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Official Report of Debates (Hansard)

Monday 26 May 2008

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Lundi 26 mai 2008

**Standing Committee on
General Government**

Payday Loans Act, 2008

**Comité permanent des
affaires gouvernementales**

Loi de 2008 concernant
les prêts sur salaire

Chair: Linda Jeffrey
Clerk: Trevor Day

Présidente : Linda Jeffrey
Greffier : Trevor Day

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 26 May 2008

Lundi 26 mai 2008

The committee met at 1404 in room 228.

The Chair (Mrs. Linda Jeffrey): Good afternoon. The Standing Committee on General Government is called to order. We're here to discuss Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts.

SUBCOMMITTEE REPORT

The Chair (Mrs. Linda Jeffrey): Could someone read the report of the subcommittee on committee business into the record?

Ms. Cheri DiNovo: On a point of order, Madam Chair: I'm concerned that this is not televised. I would like to see it televised. I think the more transparency, the better in government, and certainly this is an issue that touches the lives of all Ontarians in one way, shape or form. So I would like to move that we move to a room that can be as transparent as possible, and that would be a room that's televised.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo, I don't think you can move this as a point of order, but you could change the subcommittee minutes, so once they're read into the record we have an amendment, and then at that point—okay?

Ms. Cheri DiNovo: Okay.

The Chair (Mrs. Linda Jeffrey): Ms. Mitchell.

Mrs. Carol Mitchell: Your subcommittee met on Thursday, May 8, 2008, to consider the method of proceeding on Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts, and recommends the following:

(1) That the committee meet in Toronto on Monday, May 26, Wednesday, May 28, Monday, June 2, and Wednesday, June 4, 2008, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the Ontario English and French dailies and French weeklies where applicable.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel and the Legislative Assembly website.

(4) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Friday, May 16, 2008.

(5) That groups and individuals be offered 15 minutes for their presentation. This time is to include questions from the committee.

(6) That, in the event all witnesses cannot be scheduled, the committee clerk provide the members of the subcommittee with a list of requests to appear by 2 p.m. on Friday, May 16, 2008.

(7) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Tuesday, May 20, 2008.

(8) That the research officer provide the committee with background information prior to the commencement of public hearings.

(9) That the Minister of Government and Consumer Services be invited to appear before the committee to make a presentation of up to 15 minutes, followed by five minutes for each caucus to make a statement or ask questions.

(10) That the deadline for written submissions be 12 noon on Wednesday, June 4, 2008.

(11) That, for administrative purposes, proposed amendments be filed with the committee clerk by 5 p.m. on Thursday, June 5, 2008.

(12) That the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, June 9, and Wednesday, June 11, 2008, if required.

(13) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Mrs. Joyce Savoline: I have an amendment.

I move that, in paragraph 1, "Monday, June 2, and Wednesday, June 4, 2008," be struck out; in paragraph 11, "June 5" be struck out and replaced with "May 29"; and in paragraph 12, "Monday, June 9, and Wednesday, June 11," be struck out and replaced with "Monday, June 2, and Wednesday, June 4."

I've moved this amendment because we were safeguarding and allowing for four days of hearings. We have not had that kind of take-up with delegations and two days will be enough. That's why I'm proposing those changes.

The Chair (Mrs. Linda Jeffrey): Any discussion on the amendment? Seeing none, all those in favour of the amendment? That's carried.

Ms. Cheri DiNovo: Again pursuant to the report of the subcommittee, I just draw this committee's attention

to the fact that the phrase “public hearings” is reiterated a number of times in these. One would assume that “public” means “public”; that is to say, as transparent as possible. We certainly have here at Queen’s Park the means at our disposal to televise this. I think that interested parties would like to see it televised. Certainly I expected that it was televised. I was surprised, coming here today, to learn that it was not. So, again, I would hope that we can change rooms as soon as possible, hopefully for today, or else convene at another time when we can be transparent and accountable to the public which elected us.

The Chair (Mrs. Linda Jeffrey): Further debate on this issue?

I’m told by the clerk that this is our regular room and that there has been some construction in the room that is televised. The only day we would have available in that room would be Monday. So there is the possibility, but it would only be one day of the hearings.

Interjection.

The Chair (Mrs. Linda Jeffrey): On Wednesday, another committee has it—estimates, I believe.

Ms. DiNovo, did you want to comment on that further?

1410

Ms. Cheri DiNovo: I don’t think that’s a response. Again, I know this is being Hansarded, but certainly I think the issue warrants scrutiny, it warrants transparency, it warrants response from duly elected members to their constituents, and they want to see what’s going on. Not everybody is able—particularly some of those who are targeted by payday lenders—to access Hansard, and some of them are not able to read, in English or in French, the words of Hansard. Again, I think we want transparency here. I assume that I’m going to be outvoted, but I certainly want to go on record as saying that this is not a truly public hearing, that this is not a truly transparent hearing, and until it is, just like the other aspects of life at Queen’s Park, I don’t think this has the validity that it should have.

The Chair (Mrs. Linda Jeffrey): Further debate?

Mrs. Carol Mitchell: I do want to thank Ms. DiNovo for her comments, being a member of the subcommittee, and I understand that you felt that it was, but we’re here today. The public has certainly been duly notified. We agreed upon it. We have an amendment that is coming forward, the changes that reflect the conversation we had at the meeting. What I’ve heard is that if there was an opportunity, we would move to a different venue, but that we’d go forward today. That’s what I heard today.

I believe we have done everything within our power to notify the public. We also, as representatives from each party, have agreed on a process that we were to go forward with, so I support that and let’s continue the day.

Mrs. Joyce Savoline: Having come from municipal politics, where “public” really means public and we’re very close to the people, I understand where the member is coming from. In principle, I support everything the member is saying. I feel that from here on in, when we

meet in subcommittee and decide on when the dates are, we should also discuss which room the hearings will be held in so that we have an understanding of whether or not we have the availability of the televised committee. I would just like the record to show that on principle I totally agree with Ms. DiNovo that we here at Queen’s Park have to be as transparent and as accountable as we expect the people that we’re speaking with today to be. Those are my comments.

The Chair (Mrs. Linda Jeffrey): Just for clarification, the issue of the location isn’t a subcommittee issue that is up for debate and that we negotiate. The committee rooms are set, so that would be something at a higher level. Just for interest’s sake, for the future, they are set before we begin the committee hearings, so it is something that you can raise at another level, but it isn’t something that’s on a list, as I, as Chair, would raise for your clarification.

Mrs. Joyce Savoline: Then I will raise it at a higher level, because I think it’s extremely important.

The Chair (Mrs. Linda Jeffrey): Thank you. Ms. DiNovo.

Ms. Cheri DiNovo: I would argue that it is part of the subcommittee discussion because you’ve said “holding public hearings.” We understand public hearings at Queen’s Park to be exactly that: public, to be televised and Hansarded. Other committees that I’ve sat on have been televised, so this should certainly be no exception. As I said, I was operating under the understanding that it would be televised and that it would be truly public. Certainly we have options here, and the same could be said for question period or any of the activities of this place: that they be transparent and accountable.

I thank Mrs. Savoline for her support on this. Certainly I want to have this recorded: that this government, if they do vote me down on this, is voting for a series of committee appearances and hearings that are not truly public.

Mr. Jim Brownell: Madam Chair, I’d like to ask: Is there a complete Hansard recording of every comment made in this room today?

The Chair (Mrs. Linda Jeffrey): Yes, there is.

Mr. Jim Brownell: I think that’s quite public, and I see no reason why we shouldn’t just move on. I think we’ve debated this enough. This is a public forum. The doors are open to people to come in, make presentations, and people come in and sit in the gallery if they want, and it is recorded, so they can hear it.

Ms. Lisa MacLeod: Not to belabour the point, but Ms. DiNovo does make a point. We may not agree on every aspect of this piece of legislation, but she does make a point for openness and transparency. I think she does make a point that some of the underprivileged people who may access this type of service may not be able to access a computer and may not have the literacy skills to review the Hansard.

I might suggest a compromise that we perhaps do consider moving our Wednesday committee to Monday, if it’s possible, and perhaps Hansard can provide us with an

audio clip that Ms. DiNovo could put on her website or provide to her supporters. Let's try to work together and just move on, because I think many of us would like to hear Minister McMeekin and the deputants at some point today.

Interjection.

The Chair (Mrs. Linda Jeffrey): I'm being told that Wednesday is already being taken up by estimates in that committee room. That doesn't mean—

Interjection.

The Chair (Mrs. Linda Jeffrey): You said "Wednesday."

Interjection.

Ms. Lisa MacLeod: Can we move that to Monday, as you suggested? Did I hear that correctly?

The Chair (Mrs. Linda Jeffrey): It's clause-by-clause at that point because we didn't get enough requests to be at the hearing. That's a friendly amendment, I know, but the mover has moved the amendment that we are discussing now, which is that we move right now to another location that's televised. That's the motion on the floor.

Mr. Bill Mauro: Madam Chair, was this issue raised previously at subcommittee or, as Chair, is this the first time you've heard about this request?

The Chair (Mrs. Linda Jeffrey): It's the first time I've heard of this request.

Mr. Bill Mauro: Thank you very much.

Ms. Cheri DiNovo: It would be the first time that she's heard of it, because I assumed that public hearings would be public hearings and would be televised. So when I came here, much to my concern I discovered that they're not truly public and they're not being televised. That's why I'm raising it. If it didn't say "public hearings," you wouldn't be hearing from me.

Mrs. Carol Mitchell: Just for the record, I want to give the opportunity for the clerk to speak to it. The process has not changed at all. This is how the committees go forward.

The Clerk of the Committee (Mr. Trevor Day): Each committee is assigned a room, a set of rooms. Ours is this room for most hearings. Unless we look into it otherwise and check with another committee to say, "We want your room," or "Are you in that room?" this is the room we will usually be in.

Mrs. Carol Mitchell: So a point of clarification is that in fact it has been dealt with the same as every other bill coming forward for public hearings.

The Clerk of the Committee (Mr. Trevor Day): Yes.

The Chair (Mrs. Linda Jeffrey): Any further debate on the motion?

Ms. Cheri DiNovo: With all due respect, I've sat in on a number of bills, a number of committees, that have been televised and I assumed, this being public, that this would be one of them, and again, for very specific reasons: that a large number of people who are affected by this bill are those who will not be able to access Hansard by computer, who can watch on television a lot

more easily than they can read, particularly in a language that might be foreign to them. So again, to make it truly public, truly transparent, truly accountable, I just ask that my objection be noted, and I would like a recorded vote on that.

The Chair (Mrs. Linda Jeffrey): Okay, committee, I don't see that there's any further debate. There are five rooms. Just for clarification, only one of them is televised. I think we'd all like it if they were all televised, but one out of five is what we have right now. The motion is on the floor, and a recorded vote has been requested.

Ayes

DiNovo, MacLeod, Savoline.

Nays

Brownell, Kular, Mauro, Mitchell, Sousa.

The Chair (Mrs. Linda Jeffrey): That's lost.

The next motion we have on the floor is the report of the subcommittee as amended by Mrs. Savoline. All those in favour of the amended subcommittee report? That's carried.

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PAYDAY LOANS ACT, 2008 LOI DE 2008 CONCERNANT LES PRÊTS SUR SALAIRE

Consideration of Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts / Projet de loi 48, Loi visant à réglementer les prêts sur salaire et à apporter des modifications corrélatives à d'autres lois.

STATEMENT BY THE MINISTER AND RESPONSES

The Chair (Mrs. Linda Jeffrey): The next item on our agenda is the Honourable Ted McMeekin, Minister of Government and Consumer Services. Welcome.

Committee, I'd remind you that the minister has 15 minutes to speak and then we're going to give each party five minutes to respond to the minister's comments on this legislation, beginning with the official opposition. Minister, you have 15 minutes.

Hon. Ted McMeekin: Thank you very much, Madam Chair. Let me assure you that it is very good to be here, given some of the other options.

I have with me today a number of people if the questions get too technical, if there are any questions. John Mitsopoulos is here—he's our director of policy—and Christina Christophe from our legal department is here. So I may ask them to join us if there is something beyond my scope in terms of questions.

I am very pleased to be here before the committee today. Before going any further, I just want to take a minute to express my personal thanks to a couple of people: Cheri DiNovo, to begin with, whose passion and concern for those who have occasion to use payday loans is well known—Cheri, thank you for your good work; my colleague Deb Matthews, who in the previous term of government did a resolution with respect to payday lending, which didn't go too far; and my parliamentary assistant, Charles Sousa, who in my recent absence has been so great in picking up this file.

The merits of our proposed Payday Loans Act, 2008, have been discussed twice in the Legislature, with broad support for its passage coming from all sides. I want to take just a few minutes now to underscore the crucial details that will make this progressive consumer protection legislation the success we all need and want it to be.

This proposed legislation will protect those Ontarians who from time to time rely on payday loans to help them through a short-term financial squeeze. The proposed act is an important part of the government's plan to protect our more vulnerable consumers as we begin to address the many sources of sustained poverty in Ontario.

We've all agreed on the need to create a stable, fair regulatory framework for the payday lending industry. This means a licensing regime that allows respectable payday lenders and loan brokers to operate responsibly while providing protections to consumers who rely on these services. How exactly are we going to accomplish the goals set forth in this proposed legislation?

Here's how: First, there's the licensing. The proposed act creates a licensing regime for payday lenders and loan brokers. Only those who conduct business in accordance with the law, and with integrity and honesty, will be permitted to operate within the province of Ontario. The proposed act allows for a separate fee to be charged in respect of a licensee's locations or branch offices. The consumer protection branch of the Ministry of Government and Consumer Services will administer the legislative framework, the licensing regime and the administrative penalty provisions of the act.

A registrar would be appointed to administer this proposed legislation. The registrar would have the authority to conduct inspections and to revoke or suspend licences. The overall licensing regime is intended, as with other Ontario licensing statutes, to be self-financing through licence fees.

There are also prohibited practices. The proposed Payday Loans Act, 2008, is designed to encourage payday lenders to make loans that are within the borrower's ability to repay. To that end, the proposed legislation prohibits certain practices, including those practices known as rollovers.

Proposed prohibited practices include back-to-back loans, more commonly known as rollover loans. The borrower pays off a first loan but immediately has to borrow again to meet financial needs until the next payday. In effect, the borrower is taking a second loan to

repay the first. The proposed legislation makes it an offence for a company to enter into a second payday loan agreement with a borrower until seven days after the full balance of the first payday loan is paid.

The same prohibition applies to concurrent loans. This is the practice of lending to a borrower who is indebted to the payday lender under an existing payday loan. Again, this proposed legislation would legally require companies to wait seven days after the borrower has paid the full balance under the first payday loan agreement.

Default charges, or charges imposed when a borrower is unable to repay the loan on the due date, will be controlled. Payday lenders would be limited to certain reasonable charges related to delinquent loans.

Discounting loan principals would also be prohibited. This practice sees payday lenders hiding fees instead of including them in the cost of borrowing. An example could be a customer who borrows \$300 but only receives \$280 from the lender because \$20 goes towards a "document" or "administration" fee. The proposed legislation will prevent this. It will be an offence for the payday lender to request or receive any payments of the cost of borrowing from the borrower prior to the expiry of the loan term. So if the loan is \$300, the borrower receives \$300, and this is how it should be in the world of payday loans.

Consumer protection and enforcement come next. As a general principle, the proposed Payday Loans Act, 2008, has been designed to encourage lender compliance. The act would make it difficult for the payday lender to profit when engaging in certain conduct, such as the prohibited practices. When a payday lender engages in most prohibited practices, the borrower does not have to pay the cost of borrowing associated with the related payday loan agreement. The borrower is only required to repay the advance under the agreement. In such situations, the borrower may demand a refund within a one-year period.

There is also a critical cooling-off period. The proposed Payday Loans Act, 2008, provides the borrower with two business days to cancel the payday loan agreement without penalty. The borrower doesn't need a reason to cancel the agreement. The cancellation operates to cancel the payday loan agreement as if it never existed. As a result, the borrower has to repay to the lender any advance received and the lender has to refund any payments the borrower made, including the cost of borrowing. The lender must also return all post-dated cheques and destroy all pre-authorized debits.

On the enforcement front, the proposed Payday Loans Act, 2008, provides a broad range of enforcement tools, depending on the nature and severity of the circumstances. Payday lenders and loan brokers who violate the law or fail to meet the proposed act's requirements could face certain sanctions like administrative monetary penalties, suspension or revocation of licences, or prosecution for contravention of the act.

1430

Then we have the important payday lending education fund. The fund will promote awareness and education,

which are keys to helping Ontario consumers better protect themselves. By order of the proposed Payday Loans Act, 2008, the minister will have the authority to establish the amount of payment that licensed payday lenders and loan brokers will make to the Ontario payday lending education fund. This fund will promote the education of consumers in regard to financial planning. It would also promote awareness of consumer rights and obligations under the proposed legislation.

The proposed legislation also empowers the minister to designate a not-for-profit corporation to administer the fund in accordance with the act and the regulations. That corporation would be obliged to give the minister information or reports on the administration of this fund. Payments to this fund will remain with the fund and will not be diverted to the consolidated revenue fund.

On the issue of the maximum total cost of borrowing, federal Bill C-26 provides the provinces with the opportunity to regulate the total cost of borrowing for payday loan agreements. As members of the committee probably know, several provinces have moved or are moving in that direction. Specifically, where the amount of money advanced under a payday loan agreement is \$1,500 or less and the length of the agreement is 62 days or less, the province receives designation under Bill C-26. Under the proposed legislation, “cost of borrowing” means the total of all amounts that a borrower is required to pay as a condition of entering into a payday loan agreement. It also means all amounts prescribed in the cost of borrowing, but not including default charges and the repayment of the advance. This means that if a consumer wishes to borrow \$300, any and all amounts that they are required to pay to the lender to receive the \$300 are considered the cost of borrowing. It doesn’t matter if the charges are called “interest,” “brokerage fees,” “administrative charges,” or anything else by any other name; they are all part of the cost of borrowing.

Interjection: Full stop.

Hon. Ted McMeekin: Full stop.

Ontario will establish an independent expert advisory board to recommend to the minister what an appropriate upper limit would be to the total cost of borrowing for payday loan agreements. The board would have three members selected by the Public Appointments Secretariat: one from the consumer and poverty advocacy sector, one from the financial sector and one from the academic community. The members will be acknowledged experts in their field and will provide a written report to me, as minister, recommending an upper limit to the total cost of borrowing, one that is fair for borrowers while ensuring the viability of a licensed payday lending industry in Ontario. Under the proposed legislation, the limit to the total cost of borrowing for payday loan agreements is to be set by Lieutenant Governor in Council regulation.

The advisory board will likely consult with industry, social, poverty, consumer and financial groups and with other experts as required. These consultations would contribute to a recommendation on the upper limit to the

total cost of borrowing for payday loan agreements in Ontario.

I very much appreciate, Madam Chair, the opportunity to be here today as you begin to assess the individual merits and details behind this proposed legislation. I’m sure your committee will do a good job, and in the fullness of time there probably will be some amendments that will be considered. We certainly hope that is the case. Thank you so much.

The Chair (Mrs. Linda Jeffrey): Thank you, Minister.

For the opposition, Ms. MacLeod has five minutes.

Ms. Lisa MacLeod: Thank you very much, Minister McMeekin. It’s wonderful to see you back. Many of us here were thinking of you during your time away, so it’s great to see you back.

Hon. Ted McMeekin: Thank you.

Ms. Lisa MacLeod: I’m largely supportive of this bill, as is the official opposition. We just have a few questions that we’d like to see answered and some improvements to the legislation. At the outset, though, I would like to thank your staff for providing me with a briefing on the legislation just after it was tabled, and I see one of them is here.

Hon. Ted McMeekin: Was that helpful?

Ms. Lisa MacLeod: Yes, of course it is. They were a great help. So I just wanted to say that.

My fundamental concern here is that it is couched as a social policy bill or anti-poverty bill, when I personally feel, as well as my colleagues in the official opposition, that it should be more of a fiscal bill or an economic package. Quite honestly, I think it’s disingenuous to suggest that only low-income earners are using this when, I think even in your own dissertation, you suggested that folks are using this when they overspend.

I had an opportunity, through my research—and I know we have Mr. Marzolini up next, or I guess he’s up in a bit. I’ve not met him yet. I’m not even sure if he’s here. But going through his key findings for a report that he did for the Canadian Payday Loan Association: It suggested that the majority of payday lenders are employed full-time—over 68%. About one half, 51%, of the respondent payday loan customers have a post-secondary education; 36% are from a community college; 12% are from university; post-graduate professional programs, 3%; about one half, 45%, are married; and, on average, two thirds, 62%, of respondent payday loan customers normally borrow less than \$300.

With respect to that, Minister, I then would ask why this is couched as a poverty piece of legislation when I think it would be more relevant to not pigeonhole any demographic. I think we do a lot of disrespect to the Ontario public at large when we say that only a fragment, or a segment, of the Ontario public is using this service. I was also able to go through a lot of research through the Library of Parliament which also suggested that this created a niche in the marketplace because big banks, and in some cases credit unions, were not providing loans of this nature: short-term small loans. So I would welcome

your comment on why you believe that this should be part of the anti-poverty agenda. Philosophically, you and I probably disagree with the handling of the economy, but in terms of this legislation I'd be interested with respect to the Pollara findings, as well the Library of Parliament's recommendations.

Hon. Ted McMeekin: That's a good question, actually, and hopefully I'll have a good answer. Let me just say at the outset that we're very appreciative of the research that we received, the Pollara research, and some of the things that it indicated. I would agree with you that it would indeed be disingenuous to suggest that the only people who use this service are poor folk. We know that's not the case, but there is a significant number. I think even the Pollara research indicated that about 24% or 25% would fall clearly into the vulnerable category.

I guess, in the context of how it gets couched, governments try to find ways to present things that resonate with their overall scope and intent. Our government is committed to moving forward with a comprehensive poverty reduction strategy. This is but one component of that. There are many tentacles to responding to any poverty issue. In fact, I keep saying to anybody who has a real interest that poverty isn't just a provincial issue, a federal issue, a municipal issue, a church issue, a personal issue, a business issue or an educational issue; it's an issue that ought to concern us all. What's the old line? "No one's guilty, but we're all responsible." We have to have a comprehensive strategy. This being one part of that strategy responds in some small part to some of the concerns of vulnerable people. That's why that reference was made at least in passing, but we don't pretend that only poor, disadvantaged, vulnerable people are the only ones who use payday loans. I would agree with you that that would be quite disingenuous.

Ms. Lisa MacLeod: Thank you, Mr.—

The Chair (Mrs. Linda Jeffrey): You're out of time.

Ms. Lisa MacLeod: Oh, it's out of time. Wow.

The Chair (Mrs. Linda Jeffrey): Yes. I'm sorry. Ms. DiNovo.

1440

Ms. Cheri DiNovo: Thank you, honourable member. It's wonderful to see you here with us again, Ted—back.

Hon. Ted McMeekin: Thank you.

Ms. Cheri DiNovo: Welcome back.

Hon. Ted McMeekin: Good to be back. Thanks for your prayers.

Ms. Cheri DiNovo: Yes, absolutely. I continue to include you in them, and not in the part where I pray for my enemies.

Hon. Ted McMeekin: You and I will never be enemies.

Ms. Cheri DiNovo: You know very well where we stand in the New Democratic Party on this. I don't believe for a moment that it's only the poor who are being targeted by the—I would say "legalized loan sharks," but they're not legalized. They actually exist in that grey area with no regulation—by the desperate, because anybody who knows and is educated would

prefer not to pay 4% to 1,000% interest, according to not our own researchers but the researchers at the Toronto Star and elsewhere. They simply wouldn't. You can get money out from a credit card for far, far less than that.

I guess what I'm concerned about, of course, are the details. This is a first kick at the can. I recognize this bill as such. We, in the NDP, would support it, but we think it needs to go a great deal farther. The devil, or the angel, is in the details here. The devil or the angel is in a hard cap and the absolute interest rate charged by payday lenders.

When the federal government downloaded this responsibility they had a working definition of usury, so I'd be interested in what yours is. The federal government set theirs at 60%. So here we have an industry that is charging usurious rates by any definition of that under the Criminal Code or previously under the Criminal Code.

We would like to see—and we would demand to see, if we were to support it in its entirety after going to committee and having amendments made—a hard cap, such as they have in the States in a number of jurisdictions and, in Canada, in two at least, counting Quebec and Manitoba. The latest to come down the pike in terms of a hard cap is Ohio with 28%, and apparently payday lenders can still make money in Ohio at 28%. One would be pretty surprised if they couldn't. Anybody here who is of means would trade or should trade in their credit card if that's what they're paying on it, because you can get credit cards now that charge you a great deal less than that; not so with payday lenders.

I draw your attention to the way they market in my riding and in other ridings I've seen in the city. They market to Toronto Housing, they market to low-income communities. They set up payday lenders in low-income communities. They don't set up in Rosedale and Forest Hill. We have 24 and counting in Parkdale–High Park.

At the end of this entire process—I've already said that I hoped that this would be more transparent and televised because it's an important topic—I would hope that we come up with a hard cap that we in the New Democratic Party, and not only we in the New Democratic Party, but those anti-poverty activists across Ontario, could support. I duly note the incredible efforts of ACORN—the Association of Community Organizations for Reform Now—which I know is going to be deputed this morning. There has been a great deal of very good and very hard work done.

Some questions perhaps you could answer: What do you think is a usurious rate of interest, and are you amenable to a hard cap? I'll leave it at that.

Hon. Ted McMeekin: Those are all good points. You usually raise good points. We might not always agree, but I think your points are always well taken.

We're looking forward to setting a total-cost-of-borrowing limit. There may even be several total-cost-of-borrowing limits. The legislation provides that certain classes of individuals might be treated somewhat differently—for example, those on ODSP or welfare; those

cashing government cheques. That would be something we'd look forward to hearing.

As for the usury rate, I'm a bit of a Biblical scholar so I'd better not be quoting that rate or we'd all be in trouble. We look forward to the panel coming in and helping define that.

By the way, I hope that members around this committee and elsewhere who are reading Hansard or maybe watching a tape of this on somebody's website or whatever will choose to participate in the hearings on that.

One final point I'd like to make to you, Ms. DiNovo, is that my own personal preference and I think our government's preference would've been to see the federal government handle this itself and have an umbrella agreement right across the country that defined some of the important issues that you've identified and so that we didn't have to worry about a patchwork quilt of rates and rights and privileges and obligations. But they chose not to do that, so to the best of our ability we've been trying to work with the other provincial governments to create as close to sustainable, good umbrella legislation as possible. Time will tell whether we can achieve that or not.

The Chair (Mrs. Linda Jeffrey): Thank you, Minister.

The government side has five minutes. Any questions or comments to the minister? Seeing none, thank you very much, Minister. We appreciate your being here today.

Hon. Ted McMeekin: Thank you, Madam Chair and members of the committee.

WHITELAW PUBLIC POLICY RESEARCH
AND CONSULTING INC.

The Chair (Mrs. Linda Jeffrey): Committee, we have our first delegate on the phone: Mr. Bob Whitelaw. He's going to be joining us by teleconference.

Welcome, Mr. Whitelaw. We have your presentation in front of us. You have 15 minutes. If you don't use all your time, we will be giving time to the three parties to ask you questions about your deputation. You have the floor.

Mr. Bob Whitelaw: Thank you. Good afternoon, Chair and committee members. I'm pleased to be invited by the committee to provide information which I believe will prove helpful as Bill 48 is examined. I appear today, via teleconference, as I have both observed and had direct involvement with the payday business, not only in Ontario but throughout Canada, along with detailed research and fact-finding work internationally. During the past two years I have worked as a consultant dealing with credit unions seeking to provide their members with a small short-term loan product.

I plan to use the next few minutes to offer comments related to Bill 48 dealing with background and overview of the payday loan business; highlight recent international developments; answer the questions of why the use of payday loans is increasing and why banks and

credit unions do not offer a small short-term loan at this time; and then conclude with what I consider lurking issues within Bill 48.

On the matter of background and overview, during the past 10 years the cheque-cashing and payday loan stores have emerged as the only unregulated financial service business in Canada. The payday loan business has operated with questions about compliance with the 60% annual interest rate usury section of the Criminal Code requiring the interest to be based on a combination of interest and all fees. Moreover, Canada is the only country, based on my research, that attaches an interest rate control to a Criminal Code: section 347 of the Criminal Code, "Criminal interest rate." Uncertainty about the current payday business model and operations results from interest calculations that exceed the Criminal Code.

Today, 750 payday stores operate throughout Ontario and offer small short-term loans as an advance before an individual receives a paycheque, pension cheque, employment insurance payment or social assistance payment based on direct deposit. The payday industry is growing, and one major company recently announced a strategic change to open a store in every community with a population of 7,500 rather than the current base of 40,000 or more. Large US firms that I've been tracking are moving into Canada; one US firm has opened 10 stores during the past few months and plans another 15 within the next few weeks.

1450

So what we have here is that the key to a payday business model is that the consumer, whether a newcomer, immigrant, marginalized—Canadians as a whole—must have a chequing account with a credit union or bank, and confirm direct deposit of their regular source of income. Credit unions and banks now recognize that two million Canadians use payday loans, and the annual loan volume is \$2 billion. Also, the opening of payday stores is now happening within sight of banks and credit unions, and that very much has been part of the current product-planning discussions that I've been involved in with these financial institutions. As they look out their front door or down the street, there is now the appearance of a payday store. Again, these payday stores are serving all sections of society throughout Ontario, and as I mentioned, the newcomers, the immigrants, the marginalized are included in the users of payday loans along with the Canadians who are finding it more difficult to live week to week on their paycheque or month to month on their pension cheque.

The next point in the paper that I think is important is understanding the question of why Canadians use payday loans. I was a public servant for 25 years. I have a lot of contacts, and consistently that question is asked. I believe it's important to understand why bank and credit union customers are going to payday stores as you examine Bill 48. Provincial and federal civil servants, and indeed elected representatives, both federal and provincial—and senators—have all taken me aside and asked the same question: Why do Canadians use payday loans rather

than traditional credit products such as lines of credit, overdraft protection and access to cash advances on credit cards?

Simply put, there is no financial institution today that will provide small, convenient short-term loans, that type of product that responds to the increasing consumer acceptance and use of payday loans, except for the payday business.

The fact-finding that I've undertaken during the last two years, the research with credit unions in Ontario, Manitoba and Saskatchewan, indicates—and I think this is of interest to you and the committee—that between 10% and 15% of credit unions members are using payday loans in the absence of access to small short-term loans at their credit union. I expect that the results will be similar at banks, based upon comments that I have been given and obtained.

Trying to stay right on focus in your review of Bill 48 and the clause-by-clause, the question is, what are, in my opinion, the four principal reasons?

Ongoing research by firms such as Environics clearly indicates that an increasing number of Canadians are living paycheque to paycheque. Since preparing this report on the weekend for your review today, Environics has confirmed that more than a third of Canadians are living paycheque to paycheque or indicate that they are in some financial jeopardy if their pay is held back two or three days—33%.

Today, computer-based systems are used by credit unions and banks to determine creditworthiness and risk factors. These include assets, liabilities and related information combined with the use of credit reporting scores such as a Beacon score or what is called a BNI, a Bankruptcy Navigator Index. A Bankruptcy Navigator Index is a prediction of your possibility of going into bankruptcy within the next two years as a percentage. A low Beacon score and a high Bankruptcy Navigator Index result in denial of credit products. In the past, loans officers and branch managers would grant credit on personal knowledge of a client. But again, if we look at society and how it's changed, with our newcomers, with the immigrants, with the marginalized, it's more and more difficult to have the personal relationship, and that computer-based credit-granting system looks at those assets, liabilities and a credit score.

Prior to the current and more stringent risk tolerance tests along with required documentation to assess credit, bank and credit union staff used a practice known as unauthorized overdrafts. This happened in the last decade but has been replaced by payday stores. This process involved a telephone call from a customer requesting coverage of a couple of cheques for a few days until the next payday or the arrival of the monthly pension cheque. These requests were often granted because the client was known. Today the unauthorized overdrafts and the ability to write a cheque knowing that clearing will take two to three days has ended—with no exceptions.

The fourth factor, and just as important, in supporting why we have payday stores today, why we have need for

short-term money for a few days, is that Canadian personal savings rates as a percentage of disposable income are negative. I've tracked each and every province, including Ontario, and watched the downward trend for the last two decades. Savings rates have declined annually since 1981, while the debt-to-income ratio has increased to a level we now call debt overhang. Without rainy-day savings for unexpected expenses, combined with the absence of small, short-term loans from banks and credit unions, the only viable option is to turn to a payday lender, which has resulted in your review today of Bill 48.

I also think it's important, from a provincial point of view and for your committee work, to be knowledgeable of the international payday loan trends and decisions. An important part of my research has been involved in fact-finding with jurisdictions outside of Canada. Time today does not allow a full discussion, apart from the following point: The US federal government and a number of states are moving toward a 36% annual rate or less, with Ohio taking a new lead last week and setting, as a state, a 28% annual percentage rate as the maximum.

By the way, the federal US government has imposed a 36% annual rate for all military personnel and their families at bases and payday stores. So that is consistent as a national policy throughout the United States. US credit unions now offer their members payday-type loans of a few hundred dollars at annual rates of 12% to 18%, while reporting profitability and minimal losses.

New South Wales uses 48% APR, and earlier this month I returned from the United Kingdom, where the government is examining a series of regulated rates where the current payday loans are based upon £25 per £100 of borrowed money, and also reviewing what is called "doorstep lending," where your loan of £50 or £500 is delivered in person to your front door.

In summary, it is important, because of your invitation that I appear before the committee, to deal with Bill 48 and what I perceive as the emerging and lurking issues. Twenty-five years of my career were spent in government, dealing with public policy risk-management regulatory issues. In reviewing Bill 48, the current approach by Ontario to Bill 48 and the independent legislation and regulation by individual provinces will result in considerable fragmentation and lack of harmonization.

For example, Quebec already permits payday operations, provided a licence is obtained and interest rates do not exceed 35% on an annual basis. Newfoundland and Labrador plan to use section 347 of the Criminal Code, with a maximum annual interest rate of 60%. Alberta is still involved with consultations on a future decision about whether to accept the status quo, introduce a fee structure, or introduce legislation. The Manitoba Public Utilities Board recently determined a graduated rate series that followed extensive consultations and research. The Manitoba decision is now being challenged by the payday industry.

Point 2, also very important, is that Bill 48 is silent on how to acknowledge and respond, through legislation and

compliance, to the growth in Internet payday firms. My research, and I've shared this with the Senate, shows that there are 1,200 or more existing online payday firms. A Web-based application form is all that's required. Considerable personal and bank account information is filled out online and then the payday loan is transferred into your account, and a few days later the funds are withdrawn to repay the loan. These payday Internet firms do not exist only in Canada, but throughout the United States and internationally. There are issues on personal identification, privacy etc. When I mention these Internet groups to the credit unions and banks, they are less than thrilled to know that their customers and clients are providing a tremendous amount of personal information online.

1500

Point 3: The educational proposal within the Ontario legislation needs to recognize the root cause. This involves credit scores and lack of personal savings plans for unforeseen expenses, particularly when access to traditional credit products is denied. Key to financial literacy today is a full understanding of the importance of some form of savings and personal credit score. This also brings in the education to our newcomers, to our immigrants, to marginalized people who are turning to payday stores because they don't have that financial literacy component of knowing the importance of savings and knowing the importance of achieving and maintaining a solid credit score.

One of the things that I've looked at with credit unions and that has been reported publicly is some opportunity of building an incentive savings plan to break the payday-to-payday cycle and to improve programs to deal with credit scores. My estimate is that the final costs to the provinces to deal with the requirements of the federal downloading of Bill 26 will total \$12 million to \$15 million throughout Canada, and that's a very low estimate, a beginning estimate, for licensing, oversight, regulations and compliance to deal with the 1,400 payday store locations, while missing the regulatory and licensing control factors of the Internet payday industry.

The committee members, in reflection, may find merit in examining an alternative approach that I believe is still viable, and that is by using the model of the income tax rebate amendments to section 347 of the Criminal Code in 1983. The Tax Rebate Discounting Act sets a national graduated fee structure and is administered nationally, in this case by the Canada Revenue Agency. This could provide an important option for the current policy discussions by returning the authority for fees and regulations to the federal government while assigning licence responsibility and related consumer affairs matters to the provinces.

Madam Chair and committee members, I sincerely appreciate the time to make this presentation to you today. I welcome your questions.

The Chair (Mrs. Linda Jeffrey): Thank you, Mr. Whitelaw. That was a very detailed and thoughtful presentation. Unfortunately, you used all of your time. I

understand that if committee members have questions, they can go through the clerk's department to ask those questions of you. We appreciate you being with us this afternoon. Thank you.

Mr. Robert Whitelaw: Thank you.

POLLARA

The Chair (Mrs. Linda Jeffrey): Committee, our next deputant is Pollara, Mr. Marzolini.

Welcome. As you get yourself comfortable, if, just before you speak, you would state your name and the organization you speak for for Hansard. Then, once you begin, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask questions.

Mr. Michael Marzolini: Thank you very much, Madam Chair and committee members, for the invitation today. My name is Michael Marzolini. I'm chairman of Pollara, a strategic public opinion and market research company. We've been in business for 23 years. Our largest office is in this province; also offices right across Canada, and some in the United States. I myself have been in this profession for 36 years. I'm actually a lot older than I look, although some days I would argue that.

What I am here today to do is to lay out some hard data on the subject of the attitudes, perceptions and demographics of payday loan users. We have undertaken a study on behalf of the CPLA to come up with scientific, clinical and objective measurements of the reasons why people use payday loans, who the users are who actually take advantage of the service and what their attitudes are overall toward them. I will present that to you, hopefully in only about five minutes. That will leave you a lot of time for questions.

We're not here to spin the results in any way. Public opinion is civilization's most powerful currency. It is the one thing that cannot be taxed, taken away from you or confiscated. What we want to do is lay out what the people told us and how we took that data. I'll be very pleased to go through the results during questions.

Much more briefly, I'm going to go through the executive summary, assuming I can learn how to use PowerPoint on this computer very quickly. You have the report in front of you. What we did was to interview 503 payday loan customers back in August. That gives us results accurate to plus or minus 4.4%, 19 times out of 20. In order to find those people, we went to the CPLA members and selected from their databases 13,233 records, not chosen by any—this is certainly not the graph. We have a hardware malfunction here. Perhaps I should just leave it with the report that is in front of people.

So the 13,233 records were not chosen by the types of loan, the size of loan or any of those types of demographics. They were simply selected randomly from the people who have taken on a contract with a payday loan association.

What we find—and again, I'm not here to spin the results—what is very clear from the evidence is that the payday loan customer in Ontario is generally not the

downtrodden who has fallen through the cracks in society. Looking at page 2, the profile of the respondent payday loan customer in Ontario, the average age is 39 years. A majority—that's almost seven in 10—are employed full-time. Over half have a post-secondary education from a community college, which is about a third; a university, which is 12%; or a post-grad professional program, which is 3% of the entire population. One half are married; 18% are separated or divorced; and 33% have never been married, which would tie in with the younger age demographic.

On average, two thirds of the respondent payday loan customers—that is, 62%—normally borrow less than \$300 when they get a payday loan. The respondent payday loan customers expect to pay, on average, about \$23 for interest and administration fees to borrow \$100 for two weeks. That is not what they wish to be paying; that's what they expect to be paying. We did see in some of the findings in the survey a great deal of understanding of the terms of the loans. In fact, they share the interest rates that they are aware of about as highly as they do with credit cards and their own home mortgages. Speaking of home mortgages, the average amount of money that respondent payday loan customers in Ontario currently owe the financial institutions, excluding mortgages, is \$23,579.

Household incomes, and I'm sure there'll be some questions on that: The respondent payday loan customers have household incomes equal to the general Ontario population. That is in StatsCan: 43% of Ontarians report household incomes of less than \$50,000 a year, and that's all Ontarians. That compares to 42% of the respondent payday loan customers.

1510

There is a great deal of knowledge, on the part of payday loan customers of the financial instruments they have had or that they have: 96% of these people have a debit card, 93% have a chequing account at a bank or a credit union, three in five have a savings account, and 52%—a little bit more than half—have a major credit card. One in five—19% of the entire respondent payday market—currently has a home mortgage.

Respondent payday loan customers provide payday loan companies with a very similar average impression rating as credit card companies. They don't see too much difference in terms of the impression they have of credit card companies and payday loan companies, although payday loan companies are slightly higher. Banks are higher, although in the last 25 years I've worked for three banks on their impression ratings, and we know that the bank image, which is 6.8 on a scale of one to 10, is very high because people have to trust banks; that's where they keep their money.

There's no significant awareness of difference in the approximate amount of money that respondent payday loan customers pay for all fees for their loans with various financial institutions. If we take people who are aware of the amount they pay for all fees, including administration fees and interest charges for their payday loans, that's 61%, compared to their various bank ac-

counts, which is 65%; credit cards, 72%; and their home mortgage, 72%. Home mortgages, of course, would be a little bit higher, because that's a lot larger amount of money, whereas the average payday loan is \$300.

I think I may have hit the five-minute mark, or maybe even six or seven, so I'm going to open this up to questions. I think the point the survey makes, and the report that is in front of you, is that payday loan customers are average Ontarians. They are familiar with financial instruments such as payday loans, they are well educated and they have a 1% higher household income than people who are not payday loan customers. That is counter-intuitive, but it's certainly what we found from the survey.

I welcome all questions on the methodology and on the more detailed findings. Again, my apologies for the breakdown of machinery.

The Chair (Mrs. Linda Jeffrey): You did very well, and you didn't get flustered.

That was very interesting. Each party has two minutes to ask you questions, beginning with Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Mr. Marzolini. I appreciated the data you provided to us. I think it actually speaks to where I see this legislation lacking, which, as I mentioned to Minister McMeekin, is that it's looked at as a social policy bill rather than a fiscal policy bill. I think that when you look at the discussion note by Bob Whitelaw, he also mentions something I talked about during second reading, which is fiscal literacy.

You're talking to me and to my colleagues today about it being the average Ontarian who is using this service with the reputable payday lending firms. I think we have another issue that this bill does address, which is Internet. We're not addressing Internet payday loans, but this is an issue, as well as some of those loan sharks who are out there.

We've become a credit card society. People, whether of low-income needs or significant needs, are actually using this for their emergency funding, their vacation funding or their "hold me over so I can buy that good or service" funding. I think that when we pigeonhole one group and don't look at the systemic issues we're confronting here in Ontario, which is the credit card economy, we're doing a disservice.

I guess I would ask you: Would that be relevant? What would your suggestions be, in terms of this legislation, in how to educate these folks so they're actually spending their money better and we're not in a circle of debt as Ontarians? Certainly that's what I've taken from your findings and from some of the in-depth research I've seen.

Mr. Michael Marzolini: I think you're asking me to go beyond my jurisdiction in this. I'm presenting the data, and I don't really wish to get into whether this should be social or financial.

What we do know, however, is that when we have done focus groups of payday loan users, they tend to get very annoyed—again, this data is very anecdotal, because we're talking about focus groups, which do not have a statistically valid margin of error—and they do tend to

react very negatively to the stereotypes given to them that they are people who don't know what they're getting into and don't understand the situation.

In the case of our Manitoba focus groups, which you can find in the transcript on the CPLA website, I remember one gentleman who was louder than everybody else in terms of that. He said, "I've used venture capitalists and I've had every different type of bank loan and small business loan, and I don't like being pigeonholed in a society of which I'm not really a member." So there is that aspect to it, in terms of how the people themselves see the issue.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: The first question I have is: Who commissioned and paid for this study?

Mr. Marzolini: It was commissioned by the CPLA.

Ms. Cheri DiNovo: And the CPLA is?

Mr. Marzolini: The Canadian Payday Loan Association.

Ms. Cheri DiNovo: Thank you very much. That tells us a great deal about the contents of the study too.

The second question I have is about your sample size. How many people were sampled?

Mr. Marzolini: We interviewed 503 from the 13,337 that we sampled.

Ms. Cheri DiNovo: So only 503 across Canada?

Mr. Marzolini: No, across Ontario. We spoke to a couple of thousand across Canada—

Ms. Cheri DiNovo: Only a couple of thousand.

Mr. Marzolini:—but in Ontario, 503, which is accurate to plus or minus 4.4%, 19 times out of 20.

Ms. Cheri DiNovo: How did you gain answers to the survey? How was this actually administered and by whom?

Mr. Marzolini: It was done by telephone. We believe that telephone coverage is better than the Internet for the purpose here, because 99.2% of people in the province have access to a telephone. The questions that were asked are all in the report. We tended to word these questions very objectively, scientifically and clinically. We were not looking to lead the respondents in any direction. We're not here, as I mentioned, to spin for our client or make public opinion look different than it actually is.

Ms. Cheri DiNovo: My final question—I'm just choosing one at random here: You asked for the reasons for choosing payday loans and discovered that 51% said it was a quick and easy process, versus 15% who said they had no alternative. Our experience through the United Way, and certainly our experience on the ground, is that there's a lot of shame that goes into credit and a lot of shame that goes into using payday lenders. Do you think that people might say "quick and easy" when they actually mean "no other alternative"? That's just one example of a very flawed study, I have to say.

Mr. Marzolini: In addressing that, I would tie that question, on page 10, to the answers we received on page 14; that is, when it comes to a quick and easy process, the ease in the way people were treated at the payday loan centre actually tests better than the treatment at banks and credit unions.

The quick-and-easy process is not why they used payday loans. That's in the following question, which is on page 11: "Which of the following was the main reason why you needed the payday loan?" "For 'emergency' cash to pay for necessities" comes up in one third of all responses. Helping out with unexpected expenses, like a car or household repairs, was 26%.

The Chair (Mrs. Linda Jeffrey): For the government side, Mr. Sousa.

Mr. Charles Sousa: Thank you very much, Mr. Marzolini. I appreciate your information. This is a random sample, as you explained. Out of the sample, was there one who was using one company more than another?

Mr. Marzolini: They were chosen by the market size among Canadian Payday Loan Association members. You might assume that the results of the survey would be the same among those who are not payday loan members—we don't know that, because we haven't interviewed those people; we just talked to the payday loan members and chose proportionally. For example, if Money Mart has 35% of the customers in Ontario, that would have wound up being 35% of our sample. We also looked at the sample regionally to make sure that every region in the province was covered. We didn't quota by any income or gender; we just looked at the actual marketplace—the market size.

1520

Mr. Charles Sousa: There's a default rate of around 22% here. Have you any sense of how it's being accommodated or the reasons as to how they got into that situation, and is 22% reflective of that high income or is it worse, or even more so with lower income?

Mr. Marzolini: I believe the default rate is actually smaller than 22%; that is, people who have not paid back all the time on time. I believe the people who have not paid back at all are a lot fewer than that. But we did not ask any questions around the reasons for that.

Here we are: Seventy-eight per cent paid back all the loans on time; a further 17% paid back most of the loans on time. Paid back some of the loans on time: 4%; paid back none of the loans on time: 1%. That doesn't necessarily add up to that number in terms of the loans, but those are the customers and in their experience in one instance perhaps in the past. For multiple, we don't have that.

The Chair (Mrs. Linda Jeffrey): Thank you.

Mr. Charles Sousa: I'd like to share—

The Chair (Mrs. Linda Jeffrey): No; I'm sorry. Your time is exceeded. Thank you very much for being here today. We appreciate it.

CASH 4 YOU CORP.

The Chair (Mrs. Linda Jeffrey): Our next delegation is Cash 4 You Corp., Mr. Mahmoudzadeh. Would he be here?

Welcome. As you get yourself comfortable—I'm sure you know the drill now. If you could say your name, the company you represent and then you'll have 15 minutes.

If you use all your time, we won't be able to ask you questions. If you leave some time, there'll be an opportunity for us to question you on your presentation. Do you have a handout?

Mr. Amir Mahmoudzadeh: No, I don't.

Good afternoon, Madam Chair, members of the committee. I appreciate the opportunity to speak to the committee about Bill 48, the Payday Loans Act, 2008. My name is Amir Mahmoudzadeh. I'm the executive vice-president of Cash 4 You Corp. I'm also a member of the board of directors of the Canadian Payday Loan Association. Our company is, of course, a member of the CPLA.

Cash 4 You is a retail financial services company which offers not just payday loans but cheque-cashing, money transfers and other ancillary services. The company was started in 2001, and we currently operate 20 retail stores in 12 cities across southern Ontario. We employ close to 100 full- and part-time staff.

The backbone of our company is our customer service representatives, who are involved in every stage of interaction with our customers. Our branch managers are responsible for the overall operations of their stores, for maximizing consumer protection and meeting customer expectations.

Our company understands the importance of increased consumer protection, particularly in the areas of consumer education, fair collection practices, and credit counselling information for consumers. We have been a member of the CPLA since 2004 and have adopted, with 100% compliance, the code of best business practices. We display the code prominently and proudly in all of our stores.

Let me talk a bit about the code. I think it's important to stress its significance for two reasons: first, because it was a voluntary measure taken by members of the CPLA; and second, because, in the absence of government regulation, its application is limited to members of the CPLA. As a condition of membership, CPLA members must follow the code, which, among other things, places a limit on default charges and has clear rules around disclosure of fees and charges, fair collection practices and customer privacy. The code gives our customers the right to rescind at no cost and prohibits taking collateral as security against repayment of a loan. The code also requires us to place credit-counselling brochures in a prominent location in all of our stores. Most importantly, the code prohibits rollovers, a practice that was banned by the CPLA four years ago. The measures contained in the code were taken by a membership that believes in consumer protection and in a viable industry providing a needed service.

Cash 4 You has voluntarily submitted to the application of the code and to the compliance activities carried out by the office of the independent ethics and integrity commissioner.

I note that many of the previous provisions contained in CPLA's code are reflected in Bill 48, as well as in earlier regulations brought forward by government to

help provide information about payday loans to consumers in a way that makes sense and can be compared amongst different providers. I'm pleased to see that Bill 48 contains a prohibition against rollovers, as well as a cancellation provision and a restriction on default charges.

Speaking as a medium-sized operator and as a member of the CPLA, I'm very happy to see these kinds of rules that have been voluntarily followed by Cash 4 You and other CPLA members finally enshrined in legislation. The passage of this legislation will create a level playing field for all operators and will deliver consistent consumer protection across industry to all of its customers.

Let me talk a bit about the customer. You've just heard a presentation by Pollara about a groundbreaking survey of payday loan consumers. Having been in operation for the last seven years, I can tell you first-hand that the results of that survey reflect what we see every day with our own customers. Our customers make a conscious decision in choosing a payday loan. There's a demand for this product, and that demand is being met by the industry. Our customers typically require a payday loan because they have experienced an emergency or have run into some unexpected expenses and need to pay for necessities. They like the ease of a payday loan. It's a quick and easy process and the locations are convenient. They're satisfied customers who understand the terms of the loans and the total costs that they're paying. We also know that the vast majority of payday loan customers repay their loans on time.

My company is proud to be serving its customers—educated, middle-of-the-road Ontarians who know exactly what they're doing. We provide our customers with the convenient financial product they need, where and when they need it. We have been advocating for the regulation of the industry for some time and are pleased to see legislative action in Ontario.

Thank you for your time. I'm pleased to answer any questions.

The Chair (Mrs. Linda Jeffrey): Thank you. You've left just over three minutes for each party to ask questions, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Yes. Thank you for deputing. There's a comment that you make in your deputation—this is the printed version—that contradicts completely what the Pollara study says. You say that your payday loan customers rarely obtain payday loans and only do so in genuine emergencies, when other credit options are unavailable. Could you explain that inconsistency?

Mr. Amir Mahmoudzadeh: I would have to review the Pollara findings a little bit more in detail. I don't have the study right in front of me to speak to it.

Ms. Cheri DiNovo: Oh no, I think you're right; I think they're wrong.

Mr. Amir Mahmoudzadeh: However, I would say that it's a mixture of both. A lot of times, consumers use their products because they are paying for necessities and sometimes they may require it for other personal reasons, which they may not choose to engage in conversation with.

Ms. Cheri DiNovo: The other thing is—I just brought this as a sample; I didn't realize it was yours until I got here. This was dropped off. It's giving people \$260, so it says; it's in the form of a cheque, with no strings attached, no credit asked. It's from your organization, Cash Store, and it was delivered to Toronto Housing, to a place where the average income is ODSP/OW earners only. It was targeted there. So if your customer's a middle income earner, that typical customer, why are you targeting people who are on social assistance?

Mr. Amir Mahmoudzadeh: Ms. DiNovo, I can't comment to that because my company is Cash 4 You. I think you've mistaken my company with—

Ms. Cheri DiNovo: Oh, the Cash Store—sorry. Okay, I'll save that. Do you do something like this? You do. Come on; face it.

Mr. Amir Mahmoudzadeh: No, no.

Ms. Cheri DiNovo: You don't? You don't market at all?

Mr. Amir Mahmoudzadeh: Of course we market, but we certainly don't send cheques that are—or I can't make any reference to that because I haven't seen that publication or advertisement.

Ms. Cheri DiNovo: Okay. The last question is: What do you think is a usurious interest rate? You know that in the Criminal Code it was 60% at one time. What would you say is a usurious interest rate?

Mr. Amir Mahmoudzadeh: I don't think this would be the grounds for me to comment on that. However, I would say that a rate that is going to make it consistent for operators to be able to provide the service and at the same time provide consumer protection, is something to be later determined.

Ms. Cheri DiNovo: Okay, but it's definitely over 60% that you charge your customers? Correct?

Mr. Amir Mahmoudzadeh: It would be unfair to peg payday loans as an annual percentage rate. I like to give the example that if you need some Tylenol you can walk into a convenience store and pay \$5 for five tablets of Tylenol, whereas you can go to Shopper's Drug Mart and buy 50 of them for \$3. So to peg our industry with an annual percentage rate doesn't necessarily apply, for the same reason that Blockbuster doesn't advertise \$5 a day times 365. They don't provide an annual rate for their movies.

Ms. Cheri DiNovo: So you think a 300% to 1,000% interest rate is justified?

The Chair (Mrs. Linda Jeffrey): Thank you; your time has expired. Sorry; I didn't have time for another question.

The government side: Mr. Mauro. You have three minutes.

Mr. Bill Mauro: Thank you, Mr. Mahmoudzadeh. This is nice to hear: that you favour the introduction of the legislation. Are all operators members of the CPLA?

Mr. Amir Mahmoudzadeh: No, they're not.

Mr. Bill Mauro: Some aren't. Okay. The ones that aren't: Do they adhere to the code, or you wouldn't know? I suppose you have no way of knowing.

Mr. Amir Mahmoudzadeh: Yes; we do not monitor them.

Mr. Bill Mauro: Right, okay. You mentioned that your operation prohibits rollovers.

Mr. Amir Mahmoudzadeh: That's right.

Mr. Bill Mauro: Does everybody define a rollover the same way as that—as a second loan to pay off the first loan? Is that it in a nutshell? That's a rollover?

Mr. Amir Mahmoudzadeh: Essentially, yes.

Mr. Bill Mauro: Okay. From your perspective as an operator, you're telling us that you prohibit them within your business group. Do you feel that that just pushes the business onto another operator? Or how does it affect you and how do you come to support that? I'm curious.

Mr. Amir Mahmoudzadeh: That I can't comment on, whether or not we're sending business into the hands of our competitors. However, I can say from my company's standpoint that we want to protect our consumers and to make sure that we're retaining our customers, from a profitable standpoint. If we're overextending the consumers, they obviously can't repay us and we end up losing money.

This is a risk-management aspect that our company, as well as members of CPLA, have decided to undertake, just like a credit card company where they base credit limits—they're not going to extend \$15,000 credit to a particular customer. With us, we're not going to extend double loans or rollovers to our customers as well, because it's not in the best interests of the consumer.

1530

The Chair (Mrs. Linda Jeffrey): Ms. Mitchell.

Mrs. Carol Mitchell: I want to give you the opportunity to speak about what you do to provide education to the consumers who are using your services.

Mr. Amir Mahmoudzadeh: In each of our branches we have two different types of pamphlets.

The first pamphlet would be to discuss credit counselling options. Within that pamphlet, there are telephone numbers that our consumers can call if they are facing difficulties in terms of repaying the loan. We work quite often with credit counselling agencies—not-for-profit organizations—in developing repayment schedules for some customers who unfortunately from time to time experience temporary cash-flow situations.

The second pamphlet we have in our stores is just a simple guide on how to use the payday loan. It gives an introduction on what the product is and when it should be used, and indicates to our consumers that it is there for their use. If they require any additional information, then we would be providing that through our customer service representatives and our store managers.

Mrs. Carol Mitchell: Was the rollover ban something that was recommended by your association? Is that part of the code of conduct?

Mr. Amir Mahmoudzadeh: Yes, it was.

The Chair (Mrs. Linda Jeffrey): Ms. Savoline.

Mrs. Joyce Savoline: Two very quick questions: First of all, what interest rate does your company charge?

Mr. Amir Mahmoudzadeh: Our company charges 59%, and we also have a cheque-cashing fee that's applied to the loan.

Mrs. Joyce Savoline: How much is that?

Mr. Amir Mahmoudzadeh: It's approximately \$20 per \$100, if you equate interest plus service fees.

Mrs. Joyce Savoline: So, \$20 on top of—did you say 59% or 69%?

Mr. Amir Mahmoudzadeh: Fifty-nine.

Mrs. Joyce Savoline: Fifty-nine per cent.

On your website, you have a bit of information, but there's absolutely no information about the payment and contract details that you expect someone to sign. Why is that?

Mr. Amir Mahmoudzadeh: I guess, from one standpoint, it's not a very complicated contract. It's a simple, one-page disclosure statement.

A customer can walk into any of our branches and receive a copy of a blank loan agreement. As well, each of our customers is provided with a loan agreement upon completion of every payday loan transaction. The customer not only takes that with them, but they also have the option to rescind that transaction at no cost on the following business day. If they go home and decide that a payday loan is not right for them—they review, again, a simple contract; it's more a promissory note than anything—they do have the option of returning on the following business day and cancelling that loan.

Mrs. Joyce Savoline: Given that it's not complicated, wouldn't it behoove you to put it on the website so that people would know that and could read the fine print before they ever get to you?

Mr. Amir Mahmoudzadeh: We'll definitely take that into consideration.

Mrs. Joyce Savoline: Thank you.

The Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate your time.

ACORN CANADA

The Chair (Mrs. Linda Jeffrey): Our next delegation is ACORN Canada.

Welcome. Take a seat and make yourself comfortable. As you make yourself comfortable, could you state your name and the organization you speak for? Once you begin speaking, you will have 15 minutes. If you leave time within that 15 minutes, there will be an opportunity for us to ask questions about your presentation. Your presentation is being handed out right now.

Mr. Edward Lantz: I'd like to thank everybody here for allowing ACORN. My name is Edward Lantz. I'm the chair of the St. Jamestown chapter of ACORN, in the city centre at Wellesley and Parliament. The neighbourhood I live in is comprised of roughly 10,000 low- and moderate-income people, just to give you the gist of where I'm coming from.

Ontario ACORN is an organization of nearly 15,000 low- and moderate-income families across the province. We started our campaign to regulate the payday lending

industry nearly four years ago. We're pleased today that the government has come forward with this legislation to regulate the payday lending industry.

ACORN members are encouraged that there will be a licensing regime introduced, that there will be inspections and that there will be a ban on the hidden fees that have caused so many problems for low- and moderate-income people across Ontario. ACORN members are concerned that there isn't a cap on the interest rate. The true value of this legislation rests on whether the interest rate lowers the cost of payday loans or maintains the status quo.

In Manitoba, the interest rate set by their payday lending legislation is controlled by an arm's-length utility board, so that it is insulated from political changes and so that the rate is closer to representing an objective analysis of the needs of low-income communities and payday lenders.

This legislation sets aside money for a payday education fund. ACORN's position is that that money should be controlled by consumer organizations, community organizations and credit unions, as opposed to going back to the payday lending industry. The fund should support financial literacy and financial literacy outreach.

Lastly, the existence of payday lenders is a symptom of a much larger problem. In low-income neighbourhoods across the province, mainstream financial institutions are moving out and the void is being filled by fringe financial institutions. In this specific case, payday lenders are stepping in to fill a need for small amounts of money to be loaned out. They are nothing more than loan sharks preying on people whose banking needs are not being met by the financial mainstream.

We need the government to take this legislation a step further and set up a standing committee to work with credit unions and banks to help the low- and moderate-income communities of Toronto and across Ontario get their banking needs met. This regulation is only one step in the right direction. The larger issue here is the need to address the banking needs of low- and moderate-income families across the province.

Thank you very much for your time.

Mr. James Wardlaw: I'd like to add a little bit, if I—

The Chair (Mrs. Linda Jeffrey): Could you identify yourself for Hansard, please?

Mr. James Wardlaw: My name is James Wardlaw. I work for Toronto ACORN.

I just wanted to say that the way ACORN has built this campaign over the last four years has been to work door-to-door in low-income neighbourhoods. In the last four years, we've done more than 10,000 one-on-one visits on people's couches. We've talked to them about this and other issues. That's how we've come up with this demand.

We've chosen not to do our outreach over the phone, because a lot of people who are buried in payday lending debt get their phones cut off. I just wanted to make that distinction between the work we've done and information

we've gathered, and the information that's been gathered by other organizations.

If there are questions, Eddie or I could take those now.

The Chair (Mrs. Linda Jeffrey): We have about three minutes for each party, beginning with Mr. Mauro.

Mr. Bill Mauro: Mr. Lantz and Mr. Wardlaw, congratulations on your work over the past four years. I would expect you must be feeling pretty good, given what is occurring here today.

Mr. Wardlaw, you mentioned that you were doing a lot of one-on-one consultation. Can you tell me about the experience people you've talked with have had with rollovers in this particular industry?

Mr. James Wardlaw: I don't have numbers for you, but I personally have spoken to hundreds of people who have used payday loans, because they had to—they had no other option—many of whom have ended up in rollover situations where they've paid hundreds or thousands of dollars on an initial loan of \$100 or \$200 or \$300.

Mr. Bill Mauro: So they found that some institutions are using rollovers and some are not?

Mr. James Wardlaw: Yes.

Mr. Bill Mauro: A last quick question: When you began your lobbying effort four years or so ago, was it focused at the federal government level first?

Mr. James Wardlaw: Yes.

Mr. Bill Mauro: Can you talk a little bit about that?

Mr. James Wardlaw: About lobbying the federal government?

Mr. Bill Mauro: Yes. What was the response from the federal government in terms of your efforts to see this regulated nationally and not just provincially?

Mr. James Wardlaw: They passed the responsibility to the provinces in the fall of 2006.

Mr. Bill Mauro: Was there a reason given?

Mr. James Wardlaw: I think you probably all know better than me about that, but as far as I know, they said this issue was more about consumer protection than about the Criminal Code and interest rates.

Mr. Bill Mauro: Okay. Thank you.

The Chair (Mrs. Linda Jeffrey): Mr. Sousa.

Mr. Charles Sousa: Thank you for your presentation.

There's a point you made in regard to the education fund and how it's going back to the payday loan industry. I just want to clarify that that's not the case at all.

Mr. James Wardlaw: Great.

Mr. Charles Sousa: The fund has been funded by the industry to enable consumers to be protected, and it would be managed by a governing body.

In regard to the cap—you spoke about interest and the total cost of borrowing—is it your desire to see this the same as in Quebec?

1540

Mr. Edward Lantz: Could I address that?

Interjection.

Mr. Edward Lantz: Most definitely, with all due respect to the ramifications in regard to the effects of, let's say for example, the rollover for the payday loan

industry. It leads to a lot of anxiety within that particular individual whom it may be happening to at the time.

So as far as the cap is concerned, 35% would be nice. That would bring it down to something that might be a little more manageable for somebody on a low or moderate income.

Mr. Charles Sousa: You spoke about the community requiring and needing alternatives and needing support. You talked about the exiting of the marketplace and the fact that some of the other, bigger financials can't accommodate the need from the community. But what happens now in Quebec is that it doesn't exist. Where do those consumers go?

Mr. James Wardlaw: One of the themes—I hope it's clear—of our comments today is that people need credit. Everybody needs credit. Everybody has credit. Poor people often have very, very expensive credit. We'd like the provincial government to work with us to figure that out.

The Chair (Mrs. Linda Jeffrey): Thank you. Mrs. MacLeod.

Ms. Lisa MacLeod: Welcome, and thank you for all the work you've done on behalf of your organization and Ontarians with medium and low incomes. You must feel very gratified today that there's a piece of legislation here.

I was interested to learn that you'd done research with approximately 10,000 payday loan consumers. I'm just wondering if you have any qualitative or quantitative research to provide the committee today.

Mr. James Wardlaw: There was a qualitative study that we put together three years ago, I think. If the committee doesn't have it, the minister's office certainly does. We don't have any qualitative information that's comprehensive that's based on the 10,000 people we've spoken to.

Ms. Lisa MacLeod: So that's largely anecdotal, then?

Mr. James Wardlaw: Yes.

Ms. Lisa MacLeod: Secondly, I just want to go further than my colleague, the parliamentary assistant, with respect to—you cited Manitoba, that the interest rate there was set. It does look like it may impact the payday lending industry there and, I want to say the reputable payday lending industry, because we must always be cognizant of the fact that we have two or three separate industries out there. We've got the loan sharks in the community, we've got Internet payday lending and then we have folks here who are part of a larger association who have a code of ethics.

If you were to tackle those folks and essentially put them out of business, where would you expect those folks who have created a niche market in this country for such lending—I would be interested to hear.

Mr. Edward Lantz: My answer to that would be that it's time for the big banks to step up to the plate and recognize this problem. They have all the facilities at their disposal to offer a very low-rated interest rate to somebody who might be struggling. With the amount of money that the financial institutions are making today,

most definitely they could implement a plan that would be suitable for somebody in a low or moderate income at a reduced rate and therefore, also at the same time, offer them educational packages so that they would become a little more aware of how they would approach a financial situation such as the one they're in.

Ms. Lisa MacLeod: As Visa says, though, "If life were like that."

In any event, I want to move forward just a little bit in terms of the educational fund, the payday lending educational fund that the ministry is setting up. I'm personally of the view that that's just another bureaucracy and it won't really get to the heart of fiscal literacy in this province. I feel that we might be better off actually spending resources within the Ministry of Education to assist younger people so that we get those kids thinking about getting out of the circle of debt before they actually start it.

I would be interested in ACORN's take on that viewpoint.

Mr. James Wardlaw: Whoever runs it has to have a lot of contact with the communities where payday lending exists. So if the Minister of Education can do it, that's fine. We've asked, in our presentation today, to be part of it or for groups like ACORN to be part of it because we think we can do a good job of it.

The Chair (Mrs. Linda Jeffrey): Thank you. Ms. DiNovo.

Ms. Cheri DiNovo: I'll start where Ms. MacLeod left off. Do you think that you would be an excellent body—I would think you would be excellent—since you have worked in the field and worked with people who are affected by payday lending, to administer such a fund? Do you think you have the wherewithal to do that?

Mr. James Wardlaw: Yes.

Ms. Cheri DiNovo: Thank you. I have to say, thank you, Ed, thank you, James, for all the hard work you've done on behalf of Ontarians. You're really the only deputant we've heard from today who actually represents the users of the payday lending institutions. I'd like to point that out for the record as well.

We know that banks certainly put out credit vehicles, i.e., credit cards, for 28% interest, and many for much less than that, so do you think that both credit unions and banks should be able to offer micro loans to those who need it?

Mr. Edward Lantz: Absolutely. Yes, no question about that. I guess maybe the writing is on the wall in regard to the widening gap between the rich and the poor, so I think it's part of the financial institutions' advantage to step up to the plate and be accountable, to help the general public out.

Ms. Cheri DiNovo: Sure. Last question: Do you think perhaps the reason the banks don't do this is that the banks themselves are invested in the payday lending institutions?

Mr. James Wardlaw: Maybe; I'm not sure.

Ms. Cheri DiNovo: Well, they are. Thank you very much, and thanks for all you do.

The Chair (Mrs. Linda Jeffrey): Thank you, gentlemen. We appreciate your being here today.

SURETY ASSOCIATION OF CANADA

The Chair (Mrs. Linda Jeffrey): Our next deputant is the Surety Association of Canada.

Welcome. Make yourselves comfortable. I believe your package is being handed out as you get settled. If you could state your name for the record, and the organization you speak for. Once you begin, you'll have 15 minutes. If you leave some time, we'll be able to ask a few questions. We're glad you're here. Thank you very much for coming.

Mr. Steven Ness: My name is Steve Ness. I'm the president of the Surety Association of Canada.

Ms. Debbie Pollhaus: I'm Debbie Pollhaus. I'm the commercial chair for the western region.

Mr. Steven Ness: Thank you to the committee for allowing us to be here today. I want to begin by just telling you a little bit about who we are. We are the trade association that represents surety bonding companies across the country. We're the people that provide security and guarantee performance and/or compliance with legislation and various regulations on the commercial side.

To begin, our association is quite supportive of the initiative that led to the introduction of Bill 48, and we applaud the province of Ontario for taking steps to move in this direction. As some members of the committee may know, our association worked closely with the Manitoba department of consumer affairs when they worked on their own changes to regulate the industry in that province.

In Manitoba, our industry took a very active role in devising a form of security to ensure compliance of lenders with the regulation in the form of what we call a payday loan surety bond. In the handout material I provided for you, there's a specimen copy of the bond form that we use in Manitoba which guarantees that compliance.

If we have a concern with Bill 48 as it's currently drafted, it is that, unlike what you have in Manitoba, there's really no built-in provision to guarantee compliance on the part of the industry participants. It does have some provisions and some tools that are available at the minister's discretion. For example, you have section 55, which provides for a fine to be levied upon corporations who are convicted of an offence, and then I think section 59 will impose a penalty, an administrative penalty, of \$10,000.

The point of note, at least from our perspective, is that neither the fine nor the penalty is secured and it's possible, and even quite likely, that if you had a non-compliant lender out there, they may not be in any position to pay or compensate the consumer.

Interestingly enough, the only provision in Bill 48 that currently refers to security is found in section 52, which provides the director with the authority to impose what's called a freeze order on the assets of any non-compliant

licensee. When you go on, though, section 52 prohibits the director from making such an order if the licensee in question posts a bond or any type of security.

Respectfully, we would submit to this committee that that is a totally unworkable arrangement, because that's kind of like going to an insurance company and asking them to provide a fire insurance policy on a building that's already burning. Good luck with that.

Just another point of note: You have in section 18 a provision for transition licences. We suggest that this may result in a high degree of non-compliance, particularly in the early days as this legislation is being adopted, because the industry is going to take a little bit of time to adjust to the new legislative regime. As we've heard in some of our discussions today, like in any other industry there's the good and there's the bad. The bad are going to come to the forefront really quickly and hopefully are going to get weeded out really quickly. It will take some time, I think, for that group to be eliminated.

1550

I guess why we're here today is that our association, the Surety Association of Canada, strongly suggests that Ontario follow the lead established in Manitoba and require that all licensees and applicants for licence post a surety bond to guarantee compliance with the act and to protect consumers against the financial consequences of non-compliance. We're the guys who are in the accountability business in that regard, and we tend to do a pretty doggone good job of that.

To give you an idea of what a surety bond could provide, first of all it's the prequalification. We don't just give a pot of money to compensate a consumer who may be left short. We review these people and we get to see who are the good apples and the bad apples. We look at their credentials, we look at their financial position, we look at their background, and we provide bonds for qualified applicants. Those who aren't qualified will be eliminated. Yes, then we do provide the security. The surety bond will protect the consumer and the ministry against financial loss that comes out of non-compliance. A good example is when you have a lender who is applying what Ms. DiNovo refers to as usurious rates. The surety bond will then compensate that consumer for any amounts in excess they paid over that regulated rate.

One of the concerns we sometimes hear is availability: Who's going to be able to get it and who isn't? If we structure this properly, as we have done in Manitoba, these bonds should be available to the vast majority of applicants out there at a fairly nominal price. When I say "nominal"—I'm going to say the "minimum premium," in most cases. Minimum premiums can run from \$250 to \$350 for a bond of, say, \$10,000, which is not a lot of money.

Finally, on the administrative side, a bond will tend to reduce the ministry's administrative costs and the administrative burdens by—first of all, we'll do the up-front prequalification. We'll be the bad guys, if you will, helping the ministry out there. And we also pursue claims

recovery. The ministry would simply have to advance a claim against the surety bond, and then we would pursue recovery from there.

Finally, I'm just going to leave you with this pledge: that as we did with the province of Manitoba, we'd be happy to do here in Ontario. We're happy to work with the ministry to come up with an appropriate regime for doing this. We'll help you develop a bond form that's going to meet the needs and the specifics of Bill 48.

With that, ladies and gentlemen, I'll turn it over to you.

The Chair (Mrs. Linda Jeffrey): Thank you. We have Ms. MacLeod to begin with. Two minutes.

Ms. Lisa MacLeod: I just want to thank you very much for your presentation. It's something that I think ought to be considered as we move forward. I'd be interested in receiving more information on the work that you've done and what you've done in Manitoba, and we'd be happy to consider it as we move forward in the official opposition.

Mr. Steven Ness: Happy to do that.

The Chair (Mrs. Linda Jeffrey): Ms. Savoline.

Mrs. Joyce Savoline: Yes, one quick question: It's my understanding that payday loan companies are charging insurance. Some of them charge insurance on their loans. Are your members in support of this term as it applies to payday loans? There are all kinds of fees that are attached after the interest rate goes on.

Mr. Steven Ness: I'm not sure what you mean by insurance. We tend to think of insurance as vulgar. We hold ourselves aside from that. We are a guarantee—it is paid for by the lender, by the licensee, this \$250 over that. In terms of insurance being added to the cost of the loan, that would actually have nothing to do with us.

Mrs. Joyce Savoline: But you don't agree with that term, "insurance."

Ms. Debbie Pollhaus: That insurance could be in case of an accident or whatever, like you get on your mortgages: You can buy this insurance, so if you can't pay the bills, then the insurance company will. That's totally separate from what we're talking about here. We're talking about: If the payday lender defaults and does not have the capital to protect that, our bond would kick in and cover it to protect the consumer.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: Finally, a financial service I might get behind. Thank you for presenting here today. It's an excellent idea. We were going to propose an amendment of increasing fines, but as you aptly pointed out, if the company's going down in flames anyway or if they're not able to pay the fines, it's the consumer who loses either way. Absolutely, it's something that we would support and something we would support in an amendment.

The Chair (Mrs. Linda Jeffrey): Ms. Mitchell.

Mrs. Carol Mitchell: I just have a couple of very quick questions. Was this part of the legislation in Quebec?

Mr. Steven Ness: I'm sorry?

Mrs. Carol Mitchell: In Quebec, when the legislation came forward to regulate payday loans, was this part of the legislation?

Mr. Steven Ness: No, it was not.

Mrs. Carol Mitchell: So it's only in Manitoba.

Mr. Steven Ness: Manitoba, so far. We're going to get there.

Mrs. Carol Mitchell: I wanted to give you the opportunity to expand further on how the actual bonding would work.

Mr. Steven Ness: In terms of the process, how it's obtained?

Mrs. Carol Mitchell: Yes.

Mr. Steven Ness: The lender would come to a surety broker, who would go to someone like Debbie, who actually makes an honest living doing these things, to apply for a bond for a payday loan. In Manitoba, I think it's \$25,000—Debbie?

Ms. Debbie Pollhaus: It's \$25,000 for the first year per location, and we're looking at working with them to reduce it to \$15,000 in subsequent years per location.

Mr. Steven Ness: Debbie and her staff will then do the work, authorize the bond through the broker, at a price of \$500 or whatever. Now that broker has a bond which they post with the ministry. The ministry has it. Should there be claims under it, the ministry would then make a claim on the consumer's behalf for shortfalls such as would be necessary. The bonding company pays the ministry, the ministry pays back the consumer, and we all go on with life.

Mrs. Carol Mitchell: And this is a cost that is, I'm sure, a surcharge that's added on in Manitoba—

Mr. Steven Ness: No.

Mrs. Carol Mitchell: —to the consumer. It's a cost for doing business, so it's a surcharge, so it's added on.

Ms. Debbie Pollhaus: It probably is—

Mr. Steven Ness: It may factor into the overall cost. That we can't say. But what we would charge would be, as I say, in the neighbourhood of \$250 to \$500.

Mrs. Carol Mitchell: That's what I wanted to get a sense of.

The Chair (Mrs. Linda Jeffrey): Thank you very much for your presentation.

CANADIAN PAYDAY LOAN ASSOCIATION

The Chair (Mrs. Linda Jeffrey): Our next delegation is the office of the commissioner of ethics and integrity.

Welcome. Is it Mr. Peckford?

Mr. Sidney Peckford: Yes, it is.

The Chair (Mrs. Linda Jeffrey): Great. As you get yourself settled, we're distributing your handout. When you're comfortable and you're ready to begin, please say your name and your organization, and then you'll have 15 minutes. After that, should there be any time, we'll be able to ask you questions.

Mr. Sidney Peckford: I want to thank the Chair and the members of the committee for allowing me the opportunity to address you this afternoon as you deliberate

Bill 48 and whatever subsequent amendments you might be making in the future.

My name is J. Sidney Peckford. I live in Ottawa. I am currently the commissioner of ethics and integrity for the association. I was so appointed in April 2006, so our office has been up and running for just over two years. The model was developed by Philip Murray, who was a retired commissioner of the RCMP, with the help of Deloitte and Touche, who were contracted by the association to put together the terms of reference for this office.

Briefly, the code of best business practices, which I am responsible for enforcing, was adopted by the association in 2004. The code has 18 sections and is designed to protect consumers. Most important is the no-rollover clause. This means that a member cannot extend an existing loan for a fee. Such loans have been shown to increase the chance of a customer falling into long-term debt. The prohibition against multiple loans means that a customer cannot receive more from a lender than they are approved to borrow. There is also a clause that requires a lender to offer credit-counselling material to customers who have defaulted twice. Our code requires our members to collect in a professional and fair manner. Collateral on payday loans is not permitted by the code.

1600

Welfare recipients are also not permitted to take loans given at member stores. Given their low and static income, it is unreasonable to believe that a loan given to such individuals would be repaid without hardship to the customer.

We also regulate the term of the loan—no more than 30 days—and the maximum borrowed is \$1,500. In addition, we require members to keep and maintain records of their loans to ensure that when that customer requests this information, it is available to them. Customers have the right to return a loan within 24 hours without fees being charged. The customer is not required to return the loan in its original state, i.e. on a cash card or cheque. So long as the original amount that was borrowed is returned, the loan will be rescinded without charge.

I would like to add that this matter has been tested a number of times by our mystery shops, and we have imposed infractions as they relate to this particular clause. We're monitoring some of them against the association who pays me, and I fine them.

Members are also required to abide by all privacy laws and cannot use their customer lists for marketing purposes. We have also had a problem with this particular section because we've invariably had payday loan companies calling persons at their place of work, which is forbidden. We have also tasked them with penalties as it relates to that particular clause.

Many lenders offer insurance on the loan, but our members are not permitted to require that insurance in order to approve the loan. Loan documents must be clear and understandable to the layperson according to the code. The members must display their CPLA material, as

well as credit-counselling brochures, in the areas the customers can obviously see. Usually that is in the front part of the store, in a pocket clearly displayed so customers can get it.

The final two clauses involve the CPLA much more directly. The code requires the CPLA to investigate any alleged instance of member non-compliance and demands that any complaints brought to the company's attention by the CPLA be resolved within a reasonable time frame, about two weeks maximum.

To ensure that these provisions are followed up by member companies, I have one full-time employee who works in my office as a compliance officer. She monitors a 1-800 line which is Canada-wide—we service right now all of Canada—which is available to all customers at member outlets in the event that they have a complaint or an issue with the way they have been served. In addition, if they believe the code has been violated, they can instigate an investigation by my office by contacting the toll-free line.

Furthermore, we carry out code compliance verification programs through the use of mystery shops of member outlets. We contract a company called Corporate Research Group out of Ottawa, which is national and international—the United States. They do compliance verification for companies like Canada Post and the Canadian Bankers Association. We use similar people. They do that for us. There have been 185 mystery shops carried out by this office since its inception in 2006 by this particular company.

The shoppers apply for a payday loan and then make subsequent visits to check either whether the store would permit a rollover in the event of a likely default or whether a loan can be returned at no cost within 24 hours. I might add that I have imposed financial penalties on rollers also.

There are infractions of best practice with these areas that set a barometer by which to gauge overall compliance. As part of my mandate, I am able to impose sanctions against the stores if, through thorough investigation, they have been found to have contravened the code. I have imposed financial penalties since my appointment to the post as commissioner. To date there have been 14 sanctions issued in the last two years, with fines totalling over \$6,000. If a pattern develops with respect to a store repeating violations, I have the authority to expel them from the association.

Another function of this office is to assist clients who are in default with loans. My compliance officer is responsible for assisting companies in question to work out payment plans that might take into account the particular circumstances of that client so the client can meet his obligation to the lender. In every case that we've had with defaults on loans where we have been involved, where we have received a complaint, nine times out of 10 we've had all the fees, brokerage and interest, waived, because it costs these companies more money to try to collect on a loan than what the outstanding principal was in the first instance. We've been successful in doing that.

That's one of the main functions of our office: to help these people who are in distress.

We are also responsible for supplying educational material to all stores. The material is available to the general public and includes descriptions of the code as well as the basic education on payday loans in general. In addition, we provide specific credit-counselling brochures to all our member stores. We are the ones who supply all our stores—approximately 555 stores across Canada—that are in our association.

You will find in the accompanying material some examples of this material, as well as the last annual and quarterly reports done by this office. Our website is www.cplaethicscommissioner.ca. Go to it. Review it, if you like, to your heart's content. It's there, it's posted and it gives you exactly the mechanics of how our office operates, how we do our investigations and how we come to a determination if I'm satisfied that a breach of the code has occurred.

We also provide information on our protocol in determining whether or not a code violation has occurred and how it is addressed. I also have separate legal counsel from CPLA, which has been retained by the association, whom I go to for legal advice as it pertains to the code or any nuances that might occur in a particular situation.

In conclusion, I have found, since we started this office two years ago, over 90% compliance of the member companies that we police through our code. Payday lenders, both members of the association and outside it, have co-operated appropriately with us. I might also indicate that we have taken calls from non-member companies, and we also try to assist there when we can.

Those are my remarks, and I'd be prepared to answer questions if you have any.

The Chair (Mrs. Linda Jeffrey): Great. We have two minutes for each party, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you very much, Mr. Peckford, for coming. First of all, I want to point out that it says "Office of the Ethics and Integrity Commissioner," but this is in fact a subsidiary of the Canadian Payday Loan Association, correct? You work for the Canadian Payday Loan Association?

Mr. Sidney Peckford: They fund my office; that's correct.

Ms. Cheri DiNovo: Thank you. And membership is completely voluntary; it's not mandatory in the Canadian Payday—

Mr. Sidney Peckford: That is correct.

Ms. Cheri DiNovo: Thank you. What rate of interest do you consider usurious? Do you think 60% is too much? Do you think that's usurious, or is it more—300% or 350%? Where would you put it?

Mr. Sidney Peckford: That's a very good question. There are only two sections in the code that I enforce right now, and that is a default section and the non-sufficient funds—

Ms. Cheri DiNovo: But you know that it used to be 60%. Under the Criminal Code it used to be 60%.

Mr. Sidney Peckford: Yes, that's correct. I'm familiar with that. I was a policeman for 30 years. I know what you speak of.

Ms. Cheri DiNovo: So basically your members are charging more than that. All of your members are charging more than that right now, correct?

Mr. Sidney Peckford: I can't be certain of that. I don't know. I'll be honest with you.

Ms. Cheri DiNovo: Okay.

Mr. Sidney Peckford: Suffice it to say that if this industry, in the event that the chartered banks and other institutions do not cater to these types of loans—my worry is that if it's too high, we would get back to the old days of loan sharks, and—

Ms. Cheri DiNovo: Too low, you mean.

Mr. Sidney Peckford: —and their practices are rather dubious.

Ms. Cheri DiNovo: Okay. Could you tell me what the difference between a loan shark and payday lender is?

Mr. Sidney Peckford: I would think that they don't have any rules.

Ms. Cheri DiNovo: Thank you very much. You do what you can.

Mr. Sidney Peckford: Thank you very much for your questions.

The Chair (Mrs. Linda Jeffrey): Mr. Mauro.

Mr. Bill Mauro: Mr. Peckford, thanks for being here today. What percentage of the companies operating in Ontario do you think are voluntary members of your group?

Mr. Sidney Peckford: I can't be certain. I don't have the membership, but I would think somewhere around 250 or 300 are in our association in Ontario.

Mr. Bill Mauro: How many companies are there? Do we know how many operators there are? You don't know, as a percentage, if it's 20%, 50% or whatever it may be?

Mr. Sidney Peckford: Pardon?

Mr. Bill Mauro: You don't know what the percentage of operators who are members of your group is?

Mr. Sidney Peckford: I would say that only about 40% are in our association in Ontario.

Mr. Bill Mauro: Okay. I was interested in a comment you have in your brief here. You're saying that your store operators—they're voluntary members of your group—do not allow welfare recipients to take out loans at your member stores.

Mr. Sidney Peckford: That's correct, and we tested that through our Mr. Payday shops, because we have gone in and represented ourselves as being on welfare.

Mr. Bill Mauro: When we say "welfare," are we talking about ODSP as well? Are we talking about federal employment insurance?

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Mr. Sidney Peckford: No, they can qualify if they meet the criteria.

Mr. Bill Mauro: EI can?

Mr. Sidney Peckford: That's correct.

Mr. Bill Mauro: Okay. But welfare recipients, social assistance recipients in the province, are not eligible at your voluntary member stores.

Mr. Sidney Peckford: That's correct.

Mr. Bill Mauro: And you're telling me there are about 40% of those that you think are members of your group?

Mr. Sidney Peckford: About 40% of the stores in Ontario would be part of CPLA. The presentation that the president will make, who has a fairer—

Mr. Bill Mauro: No, no, close enough. So somewhere in that range, about 40%—that's your best guess.

Mr. Sidney Peckford: Yes.

Mr. Bill Mauro: And you're hoping that they're all complying with not allowing these loans to—

Mr. Sidney Peckford: We are currently, as we speak, doing another 50 stores—Mr. Payday shops—right now, right across the country. We are doing that as we speak right now.

The Chair (Mrs. Linda Jeffrey): Ms. MacLeod.

Ms. Lisa MacLeod: Just a quick point of clarification for everyone, because I think this needs to be answered: It's correct, then, to say that you enforce that 40% of the stores that are part of the CPLA?

Mr. Sidney Peckford: That's correct.

Ms. Lisa MacLeod: I just have a quick question with respect to the last comment you made. You say, "In conclusion, I have found a high rate of compliance—90%—with the code of best business practices in our member companies," which would be 40% of those operating in Ontario, just for everyone else's clarification.

Mr. Sidney Peckford: Yes. It could be a bit higher than that.

Ms. Lisa MacLeod: With the 10% who aren't compliant, what's the penalty?

Mr. Sidney Peckford: We've already issued \$6,000 in fines. I have one company that we were preparing to impose more sanctions on. We have already imposed a certain financial penalty in the thousands of dollars, and when we were going to the third, they withdrew from the association.

Ms. Lisa MacLeod: Okay. Thank you very much.

Mr. Sidney Peckford: That's the best I can say to you.

Ms. Lisa MacLeod: I appreciate the work that you're doing.

Mr. Sidney Peckford: When I was going after them, they just opted out of the association and they became no longer part of my mandate.

Ms. Lisa MacLeod: Thank you very much.

Mr. Sidney Peckford: Thank you for giving me the opportunity.

The Chair (Mrs. Linda Jeffrey): Thank you, Mr. Peckford. We appreciate your being here.

ONTARIO CONSUMER CREDIT ASSISTANCE

The Chair (Mrs. Linda Jeffrey): Our next delegation is Ontario Consumer Credit Assistance.

Welcome, Mr. Portelli. As you get yourself settled, we're just handing out your handout.

Mr. Edward Portelli: It's not a handout about what I'm going to speak to; it's just a handout for a little bit of reference.

The Chair (Mrs. Linda Jeffrey): Okay. That's great. When you get settled, you'll have 15 minutes and we'll be able to ask questions.

Mr. Edward Portelli: Thank you. I want to make sure that the issue doesn't stay as convoluted as it is. I've heard a few times tonight people talking about how the usurious interest rate used to be 60%—it still is 60%. I think what we've missed out on is that this industry has been operating illegally for a long time now and they have hidden behind a lot of different issues, like using insurance or using fees. The legal definition of interest is "any amount of money that's charged on top of an amount of money borrowed." So they can call it whatever they want. They've kept the issue confused for a very long time about what's legal and what's not.

Our members at Ontario Consumer Credit Assistance have been advised that due to the fact that we have proven these cases illegal three times, where the principal never had to be paid back, per the courts, currently, there is no advantage to repaying an illegal debt. We are now talking about: What do people do if they're not allowed to borrow it? That's not the problem of the courts; the courts already have an interest rate set that has been deemed to be usurious, which is 60% or above.

Nobody is willing to confess to what's happening, but the interest rates, in my experience, in over thousands and thousands of these cases, are between 300% and 800%. There is no debate here as far as whether you are allowed to lend money—they are allowed to lend money—but any answer other than "60% or less" means that all we've done is legalize an illegal operation, because they have the benefit of bringing it to such a high level of volume.

I handed out an interesting letter that I got from Mr. Peckford, who spoke before me. He indicates on page 2, at the top, that my advice about them not repaying an illegal debt may become wrong if these things become legalized. In my understanding, then, according to the letter you have in front of you, that means they are currently more than aware that it is illegal. So if we're asking an entity that knows it's illegal to police itself, that on its face is ludicrous.

Currently, we have remedies in place for this. If you want to legalize payday loans—less than 60%—that's fine, but there is no reason to bow down to a group of companies that have been breaking the law for so many years.

The other thing is that if they get caught doing it, according to the new law—if the cost of borrowing under the payday loan agreement exceeds the prescribed limits—then they have to pay the money back. If we allow them to give out loans illegally—as Mr. Peckford said, he barely has a handle on these businesses; I mean, 40% of them comply. There's no punishment if you

don't. The average individual who borrows these loans has no strength, no power, no financial background and, most times, doesn't have the financial intelligence to know how to fight for himself. So in the odd, small case where one of these individuals figures out that they've been treated illegally, then the company owes their money back. That part of the law is ridiculous.

As far as prescribed limits, we can argue all day long about the fact that nothing is prescribed here. But any loan for 60 days—\$1,500—any loan over 60% interest is insane and will get these people nowhere. We have dealt with thousands and thousands of families.

As far as no rollovers, they will simply go to another one, jump back and then go to another one. If you squeeze people hard enough and throw them a lead life preserver, they will pay you for it. That's all that's happening.

As far as monitoring, that's terrific. Let's do that. But let's not give them an interest rate that has been proven usurious for so many years. It's insanity. I guess that's it.

The Chair (Mrs. Linda Jeffrey): You have given us about four minutes for each party, beginning with the government side. Mr. Mauro.

Mr. Bill Mauro: Two quick questions. Can you tell me a little bit about the Ontario Consumer Credit Assistance group? I'm not familiar with them.

Mr. Edward Portelli: I don't want to start a whole different discussion, but we have our own private credit-counselling concept. We don't force budgets on individuals. We don't force average budgets where you're only allowed a certain amount for things. We go through their entire life and take all the minimums they need to pay to live.

Mr. Bill Mauro: So you're a lending—

Mr. Edward Portelli: We don't lend. We are credit counselling, but we're not not-for-profit. Not-for-profit is associated with creditors, and I don't want to do that. What we do is look at the individual's budget, sort out how much they can afford to repay after basic living expenses and make that offer to creditors over a limited period of time. In the case of payday loans, we offer them nothing because we have proven them illegal on too many occasions. It's bad advice.

Mr. Bill Mauro: Can you tell me a little bit about the illegal part that you're suggesting? As I understand it, the Criminal Code still says 60%.

Mr. Edward Portelli: That's correct.

Mr. Bill Mauro: But I think that fees—you referenced insurance and other administrative fees—are not part of that. So what is it that you're saying has been going on that's illegal?

Mr. Edward Portelli: Any amount of money, whether it's interest, a fine, a penalty, a tax—anything—is considered interest under law. So add the entire repayment amount and take the interest rate based on the amount of time. That has been proven three times in court at this time.

The Chair (Mrs. Linda Jeffrey): Mr. Sousa.

Mr. Charles Sousa: Just to clarify the illegality here, I understand that payday loans exist in different pro-

vincial jurisdictions because they've been exempt from the federal case in order for the industry to have the ability to serve the consumer. What we're trying to do here is protect consumers so they have access and have the availability to borrow money.

Mr. Edward Portelli: Consumers are protected with a reasonable interest rate. We can have 20 different people explain to you 20 different reasons why 800% is not considered interest. Unfortunately, the law itself says that any amount of money repaid or due for any reason, other than bank service charges, is usurious if it's over 60%. We have proven three times, with judges' backing, that not one of these different scenarios that have been brought up complies with under 60%. We have challenged every single payday loan company in writing and said, "If you believe your contract is legal, then let's bring it to court." Three have tried; three have lost.

So I don't know exactly what we keep bantering about. At the end of the day, it has already been proven. We have chosen to ignore it, because the individual who begs for it, who needs it, doesn't have the same strength as the people deciding what's good for him. That's why the law is there.

Mr. Charles Sousa: But you're talking about the total cost of borrowing, as opposed to the interest rate itself.

Mr. Edward Portelli: The interest rate is defined as the total cost of borrowing; it's the same definition. The interest is the total cost.

Mr. Charles Sousa: You just said that banks are exempt from a usury charge for their fees.

Mr. Edward Portelli: They're the only ones; that's correct.

Mr. Charles Sousa: An overdraft fee of \$4 on a \$10 overdraft is usury in your definition.

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Mr. Edward Portelli: That's why they were exempt; that's correct. But now we're exempting people who are looking to charge more than 60% interest on a loan. If you get down under \$1,500, are we saying that 800% interest, \$8,000 or \$12,000 a year—it's insane. The fact is—

Mr. Charles Sousa: I guess I'm just trying to clarify that this is not illegal. That's why we're here: to try to provide legislation to put parameters around the opportunity to protect consumers who are in need of funding beyond—

Mr. Edward Portelli: Not at over 60% interest, sir. They're not in need of funding at over 60% interest.

Mr. Charles Sousa: That's why we're talking about it right now. I don't want to charge anybody. I'm not suggesting—

Mr. Edward Portelli: But the law is already stating that 60%—

The Chair (Mrs. Linda Jeffrey): Excuse me, gentlemen. This is not a debate between the two of you.

Mr. Edward Portelli: Sorry. My fault; I don't know how the procedure works.

The Chair (Mrs. Linda Jeffrey): You should go through the Chair. The conversation—

Mr. Edward Portelli: My apologies. I'm not sure how the procedure—

The Chair (Mrs. Linda Jeffrey): It's hard for Hansard to capture it if you're talking over each other.

Our next speaker is Ms. MacLeod.

Ms. Lisa MacLeod: Thank you very much, Madam Chair. I just would like to be clear, Mr. Portelli, and I appreciate your coming here today: You are advising people who come to see you for credit counselling not to pay back their debts?

Mr. Edward Portelli: Not at all. No, I never said that once. Not to pay back debts that have been proven illegal. We have proven it three times. We have standing cases where these contracts are illegal. They're not—

Ms. Lisa MacLeod: Okay, you've made your point on that.

Mr. Edward Portelli: I don't think I have, actually.

Ms. Lisa MacLeod: I guess the point is that two wrongs don't make a right. In this province there's a free economy, and we're allowed at any point in time to go out and purchase things or borrow things.

Mr. Edward Portelli: Like cigarettes.

Ms. Lisa MacLeod: In any event, I think the real issue here is that we are a credit economy, and we have to deal with the root of those problems. From what I'm seeing here, anyway, I'm going to make a comment: Two wrongs don't make a right. I'm actually shocked that you would tell people not to pay back their debts. I think that if we're going to get people out of the circle of debt, telling them to renege on their responsibilities is probably not the way to go—

Mr. Edward Portelli: It's fascinating to me—

Ms. Lisa MacLeod: I still have the floor.

I think that's a very important point. This piece of legislation is very important because we are setting a regulatory framework. That being said, we can't protect people from themselves. They can only protect themselves from themselves—

Mr. Edward Portelli: Seat belt laws are like that, but that's another point.

Ms. Lisa MacLeod: I just think that you may want to—

Mr. Edward Portelli: Hold on, ma'am. You're saying I stated that I tell them not to repay their debts. I am telling them that if there is a contract that a judge has told me is not legal, then there is no advantage to repaying a loan shark and to my advising them how much to repay. The contract has already been proven to be illegal, and only in that case—

Ms. Lisa MacLeod: On a point of order, Madam Chair: I'm not sure that the office of the ethics and integrity commissioner for the Canadian Payday Loan Association could be considered a loan shark, and I think we may want to consider the tone of this debate.

The Chair (Mrs. Linda Jeffrey): Mr. Portelli, could you caution the language you use—be a little less inflammatory.

Mr. Edward Portelli: Okay.

The Chair (Mrs. Linda Jeffrey): But you can answer the question.

Mr. Edward Portelli: I wasn't being inflammatory to the payday loans association. I'm talking about the specific loans themselves that we are advising them not to repay. If the loan contract is illegal, the courts can't view it, and they haven't. They've chosen not to because they're illegal, so what type of advice would I be giving people on how much they should pay back on a loan that's currently not legal? That letter itself asks what happens when they become legal. Then your advice is going to be wrong. If they become legal, my advice will change, but they're not currently legal. We're debating about something I've heard several times: that it used to be 60%. It still is 60%. I think we've missed the point. We've walked past it, because the entity is so big that it seems legitimate. It's not legitimate at this stage.

Ms. Lisa MacLeod: Just one final comment, Chair. I think that if you're looking at fiscal literacy as an issue here in Ontario, telling people that they don't need to be responsible is clearly an issue. There has never been a successful prosecution of a payday loan under section 347 of the Criminal Code, and if you could elaborate on which cases you're referring to, I'd appreciate that.

Mr. Edward Portelli: I can bring those to your attention at any time. I can submit them. I have an individual coming in in two days for his own, who is going to provide those.

Ms. Lisa MacLeod: Thank you.

The Chair (Mrs. Linda Jeffrey): Ms. DiNovo.

Ms. Cheri DiNovo: Thank you very much, Mr. Portelli. I probably couldn't agree more, really. The New Democratic Party has put forward a bill hard-capping interest rates at 35%. Certainly, we're falling down the middle. Ohio just hit 28%; Oregon, 36%; other states, 36%, 48%. We're one of the few jurisdictions left that hasn't answered with a hard cap on the true cost of borrowing, so none of this getting around the letter of the law or the spirit of the law, but actually putting a stop to these shady practices.

The only point that I think we might have some confusion about is that the problem is we're dealing with a grey area. It's an unregulated financial service in Ontario, and it has been downloaded to the provinces. Unfortunately, that's why it has been taken away from the responsibility of the Criminal Code. So I think you may be mistaken in terms of the legality of the 60%; in fact, I'm pretty sure you are. I'd love to review the court cases afterwards. That's the problem—because if it was de facto illegal, we wouldn't be sitting here having this conversation.

Thank you very much for your testimony here. It's always good to just hear common sense.

Mr. Edward Portelli: Sorry for talking out of turn at stages.

The Chair (Mrs. Linda Jeffrey): Any other questions?

Thank you very much for being here today.

Our next delegation is Chris Robinson. Is he here? How about Elijah Master Singh?

Neither individual is here. We are scheduled to see Mr. Robinson at 4:30. We've got about another four minutes, so we'll have a recess for five minutes, come back, and hope that these two delegations appear.

The committee recessed from 1626 to 1633.

CHRIS ROBINSON

The Chair (Mrs. Linda Jeffrey): Is Mr. Robinson here?

Welcome. Have a seat, please. Committee, can I call you to order, please. Thank you, Mr. Robinson. We're glad you joined us. You have 15 minutes. You speak just for yourself; you're not speaking for an association or anything?

Mr. Chris Robinson: No.

The Chair (Mrs. Linda Jeffrey): If you could state your name for Hansard, when you begin, you'll have 15 minutes. If you leave us some time, we'll be able to ask questions of you. We have your package in front of us.

Mr. Chris Robinson: My name is Chris Robinson. I'm a professor of finance at York University. I have done extensive research on payday loans since 2004, written reports for the federal government, ACORN, and done extensive work for the Public Interest Law Centre of Manitoba for the hearings in front of the Manitoba Public Utilities Board. At those hearings, the Manitoba Public Utilities Board accepted my evidence and my arguments in setting the first rate caps in Canada.

With respect to the Ontario Bill 48, I've made three specific comments about specific items in the bill. I'm aware that at this point you don't change anything anyway, but you have these comments nonetheless.

You don't need subsection 28(1). I think that simply capturing the fee would be much more efficient.

Section 29 is one on which you might get other arguments saying, "No, you shouldn't put this in place." What you're going to have to do is make sure that any costs that are involved in using a debit card are captured. This was an issue in Manitoba, because some lenders will use debit cards, but the user will then face additional fees, and at least one of those borrowers refuses to provide it in cash immediately. You have no choice. If you want the loan, you have to take it on a debit card or wait for a cheque a week later. Consequently, they take it on a debit card, but these debit cards are limited-use and can only be used at a bank or other ATM machine; they can't be used at a merchant, so therefore you have to pay a fee every time you withdraw money from it.

Subsection 31(1) prevents a lender from discounting a loan. This is one that you might also hear suggestions that it's unnecessary and that there are better ways to do it. The Manitoba legislation does it better. This practice, which finance professors like me had thought disappeared—in fact, we tell our students it no longer exists; it turns out it does. The second-largest lender in Canada does it, and in US states where it has not been carefully

legislated they do it. I lend you \$100; I'm charging you \$20 on that, so I'll actually only give you \$80. This is discounting a loan. The loan agreement says you're only paying 20%; you paid \$20 on \$100, but in fact you're paying 25%. You do want to avoid that practice, since the average borrower will not realize what's happening. Of course, it escalates the cost of the loan enormously, since if they actually want \$100 in cash, they now have to borrow \$120-odd.

The bill also recommends a payday lending education fund. I am one of those rare taxpayers who's in favour of higher taxes when used for the right things, but this is a waste of public money. The problem is not payday lending; the problem is lack of financial capacity or financial literacy and, more generally, problems of poverty and social and financial exclusion.

Educating people about payday loans: First of all, nobody will understand unless they've been educated in other matters about financial literacy first, and once they've been educated about those, payday loans fall out very easily. My textbook on personal finance is the standard for use in universities and community colleges across Canada. It's also used in quite a few other countries, in various languages. I spent only a couple of paragraphs on payday loans, because by the time the student gets to that, they will know what it's all about. They don't need to see the words "payday loan"; they just need to look at the terms. So I suggest that you scrap that provision altogether. It's just more money, more work, and it won't actually do any good for anyone.

Regulating rates: Of course, you realize that there are huge amounts of material on this. I was in front of the Manitoba Public Interest Law Centre, working for 11 days for them, in front of the public utilities board—many, many more days on that. There are thousands of pages of material and very complex analytical calculations on this. All I can do is give you the recommendations. I'm not going to be able to do anything else, since your expert committee—or rather the Public Appointments Secretariat—has decided that I'm not competent.

Most of this bill is boilerplate. All that really matters is the rates that the consumers are going to pay and a few other details, which are covered 17 times over in the bill.

I recommend the following rates, and remember, these are not interest rates; these are fees—all in, everything that the person pays. But 16% is not like 16% on a mortgage. This is 16% of the principal, even if you borrow it for one day. In the industry, they talk about dollars per hundred:

- 16% of the principal up to \$500; plus
- 12% of the principal from \$500 to \$1,000; plus
- 10% of the principal over \$1,000.

The first bullet is the one that really matters, because that's where most of the loans are. The average loan is \$300 or \$400. That's where most of the money will be coming from and going to the lender. However, since there's an extensive fixed-cost component to running a payday lender—that is, they have to pay rent; they have to open the building; they have to have staff there all the

time; they have to have telephones, computers etc.; and if they're a chain, they'll have head office staff—any loan costs quite a bit to make. When you get to a \$1,500 loan, it's getting more gravy, but the person who borrows \$100 costs you almost as much to service, and therefore you should be stacking it earlier. There are many different ways of doing it. This is the format that Manitoba chose out of the various ones I offered to them.

I have lowered it 1% from what I recommended in Manitoba on the grounds that Ontario's population is denser. My calculations in Manitoba were very conservative; in fact, a number of American experts believe that I recommended too high a rate. The payday lending industry doesn't feel that, however.

In addition—and there's a provision that there should be extensions but no discussion of them—many payday borrowers can't pay back in two weeks. Think about it. We won't get personal, but how many of you could give up 30% to 40% of your pay next paycheque? I can, but I'm old and practically over the hill. Many of them can't repay. It's not a case of cheating; it's a case of, they can't. In fact, we have a bigger social problem of whether we should try to design some different kind of lending.

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But you can't expect the payday lender to get nothing by having to go through the renewal. You've all heard of rollovers, which this legislation bans. Again, I think the Manitoba legislation was better in simply regulating how they're charged. But if you like, this is how I'm doing rollovers: If they can't pay, charge 2% of the amount owing per week, or part thereof. That is substantial, but it's nothing like the initial fee. It both gives the payday lenders something, so that the payday lenders are not doing rollovers in secret—which is what they'll do, or else, if they can't pay off the first one, they'll go to another payday lender, pay the whole fee, 20% or whatever it is, and then come back to this payday lender and pay off the first one. It becomes revolving credit, except you get charged every two weeks. So this is a compromise. Manitoba went for 1% plus \$10, plus bank service charges.

I don't, as you suggest, add anything for chasing down the credit. That's part of the whole package of what their business costs, anyway; that's what their staff are doing.

There are a million other things we could do, but that's it. I'm happy to take any questions you have.

The Chair (Mrs. Linda Jeffrey): Thank you. You've left about two minutes for each party to ask questions, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you, Professor Robinson. I'm absolutely outraged—and I want this to go into Hansard—that you were not considered for an interview for the so-called expert panel. It makes me wonder about the expert panel; it makes me wonder if they're operating in good faith. I would certainly like to see the names of those who were considered worthy to be interviewed for the expert panel presented to this committee. I expect that that will happen next committee, or else you'll have me to answer to. I'm just outraged at that.

I thank you for your time here; I thank you for what you did for Manitoba. I hope we move at least in that direction. I would tend to agree with the Americans that you're being, if anything, far too generous in your total cost of borrowing—which is a term I prefer to “interest rates.” I just want to thank you for taking the time. Again, let's hope that we hear from this so-called expert panel that there are some experts who actually stand up for the consumer on it.

The Chair (Mrs. Linda Jeffrey): Mr. Sousa.

Mr. Charles Sousa: I have a couple of questions. Subsection 28(1), the broker fee: Right now, we exempt brokers from receiving any fees, just to make it airtight. I think that's the proposal in the bill, to avoid such things.

Mr. Chris Robinson: Yes. Do we need to mince words here? You're targeting Cash Store Financial with that. They're the only broker I've encountered so far in Canada. Everybody in the US is abandoning the brokerage model.

The reason that payday lending is so expensive is because it's an incredibly inefficient small business. These guys are making a handful of loans a day. Most of the time, there's nobody there. Consequently, if you now force it so that they have to go through more steps, all you're doing is raising their costs.

Mr. Charles Sousa: That's right. So one of the reasons we have that in the bill is to avoid just that.

The other one is: You spoke about the discounting of the advance, so we're doing 100% of the loan so that we know exactly what the total cost of borrowing is to the individual. Do you agree that's a good thing to put in?

Mr. Chris Robinson: Oh, yes. That's what I said. I guess what your expert committee is going to be very careful about is everything that gets called “fees,” how they get charged—I mean, the amount of the work and time that we spent; we did mystery shopping; we did everything.

Mr. Charles Sousa: Two more things. Subsection 29(2): That's the lender providing the amount of the loan at the time, so that calculations are based at the time that the consumer receives his loan. It's not the other way around; it's not the consumer paying back the loan in subsection 29(2) in that particular instance, just to clarify.

And one more thing. Your rates that you put forward: What is the total cost of borrowing to the consumer based on these rates, say, over a two-week period?

Mr. Chris Robinson: How do you want to express the total cost of borrowing?

Mr. Charles Sousa: Let's take your 12% for a \$500 loan.

Mr. Chris Robinson: No, it would be 17% on the first \$500, plus. It's a stepped rate.

Mr. Charles Sousa: Yes, and if I read this right, you're actually endorsing a rollover with the fees thereafter.

Mr. Chris Robinson: The alternative, I suppose, is shooting the borrower if he doesn't pay it back.

Mr. Charles Sousa: So you actually are saying that rollovers are—

The Chair (Mrs. Linda Jeffrey): Mr. Sousa, your time has expired. Sorry. I really pushed the question and I let you get the answer.

Mr. Chris Robinson: It's an extension, not a rollover.

The Chair (Mrs. Linda Jeffrey): Ms. MacLeod.

Ms. Lisa MacLeod: I wanted to thank you for your presentation here today. I'm particularly interested in your comments on the payday lending education fund, and that you believe it's a waste of time and money. I tend to agree that the problem we're facing here in Ontario right now with financial literacy is much broader than what we're dealing with, with respect to payday loans. I think it's a systemic issue that's facing my generation and the generation that's just coming up behind me.

I would be interested in your comments and your recommendations on how we could best address that.

Mr. Chris Robinson: I haven't been able to figure out how to do that. The reason is because the amount that a student coming through school now has to learn—I have a 12-year-old, for example—is so much greater than what I had to learn, that if what you do is add somewhere in the curriculum, say, “We'll give you a course on personal finance,” something else goes. Those “something elses” are things that are even more important.

It ultimately seems to me that it has to come from the home, and we're going to continue to have a problem. So right now I don't have an answer, even a utopian answer, for you. I think that anything we do has got significant problems.

Ms. Lisa MacLeod: Are you aware of any jurisdiction, whether in Canada, the United States or elsewhere, that is offering fiscal-literacy-type courses that are working?

Mr. Chris Robinson: Yes. I couldn't tell you specific ones that are doing it, but it probably wouldn't be hard to find out. Yes, there are schools, school boards or individual schools that offer this, usually at the high school level.

Sometimes it's simply piggybacked into other courses. For example, if you want to understand payday loans, you need the time value of money, and the mathematics for that is taught in high school mathematics. I learned it there. So did all of you, even if you don't remember it.

The Chair (Mrs. Linda Jeffrey): Thank you very much. We appreciate your being here today.

Is Mr. Elijah Master Singh in the audience? One more call. Mr. Singh: Is he here?

Okay, we're at the end of our committee hearings today. Committee, we're going to recess until we return on May 28, at 4 p.m., for our additional hearings. We're adjourned.

The committee adjourned at 1648.

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