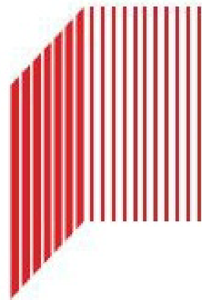

Canadian Payday Loan Association

Response to Consultation Request on Draft Regulations to the Payday Loans Act, ss.2007, c. P-4.3

Dated January, 2010

Submitted to:

Legislative Services Branch
Ministry of Justice and Attorney General

PURPOSE:

The purpose of this paper is to provide the Legislative Services Branch of Saskatchewan Justice and Attorney General with views of the Canadian Payday Loan Association and its members on the draft regulations to the Payday Loans Act issued December 7, 2009.

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 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, the Ontario Total Cost of Borrowing Advisory Board Hearings, the Federal Senate Committee on Bankruptcy, Trade and Commerce Hearings 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.

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

- The CPLA survey of the number and location of all the payday loan operations across Canada.

- The 2008 Mustel Group Qualitative Survey on the reasons consumer use payday loans.

- 2008 Deloitte Touche study on the Cost to Provide Payday Loans in British Columbia.

- 2008 Deloitte Touche study on the Cost to Provide Payday Loans in Ontario.

- Prior to implementation of regulation the CPLA 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. Because regulation and licensing has replaced the Code in most provinces the Commission has now been dissolved.

- The CPLA has created and operates the Consumer Response and Resolution Bureau (CRRB) to address and mediate complaints and concerns that payday loan customers have with lenders.

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

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

Introducing regulations that license payday lenders specifically, 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 Saskatchewan and goes far to improving consumer protection. We believe the government should tread carefully and introduce reasonable regulations. There are significant dangers and unintended consequences to over regulating the industry, particularly the beginning stages of regulation.

Overall we believe the draft regulations issued by the Government of Saskatchewan have achieved these objections, however we do have comments on certain specific sections.

SPECIFIC COMMENTS ON REGULATION

2. Provision

Interpretation

(b) "total cost of borrowing" means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or to be paid by or on behalf of a borrower directly or indirectly in connection with a payday loan, irrespective of:

> (iii) the receipt by the borrower of a product, service or other benefit separate from the payday loan in return for payment of the charge or expense.

The wording of most federal and provincial legislation that defines the cost of borrowing refers to those costs that must be paid or payable for the advancing of credit. The wording of section 2(b) is too broad because the definition of total cost of borrowing includes any cost paid "in connection with" the loan. That wording therefore includes the cost of other optional products or services that a borrower is not required to pay for in connection with the cost of borrowing. If a borrower has the option to receive a loan in cash but elects to put the loan proceeds on a debit card or if the borrower elects to purchase loan insurance these costs should not be included in the cost of borrowing if the borrower does not have to incur these costs. The cost of optional products and services are not included in the definition of cost of borrowing for disclosure of cost of borrowing in Saskatchewan for consumer loans or mortgages so there is no reason to treat payday loans differently.

The current description of costs in the definition includes "fine" and "penalty". These are costs that would most often arise after a default in payment and therefore the definition should clarify that amounts paid after default of a loan are not included in the definition of total cost of borrowing.

We would recommend that 2(b) be amended to wording similar to Ontario such as:

> "(b) 'total cost of borrowing' means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or to be paid by or on behalf of the borrower directly or indirectly as a **requirement for obtaining** a payday loan, but does not include default charges and the repayment of the advance."

4. Provision

Licensing Fees

Every applicant for a licence or renewal of a licence shall pay a fee of $5,000 for each licence.

Government should only charge a licence fee in an amount that covers the cost of issuing a licence and monitoring compliance of the licensee. Any charge in excess of that is in effect a tax. The explanation in the draft regulation states:

> "Under the Act, all payday lenders and brokers will be licensed for **each business location** in Saskatchewan. The licence fee will cover the cost of administration of the legislation and regulations."

We strongly dispute the contention that administrative costs will be $5000.00 per outlet. The evidence is certainly to the contrary.

Most provinces have a much lower licensing fee. For example, British Columbia charges $1500.00 for the initial office and $750.00 for each additional location per annum. Alberta charges $1,000.00 for the first outlet, and $500.00 for each additional outlet. Ontario charges $750.00 for the first outlet and $990.00 for each subsequent branch. These provinces, like Saskatchewan must recover the costs of administration of the legislation and regulations through their licensing fees and yet regulations in those provinces are no less onerous. Why would the cost in Saskatchewan be more than five times greater? The province of Manitoba has set their licensing fee at $5500.00 however they indicate that fee was set to recover the costs of a six month public utility board rate setting process that included 21 days of hearings, dozens of witnesses and expert reports and thousands of pages of evidence. Their Act requires a review of by the Public Utilities Board every three years. The Province of Nova Scotia has a licensing fee of $3000.00 because in that province rates were set by a utility and review board process that also had public hearings and submission of evidence. Their Act provides the Utility and Review Board must review their decision every three years. In Saskatchewan there were no submissions on rates and no such costs were incurred.

Furthermore, it should be pointed out that unlike any other province in Canada, Saskatchewan already licenses payday lenders in a manner that is very similar to post-regulation and therefore Saskatchewan will not face the cost to get a licensing regime up and running the way other provinces do.

Finally the fee is the same for each outlet. The cost to license and monitor a lender with ten outlets is not ten times the cost to license and monitor to a lender with one outlet.

We would recommend the license fee be set at $1000.00 for the first outlet and $500.00 each subsequent outlet.

6. Provision

Change in ownership of payday lender – defined

For the purpose of section 12 of the Act, a "change in ownership" means:

(a) in the case of a corporation, the transfer of a direct or indirect holding of more than 25 percent of the voting shares of the corporation; and

We would recommend that this regulation amend the definition of "change in ownership" to mean change in control so that it is consistent with normal commercial practice and achieves the objectives of the regulation. There is no reason why the transfer of 26% of the voting shares of the Corporation should trigger a change in ownership if it does not result in any effective change in control of the Corporation. On the other hand, three separate transfers of 20% of the voting shares of a corporation would not constitute a "change in ownership" but would constitute a change in control which would defeat the objectives of the regulation. Furthermore, the regulation does not recognize the fact that licensed lenders include public companies whose shares are publicly traded and they have no control over trades in shares.

We would recommend 6(a) be amended as follows:

> "(a) In the case of a corporation (except for a public corporation whose shares are traded or listed on any recognized stock exchange in Canada or the United States or a private corporation who is controlled by such a public corporation) the transfer of a direct or indirect holding of shares which results in any change in the present effective voting control of the corporation;"

8. Provision

Forfeiture of financial security

We note with this section there is the potential for requiring financial security. We think it is important to point out that unlike a direct sales business or a business where the service provider takes in customer's money prior to delivery of goods, a payday lender does not hold any amount of the borrower's money. In fact multiple borrowers hold a large amount of the lender's money. Therefore the situation is opposite to the usual circumstance where a bond is required.

While it is conceivable that there can be instances 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 a requirement of a letter of credit or bond.

Currently all payday lenders are licensed under your *Trust and Loans Corporations Act* and you have a good foundation of experience with licensing and compliance. Under the *Trust and Loans Corporations Act* there is a provision for financial security in certain circumstances and those terms and conditions are reasonable. We would expect that there would be no change as the licensing of payday lenders shifts from The *Trust and Loans Corporations Act* to the *Payday Loans Act.* If the intention is to change the criteria in any way we would ask that you advise us as we would like to make further submissions.

12. Provision

Signs to be posted

(1) For the purpose of subsection 21(2) of the Act, every payday lender must post the following signs:

> (b) a sign that is visible to a borrower at each place, within the place of business, where a payday loan agreement is negotiated.

This provision is clearly excessive. Based on the dimensions in 12(2) the signs required are poster size. 12(1)(a) requires a poster that is visible upon entering into premises and section 10 requires the same information appear in the disclosure box of the loan agreement. Therefore, there is no need for further multiple posters in an outlet. For some outlets with several wickets, our members advise there is literally not enough space to place all the posters. It is unclear how the regulation would be applied where the lender has a long counter instead of specific wickets. For example, would the counter have to be lined with posters in case on occasion three or four employees are negotiating payday loans at one time. Our members are trying to operate businesses which offer several products in a reasonable manner. They have information and advertising on all products to communicate to their customers and they wish to have their premises appear neat and professional. They do not want multiple identical posters. We agree that reasonable disclosure is a good thing and support that objective but multiple identical posters is excessive. If there is a poster size notice visible on entry, why are further posters needed? We urge you to delete 12(1)(b).

14. Provision

(1) In this section, "net pay" means the total employment earnings of a borrower less the following deductions:

In the industry these loans are typically described as "payday loans" but in fact include all small sum short-term loans as defined in 2(1)(i) of your Act and sec 347.1 of the Criminal Code which describe a payday loan as an advance of less than $1500.00 for 62 days or less. The industry operates on the basis of a future payment to be received by the borrower to repay the loan. By describing and restricting net pay as "employment earnings" you inadvertently are excluding revenue from all other sources and limiting loans to only those that receive a regular employment pay cheque. It excludes those who do contract work or receive irregular payments or receive payments from sources other than employment income. For example, the wording would exclude access to payday loans by individuals on the basis of government or employment benefit payments they are entitled to receive. We were advised by one provincial government drafting payday loan regulations that they believe there would be constitutional issues with regulation that denied access to credit for certain sectors of the population namely those receiving benefits payments. Furthermore, the wording does not define over what period the net pay refers to.

We would recommend that the wording of 14(1)(b) be amended to wording similar to the British Columbia regulations to read as follows:

> "1(b) In this section, "net pay" means the total net pay or other net income to be received during the term of the payday loan by a borrower less the following deductions:"

With the above wording, we believe this would achieve the objectives of the regulation but at the same time not exclude certain categories of borrowers.

Finally we understand from communication with your office that the reference to "25% of borrower's net pay" in 14(2) of the regulations should in fact be "50% of the borrower's net pay." If this is not the case we would ask that you advise us forthwith as we would like to make extensive representations on this point.

15. Provision

Prohibited Practices

(2) No payday lender shall do any of the following:

> (b) enter into a new payday loan agreement with a borrower before at least 24 hours have passed since the borrower has paid the full outstanding balance under the first payday loan agreement;

The CPLA is opposed to 15(2)(b) the way it is written.

The CPLA is in favour of a prohibition on rollovers because it regulates a practice of those lenders who might actively encourage borrowers to rollover or extend

their loans. That is regulating the behavior of a lender. Once a borrower has repaid their loan in full, 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 a borrower from taking out a loan for 24 hours is too influence the behavior of the borrower because the government believes it may not be a wise credit decision by a borrower, this should be addressed by consumer education and credit counseling. On the other hand there are many consumers who obtain loans in the next pay period because they need money and based on their circumstances in those occasions it is a wise credit decision. From a practical perspective introducing regulations denying access to credit to a consumer who needs that credit at that particular time will only force the borrower to seek it elsewhere, whether it is through another payday lender, a title loan, pawn shop or other source.

If, on the other hand, the intention of the government in drafting 15(2)(b) is to require a 24 hour gap to ensure that the loan is actually paid off and there has not merely been an exchange of cheques, we would suggest you add the wording similar to wording included in the Ontario legislation as follows:

"(b) Enter into a new payday loan agreement:

(2) No payday lender shall do any of the following

(i) before at least 24 hours has past since the borrower has paid the full outstanding balance under the first payday loan agreement; or

(ii) the borrower has provided the lender proof that the borrower has paid the full outstanding balance under the first payday loan agreement."

(e) attempt to obtain repayment by means of a pre-authorized debit provided the borrower when an attempt to obtain repayment by pre-authorized debit is dishonoured, except if, after the initial attempt has been unsuccessful, the borrower authorizes, in writing, an additional attempt.

We believe that section 16(2)(e) should be deleted. The Canada Payments Association rules already govern terms and conditions under which there can be a re-submission of a pre-authorized debit ("PAD") within thirty days of return. Section 16(2) in effect arbitrarily limits the negotiability of a negotiable item already governed under CPA Rules for one type of lender only. It is no different from enacting a regulation to affect the negotiability of a cheque governed by the *Bills of Exchange Act*.

The regulation is discriminatory. More and more payments are being made by PAD rather than cheque whether it is payments for insurance, newspaper subscription, rent or other debts. CPA rules set out rights and restrictions on how payees can deal with PADs. The rules are put in place to prevent abuse. As this issue is addressed by CPA Rules, why should a payment due to a payday lender be treated any differently than a payment due to any other payee and why should the rights to repayment of a debt to payday lender received a lesser priority than other unsecured debts. What is proposed will ultimately add more time and expense to provide credit that is ultimately borne by the consumer. We would recommend that this regulation be deleted.

Conclusion

We thank you for the opportunity to respond and provide comments on the draft regulations. If you have any questions or wish to obtain any further information we would be pleased to assist you.