don't like the industry, they don't want it.

And, lo and behold, he goes down to ten dollars ($10) a fixed fee irrespective of the amount of the loan. So if you had a five hundred dollar ($500) loan, you would only charge ten dollars ($10) plus interest.

How can somebody who relies on public financial statements -- has them available anyways -- and Ernst & Young. come up to such huge differences?

It suggests to me that there is no real independence. His opinions and recommendations change based on who hires him and what he thinks those people want to or need to hear.

There is absolutely, in my respectful submission, no other plausible justification for jumping from twenty-one dollars ($21) per hundred (100) to a ten dollar ($10) flat fee, irrespective of the amount.

Next, this leads me to the CPLA proposed rate which we now know is being recommended at the higher end of the range that was initially presented by their expert, and I'm on page 4, paragraph 11.

In cross-examination, I believe I demonstrated that there were -- are problems with this data. Firstly, it's approximately four (4) to five (5) years old, if you look at the data that was analyzed as opposed to the report date, with -- which both Mr. Reykdal and Mr. Sorensen testified do not reflect current expenses. In fact, Mr. Sorensen, I think, said that he had to raise his fees by five dollars ($5) to accommodate what was happening in that time period.

It did not rely on Rentcash information to arrive at his recommendation.

Secondly -- and this is point "B" -- it would also result -- and this was, I believe, explained by Mr. Reykdal -- Money Mart losing money if its payday loan product was not subsidized by cheque cashing revenue.

And we've heard, in the course of this hearing, that the cheque cashing revenue has been reducing over the years. Significantly, also, it was conducted in a rollover environment. And Mr. Reykdal explained a significant adverse effect which dropping a rollover product had on their revenue stream and corporate value.

It only analysed a very small sample of

corporations operating in the Manitoba market. It is skewed, in my respectful submission, towards the costs of the American conglomerate operating in Canada as Money Mart.

It does not allow room for product differentiation, and that's a theme that I brought up often in my cross-examination, if you recall. For example, it doesn't allow for longer-term higher risk, fourteen (14) day to thirty-one (31) day payday loans. And it does not allow for payday loans to clients with higher risk profiles.

And I took the witnesses through some of these items, but seven (7) out of the nineteen (19) companies surveyed, including the largest volume store which was over $5 million in volume, had costs which exceeded the twenty-three dollar ($23) rate cape.

So you've got nearly half of that sample wouldn't be able to operate within that rate cap based on current operations, and you've heard, at least in the industry report, Dr. Robinson say, I'd be hard pressed to see what people have to do to cut costs.

Because, I think he acknowledged that there are different risk profile people being served.

Again, if the twenty-dollar rate had been adopted, you have eleven (11) out of nineteen (19) that were surveyed that had costs at that time in a roll over environment that exceeded that twenty dollar ($20) amount.

Dr. Gould also ignored the Deloitte & Touche analysis in coming up with his recommendation. The only thing he took from that report was that costs had increased. But, based on the twenty-three dollar ($23) rate cap suggested by CPLA, each and every company that was analyzed by Deloitte and Touche would no longer be able to recover their operating costs.

Mr. Foran mentioned the exact numbers. There are approximately twenty-four (24) something per hundred (100) to about thirty dollars ($30) per hundred (100).

Another criticism I have of that report and the rate was that there was no evidence provided on how many customers would no longer receive a service based on the risk profile.

And finally, and this is at Tab 6, Mr. Stan Keyes admitted in the Nova Scotia hearings as to providing an over zealous opinion when saying that charging over twenty dollars ($20) per hundred (100) was too much, and the reference is at Tab 6. I won't go through it.

I'll go through all the reasons as to why Rentcash believes that its presented a case for its maximum amount. And before I do that, much has been said by the Coalition, and this is very fundamental to their position, that there's no competition.

And I'll admit, candidly, there's been so much paper here that I only read this morning the document which was presented by Mr. Byron Williams entitled, "Objectives of Consumer Information on Payday Loans." That was part of the documentation he provided yesterday.

And on the second page of that document, and I'm quoting:

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

Now that's a statement, and where does the Coalition want that statement that this is a competitive industry? It wants it in a package that is going to be given to every consumer that comes to the payday lender.

Now that again surprised me, because I thought the Coalition's position was that there wasn't competition. And now' in writing' presented to this Board as a recommendation' they want a statement which is totally contrary to what they were trying to tell this Board. Again, a matter of convenience.

I'll leave the Board to decide on that issue, but again. a statement this is a competitive industry. And that, in fact, is consistent with all the evidence that Rentcash and others have put in front of this Board.

I'm on page 5. I do want to go over, in some detail, the order. And I do this now because there has been a lot of thought process put into this suggested order by our client. And the summary of the proposal is at page 5, but the proposal it -- itself is at Tab 1 of these documents.

First, it is a maximum, and there is nothing in the evidence before this Board to suggest that there's any collusion. If there would be, there's the compet -- Competition Bureau. There's nothing to suggest that people won't continue to operate under the current rates. As I said, there is no overwhelming consumer outcry; everybody is satisfied, by and large, with the product and the witness of -- witnesses of the Coalition agree it's a needed service.

So in that context, do we have to be concerned and scared about telling the public we're going to set a maximum of 37.5 percent of the value received? That amount takes into the -- into account the regulatory costs -- which I have the exact numbers in the brief, but it's seventy (70) cents to about two dollars ($2) per hundred, depending on the store volume.

That amount -- and I'll get into further detail about that -- was essentially the same as what Dr. Clinton proposed. It allows the product differentiation, and I'll get to why I think you don't have to be concerned about setting that rate.

I think it -- the message to this Board, to the public -- you're protecting the public -- the Public Utilities Board -- is that there are misconceptions about this industry. There aren't huge profits, and if this was a utility -- if Rentcash was a utility -- we'd be here looking and dissecting it and saying, Well, is there a better way to offer the signature loans which costs you about thirty dollars ($30) per hundred (100) to provide? And at that you're only making half of the profits of the bank; that's what we'd be discussing.

And, as a Public Utilities Board, the duty is not to put businesses out of business; it's to ensure that reasonable rates are being charged and there's no evidence that there's unreasonable profits.

And also, that the people who want to have the service receive it. There is no compelling evidence to -- to suggest that the consumers who want to have this product should no longer be entitled to it.

Now, there are two (2) components to the first suggestion on the payday loan amount of 37.5 percent; there is also an interest component. The interest component is 59 percent per annum, and that, in my respectful submission, is a desirable component of what should be charged. Because, as I had said in the cross-examination, what happens then, if you take away the interest component, to the incentive to repay?

Do I let the consumer intentionally default and he has nothing to pay over the next ten (10) years? That would be contrary to all notions of financial responsibility and the ability of the financial industry to operate. There has to be a time component to a loan.

Now, with respect to the renewal extension and replacement of payday loans, there are two (2) components. I'm still on page 5 of the presentation.

Firstly, with respect to the extension or renewal of a payday loan, that the charge be the interest rate of 59 percent per annum. There is more detailed discussion at Tab 1.

But, in essence, this is what has been commonly referred to as "rollover loans;" something that's been discontinued by Rentcash, and something that both the CPLA, Rentcash and all the consumers group agree is the real thorn in the side of this industry. It's the recurring, repeating, spiralling nature of rollovers that causes this bad reputation.

Now, under this category, there is a separate category of replacement loans. Why do we choose a separate category? That second category is required because the definition, as I read it and I may be wrong, would also capture a loan that would be made a couple of days after a previous loan has been paid off.

Arguably, it would be a replacement. From a legal perspective, it's my respectful submission, that you have paid off a loan, dealt with that loan in a day or two (2) or whatever later, you choose to do a new loan, they are two (2) distinct loans and should each attract the fee of 37.5 percent plus the interest, as it is for the initial loan.

Next, flipping to page 6, default fees. Dr. Robinson, without any evidentiary support, suggests a twenty dollar ($20) amount. But if we're going to decide what is fair and reasonable, I would suggest to this Board that it is not fair and reasonable that payday lenders should be able to charge a maximum that's less than what the banks charge.

It doesn't mean everybody's going to charge it. Rentcash can decide, as it has, to charge a lower amount. But there's no reason to set the maximum lower than what the banks charge for NSF fees.

Again, for default, it seems to me to be logical that if the loan remains unpaid, that payday lenders not be treated different than banks. Why should the interest not continue to accrue until the loan is paid? If you take out a mortgage, they don't stop saying, Well you don't have to pay any interest because you're in default.

And again, with respect to an initial ninety

(90) day period, and that would allow, I think it would be fair and reasonable, no other charges be allowed during that ninety (90) day period because you want to give both the payday lender and the consumer a chance to work things out without the threat of having additional costs put on this particular loan.

But if they can't work it out in ninety (90) days and start some kind of payment plan, it seems me to be logical that if you have to go to the Small Claims Court -- which ostensibly now will be possible. That if the court orders court costs, which is only a fraction of a recovery of a lawyer's fee, that the company be entitled to what the court orders. So we have suggested that that also be a component that be allowed.

Now, the last portion, and I know this is not by any means perfect, is to allow for some movement across a three (3) year period.

This Hearing has been way too lengthy, way too expensive. We, in my respectful submission, don't want to be here in the interim to have somebody say, Well listen, rents have gone up 40 percent and I need, you know, another adjustment on this, otherwise I won't be able to offer this product anymore.

At a minimum, it would be suggested that the order provide that it be automatically increased as of the date -- the anniversary date -- of the order based on the previous year's Statistics Canada CPI amount, notice of which could be provided by this Board so that there's no uncertainty as to what that number is, and so that the posters, if need be, can be changed or the consumer group investigative people can ensure that there's compliance.

Now, I do want to deal with the -- I'm on to page 7 -- information. Much was said by Mr. Williams implicitly that it was only his clients that were willing to cooperate. Well, I beg to differ. We had sent a proposal to Mr. Williams and tried to entertain discussions with him on the basis that we would share all the Rentcash information as long as the competitors didn't have it.

He wasn't satisfied with that. He made his own proposal to the Board; ultimately the Board ruled on the issue and said that it wouldn't accept confidential information because it wanted everybody to have access to it, and its order speaks for itself.

Now, with the context being put before you, the proposal explained and put before you, I next reach the issues which I believe the Board is called to decide, and they start at page 7.

Dr. Clinton asked himself -- and he's used to advising governments, not only the Canadian government, but other countries -- what's the purpose of setting this maximum? What are we trying to achieve?

And I suggest in this paper that the answer is: To protect the consumer from extreme rates and to allow payday loan companies to continue to fairly and freely compete. And I don't take those out of the air; they're the Minister's words.

The second question I suggest this Board should deal with is what the regulatory model should be for this review and the next review.

And it is my submission to this Board that the Public Utilities cost analysis model is ill-suited to regulate the payday loan sector in which there are a number of firms competing. Rather, an initial elimination of extreme rates followed by monitoring of the payday loan sector can achieve consumer protection, and allow competition of differentiated services and products in the new regulatory environment which is being implemented pursuant to the Act.

And then, what is the just and reasonable rate? So that for the regulatory purpose I do a quite extensive analysis in this document. I suggest that there are three (3) points which can be looked at -- and I'm on page 8 of the paper -- a review of the history leading to the adoption of the legislation, and Mr. Foran has kindly gone through part of that.

Secondly, Ministerial, but I've also added Senatorial statements, because the Senate of the Federal level made some statements.

And, lastly, the applicable legislation which gives direction to this Board.

Now, in the legislative history, in essence I want to leave the Board with this message: It's the payday loan sector who said, We'd like to operate and the Government said, Yes, we agree that we will let you operate.

So the whole discussion by Mr. Williams about the 36 percent doesn't come close to what the Federal Government wanted to do and the Provincial Government wanted to do, because there was a 60 percent limit, and there was a recognition that this was a service which was not being provided by the banks or the credit unions and needed to be provided. We've heard a lot of evidence as to why the reasons might be that people use these services.

Now, the one (1) thing we did hear in cross-examination from Mr. Byron Williams is that the Canadian Payday Loan Association suggested that this Board should have, as its primary objective, maintaining a viable, competitive loan industry. That wasn't accepted.

And why do I point that out? Neither the position of the Consumers Group -- you do not see in this legislation under the criteria that -- that you have -- that you have a social objective and that your primary objective must be to protect the low income people.

Quite apart from not having it there, that would be contrary to any public utility model which requires the same service to everybody.

So that -- flipping on to page 10 -- the Senate proceeded with the amendments to the Criminal Code, also understanding that certain provinces had done their due diligence, and has quoted on that page 10:

> "Had come to the conclusion that fees charged were generally reasonable."

Why is that important. I'm suggesting that the evidence shows the same to be true in this hearing. And they chose not to intervene at all, and to leave competition just work its way through.

Now, they explained that they had very few complaints, and that same evidence holds true for Manitoba. It was explained that out of the four (4) complaints that were received, there were only -- there were three (3) that related to collection practices of a company that's no longer in business.

And mystery shopping, conducted on behalf of the Coalition, showed the experience to be generally positive and service oriented. And I also quote from the Pollara survey on customer satisfaction.

Thus, there is not a systemic problem that we have to try and deal with in an aggressive way. You don't have two-thirds (2/3s) of the people saying, This is not good. We don't like it. The profits are twice what the banks are making.

Why then, without any evidence to support a systemic problem, do we treat it, or do -- should we treat it as systemic problem? There is absolutely no logic to that position, I submit.

This brings me to statements by the Minister, and I've gone through those in evidence. They're also at the tabs to this material I've provided.

Firstly, CBC new story where the Minister explains all the initiatives that he was going to implement, and we've got to keep that in mind. There are a lot of initiatives here. You've got a forty-eight (48) hour cooling off period where people can decide, I don't like what I've done. I'm just gonna back out of it, and there's no consequences whatsoever.

So if they take out a loan at Rentcash at twenty-five dollars ($25) per hundred and then a day later they go to Money Mart or any other competitor and find the product cheaper, and they could qualify for it -- but you don't know that, because we saw in my cross-examination there was a wide variety of limits and sometimes, when Ms.

Friesen wanted to get a loan or Mr. Osborne was asking about a loan, he couldn't qualify for the two fifty (250). He could only get a hundred (100).

So, again, that deals with two (2) points. It's not homogeneous, but this forty-eight (48) hour period allows people the freedom, if -- if they were pressured, for whatever reason, to -- to back out.

Now, his statement -- and this comes -- it's consistent by this Minister, and it's quoted in this paper at paragraph 11:

> "The intention is not to drive 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.

A year later, the same statement comes up again. So it's not a mere coincidence that this was the Minister's focus in putting this legislation through. He indicates after in the letter I had already referred to:

> "The legislation represents a deliberate effort to balance the desire of payday lenders to provide their services and compete for a market share and the right of consumers to be protected from excessive

rates."

Now, I attempted to -- and I guess the Board will be the judge of that; as to whether I've been successful in demonstrating in my cross-examinations the distinctions between the positions of the parties.

The first position of the Coalition is -- and I agree with the submission of my colleague Mr. Foran -- is basically to leave if -- and we don't even know if it could survive and because the numbers don't prove that out -- a company like Money Mart.

And I'm not criticizing Money Mart. They obviously provided good service. They provide it to a different sector of clientele than my client, and they're a very reputable firm.

Now, nowhere in this legislation does it say -- and this would be the effect of the CPLA proposition -- that we have to cut out the smaller players or the lower volume players, and it doesn't necessarily follow I'll go through that evidence, that you say, Well, you know, this will just cut out the small guys.

Mr. Sardo, I think, made a good point when he was cross examining Dr. Robinson -- and Robin -- Dr. Robinson agreed -- even the bigger players have different volume stores. So you can't just assume that if you set a rate that works for the average of a particular company, that it allows all the stores to continue to operate.

That is not a logical follow through. In fact, we know if you base it on average, that there are numbers that are going to be below the average. And if they are, they get knocked out.

So that there has been no evidence by anyone in this proceeding to suggest anything different than what the Senate is saying and what Minister Salinger is saying is the purpose of this legislation.

No public statements have been made that it's -- you have to find an average rate and knock out companies. No public statements and no suggestions anywhere by any government representative has suggested that you should leave a big mono-provider and start regulating a monopoly in three (3) years from now.

I will acknowledge that this position doesn't find any precedent in Canada, but there are no other industries which, according to even the Coalition paper, are competitive which need to be regulated because of public and political pressures.

And, again, that's only selective. Some provinces has succumbed to the political pressure, but some of them have chosen, No, we're hot going to do it, and they have a reason basis for it.

They say, Well, listen, if companies are going to participate in these hearings, if we're going to set up a separate department of the Consumers Branch, that all costs money.

And who do you think has to pay for regulation? In the larger utility, they swallow it; it gets passed on to thousands and thousands of people, so it's not that noticeable.

But if you start putting three (3) year reviews based on rigorous analysis of financial statements and operating efficiencies or deficiencies, and we go through a one (1) week or two (2) week hearing, next time is, Well we think you could be more efficient here because you should have put one (1) person instead of two (2) people at this particular time of night. Or you should operate at sixty (60) hours a week, that might be more efficient that you -- if you operate at seventy-two (72) hours a week.

Getting into all of that detail, and not having it available because of the competitive nature of this business, makes it impossible to use that model in an effective way, in my respectful submission.

Pages 14 -- I take out the extracts with respect to the Senate. I'm not gonna repeat them; they're there for your reading. But they are consistent as I've indicated with the statements of Minister Selinger.

Now what evidence did Rentcash produce to assist you in coming to this conclusion? I'm flipping onto page 17.

We produced Dr. Clinton who advises or advised the Federal Government on a regular basis on banking issues for the Bank of Canada, and who now advises different banks across the world on policy matters. We asked him, Well, if you had -- given this problem what do you suggest? He's well aware of the regulation of banks, all the filings; he explained how complicated that would be if we started to get into the level of financial reporting that we have with the banks. But even the banks are allowed the flexibility of charging the NSF fees which they think are appropriate, as long as there's no, I guess public outcry on -- on profits.

And he came to the same conclusion and same recommendations as the Senate, as the Minister, and also I say, consistent with the legislation that governs this Board. And that's at the top of page 17.

We have not suggested to this Board that it should not render an order on the maximum rate. But Section 74.1 sub 1 of its legislation, the Public Utilities Act sets out a basic principle applicable to the sector of public utilities and regulation. This -- if you find there's competition sufficient to protect the public interest you would, under the regulation of a public utility, be able to refrain from interfering, and that's because, and the case law supports it, you act as a surrogate for competition. If you don't see it there, then you have to step in.

The only expert who provided an opinion on this was Dr. Clinton. And I say that because the economists like Dr. Simpson said, Well, this isn't perfect competition. Well, when I cross-examined I says, Well show me an example of what's perfect competition in -- in this real world. He said, Well, I agree it isn't possible. I'm paraphrasing what he said.

But nobody has said that there isn't sufficient competition to pro -- protect the public interest. There has been some criticisms. They're saying that it's an oligopoly . They're saying it doesn't matter, I guess, that Advance America is coming in. They're saying, I guess, it doesn't matter that you've got a whole bunch of small firms competing with big -- big firms, operating differently; and different hours; operating different products.

They're saying, I guess, that there's no competition between Money Mart and Rentcash, and I would suggest that you have a flavour that that couldn't be further from the truth. There is very active competition.

In fact Rentcash explained that it had reduced the cheque cashing fees by 50 percent to -- to try and get some business, and that that effort was largely unsuccessful. Why would you do that if there's no competition? Why would you do that if you don't need to compete?

I suggest that there -- the statement that there isn't competition in the sense that there's sufficient competition to create the normal market forces just can't be supported by what we know.

Now there was a criticism by my colleague, Mr. Williams, of Dr. Clinton saying that, Well, listen, he's rigid; he holds to dogmatic neoclassical theories. But we'll remind you that those are the standard ones, the normal ones. And going back to, I guess, chartered accountants, you have standard rules that you're expected to follow.

It doesn't mean that some people don't want to be creative. And I'm not criticizing creative thinking, but we have to be aware that it is creative thinking. It is not the norm which is being suggested.

And Dr. Clinton didn't pull his conclusions from the air. He had decades of experience in the financial industry. No witness apart from him that had quality. And he went to stores, spoke to management, spoke to clients, did what he had to do to learn more about this industry to come up with the recommendations and to see whether it was competitive or not.

He observed differences in services, differences in the risk profile being taken by the different companies. He observed the co-location you often see in -- and in fact right across here, every time I walk to this hearing I see two (2) competitors, one (1) across the street from each other. How long do you think it takes to walk from one side to the other to compare prices?

You see clusters too that -- in the mapping. Why do you think they cluster? Do you think that they won't have to compete if they're in a cluster?

Let's think about our own shopping experience. Why do we go to a shopping centre? We want to shop around to see what we want to buy and it's convenient to have a cluster to do that.

I could see the argument if you saw one (1) payday lender on -- you know, and none of them were within 500 yards or a 1,000 yards from each other that there isn't competition. But when you've got the clusters and co-locating, surely that has to be an indication of competition.

He also criticizes -- and this is Mr. Williams -- the models. He said that consumer welfare model -- and saying well, Dr. Clinton assumes that it's perfectly inelastic -- I think was what he used in his presentation, the written presentation.

Well, that isn't if you refer -- and his model is at Tab 2 of this binder -- isn't what Dr. Clinton said. He allowed for some, I'm going to say imperfection in the elasticity and in the supply, based on his experience.

And really it's the opposite that's being taken which is not a realistic outlook by the Coalition experts who will claim and weren't qualified in this area -- they were saying, Well, you know, if the prices go down, the demand's going to increase. There hasn't been any evidence to demonstrate that factual assumption or to support that assumption.

Now this takes me to page 18, and it's still in the question of the regulatory objectives. And Dr. Clinton explained that, based on his experience, fee regulations would not be an effective instrument for the objectives of poverty relief or financial relief of typical families.

First, as we've confirmed in this Hearing, payday clients are not particularly poor. You recall when I asked the questions about the mapping and -- and where the particularly poor were, they weren't co-locating in those areas and that's not the profile of the clients who use this service. In fact a lot of them on social assistance, et cetera, wouldn't qualify because they don't have paydays.

My son might qualify. We, I guess, try to do the best as we can as parents to teach and -- and that's one (1) thing that hasn't been talked about: Who has the ultimate responsibility? I mean, we all raise children, they all become adults. We've talked a lot about what governments should do. Nobody has talked about what we do as parents or don't do as parents to teach our children sound, financial management.

My father, who's on the farm, lives below what's considered by anybody to be a poverty line. He's an extremely happy person who doesn't want to spend more money; manages his finances group scrup -- you know, and he gives everything to his kids, which he shouldn't do.

But I went through the banking information, the Canadian Bankers Association survey, and we saw how much a month was being spent on alcohol by the average family; cigarettes, government lotteries; those are all discretionary items and they were very significant when compared to what we're talking about as far as saving consumers two ($2) or three dollars ($3) on a payday loan per hundred (100). Those are all discretionary things that people can choose not to spend on.

So that, firstly, you're not going to deal with poverty because that isn't the consumer that uses this product. And financial relief for typical families, well, the Chairperson got information and the Board got information on mortgage levels, et cetera, and credit card levels, if you want to deal with finances and what the big ticket items in your budget are, that's where you should be hitting.

By and large this product is not going to make the huge difference. If people are in the situation that they are it's because they already have chosen to poorly manage their affairs and have put them in the situation that they are in.

Now, what about the continuation of the evidence on Public Utilities? Dr. Gould presented, on a number of occasions, as an expert witness for Public Utilities. So I asked him, in my cross-examination: Do you see any problems with applying this model to the payday loan sector? And part of his response is quoted at the top of page 19 of my paper; it's an extract from the transcript at pages 1579 and 1580. And he says:

> "Where a single firm serves a market there is a presumption in favour of regulation to control prices..."

Sorry, he agreed with the statement.

> "Earnings and service standards where a large number of firms serve the market there is a presumption in favour of

unregulated competition to protect the public interest. In short, regulation is a substitute for competition and should attempt to put the utility sector under the same restraints competition places on the industrial sector."

So that is his opinion and evidence which, again, is consistent with our position.

Oddly enough, when I was first reading the report prepared by Dr. Gould, I read, read, I said, Oh, it looks like he's going to come to the same conclusion as we do. And then I read his conclusion and for the life of me I couldn't follow why, when he says, Competition's good we should allow people to charge what they should. He knows that Deloitte & Touche says that all the companies that are operating, at least that were studied by Deloitte & Touche, need twenty-four ($24) to thirty dollars ($30) to continue to operate, why he would say that those companies can't continue to operate -- and there have been no analysis and recommendations as to how those companies can change.

In fact, the extract I got from Dr. Robinson in the report to the Industry Canada he said he was -- he would be hard pressed -- and I have -- I don't have the exact quote -- but hard pressed to find ways to -- to cut costs.

Now, I've also provided, at Tab 3, and I don't intend to go through it, an extract from a book, Sullivan and Driedger on the construction of statues. The reason that there for the Board's information is that there is legal precedent for the Board to rely on senatorial and ministerial statements in deciding what the purpose is of the legislation.

It's not something I'm pulling out of the hat, that Courts have said that this can be done and it isn't improper to do it and that is the evidence that you have here. So that's the reason I -- I have produced that extract.

The other piece of legal information that I've produced is at Tab 5, and that case is discussed at pages 19 to 20 of the paper. And it's a case from the Nova Scotia Court of Appeal that was decided in 2006. It's fairly recent. And the consumers group in that province was offended because industrial groups -- and this will ring a bell here -- they said we're getting favourable rates so that the Board should give favourable rates to low income people. And the purpose of the regulation was a social objective of trying to deal with low income issues and poverty.

They were unsuccessful at the Board level and the Court of Appeal said that it agreed with the Board's approach.

And going to page 20 I've put some quotes which I think are applicable to this proceeding.

Firstly, that the Board's a surrogate for competition, that's highlighted.

Secondly, to interfere the Board has to find that costs are imprudent or unreasonable. I guess that makes sense. If you've got a fair and reasonable you'd have to conclude that if somebody needs thirty dollars ($30) or a hundred (100) that it's unfair, or imprudent, or unreasonable to -- to have that.

Once I finish this I -- I think probably we're at a break time?

THE CHAIRPERSON: I think it's a good idea.

CONTINUED BY MR. ANTOINE HACAULT:

MR. ANTOINE HACAULT: Okay. So, but the quote that I want to leave this Board with before the break is at paragraph 29.

> "The Board's regulatory power is a proxy for competition, not an instrument of social policy."

And much of the evidence that you've heard of the Coalition suggests that you should be an instrument of social policy. Thank you.

THE CHAIRPERSON: Thank you. We'll take a break now. What do you think, Mr. Hacault, ten (10) minutes?

MR. ANTOINE HACAULT: Whatever's the Boards wish. I think I'm about halfway through my presentation, maybe more even. So, we'll -- we'll take it --

THE CHAIRPERSON: Okay, well, we'll take fifteen (15) minutes then.

--- Upon recessing at 1:40 p.m.
--- Upon resuming at 1:50 p.m.

THE CHAIRPERSON: Okay, Mr. Hacault, bring us home.

MR. ANTOINE HACAULT: Well, that -- that's the danger of being the last one (1), you know, you -- you figure well I've got something to say, but just like, holy moly, just like well, how am I supposed to say this? and, it's not being critical, but I've been in -- in other contexts I was the one sitting up there, and I said, Boy is that guy taking a long time when I was looking at myself the other way.

But I appreciate the patience of this Board, because if you look back we've had twenty-one (21) days of hearing, and it may be my old age but some of the stuff isn't as fresh in my memory as if we had been able to do a block of days. And that's why I -- I am going probably in a little bit more detail than I would have if we had been able to do this in a block and then make a presentation.

So I apologize if I'm being unduly detailed in some --

THE CHAIRPERSON: Nothing to apologize for. We're following along with you just fine.

CONTINUED BY MR. ANTOINE HACAULT:

MR. ANTOINE HACAULT: So I was at page 20 and I had quoted the decision for a couple of points, the last of which was the social policy issue and that the Board's not an instrument of social policy. But also for the other points that before the Board interferes it should be satisfied that costs are imprudent or unreasonable.

And my suggestion to this Board is that there has not been the level of analysis of the businesses, of the way they operate. Nobody has gone into the businesses and gone through and said, Well, you could do this better, or you could do this better, and you could cut costs here, or this is an imprudent expense.

Public companies have enormous pressure to be efficient. I mean, they have to answer to shareholders and even -- so that -- I think -- Dr. Robinson, I had quoted from the industry report also agreed that there was pressures of companies to be efficient; that's part of the -- the market.

And flipping onto page 21. I suggest that the Board is not tasked to be paternalistic and decide whether consumers should no longer be entitled to receive payday loans because their risk profile is too high, or because their pay structure is such that they need a payday loan product of longer duration such as signature loans which is a fourteen (14) day to thirty-one (31) day product.

And with respect to the rural issues. I don't deal with them a lot in this paper, but I do want to -- it's the next paragraph -- there's no reason to discriminate between people. There -- this is a service of people who have said they want -- I would suggest that this Board should not set a rate which will make it such that rural people don't benefit from the same service.

If they want to pay the extra dollar or two (2) to get the service and that's what it costs for a smaller provider in a smaller town, so be it. And -- although Dr. Robinson came up with the example of the lady in Steinbach, I -- I'm not so sure the lady at Steinbach knows what she's into. It's a two (2) month affair, I think, is what he said. I'm not so sure she knows she's going to have to cough up fifty-five hundred dollars

($5,500). I'm not too sure how many flowers she's going to have sell to pay for that, and the bonding fee which she's going to have to put up for that.

So although there are options, I guess what I'm saying is, if it ain't broke you don't have to fix it. And things are happening out there; let's not put a rate like twenty-three dollars ($23) which is not going to make a go of it. We've heard Gerry Charlebois saying his costs are over twenty-four (24) and he has to charge twenty-six fifty ($26.50) to make a living on it.

Why should guys -- and I was impressed with the fellow, he was a very humble man. I don't think we've had very many people come in front of us during this process who were as sincere as he was. It's just his demeanor. He really thinks he's providing a good service and -- and I think the customers that benefit from his service do get that service. And why should we put a guy like that out of business by setting a rate at twenty-three dollars ($23) per hundred (100). It -- there's just no sound policy reason to do that.

This brings me to another heading that I have -- page 21 of this paper -- and it's the discussion of the cheque cashing order. Mr. Williams also referenced it. The reason why I take time to deal with it is that the Board did have to deal with a number of similar social issues and cost issues and arguments. And I want to highlight perhaps some of the differences between that Hearing and this Hearing and why the Board should not adopt an efficient provider model in this Hearing, because that's basically as I understand the order of what was decided by the Board in the cheque cashing hearing.

So first, this is at paragraph 37(a), the cashing of government cheques first, is only a part of the cheques that are being cashed and it's only a fraction of the overall volume and range of cheques being cashed by the fringe or near-banks; whereas payday loan revenues, as we've heard in this hearing, represent the majority of the revenue for those firms.

So logically, if you touch just a small little part of the business you can touch it in a more significant way without putting somebody out of business and there were options for these people.

Secondly, government cheque cashing is very low risk and does not vary like payday loan risk profiles. So that paragraph (c) goes further -- into further detail about the types of loan profiles that we see in payday loan products. There's also product differentiation in payday loans as to the length of time that we have; that's another difference.

And because of this differentiation there are some clients which are consciously paying more because of the way the service is provided. And we have at least one (1) presenter who explained that, it was Mr. Wayne Van Tassle, who explained that he enjoys the service he gets from Rentcash and knows that he can get the product cheaper elsewhere but chooses the Rentcash product.

The difference also in the cheque cashing is that banks and credit unions do offer that service; whereas here banks and credit unions don't want to offer the service. And there's no evidence that the payday loan companies are generating profits which exceed those generated by financial institutions; in fact, the publicly traded companies show it differently.

Mr. Williams -- and I refrain from, you know, you always have a temptation to stand up and say, but Mr. Williams, there is nothing in the evidence about this. He got into payday loans and about how the industry wasn't affected and how we didn't deal with that. Well, I didn't see anything in the notice that we had to deal with that issue, number one (1), nobody talked about it.

It does, I guess, have some collateral reference or implications in the sense that under the Robinson model he assumes that you're going to have that revenue and his model only works if you have a certain mix of that collateral revenue which is cheque cashing.

So if you reduce the revenues and make that less profitable you don't have that cross-subsidy which occurs in Money Mart models as it was explained in the evidence, where if you look solely at the cheque cashing fees under the rates that are recommended by Dr. Gould, Money Mart does not survive. It needs to subsidize by the -- what they call the "scope of services" to be able to survive.

So we don't know, and that's another reason to be cautious, we don't know the impact, if any, that this Board's order in the cheque cashing, by reducing the amounts that would normally be charged, will have on these payday loan providers. So you don't want to do the knock-out punch in this hearing.

With respect to the evidence of the Coalition on all these issues of economies of scale, et cetera, I asked the question bluntly of all the participants: Have any of you ever operated that business?

And I think that's an important issue that we ought not to overlook because although they have good ideas, they're well intentioned, they have absolutely no idea what it takes to operate that business.

Dr. Robinson hadn't even taken the time to call the businesses until very late in the hearing and all his recommendations and everything that was being done was done without the knowledge of even hours of operation and how that was different.

And he said, I don't know how many times in this hearing, "It's a learning process for me," and that was his reason to change his model all the time. I would suggest that -- that it would be very dangerous for this Board to rely on evidence that's based on learning.

It would be more prudent to say, Well, I know what the business is. I've spoken to managers. I know what it takes to operate a business. This is the efficiency part. This is the inefficient part. This is how they can cut costs. This is how they can change the risk profile.

None of those questions could be answered by Dr. Robinson because he has no idea. He is very good at analyzing statements and trying to decipher them, but has no idea how -- what it takes to run this business.

Now, moves me to page 25, and I've taken some quotes from the evidence again as to why a particular regulatory model ought to be chosen, because if I was sitting up there I'd have some questions. Well, Mr. Hacault, you're asking us to do something that, you know, has it been tested. How, you know, is this going to work? Are we gonna protect consumers? How's this going to work? Why does it work? And why is it better than a public utility cost model.

I've tried to answer those questions in this -- these next pages.

The problems that Dr. Gould sees in what he was trying to do in using a public utilities cost model, and I've quoted it:

> "The problem is really that there are many companies being regulated at once as opposed to one single company, and that makes a big difference because even if you have information the cost may [dash, dash] -- the cost structure may be different for each of the companies."

So that's the biggest problem we have. We don't have information on all the companies.

I don't think anybody that did the accounting analysis is in a position to say that any of the costs of any of these providers that they looked at were imprudent or unreasonable. Nobody has ventured that opinion. All they've been able to say, Well this is the average cost. This is what seems to be the average for this sector. And even that is questionable when you look at the data behind it.

Dr. Robinson in his report to Industry Canada reports:

> "There is much variation..."

And this paragraph 46 in my paper:

"There is much variation in the cost structure of all players regardless of size, and so some small firms might be more efficient than some medium or even large firms."

Well, I guess what I'm telling the Board is the evidence isn't necessarily consistent that larger means more efficient.

And then with respect to the tight fee structure, this flips on to page 26, Dr. Robinson says:

"Adopting a tighter fee schedule will cause some stores to close and there is no precise way to estimate when a significant number of communities will lose a necessary service."

And that's another cautionary approach. And I say it applies to both the twenty-three dollar ($23) rate cap and also to the rate cap proposed by the Coalition and by Dr. Robinson.

And on the cost issue, and I -- I'd referred to this earlier, but this is the exact quote at page -- at paragraph 48:

"This is a pretty simple business, and I am hard-pressed to imagine dramatic innovation that will lower costs."

Granted he had no practical experience, but he's still looking at this and makes these statements.

And then about competition, Dr. Robinson is saying at paragraph 49, I'm quoting:

"There doesn't seem to be a lot of room left for profitable expansion."

Well, to that -- to me that means that people aren't earning unreasonable profits. The next phase is usually competition to secure market share and profits from existing customers. And we see that. Rentcash tried to do it with lowering its cheque cashing fees.

Ernst & Young staff told me during their study they discovered many of their potential respondents from a list of -- CACFSP, gave them were no longer in business, and others were talking of exiting. To me, that sounds like competition in a normal market.

Now, while Dr. Robinson had access to segregated Canadian costs for Rentcash through its public filings, you'll note that they were not used in the same criticism I have levied against Dr. Gould.

He also guessed at numbers; this is Dr. Robinson. He acknowledged when I was talking to him about business valuation, that it would be important to speak to management to have a sense of what's happening in the business.

And that would be normal, because if I would want to buy a business and know whether are making reasonable profits and their expenses are reasonable, I need to speak to management. I can't just look at a financial statement and guess what can be improved or can't be improved, what's an abnormal cost.

I'd have to look at least three (3) years to have some tendencies, to know what's happening. None of this details analysis has been done in this hearing. And, in fact, if you kind of had extended his values and did business valuations based on the wide revenue streams that he's done, you'd come to maybe a negative value of I don't know what, to a positive value.

I mean, how could anybody relay on that in making a decision as to whether or not to invest in a company or whether the numbers made any sense.

Just bringing back on numbers again, the United States; I had pointed out an article which said the public companies are between 4 and 6 percent loan loss rates.

I put the reference Rentcash Exhibit 29. Rentcash itself is between 5 and 6 percent. It was higher right after the rollovers, but that's where it stabilized based on its client base.

So that in a market that leaves little room to lower costs and companies are being forced out due to market competition, there is no compelling need for the Board to do such a drastic intervention to go to twenty-three dollars ($23) or to anything lower than that.

There is no need to be concerned that setting a maximum will cause people to gravitate to that maximum. If the Board had any inkling that that was happening, it could soon intervene and deal with that issue.

There's going to be people monitoring those from the Consumers Bureau. They've had two (2) staff, so that if there's something abnormal happening in the market that couldn't be expected, and it acts differently than it has to date, then we could intervene.

But I think it's presumptuous to think the people are going to change their conduct, especially with new people coming up from the States like Advance America. If anything else, the competition is going to be stiffer.

So, at page 28, there was a criticism of Dr. Clinton because he used fee data which they said might not be accurate. Well, part of the fee data -- and that's found at Tab 2 -- you'll see was the Coalition data which they went to lengths to explain was accurate. And I cross-examined on that point.

I don't know why now they'd say all of a sudden it was imprudent for Dr. Clinton to rely on that kind of information. That is about the best information. We know at least what's being charged, we know the pressures of the competition and some of the tabulation points ,as you'll see, come from the Buckland report which are beyond the recommended limit.

So we are cutting out things that are happening in the market. For example, there's one (1) point, if we go to Tab 2 on the combined chart, you'll see it's kind of a -- I'm not good with colours, but there's a taller line at the beginning that says "Buckland" and it has a specific colour. And that colour is repeated after the recommended fee limit at a couple of occasions at the -- the higher amounts.

So it's inaccurate to suggest, if it has been suggested by the witnesses of the Coalition, that setting the maximum rate which has been recommended by Rentcash is to not interfere somewhat with the market. You are interfering because it takes out all the outliers past that particular line, and there quite a few of them.

So, if there were no lines past this recommended fee limit, I could see some merit in that argument. But you are protecting the consumer from the excessive or extreme rates in adopting the recommendation of Rentcash, and that was what supposed to be done, according to the Minister.

So, that at page 28, paragraph 57, I go through a number of advantages towards this particular approach. Consumers are not unintentionally harmed. We've had, in rebuttal, some examples of people who would have lost their jobs in rural Manitoba if they no longer have the service.

You don't have to choose a particular -- this is B -- a particular business and service delivery model that falls into a particular box. It's based on actual market demand as opposed to theoretical demand.

Flipping on to page 29, D, and this is a concern for my client. It avoids lengthy, costly hearings by avoiding detailed review which will be required if the public utility cost model is adopted. How can you come to a conclusion as to whether or not there are imprudent or unreasonable costs unless you have full access to and full analysis, as you do in public utilities, to the operations and the financial statements.

You will be guessing, and, with due respect, we shouldn't be guessing at numbers and whether things are reasonable or not when that has impacts on the lives of small businesses in this Province.

And in paragraph F on page 29, I go through an example of what I see will happen if you base it on the

Gould model, which is an average cost over time, because this is not only happening today. So if you're gonna implement the model, what's the effect of adopting that model over time?

And if you do the mathematical calculation, as you knock out the top numbers, which may not be unreasonable and may not be imprudent, you gravitate towards the lower number, because each time you do a review you choose the average of what's left. And the mathematical result of that is that you gravitate towards a monopoly.

So if this Board continues to do -- to apply the Gould model analysis or the Robinson analysis, in four (4) or five (5) years from now, you'll be regulating a monopoly, in my respectful submission, because you're going to gravitate towards the lowest provider and that lowest provider may not be providing information to consumers because they need to push them out really quick. They may not be doing pre-calls for -- before the due dates.

There may be a lot of aspects of the services which have to be cut to meet the cost box that they have to fit in. And if you use the average, you get that result. But if you use the weighted costs, which was what was -- was suggested by the Coalition, it happens even quicker, because then you give huge weight to the low number and your number goes down a lot quicker.

And, finally -- and this is in all the utility texts -- that if you set a rate, that may work for big utilities and even at that, it's a slow animal. You can only come back every three (3) years.

So if they've got a product they want to roll out because consumers are asking for it, and they want to come to this Board, they'll have to ask: Well, we've got a demand for this kind of product, but under the current fee cap that you've set, we can't offer the product. We think it's good for the consumer for reasons A, B, D and C, and then they've got to go through a hearing.

Why should they have to be put through that cost and why should the government be put through that cost, because presumably the Coalition is going to come back and we have to pay their experts and we have to pay the costs of Mr. Williams and the Public Interest Centre.

The market's working. Why do we need to incur these costs and -- and have these hearings on issues if we can set a rate that's at a higher level and people work within those parameters?

What about monitoring? Because the next thing I was wondering, Well, okay, how are we going to monitor this thing? The -- you know, if we set thirty-seven fifty (37.50) as the maximum, how can we be sure that things are working? Well, you're going to have two (2) onsite people from the Consumer's Bureau, number 1. Number 2, you have at least two (2), and now it looks like it's going to be three (3), public companies.

It's easy to look at their financials, and if they're doing anything less than banks, I would suggest they're not making unreasonable profits. And if they have to charge thirty dollars ($30) per hundred (100) to earn something that's less at -- less than or equal to financial institutions, what's wrong with that? What's even wrong with some premium because of the fact that it's a high risk investment, which Dr. Robinson has acknowledged.

But you'll -- you'll have that because you have that in the Manitoba market. You can look at those financials, you can see whether companies are acting reasonably, and whether there is any correction that needs to be done.

And I think it's fair to assume, as Dr. Robinson had indicated in his paper, that there is that pressure already for efficiency, so you don't have to be concerned about efficiency and telling the companies how to change.

In the next pages, I speak to the same issue I had raised earlier -- this is page 31 -- is: We haven't heard from consumers groups. That's odd, again.

A consumer group; the only thing that we see from them was this presentation that says, The market's competitive; we want you to tell that to every consumer. Nobody came up here from the Consumer's Group to talk to us about consumers and say there's problems.

We had some presenters. Strategically, if I didn't want consumers groups to be tested on their information, I would encourage them to do presentations. They're not subject to IR. They're not subject to cross-examination. They can give us isolated problems and not be tested on the isolated problems.

Do you have a question...? No. Okay, sorry. By the way, if there are any questions I'd invite them. I'd rather the discussion now than see, Oh, well, I thought I communicated this and it appears I didn't communicate it correctly.

The Rentcash evidence on rebuttal, which was not challenged under cross nor rebutted, was that consumers are shopping around; that they make informed decisions to pay the different price based on their perceived quality differences in services. Nobody was called to challenge that.

Leads me to page 32 which is a discussion of some points which I have entitled "Critique of Coalition in CPLA Evidence."

First there was a focus limited -- well, I put on the minority -- Dr. Buckland's knowledge was greater in the inner city area and when he had focused on other matters with respect to low income, there really wasn't any discussion about the majority group which didn't fall into that category. And that, again, I saw kind of odd because if we're talking about consumer protection, why aren't we talking about the majority? Why do we only talk about the smaller group?

Next point: No consumer consultation; I've dealt with that.

Next point on page 33: Erroneous assumption of limited consumer banking options.

On cross-examination you'll recall that I put to the panel had they actually looked at the openings? They weren't aware that there were more credit unions that had opened. They didn't seem to look at all the Canadian Bankers' Association reports that said Well, now there's no more points of service than there were ever before. You have banking machines in all -- most grocery stores, based on common experience. You have Internet banking. You have phone banking.

So you have access to that, and to suggest, in my respectful submission, that there isn't access to banks is erroneous.

Next one: Erroneous assumption that banks and credit unions are more efficient.

Dr. Robinson candidly acknowledged he had no idea what wages were being paid by -- to staff in credit unions or banks, and couldn't make any comment as to whether they were more efficient or could provide it more efficiently. In fact, Randy Hansford said that they would have to make a business case as a credit union based on his experience in the credit union industry that they could provide it and not have their other members subsidize the product.

And I also pulled out the statement from the Royal Bank on the issue of costs and why the banks didn't want to be involved.

Next point on page 34: Unreliable data use. Mr. Foran touched upon that.

The FCAC report -- the additional point I bring on this is that there were 12.3 percent of this ninety-two (92) person sample that came from Quebec. Well, we've heard Quebec doesn't offer payday loans, and yet they're treated as payday loan customers in this survey. I don't know what the profile of those people is and how that skews the result.

Next one: Erroneous assumption on lack of consumer understanding.

Again, they didn't ask consumers the evidence of Mr. Hansford and, surely, couldn't have anybody more independent than that. He was hired by the Consumers' Bureau. He observed no issues with respect to lack of consumer understanding.

Mr. Vantassel, who was a presenter, indicated he understood the product.

Again, next point, Page 35: Erroneous assumption of homogeneity.

And I've gone through a lot of that and I think you've heard a lot of evidence. There are differences. Consumers understand and know the differences. The Coalition, although it went in to get a loan, didn't experience some of the things that we've heard evidence about like with the reminder calls, the additional service like Mr. Vantassel talks about. If he wants to talk twenty (20) or thirty (30) minutes, they do that for them.

With respect to Mr. Hansford's comments that high-volume stores appear to offer as good as service as lower volume stores, his comment was restricted if you look at the context to the service in processing a repeat loan. He wasn't commenting on the overall service provided through the life of the loan.

And on cross-examination, I went through the notes but -- this at page 36, paragraph 74 -- we saw a lot of product differentiation on lower amounts, higher risk for higher amounts initially, and there was a variance in time being spent with the consumer.

Now, there have been a lot of good recommendations by the consumer groups on what should be done to enhance disclosure, et cetera.

But the question I ask is: If you compress rates the way they're suggesting, how can you offer that? How can you do both at the same time? I don't see -- it's kind of a cyclical thing if you say, Well, I want to lower costs but I want the enhanced consumer discussion and disclosure.

If you put the cost low enough that the staff doesn't have time to do that, well then, all of a sudden you're hurting the consumer because you can't benefit from that enhanced service.

The next theme I had in this paper was unfounded criticism of Clinton's welfare benefit analysis; I've already touched upon that earlier on in my presentation. The critique by the Coalition assumes that clients don't compare and don't price shop.

There's no evidence to support that. I'd give the references to the evidence to show that the assertion by Mr. Williams that demand was perfectly in inelas -- inelastic is inaccurate, and I've made the reference to the evidence that confirms that.

And with respect to all the criticism, Dr. Buckland, in his initial filing -- this is at paragraph 78 -- when talking about consumer welfare, says:

> "These studies on the net benefits or cost to individuals and society can have highly variable results depending on the assumptions made and the model used. One (1) limitation for this type of analysis, particularly for Canada, is a lack of data."

He acknowledged that they made a whole bunch of speculative assumptions, but didn't speak to consumers. The contrast is Dr. Clinton did look at stores and the service.

Again, unfounded allegations of excess profit. That word was thrown around a lot by Dr. Robinson, but if you look at the financials and the analysis, you've got Money Mart and Rentcash generating less return for their investors and banks.

Unsubstantiated speculation with respect to effective volumes -- that's at page 38 -- and I cross-examined on that point. The two (2) don't necessarily follow, so that -- I've put the references to the Ernst & Young report, but, for example, there were three (3) lenders with approximately $2 million in loan volume that had costs in the range of twenty dollars ($20).

There were four (4) lenders with less than a million dollar loan and which did not have higher operating costs. So you had more with half the volume that had no higher operating costs. So I don't know why you can automatically come to the conclusion, based on such a small sample, that one (1) size of a store is more efficient than the other.

And, finally, the one (1) lender with over $5 million in volume had costs in the twenty-five dollar ($25) range. So the highest volume one had exactly the opposite experience, and the same holds true for the Deloitte study.

The two (2) smallest operators had the lowest operational costs; the mom and pop one -- the Chairman had picked that one out -- and the next one actually had the lowest operating costs per hundred (100).

It was the three (3) subsequent which were higher. So I don't think you can draw that conclusion based on the data that we have, given that it's so limited.

Ernst & Young was based on nineteen (19) out of over two hundred and eighty (280) owners contacted. So that's only about 7 percent. I don't know why people are suggesting that a 7 percent sample is somehow better than about 30 percent sample that we had in the Deloitte study, especially given Dr. Robinson's comments that we have the best of the best in the Ernst & Young, and they may have underestimated the costs.

And that was a point that I tried to make in my cross-examination of the Deloitte report; that, in fact, it was based on historical costs. For example, I raised the issue of leases. They may have negotiated those four (4) years ago, but we all know what's happening in the market today. Rental rates are not going down.

This decision is going to be in place for three (3) years. So, like Mr. Sorensen explains, he's got some of those leases renewing. Deloitte doesn't reflect that. It reflects an old cost for the lease, not the new cost. So you've got some underestimating even happening in Deloitte.

Thirty-nine (39) -- the erroneous assumption that closing stores will necessarily lead to higher volumes. Because of product differentiation alone, that won't necessarily be true, and I tried to illustrate that in my cross-examination. The higher risk people won't be serviced by the people who don't want to service those people. They're just not going to be serviced.

The signature loan people aren't going to be serviced by the other companies, because none of them service them. So, to say that automatically the existing clients will gravitate to the other companies and increase their volumes, isn't necessarily true.

Next theme: Erroneous assumption on price spreads.

There was a talk, Well, this is not competitive because you've got more than a 20 percent price spread and in mortgages you've only got three-quarters (3/4s) to half a percent.

Well, we're talking about secure mortgages. If you go into the sub-prime mortgage sector, you see a huge range, and Assistive Financial had spoken about the types of ranges we saw in -- in that market in -- in Alberta.

Last point, CPLA recommendation isn't necessarily in the best interests of all its members.

We heard Gerry Charlebois, who took the time to come down when he found out what the recommendation was at twenty-three (23) to explain. I'm a proud member of the CPLA. I think they do good things, but I can't live on twenty-three dollars ($23) per hundred (100).

Now, I'm going to flip to page 43. There's a point that was made that Internet providers are not regulated. And one (1) of the presenters indicated the Board should be cautious, because if you drive people out of business that have the storefronts, the service will be provided by unregulated people.

And yet Dr. Robinson believes that they should be regulated and he says, Well, it doesn't matter if you shut down the -- the local provider. They can always have access to Internet in the rural areas; that's an option.

Well, the option means that you're going to drive people to an unregulated market, so nothing prevents that Internet provider from charging fifty dollars ($50) per hundred (100). He can do it. He's not regulated by this Board, and he can charge an excessive rate if the customer is put in that position.

I'm going to skip the following pages. I think they've been dealt with by my colleague, Mr. Foran, and they deal with an overview of the payday loan industry from pages 47 to 49. I've talked about market competition, and that's at pages 40 to 51. I do go into some more detail -- page 51, more detail on co-location and where that evidence can be found.

Page 52 on actual location; it's the same point Mr. Foran was making, and I think I illustrated that point in my cross-examination based on the -- the survey numbers. For example, at Polo Park, that there wasn't enough population based in that sector to service the payday loan industry, but, in fact, they were locating there and that certainly supports the evidence of the industry, that their locating on busy thoroughfares where retail space is available and where other retail services locate.

Turning to page 53 and on, you'll see that it's structured based on the criteria that are set out in the Consumers Protection Act to Legislation, at page 53, the first theme was Operating Expenses and Revenue Requirements of Payday Lenders. Again, there's a further discussion on that.

The point that I want to raise is that if you had to look -- and there's been some criticism in saying, Well, the broker model is inefficient -- apart from making that statement, there is no evidence to show that it is inefficient. I don't know -- when they're saying that, they make the statement, but where's the facts on which to base that statement? I haven't seen any evidence.

In fact, if you want to have a true idea of what the true cost is, that's probably the best model to show you what it is, because Money Mart is heavily influenced by cheque cashing and other fees, whereas you know that the Rentcash model is practically a pure payday loan model, and it has separate investors and it provides a broker service.

So that probably provides you the true numbers, and the Money Mart numbers are probably skewed so that, indirectly, if you adopt Money Mart numbers, you're adopting a model that requires subsidization from other product. And if companies can't get that, then they won't be able to provide the service.

With respect to the next item, it's page 55: Debit fees and Prepaid Card Fees. I've made the point in the evidence, that these are bank owned cards and, in cross-examination, to a large extent, uncontrollable expenses because it depends on what the consumer does.

So it's impractical to start to try and guess and put those amounts in a cost of credit, and we've explained why we believe that reading the definition the way we do, it does get disclosed, so the consumer is protected, because he can shop around and know what he has to pay, but this is a banking issue and there are legal ramifications to try, at a provincial level, to regulate banks. That doesn't happen.

You'll see consumer protection legislation applies to credit unions, but consumer protection legislation does not apply to banks and the services provided by them through any kind of provider.

Optional Insurance is the next item. I only have one (1) paragraph on that because it is all optional and it's specifically excluded from the definitions.

Now, it brings me to: Increased Costs Due to Regulation.

We've heard Mr. Foran explain that their estimate was eighty-eight (88) cents per hundred (100). We've got a range of -- and I, as you can see, am approaching the end -- we've got a range of seventy (70) cents to two eighty-two (2.82) per hundred, depending on the store. And, again, that's why, notionally, that's included in the thirty-seven fifty (37.50).

You may have the smaller rural operations that have nearly a three dollar ($3) cost per hundred (100) because of where they are. Those locations shouldn't be penalized based on some kind of an average.

And it -- it goes to show you, and it supports the point that I made earlier, even in the bigger players ,you have some stores that are different than others. You can't assume they're all same volume, same cost, et cetera. So if you're going to allow that variety to be provided by the big providers and by the small ones, you need to allow that flexibility as opposed to just an average.

I think it's telling that it was only CPLA and Rentcash that participated in an active way in this hearing, because it is so expensive to do it. Even though you wouldn't hire lawyers like Mr. Foran and I, you still have to be there. Nathan Slee did an excellent job of trying to do that, but you still have to be here; it takes you away from your business.

And -- and it would if -- if some of those business people -- small owners -- to be able to explain their situation, had to spend three (3) weeks of hearing time away from their business to explain it and, unfortunately, we don't have all those voices here. And Rentcash has done its best, together with the CPLA, to make those voices heard.

You'd say, Well why does Rentcash want to do that? You know, why wouldn't it want to knock out all the small guys. Well, it's good for industry, there's competition. There's competition. It's good for people. It's good for the industry. Why shouldn't you operate as a normal retail product.

Now, the one (1) point -- and this is a small point -- that I make with respect to licensing; for some reason the legislation requires, on my reading of it, fifty-five hundred dollar ($5,500) fee for the broker, and a fifty-five hundred dollar ($5,500) fee for the lender. It's kind of odd. I would of thought it was per store.

So, in my paper I make -- or asked this Board to make a recommendation that that be looked at, and that there be a recommendation that there only be one (1) fee per store. I don't see the logic of applying two (2) fees for one (1) store.

If you have a problem at a store, if it's bonded and if it's licensed, you pull the license from the store. Why should you be discouraged from having a particular business model and accessing capital through investors in a particular way, such as Rentcash does.

I've put information from pages 60 to and including 68 on circumstances of credit options available to payday loan borrowers generally. I don't propose to go through all of that. A lot of it was dealt with by Mr. Foran on education, income, consumers understanding the product, the range of competitive considerations.

Rentcash's own survey -- at page 63 -- you'll see all the results of that -- the differences in collection procedures and how people approach that, optional payment plans, which is a consideration, too in how services are provided, and then some discussion, at pages 65 to 67, of the consequences for consumers if payday loans are not available, so that we go through NSF charges, bank NSF charges.

We had a presenter, in fact, that explained that one (1) of her clients, on three (3) cheques, incurred a hundred and twelve dollars ($112) in charges. It's a lot higher for smaller checks than it would of been on a payday loan.

Again, information with respect to the lack of consumer complaints, and then it leads me to another item to be considered by this Board at page 68, regulation of payday lenders and payday loans in other jurisdictions. And we note again that Newfoundland is not choosing to do anything.

We note that the Province of Alberta has indicated that rate caps may not be an appropriate regulatory tool. We note that the Province of Ontario, which has the highest volume payday loan stores, is under the subject of pressures -- we saw that -- the Private Members' bill -- but that the paper that's been produced suggests that regulatory costs would be too high for consumers to bear, and that rate caps may not be in a -- may not be appropriate.

The Nova Scotia experience. I've included an extract just for information. There hasn't been a decision there, but the Board had retained the services of an accountant who had banking experience.

And if you go to that jurisdiction and get the information and he -- I put the extract that -- at least his recommendation -- and this is not based on our model -- and I'm not saying it should be adopted but just for information -- based on the same type of information in the Ernst & Young report and the Deloitte analysis, as my understanding, he refers to Manitoba evidence. He came up as being comfortable with a twenty-seven dollar ($27) fee.

The US Experience; I have a couple of comments with respect to that. That's at page 71. We note populations are much higher in the US and there's potential for higher volumes. We note -- and this is in the evidence -- that publicly traded companies, as well as their share prices -- the profits, rather -- of publicly traded companies as well as their share prices, continue to decrease. And to me, I suggest that means an indication of insufficient revenue streams.

We've heard that Advance America is exiting some markets, and we note that, to our knowledge, the minimum wage are -- minimum wages are in the range of the five seventy-five (5.75) range in the US as opposed to eight dollars ($8) in Manitoba.

So, there's been no evidence to show that -- and no analysis; I agree with my colleague, Mr. Foran -- that we can rely on any kind of the US data, apart from having some kind of a general sense that there's a lot of things happening -- some regulating, some not; some different approaches. There is no consistent approach, and -- and that's also in Canada, as I've explained, across the provinces.

I have probably about five (5) minutes to complete my presentation. I want to make a couple comments on the tiered rating system or sliding percentage model. I adopt the comments by -- made by Mr. Foran. Rentcash believes that this is not in the best interests of consumers, and the evidence of Rentcash is that the higher amounts generate higher risks.

That is not necessarily uniform across each lender because they have different lending practices, but for

Rentcash, it doesn't necessarily follow that once you've done your initial cost, that's the end of the story, because thee's the component of higher risk.

So if you have a loan over a thousand dollars ($1,000) that goes bad on you, and you take more of those which are riskier, you have to have a system which follows that risk in addition to the operating costs.

There's two (2) components: If you take a sliding scale, you ignore any kind of risk related to the higher amount going wrong; and if you have one thousand dollar ($1,000) loan, it's the equivalent of five (5) small ones at two hundred (200) going sour on you.

And the evidence, which wasn't challenged and is the only evidence in this hearing, is that some companies don't experience that because they don't take the riskier ones, but some companies do. And you will penalize the person who needs to have that larger amount right off the bat to fix his car if you don't let companies take that risk and charge accordingly for that risk and be rewarded accordingly for that risk.

I won't go through all of the discussion at pages 72 to 75 on that, but that's the theme of that discussion and why we don't think it's in the best interests of consumers and it doesn't work with the way the industry operates either.

The -- the last points: Default Charge and Interest. I've touched upon that initially in the presentation. The forty dollar ($40) amount; we support the position of CPLA, we have the same kind of analysis -- banks charge that, why shouldn't we be able to?

The interest; I've dealt with that. That's the time component of the loan and why it's necessary and, in fact, Robinson, until he flopped the other way in the Hearing, had consistently maintained a position that that was a good thing, because you had to send a message to the consumer that there's an impact on the time component.

With respect to the Schedule A, all I've done there is tried to extract what I thought were useful portions from the presenters evidence. I don't propose to go through that, but hopefully it'll be useful.

And lastly on the issue of costs, Rentcash is simply reserving its right to seek costs; that decision to actually make the application to be made at a later date, but we still continue to want to reserve that. We believe that with Dr. Clinton and the evidence that we've put forward, that it is a different perspective; a perspective that is workable; a perspective and a solution that works, not only for part of the sector but all the industry in Manitoba and -- and its consumers.

So we thank the Board and everyone present again for having the opportunity to make this presentation, and I extend my personal gratitude on behalf of the management team at Rentcash whose has -- have been here pretty faithfully throughout the Hearings, either Michael Thompson, Nancy Bland, or Mr. Reykdal.

Thank you very much.

(Written Rentcash Submission inserted below)

Executive Summary

1. The Province of Manitoba has chosen to implement a regulatory framework that is consistent with federal legislation to provide regulatory certainty to industry operators in the province. In May 2007, Bill C-26 An Act to Amend the Criminal Code (criminal interest rate) ("Bill C-26") received Royal Assent. This bill would exempt provinces from the requirement to enforce section 347 of the Criminal Code in respect of persons who charge annualized rates of interest of over 60 percent where:

- The loan is for $1,500 or less and the term of the agreement lasts for 62 days or less.
- The lender is licensed by the province to enter into the agreement.

• The province has been designated by the Governor in Council (Cabinet) under new section 347.1(3) of the amended Criminal Code.

2. Pursuant to The Consumer Protection Act C.C.S.M. c. 200, (the "Act"), the Public Utilities Board (the "Board") has been mandated to fix maximums which can be charged to Manitoban consumers in respect of payday loans.

3. In order to carry out its mandate, the Board held public hearings in Thompson, Brandon and Winnipeg. No one attended the Thompson and Brandon hearings to make any presentations. No letters were sent by citizens expressing any concerns about the payday loan sector or the rates being charged.

4. In Winnipeg, the hearings were conducted on November 13, 14, 15, 19, 20, 21, 28, 29 and on December 3, 11, 12, 13, 17 and 18, 2007 and on January 10, 11, 15 and 18, 2008 and on February 13, 14 and 15, 2008. Final submissions were received on February 19 and 20, 2008.

5. The Board received submissions from concerned consumer groups, a consumer explaining his need for and satisfaction with payday loan providers and product, a Coalition of Consumers' Association of Canada

(Manitoba), the Manitoba Society of Seniors and Winnipeg Harvest (the "Coalition"), payday loan providers, a private investment company providing payday loan funds, a payday loan insurance provider and the Canadian Payday Loan Association which represents approximately 5 percent of payday loan companies in Canada.

6. On the fee issues, all parties except Rentcash Inc. ("Rentcash") presented recommendations utilizing variations of a public utility cost based approach. The Rentcash analysis was based on excluding rates above the normal limits.

7. This Board is one of the first in Canada to issue an Order on maximum rates and therefore did not benefit from the findings of another Canadian regulatory body. The government, knowing that this Board would be receiving a fair amount of information with respect to the payday loan industry also has given this Board the discretion to provide recommendations on non-fee issues.

8. There was no applicant to the Board's proceedings and thus there was no onus carried by any participant in the proceeding.

9. The Coalition rejects the recommendations of its own expert and proposes a rate cap of $15.00/$100 ostensibly on the basis of the American experience. It was based on American data that Dr. Robinson rejected

anything below $17.00/$100. This proposal has absolutely no support from any of the witnesses at this hearing.

10. The Coalition retained Dr. Robinson who prepared a fee proposal based on a theoretical model. It should be rejected because it is based on a number of speculative assumptions, including assumptions that the U.S. costs are comparable or relevant and proposes an approximate rate cap of $17/$100 with no interest component which is below what is charged by all of the payday lenders in Manitoba. Dr. Robinson's proposal has no credibility. He started in 2005 with a range of $18.00 to $21/$100 plus interest in the report to Industry Canada he thought no one would see (CPLA Exhibit 11, p. 10). He then went down to a fixed fee of $10 irrespective of the size of the loan plus interest. His recommendations are a moving target.

11. The CPLA rate proposal of $20 to $23/$100 should also be rejected because it is mainly based on an analysis by Ernst & Young which:

(a) is approximately 4 to 5 years old which both Rentcash and Mr. Sorensen testified does not reflect current expenses;

(b) would result in Martmart losing money if its payday loan product was not subsidized by cheque cashing revenue;

(c) was conducted in a rollover environment, which has the effect of underestimating true costs of operation;

(d) only analyzed a very small sample of companies operating in the Manitoba market;

(e) is skewed towards the costs of an American conglomerate operating in Canada as MoneyMart;

(f) does not allow room for product differentiation such as payday loans for longer terms (e.g. 14 day to 31 day payday loans) and payday loans to clients with higher risk profiles.

(g) 7 out of the 19 companies surveyed, including the largest volume store (over $5,000,000 in volume) had costs which exceed the $23 rate cap. Eleven out of the 19 had costs which exceed the $20 rate cap.

(h) No evidence was provided on how many customers would no longer receive a service based on their risk profile.

(I) Mr. Stan Keyes of the CPLA admitted in the Nova Scotia hearings as to being providing an overzealous opinion in saying that charging over $20/$100 was too much (see question 545, pp. 205 and 206 [Tab 6].

12. It is submitted, for the reasons which follow, that Rentcash's proposal on fees should be adopted as summarized in the following paragraphs. (See Schedule A at Tab 1 for a more detailed version).

13. The recommended Order as to maximum fees is summarized as follows:

Order as to maximum fees

Payday loan

(a) The maximum cost of credit in respect of a payday loan be calculated as follows:

(I) A fee of 37.5 percent of value received in relation to the credit agreement plus;

(ii) Interest at the rate of 59 percent per annum compounded annually both before and after default of the total amount advanced. (Approximately 16¢ per day per $100.00).

Renewal, extension and replacement payday loans

(a) The maximum amount in respect of:

(I) the extension or renewal of a payday loan, be interest at the rate of 59 percent per annum compounded annually both before and after default of the total amount advanced;

(ii) a replacement loan:

A. where part or all of the second loan is required to be used to pay down all or part of the first payday loan previously arranged or provided by the payday lender be interest at the rate of 59 percent per annum compounded annually both before and after default of the total amount advanced;

B. where none of the proceeds of the new loan are required to be used to pay the first payday loan, in whole or in part,

I. A fee of 37.5 percent of value received in relation to the credit agreement plus;

II. Interest at the rate of 59 percent per annum compounded annually both before and after default of the total amount advanced.

Default fees

(a) The maximum amount that may be charged, required or accepted in respect of a default by the borrower under a payday loan be:

(I) A one time $40.00 fee in respect of the first 90 day period following default plus;

(ii) Interest at the rate of 59 percent per annum compounded annually both before and after default of the total amount advanced;

(iii) After the first 90 day period following default, the costs and disbursements awarded by Courts in accordance with the terms and conditions of the loan agreement or in accordance with the applicable law, or both.

Inflation

(a) The maximum fee of 37.5 percent be automatically increased on the anniversary date of the Order in an amount equal to the Consumer Price Index increase in the previous year as published by Statistics Canada, notice of which will be provided to any licensed payday lender by this Board.

Participants in the hearing

14. There were 11 intervention applications, 8 of which continued active participation.

15. Prior to the hearing the Board sought the position of the parties with respect to confidential information. The Board made a ruling and provided reasons for deciding not to require production of confidential information. The Board advised that this may affect the

weight to be given to reports based on confidential information.

16. Rentcash was willing to share confidential information with the Coalition and the Board so that it could be tested. It sought the assurance, however that the competitors would not have the confidential information. The Board, in an interim ruling, decided not to accept receiving information on that basis. Given the willingness by Rentcash to share its information and have it tested, full weight should be given to all its evidence without exception.

Issues

1. Pursuant to subsection 164(5) of the Act the Board issues an order which it considers just and reasonable in the circumstances, having regard to the factors and data considered by it.

It is submitted that, in approaching its task of determining what is just and reasonable, the Board consider the following issues and decide them as follows:

1. What is the mandated regulatory purpose of setting maximums?

The purpose is to protect the consumer from extreme rates and to allow payday loan companies to continue fairly and freely compete.

2. What regulatory model should be adopted by the Board to implement is triennial review as to whether that purpose is indeed being met?

The public utilities cost analysis model is ill-suited to regulate the payday loan sector in which there are a number of firms competing. Rather, an initial elimination of extreme rates followed by a monitoring of the payday loan sector can achieve consumer protection and allow competition on differentiated services and products in the new regulatory environment which is being implemented pursuant to the Act.

3. Considering all the relevant factors, including those in s. 164(4) of the Act, what rates are just and reasonable to both the payday loan sector and to the consumers?

The rates recommended by Rentcash allow the consumers to benefit from the products which they require and allow payday loan companies to compete and provide those products in a way which is just and reasonable.

Regulatory purpose

The following four areas assist the Board in defining the legislative intent and the resulting regulatory purpose.

1. A review of the history leading to the adoption of the legislation;

2. Ministerial statements;

3. A review of the applicable legislation - the statutory framework.

Legislative history

1. A maximum interest rate of 60 percent was prescribed by section 347 of the Criminal Code. There was a consumer demand for short term unsecured loans which are not being offered by Banks and Credit Unions. Banks and Credit Unions offer short term credit through lines of credit and credit cards, but there is still an unmet need. Entrepreneurs therefore stepped in and filled the void. Because of the very short term of these loans and loan losses, these lenders are unable to provide the product if the only fee related to the loan is a maximum interest rate of 60 percent. Lenders charge various fees which allow them to recover reasonable operating costs. Some of these lenders are embroiled in class action lawsuits in

which it was alleged that the various fees constituted interest and therefore exceeded the maximum interest rate of 60 percent. They also operate under some uncertainty as to whether they will be prosecuted under the Criminal Code.

2. At the request of the payday loan sector, the federal government agreed to amend the Criminal Code. The 60 percent maximum interest rate had been implemented to deal with usurious interest rates on long term loans. The Criminal Code is ill suited to deal with payday loans required by many consumers. The payday loan sector needed to be able to continue to provide payday loans without the threat of criminal prosecution or the threat of class action lawsuits.

3. Therefore, the Criminal Code was amended to allow Provinces to regulate the fees being charged for payday loans.

4. During the enactment process the Canadian Payday Loan Association requested an amendment to s.164(4) of the Act by adding that:

> "in making an order under this section, the Board shall have as its objective, maintaining a viable and competitive payday loan industry."

5. That requested amendment was not retained.

The Act does not direct the Board to have as its primary objective protecting the consumer and does not direct the Board to have as its primary objective protecting the payday loan industry. Rather, the legislature chose a dual objective - a balanced approach which must be "just and reasonable" to both the consumer and the payday lenders.

6. Under s. 164(4) of the Act, the Board may consider a number of factors which affect payday lenders such as operating expenses, revenue requirements, the financial risks taken by payday lenders, the regulation of payday lenders and payday loans in other jurisdictions and the terms and conditions of payday loans.

7. The amendments to the Criminal Code were enacted by the Federal Government with the specific knowledge that some Provinces such as Newfoundland would not be fixing maximum rates. For example Newfoundland (Rentcash Exhibit 24 [Tab 4]) communicated the following to the Senate Standing Committee on Banking, Trade & Commerce:

> Since we have received no complaints from consumers with respect to payday loan companies and a study commissioned by the Consumer Measures Committee concluded the fees charged are generally reasonable, we currently have no plans

> to bring in legislation to regulate payday loan companies at this time. In addition, regulation costs money. Provinces will have to create a licensing and enforcement mechanism, which means additional staff. This cost would have to be passed on to payday lenders who would likely pass it on to their clients in the form of higher fees. From this province's perspective, this would not be in the consumer's interest. (emphasis added)
>
> We do agree that an amendment to the Criminal Code is necessary in order for payday loan companies to operate and be in full compliance with it.

8. It also is the experience in Manitoba that there are very few complaints with respect to the payday loan sector. There have only been 4, 3 of which related to a company which is no longer in business. Mystery shopping conducted on behalf of the Coalition showed the experience to be generally positive and service oriented. Independent surveys show high consumer satisfaction. For example, the Pollara survey indicated (CPLA Pre-filed Evidence Part II.2 - Pollara Poll Results, at page 4):

On average, payday loan customers rate their satisfaction with the understanding of the terms of their payday loan and when payment on the loan was due at 8.5 out of 10.

Also rated high is satisfaction with the way they were treated by the customer service representative who provided the loan (8.2) and the overall customer service experience (7.9).

More than two-thirds of respondent payday loan customers in Manitoba think "easy to use", "convenient", "fast" and "long hours of operation "best describe payday loan providers, compared to other financial institutions.

9. Thus the legislative history, the experience in other provinces and the experience in this Province is not that there is a systemic problem with payday lenders and payday loans and the level of fees charged by different providers.

Ministerial and Senatorial Statements

10. In a Monday March 13, 2006 CBC News story it (see Rentcash Exhibit 25 [Tab 4]) was explained that

Manitoba's provincial government introduced legislation on that date which would limit the amount of interest payday loan companies could charge. At the same time the Manitoba government rolled out a number of consumer protection initiatives related to payday loans. It introduced provisions requiring the licensing and bonding of payday loan companies. Consumers will benefit from enhanced disclosure with standardized disclosure posters, the right to cancel a payday loan without penalty within 48 hours and a project which was designed to assist people in managing their money so they wouldn't be put in a position where they require the services of payday loan companies

11. The minister responsible for this legislation, the honourable Mr. Selinger, was quoted in this news story as saying:

> 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.
> (emphasis added)

12. Approximately one year later, the Honourable Finance Minister Greg Selinger, in a February 22, 2007 letter to the members of the Standing Senate

Committee on Banking, Trade and Commerce, reaffirmed Manitoba's objectives in respect of the payday loan amendments to the Act (Rentcash Exhibit 24 [Tab 4]):

> The decision to move forward with this legislation was made after careful consideration of the existing industry in Manitoba. As a result, the legislation represents a deliberate effort to balance the desire of payday lenders to provide their services and compete for a market share, and the right of consumers to be protected from excessive charges. …Accordingly, the Board will have the ability to consider the broad range of issues for both lenders and borrowers and must issue an order that is just and reasonable. We believe that this process will result in rates that protect consumers from excessive charges. Setting maximum rates will allow lenders to fairly and freely compete and will have a levelling effect in the industry by prohibiting extreme rates. (emphasis added)

13. These statements recognize that, as long as

payday lenders are not charging excessive charges, they should be able to continue to "provide their services and compete for a market share". This is contrasted with the position taken in this hearing that the Board's objective and by necessary implication, the legislative objective, is to set rates based on:

(a) a hypothetically efficient payday lending model such as the one presented by Dr. Robinson; or

(b) an "average" 2003 costs model skewed towards the elimination of small payday lenders and favouring MoneyMart which controls the CPLA which hired Dr. Gould to present its recommendation.

14. To enable the province to receive a designation pursuant to Bill C-26, the Board must determine maximum allowable rate that are consistent with the policy objectives of Bill C-26, which are to "balance consumer protection and a competitive lending environment," as articulated by the Standing Senate Committee on Banking, Trade and Commerce in its press release of March 9, 2007.

15. The Standing Senate Committee on Banking, Trade and Commerce noted in its review of Bill C-26 that the policy context underlying the regulation of the payday loan industry balanced the need to protect consumers from abuses with the maintenance of a competitive lending

environment. In discussing the senate review of Bill C-26, the Senate Committee Chair noted that the "examination of this Bill will determine if its measures adequately protect consumers while not stifling competition within an industry that is seeking to fulfill a need not currently served legitimately elsewhere."

16. There is no evidence filed in this proceeding which supports either of these two positions. Nothing in the legislative history or in the ministerial statements suggests that the Board should interfere with how payday lenders provide their services and how they decide to compete for a market share. Nothing in the ministerial statements indicates that the Board should interfere in market and make a decision as to whether a consumer should be refused a loan which would otherwise could have been made were it not for the interference.

17. There is no evidence the Manitoba government intended to force payday lenders out of business by setting rates below what is reasonably required by their individual businesses to provide the service.

Statutory framework

18. The statutory framework for these hearings is found in the Act as well as in The Public Utilities

Board Act C.C.S.M. c. Section 164 of Act reads as follows:

THE PUBLIC UTILITIES BOARD

"Board" defined

164(1) In this section, "board" means The Public Utilities Board.

Board to set maximum cost of credit, etc.

164(2) The board must, by order,

(a) fix the maximum cost of credit, or establish a rate, formula or tariff for determining the maximum cost of credit, that may be charged, required or accepted in respect of a payday loan;

(b) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of the extension or renewal of a payday loan or in respect of a replacement loan; and

(c) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of a default by the borrower under a payday loan.

Board may define and set maximums for components

164(3) The board may, by order, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any component of the cost of credit of a payday loan.

What the board may consider

164(4) In making an order under this section, the board may consider

(a) the operating expenses and revenue requirements of payday lenders in relation to their payday lending business;

(b) the terms and conditions of payday loans;

(c) the circumstances of, and credit options available to, payday loan borrowers generally, and the financial risks taken by payday lenders;

(d) the regulation of payday lenders and payday loans in other jurisdictions;

(e) any other factors that the board considers relevant and in the public interest; and

(f) any data that the board considers relevant.

Order to be just and reasonable

164(5) 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.

Periodic review

164(6) The board must review its existing orders under this section at least once every three years. After the review, the board must make a new order that replaces the existing orders.

Review on changed circumstances

164(7) Whenever the board is satisfied that circumstances in the payday lending industry have changed substantially, or that new evidence has come to its attention that may affect an existing order made under subsection (2) or (3), the board may review any existing order. After the review, the board must make a new order that continues, modifies or replaces the order that was reviewed.

Notice and hearing

164(8) Before making an order under this section, the board must give public notice and hold a public hearing in respect of the subject matter of the order.

Board may determine status

164(9) At a hearing under this section, the board may define the status and rights of any person wishing to make a submission or to provide or challenge evidence provided to the board. The board may refuse to admit evidence or receive a submission that, in the board's opinion, is not relevant to the subject matter of the hearing.

Costs of intervener payable by government

164(10) The board may determine whether an intervener is entitled to costs for participating in a hearing under this section, and may fix the amount of those costs. Costs are payable out of the Consolidated Fund with money authorized by an Act of the Legislature to be so paid and applied.

Notice of order

164(11) As soon as practicable after the board makes an order under this section, the director must give written notice of the order to every payday lender who holds a licence or whose application for a licence is under consideration by the director.

Board may make recommendations to minister

164(12) The board may make recommendations to the minister on matters in respect of payday loans and payday lenders.

Application of Public Utilities Board Act

164(13) Part I of The Public Utilities Board Act applies, with necessary changes, to the making of an order under this section as if the powers and duties of the board under this section were assigned to the board under that Part, except for the following provisions:

(a) section 33 (power of board on complaints);

(b) section 34 (power to appoint counsel) as it relates to the fees and expenses of the person appointed;

(c) subsection 51(2) (time for service of order);

(d) section 52 (enforcement of order);

(e) section 56 (order as to costs) as it relates to the costs of an intervener;

(f) section 57 (fees).

S.M. 2006, c. 31, s. 3.

19. Ministerial statements are consistent with the general legislative mandate of the Board as expressed in The Public Utilities Act, C.C.S.M. at section 74.1:

Board may refrain from exercising power

74.1(1) The board may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under this Act

(a) in relation to any matter before it; or

(b) in relation to

(i) any public utility,

(ii) any person who is subject to this Act, or

(iii) any product or class of products supplied or service or class of services rendered within the province by a public utility, or by a person referred to in subclause (ii), that is subject to this Act;

where the board finds as a question of fact that the public utility, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest.

20. Dr. Clinton, an expert witness who presented on behalf of Rentash was the only expert who provided an opinion on the issue of whether there is or will be sufficient competition to protect the public interest. His opinion was that there was (transcript pp. 1472 - 1476). Although other economists expressed their views on whether there was perfect competition, none of them specifically addressed their mind to the issue of whether there was sufficient competition to protect the public interest.

21. Dr. Clinton was the only expert qualified to give advice on policy issues and regulatory objectives

in the financial services industry. He is eminently qualified to give advice. The Bank of Canada as well as other Banks and Countries around the world seek out his advice. He opinion is that nothing warrants the radical intervention suggested by the Coalition and the CPLA and that the Board should proceed cautiously (see his September 17, 2007 report).

22. Dr. Clinton also explained (see page 17 of his report) that fee regulations are not an effective instrument for the objectives of:

(a) Poverty relief, and

(b) Financial relief for typical families.

23. First, payday clients are not particularly poor. This was acknowledged by Dr. Buckland who agreed that it is users of pawnshop loans who are the poor. Their income distribution reflects that of middle-class Canada. As confirmed in cross-examination of Dr. Buckland based on the Canadian Bankers Association study, the average consumers spends far more per month on discretionary items such as alcohol, cigarettes and government lotteries.

24. It is submitted that the evidence establishes that there is sufficient competition to protect the public interest and that therefore, the Board should follow the policy direction in The Public Utilities Board Act and set a rate which does not disturb the

current market and competition in the market.

25. Dr. Gould was presented as an expert on behalf of the CPLA. He has considerable experience in the field of regulation of Public Utilities. On cross-examination, Dr. Gould opined that (transcript pp. 1579 and 1580):

> Where a single firm serves a market, there is a presumption in favor of regulation to control prices, earnings and service standards. Where a large number of firms serve a market, there is a presumption in favor of unregulated competition to protect the public interest.
>
> In short, regulation is a substitute for competition and should attempt to put the Utility sector under the same restraints competition places on the industrial sector.

This is also the opinion of a recognized author in the field of regulation, Charles F. Phillips, Jr., who in, The Regulation of Public Utilities, Theory and Practice, 3rd ed., expressed that opinion at page 60 (see Rentcash Exhibit 15 [Tab 5]).

26. Thus, the statutory framework is consistent

with accepted theory and expert opinions of both Dr. Clinton and Dr. Gould that this Board should be cautious to intervene when there is competition in the market.

27. Rentcash's approach is also support by judicially pronouncements.

28. In Dalhousie Legal Aid Service v. Nova Scotia Power Inc., 2006 NSCA 74 [Tab 6], the Nova Scotia Court of Appeal had to consider the objectives of regulation in the context of whether it should be an instrument of social policy by taking into account the needs of lower income people in setting rates. The Court agreed with the following portrayal of the background to the Nova Scotia Board's rate making functions (para. 32, pp. 11 and 12):

> NSPI is not like an unregulated retailer. It is a virtual monopoly which operates its business on a cost-of-service basis. Providing electricity to all communities in the Province was not (and likely still is not) financially feasible for private, competitive companies. For that reason, the Province's electric service supplier is a cost-of-service monopoly. In return for undertaking and continuing the costs

of electrification of the Province, the utility is permitted, under the Act, to recover the reasonable and prudent costs of providing the service. Because it is a monopoly, regulation operates as a surrogate for competition. One of the regulator's tasks is to balance the need for the Utility to recover its reasonable and prudent costs with the need to ensure that ratepayers are charged fair and reasonable rates. (emphasis added)

…

[19] In short, rates charged to customers are based on costs incurred by the Utility in providing service. If the Board finds certain costs to be imprudent or unreasonable, it can (and has) disallowed such expenditures and reduced proposed rate increases accordingly. (emphasis added)

29. The Nova Scotia Court of Appeal confirmed that (see para. 33, p. 12):

The Board's regulatory power is a proxy

for competition, not an instrument of social policy.

30. Therefore, although much emphasis has been placed on social policy matters by the Coalition, those matters are for the Manitoba legislature. In addition, the Coalition has acknowledged that changing the fee by a couple of dollars will not effect the desired social policy changes.

31. In the absence of evidence demonstrating that payday lenders, under different business, service and risk models are incurring imprudent or unreasonable costs or making unreasonable rates of return, each payday lender, whether large, medium or small should not be put out of business.

32. The Board was also not tasked to be paternalistic and decide whether certain consumers should no longer be entitled to receive payday loans because their risk profile is too high or because their pay structure is such that they need a payday loan product of longer duration such as Signature loans (14 day to 31 day product) offered by Rentcash.

33. In the regulation of Public Utilities, Boards have a mandate to ensure consumers have access to the service which they want or require without discrimination. The Board should not render an Order

which may have the unintended effect of causing payday loan providers to close certain locations, whether in urban or rural areas.

Cheque cashing Order No. 72/07

34. The following is a review of the Cheque cashing Order and some cautionary statements that the same approach should not be used in respect of payday loans.

35. In its Order No. 72/07, the Board considered many similar issues with respect to setting a maximum fee which cheque cashers in Manitoba may charge for cashing or negotiation of a government cheque. In that Order it referred to the fact that it would soon be called upon to set maximum fees with respect to payday loans. Although many of the issues were similar, this Board's methodology to determine a maximum rate should be different in order to respect the purpose of the payday loan amendments to the Act.

36. This Board considered, amongst other things:

(a) The cost of doing business;
(b) What constituted a fair rate of return;
(c) The importance of not reducing consumer options;
(d) The variability of fees or other consideration charged throughout Manitoba;

(e) The availability of clear comprehensible consumer information respecting fees or charges;

(f) The degree of competition;

(g) The public interest.

37. Some of the main differences between the cheque cashing service and payday loans are:

(a) The cashing of government cheques is only a fraction of the overall volume and range of cheques being cashed by the fringe or near banks whereas payday loan revenues represent the majority of the revenue of these firms;

(b) Government cheque cashing is very low risk and does not vary like payday loan risk profiles;

(c) There is payday loan product differentiation in risk profile. There are some payday lenders such as Money Mart which provide payday loans to less risky clients resulting in lower costs as a result of the lower loan loss ratios. There are some payday lenders which are willing to lend money to higher risk clients and as a result they must charge higher prices to recover higher loan losses.

(d) There is payday loan product differentiation with respect to the length of the payday loans. Rentcash is the only company which offers loans to persons with monthly paycheques and therefore loans money to these persons for a time periods ranging for up to 14 to 31 days. A substantial portion of its revenue comes from these loans. These loans are higher risk loans for which higher fees must be charged. If these higher risk loans are no longer offered consumers may not be left with any options to be able to resolve their financial needs.

(e) There is payday loan product differentiation in the manner in which the service is provided for which some clients are consciously paying more.

(f) To date, Banks and Credit Unions have not shown an interest in providing these loans.

(g) The is no evidence of payday loan companies generating profits which exceed those generated by financial institutions.

38. In the cheque cashing hearing, it was suggest to the Board that caution was required on the Board's part. At page 10 of its reasons, the Board stated its intention to ensure consumers who are intended to be protected and assisted by the setting of maximum fees for the cashing of government cheques are not inadvertently damaged by the directions of the Board.

39. The Board also considered the possibility 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. It acknowledged this risk but nonetheless set a maximum fee it deemed sufficient to allow efficient cheque cashers within the fringe bank industry to remain in the market.

40. Without any evidence, Mr. Williams on behalf of the Coalition has asserted that there has been no impact on cheque cashing services. This is not known. Furthermore, cheque cashing only represents a collateral source of revenue whereas payday loans is the main source of revenue. The effect of a reduction will therefore be more dramatic. The Coalition proposition relies on economies of scope (i.e. generating revenue from other product). It is not known to what extent the cheque cashing Order has reduced the revenues generated and the extent of the adverse impact.

41. On the issue of economies of scope, Mr. Reykdal explained that their aggressive price promotion on trying to attract cheque cashing revenue has not been successful. The Robinson model incorrectly assumes that companies can adapt to the parameters of that model.

42. The approach of trying to determine who is an "efficient" payday lender in Manitoba is fraught with difficulties. To be just and reasonable, each payday lender's costs and delivery model, services and customer risk profile would have to be analyzed.

43. None of the Coalition witnesses have any experience in operating a payday loan business. None of them have spoken to management of payday lenders. Dr. Robinson candidly admitted he had no knowledge or advice on how to reduce loss rates. Any comments with respect to the effect of lowering government cheque cashing fees not being negative are premature and not founded on any evidence.

Regulatory Model

44. Given the regulatory purpose of allowing competition and cutting out extreme or excessive rates, the Board must then decide what regulatory model should be applied and is best suited to achieve that purpose.

45. All accounting experts have criticized the lack of required data to be able to come up with a sound cost analysis. Dr. Gould opined that there would be much more information available on a regulated utility (transcript, p. 1587). He also expressed the concern that:

> … the problem is really that there are many companies being regulated at once as opposed to one single company. And that makes a big difference because even if you have information, the costs may -- the cost structure may be

different for each of the companies.
(transcript, p. 1588)

46. Dr. Robinson, at page 10 of his report to Industry Canada (CPLA Exhibit 11) concluded as follows on this issue:

> There is much variation in the cost structure of all players, regardless of size, and so some small firms might be more efficient than some medium or even large firms.

47. When advising Industry Canada on the effect of adopting different fee schedules, Dr. Robinson concluded at page 16 of that same report:

> Adopting a tighter fee schedule will cause some stores to close, and there is no very precise way to estimate when a significant number of communities will lose a necessary service.

48. When considering the existing payday loan providers and the issue of possible cost compression, Dr. Robinson concluded, at page 22 of that report:

> This is a pretty simple business, and I am hard pressed to imagine a dramatic innovation that will lower costs.

49. When discussing the state of the market in

the 2005 report to Industry Canada, Dr. Robinson concluded, at page 23:

> There doesn't seem to be a lot of room left for profitable expansion, and the next phase is usually competition to secure market share and profits from existing competitors. Ernst & Young staff told me that during their study they discovered many of their potential respondents from a list the CACFSP gave them were no longer in business, and others were talking of exiting.

50. There is absolutely no evidence of actual discussion with management and no in-depth review which would support the assertion that payday lenders are not efficient. To the contrary, the Board heard from Mr. Sardo that he could not maintain store front payday loan stores because of inefficiencies. The market pressures only allow efficient operations to survive.

51. While Dr. Robinson had access to segregated Canadian costs for Rentcash through its public filings he chose to ignore their costs. He also chose to ignore the costs in the Deloitte and Touche report. As indicated in his report, he "guessed" at the numbers in the theoretical model. He acknowledged the importance of speaking to

management. He admitted that he continues to learn. He could not point to any Company operating in Manitoba operating under the parameters of this theoretical model.

52. In using a 3 percent loan loss rate, Dr. Robinson ignored the average bad debt loan experience of major public companies in the United States which was confirmed to be in the range of 4.0 to 6.2 percent with only one at 3.6 percent (Rentcash exhibit 29). Dr. Robinson ignored the actual loan loss experience of Rentcash which is now stabilized at between 5 and 6 percent. This represents a reduction as compared to spike experienced as a result of eliminating rollovers.

53. There is absolutely no foundation for and no evidence on which to base a conclusion that the U.S. cost experience is applicable in Canada. Yet, this forms the basis of recommendations by Dr. Robinson and the Coalition.

54. In a market where there is little room to lower costs and companies are being forced out of the market due to competition there is no need for the Board to intervene in the normal range of fees being charged for the different variations of the payday loan product.

55. Dr. Clinton, in his September 17, 2007 report, from pages 12 to 15 reviews the advantages and disadvantages of the cost model and the "normal limit"

model. He is the only expert who was qualified to give advice on policy issues and regulatory models. He has extensive experience both nationally and internationally with respect to regulatory models and approaches to achieve regulatory objectives.

56. The Coalition insisted on the accuracy of its information on the fees charged. Its findings are consistent with those of the personal survey conducted by Dr. Clinton and the other surveys relied on by hims. Yet it criticizes the use by Dr. Clinton of their fee data in arriving at his recommendations. Any adjustment in converting costs between the $250 loan figures and the $300 loan figures are nominal and do not have a material impact.

57. The normal limit approach recommended by Dr. Clinton has several advantages which are of benefit to both the consumer and the industry:

(a) Consumers are not unintentionally harmed. If there is a demand by higher risk consumers for payday loans, payday loan companies have the flexibility of deciding whether to offer the product. If there is a demand for longer term, higher risk loans, payday loan companies have the flexibility of offering the product. Consumers outside the limits of major urban centres will not be unintentionally deprived of a product which is comparable.

(b) A particular business and service delivery model does not need to be chosen by the Board. Consumers, with the enhanced uniform disclosure provisions, can decide whether there is value in superior service and flexibility. (i.e. companies who are willing to spend more time with the consumer, companies who take the time to do calls in advance of the due date in order to avoid NSF charges as opposed to models which operate on the basis (such as Money Mart) of automatic deposits without the flexibility of avoiding NSF charges.)

(c) It is simple and based on actual market demand (as opposed to theoretical);

(d) It avoids lengthy, costly hearings by avoiding the detailed review which will be required if the public utility cost model is adopted;

(e) It is based on actual market conditions and pressures as opposed to a theoretical model.

(f) It is based on actual costs as opposed to average costs which will eventually knock out all business models and levels of service except one. For example:

(i) Payday lender No. 1 has a higher risk longer term payday loan portfolio (i.e. up to 31 days) with higher quality service requiring more personnel and needs $35/100 to provide his product;

(ii) Payday lender No. 2 has a higher risk payday loan portfolio for short terms (i.e. up to 14 days) and needs $30/100 to provide his product;

(iii) Payday lender No. 3 has a low risk short term payday loan portfolio and needs $25/100 to provide his product;

(iv) Payday lender No. 4 has a low risk short term payday loan portfolio with minimal customer service and with a business model that relies on generating NSF fees at the back end and needs $20/100 at the front end to provide his product.

The average (35 + 30 + 25 + 20 divided by 4 = $27.50/100) eliminates the business models and types of service and loan portfolios of Payday lenders No. 1 and 2. upon the first review. On the next three year review if the same approach is adopted (under the unlikely assumption that Payday lenders No. 1 and 2 retool and are able to survive by getting a part of the market share from Payday lenders No. 3

and 4) there are only payday lenders charging a range from $20/100 to $27.50/100 ($27.50 + $27.50 + $25.00 + $20.00 divided by 4 = $25/100). Over the years the new average will gravitate closer to the $20/100 thereby eventually eliminating every business model except the business model adopted by Payday lender No. 4.

(g) It is based on actual costs, as opposed to the weighted costs used in the Ernst and Young report and advocated by the Coalition. If the above example were to be repeated it would heavily skew the results to the lowest cost.

(h) The regulatory process of applying for increases in maximum rates every three years is ill suited to business decisions on new services and business models. The normal limit model allows flexibility to compete on various matters such as fees, types of loans, length of loans and quality of service.

58. Dr. Robinson also conceded in cross-examination by Mr. Sardo that larger payday lenders may also have stores which don't perform as well as the average which may have to be shut down with a tighter fee limit.

59. The normal limit model protects consumers in that it cuts out extreme rates. Once those rates have

been cut out subsequent reviews of the industry can be significantly less expensive. A survey of actual rates being charged in Manitoba can be easily performed under the new disclosure standards. The Board can monitor the financial performance of at least two public companies operating in Manitoba (Rentcash and Money Mart) who have different loan profiles in order to see whether they are generating abnormal profits with the rates charged by them as compared to the higher risk financial services industry. If Advance America also competes in the market, there will be another measure by which to gage whether there needs to be any movement in the maximum allowed.

60. The Board may be tempted to set a maximum rate which is lower than the ones recommended by Rentcash. The Coalition has suggested that adopting the Rentcash recommendation would amount to an abdication of its responsibility to protect the Consumer. However, there is evidence that fees over $37.50 were previously being charged. Based on the evidence in this proceeding, rates of $40/100 to $60/100 are not reasonably required for the current range of products and services (See Clinton recommendations in Rentcash Exhibits 10 and 20).

61. Oddly enough, it is only the CPLA and Rentcash who provided evidence with respect to consumer needs and consumer satisfaction. The Consumer Association

provided no evidence of contacts with payday loan consumers, no evidence of consumer dissatisfaction, no assurance that eliminating certain categories of payday loans will benefit the consumer as opposed to harming them.

62. Although the Coalition conducted a mystery shopping, it did not testify and called no consumers to testify on this critical issue. Dr. Buckland agreed this information from consumers with respect to consumer needs and consumer welfare is important. Although some consumer groups made presentations, there evidence could not be tested, and, at best recounted isolated incidents of issues related to rollover scenarios.

63. Rentcash's evidence, which was not challenged or rebutted, was that consumers shop around and make informed decisions to pay for quality service. Rentcash's evidence, which was not challenged or rebutted, was that there are different loan risk profiles. It also provided actual examples of situations where consumers would have lost jobs if longer term riskier Signature loans were not available. Given this evidence, the Board should not speculate that it is in the best interests of the consumer to eliminate certain payday lenders and certain types of riskier payday loans.

64. Adopting the Robinson theoretical cost

model or the Gould average cost model will, based on the evidence, have the effect of eliminating services and products which consumers want.

CRITIQUE OF COALITION AND CPLA EVIDENCE

Issues with the positions of Coalition

Focus limited on the minority

65. The Coalition's position is largely focused, on low income consumers - a small portion of payday consumers. It seeks to gain the sympathy of the Board by alleging that the payday loan consumers are vulnerable. The Pollara survey and Rentcash evidence indicates otherwise. Mr. Hansford, hired by the Consumers Bureau observed no lack of understanding and no pressure.

No Consumer consultation

66. The Coalition's position, without consultation with the consumers, is that consumers will automatically benefit from a reduction in fees. For example, Dr. Buckland, on cross-examination, disagreed that a scenario of a person requiring a taxi or losing a job was a realistic example. His speculation was that payday loan consumers would all have access to bus

service. He was wrong in his assumptions. Rentcash, in rebuttal, gave 3 specific recent examples to the contrary. Rentcash also gave a number of other examples where consumers would be adversely impacted if the product was no longer available. This included scenarios from rural Manitoba.

Erroneous assumption of limited consumer banking options

67. The Coalition suggests that access to Financial Institutions in Manitoba has decreased. On cross-examination it was confirmed through reference to the Canadian Bankers Association that access, as a result of ATM's, telephone banking and internet banking has actually increased. On cross-examination Coalition witnesses also agreed that Credit Unions added branches over the last years. The information presented was limited to the inner-city Winnipeg.

Erroneous assumption that Banks and Credit Unions more efficient

68. Mr. Hansford indicated that Credit Unions would have to make a business case before offering the product. Dr. Robinson also did not have any information to contradict the representative of RBC that "When you start

talking about sitting down, talking to a client, processing an application, putting it into your system, having the technology to support it, it becomes a very, very costly way to advance $300" (PUB Ex. 32, Tab 22). They are not offering the product because of cost considerations. These statements contradict the speculation that the Credit Unions and Banks would somehow be more cost efficient if they chose to offer the product.

Unreliable data used

69. Reliance is being placed by the Coalition on the FCAC survey of 92 respondents which represents a sample of less than 2 percent of payday loan consumers but in the same breath it rejects the validity of a sample of approximately one third of payday lenders in the Deloitte and Touche report. One of the issues with respect to the FCAC survey is that 12.3 percent of this 92 person sample is from Quebec where there are no payday loans. Yet they are part of the payday loan data. The other issue is that Dr. Simpson agreed that the Manitoba sample in this survey of 6 respondents tells us nothing about Manitoba. The only Manitoba significant survey information was provided by Pollara who surveyed 350 people and by Rentcash's own survey as summarized in this submission and the September 17, 2007 filing by Rentcash. Even the 350 payday loan

person sample results in a margin of error of plus or minus 5.2 percent nineteen times out of twenty (see Pollara slide 1)

Erroneous assumption on lack of consumer understanding

70. Although the subjective evaluation of the mystery shopping suggests inadequate and incomplete consumer information and lack of consumer understanding, the evidence from consumers suggests otherwise. The Pollara survey confirms consumer understanding of the information generally consistent with understanding of other financial product (see p.8 of Pollara). Mr. Hansford, the expert hired by the Consumers Bureau, observed no issues with respect to lack of consumer understanding. The presenter, Mr. Vantassel, indicated he understood the product. In addition there are regulatory disclosure enhancements which will soon be implemented.

Erroneous assumption of homogeneity

71. The Coalition assumes no difference in the provision of services by different payday lenders. However, they have not surveyed consumers such as Mr. Vantassel who chose to pay a higher fee because of the higher quality service. Ms. Carrie Lawrence, on behalf of

Rentcash, testified that she speaks to customers on regular follow-up calls and knows that "most of our clients have already done some sort of background homework on pricing and are familiar with some of the options before they come into the store." (Transcript pp. 4868 and 4869). Again, this is consistent with the evidence of Mr. Hansford who actually observed one consumer get information then go to the competitor and not come back.

72. Although the mystery shopping did not reveal a reminder call prior to the due date, Mr. Vantassel explained that this is part of the service he appreciates receiving from Rentcash. There is a cost to providing this additional service. Customers should continue to have the option of choosing the level of service they prefer.

73. Although Mr. Hansford indicated that high volume stores appeared to offer as good a service as lower volume stores his comment was restricted to the service in processing a repeat loan. He did not comment on the service provided throughout the life of the loan.

74. On cross-examination of Mr. Osborne and Ms. Friesen of the Coalition, they agreed that base on their mystery shopping some payday loan companies have restrictions on first time loans. Thus a first time loan of $250 was not available at some locations. The maximum

amounts available for loan on subsequent loans also vary. Some lenders are willing to take higher risks. It was admitted that the time spent with consumers on the first loan varies from 10 minutes to 30 minutes.

75. The Coalition expressed a concern about the time spent at some locations explaining the product, the options and costs. This issue will only be exacerbated if, as a result of revenue compressions, staff are forced to spend less time with consumers. The Coalition asks for enhanced consumer disclosure and protection but has no experience on how this could be achieved with their proposed rate cap.

Unfounded criticisms of the Clinton welfare benefit analysis

76. Dr. Clinton took the time to attend at a number of payday loan stores and speak to management. He also took the time to observe consumers. He has a wealth of experience advising the government of Canada and other Countries on policy issues.

77. The critique by the Coalition assumes clients don't compare and don't price shop. The Coalition did not present any evidence to support this assertion. It also incorrectly asserts that Dr. Clinton assumed that demand was perfectly inelastic (see p. 42 of Coalition

submission) his graph (see [Tab 2 , p. 3] shows otherwise.

78. The Coalition argues that the neo-classical approach, which is commonly accepted, should be rejected. It ignores the concrete benefits and choices made by consumers without even asking them. Mr. Williams, at page 43 of his closing submission, refers to an American article which critiques another article which had concluded that payday loan consumers were worse off after losing access to payday loans. In the main filing, at page 38, Dr. Buckland opined as follows:

> These studies on the net benefits or costs to individuals and society have highly variable results depending on the assumptions made and the model used. One limitation for this type of analysis, particularly for Canada, is the lack of data.

79. Dr. Clinton based his opinion on his extensive experience and based on actual enquiries of people in the industry and based on actual visits. His opinion is sound and reliable.

Unfounded allegations of excess profit

80. Net profit margins of Moneymart (11.5 percent) and Rentcash are less than 50 percent of the

Canadian Bank Index (see Gould report pp. 18, 19 and 33). Dr. Robinson shows a charge of $19/$100 plus interest for Moneymart yet somehow thinks that at $17/$100 and no interest, Moneymart will be generating reasonable rates of return for investors.

Unsubstantiated speculation with respect to effect of volumes

81. Both Dr. Robinson and Dr. Gould assume that the per loan cost will reduce with increased volumes. However on cross-examination Dr. Gould acknowledged that 3 lenders with approximately $2,000,000 in loan volume had costs in the $20 range. Four (4) of the lenders with less than a $1,000,000 loan volume did not have higher operating costs. (see page 40 of the Ernst and Young report) One lender with over $5,000,000 in loan volume had costs in the $25 range.

82. The sample in the Ernst and Young report was small. Only 19 owners from across Canada responded of the 280 owners (i.e. less than 7 percent) which were surveyed (see page 23 of the report). None of the costs are Manitoba specific. This is a smaller sample than the Deloitte & Touche study which got Manitoba specific costs for 5 out of the 13 contacted.

83. In the Deloitte study, at page 12, the

report confirms that the 2 smallest volume stores had operating costs which were lower than the 3 higher volume stores. In the absence of having a detailed analysis of efficiency issues, theses facts do not support the assumption that more loan volume means a lower cost per $100 of loan. Factors such as the requirement for extra staff to service the volumes and longer hours of operation have not been fully analyzed.

Erroneous assumption that closing stores will necessarily lead to higher volumes

84. If a payday lender such as Rentcash has a significant portion of different client profiles (see rebuttal by Carrie Lawrence), (e.g. monthly paycheque clients with 14 to 31 day loans) and Rentcash is forced by low rates to no longer offer the service its revenue will decrease. The only option for these clients at present is Rentcash. It is submitted that it is unlikely that another payday lender will provide the service and it is unlikely that the loan volume of other payday lenders will increase as a result.

85. In addition, if the customer risk profile is higher and these customers are already limited in who will provide a loan, it likely that the low rate will mean that no one is willing to help them.

Erroneous assumption about price spreads

86. Mr. Williams suggested that Dr. Simpson refuted Dr. Clinton's evidence that a price spread of 20 percent in rates charged in payday lending is not unusual when compared to financial service rates. However Dr. Simpson compared prime mortgages. In the subprime mortgage sector annual rates can vary from 10 percent to 25 percent.

CPLA recommendation not in best interests of all its members

87. During cross-examination of the CPLA panel it was confirmed that Moneymart controls its Board of Directors. Members of its association have indicated that they cannot operate in the range of $20 to $23/$100. One CPLA member who took time to come down was Mr. Gerry Charlebois. He testified on December 11, 2007. At pages 2202 to 2204 of the transcript he explains that his costs are at $24.48/$100 and that he charges $26.50/$100 to operate. This does not take into account the $5,500 licensing fee or the Bonding costs.

88. Dr. Gould admitted his recommendation was not based on the costs of these operators whose costs are reflected in the Deloitte & Touche report. Cash Money and Rentcash withdrew their memberships from the CPLA whose

funding is substantially comprised of Moneymart funding.

89. Note that a Moneymart representative was present at nearly every day of hearing. No other members of the CPLA, apart from Moneymart attended in support of its position.

90. It is submitted that the resulting recommendation by Dr. Gould may be in the best interests of Moneymart in that it will put smaller operators out of business and give this American conglomerate an opportunity to gain a greater portion of the local business. However, the purpose, as repeated by Minister Selinger is not to put local Manitoba owned companies out of business. It is to allow them to fully and fairly compete.

WHAT ARE PAYDAY LOANS?

91. A payday loan may be generally defined as "a short-term loan for a relatively small amount, to be repaid at the borrower's next payday." Customers use this service for a variety of reasons; however, the following underscores the value of this product to consumers:

• Consumers with little liquidity may gain access to funds in order to cope with emergencies, unexpected bills and other expenses;

• Payday loans are relatively quick and easy to execute when compared to the type of loans that may be obtained by banks or other traditional financial institutions;

• Payday loans are unsecured; it is difficult to obtain loans of $1500 or less from other financial institutions that are unsecured;

• The service is conveniently located; providers tend to locate near high traffic areas and implement longer operating hours than traditional financial institutions;

• The availability of payday loans enables consumers to avoid certain penalties, charges and inconveniences that they may face with regard to other services, including for example:

- NSF charges from other banks, utilities or other retail service providers
- Overdraft charges
- Late payment charges
- Utility disconnection
- Utility reconnection fees

• The ability to obtain short-term liquidity to meet immediate obligations enables customers to maintain a healthy credit history and strong credit ratings

92. Generally, to qualify for a payday loan a prospective customer must provide evidence of a steady

source of income (i.e., documentation showing a steady rate of pay) and a bank account (i.e., the loan may be repaid using a post-dated cheque). Funds are typically advanced for up to 14 days (i.e. until the borrower's next payday) and for up to a certain percentage of the borrower's next pay cheque depending on individual lender's tolerance for risk. Applicants for payday loans may be rejected by some lenders and approved by other lenders. Lenders use various underwriting methods to assess risk of loss and to determine applicants' eligibility for a loan and the maximum amount that they will be eligible to borrow.

93. When the loan falls due, but the borrower indicates that he does not have any funds to settle the outstanding debt, a rollover loan may be available from some providers. This type of loan allows the borrower to extend the period of the loan for an additional fee. Rentcash does not offer rollovers as part of its payday advance product mix.

94. While the general description noted above has been the common understanding of a payday loan within the industry, recent amendments to The Consumer Protection Act have legally defined payday loans and payday loan transactions that are subject to regulation in Manitoba.

95. Pursuant to The Consumer Protection Act, a

Payday Loan is a loan of money with:
(a) An initial advance of no more than $1500; and
(b) An initial term, ignoring any extension or renewal that is no longer than 62 days.

96. The Payday Loan Regulation 99/2007 ("Payday Loan Regulations") provide that for the purpose of section 137 of The Consumer Protection Act, a "payday loan" means a loan of money that both meets the above requirements and also

> "is in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature."

Pursuant to the regulations, a payday loan does not include a loan of money in exchange for a guarantee, suretyship, overdraft protection or security on property or through a margin loan, pawnbroking, a line of credit or a credit card. These loan products would thus not be subject to the regulations and would continue to be regulated pursuant to the other relevant statutes.

97. The Payday Loan Regulations also specifically exclude payday lenders that meet both of the following criteria listed under subsection 4(1):

• The payday lender offers, arranges or provides payday loans only through agreements with borrowers formed by

Internet communications or Internet and facsimile communications.

• The payday lender has no employee or agent who is physically located at business premises in Manitoba at which borrowers may attend to enter into payday loan agreements.

Internet providers not regulated

98. As is summarized in Schedule A, one of the presenters recommended to the Board that it not set a rate which forces consumers to use internet lenders because they are not regulated. Yet Dr. Robinson suggests that rural locations would not be harmed by having those locations shut down. He suggests that they should resort to using internet payday loan providers. The effect of his proposal is to leave the consumer without regulatory protection and to unnecessarily cause local jobs to be lost by shutting down a local business.

Business Models

99. There are three business models typically used in the payday loan industry:

the traditional model,

the broker model; and

the insurance model.

100. Under the traditional model, the payday lender incurs all operating costs, providing the loan from its own capital and collecting interest and any other charges from the customer.

101. Under the broker model, the payday broker incurs all operating costs and collects a fee for brokering the loan, but the loan capital is provided by third party lenders who collect interest and assume the risk of the loan defaulting.

102. Under the insurance model, payday lenders incur all of the operating costs and charge a fixed fee and insurance premium on each loan transaction. The premium is designed to cover the cost of providing the loan funds and the risk of default and is assumed by an insurance company. There are no companies in Manitoba which operate under this model.

103. Rentcash operates under a brokerage model whereby its subsidiaries, The Cash Store and Instaloans, act on behalf of customers seeking short term advances of small amounts of credit (typically $100 to $1000 and occasionally as high as $1500) without having to provide a credit history or security on the loan.

104. Rentcash does not itself loan money to its customers, but instead brokers transactions between such

customers and third party lenders who are willing to advance small sums. These third party arm's length lenders set the criteria for the loan in broker agreements with Rentcash (or its subsidiaries) and provide the loan advance to customers, charging 59 percent per annum interest.

105. Acting as broker, Rentcash through its subsidiaries, The Cash Store or Instaloans, provides professional assistance to customers through its storefronts with regard to completing a loan application and gathering information required by third party lenders, arranging financing from a third party lender and, if approved, completing the lender's loan documents. In exchange for providing these broker services to customers, and only after the customer has received their advance, Rentcash charges a 20 percent fee on the amount of the total advance, including the broker fee, or the equivalent of 25 percent on value received (see Rentcash Rebuttal) that are typically due within 14 days, and 23 percent of the total advance, including the broker fee, or the equivalent of 29.87 percent of value received (see Rentcash Rebuttal) for loans that are due up to 31 days later.

106. To facilitate the brokerage business, Rentcash has established arrangements with a number of

third party lenders that may be willing to lend to the Company's customers. The availability of lenders varies with changes to market conditions. These third party lenders may be comprised of pools of individuals or they may be other entities willing to provide the capital required to finance payday loans, such as publicly traded companies or income trusts. One of those lenders, Assistive Financial intervened in these proceedings.

107. Rentcash has been an advocate of and adherent to best business practices designed to protect consumers, including: full and accurate disclosure, promoting consumer responsibility, consumers' right to rescind a loan, fair collection practices and the elimination of rollovers from the Company's payday advance product mix. Additionally, Rentcash maintains ongoing relationships with credit counseling service providers throughout Manitoba. Rentcash provides credit counseling service agencies with the opportunity to display promotional materials within its stores.

108. During the course of this hearing, Rentcash has been in communication with the Coalition with a view of seeking its input with respect to improvements in disclosure and readability of documents for consumers.

109. It believes strongly that training of staff is a key to consumer protection and its business success.

To ensure that its associates follow all transaction protocols, Rentcash has a continuous training program that utilizes training centres throughout the country, traveling training specialists who (on-demand) conduct in-store training sessions and a suite of training materials provided to employees both in hard-copy and on-line. The Company regularly conducts mystery calls to ensure that associates are operating to corporate standards. If standards are not being met, training specialists are sent to individual store locations to train associates to a higher level of service excellence.

OVERVIEW OF PAYDAY LOAN INDUSTRY

General

110. Payday lending in the Canadian market began to develop as an industry in the early to mid 1990's. The industry in Canada is considered relatively young, currently entering the mid-stages of its development and growth. While in 2003 there were 300-400 outlets across the country, this number has rapidly expanded to approximately 1400 outlets as of 2007. It is predicted that the market will peak at 2500 to 3000 units before full saturation and market maturity occurs. Thus, with approximately 1400 retail payday advance outlets in Canada, the payday loan market is currently operating at

50 percent of its full market potential. There are strong indications that new market entries will accelerate once regulation has been implemented. For example, the largest payday lender in the U. S., Advance America, Cash Advance Centers, Inc. is planning an expansion into the Canadian market once regulatory certainty has been established. At the Jeffries Financial Services Conference in New York, in Spring 2007, Advance America's CEO, Ken Compton, indicated that the Company has secured leases within Canada. It opened 7 stores in Winnipeg after this hearing started. Advance America currently operates 2,900 retail outlets in 37 U.S. jurisdictions.

111. The current Canadian payday loan market has an annual volume of an estimated $2.0 billion to $2.5 billion. Rentcash currently captures approximately 25 percent of this market. Dollar Financial, which owns Money Mart, owns and operates approximately 400 units across Canada (a number comparable to Rentcash). Cash Money is the next largest operator with 100 locations throughout the country. Rentcash, Dollar Financial Group (Money Mart) and Cash Money together account for 55 percent of the current Canadian payday loan market. The rest of the market consists of small single store operations (the "mom and pop" operations) or regional operations (i.e., operators that may have as many as 25 payday loan outlets

in a given region).

112. Rentcash subsidiaries, The Cash Store and Instaloans, together have a market share of approximately 34 percent of the Manitoba payday advance market based on store count. Money Mart, the second largest competitor in the province has approximately 29 percent share of the market. Cash Money is the next largest competitor with a market share of approximately 8 percent; smaller operators comprise approximately 29 percent of the market share.

113. The market is currently quite diverse, with small local operators competing with large national or multinational operators. The current market may be characterized by a wide variety of product offerings and available pricing schemes. Consumers not only have the option of choosing between products based on the price per $100 loan, but may also choose between a variety of types of loan products and ancillary services as well as customer experience.

Market Competition

114. Rentcash presented its evidence and evidence of an expert economist, Dr. Clinton, that sufficient competition exists in Manitoba's payday loan industry to protect the public interest. Nationally, there are three large providers in the market and many smaller

regional payday loan providers, some of which offers a range of cash advance services to customers throughout Manitoba and throughout Canada. Each of the three national chains has a strong presence in Manitoba. Prior to 2001, Money Mart was the dominant alternative financial services provider in Canada; however, since 2001, Rentcash has grown to become a viable competitor and Cash Money has also developed a sizable position in the market.

115. The vast majority of companies are multi-line providers, in that they supply a variety of alternative financial services in addition to payday advances, and operate under varying business models, employing varying business practices in order to anticipate and serve the needs of both current customers and to attract new customers. Additional charges to customers may include card fees, cheque cashing fees, and NSF charges and administration fees for loans in default.

116. Significantly, the existence of rollovers in the Manitoba market enables some operators to charge lower fees on a per $100 basis, as the cost of the initial loan is recovered through a larger revenue stream afforded by the rollover product. The Board should be mindful that a low advertised cost per $100 may not necessarily reflect the true cost of providing a loan due to additional charges that may occur on default. Fee limits should

therefore be accommodative of differences in product offerings.

117. Competitive pressures have led payday loan providers to evolve a range of products and services, as well as customer service measures and consumer protection practices that together maximize their ability to retain and attract new customers. Competition has also shaped how Rentcash conducts its business, i.e. its focus on enhancing customer experience and product satisfaction.

118. The following are examples of innovation in Rentcash operations that have been driven by competitive forces that currently exist in the payday advance industry:

• A key part of Rentcash's competitive business model has been to provide a high level of customer service in an inviting and open store environment. In this vein, Rentcash elects to keep only small amounts of cash on premises, providing funds to customers using debit cards, cheques or prepaid credit cards. The small amount of cash on-site is also intended as a security measure that protects customers and employees alike. It also negates any requirement for bullet-proof glass or other security measures enabling the Company to provide an open and inviting aesthetic environment that is attractive to customers.

• Rentcash has over the past year diversified the services it offers by enhancing cheque cashing services, and to promote these services Rentcash has offered its customers a 50 percent off Rentcash's largest competitor's cheque cashing fees promotion.

• Rentcash continues to expand the suite of alternative financial services available to customers. In addition to enhancing its cheque cashing product, the Company now also provides prepaid credit cards, mortgage services, tax form preparation services through H and R Block, injury advances, telephone reconnect services and wire transfers through Western Union.

Co-location of Payday Lenders Enhances Competition

119. Payday lenders tend to co-locate next to each other and also next to existing traditional financial institutions within an area (See map attached as Attachment F to Rentcash September 27, 2007). This industry trend enhances competitive forces since consumers may easily compare prices and services offered by different payday loan companies as well as banking institutions.

120. A location analysis conducted by the

Canadian Bankers Association ("CBA") concluded that for each of the four cities studied (Toronto, Halifax, Winnipeg and Vancouver) no payday lenders were located further than 1500 metres from a traditional, deposit taking financial institution such as a bank, a credit union or a trust company. In each city studied, approximately 50 percent (or more) of payday lenders found to be located within 250 metres of a traditional financial institution and more than 90 percent of payday lenders were located within 1000 metres of a traditional financial institution, and close to 100 percent of lenders are located within 1500 metres of a traditional financial institution.

121. The study concluded as follows: "it is clear that the location strategy for payday lenders is not one of infilling in areas where the population is not serviced by traditional FIs [financial institutions]. Rather, based on these findings, we can state that payday lenders are locating in relatively close proximity to the existing traditional FI network." In essence, the CBA found that payday lenders are not a replacement for traditional financial institutions - 1 they tend to co-locate near such institutions, meaning that,

> "consumers have good access to other
> financial institutions in the areas

where payday lenders are located."

Location

122. The Buckland submission at page 7 provides analysis which suggests that payday lenders locate in disadvantaged neighbourhoods at a disproportionate rate. Payday lenders are clustered in the downtown area of Winnipeg or in nearby major thoroughfares which in some cases are adjacent to low income areas, in order to service the people who work and shop in the downtown area, and are not located explicitly to serve residents that live in neighbourhoods adjacent to the downtown area. The income level of a particular area is not as critical in determining location of payday lenders as is accessibility and visibility to potential customers. Outlets tend to be located in areas where there are more potential customers, or which present the most convenient locations for consumers.

OPERATING EXPENSES AND REVENUE REQUIREMENT OF PAYDAY LENDERS - CLAUSE 164(4)(a)

123. This section reviews the factors that the Board may consider with regard to making the above-noted considerations regarding the maximum cost of credit, the maximum cost that may be charged with regard to a renewal

or rollover loan and the maximum cost that may be charged with regard to defaults pursuant to subsection 164(2) of The Consumer Protection Act.

Cost of Brokerage Services Provided

124. There is no evidence that the operating costs of Rentcash, are unreasonable given the services provided and the risk profile of its customers. In fiscal 2007, the Company generated brokerage revenues of $123.5 million. Related expenses for fiscal 2007 were as follows:

• Direct brokerage store related expenses of $71.0 million, including rent, utilities, repairs and maintenance, office and administration, training, licensing, insurance, collection and advertising and promotion costs. Expenses also include salaries, benefits and incentives paid to store clerks, store managers, regional managers and divisional vice presidents.

• Capital and intangible asset amortization costs of $3.9 million directly related to development or acquisition of storefront locations.

• Retention payments to third party lenders of $23.4 million so that they continue to be willing to advance funds to the Company's customers.

• Corporate expenses and amortization costs required to support the brokerage operations of $12.1 million. The corporate functions include accounting and finance, information systems, business development, human resources and training, internal audit, risk management, marketing, and investor and government relations. A majority of the Company's corporate functions are directly related to the brokerage business.

125. The brokerage division's net income before corporate costs for fiscal 2007 was $16.6 million. After corporate costs the net income was $8.2 million (6.6 percent of brokerage revenue).

126. Brokerage expenses have increased over the past year due to the increased number of stores in operation, the full year impact of the telephone re-connect business, the addition of a collection department and cheque cashing call centre and a significant increase in training activities. Corporate expenses have also increased due to the strengthening of operational and management capacity in key areas such as internal audit, risk management, training and government relations.

Third Party Lender Interest

127. As noted interest on the loans is charged by third party, arms length lenders, commencing from the time at which the loan is advanced and accruing until such time as the loan is repaid. Rentcash lenders currently charge interest on loans at 59 percent per annum, which is equivalent to 16 cents per $100 per day. The Company does not have any ownership or interest in any of the third party lenders. Assistive Financial Corp. provided evidence to the Board that the rates paid to the investors is competitive to other investment products with a similar risk.

128. Although Dr. Robinson, the Coalition expert, suggested a lower rate of return might be appropriate, he explained under questioning by the Board that he would expect a premium were he to be investing in a payday loan company. Dr. Gould, the CPLA expert, criticized the rates used by Dr. Robinson. Dr. Gould explained that a nominal rate of return should be used and that corporate taxes have to be taken into account. Dr. Gould's approach is consistent with the Rentcash experience.

Debit Card Fees and Prepaid Credit Card Fees

129. Once a payday advance is approved, the customer has the option of receiving their advance via a cheque sent by the lender, debit card or prepaid credit card. For security and safety reasons it is Rentcash's policy that minimal amounts of cash be maintained on store premises, and therefore a customer is not provided with the option of receiving their advance by way of cash.

130. Most customers chose either the debit card or prepaid credit card. Both cards can immediately be used at any ATM or point of sale terminal in Canada. The debit and credit cards provide customers with enhanced security, i.e., customers are not forced to exit the store carrying large sums of cash. The prepaid debit card also provides users who may not qualify for a credit card with the advantages of possessing a credit card.

131. Rentcash provides two private-label debit cards for customer convenience: The Cash Store Cash CardTM and InstaWorld Debit Card. The cost to a customer to purchase a debit card is $8.00. The cost to purchase a prepaid credit card is $14.95. Both the debit card and the prepaid credit card may be used for future advances without having to purchase another card. As is customary with all debit cards and credit cards offered by banks and others, the customer is subject to transaction fees charged directly by the card provider and by third party

ATMs.

132. These services are contracted through a bank, Direct Cash. As such they are not included in the maximum amount fixed by the Board. However they must be disclosed as there is value given and value received with respect to these third party services. The evidence is that the charges are within the range of what is charged by other financial institutions for these services.

Optional Insurance

133. Payment protection insurance is an optional product offered through a third party supplier to Rentcash customers. Brokering services are not contingent upon the purchase of the optional insurance, thus pursuant to section 3 of the Payday Loan Regulations the insurance product offered by Rentcash is not included in the cost of credit and is outside the scope of the current hearing.

Increased Costs due to Regulation

134. Rentcash estimates the cost of licensing and bonding to range from $0.70/$100 to $2.82/$100 depending on the stores. In addition the cost of this hearing will be substantial. It was lengthy and dealt with a number of collateral non-fee issues raised by the

Coalition. Although these collateral issues were of interest and may lead to recommendations which improve the regulations, they have increased the cost of regulation and must be passed on to the consumers unless assumed by the government.

135. Payday loan providers, face new operational costs due to the licensing requirements and other regulatory requirements included in The Consumer Protection Act and The Payday Loan Regulations. These costs are material and potentially prohibitive for some companies (including the smaller rural flower shops such as the one in Steinbach identified by Dr. Robinson) and it is Rentcash's position that these compliance costs must be taken into consideration in determining the maximum cost of credit for providing a payday loan.

136. The Consumer Protection Act sets out licensing requirements for payday lenders and stipulates as follows:

• All payday lenders must be licensed pursuant to The Consumer Protection Act.

• Payday lenders are defined under section 137 of that Act as persons who offer, arrange or provide payday loans.

• Pursuant to subsection 140(2) a person who wishes to offer, arrange or provide payday loans at more than one location must apply for a separate license for each location, and pursuant to subsection 141(3) such licenses must be renewed annually.

• Subsection 140(4) before a license is issued or renewed by the director, the applicant must pay the license or renewal fee specified in the regulations, and the following applies:

- Pursuant to the payday loan regulations the fee for a payday loan license for one year or a portion of a year is $5,500.

- Since lenders include persons who offer, arrange or provide payday loans, and a person who wishes to offer, arrange or provide a payday loan must pay the license or renewal fee for each location, the regulations seem to establish that both the broker and the lender for a location must separately pay $5,500 per outlet.

Recommendation re Bonding and Licensing fee

137. If the legislative requirement is applied to Rentcash to require it to pay double the fee because of its business model, this should be taken into account in setting the maximum fee. Alternatively, the Board should recommend that this requirement be changed so as to not discriminate based on Rentcash's operational model.

138. The Consumer Protection Act also requires under subsection 164(6) that the Board review existing orders issued pursuant to section 164 once every three years or where pursuant to clause 164(7) the Board is satisfied the

> "circumstances in the payday lending industry have changed substantially, or that new evidence has come to its attention that may affect an existing order made under subsection (2) or (3)."

139. The Act and the Regulations would seem to impose new and potentially prohibitive costs on both the lenders and the brokers of payday loans in Manitoba. These new costs need to be carefully considered before setting a maximum cost of credit. The cost of credit established under section 164(2)(a) must consider the cost of these regulatory changes and should not be based on current cost of providing loan in Manitoba.

140. Further, given the fact that there are a variety of payday lenders in this jurisdiction, operating

under different business models with varied product offerings, examining the financial details of each business for the purposes of determining efficiency would seem to be cost and time prohibitive if such a review is to occur every three years. The Board needs to be aware of the future costs of regulation for payday lenders and potential time and work requirements for lenders, interveners and the Board, if detailed reviews of financial information are to occur regularly in Manitoba.

141. This regulatory cost factor is another reason to reject the Public Utility cost based analysis. It is unnecessary to incur that expense and level of analysis to achieve the objective of achieving just and reasonable order.

CIRCUMSTANCES OF CREDIT OPTIONS AVAILABLE TO, PAYDAY LOAN BORROWERS GENERALLY, AND THE FINANCIAL RISKS TAKEN BY PAYDAY LENDERS - CLAUSE 164(4)(c)

Consumer Profile

Family status

142. According to a study of the payday loan industry by Statistics Canada (the "Pyper Report"), payday loan use varies according to the age of the major income recipient in families. Younger families tend to rely more

on payday loans, with the following noted:

- Less than 1 percent of families with major income recipient 45 or older used payday loans.
- 10 percent of families 15 to 24 years of age used payday loans.
- Young families were 3 times more likely to use payday loans than families aged 35-44.

143. Further, families with children or unattached individuals were more likely than couples without children to use payday loans:

- Unattached individuals – 3.6 percent
- Married couples with children – 3.5 percent
- Married couples without children – 1.6 percent

Education

144. The Pyper Report found that only 1.3 percent of families that had a major income recipient with

a university degree used payday loans, while 3 percent of families with a highs school graduate or post-secondary education used payday loans. However, the study noted that when other family characteristics were considered, education was not a major factor contributing to the use of payday loans.

Income

145. The Pyper Report found that low income families were twice as likely as other families to use payday loans, i.e., 4.6 percent compared to 2.3 percent for other types of families. Families with higher incomes tended to be less likely to use payday loans, i.e., 3.0 percent for families with incomes between $40,001 and $66,000, compared with 1.4 percent for families with incomes above $66,000. The study notes a relationship between income and liquid savings noting that

> "after controlling for other family characteristics, those [families] with $500 or less in their bank account were significantly more likely (2.6 times) than those with between $2,001 and $8,000 to have used payday loans. This is not surprising since having funds

readily available to pay expenses likely means that families do no need to look elsewhere."

Consumers Understand the Product

146. Rentcash believes that the basic brokerage model fee structure it utilizes is straight forward and easy for its customers to understand. Customers pay a broker fee to Rentcash at the time that their loan is advanced, and separately pay interest (which accrues from the date the loan is advanced) to the lender when the loan is paid.

147. Rentcash also provides its customers with loan documentation that clearly sets out relevant information with regard to the loan such as the term of advance and the date of repayment. This loan documentation, provided as Attachment D to the September 27, 2007 filing, also separately breaks out the following parts of the payday advance:

- At the top in bold print: "A Payday Loan is a high cost means of borrowing"
- The total amount of loan received by the customer
- The cost of credit broken out as follows:

- Interest at 59 percent per annum
- Broker fees payable to broker and deducted from the advance

• Total cost of credit
• Applicable card fees
• Applicable Payment Protection Plan fees
• Total amount to be repaid by customer
• Total cost of credit expressed as annual percentage.

148. Loan documents also note a service charge in the event of a returned item and an administration fee in the event of default.

149. As noted, a survey of Manitoba Rentcash customers found that a majority of Rentcash customers strongly agreed or agreed (79 percent) that the Rentcash customer service representative explained all parts of the payday loan transaction. Only 8 percent strongly disagreed or disagreed that all parts of the transaction had been explained.

Customer Satisfaction

Range of Competitive Considerations

150. Rentcash does not differentiate its product in the market or compete entirely based on price. Other

factors consumers may consider when obtaining a payday advance through Rentcash (as opposed to a competitor) include convenience, past experience with the Company and familiarity with the staff at a particular location. Manitoba consumers profiled overwhelming responded that they chose the particular outlet based on the convenience of the location (70 percent), with 10 percent responding that they chose the location because they are familiar with the staff and 8 percent responding that chose the particular location because they have visited the location in the past.

151. In a survey of Rentcash customers in Manitoba, customers were asked to rate their satisfaction with regard to various aspects of their experiences at Rentcash, the following results for specific areas of service were recorded:

Rentcash Experiences:

	Satisfied or Very Satisfied	Neither Satisfied nor Dissatisfied	Dissatisfied or very Dissatisfied
Agreement that Associate Explained all Parts of Transaction	79 percent	13 percent	8 percent

Timeliness and Convenience

Timeliness of service

85 percent 11 percent 4 percent

Hours of operations

89 percent 8 percent 3 percent

Location

Convenience of the location 90 percent 5 percent 5 percent

Ease of finding location

90 percent 8 percent 2 percent

Service

Confidentiality provided

88 percent 6 percent 6 percent

Personable staff

92 percent 5 percent 3 percent

Knowledgeable staff

90 percent 9 percent 1 percent

Aesthetics

Cleanliness of the environment

95 percent 4 percent 1 percent

Welcoming atmosphere

90 percent 9 percent 1 percent

152. Rentcash rates highly with its customers in areas of customer service, i.e., it provides a clean

environment, welcoming atmosphere and timely, convenient and professional service.

Collection Procedures

153. Rentcash associates adhere to standards with regard to customer contact. It is Rentcash policy that each customer receives a pre-call before their loan is due to remind them of their due date. Store associates must follow procedures in conducting pre-calls. Customers are only called at the appropriate times between 8 AM and 9PM, Monday through Saturday. Rentcash associates do not call customers at certain numbers if such a request is made by the customer. Pre-calls are only made two to three days prior to the date the loan is due. No message is left for the customer unless no contact is made on the day prior to the loan due date.

154. Precalls are conducted to remind customers of their payment due date, and confirms whether or not the customer will be able to pay the amount outstanding, this also helps remind customers of their due date to help ensure they do not incur any additional charges. Rentcash associates follow procedures with regard to the manner in which the call is conducted, i.e., calls are to be placed at the best time possible for reaching the customer, there are limits on when associates may leave messages and how many times per day associates may call a customer. When

documenting commitments for repayment, the associate must comply with the following procedures:

- Identify who they are and where they are calling from,
- State the reason for the call,
- Ask for the customer to provide a solution and let the customer speak,
- Accept the customer's solution/ suggest other options,
- Get a time and date commitment for repayment; and
- Repeat the commitment back to the customer to avoid misunderstanding and inform the customer you are making a note of the discussion.

155. Past due customers may only be called up to three times per day and a message may only be left at the third attempt.

Optional Payment Plan

156. The Optional Payment Plan is a tool that is utilized to collect on late accounts. Customers agree to this payment plan option at the time they apply for the loan in the Optional Payment Plan Agreement. No additional fees are added to the plan except for NSF fees and accrued interest. The payment plan allows payroll offices to pay

out the balance of the loan in full or in monthly instalments. This is one option available to customers, and customers do not have to agree to this plan when they apply for a loan at Rentcash.

Consequences for Consumers if Payday Loans are not Available

157. The Pyper report includes among the reasons that certain families use payday loan services the following:

• Individuals with poor credit ratings, a previous bankruptcy, or no bank account may not have the option of using less expensive means such as credit cards, lines of credit or overdraft protection.

• Without the payday loan option, some consumers may be forced to seek out and engage in less desirable credit options such as loan sharking or other non-storefront alternatives.

158. The Pyper Report also notes that individuals and families may require payday loans for a variety of reasons including paying for unforeseen expenses. It is also noted that some families are routinely unable to meet their monthly expenditures with

their current household incomes. It is posted that this gap between income and expenditures may be due to factors such as the "life-cycle stage" of the household (i.e., younger families have different expenses and spending patterns had less time to accrue savings). The utilization of payday advances may also be influenced by relative education and income of families.

159. If individuals or families do not have sufficient savings and cannot obtain credit by other means such as credit cards, lines of credit or provision and they do not have overdraft protection, obtaining a small payday loan may be the only viable option. In lieu of obtaining the small amounts of funds required to help meet household expenditures or to cope with unforeseen expenses and emergencies, individuals or families may be forced to bear other types of detrimental costs, including the following:

1. NSF charges

Examples of the types of NSF fees and charges consumers may face if payday loans are not made available are as follows:

- Manitoba Hydro and Centra Gas each include in their terms and conditions of services provision for NSF fees for each payment cheque returned by a financial institution due to non-sufficient funds. The payment is reversed from the customers energy account and a $20 NSF fee is charged. This NSF charge is in addition to any NSF charge assessed by the customer's financial institution. Accounts that remain unpaid after the due date are also subject tot a late payment charge of 1.25 percent per month (16.08 percent per annum).

• Bank NSF Charges – In addition to NSF fees assessed by a utility or other services provider, customers may also be charged NSF fees by their banking institutions for returned cheques. Thus, if there are insufficient funds in a customer's account to cover the cost of the monthly a customer of Manitoba Hydro would face a charge of $20.00 plus any late payment charge and an NSF charge from their financial institution that may range from $35.00 to $40.00.

- The Royal Bank charges $35.00 for each NSF incident
- CIBC charges $40.00 for a cheque or debit item returned NSF
- BMO charges $35.00 for cheque, pre-authorized bill payment or debit
- Scotia Bank charges $37.50 for each cheque or other debit item returned for insufficient funds on day to day bank accounts

• Canada Revenue Agency – In addition to interest charges assessed for late payment, CRA also charges a 5 percent penalty for late payments.

• Negative Credit Ratings – In many circumstances when a customer incurs an NSF fee or makes a late payment it is reported the credit bureau. This can cause negative credit ratings and can reduce a customer's ability to be approved for more traditional financial solutions.

2. Overdraft Charges

Consumers may face overdraft charges. For example, the Royal Bank charges $3.00 a month on overdraft interest, whichever is higher (monthly fee included in RBC VIP Banking and RBC Signature No Limit Banking accounts), and $5.00 plus debit fee and overdraft interest for each overdraft item handling.

CIBC charges interest (at an overdraft interest rate of 21 percent per year) on the outstanding overdraft amount in addition to a $5.00 charge in any calendar month for which an overdraft is created or increased.

3. Disconnection/ Reconnection fees – utilities

With no recourse to payday loan products consumers may face the inconvenience and the cost of a utility disconnection and reconnection. For example, Manitoba Hydro may disconnect customers for non-payment of service. Full payment of the account balance and a reconnection fee of $50.00 (plus GST) are required before services will be restored.

Pursuant to its terms and conditions of services, Centra may discontinue services and remove its property from a customer's premises for non-payment by the customer of any indebtedness to the company when it is due. Where a service reconnection takes place during regular business hours, a reconnect fee of $50.00 (plus GST) will be charged.

Consumer complaints

160. The Financial Consumer Agency of Canada (FCAC) is responsible for strengthening the oversight of consumer protection measures in the federally regulated financial sector and for expanding consumer education activities. It reports to Parliament through the Minister of Finance. In 2005-06, the FCAC received at total of 79 communications from members of the public regarding payday loans: 48 were inquiries regarding payday loans and 31 were complaints. This may be compared with the following other categories

of loan transactions:

• 130 inquiries and 98 complaints regarding personal loans,
• 158 inquiries and 47 complaints regarding student loans,
• 55 inquiries and 43 complaints regarding lines of credit; and
• 233 inquiries and 229 complaints regarding mortgages.

161. Generally, there are relatively few complaints on the payday loan industry from consumers. For example, the Consumer Protection Branch of the Ontario Ministry of Government Services, a government body that investigates consumer complaints and enforces consumer protection laws in Ontario, received only 10 written complaints regarding payday lenders in 2006.

162. As noted in a survey of Rentcash customers in Manitoba, customers asked to rate their satisfaction with regard to various aspects of their experiences at Rentcash, were generally satisfied with the service they received, i.e.,78 percent of customers surveyed were very satisfied or satisfied with the service they were provided. Only 5 percent of customers surveyed were dissatisfied or very dissatisfied.

REGULATION OF PAYDAY LENDERS AND PAYDAY LOANS IN OTHER JURISDICTIONS - CLAUSE 164(4)(d)

163. The Government of Manitoba has elected to regulate the industry consistent with terms stipulated in federal Bill C-26, including establishing maximum allowable charges for various components of a payday loan product. Not all jurisdictions that have regulated the industry have chosen a similar route. By no means is there a consensus amongst regulators that rate caps are the most appropriate means of protecting consumers. Indeed, many jurisdictions, both within Canada and outside of Canada, have elected to emphasize fair disclosure provisions as the key element of an effective consumer protection regime. Although the industry is regulated in the United States, many jurisdictions in that country do not set rate caps, as the facilitation of competition is viewed as the best policy mechanism for dampening prices.

164. The very low volume of consumer complaints directed against the industry has led some provinces - and many U.S. states - to conclude that the cost of price regulation, which inevitably is passed on to consumers, far exceeds the benefits. In its submission to the Senate Committee on Banking, Trade and Commerce, the Province of Newfoundland concluded that on the basis of complaints

received there is absolutely no rationale for rate regulation, as required by Bill C-26 50, as noted in the following comments to the Senate Committee on Banking, Trade and Commerce:

> Despite the high effective interest rates on these payday loans, some consumers use the service, so there is obviously a consumer demand. Consumers in this province appear to be satisfied with the service, as my Department has received no complaint with respect to payday loan companies. Also, our government currently has a red tape reduction program whereby we are reducing red tape for businesses operating in this province. We intend to bring in new legislation or regulation only where we feel it is necessary to protect consumers. Since we have received no complaints from consumers with respect to payday loan companies and a study commissioned by the Consumer Measures Committee concluded the fees charged are generally reasonable, we currently have no plans to bring in

legislation to regulate payday loan companies at this time.

165. In addition, regulation costs money. Provinces will have to create a licensing and enforcement mechanism, which means additional staff. This cost would have to be passed on to payday lenders who would likely pass it on to their clients in the form of higher fees. From this province's perspective, this would not be in the consumer's interest.

166. The Province of Alberta, in a recent news article, indicated that rate caps may not be an appropriate regulatory tool.

167. The province of Ontario has the highest volume of payday loan stores and transactions in the country, yet received only 10 complaints in a one year period, as was noted in a recent discussion paper issued by the province. This same paper suggested that regulatory costs would be too high for consumers to bear and that rate caps, therefore, may not be appropriate.

168. The United Kingdom has no rate caps for any financial services products. Instead regulators monitor the market for healthy competition by measuring exits and entries, product variation and price fluctuations.

Nova Scotia experience

169. In the Nova Scotia payday loan hearings, the Board retained the services of an accountant, Mr. Martin who is of the opinion that the rates should be in the range of $23 to $27/$100 plus regulatory costs. At page 1279 he expressed the opinion that competition is healthy and that based on the evidence he was comfortable with a $27/$100 fee. See Tab 7.

The US experience

170. The U.S. rate caps and operating costs cannot be relied on. First it is largely based on allowing rollovers, which, based on the experience of Rentcash, allows companies to charge a lower rate per $100. Second little is known about salaries and operating costs and how they compare with those in Manitoba. Dr. Robinson made a number of assumptions in trying to segregate the Canadian costs of Moneymart. He ignored actual costs experienced by Rentcash and actual costs reported in the Deloitte & Touche report.

171. When Dr. Robinson made enquiries with respect to the real rate represented by some of the $15 rate caps he found out that a discounting practice means the rates are really $17.65(see Coalition Exhibit 42). There are also many other unknowns which have not been

verified.

172. Populations are much larger in the U.S. and therefore there is the potential for higher volumes.

173. The profits of publicly traded payday loan company as well as their share prices continue to decrease thereby indicating insufficient revenue streams.

174. Large players such as Advance America are exiting some markets.

175. Operating Costs in the U.S. such as wages are different. Minimum wages are in the $5.75 range in the U.S. as compared to over $8.00 in Manitoba.

TIERED RATING SYSTEM OR SLIDING PERCENTAGE MODEL

176. Both Cash-X and Dr. Robinson discuss a tiered rating system or a "sliding percentage model" in their evidence.

177. Cash-X advocates for a tiered rating system in its September 17, 2007 submission based upon a rationale that risk of loan loss declines as loan values increase. It is noted pages 5 and 6 that operators typically provide larger loans to clients with a solid repayment history, and bad debt seems to decline with value of the loan. Thus, Cash-X concludes that it makes more sense to charge more per hundred on smaller loans

(newer clients) and less per hundred on larger loans, and recommends a fee of $30.00 per hundred on the first $300.00, and $25.00 per $100.00 up to $500.00 and $15.00 per $100.00 for amounts over $500.00.

178. The Robinson submission describes a sliding model as a model whereby the lender charges higher fees for a set initial amount of principal and a lower fee for remaining amounts. At page 11 it is noted by Dr. Robinson that, "this is a logical way to charge, because the costs for the loan are mostly invariant to the size, and hence a larger loan should be charged a relatively lower amount per dollar of principal."

179. It is Rentcash's view that the tiered rate proposed by Cash-X or the sliding percentage fee structure discussed by Dr. Robinson fail to recognize the increased risk of loan losses certain payday lenders incur when providing longer terms or larger loan amounts. Rentcash's experience has been that risk increases as the principal amount of the loan increases, i.e. the higher the value of the loan the less likely it will be repaid. Historic trends within the customer base of Rentcash demonstrate that there are higher default rates as the loan amounts increase. Thus, charging declining rates on higher value loans would result in customers at lower loan values subsidizing the higher loan customers.

180. Since it is Rentcash's experience that risk does not decrease with the size of the loan, but instead increases, declining rates on larger sizes of loans may accommodate specific operators such as Cash-X, but do not fairly accommodate all operators in the payday loan industry.

Consequences of Tiered Rate or Sliding percentage Model

181. Not all payday lenders manage risk in the same manner, or serve customers with a uniform risk profile. While lenders such as Cash-X manage their risk by restricting the amounts loaned to new customers and only increase amounts advanced as the customer demonstrates reliability, other lenders will adopt greater levels of risk in order to serve a broader category of customers and customer needs. If the tiered rate proposed by Cash-X were adopted it would force all payday lenders to restrict availability of higher risk loans to consumers who require the service in order to match risk with the maximum rates. It is Rentcash's position that such a rate structure would materially restrict the availability of larger loans to first time customers, which would not be a good outcome for consumers who require this service.

182. Imposing a tiered rate or sliding fee

structure would adversely impact consumers as lenders may limit the scope of the payday advance in order to mitigate lender risk, with the following results:

• Larger loan amounts may not be made available from certain outlets,

• Loans may not be made available to certain higher risk customers (e.g. first time users or newer customers); and

• Longer term loans may no longer be feasible.

183. A tiered or sliding rate structure applied uniform across the entire payday loan industry in Manitoba would force lenders to adopt similar customer profiles and manage risk in similar manner, i.e., limit customer access to the larger loan amounts. This may require a first-time customer to visit multiple lenders in order to access the capital required to meet his or her short term needs. Consumers' ability to comparison shop would also be affected as, if lenders were unwilling to loan larger amounts to newer customers, customers may feel obliged to stick with a certain lender in order to build up a customer profile. Alternately, consumers may in some circumstances have to take out payday loans from more than one outlet in order to obtain the advance required to meet their household needs. This would restrict the availability and convenience of this service to already

underserved members of the public. In addition, the customer's ability to understand the rate structure would be impaired compared to a simple, consistent dollar amount per hundred models.

DEFAULT CHARGE AND INTEREST

184. It is submitted that the proposed default fee of $40 is reasonable based on what is being charged by Banks. No evidence has been submitted to show this is unreasonable.

185. On the issue of interest, it has been shown through the broker model that a rate of 59 percent does not even cover the loan losses of the lender. These are high risk loans. The rate of 59 percent is actually lower than the cost. In his initial recommendation to Industry Canada (CPLA Exhibit 11 at page 10) Dr. Robinson agreed that an interest rate charge is useful in that it provides an incentive for the consumer to pay on time and some compensation to the lender.

COSTS

186. Rentcash continues to reserve its rights to seeking costs as it believes it has made a substantial

contribution to the issues to be decided by this Board.

Schedule A

Presenters

187. Although information provided by presenters was received, limited weight should be given to this evidence as it was not subject to scrutiny under the interrogatory process and could not be tested under cross-examination.

188. The first presenter was Scott Hannah, President & CEO of Credit Counseling Society. Amongst other things he expressed the following views. He does not expect that conventional institutions will fill the void. There is a need to protect consumers from unsavory practices. He believes that it is the ongoing charges after default are the problem. He suggested a limit of 50 percent of the pay day.

189. He believes that there needs to be sufficient revenue to allow reasonable entities to continue to operate. He did not favour a rate which would result in a monopoly.

190. The next presenter was John Silver, Executive Director of Community Financial Counseling Services, Inc. It provides counseling to approximately 800 families. Amongst other things he expressed the following

views. Approximately 25 percent of their customers have payday loan problems. Rollover loans are an issue according to him. Repetitive loans defeats the purpose of this product which is supposed to be short term. The cost of loan protection plans should be disclosed and included in the cost of borrowing. He also suggested that information be provided to the customers to allow them to compare. He suggested that the rates should not be below than unregulated internet payday loan providers. Otherwise they would be pushed to deal with unregulated payday loan providers. His view is that payday loan providers are only the tip of the iceberg in debt issues.

191. The majority of the people they see are persons with mortgage debts, credit cards and other loans. Gamblers are a common profile. He suggests that credit unions and banks should look at smaller short term loans.

192. The next presenter was Crystal Laborereo, the CEO Aski Financial. Amongst other things she explained that they provide services to aboriginal peoples. They offer payday loans. Full time employees can borrow. They invoice the employer. The employer does a payroll deduction. Rob Balentine the Chief Operating Officer of Tribal Wi-Chi-Way-Win Capital Corporation also presented. The loans are 2 weeks to 10 weeks. There may be some repeat borrowers. They charge 60 percent. In addition

there is a small administrative fee. It is unclear as to whether this program is self sufficient but it appears to compete with payday lenders and provide an option.

193. The next presenter was Ms. Dale Morrison of the North End Women's Centre. They serve a poor population. As was confirmed by a number of different surveys, this is not the general profile of a payday loan consumer.

194. Amongst other things she explained that her consultation disclosed that convenience is an important consideration for consumers. They get money right away. People at the payday centres are friendly. The payday loan centres have extended hours of service. The centres remind them of the payment due date. Banks are not an option. She cited some of the negative impacts. It reduces the amount available for necessities. Some have an increasing and unmanageable debt. Some are not treated properly when the loan goes into collection. There is a loss of self esteem. There can be an increase to drug use and violence. She commented on some examples of hardship. She did not survey consumers with respect to benefits and advantages of having access to payday loans.

195. The next presenter was Anna Pazdzierski of the Nova House & Manitoba Assoc. of Women's Shelters. She read a letter from the Osborne Centre which related the

experience of one their clients. Amongst other things, she explained that the majority of her clients have a poor credit history. A problem is the 5 day hold by the banks. Her view is that their clients are unaware of their rights or of other options. She provided an example of a lady who borrowed from a pay day lender who had to borrow a number of times. That lady was charged $37.50 by the Bank for each of the 3 NSF cheques she wrote to utilities. Her example which resulted in a lot of charges was with respect to bad experience with respect to a Rent to Own. It illustrates that a payday loan option may be preferable to incurring Bank NSF charges.

196. The next presenter was Kate Sjoberg, Executive Director, Spence Neighbourhood Association. She comes from a low income area. The average income is $27,000. She explained, amongst other things, that many people have to get around on foot. At financial institutions, people have to wait a 5 day wait period for cheques. Banking hours are not convenient. She agreed that payday loan companies are providing a needed service. In her view Banks should be encouraged to provide services.

197. The next presenter was Mary Ann Cerilli of the West Central Women's Resource Centre. Amongst other things, she criticized the Banks and said they have to assume some responsibilities. She also recommended

education, banning rollovers, making banks service the borrowers, proper disclosure, proper credit practices.

198. The next presenter was Elizabeth Carlyle representing the Canadian Federation of Students. She qualified her remarks by saying that they are not a policy statement by her organization. In her experience it is the most vulnerable students who use the services. The service is used as a matter of convenience. She expressed the view that students are being targeted by credit card companies and payday loans. She recommended that Banks be held accountable and have to provide services. There needs to be rules for disclosure on all charges related to the loan. She also recommended the use of plain language in loan documents. She suggested that there be education for consumers, encouragement of banks to provide services and the provision by governments of financial services to the communities in need.

199. The last presenter who had indicated an intention to appear but ultimately did not was Mr. Wayne Vantassel. He was the only consumer of payday loans to make a presentation. He explained his use of the product and that it has been a positive experience for him. He explained that he is aware of other payday loan companies offering loans at a lower rate. He is willing to pay extra for the service provided by Cash Stores as opposed to the

atmosphere and service at Money Mart. He explained that he feels that this competitor just wanted his business and then wanted him out of there. He explained that the staff is very upfront and straightforward as to what the total cost will be.

(END OF RENTCASH WRITTEN SUBMISSIONS)

THE CHAIRPERSON: Thank you, Mr. Hacault. This brings to a close the public phase of this payday loan proceeding.

We met for the first time it was mentioned, I believe on July the 6th of 2007 for the pre-hearing conference, and we began the oral hearing here in Winnipeg in November. As others have remarked this proceeding is unique, complex, lengthy, and I would add hotly contested at times. The exhibit list speaks to the complexity. And clearly by the evidence the Intervenors have contributed to enhancing the Board's understanding a great deal of energy, commitment, and expense has gone into this proceeding.

For this proceeding, like the cheque cashing proceeding before it, and unlike the utility hearings that this Board normally presides over, there is neither an applicant nor a monopoly involved. And as well, this proceeding is also not reflective of a settlement process.

Consensus of the parties, even if it could be achieved, is not required and was not sought in this case. Proprietary information if not volunteered or raised by the party was not demanded.

The Board's mandate comes from provincial legislation based on federal legislation. The Board is provided a wide range of factors it may, though not must, take into account and with the potentially differing weightings.

This Board grasps the potential importance and implications that may arise out of the proceeding for consumers, for industry, and perhaps for wider society. The Board understands the seriousness of the mandate that it's being entrusted with.

Our thanks to all of you that have participated; the Intervenors, their very competent and thorough counsels and officials that have come and joined us through many, many days of hearings; and the experts that were engaged by all parties; the presenters who took time to share their experiences and knowledge and views; and the Board counsel and staff; obviously without Board counsel and Board staff would have been unable to make our way through this labyrinth that has laid before us; and also to Digitran, and the court reporters because the transcripts are obviously valuable to the process.

We will now sequester ourselves and an order will flow in due course, which in this case is not likely for a month or so.

So thank you to everyone. Stand down.

--- Upon adjourning at 3:00 p.m.

Certified Correct,

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Cheryl Lavigne, Ms.