REPORT
of the
PUBLIC UTILITIES BOARD OF MANITOBA

in respect of

The 2013 Payday Loans Review

September 23, 2013

TABLE OF CONTENTS

1.00 EXECUTIVE SUMMARY

Pursuant to jurisdiction under *The Consumer Protection Act* (Manitoba) and *The Public Utilities Board Act* (Manitoba), the Public Utilities Board of Manitoba (the "Board") conducted a public review and consultation of Manitoba's payday loan regulations and the payday loan industry. Based on the information before it and the submissions made by Interveners and Presenters, the Board made certain findings and recommendations which represent the results of the consultation as contained in this Report.

The Board recommends in this Report to the Minister that the cost of credit for a payday loan remain unchanged at 17% of principal loaned and that the borrowing limit remain at 30% of net pay. The Board also recommends that extension and replacement loans remain available, but at the existing rate cap of 5%.

In finding that these key provisions remain unchanged, the Board concludes that the payday loan industry remains financially viable in Manitoba for lenders at the 17% rate cap. The Board has concluded that both small and large firms continue to operate successfully at the rate which has been in place since October 2010.

The Board does not accept the proposition of lenders that the rates should be increased and that competition will drive the market rate down. On the other hand, a reduction in rates as requested by other interveners may have a negative effect, causing companies to shut down or to change product offerings to the detriment of consumers.

Keeping extension and replacement loans at a 5% rate cap discourages practices that contribute to a consumer debt spiral. Keeping the borrowing limit of 30% of net pay also acts to reduce the risk of consumers overextending their credit.

The Board does recommend a change to allow payday lenders to recover the full cost of a dishonoured cheque or debit charge. The cost of recovery limit of $20.00 should be removed.

The Board is very concerned with the risk of financial harm to Manitoba consumers from product offerings by unlicensed and unregulated lenders. The Board therefore recommends that the Minister investigate the options for regulation of payday loan-like products.. The Board also recommends further research be done to consider options to reduce the risks to Manitoba consumers of unregulated internet payday lending.

The Board makes recommendations respecting possible new borrowing disclosure obligations and suggested data collection provisions for recovery of more detailed information from lenders.

The Board wishes to note that all participants in the review process provided valuable information and perspectives that were of assistance to the Board in preparing its findings and its recommendations.

This Report is provided to the Minister pursuant to the jurisdiction of the PUB under the provisions of *The Consumer Protection Act* (Manitoba) and *The Public Utilities Board Act* (Manitoba).

2.00 LIST OF ABBREVIATIONS

CPO	Consumer Protection Office of Manitoba
PUB/Board	Public Utilities Board of Manitoba
CAC	Consumers' Coalition representing The Consumers' Association of Canada (Manitoba) Inc., Winnipeg Harvest and Community Financial Counselling Services
CPLA	Canadian Payday Loan Association
PPL	5117951 Manitoba Ltd. o/a Parkland Payday Loans/The Pas Payday Loans
MPL	4420136 Manitoba Ltd. o/a The Moneytree Payday Loans

3.00 BACKGROUND RESPECTING PUBLIC CONSULTATION

Pursuant to Section 164 of *The Consumer Protection Act* of Manitoba, the Board was required to conduct a public review of specific aspects of amounts charged to consumers for payday loan transactions. The Board was also charged with the responsibility of submitting a report and recommendations to the Minister responsible for this Act in the Province of Manitoba arising from the review and consultations. The Board was mandated to specifically examine and report on the following issues:

(a) The meaning of "cost of credit" for the purposes of the relevant part of the statute;

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

(c) the maximum amounts, or the rates, tariffs or formulas for determining the maximum amounts, that may be charged, required or accepted.

(i) in respect of any component of the cost of credit for a payday loan;

(ii) in respect of the extension or renewal of a payday loan;

(iii) in respect of a replacement loan, or

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

In the review process there was no applicant, and therefore, no onus of proof on any of the participants. Further, the Board is required to make recommendations to the Minister and is not hereby fixing the cost of credit or any of the related aspects of fees chargeable for payday loans.

The Board may make recommendations about the regulation of payday lenders or payday loans in addition to the mandatory requirements to be addressed in its report.

A Notice of Public Hearing was issued with respect to this review both in Winnipeg publications and in a variety of provincial publications between March 23 and April 3, 2013. The Notice was also mailed to all parties of record at the last proceedings of 2008.

Under Board Order 38/13 Intervener status was granted to four Interveners: The Consumers' Association of Canada (Manitoba) Inc., Winnipeg Harvest and Community Financial Counseling Services - all as one joint intervention ("CAC"). The Canadian Payday Loan Association ("CPLA"), Parkland Payday Loans and The Pas Payday Loans ("PPL"), and The Moneytree Payday Loans ("MPL") also participated as Interveners.

In accordance with the procedural timetable, written opening submissions and supporting information were received from all Interveners. Information Requests ("IRs"), which are questions to obtain further information, were posed to all of Interveners by PUB. Some interveners posed questions to each other. All responses of all Interveners were filed with PUB and included in the record of proceedings.

Financial information was requested from two of the Interveners, PPL and MPL. Certain financial information was requested from Manitoba members of CPLA.

In response, financial data was supplied in confidence by PPL and MPL to PUB. CPLA did not provide data because it did not have access to its members' confidential financial data, even though the data could be filed in confidence by its member companies, the information sought was competitive in nature and commercially sensitive to CPLA members.

PUB also sourced certain statistical information, consumer and industry information and distributed PUB-sourced information to all Interveners and to other persons upon request.

Interveners were permitted to file closing written submissions. Three of the four Interveners chose to do so.

Finally, oral closing submissions were received from all Interveners.

PUB also received a presentation by Janet Davis, the Manager of MPL on her perspective regarding the rate issues and their impact on the business of MPL and by Brenda Zurba, a representative of Aski Financial ("Aski"), a business that provides loans to employees via arrangements with employers. Aski is not bound by payday loans regulations in Manitoba as it does not charge rates that bring it under regulation. Brenda Zurba spoke of the model Aski employs to offer short term credit through its business and addressed operational factors that have allowed Aski to be financially successful using their approach to small personal loans.

Some additional information was received by PUB after closing oral arguments including a supplemental written submission by CPLA. Any such additional information was circulated to all participants.

PUB has posted all of the hearing exhibits on its website. The transcript of the oral hearing is also available on the website.

This Report is also posted to PUB's website as required by legislation. It has been provided to all of the Interveners.

4.00 INTERVENER FILINGS AND SUBMISSIONS

4.1.0 Moneytree Payday Loans (MPL)

Moneytree Payday Loans ("MPL") was started as a payday lending enterprise in 2002. Co-owners Bob and Nadena Thompson, both previously employed in other occupations for many years, chose to start up the business using their savings and some borrowed funds. The payday loan industry was unregulated as to maximum fees until October 2010. MPL indicated that it was making progress financially until 2010. At that time the Manitoba payday loan regulations required MPL to reduce its loan rate fee from 20% to 17% of the principal loaned. The regulation also required the maximum amount loaned to be limited to 30% of net pay.

In 2012, due to the financial impacts of the new laws, MPL considered closing its one outlet. MPL operates from leased premises and has negotiated a one year lease (and has reduced staff) to continue operating into 2013. MPL will decide, based on the result of the Board's review and government rate-setting, whether it will continue operating.

MPL filed certain financial information in confidence with the Board which was reviewed by the Board and its advisors.

MPL submits that the notion of its customers as poor or disadvantaged is a myth. Its customers are employed and in well-paying occupations as accountants, truck drivers, police officers, nurses, teachers, trades people and City workers, to name a few.

MPL believes its customers will be deprived of their freedom of choice to select MPL as a lender if rates are set so that only the big lenders can continue. According to MPL, using a regulatory process to put small lenders out of business is perverse. Then, unlicensed lenders would have more room to move into Manitoba.

MPL seeks to have the rate cap increased to 23% to correspond with other rates in Western Canada. Competition amongst lenders would result in rates lower than the cap. MPL also wants allowable maximum loans increased to 50% of net pay from 30%.

The 2010 regulations also reduced extension loan charges to 5% for new loans extended in less than 7 days after being issued. MPL's volume dropped by 30% because they can no longer offer extension loans at a viable rate.

MPL's representatives acknowledged, on questioning, that its customers are not able to go to their banks for these funds. They have "scars" on their credit reports. They have also noted many situations where customer credit cards are at their limit, although they do not specifically track credit card data. Many customers borrow money to send to their family members living outside of Canada.

MPL differentiates its payday loans offering by providing a positive ambience within its store, and through the professionalism of its staff.

Customers benefit from an ongoing relationship with MPL, which would be lost if MPL goes out of business.

4.2.0 Parkland Payday Loans and The Pas Payday Loans (PPL)

Parkland Payday Loans and The Pas Payday Loans ("PPL") was represented by the owners and operators of the business, Ms. Diane Hlady and Ms. Angela Kuba.

As of 2013, PPL has been in operation for 8 years. Prior to the 2010 regulations, PPL charged $23.00 per $100.00 of payday loan advances. The rate cap of $17.00 per $100.00 in 2010 combined with a total $6,000.00 license fee and education levy caused PPL to reconsider its business model. PPL chose to diversify. The business went from 600 sq. ft. and 4 employees to 8,000 sq. ft. and 17 employees. PPL confirmed that its products and business lines include purchase and sales of new and used furniture and appliances, scrap gold purchases, jewellery sales, cheque cashing and payday loans.

PPL filed its initial submission and banking research to show the range of charges incurred by PPL when a cheque or preauthorized debit is dishonoured. The current regulations cap the dishonoured bank fee recovery at $20.00 even if the cost to the lender exceeds that amount. Given the 2010 reduced rate cap the lender should not have to absorb the additional default expense over the $20.00 cap. Its annual default rate is approximately 5% of its total payday loans portfolio.

PPL also said that the current loan extension fee rate in Manitoba of 5% is insufficient to meet its loan costs. As a result, PPL will not offer extension loans. Further, 100% of requests for extensions within the same pay period (prior to repayment date) are for the purpose of “topping up” the customer’s loan to the maximum 30% of net pay. If customers choose to borrow less, and find they need more, they cannot come back and borrow that additional sum (since a 5% extension charge is insufficient for PPL).

If instead, the customer could top up a loan within the same period, and the top up was also at 17%, customers would not initially borrow more than necessary to avoid the consequences of the regulation.

PPL also requests the right, with a client’s authorization, to debit an account twice (instead of once) allowing them to debit the account the day before payday. Some banks do not process their debits until late on the due date when no funds remain for transfer. This causes unintentional defaults, says PPL.

PPL filed certain financial information in confidence with the Board which was reviewed by the Board and its advisors.

Upon questioning, PPL noted that one client took a payday loan for an unforeseen tire replacement. Other customers borrow for travel expenses, either for work or medical reasons; those travel costs are not reimbursed until after the expense receipts are submitted and processed.

PPL estimates that within the geographical areas they serve, Central Manitoba up to Northern Manitoba from Dauphin to The Pas, 60% of customers do not have internet service. Internet loans are, therefore, not an option for these persons.

4.3.0 The Consumers Coalition (CAC)

The Consumers' Coalition ("CAC") is a coalition of three organizations including Winnipeg Harvest, Community Financial Counselling Services and Consumers' Association of Canada, Manitoba Branch. CAC noted that Winnipeg Harvest is Manitoba's largest food bank and, in addition, works to create long term solutions to hunger and poverty. Winnipeg Harvest participated in the Consumers' Coalition in the 2007-08 PUB payday loans hearing. Community Financial Counselling Services ("CFCS") has been operating since 1976 and is the only Manitoba based not-for-profit organization providing personal credit counselling services. CFCS is involved in a variety of financial literacy programs. CFCS made a presentation to PUB at the 2007-08 hearing.

The third member of Consumers' Coalition is Consumers' Association of Canada, Manitoba Branch. Its mandate is to inform and educate consumers on market place issues and to represent consumer interest to government and industry in working on solutions for market place problems.

CAC explained that it is guided in this review by three key beliefs. First, payday loan rates and terms continue to be a pressing public policy issue in Manitoba affecting vulnerable consumers. Second, the Province of Manitoba did a good job in creating regulations that provide protection to consumers while enabling efficient payday lenders to earn a fair rate of return. Third, the strides made in Manitoba are in jeopardy, due to the proposal by CPLA and other industry members to raise rate caps and to raise the maximum amount that can be borrowed per loan as well as to increase charges on extension or repeat loans.

In support of CAC's case and at the start of the process, CAC filed a number of expert reports including:

1. A profile of Canadian payday loan customers – Dr. Simpson and Ms. Bazarkulova explore the profile of Canadian payday loan customers based on 2009 data.

2. Payday lending literature review – Dr. Buckland examines recent U.S. and Canadian academic literature exploring the payday loan controversy.

3. Regulation of the payday lending industry – are the rate caps reasonable? Dr. Robinson examines the current 17% rate cap in Manitoba and the reasonableness of the cap by considering the payday lending market and profitability for payday lending firms in Canada and the U.S.

4. Report on mystery shopping payday lending and payday lending-like outlets in Winnipeg – Dr. Buckland supervised a mystery shopper exercise of payday lending and payday lending-like outlets in Winnipeg and reported on the results.

5. Exit interviews of payday lending customers – Dr. Buckland supervised surveys of people who had taken a small loan from a number of payday lending and payday lending-like companies and reported the results.

6. Historical data and maps – the expert group tracked the development of the payday lending industry in Winnipeg including mapping payday lending outlets.

CAC submitted resumes of the expert authors with regard to their reports and sought to have the Board qualify these experts as approved to provide their opinion evidence in their areas of individual expertise.

There was no objection made by any other Intervener on the issue of the expertise of CAC's expert authors. The Board accepts the reports and the opinions of the expert authors on the specific areas of expertise sought by CAC, although it should be noted that the formal rules of evidence do not bind the Board. The findings, opinions and conclusions of CAC's experts have been taken into account.

CAC's intention, in directing the preparation of its expert reports was to address four issues:

- rate caps and their effects on consumers and the industry
- frequent users and their vulnerability to repeat loans
- the quality of information in the market place, and
- unregulated payday lenders in the market place

Counsel for CAC noted in submissions that the literature and data assembled by the CAC expert team were merged and considered by the CAC experts, to identify what CAC says are the true characteristics of payday loan consumers in Manitoba.

CAC also undertook an analysis of publicly available financial results from major players in the market place to provide insight into the Canadian and American payday loan markets. CAC also reported on U.S. jurisdictions and rate regulation in the United States. Further, CAC did an extensive review of options available for consumers in Manitoba communities outside of Winnipeg.

By contrast, submits CAC, CPLA provided limited factual financial data from its members. CPLA provided little information about its internet lender member, 310-LOAN. It cited limited literature on payday lending. CAC submitted that CPLA provided minimal information or analysis on the U.S.

market place and did not address any analysis of the public financial statements of Dollar Financial Group (“DFG”) which contains information about Canada’s financial results for Money Mart, a central player in CPLA.

CAC also refers to significant information which it says CPLA could and should have commissioned pursuant to the Environics Survey.

CAC submits that CPLA’s filings had shortcomings and the Board should draw an adverse inference against CPLA respecting its failure to produce the noted data and underlying information.

In response CPLA objected to the adverse inference argument. CPLA has limited resources and no PUB funding for its studies, so it was required to limit its work. Further, member-owned proprietary information does not belong to CPLA so it’s wrong to characterize it as available.

The Board notes that an adverse inference would lead to findings on facts contrary to what CPLA has submitted if the evidentiary principle was applied. Such a finding is more suited to an adversarial framework where a party in a proceeding bears an onus of proof. The Board is not required to make such a finding and will not do so for this report.

CAC also noted that there was limited information available before the Board in this review process respecting data from the industry itself.

CAC submitted that CPLA’s argument for a competitive market place in Manitoba is undermined by the reality of its payday lending market and its payday lending consumers. CAC elaborated on the characteristics of this market and its payday loan consumers.

Dr. Simpson, CAC's expert respecting analytics of consumer characteristics, concludes that payday lending customers are not the typical Canadian consumer:

- payday loan customers are employed, but they have disproportionately lower incomes, lower education and disproportionate responsibility for children.

- these customers tend to be younger and tend to be unmarried, and, according to American literature they tend to be less financially literate.

- frequent users of payday loans tend to have lower family incomes than less frequent users.

- many inner City consumers lack access to mainstream financial institutions and they lack access to this type of small short term credit product from a mainstream lender.

CAC describes the market place for payday loans in Manitoba, and throughout Canada, as highly concentrated with highly vulnerable, desperate consumers. This is not a market, argues CAC, that is likely to work freely or fairly.

CAC submits that the goal of regulation in the existing oligopolistic industry for this product is to design rates that protect consumers while offering a fair rate of return to efficient payday lenders. CAC identifies the need of lenders to maximize loan volume and minimize fixed costs to be efficient and profitable.

CAC points to economies of scale for large scale payday lenders as one method to achieve this efficiency. They may also pursue economies of scope to expand in-store offerings and product lines so that the same fixed costs are spread over other sources of revenue. CAC identifies Money Mart as one lender in Canada that achieves economies of scale and scope. CAC also identifies Parkland Payday Loans (“PPL”) a payday lender in Manitoba and an Intervener in this proceeding as exhibiting economies of scope. Moneytree Payday Loans (“MPL”) another Intervener and payday lender in Winnipeg does not enjoy economies of scope or scale. While recognizing the challenge faced by a “mom and pop” business, CAC does not support a rate hike aimed at allowing inefficient lenders to flourish.

With respect to CPLA’s submission on an increase to the rate cap to 23% from 17% and an increase to a maximum loan amount based on 50% of net income from the 30% current maximum, CAC urges the Board to carefully consider the evidence of CPLA including responses to the information requests put to CPLA.

CAC submits there is no evidence to suggest that Money Mart and Cash Money cannot earn a fair return at present in Manitoba. Indeed, CPLA responded to IRs to confirm that it did not have such information. A metric of the health of the industry used by CPLA is the number of outlets in operation in Manitoba over time. There were 20 Money Mart outlets in 2010 compared to 15 in 2006. Cash Money had 4 outlets in 2005 and has 5 outlets in 2013.

With respect to the American market, CAC's data shows that the most frequent rate cap value is 15%, with a cluster between 15% to 20%. Regulators in the U.S., says CAC, clearly see no policy reason to permit higher rates. Even at 15% rate caps, returns on equity in certain U.S. companies are quite strong. CAC submitted a profitability analysis by Dr. Chris Robinson for DFG's Canadian operations. His analysis shows significantly higher operating margins for the Canadian operations than for either the U.S. or European operations. Dr. Robinson used the Ontario rate of 21% to 22% as the proxy rate value for DFG's Canadian operations analysis. As a result, CAC submits that rates are too high in Canada and in Manitoba and therefore the Board should reduce the rate cap in Manitoba to $15.00 per $100.00 of principal loaned.

CAC applauds the Manitoba regulatory regime implemented in 2010. Real savings have been achieved for consumers and they have better tools in place to slow the cycle of high cost debt. There is also better access to consumer redress.

CAC notes that consumers in urban areas still have options in the urban payday loan market place in Manitoba. Rural consumers in Manitoba have some access to storefront payday loan locations, according to the information before the Board. Internet lenders also provide access for both rural and urban customers, says CAC. Generally, notes CAC, rural consumers of all goods have less access than urban consumers.

Ultimately, CAC submits that there is no valid justification for such a major rate cap increase as suggested by CPLA. Given the vulnerability of the specific credit consumers who pursue payday loans, the trade-off is not acceptable. Further, CAC rejects the submission of CPLA that a rate increase may assist in reducing the proliferation of unlicensed lenders. Unlicensed lenders are an issue in a number of jurisdictions not just in Manitoba. CAC submits that limited evidence is available from CPLA to validate its market theory.

CAC’s conclusions are as follows:

- The rate cap should be reduced to 15%.
- The rate cap of 5% on extension and replacement loans should remain as is.
- The maximum lending amount of 30% of monthly net income should remain as is.

- Dishonoured payment costs should reflect the actual cost incurred by lenders, as suggested by PPL, and the regulations should be changed to address this particular cost recovery.

- There is a need for increased education, transparency and privacy protection in the payday lending industry.

- Consumers should be protected from products similar to payday loans such as the line of credit products offered by Cash Store and its affiliates, where borrowing costs may be as high as $75.00 per $100.00 borrowed, according to one of Dr. Buckland's surveys.

- The Government of Manitoba should require registered lenders to report certain specific information within a six month period after the end of a company's fiscal year. This data should include the number of loans granted, total number of borrowers, number of full time and part time employees including owner and managers and a copy of the fiscal statements of the lender for the fiscal year.

4.4.0 Canadian Payday Loan Association (CPLA)

CPLA explained the background and the growth of the payday loan industry in Canada since the mid 1990's as a response to an unfulfilled consumer demand for a small sum unsecured short-term credit, generally unavailable through banks or other conventional financial services institutions.

CPLA as an Association was formed in early 2004 to create industry standards of business practices to protect consumers and the reputation of the industry which, at the time, was entirely unregulated in Canada. CPLA is also a voice representing its member stakeholders in the development of the regulatory framework that has developed on a Province-by-Province basis in each provincial jurisdiction where payday loan legislation was introduced and adopted. CPLA endorses an approach to regulation that achieves the right balance between consumer protection and an economically viable and competitive industry.

Today, CPLA has 20 member companies in Canada, representing 52% of the Canadian industry. In Manitoba, CPLA has 5 members including 4 which have bricks and mortar store fronts in Winnipeg, Brandon and other towns in Manitoba and also an online internet payday lender.

In support of its initial submission, CPLA filed a number of supporting exhibits including:

- graphical data on payday outlet numbers nationally and by province from 2007 to date.

- outlet locations maps in 2007 and today.

- samples of web pages respecting apparent unlicensed online lenders as well as a loan agreement example of a loan taken by a Manitoba resident from one such provider (which was in excess of allowable Manitoba charges).

- a number of articles regarding practices and issues arising in respect of unlicensed payday loan vendors in other jurisdictions.

- information on a phenomenon described as “tribal lending”, which is occurring in the United States; a similar phenomenon is not occurring in Canada.

- a May 2013 Environics Survey Report reporting on certain payday loan borrower consumer data.

- legislative details both in respect of Manitoba’s regulations and a comparative data chart as to pertinent comparative regulatory provisions in other Canadian jurisdictions where payday loan regulations are in effect.

Other than the informal search information regarding online payday lenders and unlicensed payday loan offers in Manitoba and elsewhere including in the United States, CPLA had no data available to provide to the Board respecting concerns about regulatory limitations and potential consumer harm.

CPLA takes the position that Manitoba residents need access to this type of small short-term credit. Growth in Canada, says CPLA, is due to consumer demand.

CPLA submits that it is in the public interest for all such consumers, including those with poor credit, to be able to access such loans. The public interest favours a regulatory scheme whereby the cost of credit is high enough to allow different size lenders to flourish and be profitable. The framework should include a payday loans rate that would be a ceiling so that competition can occur below the ceiling. All of this, says CPLA, will allow borrowers a greater opportunity to obtain credit from licensed lenders. CPLA submits that a utility model of regulation is being used in Manitoba and it is not appropriate.

CPLA notes with concern that harsh regulations and low rates in Manitoba have driven a contraction in the payday lending industry in Manitoba. CPLA fears that without a rate increase here or, even worse, if the rate is lowered in Manitoba, more lenders will leave Manitoba and unlicensed and unscrupulous loan options will fill the void.

CPLA recommends that Manitoba:

- increase its payday loan cost of credit to $23.00 per $100.00 loaned. CPLA submits that this is closer to a national average and will foster competition in Manitoba.

- increase the maximum amount of a person's net pay that may be borrowed from 30% to 50% of net pay. CPLA submits that some provinces have no limit on the amount a person may borrow (no net pay restriction) and two provinces have prescribed the maximum loan value as at 50% of net pay.

CPLA notes that all other Canadian jurisdictions carefully considered their own regulatory provisions. Manitoba may now benefit from a consideration of the regulatory rates in other Canadian jurisdictions.

CPLA takes the position that rates in the U.S. state markets, submitted by the Consumer Coalition ("CAC") are not useful for the Board's consideration in this review. U.S. markets are considerably different; various operational and jurisdictional factors make such data of limited value. Further, says CPLA, looking at lending rates without considering other regulatory restrictions which affect the overall scheme is overly simplistic. A $15.00 per $100.00 rate in Manitoba with current lending limits and extension limitations would severely impact financial viability of lenders in this Province.

CPLA specifically challenges the assumptions and conclusions of one of CAC's experts, Dr. Chris Robinson, based on limited public information he used and his analysis from the 2007/08 study for the first Manitoba PUB payday loans hearing process. CPLA's full rationale outlining its concerns regarding the problems with Dr. Robinson's analysis is contained in CPLA's supplementary submission which was filed with the Board after the oral submissions were concluded.

One specific limitation noted by CPLA is the reduction in loan volumes for all payday lenders in Manitoba since the regulations were brought into force to prohibit lending more than 30% of net pay to any borrower. CPLA was unable to provide evidence of its own members' loan volume changes (identified as proprietary and unavailable via the Association) but pointed to the loan volume reduction of MPL as a concrete example of a significant change that affects the value of Dr. Robinson's analysis.

CPLA noted that significant regulatory changes have been imposed on payday lenders in Manitoba since 2010. Licensed payday lenders who wish to comply and respect the laws in force here need time to adapt and ensure full compliance. Ongoing regulatory changes that will create obstacles or add further costs to lenders should be avoided.

CPLA has always supported consumer advocacy and the sharing of information with member customers and the Canadian public regarding payday loan products and the promotion of financial literacy regarding all credit products. CPLA has created online and hard copy consumer information and provides such information to its members for consumer use. CPLA submits that in conjunction with CAC, CPLA is well positioned to foster and develop initiatives on personal financial education in Manitoba and is prepared to do so.

5.00 PRESENTATIONS

In addition to the submissions of Interveners, two Presenters were permitted to make oral presentations to the Board on July 3, 2013.

5.1.0 Janet Davis / MPL

Janet Davis is the manager of MPL, one of the Interveners in this review. Initially, Ms. Davis was allowed to make a presentation so as to address the personal impact of the regulatory regime on her and other employees of MPL. Ms. Davis was advised that any commentary on the business itself should be provided through the submissions of MPL.

Ms. Davis did make a presentation on her views of the MPL business, its viability and its customers. She addressed the current shortcomings in the regulations in Manitoba, and the consequences to MPL and to its customers. As a result, Ms. Davis' submission has been treated by the Board as an extension of the MPL submission and not an independent presentation.

Beyond the topics covered by MPL directly, Ms. Davis noted anecdotally the very real challenges and emotional strain faced by MPL employees when having to turn customers away for loans or extension loans due to the current limits. She also gave examples of other payday lenders not adhering to the rules, when MPL has stuck to the strict limits in the regulations.

Ms. Davis advised that a payday loan could be more cost effective than defaulting on a payment due for a customer who is facing NSF charges and late payment fees. She also suggested that the Board spend time behind a counter at a payday lender to see the needs of customers, and their reaction to the limits imposed.

5.2.0 Aski Financial

Brenda Zurba, Vice-President of Sales, Marketing and Development for Tribal Wi-Chi-Way-Win Capital Corporation presented the business model for one of its subsidiaries, Aski Financial ("Aski").

Aski has been in business since 2001, and started in Northern Manitoba. Aski partners with employers to offer loans to employees. There is no cost to the employer. Aski permits employees to borrow up to a value that is $100.00 over their net pay in the pay period at a borrowing rate of 59% per annum and the employee may pay back the loan over five to seven pay periods. Loans require the approval of both the employer and employee. Aski sees the employer as playing a pivotal role in assisting an employee from staying out of a debt trap.

The model has been very successful in Manitoba, reports Aski. Aski has partnered with others in B.C., Saskatchewan and in Ottawa, Ontario, to provide back-end processing services based on the same lending model. Rates on loans have been kept to 59% per annum and have remained constant since 2003. Aski is a for-profit, ISO certified business. In 2012, Aski was recognized by the Manitoba Chamber of Commerce as the most outstanding business, medium-size category.

Aski has commenced beta testing an opt-in program where loans and payments are reported to Equifax. Customers benefit as positive credit scores allow them to open bank accounts and obtain credit cards.

6.00 PUB FILINGS

PUB posed its own information requests to all of the Interveners. In addition, the Board sourced its own information on a number of matters and recorded these documents as exhibits in the proceeding. Schedule “A” to this Report contains a list of the PUB documents.

7.00 BOARD FINDINGS

7.1.0 Key Regulatory Provisions Under Review

Pursuant to definitions under Part XVIII of *The Consumer Protection Act* (Manitoba), a “payday loan” means:

> “An advance of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature, but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card. («prêt de dêpannage«)”

The Consumer Protection Act provisions apply to a payday loan if the amount initially advanced under the loan is no more than $1,500.00 and its initial term, ignoring any extension or renewal, is no longer than 62 days; or it is a replacement loan, such that the payday loan is part of a series of transactions that results in the borrowers debt under another payday loan by that payday lender being repaid in whole or in part.

The Board notes that any small credit offerings that do not fall within these provisions are not considered payday loans under the current legislation.

The public consultation required under Section 164 of *The Consumer Protection Act* requires the Board to review certain key regulations brought into force by the Province of Manitoba in October 2010 pursuant to Regulation 50/2010. The full list of regulatory provisions reviewed by the Board is listed in Schedule “A” to the Report.

There were no submissions regarding the definition of cost of credit as it applies to payday loans under the *Act*. The Board has concluded that it has not identified any recommended changes to the definition.

7.2.0 Nature of Payday Loans

A number of market and consumer factors in the United States, and subsequently in Canada, appear to have combined to create a need for small sum unsecured short term loans and an industry has developed to fill the need.

The Board understands that mainstream financial institutions have, for a number of years, focused on consumer and business segments providing the highest potential for profit, with the result that the level of attention provided to the needs of the economically disadvantaged has fallen considerably. Other short term small credit options such as borrowing from family or friends may not be desirable or may not be available. Simply doing without may bring other negative consequences for the borrower, if the money is being used to meet necessities or to pay bills where the net cost of non-payment would ultimately be greater without the loan. The Board accepts that payday lenders are filling the gap created particularly by lack of other small short term loan options. Their customers want the product and like the service.

The payday loan product has been relatively homogeneous, with average loans in the range of $300.00 to $500.00, for a loan period of ten to twelve days, under loan terms and conditions where repayment is made by preauthorized cheque or debit on the debtor's next payday.

It is recognized by all Interveners in this review, by all of the literature, and indeed by the federal government and all provincial governments who have chosen to legislate for and to regulate payday loans, that this credit product is a high cost option. The Manitoba Regulations require storefront lenders to post a notice that a payday loan is a high cost loan. They also require payday loan agreements to contain a statement on the first page of the agreement that the loan is a high-cost loan.

The Board restates, with reference to the origins of regulation in Canada, that, under the Criminal Code, it is a criminal offence to charge loan interest that exceeds 60% per annum. The regulatory exception carved out of the Criminal Code prohibition was made to permit Canadian Provinces to establish payday loans legislation that removes the 60% limit within the laws and regulations of any province that has chosen to permit payday loans to be available. Hence, in Manitoba, the government created a framework of legislative rights, duties and obligations for borrowers and lenders to operate within the law in accordance with the Criminal Code exception.

As depicted in the 2012 Financial Consumer Agency of Canada (“FCAC”) Report, *“Payday Loans: An Expensive Way to Borrow”*, a $17 fee on a two-week, $100 loan is equivalent to paying 442% annually as the cost of borrowing; a $25 fee is equivalent to paying 650% annually. The 2012 FCAC Report compares various consumer credit options and the actual dollar value cost of borrowing $300.00 for 14 days as follows:

- Line of credit $5.81
- Overdraft protection on a bank account $7.19
- Cash advance on a credit card $7.42
- Payday loan (at $21 per $100 rate) $63.00

One of the Board’s staff advisors also prepared a comparative analysis of the Manitoba cost of borrowing $300.00 for 2 weeks as at June 10, 2013. The analysis produced the following results:

Method	2 Weeks	Annual Percentage Rate (APR)
Payday Loan	$51.00	442.00%
Line of Credit (mainstream banks and credit unions)	$0.88	7.61%

Overdraft via bank	$2.42	21.00%
Cash advance on a credit card	$2.30	19.96%
Mortgage (skip a payment, 4 year closed rate, no surcharge)	$0.44	3.79%

While there is a group of consumers utilizing payday lenders in Manitoba, the Board finds that it is difficult to make any generalized conclusions why they make their first or repeat loans. The Board has been provided with much anecdotal information regarding the particular cash needs of customers who borrow from payday lenders. In addition, CPLA's 2013 Environics Survey also identifies, albeit based on a small sample size, reasons why payday loans customers borrowed cash from lenders as of 2013. The category options were scripted by the survey firm and results reported by Environics include the following:

- For 'emergency' cash to pay for necessities 58%
- To help out with an unexpected expense 30%
- To help avoid late charges on routine bills 20%
- To help get through a temporary reduction in income 17%
- To buy something you wanted 16%
- To avoid bouncing cheques 11%

- To pay bills/rent 2%
- Other 2%
- Don't know 2%

(Note: survey participants were to choose all of the main reasons for a loan; participants choose multiple answers)

A full 58% of respondents to the Environics Survey are accessing cash to pay for necessities. The only clear category of need which can be identified as beyond the control of the customer is "to help get through a temporary reduction in income" at a reported 17%. "Unexpected expenses" may simply mean unplanned expenses. The most common anecdotal explanation was tire repair or replacement, where the customer has no available savings to cover the immediate cost. In reality, this speaks to persons who have virtually or absolutely no savings. Unplanned expenses arising in the ordinary course wear and tear on a vehicle may seem unexpected; logically, however, they should be expected and part of the owner's budget.

It is difficult to reconcile the Environics Survey findings as to why customers choose payday loans over other forms of consumer personal credit. Anyone with an understanding of the cost of credit options and with access to those much less expensive options would be expected to use them. The Survey cites "quick and easy" as the number one reason for choosing a payday loan, yet it is easier and quicker to access funds via a line of credit or a credit card advance. Unfortunately, there is no further elaboration as to what "quick and easy" means to this sample group.

Furthermore, use of a payday loan does not appear on credit records. Account statements are not sent out. Some customers may be using the loans because the transactions are not tracked and reported.

Customers using payday loans who are adding to their debt load are at increased risk. The PUB distributed a May 2013 report by Hoyes Michalos and Associates Inc., Trustees in Bankruptcy, Kitchener, Ontario entitled "Joe Debtor: Who is He? Who is at Risk?". Statistics Canada reported the credit market debt to disposable income ratio to be at a record 165% in the fourth quarter of 2012. The Hoyes Report identifies a "debt-stress-debt cycle" that impacts families emotionally and financially, noting:

> "Once the pressure of meeting monthly debt payments begins to build, insolvent debtors often turn to credit as a solution. They may use credit card debt to pay for daily living expenses and rely on payday loans to make ends meet until the next paycheque arrives."

The Hoyes Report identifies risks for severe financial meltdown. Two of the identified risks noted are: (1) using credit cards for other unsecured debt for everyday living expenses and growing your unsecured debt over time, and (2) spending more than 40% of your monthly take home pay in debt payments. Consumers needing money to pay for living expenses are turning to payday loans. Consumer use of payday loans along with other unsecured debt, to the point where debt exceeds a threshold, puts the consumer at high risk for financial meltdown.

7.3.0 Consumer Characteristics

CAC's experts, Dr. Simpson and Ms. Bazarkulova, have produced evidence which establishes certain identifiable variables that are statistically significant in comparing payday loan users to non-users in the Canadian populace. The Board accepts that payday loan users are likely to have lower incomes, lower education and disproportionate responsibility for children. They are younger and likely less financially literate than non-users. Finally, frequent payday loan users tend to have lower family incomes than less frequent users.

The Board is also satisfied based on the Simpson/Bazarkulova Report, that Manitoba users would be expected to fall within these predominant Canadian payday loan consumer characteristics and not be anomalous.

An alarming statistic from the Hoyes Report indicates that the largest growth category for insolvent consumers in 2013 to be the pre-retirement group, age 50 to 59. The Hoyes Report identifies the debt income ratio for this group of insolvent consumers to be 297%. Further it appears that seniors, many of whom are living on a fixed income, are major contributors to the growth of consumer debt in Canada, and make up a portion of the payday loan customers. The debt to income ratio of insolvent seniors is very high, at 273% (excluding mortgage debt).

In Winnipeg in 2013, CAC's outlet mapping exercise shows that roughly one-half of store front outlets are located in the inner city, which is made up of relatively poor neighbourhoods. CAC's experts and the general literature report on the growth of fringe banking and the exodus of mainstream banks and credit unions from Winnipeg's inner city. The CAC's experts are of the view that limited access to main line banks, and the intentional filling of this void by payday lenders and other non-traditional credit businesses in those areas has a negative impact on consumers in the inner City. A bright spot, according to CAC, is the opening of the new Assiniboine Credit Union branch in 2012 at the intersection of McGregor Street and College Avenue in Winnipeg's North End.

The Board recognizes that borrowers are not necessarily those under the poverty level. While it appears that some payday lenders may be prepared to lend on the strength of income from social assistance, employment insurance or child benefit income, the vast majority of funds are being lent to employed persons. The Board acknowledges that these are not the poorest in our society, and that their income sources are from many fields of occupation, as indicated by the MPL submissions. The Environics Survey of recent payday loan users in Manitoba records that 29% reported their income to be above $49,000.00 per annum.

The Board concludes that the common denominator of the majority of payday loan customers is their financial vulnerability. They have insufficient savings, insufficient cash flow and, more than likely, exhausted regular low cost consumer credit options (assuming they qualify for consumer credit options through main line institutions). They have, to cite MPL's representative, "credit scars". Therefore, they go to payday lenders to get cash. All of the data of lenders show that only a small percentage fail to pay. Customers are reported to be honourable and intend to repay their loans.

Coalition member Community Financial Counselling Service ("CFCS") contends and the Board accepts that there is a stigma in our society attached to poverty and debt, where vulnerable consumers may be unlikely to complain or to ask too many questions if they find someone who will offer them credit. The stigma may mean that if they have problems with the lender, these consumers are less likely to seek redress.

No payday loan customers requested an opportunity to speak to the Board and nor did any send in written comments or emails about payday lending after the published notice of this pending review. The Board, therefore, has no first-hand information from users. Only indirect information was available to the Board.

Customers state that they feel more welcome at payday lenders according to information from payday lenders and from CAC's May 2013 Exit Interview Study prepared by Dr. Buckland. Payday loan customers need cash and obtain positive relief when they can get cash from friendly professional non-judgmental payday loan staff.

CAC's studies of customer views on service quality or payday loan cost transparency include some non-licensed payday lenders who offer line of credit products but not as licensed payday loan companies. They do not appear to fit the definition of payday lenders in Manitoba, although the Panel did not have sufficient information to evaluate the significance of this fact.

A further significant and compelling policy issue arises from frequency of use of payday loans. Virtually all payday loan customers are frequent users of payday loans. Most of the current literature produced by CAC and previously available in the 2007-08 PUB payday loan hearing supports the statistic that about 75% of loans are being made to repeat borrowers. For PPL, in business now for 8 years in Manitoba, the rate is 99% repeat borrowers. MPL reports that although its frequent user's percentage has decreased from a reported annual average number of loans per client of 16.21 in 2008, it still has an annual average frequency rate of 6.78 loans per customer in 2012. All of the evidence supports the Board's finding that the debt spiral / debt trap issue is a key concern. Indeed, using MPL's figures, it is clear that the 2010 regulatory restrictions including a 5% rate on extension and replacement loans and the borrowing limit at 30% of net pay has drastically reduced the volume of loans being made by MPL.

CPLA's consumer information on the frequent use issue from its 2013 document entitled "*Using Payday Loans, A Guide to Responsible Borrowing*" states:

> *"Payday Loans are meant for occasional and unusual use only. Payday loans are not meant to be used continuously, or as long term loans."*

However, the Board concludes there is a pattern of frequent use of payday loans by individuals with ongoing cash flow problems. Such individuals are outspending their ability to meet their obligations and then accessing payday loans at a high cost.

7.4.0 **Payday Loan Industry**

The Manitoba Consumer Protection Office ("CPO") reported to the Board that in May 2013, there were 43 licensed payday outlets operating in Manitoba. As of October 18, 2012, Cash Store Financial Services Inc. had voluntarily given up all of its payday loan licenses in Manitoba. It stopped offering payday loans in this province through its Cash Store and Instaloan outlets. The company now offers line of credit products which are not regulated by the Province of Manitoba.

The reduction of 34 outlets in 2012 from the total number of payday lending outlets in Manitoba prior to that time stems from this one change.

Cash Store Financial made the same change in Ontario in 2013, giving up its payday loan licenses and switching to the line of credit offerings.

CPLA has provided some data on changes in number of payday outlets in Manitoba and in other provinces between 2007 and 2013. The primary change regarding the closure of outlets, both nationally and within

Manitoba appears to be the removal of Cash Store outlets from the licensed market. After regulation in 2010, and assuming CPLA's research is correct, the outlet count went from 84 outlets to 82 outlets. This does not include licensed internet companies, to the Board's knowledge.

CAC's outlet count, from Dr. Robinson, records 71 outlets in 2008 and 63 outlets operating in Manitoba in 2013 (included in the numbers are the Cash Store outlets).

The Board chooses not to rely on specific numbers offered by CPLA or CAC as the methodologies vary in these counts. The Consumer Protection Branch numbers record licensed outlets in 2013 and the numbers are accepted by the Board.

Licensed lenders are required to display their license number at their outlet locations or on their website. This is a method to distinguish between licensed operators and the unlicensed. In practice, it may be having little effect on consumer choice.

While the Board recognizes that the number of licensed outlets has dropped, it remains uncertain whether the number of customers remained the same given the reduced number of outlets, or if the volume of loans or the profit margin changed with the reduction. The Board has no empirical evidence.

CPLA advises that, some of its five Manitoba members regularly review their ongoing participation and operation in the Manitoba market. None are confirmed to be closing, although Fast Cash Co. may close. Cash Money intends to remain in business and Money Mart refused to respond to the Board's inquiry through CPLA.

The Board notes that the two largest lenders, Cash Money and Money Mart have essentially maintained their complement of outlets in Manitoba (Money Mart closed one outlet, down from 20 to 19).

MPL appears to be determined to close its doors if rates do not increase. PPL diversified its product and service lines, and will continue in business. Based on confidential information supplied by these two small lenders, the Board is satisfied that these lenders' have genuine concerns as to their fixed costs, loan volumes, and their financial viability. The Board appreciates the level of cooperation and disclosure offered by PPL and MPL, as well as their participation in this review process.

Beyond the high level information on the business prospects of its membership, CPLA was unable to obtain from its members and to provide data regarding changes to the business of its members over the past 5 to 7 years, or to assist in understanding the impact of the Manitoba regulations on its membership. The Board accepts that the kind of loan volume reductions experienced by MPL have most likely been experienced by all the lenders as the reduction relates to the 30% of net pay restriction.

However, CPLA did not endorse rollover loans as a business practice prior to regulation and still does not endorse them. Therefore, CPLA members have already decided (even without regulation) that they would not seek volume or revenue from rollover loans. Extension loan limits, which are restricted to a 5% fee within seven days, may impact CPLA member volumes.

Without specific Manitoba financial data from the CPLA membership, the Board finds it difficult to accept the submission that profitability of its members is not achievable under the current regime. In fact, and as a logical inference, the Board concludes that the existing CPLA Manitoba lender outlets remain open because they are profitable.

Dr. Robinson's analysis, which he has prepared from publicly reported information of Dollar Financial Group ("DFG", Money Mart's U.S. parent) suggests that Money Mart's Canadian operations would still outperform its U.S. operations if fees were reduced to $15.00 per $100.00 loaned in Canada. Manitoba represents only 4% of Money Mart's Canadian operations; the actual impact of such a rate reduction cannot be quantified with available data. There are challenges to imputing lower margins in DFG's U.S. operations solely to lower loan rates. DFG attributed 2012 revenue reduction to high unemployment in the U.S. economy which impacted consumer lending volumes. The actual impact of such a rate reduction cannot be quantified with available data.

CPLA's critique of Dr. Robinson's analysis is reasonable to the extent that it is difficult to assess the profitability of the Manitoba segment of the Money Mart operation, assuming a reduction to $15.00 per $100.00 loaned, without also accounting for loan volume/revenue impacts arising from the 2010 regulatory restrictions in Manitoba. Revenue and profitability is impacted by these restrictions. Further, CPLA is correct in stating that apparently no U.S. jurisdiction has all of the comparable restrictions while limiting rates to 15%.

CAC comments that the Canadian industry is more concentrated than the U.S. market. Further, Dr. Robinson's findings are that, since 2008, excluding the three big chains the number of outlets has declined greatly across Canada as a whole. Rate caps, he states, are the most important industry event in Canada since 2008.

> *"The opportunity for easy profits with high prices has vanished and efficiency becomes essential for survival. The large chains have economies of scale in their advertising, oversight and systems that keep their costs per loan lower than independent stores, and hence the largest chains are expanding while the smaller players are disappearing."*

While not recently expanding in Manitoba, the larger chains are clearly holding their own and will likely take in any market share of smaller operations that exit the market, depending on location and other variables.

CPLA has notedthat Cash Store and Instaloan outlets remain open for business with their payday-like line of credit products. These non-regulated outlets are serving a segment of the small loans market but not under the Manitoba payday loan legislation.

While a rate reduction may benefit consumers in the short term, it may cause lenders to close or change their product offerings to operate outside of the regulations.The Board is concerned with the impact that a rate reduction may have on the growth of unlicensed, unregulated lending in this sector.

Overall, the Board finds that the industry remains viable in Manitoba almost three years after the rate regulations were instituted in this Province.

Outside of Winnipeg, the Board notes that a number of storefront payday lending outlets operate in both Southern and Northern Manitoba's cities and towns. CAC provided a summary of this information.

Money Mart operates outlets in Brandon, Selkirk and Portage la Prairie. Fast Cash Co. operates in Brandon, Steinbach and Dauphin. There are other payday lenders also operating in Brandon.

Intervener PPL operates Parkland Title Loans and Payday Loans in Dauphin, and The Pas Title Loan and Payday Loans in The Pas. A1 Financing & Loans operates in Thompson.

Finally, the Northern Stores chain consists of 127 food and general merchandise stores serving remote northern Canadian communities. The Northern Stores do not offer payday loans. The Northern Stores do offer a number of financial services to customers, including pre-paid Visa, a Link Credit Card which can be used at affiliate stores, a Link Gift Card, a Link Benefit Card (cheque cashing fees waived if a cheque loaded to the card; can be used for purchases at affiliate stores), and Link Tax Services.

7.5.0 **Regulation Across Canada**

Generally speaking, regulations across Canada are relatively recent. The jurisdiction with the longest experience is Nova Scotia. Nova Scotia's Utility and Review Board first fixed rates by Order in 2008, at $31.00 per $100.00 borrowed, along with other specific permitted default interest and default amounts. Nova Scotia's regulations were in force as of August 1, 2009.

In 2011, Nova Scotia reviewed rates and reduced maximum cost of credit to $25.00/$100.00 borrowed.

There are currently six Canadian jurisdictions (British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia) that regulate payday loans. In addition, New Brunswick and Prince Edward Island have developed regulatory regimes that are not yet in force.

Of the jurisdictions that regulate payday loans, all set a maximum cost of borrowing. In addition, most set maximum limits for overdue interest and for dishonoured cheques or debits. These are as follows:

Province	Maximum Cost of Borrowing for a 14-day $100 Loan	Maximum Interest Rate for Overdue Loans	Maximum Dishonoured Payment Fee	"Cooling-Off" Period
British Columbia	$23	30%/yr	$20	Next Business Day
Saskatchewan	$23	30%/yr	$50	Next Business Day
Alberta	$23	30%/yr	$25	Two business days
Manitoba	$17	30%/yr	$20	48 Hours, excluding Sundays and holidays
Ontario	$21	60%/yr	$50	n/a
Nova Scotia	$25	60%/yr	$40	One business day for "bricks & mortar loans, 48 hours from receipt of funds for internet loans
New Brunswick*	Pending			
Prince Edward Island*	Pending			

* Not yet in Force

The "cooling off" period technically describes the period within which a customer may cancel a loan and return the money to a lender with cost or charges. The Board notes that in Manitoba, lenders use the term "cooling off" to refer to the 7 day period when a customer may not take out a new loan at the full 17% rate. These are distinct issues. No one in Manitoba addressed the cancellation period.

The number of registered payday lenders varies widely across provinces. For example, as of April 2013, Ontario had 962 payday lending outlets, while Nova Scotia had 51.

A number of common themes emerged from the review of payday lending regulatory regimes in other jurisdictions, namely that:

- Some jurisdictions require payday lenders to have at least one physical location in the respective province, eliminating "pure" internet lenders;

- All regimes provide extensive disclosure requirements, in particular, the posting of information that discloses the maximum cost of credit as well as the cost of a $300 14-day loan;

- Practices that could lead to a "debt spiral", such as rollover loans, are prohibited or restricted in most jurisdictions; loan limits tied to net pay are imposed in three of six Provinces, including Manitoba;

- Enforcement practices are restricted.

The Board has reviewed the information obtained regarding the payday lending regulatory structure across Canada. It also reviewed the information to determine if any regulatory tools used elsewhere should be considered in Manitoba.

The one variation noted from certain jurisdictions is the requirement in some provinces for internet lenders to have one physical location in a province for licensing purposes.

With respect to the other key provisions regarding rates, maximum borrowing levels (3 provinces have no borrowing limit) and interest and other default fees, it appears that the policy considerations supporting the rate outcomes are unique in each jurisdiction.

A strong set of consumer protection provisions is a common element across Canada where legislation exists or is pending.

CPLA correctly notes that per outlet license fees are significantly higher in Manitoba than elsewhere. Manitoba also has a separate Payday Borrower's Financial Literacy Fund levy which other provinces do not impose. Ontario has an education fund partly created from licensing fees on payday lenders.

7.6.0 <u>Compliance Issues / Unregulated Lenders</u>

The Manitoba Government has instituted a system of compliance review and allocated two Consumer Services Officers to the task of inspections as part of their role in enforcing and administering payday loan legislation. The licensing fee of $5500.00 per year per location has been used in part to fund this oversight.

Manitoba saw a significant drop in complaints in 2012/13, with only 70 recorded, from 134 in 2010/11 and 135 in 2011/12. Although the Board does not have data on the total number of loan transactions in Manitoba in a year, it is safe to assume that this is a miniscule number overall. While the stigma of payday borrowing may limit formal complaints, these numbers are consistent with the conclusion that customers are satisfied with the services they are receiving from licensed payday lenders.

CPLA reported that over the last few years, it received no complaints originating in Manitoba at its advertised complaint resolution centre. The Environics Survey also shows that knowledge of the regulations and knowledge of how payday loans work appear to have increased. CAC's Exit Interview Survey appears to show that almost all customers who responded understood how the loan works as well as the fee components and total fees. The Mystery Shopping Report filed by CAC also reveals general consumer satisfaction with most payday lenders and good (not perfect) understanding of the licensed payday loan product.

The Board believes there has been clear progress made in protecting consumers through the legislation and regulations in Manitoba respecting licensed lenders. Transparency of loan information and disclosure requirements and credit cost notice posters in payday lending facilities, among other regulations, have made these lending arrangements more comprehensible than when the industry first began to operate in Manitoba. Governmental and non-governmental based consumer information has also increased and been disseminated so that consumers have more access to information regarding the choice they are making in using this product.

The Board also received information from CPLA, from MPL's representatives and from CAC regarding non-compliance and the operations of unlicensed lenders.

CPLA provided the Board with examples of what appear to be unlicensed payday lenders offering loans in Manitoba via the internet. The Manitoba rate cap is not respected. In one example, the customer is asked for personal credit information to be provided online that would permit the lender to fraudulently access bank accounts. While the Manitoba legislation requires online lenders to be licensed to offer payday loans in Manitoba, at present, there are unscrupulous lenders using the internet with impunity. Manitoba is not the only place where this is happening as CPLA also provided examples of such instances occurring in the state of Washington, U.S.A. It is likely happening everywhere. No doubt legislators everywhere with jurisdiction over local commerce struggle with the regulation of internet commerce, this being one example of the potential for abuse.

All Canadian jurisdictions have a consumer website and all use a variety of online methods to post consumer information akin to alerts regarding purchasing choices. Government can only go so far to attempt to protect its citizens in this area; buyers must also beware, and seek to inform themselves with information made public by the Consumer Protection Office. One such example is the December 21, 2011 Consumer Alert published by the CPO to notify consumers in Manitoba regarding unlicensed internet payday lenders operating in Manitoba.

Information provided to the Board in this proceeding, including CAC's mystery shopper report and the verbal report of Presenter Ms. Davis, put the estimate of cost per $100 of borrowing from payday like lending products offered from storefront outletsat anywhere from $49 to $75, as a starting point for an initial loan under their credit plans. Moreover, it appears impossible to determine what the actual cost will be without actually applying for the line of credit product and going through the company's application process. There is room for significant confusion for customers going to the same outlet locations, and who are now being offered line of credit products with very similar characteristics to payday loans.

. The Consumer Protection Office Report filed with PUB by the Government of Manitoba and the statistical data reports of other provincial jurisdictions prepared for the Board contain reference to compliance issues in other Canadian jurisdictions respecting Cash Store and Instaloans.

The B.C. Government has issued compliance orders and fixed administrative penalties against Cash Store and Instaloans for breaches of its B.C. payday lender licenses including an order to refund cash to its customers from unlawful amounts charged between 2009-2012; by court order in the same matters, the companies were required to secure $1,059,828.00 pending their judicial review application of the B.C. compliance orders. The matter is still pending in B.C. In 2011, The Government of Alberta also issued a compliance order against Cash Store Financial Services Inc.

The Board understands that, in Ontario in 2013, the government sought to revoke the payday loan licenses of Cash Store Financial Services for non-compliance with the Ontario Payday Loans Act and Regulations.

Cash Store brought an application for judicial review of the Ontario Government's actions challenging the validity of new regulations in Ontario which, among other provisions, require cash advances to borrowers and which establish an all-inclusive fee for various components of the loan transaction. The matter remains pending. Effective July 4th, the parent company published a notice that it voluntarily gave up its Ontario payday lender licenses in Ontario.

The Ontario Ministry of Consumer Services filed an application in Ontario Superior Court on June 7, 2013 against Cash Store Financial Services Inc. for a declaration that Cash Store is in the payday loans business by offering the lines of credit product and that it must comply with the Ontario Payday Loans Act. Ontario also seeks an order that the court direct Cash Store to obtain a payday lender license.

In Manitoba, a claim was filed on November 1, 2012 seeking class action status as against The Cash Store Financial Services Inc. and other associated companies based on alleged unlawful charges to consumers of their products in Manitoba after October 18, 2010. No further action appears to have been taken on the claim to date.

As CPLA correctly concluded, unregulated outlets compete with licensed payday lenders in Manitoba with similar products to payday loans and all of the original 34 outlets of this company remain open for business.

The Board therefore urges the Manitoba Government to further investigate these operations and any others offering comparable products to determine what regulatory action will be taken to address the concerns noted by the Board herein.

The Board is also concerned about the growth potential of unregulated lenders in Manitoba. The Board concurs with CPLA that overly onerous regulations and rate caps may ultimately lead to more invasive unregulated loan products being available in this Province leading to harmful outcomes for consumers. However, with respect to the argument that the current rate cap in Manitoba caused the contraction of outlets in Manitoba, it is now clear that even at Ontario's $21.00 rate cap, Cash Store has chosen to exit the constricts of the payday loans arena there, subject to the pending Ontario court application.

7.7.0 Credit Alternatives / Personal Financial Literacy

Limited alternative lower cost short term credit options are currently available to Manitoba consumers who cannot access mainstream traditional credit. A project that supported small short term loan offerings and that was being tested in Manitoba in 2007-08 is no longer functioning. CAC provided Dr. Buckland's November 2009 Study to the Board regarding options being implemented or tested in other jurisdictions around the world.

In addition, the Board was provided with the *Conference Summary Report* of the June 2012 Creating Community Options for Financial Services Conference held in Winnipeg, Manitoba. The costs of the conference were in part covered by funding from the Manitoba Payday Borrowers' Financial Literacy Fund ("Literacy Fund") created by the annual fund levy on payday lenders. The Report notes that the conference brought together 73 representatives from 48 organizations representing industry, consumer advocates, educators, credit counsellors and government to consider the factors limiting access to mainstream financial services for a segment of Canadian population, current actions being taken to address these factors as well as possible future action.

The Board endorses the specific recommendations arising from the conference that address efforts to facilitate communication between stakeholder groups to share best practices of successful organizations and their initiatives and the consideration of strategic partnerships to enable effective actionable steps.

The CPO also provided the Board with the details of the funding allocations which have been made from the Literacy Fund since its inception. Funding from 2011 to the present has been allocated to both conduct further study in the subject area and to cover expenses for dissemination of consumer information on payday loans and delivery of consumer information programs on financial management. CAC seeks more transparency in the methodology respecting the decision making for allocation of these funds. The Board would like to see more of the education funding provided for delivery of basic financial education programs directly to affected consumers.

All Interveners noted the underlying need of consumers of payday loans to be better informed regarding personal credit and basic financial education and to have a better understanding of how to manage their personal financial affairs. As identified in the consumer characteristics section herein, payday loan customers are likely to be less financially literate than non-users. In the 2007 Stegman study referenced in CAC's literature review, the author notes people with the lowest incomes also had the least information about their credit scores and many people using payday loans have no idea about the amount of the APR they are paying. A 2011 study by Bertrand and Morse, cited by CAC's Dr. Buckland, found that information disclosure and financial education surrounding the payday borrowing decision has a significant impact on whether that consumer takes out a payday loan. Getting a consumer to think more long term about adding up the costs of the loan over time reduces the frequency of payday borrowing by a reported 11%.

MPL believes it can offer a lower cost alternative for someone facing the cost consequences of default on a payment. On a one-time basis, perhaps this is true. Frequent payday loan use, however, can be expected to have negative consequences for a borrower. CPLA's consumer information also makes it clear that long term use of payday loans is not in the customer's interest. CPLA suggests that frequent users seek other forms of financing or consider consulting a non-profit credit counsellor.

Efforts are being made nationally and provincially to raise the level of financial literacy among ordinary Canadians. There is a clear ongoing need for the continued publication and sharing of information that will better inform the Manitoba public about personal financial management, the basics of credit and options for accessing personal credit.

The Board encourages the delivery of programs aimed at providing financial management education directly to consumers. Further, some of the payday loans education levy should be used for a consumer campaign that notifies consumers about the difference between licensed and unlicensed payday loan type products. The Board believes that a targeted approach is needed now, as the lines have been blurred and Manitoba consumers may think that they are being protected in some instances when they are not.

Finally, it may be worthwhile for the Manitoba Government to require direct reporting by payday lenders to their customers of the actual annual borrowing that is occurring through an outlet, including a per transaction reporting update for the borrower of the actual cumulative annual loans total and cost of borrowing. Frequent borrowers will then have their total actual cost of borrowing brought home to them in a stark way.

7.8.0 Balancing the Interests of Consumers and Lenders

Regulations imposing the 17% rate cap, along with the other cost of credit and related limits have been in force since October 2010, a little under 3 years. The rate cap has generated real savings for consumers in Manitoba. A number of lenders remain in business in Manitoba, small and large, including both storefront and internet lending providers, with ongoing competition for market share. Rates will undoubtedly go up, if the Board recommends an increase to the rate cap and if the Manitoba Government chooses to increase the rate by regulation.

The regulatory provisions are generally uniform across Canada respecting consumer disclosure and transparency. These regulatory reforms are having the desired effect in that there is less marketplace confusion for borrowers who are obtaining payday loans through licensed lenders.

Payday lenders appear to be compliant and customers are mostly satisfied with the product and services offered by licensed lenders. Some lenders may not be strictly abiding by the rules. However, the government has established an inspections process and has licensing control, including measures to enforce compliance. Remedies for consumers also exist under Manitoba law where non-compliance is established.

Manitoba has chosen to regulate payday lending and in doing so the Province has chosen to allow payday vendors to offer this product. As stated herein, the Board recognizes that licensed payday lenders are offering a loan product that is desired by its customer group and fills a need not met by mainstream banking institutions. However, payday loans are offered and chosen by a segment of our population some of whom are credit stressed and financially vulnerable, as summarized by the Board's findings herein.

The Board accepts CAC's submission that payday loans are not operating in a typical competitive market, due to the particular characteristics of payday loan borrowers and the industry. The Board concludes that the framework advanced by CPLA and MPL will not work properly in the interests of consumers. The Board does not accept the proposition that competition will ensure that consumers are well served at some amount lower than the suggested 23% rate cap.

Profitability for efficiently run payday lending operations is being achieved in Manitoba at the current 17% rate and in accordance with loan amount restrictions existing under Manitoba regulations. Even small enterprise is viable here, where economies of scope are realized by diversifying product and service offerings to spread the fixed costs of operation over other revenue sources.

Contrary to CPLA's theory that a utility model governs payday loan rate regulation in Manitoba, the Manitoba Legislature has not directed and the Government has not employed a public utility model to regulate payday loans. Utility regulation is vastly different under any standard methodology and requires production of detailed operational information to be disclosed and to be tested by a regulator to consider appropriate rates of return. Neither PUB in conducting this review, nor the Manitoba Government in setting rates, is following a public utility rate-setting model.

A payday loan is not of benefit for frequent or long term use by consumers. However, it is clearly frequent, long term use that supports the vast majority of the revenue of payday lenders, based on all available data. Some consumers need and want this product. In the Board's opinion their credit predicament (which drives them to pay for these high cost short term loans) continues to compel consumer protection, which the existing regulation brings to this industry.

The Board sees the current competition with a number of viable payday lenders operating in Manitoba as positive and of real benefit to consumers. A reduction of the cap to 15% may reduce the number of lenders in Manitoba, and may cause licensed internet providers to leave the Manitoba market. Growth of unlicensed operators may also result. Any of these unwanted results is not desirable and is not in the interest of consumers, the industry or the Province from the Board's perspective.

The Board, therefore, recommends that the rate cap remain at 17% of the principal amount loaned. The Board also recommends that the meaning of "cost of credit" remain as defined and that the cost of credit remains as currently structured including all component charges to be included in the single 17% rate. Rate simplicity leads to clarity for borrowers and makes compliance easier to monitor.

The Board also recommends that the limit on borrowing remain at 30% of net pay based on the existing regulation. While freedom of financial choice in borrowing is advocated by the Intervener payday lenders who appeared before the Board and the CPLA and while lenders' revenues have been significantly impacted by the imposition of this loan limitation, it is clear that customers are typically facing existing debt repayment challenges when they seek payday loans. The debt spiral for payday loan users is a known phenomenon, and therefore, limiting the level of borrowing to a portion of the net pay of the individual reduces the likelihood that they will further overextend their credit obligations.

The Board acknowledges that this protection may not be welcome by customers who want to borrow more than the limit. However, many users may be living beyond their means and may have already surpassed their ability to access low cost mainline consumer credit. It is in the public interest to use this limit to avoid further financial problems and to, therefore, reduce the attendant emotional and psychological harm that credit stress imposes, to the extent this result can be achieved for payday loan debtors and their families. Higher limits or no limits offer further exposure to insolvency risk recorded herein. The current limit should, therefore, be maintained.

The Board does not recommend a change suggested by certain payday lenders to allow borrowers to “top up” an existing payday loan once within the same transaction period if they have not borrowed to their 30% limit and allowing lenders to charge the 17% on the top up amount within that same period. The 5% charge makes offering the top up unprofitable for payday lenders.

The Board acknowledges that while a top up option would mean more revenue for lenders, it may also lead to consumer confusion and may not achieve a net benefit in the overall regulatory structure. The current rate regulations have only been in place for less than 3 years; there has been a limited time for lenders and customers to function under the current regime. In balancing the interests of both lenders and consumers, the Board concludes that the suggested change will not be of overall benefit at this time. Finally, customers must decide what they will need at the time they take their initial loan. This restriction therefore requires a planned borrowing approach by the customer. Limiting extensions to the loan is seen by the Board to be of long term benefit to consumers in this credit class.

It is in the interests of payday loan users to avoid the debt trap that arises in part from consecutive and replacement loans. The 5% rate cap for these loans should remain in place, along with the requirement that once the 30% loan limit is advanced, the seven day restriction between loans is required to charge the 17% rate again. Lenders may choose to offer a product at this rate within their business model. This tool also operates to slow the growth of consumer debt and the potential for the payday loan debt trap. Lenders want to loan more and sooner; it is in their business interest to do so. Borrowers can still go elsewhere to source a loan within the 7 days if they choose that option, and, if they are approved. The need to go elsewhere and the time in between loans is expected to have a beneficial effect for the financial well-being of the consumer.

With regard to default, the current interest rate should remain in place, at 2.5% per month, non-compounding.

The regulation regarding a payday lender’s recovery of the cost of a dishonoured cheque or debit transaction should be changed. Both CAC and their expert Dr. Robinson, along with PPL suggested that the full expense of a lender be recoverable, subject to proof of the cost incurred and disclosed by the lender to the borrower. The Board agrees with this recommendation.

As for the “two debit” request by PPL, the Board notes that the current regulations permit more than one debit, as long as the cost is not passed on to the customer, beyond the maximum cost of credit by regulation. PPL may want to discuss this further with the CPO, if it is seeking some form of relief beyond what the regulations already provide. If PPL is suggesting that it should be able to charge extra for the expense of a second debit attempt, the Board does not support that recommendation and also does not endorse the ability of a lender to debit the account of a borrower in advance of the actual payday.

The Board urges the Government of Manitoba to investigate and consider what can be done regarding the regulation of payday loan-like products.There is much room for commercial confusion in the current circumstances and the potential for harm to consumers that calls for further action. The Board makes no finding as to whether some form of provincial regulation is possible, or whether federal regulation is an option in consultation between the Province of Manitoba and the Government of Canada.

The Board recommends that the licensing fee remain at the rate currently set, and that the financial education levy remain in place. The funds generated by licensing are being used to pay for compliance inspections and administration of the regulatory system. In order to protect consumers and licensed lenders who are in full compliance from those who are not, a functional capable administration must be funded.

The education levy is being used to support financial literacy initiatives. The Board agrees with CAC's submission and recommends that there should be more transparency in the decision making associated with funding decisions respecting the Literacy Fund. The Board suggests that direct delivery programs aimed at consumers be a priority going forward. Further, since there was evidence in the review that a portion of the payday lending customer group are immigrants to Canada, there should be consideration given to translating basic consumer information into other languages, or ensuring that communication barriers do not limit the sharing of this information.

One further regulatory requirement which the Board recommends for consideration is a cumulative borrowing disclosure notice, to appear on every new payday loan transaction statement between a lender and a borrower and which discloses the cumulative annual borrowing amount and the cumulative total actual dollar cost for the borrower at that outlet. This is one more piece of clear simple information for the customer to receive that will reflect the very high cost of payday loan credit.

The Board recommends that the CPO require the provision of the statistics suggested by CAC in its submissions, with the exception of the filing of actual annual financial statements. The Manitoba Government should consider the statistical reporting requirements in other Canadian jurisdictions to determine the most efficacious data that are both available for confidential filing by lenders and that will serve the interests of regulators including any future review by PUB or government itself.

All lenders and CPLA have privacy policies in place, and note that they adhere to these policies. However, many outlets have a wicket operation whereby a borrower must stand across from the staff person and provide personal confidential information in the presence of others in the store. Identity theft exists, and the risk of confidential information of individuals being unintentionally disclosed is of concern. This is a further area for consideration, but without specific recommendations by the Board.

The proliferation of unlicensed internet lenders operating in Manitoba is an issue. The Board recommends that further research be completed in this area and that the Manitoba Government work with other governments to consider what more may be done to control unlicensed offerings, or to make consumers more aware of these unregulated businesses. The Board does not see a need for a change in the regulations to require a payday lender to have a “bricks and mortar” location in Manitoba. However, part of the licensing requirements should include that the lender has a registered office in Manitoba.

Schedule "B" to the Report is a chart which discloses the regulatory provisions reviewed and the Board's recommendations for ease of reference.

8.00 RECOMMENDATIONS

8.1.0 In accordance with the Section 164 of *The Consumer Protection Act* of Manitoba, The Public Utilities Board Hereby Recommends:

1. The definition of cost of credit remains as formulated. The single rate should continue to include all of the component costs for a payday loan.
2. The total cost of credit for a payday loan remain at 17% of the principal amount of a payday loan.
3. The limit on borrowing remain at 30% of net pay based on the existing regulation.
4. The limit on the rate for replacement, extension or renewal loans remain at 5% of the principal amount of the payday loan.
5. The limit on the rate at 5% remain for loans provided within seven days to the same borrower.
6. Upon default the current interest rate remain at 2.5% per month, non-compounding.
7. The full expense of a dishonoured cheque or debit transaction incurred by a lender be recoverable, subject to proof of the actual cost incurred and disclosure by the lender to the borrower.
8. The licensing fee and the financial education levy remain in place and at the rates currently set. Education funds should be used for direct

consumer education. A targeted approach to distinguish between licensed and unlicensed lenders is required now.

9. The Minister investigate and consider what action can be taken regarding the regulation of payday loan-like products..
10. Further research be completed respecting unlicensed internet payday lending in Manitoba and that the Manitoba Government work with other governments to consider what may be done to control unlicensed offerings, or to reduce the risks to Manitoba consumers from these unregulated businesses. Licensing requirements should include proof that the lender has a registered office in Manitoba.
11. A cumulative borrowing disclosure notice, to appear on every new payday loan transaction statement between a lender and a borrower and disclosing the cumulative loan amount and the cumulative actual dollar cost for all loans for that borrower within a calendar year, be adopted by regulation.
12. The Consumer Protection Office require lenders to provide statistics annually including: total number of loans issued, total number of borrowers, number of loans per borrower, number of full time and part time employees including owner and managers. The Manitoba Government should also consider the statistical reporting requirements in other Canadian jurisdictions to determine the most useful data that is both available for confidential filing by lenders for aggregation and public disclosure and that will serve the interests of regulators including any future review by PUB or government.

Upon review by the Panel Members herein below, The Public Utilities Board respectfully submits this Report.

____
Karen Botting, B.A., B. Ed.,
M.ED., Panel Chair

____
The Hon. Anita Neville, P.C.,
B.A. (Hons), Member

____
Susan Proven, P.H.Ec., Member

SCHEDULE "A"
PUB FILINGS

Exhibit No:	Description
PUB-10	Government of Manitoba Consumer Protection Office letter and report, dated May 13, 2013
PUB-11	Letter from the Consumer Protection Office to PUB regarding a response to further questions, dated June 13, 2012
PUB-12	Fillmore Riley LLP research report, 'Statistics Regarding Payday Lending and Other Provincial Jurisdictions'
PUB-13	The Public Utilities Board comparative cost of borrowing spreadsheet report, prepared by PUB staff advisor Jennifer Dubois, CMA, dated June 10, 2013
PUB-14	Legislative summary Bill C-26, an act to amend the criminal interest rate, report of the Parliamentary Information Research Service, Library of Parliament, dated November 22, 2006
PUB-15	Financial Consumer Agency of Canada report entitled 'Payday Loans: An Expensive Way to Borrow', dated September 2012
PUB-16	Hoyes, Michalos & Associates, Inc., trustees and bankruptcy Ontario report entitled 'Joe Debtor: Who is he? Who is at risk?' dated May 2013
PUB-17	First supplement to Fillmore Riley LLP research report, 'Statistics Regarding Payday Lending and Other Provincial Jurisdictions', dated June 21, 2013
PUB-18	Second supplement to Fillmore Riley research report, 'Statistics Regarding Payday Lending and Other Provincial Jurisdictions', dated June 25, 2013

SCHEDULE “B”
REGULATORY PROVISIONS REVIEWED

- Section 13.1(1) – maximum cost of credit – the total cost of credit for a payday loan must not be greater than 17% of the principal amount of the payday loan.

- Section 13.1(2) – replacement loan – the total cost of credit for a replacement loan must not be greater than 5% of the principal amount of the replacement loan.

- Section 13.1(3) – extensions, renewals and consecutive payment loans – the total cost of credit for a payday loan must not be greater than 5% of the principal amount of the payday loan, if:

  (a) the payday loan is an extension or renewal of a payday loan previously arranged or provided; or

  (b) the payday loan is arranged or provided by a payday lender within seven days after the borrower repaid in full another payday loan previously arranged or provided by that payday lender.

- Section 15.2(1) – maximum amount of a loan – no payday lender shall enter into a payday loan agreement with a borrower for a loan that exceeds 30% of the borrowers net pay, as calculated in accordance with Section 2.2(1) of the Regulation.

- Section 15.4(1) – maximum amount payable for default – the penalty that may be charged, required or accepted in relation to any default by a borrower under payday loan is a penalty of 2.5% of the amount in default, calculated monthly and not to be compounded. This penalty may be charged, required or accepted only once in the thirty day period.

- Section 15.5 – fee for a dishonoured cheque or a stop payment – in addition to any penalty that may be charged under 15.4(1), if a payday lender is charged a fee for a cheque, pre-authorized debit or other negotiable instrument that is dishonoured or upon which a stop payment order is placed, the payday lender may charge a fee to the borrower in the same amount, by way of reimbursement, but in no case shall the fee charged by the payday lender to the borrower exceed $20.00.

- Section 15.7(1) – no repeated attempts to process repayment – the payday lender may present a cheque, pre-authorized debit or other negotiable instrument that the borrower provided in exchange for the advance of money to a financial institution only once.

- Section 15.7(2) – exception – despite subsection (1), a payday lender may present a cheque, pre-authorized debit or other negotiable instrument to a financial institution more than once, but only if (a) the borrower is not charged a fee, penalty or other amount by the financial institution to process it; and (b) in circumstances where the payday lender is charged a fee, penalty or other amount by the financial institution to process it, the lender does not in turn charge a fee to the borrower under Section 15.5.

SCHEDULE "C"
PUB RECOMMENDATIONS CHART

Regulation 50/2010 Section Number	Provision Summary	Recommendation
Section 13.1(1)	Maximum cost of credit – the total cost of credit for a payday loan must not be greater than 17% of the principal amount of the payday loan	No change
Section 13.1(2)	Replacement loan – the total cost of credit for a replacement loan must not be greater than 5% of the principal amount of the replacement loan.	No change
Section 13.1(3)	Extensions, renewals and consecutive payment loans – the total cost of credit for a payday loan must not be greater than 5% of the principal amount of the payday loan, if: (a) the payday loan is an extension or renewal of a payday loan previously arranged or provided; or (b) the payday loan is arranged or provided by a payday lender within seven days after the borrower repaid in full another payday loan previously arranged or provided by that payday lender.	No change
Section 15.2(1)	Maximum amount of a loan – no payday lender shall enter into a payday loan agreement with a borrower for a loan that exceeds 30% of the borrowers net pay, as calculated in accordance with Section 2.2(1) of the Regulation.	No change

Section 15.4(1)	Maximum amount payable for default – the penalty that may be charged, required or accepted in relation to any default by a borrower under payday loan is a penalty of 2.5% of the amount in default, calculated monthly and not to be compounded. This penalty may be charged, required or accepted only once in the thirty day period.	No change
Section 15.5	Fee for a dishonoured cheque or a stop payment – in addition to any penalty that may be charged under 15.4(1), if a payday lender is charged a fee for a cheque, pre-authorized debit or other negotiable instrument that is dishonoured or upon which a stop payment order is placed, the payday lender may charge a fee to the borrower in the same amount, by way of reimbursement, but in no case shall the fee charged by the payday lender to the borrower exceed $20.00.	Total fee incurred by the lender recoverable, subject to proof of fee and notice to borrower
Section 15.7(1) and Section 15.7(2)	No repeated attempts to process repayment – the payday lender may present a cheque, pre-authorized debit or other negotiable instrument that the borrower provided in exchange for the advance of money to a financial institution only once. Exception – despite subsection (1), a payday lender may present a cheque, pre-authorized debit or other negotiable instrument to a financial institution more than once, but only if (a) the borrower is not charged a fee, penalty or other amount by the financial institution to process it; and (b) in circumstances where the payday lender is charged a fee, penalty or other amount by the financial institution to process it, the lender does not in turn charge a fee to the borrower under Section 15.5.	No change