



Canadian Payday  
Loan Association

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Association canadienne  
des prêteurs sur salaire

## **Canadian Payday Loan Association**

### **Response to Consultation Paper**

Consumer Protection in the Payday Lending Sector

Dated June 19, 2007

**Submitted to:**

**The Ministry of Government Services  
Policy and Consumer Protection Services Division  
Toronto, Ontario**

## **Purpose**

The purpose of this paper is to provide the Ministry of Government Services with the views of the Canadian Payday Loan Association on questions raised in the Consultation Document issued by the Ministry of Government Services regarding the Payday Loan industry.

The Canadian Payday Loan Association (CPLA) is supportive of regulation of the industry in the Province of Ontario.

The proposed submissions outlined in this paper will, in the opinion of the CPLA, support legislation which will protect consumers and ensure a viable industry so that consumers have access to credit throughout the Province of Ontario.

## **General Principles of Legislation**

The CPLA believes the Province of Ontario should introduce legislation and should be guided by the following principles in drafting the legislation.

### **1. Provide Access to Credit**

Legislation should provide for a viable market that fosters competition so that consumers have needed access to credit throughout the Province of Ontario while at the same time providing reasonable consumer protections.

### **2. Harmonization**

There is consistency in legislation of the Provinces of Manitoba, Nova Scotia and Saskatchewan who have passed payday loan legislation. The CPLA endorses this. As much as possible there should be consistent consumer protection legislation and rate caps from province to province.

### **3. Move Slowly and Cautiously**

This is an industry of independent, competitive operators with little regulation and an uneven history of self-regulation. The business dynamics of individual operators varies considerably. Reasonable, broadly applied regulation is needed but the potential for unintended consequences, namely evasion of regulation, loss of individual businesses or the growth of lending by other means is a real risk depending on the regulatory approach and options adopted by government.

By prohibiting rollovers and assignment of wages and fixing reasonable fee caps and default charges the province will address the vast majority of the issues surrounding the industry. Therefore the government should tread carefully and implement these reasonable measures, assess their impact and effectiveness and if based on assessments the government determines that there is further regulation needed then, after further consultation, additional regulations can be added.

### **4. Clear Objectives**

Government should have a clear understanding of the objective and purpose of each element of legislation.

Government should not seek to regulate behaviors that they anticipate might exist now or in the future in response to anecdotal information. Government should have a clear documented understanding on an issue of concern before seeking to regulate it. Then it should determine the precise consumer protection outcomes it would like to achieve and come up with acceptable rules and practices to achieve those outcomes. The CPLA has more information on the industry than any other entity. If the government has a concern about an issue, we urge you to contact the CPLA for information.

## **Specific Comments on Consultation Paper “Consumer Protection and the Payday Lending Sector”**

### **INTRODUCTION**

The CPLA supports the four objectives set out in the Introduction of the Consultation Paper at the bottom of page 2. The CPLA believes an additional objective should be to ensure there is a viable, competitive payday loan industry. The industry has grown rapidly in response to consumer demand. It is acknowledged by academics and consumer advocates that there is a need for the payday loan product. By maintaining a viable competitive industry, the government will ensure that the product is available throughout Ontario to all Ontarians who need the service at the lowest cost and in an environment that provides the best business practices.

### **1. Are Additional Consumer Protections Needed?**

#### **1. Rules that Limit the Amount of Money Advanced**

At first blush this seems like an easy and simple fix to “protect consumers from themselves” but on further analysis it raises many issues.

First of all, this is denying borrowers the right of access to credit. This is unusual if not unprecedented in the lending industry. In such case the government should be very clear what problem it would be attempting to address or redress by taking such a step.

It is the view of the CPLA there should not be a limit on the amount of money advanced for the following reasons:

- This is not a demonstrated problem or issue. The vast majority of borrowers repay their loans when due.
- Burden of Risk. How much to lend is a question of risk for the lender not the borrower. If a loan is not repaid when due, it is the lender who suffers the loss not the borrower.
- The question of the amount to be loaned is by in large, not a problem and is and continues to be self-correcting. No lender can afford to make loans that are not repaid. Therefore each lender will set their own lending criteria. If a lender lends too much of a borrower’s next paycheck and there is a default in repayment, the lender will suffer the loss and adjust their lending criteria accordingly.
- There are better steps to be taken. The CPLA prohibits its members from providing rollovers. The abolition of rollovers is significant. The result is that a lender cannot in effect continue to “float” what would otherwise be a bad debt by

collecting a fee every two weeks. This in itself will force lenders to be more careful with their lending practices.

- Several studies, including those cited in your consultation document, indicate consumers use a payday loan for a one time anticipated expense. If a borrower requires \$400.00 for a car repair, it is of no benefit to the borrower if the law prohibits him or her from borrowing more than \$300.00. The credit product is created in response to consumer needs. It is counter-productive to develop restrictions that prevent the product from meeting the needs of consumers.
- The majority of borrowers are informed responsible consumers. Rather than introduce regulations that prohibit borrowers from accessing their own money there should be full and complete disclosure requirements, as have been introduced in Ontario, to allow consumers to make informed choices.

## **2. Requirements to better assess a Consumer's Ability to Repay**

Consumers use payday loans because they are an important source of credit and can be accessed quickly by the borrower when needed. The statement that payday lenders do not try to determine the extent of the borrower's financial obligations or their ability to repay is not accurate. It is true however that a payday lender conducts less due diligence than a bank assessing a loan application for a \$1 Million. Accepting a higher level of risk is a requirement of providing payday loans. This is a fact because the size of the transaction does not support any costly or time consuming due diligence.

If regulations were introduced requiring lenders to "better assess a consumer's ability to repay" this would cause two results:

- The cost to provide payday loans would increase; and
- Many consumers (those who cannot access credit elsewhere) would be denied needed access to credit.

Each lender should choose what degree of due diligence they wish to conduct.

## **3. A Requirement to Undertake Credit Checks**

Government should not set credit risk criteria for lenders. Every lender should set their own credit risk criteria. If a consumer experiences financial troubles it is the lender that suffers the loss.

Paragraph 3 in the Consultation Document explains that the purpose of undertaking a credit check is to deny credit to more Canadians because some payday loan borrowers experience financial troubles. Once again it is important to analyze the logic of the proposition. When a payday loan borrower experiences financial troubles, it is a fact in every case that the payday loan is a

very small portion of the overall debt of the borrower experiencing financial trouble. Simply stated, if a borrower has a \$300.00 payday loan and is otherwise debt free, they do not experience financial trouble. The borrower will usually have one or more of a mortgage, car loan, furniture loan, several credit cards up to their limit, title loan, consumer loan etc.

The payday loan makes up a small fraction of the overall debt. To regulate the borrower's access to only 5% of his overall debt but not address the 95% of the debt that does not comprise payday loans does not help the borrower. If the government is considering restricting access to payday loans, the government should address restricting access to multiple credit cards, consumer loans, car loans etc. In the alternative, we recommend providing consumer education on proper financial management to those experiencing financial difficulties. We applaud the steps the Ontario Government has taken to date to ensure there is a clear and simple disclosure of the cost of borrowing.

Every member of the CPLA is required to carry brochures of not-for-profit credit counseling associations in their lobbies. Furthermore, it is an element of the Code of Best Business Practices of the CPLA that a member must advise customers who have defaulted twice on a payday loan within one year of credit counseling services and offer to forego accrual of interest on the debt if the customer obtains credit counseling. These are the steps that we would suggest will help consumers.

**Bad Credit History:** If there is a requirement to a conduct a credit check on a borrower then presumably this will lead to reporting of the payday loan borrowing history of customers. One problem many payday loan customers already face is the fact that they have a bad credit history in the mainstream financial arena. Adding to that information on a borrower's payday loan borrowing history as well as any defaults in repayment of payday loans will inevitably lead to further damage in borrower's credit worthiness scoring. We understand that damage to credit history in these circumstances has been an issue in other jurisdictions.

**Privacy:** Members have advised the CPLA that many of their customers are strongly opposed to having their personal credit history and personal financial practices monitored and recorded in a registry system.

Finally, there is no question that requirement to undertake credit checks will increase the cost of providing the service.

**4. Restrictions on how many payday loans a Consumer can take over a Period of Time**

With respect to this question the CPLA would repeat a number of the comments on no. 3 above. The CPLA believes that the government should introduce legislation that regulates the practices of the lender not the borrower. There should be full and clear disclosure and consumers being fully informed should be free to make their own choices. Where there is a concern about borrowing habits, the issues should be addressed through education and credit counseling.

If the government chooses to regulate a consumer's behavior in this manner then it should regulate the number of credit cards a consumer can possess as well as the number of consumer loans and overall debt as consumers can have because those are the areas that make up the majority of a consumers debt load.

The CPLA supports to abolition of rollovers. We believe this will address a majority of issues in the industry.

## **5. Provision to Create Fair Rollover Borrowing Requirements**

The Code of Best Business Practices of the CPLA prohibits rollovers. Our definition encompasses paying a fee for the extension of a loan or granting a new loan to pay off an existing loan and incurring a new set of fees in the process. Having said this, where there is a willing lender and borrower who wish to extend a loan that is due, it is problematic to prohibit them by law to do so. We believe however in the event that the parties wish to agree to extend the loan there should be a limit on fees, interest and other costs that can be charged to the borrower for the extension of the loan.

<h2><b>2. Should Ontario consider a licensing regime for payday lenders?</b></h2>
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The CPLA is not opposed to the introduction of a licensing regime to license payday lenders. The advantage of a licensing regime is that the government is aware of all of the payday lenders operating in the Province. Through issuing licenses, the government will know that operators are aware of regulations regulating their business practices and there will be clear and effective sanctions including suspension of license for violation of the regulations.

With respect to the specific items of regulation listed in paragraph 8, it is our view that reasonable application requirements as well obligations for record keeping, reporting and disciplinary actions and powers are necessary. What is provided for in the Acts passed by the Provinces of Saskatchewan, Manitoba and Nova Scotia are not unreasonable and we would suggest that in developing elements of licensing the Province of Ontario have reference to the aforementioned legislation in order to harmonize regulation as much as possible with other provinces.

If the Province is considering the creation of an arms length agency to inspect and monitor compliance, we wish to draw your attention to Compliance and Enforcement Commission by the CPLA. This is an independent body headed by

Mr. Sid Peckford, the retired Director General of Ports Canada Police who has developed significant expertise in understanding and monitoring the business practices of the membership of the CPLA. The Province may wish to consider having the Commission assume the monitoring and enforcement role of any licensing regime.

We invite you to visit the website of the Commission at [www.cplaethicscommissioner.ca](http://www.cplaethicscommissioner.ca). The first annual report of the Commission will be posted on the website in the near future.

Unlike some provinces such as Saskatchewan and Nova Scotia that have very few outlets, Ontario with 700 outlets can, through a modest licensing fee cover the cost of licensing the industry without significantly increasing the cost to offer the product.

**3. If Ontario were to seek designation what would the appropriate mechanism to establish limits on the total cost of borrowing?**

Rate setting is very important and complex. We would suggest that a department of government with expertise in financing and budgeting matters be tasked with fixing rates a level that will allow a competitive marketplace to function. The Province should put in place a process for the department to receive financial information and submissions from all stakeholders. This process should be private as opposed to public because that will result in more industry participants coming forward and providing full disclosure. The Province should consider retaining third party expertise, such as a financial consulting firm to review and analyze the submissions.

**4. Should Ontario seek designation under Federal Bill C-26**

The CPLA strongly believes that the government should and has a responsibility to seek designation under Federal Bill C-26 and regulate the industry. The Consultation Document points out that there are 600-700 payday loan outlets in Ontario. That is a significant industry and the industry has grown in response to consumer demand. The government has three options: to ban the industry, ignore the industry and allow it to function in a non-regulated environment or introduce reasonable legislation and regulations.

We do not believe it is an option to ban the industry. There is a consumer need and demand for the product. If you deny consumers access to this credit product, they will be forced to seek credit elsewhere in less favourable circumstances. We do not believe it is an option to ignore the industry and let it continue to function in an unregulated environment. Hundreds of thousands of

Ontarians use the product every year and it is important that reasonable rules and regulations and protections are put in place to protect their welfare.

In the absence of government regulation, the CPLA has adopted a stringent code of best business practices and has created an independent arms length Compliance and Enforcement Commission to monitor and enforce compliance by our members. Unfortunately a majority of the payday loan operators in Ontario are not members of the CPLA and the Commission has no jurisdiction or authority to enforce compliance. Every month the Commission receives complaints from consumers with respect to non-member outlets and the Commission has no ability to help those consumers.

We believe it is important for the Ontario government to regulate the industry so that every Ontarian will have basic protections regardless of which payday loan company they choose to deal with.

**CANADIAN PAYDAY LOAN ASSOCIATION**

25 Main Street West  
Suite 2010  
Hamilton, ON L8P 1H1  
Telephone: (905) 522-2752  
Facsimile: (905) 522-2310