



Canadian Payday  
Loan Association

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Association canadienne  
des prêteurs sur salaire

## **Canadian Payday Loan Association**

**Response to Consultation Paper On Regulation of Payday  
Lenders under the Business Practices and Consumer  
Protection Act – British Columbia**

**Dated February 21, 2008**

**Submitted to:**

**Ministry of Public Safety and Solicitor General  
British Columbia**

**PURPOSE:**

The purpose of this paper is to provide the Ministry of Public Safety and Solicitor General for the Province of British Columbia with views of the Canadian Payday Loan Association on questions raised in the Consultation Paper on Regulation of Payday Lenders under the Business Practices and Consumer Protection Act dated December, 2007.

The Canadian Payday Loan Association was created in January, 2004 by industry leaders with the mandate to:

- a) consult with and encourage government to develop and enact reasonable regulation to protect consumers while allowing for a viable competitive industry, and
- (b) in the absence of regulation by governments, to develop a code of best business practices to be practiced by its membership which would inform and protect the consumer in relation to payday loan products.

The Canadian Payday Loan Association (“CPLA”) has consulted extensively with every province across Canada and has provided input and advice on the development of all legislation and regulations. The CPLA has participated fully in Utility Board Hearings in the Provinces of Manitoba and Nova Scotia and we have provided to the Federal and Provincial Governments the best and most complete information on the payday loan industry including who provides payday loans, how they are provided, who uses them and why.

The information provided includes:

- The 2004 Ernst & Young study on the cost of payday lenders across Canada to provide payday loans;
- Survey by Environics entitled Understanding Consumers of Canada’s Payday Loan Industry which included a survey of a 1,000 Canadians from the general population and 1,000 payday loan users across Canada.
- A study by Deloitte Touche of the cost of private (non-public) companies in the Province of Manitoba to provide payday loans.
- A study of Deloitte Touche of private (non-public) payday lenders in Nova Scotia.
- A report of Dr. Lawrence Gould of the University of Manitoba analyzing the cost to provide payday loans.
- Four separate surveys by Pollara of payday loan borrowers in the Provinces of Nova Scotia and New Brunswick, Manitoba, Ontario and British Columbia.
- The CPLA survey of the number and location of all the payday loan operations across Canada.
- The CPLA has created the independent Office of Ethics and Integrity Commission to ensure compliance with the CPLA’s Code of Best Business Practices and deal with complaints made by consumers with respect to both members and non-members of the CPLA. Information on the types and numbers of complaints regarding payday loans can be found in reports filed on the website

of the Independence, Compliance and Ethics Commission at [www.cplaethicscommission.ca](http://www.cplaethicscommission.ca).

In order to assist the Province of British Columbia, the Canadian Payday Loan Association has commissioned Deloitte Touche to do a study of private (non-public) payday loan companies in the Province of British Columbia to analyze the cost of providing payday loans to consumers in the province. The study will be completed and provided to the Ministry of Public Safety and Solicitor General in April, 2008. All of the material referred to above are available from the CPLA to the Province.

## **GENERAL PRINCIPLES OF REGULATION**

We understand that the goals of the government in bringing forward legislation to regulate of the industry to be as follows:

- Reasonable consumer protection
- Allow for a viable industry
- Workable rules for industry and government
- Harmonization with other provinces

If we have misstated or omitted what we believe to be your goals we would ask that you clarify this with us.

In determining what regulations to enact, the CPLA believes it is very important for the Province of British Columbia to consider the following:

- Other provinces have done extensive study and received very significant input, not just from stakeholders but experts in various areas affected by the regulations under consideration.
- There is significant harmonization between the provinces of Saskatchewan, Manitoba and Nova Scotia in development of regulations and we strongly urge the government to harmonize regulations in BC in a similar manner.
- In regards to fixing fee caps, we understand from discussions with the Province of British Columbia that it intends to set fee caps within the same parameters as set in the Provinces of Saskatchewan, Manitoba and Nova Scotia unless there is evidence as to why British Columbia is different those other jurisdictions (and no evidence has been suggested to date.)
- Changes made to the one aspect of regulating the payday lending business rarely take place in isolation and usually have a knock-on affect to other aspects of the business which affect costs and consumer protection.

In the Consultation Document it appears the Province is considering additional and different elements of regulation not found in the other jurisdictions that have introduced regulations. Each one of the items under consideration (which we comment on in more detail in this document) will have a significant effect on the cost of doing business.

While the Province of British Columbia should draw on the input and research of stakeholders and experts in other provinces to determine maximum rate caps, you cannot rely on the research or look to what other provinces have fixed rates at if different and additional regulations are introduced in British Columbia. Also we do not believe there

has been the necessary study done on any unintended consequences that could flow from asymmetrical regulations.

Upon the proclamation of the Business Practices and Consumer Protection (Payday Loans) Amendment Act, the Province of British Columbia has made significant strides in disclosure and consumer protection surrounding payday loans. The Act will have a significant impact on the operations of many lenders in British Columbia and goes far to improving consumer protection. We believe the government should tread carefully and introduce reasonable regulations in harmony with other provinces. There are significant dangers and unintended consequences to over regulating the industry, particularly the beginning stages of regulation.

Government will have made significant strides. If however the government feels further regulation is required it can be done so in the future after assessing first steps.

## **Part A – Licensing of Payday Lenders**

### **Question 1: What qualifications should there be for a license to operate as a payday lender?**

The requirements for obtaining a license should be clear, definable and consistent. It is reasonable to request applicants to provide specific information about the applicant such as registered address and names of directors, officers and shareholders.

The Consultation Document states:

*“Applicants may need to provide information to allow the director to assess their ability to operate as a payday lender. For example, applicants may be required to submit documents showing their ability to manage money and credit, and their understanding of the Act and Regulations.”*

This statement seems to imply that each applicant would have to pass a subjective test of the director showing an ability to operate as a payday lender, manage money and credit and understanding of the Act and Regulations. If this is what is being considered, we do not think this is appropriate or necessary. It is unclear what documents could be submitted to prove an understanding of legislation or money management ability. The CPLA believes that criteria required to acquire a license should be clear, concise and objective.

The Consultation Document also considers requiring criminal record checks from the applicants, employees and corporate directors. It is unclear how criminal record checks will protect consumers. In particular, the CPLA fails to see any reason why criminal record checks would be needed for employees. Some companies have hundreds of employees which means employees are constantly changing. Operationally this would be unmanageable.

### **Question 2: Should there be special requirements for payday lenders providing services by internet and telephone?**

The CPLA has no specific recommendations in this regard. The Act and Regulations should be drafted in such a way as to license lenders, regulate and monitor business practices, and inspect every entity that provides payday loans to borrowers within the Province of British Columbia in a consistent manner.

### **Question 3: Do you have comments on the annual license fee?**

The CPLA does not feel that an annual license fee of \$500.00 is unreasonable. It should be borne in mind that like any business, licensing fees are an additional cost of operation that must be passed on to the consumer. The CPLA does believe there should be no additional “initial fee” for assessing a new applicant for license. If the province is considering an initial fee for assessing a new applicant, we would ask that the province

provide us more information on what amount it is considering for an initial fee and how that fee would be applied because the CPLA will want to provide comment in such case. Any such fee should be on a per applicant rather than per outlet basis because the assessment process will not differ significantly with the number of outlets each applicant operates.

**Question 4: Should there be a security requirement for payday lenders?**

The CPLA does not believe there should be a security requirement for payday lenders. Unlike debt collection agencies and travel agencies who receive money from consumers, payday lenders are in the business of lending their own money to borrowers.

The Consultation Document makes the statement:

*“While payday lenders do not hold a large amount of borrower’s money...”*

Lenders do not hold any amount of borrower’s money. In fact, multiple borrowers hold a large amount of the lender’s money.

While it is conceivable that there could be circumstances where a borrower has been overcharged or excess amounts have been taken from bank accounts, the likelihood of this happening or the magnitude of loss should it occur does not justify requirements of a letter of credit or a bond.

If a lender overcharges in breach of the Act they could have their license revoked which would have serious economic consequences. Furthermore, the lender will have significant amount of loans advanced to borrowers throughout the province of British Columbia. The amount of those loans will far exceed any potential liability and can stand a security to ensure performance of an obligation under the Act.

There is a significant precedent with licensing regimes of payday lenders in the Provinces of Saskatchewan and Nova Scotia. The Province of Saskatchewan has the option of requiring a bond but this is on a per company basis, not on a per outlet basis. Their experience would indicate that there is no need for a bond.

The Act and regulations will already bring significant change to the industry and protections to consumers. There is no obvious demonstrated need for such a provision. In the future, if the Minister feels this is not sufficient, the bonding requirement can be reviewed. If this is revisited, we would recommend any future regulation provide that a net worth test be established and where the test is not met, only then have a bonding requirement imposed

**Question 5: Do you have any comments on types of records that should be submitted and retained?**

The Government should be aware that different lenders, depending on size and infrastructure will have different record keeping systems and varying abilities to adjust

those systems. Furthermore, there are numerous lenders that operate in more than one jurisdiction and it is important for those companies to have record and reporting systems that are harmonized from province to province. Finally, there are cost implications to any change or additions to record keeping requirements. Inconsistent or excess record and reporting requirements will add costs that will need to be passed on to the borrower.

Therefore, the CPLA believes that the Province of British Columbia should establish record keeping and reporting requirements that are consistent with the Provinces of Saskatchewan, Manitoba and Nova Scotia.

Copies of loan agreements and other documents entered into with the borrower and proof of repayment should be retained for a period of three years. Current corporate information, copies of forms of loan agreements and fees charged for services should be filed with the government annually or more often whenever there is a change.

## **Part B – Limits on Cost of Borrowing**

### **Maximum Charge Structure**

- Question 6:** What is your preferred model of the two shown above for calculating the maximum basic transaction charge?
- Question 7:** What should be the level of proportionate and fixed amounts of the models above or for the model you prefer?
- Question 8:** At what amount should the loan be capped for applying the basic transaction charge?
- Question 9:** If you prefer a different way of calculation of a maximum transaction, what is the method?

The CPLA does not support either the Sliding Scale Model or Fixed and Proportionate model. The CPLA has observed that government has only put forward two proposed models for consideration when other formulas exist. We believe, based on the commentary in the Consultation Paper, that the government has not addressed many important factors that have to be taken into consideration in determining a rate structure. Of course, on a simplistic basis it is true to say that the fixed cost in terms of processing paper work for a loan does not cost a lender twice as much when it provides a loan of \$200.00 as it would for \$100.00. That is true of every retail business. If you go into a butcher shop and buy a pound of hamburger for \$3.00, the butcher does not charge \$4.00 for two pounds of hamburger because the time of the butcher to serve the customer is the same. There are many more factors that must be taken into consideration, some of which are set out below.

The CPLA recommends the rate cap be set as a percentage of the loan or “x dollars per hundred”. We believe this price structure is supported by industry and a majority of consumer advocates across the country. It is supported by consumers as indicated by the Pollara study.

When asked about his views on a layered rate versus a simple “dollar per hundred” rate before the Manitoba Public Utilities Board Professor Chris Robinson stated::

*“MR. ALLAN FORAN: And in these 25 recommendations you've attempted to simplify the fee structure to make it easier to implement and understand so that you now accept that a flat percentage fee for all borrowers is an acceptable fee structure. Is that correct?”*

*DR. CHRIS ROBINSON: Yes. And that has been a change in my thinking, and it was in fact the Board's questions about me that -- took me a while to think -- to recognize the issue, but then as we have all struggled with, even interpreting, through the mystery shopping what certain fees were, I've recognized the importance of -- of that. In terms of letting the costs to the*

*borrower flow where the borrower is creating the costs this is not the ideal structure. On the other hand the issue of simplification is important....And, I should add, I've completely abandoned, however, the really messy fee structure which I originally -- the -- you know, the interest plus fixed fee, plus this and that was solely because of recommendation -- because of the recognition that while I can understand how such things work, I don't think anybody else does out there who is actually borrowing on them. And I don't think they're necessary. I don't think they help anybody."*

Scott Hannah of the Credit Counselling Society also stated before the Manitoba Public Utilities Board:

*"We have examined the report prepared by Lawrence Gould on behalf of the Canadian Payday Loan Association and his recommendations to set a flat fee per hundred dollars of payday loans. Having looked at the experience our clients who have come to us with financial difficulties as a result of payday loans, we support that avenue."*

The consultation document makes several statements of fact which the CPLA does not accept as accurate. The government should not rely on these statements of fact to draft legislation. For example:

*"There are two key components to maximum charges: a basic transaction charge and an annual interest rate that accrues on the outstanding principal."*

We assume this refers to what is charged to the borrower, not the cost of the principal. The government is making the assumption that in a post-regulatory environment all lenders will charge the transaction charge and interest and therefore there is a need to set a cap for a transaction charge and interest. We do not believe that is a correct assumption. Because the size of the loan is so small and the term of the loan is so short, interest represents a small cost of the loan that varies little with the length of the term. That was why s. 347 was amended. Currently, several lenders simply charge a fee. In the future, many more lenders may shift to a simple pricing structure. Therefore breaking charges down to two components is an unnecessary complication.

The Province should set a maximum charge for the loan. That should include all costs. If a lender chooses to break out the charges to include a transaction fee and interest then both elements together must be no greater than the maximum permitted charge.

The Consultation Document states on Page 5:

*"When the two components are added together, the result should be the lowest charge possible that still allows a viable payday lending market."*

All stakeholders, both industry and consumer advocates, agree that a monopoly is not in the public interest and it is important to have a competitive payday lending market.

To quote Scott Hannah before the Manitoba Public Utilities Board:

*“So we believe that the structure that has been proposed by the Association of \$20-\$23 per hundred, while it is a high cost – no question about that – it would allow competition within the industry, which we believe is important, as opposed to setting the limit at such a low rate that you would have virtually a monopoly in the industry. We believe that it is important to have competition, innovation and allow market forces to prevail which would ensure the consumer would be able to access the lowest cost and the best service provider.*

*We believe that consumers would be better protected than by lowering the fees dramatically and perhaps driving the majority of reasonable business out of business and having that business go underground.”*

*“Government should not be seeking to regulate the industry like a utility. Government should seek to set a ceiling below which a competitive market can function, not the lowest possible charge that still allows a viable payday lending market if that means that it allows a monopoly or oligarchy in which only one or two operators to survive.”*

The reason that it is important to maintain a competitive market is as follows:

**1. Access for all consumers.**

The payday lending market is not homogeneous. Each lender has different risk assessment criteria. As a result, there are borrowers with poor credit history who are unable to obtain a loan when needed from some payday lenders but are able to obtain a loan from other payday lenders who do not have as strict a lending criterion. These companies have higher bad debt costs and therefore charge higher fees.

If the government sets a rate that is the “lowest charge possible” which still allows some payday lenders to operate, the higher cost operators will either change (restrict) their lending criteria or cease operations with the result that access to credit is denied to a portion of consumers (arguably those who need it most). These consumers will be forced to seek credit elsewhere such as obtaining a title loan or pledging goods at a pawn shop.

**2. Geographical Access.**

The CPLA is aware from talking to its members, that there are rural operators in smaller centres that charge higher amounts. Our members advise us that they must charge higher rates to remain viable. The reason is not that the costs to operate are higher in rural centres but rather the volume of transactions is lower.

Again, if the government sets the “lowest charge possible”, payday lenders will continue operate in the major centres but rural operators will be forced to close. This will exclude access by rural residents to credit.

Once regulation comes into effect there will more entrants into the market. At the same time clear disclosure rules will allow consumers to compare “apples to apples” and choose a lender on the basis of price. As consumers gain awareness, there will be aggressive competition among lenders on the basis of price. As an example of this, Advance America has already opened eight outlets in the City of Winnipeg and in advance of regulation are charging interest only on their loans and offering a cashback bonus in order to capture market share. We have been advised that they have now opened outlets in British Columbia. The result of this is that competition will set the lowest possible charge for each appropriate market and operators who were over charging will either reduce their fees or will no longer be able to survive.

The Consultation Document states on page 5:

*“As fixed costs maybe the same for large and small loans, it is suggested that the transaction charge be kept at a certain level of principal, such as \$800.00. The formula for transaction charges should not encourage lenders to lend more than the borrower needs simply to make a higher profit.”*

In all the reports, research and studies the CPLA has reviewed or conducted, we have never come across any evidence or suggestion that lenders are causing borrowers to borrow more than they need simply to make a higher profit. We have not heard this suggested as an issue by other stakeholders in hearings we have attended. Nor have we heard this expressed as a concern in any other province.

The fact of the matter is this industry has grown in response to consumer demand. It is a service the consumer wants and it is the consumer that decides how much he or she needs to borrow (up to a maximum of what the lender is prepared to lend). If the government has evidence to the contrary, we would like to discuss and test this evidence with you.

Furthermore lenders, like all financial institutions, are in a business to make a profit, not lose money. Excess lending results in loan losses. A lenders objective is not to lend more money than a borrower can repay.

If the concern of the Government is credit decisions made by some borrowers, then the government of British Columbia should address this by financial literacy and credit counselling. As John Silver, Executive Director of Community Financial Counselling Services stated to the Manitoba Public Utilities Board:

*“The average Canadian household now owes more than its annual take-home pay in debt. We carry seventy-four (74) million credit cards, three for every Canadian over the age of eighteen (18).*

*Payday loans are not the only factor in this regard. They are simply the tip of the iceberg. As I said, retail credit cards and secondary lenders with relatively high – with relative high interest rates, buy-now-pay-later plans, where interest is accrued the moment the balance is not paid in full, 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. It points to the need for the systemic changes in our mainstream financial services that would provide for the needs of under banked, the unbanked and those whose financial history, cultural background, socioeconomic status or financial requirements make access to mainstream financial difficult. It also underscores the need for formal education in basic financial management and the use of credit, beginning in our school system.*

Our concern is that the Government of British Columbia is seeking to regulate a behavior that does not exist. This is not good public policy.

### **PREFERRED MODEL FOR MAXIMUM TRANSACTION CHARGE**

The maximum cost of credit for payday lending should be a simple percentage of the amount loaned or “x dollars per hundred” for the term of the loan. For example, 23 percent which equates to \$23.00 for a loan of \$100.00 and \$66.00 for a loan of \$300.00. This is the best method for the following reasons:

#### **(A) SIMPLICITY:**

A “dollar per one hundred” system is simple and easy for consumers to understand and will facilitate a comparison from lender to lender. Governments, including this province, are moving towards more disclosure, clear understandable disclosure and disclosure on a consistent basis. With the objective of having a simple comparable method, the introduction of layered rates simply complicates calculations and works against the objective.

#### **(B) BORROWERS PAY MORE FOR SMALLER LOANS**

A company will need to earn a certain amount of revenue to remain in operation. If the amount that can be charged for higher loans is reduced, it means the amount charged for smaller loans must be increased. Those with higher incomes are the borrowers that can qualify for higher loans and conversely, those with lower incomes will only qualify for smaller amounts. As a result, with a layered rate, borrowers with lower incomes, who generally obtain smaller loans, are paying more for credit than those with higher incomes.

#### **(C) CONSUMERS WILL HAVE A MORE DIFFICULT TIME QUALIFYING FOR A PORTION OF THE LOAN.**

The net effect of having a different rate of return for different amounts lent means that the lender will have a different lending criteria for those amounts. As discussed above with higher fees, a lender can have less restrictive lending criteria. With lower fees, a lender will have more restrictive criteria. If, for example a lender can charge 26% of a loan for the first \$300.00 and 20% for the next \$300.00, the lending criteria will be more restrictive for that portion of the loan over \$300.00. Take any example where a borrower required \$600.00 for a car repair. If the borrower qualified for a \$600.00 loan the cost would be \$138.00. However in many cases, based on credit history, a borrower may only

qualify for a loan up to \$300.00. The borrower requires \$600.00 for the repair and therefore is forced to go to two different lenders to obtain two small loans at the highest rate. The cost is \$156.00. If the rate was set at \$23.00 per hundred, the total cost of the loan would be \$138.00. As a result, a layered rate hurts consumers.

**(D) ADJUSTMENT FOR INFLATION**

Cost of operation of any business increase over time. This is adjusted in part because the size of people's paychecks rise and the size of loans increase. With a layered rate over time, the lender is unable to cover increases in cost due to inflation. This is what has happened with the Tax Rebate Discounting Act.

**Question 10:** Based on what you know about interest rates today, what is a reasonable annual interest rate to apply to payday loans (given that it is an addition to the basic transaction charge)? Please give your reasons for supporting your submission as mentioned above.

**Question 11:** Do you think the regulation should specify an annual rate or daily rate?

We believe there is a misunderstanding by the government as to how the payday lending industry operates. It is important not to confuse elements of costs to the lender (processing fees and cost of capital) with how a lender charges for their product.

There is no need for government to specifically regulate the interest rate element of a loan. Many lenders do not charge an interest rate element. Post regulation - the likelihood is more lenders will not charge an interest rate. As previously stated, simplicity is an important objective - simplicity of disclosure of cost of borrowing to consumers and simplicity in understanding an enforcement of regulation. To understand the cost of borrowing, the consumer would have to take into account and compare two amounts. Furthermore, if the government chooses to regulate separate elements of a payday loan you will invariably create a market distortion by causing many lenders to charge interest in addition to a fixed fee where the lender would not otherwise choose to do so. Government will then have created two "caps" that have to be determined, complied with and monitored instead of one cap which would include all fees, costs, charges and interest that must be incurred in connection with the loan.

The Consultation Document states on page 7:

*"As background information on interest rates, the Bank of Canada has set the overnight rate at 4.5% per year; the prime business rate charged by chartered banks is about 6.25% per year; a personal loan at a chartered bank would likely have interest of about 8.5% to 13% per year. Credit card interest rates are approximately 12% to 20% per year."*

This is an interesting observation of what various institutions charge for interest however the ceiling that they can charge is 60% per annum. The federal government has not treated each of those institutions like a utility and regulated the specific rates for credit

products. There is no lower interest rates currently set for other financial products and we do not believe there should be any different rate set for payday loans. Our comment applies in respect of interest on arrears because we do not believe it is useful to fix a separate interest rate for a loan of ten (10) days on average.

**Default and NSF Charges:**

**Question 12: What default charge should be allowed?**

We believe there are two elements that the government should address when setting the maximum default charge allowed. Firstly, reimbursement for the administrative time, charges, cost and expense 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 date of payment.

The CPLA 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 the bank for a return cheque or pre-authorized debit however the Association limits the maximum fee to be not greater than the NSF fees charged by a major bank. The Association currently set the amount at \$40.00 which is the amount charged by the Canadian Imperial Bank of Commerce. Payday lenders incur no less costs than other lenders in collecting arrears and we believe therefore the maximum charge inclusive of NSF fees that may be levied on default exclusive of interest should not be less than \$40.00.

**Question 13: How often should a lender be able to charge a default charge for the same loan?**

The lender should only charge a default charge once for the same loan. To be clear however if a Borrower defaults on a loan and in future restructures repayment of the loan by providing further post-dated cheques and if a subsequent post-dated cheque is returned NSF the lender should be allowed to levy a further default charge. In such case the lender has incurred all the administration, time and bank charges because of the default and needs to be compensated. Furthermore, if the Borrower is aware that they are no longer liable for any further default charges there is no incentive to ensure payments are made.

**Question 14: What does a financial institution charge a payday lender on average when a pre-authorized payment or cheque is NSF?**

The cost charged by a financial institution will differ with each payday lender and financial institution based on the terms of the credit facility for the specific lender.

We would submit however that this is not a relevant question. The fee charged by the financial institution is only a small portion of the cost faced by the lender when a borrower defaults. We note no question was asked in the Consultation Document about time and administrative charges incurred by a payday lender on average when a pre-

authorized payment or cheque is NSF. However, this cost is more significant than the NSF charge.

As stated in question 12, we believe the government should set a default charge which should be inclusive of all charges including NSF fees.

**Question 15: How often should a lender be able to claim NSF on the same pre-authorized debit.**

A lender should be able to claim one default charge on the same pre-authorized debit.

In this section on “Default and NSF Charges” there is a statement on page 8 that reads:

*“If a Borrower has great difficulty repaying the loan and charges, it would be advisable for repayment to occur over a longer time period that is within the Borrower’s capacity to repay, rather than incurring additional default charges.”*

Questions 12 through 15 do not appear to relate to this statement in any way however we wish to provide our comments.

Where a borrower has difficulty repaying it is of course advisable for repayment to accrue over a longer period of time without additional default charges. However, such an outcome need not and should not be addressed by regulation. Like Borrowers of all lending products there are some payday loan Borrowers who will have difficulty repaying their loans. However we believe it is important to review the objective research such as the Pollara poll rather than rely on anecdotal information to make decisions on drafting regulations. There are some very significant operational realities the government should consider regarding default of payday loans. For example:

1. A payday loan is an unsecured loan. Unlike obtaining funds from a pawnshop (the costs of which are greater than many payday lenders), the Borrower has to provide chattels worth several times the value of the loan and will lose those chattels if the loan is not repaid on time or the Borrower is unable to pay the extension fee which is equivalent to a rollover. We understand circumstances are similar for title loans. There is no security with a payday loan and the lender is relying solely on the Borrower’s promise to pay.
2. A payday loan is a very small loan. The average loan is approximately \$300.00. Therefore, in the event of default, the size of the loan does not justify any extensive collection efforts. The lender needs to recover its principle; it has no leverage of other security and therefore is motivated to work with the Borrower to restructure repayment.
3. A payday lender provides a greater volume of loans than a bank for example. A bank would have far fewer loans which may, on average be \$200,000.00 or \$300,000.00 each. Where there is a default there is usually collateral security and in any case the size justifies collection activities such as of legal

proceedings to collect the loan. A payday lender with a larger volume of loans will have a proportionately larger volume of defaults and therefore less time to spend on the collection of each loan.

We believe the market works well in this respect. The lender is motivated to negotiate repayment with the Borrower and as long as the Borrower is protected from excessive charges in the event of default, no further regulation is needed. If regulations were introduced giving a Borrower the arbitrary right to restructure repayment of their debt, this in effect changes the lending paradigm and significantly increases the cost to offer the product.

### **Part C – Prohibitions, Limitations and Requirements**

#### **Question 16: What are your views about prohibiting back to back loans?**

The CPLA is opposed to any regulations prohibiting back to back loans.

The CPLA is in favour of a prohibition on rollovers because that regulates a practice of some lenders who actively encourage borrowers to “rollover” or extend their loans. That is regulating the behavior of the lender. Once a borrower has repaid their loan, it is the borrower’s decision if and when they need to obtain another payday loan. Prohibiting a borrower from obtaining another payday loan by regulation is governing the behavior of borrowers, not lenders. This is not good public policy.

If the motivation of the government in considering a regulation prohibiting back to back loans is to influence the behavior of the borrowers because government believes it may not be a wise credit decision by a borrower, then this should be addressed by consumer education and credit counseling as stated above and we again refer to the comments of John Silver. We would also refer government to the study conducted by Pollara of payday loan users in the Province of British Columbia which determined that the average amount of money payday loan customers in British Columbia currently owe to financial institutions (excluding mortgages) is \$22,765.00. This data indicates that the amount a borrower owes to a payday lender is comparatively very small compared to the overall debt. With this in mind, if a consumer is making bad credit decisions with respect to payday loans, regulating “the tip of the iceberg” without addressing the consumer’s larger credit and debt problems will have limited impact and possibly compound further unwise credit decisions. On the other hand, there are many consumers who obtain loans in the next pay period because they need the money and, based on the circumstances in those occasions it is a wise credit decision.

From a practical perspective introducing regulations denying access to one form of credit to consumers will only force consumers who need credit to seek it elsewhere whether it is through a title loan, pawn shop or other source.

The CPLA has no interest in lending money to consumers with no realistic ability to repay. Direction of these consumers to credit counsel, not regulation, is the best approach.

**Or prohibiting lenders for asking for a cheque to be made out to the borrower?**

The CPLA has no view on this point. We are not sure what difference it makes whether a cheque is made out to the borrower or the lender.

**Question 17: Are there other prohibitions that should be considered.**

The CPLA does not believe any other “prohibitions” should be considered.

Again we stress the payday loan industry grew as a result of demand by consumers. Consumers were very clear in expressing the view that they wanted and needed a small sum short-term loan that is unsecured and repayable on their next pay date. Therefore we believe regulation should, like any other industry where there is a willing borrower and lender, ensure that the borrower is aware of all of the terms and conditions of the contract and what the cost of the product or service is. Disclosure and advertising should be clear and consistent so consumers can make informed choices. The terms of the contract should be respected but enforcement of the terms should be reasonable.

**Required Disclosure and Advertising**

**Question 18: Are there other matters that should be disclosed to the borrower in the loan agreement?**

**Question 19: In their advertising, should payday lenders be required to disclose the full cost, including the APR of a typical or representative payday loan?**

Dictating the advertising content of lenders is unnecessarily intrusive and of little benefit to the consumer. Payday lenders should not be treated any differently from any other advertisers of financial products. A standard form of poster disclosing the cost of a typical loan has been mandated in other provinces and the CPLA believes this is the sort of disclosure that would be helpful to consumers.

In the Consultation Document it states

*“one tool that is useful for comparing costs of one loan to another is the annual percentage rate or APR. The APR includes all the upfront costs of borrowing such as interest and transaction charges and combines them into a single annualized rate.”*

The CPLA disagrees with this statement. As numerous experts have attested when all transaction charges are reflected as an APR in a small sum short-term loan, the interest rate is so high as to be all but meaningless to the consumer and the interest rate varies wildly depending on whether the loan is for the term of, for example, ten days or fourteen days. Surveys have found that what is useful to a consumer is disclosing the cost in dollars and cents of a typical loan.

**Question 20:** Would a representative poster be helpful for borrowers? Should there be a standard size, format and color for the poster so it is easily identified?

Yes, this would be helpful.

### **Cancellations**

**Question 21:** Are there any factors that should be taken into account or do you have any other comments about the cancellation process?

The CPLA believes Bill 27 adequately addresses the cancellation process.

The Consultation Document notes that cancellation rights can be expanded by regulation including the length of the cancellation period. The CPLA would be opposed to any consideration in this regard. The purpose of cancellation right is to allow a consumer “sober second thought”. The idea of a cancellation right we believed developed out of Quebec which had cancellation rights where a consumer obtains a mortgage. The need for sober second thought when one obtains a mortgage of several hundred thousand dollars for a period of several years is far more important than when obtaining a payday loan of a few hundred dollars for a period of ten days.

As you are aware, the Code of Best Business Practices of the CPLA as well as the Act requires that its members provide a one day cancellation right for consumers. That period represents 10% of the term of the average loan. It also provides ample opportunity for a consumer to reconsider their decision.

**Question 22:** Do you have any suggestions as to what should be included on the notice form?

As the CPLA has stated in earlier consultations, while it is important that the borrower be aware of the cancellation right, there is no need to have a separate piece of paper to give “notice” of the cancellation right or provide them with the form of notice to be used in exercising the right. The CPLA and the Independent Compliance and Ethics Commission have found no evidence that there has been any problem with how the borrower notifies the lender that he or she wishes to rescind a loan transaction or proof of repayment of a loan which would require regulation.

### **Cash Card Requirements**

**Question 23:** What do you think the mandatory cash out amount for payday loan cash cards should be?

**Question 24:** Are there any other factors regarding cash cards to be taken into consideration for the regulations?

The CPLA has no comments with respect to cash cards.

## **Limitations**

### **Question 25: What should be the maximum proportion of the Borrowers next paycheck that may be issued as a payday loan?**

The CPLA believes that there should be no restriction on the percentage of the Borrower's next paycheck that can be loaned or if there is a restriction it should be a high percentage. While lenders often advertise the maximum percentage of the Borrower's next paycheck that may be loaned, in practice a lender makes a separate credit decision with every borrower that applies for a loan and our members advise us that in a majority of cases a borrower will not qualify for the maximum amount that could be loaned and/or the amount the borrower is seeking to borrow is less than the amount for which the borrower is approved.

Market forces work well in this respect and we do not believe intervention by regulation is necessary. Lenders must be very careful in advancing credit and making correct credit decisions if they want to remain in business. There is strong motivation not to lend to a borrower more than can reasonably expect to repay. On the other hand, if a borrower needs to borrow \$600.00 for a car repair, legislation prohibiting a lender from lending the borrower more than \$400.00 will merely force a borrower to seek the additional funds elsewhere. In drafting regulations it is important for the government to remember that it is the Borrower that makes the decision how much he or she wants to borrow, not the lender.

### **Question 26: Should there be a limit to the amount of the repayment required on the next payday, and if so, what portion of a Borrower's paycheck should be the maximum repelled repayment?**

### **Question 27: Should a lender be prohibited from requiring repayment before the Borrower's next payday?**

The CPLA has concerns with the statement on Page 11 of the Consultation Document:

*"The Regulations will speak to the limits on the size of the loan and how much the borrower can be required to pay off at any one time."*

The introduction by regulation of how much a borrower may be required to pay off at any one time is a new concept and one that we were not aware was under consideration in the province of British Columbia and to our knowledge is certainly not considered in any other jurisdiction across Canada. Such a provision would be rewriting the terms of a contract between two parties. If the government introduced such a regulation they would, in our view be in fact, redesigning the payday loan product. As stated earlier, this product was developed in response to demand by consumers. If consumers want a different type of product they will tell the industry.

On the other hand, the government must understand there are extensive unintended consequences to a government redesigning financing products lenders provide to consumers and the government must have a complete and thorough understanding of the

business, the product and how it is delivered and the implications of redesigning the product before proceeding along this course.

Firstly, we would ask why would the province of British Columbia consider a regulation that arbitrarily allows a borrower to unilaterally extend the term of their loan. There will always be some consumers who do not repay their debts on time whether it is lending products or purchase of goods and services. However we were not aware of any evidence that this is a significant problem with the payday loan industry. On the contrary, the Pollara study found almost all responded payday loan customers in British Columbia reported that they pay all the loans they received in the past back on time (85%) or most of the loans on time (13%).

Fees charged may vary from lender to lender however these fees to a large extent reflect the lenders costs. Such a regulation would significantly decrease the number of loans to be paid on time and would increase the administrative cost. This adds to the cost of the product which will in turn increase fees charged to consumers.

Further, any such regulation would be vague and uncertain and would ultimately undermine the general framework on which the short-term small sum loan industry is structured.

- Who determines when a borrower “cannot repay” their loan?
- When and how do they communicate this?
- What evidence is required to establish this?
- Is it the borrower that determines this?
- How do they provide evidence?

With such a provision, a majority of borrowers would simply elect not to repay their loans. The viability of the industry would be threatened and the cost to consumers for payday loan products would rise.

Any such regulation would be unfairly judgmental by the government. When a borrower obtains a payday loan, the borrower in fact, by definition has sufficient funds on payday to repay the loan. In stating a borrower “cannot repay” the Consultation Document actually means a borrower is unable to pay all of his or her obligations. Each case is different, however, a borrower most likely has several obligations such bank loans and/or credit cards, rent, etc. to be paid and there are not sufficient funds. Such a regulation is a decision by the government that a payday lender should have a lower priority than every other creditor and be the last one paid. The appropriate solution, if a borrower is unable to repay their debt is to seek the assistance of credit counseling.

**Question 28: Should there be a limit on the number of days a lender can charge on outstanding loans? What should the limit be?**

The CPLA is absolutely opposed to any limit on the number of days a lender can charge interest on outstanding loans. The Consultation Document states:

*“the intent would be to encourage payday lenders to refer borrowers to credit counseling to help them manage their debts when they have great difficulty repaying”.*

While the CPLA requires all of its members to keep credit counseling brochures in their lobbies, we do not believe it is the duty of payday lenders as opposed to other lenders or government to oblige borrowers to attend credit counseling. As stated earlier, if a borrower has financial difficulties such that they need credit counseling, it is not because of a \$300.00 payday loan which generally represents “the tip of the iceberg”, but because of a myriad of debts of far greater amounts to other parties. A prohibition of a lender charging interest after a certain term is unprecedented to our knowledge and provides little practical effect. We also expect that such a regulation would be subject to constitutional challenge.

**Question 29: Do you have any other comments or suggestions about avoiding overuse of payday loans or unmanageable debt through payday loans?**

The question again is misleading. The credit-worthiness of consumer is not contingent on the number of times they use a payday loan, but their ability to repay the loans they obtain. In fact, payday loans, unlike credit cards where a balance can be kept for long periods, must be repaid and there is no incentive to continue lending to consumers who can not repay.

Unmanageable debt is something that emerges as part of a combination of credit and debit problems and rarely is the exclusive outcome of a payday loan.

### **Internet and Telephone Loans**

**Question 30: Do you have any comments on any of the specific measures identified above for internet or telephone loans?**

**Question 31: Are there any other considerations for setting out the specific process for internet or telephone loans or regulations?**

Regulation of the payday loan product should be consistent whether it is delivered over the internet or telephone or obtained through a bricks and mortar payday loan outlet.

### **Part D – Fees for Cashing Government Cheques**

**Questions 32: How should the maximum fees be calculated? What should the maximum be?**

**Question 33: Should a fee be allowed if the cheque holder is purchasing goods or services with the cash?**

Cheque cashing is outside the mandate of the CPLA and we have no comment on this.

## **CONCLUSION**

Thank you for the opportunity to respond to the Consultation Document. The Consultation Document does not indicate how the Province will set maximum rates for payday loans or what factors it will take into consideration in setting rates. We look forward to working closely with the Province as these matters are defined. Rates and how they set are obviously of tremendous importance to the industry and our customers.

The Provinces of Manitoba and Nova Scotia have now concluded hearings before their respective public utility boards. The Province of Saskatchewan has retained the accounting firm of Myers Norris Penny who has completed their study of the operations of payday lenders in the province. In Nova Scotia and Manitoba combined there were a total of 30 hearing days, 6,000 pages of testimony and several hundred pages of expert reports.

If British Columbia introduces regulations that are harmonized with those provinces, the government will benefit from introducing rules and rates informed by considerable data, disclosure and study. The CPLA is prepared and looks forward to the opportunity to provide input to British Columbia based on a review and distillation of the information generated in other jurisdictions.

If British Columbia introduces regulations that are not harmonized with those provinces, then we believe it is essential that the Province create a process and engage experts and government agencies with the necessary expertise to determine rates and associated rules.