



Canadian Payday Loan Association

**Response to Regulating the Payday Lending Sector
Discussion Paper**

Submitted to:

**Prince Edward Island Office of the Attorney General
Consumer, Corporate and Insurance Division**

PURPOSE:

The purpose of this paper is to provide the Prince Edward Island Office of the Attorney General with views of the Canadian Payday Loan Association on questions raised in the Regulating the Payday Lending Sector Discussion Paper dated November 6, 2008.

CANADIAN PAYDAY LOAN ASSOCIATION

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 payday loan industry, and
- (b) in the absence of regulation by governments, to develop a code of best business practices to be followed 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, appeared in stakeholder consultations in Alberta and British Columbia, appeared before the Maximum Total Cost of Borrowing Advisory Board of Ontario established to set maximum rates for payday loans in Ontario 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.
- Two separate studies by Deloitte Touche of the cost of private (non-public) companies to provide payday loans for the Provinces of Manitoba and British Columbia.
- A study by Deloitte Touche of private (non-public) payday lenders in Nova Scotia.
- Two separate reports of Dr. Lawrence Gould of the University of Manitoba analyzing the cost to provide payday loans in the Provinces of Manitoba and Ontario.

- Six separate surveys by Pollara of payday loan borrowers in the Provinces of Nova Scotia and New Brunswick, Manitoba, Ontario, Saskatchewan, Alberta 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.

All of the materials referred to above are available from the CPLA to the Province.

General Principles of Regulation

We believe that the goals of the government in considering legislation to regulate of the industry to be as follows:

- Reasonable consumer protection
- Allow for a viable industry
- Workable rules for industry and government

It is important for the government of Prince Edward Island to be aware of the purpose of payday loans and the importance of having the product available to consumers. The rapid growth of the industry over the past ten years in response to consumer demand is evident. Access to credit such as a payday loan is very important to consumers who need a small amount of funds on short notice for a short period to cover unexpected expenses such as a car repair or avoid incurring n.s.f. charges for cheques that have been written. Particularly in this rapidly deteriorating financial environment, a payday loan provides an important bridge to consumers over tight financial periods. It is also important for the government to understand the costs lenders incur to provide these loans. Because the loans are very small and for a very short period in comparison to a bank loan or mortgage, the “cost per dollar lent” is much higher. We encourage you to read the studies analyzing the costs of operation of payday lenders conducted by Deloitte Touche and Ernst Young which can be found on the CPLA website.

Introducing regulations that license lenders, standardize disclosure, set fee caps that allow for a viable competitive industry and prohibit rollovers will have a significant impact on the operations of many lenders in Prince Edward Island and will go a long way to improving consumer protection. We believe the government should tread carefully and introduce reasonable regulations. There can be significant negative repercussions and unintended consequences to over-regulating the industry, particularly at the beginning stages of regulation.

By bringing into force the provisions of your draft *Payday Loans Act* dated September 30, 2008, government will have made significant strides.

Proposed Regulatory Options

The Consultation Document sets out four regulatory options:

1. Maintain the status quo;
2. Provide specific advertising and disclosure requirements for payday lenders, with sample forms and filing requirements;
3. Provide specific advertising and disclosure requirements as well as a comprehensive licensing regime; or
4. Provide specific advertising and disclosure requirements, a comprehensive licensing regime, and provincially mandated limits on total borrowing costs.

Option 1: To maintain the status quo suggested in option one limits the ability of the government to introduce regulations to protect the consumer. While we have no evidence with respect to Prince Edward Island, certainly elsewhere in Canada there are unscrupulous lenders that employ questionable lending and collection practices. A payday loan is a financial product used by over two million Canadians and like other financial products there should be appropriate regulation for the benefit of the consumer and industry. Furthermore, as the other maritime provinces introduce regulation, the Province of Prince Edward Island does not want to inadvertently create a vacuum that attracts those lenders that seek to base their operations in an unregulated environment.

Option 2: We believe specific disclosure requirements for payday lenders is a good thing provided they are not the only action taken to regulate the industry. There should be plain language contracts that are easy for consumers to understand as well as posters that set out the cost of borrowing in a clear and standardized manner. Disclosure of the cost of borrowing in dollars and cents provides meaningful information to consumers and allows them to compare prices from one lender to another. This in turn fosters competition among lenders on the basis of price which benefits the consumer.

This type of disclosure requirement was first enacted in the Province of Ontario at the suggestion of the CPLA. Similar provisions have now been put into place for Nova Scotia, Manitoba and British Columbia. We would recommend that the Province of Prince Edward Island adopt disclosure requirements consistent with those in force in Ontario. Consistent disclosure requirements simplify regulatory compliance and therefore reduce the costs of lenders operating in multiple jurisdictions. There is no need for specific advertisement requirements as regulation of advertising practices is already covered under section 14 of the *Consumer Protection Act* of Prince Edward Island. Simply introducing disclosure requirements however will not limit the charging of excess fees and default charges nor will it provide effective consumer protection against harmful practices such as rollovers. Absence of regulation will result in inconsistent practices among lenders.

Option 3: This option provides for a comprehensive licensing regime as well as advertising and disclosure requirements. We do not believe this is a practical option. To regulate the industry without federally approved legislation leaves the provincial government in the

awkward position of regulating transactions that allegedly contravene the Criminal Code. Furthermore there would be no limit on the amount of fees charged to consumers, a significant element of consumer protection.

Option 4: The CPLA believes the Province of Prince Edward Island should regulate the industry by enacting consumer protection legislation and setting a maximum on total borrowing costs as set out in this option. This would require each payday loan company operating in Prince Edward Island to be licensed. The benefit of licensing is that the government will be aware of each payday lender operating in the Province and will be better able to monitor compliance and ensure consistency from lender to lender across the Province. Furthermore, obtaining the designation of exemption of payday loans from section 347 of the *Criminal Code* allows the provincial government to set a maximum rate cap which is not available through any of the other options. Obtaining the exemption will also ensure regulatory certainty for loan providers operating in the Province. With regulatory certainty, more larger and stable operators will enter the market which will ensure competition with delivery of the lowest cost and best services to the consumer.

Maximum Fees: We believe that the government should set a maximum amount that payday lenders can charge a consumer which would be required under option four. It should be a “maximum” or “ceiling”, which will allow providers to offer the product at a price lower than the maximum in a competitive environment that accounts for variations in geography and creditworthiness of individuals.

Government should not seek to set a rate that treats the industry like a utility because that will create a monopoly. Unlike a utility, the payday loan market is not homogeneous. Every borrower is different and every lender has different risk assessment criteria.

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 of the British Columbia Credit Counselling Association before the Manitoba Public Utilities Board:

“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.”

It is important to maintain a competitive market for the following reasons:

1. Access for all consumers.

The payday lending market is not homogeneous. Each lender has different risk assessment criteria. There are borrowers with poor credit histories who are unable to obtain a loan from

some payday lenders but are served by other payday lenders with less stringent 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 only allows some payday lenders to operate, the higher cost operators will either change (restrict) their lending criteria or cease operations with the result being 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. It is clear that there is a demand for the product. Denying consumers a payday loan product does not see demand for small sum, short term credit go away.

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 to operate in the major centres but rural operators will be forced to close. This will deny rural residents access 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. We have seen examples of this in other provinces which have passed legislation. Large operators have opened and aggressively competed on price to obtain market share. 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.

Default Fees: The CPLA also believes there should be a restriction on the maximum costs that can be charged to a consumer who defaults on repayment of a loan.

We believe there are two areas that the government should be aware of 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.

In addition, a lender should be able to charge interest on the amount of the loan at a rate within currently permitted limits until repayment.

The province should also introduce legislation that limits the fees that can be charged for loan extensions or “rollover” loans where the payday lender gives the client another loan to pay for the initial loan and charges them a fee.

Currently it is a condition of membership of the CPLA that a member not provide rollovers. For clarification, the definition of the CPLA is as follows:

“A rollover includes (a) an extension of a loan for a fee (not including interest and (b) the granting of a new loan where part or all of the proceeds of the loan are used to pay out an existing loan.

CONCLUSION

Thank you for the opportunity to respond to the Consultation Document. We encourage the Province to move forward with your proposed bill. 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. Regulations, rates and how they set are obviously of tremendous importance to the industry and borrowers.