

NOVA SCOTIA UTILITY AND REVIEW BOARD



IN THE MATTER OF THE *CONSUMER PROTECTION ACT*

- and -

IN THE MATTER OF A HEARING respecting certain aspects of the *Consumer Protection Act* relating to payday loans

BEFORE: Peter W. Gurnham, Q.C., Chair
Wayne D. Cochrane, Q.C., Member
Roland A. Deveau, Q.C., Member

COUNSEL: **THE CASH STORE INC.**
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PROVINCE OF NOVA SCOTIA
SERVICE NOVA SCOTIA AND MUNICIPAL RELATIONS
J. Mark McCrea, Q.C.
C.A. Mark Coffin, Deputy Registrar of Credit

CANADIAN PAYDAY LOAN ASSOCIATION
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James A. MacDuff, LL.B.

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BOARD COUNSEL: S. Bruce Outhouse, Q.C.
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WRITTEN BRIEFS: February 28, 2011 and March 3, 2011

DECISION DATE: May 4, 2011

DECISION: **The Board makes Recommendations to the Minister with Respect to the Regulation of Online Payday Loans**

I INTRODUCTION

[1] This Decision is a supplementary decision ("*Payday 2011 Supplementary*") to *Re Consumer Protection Act (Payday Loans)*, 2011 NSUARB 22 ("*Payday 2011*").

[2] At present, Nova Scotia regulates payday loans which occur in the Province, where those loans are advanced through what the Board will, in this supplementary decision, refer to as "bricks and mortar" outlets. These are physical premises located in the Province, in which prospective borrowers may meet with staff of payday lenders, and apply for and receive loans.

[3] Unlike many other provinces, however, the Province does not regulate payday loans which are provided "online" (i.e., through the Internet).

[4] In *Payday 2011* the Board decided, among other things, to recommend to the Minister that online payday loans should be expressly permitted, and be made subject to essentially the same regulatory requirements (including with respect to disclosure and other matters) as bricks and mortar payday operations. On this point, the Board refers to, and incorporates by reference in this supplementary decision, paragraphs 148 to 171 of *Payday 2011*.

[5] The Board invited the participants in *Payday 2011* [The Cash Store Inc., Province of Nova Scotia - Service Nova Scotia and Municipal Relations ("the Department," or "Service Nova Scotia"), Canadian Payday Loan Association ("CPLA"), and the Consumer Advocate] to provide written submissions with respect to the recommendations the Board might make in this supplementary decision. Of these parties, only the CPLA and the Consumer Advocate did so.

Consequences of Failure to Regulate Online Lenders

[6] As a preliminary comment, the Board notes that CPLA's submissions of March 3, 2011, contain observations with respect to the utility of permitting and regulating online payday loans. While, as noted, the Board has already decided (in *Payday 2011*) that it believes online payday loans should be permitted, and regulated, in Nova Scotia, as they are elsewhere in the Country, it considers that CPLA's comments on that point are worthy of note in this supplementary decision:

The Canadian Payday Loan Association ("CPLA") is aware of several internet payday lenders that are licensed in other provinces, adhere to respective provincial laws and would wish to offer loans to Nova Scotia residents, but do not do so because they cannot be licensed and they would not conduct lending activities without a license. There are, however, unlicensed businesses operating from foreign jurisdictions that do offer internet payday loans to Nova Scotia residents and currently this is the only choice for Nova Scotians to obtain loans remotely without enjoying consumer protections that they deserve.

Nova Scotia is an attractive market for offshore unlicensed internet payday lenders because there is no competition from those credible internet lenders who will not provide loans without a license.

Licensing internet payday lenders will not cause unscrupulous offshore payday lenders to apply for a license or withdraw from the marketplace, but it will severely restrict their lending opportunities as a result of competition from licensed internet payday lenders. It will also help educate Nova Scotians about legitimate options and the level of consumer protections that may come from working with licensed lenders.

For these reasons the CPLA believes that the Regulations should be amended to allow for licensing of payday lenders who provide loans to residents of the Province of Nova Scotia over the internet or by telephone.

[CPLA's submissions, March 3, 2011, p.2]

II RECOMMENDATIONS

[7] In this decision, the Board makes nine recommendations to the Minister. These are summarized at paragraph 65. The recommendations in detail are as follows:

1. The Board Recommends that the Minister Adopt Regulations Requiring Licensing for Online Payday Loans in Nova Scotia, and Providing that Payday Loans not be Enforceable Against the Borrower by an Unlicensed Lender

[8] The Board agrees with CPLA that most online payday lenders can be expected to be based outside Nova Scotia. The Board considers that the *Payday Lenders Regulations* (the “*Regulations*”), made under the *Consumer Protection Act*, should require that any payday lender (wherever that lender be located, be it in Nova Scotia or elsewhere) must be licensed in Nova Scotia if the payday lender provides the loan to an individual residing in Nova Scotia.

[9] The Board considers that it is not enough for the legislation to simply subject an unlicensed payday lender to potential prosecution for breach of the *Regulations*: as a practical matter, such a threat may have little impact upon a lender located elsewhere, in relation to whom enforcement by the Department would likely be problematic.

[10] Accordingly, while the Board does consider that unlicensed online lenders should be potentially open to prosecution, it believes the *Regulations* should contain a more practical remedy to deal with online lenders who are not licensed under Nova Scotia’s legislation, but who make loans to Nova Scotia residents. The remedy which the Board recommends is that repayment of any online payday loan should not be enforceable against the borrower if the lender was unlicensed in Nova Scotia at the time of making the loan.

[11] This would allow any borrower to raise as an absolute defence against collection attempts the fact that the lender was unlicensed at the time of the loan.

2. The Board Recommends that Service Nova Scotia Inform the Public that Online Payday Loans will be Regulated

[12] The Board agrees with the Consumer Advocate that Service Nova Scotia should, when *Regulations* respecting online loans go into effect, conduct a public information campaign to inform consumers about this change. The Department should inform payday loan consumers that payday loans are now available online, from lenders licensed in the Province. It should encourage residents of the Province to deal only with online companies that are licensed to do so.

[13] The Consumer Advocate also recommended that the websites for payday lenders include educational materials about financial planning. In the view of the Board, if such information is worthwhile, it should be provided to all payday borrowers. It has accordingly not adopted this recommendation by the Consumer Advocate. In a future proceeding, the Board may invite submissions from parties as to the utility of making such information available to all payday borrowers (i.e., borrowers from bricks and mortar outlets, and from online lenders).

3. The Board Recommends that no Special Regulations are Needed for the Timely Delivery of Funds to Online Payday Borrowers

[14] The importance to payday borrowers of the immediate availability of funds was noted by the Board in *Re Consumer Protection Act, 2008 NSUARB 87* ("*Payday 2008*") (para. 132, quoted in *Payday 2011*, para. 149):

[132] The Board finds that the evidence before it points to payday borrowers expecting to obtain the cash they are borrowing immediately upon qualifying for a loan. In other words, the typical borrower (who, as the Board has noted elsewhere in the decision, is a person with a household income generally on average with that of the population as a whole) expects to be able to enter the office of a payday lender (or make contact by telephone or by Internet, with lenders such as 310-LOAN) and, upon satisfying the lender that they qualify for the loan, be able to immediately receive the desired amount of cash, or the equivalent.

[Board Decision, *Payday 2008*, para. 132]

The Board notes that, in saying that borrowers wish to “immediately receive” the desired amount of cash or the equivalent, evidence before the Board in *Payday 2008* (which was consistent with what was heard by the Board in *Payday 2011*) is that borrowers from a bricks and mortar outlet expect to leave the outlet with cash, or the equivalent, within a matter of minutes after the lender has agreed to the loan.

[15] In the Board’s judgment, however, neither the CPLA nor the Consumer Advocate have, in their recommendations, recognized the importance to payday borrowers of a speedy advance of funds. In fact, the CPLA’s recommendations, if adopted, would have the effect of placing online payday borrowers at a significant disadvantage (from the point of view of speed that funds are placed in the hands of a borrower), to those who have borrowed from a bricks and mortar outlet.

[16] Specifically, the following are the detailed recommendations of CPLA and of the Consumer Advocate.

[17] CPLA recommends:

Timing of Delivery of Advance. When a borrower obtains a payday loan from a retail outlet, funds are delivered immediately. With a loan provided remotely, there are timing issues affecting delivery of the advance that are beyond control of the payday lender. Same day funding is impossible to guarantee within the current state of the Canadian banking system. Regardless of the time of day the instruction is provided by the payday lender to a financial institution to wire funds, funds are wired by the financial institution at one time, usually the following morning. Therefore if there is any regulation regarding timing of delivery of funds, then that regulation should provide that “the payday lender is

to deliver instructions to the payday lender's financial services provider to transfer the amount of the advance to the borrower on the same day as the day on which the agreement is entered into by both the borrower and the payday lender" as is set out in Section 14(4) of the Alberta Payday Loans Regulation.

[CPLA's Submissions, March 3, 2011, p.3]

[18] The Consumer Advocate recommends, in part:

Funds should be transferred promptly to a borrower once a loan agreement has been concluded. If the funds are not transferred within the prescribed time period, the borrower should be permitted to cancel the agreement. Most jurisdictions which regulate online payday loans require that the funds be transferred on the same day the loan agreement is made: Prince Edward Island, Section 21(draft); Manitoba, Section 14.3(2); Alberta, Section 14(4).

[Consumer Advocate's Submissions, February 28, 2011, p.4]

[19] The Consumer Advocate has a further comment relating to Ontario's approach to this issue, which the Board will discuss in more detail below.

[20] The Board does not agree with CPLA's recommendation that a payday lender be merely required to "deliver instructions to the payday lender's financial services provider to transfer the amount of the advance to the borrower on the same day." In the view of the Board, it is up to the online lender to put in place financial arrangements which will, most of the time at least, actually succeed at delivering the sum agreed upon to a borrower in a timely fashion. CPLA's provision would mean that a lender has met its obligations once it has given instructions to its bank; thereafter, a valid loan is in existence, and one which a borrower (if the only rule which applied was CPLA's) would be bound by, no matter how much time the bank may take to deliver the funds into the borrower's account.

[21] The Consumer Advocate's recommendation (quoted above), which refers to a requirement in "most jurisdictions" that the "funds be transferred on the same day the

loan agreement is made” is, in fact, similar in spirit to that of the CPLA. For example, s. 14 (4) of Alberta’s legislation does not require transfer of funds to the borrower on the same day, but merely that the payday lender have instructed its bank to transfer the funds, which is not the same thing.

[22] The Board considers it essential that speed be measured not by the speed with which instructions are delivered to a bank, but by the speed with which money is delivered into a borrower’s account.

[23] Ontario, alone it seems among the jurisdictions, has chosen to enact a regulation which is focused upon the speed with which funds are delivered to the borrower’s account by a lender. The Consumer Advocate notes this in his recommendations:

The Ontario Regulations provide that if the funds are not transferred within one hour of the agreement being concluded, the borrower may cancel the agreement at any time: Ontario Section, 21(2).

[Consumer Advocate’s Submissions, February 28, 2011, p.5]

The Board has given this provision serious consideration, but ultimately has decided not to recommend it to the Minister. As the provision is drafted, it appears to the Board that it arguably means (among other things) that if funds are advanced to a borrower just beyond the one-hour time limit (for example, 70 minutes after the agreement was entered into), the borrower could retain the funds for 13 days, and then repay only the principal amount on the 13th day (i.e., the day prior to the due date), thus avoiding payment of any interest or related fees. The Board sees this as inconsistent with the agreement into which the borrower and lender entered. The Board prefers to see an

approach which gives the maximum flexibility to borrowers, while preserving the spirit of the mutual rights and obligations of borrower and lender as contemplated in payday loan agreements.

[24] The Board considers that the simplest way to do this is to not make any special rule with respect to online payday loans, but instead to use the already existing section 18Q of the *Act*. That provision permits a borrower to cancel a payday loan anytime up to the second business day after receiving the money:

Cancellation by Borrower

18Q (1) A borrower may cancel a payday loan anytime prior to the end of the business day following the date of receipt of the initial advance or cash card or other device enabling the borrower to access the funds, or such longer period as prescribed in the Regulations.

(2) A borrower may cancel a payday loan at any time if the payday lender

(a) did not advise the borrower of the borrower's right pursuant to subsection (1); or

(b) failed to provide the borrower with the information required to be provided to the borrower under Section 18I.

[25] Just as with borrowers from bricks and mortar outlets, the Board believes that online borrowers should have the right to cancel payday loans any time up to the end of the second business day after the money has actually been received by him or her. To put it another way, the time period should not begin to run from the time the payday lender gives instructions to its bank to advance the funds (as CPLA recommends, and as the Alberta provision cited by the Consumer Advocate, requires), but from when the borrower has actually received the funds.

[26] The Board recognizes that s. 18Q was adopted when Service Nova Scotia intended only to regulate bricks and mortar outlets, and makes no mention of online

lending. Nevertheless, in the view of the Board, s. 18Q as presently drafted arguably would protect online borrowers as well. It would be open to the Minister, of course, to decide that amendments to s. 18Q, making it expressly applicable to online payday lending, would be appropriate.

4. The Board Recommends that Online Payday Lenders be Required to Have a Registered Office in Nova Scotia, but not be Required to Have a Bricks and Mortar Outlet

[27] The CPLA and the Consumer Advocate appeared to take different positions on this issue. Having considered the positions of each, the Board has concluded that it prefers that of the CPLA.

[28] CPLA's detailed recommendations are as follows:

We expect that most internet lenders do not wish to and will not open retail outlets in Nova Scotia in order to offer internet loans, as this is unnecessary and imposes significant expense. The legislation should not impose the obligation on the payday lender to open a retail outlet in the Province since these lenders do not contemplate offering their product in the storefronts. The payday lender must be required to register extra-provincially with an address for receiving service in the Province of Nova Scotia. That is sufficient for the protection of consumers. If the Province imposes the obligation that an internet lender must open a "brick and mortar" outlet or have employee(s) in the Province, we believe those credible internet payday lenders who wish to be licensed will just choose to avoid the Nova Scotia marketplace.

[CPLA's Submissions, March 3, 2011, pp.2-3]

[29] The Consumer Advocate's detailed recommendations are as follows:

Most jurisdictions require any company offering loans online under a license or permit to maintain a minimum of one office in the Province. This ensures that there is a location in the Province for the service of documents related to the enforcement of Regulations. Ontario goes further and requires online lenders to maintain a bank account in Ontario that is associated with their lending activities.

Nova Scotia should require online lenders that loan money to borrowers in Nova Scotia to maintain at least one office in the Province: Prince Edward Island, Section 10(draft); Ontario, Section 10; British Columbia, Section 12.

[Consumer Advocate's Submissions, February 28, 2011, p.5]

[30] The CPLA recommended that online lenders be required only to have a registered office (which can be, for example, simply a lawyer's office), rather than a bricks and mortar outlet. An important function of such a registered office is that it affords a convenient address in Nova Scotia at which a resident of the Province may launch a civil action against an out-of-province company.

[31] The Consumer Advocate, on the other hand, recommended that Nova Scotia insist that any online lender have "at least one office" (by inference, a bricks and mortar outlet, although the Consumer Advocate does not explicitly say) in the Province. The Consumer Advocate also at least impliedly suggests that the Province adopt Ontario's requirements that online payday lenders be required to maintain a bank account in the Province.

[32] The Board, as noted, agrees with the position taken by the CPLA.

[33] In the view of the Board, making loans available to Nova Scotia residents from as wide a range of competing lenders as possible is a desirable goal, because it benefits consumers. To insist on a "bricks and mortar" outlet for an online lender increases the probability that certain online lenders would, as CPLA suggests, choose not to lend to Nova Scotia residents at all. Further, the Board sees little practical utility in requiring that an online payday lender be required to maintain a bank account in the Province.

5. The Board Recommends that Personal Information About Online Payday Borrowers be Protected Using Existing Legislation, such as PIPEDA

[34] There was likewise a difference of opinion between the CPLA and the Consumer Advocate with respect to the provision of personal information by prospective online payday borrowers. Having reflected on the submissions from CPLA and the Consumer Advocate, in light of the evidence as a whole, the Board adopts, in general, the position of CPLA. In essence, the Board finds that no new, unique, privacy regulations should be created for online lending, but, instead, existing legislation should be applied.

[35] The following states CPLA's position in more detail:

The collection and maintenance of personal information is governed by the Personal Information [Protection] and Electronic Documents Act (Canada) S.C. 2000 c.5 ("PIPEDA") which establishes the general compliance standards for the protection of personal information that is collected and used by all financial institutions and financial service providers, including payday lenders. This does not change in respect of loans provided electronically.

[CPLA's Submissions, March 3, 2011, p.3]

[36] The Consumer Advocate's position is as follows:

Because of the "virtual" nature of the online commercial transaction, lenders typically require more personal information from prospective borrowers than is required to obtain a loan at a physical outlet. Consumer protection agencies warn prospective online borrowers not to provide online lenders with personal information such as a social insurance number, a driver's license number or personal financial information. The Financial Consumer Agency of Canada warns that personal information submitted to obtain an online, payday loan could be stolen or sold: "The Cost of Payday Loans", the Consumer Agency of Canada, Tab 2; "Consumers warned of Online Payday Loans Sites", US Government Information Newsletter, "about.com", Tab 3.

The Board should recommend that Regulations applying to online payday loans in Nova Scotia strictly limit the personal information that may be required to obtain a loan online and restrict the personal information which must be provided to that which is currently required to obtain a loan at a physical payday loan outlet.

[Consumer Advocate's Submissions, February 28, 2011, p.5-6]

[37] Loans from bricks and mortar payday loan outlets located in Nova Scotia are already subject to existing privacy legislation which applies to such transactions. These legislative provisions include, most particularly, the *Personal Information Protection and Electronic Documents Act (Canada) (PIPEDA)*. The Board considers that to add further privacy regulations, which would apply in addition to the provisions found in legislation such as *PIPEDA*, would very likely lead to confusion.

[38] In the Board's view, meeting the objects of the legislation (i.e., the *Consumer Protection Act* and the *Criminal Code*), effectively requires the maximum amount of competition in the payday loan industry. Part of this is the encouragement of more lenders, rather than less, and the participation of online lenders (subject, of course, to regulation) who may not presently be operating in the Province at all.

[39] *PIPEDA* is standardized legislation which applies in jurisdictions across the Country. Accordingly, a wide range of businesses, including online payday loan lenders, can be expected to be familiar with *PIPEDA*. The Board considers that the imposition (as the Consumer Advocate recommends) of privacy provisions which would be unique to Nova Scotia would inevitably have the effect of discouraging some online lenders elsewhere from doing business in Nova Scotia. This is particularly so given the relatively small size of the Nova Scotia market, in comparison to such markets as Ontario, Alberta and British Columbia.

[40] The Board accordingly recommends that privacy of information for online lenders be dealt with, at least initially, using the same requirements as applied to bricks and mortar lenders. If subsequent experience with respect to the regulation of online

lenders in Nova Scotia points to the possible utility of additional, or different, privacy regulations with respect to online payday loans, such changes could be considered at that time.

6. Requirement for Provision of Clear and Understandable Information to Payday Borrowers

[41] This recommendation comprises four related sub-recommendations (6(a), (b), (c) and (d)) relating to the provision of information by online lenders. These relate to specific recommendations made by the Consumer Advocate with respect to: the display of cost information on the websites of online lenders; advertising; the easy access to copies of loan agreement forms both prior to, and after execution; express consent to entry into payday loan agreements, and records of consent. The Board has also included in this part a recommendation (relating to explanations of repayment mechanisms) not referred to by either the Consumer Advocate or the CPLA; this recommendation appears at para. 53 below.

[42] The Board agrees with the Consumer Advocate's submissions, and does not see the CPLA as taking contrary positions in relation to any of these items specifically.

6(a) The Board Recommends that Display of Cost Information, and Other Similar Requirements, for Online Lenders Should be Similar in Substance to that for Loans Made Through "Bricks and Mortar" Outlets

[43] The Board agrees with the submissions by the Consumer Advocate and the CPLA which, in essence, say that information about the cost of payday loans should be

prominently displayed to prospective online borrowers, in a manner similar to that done in bricks and mortar outlets.

[44] The Consumer Advocate's submissions suggest as follows:

A notice, fully disclosing the cost of a payday loan, including the cost per \$100 borrowed, the annualized percentage interest rate for the loan and any other disclosure that must be posted in a business premises, should be displayed on a page on the website that precedes the loan application: Ontario, Section 14(5); Manitoba, Section 16(1); Saskatchewan, Section 13(3); Alberta, Section 20(3); British Columbia, Section 13.

[Consumer Advocate's Submissions, February 28, 2011, p.3]

[45] The CPLA's submission on this point is very nearly identical:

Notification of Information. The Regulations of each province require a licensed payday lender to have a poster displayed in the licensed outlet that sets out the cost of the loan. This is found in Section 8(3) of the Payday Lender Regulations of Nova Scotia and the dimensions, colour and content of the poster are consistent from province to province. Regulations regarding internet lending should provide that the information on the poster is displayed on the page that precedes the payday loan application or the first page that is displayed after the borrower selects the applicable province on the payday lender's website.

[CPLA Submissions, March 3, 2011, p.3]

6(b) The Board Recommends that Regulations With Respect to Advertising by Online Lenders Should be the Same as that for Bricks and Mortar Lenders

[46] The Consumer Advocate's position is:

The Board should recommend that advertising on behalf of any online payday lender holding a permit to loan money to borrowers in Nova Scotia should be subject to the same regulatory provisions that apply to conventional payday lenders. In particular, any advertising online on behalf of a lender that loans money to borrowers in Nova Scotia should state the overall cost of a loan.

[Consumer Advocate's Submissions, February 28, 2011, p.6]

[47] The Board agrees that all advertising by online lenders (be that advertising which is actually online, or through some other medium) should be subject to the same regulatory requirements that apply to bricks and mortar lenders.

6(c) The Board Recommends that Regulations Should Require Easy Access by Online Borrowers to Copies of Loan Agreement Forms Both Prior To, And After Execution

[48] The Consumer Advocate's submissions include the following recommendation with respect to the loan agreement forms for online loans:

The loan agreement should be in a form that can be retained and printed by a prospective online borrower before the borrower enters into the agreement: Ontario, Section 18(4); Manitoba, Section 14.01(1).

Once completed, the loan agreement should be transmitted to the borrower by email, if an email address was provided by the borrower, or by regular mail: Saskatchewan, Section 11(b).

[Consumer Advocate's Submissions, February 28, 2011, p.4]

In a related recommendation, the Consumer Advocate suggests as follows:

Consent

The website should clearly state the action that will convey the consent of a borrower to the terms of a loan agreement: Prince Edward Island, Section 18(5) (draft); Manitoba, Section 14.01(1).

The online payday lender should be required to make and retain a record showing consent in a manner that allows the lender to prove consent: Prince Edward Island, Section 18(5)(draft); Manitoba, Section 14.01(3).

[Consumer Advocate's Submissions, February 28, 2011, p.4]

[49] The Board agrees with both these recommendations. A prospective online payday borrower should be able to see the loan agreement in its entirety, before making even a tentative commitment to actually entering into such an agreement. Further, any loan agreement which is actually entered into by an online borrower must be transmitted to the borrower by e-mail or by regular mail.

6(d) The Board Recommends that Online Lending Regulations Should Provide for: Express Consent to Entry into a Payday Loan Agreement; Record of Consent; and Explanations of Repayment Mechanisms

[50] Likewise, the Board agrees with the Consumer Advocate's suggestion that the websites of online payday lenders must clearly indicate the action which conveys the consent of a borrower to the terms of a binding payday loan agreement.

[51] In the view of the Board, it is essential that borrowers be clearly told that (for example) "clicking" on a particular website button means that they will be entering into binding payday loan agreements, in the same manner as persons who sign their names in pen and ink to loan documentation in the traditional paper form know they are entering into a binding agreement.

[52] Likewise, the Board agrees that online lenders be required to retain records proving that consent by the borrower occurred.

[53] While the Consumer Advocate and CPLA did not address the following issue, the Board also recommends that the Minister make regulations which will require that the repayment mechanisms for online payday loans (whether they are repaid at their normal maturity of 14 days, or during the cancellation period provided for under the Act) be expressly explained on lenders' websites.

7. The Board Recommends that Fees Charged by Service Nova Scotia for Licensing Payday Websites Should be the Same as those Charged for Bricks and Mortar Outlets

[54] The Consumer Advocate recommends that a website operated by an online lender be charged a higher licensing fee by Service Nova Scotia than that charged to a bricks and mortar outlet:

Under the Act and Regulations, payday loan companies must pay \$3000 for a permit for each location from which payday loans are offered in Nova Scotia. A single website could generate the same volume of business as scores of individual locations. The Board should recommend a fee structure for websites offering online payday loans that reflects the fact that a single website is a substitute for multiple, individual locations.

[Consumer Advocate's Submissions, February 28, 2011, p.6]

[55] The Board does not agree. According to the evidence before the Board, the licensing fee charged in Nova Scotia for payday lenders is already the highest in the Country, except for Manitoba.

[56] The following table shows information made available to the Board with respect to licensing fees charged elsewhere in Canada. Three provinces (British Columbia, Alberta and Ontario) charge different fees for bricks and mortar "main locations" than they do for outlets; no province, however, charges more for an online lender fee than it charges to license a "main location." Saskatchewan and Manitoba charge the same amount for bricks and mortar outlets as they do for online lenders (\$2,000 and \$5,500, respectively):

Fees for 1 year of operations:			
Province	Main location fees	Per Outlet fees	Online lender fees
BC	\$1,500	\$750	\$1,500
AB	\$1,000	\$500	\$1,000
SK	\$2,000	\$2,000	\$2,000
MB	\$5,500	\$5,500	\$5,500
ON	\$750	\$990	\$750
PEI			Not allowed
NS	N/A	\$3,000	N/A

Source: information gathered by Board staff.

[57] For reasons previously discussed, the Board considers that increased competition amongst payday lenders is a goal to be pursued, rather than discouraged.

[58] The policy choice as to whether payday lending is a good thing, or a bad thing, to be permitted, or to be prohibited, does not lie within the jurisdiction of the Board, but has already been made by the Federal and Provincial legislatures.

[59] Payday lending is to be available in Nova Scotia, subject to reasonable regulation, by Service Nova Scotia and the Board.

[60] Nova Scotia is a province in which, as in many others, there is a perception of increasing disparities between services available to those living in the rural areas and those living in urban ones. Where (as in Nova Scotia) the combined Federal and Provincial legislatures have determined that payday lending is an acceptable practice, the Board considers that regulation of payday lending in such a way as to reduce inequality of opportunity with respect to borrowing, as experienced by urban and rural dwellers, is something to be encouraged.

[61] Making payday loans available to rural residents (as well as others) through many competing online lenders is one way of increasing the competitive nature of the marketplace. The Board considers that to impose a fee on an online lender which is

greater than the \$3,000 which Nova Scotia charges to each bricks and mortar outlet (a fee which, as noted, is the second highest in the Country) would, in the Board's judgment, discourage the entry into the marketplace of some online lenders, particularly those which are relatively small.

8. Regulations Should Require that Online Lenders Report Their Loan Activities in the Same Fashion as Bricks and Mortar Lenders

[62] The Board agrees with the recommendation from the Consumer Advocate with respect to the detailed information which payday lenders are required to provide to Service Nova Scotia:

The Payday Lenders Regulations currently require payday lenders holding permits to operate in Nova Scotia to file information with Service Nova Scotia showing the number of loans granted, the average size of loans granted, and the number of defaults on loans granted.

This information is required annually for each payday loan outlet. Online lenders holding permits to loan money to borrowers in Nova Scotia should be required to provide the same information. Where online lenders also operate conventional payday loan outlets in Nova Scotia, the data on online lending should be segregated and be clearly identified.

[Consumer Advocate's Submissions, February 28, 2011, pp.6-7]

9. The Regulations Adopted by Nova Scotia Should, Where Practical, be the Same, or Similar, to Provisions Adopted Elsewhere Which are Intended to Achieve a Similar Result

[63] CPLA recommends to the Board as follows:

Regulations need to be clear and concise so internet payday lenders have certainty and will be able to understand what is necessary to be in compliance with all legislation.

[CPLA's Submissions, March 3, 2011, p.2]

[64] Where regulations in other provinces are consistent with the Board's recommendations, the Board recommends that these regulations be adopted. This is

likely to reduce uncertainty on the part of borrowers and lenders as to the meaning of particular regulations.

III SUMMARY

[65] In this Decision, the Board makes nine recommendations to the Minister:

1. The Board Recommends that the Minister Adopt Regulations Requiring Licensing for Online Payday Loans in Nova Scotia, and Providing that Payday Loans not be Enforceable Against the Borrower by an Unlicensed Lender
2. The Board Recommends that Service Nova Scotia Inform the Public that Online Payday Loans will be Regulated
3. The Board Recommends that no Special Regulations are Needed for the Timely Delivery of Funds to Online Payday Borrowers
4. The Board Recommends that Online Payday Lenders be Required to Have a Registered Office in Nova Scotia, but not be Required to Have a Bricks and Mortar Outlet
5. The Board Recommends that Personal Information About Online Payday Borrowers be Protected Using Existing Legislation, such as *PIPEDA*
6. Requirement for Provision of Clear and Understandable Information to Payday Borrowers
 - (a) The Board Recommends that Display of Cost Information, and Other Similar Requirements, for Online Lenders Should be Similar in Substance to that for Loans Made Through “Bricks and Mortar” Outlets
 - (b) The Board Recommends that Regulations With Respect to Advertising by Online Lenders Should be the Same as that for Bricks and Mortar Lenders
 - (c) The Board Recommends that Regulations Should Require Easy Access by Online Borrowers to Copies of Loan Agreement Forms Both Prior To, And After Execution
 - (d) The Board Recommends that Online Lending Regulations Should Provide for: Express Consent to Entry into a Payday Loan Agreement; Record of Consent; and Explanations of Repayment Mechanisms

7. The Board Recommends that Fees Charged by Service Nova Scotia for Licensing Payday Websites Should be the Same as those Charged for Bricks and Mortar Outlets

8. Regulations Should Require that Online Lenders Report Their Loan Activities in the Same Fashion as Bricks and Mortar Lenders

9. The Regulations Adopted by Nova Scotia Should, Where Practical, be the Same, or Similar, to Provisions Adopted Elsewhere Which are Intended to Achieve a Similar Result.

[66] The Board has not drafted regulations with respect to these recommendations. The ultimate content of any regulations adopted by the Minister in consequence of these recommendations will, of course, reflect the policy choices which the Minister (and Cabinet) may choose to make.

DATED at Halifax, Nova Scotia, this 4th day of May, 2011.



Peter W. Gurnham



Wayne D. Cochrane



Roland A. Deveau