

**PRE-FILED EVIDENCE OF  
THE CANADIAN PAYDAY LOAN ASSOCIATION (“CPLA”)**

**INTRODUCTION**

Pursuant to *The Consumer Protection Amendment Act (Payday Loans)* (the “Act”), which took effect on June 5, 2007, the Public Utilities Board (the “Board”) has convened this proceeding to set the maximum amounts that can be charged for payday loans. The Board’s mandate has three components:

- a) fixing the maximum cost of credit, or 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) fixing the maximum amount, or rate, formula, or tariff for determining the maximum amount, that may be charged, required or accepted in respect of either an extension or renewal of a payday loan or replacement loan; and
  
- c) fixing the maximum amount, or rate, that may be charged, required or accepted in respect of payday loan customer default of a payday loan.

By Board Order No. 91/07, dated July 13, 2007, the Board granted intervener status to the Canadian Payday Loan Association (“CPLA”). The CPLA is providing the within-pre-filed evidence to assist the Board in gaining an understanding of general industry, economic and costing factors, and Canada-wide regulatory practices. The CPLA’s evidence contains specific information on the locations and demographic setting of payday lending outlets in Winnipeg, the first comprehensive study and profile of the typical payday loan customer in Manitoba, a province-specific study concerning the costs of providing payday lending services to Manitoba customers, as well as an analysis, from the perspective of financial theory, of how the specific features of the payday lending industry in Manitoba impact on the Board’s mandate.

It is the CPLA’s submission that it is in the public interest for Manitobans to have access to the payday lending product regardless of their credit history or geographic location, and this is achieved by setting regulatory parameters which protect consumers from excessive fees and allowing a viable competitive marketplace to function to ensure there is the flexibility to allow reasonable rates depending on geography and degree of risk.

## **THE PAYDAY LOAN PRODUCT**

### History

The payday loan industry first emerged in Canada in the mid-1990's in response to an unfulfilled consumer demand for small-sum short-term credit. These types of small unsecured loans are typically unavailable through banks or other conventional financial services institutions.

A payday loan is a small sum short-term loan, typically a \$300.00 advance for a period of 8-14 days to coincide with the payday loan customer's next payday. A payday loan is not a long term financial product but is intended to meet unexpected emergencies or short-term financial needs. These loans are unsecured and are repayable on the payday loan customer's next pay date. To obtain a payday loan the payday loan customer will go to a payday loan outlet, provide proof of employment and residence and bank account. At the time of the advance, the payday loan customer will provide the lender a post-dated cheque or pre-authorized debit for the amount of the loan and the loan fee which is dated for the payday loan customer's next payday. When the loan comes due, the lender deposits the cheque or obtains funds through the pre-authorized debit. The payday loan customer does not need to return to the loan outlet to repay the loan. A payday loan customer can obtain a payday loan quickly and without having established a long-term financial relationship as would be required with a bank, trust company or credit union.

Since payday loans were first introduced in Canada, the industry has grown to an estimated 1,350 payday loan outlets across the country. Payday loans are used by a broad spectrum of Canadians in all walks of life. A payday loan customer must have a job and a bank account. It is estimated that upwards of two million Canadians have used a payday loan from time to time.

In addition to payday loans, many payday lenders provide a wide range of personal financial products and services designed to meet consumers' financial needs.

These include:

- Cheque cashing services;
- Money orders;
- Money transfers;
- Private mailbox rentals;
- Utility bill payments;
- Foreign currency exchange;
- Prepaid Mastercard;
- Consumer loans;
- Mortgage referrals;
- Stored value debit cards; and
- Tax preparation and refund services.

## **The CPLA**

The CPLA (formerly Canadian Association of Community Financial Services Providers) was formed in early 2004, by responsible financial service companies who offered the payday loan product. Because the payday loan product was unregulated, members of the CPLA recognized that it was important to create industry standards of business practices to protect consumers and the reputation of the industry. It was also important to have a voice to represent the interests of the industry to sectors of governments, and to ensure that CPLA members would adhere to national standards of best business practices for the industry. Appendix "A " includes a copy of the CPLA's By-laws.

## Membership

Today the CPLA has 23 member companies, representing approximately 482 stores. Five of the CLPA's members operate outlets in Manitoba. These outlets are included in the list of Manitoba payday lending outlets which is attached as Appendix "B ".

## Government Legislation

A priority of the CPLA has been to work with governments to achieve a regulatory framework for the payday loan industry that protects consumers and allows for a viable and competitive payday loan industry. Recognizing the rapid growth in payday loans that was occurring in response to strong consumer demand, the Consumer Measures Committee, a committee comprised of a representative of each province

and territory and Industry Canada, began studying the need for regulation of the payday loan industry as far back as 2000. It recognized that the first obstacle to regulation was Section 347 of the Criminal Code. That section provided that it is an offence to charge more than 60% per annum interest (inclusive of all fees and charges related to the advancing of credit) on loans. While 60% is a very high annual interest rate for a long-term loan of \$100,000.00 for a year for example, it is not an appropriate measure for a small sum short-term loan. For example, pursuant to the calculations required under Section 347, a \$1.00 charge on a loan of \$100.00 for five days would equal an interest rate of 107%. In fact for small sum short term loans an annualized interest rate is not the appropriate measurement at all.

Acting on the advice of the Consumers Measures Committee, Parliament passed Bill C-26 which took effect on May 3, 2007. Bill C-26 firstly defined a payday loan as an unsecured loan of not more than \$1500.00 for a term of not more than 62 days, and secondly provided that in the event that a province introduced regulations and set maximum fees governing payday lenders, then upon designation from industry Canada, Section 347 of the Criminal Code would not apply to payday lenders in that province.

This opened the way for provinces to begin steps to regulate the industry and to set reasonable rates and charges, taking into account the costs associated with delivering a payday loan and implementing consumer protections that are more closely tailored to this specific industry. The CPLA has worked closely with provincial

law makers, including British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick and Nova Scotia. Where legislation governing the payday loan industry has been enacted, it mirrors in many respects the best practices that the CPLA adopted for its membership.

The CPLA's other priority has been its commitment to enforcing a Code of Best Business Practices among its members that is designed to protect consumers in the absence of appropriate government regulation. It is the most rigorous code for payday lending found anywhere. As a condition of membership, all Members of the CPLA must abide by the Code and display it prominently in their places of business. A copy of the CPLA's Code is attached as Appendix "C".

To foster and ensure compliance with the Code, the CPLA has established the Office of the Ethics and Integrity Commissioner, an independent and arms length entity, whose primary mandate is to monitor compliance with the Code. The Commissioner has the ability to make determinations on issues of non-compliance, to investigate possible violations and to issue warnings, impose fines or take other disciplinary action. In addition to investigating potential Code violations that are brought to the Commissioner's attention by customers or other members, the Office of the Commissioner conducts random, wide-scale "mystery shops" on members to verify compliance with the Code. Some provincial consumer protection offices now refer all complaints they receive regarding payday loans to the Commissioner. A copy of the Commissioner's Letter of Mandate as well as a description of the process of investigation and dealing with Code violations followed by the

Commissioner are attached as Appendix "D ". A copy of the annual report of the Commissioner is attached as Appendix "E ".

With respect to fees charged to payday loan customers, the CPLA, like any industry association, does not set or dictate rates and fees. The Code of Best Business Practices does, however, contain the following provisions which impact the fees and charges collected by CPLA members from their customers:

- No rollovers

Members will not grant a customer an extension of an outstanding payday loan for a fee or advance a new payday loan to pay out an existing payday loan.

- Default and post-maturity interest charges

A member shall not charge a penalty fee and/or NSF fee that exceeds an amount set from time to time by the Association. Interest on each \$100.00 of a payday loan in default will not exceed \$.90 cents per week for the first 13 weeks and \$.50 cents per week thereafter.

## **FACTORS TO BE CONSIDERED BY THE BOARD**

The within evidence deals with the following factors which are identified in the Act for the Board's consideration:

- the terms and conditions of payday loans;
- the circumstances of, and credit options available to, payday loan customers generally;
- the operating expenses and revenue requirements of payday lenders in relation to their payday lending business;
- the financial risks taken by payday lenders;
- the regulation of payday lenders and payday loans in other jurisdictions.

In addition, the CPLA's evidence addresses the regulatory objectives and principles that should be applied to the payday lending industry given its particular features.

## **TERMS AND CONDITIONS OF PAYDAY LOANS**

The Act states that in exercising its mandate, the Board may have regard to the terms and conditions of payday loans. Many of these terms are now prescribed under the Act or the *Payday Loans Regulation* which was registered on July 31, 2007 (the "Regulation"). To a significant extent, the prescribed terms and conditions mirror the best business practices set out in the CPLA's Code.

### Amount and Term

Under *The Consumer Protection Act* of Manitoba, payday loans may not exceed \$1,500.00, and the initial term of a payday loan may not exceed 62 days. The average amount borrowed by Manitoba consumers through a payday loan is \$300.00 and the average term is 10 days. Most commonly, payday loans are to be repaid at the customer's next payday.

### Eligibility Requirements

In order to qualify for a payday loan, the customer must have a steady job and provide documentation concerning his or her rate of pay. Most payday lenders will advance up to a specified percentage of the customer's net pay. A bank account is also required, since repayment is typically by way of post-dated cheque provided at the time of the transaction or by pre-authorized debit. The Regulation limits the

definition of “payday loan” to loans of money that are in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature.

### Security

Payday loans are by definition unsecured. Both the CPLA Code of Best Business Practices and Manitoba legislation prohibit payday lenders from taking security in personal or real property or requiring an assignment of wages as security for a payday loan.

### Cancellation at Customer’s Option

Pursuant to the Act, a payday loan customer may cancel a payday loan within 48 hours – excluding Sundays and other holidays – after receiving the initial advance or obtaining access to funds under the loan. In circumstances where the payday lender fails to notify the payday loan customer of this right or fails to provide other required information, the customer may cancel the payday loan at any time. The CPLA’s Code also provides for customer cancellation rights.

### Rollovers and Replacement Loans

The CPLA’s Code prohibits the extension of an outstanding payday loan for a fee or the advance of a new payday loan to pay out an existing payday loan. Pursuant to

the Act, replacement loans, and extensions or renewals of existing loans are permitted but subject to maximum charges to be set by the Board in this proceeding.

Required Disclosure

Pursuant to the Act and the Regulation, payday lenders must include the following information in writing to all payday loan customers:

- the date and time of day on which that the initial advance is being made or the card or other device enabling the payday loan customer to access funds is being provided;
- a statement that the loan is a high-cost loan;
- notice of the payday loan customer's right to cancel the loan within 48 hours;
- a form of notice that the payday loan customer may use to exercise his or her cancellation right;
- a form of receipt that a payday lender must use to acknowledge receipt of funds returned by a payday loan customer upon cancellation;
- the payday lender's business name or style, business and mailing address, and telephone and fax numbers;
- the payday loan customer's name, address and telephone number;
- the principal amount of the loan;
- the term of the loan;
- the amount of the initial advance;

- the total cost of credit and the APR (the cost of credit expressed as an annual percentage rate);
- an itemization of all fees, commissions, charges, penalties, interest and other amounts or consideration charged, paid or given, or to be charged, paid or given in relation to the loan;
- the date on which payment is due to the lender and, if being repaid by more than one payment, the date and amount of each payment;
- in cases where a cash card or other device to access funds is issued to the payday loan customer, the terms and conditions for use of the device, the amount of credit available, the expiry date, and an itemization of any third party service charges that may apply;
- prescribed statements referring the payday loan customer to The Consumer's Bureau for questions or concerns about payday loans, cancellation rights or collection practices or debt counselling.

In addition, payday lenders are required to post at each payday loan outlet a sign of prescribed size and colour, displaying the content prescribed by the regulation, which includes cost of credit, information for an example loan of \$300.00 with a term of 14 days and a referral to The Consumer's Bureau for questions or concerns about payday loans.

The legislation requires the payment of an annual licence fee of \$5,500.00 per outlet. An operator must also purchase a bond in the amount of \$25,000.00 for each

outlet to remain in place during their operation and a further period of two years after their operations cease. These two new requirements will significantly add to the costs of providing payday loans incurred by payday lenders in Manitoba. These costs have not previously been incurred and will need to be taken into account in setting maximum charges.

### Summary

Many of the best practices mandated by the CPLA's Code are reflected in the legislation. Several of the prescribed terms have a direct impact on the cost of providing payday loans in Manitoba which are addressed below.

## **CIRCUMSTANCES OF CUSTOMERS**

### Why is the Product Needed?

The rapid growth in the payday lending industry is evidence of the pent up demand by Canadians for the payday loan product. Payday lenders have been described as "fringe banks" lumped in with businesses such as pawn shops that locate in areas that have been abandoned by banks and credit unions. This is not a fair or accurate description. Payday lenders serve mainstream Canadians. The majority of payday loan outlets offer a suite of financial services and are used by consumers that value convenience and fast service. For other consumers, these financial services represent an important and essential source of credit.

Payday loan outlets are located where Canadians live and work. Unlike pawnshops, they do not target low income areas. Attached as Appendix "F" is a report of the City of Vancouver examining the siting of payday loan outlets in that city.

The situation in Winnipeg, where 52 of the approximately 67 payday loan outlets in Manitoba are located, is similar. Payday lending outlets are located in all geographic and economic areas of the City. 77% of the Winnipeg outlets are located in areas with average annual household incomes of \$35,000 and greater. A majority (52%) are located in areas with average annual household incomes higher than \$45,000. Only 12% of outlets are located areas where average annual household incomes are \$25,000 or less.

A map illustrating payday loan outlet locations and average household income areas in Winnipeg is attached as Appendix "G ". An interactive version of this map can be accessed at the CPLA's website at **[www.cpla-acps.ca](http://www.cpla-acps.ca)**.

Furthermore, the majority of payday loan outlets are located in close proximity to banks. Not only do customers value the long hours and convenient locations but a short term cash advance is a form of credit that many customers cannot easily obtain from banks. For this reason our members indicate that banks can be a major source of referral of customers. Attached as Appendix "H " is a study conducted by

the Canadian Bankers Association which examines the location of payday loan outlets in comparison to banks.

As the following evidence will indicate, Manitobans use payday loans for many reasons to meet their short term needs. They are borrowing against their current income, not their future income as is the case with a mortgage or car loan. They are aware of the cost of the loan in dollars and cents. While payday loans are not inexpensive (because they are costly to provide), members' customers tell them obtaining a payday loan is an intentional and rational choice. For example, if a customer has written a cheque for which it turns out there are not sufficient funds, the customer will be faced with an nsf charge of up to \$40 from the party to whom they wrote the cheque, another charge of up to \$40 from their own bank as well as potential impairment of their credit rating. Another example is an unexpected car repair bill where the customer does not have the funds to pay the bill to payday yet needs the vehicle to get to or to use at work. In each case access to a payday loan can be essential.

#### Pollara Report

In preparation for its participation in the current Board hearing, the CPLA commissioned Canada's leading public opinion firm, Pollara, to conduct research specific to Manitoba payday loan customers. The CPLA understands that these are the first studies ever done that specifically survey the attitudes and opinions of a statistically-relevant number of payday loan customers in Manitoba. A copy of the

report prepared by Pollara (the “Survey”) as well as a copy of the report from the focus groups (“Focus Groups”) are contained in Part II of the CPLA’s Pre-filed Evidence.

Pollara surveyed 350 payday loan customers in Manitoba from September 6-13, 2007, who were chosen at random from a total of more than 7,000 records. The margin of error for the survey is +/- 5.2%, 19 times out of 20. Pollara also conducted two focus groups with Winnipeg payday loan customers on September 13, 2007 to further examine detailed attitudes and opinions about the product and providers.

The results of the surveys include the following highlights:

- the average age of a Manitoba payday loan customer is 38 years
- 77% of customers are currently employed full-time
- almost half (46%) have completed post-secondary education
- Overall household income reported for payday loan customers tends to be either on par with – or ahead of – the general Manitoba population. Notably, only 13% of payday customers reported household income of less than \$25,000 compared to 28% of the general Manitoba population. 39% of payday loan customers reported household income in the \$25,000-\$50,000 bracket compared to 30% of the general Manitoba population. Another 39% of payday loan customers reported income of \$50,000 or more compared to 42% of the Manitoba population with the same household income.

- Customers owe an average of \$24,357 to various financial institutions
- Notwithstanding the average debt load, the average payday loan taken out by a payday loan customer is \$300.05
- Almost 60% of customers cite “emergency” or “unexpected” expenses as the principal reason for requiring a payday loan. A further 18% use payday loans to avoid bouncing a cheque or avoid incurring late charges on bills that are due.
- Customers in focus groups indicated they make an “informed choice” when they take out a payday loan and generally only do so in emergency situations.
- Specific examples of “emergencies” in the focus groups included unexpected car maintenance, extended sick-leave from work, job transition and unexpected medical expenses.
- Customers have access to a variety of credit options, but choose a payday loan over seeking help from a family member, a line of credit, credit card, overdraft or other forms of credit largely due to the “convenience” of the product, “ease of use” and “long hours of operation”. Only 15% of customers indicated they used a payday loan because they had “no other option”.
- Customers rate payday loan companies above banks and credit unions in the areas of, “hours of operation”, “fast”, “convenient” and “easy to use”. Customers believe payday loan companies are on par with banks – and ahead of credit unions – when it comes to being

“respectful” and providing “good service”. Customers rate payday loan companies on par with credit unions for providing “good value” – although significantly recognize that banks provide better value.

- Customers in the focus group indicated that they prefer taking a loan from a payday loan company over a bank because they only need a small amount of money for a short period of time, however banks require them to take a minimum of \$500 or \$1,000 in credit.

Customers also indicated that payday loan companies did not judge them or require justification for needing the money and had better overall customer service and were generally more convenient.

- Customers said they expect to pay an average of \$24.67 for a \$100 loan for two weeks.
- Customers in the focus groups disagreed with the notion that they are being taken advantage of or don't know what they are getting themselves into.
- Customers clearly understand the costs and terms of their payday loan. This understanding is on par with their understanding of the costs and terms of their mortgage, credit cards and bank fees.
- 79% of customers have paid back all their payday loans on time, while another 18% have paid back “most” of their loans on time.

Customers in focus groups indicated they are responsible borrowers and pay back their loans on time. They indicated they pay back their loans on time to avoid added interest charges and bad credit.

## **COST OF PROVIDING PAYDAY LOANS**

### Ernst & Young Report

In 2004, the CPLA commissioned Ernst & Young to conduct a detailed study of the costs of providing payday lending services to customers. This was the first study of its kind in Canada and contained the most reliable information available for use by the industry and legislators as to the quantitative information associated with the fixed and variable operating costs of the industry. Part III of the CPLA's Pre-filed Evidence contains a copy of the Ernst & Young Report. The Ernst & Young Report concluded that the cost of providing payday loans per \$100.00 was on average \$20.66 [See Table 5(a) on page 29].

### Deloitte & Touche Study

For the purposes of this hearing, the CPLA commissioned a further study on the cost of providing payday loans in Manitoba specifically. The CPLA was advised that Ernst & Young was no longer available to provide this type of consulting service and accordingly retained another reputable consultant, Deloitte & Touche, who agreed to conduct a survey and prepare an analysis of the costs of providing payday lending services specific to the Manitoba market place. The conclusions provided by Deloitte & Touche are contained in Part IV of the CPLA's Pre-filed Evidence.

The Deloitte & Touche survey focussed on private corporations that are service providers. The two largest payday lenders in Manitoba are publicly traded companies one of whom (Rent Cash) is an intervener in this proceeding. The other is Money Mart, who is a member of the CPLA.

### Gould Report

The CPLA also retained Dr. Lawrence I. Gould to analyze the implications of the industry's cost structure and market characteristics in the context of setting maximum rates and charges. Dr. Gould's report is contained in Part V of the CPLA's Pre-filed Evidence.

### **FINANCIAL RISK TAKEN BY LENDERS**

The reports of both Ernst & Young and Deloitte & Touche address the significance of the risk taken by payday lenders in the context of their conclusions of the costs of providing payday loans.

### **REGULATION IN OTHER CANADIAN JURISDICTIONS**

The Act states that in exercising its mandate, the Board may have regard to the regulations of payday lending in other jurisdictions. As of the date of this submission the status of payday loan regulation in other Canadian provinces is as follows:

The province of British Columbia has introduced a payday loan act which received second reading in their legislature before the legislature recessed for the summer. We have been advised that the legislature will sit again in the fall and it is their intention to pass their act into law before the end of the fall session. Officials are holding consultations with stakeholders in advance of drafting regulations and fixing rates.

The Province of Alberta intends to govern the industry by passing regulations pursuant to their Fair Trading Act rather than by introducing separate payday loan legislation. Alberta is about to issue a consultation document to receive information from all stakeholders.

The Province of Saskatchewan passed Bill 43, an Act Respecting Payday Loan Agreements, Payday Lenders and Borrowers in the spring of 2007. The Province has retained the services of a chartered accountant firm which has issued a questionnaire that mirrors the questionnaire prepared by Ernst & Young for the study conducted for the CPLA entitled "The Cost of Providing Payday Loans in Canada". The objective of the Saskatchewan study is to obtain financial information submitted by payday lenders in the Province of Saskatchewan in order to analyse the costs of offering the product. The Province then intends to complete draft regulations by November, 2007 followed by final consultation with stakeholders in December, 2007.

Ontario has introduced a consultation document to all stakeholders and has expressed the intention to introduce legislation to regulate the industry.

We have been advised that the Province of New Brunswick intends to introduce a payday loan act in the fall of 2007.

The Province of Nova Scotia passed Bill 87 Consumer Protection Act (amendment) to govern payday loans. Rates will be fixed through the Nova Scotia Utility and Review Board which intends to hold hearings in January. We have been advised that regulations will be enacted in October or November of this year.

## **PRINCIPLES OF REGULATION**

Speaking in the legislature on the occasion of moving Bill 25 for second reading on May 24, 2006, the Honourable Greg Selinger, Minister of Finance, explicitly recognized the need for the payday loan services and the inappropriateness of conventional interest limits as a regulatory measure for this industry:

Currently, the Criminal code prohibits lenders from charging more than 60 percent interest, including all the administrative charges. Administrative charges and other fees are typically added to these loans by payday lenders to cover the cost of doing business. Because payday loans are for small amounts for short terms, it is very easy for the interest charges and fees to add up to rates that could be far in excess of the Criminal Code rate. Because of the demand for these loans and the gaps left by traditional financial institutions in serving the community, it is clear there is place for services of this nature.

A Hansard excerpt containing this statement is attached as Appendix "I".

Similarly, in an interview with CBC on January 12, 2005, a transcript of which is attached as Appendix "J", the Minister noted the potential danger of regulatory restrictions that would have the effect of limiting the availability of legitimate service providers and driving the activity of short term lending into the hands of organized crime:

In Quebec, they brought in legislation which was quite strict but my read on that is that even though pay day loans haven't expanded there, that what has happened is that it's driven this kind of activity into the hands of organized crime and so that is one of the dangers. If you overdo it and wipe out the possibility of this kind of activity without the banks and the credit unions or the casse [sic] populaires moving into the field, people will seek out credit in 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.

In choosing to regulate fees and charges by way of a cap rather than setting specific amounts, the Province of Manitoba has implicitly recognized the importance of competition as a mechanism that disciplines rates charged by industry participants. As Dr. Gould concludes in his report, the competitive nature of the payday lending market calls for a regulatory approach which differs from that which the Board applies to monopoly service providers such as public utilities.

The CPLA submits that the broad regulatory purpose of fostering the welfare of consumers gives rise to two objectives: the fostering of a viable competitive industry and the protection of payday loan customers from risks beyond their control. Fee regulation in this industry should protect customers where, because of lack of information or time-critical needs, they may be vulnerable to exploitation while at the same time preserving a competitive, open market.

### **THE CPLA'S CONCLUSIONS AND RECOMMENDATIONS WITH RESPECT TO FEES AND RATE MECHANISMS, PRACTICES AND CONSUMER RIGHTS**

#### Maximum Cost of Credit to be Charged in Respect of a Payday Loan

Earlier this year, the CPLA publicly took the position that a maximum charge of \$20.00 per \$100.00 borrowed would be appropriate (see Appendix K). This position was taken after careful consideration by and consultation with our members many of whom in fact were charging higher amounts. The CPLA recommended this amount in order to support the implementation of a regulatory environment while also recognizing the bottom line requirements of our members. Our members made it clear that this recommendation would require significant belt tightening and cost control on their part, including denial of credit to some customers with a poor credit history. The CPLA's recommendation represents what our members agreed was the charge at which they could continue to provide payday lending services and below which a significant majority of the industry could not.

At the time of the recommendation, the CPLA had no information as to the regulatory costs, such as licencing fees and bonding requirements, that would be added to the industry's cost structure or the regulatory time-frames over which specific maximum rates would remain in effect under provincial regimes. The recommendation accordingly did not reflect either these regulatory costs or anticipated increases in the cost of providing the service over time. It was understood by CPLA members that any limit below the recommended amount would significantly impact the ability of many industry participants to continue providing payday lending services.

#### Maximum Default Charges

The Board is required to fix the maximum amount or rate that may be charged, required or accepted in respect of a payday loan customer default of a payday loan. We believe there are two elements that a Board should address in this regard; firstly, reimbursement for the administrative time, charges, costs and expenses incurred by the lender when the payday loan customer defaults on repayment of the loan; and secondly interest that is charged on the amount outstanding from the date of default until the date of payment.

The CPLA's Code of Best Business Practices provides that "a member may not charge a penalty or nsf fee that exceeds an amount set from time to time by the Association". The Association sets the fee to cover reasonable costs that are incurred by the lender as a result of default, including costs charged to the lender by its bank for a returned cheque or pre-authorized debit however the Association limits the maximum fee to be not greater than the n.s.f. fees charged by a major bank. The Association has currently set the amount at \$40.00 which is the amount currently charged by the Canadian Imperial Bank of Commerce. Payday lenders incur no less costs than other lenders in collecting arrears and we believe therefore that the maximum charge that may be levied on default exclusive of interest should be not less than \$40.00.

In respect to interest on arrears, the Code of the CPLA Best Business Practices states "Interest on each \$100.00 of a payday loan in default will not exceed 0.90¢ per week for the first thirteen weeks and .50¢ per week thereafter". This represents an effective annual interest rate of 60% for the first 13 weeks and 36% thereafter. While these rates are what the CPLA members have chosen to restrict themselves to by virtue of membership in the CPLA, we believe that the interest rate chargeable on an amount in arrears by a lender holding a payday loan license should be no different than the rate chargeable by any other lender in Canada. We therefore believe that 60% per annum should be the maximum rate of interest payable on a loan that is in default.

## Conclusion

The CPLA believes that in setting rates the Board should have as an objective, to ensure there is a viable market that fosters competition so that consumers of all level of credit risk and in all areas of Manitoba will have needed access to credit while at the same time providing reasonable consumer protections.

The CPLA also feels it is important to be aware that this industry is being regulated for the first time. The business dynamics of the different operators vary considerably. Setting rates too low provides a disservice to the consumer because it creates the potential for unintended consequences, including evasion of regulation, loss of individual businesses which restricts geographic access to credit, denial of credit to consumers with prior credit history, forcing consumers to obtain credit from unlicensed internet lending or lending by other means. By prohibiting rollovers and assignments of wages and fixing reasonable fee caps and default charges, the province will address the vast majority of issues surrounding the industry, making huge steps in consumer protection from what exists today. Therefore the Board should implement reasonable rates as recommended by the CPLA, which allow for a viable competitive marketplace. Thereafter the Board can assess the impact and effectiveness of its decision and if, based upon further review in three years time (or sooner if necessary), the Board determines that there is further adjustment needed, then such adjustments can be made.