

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: Roland A. Deveau, Q.C., Vice Chair
Richard J. Melanson, LL.B., Member
Jennifer L. Nicholson, CPA, CA, Member

COUNSEL: **CONSUMER ADVOCATE**
David J. Roberts, Counsel

CANADIAN CONSUMER FINANCE ASSOCIATION
Patty P. Ko, Counsel

PROVINCE OF NOVA SCOTIA
DEPARTMENT OF JUSTICE
Jeremy P. Smith, Counsel
Kelly L. Wyer

BOARD COUNSEL: S. Bruce Outhouse, Q.C.

HEARING DATE: March 28, 2022

WRITTEN BRIEFS: April 19, 2022

DECISION DATE: **June 7, 2022**

DECISION: **Maximum cost of borrowing reduced to \$17 per \$100, effective September 1, 2022, and to \$15 per \$100, effective January 1, 2024. On default, the maximum interest rate that can be charged on any balance outstanding on the loan, is reduced to 30%.**

Table of Contents

I	SUMMARY	3
II	BACKGROUND.....	4
III	REGULATION OF THE PAYDAY LOAN INDUSTRY.....	8
IV	PAYDAY LOAN LEGISLATION IN NOVA SCOTIA.....	8
V	PROCEEDINGS AND FORMAL INTERVENORS.....	12
	(a) Letters and Public Speakers	13
VI	ISSUES	17
VII	ANALYSIS AND FINDINGS	17
	(a) The cost of borrowing currently charged by different payday lenders in Nova Scotia.....	17
	(b) Comparison of payday regulations in the Province, including limits on the maximum cost of borrowing, with other jurisdictions.....	18
	(c) Whether the Market Approach remains the methodology to be used by the Board in making its determination of the maximum cost of borrowing	19
	(i) Findings.....	22
	(d) Whether the Board should vary the existing maximum cost of borrowing set at \$19 per \$100.....	22
	(i) Findings.....	26
	(e) Whether the Board should vary the existing maximum fee, charge or penalty chargeable on default set at \$40 per loan	32
	(f) Whether the Board should vary the existing limit on the maximum interest rate chargeable on a payday loan set as sixty percent (60%).....	34
	(g) The adequacy of the existing disclosure requirements imposed upon payday lenders under the <i>Regulations</i>	35
	(h) Whether the Board should recommend regulations to control the provision of repeat and concurrent loans to borrowers by lenders	36
	(i) The scheduling of the next review to be conducted by the Board.....	38
	(j) Any other issue the Board is asked to take into account under the <i>Regulations</i>	39
VIII	CONCLUSION.....	40

I SUMMARY

[1] The Nova Scotia Utility and Review Board held a public hearing on March 28, 2022, about payday loans under the *Consumer Protection Act*. The *Act* requires the Board to review its existing payday loan orders at least once every three years. This review covered a variety of issues, including setting the maximum cost of borrowing that can be charged by payday lenders.

[2] A payday loan is typically a small loan payable over a short term, generally on or before the customer's next payday. The *Consumer Protection Act* defines a payday loan as involving up to \$1,500 and a term up to 62 days.

[3] Having reviewed all of the evidence, the Board reduces the maximum cost of borrowing to \$17 per \$100, effective September 1, 2022, and to \$15 per \$100, effective January 1, 2024. The Board maintains the maximum penalty for defaulting on a payday loan at \$40 per loan and reduces the maximum interest rate on any balance outstanding on the loan to 30% in the case of default. An Order will issue, effective September 1, 2022, to allow time for payday lenders and the Minister to implement this Decision.

[4] Despite numerous letters of comment asserting that the payday loan industry be “shut down” in Nova Scotia or that the maximum cost of borrowing be significantly reduced, the Board remains mindful that both the federal and provincial governments have legislation in place allowing lenders to offer payday loans to the public. As noted in the submissions of Service NS in this hearing, referring to the Board’s 2018 decision, the elimination of the regulated payday loan industry in Nova Scotia would reduce available options of short-term credit for consumers. It would also increase the presence of unscrupulous and unregulated lenders, particularly unlicensed online

lenders, potentially leading to the unfortunate consequences of innocent borrowers accessing such unregulated loans from the internet. This was undoubtedly a policy consideration of Parliament and the Province in their enactment of the payday loan legislation.

[5] Further, the Board makes two recommendations to the Minister which were suggested by the Consumer Advocate:

- that the *Regulations* be amended to provide that where a borrower takes out three or more loans in a 62-day period, repayment of a third and any subsequent loan must, at the option of the borrower, be extended over a minimum of three pay periods if the borrower is paid bi-weekly or a minimum of two pay periods if the borrower is paid on a less frequent basis; and
- that the *Regulations* be amended, specifically Regulation 5(1)(d), to require payday lenders to include, in their reporting requirements, data on the number and value of uncollectable loans resulting from loan defaults.

[6] Service NS indicated that it will have to conduct research and consultation with the payday lending industry before deciding whether to implement these two recommendations.

II BACKGROUND

[7] This Decision follows a public hearing held by the Nova Scotia Utility and Review Board about certain aspects of the *Consumer Protection Act*, R.S.N.S. 1989, c. 92 (*Act*), relating to payday loans.

[8] A payday loan is typically a small loan payable over a short term, generally on or before the customer's next payday. The *Consumer Protection Act* defines a payday loan as involving up to \$1,500 and a term up to 62 days.

[9] In addition to providing payday loans, many lenders also offer a range of other products and services such as cheque cashing, operation of bank accounts, money transfers, credit cards, debit cards, and borrowers' insurance, each of which is typically sold for a separate and additional price, over and above the stated cost of borrowing.

[10] The purpose of this hearing was to conduct a review of the Board's existing Order on payday loans made under s. 18T of the *Act* and effective February 1, 2019.

[11] The Board held its first hearing about payday loans in 2008. In its Decision, 2008 NSUARB 87 (*Payday 2008*), the Board made numerous findings, including, among others, that it should apply a Market Approach (rather than a Cost Approach) to determine the maximum cost of borrowing; that the maximum cost of borrowing be set at \$31 per \$100, inclusive of all expenses (including interest); that the maximum penalty chargeable for defaulting on a payday loan should be \$40 per loan; that 60% be the maximum interest rate that should apply, in the case of default, to any balance outstanding on a loan; and that the disclosure requirements set out in s. 18I of the *Consumer Protection Act*, together with the requirements set out in ss. 8, 9 and 18 of regulations (in draft form at the time), provided appropriate disclosure by payday lenders to borrowers as Nova Scotia embarked on a newly regulated marketplace after the legislation took effect. Also, the Board determined that it should conduct a review of its Order in two years.

[12] Nova Scotia was the first province in Canada to enact regulations respecting payday loans when it enacted the *Payday Lenders Regulations (Regulations)*, effective August 1, 2009.

[13] The Board held its second hearing about payday loans in 2010-2011. In its Decision, 2011 NSUARB 22, the Board set the maximum cost of borrowing at \$25 per \$100, inclusive of all expenses (including interest). The Board also concluded that the disclosure requirements set out in s. 18I of the *Consumer Protection Act* and the *Regulations* were adequate, but recommended to the Minister that payday lenders be required to disclose the cost of payday loans in their advertising.

[14] Further, the Board recommended to the Minister that more data be collected about repeat loans and that the *Regulations* be amended to provide that all payday lenders file with the Registrar, on an annual basis, the following data (on a per outlet basis): the number of repeat loans, the number of customers who have taken out repeat loans, and the number of repeat loans taken out by individual customers.

[15] The Board also determined that it should review its Order in three years.

[16] In a Supplementary Decision, 2011 NSUARB 58, the Board, after reviewing submissions from the parties, made recommendations to the Minister about the regulation of online payday loans (both Decision 2011 NSUARB 22 and Supplementary Decision 2011 NSUARB 58 shall be referred to in this Decision, collectively, as *Payday 2011*).

[17] The Board held a third hearing in 2015. In its Decision, 2015 NSUARB 64 (*Payday 2015*), the Board reduced the maximum cost of borrowing to \$22 per \$100. It also recommended that the Minister consider placing restrictions on repeat and concurrent loans and require lenders to display comparisons of borrowing costs of

alternative financial products in dollar terms. The Board also ordered that the next review occur in three years.

[18] A fourth hearing was held in 2018. In its Decision, 2018 NSUARB 215 (*Payday 2018*), the Board reduced the maximum cost of borrowing to \$19 per \$100. The Board ordered that the next review be scheduled in three years.

[19] The Province amended the *Act* in October 2017 to implement the Board's recommendation in *Payday 2015* requiring lenders to display educational materials, but the Minister did not implement the Board's recommendation to place restrictions on repeat and concurrent loans. The Department of Service Nova Scotia and Internal Services (Service NS) stated it researched the matter, but its analysis determined that implementing further restrictions, including using loan-tracking databases, was not feasible because of privacy implications and costs. The Consumer Advocate raised the issue again in *Payday 2018*, but the Board accepted the Province's ultimate decision that the *Regulations* not be amended respecting this issue for the cited reasons. However, in its decision, the Board did recommend that the *Regulations* be amended to provide that where a borrower takes out three or more loans in a 62-day period, repayment of a third and any subsequent loan should, at the option of the borrower, be extended over a minimum of three pay periods if the borrower is paid bi-weekly or a minimum of two pay periods if the borrower is paid less frequently. This recommendation was not implemented by the Minister and is addressed again later in this Decision.

[20] Starting in *Payday 2008*, through *Payday 2018*, the Board has consistently applied the market approach to determine the maximum cost of borrowing. Further, it has maintained the maximum penalty for defaulting on a payday loan at \$40 per loan and

the maximum interest rate at 60% (the maximum rate that can be charged under the *Criminal Code*).

III REGULATION OF THE PAYDAY LOAN INDUSTRY

[21] In 2007, the Parliament of Canada amended the *Criminal Code* provisions dealing with criminal rates of interest, effectively providing for the regulation of payday loans by the provinces.

[22] Because of the 2007 amendment, the provisions in s. 347 of the *Criminal Code* relating to criminal rates of interest no longer apply to payday loans in any province that enacts payday loans legislation, and is designated under s. 347.1(3):

Designation of province

347.1(3) The Governor in Council shall, by order and at the request of the lieutenant governor in council of a province, designate the province for the purposes of this section if the province has legislative measures that protect recipients of payday loans and that provide for limits on the total cost of borrowing under the agreements. [Emphasis added]

[23] Thus, before a payday lender can benefit from the protection afforded by s. 347.1(2), subsection (3) requires the affected province to enact "legislative measures that protect recipients of payday loans and that provide for limits on the total cost of borrowing under the agreements".

IV PAYDAY LOAN LEGISLATION IN NOVA SCOTIA

[24] In 2006, Nova Scotia amended the *Consumer Protection Act* to provide for the regulation of payday loans: S.N.S. 2006, c. 25. The amendments provide for, among other things, the licensing of payday lenders (ss. 18C-18H), the information to be disclosed by payday lenders to their borrowers (ss. 18I and 18O), various provisions aimed at protecting the borrowers (ss. 18L-18N, 18Q-18R), the Board's powers to set the

maximum cost of borrowing and other charges or rates (s. 18T), a prohibition against payday lenders charging fees or rates in excess of those set by the Board (s. 18J), the retention of loan documentation by payday lenders (ss. 18M and 18S), as well as a broad authority for the Governor in Council (Cabinet) to make regulations about payday lending.

[25] Two payday loan amendments to the *Consumer Protection Act* in 2006 were proclaimed in force on August 31, 2007 (i.e., ss. 18A and 18T). Section 18A defines internet payday loan, payday lender, payday loan and rollover:

18A In this Section and Sections 18B to 18U,

(aa) "Internet payday loan" means a payday loan under an agreement between a borrower and a lender that is formed by Internet communications or by a combination of Internet and fax communications;

(ab) "payday lender" means a person who offers, arranges or provides a payday loan;

(b) "payday loan" means any advancement of money with a principal of one thousand five hundred dollars or less and a term of sixty-two days or less made in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbrokering, a line of credit or a credit card;

(c) "rollover" means the extension or renewal of a loan that imposes additional fees or charges on the borrower, other than interest, or the advancement of a new payday loan to pay out an existing payday loan, or a transaction specified in the regulations.

[26] The Board's powers are set out in s. 18T:

18T(1) In this Section, "Board" means the Nova Scotia Utility and Review Board.

(2) The Board shall, by order,

(a) fix the maximum cost of borrowing, or establish a rate, formula or tariff for determining the maximum cost of borrowing, that may be charged, required or accepted in respect of a payday loan;

(b) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of the extension or renewal of a payday loan; and

(c) fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any fee, charge or penalty that is provided for in the regulations.

(3) The Board may, by order, fix the maximum amount, or establish a rate, formula or tariff for determining the maximum amount, that may be charged, required or accepted in respect of any component of the cost of borrowing of a payday loan.

- (4)** When making an order under this Section, the Board may consider
- (a) the operating expenses and revenue requirements of payday lenders in relation to their payday lending business;
 - (b) the terms and conditions of payday loans;
 - (c) the circumstances of, and credit options available to, payday loan borrowers generally, and the financial risks taken by payday lenders;
 - (d) the regulation of payday lenders and payday loans in other jurisdictions;
 - (e) any other factor that the Board considers relevant and in the public interest; and
 - (f) any data that the Board considers relevant.
- (5)** An order made under this Section must be one that the Board considers just and reasonable in the circumstances, having regard to the factors and data considered by the Board.
- (6)** The Board shall review its existing orders under this Section at least once every three years and, after the review, the Board shall make a new order that replaces the existing orders.
- (7)** Whenever the Board is satisfied that circumstances in the payday lending industry have changed substantially, or that new evidence has come to its attention that may affect an existing order made under subsection (2) or (3), the Board may review any existing order and, after the review, the Board shall make a new order that continues, modifies or replaces the order that was reviewed.
- (8)** Before making an order under this Section, the Board shall notify the Registrar and give public notice and hold a public hearing in respect of the subject matter of the order.
- (9)** As soon as practicable after the Board makes an order under this Section, the Registrar shall give written notice of the order to every payday lender who holds a permit or whose application for a permit is under consideration by the Registrar.
- (10)** The Board may make recommendations to the Minister on matters in respect of payday loans and payday lenders.
- (11)** The *Utility and Review Board Act* applies *mutatis mutandis* to a proceeding by the Board under this Section.

[27] The remaining 2006 amendments to the *Act* (i.e., ss. 18B - 18S and s. 18U) were proclaimed August 1, 2009.

[28] Section 18U(1) of the *Act* provides that the Cabinet may make regulations respecting several matters relating to payday loans. The *Regulations* also took effect August 1, 2009.

[29] Following the Board's issuance of *Payday 2011*, the Cabinet amended the *Regulations* in 2011 to require the disclosure of the cost of payday loans in lenders' advertising and the collection of data from lenders about repeat loans. In 2012, the *Act* and *Regulations* were amended to allow for online payday loans provided through the internet.

[30] The Legislature amended the *Act* in October 2017 to implement some of the Board's recommendations in *Payday 2015*. Section 18HC of the *Act* was amended to remove a one-hour loan funding requirement. Payday lenders are now required to forward lending instructions on the same day the borrower enters into the loan agreement. The amending legislation also added subsections 18O(3) and (4) requiring lenders to display educational materials that are developed or approved by the Registrar of Credit, and clause 18I(1a) of the *Act* requiring lenders to provide borrowers with those educational materials as part of every loan purchased.

[31] The *Regulations* contain a number of provisions, including provisions dealing with the displaying of rates and fees by payday lenders in their outlets (s. 8), the information to be disclosed by payday lenders to their borrowers (s. 9), the protection of borrowers with respect to the repayment of payday loans (ss. 10 - 17), limits on the charges that can be included in the cost of borrowing (s. 18), provisions requiring the retention of loan documentation by payday lenders (s. 22), a provision setting out the information that must accompany applications for the licensing of payday lenders (s. 5), and provisions about online payday loans (ss. 8A and 8C).

V PROCEEDINGS AND FORMAL INTERVENORS

[32] By Hearing Order issued November 23, 2021, the Board directed that a hearing be conducted for this matter and established a timeline for the filing of requests for formal standing, the filing of evidence and information requests, the filing of letters of comment by the public and requests to speak at the evening session and the scheduling of the hearing.

[33] The Notice of Public Hearing was published in the Chronicle Herald and the Cape Breton Post on November 27 and December 1, 2021. Further to s. 18T(8) of the *Consumer Protection Act*, the Board also advised the Registrar of Credit about the hearing by letter dated November 23, 2021.

[34] Following submissions from the formal intervenors, the Board set out a Final Issues List which specifically identified those matters which would be the focus of the public hearing. Three formal intervenors appeared at the Public Hearing: the Canadian Consumer Finance Association (CCFA), represented by Patty P. Ko; the Consumer Advocate, David J. Roberts, LL.B.; and Service Nova Scotia and Internal Services (Service NS), represented by Jeremy P. Smith, LL.B. and Kelly L. Wyer.

[35] The Consumer Advocate called Michael Gardner, of Gardner Pinfold Consultants Inc., as a witness, who was qualified by the Board to testify as an expert able to provide opinion evidence on economic and policy analysis in the fields of regulated industries and public administration.

[36] The CCFA, formerly known as the Canadian Payday Loan Association (CPLA), is a federally incorporated not-for-profit association “whose mandate includes working with government on development and implementation of balanced regulation that

allows for a viable industry and protects consumers”. It confirmed at the hearing that it changed its name to better reflect the range of financial services it offers to its clients. The CCFA represents six companies with 762 retail outlets and licensed internet lenders across Canada. It represents five CCFA members in Nova Scotia which have 27 retail outlets and internet lending licenses. The CCFA has had extensive and ongoing meetings with officials in every province across Canada. It also participated as an intervenor under its former name (i.e., the CPLA) and presented evidence in all prior payday loan hearings conducted by the Board.

[37] Service NS is responsible for administration of the *Consumer Protection Act* and the *Regulations* pertaining to payday loans. At the request of the Board, Service NS filed the list of payday lenders holding permits to conduct business in Nova Scotia, copies of sample loan documentation filed by such payday lenders with Service NS, and, on a confidential basis, data on a “per outlet” basis about the number of loans granted, the average size of loans, the number of defaults, the number of repeat loans, and the number of customers taking out repeat loans.

(a) Letters and Public Speakers

[38] The Notice of Hearing invited members of the public to send letters of comment to the Board or appear at the hearing in a public session. The Board received 31 letters of comment. Four people also registered to speak at the public session, including Alex Dumaresq, Dean Tupper, Dr. Michael Bradfield and Patrick Mohan.

[39] Most of the 31 letters of comment opposed high rates charged by payday lenders in Nova Scotia, or the payday loan industry in general. Many of the letters were the same form letter, sent and signed by different people.

[40] These letters shared one or more of the following three requests:

1. Lower the maximum cost of borrowing dramatically. Some letters suggested it should be lowered to the maximum allowed under the *Criminal Code*, 60% per annum, while others suggested 35% per annum, as was implemented in Quebec.
2. Abolish payday loans, or recommend Government disallow them.
3. Replace payday loans with policies and products that work to reduce poverty, including cheaper micro-credit options.

[41] In addition to the three main themes noted above, several of the letters suggested that the default rate be lowered, that the Market Approach does not work, and that the disclosure requirements for payday loans are inadequate compared to other short-term credit products.

[42] Three of the speakers at the hearing, Alex Dumaresq, Dean Tupper, and Dr. Michael Bradfield, were generally against payday loans in Nova Scotia and reiterated much of what is in the letters of comment.

[43] Dr. Bradfield also noted that he believes the Board's role is to protect the consumers, not the industry, and as such, the sustainability of the lenders should not be a determining factor in setting the maximum cost of borrowing.

[44] The fourth speaker, Mr. Mohan, spoke in favour of the industry. He is President of the Independent Payday Loan Association of Canada (IPLAC), which was described in an earlier hearing as a non-profit association representing "short term lending organizations who are operator owned, Canadian owned and reflect the values of responsible lending". Its mandate also includes "working with governments across the

country on development and implementation of balanced regulation that allows for a viable industry and protects consumers”. IPLAC represents over 50 Independent Payday Loan operations with over 100 store fronts located across Canada. Mr. Mohan confirmed at the hearing that he owns and operates four retail outlets in Nova Scotia under the Money Direct brand, who are members of the association. He described IPLAC as representing the “little guy”, including “Mom and Pop” operators.

[45] He noted that current rates are not adequate and suggested higher rates may be required for the industry to survive. He noted a 2004 Ernst and Young study in Ontario determined an appropriate rate was \$21 per \$100 borrowed, and that the current \$15 applied in other jurisdictions was not based on evidence nor was it a market rate in any jurisdiction before being implemented.

[46] Mr. Mohan also noted that if the industry can’t survive, the market would then be serviced by unregulated online lenders, which could leave customers worse off than with a sustainable regulated industry.

[47] In response to a question posed to Ms. Ko earlier in the hearing, Mr. Mohan addressed the issue of default fees and confirmed that in addition to borrowers being charged by their bank for a non-sufficient funds (NSF) charge, payday lenders are also charged a fee from the Bank when borrowers default on a payment.

[48] As part of their final arguments, the Consumer Advocate and Service NS included their position on the letters of comment and the public speakers. The CCFA addressed some of the concerns from the letters, such as lowering the cost of borrowing, but did so indirectly.

[49] In the Consumer Advocate's final submission, he noted that many of the concerns brought forward in the letters of comment, which questioned the legitimacy of payday loans or asked for the prohibitions from the *Criminal Code* for payday lending to be ended, are matters beyond the mandate of the Board under the current *Regulations*.

[50] The Consumer Advocate also suggested that the Board dismiss Mr. Mohan's request to increase the maximum cost of borrowing as he did not intervene in the matter nor provide any supporting evidence.

[51] In its closing submission, Service NS addressed some of the common points made in the letters of comment. With regards to having the industry "shut down", Service NS highlighted the following statement made by the Board in its *Payday 2018* decision:

[119] ... the elimination of the regulated payday loan industry in Nova Scotia would reduce available options of short term credit for consumers, and would increase the presence of unscrupulous and unregulated lenders, particularly unlicensed online lenders. Evidence was presented at the hearing about the unfortunate consequences of innocent borrowers accessing such unregulated loans from the internet. This was undoubtedly a policy consideration by Parliament and the Province in their enactment of the payday loan legislation.

[52] Service NS further noted that requests for alternative ways to reduce reliance on payday lenders are outside of Service NS's authority under the *Consumer Protection Act*. Service NS stated that it is looking into options, such as improving financial literacy initiatives, to reduce repeat borrowing.

[53] In its closing submission, the CCFA stated that the maximum cost of borrowing should remain at \$19 per \$100, as the industry is sustainable at that rate. It was also noted that the market has plateaued and no longer attracts new entrants at this rate.

VI ISSUES

- [54] The Final Issues List established by the Board for this hearing is as follows:
- (a) the cost of borrowing currently charged by different payday lenders in Nova Scotia;
 - (b) comparison of payday regulations in the Province, including limits on the maximum cost of borrowing, with other jurisdictions;
 - (c) whether the Market Approach remains the methodology to be used by the Board in making its determination of the maximum cost of borrowing;
 - (d) whether the Board should vary the existing maximum cost of borrowing set at \$19 per \$100;
 - (e) whether the Board should vary the existing maximum fee, charge or penalty chargeable on default set at \$40 per loan;
 - (f) whether the Board should vary the existing limit on the maximum interest rate chargeable on a payday loan set at sixty percent (60%);
 - (g) the adequacy of the existing disclosure requirements imposed upon payday lenders under the *Regulations*;
 - (h) whether the Board should recommend regulations to control the provision of repeat and concurrent loans to borrowers by lenders;
 - (i) the scheduling of the next review to be conducted by the Board; and
 - (j) any other issue the Board is asked to take into account under the *Regulations*.

VII ANALYSIS AND FINDINGS

(a) The cost of borrowing currently charged by different payday lenders in Nova Scotia

[55] Before beginning its analysis of the issues, the Board considers it useful to review the cost of borrowing currently being charged by different payday lenders in the Province.

[56] Michael Gardner, in his report for the Consumer Advocate, stated that payday lenders in Nova Scotia uniformly charge the maximum fee of \$19 per \$100 loan. He commented that this is the highest in Canada, with the exception of \$21 per \$100

charged in Newfoundland and Labrador. This data was not challenged by any of the parties.

(b) Comparison of payday regulations in the Province, including limits on the maximum cost of borrowing, with other jurisdictions

[57] In making an order fixing the cost of borrowing for a payday loan, s. 18T(4)(d) provides that the Board may consider “the regulation of payday lenders and payday loans in other jurisdictions”.

[58] The information provided by Service NS and the Consumer Advocate about payday loan rates and regulations in other provinces was compiled by the Board in the following table:

	Cost per Hundred	Default Fee	Maximum Interest on Arrears	Maximum Loan Based on Borrower's Net Pay
Nova Scotia	\$19.00	\$40.00	60% per annum	\$1,500
British Columbia	\$15.00	\$20.00	30% per annum	50%
Alberta	\$15.00	\$25.00	30% per annum	\$1,500
Saskatchewan	\$17.00	\$25.00	30% per annum	50%
Manitoba	\$17.00	\$20.00	30% per annum	30%
Ontario	\$15.00	\$25.00	60% per annum	50%
Prince Edward Island	\$15.00	Reasonable charge	60% per annum	\$1,500
New Brunswick	\$15.00	\$20.00	30% per annum	30%
Newfoundland and Labrador	\$21.00	\$20.00	2.5% per month	50%
Quebec	N/A			

[59] Service NS indicated that Quebec has decided not to regulate payday loans *per se*. Instead, it has limited the annual interest rate on payday loans to 35%, which has “ultimately curtailed the operation of payday lenders in the province.”

[60] Most, if not all, other provinces that have regulated the payday loan industry have included provisions in their legislation about online lenders.

[61] Nova Scotia requires, as a licensing condition, that payday lenders track and submit aggregated data respecting their payday lending activities. Mr. Gardner indicated that British Columbia also requires the filing of similar data.

(c) Whether the Market Approach remains the methodology to be used by the Board in making its determination of the maximum cost of borrowing

[62] In *Payday 2008*, the Board thoroughly reviewed the methodology it should adopt to set the maximum cost of borrowing. It reviewed the Cost Approach and the Market Approach. The term Cost Approach refers to the model commonly used for the regulation of public utilities. It involves determining the reasonable cost of providing a service (including capital and operating expenses) and then applying whatever rate of return on capital the Board deems reasonable in the circumstances. Several experts testified before the Board on the issue.

[63] The Board, in that proceeding, concluded it should adopt the Market Approach:

[275] The Board rejected the Cost Approach as a methodology for determining the maximum cost of borrowing. It involves the collection of cost data from payday lenders operating in the payday market. The Board finds that the Cost Approach would pose difficulties in developing a standardized format to obtain reliable and meaningful cost data from different lenders and would also greatly increase the cost of the regulatory environment for the payday lending market. This would involve significant costs for payday lenders in terms of compliance with such a regulatory scheme and increase the cost of monitoring by government. In the end, these costs would ultimately have to be borne by the consumers.

...

[279] Further, based on its review, the Board must set a maximum cost of borrowing that recognizes the different business models that exist in the marketplace, in addition to those that may choose to enter in the future. This will help to ensure that consumers will continue to be offered a range of different products and services.

[2008 NSUARB 87 (CanLii)]

[64] The *Payday 2008* finding on the use of the Market Approach was confirmed in *Payday 2011*, *Payday 2015* and *Payday 2018*.

[65] In this proceeding, Mr. Gardner, on behalf of the Consumer Advocate, states that, in theory, the Market Approach to price setting is determined by supply and demand for payday loans and that, over time, the market price would be driven down as payday loan providers become more efficient. This would lead to lower costs that would be passed on to the borrower, who is looking for the lowest price. Mr. Gardner asserts that the current payday loan market does not conform to competitive forces because payday lenders have pricing power that enables them to charge the maximum amount allowable without losing market share. He contends that “The evidence indicates that the maximum regulated cost is a floor, not a ceiling below which price competition takes place.”

[66] Mr. Gardner claims that “The market was from the outset characterized by a high level of corporate concentration; three to four companies accounted for a high percentage of total output.” Mr. Gardner offers comparisons to other Canadian markets, where the price for a payday loan is less, as proof that payday loans in Nova Scotia are not competitively determined. He notes that the same few companies dominate these markets “offering the same products from the same kinds of storefront outlets”, where the price is set by regulation.

[67] Mr. Gardner considers that the Market Approach has not worked in Nova Scotia because payday lenders are not competing on price. He identifies that non-price competition has been the means by which payday lenders have attracted customers and secured their market share. Given the absence of price competition in Nova Scotia, Mr.

Gardner proposes that the Board determine the maximum cost of borrowing using one of the following two approaches:

1. A Cost-based Approach where market data is used to establish a price and periodically updated.
2. A Comparative Approach that applies the regulated cost from other jurisdictions with similar industry and borrower characteristics.

[68] Mr. Gardner recommended that the Board adopt a Comparative Approach for setting the maximum cost of borrowing following the examples of other provinces with similar industry and borrower characteristics. The Consumer Advocate considers that “A Comparative Approach, based on cost limits enforced in other jurisdictions in the country, would approximate a market determined result”.

[69] The CCFA asserts that the Market Approach to setting the maximum cost of borrowing should continue to be used. The CCFA submits that due to the risky nature of payday lending and the high costs of operating “it is only fair and reasonable for the Board to consider the maximum rate of borrowing using the market perspective.” However, the Board considers the CCFA’s submission did not demonstrate a clear link between the level of risk or operating costs in this market to the appropriateness of maintaining a Market Approach or to the unsuitability of following an alternate approach to setting the maximum cost of borrowing. The CCFA offered that even if the Board did not fully apply a Market Approach, market forces should be considered when setting the maximum cost of borrowing.

(i) Findings

[70] Effective competition gives businesses a level playing field and provides consumers with numerous benefits such as lower prices, better quality, and choice; however, effective competitive markets do not normally need to be regulated. The Board expected that following a Market Approach to set the cost of borrowing for payday loans would incentivize payday lenders to behave in a manner similar to those in effectively competitive markets. The set price would act as a ceiling and signal to competitors the opportunity to compete by selling the same service at lower prices. In practice, this price competition has not occurred. The Board concludes that the Market Approach has not incentivized price competition or corrected a market failure where the borrowers, rather than the lenders, are price takers. The Board accepts Mr. Gardner's evidence that using the Market Approach to set the cost of borrowing has acted as a floor rather than a ceiling, as the payday lenders charge the maximum allowable price.

[71] As noted later in this Decision, the Board finds that adopting Mr. Gardner's proposed Comparative Approach allows the Board to identify similar markets where industry and borrower characteristics are similar to those in Nova Scotia, and where the payday loan market continues to function successfully.

(d) Whether the Board should vary the existing maximum cost of borrowing set at \$19 per \$100

[72] In *Payday 2018*, the Board determined that the maximum cost of borrowing should be reduced to \$19 per \$100. The evidence establishes payday lenders in Nova Scotia uniformly charge this maximum cost. The evidence further establishes that only Newfoundland and Labrador allows a higher maximum cost of borrowing. Mr. Gardner's

opinion was that the payday loan industry appears to continue to thrive despite a lower cost of borrowing throughout most of the country.

[73] Having expressed the opinion that the Board's Market Approach has not led to any competition related to the actual cost of borrowing, Mr. Gardner suggested there were two potential alternatives: a Cost-based Approach, such as the one used to regulate petroleum products, and a Comparative Approach "... [s]etting the maximum cost based on a comparison of regulated costs in jurisdictions with industry and borrower characteristics similar to Nova Scotia's."

[74] Given the absence of margin and cost data, and the administrative burden associated with gathering such data, Mr. Gardner recommended that the Board use the Comparative Approach. In comparing the maximum cost of borrowing across jurisdictions, Mr. Gardner made the following recommendation:

28.I recommend the Board reduce the loan cost from \$19/\$100 to \$17/\$100 effectively immediately, and from \$17/\$100 to \$15/\$100 in December 2023. I would have recommended an immediate adjustment to \$15/\$100, but for the obvious negative impact (~30% decline) the pandemic has had on loan levels and industry revenues in Nova Scotia. By December 2023, total industry loans should return to pre-2020 levels. On the evidence in other jurisdictions, a \$15 cost has been absorbed by the industry in terms of relative stability in number of companies and outlets, and an increase in loan demand. A decline in cost would be beneficial to borrowers who would see reduced costs.

[Exhibit P-11, p. 9]

[75] The CCFA asserted that in New Brunswick, with a comparable population and similar regional characteristics, the drop in the cost of borrowing to \$15 per \$100 had led to a dramatic drop in the number of payday lenders. There is now only one licensed payday lender with a physical bricks and mortar location in that province. There are also four licensed internet payday lenders. This compares with 28 bricks and mortar locations in 2014. In New Brunswick, the maximum cost of borrowing was reduced to \$15 per \$100 in 2017.

[76] In his testimony, Mr. Gardner pointed out most payday lenders have a number of business lines, including installment loans. In New Brunswick, the applicable legislation does not allow institutions to offer payday loans along with other credit products. Mr. Gardner's review indicated that the companies who offered payday loans in other Canadian jurisdictions continued to operate in New Brunswick. However, they chose to offer installment loans, along with other products such as money transfers and cheque cashing services. Based on his own analysis, and discussions with the New Brunswick regulator, it was Mr. Gardner's opinion that, when having to choose between payday loans and other forms of business, the New Brunswick payday lenders had simply opted for these other business lines. In his opinion, while the reduction in the cost of borrowing might have had some impact, the number of payday lenders had considerably diminished in New Brunswick starting in 2014 when they were forced to make their choice of loan products.

[77] The CCFA evidence focused on the impact of the COVID-19 pandemic, both in terms of a significant decline in the amount advanced to borrowers and in the number of new borrowers. February 2020 was used as the baseline and the information was not updated after June 2020. The CCFA also pointed to the increase in the loan default rate in 2021 as indicating negative pressure on the industry.

[78] Mr. Gardner prepared a table showing aggregates of the per-outlet data supplied on a confidential basis by the Minister. This table provides useful information on trends related to the payday loan industry in the Province:

Table 1: Nova Scotia payday loans - Key statistics, 2011-2021

Year ending June	Number of payday loan companies	Number of payday loan outlets	Number of borrowers granted > 1 loan	Total Loans Granted	Number of borrowers granted repeat loans	Average Amount Loan Granted	Estimated Total Value of Loans Granted	Default rate
	#	#	#	#	#	\$	\$000s	
2011	11	45	n.a.	148,348	n.a.	423	62,754	8.2%
2012	14	50	n.a.	172,023	n.a.	448	77,063	7.1%
2013	15	50	19,630	194,794	15,545	438	85,331	6.8%
2014	14	52	24,788	206,165	18,794	433	89,276	7.1%
2015	12	44	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
2016	14	43	23,744	213,165	17,665	441	94,002	7.8%
2017	11	42	24,050	209,000	18,795	449	93,925	7.7%
2018	n.a.	n.a.	22,838	202,625	17,503	501	101,493	7.6%
2019	n.a.	n.a.	23,369	195,777	17,477	465	91,046	7.5%
2020	n.a.	n.a.	22,517	175,308	16,378	490	85,976	8.0%
2021	12	44	15,290	123,964	10,697	487	60,427	10.5%

Source: Service Nova Scotia

[79] The data obtained from the Minister, as analyzed by Mr. Gardner, confirms a decrease in both the number of borrowers and the total value of loans in 2021. Neither is dramatic as the numbers suggested in the CCFA data for the period at the start of the COVID-19 pandemic. The data also shows an increase in the default rate from 7.5% in 2019 to 10.5% in 2021.

[80] The data shows, for the pre-COVID period, a decline in the number of loans from 2015 to 2019 of approximately 8%, although the decrease in the total value of loans was only about 3%. The data further indicates that the number of different companies offering payday loans in Nova Scotia, and the number of retail outlets, has remained stable from 2017 to 2021, despite a reduction in the maximum cost of borrowing and a pandemic.

[81] The Board concludes the data supplied by the Minister, and summarized by Mr. Gardner, is the only objective and verifiable evidence before the Board about the state of the payday loan industry in Nova Scotia.

(i) Findings

[82] The Board notes that in making an order in this proceeding, it may, under s. 18T of the *Act*, consider a number of factors:

18T(4) When making an order under this Section, the Board may consider

- (a) the operating expenses and revenue requirements of payday lenders in relation to their payday lending business;
- (b) the terms and conditions of payday loans;
- (c) the circumstances of, and credit options available to, payday loan borrowers generally, and the financial risks taken by payday lenders;
- (d) the regulation of payday lenders and payday loans in other jurisdictions;
- (e) any other factor that the Board considers relevant and in the public interest; and
- (f) any data that the Board considers relevant.

[83] Thus, while the maximum cost of borrowing allowed in other provinces is a factor it may consider, the Board may also consider the factors listed above, including other factors it considers relevant and in the public interest.

[84] The Consumer Advocate submitted that Mr. Gardner's recommendation of an immediate reduction in the maximum cost of borrowing to \$17 per \$100 should be adopted. He also submitted the Board should adopt Mr. Gardner's recommendation that the maximum cost of borrowing should be further lowered to \$15 per \$100 in December 2023. Mr. Roberts suggested the reduction to \$15 per \$100 should follow a "...review by the Board of payday lending activity in the province." This two-staged approach would allow the Board to review the status of the industry, including whether there are any ongoing repercussions from the pandemic, before proceeding to establish a maximum cost of borrowing that already applies to the majority of the Canadian population.

[85] Mr. Roberts argued that in the absence of any cost or margin data filed by the payday loan industry, the Comparative Approach was the only one available to the Board in this proceeding. The Board is satisfied that, based on the filings, the Comparative Approach provides the only evidence-based framework for arriving at a decision. This approach showed that five provinces, including New Brunswick and Prince Edward Island, set the maximum cost of borrowing at \$15 per \$100, while two other provinces have established \$17 per \$100 as the maximum. The Consumer Advocate said this provided a sufficient basis to follow Mr. Gardner's recommendation.

[86] Ms. Ko, on behalf of the CCFA, submitted that due to the negative impact of the COVID-19 pandemic, there should be no change to the approach used by the Board. She argued payday lenders were involved in a high-risk enterprise, with varying cost structures and business models. She said this industry does not lend itself to the type of analysis discussed at the hearing in relation to other industries. Given the significant negative impact of the COVID-19 pandemic, she indicated it was not the time to make significant changes and urged that the \$19 per \$100 maximum cost of borrowing be maintained.

[87] Ms. Ko submitted the significant reduction in payday lenders in New Brunswick is a cautionary tale. She said it illustrates what can happen if the maximum cost of borrowing is set too low. Mr. Roberts argued the New Brunswick situation had more to do with the specific limitations in the legislation discussed by Mr. Gardner than the reduction in the maximum cost of borrowing in that jurisdiction.

[88] Mr. Mohan suggested that rather than lowering or maintaining the current maximum cost of borrowing, it should be increased to allow smaller operators to offer

their product. While his presentation provided anecdotal evidence, there was no verifiable data or expert opinion evidence in support of the proposition that the maximum cost should be increased. The Board rejects this proposition.

[89] The Board has no evidence before it to establish representative costs or reasonable profit margins for participants in the payday loan industry. It is, therefore, not in a position to use a Cost-based Approach in this proceeding. The Board has always understood the expense and complexity of gathering and normalizing cost data across various payday lenders and applying a reasonable profit margin to the results. That is not to say the task is impossible. That said, the topic raises issues about the respective roles of the regulator and regulated.

[90] If regulated payday lenders are of the view that a Cost Approach is more appropriate than the Comparative Approach, the onus should be on them to at least attempt to collect the applicable data and expert(s) reports supportive of this position. The Board understands this involves disclosing and normalizing data from competitive businesses.

[91] The Board has tools to assist. For example, processes have been developed to collect financial data from the highly competitive retail and wholesale petroleum products fields. The diversity of business models, and the number of participants, in the petroleum products field, particularly in the retail sector, might well be greater than that found in the payday lending market.

[92] The Board takes Mr. Gardner's point that, in the petroleum sector, there had been considerable historical data on reasonable margins which formed part of the framework of regulation from the outset. There is no reason in principle why this cannot

be developed based on historical data from the Nova Scotia payday lending industry. That said, what the Board perceives is required, before even considering the Cost Approach, is some initiative from the industry showing a desire and willingness to collect and provide expert analysis of the data.

[93] In the absence of cost data, the Board will assess the Comparative Approach recommended by Mr. Gardner. The Board finds that adopting Mr. Gardner's proposed Comparative Approach allows the Board to identify similar markets where industry and borrower characteristics are similar to those in Nova Scotia, and where the payday loan market continues to function successfully. In making this assessment, the Board is mindful that by enacting the regulatory regime the Board is tasked with implementing, the Province made a conscious policy choice to allow the payday lending industry to function in the Nova Scotia marketplace. Without this regulatory scheme, payday loans would be illegal under the *Criminal Code*.

[94] As previously discussed, the regulatory regime allows for a system to provide limited short-term credit for the gainfully employed, who otherwise do not qualify for the credit products offered by traditional lenders. As submitted by Mr. Smith, on behalf of Service NS, when quoting from a prior Board decision, another of the purposes of the legislation is to protect consumers who need small amounts of short-term credit from unscrupulous and unregulated lenders.

[95] To set the maximum cost of borrowing so low as to preclude a viable industry, as has been done through legislative action in Quebec, would be contrary to the intent of the regulatory scheme. That said, the regulatory regime does not set goals about

what number of market participants constitutes sufficient availability of the product to attain the desired goal.

[96] There is no reason in principle why payday lenders cannot adapt their business models to offer their products in Nova Scotia at a cost equivalent to that offered in most of the rest of the country. The CCFA offered no evidence, or satisfactory explanations, why this would not be the case. While there are no doubt regional differences in overall population, demographics, income, and other financial yardsticks, the profile of the consumers of the product should, by virtue of the nature of the product, be relatively similar across the country. The industry, as a whole, should be able to service this demographic on relative parity with the rest of the country.

[97] By the Board's calculations, for approximately 85% of the population, where payday lending is allowed in Canada, the maximum cost of borrowing is set at \$15 per \$100. In this analysis, the Board has excluded Quebec, where the regulated maximum effectively ended the industry, and the three Canadian territories, where there is no regulation, making the *Criminal Code* interest rate provisions applicable.

[98] As pointed out by Mr. Gardner, for the most part, there appears to be no evidence that the payday lending option is no longer available in any of these jurisdictions. With the exception of New Brunswick, the CCFA did not provide any evidence associated with an unacceptable level of product availability based on the \$15 per \$100 maximum cost of borrowing.

[99] The New Brunswick example does give the Board some cause for concern. The Board accepts that the different legislative scheme, which makes businesses choose between payday loans and other credit products, may account, to a significant extent, for

a large and precipitous drop in the number of licensed payday lenders. That said, the marked difference in the regulation of payday lenders means it is difficult to make use of the New Brunswick figure, originating from a jurisdiction with many similar characteristics to our own, in any comparative analysis.

[100] The two other provinces with populations roughly comparable to that of Nova Scotia, being Manitoba and Saskatchewan, have a current maximum cost of borrowing of \$17 per \$100. This provides support for the immediate setting of the maximum cost of borrowing in Nova Scotia at the same \$17 per \$100.

[101] The Board recognizes the available data shows the COVID-19 pandemic had a negative impact on the number of loans and their total value. There was also potentially an impact on the default rate, although the Board agrees with Mr. Gardner that the number and amount of the loans which were uncollectible might provide more meaningful information on the financial impact of these defaults.

[102] Were it not for the impact of the COVID-19 pandemic, the Board would have been inclined to move immediately to the \$15 per \$100 maximum cost of borrowing. The Board is of the view that a phased approach to the reduction in the maximum cost of borrowing, to reach a level where Nova Scotia consumers are afforded the same rate protection as is available to most of the rest of the country, is reasonable in the circumstances.

[103] There has been a significant shift in the management of the pandemic. Most mandated restrictions on business have been removed. At some point, any lingering effects of the pandemic must be seen as the new normal. Businesses must adjust accordingly. The Board does not see the need to re-evaluate the situation prior to

making the second adjustment recommended by Mr. Gardner. There was no evidence before it that any of the jurisdictions where the maximum cost is currently \$15 per \$100, and has been for some time, were considering increasing this maximum due to the pandemic.

[104] The Board, therefore, finds that further lowering the maximum cost of borrowing to \$15 per \$100 on January 1, 2024, provides a just and reasonable result. It will give industry sufficient time to adjust, while not overly delaying the consumer protection this reduction affords.

[105] Having reviewed all of the evidence before it, the Board sets the maximum cost of borrowing at \$17 per \$100, effective September 1, 2022, and \$15 per \$100 effective January 1, 2024, inclusive of all expenses (including interest) which must be borne by a qualified borrower in order to actually receive the cash requested (or the equivalent) immediately after it being determined by the lender that the borrower is so qualified. For any loan for an amount other than \$100, the rates of \$17 and \$15 shall be applied *pro rata*.

[106] As noted in prior Board decisions, this shall include any cost to the consumer of insurance sold by, or through, the payday lender within the maximum cost of borrowing of \$17 and \$15 per \$100, respectively.

(e) Whether the Board should vary the existing maximum fee, charge or penalty chargeable on default set at \$40 per loan

[107] When the Board originally set the maximum \$40 default fee in *Payday 2008*, it mirrored the default rates being charged by most chartered banks at the time. The Board understands some of the default rates now being charged by the chartered banks

have seen a modest increase. The Board has maintained the maximum \$40 default fee in all of its subsequent decisions.

[108] In his review of default fees currently charged by payday lenders in other provinces, Mr. Gardner found that Nova Scotia is the only province still charging \$40. All other provinces have reduced their fee to either \$20 or \$25 per default, with the exception of Prince Edward Island which charges a “reasonable” amount.

[109] Mr. Gardner could not find any rationale to explain why the fees have been reduced in other jurisdictions. He recommended that in line with his overall recommendation to use the Comparative Approach, Nova Scotia should reduce the default fee to \$25 immediately.

[110] The CCFA did not address the default fee in its written submission, nor did it provide any evidence about the actual costs incurred to process NSF transactions. Ms. Ko said that both the lender and customer are charged a default fee by the bank when a default occurs but she provided no evidence to support this.

[111] As described earlier in this Decision, Mr. Mohan confirmed that both the payday lender and the borrower are charged an NSF fee on a loan default. He asked that the default fee remain at \$40 to reflect the actual cost charged by chartered banks to lenders when a customer defaults.

[112] The Board concludes that the maximum penalty for defaulting on a payday loan should be set at \$40 per payday loan to reflect the actual costs incurred by lenders when a customer defaults.

(f) Whether the Board should vary the existing limit on the maximum interest rate chargeable on a payday loan set as sixty percent (60%)

[113] In *Payday 2008*, and as confirmed in each of its subsequent decisions, the Board determined that it would not set a maximum for any component of the maximum cost of borrowing under s. 18T(3), apart from fixing the maximum interest rate chargeable at 60% (as calculated in accordance with the *Act* and the *Regulations*). However, the Board noted that, under no circumstances, may payday lenders charge an amount that exceeds the total cost of borrowing set by the Board.

[114] The Board notes that 60% is the maximum annual rate of interest permitted under the *Criminal Code*.

[115] From the data compiled by Mr. Gardner, five of the nine jurisdictions in Canada have capped the maximum interest rate at 30% on default. Nova Scotia, Prince Edward Island, and Ontario have set a maximum rate of 60% on default. Newfoundland and Labrador has set a maximum rate at 2.5% per month.

[116] Mr. Gardner could not find any rationale or methodology for choosing a rate in the course of his research. He commented that the current NSF fee plus the interest rate on default should be a strong incentive not to default on a payday loan and suggested that this would not change if the rate was decreased. He recommends, based on the experience in other provinces, that the Board reduce the maximum interest rate charged on a loan default from 60% to 30%.

[117] The CCFA did not address this issue in its written submission or directly in the hearing.

[118] The Board considers that 30% (as calculated in accordance with the *Act* and the *Regulations*) is the maximum interest rate which should apply, in the case of default, to any balance outstanding on the loan.

[119] As it did in its prior hearings respecting payday loans, having set the total maximum cost of borrowing (i.e., in this proceeding it has been set at \$17 per \$100 followed by \$15 per \$100), the Board does not consider it necessary to set a maximum for any component of the maximum cost of borrowing, except that it sets the maximum interest rate chargeable at 30% (as calculated in accordance with the *Act* and the *Regulations*). In making this finding, the Board notes again that any interest charged is, in any event, but one component of the total cost of borrowing that must not exceed that set by the Board.

(g) The adequacy of the existing disclosure requirements imposed upon payday lenders under the *Regulations*

[120] This issue relates to the obligations imposed on payday lenders to disclose the terms and conditions of payday loans to their borrowers.

[121] There are various disclosure requirements imposed upon payday lenders under the *Regulations*, including provisions dealing with the displaying of rates and fees by payday lenders in their outlets (s. 8) and the information payday lenders must provide to their borrowers (s. 9). Other disclosure requirements previously recommended by the Board have also been imposed on payday lenders. As noted earlier in this Decision, following the Board's issuance of *Payday 2011*, the Cabinet amended the *Regulations* to require the disclosure of the cost of payday loans in lenders' advertising. The Province also implemented the Board's recommendations in *Payday 2015*, amending subsections 18O(3) and (4) of the *Act* requiring lenders to display educational materials that are

developed or approved by the Registrar of Credit, and clause 18I(la) of the *Act* requiring lenders to provide borrowers with those educational materials as part of every loan purchased.

[122] In his presentation at the Board's public session, Dr. Bradfield submitted that the contracts provided to borrowers should be printed in larger print to outline the annual percentage rate (APR) being charged on payday loans. Further, he suggested that payday lenders did not post visible signage in their outlets disclosing the APR charged on payday loans. However, Dr. Bradfield acknowledged that he was unaware of the disclosure requirements imposed on payday lenders. He was referred by the Board, during his presentation, to the actual printed form required to be provided to borrowers for their signature accepting the terms of the loan. The font of the characters setting out the cost of borrowing (including the APR) on the loan agreements is already in larger bold lettering which, in the Board's view, clearly outlines the APR applicable to the payday loan being taken by the borrower. Moreover, the size and content of signs displayed in payday outlets are also prescribed under the *Regulations*.

[123] The Board is satisfied that the current disclosure requirements appropriately inform borrowers, both in form and content, about the terms and conditions of payday loans. The Board concludes that no further disclosure requirements are needed.

(h) Whether the Board should recommend regulations to control the provision of repeat and concurrent loans to borrowers by lenders

[124] Based on submissions received in *Payday 2018*, the Board recommended to the Minister that the *Regulations* be amended to provide that where a borrower takes out three or more loans in a 62-day period, repayment of a third and any subsequent loan should, at the option of the borrower, be extended over a minimum of three pay periods

if the borrower is paid bi-weekly or a minimum of two pay periods if the borrower is paid less frequently.

[125] In its pre-hearing submissions, Service NS noted this recommendation and stated:

[8] SNS-IS continues to monitor other provinces that have introduced an Extended Payment Plan ("EPP") to understand the impact EPP has had addressing repeat borrowing. Additional research has been completed since the 2018 Decision. However, SNS-IS has not yet come to a final determination as to whether EPP should be adopted in Nova Scotia.

[9] SNS-IS continues to collect annual data from all payday loan outlets in the Province, as required by the Regulations, on the number and size of payday loans made, number and size of loans defaulted, and information on multiple and repeat loans. ...

...

[11] The data also shows a decrease in the incidence of repeat loans. However, there are still thousands of Nova Scotians who, over the period, had eight or more repeat loans. Despite the decrease, the prevalence of repeat loans continues to belie the view expressed in the Canadian Consumer Finance Association's ("CCFA") Code of Best Business Practices that "a payday loan is an unsecured short term loan to meet unexpected cash needs. Payday loans are for occasional use only and should not be used to cover continual shortfalls in a person's budgetary requirements."

[12] SNS-IS is concerned that, despite restrictions on rollover loans, some consumers may continue to experience a cycle of payday loan debt. According to data collected, in 2020-2021, 61% of all loans were repeat loans, and 29.73% of borrowers who received repeat loans in this period received eight or more. It is estimated that these borrowers, which total over 3,100 individuals, received an average of 17 loans each, in addition to initial loans.

[13] While the data does not tell us if these loans are sequential, SNS-IS remains concerned that some individuals appear to be borrowing many times a year.

[14] SNS-IS is specifically concerned that some borrowers take out subsequent loans because they cannot afford to repay initial loans. As noted, SNS-IS continues to conduct research and analysis into the Board's recommendation...

[Service NS Pre-Hearing Submissions, March 16, 2022, pp. 2-3]

[126] In his testimony, Mr. Gardner stated that, in his opinion, the percentage of repeat or multiple loans had not decreased appreciably over time, when measured as a proportion to the total number of borrowers taking out one loan (see Exhibit P-11, Table 1).

[127] In its post hearing submissions, the Consumer Advocate submitted:

36. Repeat borrowing remains a significant aspect of payday lending activity in Nova Scotia. This has not changed since the last review. It suggests many consumers remain trapped in a cycle of payday loan debt.

37. The Board should urge Service Nova Scotia to complete its review of the 2018 recommendation concerning extended repayment plans for repeat borrowers and implement the recommendation without further delay.

[CA Post-Hearing Submissions, April 12, 2022, p. 6]

[128] The CCFA did not comment on this recommendation.

[129] As noted by counsel for Service NS, it is concerning that some borrowers take out a number of sequential loans because they cannot afford to repay their initial loans. As noted by Service NS, the Minister continues to explore and study ways to reduce the incidence of repeat borrowing, including the monitoring of other provinces that have introduced extended payment plan (EPP) options to understand the impact EPP has had addressing repeat borrowing. Based on its review of the submissions, the Board considers this initiative should continue and repeats its recommendation.

(i) The scheduling of the next review to be conducted by the Board

[130] Section 18T(6) of the *Act* provides that the Board shall review its existing orders made under s. 18T at least once every three years and, after the review, it shall make a new order replacing the existing orders.

[131] The payday loan industry continues to experience constant change. The Board finds that a three-year review period provides an appropriate time span to review the industry, especially given the phased-in reduction of the maximum cost of borrowing ordered by the Board earlier in this Decision. The Board considers it appropriate that the next review be scheduled in three years from the date of the Board's Order in this matter.

[132] However, as the Board noted in its prior Decisions, if a critical issue is brought to the Board's attention in the interim, it is possible that a review (whether comprehensive, or on a specific point) could occur in less than three years.

(j) Any other issue the Board is asked to take into account under the Regulations

[133] In his report, Mr. Gardner also submitted that the Board recommend to the Minister that the *Regulations* be amended, specifically Regulation 5(1)(d), to require a payday lender to include, in their annual reporting, data on the number and value of uncollectable loans resulting from loan defaults. He noted that the current data that is provided by payday lenders only captures the initial default by borrowers, rather than the loans that are actually written off as uncollectable. Mr. Gardner testified that the reasons for this recommendation were twofold: 1) it would indicate the incidence of hardship levels on borrowers, and 2) it would clarify the actual impact of defaults on payday lenders.

[134] The Consumer Advocate submitted:

24. Mr. Gardner also proposed that the Board recommend a change in the payday loan regulations to require lenders to report the number and value of uncollectable loans. As Mr. Gardner explained in his testimony, this would provide a more accurate indication of the impact of loan defaults on lenders than the simple number of defaults

[CA Post-Hearing Submissions, April 12, 2022, p. 5]

[135] In its post-hearing submissions, Service NS responded to this recommendation as follows:

[9] Regarding the Consumer Advocate's recommendation to require the reporting of the number and value of uncollectable loans resulting from loan defaults, SNS-IS submits that more research and consultation with industry are required before a position on this suggestion can be decided.

[Service NS Pre-Hearing Submissions, April 12, 2022, p. 2]

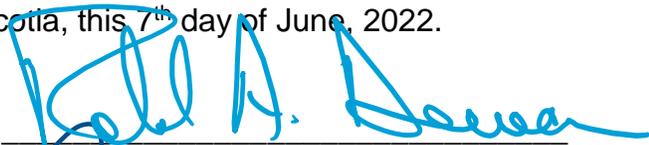
[136] The CCFA did not comment on this recommendation.

[137] The Board is mindful of the Service NS comment that research and consultation with industry is required before a final determination can be made about this issue. However, the Board accepts Mr. Gardner's view that such information would be helpful and it considers that the Minister should further examine the requirement of lenders to provide such data. It so recommends.

VIII CONCLUSION

[138] An Order will issue, effective September 1, 2022, to allow sufficient time for payday lenders and the Minister to implement this Decision.

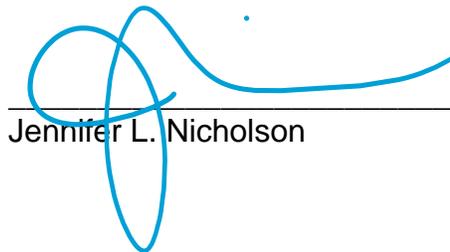
DATED at Halifax, Nova Scotia, this 7th day of June, 2022.



Roland A. Deveau



Richard J. Melanson



Jennifer L. Nicholson