M A N I T O B A	)	**Order No. 39/08**
	)	
THE PUBLIC UTILITIES BOARD ACT	)	**April 4, 2008**

BEFORE: Graham Lane, CA, Chairman
Monica Girouard, CGA, Member
Susan Proven, P.H.Ec., Member

MAXIMUM CHARGES FOR PAYDAY LOANS

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1.0 EXECUTIVE SUMMARY

By this Order and following public hearings held in Thompson, Brandon and Winnipeg over the months of November 2007 through to February 2008, the Public Utilities Board (Board) establishes the maximum charges payday lenders may assess their customers.

The Order, which is accordance with the Board's mandate as provided by the legislature of Manitoba, sets a sliding scale of charges based on the size of the loan (value received), starting at 17% for advances up to $500 and ranging downwards thereafter (advances between $501 and $1000, and $1001 to $1,500, will be subject to lower maximum rates).

In its next expected review of the maximums, to occur in three years, the Board currently intends to review the maximum of the lower rate thresholds to consider the effects of inflation – inflation also may be inherently reflected in increased average loan amounts. While the maximums now set are expected to reduce the cost of payday loans to Manitoba borrowers by 20% to 50%+, the average annual percentage rate (APR) associated with payday loans will remain ten or more times the 60% limit established by Section 347 of the *Criminal Code,* and be in the hundreds of a percent -- payday loans will remain a very high-cost short-term consumer credit option.

Prospective payday borrowers should realize that payday loans are so expensive that they should be avoided, to be considered only in the absence of access to credit from mainstream lenders, family or "doing without".

Chartered banks and credit unions should be encouraged to expand their credit offerings to better service the small-balance, short-term credit needs of the less affluent. To do this would require banks and credit unions to consider the needs of the cohort of consumers that require small balance advances with "instant approval" times, and while the operational and bad debt costs associated with such loans are likely to be higher than banks and credit unions prefer, the Board holds that banks and credit unions, benefiting

considerably from the advantages of the stable Canadian and Manitoba marketplace, should make the effort.

Banks and credit unions have long realized that finance company customers can be their customers, to the mutual benefit of both, and the Board hopes that this prior realization can be drawn on to assist mainstream lenders in finding ways to better serve small-balance credit-worthy payday loan borrowers.

Legal language to reflect the directions set out in this Order will be approved by the Board prior to being set out in a regulation.

Summary Comments

The implications of this Order are significant, both for payday borrowers and lenders.

The Board finds it distressing that an increasing and significant number of Manitobans are taking out payday loans, notwithstanding that payday loans, while meeting an immediate need, may only defer and make worse a borrower's financial problem, and are very expensive and don't build a credit rating. In fact, the Board suspects the taking out of a payday loan, if it becomes known to a bank or credit union, may actually dissuade mainstream lenders from lending to the borrower.

The overall savings rate of the average Canadian has fallen to very low levels, and the lowest income deciles of the employment rolls have secured little or no after-inflation household income gains in 20 years. Many families live from paycheque to paycheque, and, for those experiencing credit difficulties and lacking an available borrowing relationship with a bank or credit union, payday loans, defaults and bankruptcy have unfortunately become an increasing occurrence.

While, as indicated, receiving a payday loan may assist a borrower in meeting an immediate need, there are problems with payday loans, and not the least of these is the very high cost of credit associated with them. The saying *homo homini lupus* (man is a

wolf to man), from a play by *Plautus* and later paraphrased by the philosopher *Thomas Hobbes* as *"Man to Man is an arrant Wolfe"* (De Cive, Philosophical Rudiments Concerning Government and Society), is suggestive of the situation of too many vulnerable consumers when it comes to payday loans.

Most Canadians taking out loans pay interest on their consumer (secured and unsecured) and mortgage loans at rates below 10%, some garnering rates as low as prime (bank prime now, 5.25%) from chartered banks and credit unions. Credit card holders unable to pay off their full account on the due date incur rates of between 9.9% and 28.8% (reportedly, 21% for members of the Canadian Bankers Association). And, even the customers of finance companies such as CitiFinancial, Wells Fargo and HSBC Financial, who may pay rates between 15% and 36% per annum (some American-based banks operate finance company subsidiaries), may be far better off than payday loan borrowers. And, these other lenders offer repayment terms that are not restricted to the borrower's next payday.

Payday loan industry borrowers are not so fortunate, and find themselves in a similar situation to that of the patrons of pawnshops, charged 25% monthly (inclusive of interest and storage charges) for a form of credit that is only cheaper than a payday loan if the merchandise pawned is redeemed (if not redeemed, the cost of the credit could be considered to be the replacement value of the pawned good).

With few exceptions, the combination of interest and other charges incurred by payday borrowers for loans, with durations as short as 2 days but more commonly of 12 days, result in equivalent annual interest rates from hundreds to thousands percent of the loan. The levying of separately-identified other charges and fees as well as interest, and/or the structuring of the loan's terms towards separating interest from the other charges, has provided payday lenders an argument that the 60% interest rate cap of Section 347 of the *Criminal Code* has not been breached. The lenders' arguments, refuted by both Court

decisions and a common sense understanding of Section 347, are currently being tested in a half-dozen or so class action suits.

Yet, despite the questionable legal status of payday loans, few prosecutions have occurred. The 60% limit on interest rates set by the *Criminal Code* has rarely been enforced, due to some or all of the following factors:

a) shared federal-provincial regulation over prosecutions related to Section 347 of the *Criminal Code;*
b) required consent of the respective provincial Attorney General to prosecute an offence under Section 347 (a proposed prosecution of a Section 347 case may "compete" for attention with crimes involving violence or thefts and frauds involving large sums);
c) problems with Section 347, particular with respect to the terms of commercial transactions;
d) concern that a succession of successful prosecutions would destroy the payday loan industry, removing what is considered by some to be an acceptable credit alternative for the relatively small cohort of Canadians unable to access credit on more reasonable terms;
e) recognition that 16 cents per $100 of loan advanced per day, representative of a 60% APR, is insufficient to meet the operating, bad debt and interest costs of payday lenders – due to the small amounts advanced and short maturity dates; and
f) the risk that the destruction of the payday loan industry would either drive credit-damaged consumers to loan sharks, thievery or "doing without".

Accordingly, and following consultations between the federal government and the provinces undertaken through the *Consumer Measures Committee (CMC) Working Group on the Alternative Consumer Credit Market*, Parliament acted. Bill C-26 of the Parliament of Canada provides for the exemption of payday loan firms licensed by a province "that has legislative measures in place designed to protect consumers and limit

the overall cost of the loans" (Legislative Summary, LS-541 E, Parliamentary Information and Research Service*)*.

Rather than either actively prosecuting payday lenders for breaching section 347 of the *Criminal Code* or directly banning the practice, Canada delegated regulatory oversight of payday lenders to provinces establishing a provincial regulatory framework deemed adequate to protect consumers, allowing payday lenders to continue.

Licensed payday lenders are to be exempted from the application of Section 347, and this will remove a major legal risk for payday lenders, a risk associated with the class action suits previously indicated. With licensing, payday lenders will be able to continue charging annual percentage rates (APRs) of 100 times or more the lowest rate obtainable from a chartered bank or credit union. It is not surprising that payday lenders sought and encouraged Parliament to act.

Subsequent to Manitoba acting on Bill C-26 by way of legislative amendments to *The Consumer Protection Act (Manitoba)*, and the enactments of *The Consumer Protection Regulation 226/2006* and *The Payday Loans Regulation 99/2007*, for the first time the Board now fixes the maximum charges a payday lender may assess a borrower.

Other Matters

Additionally, this Order provides an overview of the payday loan industry, placing it within the context of the overall consumer credit market, and offers recommendations to government. Included amongst the Board's recommendations are calls to:

a) regulate internet and telephone payday lending – to prevent lending at rates in excess of the maximums set herein by lenders located in other jurisdictions;
b) amend the payday loan regulation to include payday loan creditors insurance premiums within the definition of cost of credit;
c) regulate pawning and rent-to-own charges;

d) review non-payday loan practices of payday lenders through the licensing and monitoring processes (other activities include wire transfers, title loans, money orders, foreign exchange and mortgage referrals);

e) engage banks and credit unions in discussion towards those lenders developing small balance short-term credit options for consumers now reliant on payday lenders; and

f) enhance consumer credit education, information and counseling – beginning budget and consumer credit education in middle school.

General Assessment

The Board considers consumer reliance on payday lenders to be injurious to the financial health of repeat borrowers, and a contributor to economic lives being kept outside the much lower-cost financial mainstream. The judgment is based not on the net profits of payday lenders, which may be more or less than those earned by the major chartered banks, but rather on the high rates of interest involved, and the impact of those rates on repeat borrowers.

Some payday borrowers rely on payday firms not only for repeat payday loans, but also for cheque cashing, money orders, wire transfers of remittances to relatives in other countries, title loans, second mortgages, foreign exchange and other services. Consumers dealing with the fringe or convenience banking industry should understand that all such services likely come at a price in excess of what could be obtained through a mainstream financial institution.

With respect to payday loans, the current practices of payday lenders result in those individuals least able to afford credit incurring borrowing costs up to a 100 times or more (on an annualized basis) greater than the cost that would be incurred if a similar loan advance and term was extended by a bank or credit union.

Accordingly, the Board suggests a general societal objective be considered, that of reducing the number of Manitobans availing themselves of payday loans, pawnshops and rent-to-own firms. For those that continue to take out payday loans, the maximums now established by the Board will only ensure that the cost will be more "reasonable", that is, reasonable at least in comparison to the costs payday loan borrowers are now incurring.

Expectation

The Board anticipates that the maximum charges established by this Order will result in some, if not many, payday lenders exiting Manitoba, and acknowledges that such a result will bring transitory hardship to some payday loan borrowers who will either have to establish an alterative source of credit or do without. The Board also anticipates that some relatively efficient payday lenders will continue to operate at the lower level of authorized rate charges, and that those surviving firms will assume some of the market demand that may become available with the closure of some of the existing payday lenders.

Continuing and reasonably efficient payday lenders, with the legality of their lending secured by licensing, should be able to secure lower interest rates on their own borrowings, bringing down their cost of funds. As well, as the industry's legal risk profile declines, the required rates of return on equity for the lenders' owners may be reduced, and legal judgments may be secured upon defaulted loans.

Lower costs of funds and capital should allow for some belt-tightening by efficient lenders, and the economies of scale resulting from higher volumes per location should reduce operating costs per loan. And, more care with respect to the credit being extended may allow continuing payday lenders to reduce their bad debt loss ratios.

While the Board regrets that employees of payday lenders ceasing or reducing operations will lose their jobs, the outcome of a conflict between the interests of borrowers and

payday lenders and their investors necessitated the regulation of payday lending to protect borrowers.

The Board reached its decisions following a careful review of the evidence and other information available, and after making an assessment of the likely and possible implications of its decisions.

Application for reconsideration

Interveners to the recent proceeding that led to this Order may, within thirty days of this Order, seek the Board's reconsideration of the directions provided herein. Application for reconsideration should be supported by facts and reasons, preferably other than those reviewed herein.

This Order, and the transcripts of the hearing that preceded it, may be found on the Board's website, www.pub.gov.mb.ca. The full body of evidence and information received during the lengthy proceeding may be viewed at the Board's offices; exhibits placed into evidence in the proceeding are listed in an appendix to this Order.

2.0 BACKGROUND

2.1 Board's Mandate

Following unsuccessful efforts by some parliamentarians and consumer groups to have Section 347 enforced by government, the *Criminal Code* was, as previously described, amended to allow provinces licensing payday lenders to regulate the lenders and set the maximum charges they may make.

Manitoba was the first province to seek to control the practices of payday lenders, after the "delegation" of responsibility from the federal government, by enacting legislation and regulations. Recent amendments to *The Consumer Protection Act (CPA)*, Manitoba, and the enactment of Regulations 226/2006 and 99/2007 to the CPA, the latter denoted as The Payday Loans Regulation (PDR), are concerned with the regulation of payday loans in Manitoba.

CPA amendments require the Board to fix:

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

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

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

The *PDR* added specific definition to the terms "value received" and "value given" towards the determination of cost of credit for a payday loan, as well as set out licensing and consumer notice conditions under which payday lenders are to operate in Manitoba.

The charge to the Board to set maximum charges also provides for the Board making recommendations to government on matters with respect to payday loans.

In introducing the legislation, Manitoba Finance Minister Selinger advised that the amended *CPA* would require payday lenders to be licensed and bonded, and be subject to maximum charges to be set by the Board. As well, Minister Selinger stated that additional fees would not be allowed when loans are renewed, extended or replaced by a new loan, unless authorized by the Board, and borrowers would have the right to cancel a loan without penalty within 48 hours of taking out a payday loan.

Paraphrasing the Act, the Board has the authority to consider any factors it considers relevant, such as:

- payday lender operating requirements and financial risks;
- lending competition and consumer borrowing options;
- the particular circumstances of consumers obtaining payday loans;
- history of bank branch and credit union consolidations and closings, and their impact on consumers seeking small loans;
- reasons and factors behind the increase in the number of payday lenders and offices, and the relative cost to consumers of relying on such firms rather than banks or credit unions;
- federal and provincial law;
- such information as may come to the Board's attention; and
- the public interest.

Minister Selinger stated that the government's purpose for the Act amendments, for licensing and regulating payday lenders "… was not to drive the companies out of business, because people are showing an interest in having this service, but to make sure that when they offer the service they do it in a way that's just and reasonable".

The Board understands the Minister's statement within the context of the amendments, and does not interpret the remark as a directive to avoid setting maximum rates resulting in some payday lenders exiting the industry.

CPA provisions relevant to licensing payday lenders are expected to come into force following the issuance of this Order, with full proclamation to follow. The intervening time is expected to allow for the process of licensing payday lenders and the dissemination of educational material, etc.

2.2 Historical Context

Payday loans came to Canada in the mid-1990s, approximately ten years after the practice became a fledging industry in the United States. While sub-prime consumer loans were well represented in Canada ahead of payday lenders, finance companies generally abided by the body and spirit of Canada's anti-usury laws and offered loans with APRs well below the 60% cap. Payday lending first arose in the United States following a court decision that allowed banks to circumvent state anti-usury laws.

Before then, borrowers relied on employers, banks, credit unions, family, finance companies and pawnshops. Prior to the advent of direct payroll deposits and the out-sourcing of payroll, many employers would make payroll advances, usually at no interest, to employees. And, primarily in industrial settings and factories, "lunch-box" lending took place, whereby a fellow employee would advance short-term loans to the next payday to trusted colleagues.

2.3 Legal Considerations

2.3.1 The Criminal Code

Section 347 of the *Criminal Code* (Canada) makes it a crime to charge interest in excess of 60% per annum.

"347(.1) Despite any other Act of Parliament, every one who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate, is

a) guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

b) guilty of an offence punishable on summary conviction and liable to a fine not exceeding $25,000 or to imprisonment for a term not exceeding six months or to both."

And,

"*criminal rate* means an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement.

"*credit advanced* means the aggregate of the money and the monetary value of any goods, services or benefits actually advanced under an agreement or arrangement minus any required deposit balance, and any fee, fine, penalty, commission or other charge or expense directly or indirectly incurred under the original or any collateral agreement or arrangement.

"*interest* means the aggregate of all charges and expenses whether in the form of a fee, fine, penalty, commission or similar charge or expenses or by any other form, paid or payable for the advancing of credit … but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance …"

While the intent of the section would appear to make unlawful the current practices associated with payday lending, most lenders have a different perspective. Most payday lenders have structured their approaches to lending to avoid falling under the constraints of the *Criminal Code*, although whether or not they have succeeded remains to be fully

tested before the Courts, with several class action suits underway asserting that payday lenders have breached the *Criminal Code*. There have been a few court decisions in Manitoba and elsewhere in Canada that have upheld the rate cap of Section 347, thus reducing or cancelling some consumers' obligations to lenders.

National Money Mart, owned by Dollar Financial of the United States and operating as Money Mart across Canada, charges interest just below the 60% *Criminal Code* limit, and allows borrowers to pay only the interest charge if they repay the loan in cash prior to the due date. If pre-payment does not occur, the borrower's payment must include not only the principal and interest, but also a cheque cashing fee; that fee comprises the majority of the overall cost of credit to the borrower.

Despite the separation of "interest' from the cheque cashing fee, National Money Mart is the subject of at least one major class action suit claiming the cheque cashing fee is a component of the overall "interest" being charged, and that the overall cost of credit ("interest" pursuant to Section 347) exceeds the legal maximum of 60%. The amended legislation makes it absolutely clear that a cheque cashing fee associated with a payday loan is to be included in the calculation of the APR for that loan.

Other payday loan lenders have taken the view that Section 347 does not mean that other charges, such as brokerage and other fees carrying various descriptions cannot be separately assessed and charged along with interest, and that only the interest charge need be no higher than 60%. Rentcash, a Canadian company operating as Instaloans and The Cash Store, has developed a large national chain based on a broker model, described in depth below, which has Rentcash operating as a broker and service agent and not as a direct lender – the lender is a third-party not owned by Rentcash.

Notwithstanding the mechanism chosen to avoid the application of Section 347, payday lenders, including the largest of the firms, are the defendants of several ongoing class actions suits.

In short, most payday lenders structure their charges to evade the intent of Section 347 as understood by the Board and as argued by the plaintiffs of the class actions suits. When both the interest charged and other charges and fees are taken into account, payday lenders charge their borrowers costs of ten times and more than the maximum specified in Section 347.

In the view of the Parliamentary Information and Research Service (LS – 541), Section 347 of the *Criminal Code* also defines "interest" in a way that has allowed payday lenders to "… disguise interest as various fees and charges, including insurance charges". Also, the Supreme Court of Canada has stated, in a case not concerning a payday lender, that section 347 is "a deeply problematic law" (*Garland v. Consumer Gas, 1998.)*

Bill C-26 amended the *Criminal Code* to allow provinces to regulate the operations of payday lenders within their jurisdiction. Bill C-26 provides a definition of payday loans, that being "… an advancement of money in exchange for a post-dated cheque, a preauthorized debit or a future payment of similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawn broking, a line of credit or a credit card".

C-26, by way of new section 347.1(2) exempts a person who makes a payday loan from criminal prosecution if:

a) the loan is for $1500 or less and the term of the agreement lasts for 62 days or less; and
b) the person is licensed by a province to enter into the agreement (issue payday loans); and
c) the Governor General in Council has designated the province under a new section to the *Criminal Code*, 347.1(3).

New *Criminal Code* section 347.1(2) does not apply to federally-regulated financial institutions (banks and insurance companies), but regulating payday lenders and loans would appear to allow credit unions and finance companies to offer payday loans, subject to provincial regulations. The question is whether it is in the public interest to license mainstream lenders to offer payday loans, when payday loan rates are at such high levels.

New section 347.1(3) indicates the new provisions of section 347 apply in provinces requesting application and designated by the Governor in Council, if a province enacts legislative measures to "protect recipients of payday loans and that provide for limits on the total cost of borrowing". New section 347.1(4) allows for the revocation of a designation if requested by a province, or if the legislative measures taken by the province to allow the designation to be made are no longer in force.

In approving the revisions to Section 347 of the *Criminal Code*, Parliament has allowed payday lending, as it has been practised – i.e. with fees and interest well in excess of 60%, to continue in provinces providing the required legislative protection of consumers. Parliament acted to allow the industry to continue, because the disappearance of payday lenders was perceived as being potentially damaging to some consumers, with mainstream lenders currently not serving the short-term and small balance loan needs of a growing component of the borrowing community.

As indicated, several class action suits have been initiated against payday lenders in various provinces, including Alberta, British Columbia and Ontario, but are yet to be heard and/or resolved.

As well, there have been a few Manitoba cases involving charges laid against lenders. For example, a Manitoba Small Claims Court decision relating to a payday loan determined the lender was in breach of Section 347 and barred the lender from obtaining a judgement against a defaulted customer; that decision has not been appealed and has since been perceived as a bar of payday lenders seeking judicial judgements against defaulted payday loan borrowers.

At the recent Board hearing, payday lenders advised that the costs associated with Court action against defaulting customers are prohibitive relative to the magnitude of the debts involved, and that even in the absence of Small Claims Court decisions, payday lenders would be reluctant to seek judgements. Thus, with judgements not obtainable for legal reasons, payday lenders have relied on other standard collection methods, and the desire of borrowers to protect their credit standing with the lender. (Presumably, with licensing the question of the legality of payday loans would be addressed, allowing judgements to be obtained.)

As previously indicated, the payday lender defence against claims of being in breach of Section 347 is generally based on the industry's standard practice of levying both interest (at no more than the allowable 60%) and non-interest charges – the latter denoted as brokerage, cheque cashing, administration and/or other fees. If payday lenders were restricted to the 60% maximum of Section 347, with no other charges or levies permissible, the industry alleges that it would be "out of business".

Section 347 became law in 1981, replacing *The Small Loans Act*, which had been enacted in 1939 to replace an early version enacted in 1907.

The 1907 and 1939 laws were much more proscriptive than Section 347. These earlier laws targeted small consumer loans and established maximum rates of interest much lower than the 60% set by Section 347. *The Small Loans Act* defined a small loan as a loan at or below $1500, with legislated maximum rates of interest being 24% to $300, 12% on sums between $301 and $1000 and 6% on sums between $1001 and $1500. If the *Small Loans Act* had not been repealed, it is possible that the payday loan industry, as now practised, would not have developed in Canada.

The 1907 and 1939 laws represented Parliament's use of its constitutional right to regulate national interest rates. The repeal of *The Small Loans Act* represented an extension of applicability to cover all loans, and a new reliance on the marketplace to

provide fair rates for consumers, rather than the federally determined market maximum rates.

2.3.2 Manitoba Court Cases

The following Manitoba cases provide some guidance:

i) *MoneyMax Canada Ltd.* and *Mario Barcolta* (Court of Queen's Bench) – decision of September 8, 2005:

MoneyMax sought a judgment against Barcolta for repayment of an outstanding payday loan. In the decision, the hearing officer indicated the following facts:

- loan contract dated May 2005 related to a loan of $300 for three days;
- post-dated cheque was provided for full payment, including all charges;
- indicated annual interest rate, 58.24%;
- $100 NSF or stop payment fee (actual bank charge to MoneyMax, $5)

The decision was:

"the contract offends section 347 of the C*riminal Code*. The $100 NSF fee – penalty, is to be construed as interest ... rais(ing) the cost of borrowing, the interest rate, well over 60% per annum. Interest as defined in the C*riminal Code* is all inclusive and covers charges, penalties and fees (however they may be described or disguised) payable under an agreement for credit … in conclusion, and as reflected by Madam Justice Hamilton in … C.A.P.S. International Inc. and Robert Kotello, judgment delivered April 25, 2002, Court of Queen's Bench of Manitoba, 'the court will not assist lenders in the business of loaning short-term money at criminal interest rates' .. the plaintiff's claim is dismissed…"

ii) *Keystone Financial Inc.* and *Alvin Yumang, Eva Burgos Yumang* and *Jeffery Bryan Yumang* (Court of Queen's Bench), decision of March 22, 2006:

The defendants borrowed $2,210.66 from Keystone, consisting of a loan of $1,860.00 and $332.66 in fees and “alleged” insurance premiums. At issue was whether the interest charged was at a criminal rate under section 347 of the *Criminal Code*. The defendants defaulted in repayment. Also, Keystone charged the defendants $608.82 over a 22-month period for 18 service charges allegedly arising from N.S.F. charges; Keystone sought judgement for the outstanding balance, including unpaid NSF charges and interest to the date of the January 2006 hearing.

The Court indicated the issues to be considered were liability under section 347 of the *Criminal Code* as to whether the fees and interest charged were interest, and, if so, whether the result was a criminal rate of interest, and, if so, the consequences of illegality.

The Court decided that the fees charged, including insurance premiums, were interest pursuant to section 347(2) of the *Criminal Code*, that the repayment terms produced a criminal rate of interest in contravention to section 347(1)(a), and did not grant Keystone the judgment it sought. In providing the decision, the Court cited *Garland v. Consumers' Gas Co.,* (1998) in refuting a decision of Judge Donnelly in *Affordable Payday Loans v. Harrison* (2002) with respect to whether NSF charges were “interest”. The Court concluded on this point: “As set out by Justice Major (in) Garland, the broad definition of interest in section 347(2) is intended to prevent creditors from avoiding s.347 ‘by simply manipulating the form of payment exacted from their debtors’ .. For this reason, a court must look at the substance of the charge and not its form or description.”

The Court also dismissed the effect sought by a disclaimer clause that was contained in Keystone's contract: “Nothing in this agreement shall be construed as obliging the Promisor to pay any interest, charges or other expenses as provided by this agreement or in any other security agreement related thereto in excess of what is permitted by law”.

Finally, the Court concluded "… this was a high-risk loan made to unsophisticated borrowers (and) I find the disclaimer clause to be deceptive. It could mislead an unsophisticated borrower into believing that all the charges and fees required by the promissory note were legal. The terms of the promissory note and the high service charges and other interest payments received by Keystone lead me to the conclusion that the criminal interest rate was not inadvertent".

iii) *Keystone Financial Inc.* and *Lawrence Lloyd Cochrane* and *Annette Elizabeth Cochrane* (Court of Queen's Bench), decision of March 31, 2006:

Keystone sought a judgement when the defendants defaulted on $1,000 loan, repayment requiring $1,268.28 including "various fees and alleged insurance premiums". At issue was "whether … fees and charges (preparation filing and discharge fees, a loan brokerage fee and insurance premiums) fall within the definition of interest in s. 347(2) of the *Criminal Code"*.

The Court found that "the preparation filing and discharge fees … the loan brokerage fee ... and the insurance premiums ... are interest … (and) produce a criminal rate of interest". Dismissing the claim for judgement, the Court also found that the disclaimer clause in the loan agreement was deceptive and "could mislead an unsophisticated borrower into believing that all the charges and fees … were legal".

iv) *Keystone Financial Inc.* and *William Grant Philippot* (Court of Queen's Bench), decision rendered March 22, 2006:

The plaintiff sought judgement with respect to a defaulted loan of $1,000 at a disclosed rate of interest of 33% per annum plus "various fees and alleged insurance premiums". The Court reviewed then-s. 347 of the *Criminal Code* and concluded "…in the absence of any evidence that (the preparation and discharge) fee was incurred as an official fee, I conclude it is a fee that falls within (the *Criminal Code*) definition of interest".

With respect to the insurance premium, the Court noted that the definition of interest provided by s. 347 excluded an insurance premium, and concluded "… in order for me to conclude that the alleged insurance premiums are an insurance charge, I need some evidence that the insurance premiums purchased a policy of insurance".

The Court dismissed Keystone's application, commenting "… the criminal interest rate was not inadvertent … the disclaimer clause is deceptive and could give an unsophisticated borrower the false understanding that the fees and insurance premiums were legal charges".

v) *Keystone Finance Inc. v. Phillipot* (Court of Queen's Bench), decision issued November 20, 2006:

Keystone appealed the Small Claims Court decision to dismiss Keystone's application for a judgement against Phillipot, and QB held a trial *de novo* at which QB concluded:

- Keystone had paid to register the security agreement, and the charge against Phillipot would be accepted as valid;
- As evidence that an insurance policy has been purchased, the charge would be accepted as being separate from interest;
- The NSF service charges were imposed "as the result of attempts to obtain the monthly payments … attempts after the credit (was) advanced" and will be allowed separate from interest;
- The brokerage charge levied by Keystone, which was paid to a numbered company controlled by the President of Keystone and to the President, is, as determined at Small Claims Court, interest and is disallowed; and
- A service charge levied by Keystone on the occasion of each NSF cheque was not reasonable.

QB ruled that Phillipot should pay Keystone $535 plus interest, representing a portion of Keystone's claim against Phillipot.

vi) *C.A.P.S. International Inc.* and *Robert Kotello* (Court of Queen's Bench), decision rendered April 25, 2002:

The plaintiff, in the auto sales and short-term loan business, sought a judgement against a borrower who had defaulted on a six-month loan of $1,200 plus interest and an administrative fee amounting to $476.33 plus overdue charges and expenses. The defendant claimed the interest rate charged by the plaintiff was criminal pursuant to the *Criminal Code*. The small claim Court case was heard in December 2001, and the Judge provided the parties an opportunity to provide written submissions.

The Court concluded that the effective interest rate pursuant to the definition of interest provided by s.347 of the *Criminal Code* was 80.05%, the rate charged was criminal, and determined that the plaintiff was not "entitled to a remedy", noting that the "defendant is not a sophisticated business person who was represented by legal counsel … he did not know that the rate of interest was criminal. The loan was not negotiated. The terms were dictated … by the plaintiff".

Reviewing a number of cases (*William E. Thomson v.* Carpenter, Ontario, 1989; *Degelder Construction v. Dancorp Developments Ltd;* and, *Garland v. Consumers' Gas Co.)*, the Court commented: "the public policy objective of s.347 is to protect the public from loans such as this. While I will refrain from describing this loan as 'loan-sharking', it is usurious … public policy demands that I make a strong statement against a loan transaction with such a usurious rate."

The Court determined the plaintiff was "not entitled to the court's assistance in any way to enforce the promissory note … the public policy need for a strong and clear message that courts will not assist lenders in the business of loaning short-term money at criminal interest rates to unsophisticated customers far outweighs the public policy concern of unjustly enriching a person by not granting judgment for repayment of the principal".

The Court concluded that if the Court had granted judgment for the repayment of the principal only, the Court would have found that *The Unconscionable Transactions Relief Act* (Manitoba) had application and released the security provided by the defendant for the loan.

vii) *Robert Kotello* and *Leon Dimerman* and *Liubov Dimerman* operating as *Economy Furniture Co. Ltd.* (Court of Appeal of Manitoba), a decision rendered July 4, 2006:

This was an appeal pursuant to *The Court of Queen's Bench Small Claims Practices Act*, concerning "a single question of law relating to the civil consequences to a lender who contracts to receive a criminal rate of interest".

The Court advised the question was "an important matter of consumer protection … recently … dealt with extensively by the *Supreme Court of Canada* in the case of *Transport North American Express Inc. v. New Solutions Financial Corp*., 2004". Accepted as fact was that:

a) In the space of a week in 1998, Kotello pawned two electric guitars, receiving in each case $300 and a pawn ticket;

b) While the pawn tickets do not disclose the charge on redemption of the merchandise, the trial judge found that Kotello had been told that to retrieve a guitar in one month, it would cost him 20% of the amount advanced;

c) Not redeemed, the pawns were to be extended a month with the payment of 20% of the amount advanced; new pawn tickets were provided;

d) Kotello enquired as to the guitars in 2000, and was advised they were available for redemption;

e) Kotello enquired again in 2004, and was told they were no longer available, having been sold by Economy in 2001 and 2002;

f) Kotello issued a Small Claims Court claim against Economy in 2004 for $4,883, representing the approximate replacement value of the two guitars,

asserting that Economy had charged a criminal rate of interest, making the contract "illegal, invalid and unenforceable";

g) The claim was dismissed by the Small Claims Court hearing officer, and Kotello made an appeal to Court of Queen's Bench;

h) The Court found that "... a criminal rate of interest was charged ... contrary to s. 347(1) of the *Criminal Code* ... (and) if the calculations were done annually, the rate of interest would amount to 240% per annum … reject(ing) the argument that the major portion of those charges related to storage, handling and insurance" ; and

i) Dealing with the consequences of illegality, the Court held:
"There is case law from the Supreme Court of Canada which has determined that when a term of an agreement is illegal, if that term can be severed from the totality of the agreement and the agreement can still stand on its own, then the term should be severed out and the balance of the claim is enforceable. In this case, if Mr. Kotello, as the plaintiff, was seeking to enforce parts of the agreement or otherwise or if (Economy), who is the defendant in this case, was seeking to submit or enforce the balance of the agreement by severing from it the amount of interest, <u>then that is what this court is bound to do."</u>

Reaching that conclusion, the Court (QB) "severed the interest portion of the contract, then held that since the guitars had been sold to *bona fide* third parties and Mr. Kotello took no action until 2004 … (the Court) was not in a position to grant judgment and dismissed his claim".

The Court of Appeal (CA) cited *Transport North American Express* (Supreme Court of Canada), noting "…in that case, the Supreme Court settled the circumstances in which a court has a discretion to enforce, in part, a contract that is otherwise illegal, particularly by reason of a breach of the criminal interest provisions of the *Criminal*

Code, the principles upon which the discretion is to be exercised and the range of remedies available to a judge who has decided to enforce the contract".

CA concluded QB had erred in law and that CA would exercise the discretion allowed the Court. CA noted that *Transport North American Express* "is important for the statement of principles as to when the discretion is available to sever a portion of an illegal contract and thereby to enforce the remainder. Arbour J., for the majority, held that judges have "the maximum level of remedial flexibility to determine whether public policy ought to allow an otherwise illegal agreement to be partially enforced rather than being declared void ab initio".

CA commented "in determining the appropriate remedy, a court is to take into account the seriousness of the illegality, the identity and nature of the parties and the broader contractual context", and listed the four factors provided by the Supreme Court as being "relevant to the determination of whether public policy ought to allow an otherwise illegal contract to be partially enforced":

1. whether the purpose or policy of s.347 would be subverted by severance;
2. whether the parties entered into the agreement for an illegal purpose or with evil intention;
3. the relative bargaining positions of the parties and their conduct in reaching the agreement; and
4. the potential for the debtor to enjoy an unjustified windfall.

CA noted that the Supreme Court had concluded that "the prevention of loan-sharking as a policy objective behind the criminal interest provisions set out in s.347 of the *Criminal Code* (and that) for contracts which undermined the policy objectives of the section, it would not be appropriate to apply the remedy of severance, notional or otherwise:

> "At one end of the spectrum are contracts so objectionable that their illegality will taint the entire contract. For example, exploitive loan-sharking arrangements and contracts that have a criminal object should be declared void ab initio. At the other end of the spectrum are contracts that, although they do contravene a statutory enactment, are otherwise unobjectionable. Contracts of this nature will often attract the doctrine of severance. The agreement in this case (Transport North American Express) is an example of such a contract. In each case, the determination of where along the spectrum a given case lies, and the remedial consequences flowing there from, will hinge on a careful consideration of the specific contractual context and the illegality involved."

CA noted Hamilton J.'s conclusion in *Whittacker v. Corrigal et al*

> "When a person pawns an article with a pawnbroker it is a contract for a loan transaction and the article pawned is security for the debt owed. A pawn is a form of pledge; it is a type of bailment," concluding that Kotello/Economy case "was not a classic loan-sharking".

However, CA cited the decision in *R. v. Dimerman (L.) and Economy Furniture Co.* (1992), where the Court "rejected the argument made by (Economy) the same defendant that s. 347(1) was not intended to apply to pawnbrokers", and found:

> "I am satisfied that s. 347(1) was intended to apply to anyone charging an effective interest rate in excess of 60%. That is the plain meaning of the section. If Parliament had intended to exclude pawnbrokers from the operation of the section, it would have done so by express language. In any event, the appellants were loan sharks. A loan shark is someone who lends money at an excessive rate of interest. That is exactly what the appellants (Economy) were doing."

CA then concludes on the Kotello/Economy case:

> "The rate of interest here is so incredibly high (240 per cent per annum, without the compounding that was attempted when the pawn tickets were last rewritten for $360) that it falls within the type of contract which is so objectionable that its illegality taints the entire contract. To allow notional severance in this situation would subvert the purpose of s. 347 of the *Criminal Code*."

CA continued:

> "… there are other factors as well that militate against severance. The defendant (Economy) was aware of (s. 347) and of its application to its practices. This was not an accidental infringement. In 1992, the defendant had been found guilty of five counts of breaching s. 347 (1) (a) of the *Criminal Code* on similar facts. An appeal was dismissed. … The grounds of appeal dealt with the mental element of the offence as well as the argument that of the 25 per cent interest charged per month, only five per cent was for financing and the remaining 20 per cent was for storage, handling and insurance."

CA noted:

> "(Dimerman) testified that Economy had not changed the way it carries on business or the amount of its charges for the past 29 years. The fact that a criminal conviction has failed to alter the practices of the lender and that those practices affect borrowers in thousands of transactions is a proper consideration from a policy perspective."

CA also observed:

> "Most importantly, the parties here are not in a position of equal bargaining power. Most individuals who pawn their goods are in desperate need of immediate money. Their need makes them a vulnerable group and s. 347 was designed to protect them".

The CA concluded

> ".. the contract is illegal and … the court's discretion should not be exercised in favour of severance, the contract cannot be enforced. Mr. Kotello is entitled to damages … since his guitars were sold to a third party … when Economy was not legally entitled to sell them".

These cases are illustrative of the general context and consideration of breaches of Section 347 of the *Criminal Code* and related application of civil law remedies and protections and, in the Board's view, illuminate some of the matters to be considered in determining the public interest regarding the reasonableness of short term borrowing costs in Manitoba.

2.4 Payday Loan Description

2.4.1 The Basic Product

By definition enshrined in legislation, a payday loan is a small loan of up to $1500 advanced for a period not exceeding 62 days, secured only by a promissory note and either a personal cheque or a pre-authorized bank/credit union debit.

Pursuant to the CPA amendments, a payday loan may represent no more than 50% of a borrower's next pay (employment, social assistance, etc. – depending upon the lender's loan criteria). Currently, the Board understands that some payday lenders may be advancing up to 60%.

While wage assignments and the provision of tangible security (home, car, etc.) are not allowed as security for a payday loan, the practice of taking a post-dated cheque or pre-authorized debit is permissible. On average, a $100 loan results in $20-$25 of charges, including interest.

Many borrowers access banks and credit unions for short-term credit, usually in the form of authorized overdraft protection and lines of credit. Those unable to gain access to credit in that form increasingly seek out payday lenders. However, in Quebec, where payday lending is effectively barred through the imposition of a maximum interest rate cap of 35% (with the likely exception of Internet and telephone-based payday lending), the Board was advised that borrowers make significant use of pawnshops.

The advantages of payday loans to borrowers include:

- access to needed cash, perhaps not available from mainstream lenders;
- quick decisions and loan issuance;
- simple design of the product, tied to the borrowers next paycheque: so much is borrowed, so much is due back within 62 days, and more often within two weeks;
- the discipline of a specific predetermined repayment date, as opposed to the potential open-ended terms of credit cards;
- limited size of loan: no more than $1500 and on average $300, a definite amount with a prescribed and definite due date;
- no security required from the borrower;
- convenience of payday lending offices (or access by way of Internet or telephone), and hours of service (unlike the "business hours" and location of banks);
- no credit check, generally no reference calls to employers; and
- reported friendly staff: no worry about mainstream financial institution staff "looking down" on a need for $100 or so from a client with what may be a "chequered" credit history.

The cash provided by payday lenders allows borrowers to meet family obligations and emergencies in a timely fashion; for example the repair of disabled vehicles that in the absence of being fixed could lead to lost employment.

Payday lenders advise that a loan can be processed and advanced within an hour or less, and no credit check (outside the payday firm's own records) will likely be required. Generally, the lender reviews the prospective borrower's bank/credit union statement and pay stubs, and considers evidence of returned cheques or the presence of other payday loans as possible reasons for turning away a borrower.

With some payday lenders, in approving a borrower for a loan, a credit limit is determined, and this makes it easier and quicker for a repeat loan (assuming the initial loan is for less than the credit limit established by the payday lender for the borrower).

Payday loans are (particularly relative to size and whether the loan is the first loan to a borrower) quite expensive to initiate and process. Collection can also be costly relative to the debt owed, and arises when the borrower's post-dated cheque or pre-authorized debit does not clear. Those factors are why banks and credit unions, which eschew the types and magnitude of fees payday lenders charge borrowers, prefer to meet consumer non-mortgage credit requirements with lines of credit (which might be secured by collateral mortgages), credit cards and larger personal loans, the latter often for the purpose of major purchases or consolidating consumer debt.

In mainstream banking, the spread between the interest rate charged on a loan and the cost of the funds employed to make a loan (the interest paid by the lender to secure the funds to make the loan), together with a premium to account for expected bad debts, provides the margin deemed necessary to meet the lender's operating costs and produce a sufficient profit after tax to allow for continued operations and investor support.

For example, if the going rate for a five-year fixed-rate mortgage is 6% per annum, compounded semi-annually, and the lender's cost of funds is 4% (arising out of a mix of no interest chequing accounts, savings accounts and guaranteed investment certificates), the margin is 3%; with the volume of loans and the account balances

outstanding through the year determining whether operating costs and a reasonable provision for bad debt costs are met and, after income tax, there is a return to the shareholders. The principle is the same for non-mortgage consumer loans, including lines of credit, though the sources of the funds used to support the loans and the rates on those funds differ, as do the interest rates charged consumers.

Despite such low margins, banks can prosper due to very high loan volumes and average balances outstanding. But for payday lenders, a $100 loan advance can generate, at 60% per annum, only 16 cents per day. A ten-day loan, apparently typical of payday loans, generates only $1.60 for a lender at a 60% annual rate, making it uneconomic to advance such a loan on the basis of the interest charge alone. The volumes of loans made by payday lenders and the average balances of loans outstanding have been found to be too low, on average, to allow the lending model to succeed at an APR of 60%.

Since the term is too short to allow the lender to recoup the cost of the loan transaction and subsequent processing from the interest rate alone, payday lenders, challenging the constraints of Section 347 of the *Criminal Code*, have opted to levy additional charges (other than interest) to provide the vast majority of payday lender revenue from payday loans.

Under the *broker model*, described below in more detail, third party lenders make the loans through a payday loan firm. The payday loan firm provides staffed offices, advertisement, etc., and secures the funds for lending from the third-party lender.

The economics of payday lending for a third-party broker (as opposed to a direct lending payday lender which utilizes its own invested or borrowed funds to make loans) is considerably different. A third-party lender supporting payday lending at the retail level does not operate direct lending outlets and thus avoids those costs. The net profit for third-party lender comes from the interest rate of 60% per annum, Section 347's cap, on the average outstanding balances of advances made by the

broker to the payday firm's customers, less bad debts and plus retention payments received from the broker (described below). Depending on the level of bad debts and retention payments received from payday firms, the broker's model can be more profitable for a third-party lender than a direct lending payday firm.

Although most payday borrowers usually access payday lenders because of a need for immediate cash, some payday lenders provide loaded debit cards rather than cash. Typified by Rentcash (operating under two brand names - Instaloans and Cash Store), some firms provide loaded debit cards to borrowers, who are required to pay a fee for acquiring and "loading" the card, and further transaction fees as they draw down the balance, in addition to paying for the principal amount loaded into the card.

Rentcash reported that its outlets rarely issue cheques, as to do so requires time for the lender to issue and the borrower to receive the cheque, involves a cashing fee for the customer, and may be subject to a holding period by the borrower's bank or credit union. Rentcash advised of plans to offer direct deposits of proceeds to customer bank or credit union accounts, at no additional fee.

Rentcash advised of receiving commissions from its card provider and commissions from ABM companies, when the ABMs are used to make withdrawals. (As with most ABMs, cash is dispensed only in $20 bills, and a balance may be left on the card in the end that may not be retrievable by the borrower without returning to Rentcash to "top up" the balance remaining on the card.) Commissions from third party suppliers of client services such as card firms are normal, with several payday lenders also providing wire transfers through Western Union, earning transaction commissions.

An example drawing on The Cash Store (a Rentcash outlet) placed into evidence during the hearing indicates the detail of what was represented as a typical payday loan (a loan issued on October 31, 2007, repayable November 9, 2007 – 9 days later):

Net Amount for borrower placed on debit card	$100.00
Amount due November 9, 2007	140.38
Charges	$ 40.38
Accounted for by:	
Interest (for third party lender)	$ 1.96 **
Broker fee (for The Cash Store)	27.00
Cash card (debit card) fee (for Direct Cash*)	8.00
Creditors' insurance (for insurer*)	3.42
Charges	$ 40.38

* Commissions on these amounts paid to The Cash Store by Direct Cash and the insurance company.

** Interest at Section 347 maximum = 60% of (net amount + charges - interest)

2.4.2 Additional Related Products

Some payday lenders also offer creditors insurance, providing coverage for death, disability, critical illness and employment loss. The policy may have exclusions for pre-existing conditions, and the effective coverage period is no longer than the term of the loan (two to 62 days). The Board understands that the insurance premiums generate up to 50% in commissions for payday lenders, leaving the remainder of the premium to meet the insurer's costs, establish required reserves, pay taxes and create margin/profits. Loss ratios (claims to earned premiums) are unlikely to be very high in such circumstances.

During the hearing and through the testimony of Mr. Taylor of Progressive Insurance Solutions, an insurance broker, the Board learned of the categories of creditors' insurance sold through some payday lenders (life, disability, critical injury, loss of employment), and of the ACE INA Insurance Company and ACE INA Life Insurance (insurers providing such coverage, reportedly on a voluntary basis).

The Board wrote INA concerning its participation in the payday loan industry and received a response. INA advised that it designs and sells creditor insurance to the borrowers of the payday loan industry on a voluntary basis, that it is regulated by the Office of the Superintendent of Financial Institutions of Canada (OSFI) and the Superintendent of Insurance, Consumer and Corporate Affairs, Financial Institutions Regulation Branch (Manitoba Finance). INA declined to provide the Board with specific information related to commission payments to payday lenders and/or brokers and its loss ratios on creditors insurance.

2.4.3 Default

In default, generally NSF and other charges are levied, as well as interest. (While the cost to the lender for a NSF deposit is in the range of $1-$5, payday lenders may charge the borrower up to $100, though their average charge is considerably less than that.) On an average $300 loan, which may be due 10-14 days later, the Board understands that default charges generally range from $25 to $100. Default charges, when combined with interest, compound the borrower's difficulty in paying off the debt.

Solutions implemented for overdue loans include: rollovers, extensions, new loans (from either the initial lender or another payday loan firm), consolidation of debts through other lenders (finance companies, banks or credit unions), or bankruptcy. The Board understands that approximately 20% of Manitoba bankruptcies during 2006 involved loans from payday lenders.

Rollovers arise when a borrower is unable to pay off a loan on its due date and the lender agrees with the borrower to transfer the outstanding balance to a new loan, and then adds default charges to the standard charges made for the new loan (interest and broker/administration fees). With a rollover, the initial loan advance can become a significant debt beyond the ability of the borrower to repay.

The end result of multiple rollovers can be that payments by the borrower are inadequate to fully extinguish the debt, although those payments are "profitable" to the lender even if the initial advance is never repaid. Loan rollovers are prohibited pursuant to the CPLA's code of conduct, and members of the CPLA should not make rollovers. Some payday lenders that are not members of the CPLA also bar rollovers; for example, Rentcash advised the Board that it stopped granting rollovers from its outlets in 2006, and that its net income was deleteriously affected.

New loans, either from the original payday lender or a different one, can be employed to pay off an existing payday loan. *Extensions* may involve default and NSF fees, and additional interest, often at 60% per annum, although some payday lenders reportedly assess lower rates in the case of default. *Consolidation loans* may be sourced from a finance company, bank or credit union, with the result that the payday lender is paid out and the borrower has a relationship with a lower-cost lender.

As reported by Dr. Simpson, a witness for the Coalition (representing the Canadian Association of Consumers, Manitoba Society of Seniors and Winnipeg Harvest one of the interveners to the Board proceeding), payday loan borrowers are generally younger, less educated and with lower annual income than the general adult population. Less than half of those borrowers report having credit cards, and about half report "no one else to turn to" when in need of emergency cash.

Payday loan applications are generally approved or declined following a relatively cursory review of the applicant's ability to repay. While lenders have criteria to assist in granting loans, there are reportedly no checks of a loan applicant's credit record with an independent credit bureau (apparently due to the cost of credit reports).

The standard support for a payday loan application reportedly includes, at minimum: the borrower's bank statement, two pay stubs, suitable personal identification and a cheque or a pre-authorized debit authorization. (Small balance payday loans

reportedly do not provide the revenue required to support more detailed credit investigation).

Accordingly, payday loans have a history of high default and bad debt rates, perhaps ten times the ratio experienced by banks and credit unions. Experience amongst payday lenders varies widely (Money Mart's bad debt ratio was reported to be less than 2%), and that experience is a factor in pricing payday loans.

While some payday borrowers may obtain a payday loan infrequently, on average borrowers return for a new loan several times a year.

Some payday loan borrowers obtain loans from more than one payday lender. Unable to repay one payday lender on the due date, a borrower may secure a payday loan from another payday lender, raising the funds necessary to repay the first one and, in so doing, converting what was intended to be a short-term loan into a succession of loans at compounding cost. (There is no industry-wide loan registry allowing a payday lender to check whether other payday lenders have funds outstanding with an applicant.)

2.5 Size of the Industry

Payday loan outlets in Canada have increased from very low numbers in the early 1990s to almost 1400 outlets today. During the hearing, it was suggested that the Canadian payday loan industry has yet to mature, a view supported by the presence of approximately 30,000 payday loan outlets in the United States (a financial market roughly ten times the size of Canada's). As indicated earlier, payday lending began in the United States, migrating to Canada ten years after rapid growth in the United States.

Assuming $1 million of annual volume per store (a "conservative" estimate) it can be projected that approximately 4,330,000 payday loans will be issued in Canada in 2008, representing an average of 4-6 loans per borrower. Using Advance America data (the

largest payday lender in the United States) suggests that the average number of loans per borrower in a year may be 8-10 rather than 4-6, and that up to 900,000 individual Canadians may borrow once or more from a payday lender in 2008.

An industry that basically didn't exist twenty years ago is growing rapidly with a presence in an increasing number of communities. In some communities where bank branches once dominated, payday loan offices are prominent.

Excluding Internet and telephone payday lenders loaning into Manitoba from non-Manitoba physical locations, there are more than 15 payday lenders operating from approximately 75 "stores" in Manitoba. Based on an estimated average loan volume of $1.25 million per location, payday lenders in Manitoba will issue approximately $100 million of payday loans in 2008, for an average duration of two weeks or less. At an average of $300 per loan and 4-6 loans per individual (with 90% of loans reportedly being to repeat customers), between 55,000 and 80,000 individual Manitobans may be expected to take 330,000 loans from payday lenders in 2008.

With the average payday industry "all-in" charge of, say, $25 per $100 loan, including interest and deducting for bad debts, this means that prior to this Order the Manitoba payday loan industry would have been expected to generate approximately $18 million of revenue from payday loan charges in 2008, starkly higher than the projected cost of funds that would be employed to make the loans ($300,000 or less).

The two largest firms, National Money Mart and Rentcash, currently have over half of the locations in Manitoba and do most of the payday loan business. With the expansion of the industry, consolidations and new entrants are likely, and, during the hearings, the largest payday lender in the United States, Advance America, opened seven branches in Manitoba under the name National Cash Advance.

In addition to payday loans to borrowers through stores, payday lenders also provide loans by Internet and telephone. There is a plethora of companies offering to provide or

find payday loans. While Internet and telephone payday lenders are currently exempted from regulation in Manitoba, later in this Order the Board recommends that they should be brought under regulation, for the protection of consumers and competitive fairness.

Despite its growth and the number of offices, Manitoba's payday loan industry is very small relative to the operations of banks and credit unions in respect to number and value of outstanding loans, average loan size or number of borrowers. Dr. Robinson, a witness for the Coalition opined that at any time the outstanding loans of the entire payday industry in Manitoba is likely to be less than can be found within the average chartered bank branch.

Estimates are that the entire Canadian payday lending industry is operating with approximately only $60 million outstanding at any one time, yet yielding gross loan revenue in the range of $360 million. Compare that with the gross revenue of a bank with $60 million of average outstanding balances earning about $4.8 million, or a typical consumer finance company yielding about $14.4 million on the same total of loans outstanding.

2.6 Consumer Finance Market

Borrowing is big business in Canada, and Manitoba is no exception. Consumer debt in Canada has risen sharply, driven by increased prices for housing and cars, consumerism, dwindling savings rates and the growing inequality of household incomes.

Debt ($millions)	**1999 ($billion)**	**2005 ($billion)**	**% Increase**
Mortgages: Residence	$398.9	$572.1	43.4%
Other Property	$ 57.5	$ 86.1	49.7%
Lines of Credit	$ 29.2	$ 68.1	133.2
Credit card/install.	$ 16.3	$ 25.8	58.3%
Student loans	$ 17.3	$ 20.0	15.6%
Vehicle loans	$ 32.6	$ 46.1	41.4%
Other debt	$ 21.2	$ 28.1	32.5%
Total household debt – Canada	**$515.4**	**$760.2**	**39.4%**

Iain Ramsay (*Access to Credit in the Alternative Consumer Credit Market)* claims that "in North America and the United Kingdom, there has been a sharp increase in the level of household debt over the past two decades (and) available research … suggests that those on lower and lower to middle incomes have higher debt-to-income ratios than higher income earners".

The increasing inequality of household financial situations is evidenced by an apparently large segment of Canadian households living from paycheque to paycheque, with perhaps 3-5% of households drawing on payday lenders, while, on an overall basis, household net worth has increased to $4.862 trillion in 2005 from $3.432 trillion in 1999, an increase of 41.7%.

Dean Wilson (*Payday Lending in Victoria)*, commenting on the Australian situation, quoted B. Hahn (*No Interest Loan Schemes: What are they?*, paper to NCOSS conference, 1999) "... despite the expansion of credit … low income consumers still have only a limited number of high cost options in accessing credit".

Wilson claimed "… the rise of the payday lending industry has been possible due to failure of financial markets to supply appropriate credit to a growing demographic of consumers (low income)".

From a supply perspective, and excluding unreported debt, the consumer finance market is comprised of:

a) Schedule 1 and 2 chartered banks and their trust company subsidiaries – these deposit-taking firms offer personal loans, lines of credit, overdraft protection, credit cards and mortgages – interest rates range from "bank prime" (recently 5.25%) for secured loans, to 21% for bank-sponsored credit cards;

b) credit unions and caisses populaires – these credit cooperatives basically offer the same range of personal finance options as the banks, but only to their members, and at interest rates not much different than the banks;

c) automobile finance companies – mainly owned or supported by car manufacturers, as both a marketing assist and secondary line of business, and offering rates that range from 0% (subsidized by the manufacturer as an incentive for vehicle sales) to much higher levels. This lender category also includes non-manufacturer affiliated finance companies;

d) finance companies – companies such as CitiFinancial, HSBC and Wells Fargo offer personal loans, lines of credit, mortgages (first and second) and credit cards, at interest rates considerably higher than those of banks, credit unions and caisses populaires, the range reported to be from 15% to 36%;

e) payday lenders – these firms offer unsecured small loans for terms of up to 62 days for charges and interest usually the equivalent of APRs of between 400% and 1,000%. The payday loan industry in Canada has been dominated by two large multi-branch firms – National Money Mart (owned in the United States and traded on the NYSE) and Rentcash (headquartered in Alberta, and traded on the TSX), each with over 300 offices, less than ten "larger" chain operators and hundreds of small firms. Recently, Advance America (America's largest payday lender), opened seven National Cash Advance offices in Manitoba; and

f) pawnshops – largely locally-owned, these longstanding members of the consumer credit environment accept pawns at a reported combined cost of 25% per month (5% for interest, 20% storage fee). Those costs are higher in Manitoba than

reported in some other jurisdictions for pawnshops and for loans secured by personal property (from electronics to vehicles). The Board understands that approximately 85% of persons pawning merchandise reclaim their merchandise on or before the due date, and that extensions are available for the same monthly charge. For those that do not reclaim the merchandise pawned, the "cost of credit" may be much higher than those that do, as it could involve the repurchase of the item. (The amount provided by a pawnshop on a pawn may be as little as 20% of the replacement value.) Some pawn shop operators also offer unsecured loans at rates in the range of payday lenders.

Banks, some credit unions and many finance companies not only make loans but also purchase conditional sales contracts from retail stores, with effective rates of interest ranging up to 30% per annum, and with the general intention of "converting" customers obtained through the purchase of the finance contracts into larger loans. For finance companies, the "sales pitch" is affordable payments, downplaying the interest rate.

There are often business and/or ownership relationships between firms representing different categories of lenders. Schedule 2 banks (such as Citigroup, HSBC and Wells Fargo) own finance companies, and finance companies may rely on banks for financing and pension plans and other investment pools for investment capital.

All lenders, including the payday loan industry, rely on the "banking system" and the Canadian Payments Association for "banking" services. Without the ability of payday lenders to access the system for transacting business, there would be no payday lenders.

Banks and credit unions support payday lending by accepting deposits and issuing guaranteed income certificates and commercial paper. Finance companies secure the majority of their lending capital through bank loans, bond issues and commercial paper. Pawnshops are assumed to be securing their operating capital from owner investments and bank loans, while payday lenders rely on third party individuals and owner capital –

with bank financing difficult to obtain with the risk of a Section 347 prosecution and/or class action suit.

The cost of funds for the various lender categories differs widely, according to the source of funds – banks and credit unions have the lowest cost of funds, securing a portion of their lending base through no or low-interest chequing and savings accounts.

Lending rates are affected by factors other than cost of funds, the primary ones being cost of operations and bad debts. The cost of operations is lowest for the banks and credit unions, which generally have broad product lines allowing economies of scale for overhead contributions from multiple sources. Bad debt experience is also lowest for the banks and credit unions, both relying virtually exclusively on secured loans (mortgages, collateral mortgages, vehicles, debentures, etc.) For payday loan firms, bad debt experience varies, with Money Mart's reported experience below 2% and some firms reportedly over 5%, presumably the differences result from differing credit criteria and collection practices.

The cost of funds, operational costs and bad debt experience, as well as the degree of competition, business volume, regulatory and tax costs all factor into the rates charged by lenders on loans advanced. Operational costs differ amongst lenders due to several factors, including scope, volume, location, time at a location, and chain/regional or stand-alone operator model.

Of all the lender categories, pawnshops and payday lenders rely most on non-"interest" revenue, with the pawnshops dependent on "storage" fees and retail margins and payday lenders on fees other than interest (cheque cashing, etc.). The scope of operations for a payday lender may extend to such non-payday loan services as cheque cashing, money transfers, card services, money orders, foreign exchange, creditors' insurance, mail boxes and title loans – referrals or direct lending. Payday lenders offering services beyond payday lending generally allocate operating and other costs to such other services, reducing the allocation to payday lending.

2.7 Rationale for Borrower, Why Borrow from a Payday Lender?

Payday loans are very expensive for consumers, 100 times or more than the lowest annual consumer rates available in the market.

Payday firm** (Winnipeg)	Loan Size	Amount Due	Charges Levied	Section 347 Max.	Secured LOC* Charge	Additional Cost (over Section 347)	Additional Cost (over secured LOC)
A	$250	$295	$ 47.99	$ 4.93	$ 0.49	$ 43.06	$ 47.50
B	$250	$359	$109	$ 4.93	$ 0.49	$104.07	$108.51
C	$250	$348	$ 96.12	$ 4.93	$ 0.49	$ 91.19	$ 95.63
K	$250	$300	$ 50	$ 4.93	$ 0.49	$ 45.07	$ 49.51
N	$250	$294	$ 44	$ 4.93	$ 0.49	$ 39.07	$ 43.51

*LOC- line-of-credit, based on 6% per annum.

**Extracted from evidence provided by an Intervener (Coalition) arising out of a "Mystery Shopper" exercise.

In each case, the payday lender offered the client a loan for $250 due in 12 or fewer days. The total charge due is represented above, as is the interest that may be charged pursuant to Section 347's cap of 60% (in each case $4.93) and the interest on $250 for 12 days for a draw on a secured line of credit at bank prime, 6%. Where Section 347 provides for maximum interest of $4.93 for the twelve days, the payday lenders as represented above charged between $44 and $109. If the borrower had a secured line of credit from a bank or credit union, at "bank" prime of 6%, the loan of $250 for twelve days would have cost 49 cents.

While the loans are for very short durations, many borrowers are repeat payday loan customers, thus extending the period and actual cost of their indebtedness to payday lenders.

Considering the data represented in the above table, if the borrower had made ten similar ten-day loans in the course of a year, the borrower would have ended up paying between $440 to $1090 for the use of $250 for a total of 100 days in the year, as opposed to $41 if Section 347's maximum had been applied or $4 if the secured line of credit had been in place. (The Board neither suggests that the typical payday borrower would have been able to obtain a secured line of credit at 6%, nor that a payday lender, as now structured, would be able to operate charging only the interest allowed by *Criminal Code* section 347.)

So, given the enormous difference in charges between those made by payday lenders and those permitted by Section 347 or available from mainstream lenders – even substituting finance company level interest rates for that of a bank or credit union, why do consumers seek out payday loans?

The answer rests partly with the banks' interest in maximizing profits and their general disinterest in serving the financial needs of poorer communities. In particular, and with a few pilot project exceptions, banks have shown little interest in making small and unsecured loans to individuals with less than stellar credit ratings and financial stability. The above chart indicates one basis for their disinterest-ten day loans at "standard" or even sub-prime rates provide little revenue, particularly given the assumption that the borrower may have a poor credit rating and represents a higher credit risk, with the prospects of collection costs and difficulties.

While a bank may be reluctant if not resistant to the prospect of issuing loans for repayment in a very short period of time, to provide a line of credit or a longer (but still short–term) loan poses the same problems - low absolute returns and the prospect of difficult collection issues. It is important to note that payday borrowers must have a bank

or credit union account (evidence presented at the hearing suggested that 97-99% of Canadians have either a bank or credit union account), so it is not that payday borrowers lack a relationship with a mainstream lender.

Bank and credit union lending practices have changed with the increasing technology and codification that marks mainstream banking. No longer is the day when the borrower met with the branch manager or credit officer and the loan decision was made on the basis of personal knowledge and a sense of trust. Credit history and scores now rule the decision, and oftentimes the manager or loan officer lacks the authority to grant a loan when the credit score or some other element of the application does not meet pre-set criteria.

In addition, the prospective borrower may have a "maxed out" credit card, whether bank or credit union sponsored, eliminating that avenue to meet a cash emergency. Dean Wilson comments:

> "The use of ever more refined credit risk assessment tools by mainstream financial institutions means those with blemished credit records are likely to be rejected. Consequently there is a demand for credit among people with a history of bad debts that is not being met by mainstream creditors." *(Payday Lending in Victoria*)

Overdraft and NSF cheque charges provide considerably more revenue for a bank or credit union than a line of credit or a small loan with more or less standard rates of interest.

The area of customer interest for the banks is evident in their withdrawal from poorer communities and their focus on technology (Internet banking, ABMs), lines of credit and credit cards which generally serve the more affluent consumers. Bank withdrawal from small loans and the less affluent urban neighbourhoods has led to a gap in loan availability for the poorer segment of the population, opening up an opportunity for payday lenders. As banks withdrew and credit unions merged, the less affluent

neighbourhoods were left with no mainstream lender to easily access to meet an increasing loan demand from the economically disadvantaged.

Before payday lending became prevalent, the "legal" options for those who could not, for one reason or another, access banks, credit unions, finance companies or family for emergency financial requirements were limited. They could pawn their possessions, seek out a "loan shark" or "do without".

While it is not unlawful for a consumer to borrow from a loan shark, because loan sharking usually involves rates well in excess of the Section 347 limit and uses intimidation as a primary collection tool, loan sharking is illegal. With pawning, borrowers pledge their belongings to gain loans carrying a monthly cost of 25%, and lose the goods they pawned when they are unable to repay and redeem. Doing without has its own problems and may not be a palatable option.

Compounding the access problem of the poor is the growing inequality of disposable family income over the last twenty years, which has in part contributed to rising levels of household debt. The Board was advised that the bottom four deciles (40%) of households have noted no improvement in their real after-inflation disposable income over this period, a time during which consumerism has blossomed, fed in part by a plethora of offered credit cards, new technologies for sale, and, for the more affluent, significantly lower interest rates bringing down the cost of credit.

Drawing on the work of Iain Ramsay (*Access to Credit in the Alternative Consumer Credit Market,* Office of Consumer Affairs, British Columbia), Dean Wilson*, Payday Lending in Victoria*, comments:

> "The rise of the service economy and the decline of the occupational structure associated with Fordist mass production have also resulted in … increased job insecurity and a rise in the level of low paying part-time and casual employment … the barrier between a secure middle class and vulnerable consumers is also less clear,

> as the unpredictable consequences of economic restructuring render the control of personal finances more problematic. The result is that increasing numbers of consumers resort to credit to maintain living standards in the face of stagnating or declining incomes, or to ride over the unpredictable shocks inherent in a flexible labour market. Short-term and casual employment status can also result in exclusion from mainstream credit sources requiring proof of a stable employment history."

While the incomes of the poor have not risen in real terms, the cost of living has. House prices have risen dramatically, leading to reduced levels of home ownership and increasingly higher rent levels. The disposable income of "poorer" households has been pressured not only by rising occupancy costs but also energy pricing - transportation and household, water rates, bus fares, cigarettes and food. Not only the poor live paycheque to paycheque; the Board understands that there is no Winnipeg area that has an absence of food hamper deliveries at Christmas, suggesting households that may be vulnerable to high-rate loans when emergencies arise.

In his paper *Payday Lending in Victoria*, Dean Wilson suggested three significant implications of the high debt/low savings environment upon the demand for short-term credit:

- increasing demand from low-income consumers for short-term credit to address fluctuations in circumstances and/or service existing debt;
- less likelihood of low-income consumers obtaining credit from mainstream financial institutions due to existing debt and lack of savings; and
- lower-middle and middle-income consumers already over-committed to mainstream financial institutions (and) unable to access further credit (from those sources) in emergency situations.

For the less affluent, the cost of credit has not fallen as it has for other households (general interest rates have been falling for twenty years, since the Bank of Canada adopted a 1-3% inflation target and the federal and provincial governments eschewed

budgetary deficits); it has risen dramatically for them with payday loans, finance company and credit card debt.

Another indicator of household financial distress is the annual level of natural gas disconnections of Winnipeg and Brandon residences. In recent years, between 5,000 and 9,000 households have had their service disconnected as a result of delinquency.

2.8 Options for Payday Borrowers

Banks and credit unions provide loans to their customers or members at much lower APRs than do payday lenders, but obtaining a loan from a bank or credit union:

- requires a relationship – an account, a reasonable credit history and a credit score that meets the lender's loan criteria;
- may require collateral;
- usually results in a secured credit line or authorized overdraft provision based on security, particularly if the applicant has had credit difficulties; and
- may require the prospective borrower to travel to a more distant bank or credit union and, most likely, a requirement to attend during normal business hours; both location and hours of service may be an issue.

The Board understands that mainstream financial institutions, banks in particular, have 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 is low and has fallen considerably. *Leyshon* and *Thrift* (*Money/Space: Geographies of Monetary Transformation,* Routeledge, London) claim that "… financial capital is retreating to a middle class heartland".

Family or friends are an option, but generally that requires disclosure and the ability of the source to meet the request. As well, reliance on family by young adults has reportedly declined with increased independence. As to pawning, it requires collateral and may not be cheaper, particularly if the borrower is unable to redeem and loses the

collateral (and then be forced to repurchase the merchandise lost at a much higher price than the amount received from the pawnshop). Pawning also brings the troublesome prospect that the goods in question may have been stolen.

Another option for a prospective payday borrower is to choose not to meet the emergency financial need, though this option may carry negative implications for the borrower as the emergency may relate to the avoidance of utility service disconnection, repair of a vehicle required for work, meeting rent, or paying off a debt involving personal risk. Of course, obtaining a payday loan, with the very short timeframe until the required repayment, may simply defer the problem until the next payday, when the "problem" is even bigger, given the charges involved.

A prospective payday borrower could seek credit counselling, or assistance from the Department of Family Services and Housing – a lengthy and uncertain process. Or, a particularly desperate person could seek a loan from a "loan shark", if accessible at all. This option includes the risk of physical harm for non-payment. The Board understands that loan sharking in Manitoba is generally reserved for the drug trade.

Bankruptcy is an option that more and more borrowers have been choosing, though even that requires a fee to be paid. Theft to obtain cash may be an option for some, though one involving a high risk of incarceration and other problems.

2.9 Payday Lender, Business Models

There are two basic payday lending operating models, with both models generally associated with ancillary services and offerings. Some payday lenders finance loans directly (Money Mart, National Cash Advance, etc.), others, (Rentcash, etc.) operate as a broker, with the payday loans actually being advanced by third-party lenders accessed by the broker. Under both models, payday lending may occur through physical offices, Internet or telephone.

Some payday lenders only loan to employed applicants, others also accept pensioners, those on unemployment insurance and persons on social assistance. Most payday lenders offer services beyond payday loans (cheque cashing, debit/credit cards, money orders, creditors insurance, wire transfers (usually through Western Union), creditors insurance, mortgages and mortgage referrals, etc., while some are "monoline" lenders, issuing payday loans but not offering cheque cashing or other services.

Some non-CPLA lenders offer rollovers and all payday lenders offer repeat loans, generally with no requirement for time between loans (New Brunswick plans to require 60 days between loans before a new loan can occur). Repeat loans can lead to a form of continuous credit at very high cost.

Some payday lenders check credit references, including with employers, some do not. Some lenders photograph borrowers and/or maintain electronic files allowing borrowers quick access to new loans through their branch network. Most payday lenders in Canada operate from single locations, though the larger operators have regional or national chains.

The business model that has payday loans advancing and funding loans provides for profits to arise from both interest charged and from processing fees; the broker model separates the receiver of interest from the broker's revenue stream, the receipt of processing fees. Both basic models aim to be profitable; the industry is there because of its profit potential.

As to the question of whether there are economies of scale within the industry, differences of view were expressed at the hearing. A one-store company reportedly can have very low costs, while large branch operations can have higher costs per $100. Whether a firm has high or low costs per $100 loan (reportedly) largely depends on policy differences (credit criteria) and whether the firm is a multi-line or monoline operation. Multi-line operators are able to absorb some of the costs of their operations from revenues generated from lines of business other than payday loans.

Dr. Robinson suggested that typical payday lender operating costs, including cost of funds but excluding bad debts, were as follows:

Cost Category	**Large Lender: $3m**	**Large Lender: $2m**	**Large Lender: $1.6m**	**Large Lender: $1.2m**	**Small Lender: $1.5m**	**Small Lender: $1.0m**	**Small Lender: $.5m**
Operating costs/$100	$ 8.51	$ 8.51	$11.00	$12.00	$12.00	$15.00	$16.00

Dr. Robinson suggested that National Money Mart locations averaged $3 million in annual loan volume, Rentcash outlets averaged $1.2 million, and Advance America's American outlets averaged $1.6 million. Dr. Robinson and Mr. Schinkel, the latter a witness for CPLA, also advised that small payday lenders had operating costs lower than the costs represented as average in the table, while some larger payday lenders may have operating costs higher than those represented in the averages presented.

Reportedly, chartered banks do not loan directly to Canadian payday loan firms, primarily due to Section 347 risk of a class action suit that could name the investors or suppliers to a payday firm as defendants. The lack of access to bank and other institutional financing has left payday lenders to seek loan capital from either their owners or third party lenders willing to accept the risk.

The American experience is different, as payday lending is regulated and "legal" in most states. There (apparently), banks do lend to payday lenders, through term or revolving credit arrangements, though proprietor capital is reportedly still a prevalent source of funds.

2.9.1 Direct Lending Model

Under the direct lender model, the payday lender raises the funds required to lend and operate from capital stock or direct borrowings.

While the cost of funds invested or borrowed to operate a payday lending operation is a relatively small component of overall operating costs (unlike the situation of a bank or credit union), the rate of interest paid by a payday lender for its operating funds is higher than in the case of a bank or credit union, due to both funding source and return expectations.

2.9.2 Broker Model

The broker model is of particular interest to the Board. As previously described, it involves third party lenders advancing loans to borrowers through payday loan firms, at or near an annual rate of 60%. The payday loan firms advance and collect the funds from borrowers for the third party lenders.

The third party lender would earn up to 60% on its full "book" of loans outstanding, excepting for bad debts, which are its responsibility. Assistive Financial, an intervener to the proceeding, suggested that bad debts reduce the net yield to the third party lender to below 20%, before broker *retention payments.*

The payday lender pays the third-party lender an agreed upon percentage of the third party lender's bad debts, as a retention payment, thus increasing the net yield of the third party lender. Assistive Financial suggested that in the absence of retention payments it would be difficult for a payday lender/broker to attract third party lenders, as the investor could obtain net yields approximating 20% from more secure second mortgage loans and avoid the risk of being named as a defendant of a class action suit related to an interpretation of the intent of Section 347 of the *Criminal Code*.

Under this model, payday firms meet their costs by earning revenue on non-interest charges, broker and other fees. The Board is unaware of ownership linkages between third party lenders and payday firms; although it was reported to the Board by Rentcash that it is not associated with its third party lenders, such may not be the case with other payday firms relying on the broker model to fund their loans.

With payday lenders now being regulated, presumably chartered banks and other "mainstream" lenders will be able to finance the payday loan industry's loans without the current Section 347 risk (this would require a separate payday loan company for each jurisdiction as some are not yet regulated). In the United States, banks loan operating funds to payday lenders. With a lower cost of funds arising from payday lenders borrowing from mainstream lenders, both the broker and direct lending models could experience a reduction in operating costs from current levels.

2.10 Jurisdictional Scan

The Board did not conduct exhaustive research into the consumer lending and payday loan industry environments of the other provinces of Canada or other countries. However, it did conduct a limited literature search with respect to other Canadian provinces:

Quebec – the Province of Quebec reports no "payday lending" outlets, as a result of provincial law restricting the maximum interest that can be charged to 35%, with interest considered to include charges such as those levied by payday lenders in the other provinces and cited as not being interest. That said, Quebec does license lenders and has a thriving pawnshop industry. As well, its residents may be taking out payday loans from payday firms operating through Internet and/or telephone and physically located in other provinces.

British Columbia and Saskatchewan have brought forward legislation that provides for rate setting for the industry by the respective governments. Both provinces have engaged in some degree of public consultation on rates and other payday lending issues.

The Board understands that British Columbia will, following the establishment of rates, turn over the licensing and enforcement of the industry to a not-for-profit organization, *The Business Practices and Consumer Protection Authority*. Saskatchewan currently

licenses payday lenders through its financial services oversight branch, pursuant to the *Trust and Loan Corporation Act*.

The Board further understands that all other Canadian provincial and territorial jurisdictions have expressed some degree of interest in the payday loan issue. To date, (excluding Manitoba), only British Columbia, Saskatchewan, Ontario, New Brunswick and Nova Scotia (the latter two provinces intending to employ a public process similar to the hearing that led to this Order) have taken steps to regulate payday lending. Ontario is undertaking some consultation on the question of whether additional regulatory oversight is needed and, if so, what (in addition to disclosure requirements) is required.

The Board also undertook a limited literature search of payday lending in the United States, the United Kingdom and Australia, and discovered that payday lending originated in the United States. As is the case in the Canadian jurisdictions "allowing" payday lending, payday loans in these other jurisdictions have the following characteristics:

- very short-term loans (62 days or less);
- advances linked to employment or other similar regular receipts;
- generally unsecured; and
- very high cost to the borrower.

The Board understands that there presently are 28 American states that both allow and regulate payday lending, the latter through the establishment of rate caps. Another 6 states allow payday lending and have no stated interest rate ceiling. The other states either specifically bar payday lending or accomplish the same objective by rate caps set too low to allow a payday lender to operate (as indicated previously, the operating mode of payday lenders results in high operating costs per $100 loan).

At the hearing, Dr. Robinson claimed that the average rate ceiling for a state with a rate ceiling was between $15 and $16 per hundred, with the range being $12 to $20 per hundred. Some states have sliding scales.

The Board understands that Massachusetts had the first anti-usury laws in the colonies, adopted in 1641 and involving the capping of lending rates at 8%. At the time of American independence from England, all thirteen states had laws limiting the maximum interest rate that could be charged, and all caps were at 8% or below.

According to Christopher Peterson, Associate Professor of Law, University of Florida, current payday lending has its origins with "salary loans" in the 1800s. Peterson reports that, due to enforcement difficulties, interest rates on "salary loans" reached 500% and beyond in the late 1800s, and this generated "reform" of the anti-usury laws through the raising of state rate caps to allow mainstream lenders to "profitably lend small amounts to working class borrowers". Peterson reported that licensed lenders were granted exemptions from anti-usury law limits so as to allow the firms to make loans at between 24% and 42%, and that "…competition from mainstream lenders operating under these higher caps, along with aggressive enforcement by the courts and state regulators, managed to stamp out salary lending throughout most of the mid-twentieth century".

Then, as a result of an American Supreme Court decision (*Marquette National Bank v. First Omaha Service Corp.*, 1978), national banks were allowed to lend money across state lines, thus avoiding the anti-usury laws of the state(s) being lent into. The end result was, according to Peterson, state legislatures amending the anti-usury laws to allow state registered lenders to compete with national banks, while at the same time, recognizing the hyper-inflationary conditions of the early 1980s.

Peterson indicated that current day laws allowing rates with APRs at a hundred percent or more for payday loans arose through this process. Another major feature of payday loans, Peterson reports, was that the American Federal Trade Commission's prohibition of wage assignments resulted in payday lenders' requirement for a post-dated cheque (now also includes a pre-authorized debit) as a surrogate for a wage assignment.

In the United Kingdom, the Board understands that while there are no rate caps for consumer loans, licensing takes place and considerable reliance is placed on consumer

education and proper disclosure. Other than banks and savings associations, which make loans and mortgages, there are also moneylenders (weekly-collected consumer credit firms), mail order and Internet lenders, "cash converters", pawnshops, payday lenders and unlicensed moneylenders. National Money Mart's American parent, Dollar Financial, operates a reported 450 payday loan outlets under the name *Money Shop*.

The United Kingdom now has no rate caps, even though its history with anti-usury laws goes back centuries, originating with theologically-based views as to what rates represented fairness.

According to Dean Wilson, Consumer Law Centre (Australia), payday loans in the United Kingdom are "defined as extended credit and are subject to the provisions of the *Consumer Credit Act* (1974). Wilson reports the main criticisms of the Act have been:

- Few cases (of wrongful lending) have been prosecuted;
- The onus is on the borrower to initiate a prosecution;
- The wording of the Act is imprecise, "judicial decisions have been based on restrictive interpretations of (the Act's) provisions"; and
- Penalties are inadequate "for dealing with extortionate credit bargains".

Wilson commented on what he portrayed as the ongoing growth of the payday loan industry in the United States, the United Kingdom and Canada as being explained by "…broader socio-economic context…".

- deregulation of mainstream financial services;
- withdrawal of services from low-income consumers;
- stagnating or declining real incomes amongst lower income earners in industrialized economies;
- rising levels of credit use;
- increasing levels of household debt and declining levels of savings; and
- rising rates of personal bankruptcy.

In Australia, along with the banks, credit unions and savings and loan lenders, there are also personal and car loan lenders, mortgage companies and payday loans. Unlike the UK, the various Australian states establish rate caps. Citing B. Hahn (*Just Credit: Should Access to Credit be a Citizenship Right?,* Good Shepherd Youth and Family Service, Melbourne), Dean Wilson comments:

> "The use of credit in Australia has expanded to such an extent that access to credit is crucial to an individual's ability to participate fully in society … (however) credit fulfils different purposes and has different social meanings for different income groups. As Berthoud & Kempson noted in their study of credit and debt in the United Kingdom. (*Credit and Debt: The PSI Report, Policy Studies Institute, London*) "Poorer families, on the whole, use credit to ease financial difficulties; (while) those who are better-off take on credit commitments to finance a consumer life-style".

Consumer lending in Australia is pursuant to *Uniform Credit Code* (Code), with an exemption for the provision of credit for 62 days or less, apparently enacted to "allow banks to provide short-term bridging finance and for trade credit arrangements" (C. Field, *The Sharks are circling – a Report on payday lending*, Australian Business Law Review 148, pg. 149). Payday lenders in Australia work within the exemption, reportedly offering loans for 14 and 28 days and charging no more than 5% interest; they also levy other charges similar to the approach in Canada.

According to Dean Wilson, the present Code does not:

- require payday lenders to disclose the cost of credit as an annual percentage interest rate;
- effect a national interest rate cap of 48% - that cap reportedly now applies only to New South Wales, Victoria and the Australian Capital Territory; and
- excepting for New South Wales, specify whether the cap includes all fees (typical fees include membership fee, loan charge and administration fee).

Of note, Tasmania bans payday lending while "awaiting legislative developments in other jurisdictions" (Wilson, Payday Lending in Victoria). Wilson also indicated that rollover and "back-to-back" loans are provided by the industry, and that the industry is trending to product diversification (car loans, longer-term loans, etc.).

A review of other literature discovered a *Business Week* article entitled *The Ugly Side of Microlending*, commented on later in this Order. That article provided an example where a jurisdiction (Mexico), without consumer rate caps, experiences banks (including a bank owned by the retail giant Wal-Mart) charging consumers APRs up to and exceeding 100%, in contrast to government and corporate bond yields well below 10%. *Banco Azteca's* Vice-Chairman, *Luis de Rivera* is quoted saying: "We lend to them (poor customers) as much as they can borrow, and they can borrow as much as they can buy." *Banco Azteca* is reported to have produced an after-tax return in excess of 50%, with the founder having parlayed a $250,000 investment into $100 million.

2.11 Jurisdictions With No Payday Lending

As previously indicated, there are jurisdictions in Canada (Quebec) and the United States (North Carolina, Georgia, etc.) that have set interest rate caps so far below payday loan levels that payday lenders, at least those operating from physical locations within the jurisdiction, are not present.

Part of the motivation for Parliament to legislate an exemption to allow payday lenders to operate in provinces that regulate and license the lenders was the apparent concern that, in the absence of payday lenders, a significant number of consumers would either go without required short-term loans or rely on illegal and intimidating loan sharks. Therefore, it is important to consider the rationale used in those jurisdictions that have effectively banned payday lending.

While an objective and thorough analysis of the situation in those jurisdictions would be of value to the Board, Parliament and provincial legislatures and governments, the uncontested literature is sparse.

Quebec has a thriving pawnshop industry, as well as the Desjardins network of caisses populaires. The Board was unable to access any detailed review of the consequences of an interest rate cap that has not allowed the payday loan industry to develop in the Province.

In the United States, the Center for Community Capital prepared a report on the situation for consumers following the exclusion of payday lenders from North Carolina. The report is entitled *North Carolina Consumers After Payday Lending: Attitudes and Experiences with Credit Options.*

The report advises:

> "Researchers concluded that the absence of storefront payday lending has had no significant impact on the availability of credit for households in North Carolina. The vast majority of households surveyed reported being unaffected by the end of payday lending. Households reported using an array of options to manage financial shortfalls, and few are impacted by the absence of any single option – in this case, payday lending.
>
> More than twice as many former payday borrowers reported that the absence of payday lending has had a positive rather than negative effect on their household. The ban on payday lending has made no difference to most, and helped more households than it has harmed.
>
> Payday borrowers gave first-hand accounts of how payday loans are easy to get into but a struggle to get out of. These borrowers universally agreed that the cost of payday loans was excessive.

> Nearly nine of ten households surveyed think that payday lending is a bad thing. This overwhelming negative view of the product did not vary significantly for households that had experienced a financial shortfall."

Providing another perspective was a paper by David Morgan, a researcher affiliated with the New York Federal Reserve Bank and Michael Strain, a Cornell University graduate student, which concluded (based on a review of NSF cheques, complaints against lenders and loan collectors and bankruptcy filings), that North Carolina consumers had not fared better than jurisdictions allowing payday lending after North Carolina ended the practice. However, a paper published by the *Centre for Responsible Lending* contested *Morgan* and *Strain's* work, suggesting flaws in the research.

2.12 Ethics And Social Responsibility

With only occasional and minor exceptions, the Board's hearing focused on every aspect of the payday loan industry except for the question of ethics.

However, a paper by *Mark Schwartz* and *Chris Robinson (York University)*, (Dr. Robinson was also a witness engaged by the Coalition for the hearing) was entered into the record and concerned the ethics of the industry. The paper tested the question of whether the industry was ethical and socially responsible, considering three areas: economic, legal and ethical domains.

With respect to the economic domain, Schwartz and Robinson noted that the economic domain considers "… activities which are intended to have either a direct or indirect economic impact on the corporation(s) in question. The positive impact … based on two … criteria: (i) the maximization of profits; and/or (ii) the maximization of share value (indicating that) any activity … pursued with improving profits and/or share value... is deemed to be economically motivated". Schwartz and Robinson concluded that the

payday industry "… operates clearly within the economic domain (with) all of their actions ... tied to the maximization of profits and/or share values".

The authors supported their findings with respect to the economic domain by noting that since the industry's beginnings in Canada, the largest firm had raised its fees twice, and by significant amounts, and had increased the percentage of a borrower's pay that it would advance on, while the second largest firm, upon acquiring another large payday loan firm, increased the charges that the acquired firm had been charging.

With respect to the legal domain, the authors cited the criteria by which an assessment would be made, quoting from *Schwartz* and *Carrol* (2003):

> "The legal domain … pertains to the business firm's responsiveness to legal expectations mandated by and expected by society … in the form of (statute law) … or through legal principles as developed in case law … (with) compliance … further sub-divided into three types: passive, restrictive and opportunistic … (with respect to opportunistic compliance) … a corporation may actively seek out and take advantage of loopholes in the legislation to be able to engage in certain activities. In such cases one typically finds that the corporation is abiding by the letter of the law but not the spirit of the law. Second, a corporation may choose to operate in a jurisdiction because of its weaker legal standards. … Activities would fall outside of the legal domain when they take place despite: (i) an awareness of non-compliance with the law; (ii) an awareness of actual or potential civil negligence; or (iii) merely passive compliance with the law."

The authors concluded that, overall, the payday loan industry's actions fall outside the legal domain, primarily because "…most jurisdictions have legislation prohibiting interest per year over a certain percentage, and the firms presumably are well aware of this fact (but attempt to evade it through 'other' charges)".

The authors suggest that criminal prosecutions of industry firms (with respect to alleged breaches of the maximum rate of interest provided by the *Criminal Code*) have not taken place, possibly because "governments recognize that there is a legitimate need for (payday) loans and are reluctant to use the big club of criminal prosecution, which would certainly close down payday lending altogether". The authors also suggest that payday lending firms engage in opportunistic compliance (calling charges that would better be defined within the cost of credit a different name).

With respect to the ethical domain, the authors advise that, quoting Schwartz and Carrol, the domain "refers to the ethical responsibilities of business as expected by the general population and relevant stakeholders, and includes three general ethical standards: (a) conventional; (b) consequentialist; and (c) deontological".

Schwartz and Carrol described the conventional standard as "those standards or norms which have been accepted by the organization, the industry, the profession, or society as necessary for the proper functioning of business … (indicating that) reference should be made to formal codes of conduct or ethics … to establish whether a company is acting ethically according to the conventional standard". The authors (Schwartz and Robinson) concluded that there was evidence (both for and against) that the industry was acting in accordance with a conventional standard, noting that industry standards do not limit the amount of charges payday lenders may levy on their borrowers. They also observed that society had not raised any "… major objection to the practices taking place, and the significant number of users of payday loan services suggests that the service is considered to be not only morally acceptable but highly desirable, if not necessary".

Schwartz and Robinson further noted that members of associations of Canadian and American payday lenders had developed codes of business conduct, which "… if lived up to would address many ethical concerns (i.e. integrity, disclosure, rollovers, confidentiality, etc.); the primary ethical issues they do not address is the current rate of (charges) …"

With respect to the consequentialist standard, the authors cite Schwartz and Carol: the consequentialist standard "… focuses on ends and consequences" and "suggests that ... the morally right thing to do is to promote the good of persons". Schwartz and Robinson continue quoting Schwartz and Carrol "… when it promotes the good of society, or more specifically, when the action is intended to promote the greatest net benefit (or lowest net cost) to society when compared to all of the other alternatives". Assessing whether the payday loan industry meets the consequentialist standard, Schwartz and Robinson provided a mixed review:

Pros:

- benefits of the industry evidenced by number of borrowers, short-term alleviation of hardship through "easier and quicker access to funds";
- relief to those borrowers who cannot "wait for checks to clear" and "live hand-to-mouth";
- the industry provides an option to those who "do not trust banks, and don't feel welcome there";
- jobs for the employees of the industry and positive returns for industry investors; and
- meeting needs ignored by mainstream lenders which withdrew from poorer neighbourhoods and do not provide needed services to the less affluent.

Cons:

- short-term relief from cash access deprivation may lead to long-term hardship (consumers "digging themselves into some sort of debt trap"); and
- onerous charges.

Schwartz and Robinson attempted to come to a conclusion as to their assessment of the industry's performance with respect to the consequentialist standard of ethical behaviour by considering the question of whether the industry earns excess profits, concluding that "the payday lending industry is very inefficient" and that "its large fees are due to the exorbitant rates, rather than to a large volume of business". The authors suggest that low

volumes and the fixed costs associated with individual store operations "forces a payday lender to charge very high rates".

Schwartz and Robinson further suggested that on a consequentialist basis "one can make the case that if the long-term is taken into account, the industry is not generating a net benefit to society, and would need to reduce … rates". The authors advised that if the industry was not operating, the replacement of the provision of funds to those unable to obtain credit elsewhere, even if it came from unlicensed lenders, would be unlikely to come at a higher price.

Schwartz and Robinson concluded their assessment of the industry's performance on a consequentialist basis "it may be better if the industry continues to exist, but only if modified (e.g. payment terms more restricted and enforced) would it lead to the overall greatest net good for society".

The authors also considered the industry's performance relative to the deontological standard, one "embodying those activities which reflect a consideration of one's duty or obligation ... embrac(ing) moral rights, justice, religious doctrine, Kant's categorical imperative and core values such as trustworthiness (i.e. honesty, integrity, reliability, loyalty); responsibility (i.e. accountability); caring (i.e. avoid unnecessary harm); and citizenship (i.e. assist the community, protect the environment)".

Schwartz and Robinson stated that according to Schwartz and Carrol (2003), "activities would fall outside the ethical domain when they are: (i) amoral in nature (i.e., with an unawareness or indifference to the morality of the action); (ii) take place despite an awareness that the action conflicts with certain moral principles (i.e., are unethical); or (iii) are only intended to produce a net benefit for the corporation and not for the affected stakeholders (i.e., are only supported by egoism)".

The authors conclude that there appears to be "many deontological concerns with respect to the activities of the payday loan industry". Schwartz and Robinson note that "most of

the customers are the working poor, who don't realize how expensive the transactions really are", and assert that the industry may be:

- "seen as exploiting a vulnerable population";
- firms engaging in rollovers or unfair collection practices "may be seen as taking advantage of the misfortune of certain members of society";
- taking advantage of "an unequal relationship of power and knowledge (e.g. ignorance and lack of informed consent) of the providers relative to their customers, leading to an unfair advantage in the transactions that take place";
- providing less "transparency, disclosure and honesty" – the authors assert that without full knowledge "customers may in fact not be giving fully informed consent to … transaction".

Schwartz and Robinson conclude their paper on the ethics and social responsibility of the payday loan industry with the view that "the industry is … a perfect example of … the purely economic firm or industry ... focus(ed) only on maximizing profit and shareholder value while clearly falling outside of the legal and ethical domains in each and every respect". They proposed a new *"Code of Ethics and Social Responsibility"* for the entire industry and suggested that "future research should take place to more fully examine the societal implications of (payday lending)".

CPLA members have adopted a *Code of Best Business Practices* and this is premised on the view that "… payday loans are for occasional use only and should not be used to cover continual shortfall in … budgetary requirements". The preamble to the *Code* continues: "People who have ongoing problems meeting their financial obligations should be consulting credit counsellors …"

Furthermore, the CPLA has invited industry regulation and lobbied aggressively for it.

CPLA's *Code* comprises the following:

- No rollovers; member companies "shall not grant multiple payday loans … that exceed what the (firm) initially approved the customer to borrow";

- restrictions on default and post-maturity interest charges;
- no collateral;
- no assignments of wages;
- fair collection practices;
- terms of 31 days or less;
- right of a customer to rescind;
- privacy provisions;
- plain language disclosure; and
- a prohibition on the tied-selling of other goods or insurance.

The Board also considered two brief papers on ethics and business, being:

a) *Beyond Selfishness* (Mintzberg, Simons and Basu, April 2002); and

b) *CEO Ethics Survey – Project for School of Business and Economics, Wilfrid Laurier University and the National Post* (COMPAS Inc., September 2000).

In *Beyond Selfishness*, Mintzberg, Simons and Basu suggest that, for some in business, ethics has been sacrificed for maximizing shareholder value and that the pursuit of returns for shareholders represents "... a glorification of self-interest perhaps unequalled since the 1930s". The authors claim that "... greed (has been) raised to some sort of high calling (and that) corporations (have been) urged to ignore broader social responsibilities in favour of narrow shareholder value".

The authors cite *Jensen* and *Mecklin's* (The Nature of Man, journal of Applied Science, Summer 1994) five models of "The Nature of Man", those being sociological, psychological, political, economic and, what they describe as "resourceful, evaluative, maximizing", preferring the last model. *Jensen* and *Mecklin* suggest that today, the emphasis has been on the economic aspect, "man as an evaluator and maximizer who has only one want: money income" and that their preferred fifth model of man brings together the various aspects rather than focusing on the economic.

Mintzburg, Simons and *Basu* indicate that "Corporations used to exist … to serve society ... (and that while) corporations are economic entities … they are also social institutions that justify their existence by their overall contribution to society". The authors claim that "... (corporations) must serve a balanced set of stakeholders (yet, today) … the shareholders have muscled out all the others".

The authors juxtapose two views of the chief executive officers of America's 200 largest corporations (comprising the *Business Roundtable*), the first set out a "balanced view of the corporation, including a sense of corporate responsibility...", by the 1981 *Statement on Corporate Responsibility:*

> "Balancing the shareholder's expectations of maximum return against other priorities is one of the fundamental problems confronting corporate management. The shareholder must receive a good return but the legitimate concerns of other constituencies … and society at large also must have the appropriate attention … by giving enlightened consideration to balancing the legitimate claims of all of its constituents a corporation will best serve the interests of its shareholders."

In the second view point, the authors compare the 1981 statement of the Business Council with the 1997 view, as expressed by the CEOs, in a report on Corporate Governance:

> "The notion that the board (of directors) must somehow balance the interests of stockholders against the interests of other stakeholders fundamentally misconstrues the role of directors. It is, moreover, an unworkable notion because it would leave the board with no criterion for resolving conflicts between the interests of stockholders and of other stakeholders or among different groups of stakeholders."

Mintzburg, Simons and *Basu* claim that the change in the view of the CEOs of the largest corporations has been dramatic, and that while "the customer may be king, and the

employee may be the corporation's greatest asset", this is rhetoric, and the reality is that "there is no one but the shareholder".

The authors suggest that while in the past shareholders were the "residual claimants" on the funds of the corporation, now corporations are "managed for (shareholder) claims, no matter how much pressure (results)" and that "shareholder wants have thus been transformed into shareholder needs".

In 1999, Compas Inc, a public opinion and research firm, conducted a survey of Canadian CEOs, for Wilfrid Laurier University and the National Post, entitled *CEO Ethics Survey*, concluding "Canadian CEOs define ethics as a sense of justice rather than avoiding public relations problems".

The survey suggests that many CEOs then viewed "obeying the law" as being representative of an "excellent definition of ethics" (and that) "when faced with an ethical situation (not knowing) the appropriate course of action, the most popular counsel is spouse or family followed by a lawyer…".

COMPAS determined that "ethical preoccupations have grown in importance, especially in the eyes of CEOs from larger companies, and those that are heavily regulated or are under intense public scrutiny …". COMPAS noted, however, that "unethical behaviour can be encouraged when there is a lot at stake" and that when ethical concerns confronted profitability, ethics versus "maximizing shareholder value", ethics could take second place, and suggested that "… companies should put more priority on environmental issues".

2.13 Parties to the Hearing

There was no applicant to the Board's hearing, the Board's mandate and task came from legislation, and thus no onus carried by any participant in the hearing. While the Thompson and Brandon hearings had neither interveners nor presenters, the Winnipeg

hearing included eight interveners and a wide representation of presenters and called witnesses, some of who were sworn in and provided testimony.

2.13.1 Interveners

Interveners to the hearing were:

a) Cash-X;
b) Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors/Winnipeg Harvest (Coalition);
c) Canadian Payday Loan Association (CPLA) – representing the interests of approximately 25 lenders, including the largest, National Money Mart;
d) Rentcash (operating under the broker model);
e) 310-Loan (an internet payday lender);
f) Assistive Financial (a lender to the payday loan industry);
g) Progressive Insurance (an insurance broker providing creditors' insurance options to payday lenders); and
h) Sorensen's Loans til Payday Inc. (a payday lender).

Interveners presented evidence directly and through their witnesses, who included expert witnesses providing their own perspectives on issues and questions put before them. Further, they cross-examined witnesses brought by other interveners and provided closing submissions with recommendations.

Assistive Financial's President, Mr. Randy Schiffner, provided evidence with respect to Assistive, a lender to payday borrowers utilizing the payday loan broker, Rentcash. He reported that Assistive was one of Rentcash's third party lenders, and that investors in Assistive required net returns of approximately 20%, recognizing the availability of similar yields from second mortgage lending and the peculiar risks associated with payday lending (that primarily being a regulatory risk, the Section 347 rate caps and the potential for third party lenders to payday firms being named in a class action suit). Mr. Schiffner advised the Board that Assistive determines the loan criteria for loans to be

made on its behalf by Rentcash, and that Assistive receives *retention* payments from Rentcash to reduce the bad debt losses Assistive incurs.

CPLA provided a panel of industry officials and independent experts (Mr. Norman Bishop, the Honourable Stan Keyes, Mr. Dean Schinkel of Deloitte & Touche LLP, Mr. Michael Marzolini of Pollara and Dr. Lawrence Gould).

Mr. Bishop and Mr. Keyes advised the Board with respect to the membership of the CPLA and its history, and the Association's efforts to bring about regulation of the industry for the purpose of enhancing consumer protection. They indicated that CPLA's membership, which includes the industry's largest firm (National Money Mart) and approximately 20 other payday lenders, have adopted a code of business conduct that the Association's membership are required to uphold. That code prohibits CPLA members from making loan rollovers, and advocates for effective consumer education.

Deloitte & Touche's Mr. Schinkel provided testimony with respect to a Deloitte & Touche survey of the cost of operations of small and medium sized payday lenders in Manitoba, commissioned by the CPLA, and responded to questions related to that survey and other matters of interest. He reported that the survey of five Manitoba payday lenders revealed an average operating cost per $100 loan advance of approximately $28, and suggested that volumes, high bad debt experience and a cost of funds influenced by a reliance on investor financing required a regulated cap high enough to allow smaller and medium sized firms to continue in operation.

Dr. Gould testified as to what would represent fair returns to the owners of larger publicly-traded payday firms, and compared the returns of National Money Mart to those of Canada's Schedule 1 chartered banks. He recommended that the rate cap to be established by the Board should be in the range of $20-23 per $100 plus an allowance for regulatory costs (licensing and bonding).

Mr. Marzolini testified as to the results of a Pollara survey of payday borrowers, commissioned by the CPLA, and suggested that the average income of payday borrowers,

levels of employment and education were not dramatically dissimilar to the Canadian average. Mr. Marzolini also reported that payday borrowers responding to Pollara's survey indicated the primary reason for taking out a payday loan was to meet emergencies, and the general satisfaction of payday borrowers with the industry.

Rentcash provided a panel of company officials (Mr. Gordon Reykdal and Ms. Nancy Bland), and engaged Dr. Kevin Clinton, who provided expert evidence with respect to the economic value of payday lenders to their borrowers and the economy, and provided an opinion as to what represents a reasonable maximum tariff.

Dr. Clinton provided an econometric defense of the fairness of a rate cap of $37 per $100, a cap that would be sufficient to allow payday lenders with differing operating costs, bad debt experience and loan criteria to continue in operation. He argued that the cap should be set high enough to promote competition, suggesting that the optimal level of benefit would arise from a competitive landscape. Dr. Clinton noted that a competitive landscape, as was suggested to be the current situation in Manitoba, would best ensure loan demand was met. He suggested that such an approach would likely result in a gradual decrease in the average rate for loans in the industry, and that the average rate would not likely increase because of a cap that promoted competition.

Coalition engaged and presented a panel of expert witnesses, comprised of Dr. Jerry Buckland, Dr. Chris Robinson, Dr. Wayne Simpson, Dr. Tom Carter, Mr. John Osborne and Ms. Anita Friesen. Dr. Buckland was represented as the Chair of the panel, and as having organized the panel's collective effort to provide evidence related to payday lending and the implications for borrowers and society.

The Coalition panel reviewed the withdrawal of banks from north Winnipeg and the placement of payday offices throughout the City of Winnipeg, claiming that the intent was to service the less affluent neighbourhoods of the City that had been largely abandoned by the banks. The Coalition provided evidence arising from a "mystery shopping" initiative, which had two of the Coalition's witnesses, and another unidentified

agent, calling and visiting payday loan outlets to garner information on loans and related practices.

Dr. Robinson provided a review of payday lending in Canada and the United States, including estimates of cost and profitability experience. He reviewed lending caps in the United States, and provided estimates of volumes, cost and profitability for large and small payday firms. Dr. Robinson proposed a sliding scale rate cap for Manitoba, and professed no interest in making payday lending impossible to practice in the Province.

Officials and shareholders provided evidence on the part of 310-Loan (Mr. Nathan Slee), Cash-X (Mr. Steve Sardo) and Progressive Insurance Solutions (Mr. Kent Taylor). Mr. Sardo and Mr. Slee reported on the cost experience of their firms, their approaches to lending criteria and advised against the setting of a rate cap that would make Internet-based operations unprofitable. Mr. Taylor advised of promoting the development of creditors' insurance for the payday loan industry, reported on the commission practices of the insurer, and reported on the benefits of the insurance for payday borrowers.

2.13.2 Presenters

The Board also received presentations from representatives of a number of other organizations and individuals that either came forward or were requested to attend by the Board, in an effort to ensure the Board had the necessary factual foundation for its deliberations.

Presentations were received from Mr. John Silver, Ms. Dale Morrison, Ms. Anna Pazdzierski, Ms. Kate Sjoberg, Ms. Mary Ann Cerilli, and Ms. Elizabeth Carlyle (social agencies); Ms. Crystal Laborero and Mr. Rob Valentine, Mr. Gerry Charlebois and Mr. Scott Hannah (industry); Mr. Wayne Vantassel (payday borrower); and Professor Bruce Duggan and Professor Ruth Berry (researchers).

Mr. Jim Scalena, Staff Sergeant Levasseur and Mr. Norman Glass provided additional sworn testimony, on the invitation of the Board. Mr. Randall Hansford appeared at the

behest of Rentcash. With respect to the additional sworn witnesses, the Board directed questions to the witnesses, though cross-examination by interveners and Board Counsel was not provided for. The Board has the authority to set its own Rules of Practice and Procedure, and the Board is able to vary its Rules to meet justifiable circumstances. Pursuant to the Rules, the Board questioned these additional witnesses and, by so doing, added to its information base.

Unfortunately, neither a credit union or a bank, nor the associations that represent these mainstream financial services organizations, either sought intervener status or provided a presentation to the proceeding. At the Board's cheque cashing fee-setting procedure, which concluded in the spring of 2007, Assiniboine Credit Union (Assiniboine) and Credit Union Central of Manitoba (CUCM) attended and provided presentations. Assiniboine advised of its interest in assisting the poor with establishing "banking" relationships, and of its involvement with Community Financial Counseling Services (CFCS), as a founding and contributing member. CUCM did not offer any views on fringe or convenience banks, or the circumstances of those without strong relationships with a mainstream financial institution.

2.14 Issues Considered

The administrative decisions herein made by the Board have required the Board to consider varied circumstances both as to the demand side of the equation (consumer needs and desires) and also as to the supply side (the business requirements of payday lenders).

Participants to the Board's hearing drew the Board's attention to a variety of issues, some of which were:

- The circumstances of low-income consumers;
- Supply side changes to the traditional bank and credit union lending and branch presence practices, contributing to the introduction and growth of payday lenders;
- Payday lenders' cost of doing business;

- Risks associated with payday loans for payday lenders and brokers;
- What constitutes a fair rate of return for the investments made in and by payday lenders;
- Payday lending operating models – direct and brokerage;
- Variability of fees, interest and other charges by payday lenders;
- Availability of clear and comprehensible consumer information respecting payday lending terms and charges;
- Practicalities associated with the implementation and subsequent adherence to maximums as to be set by the Board;
- Risks for consumers and the economy associated with Board actions likely to result in reduced consumer borrowing options;
- Availability of information related to payday lenders and their customers;
- Ethics, with respect to lending practices; and
- The findings to be subject to review no later than three years from now, a perceived need for caution, this hearing being the first of its kind.

The evidence submitted in the hearing is voluminous and available for review at the Board's offices in Winnipeg, upon reasonable notice and during normal business hours.

2.15 Process

Early in the hearing, the Board advised interveners that, as its mandate provides for, the Board intended to make recommendations to government. The recommendations were expected to arise out of the hearing and/or relate to matters coming to the Board's attention as a result of the hearing and regulatory mandate.

During the hearing, recommendations for the Board's consideration were received from various witnesses and presenters, and some of these are represented in the recommendations the Board makes herein.

In accordance with the legislation, the Board is required to issue an Order establishing maximum charges, and review the initial setting and subsequent Orders at least once every three years. Upon concluding such reviews, the Board must then issue a new Order replacing the then-existing Order. However, if circumstances respecting payday lenders change substantially, such an Order can be reviewed at an earlier time.

So, while this Board Order is final and binding, it will be only the first such Order.

This Order will be posted on the Board's website, www.pub.gov.mb.ca. Also on the website are the transcripts of the Winnipeg hearing, and interested parties may review the Board's file related to the hearing, including the exhibits placed on the record of the hearing, at the Board's Winnipeg offices.

3.0 PRESENTERS

The hearing included presenters providing differing perspectives on the issues before the Board. Presenters were neither sworn in nor cross-examined. In some cases, where the Board sought additional evidence, additional witnesses were brought before the hearing by the Board, were sworn and cross-examined by the Board.

The Board found both the presenters and additional witnesses forthright and, pursuant to its mandate, the Board took into consideration the information provided, generally as supportive or collaborative to information obtained otherwise through the process.

The names of the presenters and the additional sworn witnesses and the organizations they are associated with are listed in Appendix C. The Board's transcript of proceedings is available on the Board's website, and the transcript records verbatim the presentations of these individuals (http://www.pub.gov.mb.ca/transmisc.html)

3.1 Social Agencies

The majority of the presenters were associated with social support agencies; they presented an array of concerns and criticisms with respect to the payday lending industry:

- agency caseloads increasingly include those with payday loans;
- reports that payday loans are related to both unexpected financial emergencies and overspending;
- borrowers having no savings, and minimal money management skills;
- clients having less than average income;
- difficulties with payday lenders' default charges, loan rollovers, repeat and serial loans;
- clients with several and/or concurrent outstanding payday loans;
- payday loans representing too high a percentage of net pay to allow for repayment at the due date;

- borrowers unable to access the full amount of an advance placed on a prepaid debit card by a payday lender;
- unchecked consumerism causing debt to grow;
- although some agencies offer workshops and seminars on financial and credit management to thousands, accessibility is limited and public profile is low;
- payday loan clients more likely not to complete agency debt management programmes;
- loan difficulties associated with gambling, drugs and alcohol related problems;
- inadequate disclosure hampering comparison of loan costs across payday loan companies, and with other types of loans;
- the use of a voided cheque as authorization allows the lender to repeatedly present the cheque for payment, causing repeated additional NSF and other charges; clients have reportedly found their bank accounts emptied, resulting in defaults with other obligations;
- payday lenders seeking security, including wage assignments, contrary to the intended unsecured loan concept;
- misleading and/or intimidating correspondence – some threatening wage garnishment or legal action;
- lack of documentation supporting insurance policies priced into the amount due from borrowers;
- client loss of self-esteem, leading to depression and anger, risking family violence and child abuse;
- bank requirements involving 3-7 day holds on deposits, including cash deposits through ATM's; driving some to rely on fringe banks;
- "a violation of the UN Convention on Economic and Social Rights";

- the lack of proper identification on the part of a disproportionate number of low-income people which would allow them to use the services of a bank or credit union; and
- that the federal and provincial governments of Canada have failed consumers by collaborating to regulate rather than ban payday loans.

Presenters identified clients living below the poverty line who were paying many times more for banking services than the more affluent, with the result being that scarce monetary resources "were drained".

A presenter suggested that the more affluent "hav(e) one set of financial services, with one set of rates, for people with the good fortune to be more affluent … (while) another set of financial services (exists) for people who are less fortunate" and claimed this separation was "discriminatory, exploitive".

Presenters opined "it is actually the most vulnerable students who use these services. It's not students who are managing fine and will be repaying the loan quickly" and

"there's a concentration of payday lending businesses in Manitoba's low-income communities" and "the competition model (to provide reasonable rates) hasn't really panned out anywhere".

Presenters from social agencies provided a number of suggestions:

- that the Board "set reasonable maximum interest rates, fees and charges for all individuals and businesses engaged in lending".
- require mandatory participation by payday lenders in independent complaint resolution mechanisms;
- oversee acceptable debt collection practices;
- mandate that payday lenders forego interest charges on a loan in default if the borrower seeks credit counselling;
- reject voluntary codes of good business practices, and implement mandatory codes of business conduct;

- mandate rules for disclosure covering rates and all elements of offered products – requiring plain language contract wording;
- prohibit rollovers, loan discounting, wage assignments and the pawning of vehicles;
- harmonize debt collection practices for small short-term loans;
- consider Quebec's approach (maximum rate, 35% per annum, effectively barring payday lending) and consider "alternate ways to get people the short-term credit they need as well as offer suggestions for eradicating the kind of poverty that makes people reliant on payday loans in the first place";
- recognize "… the need for the systemic changes in our mainstream financial services that would provide for the needs of the under-banked";
- banks and credit unions should move back into communities they left;
- banks should offer smaller, shorter-term loans for new immigrants and others who have difficulty providing the identification and other requirements of mainstream lenders - banks and credit unions should meet the short term credit needs of the less affluent, and should also provide credit counselling services;
- the Board should lobby all financial institutions towards their providing appropriate financial services for all members of the community;
- low income earners should be assisted by direct deposit, low fee multiple accounts (allowing for small savings to develop in a second account), together with provision of financial management training and asset building programs, the development of new technologies geared to low income people, such as debit cards, secured credit cards and fee-based credit cards;
- the process of bank closure in low-income and rural neighbourhoods should be more onerous;
- formal education in basic financial management and the use of credit should begin in the school system;

- government-led education programs are required to promote financial literacy;
- research is required to determine the kind of financial products needed by low-income communities; and
- government and schools should foster financial literacy.

A synopsis of the presentations of social agencies follows:

Mr. John Silver presented on behalf of Community Financial Counselling Services (CFCS), an agency established in 1974 as a non-profit charitable organization. It receives funding from the Province of Manitoba and the United Way.

Mr. Silver indicated that CFCS serves as a financial counselling agency "… uniquely positioned to address the needs of ... vulnerable and high-risk ... such as youth, seniors, lower income, mentally challenged and problem gamblers". He advised that despite CFCS not advertising its services publicly, with the majority of the agency's clients coming from referrals from social service agencies, the agency's caseload is growing.

Mr. Silver noted that the consumer debt-to-income ratio in Canada continues to rise and "… the average Canadian household now owes more than its annual take-home pay in debt". He further advised that "(Canadians) carry 74 million credit cards, three for every Canadian over the age of 18. Students are now graduating university with an average debt of $25,000… since 1984 Canadians' personal debt has increased from $187 billion to $801 billion… mail out of some 184 million credit card applications to Canadians each year, (the offer of) buy-now-pay-later plans, and our increasing unchecked consumerism will ensure that debt continues to be a growth industry".

He indicated that payday lenders "… are often dealing with financially or socially vulnerable members of our communities, such as the working poor and those on income assistance, disability payments, and other fixed incomes".

Mr. Silver reported that CFCS has provided comprehensive financial counselling to 800 individuals and families each year, in partnership with other agencies so as to be able to provide a "… more integrated service, with attention on community education and professional cross-training that increases the preventative nature of financial counselling and debt management". He indicated that the agency offers workshops and seminars on financial and credit management to thousands, and has on average at all times 135 participants in its licensed debt management program.

Mr. Silver indicated that 25% of families and individuals in the debt management program have outstanding payday loans ranging in amounts up to several thousand dollars. He noted that the higher outstanding loan balances have been found with individuals with gambling issues. He observed that half of the agency's clients with payday loans have more than one outstanding payday loan, with the number of payday loans ranging from 2 to 8. He reported that the agency's payday loan clients are almost twice as likely to default and/or do not complete the agency's program.

Mr. Silver made the following additional comments and/or suggestions based on the agency's interaction with its clients:

a) repeated rollovers increase indebtedness exponentially;

b) repeat loans can have the same effect as rollovers;

c) gamblers are frequent payday borrowers ("a quick and easy way to get funds when (one) is maxed out (with) credit cards");

d) little or no communication between payday loan lenders and offices contribute to multiple loans to one borrower;

e) with rollovers, repeat and multiple payday loans, the cost becomes excessive and beyond the ability of the borrower to repay within a reasonable time frame (and well beyond the 62 day term maximum for a payday loan);

f) payday loans are not always well documented, so collection bureaus acting for payday lenders have had difficulty supporting claims;

g) payday loan fees, a variety of fixed and variable, are not always disclosed prior to the borrower signing the contract;

h) information on fees should be presented in a way that "allows clients to compare loan costs across payday loan companies and with other types of loans";

i) while pre-authorized debits has been a problem, both post-dated cheques and pre-authorized debits can be voided (though at a cost to the borrower); a particular problem is the use of a voided cheque as authorization allowing the lender to repeatedly present the cheque for payment, causing repeated additional NSF and other charges – clients have found their bank accounts emptied, resulting in defaults with other obligations;

j) some payday lenders have sought and obtained security, contrary to the intended unsecured loan concept;

k) some payday lenders have sought and obtained voluntary wage assignments – not permissible under the new regulations;

l) misleading and/or intimidating correspondence – some threatening wage garnishment or legal action; and

m) lack of documentation supporting insurance policies priced into the amount due from borrowers (Mr. Silver questioned the value of such policies).

Mr. Silver suggested that the penalties to be established for contraventions of provincial payday loan regulations should be sufficient "… to deter payday lenders (from improper actions) and counterbalance the profits that they must be making from the interest charged". He also suggested that the Board should take into account the cost of loans to borrowers when establishing maximum charges.

Mr. Silver noted that "… a simple internet search for online payday loans will bring (236,000) hits – websites, (and while) not all of those are for payday loan companies, thousands do promise immediate funds direct deposit to anyone with an email address, a bank account, and stated employment". Mr. Silver noted that most of the internet websites are for out-of-province/out-of-country payday lenders, not subject to the

provincial amendments and "… creating ... just as much difficulty for (the agency's) clients".

Mr. Silver suggested that the Board set its maximum fees such as to encourage borrowers to utilize provincial lenders rather than website-reached payday firms. He also indicated that CFCS has found most payday lenders to be cooperative with the agency's efforts to assist its clients in managing their debt issues, and that payday lenders have agreed on occasion to reduce or eliminate interest charges on loans in default.

Mr. Silver indicated that payday lenders were not the "only problem" related to the debt problems of his agency's customers, typifying payday loans as "the tip of the iceberg" and citing "… retail credit cards and secondary lenders with relatively high interest rates, buy-now-pay-later plans, where interest is accrued the moment the balance is not paid in full", suggesting "all contribute to the financial exploitation of consumers without access to other forms of credit or a full understanding of the consequences of the credit agreement they are entering into".

He also "… points to the need for the systemic changes in our mainstream financial services that would provide for the needs of the under-banked, the unbanked and those whose financial history, cultural background, socioeconomic status or financial requirements make access to mainstream financial services difficult". Mr. Silver suggested that banks and credit unions should move back into communities they previously left, noting that for many low-income areas there are no branches. He also suggested that banks should offer smaller, shorter-term loans that would be useful for new immigrants and others who have difficulty with identification.

Mr. Silver suggested that the current situation "underscores the need for formal education in basic financial management and the use of credit, beginning in our school system, neighbourhood access to more mainstream banks and credit unions (and) credit and savings schemes that address these specific needs, partnered with credit and counselling services… to break the cycle of debt that many find themselves in".

Ms. Dale Morrison presented on behalf of North End Women's Centre, an agency that serves women portrayed as being limited as to education and literacy, and with large families to support. Ms. Morrison indicated that the majority of the agency's clients are on welfare and access payday loans.

Ms. Morrison indicated that the women frequent payday lenders because of easier access (location and service hours), and a feeling of greater comfort than from a bank or credit union (she noted that payday lenders offer other services desired by the agency's clients, such as cheque cashing and wire transfer), and that, without access to vehicles, its clients need lenders that are within walking distance. She indicated that the availability of payday loans is also problematic, as many of its clients struggle with addictions, drugs or alcohol.

For Ms. Morrison the problem with payday firms and her agency's clientele does not include accessibility (a problem that lies with the banks and credit unions) but rather with their charges and the ease by which loans are made to vulnerable people, with the result being further pressure on very limited budgets, and more resultant stress.

Ms. Morrison reported:

> "We've had reported breakdown of family leading to divorce and separation; the families just can't deal with the debt load. They're fighting, they're arguing; even where the family is employed at times the whole paycheque is going to repay the debt, and so they have no choice but to go back and re-borrow the full amount if they're to make ends meet. So often what will happen is the mother and children will go on welfare where they can at least afford to house and feed the children at some level, and the father will carry the loan or default on it, and the family is basically destroyed. We see an increase in alcohol and drug use just dealing with that issue. There's a loss of self-esteem, depression and anger and that can lead to family violence, it leads to an increase in abuse of children. As I said, there's an increase of

> alcohol and drug use, it's due to easy access to the cash and also as a way of coping with the financial problems.
>
> "Many individuals close their bank accounts to avoid the debt because they can't carry it any longer, or it's a way of keeping themselves from going and borrowing more money because they're afraid they'll weaken. So, if they don't have a bank account, they can't borrow money from (payday lenders). They won't give them the loan. Their credit rating, if they have any, anyways is damaged. They often suffer an inability to get another bank account due to a poor credit rating and then they access the payday lenders to cash their cheques at high charges, and individuals are vulnerable to crime as they're often carrying large amounts of cash with them when they leave the loan place."

Ms. Morrison cited a problem with rollovers, indicating that "several women who reported that they paid back equal or even double the amount of the initial (advance) in interest and charges. One person said that she borrows $100 for two weeks and she pays back $124 for every additional two-week period. That isn't a huge amount to many of us but for her, it is a large amount. The processing fee is larger (for) larger amounts, (though) it is the same paperwork."

Ms. Morrison indicated receiving "other comments given by ... our community is there are no good things about payday lenders, they rob money from our children… People in our community are very bitter and have really strong negative feelings about (payday lenders). And the women who provided us with these responses are the lowest income earners in the City of Winnipeg … they're the least able to afford the charges of these lenders."

Ms. Morrison commented "we have moms that are coming into our centre – and to feed the kids breakfast before they go to school they're putting sugar cubes in a glass of milk, and that's the kids' breakfast. We do serve lunches three days a week and we're moving that up to five.. we have a lot of mothers who are coming in and feeding their children

their lunch from our center from the free… soup or stew.. we're seeing .. extreme poverty". Ms. Morrison concluded by indicating that the situation is getting "worse and worse, the drug problems… women are going out to work on the streets in order to provide for the family".

Ms. Anna Pazdzierski presented on behalf of the Manitoba Association of Women's Shelters, providing a summary of the views and positions of ten women's shelters across Manitoba that serve 2,700 women annually; the majority are from low-income families and have history of social assistance and/or working for minimum wage.

Ms. Pazdzierski began by relaying a report from Osborne House's Executive Director, as a representative case of clients involved with payday lenders:

> "We had a woman in shelter .. caught in the payday loan trap. She had initially a debt of $400 with one company and about $500 with another company. She.. was making payments .. on the $400 debt and had it down to $200, but then missed a payment because her partner forced her to give him money for his addiction… the debt was a combination of needing money for her bus fare to work and to cover her partner's addiction. … she got behind and the cost of the interest was $168. The client worked at a large retail store in Selkirk.. and was required to get there by Beaver Bus… her employer would not transfer her to another store in Winnipeg, so she needed to pay for bus fare of $6.50 both ways .. equalling $13 for her travel… in ten days of work she spent $130 for bus fare.. and was in a desperate situation with having to pay a loan that never appeared to diminish because of accumulating interest."

Ms. Pazdzierski reported that this client drew on four payday lenders, and from each loan she takes out she pays half of it on existing loans and uses the other half to live on.

Ms. Pazdzierski indicated the clients of her association's members have poor or no credit history, with many never having had a bank account. She noted that, with banks requiring 3-7 day holds on deposits, including on cash deposits through ATM's, many clients have

no real choice other than relying on fringe banks, payday lenders. Ms. Pazdzierski indicated that many clients were not aware of either their rights or their options, and "needing to obtain formula, food, diapers.. they felt they had no options but to use payday lenders and had no concept of the amount of interest, charges.. that they were paying".

Ms. Pazdzierski also outlined the dealings (of a client) with a pawn shop, where the owner lent the client money at no interest, and with a rent-to-own outlet that represented shoddy documentation and consumer information with practices that amounted to fraud.

Ms. Pazdzierski recommended that the Board "set reasonable maximum interest rates, fees and charges for all individuals and businesses engaged in lending". She also encouraged the Board to "lobby all financial institutions to provide appropriate financial services for all the members of their communities", stating "many third-world countries have lending institutions for the economic(ally) disadvantaged".

She concluded with: "the current system is ethically corrupt and takes advantage of those with no real choices. We have laws against scam artists. Is the payday lending system any different?"

Ms. Kate Sjoberg presented on behalf of the Spence Neighbourhood Association, a non-profit association working in housing (infill and assistance to tenants), youth programming and community economic development (pre-employment programs for both youth and adults). She provided a report and comments related to the use of payday lenders by residents of the Spence Street neighbourhood, a low-income community (average household income, $27,000 – less than half that of Winnipeg overall) including aboriginals, immigrants, refugees and others with special challenges.

Ms. Sjoberg opined that when low-income customers of payday lenders are considered, the discussion is about the financial exclusion from mainstream financial institutions of marginalized people for whom service at a fair price is important.

Inferring that many low-income people have few options to payday lenders, she commented:

> "It's easy to talk about payday loan companies serving a need, as if poor people have a choice whether or not to use them, especially when so many (of these) people access payday loan companies. The question is why would someone living below the poverty line pay many times more for banking services, taking money out of their food budget often, if they didn't have to."

Ms. Sjoberg reported on the circumstances of the Association's members:

a) people regularly forced out of housing due to affordability issues;
b) housing situations that are unsafe for children and their parents;
c) after-school programs for twelve-year olds well attended because food is provided;
d) inadequate winter clothing;
e) unsafe and abusive situations at home, for some;
f) single-mothers dealing with household tasks, liaising with social workers, working part time and struggling to make ends meet;
g) lack of jobs with adequate incomes, and lack of adequate educational opportunities; and
h) problems related to the integration of refugee and immigrant families – income, language, training and parental support, etc.

Ms. Sjoberg advised that

> "Payday loan outfits are used by-and-large by low income people who don't have alternatives because of any number of factors, most important of which, because they need money as soon as they are paid and can't wait for bank-enforced holding periods. So because the parents… don't make enough to make it from cheque to cheque, or can't get to a bank because it operates on fixed hours and they don't have a

> car, they're forced to pay high fees to earn rights to their own money. In effect, they are punished for earning too little."

She claimed that "the way the payday loan system currently operates not only contributes to systemic discrimination against poor people, but more to the point it exploits poor people".

Ms. Sjoberg read into the record of the proceeding from a letter from the Association to the Minister of Finance:

> "Our research has shown that the users of fringe banking services are more likely to come from the lowest income brackets. They have limited access to short-term credit and often lack the proper identification to use the services of a bank or credit union. These, the most vulnerable members of society, use cheque cashing and payday loan services because they have no other financial alternatives. To profit from the disadvantage of those who are striving to escape from poverty is a practice that is abhorrent to the majority of Manitobans."

Ms. Sjoberg suggested that the impact on low-income families suffering a severe crisis of paying interest rates and administrative charges representative of annual interest rates well in excess of Section 347's maximum rate of 60% is particularly difficult, and that the loans and charges of payday firms are illegal. She argued that the practices of the fringe banks "prevent lower income families and individuals from accumulating liquid assets which are essential to financial independence" and reported on having "encouraged the Government of Manitoba to use amendments to the Consumer Protection Act as a platform for building policies that will encourage savings and reduce government dependency for low income families…".

She noted "a wide range of factors … force low income people to use payday loan companies" and suggested that "government should do more than just reduce the fees for service currently being charged ..and, for instance, remove barriers to using mainstream

banks such as distance". She advocated for "appropriate services for low income people, such as personal identification, direct deposit, low fee multiple accounts that allow for small savings in a second account, provision of financial management training and asset building programs, development of new technologies geared to low income people, such as debit cards, secured credit cards and fee-based credit cards".

Ms. Sjoberg also suggested that "banks need to make adjustments that can accommodate low income people and the government has to respond to the discrepancy between the rate of affordable housing and welfare and income rates".

Ms. Marianne Cerilli presented on behalf of the West Central Women's Resource Centre, which is dedicated to the "empowerment of neighbourhood women, their families and the community at large". She indicated that the Centre offers programs to assist some of the "poorest and most marginalized people (in Winnipeg)".

She reported that the Centre "provides food, clothing, free clothing, access to telephones, photocopiers … casual child minding workshops and advocacy as well as the opportunity for volunteer work experience so people can develop their resumé and skills".

Ms. Cerilli noted that the Centre's clients, many on welfare, are low income and have less choice than others. She observed that "the major banks over the past years have been able to abandon low income citizens in many of the neighbourhoods where banking services don't turn a profit". She held that "the banks must hold some responsibility in the problem for payday loan companies, and once the industry has been re-regulated or banned, as they have (been) in Quebec, (the banks) will step back in and serve the segment of the population that's been exploited by payday loans".

She opined "there are some businesses that are not in the public interest, and … payday companies are some of them", and observed:

> "Stakes are high, since payday loan companies are part of a $2 billion a year business that serves more than 2 million Canadians annually," and claimed "however, this $2 billion has been lost to some of Canada's poorest citizens; payday loans companies .. are right up there with weapons dealers, drug traders and pimps (and) represent the worst form of predatory capitalism by sucking money out of those who are most financially desperate and vulnerable."

Ms. Cerilli suggested that the federal and provincial governments of Canada had failed consumers by collaborating to regulate rather than ban payday loans:

> "If the payday loan industry is not regulated, its future will be ultimately determined by a number of class action suits currently proceeding through the Canadian courts. These lawsuits claim that consumers were charged fees in excess of the rates allowed under the *Criminal Code*, and seek to recover hundreds of millions of dollars… Should these class-action lawsuits succeed, it could potentially bankrupt the payday loan industry. But, Bill C-26, federal legislation, opts for provincial regulation of the market rather than an outright ban on payday loans. .. I think we have to end the failure of leadership in terms of both the federal and provincial governments."

Ms. Cerilli provided a number of recommendations for the Board and government to consider:

- government-led education programs to promote financial literacy;
- promotion of competition from banks and other financial institutions, to better control costs in the consumer credit market;
- reforms to make the process of bank closure in low-income and rural neighbourhoods more onerous;
- limitations on rollovers and back-to-back loans;
- mandatory participation by payday lenders in independent complaint resolution mechanisms;
- mechanisms ensuring full and accurate disclosure of contract terms;

- acceptable debt collection practices;
- prohibit, limit and/or regulate interest, administration fees, processing fees, convenience charges, verification fee, broker's fee, collection fee, late payment fee, initial one-time set-up fee, and rollover fees;
- forego interest charges on a loan in default if the borrower seeks credit counselling; and
- reject voluntary codes of good business practices and opt for regulated codes.

Ms. Cerilli concluded by opining that "having one set of financial services, with one set of rates, for people with the good fortune to be more affluent, and another set of financial services for people who are less fortunate is discriminatory, exploitive and a violation of the UN Convention on Economic and Social Rights", and suggesting that Manitoba takes the same route as Quebec and act to ban payday lending.

Ms. Elizabeth Carlyle presented on behalf of the Canadian Federation of Students (CFS), a national alliance of student unions – including associations with 42,000 students in Manitoba, providing post-secondary students with provincial and national representation on issues of interest. She indicated that while CFS has positions on student poverty and other issues, it does not have a specific policy on payday loans, noting that her comments should not be inferred as being positions of the CFS.

She observed that payday loans and cheque cashing from fringe banks were "aggressively marketed to students, mainly online" in the United States, and quoted from a firm's website the following marketing approach:

> "Many college students are turning to payday loans for help paying for text books. Depending on the student's course of study, text books can easily top $500 for a semester's worth of books, and that doesn't take into account notebooks and pens … For students who are paying their own way… the beginning of a semester can be a difficult financial time. Some of these students are turning to payday loans to help with the bills."

She indicated that in CFS' experience "it is actually the most vulnerable students who use these services. It's not students who are managing fine and will be repaying the loan quickly … students who can't afford text books, and students who did apply or are ineligible for federal and provincial aid, students whose loans are inadequate to cover emergency expenses such as unforeseen childcare, replacing glasses, replacing a bicycle, those kinds of things."

Ms. Carlyle opined "it's often people using payday loans, including students, who simply have inadequate resources. They're poor … one way or another and don't have enough money to make ends meet … another issue (for the use of payday loans) is convenience, and … students who do have other means of accessing cash or credit – family, banks, lines of credit, student loans – will not use payday loans typically unless it's an emergency issue that they've already tapped out other resources."

Ms. Carlyle urged the Board to limit interest rates and address the other related issues raised in presentations by others, noting that the "incredibly high interest rates aren't the only issue". She suggested that the Board should "try to understand what the definition of low-income is and what the definition of middle class or comfortable is". She observed that "there's a concentration of payday lending businesses in Manitoba's low-income communities ... a good starting point for looking at who uses payday lending". She cited Buckland et alia's 2005 study for the Canadian Centre for Policy Alternatives, claiming "disconnect between what the payday lending companies present their clientele publicly for promotional purposes as sort of upstanding middle class... and how they see their clientele when they're asked about their perceptions of their clientele … they sell their clientele as financially irresponsible …".

Ms. Carlyle suggested that "the question of why people use these fringe banking services, payday lending in particular, is important but ... the Board should (not) be distracted by the question of why people use them .. people are using these services and they need to be regulated … the competition model hasn't really panned out anywhere".

She observed that "with the easy credit environment in which we currently exist, students and other vulnerable groups are being targeted by credit card companies, targeted by payday loan companies, targeted by all kinds of aggressive or even predatory lenders and credit product providers" and suggested "now is the time to take action and do something about it ... the main concern of the Board should not be whether or not payday loan companies can manage with whatever rate of interest the Board decides to impose .. the discussion should be about what is fair to the clients and the users of the service …".

Ms. Carlyle considered the issue of jurisdiction, concluding "there is a divide between federal and provincial jurisdiction and it's allowed payday lending companies and a lot of other credit companies including the banks and the credit card companies, to engage in practices that are not fair and that are in fact usurious".

She advanced the following recommendations on behalf of CFS:

- maximum interest rate structures for payday and other short term loans;
- require/demand the chartered banks and other mainstream financial institutions to move back into low-income communities, with these lenders providing small short term loans at reasonable rates;
- make the process of bank closures in low-income and rural neighbourhoods more onerous, or require a presence of banks in low-income neighbourhoods;
- research and determine the kind of financial products needed by low-income communities;
- government support for the establishment of community banking operations in low-income neighbourhoods;
- rules for disclosure, rates and all elements of offered products – with plain language contract wording;
- prohibit rollovers, the discounting of loans, wage assignments, auto pawns;
- harmonized debt collection practices for small short-term loans;
- foster financial literacy;
- pursue regulation rather than voluntary compliance;

- government-led education programs; and
- promote competition from and between mainstream lenders.

She recommended that the 60% interest ceiling of Section 347 of the *Criminal Code* be enforced and concluded by recommending that the Board consider Quebec's approach and consider "alternate ways to get people the short-term credit they need as well as offer suggestions for eradicating the kind of poverty that makes people reliant on payday loans in the first place".

Mr. Scott Hannah presented on behalf of the *Credit Counselling Society*, identified as a non-profit organization, established in 1996 and licensed in the four western provinces to assist those with financial issues.

Mr. Hannah indicated the Society has assisted 50,000 consumers.

Mr. Hannah reported that the Society's client base increasingly included those with payday loans – accessing the loans from a background of a "riskier" credit profile than mainstream lenders prefer, and advised that the reasons the clients obtained the loans were related to unexpected financial emergencies and overspending, with the borrowers having no savings and minimal money management skills.

He advised that the Society's clients, who reported average income of 20% or less of the average, approached payday lenders because of easy access, noting that mainstream lenders do not provide very short-term small loans and have closed offices. He opined that the *Small Loans Act*, repealed in 1980, was repealed because mainstream lenders were not offering small loans. Mr. Hannah suggested that a payday loan may be an effective assistance to some borrowers exposed to short-term emergencies, if accessed only once or twice a year.

Mr. Hannah suggested that payday lenders have higher operating costs per $100 of loan than mainstream lenders, due to the size of loan differential and short-term of a payday

loan. He suggested that the Board establish maximum charges that allow for a "reasonable business entity that is well run to make a reasonable rate of return without endangering the consumers' financial circumstances long-term". Mr. Hannah suggested that $60 on a $300 loan was not excessive, that the CPLA's proposed $23/$100 would allow for competition (which he held to be important for consumers) and was unlikely to put a borrower into long-term financial difficulty, by itself. He reiterated his view that the problematic borrowers were those involved with rollovers and repeat loans.

With respect to the business model of the lender, Mr. Hannah indicated a preference for the direct lending model rather than the broker approach, and suggested insurance on a payday loan was not necessary. As to the use of debit cards to provide a loan advance, Mr. Hannah noted the security advantages of the approach, though suggesting that the borrower should be able to access the full amount of any advance placed on a card.

Mr. Hannah suggested a need to protect consumers from "unsavoury business practices that really can cause consumers long-term financial harm". He applauded the Canadian Payday Loan Association's (CPLA) code of business practices, and advocated for the establishment of standards that "prevent or eliminate rollovers, punitive collection practices and excessive fees".

He also suggested problems with:

a) not the initial charges but the charges that follow default;

b) payday loans that represent too high a percentage of net pay (he cited 50% or more); and

c) payday borrowers paying off the initial loan with a loan from another payday lender, or obtaining the second loan while the first one goes into default (he indicated that the Society has observed clients having five or more outstanding payday loans).

3.2 .Researchers

Professor Bruce Duggan of Providence College and Seminary, who teaches in the business administration program of the College, provided a presentation that "approach(ed) the question of business ethics from a Christian perspective".

Professor Duggan noted that the hearing had an economic, financial theory and cost analysis focus and suggested the Board would benefit from considering a business ethics perspective. He advised that he was not opposed to the concept of charging interest while stating that "questions of debt and fair interest rates … and the ethics of charging interest and the shared social responsibility for those in debt is a prominent theme in (all) three (western) religious traditions (Christianity, Judaism and Islam)". He noted that Islam does not allow for interest, and requires that transaction fees be "based on the time it takes to process a transaction" and that "Jewish and Christian traditions tell us that we should be particularly concerned when the wages of working people become subject to debt".

Professor Duggan highlighted "the inequality of power that arises through debt… even though the debtor and lender may have begun their relationship as equals, over time, power shifts from borrower to lender, and the borrower becomes increasingly vulnerable". He noted that all three major western religions "tell us the entire community must be concerned about vulnerability, that debt is not simply a private matter between lender and borrower".

Professor Duggan also cited Adam Smith, and noted that Smith "advocated for the market economy on ethical grounds … claim(ing) that each individual pursuing their own interests would provide the greatest possible material benefit to society". He suggested that the west has accepted Smith's argument "and allowed the market to flourish, and it has worked (produced) benefits (as) Smith predicted". Professor Duggan also cited Milton Friedman, and claimed that Friedman "did not suggest markets should operate

without constraint ... (and) said (markets) must operate while conforming to the basic rules of society, both those embodied in law and those embodied in ethical custom".

Professor Duggan advised that when the Board establishes maximum charges for payday loans, it will provide the rates and payday lenders legitimacy, "that our society sees them as fair and reasonable". He argued that the Board should not focus on the financial viability of payday lenders but, instead, "protect consumers". He suggested that the Board's legislated mandate "does not instruct (the Board) to consider whether or not (payday lenders) are able to earn a profit", opining that while the Board may consider that matter, it is not required to do so. In support of his position, Professor Duggan referred to the reference to the Board's task in the government's *Speech from the Throne*, noting that the mandate was described as a means of consumer protection. He further supported his argument by quoting from the Honourable Gregory Selinger's comments to the legislative committee considering the mandate (the bill providing the mandate):

> "It is our opinion that right now the industry is actually operating outside of the *Criminal Code* and is, in fact, illegally charging interest rates which go beyond the 60 percent maximum described."

Professor Duggan noted that the CPLA sought an amendment to the bill that would have made the viability of the payday industry as important a goal as consumer protection, but was rebuffed with no support from any party of the legislature.

For Professor Duggan, whether or not the industry can profit under the rules to be established by the Board is "irrelevant"; he cited examples where the profitability of an industry has been of no concern to legislators.

He questioned the validity of the industry's surveys, which provided support for the industry, and he focused instead on individual comments from industry focus groups that had denounced payday loans. As well, Professor Duggan cited "witnesses who are not payday advocates" reporting such comments as: "poor, burdened with multiple loans,

sometimes unable to meet basic needs because their bank accounts have been emptied out by lenders".

Professor Duggan acknowledged payday loan critical comments, such as reports of "families whose entire social assistance or paycheque is consumed in paying debts". He reviewed the presentations of women's shelters and other advocacy groups, in support of his position, and quoted from a speaker to the legislative committee who claimed, with respect to clients reported to use payday loans for gambling and alcohol:

> "These people have exhausted their friends and their families for money, and still continue in their addictions. These institutions of finance (payday lenders) … helped them to be in a position of continuing their addiction. Why are charges not being laid? Why are these places not being closed down? Why are people able to flaunt the law in the face of society?"

Professor Duggan referred to the creditors insurance, supported by Mr. Taylor of Progressive Insurance Solutions, as "the most compelling portrayal of vulnerability and desperation", suggesting that payday borrowers are being taken advantage of and harmed by the industry, not helped, although he allowed that some payday loan borrowers may be helped by the advance of a payday loan:

> "We don't weigh up the benefits and harms and if 60% of people are benefited and only 40% are harmed (and) leave the product in the marketplace. We don't sacrifice the minority for the majority. Instead we ask - in the normal course of events, does this product cause harm to a significant number of people? There is no numerical test for what significant means. In our society, we require regulatory bodies … acting on our behalf, to decide whether or not (harmed payday borrowers) are significant. Are they significant? To ask the question is to answer it."

Professor Duggan reviewed the testimony of the hearing through the week of December 3, 2007, and concluded that none of the maximum fee levels proposed or discussed by the

CPLA, Rentcash or the witnesses engaged by industry interveners were acceptable (none of CPLA's or Dr. Gould's $20-23/$100 plus regulatory costs, Mr. Schinkel's $26.87, or Dr. Clinton's $37). He noted the *Criminal Code*'s definition of interest ("Interest means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form") and proposed that the Board similarly define what is to be included in the Board's maximums.

Professor Duggan cited payday industry advocates as arguing that "living under the definition of (interest) in *the Criminal Code* will destroy their industry", advising he was not convinced, citing the continuing existence of tax rebaters subsequent to regulation twenty years ago. He noted the argument that it could be considered unfair that part of the financial industry, namely payday lenders, would be required to operate under stringent rules, and suggested that if banks and credit unions were to offer payday loans under the same definitions and terms as payday lenders, they too should be subject to the same restrictions. He suggested that "government regulates financial institutions because we have concluded that a well-regulated financial sector benefits our society … use(ing) the same rationale for regulation that Adam Smith used for the market economy".

Referring to payday industry advocates who "have argued if (the industry) does not survive, those who use their services will be in desperate straits (and) that payday lending is an essential service", Professor Duggan opined "payday lenders should not portray themselves as providing a social service. As Adam Smith said 'I have never known much good done by those who affect the trade for the public good, it is an affectation, indeed' ".

Dr. Duggan suggested there were "models of potential solutions (to payday lending) in place" citing Aski Financial, which, Dr. Duggan claimed "provides a service very similar to that of payday lenders while adhering to the *Criminal Code*". He also referred the Board to the *Buckland and Martin study* documenting payday loan alternatives "currently

active in Florida, Arizona, New York, Quebec, Ontario, British Columbia, and, here in Winnipeg, in West Broadway and Winnipeg's North End".

Dr. Duggan advised that while "access to short-term credit at fair and reasonable rates is important; however, payday lenders are not part of the solution, they are part of the problem". In conclusion and in response to questions from the Chair, Professor Duggan indicated:

> "We don't live in an economy of unfettered freedom. We live in an economy in which we make a judgment on whether or not certain transactions should go ahead. And as we've said, transactions which are too risky, which would require more than 60 percent interest, are unwise."
>
> "The payday lenders' argument (on whether in the absence of payday loans borrowers will secure funds from even higher cost sources in the unregulated market) has a fatal flaw … on one hand, they argue that their customers choose them freely, that they have bank accounts, that they have access to alternative sources of legitimate credit, and yet they choose them for convenience. If that is true, it cannot also be true that they have no options … yes, there's a danger now of illegal lending, but the answer to that is not to allow lending at exorbitant rates of interest but to ensure that there are (lower cost) alternatives available."

Professor Ruth Berry, a retired professor at the University of Manitoba, made a presentation related to her interest in financial issues of families and individuals. She reported on her recent work for Industry Canada, the Office of the Superintendent of Bankruptcy, on the effect of payday loans as related to consumer bankruptcies.

Professor Berry reported that her study used e-file data from 2005 and 2006 bankruptcy and proposal filings, and, as payday lending tends to be an urban phenomenon, she relied on the census of metropolitan areas (CMAs) for the largest cities in Canada, including

Winnipeg, although Winnipeg isn't one of the largest CMAs. She provided background on the results of her study pertaining to Winnipeg, after indicating she was not in a position to discuss the entire study.

Professor Berry reported an absence of Canadian research on the effect of payday loans as to consumer bankruptcy, noting the presence of two schools of thought on the issue. She reported the views that payday loans are either a terrible, usurious practice, with the least knowledgeable and most vulnerable consumers falling prey and proceeding to "rack and ruin", or, alternatively, payday loans are a very rational solution for consumers who don't have many assets and have a great need for short-term funds.

She advised that she had reviewed Canadian and American literature on payday loans and found that consumers using payday loans tend to be younger, urban, live in the western provinces, tend to have post-secondary education, and have household incomes lower than $30,000 a year, with (92%) favourable attitudes toward their payday loan experience and not being enamoured with mainstream banks and credit unions - finding them to be invasive and not convenient. Professor Berry noted her findings that payday borrowers were pleased with the service, locations and extended hours provided by payday lenders.

Professor Berry reported that for 2005, 19% of the insolvents with payday loans owed more than 25% of their monthly income to payday lenders, while in 2006 25 percent of the insolvents reached this threshold. As to household monthly incomes, she advised that her sample revealed insolvent households were even more severely impacted by payday loans, with 25% of household monthly income in 2005 and 29.5% in 2006 being owed to payday lenders.

Professor Berry reported that a *Financial Consumer Agency of Canada* study showed that fewer than one in ten reported users of payday loans have filed for bankruptcy, and noted that the finding was consistent with her findings, and that more than 10% reported borrowing to repay their payday loan.

She then reported on her findings with respect to summary administrations, straight bankruptcies, and Division 2 proposals, related to loans consumers pay back over a period of time. She noted that the survey results indicated that for both of the years surveyed, Winnipeg had the highest number of payday loans in both the summary administration files and the Division 2 proposal files, considerably higher than any other CMA in Canada. She noted that 20.4% of the Winnipeg files contained payday loans in 2005, and 23.7% in 2006. She advised that 80% of the payday loans referred to in the bankruptcy and proposal survey related to loans from members of the Canadian Payday Loan Association and others identified by the Bankruptcy Office as payday lenders; there were many other payday lenders that were not specifically identified as payday lenders.

Professor Berry noted that the Winnipeg survey sample included 320 files for each of the years of 2005 and 2006 of straight bankruptcies, and 144 files in 2005 and 128 in 2006 of Division 2 proposals. She noted that in all the data, including Winnipeg's, there was no material difference between proposals and summary administration bankruptcies as to the number of payday loans. She indicated that Winnipeg had the highest proportion of payday loans reported in all seven CMAs surveyed.

Professor Berry reported that for 2005, the number of payday loans held by Winnipeg consumers filing bankruptcy or a proposal ranged from 1 to 9 in Winnipeg, with the mean number being 2.27 loans held by one person. She reported that for 2006 the range was 1 to 7 payday loans, with the mean being 2.62 – most of those filing indicated more than 2 payday loans. She reported the average dollar amount of the payday loans for the 2005 Winnipeg sample was $1,347, with a range between $25 and $10,000. For 2006, Professor Berry reported a lower average balance of $1,287, with a range between $75 and $6,500.

Professor Berry also reported that Winnipeg bankrupts had, for both 2005 and 2006, the lowest monthly income of bankrupts in her entire survey. She reported that insolvent consumers with payday loans owed on average 80-82% of their monthly income to

payday lenders, and, on a household income basis, 57%. She observed that it would be very hard to operate a household if you owed over 80% of your income to payday lenders, and that it would be almost impossible to repay the payday loan.

She also reported that payday borrowers represented in the bankruptcy survey were significantly younger, more likely to be single, generally employed - almost no disabled, students, people working doing household work, or retired, and had monthly income that was significantly higher for payday loan borrowers than it was for the other borrowers.

Professor Berry stated that among the reasons for bankruptcy, payday borrowers were more likely to report gambling, addiction problems and credit overuse, and often indicated having filed a previous bankruptcy. She also indicated that payday borrowers going bankrupt reported lower amounts of long-term and short-term debt than non-payday loan holders. She reported that these bankrupts went bankrupt with lower debt-to-income ratios than other insolvents, noting that this may not be a bad thing as it would "probably shortens the agony and misery of waiting to go bankrupt".

Professor Berry suggested that payday loans contribute to bankruptcy, stating:

- 1 in 10 bankruptcies includes a payday loan;
- That, if the loans were small loans, they wouldn't exacerbate the consumers' financial situation, but with the average payday loan outstanding being over $1,500, with an average number of loans of over two, it would be unlikely the payday debt could be repaid within the terms of the payday loan agreement; and
- Payday borrowers went bankrupt earlier than those without payday loans.

She suggested that the pressure of a large payday loan with "very tight terms" encourages people to select some relief from their situation through the route of declaring bankruptcy.

Professor Berry also provided the following views and comments:

- based on her reading of financial literature and her experience with wage and

price controls, and with usury rates in the United States, she suggests that restricting interest rates results in the price of the loans going to ceiling, even for the most credit-worthy borrower;

- payday loans may be useful in the short-term, and not too expensive for the short-term, and borrowers really like them, but not for the long-term; and
- the number of payday loans "carried at one time" and the duration allowed to be held should be restricted (Professor Berry cited Illinois legislation mandating that only one payday loan can be held at one time, and not be rolled over).

She concluded that a payday industry-wide database "might be helpful", to allow for checks to determine whether payday lenders were enforcing a rule that required only one payday loan to a consumer at one time.

3.3 Industry

Representatives from industry, including the payday loan industry, provided positive comments on aspects of payday loans and lenders:

- payday loans may be an effective assistance to some borrowers exposed to short-term emergencies, if accessed only once or twice a year;
- payday lenders report having been cooperative with social agency efforts to assist the agency's clients in managing their debt issues;
- a payday lender having agreed, on occasion, to reduce or eliminate interest charges on a loan in default; and
- with respect to a pawn shop, the owner reportedly lent the client money at no interest.

Ms. Crystal Laborero and **Mr. Rob Valentine** presented on behalf of Aski Financial (Aski), an aboriginal led and driven financial services company that operates primarily through telephone, fax, and meetings. These include meetings often held in First Nations

communities, specializing in serving aboriginal-owned and operated businesses, including First Nation bands, associations and organizations.

She indicated that Aski provides employer benefit loans, analogous (other than with respect to rate) to payday loans, tax preparation, loaded debit cards, and financial awareness education. Subsequent to signing up an employer client, Aski will advance a loan to qualifying employees for a term of up to ten weeks, at a charge of 60% per annum interest plus an administration fee that approximates in aggregate $35 on a $300 loan. Ms. Laborero reported that the average loan is for $1000, to be repaid over 10 weeks, and the charges on that loan would be an administration fee of $40 plus interest reflective of 60% per annum. The responsibility for repayment was reported to lie with the borrower, with the client employer responsible for making payroll deductions and remitting payments to Aski. The borrowers provide wage assignments to Aski.

Mr. Valentine indicated that Aski meets a gap in financial services for aboriginal communities, specifically First Nations, of which there are 63 in Manitoba, 19 reported as remote or isolated. Mr. Valentine indicated that Aski's clients have previously relied on non-bank entities such as payday lenders, and that Aski and Tribal Wi-Chi-Way-Win Capital Corporation (TWCC), the latter a developmental lender, lend into their marketplace so "that over time, clients would develop a credit history and migrate to the larger financial institutions".

Mr. Valentine indicated that the challenges faced by the clients of TWCC and Aski included risk profile and the lack of operating assistance, resulting in both agencies pricing their services adequately to meet costs and generate a profit that can be repatriated to their clients through preferred rates.

Mr. Gerry Charlebois represented his firm C11 Holdings Limited, a firm with three payday loan offices, including one in Thompson, Manitoba. Mr. Charlebois raised the following points:

a) his firm is funded through personal loans/advances from the owner (no bank being willing to lend with the regulatory risk present);

b) his market niche was to "establishing and competing (by) … offer(ing) a comfortable and confidential service to people who often have no one else to turn to;

c) his firm takes high risks with its lending, and, in so doing assists the firm's clients when conventional lenders will not;

d) clients regularly express their thanks for his firm's service, even occasionally providing a small gift to the firm's staff members "who have done what they could to help them";

e) while some clients take out loans once to meet an emergency, others have used it more frequently "until they have time to get back on their feet financially";

f) "when clients who have run into difficulty and cannot repay on time, and may require an extended time to repay or make monthly payments … one such situation … (the firm) provided … with interest free monthly payments to repay her loan and get back on her feet";

g) there have been cases "of people requiring much needed medical supplies that did not have the resources to pay the pharmacist, but could not wait until they received their pay cheque … people have used our services to purchase bus tickets or airfares to get back to work";

h) clients requiring to be put on a payment plan are not charged interest or penalties, though "their capacity to re-borrow diminishes, and they have to work to re-establish their credit (with the firm)";

i) a higher transient population in smaller northern communities, collection and bad debt costs are higher; and

j) 2,500 people have borrowed from the firm since its inception.

Mr. Charlebois reported that as owner his compensation was modest, and that his firm's clients have choices when choosing a lender and are astute enough to make the right

choices. He advised that payday loans services are sought by Canadians for various reasons – convenient, no appointment requirement, quick response. He suggested that no rate caps were required, noting that "our Canadian free enterprise system has always been self-regulating". He opined that enforcement of the CPLA's voluntary Rule of Conduct Practice Code should stop "any business operators (which) may be operating a shady business".

3.4 User of Payday Loans

Mr. Wayne Vantassel presented on his own behalf, representing himself as a higher-than average income earner who has used payday lenders and found them accessible and useful.

He advised that following refusals to advance credit by finance companies he approached the Cash Store, though "there may be other payday loan companies which may offer loans at a lower rate", stating "I prefer to take the loan by way of a card instead of cash (and) they are always friendly and provide me excellent service. I can take 20 to 30 minutes talking to them. My experience with them has always been a good experience. I am quite comfortable with them."

Mr. Vantassel concluded his presentation with the following report:

> "I know some people have the view that these companies are shysters or loan sharks. Nobody forces me to take payday loans. It has been a positive experience .. they call me before the loan is due to remind that it is due (and) I appreciate these calls .. They are very upfront and straightforward as to what the total cost will be. I have seen the way they treat other customers and have been impressed by the professional way customers are treated. They have always answered any question I had. The Cash Store manager had asked me whether I was willing to share my views with you on payday loans. I accepted to do so. I felt it was the least I could do given the friendly way which they treat me."

3.5 Sworn Presenters

Mr. Jim Scalena, Superintendent of Financial Institutions for the Province of Manitoba attended and, after being sworn in, responded to questions from the Chair.

Mr. Scalena reported that the Province regulates the practices of insurance companies offering creditor insurance in Manitoba. He indicated that there is a regulatory framework regulating all insurance in the Province of Manitoba involving the *Insurance* Act, regulations and the *Insurance Council of Manitoba*, which was set up under the legislation.

Mr. Scalena indicated that the *Insurance Council of Manitoba* (Council), through delegated authority, licenses, sets standards, investigates matters raised with the Council and disciplines agents, brokers and adjusters. He further indicated that the Council has rules that agents and adjusters have to follow, and codes of conduct. He also indicated that the Council works closely with a number of insurance industry associations to provide a full regulatory framework for insurers. The Council mainly deals with the marketing of insurance products rather than insurance policy design. The Insurance Act covers all insurance through delegated authority, and oversight of the distribution of insurance products has been delegated to four Insurance Councils - a life insurance council, a general insurance council, an adjusters' council and an administrative council that oversees the administration of the full Insurance Council of Manitoba, each council having six members appointed by the Minister of Finance. The federal Office of the Superintendent of Financial Institutions (OSFI) has responsibility for the solvency of insurers and Manitoba's Superintendent of Financial Institutions and the Council relies on OSFI; most insurance companies are federally incorporated.

Mr. Scalena reported that all insurers selling group creditor insurance have to be licensed, and that it is generally accepted that individuals that enrol consumers in group creditor insurance do not require an insurance licence.

Mr. Scalena indicated that when faced with any questions about group insurance or group creditor insurance, the Council and Mr. Scalena take the position that the insurance companies are responsible for all aspects of the insurance, from manufacturing the product right down to the sale of the product.

Mr. Scalena indicated that there are no limits on the commissions that insurance companies may provide to the lenders and/or brokers related to creditor insurance, and that there are also no guidelines regarding the pricing and marketability of such insurance products other than guidelines established by the Canadian Life and Health Insurance Association, which outlines best practices for insurers.

Mr. Scalena also reported that there are no guidelines with respect to acceptable claims ratios for creditors' insurance, and that the Council and he have always taken the position that as claims ratios dictate profitability and there are a number of participants in the market, the assumption is that the market will control the pricing and the commission rates.

Mr. Scalena indicated that he did not receive any specific reports providing claims ratios for creditors insurance sold in Manitoba, commenting that all insurance companies make annual and quarterly filings to regulators with exhibits to support their financial statements, with the information provided grouped into classes of business such as life insurance, accident and sickness insurance, individual insurance and group insurance. He noted that exhibits related to group insurance generally has group insurance included in totals for "other lines of business" and do not break out a line of insurance products sold through a particular group of financial institutions.

Mr. Scalena reported that a creditors' insurance policy could be sold having a loss ratio of 10 percent and that such a circumstance would not normally be known by the regulator; the Council wouldn't normally be looking for such information, though if there was a complaint, the Council or he could request specific information from an insurer, the insurer having an obligation to respond.

Mr. Scalena indicated that if a creditor's insurance policy had a low claims ratio, there are no guidelines or regulations providing his office with authority to cause the policy to be amended.

Mr. Scalena indicated that his office had received no complaints from consumers related to creditors' insurance over the past year and, with respect to complaints that were received, they were mainly concerning claims matters and the issue of pre-existing conditions.

Staff Sergeant Larry Levasseur, in charge of the Commercial Crimes Unit for the City of Winnipeg Police Service, provided responses to questions posed by the Board.

In response to the question whether the Winnipeg Police Service had investigated any complaints related to a breach of Section 347 of the *Criminal Code*, Staff Sargeant Levasseur indicated that since April of 2005, he has overseen one of two investigations resulting in charges authorized by the Attorney General's office to proceed.

He noted that the first investigation began in 2001 by following a letter from a Small Claims Court hearing officer concerning several claims submitted by *Money Instantly Services* related to defaulted payday loans, suggesting that the company was charging criminal rates of interest. He advised the investigation involved an actuary who calculated the interest being charged to be in the area of 10,000 percent, and that the company's principal was charged but died unexpectedly, in the fall of 2003, prior to the matter proceeding to preliminary inquiry.

Staff Sargeant Levasseur reported that the second case was a proactive investigation undertaken as no findings of culpability had been made in the first case and the industry appeared to be flourishing. He indicated that the investigation of *Paymax Canada Incorporated* began in 2004 and also involved the services of an actuary, with the actuary's findings mirroring that of the first investigation. He advised that charges were authorized by the Attorney General's office in 2005; in early 2006 the firm and its offices

were criminally charged. By May 2007 an agreement was reached between Crown and defence counsel which resulted in a stay of proceedings against the two principals of Paymax and a guilty plea by the corporation to charging criminal rates of interest.

In response to a question from the Chair as to whether any other lending activities in Winnipeg involving rates in excess of 60 percent per annum, other than payday lending, are occurring, Staff Sergeant Levasseur indicated no awareness, noting that the *Criminal Code* requires that an actuary be used to figure out the rates of interest being charged.

Also in response to questions from the Chair, Staff Sergeant Levasseur advised any monitoring of pawn shops related to lending practices fell outside his area of responsibility, and that, to his knowledge, loan sharking (which to him conjures up visions of gangsters, back alley exchanges and threats of violence for recouping monies loaned, in areas more in tune with the drug trade) is not reported to the police.

Mr. Norman Glass, President of the Manitoba Pawn Brokers Association and an owner of pawn shops, provided sworn testimony related to pawning and pawn shops. He advised that the term "pawn" means a collateral loan, though the “street” definition might be “I'm just pawning it off on somebody”.

Mr. Glass advised that there were no laws, regulations or licensing requirements regulating the fees or interest charged by pawn shops, other than Section 347 of the *Criminal Code*, which he indicated was enacted to “protect society against … gangsterism (loan sharking)…”, and that the section hasn’t been enforced “over the pawn brokers or other similar industries”.

Mr. Glass, responding to the question “do pawn shops make loans?” indicated “I guess you consider each transactions of ours a loan” and, to the question, “an unsecured loan, one that isn't secured by someone pawning something”, “we do not, though some shops are doing so (making the equivalent of payday loans)”.

Mr. Glass reported that pawns are generally for one month, with the charges being a 5% interest charge and a 20% storage charge related to the item itself, that brings the overall charge to 25% percent. He indicated that extensions or renewals of the pawn are made on the same terms as the initial one-month pawn.

Mr. Glass advised that 75% to 80% of pawned merchandise is reclaimed by the person making the pawn. He noted that "some misunderstand the (concept) and think they're selling it, (so as to those that do not reclaim the merchandise) the people who brought them in initially had never intended to pick them up, because of their misunderstanding of the term 'pawn' (having considered the transaction a sale)".

Mr. Glass indicated that there can be no assurance that the item pawned has not been stolen, advising "if you do it long enough, you get a feel for your customers, and it's a gut thing. It's not something that's -- I mean, if you're taking in a vehicle, they produce documentation like a registration or something of that nature. However, if they bring in a DVD player, there's no title that goes along with it. So it's a -- it's a bit of a crapshoot for the pawn broker."

Mr. Glass concluded by indicating in response to a Board question that that the payday loan industry has reduced pawn shop business "a little bit".

4.0 INTERVENERS' RECOMMENDATIONS

Introduction

The Coalition, Assistive Financial Corporation, Progressive Insurance Solutions, Sorensen's Loans til Payday Inc., Canadian Payday Loan Association, Rentcash Inc., 310-Loan and Cash-X provided closing statements to the Board, and set out their recommendations and comments with respect to the Board's mandate.

With respect to the establishment of a maximum cost of credit to be established by the Board, the interveners provided a wide range of recommendations:

a) Coalition - $15 per $100 of value received;

b) Canadian Payday Loan Association - $23 plus 60% APR interest, 88 cents with respect to regulatory cost recovery, and an allowance for recovery of hearing costs;

c) 310-Loan - $25.00;

d) Cash-X - $30.00;

e) Sorensen's Loans til Payday Inc.- $30.00; and

f) Rentcash - $37.50 plus 59% interest, an allowance for regulatory cost recovery and indexation of the cap to recognize general inflation.

Various recommendations were made with respect to default fees and other matters, while the Coalition, CPLA and Rentcash found favour with a "simple" rate cap rather than a sliding scale. Neither Assistive Financial nor Progressive Insurance Solutions recommended a level for the rate caps.

Basically, industry interveners sought a rate cap that would allow the industry to continue more or less as the majority of the industry has, setting rates to meet firm-specific requirements for meeting costs and producing profits, while requiring certain smaller

firms with rates above the recommended caps of the interveners to either reduce rates or leave the industry. CPLA, with the most prominent member firm being National Money Mart, which has one of the lowest fee schedules in the industry, proposed the lowest fee cap recommended by industry. Rentcash, which operates under the broker model, proposed the highest fee cap. The Coalition recommended a rate cap below that now offered by the vast majority (if not all) of the current firms in the industry.

Industry interveners held that the Manitoba and Canadian payday loan industry is competitive, and in need of regulation primarily to legitimize the industry (with respect to Section 347 of the *Criminal Code)*, unable to secure a judgement against a debtor in Manitoba and the subject of several class action suits. The Coalition held that rates of the payday loan industry are far too high, representing an undue burden on their borrowers, and that a much lower rate cap will bring cost reductions to borrowers and incent the industry to become more efficient. The Coalition opined that the industry represents an oligopoly, and is heavily concentrated with two firms holding two-thirds or more of the Manitoba marketplace.

Cash-X

Cash-X opined that four assumptions related to the outcome of the proceeding and the basis for the decision of the Board were reasonable, those being:

1. Regulation is required to provide for consumer protection;

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

3. Regulation should be based on firms rather than volumes; in order to maintain reasonable market stability, regulation should not concentrate on a large volume firm, translating that firm's results to the other firms; and

4. The Board should employ reliable data, not “guesstimates” or averages, with respect to loan volumes, payday firm expenses, etc., as inappropriate maximums and/or rules arising from the use of inaccurate data could lead to “massive layoffs, entrepreneurs going bankrupt, landlords losing tenants and … the ripple economic impacts (associated with) large industry closures.”

To arrive at its recommendations, Cash-X advised it had used and amended a spreadsheet of “representative” industry volumes and costs submitted by Coalition witness Dr. Robinson.

Cash-X adjusted Dr. Robinson’s spreadsheet for the following:

1. Money Mart has no volume of payday loans in Quebec;

2. To allow for 24-hour stores and to approximate the distinction between small, medium and large stores so as to eliminate the “problems” of using store averages;

3. A revised assessment of Rentcash costs, employing Rentcash’s most recent public financial statements;

4. Considering Rentcash stores in proximity to Money Mart outlets, using the data to estimate large, medium and small Rentcash store volumes; and

5. To “break-down” actual costs (used by Dr. Robinson) to recognize that, below threshold loan volumes, it is unwise to consider an operating cost per $100 of a loan.

Based on the results of Cash-X’s amendments to Dr. Robinson’s spreadsheet, Cash-X supports its recommendation that the maximum charge per $100 of loan should be $30.

Cash-X opined that its analysis clearly demonstrated that Money Mart may well be the only industry survivor if the Board established its maximum at the level recommended by

Dr. Robinson (i.e. $17 per $100 loan).

Cash-X argued that by adopting Dr. Robinson's recommendation the Board would create "a U.S. company (i.e. Money Mart) monopoly which (would be unlikely to) benefit customers". Cash-X also forecast that such an outcome would also lead to "massive (industry) closings" that would result in high costs for payday loan customers then required to travel by cab or bus to a Money Mart location.

Cash-X also forecast high Manitoba economic losses from a projected closure of 35 stores in Winnipeg, with an accompanying loss of approximately 120 jobs.

Coalition

The Coalition observed that its witnesses had been cross-examined by the Board and interveners for 10 or 11 days during the Winnipeg hearing.

The proceeding was described as a unique process, "… the only hearing that's even similar in terms of the issues … (was) the cheque cashing hearing (of late 2006 through to the spring of 2007, also involving payday lending firms) … apart from (that) proceeding, there is no Canadian regulatory precedent".

The Coalition also noted that the hearing had been complex, particularly as to the issue of proprietary information, commercial confidentiality, raising the question "… how do we determine appropriate cost-based rates when so much of the information is proprietary?"

The Coalition suggested that it is important to "…look for guidance from other sources … (which) should and must come from the United States". The intervener observed:

> "the industry has its roots in the United States… is more developed in the United States than in Canada, and … the debate (surrounding payday lending) has been hot and heavy and longstanding in the United States. Is (payday loans) a service for consumers or is it exploitation or perhaps -- a more nuanced approach -- perhaps a bit of both? There's much more American literature and there's much more regulatory

experience in the United States… we do have to look to the American experience."

Supporting its view that U.S. experience should be taken into account, the Coalition noted that between 30 and 40 states regulate payday loans by way of fee caps, and that in North Carolina, Oregon and the US Military, interest in a 36% APR was evident. The Coalition also noted Missouri, reportedly "where the payday lending industry in the United States started", and its Attorney General's "call for a 36% APR".

The Coalition suggested that two different approaches had been taken by interveners with respect to their presentation of evidence placed before the Board:

a) an adversarial "self-reinforcing" approach, described as "don't acknowledge your bias, approach from one, only, theoretical basis … tightly delineate your areas of inquiry, and focus on material which directly supports your analytical approach and stop looking. Don't look -- don't look towards anything that might test the premise on which you're advancing within that adversarial context"; and

b) an "inquisitorial, interdisciplinary approach", described as being "self-testing", comprising recognition that "… this is a relatively new area, acknowledge your bias, deal with them, explore the context, expressly identify and consider ethical issues, draw on as many sources of information as possible, and employ and test a variety of theoretical approaches to understand the consumer and the marketplace and, perhaps most importantly, expressly include and address material which may run in a different direction from your ultimate conclusions."

The Coalition inferred that industry interveners had largely taken the first approach, placing little information on the record related to their actual business experiences, while the Coalition, through its panel of witnesses, and particularly with Drs. Buckland, Simpson and Robinson, had followed the second approach, one of "internally test(ing) and retest(ing) … continually testing".

The Coalition suggested that its panel of witnesses had supported its evidence and recommendations through a process of triangulation, i.e. considering information from a number of perspectives. The Coalition, providing as an example its mystery shopping exercise (whereby payday outlets were visited and telephoned by team members, and surveyed for business practices and terms) claimed that its panel "… don't just find some supportive facts and accept them; they test it from different -- from different observations, from different sources of inquiry, and then they retest it."

The Coalition noted that its panel of witnesses had, unlike the industry interveners, engaged in an "express examination of the ethical issues, the really profound issues that are raised by the … recent phenomena -- of payday lending", expressing concern over the "high" rates, which "… challenge our basic notions of fairness when … comparing them to lines of credit or to credit cards, et cetera … there's something … about this issue that strikes a chord with many people; it challenges our notions of fairness".

The Coalition also suggested that " … the phenomena of payday lending has to be understood within the institutional context of the decline in mainstream banking services for low income persons, coupled with the economic stagnation (experienced by) the bottom two quintiles of the population".

On the question as to whether ethical considerations should be taken into account by the Board, the Coalition noted that, based on a survey of Canadian Chief Executive Officers "CEOs seem to be struggling with some of the same questions that (the Coalition's panel) are", and "that Canadian CEOs are preoccupied by ethical dilemmas … (with) a majority … believ(ing) that ethics have become more important over the last twenty years, especially in the eyes of CEOs from larger companies and those that are heavily regulated."

The Coalition suggested that interveners to the proceeding adopted two general perspectives on the payday loan industry, being either:

a) "… critics of the industry who argue that payday lenders prey on, exploit or trap their clients, whether through high fees on low income or credit-constrained customers, or (through) unfair business practices or the phenomena of rollover or repeat loans"; or

b) as enunciated by Rentcash's counsel, the position that " …payday loans are a product that helps consumers with (their) short-term financial crisis .. a service to people with a particular need … without these loans, many clients would either have no option or have to go to underground options".

The Coalition set out three perspectives as to the essence of exploitation, those being:

a) "… the classic or neoclassical approach (to defining a condition of exploitation involving imperfect competition), where the marketplace is an inadequate safeguard for consumers … consumers may face exploitation via a higher price when the market isn't perfectly competitive";

b) concept of relative advantage exploitation, arising from a rapid increase in a consumer's credit cost, "what happens … when one or two week short-term loans are converted week after week into multi- week, medium-term loans … in the fact of stagnant benefits"; and

c) concept of sufficiency exploitation.

The Coalition suggested payday loans qualified as exploitation on at least the first two of the above criteria, leaving the last criteria for further debate.

The Coalition also considered consumer behaviour, which it claimed was an important consideration because " …it's difficult for many … to understand why consumers would pay so much for (payday loans)", providing three perspectives on this matter:

a) neoclassical, the idea that "people are rational economic actors … (and) act in a

way that maximizes the personal self-interest"; and

b) the New Keynesian or institution approach, wherein "(while) people are rational actors… they are constrained by the institutional boundaries"; and

c) behavioural economics.

The Coalition suggested that the institutional context was important, because it was necessary to "… understand what's going on in a marketplace". The intervener noted that "… the social and economic structure of that marketplace is reflected in income distribution, which then shapes the markets". The Coalition cited Dollar Financial Group's (DFGG) Form 10-K, indicating that the parent company of National Money Mart believed that lower and middle income earners are a key market segment for the payday lender, suggesting that while "that doesn't mean that that's all they serve, but that (segment) is a core source -- a central market demographic … they're focused on."

With respect to low income Canadians, the Coalition noted that with "Canadians … increasingly unequal in their capacity to mitigate negative income shocks in bad times" that the "bottom 40 percent … of the marketplace … have seen both their incomes and their assets stagnate over the last twenty (20) years, particularly in the 1990s".

The intervener observed that consumer debt is high and rising, particularly in the case of lower income people, and that debt-income ratios "… are higher for the young and for those with low incomes", driven in part by the "key dynamic within the marketplace … the phenomena of consumerism".

Citing a variety of sources, the Coalition reviewed the supply side of consumer finance, "from the consumer perspective, what's going on in the marketplace". The Coalition claimed " …there's been a decrease in mainstream banking services for low income people … access to banks has become more difficult over time for many consumers, and … closings … have occurred in lower income neighbourhoods." The Coalition claimed,

based on the research and evidence of its witnesses, that "the overall trend is that payday lenders are disproportionately located in economically disadvantaged and vulnerable areas of the city."

The Coalition claimed that ethics, the circumstances of the borrowers of the payday loan industry and the actions of other lenders all "matter … context matter(s)". The Coalition observed that "… income and banking charges are important critical structural issues to consider regarding payday lending … they are affecting low and modest middle income consumers and the financial services they have access (to), so that instead of payday lending maximizing consumer welfare, as neoclassical economic theory might suggest, payday lenders may be reinforcing underlying economic inequality. And that's a particularly key concept when we look to the demographic of repeat borrowers."

The Coalition, supported by its panel of expert witnesses, made "… general observations about the Canadian population, (claiming) payday loan customers … tend to be younger, less educated, in larger families and have lower family income than the rest of the population".

With respect to the usage of payday loans, the Coalition held that "… frequent users tend to be more vulnerable than the payday loan population at large … whether it's 26 percent or 24 or 23 percent (frequent payday loan users of overall users), frequent users are a large percentage of the payday loan population… and … 52% of those using payday loans at least monthly have had incomes under $30,000 … that compares to only 32% of all payday loan users (having incomes below $30,000)."

Citing this data, the Coalition claimed that "… when you look at the people who are using this service most frequently… the individuals upon who (comprise) the real business case for payday lending, (you find that the industry) is really built upon repeat use (and as to) who are those people … in terms of income, more disadvantaged, not only than the general Canadian population, but even as compared to the payday lending population".

The Coalition advised that "financial options tend to be more limited for payday loan customers" and that "43% (of payday loan customers) live in a family without a credit card, as compared to 17 percent of the rest of the population … 48% stated they had no one else to turn to when they had financial difficulties, compared to 32% of the population". The Coalition held that "when (those without credit cards and no family to turn to are) hit with a negative income shock … then the options they have are obviously fewer".

With respect to the issue of regulatory intervention in the economy, Drs. Simpson, Buckland and Robinson, key Coalition witnesses, expressed a contradictory position to that taken by Rentcash witness Dr. Clinton, who was of the view that the market was working and competition was sufficient to provide consumer protection, suggesting the Board establish a "high" maximum cap.

Buckland and Simpson, representing the Coalition's final position on the matter, held that regulatory intervention was required when the market is "an inadequate safeguard for consumers", the situation they held as representing the payday loan industry.

Defending the position that regulation was required, the Coalition provided a context that included:

a) very high charges, both relative to other forms of credit and in absolute terms; Buckland et al claimed the unweighted average APR disclosed by their research for payday lenders operating in Manitoba was 771%, roughly 12 times Section 347's 60% cap.;

b) evidence that repeat loans represent a very significant element, if not the primary element, of the payday loan business, citing Ernst & Young's report "suggested that there were 15 repeat or rollover customers to every new one"; in addition, the Coalition cited a survey by the Financial Consumer Agency of Canada (FCAC) which indicated that 24-26% of payday loan borrowers took out a

payday loan at least once a month during the course of the year; Dr. Simpson's projection that "those who take out a loan … once a month or more frequently account for about 85% of all loans … by payday loan customers"; and an observationally-based study that revealed that of all the transactions observed, perhaps all or at least all but one involved a repeat loan; and

c) opined that payday lenders "encourage and need repeat loans in order to thrive", citing Dr. Buckland's comment "Continuous repeat loans demonstrate that … payday lenders are not in the market for short-term loans, but only attract customers that way. Many customers get trapped into back-to-back loans because they cannot repay the loan. The results for consumer(s) (are) a costly multi-week, medium-term loan."

Further to support its argument, the intervener cited evidence of firms in Manitoba "offering preferential rates for repeat customers", and holding that "repeat loans are relatively easy to obtain and that there are few barriers (to an applicant's) success in accessing repeat loans".

The Coalition provided an example of the overall cost of taking out very high cost loans on a frequent basis, citing "Dr. Buckland … compared a person taking 12 payday loans over the course of a year versus some(one) … using a credit card and paying off their credit card amount on a monthly basis (resulting in) costs of $768 for the person using 12 payday loans in a year versus $24 for someone using a credit card."

Further supporting its assertion that payday loans required regulation, and questioning the adequacy of consumer information provided by payday lenders to prospective customers, the Coalition claimed that its mystery shopping review of payday outlets revealed that "there was not full disclosure of all that a potential consumer might need to know in order to accurately assess the cost and ramifications of taking a payday loan".

The Coalition cited its witness Ms. Friesen's claim that "with the information provided

during the enquiry visit, it seems unlikely that a customer would be able to make quick, accurate comparisons between the different lenders of the full cost of taking a loan". The Coalition suggested that consumer awareness with respect to loan detail was also deficient with respect to allowing a consumer to calculate the amount that would be owed on a loan, and also with respect to the details and charges for optional services, and "saw this confusion and inaccurate information particularly pronounced (related to) default fees".

Overall, the Coalition perceived the payday loan industry as being in need of regulation, partly due to the matters raised above – high rates, insufficient consumer information, and also due to market concentration and barriers to entry into the industry. From the Coalition's perspective, neither improved disclosure rules nor additional legislation related thereto would be adequate to protect consumers, and that problems in terms of fair access to the marketplace and just and reasonable rates for consumers will require regulation, and should not be left to competition to resolve.

With respect to the industry's claim of efforts to assist consumers with debt management, the Coalition cited its mystery shopping survey results as providing indication that payday loan firms were not doing enough, including a noted absence of evidence of follow-up telephone calls soliciting timely loan payments in order to reduce high default rates and bad debt loads, or the making of pre-loan reference checks – the survey suggesting that reference checks that did take place happened after the loan had been advanced.

For the Coalition, the mystery shopping survey provided evidence that "… there's probably a bit more efficiency that might be available to the industry in terms of addressing issues of bad debt".

With respect to the issue of service levels associated with various sizes of payday lenders, based on its mystery shopping survey the Coalition concluded:

a) larger firms appeared to offer at least as high quality service as small firms;

b) high-volume stores appeared to offer as good service as low-volume stores;

c) large firms in general offered greater amounts of fee information;

d) a greater variability in the amount of information available for consumers occurred with smaller firms;

e) as to information requirements from consumers, the lender which required the least information was a large, well-established payday loan company, one of the top three; and

f) smaller firm outlets demonstrate greater inner city concentration.

In defence of the findings of the mystery shopping survey, the Coalition noted that there had been " …a very experienced survey team … (with appropriate) qualifications … people (with) a lot of experience in qualitative research in very difficult environments, … drawing on … interdisciplinary traditions: anthropological, geographical, economic, and finance".

The Coalition also commented on urban/rural issues, noting that the Manitoba industry has a heavy urban (Winnipeg) concentration. Of the 69 payday loan locations that were mapped by its researchers in September of 2007, 51 were in Winnipeg, another 8 in southern urban centres (such as Brandon and Portage) and about 10 were in other Manitoba communities. The Coalition adopted the evidence of Dr. Robinson to support its conclusion that the payday loan industry in Manitoba is highly concentrated in specific urban areas, and indicated that the concentration should be considered an important consideration in reviewing "the tradeoffs that (the Board) … may have to make".

Also in considering the issue of market concentration, the Coalition noted that when considering the rural market "… it's also important to understand that much of rural

Manitoba is not served directly by in-town bricks and mortar payday lenders, (as) … leaving aside Brandon, Portage, and Winnipeg, there are not many payday lenders … in the countryside."

The Coalition concluded that no evidence had been placed before the Board indicating that payday lender operating or bad debt costs were higher outside Winnipeg, citing Rentcash's counsel as follows:

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

The Coalition also observed that "Fast Cash" Flower Store in Steinbach, Manitoba was "among the lowest price payday loan providers in the province", suggesting that its approach provided "insight into the cost structure in rural areas".

With respect to the various operating models of payday lenders, the Coalition noted that the evidence demonstrated a number of different approaches, including:

a) not all payday loan outlets are stand-alone businesses, "some … have sought to achieve economies of scope through rather creative typical rural Manitoba fashion", such as the "Fast Cash" Flower Shop in Steinbach and a "laundromat and pawnshop" outlet in Ontario, suggestive of operations which "if they cannot get enough volume directly through payday loans, have opportunities to achieve economies of scope otherwise";

b) part-time payday loan operations;

c) efficient, high volume, multi-service fringe banks, offering as only one of the services payday loans (providing lower costs and economies of scope);

d) efficient mono-line (payday loans only) operations, with no economies of scope;

e) brokerage operations, with the loans being provided by third-party lenders and the payday firm acting as a broker; and

f) payday firms offering loans through the internet and telephone.

The Coalition commented on the variety of business strategies being conducted within the industry, some firms growing through acquisitions, others ceasing to offer loan rollovers, and others switching from brokerage models to direct lending.

The Coalition noted, when considering the cost structure and characteristics of payday lenders, that their outlets are relatively small stores, with loan volumes ranging from less than $1 million to a few of up to $7 million(in the Toronto area). The Coalition indicated an understanding that Rentcash's average store volume was about one loan transaction an hour in 2007 and 2006, suggesting that "there may be some opportunities … with the high fixed costs structure, that if volume increases, cost per $100 (may) go down".

For the Coalition, "the big issue … is (payday) operating costs … (with) consensus around … 75% of the costs (being) operating costs; salary, heat, light, etc. … and consensus … that these costs are relatively fixed, therefore, an increase in volume may result in a significant increase in profit".

The intervener noted that the second-highest cost element for payday lenders is bad debt costs, which the intervener suggested represented "much less than half of the operating costs", citing Ernst & Young's survey's report that "bad debt costs were about 21 percent of the total costs versus operating costs being 75 percent".

The Coalition noted that its witness, Dr. Robinson, had opined that Money Mart "tends to have a lower bad debt ratio (than the industry generally) … $8.51 per $100 (for operating costs) versus a bad debt cost of less than $2 (per $100). The intervener accepted the evidence that "there's a wide variance in bad debt ratio … if you compare the bad debt ratio of Rentcash versus Money Mart, (higher bad debt experience for Rentcash) it's

simply either a difference (as to) client characteristics … or is there an element of insufficiency in the handling of clients?"

The Coalition cited Ernst & Young's survey that found of the 19 payday firms for which they had data, about 14 had bad debt rates of 4.2% or lower, with 7 (including some smaller stores and Money Mart which does not offer loan rollovers), with loss rates of 2% or less.

Further with respect to bad debt costs, the intervener, in support of Dr. Robinson's claim that bad debt experience could be held to the range of 2% to 4% over the long-term, cited Ernst & Young's comment that there was a wide variance in bad debt experience. The differences may indicate that some lenders have not been as successful in screening customers for risk of bad debt as Money Mart. The Coalition suggested that by "asking for less credit information and … making (loan) decisions fast", Money Mart is not disadvantaged by "the large quantity of information requested (of prospective borrowers) by other payday lenders (which) doesn't seem to lead to anything (and may) go to the efficiency argument … there are some operators that are less efficient than other operators".

To refute the contention advanced by one industry intervener that "different bad debt rates are simply (due to) different client characteristics", the Coalition cited Mr. Reykdal's (of Rentcash) speech of September 2007, when Mr. Reykdal said that "Rentcash is moving from a high risk model to a low one. We're adding quite significantly to infrastructure, changing underwriting criteria, starting to look at customers with multiple loans from multiple lenders." Furthermore, in support of its argument that bad debt costs could be reduced with more careful management, the Coalition noted Mr. Reykdal's plans to make changes to store operations by instituting an audit department, increasing the training and development budget, and making a fundamental change in terms of general business practices and Rentcash's lenders' underwriting criteria. The changes were "starting to see an impact, as a result of these

efficiencies, on the bottom line".

With respect to the cost of capital (payday lenders' cost for the funds used to operate the business and issue loans), the Coalition supported Dr. Robinson's observation that the cost of capital has only a small effect on total payday lender costs. The Coalition cited CPLA's witness Dr. Gould's statement:

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

The Coalition noted Dr. Gould's basis for his assertion, a test of the impact of decreasing before-tax rate of return on equity from 20% to 10%, and an after-tax return of 12.8% to 6.4%, concluding that the changes would "barely (make) a 3/4 of 1% difference in the average per $100 cost of loan". The intervener further supported this view by citing Mr. Reykdal's rebuttal evidence and a statement by Dr. Gould made under cross-examination:

> "The choice of rate of return on equity and interest rate on debt does not make a significant difference … operating costs are by far the largest cost faced by payday loan providers while the cost of capital is relatively small. The choice of rate of return on equity does not make a significant difference".

The Coalition opined "the largest risk faced by any payday lender is that they won't develop enough volume", a view supported by Dr. Robinson and not contradicted by any party or witness to the proceeding.

The Coalition reviewed its perspective of the Board's options with respect to a maximum rate structure, and suggested there were two basic options: a) "a simple one … easier for consumers, or b) "one that is more reflective of the cost … because cost causality has always been a central concern to (the Coalition's members)".

The Coalition noted the evidence that "the cost to provide a five hundred dollar ($500) loan is not significantly more than the cost to provide a hundred dollar ($100) loan", as

reinforcing its view that payday lending is “a business driven by operating costs (and) the time … with a consumer does not differ appreciably given this (narrow) range of loans”.

The intervener acknowledged and shared Ernst & Young’s finding, confirmed as well by Dr. Gould and further supported by the observations of Ms. Friesen (one of the mystery shoppers) and Mr. Hansford, that processing the first loan for a customer is “much more” costly than a repeat.

With respect to what was cited as the neoclassical concept of exploitation, (a market that's imperfectly competitive and fails to safeguard the interest of consumers, particularly with respect to price competitiveness), the Coalition cited Dr. Simpson and his assertion that price competition is an important factor in considering fee regulation. The intervener suggested: “if there's adequate competition … you don't need rate regulation” and, if not, “then consumers are paying too much, and in the context of payday loans, where there's a high frequency (of loans) to particularly vulnerable people, vulnerable people are paying too much”.

The Coalition supported Dr. Simpson’s advice that “perfectly competitive markets tend to protect consumer interests” and that “under perfect competition, what tends to happen is that there's free entry and exit of firms … if they can't earn a normal profit … they will not enter the market, and (if they cannot) may, in fact, leave the market”.

> "If you're a small firm hoping to enter the market, … it would be difficult to compete if it cost you $22.88 (to make) a $100 payday loan and other firms can charge … less than $17. unless those (lower cost) firms are not willing to compete on price, and, in fact, are able to earn … above normal returns."

The Coalition asserted that the payday loan industry in Manitoba represented an oligopolistic market structure that is “heavily concentrated both in terms of number of stores and, more importantly, volume of business” with the largest two firms, Money Mart and Rentcash, (prior to Advance America’s recent entry into the market)

representing two-thirds of the outlets and probably over 80% of the estimated overall industry, a view confirmed by Mr. Reykdal – “in terms of stores, the marketplace is dominated by major players (and) in terms of volume, the major players have an even more dominant position”.

The Coalition reported that the market concentration led Dr. Simpson to conclude that an oligopolistic market structure existed in Manitoba, “where the dominant firms can influence a market in terms of prices and output”.

The intervener noted that the Manitoba payday lending market, where two firms have dominant position, “raises some questions about … analysing costs on an unweighted basis, as Dr. Gould is, or analysing prices on an unweighted basis, as Dr. Clinton is”.

The Coalition suggested that the dominance of 2 or 3 large firms in the marketplace may be contrasted with American experience, where “the payday cash advance services industry is highly fragmented … Advance America … the biggest player … had only about 11% (of the market)”.

The Coalition adopted the view of its witness, Dr. Simpson, in asserting that “there are economies of scale in the provision of loans which would constitute a barrier to entry … the larger outlets and larger firms can provide (loans) more cheaply.” The intervener, drawing on the testimony of Dr. Robinson and Dr. Simpson, held that there are “advantages of the economy scale in terms of information technology and information management training, advertising, including spill over effects … regulatory costs and, to a lesser extent, cost of capital”.

The Coalition further supported its view by citing Advance America’s published regulatory reports, which are “quite explicit about economies of scale … they talk about levering their brand name … into a creative favourable relationship with landlords, strategic vendors and other suppliers, and centralized support functions including marketing and advertising, accounting, finance, human resources, information technology

and customer support systems." The intervener also cited Money Mart, as having "suggested they had a huge advantage in terms of bad debt because of their voluminous information about consumers across Canada".

The Coalition also asserted the existence of economies of scope, with "Money Mart is the most vivid example of that which would constitute a barrier to entry in the event of meaningful price competition." The intervener also drew on the evidence of Dr. Simpson and Rentcash to support the claim that economies of scope are present, noting that "Rentcash is quite prudently trying to expand into (other service) areas, recognizing the advantage that Money Mart enjoys through its cheque cashing business and assorted other lines of revenue."

Responding to industry assertions that the payday lending market is marked by differentiation between the services and approaches provided by the various firms, the Coalition disagreed with Rentcash counsel's assertions of significant differentiation and cited Dr. Simpson's perspective:

> "This is a relatively homogenous product. Everyone's selling the same thing. Money now, for the promise to repay in the future."

As to what might be the signs of differentiation, the Coalition opined: "it's certainly not in hours of service. The lowest cost producer, or among the lowest cost producer (Money Mart), has the longest hours. The hours are shorter outside Winnipeg."

The Coalition also criticized the industry with respect to consumer information, adopting Dr. Simpson's view that:

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

The Coalition held that the matter of "imperfect" information is important because it "identifies a fundamental limitation in the marketplace" and "undermines Dr. Clinton's

whole analysis and … whole proposal to set the maximum fee based upon pricing information, given the inherent unreliability of the data that he collected".

The Coalition referred to Dr. Robinson's and Dr. Simpson's conclusion that "there is some evidence of high profits", citing "oligopolistic market structure, the significant barriers to entry, the imperfect information, and … little evidence of price competition within the meaning that economists use".

To support the view that there is little real price competition in the payday loan market, the Coalition cited the range of charges present in the industry for a $250 loan "a range from $44 to $109 … in a perfectly competitive market, you would not expect a spread of that magnitude".

The intervener cited Dr. Robinson's views on "the absence of price competition as the economists or finance professors would understand it … not(ing) that one of the big two (firms), Money Mart, has among the lowest rates, while (the other) one, Rentcash, has among the highest rates." The Coalition noted that Dr. Simpson had reported "a price spread range of 40%" and had objected to Dr. Clinton's suggestion that a 20% spread existed and was normal.

The Coalition suggested that in the financial services industry, price spreads are generally much lower, "you're often talking of prices and differentiations, not of 2% or 10% or 20% or 30% or 40%, but in the range of one-half to three-quarters of a point".

The intervener supported Dr. Simpson's evidence indicating that while "competitive models predict that entry of firms will induce price competition and that the high cost firms will in fact leave the market", the situation in the market is one of high prices and "little, although some, evidence of exit".

The Coalition also cited the findings of the UK Competition Commission on the home credit business, finding that firms were earning excess profits, with the "weakness of

price competition … due fundamentally to insensitivity of consumers to price and failures of lenders to compete on price".

The Coalition held that "some payday loan customers are experiencing exploitation within the marketplace … there's clear evidence of relative advantage exploitation (particularly) where the one or two (week) short-term loans are converted week after week into multi-week, medium-term loans, resulting in a rapid escalation of fees in the face of stagnant benefits".

The Coalition opined: "a clear case has been made for (the existence of) exploitation in the neoclassical and relative advantage sense".

The Coalition commented on the American situation, citing Mr. Reykdal's indication that "many jurisdictions in the United States have set maximum payday loan rates. The average rate caps range from fifteen dollars ($15) to seventeen ($17) per hundred ($100) borrowed."

The Coalition reported that "there's 8 states with regulated fees of less then 15%, 9 at 15%, 8 from 15.5% to 20%, and 3 over 20%, 2 with no limit, and (the cap) for 7 could not be determined".

The Coalition held that the American experience supported the view that "rates in a rate ceiling environment are likely to rise towards the rate ceiling". The Coalition also noted "an ongoing tension in the United States, even in jurisdictions which have implemented rate caps, there are some who are certainly moving to the 36 percent APR or bans".

With respect to the evidence placed before the Board by interveners, the Coalition opined that two different approaches had been exercised:

a) a self-reinforcing approach; and

b) a self-testing approach.

The Coalition held that it had taken the self-testing approach, whereas the industry interveners had adopted the self-reinforcing approach, and that the latter approach had resulted in important information not being placed before the Board. One of the matters that had not been thoroughly tested, according to the Coalition, was "whether payday loan providers in small locations will continue to exist" with the maximum to be established by the Board.

The Coalition noted that the rural business model may differ from that employed in urban settings, with part-time hours and payday lending carried out from the same location as a different line of business, but not "one piece of evidence (was) provided … by any of the Interveners (as to) what's going on in rural Manitoba from the perspective of these different business models".

The Coalition suggested that there were options allowing for payday lenders to stay in business in small communities under a rate cap that is below current industry averages, one option being the utilization of "different ways, perhaps innovative ways, of gaining economies of scope, and another is to establish different cost models". The intervener noted the evidence of a Steinbach flower shop, as being an example of "an innovative way to achieve economies of scope".

The Coalition also suggested that payday lenders operating in smaller communities could reduce costs through such measures as part-time payday operations, "keeping the store open for fewer hours, keeping some of those salary figures and heating and lighting bills down".

The Coalition also noted that data on the frequency of loans, repeat as well as new, was not placed on the record by industry interveners, while "American experience … suggests a high frequency of loans … (and) Ernst & Young (reports a) 15 to 1 ratio (repeat to new loans), and we have some limited data by the FCAC."

The Coalition opined that the payday loan industry interveners didn't respond to

enquiries related to repeat loan frequency because “they didn't want to know the answer”.

The Coalition noted that the Pollara survey, commissioned by CPLA “was quite happy to sample the political preferences of payday loan … borrowers, but information about frequency was sadly lacking”. The Coalition observed that Bannister, engaged by Rentcash “apparently has done some work (on the topic) (and) Dr. Clinton has seen it … but, again … certainly the Coalition has not”.

The Coalition also reviewed other areas where payday industry interveners would likely have considerable knowledge, but had not provided that information to the Board: “what's going on in the States? … information in terms of the US regulatory approach, how it's affecting firms in the States”. Again, the Coalition suggested that the information was not forthcoming because “(the industry) don't want to know the answer”.

The Coalition noted that it had “attempted to ask Mr. Reykdal and Dr. Clinton if they'd looked at this issue, and they were not able to share anything with me … (and that Board Counsel) in her cross-examination of Dr. Gould asked him, ‘Can you help us? You know, have you informed yourself of the regulatory experience of the US?’ And Dr. Gould had not. ‘Have you done your own research on whether there's comparability with respect to the product between the US market and the Canada market?’ Again, he had not.”

The Coalition suggested an inference be drawn, “that the industry has chosen not to ask these questions because there's information that might run contrary to their self-reinforcing model”.

The intervener cited the concerns expressed by industry interveners that the Board would establish maximum rates based on the efficiency model proposed by Dr. Robinson and Dr. Buckland, as that model could result in the establishment of maximums that would lead to “a significant exit from the marketplace by at least some payday lenders”. The Coalition noted that consideration of the efficiency model was not “novel”, and indicated

that such an approach was taken by the Board in its setting of maximum cheque cashing charges, and that Dr. Buckland had advocated an efficiency model in that hearing, (drawing on the work of Dr. Robinson).

The Coalition noted that industry interveners to the cheque cashing hearing had expressed a similar concern, that "they would be unable to earn a reasonable rate of return and there would be a withdrawal from the market, thereby reducing the availability of cheque cashers to the public" if the Board set "too low" a maximum.

The intervener noted that in that hearing the Board did "set maximum fees for cheque cashing sufficient to allow efficient cheque cashers within the fringe bank industry to remain in the marketplace", and that, for the Coalition, that represented "an endorsement of the efficiency model".

The Coalition noted that although the Board set lower maximums for cheque cashing than was proposed by the industry, there has not been any evident "stampedes of cheque cashers … fleeing the marketplace". The intervener suggested that the Board's approach to cheque cashing fees did not dissuade Rentcash, then not in that line of business, but now "attempting to expand their business in this market".

The Coalition further noted that although the Board had set maximum cheque cashing fees based on the efficiency model, that approach had also not dissuaded Advance America from entering the Manitoba payday loan market, which it did "rather aggressively in October of 2007".

The Coalition suggested that payday lenders "have a right, under this legislation, to earn a competitive return on their capital, provided they're efficient, (and suggested that) there are opportunities for efficiencies within the current players in the marketplace".

The Coalition cited CPLA comments about "certain payday lenders tightening their belts" and Rentcash's Mr. Reykdal's view that "there are real opportunities for industry

players under regulation and there are efficiencies to be gained in their current operations."

The intervener observed that Mr. Reykdal suggested that "the Canadian market is not as saturated as the U.S.", and indicated that Rentcash is likely to expand further in Manitoba. The Coalition also reviewed Rentcash's evidence concerning the composition of its current offices in Manitoba, noting Rentcash's reports of:

a) a number of recently-established stores - 9 of Rentcash's 26 Manitoba stores have been in operation less than three years, and 5 of those have been in operation for less than 12 months;

b) that it takes about 8 months for a store to break even on a monthly basis;

c) a second-year store is expected to have a higher volume than a first-year store, while a third-year store would be expected to have higher volumes than a second year store.

The Coalition noted that Rentcash's observation suggests there are significant opportunities for in-store volume growth, and that store volumes "are not frozen in time".

The intervener also noted Rentcash's indication that "when you're looking at new stores, because stores don't grow -- get to maturity -- until three or four years out, you'd expect the volumes in these stores to increase significantly over time". And that Rentcash had also indicated that the cost structure for … stores is … "relative(ly) fixed (and that) assuming you're running your business efficiently, a significant increase in volume given relatively fixed costs results in a significant contribution to your bottom line".

The Coalition opined that based on Rentcash's evidence, there are opportunities for improvements in results for current payday loan outlets, and also room for expansion in the number of outlets.

The Coalition focused on Rentcash, suggesting that out of “real challenges … come opportunities for efficiency”. The Coalition cited Rentcash Chairman’s (Mr. Reykdal) comments on the firm’s recent expansion, and that “there's growing pains and a learning curve involved in rapid growth and rapid change”.

The Coalition reviewed Rentcash’s 2005 acquisition of 99 Instaloan stores, noting the evidence that the integration of those outlets was “quite a challenge, because they were operating under a different business model, different risk tolerance, which goes to the bad debt issue, and different collection procedures, which again goes to the bad debt issue … a huge influx of new stores, different model, different procedures but also opportunities for efficiencies over time”.

The Coalition reviewed Rentcash’s decision to cease providing loan rollovers, which, according to the evidence, led to “unforeseen significant challenges”.

The intervener also cited Mr. Reykdal's New York speech of September, 2007 as “reinforc(ing) the (Coalition’s claim for) opportunities for efficiencies”, suggesting that payday lenders are “not businesses frozen in time and that there are active/proactive steps that could be taken”.

The Coalition quoted from Mr. Reykdal’s speech to underscore its view that efficiencies could be wrought out of current payday lending operations, Mr. Reykdal having said:

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

And,

> "We have made a fundamental change in our business in terms of how we deal with our business practices as well as our lenders' underwriting criteria, so it's unfair to

look at us a year ago as compared to today."

The Coalition noted that Rentcash "anticipates volume gains at the onset of regulation and (an) opportunity to take market share from other operators, specifically … those who are still doing rollovers". As to the effect of rate caps and Rentcash's expectations, the Coalition cited Rentcash as indicating: "if there's downward pressure or any rate compression, we feel that we can offset that by cost reduction."

The Coalition also suggested, and noted that Mr. Reykdal had confirmed the expectation, that Rentcash could "reduce its costs of loan capital by eliminating the third party lender (and) moving to a different model".

The Coalition reviewed the concept of a "just and reasonable rate", filing a paper entitled "*What is a Just and Reasonable Rate?*", written by an articling law student (Ms. McCandless) addressing American and Canadian case law.

Citing a U.S. case, *Nebbia v. New York* (*Nebbia*), the Coalition noted it dealt with the regulation of prices in the dairy industry, a "marketplace with a number of suppliers and not a natural monopoly". The intervener opined that case concluded that it is "appropriate in certain cases to have regulatory intervention … (that being) where the market is an inadequate safeguard for the public or a group of the public".

The Coalition observed that in *Nebbia*, the "Court stated that the (American) Constitution does not secure to anyone liberty to conduct business in such a fashion as to inflict injury upon the public at large or upon any substantial group of people."

The intervener opined that "(given) the dearth of price competition … (and) evidence in terms of relative advantage exploitation … consumers are not being well served by the (payday loan) marketplace as it currently stands and … regulatory intervention as has been recognized by the provinces is required".

The Coalition opined "consumers … are paying far too much … because the market is

imperfect. And in particular frequent borrowers, the most vulnerable of the payday lending population, are paying far too much … (and) consumers require some relief because the marketplace has failed them".

Further supporting its view that the Board should not rely on the marketplace and competition to provide consumers just and reasonable rates, the Coalition relied on Goodman, *The Process of Ratemaking* (Public Utilities Reports, 1998) and *Federal Power Commission v. Texaco Inc.*, in stating:

> "This principle that the market will not necessarily create just and reasonable rates may help to explain why the standard of the unregulated marketplace … which … Dr. Clinton (Rentcash witness) is proposing, is not an acceptable, just and reasonable standard. Absent express statutory authority, a regulatory authority is without jurisdiction to defer to the prices that prevail in the marketplace when setting a rate standard."

On the concept of setting maximum rates, the Coalition suggested that American regulatory experience should be considered, and, quoting from *The Process of Ratemaking* opined:

> "When an administrative agency is charged with the task of setting only the maximum rate to be charged, the regulator certainly permits the company to charge less than the maximum to customers. However, one potential weakness with this form of rate regulation is the temptation for the administrative agency to extend 'a broad umbrella' over the less efficient companies, or to set the maximum level so high that there is little or no effective regulation over the earnings of any company."

Based on that view, the Coalition criticized CPLA witness Dr. Gould for recommending a maximum rate that "stretch(es) a broad umbrella over less efficient companies" and Dr. Clinton for "recommending setting the maximum level so high there's little or no effective regulation".

For the Coalition, a just and reasonable rate "should not be set high enough to guarantee a profit to the least efficient companies. This would either discourage efficiency or produce excessive profits for the more efficient companies".

The Coalition concluded its review of Ms. McCandless' paper by listing its key conclusions as to what should be taken into consideration by the Board in establishing a fair and reasonable rate (i.e. maximums):

- fairness to the consumer, balanced by providing a fair rate of return to efficient service providers;
- "the assumption that the market will create just and reasonable rates breaks down for certain industries or for certain classes of customers within non-competitive industries";
- allowing for "efficient businesses to earn a fair rate of return";
- "the fact that less efficient companies may not be able to continue … does not necessarily mean that the rate is not just and reasonable in the circumstances"; and
- "a proper balance of interests may require not the automatic acceptance of a middle ground but rather a full understanding and analysis of each party's position."

The Coalition claimed that its review of American and Canadian Court decisions "reinforces the concept that setting a just and reasonable rate involves a balancing of interests and an exercise in discretion on the part of the administrative agency (and while) the cost of service will be a factor that a board will consider in setting a just and reasonable rate … it need not be the only consideration".

The Coalition opined that the Board's Order should establish "a just and reasonable rate

for the maximum amount chargeable for payday loans" that … "the Board considers just and reasonable in the circumstances, having regard to the factors and data considered by it … (and) the weight (the Board should) give various factors will depend on the particular circumstances of the payday lending industry".

The Coalition noted that Dr. Robinson's recommended maximums (the "17% recommendation"), arose out of the witness' considerations of "an efficient mono-line provider with modest volumes ($1.6 million per store), and … would allow (such a firm) to earn a modest excess profit". The Coalition reminded the Board that Dr. Robinson had "tested (his recommendation for a 17% rate) against … an efficient, multi-service provider with high volume, $3 million per store … the U.S. regulatory experience … against U.S. data for Advance America average fees … U.S. data for Dollar Financial Group average fees and … internally tested and considered within the Coalition witnesses decision-making process".

The Coalition provided its suggestions for Board recommendations to government with respect to disclosure, providing a paper denoted as "*Objectives of Consumer Information on Payday Loans".* The paper provided a number of objectives with respect to disclosure and, as well, suggestions as to what would represent realization of the objectives.

The intervener opined that the key disclosure objective should be that "consumers should have access to sufficient information before making a decision to take a payday loan" and suggested that the package of information should be provided to each first-time loan applicant, and should include pertinent information on the nature of payday loans, the cost of the loan in dollars (and as represented as an APR), all terms and conditions of the loan, and information concerning the payday loan regulation and consumers rights – all written in plain language and presented in a reasonable font size. The Coalition suggested the payday loan applicants be provided an opportunity to review the information provided, apart from payday lender staff, prior to making a decision.

The Coalition further suggested that, as printed information may not be comprehended by

all applicants, verbal information should be provided to applicants by lender staff where requested and should be standardized and address the most significant provisions, terms and other consumer information related to a prospective loan. The Coalition also provided suggestions concerning loan posters and internet lending.

The Coalition reviewed what it portrayed as “the competing analytical themes”, as presented by the Coalition and the industry interveners. Beginning with Dr. Clinton, the Coalition summarized his analysis of the payday lending situation and the pending establishment of maximum rates by the Board as the argument that as “the marketplace ain't really broke (and) … with the exception of some really rough outliers (payday lenders charging fees higher than the maximum recommended by Dr. Clinton) … (the Board should) set rate caps close to the status quo, using pricing information in the (current) marketplace”.

The Coalition suggested that Dr. Clinton’s approach was “consistent with the traditional neoclassical approach … the assumption that (if) the market is functioning well, and that (prices are) competitive … the proper price signals are being sent and … consumer welfare is being maximized”. The intervener noted that Dr. Clinton’s view was based on a number of key assumptions, the primary one being “the assumption that demand and supply curves are in equilibrium and, therefore, observed prices are the right ones … the equilibrium prices”.

The intervener reported Dr. Clinton's argument to be, essentially, a tautology, being “allowing the market to take its course will work to the ultimate benefit of consumers and society in general … set the rate cap using market rates because the market is working properly”.

The Coalition also criticized Dr. Clinton’s analysis on several grounds, the first being that “unlike Dr. Gould and unlike Dr. Robinson, (Dr. Clinton did) not us(e) (actual) cost data (but used) price data”. As well, the Coalition noted that with respect to the use of price data, that Dr. Clinton had used an unweighted average, and that the approach was

incorrect as “two firms account for 80 percent of the market and one of those firms, Money Mart, has about 50 percent of the market in terms of volume, and its prices are much lower, so that (the) unweighted average is really not … reflective of the marketplace”.

The Coalition also took exception to the use of the pricing data made by Dr. Clinton, noting “he's tried to take the data for, for example, for $250 (loans) and simply divide it by 2.5 to get down to a (loan of) $100”.

The Coalition suggested that taking that approach “doesn’t work … when you're looking at (working with) sliding scales”.

As to Dr. Clinton’s suggestion that “overall public welfare, consumer welfare, are both advantaged by a relatively high fee cap”, the Coalition observed that “his assumption … that demand is perfectly inelastic … (is) absolutely inconsistent with Dr. Clinton's training and his analysis elsewhere on the record”, quoting Dr. Buckland’s comment: “This is a situation where the neoclassical assumption seems to be broken.”

The Coalition also criticized Rentcash’s submission that its “*Signature Loans*”, larger loans with an average initial duration of one month rather than 10-12 days, carry a higher risk of default and non-payment than its shorter-term payday loans. The Coalition cited Dr. Robinson’s analysis that suggested that while Signature Loans may be associated with higher than average defaults, the longer-term loans were also associated with lower operating costs and higher revenue, providing the lender an opportunity to “make a lot more money” than with the shorter-term, lower balance loans.

With respect to the argument of 310-Loan Company, the Coalition noted that 310-Loan accepted the premise that the payday loan industry market has imperfections but suggested the deficiencies could be remedied by the entry of new firms into the market (Advance America), improved consumer disclosure and relatively high rate caps.

The Coalition noted that 310-Loan had cited Missouri's absence of rate caps as an argument for the Board setting a high rate cap, having claimed that though there was no rate cap in Missouri, the payday lenders were charging an average APR of 422% - considerably lower than the average in Canada - or 16.1% of the principal, again much lower than in Canada. The Coalition accepted the data but provided additional context in refuting 310-Loan's view that "Missouri" provided a rationale for a high Manitoba rate cap.

The Coalition noted Missouri is surrounded by states with rate caps, and that Missouri's payday loan rates are higher than the rate cap in the regulated states that surround it. The Coalition also observed that Missouri has "about 20 times" the number of payday loan outlets in Manitoba, and that the "largest player in the (Missouri) market is only 5.4% of the market share … as opposed to Money Mart's dominant position in the Canadian and Manitoba marketplace".

The Coalition further noted that Advance America's rates in Missouri were 19% of the loan principal, compared to the firm's national rate average in 2006 of 15.4%, and that "there are major demands for lower rates (in Missouri), and consumers are still paying too much". The intervener also reported that, in 2005, the *Centre for Responsible Lending* suggested that the average Missouri rate was higher than that charged by payday lenders in 32 other states.

With respect to 310-Loan's views on improving disclosure and new firms entering the market as means to fix current market deficiencies, the Coalition suggested 310-Loan overstated the effects of disclosure and understated the market entry barriers, particularly those associated with the current concentration issue and the benefits of concentration to economies of scale.

With respect to 310-Loan's submission that the recent entry of Advance America will address the current concentration issue, the Coalition replied: "One more oligopoly does not a competitive market make".

For the Coalition, 310-Loan “fails to acknowledge the U.S. experience that rates tend to rise towards the cap”.

The Coalition criticized the analyses and recommendations of the CPLA and its witness, Dr. Gould, beginning with the use of "an unweighted average approach in terms of (determining industry) costs" and concluding with their recommendations to “setting rates to allow the average payday lender to operate (so as to) ensure high levels of competition and enhance a more diverse geographic presence of lenders”.

The Coalition notes that Dr. Gould didn’t “actually perform his own cost analysis of any firm … (but) relies on the cost figures from two sources; Ernst & Young and Deloitte & Touche … (to arrive at) an unweighted average”.

The Coalition claimed that “there's a lot of problems with the Deloitte & Touche study … they excluded 80%, 90% of the marketplace … (and) excluded the big two, Rent Cash and Money Mart”. The intervener cites Mr. Schinkel, a witness from Deloitte & Touche for the CPLA, as indicating that the Deloitte & Touche study “was not representative of the smaller private companies”.

As to the Ernst & Young survey, while the Coalition accepts the review as having value, it claimed there was one analytical problem with the cost data, that being that it represents a situation at a particular time, Ernst & Young having “took an observation of costs and divided it by the volume at the time … (with) an industry that was expanding rapidly”.

The intervener included in its commentary on the Ernst & Young survey comments from Dr. Robinson:

> "The data is a snapshot at a specific point in time of an industry that was still expanding rapidly. The cost figures lumped together stores that were just starting up with those that had an established clientele. Since E&Y presented its results on the

basis of dollars per hundreds of loans, stores that are in a start-up will show almost full cost but less than full volume and hence, biased the costs upward -- tremendously biased the costs upward."

As to Dr. Gould's evidence, the Coalition noted that he had "simply not explored the U.S. experience and the lessons that could be learned from that … and ignored the recent Manitoba experience (following the Board's cheque cashing decision)". The intervener also criticized Dr. Gould's use of unweighted cost data: "He's got this giant of Money Mart, approximately 50 percent of the volume, and in (his use of) unweighted cost average, he's given the same weight to (Money Mart's) costs, as the smallest low-volume producer". The Coalition observed that "if you use a weighted average … you get a cost of $17 … a $100 … (but) if you use an unweighted average you get a cost of $23.40."

With respect to regulated rate caps, the Coalition noted that Dr. Gould had accepted the concern that "(if) prices do tend to rise towards the rate cap, as some American experience has shown, what happens for those consumers who are paying lower rates because they're buying from (the) Money Marts of the world? They'll pay more (as rates rise towards the cap) and efficient firms will enjoy excess profits".

The Coalition supported its witness (Dr. Buckland's) opinion that "the market is an inadequate safeguard for consumers … and better consumer information is necessary but won't solve the market imbalance". The Coalition opined: "the best balance is one that allows an efficient service provider to earn a competitive return".

The intervener supported Dr. Robinson's suggestion that when considering an appropriate rate cap, the Board should focus on payday lenders' operating costs, and not "get distracted by … cost of capital, (and while) … some attention to … bad debts (is appropriate) … the big focus should be on … operating costs".

The Coalition acknowledged that with the balancing of interests represented in the Board's determination, "there will be balancing between some consumers or many

consumers paying excessive rates and some individual firms leaving the marketplace … a challenging issue in terms of small communities".

On the topic of rate cap design, the Coalition reviewed the two approaches suggested by Dr. Robinson, one based on simplicity, an across-the-board 17%, one advantage of that model being the facilitation of cross firm comparisons, and the other "going back to the concept of a just and reasonable rate, recognizing cost causality, and making sure that the fees paid by consumers approximate the cost they bring to the system, a more complex fee structure".

With respect to a rate structure based on cost causality, the Coalition cited Dr. Buckland's recommendation to take into account that "a single percentage right across the board does not capture the relatively greater costs for a small loan versus a larger loan (so) you might want to look at a sliding scale" and noted that "a single percentage does not capture … the fact that a repeat loan takes much less time to process than an original loan … (suggesting) an upfront first time loan fee".

As to the maximum ongoing charge for a loan in default, the Coalition suggested either 1% or 2% per week.

With respect to the basis for Dr. Robinson's recommendations, the Coalition advised that his approach sought to arrive at a maximum fee that would provide a minimal amount of "excess profit", i.e., forecast profit above his deemed reasonable rate of return on capital. In arriving at his recommendation, the Coalition reported that he had employed, in his analysis of Money Mart "some pretty conservative assumptions".

For the Coalition, Dr. Robinson's recommendation of a 17% across-the-board rate design was attempting to "allow a just and reasonable return for an efficient mono-line payday lender", and that "for an efficient, high-volume, multi-service payday lender like Money Mart, Dr. Robinson's conclusion is that his recommendation will actually (allow Money Mart) to earn an excessive return".

The Coalition noted that "even with a bad debt rate of 3% (the evidence was that Money Mart's bad debt rate was 2%), Money Mart … would earn an excess profit under his recommended fee structure, assuming that they charged at the maximum (the 17% recommended by Dr. Robinson)".

With respect to the Coalition's recommended "single rate" of 15%, the intervener noted that "most of the American states, including states with small populations and small densities, are regulating at rates at or below (that level)". In further defence of a 15% rate cap, the Coalition noted that "Advance America is expanding (in the United States) under the existing rate caps and perhaps the best example of that is Indiana, which has a sliding scale lower than the one recommended by Dr. Robinson … (yet) Advance America has grown in size by over 30 stores (in Indiana) in the past two years".

The Coalition further noted that "another check (as to the reasonableness of Dr. Robinson's recommended cap of 17%) is the American fees … of Advance America and Dollar Financial Group (which were, on a percentage disclosure, less than Dr. Robinson's recommended 17%)".

The Coalition defended its references to American experience as being relevant, noting that "it's important to understand that we don't have the wealth of regulatory precedent or experience … for payday lenders in Canada that we might have under a public utilities model … (and) U.S. experience is tremendously relevant".

The Coalition defended the evidence of Dr. Robinson against the criticism of Dr. Gould (who suggested that Dr. Robinson's approach to rate of return on equity and the interest rate on debt was incorrect) by noting that the evidence of all parties suggested that differences in return and cost of loan yields "does not make a significant difference" with respect to the overall cost per $100 for payday lenders – operating and bad debt costs representing by far the majority of overall costs.

The Coalition noted that Dr. Robinson's analysis of payday lending costs and returns and

his recommendation on maximum rates was supported by other members of the Coalition's witness panel, and particularly by Dr. Simpson and Dr. Buckland, who saw Dr. Robinson's recommendation of 17% "as being a conservative analysis with a lot of conservative assumptions", a view that the Coalition shared, noting Advance America's and Dollar Financial's American average fees from loans, suggesting their average to be 15% - 16%.

The Coalition indicated that in considering its recommendation, it had considered a maximum APR of no more than 36%, noting that a number of American jurisdictions and Quebec have limited maximum interest to that range, and despite their view that such an approach would not be feasible for the present payday lenders.

The Coalition cited the UNC Centre for Community Capital and its study of "consumer views in the aftermath of the closure of payday lending stores in North Carolina in 2006", and noted that the survey, which was of low and middle income borrowers, had concluded that "the absence of storefront payday lending has had no significant impact on the availability of credit for households in North Carolina … more than twice as many former payday borrowers reported that the absence of payday lending (had) a positive rather than a negative effect on their household".

As to its recommendation in this proceeding, the Coalition reported having been "heavily guided by the work of Robinson and Buckland in arriving at suggesting … an across the board charge … taking a lot of guidance from the US experience … (of) 15% percent for first and repeat loans".

As an option involving more complexity, "to give greater credence to the principles of cost causality", the intervener suggested a sliding scale beginning with 15% to the first threshold. And, as a suggestion related to possible future legislative amendments, the Coalition suggested "looking at introductions of loan limits as a percentage of income and (also) the extension of repayment periods". These are issues (for the Coalition) requiring further study.

Assistive Financial

Assistive indicated that one of its objectives in participating was to “remind the Board that there are lenders … such as Assistive Financial, that are involved in the industry”. Assistive advised that its second objective was to consider “the question of what constitutes a just and reasonable rate or formula”.

Assistive suggested that the Coalition had “emphasiz(ed) the role of the Board as a protector of consumers from unreasonable charges” while giving little “consideration to the needs of the payday loan industry”.

Assistive opined that the Coalition and its recommendation for a 15% cap were “inherently biased, not only against the payday loan industry, but possibly even against the entire capitalist system on which our society actually functions”. Assistive suggested that the basis for the Coalition’s recommendation, the analysis of payday lenders’ costs and a review of rates charged by payday lenders in Canada and the United States, represented an inadequate rationale for limiting the actions of an industry that provided a service to borrowers choosing to borrow from payday lenders.

As to the objective of “protecting consumers from unreasonable charges”, Assistive accepted its legitimacy, but observed that that goal is “only a small part of what it means to set a just and reasonable cost of credit”.

Assistive held that the Coalition’s recommendation primarily relied on American case law and that such a reliance was unjustified as there were “plenty of Canadian cases on point”, suggesting that the Consumers Association of Canada/Manitoba Society of Seniors v. Public Utilities Board, Court of Appeal, 2005, provided adequate guidance, and cited Justice Monnin as follows:

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

And,

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

And,

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

Assistive noted that the hearing was “pursuant to Section 164(5) of the Consumer Protection Act, which also uses, just as the Public Utilities Board Act does -- the magic phrase ‘just and reasonable’, and both sections of both legislation direct this Board to essentially set down those just and reasonable rates”.

Assistive opined that "just and reasonable in the Manitoba Hydro case has the same meaning as it would before this Board in these proceedings … and this Board needs to consider the interests of payday loan consumers, but also, and in equal consideration, the financial health of payday loan industry members”.

Assistive noted that *The Consumer Protection Act* “sets out a number of factors that this Board has to consider when it tries to define what constitutes a just and reasonable cost of credit”, citing Section 164(4) and three particular factors there listed: payday loan industry operating expenses and revenue requirements, and the financial risks taken by payday lenders.

Assistive observed that parties to the hearing accepted that payday lending is a “high risk business” requiring high charges to meet costs and provide a reasonable return for the

risk assumed. Assistive asserted "companies like Rentcash need to have enough of their own fee generation so that it can afford to pay" its costs, including retention payments, to firms such as Assistive.

Assistive asserted that the 59% annual interest it requires from the loans it makes through payday loan brokers is justified, given high bad debt costs ("35% of that 59% reflects money that could be lost as a result of the high risk") and the return of 18% to 19% required by Assistive's investors.

Assistive asserted that the Coalition's recommendations were based on the evidence of academics, whereas Assistive's witness, its President, had over thirty years of experience in the finance business and understood the costs, risks and requirements of the business.

Assistive advised that "if the rate of return were diminished because of (rate caps) this Board might fix, and if the rate of diminishment was so significant, the ultimate reality would be that Assistive Financial would simply have no choice but to pull out of operations in Manitoba".

Assistive opposed "state paternalism, state interference" as not being "called for simply to control the way in which consumers use their money". The intervener suggested that "people will spend money and they will derive their own subjective pleasure or benefit as they themselves define it, and that when this happens the State in this case ought not to interfere, but in my view would (we might say ought to) be slow to interfere, to challenge the subjective decision of a consumer on how that person uses money".

Assistive asked "is this Board comfortable with the role of essentially dictating to consumers the ways in which they ought to be allowed to access credit, which they will then use to spend in a way that they themselves find useful?" Assistive noted that the Coalition's witnesses, in considering the various uses a borrower of a payday loan might put to the loan, had missed "the subjective consideration, namely that even though objectively the family was paying money on a payday loan, they derived the subjective

benefit of having a vehicle that's repaired, which gave them the feeling of either satisfaction, or the feeling of being able to act or drive (to) places".

Assistive suggested that in assessing value, it should not "merely (be) a question of what objectively and perhaps rationally ought to happen, but rather there are circumstances that relate to the subjective value of having … credit available even when the cost of that credit may not objectively be justified".

With respect to the Coalition's recommendation as to a maximum charge, Assistive suggested that it had been based on estimates of "revenues and expenses that a payday loan, a fictional payday loan company might incur … " and that as "the industry (is) not a homogenous set of companies"; the estimates were "just one man's attempt to put together what one man thinks, based on incomplete evidence, of how that industry actually performs".

Assistive suggested that, given the impact the Board's decisions may have on the industry, the Board required "more than a best estimate of costs, expenses and revenues", and given that no actual numbers were available, the Board should be careful not to set a cap that would drive firms out of business.

Assistive noted that Dr. Robinson had noted in his paper (*Payday Loans, an Ethical and Socially Responsible Industry)*:

> "Society does not appear at this point to have raised any major objection to the practices taking place. And the significant number of users of payday loan services suggests that the service is considered to be not only morally acceptable, but highly desirable if not necessary."

Assistive objected to Dr. Robinson's opinion that the broker model of payday lending (using an example involving Rentcash and Assistive Financial), was inefficient and leads to higher costs, noting that Dr. Robinson had at one point asserted that "Assistive

Financial should not exist" only to later suggest "it may in fact be somewhat premature to make that assertion … we don't know what it will be in the long run. It may well be that I'm incorrect in that over time that relationship can be profitable."

Assistive Financial did not take a position on "exactly what the (maximum) cost of credit should be", having sought to "point out some of the concerns, profound concerns, and problems that (it found) in the evidence of the Coalition".

310-Loan

310-Loan supported Manitoba's regulation of the payday loan market (both the specific legislation and regulations), advising that "the existence of legal and regulatory risks were preventing (the payday loan industry) from reaching a level of maturity that would allow consumers to enjoy the full benefits of a competitive market".

The intervener suggested "through regulations and through the issuance of (the Board's) order … legal and regulatory risks that we have repeatedly spoken of (will be alleviated)… (and) pending regulations … for uniform disclosure … will make it easier for consumers to compare rates across the industry".

310-Loan recommended that the Board be "wary of the unintended consequences that could result from an overly restrictive maximum rate … (as) shutting down the alternative consumer credit market may lead consumers to less desirable credit options associated with loan-sharking and organized crime".

The intervener suggested that too low a cap could be expected to lead to "higher risk borrowers (being) excluded from the payday loan market … and face … exposure to less desirable credit options". 310-Loan noted indications that such undesirable credit options may (citing United Kingdom experience) involve much higher cost loans than found with payday loans in Canada.

310-Loan suggested the "Board (should) consider the benefits that a healthy and

competitive market would deliver to consumers", while opposing the cap recommendation of the Coalition, opining that "the Coalition is recommending that (the Board) give up on the hope of a functioning market that will deliver substantial benefits to consumers…".

The intervener suggested that "the Board make every effort to facilitate sufficient competition, monitor the progress of the market over time and make adjustments as necessary", indicating "that this approach will deliver the best possible long-term results for consumers".

310-Loan suggested "neoclassical economic theory predicts that over time, firms will build enough capacity to fully meet the demand for a given product (and) if there is more capacity in the market than there is demand … then there will be downward pressure on price as firms compete for scarce market share". The intervener posited "price wars will force some firms out of business (and) some firms will offer their product at the lowest possible price that will allow them to earn the lowest acceptable return on investment". 310-Loan also suggested that if there was more loan demand than supply "existing firms will increase their prices and/or new firms will enter the market to capture available profit (and) this will continue until prices are high enough to decrease demand for the product and/or enough firms enter the market to restore the equilibrium between supply and demand".

310-Loan suggested that market factors in the Manitoba payday loan market were currently "preventing the market from behaving in an optimal manner", these being:

a) payday loans are relatively new to Manitoba, suggesting "demand will grow as more consumers gain a better understanding of the product"; and

b) "stagnating incomes and rising levels of consumer debt amongst Manitobans are increasing the demand for sub-prime credit."

310-Loan identified "the presence of legal and regulatory barriers preventing new firms from entering the market, limiting the extent to which existing firms invest in growing their business, and restricting the flow of outside investment into the industry", suggesting that those factors were "putting downward pressure on the supply of payday loans and preventing enough investment … from flowing into the industry" and that this was resulting in "firms (having) little pressure to decrease their prices and (being able) to raise them without losing significant market share".

As to the issue of industry concentration, 310-Loan agreed with the Coalition's witness panel and accepted that "the market can be described as highly concentrated and … resembles an oligopoly", suggesting that "an oligopoly … exist(s) (because) there are not enough profits available in the market to support more than a small number of firms (and/or) there are barriers to entry that prevent firms (new or existing) from taking market share from the dominant market leader(s)".

310-Loan commented on the wide divergence in industry pricing, noting that "current prices vary from as low as 18% of the loan amount to as high as 43% … (with) anecdotal evidence of rates above 50%", suggesting that the wide divergence may either "point to significant market distortions that may call for dramatic regulatory action (or provide) justification for price divergence". The intervener suggested "it is important for regulators to understand (the cause of wide divergence in pricing) … to optimize the extent of (regulatory) actions and avoid unintended consequences".

310-Loan provided four possible explanations for the wide divergence in pricing in the Manitoba market:

1. Varying customer risk profiles based on differing loan criteria employed by industry firms;

2. A lack of standard fee disclosure, making it "difficult for consumers to compare rates between lenders";

3. Economies of scale, “larger lenders, in most cases, can issue loans at a lower rate than smaller lenders”; and

4. Location of lenders, “depending on where a lender is situated, they may incur higher (or lower) costs that will affect the rates…”

310-Loan suggested that there is “a broad consensus amongst both the participants in these hearings and the Minister responsible … regarding the desired state of the Manitoba payday loan market”, and provided quotations from a variety of commentators:

> "The intention is not to drive the companies out of business, because people are showing an interest in having this service, but to make sure that when they offer the service they do it in a way that's just and reasonable." *(Honourable Greg Selinger, Manitoba Minister of Finance)*

> "... a viable payday loan industry is something that Manitobans want. And so I believe the recommendations that we're proposing will allow for a viable payday loan industry." *(Dr. Jerry Buckland)*

> "If the Board enacts rates that prevent efficient lenders from earning a fair rate of return, consumers may benefit in the short run from lower fees, but we may lose more as a society because there is insufficient competition to drive innovation and further cost reduction." *(Dr. Chris Robinson)*

> "I think that this range ($20-$23 per $100 plus an allowance for regulatory costs) would allow firms to function at more than the large-firm basis, and through competition and innovation make [payday loans] a more beneficial source of capital for consumers." *(Dr. Lawrence Gould)*

> "... the regulatory scheme should allow a viable, competitive payday loan industry, albeit under a more transparent, more borrower-friendly framework." *(Dr. Kevin Clinton)*

> "... we believe that it's important to have competition, innovation, and allow market forces to prevail, which would ensure that consumers would be able to access the lowest cost and best service provider. And (in that) we believe that consumers would be better protected than by lowering the fees dramatically and perhaps driving the majority of reasonable businesses out of business and having that business go underground." *(Mr. Scott Hannah, Credit Counselling Society, presenter)*

310-Loan suggested "participants in these hearings are seeking a Board order that will result in a viable and competitive payday loan market".

310-Loan proposed that the Board reach a conclusion on a rate cap taking into account the "likelihood that (the) decision will achieve the viable and competitive market desired by participants".

The intervener posited that "demand for payday loans may be growing faster than the supply (while) supply may be restricted by the fact that new firms are reluctant to enter the market and existing firms are reluctant to invest due to uncertainty around the legal and regulatory status of payday lending".

With respect to the demand element, 310-Loan suggested "demand may be growing due to an increased understanding of the payday loan product and socio-economic factors … leading more consumers to seek sub-prime credit (and that this) may be a situation where firms are not facing pressure to innovate or lower rates". The intervener opined that if this is the case, "a Board order should aim to facilitate either an increase in the supply of payday loans or a decrease in demand (and as) the Board has limited power to affect the number of consumers who desire a payday loan (and) the very issuance of their order will remove the legal and regulatory uncertainty that exists today … (the Board's Order) must not itself act as a new barrier to prevent entry and investment in the industry".

310-Loan suggested "if the Board's order is effective at restoring a closer balance between supply and demand, we should expect to see downward pressure on price and

upward pressure on firms' incentive to innovate".

The intervener suggested that the Board should act to further the development of competition, advising a decision that "encourages a decrease in market concentration", suggesting that "a market of five to ten firms would satisfy the Coalition experts that the industry is viable and competitive".

310-Loan supported Dr. Robinson's contention that an appropriate cap "will allow … lenders (judged to be) efficient to earn a reasonable profit, but not earn an excess profit", suggesting that in order to reach a conclusion on a cap that would meet this test sufficient actual data would need to be available, and opining, following a review of the data that was available, that it was not.

310-Loan noted "there has not been a comprehensive study of Manitoba lenders that would provide the Board with a truly representative picture of lenders' actual operating costs, loan volume and bad debt rates (and) … the major data sources that have been presented (at the proceeding) are filings from publicly-traded companies, the Ernst & Young study and the Deloitte & Touche study", and the intervener reviewed the limitations of these data sources. The intervener also noted Dr. Robinson's reliance on corporate information filings of Dollar Financial and Advance America, the former from which he derived Canadian store information, and Rentcash's limited data filings at this proceeding.

310-Loan provided its perspective as to a summary of evidence from the hearing with respect to the costs and volumes of payday loan companies:

a) on publicly traded companies - Dr. Robinson provided 2007 Money Mart Canadian operations and Advance America global operations (the latter for the nine months ending September 30, 2007) in Canadian dollars. Rentcash provided data through responses to information requests. Operating costs: Money Mart - $8.51 per $100 loan, Advance America - $10.96, Rentcash –

withheld, proprietary; loan volumes per outlet: Money Mart - $2.644 million, Advance America - $1.577 million, and Rentcash - $1.431 million; bad debt experience: Money Mart - 1.65 percent, Advance America - 3.10 percent, and Rentcash – 5% to 6%;

b) from Ernst & Young's survey of Canadian payday loan firms – based on 2003 data operating costs by loan volume - Large Businesses (over $20 million in annual volume, $12.21 per $100 loan, Medium Businesses (between $2 million and $20 million in annual volume, $14.69 per $100 loan, and Small Businesses (less than $2 million in annual volume, $17.21 per $100 loan); and

c) from Deloitte & Touche's 2007 survey of the Manitoba payday loan market, based on responses from five small and medium firms – operating costs in excess of $20 per $100 loan on average loan volume of $715,732.

From the surveys and the related information presented at the hearing (suggesting cost increases since the surveys were conducted), 310-Loan "deduce(d)" the operating costs per $100 loan of payday loan firms in 2007 fell into the following range:

Large firms, other than Money Mart	$14.86
Medium sized firms	$15.90
Small payday loan firms	$18.63

Following a similar process, 310-Loan deduced that "an unweighted average of bad debt experience" would fall in the range of 3.45%.

With respect to what would represent a "fair return for the lender", and utilizing the testimony of Coalition witness Dr. Robinson, 310-Loan suggested a range to $1.62 per $100 loan, and suggested that "a typical firm in the Manitoba payday loan market would not continue to operate if they were experiencing a (significant) economic loss", and opined that "no firm other than Money Mart and possibly Advance America will remain

in the Manitoba market under Dr. Robinson's recommended maximum fee structure (of $17 per $100 loan)".

With respect to Advance America, 310-Loan opined "to be financially viable under Dr. Robinson's fee structure, Advance America must achieve the same cost, volume and bad debt numbers … they have accomplished in the United States (and) their ability to do this is in no way certain and the Board should consider the following when trying, (as) costs such as rent, wages and taxes will all be significantly different in Canada than the United States. Advance America built an established brand in the United States and was an early entrant into that market, (and) as a late entrant in Canada, there is no guarantee that they will be able to achieve the same level of brand awareness here…".

310-Loan concluded "there is no reason to believe that Advance America will not be successful in Canada as they have been in the United States … that being said, whether their cost, volume and bad debt numbers from their American operations are reflective of what their future Canadian operations will look like is highly speculative and, in our view, highly unlikely".

With respect to Dr. Robinson's suggestion that communities losing payday loan outlets under his recommended rate cap "will still have access to payday loans through direct lenders such as 310-LOAN who serve customers by phone or online", the intervener noted its view that internet/telephone lenders "will not be able to operate at an average rate of 17% of the loan amount".

As to what would constitute an acceptable framework for establishing a rate cap, 310-Loan recommended Professor Iain Ramsay's "third way" approach to consumer credit regulation. 310-Loan reported that Professor Ramsay "has identified two consumer protection philosophies that prevail today", those being:

a) "liberal model for the responsible consumer, an information model of consumer protection as the primary policy"; and

b) social model, based on the “presumption of the hasty and needy consumer, forced into contractual relations by social circumstances he cannot control; someone lacking in concentration and in need of protection [where it is] the duty of the State to protect consumers by controlling the market."

310-Loan recommended Professor Ramsay’s “third way”: a consumer protection philosophy that "recognises the market as a central institution and attempts to empower individuals to make responsible choices within the market [while] at the same time ... attempts to achieve social policy goals through a wide variety of techniques”.

310-Loan recommended Professor Ramsay's approach to rate regulation, that being: "Regulating prices through interest rate ceilings established at a rate significantly above the competitive rate for that market that are designed to be a proxy for overreaching behaviour ..”., and concluded that employing that model would suggest the Board set “a flat fee equal to 25% of the loan amount”.

In support of that recommendation, 310-Loan suggested reference to the "competitive rate" in the market, noting evidence filed by Dr. Buckland, Dr. Clinton and 310-LOAN on 2007 payday loan market rates in Manitoba had been “presented as unweighted averages because the objective is to set a rate that will allow all but the most overreaching firms to continue to operate”:

SOURCE	MARKET RATE (as a percentage of loan amount)
Buckland (2007)	24.28%
Clinton (2007)	27.63%
310-LOAN (2007)	23.07%
Average rate	24.99%

310-Loan reinforced its support for Professor Ramsay's approach, which, according to the intervener, “aims to enhance consumer welfare through market forces, while

acknowledging that some adjustments are necessary to ensure that the market works for all consumers”.

310-Loan suggested that Professor Ramsay’s philosophy “is (an) acknowledgement that market forces drive the innovation that can deliver both better service and better prices”, and is consistent with “Dr. Robinson's comments … that suggest society will lose if there is insufficient competition to drive innovation and further cost reduction."

The intervener suggested that the establishment of a flat rate of 25% would have implications for the overall market, that market comprised as follows:

<u>NUMBER OF FIRMS, RATES ABOVE 25%:</u>

Buckland (2007)	3
Clinton (2007)	3
310-LOAN (2007)	1

<u>NUMBER OF FIRMS, RATES AT OR BELOW 25%:</u>

Buckland (2007)	14
Clinton (2007)	11
310-LOAN (2007)	10

<u>PERCENTAGE OF FIRMS, RATES AT OR BELOW 25%:</u>

Buckland (2007)	82%
Clinton (2007)	79%
310-LOAN (2007)	91%

310-Loan suggested that it is important to note that Ramsay's rate recommendation does not stand on its own, but is accompanied by seven other recommendations that make up his "third way" approach to regulation in the payday loan industry. Specifically, 310-Loan noted that Ramsay recommends facilitating increased competition, both directly

within the industry and through alternative credit products, and the introduction of disclosure policies and monitoring of the industry "through the collection of regular data".

310-Loan concluded its argument by suggesting “the majority of participants in these hearings desire a Board order that will result in a viable and competitive payday loan market in Manitoba.”

310-Loan opined that the employment of Professor Ramsay’s approach by setting a maximum that “will force only a few ‘overreaching’ lenders to leave the market and will not act as a barrier for new firms considering entry” would:

a) promote movement towards an equilibrium between supply and demand of payday loans in Manitoba;

b) encourage greater price competition; and

c) reduce market concentration.

The intervener suggested that adopting its recommendation would “deliver the greatest possible long-term benefit to consumers and minimize the risks associated with eliminating large numbers of firms from the market”.

Progressive Insurance Solutions

Progressive noted that creditors’ insurance is an optional product for payday loan borrowers, “underwritten by a licensed insurance company, and … exempted in calculation of the 60% maximum annual percentage rate allowable under Section 347”.

Progressive recommended that the rate cap to be established by the Board leave “outside the maximum” insurance premiums for creditors insurance, so as to allow “customers that wish to protect their debt (to) have the option to do so”.

Although Progressive does not currently offer its product in Manitoba, it has in the past and may do so in future; the factual evidence of the product features given was consistent with past Manitoba offerings and current offerings in other Canadian provinces.

The intervener suggested that payday loan borrowers have demonstrated a need for creditors' insurance, and "that customers that participate in taking out a payday loan (to satisfy immediate or short-term need for a fixed amount of money to cover unexpected expenses) do not have a rainy-day fund, nor do they have access to unsecured means of credit which is reserved or accessible for cash emergencies". Progressive also stated that "these people typically rely on their group health benefits of their employment (if there are any to begin with) to replace their income should they become ill and unable to work, or God forbid, they pass away … and that their benefits (if they have any) provide no financial protection should they be laid off".

Progressive suggested that "consumers need to have an option of protecting their debt when their existing plans fall short", and that "the very foundation of why optional loan insurance should be available to customers of payday lenders is customer service".

Progressive suggested that creditors' insurance available to payday borrowers is "easily explainable in a full-disclosure and optional environment". The intervener noted that the insurance option offered a program that "meets expectations", though "this optional product has been met with scepticism of the insurance industry in general, with approximately 40 percent of customers electing not to participate in the payday loan insurance".

Progressive stressed the optional nature of the insurance, noting that 60% of borrowers opt to take out the insurance for "the benefits … should they become disabled, involuntarily unemployed, critically ill or pass away".

The intervener advised that the optional nature of the insurance was understood by the industry, noting the prohibitions against "tied selling" in *The Competition Act, C-34* and *The Bank Act, C-46:*

From *The Competition Act*, section 77(1):

> "A tied selling means any practice whereby a supplier of a product, as a condition of supplying the product [the 'tie-in product'] to a customer to (1) acquire any other product from the supplier or the supplier's nominee."

From *The Bank Act*, Section 459.1(1):

> "A bank shall not impose any undue pressure on, or coerce a person to obtain a product or service from a particular person, including the bank or any of its affiliates, as a condition of obtaining another product or service from the bank."

Progressive also noted that the *Manitoba Insurance Council* has the authority "to take remedial action it deems appropriate against any insurance company which allows its products to be marketed to the public in an inappropriate fashion", advising that the *Insurance Council* (in conjunction with the *Superintendent of Insurance)* regulates an insurance company's ability to carry on its business in the Province.

Progressive also noted that the *CPLA's* Code of Best Business Practice provides guidance to its members related to creditors' insurance:

> "A member is prohibited from requiring a customer to obtain insurance as a condition of taking out a payday loan."

Progressive advised that, to its knowledge "there hasn't been any lender that we deal with that's been found guilty of inappropriately offering that coverage", and that Progressive's insurance offerings involve policies of *ACE INA Life Insurance Company*.

Progressive assured the Board that "if the borrower elects to purchase insurance through

the lender, such election is entirely done at the borrower's option and is a separate and distinct component of the transaction”. Progressive noted that it provides to its payday loan firm clients “a complete lender's manual outlining coverage details … acceptable, transparent and optional disclosures and a full-time contact to answer any questions the lender or the customer may have”.

Progressive noted that it requires “lenders to present the cost of insurance on a distinct and separate line of the (loan) contract so the customer knows exactly what they're paying … the disclosure must (occur) prior to the customer's signature … and (offers) the ability to cancel the coverage for a full refund for up to 10 days after enrolling in the coverage”.

Sorensen’s Loans til Payday Inc.

Sorensen suggested that reliance on American information related to payday loans was not justified, noting the difference in population, with the United States population being approximately ten times that of Canada. Sorensen criticized what the Coalition portrayed as the focus on “efficiency”, suggesting that efficiency was not a requirement in other industries such as grocery stores.

Sorensen noted that a grocery store can charge “$1.30 for a pound of carrots instead of about $0.70”, with no regulated price cap being in place. The intervener noted that “if I become too inefficient, I will quickly close down”.

The intervener criticized the Coalition’s reliance on academics, and noted that “none of them had been in the payday loan industry or, basically, had worked in private enterprise”.

Sorensen suggested that the concept of a “fair and reasonable cost (rate)” should be based on “what it costs you to operate and what you should get as a fair return for your investment”, and advised that the firm’s prices had risen over the years “I started 10 years

ago in this business (and) charged twenty dollars (for $100) and … (now) charge $25 and … have a broker fee type of arrangement where I charge $25 a $100 and … 16 cents a day… ”.

The intervener suggested "you can't pay wages and can't pay your rent on 17% of what you loan out, unless you do a million dollars (of loan volume) a week". Sorensen noted that rates of a payday lender cannot be fairly compared to that of a bank branch, with $250 million of mortgages outstanding, which, he argued, can operate on a small margin.

Sorensen suggested there were few payday firms, and perhaps only Money Mart, that could operate at a lower rate than currently charged, and suggested that if a cap is to be placed it should be "in the range of $30, because in 5 years I (have) had to increase (rates by) $5 (and by) $6.60… since the 10 years (ago) that I started".

The intervener opined that payday lenders' costs would increase over time "if I have to pay more money, pay more rent, pay more wages, and I've got more competition". The intervener also cited the proposed licensing fee for Manitoba and his bad debt experience, suggesting he had $3 million of bad debts and that bad debts were a significant factor in price setting.

Sorensen suggested that competition was present in the industry, with the various firms in the industry charging different rates. Sorensen criticized the Coalition, suggesting that its assertions were "confusing, un-validated in any sense" and often in error.

Sorensen suggested that the licensing fees will likely result in one of the intervener's outlets in Manitoba being closed, and that closures affect the economy and jobs.

Sorensen noted receiving few complaints from its customers, and an ability to solve those that do arise, noting "we solve … problem(s) right away … I don't want my clients mad at me … that's not a way to continue (in) business".

Sorensen suggested that a rate cap of $30 would result in the industry seeking a cap

increase shortly thereafter since "if we're not allowed to make money, we're gone; it's that simple. The services won't be here."

The intervener suggested that the hearing had focused on the "poor and the unfortunate people" and that while the poor were included in the industry's client list, the Board should also consider "the people that don't manage their money right (noting that) that's (not) against the law. I've never found a law that… stupidity was a crime".

Sorensen acknowledged that "there are people out there that make bad choices on money" and asserted "it's their choice … their freedom … the Constitution of Canada allows them to … make mistakes and (firms) to be in business". The intervener opined "we don't have to be efficient to be in business, we're allowed to go broke" (and) if that happens, nothing else (does).

Canadian Payday Loan Association

The CPLA reminded the Board that its mandate is to "set a rate", and advised that the intervener relies on its expert, Dr. Gould, in recommending that the rate be set at $23 per $100 plus both an allowance for regulatory costs of 88 cents and an allowance for the cost of the hearing.

CPLA noted that Dr. Gould had suggested that the maximum set by the Board should not be less than $20, or more than $23.00, the higher level to "allow smaller companies to operate in Manitoba and allow the forces of competition to operate more fully". The intervener proposed an additional 88 cents, based on the advice of Deloitte & Touche, to meet both the estimated cost to payday lenders of the expected license fee ($5500) and the cost of the bond requirement. CPLA proposed that a further allowance be added to provide for costs incurred by the industry with respect to the hearing, and indicated that CPLA's costs to November 2007 were $656,000.

CPLA contrasted its position to that of the Coalition, suggesting "the Coalition called

evidence … purported to include experts … took advice from its experts and then ignored it in coming to its final recommendation”. The intervener suggested that it had called evidence, included experts, and then followed the expert advice.

CPLA suggested that two different views were advanced in the hearing, the first being CPLA’s, “that competition benefits consumers”, and the second (the Coalition’s) that “consumers would be better served with a monopoly service provider regulated by the Board”.

CPLA indicated that, supporting its view, it had “brought forward unbiased cost information and … Dr. Gould's conclusions as to the benefits of competition in the marketplace”. As to the Coalition, CPLA opined that it had employed the concept of efficiency such that it became a call for a monopoly.

CPLA claimed that the Coalition’s recommendation was based on a model supported by estimates and the results of the least cost and largest payday firms (the operators with the lowest costs and highest loan volumes) and represented those results as the “ideal”.

The intervener reminded the Board that “the Board's mandate is set out in the Consumer Protection Act … enacted in 2006 (calling on the Board to) establish the maximum cost of credit for payday loans, the maximum charges for renewals, extensions or replacements of payday loans and the maximum charge that may be levied when a customer defaults on a payday loan”. CPLA noted that the “Manitoba legislation is the result of a long process that began with the work of the Consumer Measures Committee (CMC) … (a) committee comprised of a representative of each province and territory, and Industry Canada”.

CPLA suggested that, “recognizing the rapid growth in payday loans that was occurring in response to strong consumer demand”, CMC began considering payday loan regulation in 2000. CPLA suggested that CMC “recognized that the first obstacle to regulation was Section 347 of the *Criminal Code*, which provided that it was an offence to charge more

than 60% per annum interest inclusive of all fees and charges related to the advancing of credit on loans”.

CPLA advised that Parliament passed Bill C26 on the advice of CMC, advice that “recogniz(ed) that annual interest rates are not an appropriate measure for a small sum, short term loan”, noting that a payday loan has been defined as an unsecured loan for a sum of not more than $1,500 and for a term of not more than 62 days, with the “legislation provid(ing) that in the event that a province introduced regulations and set maximum fees governing payday lenders, then, upon designation from Industry Canada, Section 347 of the *Criminal Code* would not apply to payday lenders in that province”.

CPLA noted that the federal Act “allowed the Province of Manitoba to take steps to provide (the) Board with the jurisdiction to set the maximum rates”, opining that “the Government of Manitoba made a determination that payday lending should be treated as a legitimate enterprise in this Province, and that the service provided by payday lenders should be available to consumers in Manitoba”.

CPLA noted that the legislation mandates the Board to “set a maximum below which all payday lenders must operate … (and didn't) ask the Board to fix an exact rate that must be charged by all”.

CPLA suggested that “the Board's mandate in relation to payday lending differs from that which it exercises in relation to public utilities … (in that while) public utilities must charge (the) rates that are approved by the Board, no more, or less, payday lenders … will be prohibited from charging, accepting, or arranging for amounts in excess of the maximum established by the Board”.

CPLA opined that “implicit in (the Board’s mandate) is the Government's choice … and the recognition -- that the industry is diverse … operat(ing) on different business models”. The intervener suggested that the Government’s selection of a mandate for the Board provides “a clear signal (that) the competition and market forces should continue

to operate below the regulated maximum".

CPLA opined that the Manitoba legislation represents, quoting Manitoba Finance Minister Selinger:

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

The intervener suggested that Minister Selinger had indicated the government's intent with the Board's mandate, in saying:

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

And, "If you overdo it and wipe out the possibility of this kind of activity, without the banks and the credit unions or the caisse populaires moving into the field, people will seek out credit at other venues which are maybe more underground venues, and what we don't want to do is create a whole market for organized crime in our jurisdiction."

CPLA suggested that "competition in market forces will allow those things that Minister Selinger indicated that he thought … was the goal … to protect consumers from excessive charges, but still to make sure that the service was provided by virtue of the fact there is a gap… there is no other alternatives (to payday loans)."

CPLA provided background on the association, indicating:

a) the Association is "formally known as the Canadian Association of Community Financial Service providers … formed in early 2004";

b) the members "believe they are responsible financial service companies who offer a payday loan product";

c) "because (payday loans are) unregulated, the members of CPLA recognized … it was important to create industry standards, business practices to protect consumers and the reputation of the industry";

d) the CPLA was designed to "help progress the industry, but also help the consumer";

e) CPLA is "a voice to represent the interests of the industry to sectors of government, and to ensure that its members adhere to national standards"; and

f) "CPLA has been an industry leader in consulting with governments, credit counselling agencies and consumer interest groups in developing best business practices that its members would be required to comply with in the absence of government legislation."

CPLA opined that the legislative provisions enacted by Manitoba "mirror the requirements of CPLA's Code of Business Practices", and suggested that the Coalition's mystery shopping exercise evidenced that "the CPLA Code of Conduct was something that was understood and … was followed".

CPLA advised the Board that it intervened in the hearing to "provide … an industry perspective, details on the cost of operating a payday loan business in Manitoba, information about payday loan borrowers in Manitoba, an analysis of what constitutes a competitive rate, details on our members and information on regulatory regimes in other jurisdictions", suggesting that it had met its intentions through "provid(ing) … the evidence of Dr. Larry Gould … a Manitoba-specific report of Deloitte & Touche … a specific study (survey of payday loan borrowers) commissioned for Manitoba by Pollara … (and) details of a national study -- the Ernst & Young report -- on the cost of operations …".

CPLA opined that "the evidence of CPLA addressed the factors which the legislation

indicates that the Board may and should consider … the operating expenses and revenue requirements of payday lenders … the terms and conditions of payday loans … the circumstances of and credit options available to payday loan borrowers … and the regulation of payday lenders and payday loans in other jurisdictions".

CPLA noted that the Board's mandate provides it "some general discretion (to) … take into account other relevant factors in the public interest and any other data that the Board considered relevant (and the Board) … did that".

CPLA suggested that there is no "U.S. experience", with the states varying widely in their approach to payday loans (some states go APR and some states go fixed sum … some states want a data bank and some states want to ban (payday loans) outright and some states let you charge whatever you want. "You've got it all", suggesting that this hearing should be focused on "setting a rate in a Canadian jurisdiction".

The intervener opined that, as "uniformly agreed by the Coalition witnesses, by the CPLA witnesses, by Rentcash and all the other Interveners, in order to continue to provide payday loan products to customers in Manitoba, payday lenders must be able to recoup their expenses and earn a reasonable return while operating within the maximum set by the Board".

CPLA suggested that its disagreement with the Coalition is with respect to "what are the operating expenses and revenue requirements that are actually being experienced by payday lenders in Manitoba … and to what degree should the Board intervene in the marketplace to eliminate higher cost and less than optimally efficient operators?"

CPLA held that "efficiency" should not, as it represented the Coalition was advocating, require a monopoly held by the lowest cost provider, but represent "operating in a manner that's reasonable".

CPLA noted Dr. Gould's evidence recommending that, in establishing a maximum cost

of credit, the Board should acknowledge that the industry is "comprised of many different companies, with many different cost structures, and different fair rates of returns, (that being) … completely at odds with regulating a public utility that is essentially a monopoly".

CPLA advised that "a payday loan company's cost structure will be influenced by a variety of factors … location … hours of operation (with) … an impact on increasing operating costs … different way(s) of doing business (and) … each company may have a different fair rate of return based on a particular risk in capital structure".

The intervener noted Mr. Schinkel's evidence concerning "the different ways … (firms) funded their operations, and the different kinds of activities that took place … being a full time operator … franchises as being an option … Internet service providers, or you have bricks and mortar".

CPLA noted that unlike "the process involved in approving rates for a public utility, the regulation of the maximum cost of credit for all payday loan companies in the Province does not include a correction mechanism that permits after-the-fact adjustments for payday loan companies with reasonable cost structures above that assumed in the Board's decision", suggesting that "if the Board misjudges what constitutes a reasonable cost structure … companies will be forced out of the market (and) … you can't unscramble an egg … once the business shuts, it's not going to be an easy task for it to reopen".

CPLA suggested that the Manitoba legislation provides for a regular maximum cost of credit review process, and that with this being the first "setting" the Board should take particular caution and, subsequently, "take a look at how its order has impacted the Manitoba marketplace".

CPLA cited Dr. Buckland's evidence suggesting that "payday lending is an important source of credit for some consumers, and (that) the Board's order needs to allow for a viable payday lending industry in Manitoba". CPLA also noted Dr. Buckland's advice

that consumer education was more important than "lowering … or increasing the price (of payday loans)".

CPLA noted its provision of a "2004 CPLA-commissioned study from Ernst & Young that provided details of the cost of providing payday lending services to customers", that the study "was the first study of its kind in Canada and contained the most reliable information on the cost of providing payday loans in Canada".

CPLA noted that the Ernst & Young survey has included responses of both "monoline businesses (offering) only payday loans as well as multi-line businesses (offering) an array of financial products", though the survey did not include internet lenders and "was limited to lenders who service their customers through physical storefronts".

CPLA noted that Ernst & Young "found that the unweighted average cost of all firms of providing payday loans was $20.66 per $100 …. (and that) the weighted average for all firms, although lower, was significantly influenced by the very large share of total payday loan volumes represented by the largest payday lenders".

The intervener also reminded the Board of certain of Ernst & Young's other study conclusions:

a) small payday loan firms, with annual loan volumes below $2 million, reported total average costs of $22.88 per $100 lent;

b) medium-sized firms with annual volumes over $2 million (but less than $20 million) reported average costs of $20.79 per $100; and

c) considerable variances were reported in the cost of providing first-time loans, with the unweighted average total cost of such loans being $39.45.

CPLA noted Deloitte & Touche's survey of private Manitoba payday lenders, suggesting that it was "the only evidence before this Board (dealing with) the cost of operating a

small or medium- sized payday lending business in the Province of Manitoba" and reported Deloitte & Touche's finding that "an average cost of providing a $100 loan in Manitoba is $26.89 (with) a range … $24.17 to $30.88".

CPLA also noted that Deloitte & Touche had estimated that "the additional costs that operators will encounter as a result of the provincial legislation … include(ing) the annual licensing fee of $5,500 per outlet and the cost of posting a bond of $25,000 per outlet (estimated to be) $800 per year … would add another $0.88 to the cost of providing a $100 loan".

CPLA further advised that Deloitte & Touche's cost estimate excluded hearing-related costs, costs that CPLA estimated "to be $1,311 per outlet … over the 501 various outlets that CPLA (members) operate as at November 5 … $650,000 as of November 3".

CPLA noted that Dr. Robinson's assumptions about operating costs did not include "any Manitoba-specific data". Furthermore, CPLA criticized Dr. Robinson's estimations of payday loan outlet average costs, citing the following reasons:

a) Dr. Robinson had amended his assumptions about the costs of small and mid-size lenders over the course of the hearing; and

b) the Board was not provided with data explaining the changed assumptions.

CPLA noted that in November 2007 Dr. Robinson had provided a spreadsheet illustrating his estimate of operating costs for a single payday loan store model, then concluding that operating expenses for this model would average $15.10 per $100, only to revise his estimation in December to "as low as $12 per $100 loan", though the change in assumption "was not a matter of incorporating newer … information". CPLA submitted "there was no factual evidence provided to the Board supporting this change … nothing … lead(ing) to the conclusion that operating costs in this range are achievable by small

and mid-sized business operators in Manitoba".

CPLA reminded the Board that Deloitte & Touche had reported that the two "lowest cost" operators included in its survey had reported operating costs of $14.87 and $15.43 … (and) the unweighted average operating costs of small operators in the Ernst and Young 2004 study were $17.21", suggesting that it "is clear from the evidence … that small businesses with reasonable costs … will require a rate significantly in excess of (Dr. Robinson's estimations and the Coalition's recommendation)".

CPLA opined that "by implementing any of Dr. Robinson's conclusions or recommendations (the) Board will, in effect, shut down small to mid-size operators in Manitoba", and submitted that such an outcome would not be "just, reasonable or in the public interest".

CPLA noted that Ernst & Young's and Deloitte & Touche's surveys support "Dr. Gould's observations that there's a significant cost variance in the payday loan industry, with costs of individual companies ranging from $10 to $35 per $100 of payday loans", and reminded the Board that "Dr. Gould (had) concluded that setting a rate at the level (of) the industry's average cost would eliminate a number of higher cost payday lenders and would make it more difficult for new firms to enter the market, reducing competition and innovation".

CPLA, in support of Dr. Gould's conclusion, reminded the Board of the Coalition's witness' suggestion that "if the Board enacts rates that prevent efficient lenders from earning a fair rate of return, consumers may benefit in the short run from lower fees, but we may lose more as a society because there is insufficient competition to drive innovation and further cost reduction."

CPLA noted that Dr. Gould had concluded that "setting the maximum fee for payday loans at $23 would allow smaller companies to operate in Manitoba and allow entry of new companies … while a maximum closer to $17, would render an increasing number

of companies unable to operate in Manitoba", before recommending a maximum fee in the range of $20 to $23 per $100 of payday loans "plus an adjustment of regulatory expenses, such as licensing and bonding costs and costs of regulatory hearings".

Noting that Dr. Robinson's estimations of payday loan outlet operating costs were not supported by actual costs but by a "fictitious model … simulat(ing) costs and revenues of payday lenders", CPLA accused Dr. Robinson of being biased against the payday loan industry, supporting its claim by reference to Dr. Robinson's involvements with a consumer activist organization, ACORN, claiming he was an advocate rather than an independent expert.

CPLA also criticized Dr. Robinson for "a tendency to stray into subject matters clearly outside the areas for which the Coalition Counsel sought to qualify him as an expert in order to provide additional justification for his recommendations (offering) on numerous occasions … hearsay evidence of last minute telephone conversations with unnamed individuals to bolster evidence previously given".

CPLA opined that Dr. Robinson's operating cost model was technically flawed, claiming Dr. Robinson's cost model:

a) "incorrectly calculates the cost of capital on a real instead of a nominal basis", citing Dr. Gould's rebuttal evidence that "providing a fair rate of return to an investor in an inflationary environment requires adding a premium for inflation to the real rate of return";

b) "failed to include the effects of corporate tax", citing Dr. Gould's testimony that "all of the indices commonly used to determine the cost of capital are done on an after corporate tax basis and that accordingly, to provide for returns comparable to those benchmarked by these indices, the pre-tax rate of return must be grossed up for corporate tax"; and

c) “incorrectly calculates bad debt loss”, citing Dr. Gould’s view that in “accounting for bad debt cost it's necessary to include a cost to capital component for debts which the payday lender is unable to collect”.

Furthermore, CPLA opined Dr. Robinson’s cost model was also flawed, because:

a) the model was based “primarily on Money Mart (and) largely ignores Rentcash, the other large Canadian chain operating in Manitoba”;

b) “uses cost assumptions that are not based on any actual cost data”; and

c) “his wide-ranging (and changed) recommendations couldn't be explained on the basis of new information”.

CPLA opined that Dr. Robinson’s cost model, on which he based his recommendations, “contains a series of assumptions that are not based on actual data but are, in fact, guesses -- informed guesses, otherwise guesses or impressions (on) operating costs for single store operators, average terms and defaults, cash on hand and initial store losses (etc.)”.

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

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

CPLA submitted that the recommendation of Dr. Gould represents a “more appropriate

(approach) which (would) allow efficient operators of all sizes to continue to offer services in Manitoba".

With respect to the terms and conditions of payday loans, CPLA noted that "the payday loan industry first emerged in Canada in the mid-1990s in response to an unfulfilled consumer demand for small sum, short-term credit which is typically unavailable through banks or other conventional financial service institutions".

CPLA noted that "the regulatory regime adopted by the Province of Manitoba will have the effect of adding certain mandatory terms and conditions … customers will have a statutory right to rescind a payday loan transaction within 48 hours, excluding Sundays and other holidays, after receiving the initial advance … a prohibition on a lender from issuing concurrent loans to the same customer … extensions, renewals and replacement loans will only be permitted if they comply with the separate maximum charge set specifically for each such transaction … disclosure requirements will be standardized and expanded, and payday lenders will be required to post a sign of prescribed size and colour, displaying the content prescribed by the regulation, which includes cost or credit information …", suggesting that the new requirements are similar to those established by the CPLA's Code of Best Business Practices.

CPLA submitted that while "this additional protection will be available to customers of all payday lenders in the Province and will assist consumers in comparing prices among payday lenders, as well as between payday loans and other forms of credit … complying with these provisions will require many lenders to make significant adjustments".

CPLA noted that one of the factors the Board is to consider in establishing the maximum cost of credit is the circumstances of and credit options available to payday borrowers, and opined that the findings of the Pollara survey, commissioned by CPLA, suggest that the circumstances of payday borrowers are not particularly unique to consumers generally, and that "only 15% of respondent payday loan customers indicated that they use payday loans because they have no other alternative sources for borrowing".

CPLA reminded the Board of Pollara's finding that "asked what they would do if they needed a $300 loan for a few days before their next payday, 56% responded that they would use a payday advance or payroll loan company, and 40% indicated that they would borrow the money from a family member or friend, while 22% (reported) they would use a bank overdraft protection or a line of credit", and that "customers had high satisfaction levels with respect to payday loans – 83% were satisfied with their understanding of the terms of payment requirements of the loan, 79% were satisfied with the way they were treated by a customer service representative, (and) 75% were satisfied with the overall customer service experience".

As well, CPLA noted that the Pollara survey had reported that the "vast majority of respondents indicated that they paid either all – 79% -- or most – 18% -- of their past payday loans back on time".

In summary, CPLA submitted that "the Pollara study supports these conclusions: payday loan customers in Manitoba have annual family incomes similar to those of the general population … are satisfied with their understanding of the terms of payday loans … understand that payday loans are high-cost loans … (are) no less educated than Manitobans, generally … typically have access to credit options other than payday loans, and they typically pay back most or all of their payday loans on time".

CPLA countered evidence provided by the Coalition's witnesses that indicated a "special relationship between the location of payday loan outlets in the City of Winnipeg and the demographics of surrounding neighbourhoods", noting that "all but two (payday outlets) are located at or very near principal roads" and criticizing the Coalition's findings for failing to "illustrate the relationship of the location of payday lenders to the availability of commercial retail space, or to the level of rental payments that such space commands in various neighbourhoods within the city … (or to) the location of financial institutions that remain in operation to provide services to customers in Winnipeg neighbourhoods".

With respect to the "mystery shopping … exercise … conducted by Coalition witnesses

and focused on a customer understanding of the charges, terms and conditions associated with payday loans", CPLA noted that the venture was "structured as qualitative rather than quantitative research, and it was aimed at a deeper understanding of a smaller number of transactions rather than as a measurement that reflects the experience of borrowers generally".

CPLA contrasted the finding of the "mystery shoppers" (suggesting deficiencies with payday lenders' consumer information processes) with the findings of Pollara (asserting that Pollara's results, based on "the observations of 350 actual payday loan customers" was of more value than the more limited survey conducted by the Coalition's witnesses), and further suggested that "the results of the mystery shopping exercise are simply not representative of the larger population of payday loan customers in Manitoba".

CPLA also noted that while Dr. Robinson had "referred to regulatory caps in place in U.S. jurisdictions", he had "acknowledged his lack of expertise in this area" and that there were "numerous relevant differences between Canada and the United States".

CPLA commented on those differences, suggesting that "demographic studies of U.S. payday loan borrowers and U.S. consumers generally show that, unlike in Canada, ethnicity is a significant predictor of the use of payday loans, and that a significantly greater proportion of Americans than Canadians are unbanked". Furthermore, CPLA contended "the payday lending industry is more mature in the U.S. than it is in Canada, and has been the subject of a greater volume of research and academic study".

CPLA acknowledged that "there's a far greater market concentration among payday lenders in Manitoba than in (the) United States", but also noted that "regulatory regimes, including maximum permitted charges, vary widely from one U.S. jurisdiction to the next, and there is (also) less market concentration in the banking sector in the United States than in Canada", suggesting "this … hearing wasn't focused on the United States (and) … there wasn't one expert on the U.S. regulatory scheme, or the models, or the various states that's been provided by any of the parties".

CPLA suggested that “what … limited evidence the Board's received (on the approaches of various states in the United States) does disclose is that there is a patchwork, a different and widely-divergent regulatory approaches”, and suggested that “the Board has virtually no information regarding the social and market factors to which the various U.S. state governments responded to in adopting their different regimes, and extensive expert evidence would be required to enable the Board to properly consider the context within which each state set its maximum rates”, concluding “the Board does not have any evidentiary basis to support the conclusion that the approach taken in the more restrictive US jurisdictions would be just and reasonable or even workable for Manitobans”.

With respect to the level of competition present in the Manitoba payday loan market, the CPLA noted that both the Coalition and the industry interveners considered competition to be “a relevant consideration in the exercise of (the Board’s) mandate”.

CPLA noted the Coalition’s witnesses’ contention that “the Manitoba payday loan market is highly concentrated, allowing dominant firms to influence prices and output … there is insufficient price competition, and that competition can therefore not be relied upon to discipline lenders who charge excessive prices”, suggesting that the positions taken by the Coalition “on price competition is based on the erroneous assumption that payday loans are a homogenous product”.

CPLA reminded the Board of “evidence of a variety of ways in which payday lenders differentiate the services they offer, including the lending criteria they use to determine whether and how much they will lend to a particular customer” and suggested that “failing to take such differences into account will result in an order that precludes customers with higher risk profiles, for example, from accessing payday loans”.

CPLA noted that Dr. Simpson had acknowledged “that the current price dispersion amongst different payday lending operators in Manitoba is largely a measure of customers' inability to readily compare prices between different lenders”, and suggested that “the standardized disclosure required under the new regulations will significantly

alleviate any problems that may currently exist in this area".

As well, CPLA contended that disclosure improvements would "facilitate the comparison with other forms of credit … and heighten price competition" and suggested that "the recent appearance of Advance America in the Manitoba market, coinciding with the … hearing process, suggests that the legal uncertainty that currently surrounds the application of the *Criminal Code* to payday lenders acts as a barrier to new entrants (and that) the Board's order will remove that barrier, and, provided it does not set the maximum cost of credit too restrictively, is likely to increase competition amongst payday lenders in Manitoba".

CPLA reminded the Board of the submission of Mr. Hannah, a presenter, that "a maximum that allows for competition and market forces to operate offers better protection to consumers than lowering the fee so dramatically that reasonable operators are driven out of business".

CPLA observed that mainstream financial institutions (banks and credit unions) were "conspicuously absent from these proceedings", and "provided no evidence to the Board that would allow the Board to conclude that they are currently offering credit products comparable to payday loans, or that they intend to do so in the near future".

CPLA opined that "whatever the bank's ability is, in relation to providing alternatives, that ability will not be affected at all, in any way, by the Manitoba legislation or by an order of this Board", noting that "no product offered by a federally-regulated bank will qualify for the C*riminal Code* exemption in respect of payday loans". CPLA further asserted that no evidence was present that the Board "could influence the bank's credit product offerings", though suggesting that "all may agree that the banks have a social responsibility to serve all Canadians", suggesting that agreement on that point "is irrelevant if the service isn't provided".

As to the potential for credit unions to offer small balance short-term credit as an

alternative to payday loans, CPLA noted that "none of the expert witnesses called by the Coalition … were in a position to offer firsthand evidence (of that possibility, and) … relied heavily on a document prepared by an individual who was not called to testify and whose qualifications or lack thereof were not disclosed and could not be questioned upon".

CPLA observed that as "secured loans and credit in the form of overdraft protection or credit cards is (not) specifically excluded from the statutory definition of a payday loan … (so) the Board's order will neither prevent credit unions from providing such products on a broader scale, nor give them an incentive to do so", indicating that "there is no legal impediment now for credit unions to offer such alternatives to payday loan customers generally, and the fact they are not doing so … reflects the reality that their current credit processes are incompatible with an approach that would enable them to truly compete with payday lenders".

CPLA observed that "one of the alternatives open to payday loan customers in Manitoba is the use of pawn shops (which have) seen their volume of business decline since the advent of payday lenders". CPLA noted Coalition witness's testimony that "pawn shops are more frequently relied upon by consumers with lower or less stable incomes", and asserted that "the cost to consumers of using this alternative, which includes storage charges, is higher than the fees currently charged by many payday lenders in Manitoba (and) … requires the customer to pledge personal property of a value that significantly exceeds the amount of the loan".

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

CPLA observed that the Board "may set a flat rate or establish a formula or tariff for determining the maximum cost of credit" and submitted that "fixing the maximum by

determining a flat fee per $100 is preferable to a tiered or sliding scale structure", providing the following reasons:

a) Simplicity – "the importance to consumers of clear and understandable fee structures that facilitate price comparison";

b) Compliance and enforcement – "a simple flat rate structure will facilitate compliance and enforcement";

c) Impact on low-income borrowers;

d) Impact on credit criteria; and

e) Risk of multiple loans.

CPLA opined that "under a tiered structure that reduces the amount that may be charged as the amount borrowed increases, lenders will be forced to increase their charges for smaller loans in order to remain viable". As well, with a sliding scale involving lower rates for higher loan amounts, CPLA projects that "lenders (will) adopt more stringent lending criteria for larger loans", leading to a probability of multiple loans of smaller amounts.

With respect to the Coalition's suggested option of "increasing the amount … charged to a first-time customer in recognition of the fact that the costs involved in providing service to a new customer tend to be higher than those providing service to a repeat customer", CPLA opined that such an option would "discourage comparison shopping" and "inhibit the volume growth that smaller operators and prospective new entrants may require in order to become more efficient or to successfully enter the market".

Noting that the term of any extension, renewal or replacement is not regulated either by the Act or the Regulations, CPLA submitted "it would be appropriate to structure this maximum to include an interest component (and that) … there should be a fixed fee that

is capable of providing lenders with an incentive to extend an existing loan rather than treating the borrower's failure to pay on the original due date as a default".

With respect to the setting of maximum fees on default, CPLA recommended that the Board should take into account "reimbursement of administrative time, charges, cost and expenses incurred by the lender … and … interest on the outstanding amount from the date of default until the date of payment", noting that CPLA "has currently set, for its members, the maximum amount that may be charged on default, at $40 plus interest at an effective annual rate of 60% for the first 13 weeks and 36% thereafter".

CPLA submitted "that (a) maximum fee of $40 (would be) consistent with NSF fees currently charged by major banks in Canada and … annual interest rate of 60% … (would be) an appropriate maximum for the interest component of amounts payable on a loan that is in default".

CPLA noted that the Board's order "will the be the first of its kind in Manitoba, quite possibly in Canada … will govern the payday loan industry in the province for the next three years (and) regardless of what adjustments are made three years from now any lender … unable to operate within the terms of the Board's first order in the interim will no longer be in business".

CPLA suggested that with the Board's order, "some lenders will have little time in order to make significant changes to their business operations … many may have insufficient resources to commence and participate in a hearing for an adjustment within the three year period (for example, a special request to account for inflation or increased costs)", and submitted that the Board should exercise caution.

CPLA asserted that "the maximum recommended by CPLA will require a considerable number of operators to improve their business practices or to exit the business (and its) recommendation will allow efficient operators … not a monopoly, but somebody that is out there working under the maximum fee schedule … the opportunity to recoup their

operating expenses and earn a fair return".

CPLA asserted that acceptance of its recommendations "will ensure that payday loan services remain a credit option available to customers throughout Manitoba as … envisaged by the government of Manitoba" and that "it will allow new companies to enter the marketplace (and) provide payday lenders with an incentive to become more efficient and to increase their per store volumes and to lower their costs (while) protect(ing) consumers against excessive rates".

CPLA concluded that its recommended maximum cost of credit represents "the just and reasonable rate, having regard to the circumstances".

Rentcash

Rentcash noted that it charges $25 per $100 on some types of loans "and … $29.87 on its signature loans (longer-term payday loans, one month in duration)", and queried "so, what's the fuss about? … you'll have posters and (the regulations) … require a font that is 144 – (saying) payday loans are high cost loans. What's all the fuss about not understanding it … it's going to be on the poster that (for a $300 loan it will) cost you $360 or $390, what level of education do you need to understand the difference between those two amounts?"

Rentcash noted that its profits were "half those of the banks" and "there's no general outcry by the consumers, there's no complaints flooding into the Consumers Bureau … (and) … clients are very satisfied with the service they get. They know their options … When we go out in the population and … speak to people they say, oh, you prey on -- you're acting for the people who prey on the poor … part of the fuss is the press releases that come out, the high APRs and the suggestions and the implications in the media -- and this is fostered by the consumers groups -- that payday loans are directed to low-income people only, and they're charging outrageous fees -- thousands of percent".

Rentcash asserted that payday loan customers are mainly from the middle class, with “some lower and some higher income people in there”.

Rentcash noted that Dr. Robinson, in his report to Industry Canada, had commented that “APRs are really meaningless for a short-term loan like this”. Rentcash asserted that “in a sense, the consumer groups are perhaps influencing banks and credit unions not to provide the product … why would I, as a manager of a bank and a manager of a credit union, want to offer a product where I'm going to be criticized by consumer groups as preying on the poor and charging outrageous fees and being unethical about it?”

Rentcash noted as of particular significance that while the Board will set a maximum charge for payday loans (loans of $1,500 or less for a term of 62 days or less) “there (are) different products out there … some of them are longer-term loans (one month rather than 10-12 days) … and they haven't been analysed by anybody … the only evidence on those loans comes from Rentcash”. Rentcash observed that these longer-term loans (its “signature loans”) are for those earning a monthly wage, with some of these customers being professionals.

Rentcash advised that signature loans represent “a higher risk product and that there's higher loan losses, and it has been priced accordingly, and the price difference (over Rentcash’s normal tariff) is nearly $5 per $100”.

Rentcash criticized the approach taken by the Coalition, suggesting that the consumer intervener “didn't speak to the consumers”, and noting that the hearing had “no consumers testify(ing)”, and that the Coalition had relied on surveys conducted and provided by others (by CPLA and Rentcash).

Rentcash inferred that the Coalition had not brought payday borrowers forward “because they didn't want to hear that consumers are happy with the product and want the product”.

Rentcash also held that “none of the experts presented by the Coalition took time to meet and speak to management of the payday lenders”, suggesting that if they had they would have learned how difficult it would be for the lenders to cut costs and reduce loan losses. Rather, according to Rentcash, the Coalition had asked the Board “to make a leap of faith in somebody (Dr. Robinson) who knows nothing about the industry, and fix a maximum rate … that will affect the industry”.

Rentcash observed that “the Coalition rejects the recommendations of its own expert (Dr. Robinson, who proposed a cap of $17 per $100 loan) and proposes a cap rate of approximately $15 per $100, ostensibly on American experience”, and held “there is no evidence and no analysis and no support on which to make a decision based on the American experience”.

With respect to the evidence and recommendations of Dr. Robinson, on which the Coalition based its recommendation, Rentcash suggested flaws, including the changes to Dr. Robinson’s views (on what is an appropriate maximum) that have occurred since his involvement with payday loans.

Rentcash noted that in Dr. Robinson’s 2005 report to Industry Canada, he suggested a rate cap “with a range of $18 per $100 to $21… plus interest … and he acknowledged in that report that (implementing his recommendation) would knock out people in the industry”. Rentcash then noted Dr. Robinson’s engagement by the Association of Community Organizations for Reform Now (ACORN), and his then-recommendation of a cap of $10, a fixed fee irrespective of the amount of the loan … plus interest, asking “how can somebody who relies on public financial statements -- has them available anyways -- and (has available the study of) Ernst & Young come up to such huge differences?” Rentcash suggested that Dr. Robinson’s “opinions and recommendations change based on who hires him and what he thinks those people want to or need to hear”.

With respect to CPLA’s recommended rate ($23.00 plus 88 cents to reflect licensing and bonding costs and an additional amount to mitigate the cost of the hearing for the

industry), Rentcash suggested that the recommendation was influenced by Money Mart, which (according to Rentcash) “subsidizes its payday loan operations with cheque cashing revenue” and is based on out-dated industry cost data.

Rentcash noted that both Mr. Reykdal (Rentcash) and Mr. Sorensen (Sorensen’s Loans til Payday Inc.) had raised their fees to reflect increased costs, in the period following the release of the Ernst & Young report. Rentcash suggested that Ernst & Young’s average costs for the industry were too low, as it was after the report’s release that the major firms in the industry ceased offering loan rollovers, causing a negative impact on firm revenues.

Rentcash further criticized the Ernst & Young report, noting that “it only analyzed a very small sample of corporations operating in the Manitoba market … is skewed … towards the costs of the American conglomerate operating in Canada as Money Mart (and) … does not allow room for product differentiation and … loans to clients with higher risk profiles”.

Rentcash suggested that a significant number of payday loan firms now operating in Manitoba would close if the Board set the maximum at the level recommended by CPLA, suggesting that those firms now charging more than CPLA’s recommended maximum would not be able to reduce their costs sufficiently to allow them to continue in operation. Rentcash suggested that the closure of a significant number of payday loan outlets would result in higher-risk borrowers being unable to secure a loan from the industry.

With respect to CPLA’s recommendation (based on the testimony and recommendation of Dr. Gould) Rentcash opined that Dr. Gould had “(basically) ignored the Deloitte & Touche analysis in coming up with his recommendation … only (using the indication) that costs had increased, (as), based on a $23 rate cap suggested by CPLA, each and every company that was analyzed by Deloitte and Touche would no longer be able to recover their operating costs”.

Rentcash further noted that CPLA, in providing its recommendation, had not provided an estimate on “how many (payday loan borrowers) customers would no longer receive a service based on the risk profile (required to allow for a $23 cap)”. Rentcash noted that Mr. Keyes (CPLA’s President) had indicated in the Nova Scotia hearing (Nova Scotia is holding a public hearing ahead of setting payday caps) that, contrary to his evidence at this hearing, $20 per $100 would be too little for the industry to charge.

Rentcash disagreed with the Coalition’s position that the industry was inadequately competitive, suggesting that the industry is highly competitive, and advising that “there's nothing to suggest (industry price) collusion”, noting that if there was collusion, that would be a matter for the Competition Bureau. Rentcash also suggested that “there's nothing to suggest that (payday firms) won't continue to operate under the current rates (if Rentcash’s rate cap recommendation is adopted)”.

Rentcash recommended a cap of 37.5% of value received (loan advance) plus interest, and from 70 cents to about $2.00 as an allowance for regulatory costs, its recommendation based on the evidence and recommendation of Dr. Clinton, suggesting its recommended cap “allows … product differentiation” and avoids the risk of firms leaving the market. As to the interest component (59% per annum), Rentcash held that it was required to motivate timely repayment.

Rentcash noted the Public Utilities Board’s “duty is not to put businesses out of business, (but) it's to ensure that reasonable rates are being charged and there's no evidence that there's unreasonable profits … (and to facilitate) people who want to have the service receive it”. Rentcash advised that “there is no compelling evidence to suggest that the consumers who want to have this product should no longer be entitled to it”.

With respect to caps applicable to renewal extension and replacement of payday loans, Rentcash proposed:

a) with respect to extensions or renewal, an interest rate of 59% (Rentcash advised

that, in essence, the industry has considered extensions or renewal as “rollover loans); and

b) with respect to replacement loans, the same charges as with a new loan (“you have paid off a loan, dealt with that loan in a day or two or whatever; later, you choose to do a new loan; they are two distinct loans and should each attract the fee of 37.5 percent plus the interest”).

Rentcash advised that the main problem with payday loans has been charging practices with respect to rollovers, whereby lenders would, and some still do, repeat the initial fees along with the interest charge upon an extension, a practice that Rentcash recently refrained from despite a significant cost to its profitability.

With respect to default fees, Rentcash objected to Dr. Robinson’s recommendation of $20 and proposed “payday lenders should be able to charge a maximum that's less than what the banks charge”, suggesting that “it doesn't mean everybody's going to charge it. Rentcash can decide, as it has, to charge a lower amount. But there's no reason to set the maximum lower than what the banks charge for NSF fees”.

And, with respect to interest on default, Rentcash held that lenders should not be “treated different than banks”, calling for the interest to continue at 59% per annum.

Following the first 90 days in default, Rentcash held that lenders should be allowed to charge legal disbursements related to Small Claims Court arising from regulation and licensing.

Rentcash suggested that, in recognition of the costs associated with the hearing, and the three year time period prior to a new Board review, an allowance should be provided by way of automatic indexation of the cap to account for inflation.

Rentcash opined that the objective of the Board, in establishing caps, should be “to protect the consumer from extreme rates and to allow payday loan companies to continue

to fairly and freely compete".

Rentcash submitted that the Public Utilities Board's regular cost analysis model used for utilities is "ill-suited to regulate the payday loan sector in which there are a number of firms competing", suggesting instead an approach allowing for "an initial elimination of extreme rates followed by monitoring of the payday loan sector (that should both) achieve consumer protection and allow competition of differentiated services and products in the new regulatory environment which is being implemented pursuant to the Act".

With respect to the "legislative history" leading to the Board's mandate, Rentcash submitted that "it's the payday loan sector who said, we'd like to operate and the Government said, yes, we agree that we will let you operate". As to the Coalition's musings about a 36% APR cap, Rentcash suggested that the establishment of a cap below 60% APR is inappropriate and "doesn't come close to what the Federal Government wanted to do, and (what) the Provincial Government wanted to do … there was a 60% limit (Section 347, *Criminal* Code) and … (there was) recognition that this was a service which was not being provided by the banks or the credit unions and needed to be provided."

Rentcash supported CPLA's submission that "the Board should have, as its primary objective, maintaining a viable, competitive loan industry", noting that the criteria set out in the legislation to assist the Board in establishing a maximum does not include "a social objective … (a) primary objective … to protect the low income people". Rentcash opined that having such an objective "would be contrary to any public utility model which requires the same service to everybody".

Rentcash advised that when the Senate proceeded with the amendments to the *Criminal Code*, and "understanding that certain provinces had done their due diligence", it "had come to the conclusion that fees charged were generally reasonable" and "chose not to intervene at all, and to leave competition (to) just work its way through".

With respect to the Coalition's mystery shopping, Rentcash noted that the results "showed the experience to be generally positive and service oriented", a view that, for Rentcash, was confirmed by the Pollara survey on customer satisfaction. Rentcash concluded "there is not a systemic problem that we have to try and deal with in an aggressive way. You don't have two-thirds of the people saying, this is not good, we don't like it, the profits are twice what the banks are making".

Rentcash stressed that the legislative changes, including the 48-hour "cooling off" period, allowing for the borrower to return the money and have the loan cancelled at no cost, suggested there was no "systemic problem" requiring stringent Board action. In support of this view, Rentcash (as had CPLA) quoted Finance Minister Selinger:

> "The intention is not to drive companies out of business, because people are showing an interest in having this service, but to make sure that when they offer the service, they do it in a way that's just and reasonable."

And,

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

Rentcash noted that the legislation providing the Board its mandate does not, contrary to the effect CPLA's proposal would have, require the Board to "cut out the smaller players or the lower volume players…". Rentcash reminded the Board of Cash-X's comment "you can't just assume that if you set a rate that works for the average of a particular company, that it allows all the stores to continue to operate".

Rentcash opined that "there are no other industries which, according to even the Coalition paper, are competitive which need to be regulated because of public and political pressures", noting that while "some provinces have succumbed to the political pressure

… (but) some of them have chosen No, we're not going to do it, and … have a reason(ed) basis for it".

Rentcash suggested that provinces not choosing to regulate the industry, or at least avoiding a public hearing, had concluded the costs of a hearing and the extent that such a hearing requires detailed reviews of the practices, costs and revenues of competitive businesses, cannot be justified.

Rentcash reviewed its effort to persuade the Board that the industry is competitive and a rate cap that would allow most firms to remain in business was in the public interest. Rentcash noted it had presented Dr. Clinton, who had advised the Federal Government on banking issues for the Bank of Canada, and other banks on policy matters, and engaged him to consider the issues before the Board and provide an expert opinion. Rentcash reported that Dr. Clinton had advised against the Board requiring the industry to provide "the level of financial reporting that (is present) with the banks".

Rentcash reported that Dr. Clinton had come "to the same conclusion and same recommendations as the Senate, as the Minister", and … consistent with the legislation that governs th(e) Board that there was sufficient competition to protect the public interest".

Rentcash noted that while it had not recommended that the Board refrain from exercising its mandate, and accepts that the Board will establish a maximum cost of credit, it has observed that the Board, by way of Section 74.1(1) of *The Public Utilities Board Act* may refrain from regulation "where the Board finds as a question of fact that the public utility, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest".

Rentcash asserted that Section 74.1(1) of the Board's governing legislation "sets out a basic principle … if you find there's competition sufficient to protect the public interest you would, under the regulation of a public utility, be able to refrain from interfering, and

that's because, and the case law supports it, you act as a surrogate for competition. If you don't see it there, then you have to step in".

Rentcash asserted that, of the witnesses that came before the Board in the hearing, only Dr. Clinton expressed an opinion favourable to the Board not exercising its authority, noting that Dr. Simpson refrained from such a view because the industry does not reflect "perfect competition", although "in this real world … it isn't possible".

Rentcash asserted that no party to the proceeding said "there isn't sufficient competition to protect the public interest", though Rentcash acknowledged that the Coalition had claimed the industry represented an oligopoly. Rentcash opined that with the entry of Advance America into the market, "you've got a whole bunch of small firms competing with big firms, operating differently, (with) different hours (and) offering different products".

Rentcash asserted that the Coalition was holding that "there's no competition between Money Mart and Rentcash", a position that Rentcash opined "couldn't be further from the truth (as) there is very active competition". Rentcash advised that it had "reduced its cheque cashing fees by 50% to try and get some business, and that effort was largely unsuccessful", citing it as further evidence of competition.

With respect to the "weight" Rentcash expects the Board to provide Dr. Clinton's testimony, the intervener noted "he went to stores, spoke to management, spoke to clients, (and) did what he had to do to learn more about this industry to come up with the recommendations and to see whether (the industry) was competitive or not". Rentcash noted that Dr. Clinton had reported observing differences in services and in the risk profile of the different payday firms, and had observed the co-location of the outlets of various firms, supporting the view that comparing prices would be easily done by borrowers.

Rentcash noted that while Dr. Clinton opined a degree of flexibility in the elasticity of

supply, he did not support the Coalition's view that "if the prices go down, the demand's going to increase", suggesting "there hasn't been any evidence to … support that assumption".

With respect to the objectives of regulation, Rentcash noted Dr. Clinton's view that "fee regulations would not be an effective instrument for the objectives of poverty relief or financial relief of typical families" as "payday clients are not particularly poor", observing that persons "on social assistance … wouldn't qualify".

As to who bears the responsibility to educate consumers concerning financial management, Rentcash suggested that parents should play a role, and that not all people below the poverty line experience credit demands.

Rentcash noted that the average family spends a considerable sum on discretionary expenditures (items such as alcohol, cigarettes and government lotteries) and suggested a comparison between a family's discretionary expenditures and "saving consumers $2 or $3 on a payday loan per $100", noting that "people can choose not to spend (on discretionary items)". Rentcash suggested that if government wanted to "deal with poverty", attention should be paid to mortgage levels and credit card levels, "the big ticket items", rather than controlling payday loan fees.

Rentcash suggested that controlling payday loan fees "is not going to make a huge difference (as) if people are in the situation that they are, it's because they already have chosen to poorly manage their affairs and have put them(selves) in the situation that they are in".

The intervener agreed with and cited Dr. Gould's opinion on the wisdom of applying a cost of service public utility regulation model on the payday loan industry, reporting it to be as follows:

> "Earnings and service standards, where a large number of firms serve the market,

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

With respect to the weight the Board should give to senatorial and ministerial comments, Rentcash cited *Sullivan and Driedger* on the construction of statutes, in claiming that “there is legal precedent for the Board to rely on senatorial and ministerial statements in deciding what the purpose is of the legislation … (that) … Courts have said that this can be done and it isn't improper to do it”.

Rentcash also cited a *Nova Scotia Court of Appeal* decision (Dalhousie Legal Aid Service v. Nova Scotia Power, 2006) in concluding that the Board should not establish rate caps that favour low income; the decision in the Nova Scotia case was that Nova Scotia Power should not offer lower rates to lower income customers than it charges to other customers, consistent with the concept of a public utility. Rentcash also cited that case as indicative of the proper role of rate regulation, noting the Court’s view concerning Nova Scotia power, an electric utility: “Because it is a monopoly, regulation operates as a surrogate for competition.”

As well, Rentcash considered the decision as representing precedent in its finding “the (Nova Scotia) Board has to find that costs are imprudent or unreasonable” if it is to interfere with the utility’s rates, the Court finding that “The Board's regulatory power is a proxy for competition, not an instrument of social policy." Rentcash suggested that the Coalition recommendation “suggests that (the Board) should be an instrument of social policy”.

Rentcash suggested that there had been insufficient analyses presented through the hearing to allow the Board to find the industry and its firms to be inefficient, alleging support for a lower fee cap than proposed by Rentcash. Rentcash opined “nobody has gone into the businesses and gone through and said, well, you could do this better, or you

could do this better, and you could cut costs here, or this is an imprudent expense".

Rentcash opined that public companies (those traded on the stock exchange, such as Rentcash and Dollar Financial) are under "enormous pressure to be efficient", having to "answer to shareholders". Rentcash noted that Dr. Robinson had "also agreed that there (were) pressures on companies to be efficient".

Rentcash suggested that "the Board is not tasked to be paternalistic and decide whether consumers should no longer be entitled to receive payday loans because their risk profile is too high, or because their pay structure is such that they need a payday loan product of longer duration …".

With respect to payday lending in rural areas, Rentcash opined that the Board "should not set a rate which will make it such that rural people don't benefit from the same service". Rentcash suggested that if rural borrowers "want to pay the extra dollar or two to get the service, and that's what it costs for a smaller provider in a smaller town, so be it".

Rentcash observed that "if it ain't broke, you don't have to fix it", suggesting the Board "not put a rate like $23 per $100, which is not going to (allow many firms to) make a go of it". Rentcash noted presenter Gerry Charlebois' saying that "his costs are over $24 and he has to charge $26.50 to make a living on it".

Rentcash suggested that Mr. Charlebois was "a humble man" with a firm that he thinks "(is) providing a good service", opining "why should (the Board) put a guy like that out of business by setting a rate at $23 per $100 … there's just no sound policy reason to do that".

Rentcash noted the Coalition's citing of the Board's cheque cashing order as representing a precedent for setting a cap representative of "efficiency", suggesting that in that case "the Board (had) to deal with a number of similar social issues and cost issues and arguments". Rentcash stated that there were significant differences between that hearing

and this one, and provided a rationale for why “the Board should not adopt an efficient provider model in this Hearing”. Rentcash noted that in the case of the cheque cashing hearing, the service at issue (the cashing of government cheques) represented only a fraction of the overall volume and range of cheques being cashed by the fringe or near-banks, suggesting that in this proceeding “payday loan revenues … represent the majority of the revenue for (the) firms”.

Rentcash opined that “logically, if you touch just a small little part of the business you can touch it in a more significant way without putting somebody out of business”. The intervener also noted that the cashing of government cheques “is very low risk and does not vary like payday loan risk profiles”. As well, Rentcash observed that there was “product differentiation in payday loans (and) … because of this differentiation there are some clients who are consciously paying more because of the way the service is provided”.

Rentcash noted that one presenter had “explained that he enjoys the service he gets from Rentcash, and knows that he can get the product cheaper elsewhere but chooses the Rentcash product”. Finally, Rentcash noted that, unlike payday loans (which banks and credit unions do not offer) banks and credit unions do offer government cheque cashing.

Rentcash noted that if cheque cashing is subsidizing Money Mart’s payday loan business, the reduction in allowable rates provided by the Board with respect to its government cheque cashing order would reduce the “collateral” revenue earned on cheque cashing, potentially reducing the ability of the firm to offer low payday loan fees. Rentcash suggested that Money Mart requires the economies of scope and services in addition to payday lending, to facilitate its lower rates for payday loans.

Accordingly, Rentcash noted that the Board, in placing a cap on the fees charged for cashing government cheques, had reduced industry cheque cashing revenue, suggested that the impact of this is not known, and opined “that's another reason to be cautious (with the payday loan cap) … we don't know the impact, if any, that this Board's order in

the cheque cashing, by reducing the amounts that would normally be charged, will have on these payday loan providers. So you don't want to do the knock-out punch in this hearing”.

Rentcash suggested that, with respect to “issues of economies of scale, et cetera”, none of the Coalition’s witnesses have been in the payday loan business and thus, while they may have “good ideas” they have “absolutely no idea what it takes to operate that business”.

As to the rationale for the use of any particular regulatory model, Rentcash suggested it was important to ask:

a) How will it work?

b) Will it protect consumers?

c) Why will it work?

d) Why is it better than a public utility regulatory model?

Rentcash quoted Dr. Gould with respect to using a public utilities cost model:

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

Rentcash noted that the proceeding had not received costing information on all of the companies to be affected by regulation, and opined: “(as) we don't have information on all the companies … I don't think anybody that did the accounting analysis is in a position to say that any of the costs of any of these providers that they looked at were imprudent or unreasonable … all they've been able to say (is), ‘Well this is the average cost (or) this is what seems to be the average for this sector.’ And even that is questionable when you look at the data behind it”.

Rentcash quoted Dr. Robinson from his report to Industry Canada:

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

Rentcash thus advised “the evidence isn't necessarily consistent that larger means more efficient”, and, with respect to the Board setting a low fee maximum, Rentcash quoted Dr. Robinson:

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

With respect to the prospects of the firms of the industry being able to reduce costs to meet a “low” fee maximum, Rentcash advised caution, particularly with respect to CPLA’s $23 proposal and the recommendations of the Coalition ($15) and Dr. Robinson ($17), again quoting Dr. Robinson:

> "This is a pretty simple business, and I am hard-pressed to imagine dramatic innovation that will lower costs (and) there doesn't seem to be a lot of room left for profitable expansion."

Rentcash noted that Ernst & Young had advised the intervener that as the consultancy was doing its survey (relying on a list of firms provided by the predecessor to CPLA), it found that many had left the business, suggesting to Rentcash that normal competitive factors were at work in the industry.

With respect to Dr. Robinson’s claim that “normal” bad debt experience in the industry would be approximately 3%, Rentcash advised of American payday loan companies with loss rates in the range of 4% to 6%, and Rentcash’s experience of between 5% and 6%, noting that its experience had been higher after it ceased offering loan rollovers, but had since stabilized.

Rentcash opined “that in a market that leaves little room to lower costs and companies are being forced out due to market competition, there is no compelling need for the Board to do such a drastic intervention (as) to go to $23 or to anything lower than that” and that “there is no need to be concerned that setting a maximum will cause people to gravitate to that maximum (because) if the Board had any inkling that that was happening, it could soon intervene and deal with that issue”.

Rentcash noted that the Consumers Bureau will be monitoring industry operations, “so that if there's something abnormal happening in the market that couldn't be expected, and it acts differently than it has to date, then (the Board) could intervene”.

Rentcash held that it would be “presumptuous to think … (lenders) are going to change their conduct, especially with new (firms) coming up from the States like Advance America. If anything else, the competition is going to be stiffer”.

Rentcash suggested “it's inaccurate to suggest, if it has been suggested by the witnesses of the Coalition, that setting the maximum rate … recommended by Rentcash is to not interfere somewhat with the market”, opining that the Board would be intervening adequately by adopting Rentcash’s recommendation because it would be “tak(ing) out all the outliers past that (rate), and there are quite a few of them”.

Rentcash suggested by adopting Rentcash’s recommendation the Board would ensure no higher rates in the industry, and by so doing would be “protecting the consumer from the excessive or extreme rates”, opining that was the intent of the Minister in the establishment of the Board’s mandate.

Rentcash advised that by adopting Dr. Clinton’s recommendation, adopted by Rentcash, and establishing a cap based on the normal market limit, the Board will not have to “choose a particular business and service delivery model … (and can allow the market to function) based on (adequate disclosure and) actual market demand as opposed to theoretical demand”.

Rentcash suggested that by adopting Rentcash's proposed cap, the "normal limit" approach of Dr. Clinton, the Board could avoid future "lengthy, costly hearings by avoiding detailed review which will be required if the public utility cost model is adopted". Rentcash suggested that under the public utility model of regulation, the Board would have to "have full access to (firm operational statistics and results) and full analysis, as (the Board does) in (the case of) public utilities". Without such information, Rentcash suggested the Board would be establishing caps based on "guessing" and opined that the Board should not be "guessing at numbers and whether things are reasonable or not when that has impacts on the lives of small businesses in (Manitoba)".

Rentcash, in its opposition to the lower cap recommendation of Dr. Gould and CPLA, suggested that if the Board were to adopt that approach, based on "average cost over time", the result would be fewer firms and ever lower averages, as the higher fee firms drop out of the industry.

Rentcash concluded that if the Board adopts either the recommendation of CPLA or the Coalition (either Dr. Gould's or Dr. Robinson's theoretical approach) "in four or five years from now, (the Board will) be regulating a monopoly … because you're going to gravitate towards the lowest provider and that lowest provider may not be providing (adequate service and) information to consumers because they need to push (the loans) out really quick".

Rentcash suggested that, in such a scenario, the surviving payday firms "may not be doing pre-calls before the due dates (suggesting higher defaults)" and that "there may be a lot of aspects of the services which have to be cut to meet the cost box that they (would) have to fit in". Rentcash suggested that would be the certain outcome if the Board based the cap on average weighted costs, as suggested by the Coalition.

Rentcash suggested that "the market's working", so "why do we (the industry) need to incur these costs (hearing costs) and have these hearings on issues (when we could) set a rate that's at a higher level (allowing firms to) work within those parameters?"

As to monitoring the industry (assuming adoption of the higher rate cap proposed by Rentcash), the intervener suggested that with two Consumers Bureau staff and (with the arrival of Advance America) three public companies, it would be “easy to look at their financials, and if they're doing anything less than banks, I would suggest they're not making unreasonable profits. And if they have to charge $30 per $100 to earn something that's less than or equal to (the returns of mainline) financial institutions, what's wrong with that? What's even wrong with some premium because of the fact that it's a high-risk investment?”

Rentcash proposed that under that monitoring model, the regulator “can look at those financials … can see whether companies are acting reasonably, and whether there is any correction that needs to be done”.

Rentcash opined “there is that pressure already for efficiency, so you don't have to be concerned about efficiency and telling the companies how to change”.

Rentcash noted that its rebuttal evidence was not challenged nor rebutted, and it supported the view “that consumers are shopping around, that they make informed decisions to pay the different prices based on their perceived quality differences in services”.

With respect to the Coalition claim that banks had left the City’s north end communities to be replaced by payday lending outlets, Rentcash noted that the Coalition’s witness panel had failed to consider bank and credit union branch openings in the communities, and that the review had only considered closings. Rentcash also noted that with the increased availability of banking machines and with telephone banking, there is now more access to mainstream banking than before.

With respect to the Coalition’s inference that banks and credit unions are more efficient than payday lenders, Rentcash noted that “Dr. Robinson candidly acknowledged he had no idea what wages were being paid to staff in credit unions or banks, and couldn't make

any comment as to whether they were more efficient or could provide (loans) more efficiently". Rentcash also noted that Mr. Hansford had testified that credit unions "would have to make a business case … that they could provide (payday loans) and not have their other members subsidize the product". As to the potential involvement of banks in payday lending, Rentcash suggested that banks didn't want to be involved, due to costs and limited revenue from such loans.

With respect to disclosure improvements, Rentcash noted that consumer groups had offered good ideas on how to enhance disclosure, but suggested that if rates are suppressed (lowered) payday staff may not "have time to do that", and that reduced service due to inadequate revenue would only damage the consumer.

Rentcash disputed Dr. Robinson's "unfounded allegations of excess profit", suggesting that the financials of Dollar Financial Group and Rentcash indicate the firms were "generating less return for their investors (than) banks".

Rentcash also disputed Dr. Robinson's "unsubstantiated speculation with respect to effective volumes", suggesting that volumes were only one factor determining profitability, noting that the Deloitte & Touche study reported one of the two smallest Manitoba operators indicated the lowest operational costs.

Rentcash advised that industry operating costs have been rising, and noted that Ernst & Young's report indicated average operating costs based on old data, and that cost increases are likely to put increased pressure on profitability going forward.

Rentcash suggested that Dr. Robinson's conclusion that "that closing stores will necessarily lead to higher volumes" and lower costs, "won't necessarily be true, and (that) … (with closures of some firms) higher risk people won't be serviced by the (firms) who don't want to service those people".

Rentcash suggested that if Rentcash could not continue in operation in Manitoba because

of a low rate cap, the firm's signature loans, loans with a one-month term, "are not going to be serviced by the other companies, because none of them service them. So, to say that automatically the existing clients will gravitate to the other companies and increase their volumes, isn't necessarily true".

Rentcash commented on Dr. Simpson's suggestion that price differences in the payday loan industry are greater than those found in other industries, suggesting that the comparison of payday loan rates with bank mortgage rates was inappropriate, noting that with mortgages one is considering a secure loan, and noting that in "the sub-prime mortgage sector, you see a huge range".

Rentcash noted that internet providers are not regulated, and suggested that "the Board should be cautious, because if you drive people out of business that have the storefronts, the service will be provided by unregulated (firms)". Rentcash noted Dr. Robinson's view that internet lenders should be regulated, so as to provide payday loan availability in the case of "the local provider" closing. Rentcash noted that if borrowers are "drive(n) … to an unregulated market … nothing prevents that Internet provider from charging $50 per $100 … he's not regulated by this Board and he can charge an excessive rate if the customer is put in that position".

With respect to the location of payday lenders, Rentcash agreed with CPLA that the industry locates "on busy thoroughfares where retail space is available and where other retail services locate".

Rentcash opined that "there is no evidence that the operating costs of Rentcash are unreasonable given the services provided and the risk profile of its customers … including retention payments to third party lenders … and corporate expenses and amortization costs to support the brokerage operations". Rentcash opposed Dr. Robinson's view that the "broker model is inefficient", opining there is no evidence to support the claim.

With respect to the debit cards and fees, Rentcash noted that the cards are “bank-owned cards” and the charges to Rentcash borrowers are “to a large extent, uncontrollable expenses because it depends on what the consumer does”. Rentcash opined it would be “impractical to start to try and guess and put those amounts in a cost of credit”, noting that card fees are disclosed, thus “the consumer is protected, because he can shop around and know what he has to pay”.

With respect to optional insurance, Rentcash’s view is that, as the product is optional, the cost to consumers taking the coverage is “specifically excluded from the definitions” and thus not an issue for the Board.

With respect to the costs of regulation, Rentcash noted CPLA’s estimate of 88 cents per $100 and indicated Rentcash’s estimate falls in a range of 70 cents to $2.82 per $100, depending on the store, noting that the estimate is notionally included in Rentcash’s recommended cap of $37.50.

The intervener noted that for “smaller rural operations” the regulatory cost provision would be nearly $3 per $100, opining “those locations shouldn't be penalized based on some kind of an average”. Rentcash noted that the range of regulatory costs differs by location, and that this “supports the point that … even in the (case of) bigger players, you have some stores that are different than others … can't assume they're all same volume, same cost, et cetera. So if you're going to allow that variety to be provided by the big providers and by the small ones, you need to allow that flexibility as opposed to just an average”.

Rentcash noted that “it was only CPLA and Rentcash that participated in an active way in this hearing, because it is so expensive to do it”. Rentcash indicated that “if some of those … small owners … had to spend three weeks of hearing time away from their business (it would be very difficult for them)”, suggesting that their absence had been covered off as best as possible by Rentcash and CPLA.

Rentcash also noted confusion as to licensing fee requirements, questioning whether a brokerage outlet would be required to pay $5500 for the broker and a further $5500 for the third-party lender, suggesting that one fee per outlet would be reasonable.

Rentcash advised as to some of the consequences for consumers if payday loans were not available, such as NSF fees and overdraft charges by banks. And, as to "the lack of consumer complaints", Rentcash noted that Newfoundland had chosen "not to do anything", that the Province of Alberta "has indicated that rate caps may not be an appropriate regulatory tool" and that the Province of Ontario, with the highest volume of payday loan stores, "is under … pressure (to hold a hearing) … but that the paper that's been produced suggests that regulatory costs would be too high for consumers to bear, and that rate caps may not be appropriate". With respect to Nova Scotia, Rentcash advised that the regulator had retained the services of an accountant that has indicated being "comfortable with a $27 fee".

With respect to the U.S. payday lending experience, Rentcash advised that the share prices of publicly listed payday firms "continue to decrease", suggesting "insufficient revenue streams". Rentcash also suggested that "the Board should not rely on … the U.S. data, apart from having some kind of a general sense that there's a lot of things happening -- some regulating, some not; some different approaches." With respect to the concept of a "tiered rating system or sliding percentage model", Rentcash supported CPLA's recommendation that such approaches are "not in the best interests of consumers".

With respect to default charges, Rentcash supported the recommendation of CPLA, opining "the $40 … banks charge that, why shouldn't (the industry)?" As to interest in default, Rentcash supported CPLA's position that interest is required to motivate repayment.

5.0 BOARD FINDINGS

Following two months of pre-hearing process, four months of hearings and a month of deliberation following the hearing, and careful consideration of all information put forward and reviewed, the Board concludes that the maximum charges to be set for payday loans should be such as to reduce the cost of credit for consumers while promoting increased efficiency within the industry. Concurrently, the Board recommends steps be undertaken by government to promote and effect a marked reduction in the utilization of payday loans by consumers.

Payday loans are currently made at annual interest rates equivalent to a range from hundreds to thousands percent, this suggesting that an informed and prudent borrower would rely on such a loan only if there were no feasible alternative other than doing without, and that "doing without" was itself not feasible.

5.1 Intent of *Criminal Code* Section 347

While the evidence brought forward during the hearing focused on the costs of operating a payday loan firm and, to a lesser extent, the benefits of competition as a surrogate for regulation, the hearing treated the industry as a legitimate provider of a useful service for those borrowers presumed unable to acquire needed short-term credit from another lower-cost source. However, as touched upon at the hearing by both Coalition witnesses and independent presenters, the Board also considered as an important issue (if not the most important), the ethics of payday lending.

The Board is struck by the payday loan industry's longstanding disregard for the intent of Section 347 of the *Criminal Code* (as perceived by the Board and as concluded by Manitoba court decisions) and an equally longstanding disregard by the government of pursuing compliance with that intent through prosecution of firms in breach of the anti-

usury provision. Prosecutions based on single individual small balance short-term loans would have suffered inattention competing with cases involving violence and large dollar values for scarce prosecutorial and court time and resources. The "forest may have been lost for the trees."

Rather than proposing changes to the *Criminal Code* to allow for payday lending at rates well above the 60% cap (which it did eventually pursue and advocate), the industry began by flouting it. However, following the commencement of several private prosecutions (in the form of class action suits), the industry began calling for regulation. Regulation would allow for the legitimization of payday loans and, presumably, an end to the risk of damages that could range into the hundreds of millions of dollars if the class action suits succeed.

Based on that experience -- an industry comprised of firms that either ignored Section 347 or acted so as to "get around it"-- the Board recommends that the Consumer Bureau (the provincial government agency charged with the responsibility to license and monitor payday lending in Manitoba) maintain close supervision of the industry, to ensure that both the letter and the spirit of the maximum charges established by this Order are abided by.

Direct payday lenders (such as National Money Mart) separate their interest charges to borrowers (limiting stated "interest" to 60%, the limit set by Section 347) from the other charges they impose (with National Money Mart, a cheque cashing fee) in an attempt to "get around" Section 347. Payday lenders operating as brokers (such as Rentcash's two operating units) involve third-party lenders making the loans that a broker (Rentcash) arranges with its customers, charging the customers broker fees, also in an attempt to "get around" Section 347. With the amendments to the Consumer Protection Act, and active monitoring of payday operations by the Consumers Bureau, there should be no "getting around" the maximums set herein.

The end result for payday borrowers has been the same (whether the payday lender has operated as a direct lender or as a broker), overall charges equivalent to APRs in the hundreds to thousands percent. Unfortunately, even with the maximum rates established by this Order, very high APRs associated with payday loans will continue.

It is the Board's understanding that the federal Small Loans Act was repealed in 1981 and replaced by Section 347 of the *Criminal Code* because of perceived problems primarily associated with commercial transactions and the treatment of fees related to participating in profits, etc. As well, it is the Board's understanding that the rate caps of the Small Loans Act were judged to be too low for a time marked by high inflation and general interest rates. Concerns were also expressed over the difficulty of regulating the credit markets.

The 60% cap was devised to define the threshold above which criminality was present, a cap expected to be breached only by loan sharks. The concept of payday lending was then both unknown and unanticipated.

Fast forward almost thirty years and a major question arises: why has government, being aware of both the payday loan industry and the industry's efforts to "get around" Section 347's cap of 60%, not actively enforced the *Criminal Code*? Or, if Section 347 was thought not to be "tight enough" to prevent its intent being evaded, why didn't the federal government move to amend the law, and close any loopholes that were determined to exist? As to the answers to those important questions, the Board is not sanguine and is left to guess.

That said, it was suggested at the hearing that the law has not been vigorously enforced because of a lack of a "hue and cry" from payday loan borrowers, consumer lobby groups and provincial governments, with the lack of "hue and cry" attributed to one or more factors:

a) payday loan borrowers are essentially powerless, vulnerable consumers unable to acquire needed short-term credit from a mainstream financial institution; and/or

b) payday loans provide short-term, small-balance loans unavailable from mainstream lenders to particular categories of borrowers (poor credit, no credit, etc.); and/or

c) concern that for very short loan terms, regulation based on the APR is unreasonable (interest at an APR of 60% provides only 16 cents of interest on a $100 loan, per day).

Whatever perception represents reality, mainstream lenders (banks and credit unions - although apparently 97% or more of payday borrowers have either a bank or credit union account) never led a charge to have Section 347 enforced. The Board suspects the reason for their lack of pressuring government was preoccupation with their own business goals, and realization that, if they argued successfully for the prosecution of payday lenders, disappointed payday loan borrowers would then expect mainstream lenders to meet payday loan borrowers' needs.

Payday loan borrowers have credit needs just as other consumers do, though these borrowers are considered to be higher-risk and frequently less affluent (no savings, unavailable credit lines or credit card balances). Likely, there is not enough revenue and net margin available from payday borrowers for banks and credit unions to make a concerted effort to service their short-term, low-balance credit needs.

Prior to the repeal of *The Small Loans Act* and the advent of payday lenders, finance companies (charging APRs ranging into the 30%s) were the high-cost providers of consumer credit; now, payday lending makes the finance companies' rates look reasonable, though only in comparison to payday loans, pawning, tax discounters and rent-to-own operators.

Lying behind the reasons for the lack of government enforcement of the *Criminal Code*'s interest rate cap may also be a view shared by both mainstream lenders and their more affluent customers and borrowers - that borrowers unable to gain credit from mainstream financial institutions are responsible for their own lot, and that many of these borrowers are prolific spenders unable to gain control of their household budgets and meet their debt obligations as due.

The Board does not share that view that may provide, for some, a rationale for the punishing rates of payday loans being seen as justifiable. The Board believes that the root cause of payday borrowing lies with:

a) strained household budgets;

b) an absence of savings;

c) a goodly portion of Canadian and Manitoba families living from paycheque to paycheque; and

d) an absence of adequate short-term, small-balance credit options from mainstream lenders for some borrowers.

Whatever the reasons, Section 347 has not been vigorously enforced. As a result, the industry of payday lenders has grown in Canada from a reported few "stores" in the early 1990s to (a reported) almost 1,400 locations nationwide today. With more and more Canadians obtaining very high-cost loans from payday lenders, and payday loan outlets springing up not only in all major urban areas but also in smaller provincial and territorial centers, the industry has become increasingly visible. At the hearing, Dr. Robinson suggested that the payday loan industry has "room to grow" in Canada, and that twice the current number of outlets may represent market saturation.

Consequently, the industry has attracted sufficient attention that, under pressure from consumer lobby groups, the payday industry itself (seeking legitimization to address risks

from class action lawsuits) and provincial governments, the federal government acted, by punting the issue to provinces willing to regulate the industry.

5.2 Responsibility to Regulate Lending

Provincial regulation, or at least the opportunity for provincial regulation, represents an improvement over either the current situation (a failure by government to prosecute pursuant to Section 347 of the *Criminal Code)* or by federal amendments to the *Criminal Code* to restrain the industry and restrict the need for further prosecutions.

Bill C-26, allowing the provinces to regulate payday loans within their jurisdictions, appears to represent a conscious decision by the federal government to delegate the federal government's constitutionally provided right to establish a national interest rate policy to the provinces. Just one of the implications of the federal approach will be nationally operating payday loan companies required to have different tariffs of charges across the country. Some jurisdictions (such as Quebec and several American states) have, or may, set maximum charges low enough that payday lending will not be economically feasible (in those provinces and states, consumers rely on mainstream lenders, pawn shops, families or "doing without").

Some provinces may do nothing, and not act to take on the responsibility of licensing and regulating payday lenders in their jurisdictions, leaving Section 347 (as amended) in force. Whether the payday lending industry will remain active in those provinces (presumably trusting in the probability that prosecutions will remain as rare as now), or whether more prosecutions will follow, remain open questions.

Other provinces, such as Manitoba, will take up the challenge and regulate the industry. The combination of provinces acting in different ways will lead to a hodge-podge of lender practices, laws and risks across Canada, a situation not in the best interest of either consumers or the industry.

Thus, the federal delegation to "willing" provinces is highly likely to result in APR rates for small loans varying significantly through the various Canadian jurisdictions. As to how such an approach makes "sense" for either borrowers or industry, the Board is, again, not sanguine.

All the differing approaches and caps that will develop with the federal delegation of regulatory responsibility will affect payday loan industry operations, record-keeping, monitoring, advertising, marketing, staff training and profitability. As well, difficulties will be encountered with payday lenders operating by way of Internet or telesales, and not having "bricks and mortar" offices in all provinces – some will be regulated, some will not.

As previously suggested, provinces and territories choosing not to license payday lenders will not gain a federal exemption for the payday lenders operating in their jurisdiction, thus all payday lenders operating in those provinces will presumably remain subject to the rate cap of 60% set and defined by Section 347 of the *Criminal Code*. The Board suspects that for payday lenders making loans to borrowers within a regulated jurisdiction from a location outside that jurisdiction, and with such loans being at APRs higher than the cap set by that jurisdiction, likely these lenders will risk, at minimum, an inability to obtain court judgments in cases of loan default.

The Board has many unanswered questions as to how the payday lending industry will develop with no national rate cap. Will jurisdictions not choosing to regulate payday lenders begin to undertake prosecutions under Section 347? Will the payday lenders in those provinces withdraw? And, will payday lenders licensed in provinces choosing to regulate the industry be able to reduce their cost of funds by obtaining loans from banks and/or commercial paper (as has been the case in the United States), even though some of their operations are still subject to the risk of prosecutions and/or class action suits?

While the federal government appears to have "walked away" from what some presenters to the hearing considered a moral responsibility to protect consumers across the country

(though Parliament and the federal government presumably would have been aware of the implications for consumers, given the research conducted by government and Parliament's administrative resources), the legislature of Manitoba has provided a mechanism to protect Manitoba consumers.

5.3 Manitoba's Response to Regulation of Payday Lending

As previously indicated, the Board's mandate was provided through amendments to *The Consumer Protection Act* (Manitoba), the objective of that Act being the provision of protection to consumers.

Neither the Act nor the Board were or are focused on sustaining the payday loan industry for the benefit of its owners and employees. The Board's particular focus is assisting and protecting those consumers now relying on payday loans to meet short-term credit needs, yet unable to access that short-term credit from a lower-cost source.

The mechanism chosen by Manitoba includes the role provided to the Board, that being to set the maximum rate allowable for payday loan charges. The Board interprets the intention of the legislature was not to "drive out" the payday loan industry, inferring that the legislators' unwillingness to end the practice of payday lending was due to a concern that to do so would leave some consumers without access to short-term credit and therefore, subject to the long-feared loan sharks, or other illegal sources of funds.

The Board views Manitoba's actions to regulate the payday industry not to be an endorsement of the industry, but rather, an action to mitigate a bad situation and improve the lot of desperate borrowers.

5.4 Schedule Of Maximum Charges Related To Payday Lending

5.4.1 Cost of Credit

The maximum cost of credit that may be charged, required or accepted in respect of a payday loan, excepting for loans to persons on employment insurance or social assistance, or for loans in excess of 30% of the applicant/borrower's expected next pay, net of deductions, will be:

a) 17% of value received to $500; plus
b) 15% of value received from $501 to $1,000; and
c) 6% of value received between $1,000 and $1,500.

For payday loans to persons on employment insurance or social assistance, or in excess of 30% of the applicant/borrower's expected next pay net of deductions, the maximum cost of credit shall be 6% of value received to $1,500.00.

If a payday loan is fully repaid more than five (5) days prior to the loan's due date, but after the 48-hour cooling off period, the cost of credit shall be retrospectively set at the original cost of credit, less $3.00 for each day over five (5) days the loan is repaid early, with a minimum cost of credit of $10.00.

In determining adherence to this maximum, all charges and interest of any and all kinds, however determined or levied, are to be included in the calculation. In its next review of maximum charges (which is to take place no later than three years from the date of the government's Regulation setting maximum charges) the Board intends to review the thresholds at which these amounts are now established, to address any effects of inflation.

5.4.2 Extension, Renewal or Replacement

The maximum amount that may be charged, required or accepted in respect of an extension, renewal or replacement loan is 5% of the balance extended, renewed or replaced.

Only one charge is allowed for each extension, renewal or replacement event, notwithstanding the number or frequency of times that extension, renewal or replacement occurs. No separate interest or any other charge may be levied related to the extension, renewal or replacement of a payday loan.

5.4.3 Default

The maximum amount that may be charged, required or accepted in the case of default will be $20, and that for only one time, plus a maximum rate of interest of 2.5% per month, not to be compounded unless an extension, renewal or replacement loan is provided. In the latter case, no default charge may be applied, required or accepted.

5.4.4 Debit/ Credit Card Charges

With respect to charges for or related to debit and credit cards, where the borrower does not have the option of receiving cash, the aggregate amount of any charges that may be levied on or accepted by a borrower, including the estimated or known charge by a third party based on the assumption of one transaction, is to be added to the cost of credit and, if the sum exceeds the maximum cost of credit as set out above, then the excess is to be deducted from the cost of credit.

5.5 Premises Supporting the Board's Decision

The maximum charges established by this Order will produce borrowing rates much less onerous than now charged by the highest-priced payday lenders, and the terms attached to the maximums are expected to reduce the average advance as a percentage of borrowers' net pay, and should discourage payday lending between $1,000 and $1,500.

Advances in excess of 30% of a borrower's next net pay make it unlikely that the borrower's situation can be improved by the loan, and are to be discouraged. And, for loan advances in excess of $1,000, the charges and principal repayment requirement

(where due within no more than one month) are such that repayment problems can be expected, and are best avoided by discouraging such loans.

Assuming that the average payday lender charges $25 per $100 advanced, plus interest at 16 cents per day per $100 advanced, the new maximums will substantially reduce overall revenue and profitability, particularly for low volume "mono-line" lenders. The new maximums will likely allow only the most efficient of payday lenders to remain viable as a payday lender.

The Board establishes these maximums on the following major premises:

a) There is a significant population in need of short-term small loans. This population is often characterized by an absence of savings, static after-tax household income, poor or no ongoing credit relationship with a bank or credit union, and limited or exhausted access to other family assistance for the day-to-day type of access to credit that more affluent households manage without major problems.

b) The “maximums” will become the tariff for many (if not most) payday lenders; it is unlikely any (or at least many) payday lenders from within the industry’s current rolls will set charges lower than the maximums established herein (with payday lending made “legal” by regulation), and it is possible that some other lenders (finance companies being the most likely) may enter the market, which requires licensing (see below).

c) The federal and provincial governments, acting together to allow for an exemption from the restrictions of section 347 of the *Criminal Code* for provincially-licensed payday lenders, have and are acting in a *paternalistic* manner, and have rejected the market as being capable of protecting consumers of payday loans in the absence of rate caps, opting instead for regulation.

d) Neither level of government seeks the abolition of the industry, but desire lower charges than have been prevalent.

e) The intent of governments is to protect consumers.

f) There is no public interest reason supporting inefficient payday lending, anymore than one might expect a pizza restaurant to survive by selling only eight pizzas a day – competition will address pizza market issues, but regulation is required for payday loans (in the absence of a "competitive" market), to ensure that the consumers of payday loans are served by efficient payday lenders.

g) The payday loan industry in Manitoba is very concentrated, with the two largest firms operating more than half the outlets with more than 75% of the total loan volume.

h) While competition is present between the firms, the nature of the competition is not based on rates – the Board infers from the evidence given that firms within the industry have a symbiotic relationship with each other; borrowers who exhaust their credit at a lower-cost payday firm access higher-cost payday firms for concurrent, additional or new loans unavailable from the lower-cost firm.

i) Economies of scale exist in most (if not all) industries, and with lower maximum charges and the closure of some higher-cost payday lenders, the remaining lenders may experience higher volumes, reducing the cost of operations per loan.

j) Credit criteria set so "loose" as to result in bad debt ratios higher than 5% are not in the public interest; the industry would have the Board set maximums at a level which would allow payday lenders experiencing very large bad debt losses to continue with their particular "riskier" loan policies, with the costs of those riskier policies met, in the end, by payday borrowers who do repay.

k) By licensing payday lenders, the government will, in essence, be protecting the lenders from the application of section 347's 60% annual interest rate limit, and this protection may motivate other non-bank lenders (such as finance companies) to enter the field, in effect increasing the rates they now charge to their customers. By establishing lower maximums for loans in excess of $500, the Board acts to dissuade other lenders from "moving up" their rates and shortening the duration of loans offered, to allow for higher yields.

l) Once licensed, payday lenders will have a major business risk disappear, the risk of application of section 347's 60% annual interest rate limit, and this should enable surviving payday loan firms to seek out and secure lower cost loans and investments from owners/shareholders, and the reduction in cost of funds should be reflected in the rates charged to the borrowers.

m) American payday lenders operate in states where the maximum charges are lower than the maximum charge per $100 loan established herein, and this suggests that industry viability will not be challenged or made impossible with the maximums set herein.

n) If finance companies begin (as expected) to offer personal unsecured loans in excess of $500, payday borrowers who find fewer payday lenders willing to advance loans in excess of $500 (as a consequence of the maximums set herein) will have the opportunity to approach these finance companies; the rates, though very high compared to banks and credit unions, are considerably lower than the APRs of payday loans, and the durations of the loans more amenable to gradual repayment.

o) Those individuals relying on social assistance, Employment Insurance or other forms of fixed income generally do not have the financial capacity to easily meet their day-to-day living expenses, let alone repay very high APR loans within 62 days.

p) For loans in default, repayment is likely to arise beyond the 62 day maximum set for payday loans, and credit should not cost hundreds or thousands percent for mid-term loans, thus extensions for loans in default should reflect mid-term (rather than short-term) rates, and be at lower rates than short-term payday loans.

q) For most loans (other than payday loans) the interest rate set by the lender assumes a particular default and bad debt rate, and an assumption as to collection costs; default costs allocated to payday borrowers should not be excessive.

r) Creditors' insurance on payday loans, with commission payments to payday lenders by the insurer of up to 50%, are not in the public interest, but are designed to produce profits for the payday firm, insurer and broker involved.

Manitoba Court decisions, as reviewed earlier, support the intention of s. 347 of the *Criminal Code* that interest described as various charges is nonetheless interest pursuant to s. 347, and that the purpose of the section is consumer protection.

5.6 Rejected Options

Given the statements of legislators (federal and provincial), made when amendments leading to or providing for the Board's mandate were introduced, the Board understands that it should not establish maximums with the intent or consequence of bringing about the closure of all payday lenders in Manitoba.

For this reason, although the Board was aware of and considered the approach of Quebec and several U.S. states to cap consumer interest rates at approximately 3% per month, the Board (out of respect for government's concern and the deficiencies evident in the present market with respect to mainstream lenders meeting the short-term small balance credit needs of the less affluent), has not established an initial rate cap that would make all payday lending uneconomic.

> "The intention is not to drive the companies out of existence, because people are showing an interest in having the service, but to make sure that they do it in a way that's just and reasonable." *(The Honourable Greg Selinger, Minister of Finance, Hansard 3/13/06)*

The federal legislation providing an exemption from s. 347 for payday lending pursuant to provincial licensing, and the amendments to Manitoba legislation thereto, were made with full knowledge that payday loans are made with APRs in the hundreds and thousands per cent, rates that far exceed the 60% maximum established by s. 347 of the

Criminal Code. The Board concludes that government is aware of and accepts that the borrowers of payday loans will continue to pay rates of interest that Parliament and the courts have concluded are usurious. The Board further concludes that this position was taken due to concern by government that, in the absence of payday lenders, some disadvantaged borrowers requiring credit (and finding no source from mainstream financial institutions) would turn to *loan sharks*, and be worse off than if they had obtained a payday loan.

The Board has noted a paucity of available information concerning many apparent problems in the Quebec market due to the absence of payday lending; and a recent American study suggested that consumers in a state that has lowered the interest cap to 36% APR (curtailing payday lending in that state) consider themselves "better off" for the absence of those lenders.

The Board's mandate was to set maximums and terms in line with the new legislative provisions. In establishing the maximums, the Board also intends to provide its understanding of the industry and its business models, setting out the risks, benefits and implications for both borrowers and the industry.

In setting the maximums, the Board has not distinguished between the broker and direct lending payday loan models (the latter separating the interest component of charges against borrowers from charges made by the broker). Nor does the Board establish maximums with the specific intent of accommodating the insurance model of payday lending (a model that the Board is not aware of being present in Manitoba). The business model choice of a lender is the lender's business, although the choice should not negatively impact the borrower.

While the Board cannot prohibit rollovers or the issuance of new loans to repay old loans, it will establish a rate schedule that will reduce the cost of such practices for consumers and make the practices less lucrative for payday lenders. The Board will limit the charges that can be made in those circumstances, to prevent predatory practices and, similarly, the

Board will limit the maximum charges for default conditions. By its recommendations, the Board seeks to ensure improved customer information and education, and promote action to both enhance credit counselling and provide for alternative loan sources at more reasonable costs to borrowers.

Consistent with the current wording of s. 347 of the *Criminal Code* (the requirement that all charges related to a payday loan be represented in the APR for the loan) and Manitoba legislation, the Board includes all charges related to a payday loan, excluding non-mandatory insurance premiums but including charges for the provision, loading and transacting of debit and credit cards, within the maximum charges set.

As to insurance premiums, the Board will recommend the payday loan regulation be amended to include insurance premiums for payday loans, whether mandatory or voluntary, being included in the definition of cost of credit..

The Board had the option of establishing maximums that provide for a separation of interest rate and fixed/variable charges, and distinguishing such charges between term and amount advanced. The Board determined to fix maximums that do not separate interest from other charges, having concluded that an approach readily understood by borrowers is preferable.

The Board will recommend that loan advances be made either by cash or direct deposit to the borrower. It will encourage those methods of advancing credit by requiring that, if loaded debit or credit cards are used, any fees associated with those cards (as well as with one cash withdrawal transaction) will be factored into the calculation for determination of the maximum charge limit. Also, the Board will recommend that if a debit or credit card is issued, a mechanism must be established to ensure the borrower is able to fully recover the full balance on that card at no additional cost, rather than leaving a balance that cannot be accessed by any party other than the lender or the card company.

The Board had the option of setting maximums within the ranges recommended by interveners, but rejected the alternatives presented by industry interveners as being too costly for consumers. The Board is of the view that the maximums it will set herein will be adequate to allow for the survival and continuance in business of *efficient* payday lenders, though it acknowledges that the approach may result in considerable consolidation in the industry and will likely result in the exit from the industry of several firms and outlets.

The Board rejects the premise that existing competition within the industry is sufficient to protect consumers and will lead to competitive and efficient payday lenders offering lower rates. The industry is highly concentrated and operates with a symbiotic relationship amongst the firms in the industry.

The Board also considered the range of rates charged by payday lenders in the United States (10%-22% of a loan) and the approach taken in Quebec (the establishment of a 35% maximum APR, which has effectively precluded payday lenders from operating in Quebec), the practices of certain American states that have also taken action to effectively bar payday lending.

Recognizing that federal and provincial legislation was not intended to bar payday lending, and also recognizing that 16 cents per $100 (equivalent to 60% APR) is inadequate to meet the expenses incurred by a lender in establishing the initial account or the expenses incurred for store operations on a going-forward basis, the Board will not set a maximum at or below 60% APR.

The Board expects that the lower range of charges set herein will allow efficient payday lenders to continue. The average charge in the United States is in the range of $15 to $16 per $100, with Advance America at $18/$100. In Manitoba, Money Mart now charges (on an all-in basis) approximately $19/$100. At the higher range of the scale, some payday lenders are currently charging $40/$100 and more.

With respect to default charges, the Board's options ranged from allowing only interest to be charged on accounts in arrears (with a rate of 60% per annum or less prescribed), to allowing the current range of practices that involve NSF and/or administration fees, on top of interest.

At the hearing, some discussion occurred as to the possibility of setting different maximums if the loan were provided to a low-income individual. The Board has considered this and rejected the option. However, the Board has concluded that the maximum fee schedule should provide for lower rates for loans backed by anticipated social assistance and Employment Insurance receipts. Those on social assistance or Employment Insurance are particularly vulnerable to the financial effects associated with high cost credit.

Having found insufficient value for consumers in creditor insurance for loans that are both restricted in amount and term, and finding that the offering of creditors' insurance with commissions back to the lender of up to 50% represents benefits to the lender, not the consumer, the Board, as previously indicated, will recommend that the CPA be amended by providing that any associated charges or premiums are to be included as part of the cost of credit in measuring compliance with the maximums, whether the coverage is offered on a voluntary or mandatory basis.

The Board will make recommendations with respect to information disclosure, with respect to identifying third-party lenders for broker model firms and as to annual reporting requirements for all branch and company operations. And, the Board will recommend government assistance to arrange for the provision of a universal ability to access no (or low) cost credit counselling in all areas of Manitoba.

The Board will also recommend that mainstream financial institutions be urged to make a greater effort to provide short-term small loans at reasonable interest rates to low-income individuals and households. Finally, the Board will also make recommendations with respect to pawnshops and rent-to-own.

5.7 Alternatives to Payday Loans

The Board suggests that government meet with mainstream financial institutions to promote and encourage the development of a province-wide system to market small loans at reasonable interest rates with reasonable repayment schedules to low-income households and individuals. As previously suggested, both existing policies and approach will have to change if the less affluent members of society are to feel comfortable in approaching a mainstream financial institution for credit needs.

With the cooperation of the banks and the credit unions, some current and prospective payday loan industry customers may obtain access to credit at reasonable terms, gain a credit record and develop a relationship with a mainstream financial institution.

Given Assiniboine Credit Union's community outreach focus, as evidenced by its presentation to the Board's cheque-cashing hearing, the credit union movement may be particularly well-equipped and interested in "reaching out" to disadvantaged members of society. It has been over 25 years since the Province assisted the credit union system by providing backstop resources for the movement's deposit insurance body, and the system has grown and prospered since; perhaps it is time and the credit unions would welcome an opportunity to assist society by helping the less affluent to avoid the pitfalls of payday loans.

5.8 Loan Sharks and Ethics

Unfortunately, leaving aside the intimidation associated with *loan sharks* (those predators suggested by the witness representing the Winnipeg Police Service to be a feature of the underground drug trade and not that of general consumer lending), the Board concludes that, in the common parlance, payday lenders could be considered *loan sharks*, albeit minus the intimidation factor associated with the definition. How else would one describe lenders charging rates representative of APRs 100 times and more than that of banks and credit unions, to borrowers reportedly unable to obtain credit elsewhere?

Professors Schwartz, Robinson and Duggan, and some of the other presenters, raised the question as to whether payday lending is ethical, a topic not particularly well canvassed during the oral hearing component of the proceeding. Regardless, the ethical treatment of Manitobans is of interest to the Government of Manitoba, the Manitoba legislature and this Board, there being a long history of concern with the condition of the poor, with interest in social justice being a general government concern dating back centuries.

Karen Armstrong, in her book *The Great Transformation*, recounted:

> "As early as the third millennium, the kings of Mesopotamia … insisted that justice for the poor ... was a sacred duty… (and) the prologue of the Code of Hammurabi (1786-1686 BC) decreed that the sun would shine over the people only if the king and the mighty did not oppress their vulnerable subjects … In Ugarit (an ancient cosmopolitan port city, circa 1450 BC), (the belief was that) famine and drought could be held at bay only if justice and equity prevailed … justice was an essential pillar of religion ... (and) also good pragmatic policy. There was no point in conquering foreign and cosmic foes if your iniquitous social policies created enemies at home." *(sic, 78-79)*

5.9 Why Payday Loan Customers Are Vulnerable

On average, payday loan borrowers have lower than average income. While they have bank or credit union accounts, and are required to have such an account to obtain a payday loan, apparently many are either unable to access bank/credit union credit at lower rates (lines of credit, overdraft protection, small secured or unsecured loans), or unwilling to indicate to a mainstream lender their need for short-term borrowing.

This latter reason for borrowers not obtaining their requirement for credit from a mainstream financial institution (at much less cost) is difficult to measure, though the Board did receive information that some payday borrowers do not feel comfortable dealing with a bank, and that others required funds for gambling or other addictions. That

said, once a borrower has obtained a line of credit from a bank or a credit union, the use of that line, the purpose of draws, is confidential to the borrower; mainstream lenders have long discontinued evaluating the reasonableness of credit demands.

Many payday borrowers experience an emergency of some sort (rent is due, car repairs, etc.) and need cash immediately. Having not established a line of credit or a suitable credit card limit from a bank/credit union, the prospective borrowers conclude they cannot wait for deliberation of a bank or face the embarrassment of asking relatives. With large numbers of the population "living from payday to payday", and with no savings, events such as vehicle breakdowns or rent due dates often require short-term loans.

Most of these borrowers are unable or unwilling to approach relatives or friends, or to seek assistance from Manitoba Housing and Family Services (for immediate social assistance requirements such as food, dental treatment, etc.), which takes time. Others may require funds for a certain purpose and may wish to keep their spouse, partner or family unaware of the need.

Some may live beyond reasonable walking distance from mainline financial institutions; apparently, many borrowers from payday lenders do not have a vehicle. As well, there may be a lack of collateral, or an unwillingness to pawn goods or even consider pawn shops, which in any case may involve even higher credit cost. While many of these borrowers may be in need of credit counselling, some may have limited or no access (or no interest) in credit counselling.

According to surveys provided to the Board, at least 50% of payday borrowers evidenced satisfaction with their treatment by payday lenders, though many may not have fully understood the actual cost or cost relative to other sources of credit.

The evidence suggests that payday borrowers are often repeat users of payday loans, and that payday lenders depend on repeat borrowers. While interveners to this proceeding

were reluctant or unable to provide evidence as to the degree of repeat business within their annual loan volume, information gleaned from Advance America 10K and 10Q filings indicates that their borrowers borrow (on average) close to 9 times each year. (As to the make-up of Advance America's customer base, there are similarities with the Canadian surveys. According to Advance America filings, borrowers are as likely to be male as female, are of an average age of 40, with 50% under 35, 50% are married, 75% pay rent, and the average family income of the borrowers was $42,000.)

Mr. Sorensen, representing Sorensen's Loans til Payday Inc. (an intervener to this hearing), suggested that 93% of the customers of his payday loan firm are repeat customers. If Advance America's U.S. experience is also reflective of Manitoba experience, the Board would expect that with an annual volume projected at about 250,000 loans, approximately 30,000 people may be expected to rely on payday loans. At lower levels of repeat borrowing, the number of projected individual customers rises.

5.10 Deficiencies of Payday Loans

The Board finds payday loans to have structural and other deficiencies, including:

a) high charges – representing 100 times or more the annual interest rate charged to borrowers from mainstream lenders;

b) very short repayment periods, up to 62 days but generally 10-14 days; CPLA members are not supposed to make a loan for over 31 days (if one hasn't the resources to meet a $100 emergency, how does the situation get any better ten days later when $125-140 has to be paid back?);

c) the high percentage of next "net pay" payment required in some payday loans brings into question the ability to repay within the required short period of time; the loan seems to be simply "moving the problem";

d) taking out and repayment of payday loans are not reflected in consumer credit ratings, so:

- payday loans do not "build" a credit rating, and thus a borrower is not assisted in gaining future access to loans from a mainstream lender as a result of a payday loan – in fact, the hearing was informed that being known to rely on payday loans may be a detriment to a borrower; and
- a payday lender cannot be certain that other payday loans to the borrower are not outstanding with other firms; in the absence of an industry credit registry, concurrent borrowing from more than one payday lender occurs, bringing ability to repay even more in doubt;

e) lack of reasonable assurance that a payday loan due at one payday loan lender isn't repaid from the loan proceeds from another payday lender, resulting in the risk of more or less continuous debt repayment at extraordinarily high rates and a consequent requirement to set aside a portion of what might be relatively meager net pay to meet the on-going and compounding charges;

f) what payday lenders cite as an advantage to consumers (that lenders have different credit criteria allowing for riskier borrowers to be taken on by one payday lender after being turned down by another) can be a long-term disadvantage to some consumers, enabling "daisy-chain" borrowing (a succession of loans, one following the first, and so on);

g) extending eligibility for payday loans to those on social assistance and Employment Insurance (those of meager means having difficulty living from one deposit to another). Meeting a payday loan obligation will make desperate situations only more desperate; and

h) the symbiotic nature of the relationship between payday firms – so called low, medium and high-cost payday lenders are able to operate successfully within the same market in the absence of rate caps; borrowers having exhausted their credit, at least for the moment, from one payday lender may access credit from another, the other lender employing less restrictive credit criteria.

While the Board accepts the survey findings of the payday loan industry and federal government, including the finding that a significant percentage of payday borrowers have household income around the average of the general population and steady employment, and may even be capable of obtaining credit from a chartered bank or credit union on normal terms, and choose to take a payday loan for the sake of convenience (hours of operations, location of branches, friendly staff, etc.), the Board perceives that vulnerability comes in many forms.

Based on both the borrower surveys and the mystery shopping exercise conducted by the Coalition, it is evident that some consumers do not grasp the magnitude of the price differential involved in the taking out of a payday loan as compared to more mainstream credit. Others, despite have reasonably good income, have debt levels of such proportionate magnitude as to reduce regular disposable income to the point that further mainstream credit is not available to them. Either debt-starved or living paycheque to paycheque, they are finding credit from the payday loan industry, and credit at any cost is not necessarily a benefit.

As previously indicated, frequent payday loan borrowers pay 100 times or more the cost of credit required (in terms of the APR) compared to borrowers from mainstream lenders, and apparently lack the means or ability or knowledge to avoid reliance on the payday loan industry. While payday loans were intended as bridge financing between paydays for borrowers lacking savings and having a requirement to meet an emergency and not to represent an ongoing source of capital, payday lenders depend on frequent borrowers for profitability.

Evidence at the hearing suggested that a statistically significant number of payday borrowers resort to payday loans at least monthly; an Advance America 10K filing indicated that the average borrower took out in excess of 8 payday loans in a year. For serial or repeat payday loan borrowers, the cost of credit can become a major financial problem, and may lead eventually to bankruptcy.

5.11 Assessment

The primary purpose of the industry is to maximize profits for the owners of the firms. Concern for borrowers, while indicated by the CPLA's code of business practices and the reported actions of some of the lenders with respect to individual cases, is a distant secondary consideration.

Payday lending occurs to make money for payday lenders and their third-party suppliers of capital. Others making money from the business are the employees and suppliers of services to the firms. Service providers to the industry include chartered banks; without access to the Canadian Payment Association's settlement system, the industry could not operate. In the United States, banks reportedly have invested in payday lenders, and provided them with financing.

The service provided to payday borrowers (the loans) too often simply moves the problem faced by a vulnerable borrower – needing up to 50% or even more of their next pay cheque to meet a pressing need, they obtain a loan that will cost at least 20% of the amount advanced by the lender, due in two weeks or less. The borrower, having no savings to meet relatively small financial emergencies, may simply move the problem out ten days, until it comes time to "pay the piper" with the very next paycheque.

Defaults (apparently 10-15% of payday loans go into default) lead to additional charges (NSF, administration charges and interest) which, added to the amount in default, compound the borrower's obligation and problem. And, if the old loan is paid off with a new one, it has a larger balance, as not only must the original debt be repaid, but also, new fees are incurred along with the default charges.

One of the Board's primary concerns is that vulnerable consumers are being caught in a spiral of very high cost debt.

5.12 Role of Banks and Credit Unions

Banks and credit unions, by errors of commission and omission, have contributed to the growth and success of the payday loan industry. Rather than being "part of the solution", mainstream lenders have been part of the problem.

When supplying credit to their borrowers, banks and credit unions apparently treat the longer-term interests of credit-impaired consumers and borrowers as quite secondary. While profiting from their operations in Manitoba, the banks in particular have not well-served the less affluent, have withdrawn from poorer neighbourhoods and shown little interest in developing loan products to compete with the high-cost, short-term credit offerings of the payday lenders.

The banks focus on bringing in ever-higher returns for their shareholders to maintain and enhance stock values and high executive compensation. Most credit unions are narrowly focused on their members, and have also largely abandoned or neglected service to poorer neighborhoods. Credit unions have been in a process of amalgamation for over twenty years, with the number of Manitoba credit unions falling from approximately 150 to 50; the remaining credit unions are much larger and have more extensive branch networks, though branches in the north end of Winnipeg are relatively few.

In short, both the banks and the credit unions have effectively left a relatively small and poorer segment of the population to the payday lenders, preferring to concentrate on affluent areas and profitable consumer and commercial business. So, as to who is culpable for the poorest component of society paying 100 times or more the rates of mainstream financial institutions, the Board looks not only to payday lenders and pawn shops, but also to banks and credit unions which, in the end, do not provide adequate credit services for up to 5% of consumers.

The banks and the credit unions should "do better". Most customers now with the payday lenders either have a bank or credit union account, and their credit standing, while

apparently not good enough to gain short-term credit in small amounts, could use bank and credit union help. Repaid bank and credit union loans build the borrower's credit rating; payday loans only complicate it.

For banks and credit unions to assist the borrowers of payday loans, they will have to offer loan products offering small balances and short terms and with very short "instant" approval processes. Payday borrowers go to payday lenders because of "emergency needs"; emergency needs do not allow for lengthy waits for approval. In today's electronic age, banks and credit unions are fully capable of assisting a large component of the payday loan borrower profile, reducing their cost of credit and providing them credit-building assistance.

Non-government agencies, such as CFCS of north Winnipeg, have a small reach and are not equipped to meet emergency cash requirements. While micro loans are increasingly available in the third world, for some Manitoba consumers the credit need is here, but micro loans are not

5.13 Objections and Discussion

Dr. Clinton proposed a much higher rate cap than is established in this Order, relying on Adam Smith's argument suggesting that competition may be relied upon to produce just and reasonable rates. Dr. Clinton held that by setting too low a cap, the Board would bring about a decline in social welfare as a result of some consumer demand for loans going unsatisfied.

However, the Board observes that, notwithstanding Adam Smith's reliance on the "invisible hand" of the market, the famous economist wrote in favour of anti-usury laws, suggesting that too-high rates would result in funds being available to "… prodigals and projectors, who alone would be willing to (accept) this high interest. Sober people … would not venture into the competition". In short, the Board infers that Smith was

concerned that, if rates got too high, the “takers” would include those for whom “taking” the loan would be unwise.

Economists have, over the years, been on both sides of the argument over the efficacy of usury laws. The Board is particularly concerned with the power imbalance represented by borrowers “with no other place to go” and lenders seeking incremental gains from higher returns at perhaps ever-higher risk levels; Dr. Clinton held that some payday lenders had less onerous credit criteria than others; the Board questions whether there is a point where a reasonable credit criteria would suggest that no loan should be made.

Manitobans (Winnipeg residents in particular) are known for “looking for bargains”, and this works best when both the seller and the buyer have options. Unfortunately, for some borrowers credit options are sparse, and the structure of the payday loan industry, when its members are relied upon for loans, requires high charges against borrowers to meet operating costs - regardless of the degree of competitiveness between lenders.

While some payday borrowers may be able to obtain credit from a bank or credit union, and take loans from payday lenders for convenience (location, hours of service, a desire to avoid a credit check, etc.), many if not most have a “legitimate” emergency to deal with and no other source of immediate credit at hand. Some payday borrowers likely could obtain credit from a bank or credit union, but have not found them approachable. Dr. Clinton, under cross-examination, conceded that people who apply for payday loans do so because they have, for the most part, exhausted their options.

With these new limits, the Board expects that many firms within the current roster of payday lenders (though not necessarily the majority of locations) may be unable to continue operations in Manitoba. Assuming that the average payday lender now charges $25 per $100 advanced, including interest, the new maximums will substantially reduce overall revenue (and profitability), particularly for low volume "mono-line" lenders. The new maximums will likely allow only the most efficient of payday lenders to remain in business.

Of course, banks and credit unions (through loans, lines of credit, credit cards and overdraft protection) provide a tariff of rates and charges far below the maximum to be allowed by the Board; it is assumed that this will remain the case. It is hoped that many current payday borrowers, considering the evidence of the cost of loans associated with payday loans, and with a greater effort by banks and credit unions to serve less affluent populations seeking small loans, will be able to develop a credit relationship with banks and credit unions. Banks absorbed many of the former employees of consumer finance companies in the 1970s and 1980s, finding them to be well trained, and the finance companies' customers to be good candidates for mainstream credit (at lower rates); to some extent, the pattern may be repeated with payday loans.

The Board understands that serving less affluent members of society will require both changes in bank and credit union policy and staff training; if the working poor are to feel comfortable enough to approach a mainstream lender, the lender will have to make a special effort to reach out to these communities and extend a "friendly hand".

The payday lenders most likely to close (upon the maximums being established) are also those likely to be the least careful with respect to granting credit, and thus are experiencing the highest bad debt costs (reflected in their rates). As well, it may be difficult for payday lenders operating under the "broker model" (where third party lenders provide the loans and the payday lender acts as the borrower's broker) to continue; those lenders experience higher cost of funds than do the direct lenders within the industry. For those lenders, conversion of their business model to that of a direct payday lender (accessing loan capital from the principals or other financial institutions) will likely need to be considered.

The maximums set herein will not result in payday borrowers having cost of credit levels even close to those experienced by the customers of mainstream lenders; payday borrowers pursuant to the maximums now set will still pay approximately 100 times or more the cost of credit of mainstream lenders' customers. However, with this Order,

payday borrowers will be saved from the highest charges now present in the industry, and the effects of default will be less punishing for many. As well, payday loans in excess of $500 will be discouraged with the lower maximum set for such loans, and loans to those on fixed income will effectively be barred or strongly discouraged.

The Board cannot eradicate poverty or require banks or credit unions to make a better effort at serving the poor. Nor can the Board fund or operate either non-government or government operations to provide emergency loans to the poor at bank or credit union rates, or higher. However, the Board can act to restrict the charges the payday lenders charge their customers, and can employ a maximum charge schedule to discourage certain disadvantaged categories of borrowers as well as the making of larger loans still falling within the $1500 cap for payday loans.

5.14 Board Deliberations

Interveners (particularly the industry interveners), recognizing the importance and complexity of the matter before the Board, recommended that caution was required by the Board with this first Order establishing maximum charges for payday loans. Citing risks to payday lending presence, jobs and the economy, their proposed maximums ranged from a low "all-in" rate per $100 of value received in the range of $25 up to a proposal representative of a maximum rate of over $40; the latter would allow virtually all payday lenders operating in Manitoba to continue with their current charge approach.

The Coalition inferred it had exhibited caution in its recommendations, suggesting an interest in Quebec's approach, suggesting that more experience and consultation was required before it would consider recommending a 35% APR, which has effectively barred payday lenders from operating in the Province of Quebec.

Consistent with that cautionary tone, the Board's intention is to ensure, as reasonably as possible, that consumers to be protected and assisted by the setting of the maximum charges are not inadvertently damaged by the directions of the Board.

One of the identified risks in the setting of maximums relates to payday lenders' forecast of the effect on their revenues as a consequence of the new maximums. If their revenue is less than the sum of their costs and a reasonable return or profit, the lenders have stated that some will withdraw from the market. This will reduce the availability of payday loans to the public, particularly to the segment of the market that now lacks bank or credit union loan access. The Board acknowledges the risk that has been identified, and thus sets a maximum fee it deems sufficient to allow *efficient* payday lenders within the fringe bank industry to remain in the market.

The Board notes that many 'near' or 'fringe' banks are now well-represented in Manitoba, particularly in Winnipeg, and have service offerings that include cheque cashing and money transfers. Other services (such as bill payment, "loaded" debit and credit cards, tax return preparation and instant refund, and mortgage referrals) are now offered by some of the lenders. These other lines of service provide revenue to the fringe banks offering them, and allow for revenue contributions to overall store operating cost, reducing the costs allocated to payday lending.

Obtaining a payday loan at a fringe bank may be convenient and useful for some Manitobans, but for lower-income persons, it is a high-cost approach that may lead to the use of other similarly high-cost services from those companies. The Board understands that dealing with a fringe bank means neither external credit checks nor the development or enhancement of a credit record; this may seem an advantage to some, but augurs for potential difficulties for many others.

Leaving aside 'near' banks (such as Money Mart) and mainstream financial institutions (such as banks and credit unions), the Board understands that payday lenders also include pawnshops and individuals. The clear intention of government was to avoid exploitation. That said, defining "exploitation" is itself difficult, though the Board has no difficulty in associating the term "exploitation" with charges beyond the maximum levels established herein. The degree of exploitation increases with the rate charged. The maximums

established by this Order will make it clear to all payday lenders and borrowers that exploitation is unlawful. Upon conviction, the guilty party will face serious penalties. This is just and reasonable.

The hearing considered the question of why individuals seek out payday loans from firms assessing charges and rates so far (in aggregate) in excess of community norms and Section 347 of the *Criminal Code*. The industry average for Winnipeg fringe banks, and on this the Board accepts the evidence of COALITION's expert witnesses, that the current range of fees at Winnipeg payday lending outlets is $19/$100 to over $50/$100 for a loan with a duration as short as 2-10 days.

For a $100 loan, an overall rounded charge (including interest) of approximately $27 appears to be the norm; for a loan of $500 it is $135; and for a loan of $1000 it is $270. The Board understands that the average payday loan has been $300, and the average duration has been 12 days.

So, given the high cost and short durations of these loans, the Board pondered the question: why do individuals obtain payday loans? The Board accepts the evidence of all parties to the proceeding that the reasons include:

a) convenience – location of the lender, and days and hours of service;
b) inability of the borrower (or perceived inability) to obtain a loan at a bank or credit union, due to credit problems; and
c) necessity; an emergency needed to be funded.

Canada's banks have closed and consolidated branches for reasons of profit maximization, and not everyone has a vehicle or the financial means to travel regularly to the nearest bank. Credit unions have merged for reasons of cost efficiency and long-term member benefit. Again, this has reduced the availability of mainline financial institutions to the residents of north Winnipeg, rural and northern Manitoba.

It is evident that banks operate to earn as high a rate of profit as they can legitimately earn for the benefit of their shareholders. And, based on the Mexican experience (Business Week, January 2008), in the absence of regulation and laws capping interest rates, only the market determines the rates consumers will pay, and that market can involve very high rates. *Keith Epstein* and *Gerry Smith* wrote in an article entitled *The Ugly Side of Microlending* "… poor people are turning into one of the world's least likely sources of untapped profit, because they will pay interest rates most Americans would consider outrageous, if not usurious". *Smith* and *Epstein* described how loans with an average balance of $257 (with APRs up to 110%) can provide for a 53% return on investment for a Mexican bank, *Banco Azteca*. Of course, Canada's largest banks don't charge anywhere near an APR of 110%, offering prime rates of 5.25% through to credit card rates of 21%, yet produce very material returns for their investors.

And, as credit unions exist for the benefit of their members, they are also not social agencies, though the less affluent can be members as well. (This said, the Board notes that all of these financial institutions provide necessary services to Manitobans, and encourages banks and credit unions to extend those services to the making of small loans to replace the service now provided by the payday lenders.)

As stated, the evidence is clear that both banks and credit unions have withdrawn from poorer neighbourhoods in order to concentrate on areas where affluence is more evident. This trend needs to be brought to an end, if not reversed; the poorer segment of society needs affordable financial services, and depriving them of that hurts society generally.

As previously indicated, the Board has not set maximum rates in reaction to the profits earned by payday lenders. While the Board accepts the premise that the industry and its firms can be quite profitable (if there were no profits, expansion would not have occurred), it also accepts Dr. Gould's view that the returns of the larger publicly-traded payday lenders have not been exceptional relative to the returns of Canada's major chartered banks. The Board surmises that industry returns are suppressed by high

operating and bad debt costs and the effects of expansion, and accepts the view expressed at the hearing that outlet volume and profitability could be expected to grow over time.

Industry interveners were particularly critical of the evidence presented and testimony given by Coalition witness Dr. Robinson. The industry interveners cited Dr. Robinson's changes to his recommendations over time throughout the hearing, and before. They also critically cited his use of data and development of estimates, and his frequent "suppositions", as well as his reliance on American data, as was available. Industry interveners also suggested that Dr. Robinson (accepted by the Board as an expert witness) was biased and was acting more as an advocate than as an independent expert. The Board has a contrary view.

The Board finds Dr. Robinson to have been a credible and independent expert, and that his use and sourcing of data, production of estimates and posing of suppositions was reasonable in the circumstances. Industry (as represented at the hearing) was unwilling to place proprietary information on the record, leaving Dr. Robinson little choice other than to derive information from such sources as were available to him.

The Board also found value in the evidence and testimony of the other members of the Coalition's witness panel, and as well, in the evidence and testimony of the expert witnesses and witness panel members brought forward by the industry interveners. Dr. Clinton and Dr. Gould, in particular, provided information and opinions that were useful to the Board, which has considered them carefully in arriving at its determinations.

6.0 BOARD RECOMMENDATIONS

Similar to the primary objectives for setting of maximum charges, the Board's recommendations for government are intended to provide for enhanced consumer protection and further the development of lower-cost credit options for payday borrowers.

While average to higher income individuals and families may be able to afford the higher charges of a payday lender when the product is used as intended (short-term advance of less than 50% of the next pay, etc.), the implications for low-income individuals and families are not promising. The repayment obligations accepted by lower-income and cash-strapped individuals taking out payday loans lead to reduced disposable income within what may likely be an already-depressed economic existence. While many payday borrowers may meet an emergency by accessing a payday loan once or twice a year, others find themselves unable to repay, resulting in a cycle of payday loan debt and placing tremendous stress on their financial capacity and lives.

As well (and regardless of one's general financial circumstances), depending on a payday lender for a loan or loans does not build a credit rating, except with that firm, and could even damage this rating in the eyes of mainstream lenders.

With eight active interveners and their witnesses, extensive pre-hearing and oral hearing processes, numerous presenters and a variety of further witnesses, along with the Board's own research, a significant accumulation of information on the subject of payday loans was compiled to assist the Board in its deliberations and the interveners in preparing their final arguments.

The decisions required from the Board led it to consider varied circumstances and facts, both on the demand side of the equation (borrower needs and desires) and the supply side (including the business requirements of payday lenders), and the comments of industry interveners and the Coalition on these matters in their final arguments.

Societal impacts arising from supply and demand factors also came to the attention of the Board, along with some fundamental philosophical matters of social welfare and ethics (the latter drawing the particular attention of the Coalition and social agency presenters). Overall, participants to the Board's Winnipeg hearing drew the Board's attention to a variety of issues, many of which were commented on by the interveners in their closing arguments.

Assisted by the interveners, the Board has considered payday lenders' cost of doing business and the risks associated with payday loans for payday lenders and the brokers of payday loans. The Board has given extensive consideration to what constitutes a fair rate of return for the investments made in and by payday lenders, a matter of particular concern to industry interveners.

The Board panel hearing this case was initiated to the payday loan industry through the government cheque-cashing hearing that preceded this hearing. Through the cheque-cashing hearing, which extended over a period of four months concluding in 2007, the panel familiarized itself with the industry and the services it offers. The panel members for this hearing are the same as those that served for the cheque-cashing hearing. The composition of the panel consists of two professional accountants and a professional home economist.

The Board's Chairman has almost twenty years of senior management experience in the financial industry, serving at various times as Corporate Controller of Avco Financial Services Canada (a finance company, then operating over 450 branches in Canada and the United Kingdom, and with associated firms in the insurance industry), Chief Executive Officer of Credit Union Central of Manitoba, Chief Executive Officer of one of Canada's largest credit unions, General Manager of a regional sub-prime trust company and Chief Executive Officer of two Crown insurers. All members of the panel have extensive experience with regulatory matters and the Board, having heard a variety of applications ranging from provincial and municipal utilities to private businesses.

The following basic recommendations for government are made with the intent of addressing the structural and other barriers that result in many low-income individuals dealing with payday loan firms for financial services, ranging from payday loans and cheque-cashing to money transfers, mortgage referrals and credit/debit card acquisition. Dealing with such firms, rather than mainstream banks and credit unions, results in much higher financial transaction costs than would be the case if banks or credit unions provided an adequate range of services to the poor.

6.1 Structural Recommendations

The Board provides the following "structural" recommendations:

- Consideration should be given to providing social assistance recipients with photo identification and financial counseling at no cost to them (towards facilitating relationships with mainstream financial institutions).
- Social assistance recipients should be encouraged and assisted in opening bank and credit union accounts (towards facilitating relationships with mainstream financial institutions).
- Social assistance payments should be electronically deposited into client bank or credit union accounts, rather than being provided by cheques (towards facilitating relationships with mainstream financial institutions).
- Consideration should be given to increasing support for CFCS (a pilot project serving north Winnipeg) in order to make its counseling and referral services available to more low-income families.
- The Province should engage banks and credit unions in discussion, with the goal of obtaining their participation in marketing low-cost accounts and making available short-term small loans with a minimum of an application process; credit could be provided in the form of authorized limited overdrafts, lines of credit, or small term loans at rates within the parameters of Section 347.
- Consideration should be given to enacting legislation to provide for the licensing of other components of the near-bank industry, including cheque cashers,

pawnshops, rent-to-own operators, and internet and telephone-based payday loan firms.

- The provincial government should engage in further discussions with the federal and other provincial governments toward an eventual return to nation-wide interest rate maximums.

While payday lenders have skirted the Board's understanding of the intent of Section 347 of the *Criminal Code,* and issue loans with APRs ten or more times the Section 347 interest rate maximum, the major banks and provincial credit unions offer loans at interest rates that represent only a fraction of the 60% maximum interest rate set by Section 347.

The problem is not the tariff of rates of mainstream lenders, but the availability of their services to low-income families and communities. Banks have withdrawn from poorer neighbourhoods (credit unions have largely failed to locate in and/or service these neighborhoods), and are geared for higher-balance and longer-term loans than families living from one paycheque to the other require.

Both banks and credit unions are doing well dealing with the more affluent members of society, with annual after-tax profits of the main chartered banks in the tens of billions. It is time banks and credit unions made a better effort at serving Canada's poorer families. Banks and credit unions should be strongly encouraged to move back into communities they previously left, addressing the current reality of many low-income areas with no mainstream financial industry branches. A process involving regulation should be put in place related to bank and credit union branch closures in low-income neighbourhoods, accompanied by onerous requirements.

Perhaps the approaches being taken by Aski and Tribal Wi-Chi-Way-Win Capital Corporation, lending into a market that has experienced credit difficulties, should be reviewed. Banks and credit unions should similarly offer smaller, shorter-term loans that would be useful for new immigrants; an increasing number of third-world countries have

lending institutions that provide micro-loans to the financially disadvantaged. Why not in Canada?

Research into the financial products required by low-income communities needs to be undertaken, and further government support for the establishment of community banking operations in low-income neighbourhoods should be considered.

6.2 Other Recommendations

Amendments are warranted to the *Consumer Protection Act (*Act) to deal with:

a) Pre-authorized debits. While both post-dated cheques and pre-authorized debits can be voided, though at a cost to the borrower, a voided cheque used as authorization for bank debits potentially allows the lender to repeatedly present the cheque for payment, causing repeated additional NSF and other charges. The Board understands that, while not cited as a frequent abuse, some borrowers have found their bank accounts emptied, resulting in defaults with other obligations.

b) Reviewing the practices related to misleading and/or intimidating correspondence, particularly those threatening wage garnishment or legal action, the former prevented by law, the latter by lender cost and, presently, a Manitoba Small Claims Court decision.

c) Lender presentation of information on fees, beyond that of the required poster presentation, should allow prospective borrowers to compare loan costs across payday loan companies and with other types of loans (the Board, in its oversight of natural gas brokers and the sale of natural gas supply contracts pre-vets industry consumer information material). As misinformation or selective information is a problem that extends beyond payday lenders, the marketing practices of finance and credit card companies also require an in-depth review; debt taken on at high rates, though not at payday loan levels, contribute to payday loan borrowing and consumer financial distress. Credit card and finance company marketing materials should also compare rates and terms with mainstream

financial lending terms, and outline the pitfalls associated with debt at high interest rates employing "plain language", not only in marketing material but also in contract wording.

d) With respect to information disclosure, The Act should require disclosure of the identity of third-party lenders for broker model firms as part of the annual reporting requirements for all branch and company operations.

e) Information related to saving and borrowing needs to be provided to students, beginning in the elementary grades; the young are too vulnerable to the siren call of consumerism and easy credit, and too inexperienced to fully appreciate the problems that can arise when too much debt at too high rates of interest and too short terms are relied on.

f) The Act requires amendment with respect to insurance premiums, and charges for or related to debit and credit cards or any other service related to a payday loan (whether provided to borrowers on a voluntary or mandatory basis). The aggregate amount of any premiums and/or other charges that may be levied on or accepted by a borrower should be considered to be part of the cost of credit subject to the maximums defined in this Order.

g) The Act should limit the method of advancing loans to either cash or direct deposit. Failing this, if a debit or credit card is issued, a mechanism must be established to ensure that the borrower is able to fully recover the balance on that card at no additional cost.

h) Research is required into determining the budgetary requirements of families in both urban and rural environments, specifically considering renters as opposed to home-owners, home-owners with and without mortgages, and residences (whether energy-saving or not, etc.), to arrive at more accurate representations of individual and family financial capacity.

i) Banks and credit unions should be requested to review their deposit-holding practices; requiring 3-7 day holds on ATM cash deposits only encourages the use of fringe banks, which leads to the use of the firms for payday loans, wire

transfers of remittances and other services, and drives potential bank and credit union customers to reliance on payday lenders.

j) Research is required to fully understand the practices and implications of pawn shop lending, and of rent-to-own operations; both types of operation appear to be under-regulated and a contributor to the financial distress of families and individuals.

k) Research is required into debt collection practices within the financial industry, perhaps leading toward framing regulations to govern the practices.

l) Government should use its various agencies and programs to promote financial literacy, including no or very low-cost financial counseling services to all Manitobans, particularly those of low income.

m) Independent complaint resolution mechanisms should be put in place to assist payday borrowers, and use of the mechanism should be made mandatory for payday lenders.

The Board understands that to act on its recommendations will require research, coordination, time and the allocation of financial resources, and that government will establish its own priorities.

Accordingly, and for the immediate future with respect to payday lenders, the Board recommends that, as a licensing condition, all payday lending in Manitoba be subject to a *Code of Business Practices*, and that the code be based on the code now in place for members of the *Canadian Payday Loan Association*, and include the following points:

1. Only one payday loan outstanding at one time to any customer is permitted.
2. Default and/or post-maturity charges may not exceed the Board-established maximum.
3. Borrowers with a loan in default shall be advised of credit counseling offered in the community.
4. Collection practices shall abide by provincial law and regulations and be conducted in a fair and professional manner.

5. Administrative penalties will be used to ensure compliance.
6. Use of personal and/or confidential information for marketing or any other purpose unrelated to the payday loan is prohibited.
7. Advertising must comply with all laws and regulations.
8. Payday lenders shall use plain language in loan and related documentation and disclose all charges in a clear manner, and prominently indicate the high-cost nature of payday loans on all loan documentation.
9. Complaints from customers must be responded to diligently, and records must be maintained of complaints and the payday lender's responses.

Pawnshops and rent-to-own firms

The Board found Manitoba Court decisions relevant in its consideration of maximum charges for payday loans. That said, the Court of Appeal (CA) decision in the case of *Economy Furniture Store* and Kotello, was of particular interest with respect to pawnshops.

CA noted that Economy, which is described as a pawnshop (though also identified as a payday lender in the recent Board hearing), charges rates in the range of 240%, four times the allowed cap of s. 347, and had reported that it had done so for 29 years, despite previous prosecutions and convictions related thereto. CA ruled that pawnshop charges and rates are subject to s. 347, yet no evidence came before the Board suggesting current prosecutions against pawnshops. Mr. Glass, a pawnshop owner and presenter at the hearing, reported monthly charges of 25% on an ongoing basis.

From another presenter, the Board heard a serious complaint involving the conduct of a rent-to-own operator.

The Board recommends that government research the operations of pawnshops and rent-to-own firms, and consider provincially licensing these operations in a similar manner as will be the case for payday lenders.

6.3 Next Steps

The Board will maintain a watching brief over developments within the payday loan and general lending industry, and intends to undertake a formal review of the market situation and directions, as established herein, in three years.

Among matters then to be considered will be the efforts and, hopefully results, of mainstream financial institutions with respect to offering small balance short-term loans with simplified application processes.

7.0 IT IS THEREFORE ORDERED THAT:

Legal language to reflect the following statements of maximum charges for or related to a payday loan is to be developed and approved by the Board prior to being set out by regulation pursuant to *The Consumer Protection Act*:

Maximum Charges with respect to a Payday Loan

Cost of Credit

The maximum cost of credit that may be charged, required or accepted in respect of a payday loan, excepting for loans to persons on employment insurance or social assistance, or for loans in excess of 30% of the applicant/borrower's expected next pay net of deductions will be:

a) 17% of value received to $500; plus
b) 15% of value received from $501 to $1,000; and
c) 6% of value received between $1,000 and $1,500.

For payday loans to persons on employment insurance or social assistance, or for loans in excess of 30% of the applicant/borrower's expected next pay net of deductions, the maximum cost of credit shall be 6% of value received to $1,500.00.

If a payday loan is fully repaid more than five (5) days prior to the loan's due date, but after the 48-hour cooling off period, the cost of credit shall be retrospectively set at the original cost of credit, less $3.00 for each day over five (5) days the loan is repaid early, with a minimum cost of credit of $10.00.

<u>In determining adherence to this maximum, all charges and interest of any and all kinds, however determined or levied, are to be included in the calculation.</u> In its next review of maximum charges (which is to take place no later than three years from the date of the

government's Regulation setting maximum charges) the Board intends to review the thresholds at which these amounts are now established, to address any effects of inflation.

5.4.2 Extension, Renewal or Replacement

The maximum amount that may be charged, required or accepted in respect of an extension, renewal or replacement loan is 5% of the balance extended, renewed or replaced.

Only one charge is allowed for each extension, renewal or replacement event, notwithstanding the number or frequency of times that extension, renewal or replacement occurs. No separate interest or any other charge may be levied related to the extension, renewal or replacement of a payday loan.

5.4.3 Default

The maximum amount that may be charged, required or accepted in the case of default will be $20, and that for only one time, plus a maximum rate of interest of 2.5% per month, not to be compounded unless an extension, renewal or replacement loan is provided. In the latter case, no default charge may be applied, required or accepted.

5.4.4 Debit/ Credit Card Charges

With respect to charges for or related to debit and credit cards where the borrower does not have the option of receiving cash, the aggregate amount of any charges that may be levied on or accepted by a borrower, including the estimated or known charge by a third party based on the assumption of one transaction, is to be added to the cost of credit and, if the sum exceeds the maximum cost of credit as set out above, then the excess is to be deducted from the cost of credit.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"GERRY GAUDREAU, CMA"
Secretary

Certified a true copy of Order No. 39/08
issued by The Public Utilities Board

____
Secretary

DEFINITIONS, REFERENCES AND REVIEW (PAYDAY LOAN LAW)

Administrative penalties (CPA): administrative penalties for breaches of the Act and regulations may be issued in the amounts of $1000, $3000 and $5000, for first, second and third and subsequent offences. Penalties relate to non-compliance with cost of credit disclosure as set out in sections 30-32 of the CPR, and non-compliance with provisions specifically related to payday lending as are set out in section 19, PDR.

APR (the annual percentage rate charged on a loan): is a time-rate relative measure that takes into account the dollar value of the Cost of Credit (CofC), the amount of credit extended, and the period for which the credit is outstanding. It includes both interest and non-interest charges. (Section 7, CPR).

Borrower: a person to whom credit is, or will be extended, including a prospective borrower.

Broker: a person who, for compensation, assists a person in obtaining credit (also, a payday loan firm that brokers payday loans between third-party lenders and payday borrowers, charging a fee(s) for its services). Brokers cannot charge a fee or accept any payment before the borrower has access to the proceeds of credit (section 20.1(1), CPA). If a broker contravenes 20.1(1), the consumer can demand and must receive return of the broker fee (section 20.1(2), CPA). A credit grantor can deduct a broker fee from an advance if the initial disclosure statement discloses the amount of the fee and accounts for the fee in the APR and CoC (Section 20. 5(2), CPA).

Broker disclosure: before assisting a borrower to obtain credit, the broker must provide a separate written statement containing at least the following: broker name, business address and telephone number; borrower’s name; amount of credit and the amount payable by the borrower to the broker (Section 20.2(1), CPA.).

Brokerage fee: an amount paid or payable on or on behalf of a borrower to a broker for arranging or attempting to arrange a credit agreement. Where a broker fee is charged, the credit grantor must disclose the fee in the initial disclosure statement for the credit agreement, and account for

the fee in the APR and the CoC (section 20.2(2), CPA); failure to do either entitles the borrower to a refund of the broker fee (section 20.2(4), CPA).

CoC, cost of credit: an absolute measure (i.e. dollar value) that indicates the difference between the value given by the borrower and the value they receive, assuming no prepayment or default (VG – VR = CoC). Must consider section 6 of the CPA and section 3 of the PDR.

Convenience bank/fringe bank: a company that is neither a bank nor a credit union offering limited retail financial services, which may include (in whole or in part) cheque cashing, payday loans, debit and/or credit cards, creditors' insurance policies, money transfer, foreign exchange, mortgage and large loan referrals.

Consumer Rights (as related to CofC): a consumer is entitled, at no cost, to a detailed account of her/his indebtedness at least once per year, and at any time a dispute arises (section 16, CPA).

Consumer Remedies (Part 18, CPA): consumers charged fees that exceed maximums established by the Public Utilities Board for loans, replacement loans, extension or renewal of loans, or default fees, are entitled to an immediate refund of the full amount charged – this all applies to any amount charged for a concurrent loan. A payday lender may also be subject to other penalties under the CPA.

CPA: *the Consumer Protection Act* (Manitoba).

CPLA: the Canadian Payday Loan Association, an association of payday lenders representing (as of January 2008) 21 firms with approximately 500 outlets agreeing to abide by the Association's *Code of Best Business Practices*.

CPR: *the Consumer Protection Regulation, Reg. 226/2006.*

Credit agreement: an agreement or transaction under which credit is, or is to be extended. This includes: an agreement for a loan of money, an agreement for a credit sale, an agreement under which loans of money or credit sales may occur in the future, an agreement for a line of credit, and an agreement to renew any of these credit agreements.

Default charge: a charge imposed on a borrower for a default, or for a failure to comply with any other obligation under a credit agreement; does not include interest on an overdue payment.

Direct lender: a payday loan firm that secures the funds required to lend to payday loan borrowers from its owners, or by way of loans.

Disclosure, general advertising: information in an advertisement must be disclosed prominently (section 13(1), CPA); if an advertisement states an interest rate or the amount of a payment, it must disclose the APR and the term of the loan (section 34.2(1), CPA); and, an advertisement can use a representative transaction if that fact is disclosed.

Disclosure General Requirements (CPA): disclosure requirements apply to any credit grantor that offers or solicits an offer to enter into a credit agreement covered by the CPA. Disclosure statements must be in writing, or in an electronic form if the borrower consents, express the information clearly, may be in a separate document or can be part of a credit agreement or loan application, and information can be an estimate, but only if not reasonably ascertainable and only if the statement indicates that it is an estimate or assumption (section 8, CPA).

Disclosure, payday loan agreement: the date when payment to the credit grantor is due, and if more than one payment, the amount and date of each; if a cash card or other such device is used the following additional information must be disclosed – the terms and conditions of use, the amount of available credit on the card, the expiry date if any, itemization of any third party service charges that might apply, and the name and telephone number of the Consumers' Bureau for information on payday loans, cancellation rights, collection practices, or for information on debt counselling (section 14, PDR).

Finance company: a company that is neither a bank nor a credit union – no deposit-taking, chequing or savings accounts - offering limited retail financial services which may include cheque cashing, secured and unsecured loans, mortgages, credit cards and creditors' insurance policies.

Insurance: a borrower who must purchase insurance for a credit agreement can pick any insurer, but the credit grantor has the right to disapprove on reasonable grounds (section 21 (1), CPA). Applications must be forwarded promptly to an insurer and the borrower must be given proof of

the insurance as soon as it is effective [section 22(2.1), CPA]. The borrower must pay the premiums on the insurance while it is in effect and is entitled to a refund of the unearned premium if it is cancelled (section 22(2), CPA).

Loaded debit or credit cards: debit or credit cards with monetary balances available for use by a consumer, the balances made available by a payday loan.

Non-interest finance charge: a charge that a borrower is required to pay in connection with a credit agreement, and includes a fee for discharging a credit agreement, but does not include: interest, default charge, charge for an optional service, a charge for an amount that constitutes value given or value received under section 6 of the CPA.

Offence/Penalties: individuals who do not comply with the CPA are subject to fines of up to $1,000 and imprisonment of up to one year, or both, for a first offence, and for second and subsequent offences, a fine of up to $5,000 and imprisonment of up to three years, or both. For non-compliance by a corporation, the first offence may bring a fine of up to $25,000, with second and subsequent offences fines of up to $100,000.

Optional service: a service offered to a borrower that he/she does not have to accept to enter into the credit agreement. Borrowers have the right to cancel optional services as long as they give at least 30 days written notice to the credit grantor (section 23, CPA); and, if properly cancelled, the borrower is entitled to a refund of the unused portion of the services (section 24, CPA).

Payday loan: a short-term unsecured loan of up to $1500 due within 62 days of issue provided by a non-traditional lender.

Payday lender: a person who offers, arranges or provides a payday loan.

Pawn: to secure a loan by providing collateral in the form of merchandise/personal property.

Pawn shop: a company accepting pawns of merchandise/personal property for a fee; if the pawned merchandise is not claimed within one month, the pawn shop may seize the merchandise for resale.

PDR: *the Payday Loans Regulation, Reg. 99/2007*.

Person: a natural person, a corporation, a partnership, and an unincorporated association: a person requires a license for each location from which payday loans are offered or arranged.

Partial prepayment: borrowers may prepay a partial amount without any charge or penalty, on a scheduled payment date or at least monthly.

Prepayment provisions: borrowers are entitled to repay the outstanding balance at any time without any charge or penalty. In fixed credit scenarios, the credit grantor must refund a portion of any non-interest finance change. Borrowers are not liable for payment of any unearned interest. (Sections 18-20, CPA)

Prepayment statement: on request by the borrower, he/she is entitled to receive a statement showing the outstanding balance, the amount credited by the prepayment, and the net amount remaining – borrowers are entitled to one free prepayment statement per year.

Retention payments: payments made by a payday lender, acting as a broker, to its third-party lenders to compensate the lenders, in whole or in part, for bad debt losses arising out of payday loans.

Rollovers: when a payday loan is not repaid by the due date, some payday lenders "roll" the existing debt (including the original principal and charges, plus default charges) into a new loan, with new charges and interest added and with a new due date.

Second mortgage: a mortgage loan on a property that is second in priority as to security to a first mortgage.

Signage, payday lenders: all payday lenders must post a sign in a location that is visible to borrowers immediately upon entering a location (section 16(1) – PDR); sections 16(2) and 16(3) of the PDR sets out the information that must be in the poster/sign; and the information must refer to a representative loan of $300 for a 14-day term; and, no additional information is allowed.

Value given (VG): money paid by the borrower to the credit grantor, assuming no prepayment or default, to a third party for services that the credit grantor required the borrower to pay for, and/or to a broker (Section 6(3) of the CPA); and, in the case of a payday loan, includes the amount paid

by the borrower for mandatory purchases; fees, commissions, charges, penalties, interest or other consideration paid or to be paid for cashing a cheque, pre-authorized debit, in relation to a cash card or other device that allows the borrower to access money, includes inactivity and service fees, and by or on behalf of a borrower to a broker for arranging a loan (Section 3 of the PDR).

Value received (VR): all monies given to or for the benefit of the borrower: the amount of a monetary obligation of the borrower that is paid, discharged, or consolidated by the credit grantor, and; if a line of credit or credit card is used by the borrower to obtain money, property or service, the amount charged by the borrower (section 6(1) of the CPA). According to section 3(a) of the PDR, does not include the cash price related to tied selling for insurance or other goods or services.

Appendix A

Appearances

Ms. Anita Southall Mr. Robert Peters	Counsel for The Manitoba Public Utilities Board
Mr. Antoine Hacault Mr. Michael Thompson Ms. Mona Pollitt-Smith	Counsel for Rentcash
Mr. Allan Foran Ms. Lucia Stuhldreier	Counsel for Canadian Payday Loan Association
Mr. Byron Williams	Counsel for the Consumers' Association of Canada (Manitoba) Inc./ Manitoba Society of Seniors/Winnipeg Harvest
Mr. Leo Sorensen	Sorensen's Loans til Payday Inc.
Mr. Nathan Slee	310-Loan
Mr. Robert Dawson	Counsel for Assistive Financial Corporation
Mr. Steve Sardo	Cash-X
Mr. Kent Taylor	Progressive Insurance Solutions

Appendix B

Witnesses for Canadian Payday Loan Association

Norman Bishop	Lawyer, Officer of Canadian Payday Loan Association
Honourable Stan Keyes	President, Canadian Payday Loan Association
Mr. Dean Schinkel	Deloitte & Touche LLP
Mr. Michael Marzolini	Pollara
Dr. Lawrence Gould	University Professor

Witnesses for Rentcash

Ms. Nancy Bland	Chief Financial Officer, Rentcash
Mr. Gordon Reykdal	Chairman of the Board of Directors, Rentcash
Dr. Kevin Clinton	Consulting Economist
Ms. Carrie Lawrence	Regional Manager, Manitoba

Witnesses for CAC/MSOS/Winnipeg Harvest - Coalition

Professor Jerry Buckland	University Professor, University of Winnipeg/Menno Simons College
Dr. Chris Robinson	University Professor, York University
Dr. Wayne Simpson	University Professor, University of Manitoba
Dr. Tom Carter	University Professor, University of Winnipeg
Mr. John Osborne	University student and researcher, University of Winnipeg
Ms. Anita Friesen	Researcher, University of Winnipeg

Witness representative of Manitoba Pawn Shops

Norman Glass	Owner, interests in four Winnipeg pawn shops

Witness of 310-Loan

Mr. Nathan Slee	President

Witness of Cash-X

Mr. Steve Sardo	President

Witness of Progressive Insurance Solutions

Mr. Kent Taylor	President

Witnesses of Assistive Financial

Mr. Randy Schiffner	President

Appendix C

Interveners

Interveners
Assistive Financial Corporation
Canadian Payday Loan Association
Cash-X
Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors/Winnipeg Harvest (Coalition)
Progressive Insurance Solutions
Rentcash Inc.
Sorensen's Loans til Payday Inc.
310-Loan

Presenters

Social support groups	
Mr. Scott Hannah	Credit Counselling Society
Mr. John Silver	Community Financial Counselling Services
Ms. Dale Morrison	North End Women's Centre
Ms. Anna Pazdzierski	Manitoba Association of Women's Shelters
Ms. Kate Sjoberg	Spence Neighbourhood Association
Ms. Marianne Cerilli	West Central Women's Resource Centre
Ms. Elizabeth Carlyle	Canadian Federation of Students

Researchers	
Professor Bruce Duggan	Providence College and Seminary
Professor Ruth Berry	Professor-University of Manitoba (retired)

Industry	
Mr. Gerry Charlebois	C11 Holdings Limited
Ms. Crystal Laborero	Aski Financial
Mr. Rob Valentine	Aski Financial

User	
Mr. Wayne Vantassel	

Sworn Called Witnesses

Mr. Jim Scalena	Superintendent of Financial Institutions
Staff Sergeant Levasseur	Commercial Crimes Unit for the City of Winnipeg Police Service
Mr. Norman Glass	Manitoba Pawn Brokers Association
Mr. Randall Hansford	Consultant, Consumers' Bureau

APPENDIX D

To determine maximum allowable charges
and fees for payday loans

Exhibit List
(available for review at Board's Offices)

Public Hearings
November 5, 2007 - Thompson, Manitoba
November 7, 2007 – Brandon, Manitoba
November 13, 2007 – Winnipeg, Manitoba

THE PUBLIC UTILITIES BOARD'S EXHIBITS

Ex. #PUB-1(a)	Notice of Public Hearing	
Ex. #PUB-1(b)	Reminder Notice	
Ex. #PUB-2	Draft Timetable – revised July 5/07	
Ex. #PUB-3	Rules of Practice and Procedure	
Ex. #PUB-4	Transcript of Pre-Hearing Conference held July 6, 2007	
Ex. #PUB-5	Board Order No. 91/07 dated July 13, 2007	
Ex. #PUB-6	Book of Documents – Amended August 28/07	
Ex. #PUB/AF-7A-1	The Public Utilities Board's Information Requests and Assistive Financial's Response	Rate of return
Ex. #PUB/AF-7A-2	" " "	0perations
Ex. #PUB/AF-7A-3	" " "	Corporate/affiliate relationship
Ex. #PUB/AF-7A-4	" " "	Fee structure
Ex. #PUB/AF-7A-5	" " "	Current fees

Ex. #PUB/AF-7A-6	“ “ “	Rollovers
Ex. #PUB/AF-7A-7	“ “ “	Evidence - witnesses
Ex. #PUB/AF-7B-1	“ “ “	Markets
Ex. #PUB/AF-7B-2	“ “ “	Loan criteria
Ex. #PUB/AF-7B-3	“ “ “	Loan defaults
Ex. #PUB/AF-7B-4	“ “ “	Measure of loan evaluation
Ex. #PUB/AF-7B-5	“ “ “	Banks vs credit unions
Ex. #PUB/AF-7B-6	“ “ “	Taxes and overhead
Ex. #PUB/AF-7B-7	“ “ “	Retention payments
Ex. #PUB/AF-7B-8	“ “ “	Fee level required
Ex. #PUB/AF-7B-9	“ “ “	Proceedings against PVB
Ex. #PUB/CPLA-8A-1	The Public Utilities Board’s Information Requests and Canadian Payday Loan Association’s Response	Rate of return
Ex. #PUB/CPLA-8A-2	“ “ “	Operations
Ex. #PUB/CPLA-8A-3	“ “ “	Corporate/affiliate relationship
Ex. #PUB/CPLA-8A-4	“ “ “	Fee structure
Ex. #PUB/CPLA-8A-5	“ “ “	Current fees
Ex. #PUB/CPLA-8A-6	“ “ “	Rollovers
Ex. #PUB/CPLA-8A-7	“ “ “	Evidence - witnesses
Ex. #PUB/CPLA-8B-1	“ “ “	Consumer loans
Ex. #PUB/CPLA-8B-2	“ “ “	Class action suit
Ex. #PUB/CPLA-8B-3	“ “ “	Submissions – other jurisdictions
Ex. #PUB/CPLA-8B-4	“ “ “	Multiple loans

Ex. #PUB/CPLA-8B-5	“	“	“	Ethics - compliance
Ex. #PUB/CPLA-8B-6	“	“	“	Security/assignments
Ex. #PUB/CPLA-8B-7	“	“	“	Credit counselling
Ex. #PUB/CPLA-8B-8	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-9	“	“	“	Household income
Ex. #PUB/CPLA-8B-10	“	“	“	Customer understanding
Ex. #PUB/CPLA-8B-11	“	“	“	Credit rating agencies
Ex. #PUB/CPLA-8B-12	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-13	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-14	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-15	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-16	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-17	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-18	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-19	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-20	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-21	“	“	“	Pollara report
Ex. #PUB/CPLA-8B-22	“	“	“	E & Y 2004 Report
Ex. #PUB/CPLA-8B-23	“	“	“	E & Y – double counting
Ex. #PUB/CPLA-8B-24	“	“	“	Deloitte Report
Ex. #PUB/CPLA-8B-25	“	“	“	DR – participant
Ex. #PUB/CPLA-8B-26	“	“	“	DR – cost analysis
Ex. #PUB/CPLA-8B-27	“	“	“	DR – repay times
Ex. #PUB/CPLA-8B-28	“	“	“	DR – operating costs

Ex. #PUB/CPLA-8B-29	“ “ “	DR – loan capital
Ex. #PUB/CPLA-8B-30	“ “ “	DR – bad debt costs
Ex. #PUB/CPLA-8B-31	“ “ “	DR – payments to affiliates
Ex. #PUB/CPLA-8B-32	“ “ “	DR – payments to owners
Ex. #PUB/CPLA-8B-33	“ “ “	DR – survey results
Ex. #PUB/CPLA-8B-34	“ “ “	DR – financing sources
Ex. #PUB/CPLA-8B-35	“ “ “	DR – product line activity
Ex. #PUB/CPLA-8B-36	“ “ “	DR - Breakdown of fees
Ex. #PUB/CPLA-8B-37	“ “ “	DR - Support for data
Ex. #PUB/CPLA-8B-38	“ “ “	Gould Report – capital structure
Ex. #PUB/CPLA-8B-39	“ “ “	GR – fees - rates
Ex. #PUB/CPLA-8B-40	“ “ “	GR – rate of return
Ex. #PUB/CPLA-8B-41	“ “ “	GR – revolving credit
Ex. #PUB/CPLA-8B-42	“ “ “	GR – validity of APR
Ex. #PUB/CPLA-8B-43	“ “ “	GR – competition
Ex. #PUB/CPLA-8B-44	“ “ “	GR – financing structures
Ex. #PUB/CPLA-8B-45	“ “ “	GR – Money Mart
Ex. #PUB/CPLA-8B-46	“ “ “	GR – Bank profitability comparison
Ex. #PUB/CPLA-8B-47	“ “ “	GR – growth
Ex. #PUB/CPLA-8B-48	“ “ “	GR – fixed charge
Ex. #PUB/CASH-9A-1	The Public Utilities Board’s Information Requests and Cash-X’s Response	Rate of return
Ex. #PUB/CASH-9A-2	“ “ “	Operations

Ex. #PUB/CASH-9A-3	" " "	Corporate/affiliate relationship
Ex. #PUB/CASH-9A-4	" " "	Fee structures
Ex. #PUB/CASH-9A-5	" " "	Current fees
Ex. #PUB/CASH-9A-6	" " "	Rollovers
Ex. #PUB/CASH-9A-7	" " "	Evidence - witnesses
Ex. #PUB/COALITION-10A-1	Letter dated October 23, 2007 from B. Williams	No response to PUB A1 to A7
Ex. #PUB/COALITION-10B-1	" " "	Robinson CV
Ex. #PUB/COALITION-10B-2	" " "	Acorn Report 2006 – risk
Ex. #PUB/COALITION-10B-3	" " "	AR – bank comparison
Ex. #PUB/COALITION-10B-4	" " "	AR – bank participation
Ex. #PUB/COALITION-10B-5	" " "	AR – regulatory span
Ex. #PUB/COALITION-10B-6	" " "	AR – interest rate
Ex. #PUB/COALITION-10B-7	" " "	AR – high profits
Ex. #PUB/COALITION-10B-8	" " "	AR – business model
Ex. #PUB/COALITION-10B-9	" " "	AR – competition
Ex. #PUB/COALITION-10B-10	" " "	AR – EAR/APR
Ex. #PUB/COALITION-10B-11	" " "	AR – EAR
Ex. #PUB/COALITION-10B-12	" " "	AR – fee structure
Ex. #PUB/COALITION-10B-13	" " "	AR – Money Mart
Ex. #PUB/COALITION-10B-14	" " "	AR – risk
Ex. #PUB/COALITION-10B-15	" " "	AR – cost of supplementary capital
Ex. #PUB/COALITION-10B-16	" " "	AR - Bad debt
Ex. #PUB/COALITION-10B-17	" " "	AR – Bad debt – loss rate

Ex. #PUB/COALITION-10B-18	“	“	“	AR – fee calculation methods
Ex. #PUB/COALITION-10B-19	“	“	“	AR – bank participation
Ex. #PUB/COALITION-10B-20	“	“	“	AR – charging max rates
Ex. #PUB/COALITION-10B-21	“	“	“	Robinson Report 2007 – bad debts
Ex. #PUB/COALITION-10B-22	“	“	“	RR – Indiana regulation
Ex. #PUB/COALITION-10B-23	“	“	“	RR – Money Mart – Cash Stores
Ex. #PUB/COALITION-10B-24	“	“	“	RR – NSF cheques
Ex. #PUB/COALITION-10B-25	“	“	“	RR – « disadvantaged »
Ex. #PUB/COALITION-10B-26	“	“	“	RR – cost allocation
Ex. #PUB/COALITION-10B-27	“	“	“	RR – fee algorithm
Ex. #PUB/COALITION-10B-28	“	“	“	RR – bank participation
Ex. #PUB/COALITION-10B-29	“	“	“	Buckland Report – cv’s
Ex. #PUB/COALITION-10B-30	“	“	“	BR – sufficiency exploitation
Ex. #PUB/COALITION-10B-31	“	“	“	BR – market structure
Ex. #PUB/COALITION-10B-32	“	“	“	BR – APR’s
Ex. #PUB/COALITION-10B-33	“	“	“	BR – recommendations
Ex. #PUB/COALITION-10B-34	“	“	“	BR – fee disclosures
Ex. #PUB/COALITION-10B-35	“	“	“	BR – repeat loans
Ex. #PUB/COALITION-10B-36	“	“	“	BR – consumer credit reporting
Ex. #PUB/COALITION-10B-37	“	“	“	BR – consumer credit reporting
Ex. #PUB/COALITION-10B-38	“	“	“	BR – characteristics
Ex. #PUB/COALITION-10B-39	“	“	“	BR – declining incomes
Ex. #PUB/COALITION-10B-40	“	“	“	BR – assessment goals
Ex. #PUB/COALITION-10B-41	“	“	“	BR – bank services

Ex. #PUB/COALITION-10B-42	" " "	BR – transportation
Ex. #PUB/COALITION-10B-43	" " "	BR – bank account requirement
Ex. #PUB/COALITION-10B-44	" " "	BR – income levels
Ex. #PUB/COALITION-10B-45	" " "	BR – Acorn Report
Ex. #PUB/COALITION-10B-46	" " "	BR – Stratcom report
Ex. #PUB/COALITION-10B-47	" " "	BR – bank loan availability
Ex. #PUB/COALITION-10B-48	" " "	BR – chronic credit patterns
Ex. #PUB/COALITION-10B-49	" " "	BR – competition
Ex. #PUB/COALITION-10B-50	" " "	Mystery Shopper
Ex. #PUB/COALITION-10B-51	" " "	Buckland - correlation
Ex. #PUB/DIRECT-11-A-1	The Public Utilities Board's Information Requests and DirectCash Management Inc.'s Response	Rate of return
Ex. #PUB/DIRECT-11-A-2	" " "	Operations
Ex. #PUB/DIRECT-11-A-3	" " "	Corporate/affiliate relationship
Ex. #PUB/DIRECT-11-A-4	" " "	Fee structure
Ex. #PUB/DIRECT-11-A-5	" " "	Current fees
Ex. #PUB/DIRECT-11-A-6	" " "	Rollovers
Ex. #PUB/DIRECT-11-A-7	" " "	Evidence - witnesses
Ex. #PUB/PROGRESSIVE-12A-1	The Public Utilities Board's Information Requests and Progressive Insurance Solution's Response	Rate of return
Ex. #PUB/PROGRESSIVE-12A-2	" " "	Operations
Ex. #PUB/PROGRESSIVE-12A-3	" " "	Corporate/Affiliate relationship

Ex. #PUB/PROGRESSIVE-12A-4	“ “ “	Fee structure
Ex. #PUB/PROGRESSIVE-12A-5	“ “ “	Current fees
Ex. #PUB/PROGRESSIVE-12A-6	“ “ “	Rollovers
Ex. #PUB/PROGRESSIVE-12A-7	“ “ “	Evidence
Ex. #PUB/RC-13-A-1	The Public Utilities Board’s Information Requests and Rentcash Inc.’s Response	Rate of return
Ex. #PUB/RC-13A-2	“ “ “	Operations
Ex. #PUB/RC-13A-3	“ “ “	Corporate/affiliate relationship
Ex. #PUB/RC-13A-4	“ “ “	Fee structure
Ex. #PUB/RC-13A-5	“ “ “	Current fees
Ex. #PUB/RC-13A-6	“ “ “	Rollovers
Ex. #PUB/RC-13A-7	“ “ “	Evidence - witnesses
Ex. #PUB/RC-13B-1	“ “ “	Jurisdictional challenge
Ex. #PUB/RC-13B-2	“ “ “	Jurisdictional challenge
Ex. #PUB/RC-13B-3	“ “ “	Lower cost services
Ex. #PUB/RC-13B-4	“ “ “	Criminal code
Ex. #PUB/RC-13B-5	“ “ “	Credit reporting
Ex. #PUB/RC-13B-6	“ “ “	Percent of net income
Ex. #PUB/RC-13B-7	“ “ “	Processing time
Ex. #PUB/RC-13B-8	“ “ “	Cost disclosure
Ex. #PUB/RC-13B-9	“ “ “	Short vs long term rates
Ex. #PUB/RC-13B-10	“ “ “	Alternative loan products
Ex. #PUB/RC-13B-11	“ “ “	Products/services
Ex. #PUB/RC-13B-12	“ “ “	Code of conduct

Ex. #PUB/RC-13B-13	“	“	“	Submissions of other jurisdictions
Ex. #PUB/RC-13B-14	“	“	“	Fair disclosure rules
Ex. #PUB/RC-13B-15	“	“	“	Customer needs
Ex. #PUB/RC-13B-16	“	“	“	Optimal services
Ex. #PUB/RC-13B-17	“	“	“	Locations in disadvantaged neighbourhoods
Ex. #PUB/RC-13B-18	“	“	“	Customer information handling
Ex. #PUB/RC-13B-19	“	“	“	Cost of debit/credit card
Ex. #PUB/RC-13B-20	“	“	“	Signature loans
Ex. #PUB/RC-13B-21	“	“	“	Cost disclosure
Ex. #PUB/RC-13B-22	“	“	“	Clinton Report – fees
Ex. #PUB/RC-13B-23	“	“	“	CR – APR
Ex. #PUB/RC-13B-24	“	“	“	CR – payment options
Ex. #PUB/RC-13B-25	“	“	“	CR – ATM fees
Ex. #PUB/RC-13B-26	“	“	“	CR – brokerage division costs
Ex. #PUB/RC-13B-27	“	“	“	CR – fee recommendation
Ex. #PUB/RC-13B-28	“	“	“	CR – cross-subsidization
Ex. #PUB/RC-13B-29	“	“	“	CR – cross-subsidization
Ex. #PUB/RC-13B-30	“	“	“	CR – hidden fees
Ex. #PUB/RC-13B-31	“	“	“	CR – returned item
Ex. #PUB/RC-13B-32	“	“	“	CR – wage assignment
Ex. #PUB/RC-13B-33	“	“	“	CR – cost of credit information
Ex. #PUB/RC-13B-34	“	“	“	CR – credit
Ex. #PUB/RC-13B-35	“	“	“	CR – expertise of author

Ex. #PUB/RC-13B-36	“ “ “	CR - informed customer
Ex. #PUB/RC-13B-37	“ “ “	CR – Banister Report
Ex. #PUB/RC-13B-38	“ “ “	CR – normal limit
Ex. #PUB/RC-13B-39	“ “ “	CR – rollovers
Ex. #PUB/RC-13B-40	“ “ “	CR – underlying trends
Ex. #PUB/RC-13B-41	“ “ “	CR – unregulated products
Ex. #PUB/RC-13B-42	“ “ “	CR – Baye et al (2004) report
Ex. #PUB/RC-13B-43	“ “ “	CR – excess capacity
Ex. #PUB/RC-13B-44	“ “ “	CR – extension charges
Ex. #PUB/RC-13B-45	“ “ “	CR – decline in forms
Ex. #PUB/RC-13B-46	“ “ “	CR - % of pay
Ex. #PUB/RC-13B-47	“ “ “	CR – abnormal fees
Ex. #PUB/SL-14A-1	The Public Utilities Board’s Information Requests and Sorensen’s Loans til Payday’s Response	Rate of return
Ex. #PUB/SL-14A-2	“ “ “	Operations
Ex. #PUB/SL-14A-3	“ “ “	Corporate/affiliate relationship
Ex. #PUB/SL-14A-4	“ “ “	Fee structure
Ex. #PUB/SL-14A-5	“ “ “	Current fees
Ex. #PUB/SL-14A-6	“ “ “	Rollovers
Ex. #PUB/SL-14A-7	“ “ “	Evidence - witnesses
Ex. #PUB/310-15A-1	The Public Utilities Board’s Information Requests and 310-Loan’s Response	Rate of return
Ex. #PUB/310-15A-2	“ “ “	Operations

Ex. #PUB/310-15A-3	" " "	Corporate/affiliate relationships
Ex. #PUB/310-15A-4	" " "	Fee structure
Ex. #PUB/310-15A-5	" " "	Current fees
Ex. #PUB/310-15A-6	" " "	Rollovers
Ex. #PUB/310-15A-7	" " "	Evidence - witnesses
Ex. #PUB/TG-16A-1	The Public Utilities Board's Information Requests and Trans Global Insurance's Response	Rate of return
Ex. #PUB/TG-16A-2	" " "	Operations
Ex. #PUB/TG-16A-3	" " "	Corporate/affiliate relationships
Ex. #PUB/TG-16A-4	" " "	Fee structure
Ex. #PUB/TG-16A-5	" " "	Current fees
Ex. #PUB/TG-16A-6	" " "	Rollovers
Ex. #PUB/TG-16A-7	" " "	Evidence
Ex. #PUB/AF-17-1	The Public Utilities Board's 2nd Round Information Requests and Assistive Financial's Response	Interest 35% vs 59%
Ex. #PUB/AF-17-2	" " "	Bad debt expense
Ex. #PUB/AF-17-3	" " "	Retention payments
Ex. #PUB/AF-17-4	" " "	Default loans
Ex. #PUB/AF-17-5	" " "	Fixing maximums
Ex. #PUB/CPLA-18-1	The Public Utilities Board's 2nd Round Information Requests and Canadian Payday Loan Association's Response	F/S's of 3 largest members
Ex. #PUB/CPLA-18-2	" " "	Repeat business
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Ex. #PUB/CPLA-18-4	“ “ “	Loan issuing process
Ex. #PUB/CPLA-18-5	“ “ “	Fee structure
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Ex. #PUB/CPLA-18-7	“ “ “ “	Fees
Ex. #PUB/CPLA-18-8	“ “ “	Operating costs
Ex. #PUB/CPLA-18-9	“ “ “	Deloitte – conflict of interest
Ex. #PUB/CPLA-18-10	“ “ “	Imports of licensing
Ex. #PUB/CPLA-18-11	“ “ “	Code of Best Business Practices
Ex. #PUB/CPLA-18-12	“ “ “	Disclosure
Ex. #PUB/CPLA-18-13	“ “ “	Risks
Ex. #PUB/CPLA-18-14	“ “ “	Analysis of operating costs
Ex. #PUB/CPLA-18-15	“ “ “	Salaries
Ex. #PUB/CPLA-18-16	“ “ “	abnormalities
Ex. #PUB/CPLA-18-17	“ “ “	Bad debt calculation
Ex. #PUB/CPLA-18-18	“ “ “	Fees
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Ex. #PUB/CPLA-18-20	“ “ “	Imputed capital structure
Ex. #PUB/CASH-19-1	The Public Utilities Board’s 2nd Round Information Requests and Cash-X Inc.’s Response	Volume of loans
Ex. #PUB/CASH-19-2	“ “ “	Volume of loans
Ex. #PUB/COALITION-20-1	The Public Utilities Board’s 2nd Round Information Requests and COALITION’S Response	Regulatory process
Ex. #PUB/COALITION-20-2	“ “ “	Optional insurance

Ex. #PUB/COALITION-20-3	“	“	“	Change in Money Mart’s structure
Ex. #PUB/COALITION-20-4	“	“	“	competition
Ex. #PUB/COALITION-20-5	“	“	“	Price discovery barrier
Ex. #PUB/COALITION-20-6	“	“	“	lenders in rural communities
Ex. #PUB/COALITION-20-7	“	“	“	Proposed models
Ex. #PUB/COALITION-20-8	“	“	“	Collusion
Ex. #PUB/COALITION-20-9	“	“	“	Credit frequency cap
Ex. #PUB/COALITION-20-10	“	“	“	Debt to disposable income
Ex. #PUB/COALITION-20-11	“	“	«	Vancity Credit Union
Ex. #PUB/COALITION-20-12	“	“	“	Control by large firms
Ex. #PUB/COALITION-20-13	“	“	“	Average income
Ex. #PUB/COALITION-20-14	“	“	“	LICO
Ex. #PUB/COALITION-20-15	“	“	“	Cost structures
Ex. #PUB/COALITION-20-16	“	“	“	Rate of return
Ex. #PUB/COALITION-20-17	“	“	“	Posting APR’s
Ex. #PUB/PROGRESSIVE-21-1	The Pubic Utilities Board’s 2nd Round Information Requests and Progressive’s Response			
Ex. #PUB/PROGRESSIVE-21-2	“	“	“	
Ex. #PUB/RC-22-1	The Public Utilities Board’s 2nd Round Information Requests and Rentcash Inc. ’s Response			Outlier rate
Ex. #PUB/RC-22-2	“	“	“	Retention payments
Ex. #PUB/RC-22-3	“	“	“	Optional card fees
Ex. #PUB/RC-22-4	“	“	“	Credit/debit card
Ex. #PUB/RC-22-5	“	“	“	Insurance

Ex. #PUB/RC-22-6	" " "	APR
Ex. #PUB/RC-22-7	" " "	ATM's
Ex. #PUB/RC-22-8	" " "	Default loans
Ex. #PUB/RC-22-9	" " "	Credit history letters
Ex. #PUB/RC-22-10	" " "	lenders
Ex. #PUB/RC-22-11	" " "	Sample loan agreement
Ex. #PUB/RC-22-12	" " "	Recommendations of best practices
Ex. #PUB/RC-22-13	" " "	Impact of regulatory fees
Ex. #PUB/RC-22-14	" " "	% of net income
Ex. #PUB/RC-22-15	" " "	Roth presentation – New York
Ex. #PUB/RC-22-16	" " "	Concentration of competition
Ex. #PUB/RC-22-17	" " "	Extension of loans
Ex. #PUB/RC-22-18	" " "	Customer information
Ex. #PUB/RC-22-19	" " "	Repeat loans
Ex. #PUB/RC-22-20	" " "	Collection costs
Ex. #PUB/310-23-1	The Public Utilities Board's 2nd Round Information Requests and 310-Loan's Response	Long-term affordability
Ex. #PUB/310-23-2	" " "	Customer demographics
Ex. #PUB/310-23-3	" " "	Charges and costs of $100/250
Ex. #PUB/310/23-4	" " "	Fee calculation
Ex. #PUB-24	Letter – Consumers Bureau – re Hansford (Dec 7/07)	
Ex. #PUB-25	Advance America – 10-Q – September 30, 2007	

Ex. #PUB-26	Advance America – 10K – December 31, 2005
Ex. #PUB-27	Letter from Insurance Council – December 11, 2007
Ex. #PUB-28	List of Lenders and 3 example lenders
Ex. #PUB-29	Advance America correspondence – December 18, 2007
Ex. #PUB-30	ACE INA Insurance Corporation – January 4, 2008
Ex. #PUB-31	BC Consultation Paper – PD Loans – December 2007
Ex. #PUB-32	Book of Documents – Vol. II
Ex. #PUB-33	Supplemental Documents
Ex. #PUB-34	Center for Responsible Lending – CRL Critique

ASSISTIVE FINANCIAL'S EXHIBITS

Ex. #AF-1	Evidence of Assistive Financial filed September 17, 2007	
Ex. #AF/CPLA-2-1	Assistive Financial's Information Requests and Canadian Payday Loan Association's Response	Definition
Ex. #AF/CPLA-2-2	" " "	Range of products
Ex. #AF/CPLA-2-3	" " "	Formation of CPLA
Ex. #AF/CPLA-2-4	" " "	Formation of CPLA
Ex. #AF/CPLA-2-5	" " "	Consumer Measures Cte.
Ex. #AF/CPLA-2-6	" " "	Code of Best Practices
Ex. #AF/CPLA-2-7	" " "	Ethics & Integrity Commissioner
Ex. #AF/CPLA-2-8	" " "	" « «
Ex. #AF/CPLA-2-9	" " "	« « «
Ex. #AF/CPLA-2-10	" " "	« « «
Ex. #AF/CPLA-2-11	" " "	« « «
Ex. #AF/CPLA-2-12	" " "	Factors
Ex. #AF/CPLA-2-13	" " "	Bond requirement
Ex. #AF/CPLA-2-14	" " "	CV – Tanya Watson
Ex. #AF/CPLA-2-15	" " "	Source of capital
Ex. #AF/CASH-3-1	Assistive Financial's Information Requests and Cash-X Inc.'s Response	Source of capital
Ex. #AF/COALITION-4-1	Assistive Financial's Information Requests and Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's Response	Contract – Buckland

Ex. #AF/COALITION-4-2	“ “ “	Contract – Robinson
Ex. #AF/COALITION-4-3	“ “ “	Contract – Buckland re serving
Ex. #AF/COALITION-4-4	“ “ “	Coauthors – Buckland report
Ex. #AF/COALITION-4-5	“ “ “	jurisdiction
Ex. #AF/COALITION-4-6	“ “ “	Robinson – cv
Ex. #AF/COALITION-4-7	“ “ “	Robinson – availability
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Ex. #AF/DIRECT-5-1	Assistive Financial’s Information Requests and DirectCash Management Inc.’s Response	Not received
Ex. #AF/DIRECT-5-2	“ “ “	
Ex. #AF/DIRECT-5-3	“ “ “	
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Ex. #AF/PROGRESSIVE-6-1	Assistive Financial’s Information Requests and Progressive Insurance Solution’s Response	Manitoba operations
Ex. #AF/PROGRESSIVE-6-2	“ “ “	Subsidiary relationship
Ex. #AF/PROGRESSIVE-6-3	“ “ “	Affiliations
Ex. #AF/RC-7-1	Assistive Financial’s Information Requests and Rentcash Inc.’s Response	Access to capital
Ex. #AF/310-8-1	Assistive Financial’s Information Requests and 310-Loan’s Response	Selinger quote
Ex. #AF/310-8-2	“ “ “	Hidden fees/vulnerable persons
Ex. #AF/310-8-3	“ “ “	“actively employed”

Ex. #AF/310-8-4	“	“	“	NSF – other lenders
Ex. #AF/310-8-5	“	“	“	Borrower’s history
Ex. #AF/310-8-6	“	“	“	Multiple loans
Ex. #AF/310-8-7	“	“	“	Loan definition
Ex. #AF/310-8-8	“	“	“	Payday loan studies
Ex. #AF/310-8-9	“	“	“	Membership
Ex. #AF/310-8-10	“	“	“	Loans for emergencies
Ex. #AF/310-8-11	“	“	“	Title loan
Ex. #AF/310-8-12	“	“	“	Product lifecycle
Ex. #AF/310-8-13	“	“	“	Levin’s Harvard Business Review article
Ex. #AF/310-8-14	“	“	“	Corey & Capon article
Ex. #AF/310-8-15	“	“	“	Competitiveness
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Ex. #AF/310-8-17	“	“	“	Pressures on Mogo
Ex. #AF/310-8-18	“	“	“	New features
Ex. #AF/310-8-19	“	“	“	Market plea
Ex. #AF/310-8-20	“	“	“	Legal uncertainty
Ex. #AF/310-8-21	“	“	“	Uncertainty
Ex. #AF/310-8-22	“	“	“	Investors
Ex. #AF/310-8-23	“	“	“	Donald Morgan
Ex. #AF/310-8-24	“	“	“	Iain Ramsay Report
Ex. #AF/310-8-25	“	“	“	Consumer Measurers Committee
Ex. #AF/310-8-26	“	“	“	Ramsay’s & recommendations

Ex. #AF/310-8-27	"	"	"	Manitoba legislative context
Ex. #AF/310-8-28	"	"	"	E & Y Report
Ex. #AF/310-8-29	"	"	"	Profit margin banks
Ex. #AF/310-8-30	"	"	"	Economic scholars
Ex. #AF/310-8-31	"	"	"	Egregious lenders
Ex. #AF/310-8-32	"	"	"	Non price needs
Ex. #AF/310-8-33	"	"	"	Low rate ceiling
Ex. #AF/310-8-34	"	"	"	Durkin paper
Ex. #AF/310-8-35	"	"	"	Manitoba vs U.S.
Ex. #AF/310-8-36	"	"	"	PUB jurisdiction
Ex. #AF/310-8-37	"	"	"	Current payday loan rates
Ex. #AF-9	Rebuttal Evidence of Assistive Financial filed November 1, 2007			
Ex. #AF-10	Undertaking			

CANADIAN PAYDAY LOAN ASSOCIATION'S EXHIBITS

Ex. #CPLA-1	Pre-filed Evidence of Canadian Payday Loan Association	
Ex. #CPLA/AF-2-1	Canadian Payday Loan Association's Information Requests and Assistive Financial's Response	View of maximums
Ex. #CPLA/AF-2-2	" " "	Basis for position
Ex. #CPLA/COALITION-3-1	Canadian Payday Loan Association's Information Requests and Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's Response	Market failure
Ex. #CPLA/COALITION-3-2	" " "	Basis for position
Ex. #CPLA/COALITION-3-3	" " "	Lump sum fees
Ex. #CPLA/COALITION-3-4	" " "	Types of credit
Ex. #CPLA/COALITION-3-5	" " "	APR comparisons
Ex. #CPLA/COALITION-3-6	" " "	Core group
Ex. #CPLA/COALITION-3-7	" " "	Core group
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Ex. #CPLA/COALITION-3-10	" " "	Repeat customers
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Ex. #CPLA/COALITION-3-14	" " "	Inner-city
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Ex. #CPLA/COALITION-3-17	“	“	“	Principal road
Ex. #CPLA/COALITION-3-18	“	“	“	Outlet locations
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Ex. #CPLA/COALITION-3-20	“	“	“	Lump sum fee
Ex. #CPLA/COALITION-3-21	“	“	“	APR
Ex. #CPLA/COALITION-3-22	“	“	“	Aboriginal/minorities
Ex. #CPLA/COALITION-3-23	“	“	“	Personal information
Ex. #CPLA/COALITION-3-24	“	“	“	Personal information
Ex. #CPLA/COALITION-3-25	“	“	“	Repeat borrowing
Ex. #CPLA/COALITION-3-26	“	“	“	Robinson Report – Report to PUB
Ex. #CPLA/COALITION-3-27	“	“	“	Recommendations
Ex. #CPLA/COALITION-3-28	“	“	“	Privacy rules
Ex. #CPLA/COALITION-3-29	“	“	“	PIPEDA
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Ex. #CPLA/COALITION-3-32	“	“	“	Use frequency
Ex. #CPLA/COALITION-3-33	“	“	“	Robinson report
Ex. #CPLA/COALITION-3-34	“	“	“	Field research
Ex. #CPLA/COALITION-3-35	“	“	“	Margins
Ex. #CPLA/COALITION-3-36	“	“	“	Clients « underbanked »
Ex. #CPLA/COALITION-3-37	“	“	“	Sub-prime lenders
Ex. #CPLA/COALITION-3-38	“	“	“	Definitions – customer profiling
Ex. #CPLA/COALITION-3-39	“	“	“	Low-income group

Ex. #CPLA/COALITION-3-40	"	"	"	Sufficiency exploitation
Ex. #CPLA/COALITION-3-41	"	"	"	Relative advantage exploitation
Ex. #CPLA/COALITION-3-42	"	"	"	Repeat client
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Ex. #CPLA/COALITION-3-48	"	"	"	Consumer behaviour
Ex. #CPLA/COALITION-3-49	"	"	"	Banks re small loans
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Ex. #CPLA/COALITION-3-52	"	"	"	Bank closures
Ex. #CPLA/COALITION-3-53	"	"	"	Location
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Ex. #CPLA/COALITION-3-55	"	"	"	Fringe banks – low income
Ex. #CPLA/COALITION-3-56	"	"	"	Changes in bank density
Ex. #CPLA/COALITION-3-57	"	"	"	ACC secured credit card
Ex. #CPLA/COALITION-3-58	"	"	"	ACC secured credit card
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Ex. #CPLA/COALITION-3-61	"	"	"	Alterna Credit Union
Ex. #CPLA/COALITION-3-62	"	"	"	Alterna Credit Union
Ex. #CPLA/COALITION-3-63	"	"	"	SFS study

Ex. #CPLA/COALITION-3-64	“	“	“	FCAC survey
Ex. #CPLA/COALITION-3-65	“	“	“	SFS survey
Ex. #CPLA/COALITION-3-66	“	“	“	Acorn study
Ex. #CPLA/COALITION-3-67	“	“	“	Acorn study
Ex. #CPLA/COALITION-3-68	“	“	“	LICO
Ex. #CPLA/COALITION-3-69	“	“	“	LICO
Ex. #CPLA/COALITION-3-70	“	“	“	Cheque cashing/PDL
Ex. #CPLA/COALITION-3-71	“	“	“	LICO
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Ex. #CPLA/COALITION-3-85	“	“	“	Support Network Survey
Ex. #CPLA/COALITION-3-86	“	“	“	Frequent borrowers definition

Ex. #CPLA/COALITION-3-87	"	"	"	Perfectly competitive market
Ex. #CPLA/COALITION-3-88	"	"	"	Perfectly competitive market
Ex. #CPLA/COALITION-3-89	"	"	"	Winnipeg outlets
Ex. #CPLA/COALITION-3-90	"	"	"	Identifying firms
Ex. #CPLA/COALITION-3-91	"	"	"	Mystery Shopper
Ex. #CPLA/COALITION-3-92	"	"	"	« « «
Ex. #CPLA/COALITION-3-93	"	"	"	« « «
Ex. #CPLA/COALITION-3-94	"	"	"	« « «
Ex. #CPLA/COALITION-3-95	"	"	"	« « «
Ex. #CPLA/COALITION-3-96	"	"	"	« « «
Ex. #CPLA/COALITION-3-97	"	"	"	« « «
Ex. #CPLA/COALITION-3-98	"	"	"	« « «
Ex. #CPLA/COALITION-3-99	"	"	"	« « «
Ex. #CPLA/COALITION-3-100	"	"	"	Customer information
Ex. #CPLA/COALITION-3-101	"	"	"	« « «
Ex. #CPLA/COALITION-3-102	"	"	"	Mystery Shopper
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Ex. #CPLA/COALITION-3-104	"	"	"	« « «
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Ex. #CPLA/COALITION-3-109	"	"	"	Mystery Shopper
Ex. #CPLA/COALITION-3-110	"	"	"	Compare to mainstream

Ex. #CPLA/COALITION-3-111	“	“	“	Locations
Ex. #CPLA/COALITION-3-112	“	“	“	Telephone inquiries
Ex. #CPLA/COALITION-3-113	“	“	“	Insurance
Ex. #CPLA/COALITION-3-114	“	“	“	Robinson – profitability
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Ex. #CPLA/COALITION-3-116	“	“	“	Robinson – fees compared to banks
Ex. #CPLA/COALITION-3-117	“	“	“	Robinson – bank participation
Ex. #CPLA/COALITION-3-118	“	“	“	Robinson – Credit Union
Ex. #CPLA/COALITION-3-119	“	“	“	Robinson – Provincial Government – moral suasion
Ex. #CPLA/COALITION-3-120	“	“	“	Robinson – Federal Government – moral suasion
Ex. #CPLA/COALITION-3-121	“	“	“	Robinson – risk
Ex. #CPLA/COALITION-3-122	“	“	“	« « «
Ex. #CPLA/COALITION-3-123	“	“	“	Robinson – consumer knowledge
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Ex. #CASH/CPLA-2-5	" " "	Money Mart/Cash Money
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Ex. #COALITION/CPLA-2-7	" " "	Pollara – awareness
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Ex. #COALITION/CPLA-2-9	" " "	Pollara – pay back
Ex. #COALITION/CPLA-2-10	" " "	Pollara – PDL option
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Ex. #COALITION/RC-4-1	Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's Information Requests and Rentcash Inc.'s Response	“sporadic”
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Ex. #COALITION/RC-4-11	"	"	"	Survey of financial security
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Ex. #COALITION/RC-4-28	"	"	"	Low income families
Ex. #COALITION/RC-4-29	"	"	"	Complaints
Ex. #COALITION/RC-4-30	"	"	"	Customer opinion
Ex. #COALITION/RC-4-31	"	"	"	Hours of operation
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Ex. #COALITION/RC-4-34	" " "	Rentcash website
Ex. #COALITION/310-5-1	Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's Information Requests and 310-Loan's Response	Studies vs surveys
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Ex. #COALITION/310-5-3	" " "	Statistics Canada reports
Ex. #COALITION/310-5-4	" " "	Hours of operation
Ex. #COALITION/310-5-5	" " "	Cost of loan
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Ex. #COALITION-6	Letter dated October 23/07 from Byron Williams to The Public Utilities Board enclosing excerpt from "Research Project Plan for Ethics Review", spreadsheet and letter sent to payday lending stores on October 17, 2007 with Agreement to Waive Anonymity.	
Ex. #COALITION/CPLA-7-1	Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's 2nd Round Information Requests and Canadian Payday Loan Association's Response	Deloitte – profit data
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Ex. #COALITION/RC-8-1	Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's 2nd Round Information Requests and Rentcash Inc.'s Response	Clinton – cv
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Ex. #COALITION/310-9-1	Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's 2nd Round Information Requests and 310-Loan's Response	Money Mart – new stores
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Ex. #COALITION-11	Rentcash Presentation – Reykdal to NY Conference	
Ex. #COALITION-12	Rentcash 1st quarter results – November 7, 2007	
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Ex. #COALITION-14	PPT – Rentcash – Orange County – February 2007	
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Ex. #COALITION-18	Who are the Consumers of Payday Loans? (Simpson)
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Ex. #RC/CASH-3-1	Rentcash Inc.'s Information Requests and Cash-X Inc.'s Response	Default rate
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Ex. #RC/COALITION-4-6	“ “ “	N/A
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Ex. #RC/COALITION-4-15	“ “ “	Buckland report
Ex. #RC/COALITION-4-16	“ “ “	Rules – credit cards – lines of credit
Ex. #RC/COALITION-4-17	“ “ “	Micro-loans

Ex. #RC/COALITION-4-18	“	“	“	Services of mainstream banks
Ex. #RC/COALITION-4-19	“	“	“	North end consumers
Ex. #RC/COALITION-4-20	“	“	“	Rollovers
Ex. #RC/COALITION-4-21	“	“	“	Manitoba specific information
Ex. #RC/COALITION-4-22	“	“	“	Timing for loan approval
Ex. #RC/COALITION-4-23	“	“	“	Robinson – sources
Ex. #RC/COALITION-4-24	“	“	“	Store sizes
Ex. #RC/COALITION-4-25	“	“	“	Cross subsidy
Ex. #RC/COALITION-4-26	“	“	“	Electronic spreadsheet
Ex. #RC/COALITION-4-27	“	“	“	# of transactions
Ex. #RC/COALITION-4-28	“	“	“	Business sizes
Ex. #RC/COALITION-4-29	“	“	“	Wages
Ex. #RC/COALITION-4-30	“	“	“	Competition
Ex. #RC/COALITION-4-31	“	“	“	Regulatory costs
Ex. #RC/COALITION-4-32	“	“	“	Efficient cost structures
Ex. #RC/COALITION-4-33	“	“	“	Robinson – supporting documentation
Ex. #RC/COALITION-4-34	“	“	“	Bad debts/default rates
Ex. #RC/COALITION-4-35	“	“	“	Cheque cashing
Ex. #RC/COALITION-4-36	“	“	“	“regular customers”
Ex. #RC/COALITION-4-37	“	“	“	Risk of default
Ex. #RC/COALITION-4-38	“	“	“	Robinson – Manitoba specific
Ex. #RC/COALITION-4-39	“	“	“	Robinson – store specific
Ex. #RC/COALITION-4-40	“	“	“	Robinson – support data

Ex. #RC/COALITION-4-41	“ “ “	Collection costs
Ex. #RC/COALITION-4-42	“ “ “	Repeat customers
Ex. #RC/COALITION-4-43	“ “ “	Competition
Ex. #RC/COALITION-4-44	“ “ “	Volumes
Ex. #RC/COALITION-4-45	“ “ “	Mainstream institutions
Ex. #RC/COALITION-4-46	“ “ “	Credit unions
Ex. #RC/CPLA-5-1	Rentcash Inc.’s 2nd Round Information Requests and Canadian Payday Loan Association’s Response	Fee structure
Ex. #RC/CPLA-5-2	“ “ “	Cost of bond
Ex. #RC/CPLA-5-3	“ “ “	Deloitte vs Gould Report
Ex. #RC/CPLA-5-4	“ “ “	Money Mart
Ex. #RC/CPLA-5-5	“ “ “	Repeat customers
Ex. #RC/CPLA-5-6	“ “ “	Default rates
Ex. #RC/CPLA-5-7	“ “ “	Members
Ex. #RC/CPLA-5-8	“ “ “	Regulatory costs
Ex. #RC/CPLA-5-9	“ “ “	E & Y worksheets
Ex. #RC/CPLA-5-10	“ “ “	E & Y/Deloitte calculations
Ex. #RC/CPLA-5-11	“ “ “	Deloitte – bad debts and losses
Ex. #RC/CASH-6-1	Rentcash Inc.’s 2nd Round Information Requests and Cash-X Inc.’s Response	N/A
Ex. #RC/CASH-6-2	“ “ “	N/A
Ex. #RC/COALITION-7-1	Rentcash Inc.’s 2nd Round Information Requests and Consumers’ Association of Canada (Manitoba) Inc./Manitoba Society	Disclosure

	of Seniors and Winnipeg Harvest's Response			
Ex. #RC/COALITION-7-2	"	"	"	310 query
Ex. #RC/COALITION-7-3	"	"	"	Commercial locations
Ex. #RC/COALITION-7-4	"	"	"	310 query
Ex. #RC/COALITION-7-5	"	"	"	Competition
Ex. #RC/COALITION-7-6	"	"	"	Articles/e-mails
Ex. #RC/COALITION-7-7	"	"	"	Whitelaw report
Ex. #RC/COALITION-7-8	"	"	"	Articles
Ex. #RC/COALITION-7-9	"	"	"	Buckland – competition
Ex. #RC/COALITION-7-10	"	"	"	Buckland – Ernst, Faris and King study
Ex. #RC/COALITION-7-11	"	"	"	Buckland – caps
Ex. #RC/COALITION-7-12	"	"	"	Alterna Credit Union
Ex. #RC/COALITION-7-13	"	"	"	Alterna Credit Union
Ex. #RC/COALITION-7-14	"	"	"	APR
Ex. #RC/COALITION-7-15	"	"	"	Sophisticated systems
Ex. #RC/COALITION-7-16	"	"	"	Fixed costs
Ex. #RC/COALITION-7-17	"	"	"	Support for evidence
Ex. #RC/COALITION-7-18	"	"	"	Risk
Ex. #RC/COALITION-7-19	"	"	"	Bad debt losses
Ex. #RC/COALITION-7-20	"	"	"	CPLA query
Ex. #RC/COALITION-7-21	"	"	"	Whitelaw/Alterna
Ex. #RC/COALITION-7-22	"	"	"	Cap on loans
Ex. #RC/COALITION-7-23	"	"	"	Robinson – value received

Ex. #RC/COALITION-7-24	" " "	Buckland – value received
Ex. #RC/COALITION-7-25	" " "	Locations
Ex. #RC/COALITION-7-26	" " "	Business calculations
Ex. #RC/COALITION-7-27	" " "	Regulatory costs
Ex. #RC/COALITION-7-28	" " "	2006 report
Ex. #RC/COALITION-7-29	" " "	Credit reporting
Ex. #RC/COALITION-7-30	" " "	Competition
Ex. #RC/COALITION-7-31	" " "	Report (see PUB-11-7b)
Ex. #RC/COALITION-7-32	" " "	"value received"
Ex. #RC/COALITION-7-33	" " "	Jurisdictional comparisons
Ex. #RC/COALITION-7-34	" " "	Promise of information
Ex. #RC/COALITION-7-35	" " "	Witness qualifications
Ex. #RC-8	Rebuttal Submission dated October 31, 2007	
Ex. #RC-9	Rebuttal Submission by Kevin Clinton dated October 31, 2007	
Ex. #RC-10	Rentcash Rate proposal	Refiled
Ex. #RC-11	e-mail from Mr. Isfeld of October 22, 2007	
Ex. #RC-12	Recommendation for payday loan fee limit for MB	
Ex. #RC-13	Equilibrium estimate of welfare effect of regulation	
Ex. #RC-14	Rentcash 2007 Annual Report	
Ex. #RC-15	Regulation of Public Utilities – Charles Phillips	

Ex. #RC-16	Corrected Table A (see Ex. RC-10) – Cost of credit
Ex. #RC-17	Undertaking 67 – Calculation of APR
Ex. #RC-18	Undertaking 66
Ex. #RC-19	Undertaking 67 – expanded
Ex. #RC-20	Partial equilibrium estimate of welfare effect of alternative payday loan limits
Ex. #RC-21	Expanding Credit Access – Dartmouth Study
Ex. #RC-22	Federal Reserve Bank of New York - – Payday Holidays: How Households Fare After Payday Credit Bans – November 2007
Ex. #RC-23	Collard/Kempson Report 2003 – Introduction
Ex. #RC-24	Letter from Premier to Standing Senate Committee – March 6, 2007
Ex. #RC-25	CBC News – Proposed Law on PDL
Ex. #RC-26	Canadian Bankruptcy Statistics
Ex. #RC-27	Payday Loans and Exploitation (Mayer)
Ex. #RC-28	Economics of Payday Lending (Caskey)
Ex. #RC-29	Payday Lending (Stegman)
Ex. #RC-30	Customer package
Ex. #RC-31	2001 Census – City of Winnipeg Neighbourhood Profiles
Ex. #RC-32	Hansford – CV

Ex. #RC-33	Notice of Motion – letter – January 24/08
Ex. #RC-34	Rebuttal – Consumer Welfare

310 LOAN'S EXHIBITS

Ex. #310-1	Evidence of 310 Loan prepared by Andrew Smyth and Nathan Slee dated September 17, 2007	
Ex. #310/COALITION-2-1	310 Loan's Information Requests and Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors and Winnipeg Harvest's Response	Legislation
Ex. #310/COALITION-2-2	" " "	Exploitation
Ex. #310/COALITION-2-3	" " "	Sufficiency exploitation
Ex. #310/COALITION-2-4	" " "	Exploitation
Ex. #310/COALITION-2-5	" " "	Customer loan access
Ex. #310/COALITION-2-6	" " "	Repeat customer
Ex. #310/COALITION-2-7	" " "	North end
Ex. #310/COALITION-2-8	" " "	Pigeon Park Savings
Ex. #310/COALITION-2-9	" " "	Secured credit card
Ex. #310/COALITION-2-10	" " "	Vancity and Alterna
Ex. #310/COALITION-2-11	" " "	Vancity and Alterna
Ex. #310/COALITION-2-12	" " "	Micro-loans
Ex. #310/COALITION-2-13	" " "	Multi-line outlets
Ex. #310/COALITION-2-14	" " "	Average age
Ex. #310/COALITION-2-15	" " "	Bankruptcy
Ex. #310/COALITION-2-16	" " "	North end income
Ex. #310/COALITION-2-17	" " "	Options for welfare customers
Ex. #310/COALITION-2-18	" " "	Spatial monopoly
Ex. #310/COALITION-2-19	" " "	Growth

Ex. #310/COALITION-2-20	“	“	“	Compensation – owner/manager
Ex. #310/COALITION-2-21	“	“	“	N/A
Ex. #310/COALITION-2-22	“	“	“	Robinson – capital/opportunity costs
Ex. #310/COALITION-2-23	“	“	“	N/A
Ex. #310/COALITION-2-24	“	“	“	Robinson – excessive profits
Ex. #310/COALITION-2-25	“	“	“	Regulation vs benefit
Ex. #310/COALITION-2-26	“	“	“	PDL vs corporate loan default
Ex. #310/COALITION-2-27	“	“	“	Robinson – viability under maximums
Ex. #310/COALITION-2-28	“	“	“	Robinson – efficiency
Ex. #310/COALITION-2-29	“	“	“	Robinson – banks/credit unions
Ex. #310/COALITION-2-30	“	“	“	Robinson – competition
Ex. #310/COALITION-2-31	“	“	“	Robinson – growth plan
Ex. #310/COALITION-2-32	“	“	“	Robinson – regulation
Ex. #310/COALITION-2-33	“	“	“	Robinson – efficient lenders
Ex. #310/COALITION-2-34	“	“	“	Money Mart
Ex. #310/COALITION-2-35	“	“	“	3 year rate review
Ex. #310/COALITION-2-36	“	“	“	Regulated excess profits
Ex. #310/COALITION-2-37	“	“	“	Technology used for efficiency
Ex. #310/CPLA-3-1	310 Loan’s 2nd Round Information Requests and Canadian Payday Loan Association’s Response			CPLA recommended rate
Ex. #310/COALITION-4-1	310 Loan’s 2nd Round Information Requests and Consumers’ Association of Canada (Manitoba) Inc./Manitoba Society of Seniors			Excess capacity

	and Winnipeg Harvest's Response	
Ex. #310/COALITION-4-2	" " "	North end data
Ex. #310/COALITION-4-3	" " "	Rate of return
Ex. #310/COALITION-4-4	" " "	Suitable return
Ex. #310-5	Rebuttal Evidence dated November 5, 2007	
Ex. #310-6	Person Finance Research Centre – Executive Summary Report – November 2006	
Ex. #310-7	Advance America Update	
Ex. #310-8	Fee Collection Data from Buckland Team	
Ex. #310-9	Maximum Finance Charges in Regulated US States	
Ex. #310-10	Letter from Missouri Commissioner of Finance to Governor – January 17, 2007	
Ex. #310-11	Spreadsheet – Final Recommendations by Robinson (A through D)	