

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
Roland A. Deveau, Q.C., Vice Chair
Jennifer L. Nicholson, CPA, CA, Member

COUNSEL: **CANADIAN CONSUMER FINANCE ASSOCIATION**
Tony Irwin, President

CONSUMER ADVOCATE
David J. Roberts, LL.B.

**CREDIT COUNSELLING SERVICES OF
ATLANTIC CANADA, INC.**
Gordon Arsenault
Kevin Grant

**INDEPENDENT PAYDAY LOAN ASSOCIATION
OF CANADA**
Patrick Mohan

**PROVINCE OF NOVA SCOTIA
DEPARTMENT OF JUSTICE**
Jeremy P. Smith, LL.B.

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

HEARING DATE: September 11, 2018

WRITTEN BRIEFS: October 16, 2018

DECISION DATE: November 27, 2018

DECISION: Maximum cost of borrowing reduced to \$19 per \$100, and a recommendation made to the Minister regarding extended payment terms.

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I INTRODUCTION

[1] This Decision is further to a public hearing conducted by the Nova Scotia Utility and Review Board (Board or NSUARB) respecting certain aspects of the *Consumer Protection Act*, R.S.N.S. 1989, c. 92, as amended (*Act*), relating to payday loans.

[2] A payday loan is typically a small loan payable over a short term, generally to be repaid 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] 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.

[4] 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 May 1, 2015.

[5] The Board conducted its first hearing respecting payday loans in 2008. In its Decision, 2008 NSUARB 87, dated July 31, 2008 (*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 with respect to default on a payday loan should be \$40 per loan; that 60% be the maximum interest rate which 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.

[6] 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.

[7] The Board conducted its second hearing respecting payday loans in 2010-2011. In its Decision, 2011 NSUARB 22, dated February 1, 2011, the Board concluded, among other findings, that it should continue to 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 \$25 per \$100, inclusive of all expenses (including interest); that the maximum penalty chargeable with respect to default on a payday loan should remain at \$40 per loan; and that 60% be the maximum interest rate which should apply, in the case of default, to any balance outstanding on a loan. 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.

[8] Further, the Board recommended to the Minister that more data be collected respecting 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.

[9] The Board also determined that it should conduct a review of its Order in three years.

[10] In a Supplementary Decision, 2011 NSUARB 58, dated May 4, 2011, the Board, after having reviewed submissions from the parties, made recommendations to the Minister with respect to 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*).

[11] The Board conducted a third hearing in 2015. In its Decision, 2015 NSUARB 64, dated March 30, 2015 (*Payday 2015*), the Board determined that the Market Approach should be retained to determine the maximum cost of borrowing; that the maximum cost of borrowing be reduced to \$22 per \$100; it recommended that the Minister consider placing restrictions on repeat and concurrent loans; and it recommended that the Minister require lenders display comparisons of borrowing costs of alternative financial products in dollar terms. The Board also ordered that the next review occur in three years.

II REGULATION OF THE PAYDAY LOAN INDUSTRY

[12] 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.

[13] 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 which 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]

[14] 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".

III PAYDAY LOAN LEGISLATION IN NOVA SCOTIA

[15] 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, among other things, for the licensing of payday lenders (ss. 18C-18H), the disclosure to be provided 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), provisions prohibiting payday lenders from charging fees or rates in excess of those set by the Board (s. 18J), provisions requiring the retention of loan documentation by payday lenders (ss. 18M and 18S), as well as a provision allowing the Governor in Council (Cabinet) to make regulations respecting a broad variety of aspects of payday lending.

[16] Two provisions of the 2006 amendments to the Nova Scotia *Consumer Protection Act* (i.e., ss. 18A and 18T), relating to payday loans, were proclaimed and took effect on August 31, 2007. Section 18A defines payday lender, payday loan and rollover:

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

(aa) "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.

[17] 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.

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

[19] 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.

[20] Following the Board's issuance of *Payday 2011*, the Cabinet amended the *Regulations* in 2011 regarding the disclosure of the cost of payday loans in lenders' advertising and providing for 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.

[21] The Province 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 Province also added subsections 18O(3) and (4) requiring lenders to display educational materials that are developed by Government, and subsection 18I(la) of the *Act* requiring lenders to provide borrowers with those educational materials as part of every loan purchased.

[22] 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 disclosure to be provided by payday lenders to their borrowers (s. 9), requirements intended to protect 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 an application for the licensing of payday lenders (s. 5), and provisions respecting the provision of online payday loans (ss. 8A and 8C).

IV PROCEEDINGS AND FORMAL INTERVENORS

[23] By Hearing Order issued March 28, 2018, the Board directed that a hearing be conducted respecting 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.

[24] The Notice of Public Hearing was published in the Chronicle Herald and the Cape Breton Post on March 31, 2018 and April 14, 2018. Further to s. 18T(8) of the *Consumer Protection Act*, the Board also advised the Registrar of Credit about the hearing, by letter dated March 28, 2018.

[25] On April 24, 2018, 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. Five formal intervenors appeared at the Public Hearing.

[26] The Canadian Consumer Finance Association (CCFA), represented by Tony Irwin, President; the Consumer Advocate; Credit Counselling Services of Atlantic Canada, Inc. (Credit Counselling Services), represented by Gordon Arsenault and Kevin Grant; the Independent Payday Loan Association of Canada (IPLAC), represented by Patrick Mohan; and Jeremy P. Smith, LL.B., on behalf of the Province of Nova Scotia.

[27] The Consumer Advocate was appointed by the Board and granted formal standing in this proceeding. David J. Roberts, LL.B., acted as the Consumer Advocate. 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.

[28] 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 13 companies with 871 retail outlets and licensed internet lenders across Canada. It represents four CCFA members in Nova Scotia which have 29 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.

[29] IPLAC is 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, its President, confirmed at the hearing that he 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. IPLAC also has had extensive and ongoing meetings with officials in Ontario and other provinces to represent its members. This was IPLAC’s first involvement in the Board’s regulatory hearings in this Province respecting payday loans.

[30] The Province of Nova Scotia, through Service Nova Scotia (Service NS), also participated as a formal intervenor at this hearing, as it did in the prior hearings held by the Board on payday loans. 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

respecting 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.

[31] Credit Counselling Services is a not-for-profit, charitable organization founded in 1994. Gordon Arsenault and Kevin Grant appeared on its behalf. It has offices in Atlantic Canada, including four offices in Nova Scotia (i.e., Dartmouth, Sydney, New Glasgow and Truro). It describes itself as an organization serving customers who are struggling with debt. It has also participated in prior payday loan hearings held by the Board.

[32] S. Bruce Outhouse, Q.C., acted as Board Counsel.

[33] 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 only group to make a presentation was the Face of Poverty Consultation. Michael Bradfield, a representative of the group, appeared at the hearing to provide its comments.

V ISSUES

[34] 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 \$22 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 payday 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*.

VI ANALYSIS AND FINDINGS

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

[35] 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.

[36] The CCFA provided evidence that all its members in Nova Scotia, which include National Money Mart Company, Cash Money, 310-Loan and My Canada Payday, charge \$22 per \$100 loan.

[37] Michael Gardner, in his report for the Consumer Advocate, stated that payday lenders in Nova Scotia uniformly charge the maximum fee of \$22 per \$100 loan. He commented that this was among the highest costs in Canada.

[38] The above 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.**

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

[40] As the Board noted earlier in this Decision, Nova Scotia was the first province to have payday loan regulations in effect. The *Regulations* were effective August 1, 2009. Since that date, most provinces have enacted regulations.

[41] The information provided by the Consumer Advocate respecting the state of payday loan 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	\$22.00	\$40.00	60% per annum	\$1,500
British Columbia	\$17.00	\$20.00	30% per annum	50%
Alberta	\$15.00	\$25.00	30% per annum	\$1,500
Saskatchewan	\$17.00	\$50.00***	30% per annum	50%
Manitoba	\$17.00	\$20.00	30% per annum	30%
Ontario	\$15.00	\$50.00	60% per annum	50%
Prince Edward Island	\$25.00	Reasonable charge	60% per annum	\$1,500
New Brunswick	\$15.00	\$40.00	30% per annum	30%
Newfoundland and Labrador	\$21.00*	**	60% per annum	\$1,500

* Proposed

** Data for Newfoundland and Labrador is incomplete as regulations are still under development.

***Only one NSF fee per loan may be charged.

[42] The Board understands that Quebec has decided not to regulate payday loans.

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

[44] It appears Nova Scotia is one of only two provinces (British Columbia being the other) that requires, as a licensing condition, payday lenders to track and submit aggregated data respecting their payday lending activities.

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

[45] 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. Several experts testified before the Board on the issue.

[46] The Board, in that proceeding, concluded that the Market Approach was the approach the Board should adopt.

[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), paras. 275 and 279]

[47] 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.

[48] The *Payday 2008* finding was confirmed in both *Payday 2011* and *Payday 2015*.

[49] In this proceeding Mr. Gardner, on behalf of the Consumer Advocate in his pre-filed evidence, recommended the Board adopt a cost based approach, similar to the approach used in Manitoba.

[50] His concern was that payday lenders charge \$22 per \$100 on loans. He believes competition, which is the implicit aim of the Market Approach, is not working.

[51] He conceded that some payday companies do compete on cost by offering special deals or introductory rates available on first loans and, in some cases, specified loan amounts.

[52] Mr. Gardner argued, in the absence of price competition and without knowing the cost of actually delivering a payday loan to customers, there is no way to determine if a particular rate is reasonable or if it returns excessive profits to the lender.

[53] Under questioning from the Board, however, he appeared to retreat from this recommendation:

Q. And here in Nova Scotia we're at \$22 per hundred and I don't hear anybody, at least so far here today, suggesting we raise it. So the delta is somewhere between 17 and 22. Is it your view that going through the cost of service exercise is going to get us to a much different delta or range?

A. Than ...

Q. 17.

A. ... 17?

Q. To 22.

A. I would be surprised if it ... if it landed somewhere significantly different. I mean, the ... the provinces, the populations are broadly similar. You've got roughly the same sort of levels of urbanisation and ... and so on. So cost, the basic costs of rent and ... and wages and so on are not that ... not that different. So I would ... I'd be very surprised if it landed somewhere significantly different.

[Transcript, p. 159]

Q. Yeah, and I guess the point I'm making is, given that we're operating probably within a fairly narrow delta of 17 to 22, is it really worth the effort? That's for us to decide, but before you leave the stand I'll give you one last chance to ... just to comment on it.

A. If I were sitting where you are, I would probably conclude that it is not worth the effort, that ... that there's a ... within a year or so there will be more than enough known about what seems to be sustainable for the industry based on the ... the changes that have occurred. And you know, I would probably sit back, wait for that to play out, and ... and say, Right, this seems to be a reasonable number.

[Transcript, p. 161]

[54] In his closing submission the Consumer Advocate tempered the recommendation somewhat, recommending that the Board should commission a study of the implications of adopting a cost based approach.

[55] None of the other parties recommended changing the approach from a market based approach. The Province recommended continuing with the Market Approach. In its final argument, CCFA stated:

The CCFA believes the market approach remains the correct methodology to be used by the Board in making its determination on the maximum cost of borrowing. This industry is not a single large utility serving all Nova Scotians. This is a very small industry made up of multiple companies both large and small located in Halifax, Dartmouth and small communities. A cost based approach would be complex, costly and likely not accurate. ...

[CCFA Final Argument, p. 3]

(i) Findings

[56] The Board is very familiar with the Cost Approach as it is the approach that it uses to regulate the water, gas and electric utilities in Nova Scotia.

[57] In *Payday 2008* the Board concluded that the Cost Approach, or any variation thereof, would significantly increase the cost of regulation for the payday lending market. In the end, these costs would ultimately have to be borne by customers which the Board, in that Decision, did not believe would be in their best interest. Also, as noted in this hearing, it is not likely that the Cost Approach would suggest a significantly different result from a number that would be set under the Market Approach.

[58] The Board's view is not changed. In this proceeding, as it has in previous proceedings, the Board considers that the Market Approach, as opposed to the Cost Approach, is the correct one for it to use.

(d) Whether the Board should vary the existing maximum cost of borrowing set at \$22 per \$100.

[59] In *Payday 2015*, the Board determined that the maximum cost of borrowing should be reduced to \$22 per \$100.

[60] In its Final Argument, the CCFA submitted that the maximum cost of borrowing should be maintained at \$22 per \$100. It noted that reductions in approved rates in other Canadian provinces had resulted in negative impacts on the payday loan industry, including reduced access to short term credit by customers. It submitted:

The CCFA believes the Board should not change the existing maximum cost of borrowing at this time. If the Board chooses to reduce the maximum rate it should proceed cautiously. There have been significant reductions in rates in many provinces across the country. This has resulted in impacts to lenders and borrowers but these impacts have not yet been measured.

In our presentation we highlighted the extremely harsh regulations in New Brunswick which in the span of ten months has left that province with one brick and mortar outlet that does not lend to new customers and three online lenders, one of whom has advised us they deny ninety percent of their applications.

...

In enacting payday loan legislation, provincial governments recognized that there is a need of access to a short term credit product. There is no doubt that New Brunswick has removed access to short term credit from licensed credible lenders.

[CCFA Final Argument, October 9, 2018, p. 3]

[61] IPLAC also requested that the Board maintain the maximum cost of borrowing at \$22 per \$100. Noting the reduction of maximum rates in other Canadian provinces, Mr. Mohan's written submissions echoed the comments he provided during the hearing:

... Lowering the rate has not worked well, restricting the ability of regulated operators to supply their customers with badly needed funds on a short term basis, bridging the gap between paydays.

... Now, in the provinces which have decided to reduce rates, for no apparent reason, with no independent consulting from professional firms who can actually rationalize the rates, the industry is in shambles, leaving only the large US backed firms with the ability to survive. Having said that, the large US firms are no longer providing the PayDay Loan product, as it is not viable for them either, so they are now offering long term “Lines of Credit”, and “Installment Loans”. This, like the Visa and Mastercard products, gets the consumer into more long term debt.

[IPLAC Post-Hearing Submissions, p.1]

[62] Mr. Mohan testified during the hearing that the Board’s reduction of the maximum cost of borrowing in 2015 from \$25 to \$22 per \$100 had negatively impacted his own Money Direct payday loan business in Nova Scotia. He confirmed this impact in IPLAC’s Post-Hearing Submissions:

... As I stated in my presentation to the Board, I opened my operation in Nova Scotia with 5 stores in May of 2015. The timing of this implementation was less than opportune, as the [Nova Scotia payday loan] rates were reduced one month before we opened. After a valiant attempt to make it work, I was forced to close one store with the rate dropped from \$25.00/ \$100.00 to \$22.00/ \$100.00 borrowed, laying off 3 employees. ...

Similar to the insurance, telecommunications, and banking industries, we want to create an ongoing dialogue with regulators across Canada. We hope that the UARB will take the leadership to engage us on this level, thus enabling us to continue to provide this service and protect the consumer from unscrupulous, unlicensed, unregulated lenders.

[IPLAC Final Argument, October 9, 2018, pp. 1-2]

[63] However, the Consumer Advocate submitted in his Post-Hearing Submissions that “the maximum allowable cost of a payday loan in Nova Scotia is too high. It should be reduced to \$17 per \$100 borrowed, a level more in line with the maximum cost allowed in other provinces.”

[64] Noting that, in *Payday 2015*, the Board “justified” its reduction of the maximum cost of borrowing from \$25 to \$22 per \$100, in part, “to reflect the apparent lack of competition in Nova Scotia” and the failure of this reduced competition from having a resulting impact on payday loan rates (see: *Payday 2015*, 2015 NSUARB 64, at para. 56), the Consumer Advocate submitted that the payday loan marketplace in Nova Scotia is even less competitive now than it was in 2015:

...Payday lenders have set their pricing "rigidly" at the maximum allowable level: Report of Michael Gardner, Exhibit P-1, para. 48.

4. Outside of Nova Scotia, Regulators have significantly reduced the maximum price payday lenders can charge for their product. Four provinces, British Columbia, Alberta, Ontario and New Brunswick have cut the maximum allowable cost of a payday loan to \$15 per \$100 borrowed. Saskatchewan has cut its rate to \$17 per \$100 borrowed, the same maximum allowed in Manitoba. Newfoundland has proposed a maximum allowable rate of \$21 per \$100 borrowed, although the Regulation imposing that limit is not yet in effect: Report of Michael Gardner, Exhibit P-1, para. 23.

5. The result is that consumers in Nova Scotia now pay the second highest rate for payday loans in the country. Only Prince Edward Island allows payday lenders to charge more.

6. There is no evidence before the Board to justify the disproportionately high cost of payday loans in Nova Scotia. The industry has provided no data that supports the \$22 per \$100 charge. The payday lenders lobby group, the Canadian Consumer Finance Association, concedes that it has no evidence that the viability of the industry in Nova Scotia would be compromised if the current, \$22 rate was cut: Response to IR-3 from the Consumer Advocate, Exhibit P-10; Hearing Transcript, pp. 23 - 24.

7. ...The consensus among most provinces in Canada is that payday lenders should not be able to charge consumers more than \$15 to \$17 for every \$100 borrowed. There is no reason for Nova Scotia to be an outlier. The Board should cut the maximum allowable rate for a payday loan in Nova Scotia to \$17 for every \$100 borrowed. [Emphasis added]

[CA Post-Hearing Submissions, October 9, 2018, pp. 2-3]

[65] While the Province noted in its submissions that Nova Scotia currently has the second highest cost of borrowing in Canada (PEI being the highest at \$25), it did not make a specific submission on what rate the Board should set for the maximum cost of borrowing:

[19] SNS would like the Board, in its decision, to recognize the growth of internet loans and the emergence of "Fintech applications," which enable consumers to acquire payday loans on their mobile devices. Currently these applications are subject to Nova Scotia laws and licensing requirements for internet lenders. It is important that these applications continue to follow our guidelines. SNS believes that maintaining Nova Scotia's "place-of-business" requirement for all payday lenders, including those operating online or via Fintech applications, strengthens consumer protections.

...

[21] SNS is of the view that the maximum allowable fees should promote competition while being fair to consumers. Several factors are relevant to the Board's review of this issue, including fees allowed in other jurisdictions, and market conditions.

[22] As part of the Board's review of the maximum cost of borrowing, SNS notes that while Nova Scotia has the second highest cost of borrowing in Canada at \$22 per

\$100 borrowed, most lenders in other jurisdictions offer loans for less, with the lowest rate being \$15 per \$100.

[23] The payday lending industry is regulated in Nova Scotia to promote competition in the industry and to ensure consumers are protected and treated fairly. [Emphasis added]

[Province's Pre-Hearing Submissions, August 31, 2018, pp. 4-5]

(i) Findings

[66] 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.

[67] 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.

[68] One factor which the Board considers relevant in setting the maximum cost of borrowing is to ensure that consumers in Nova Scotia have access to short term credit products. While some may argue that payday loans should not be permitted in our society, or offered only at very low rates, as was argued by the Face of Poverty Consultation (which recommended a rate of \$2.25 per \$100), it is clear to the Board that setting rates at such low levels as those proposed by the Face of Poverty Consultation

would effectively eliminate the payday loan industry in Nova Scotia. In the Board's view, for the reasons described below, that would not be in the public interest.

[69] On this point, the Board observes that Parliament and the Province have, collectively, made the policy decision to establish a statutory regime that contemplates the existence and operation of a payday loan industry in Nova Scotia. In the Board's opinion, its mandate is to apply the legislation in such a way as to make the statutory regime function as was intended. The setting of payday loan rates, and the regulation of the payday loan industry, generally, should be carried out in a manner that accommodates the continuation of a viable payday loan industry, but one which concurrently provides appropriate protection for consumers.

[70] In this respect, the Board is mindful that 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. This was undoubtedly a policy consideration by Parliament and the Province in their enactment of the payday loan legislation.

[71] There was evidence during the hearing about the existence of unregulated lenders in the marketplace, particularly by online lenders. In its prefiled evidence, the CCFA provided various examples of unlicensed and unregulated lenders offering loans on the internet, including from offshore websites (see: Exhibit P-2, Appendix K).

[72] The Board also notes the evidence about the unfortunate consequences of innocent borrowers accessing such unregulated loans from the internet. Mr. Irwin of the CCFA outlined such concerns in questioning by the Board:

... And in the 21st century that means going online. And unfortunately, these websites, they've improved a lot over time. Several years ago, the last time we were here, I think we might have indicated that the websites looked pretty crude and pretty ... all of us should be

able to sort of figure out that it doesn't look like it's a legitimate lender. Those days are over. The sites now are very sophisticated. Oftentimes they have our logo. We have to try to get ... but again, how do we find them to say, Get our logo off your website? They put up a license number but it's not a real license number.

So they do more and more things to make themselves appear to be legitimate licensed lenders, and we get calls to our office from people, some of whom have already pressed Click and they've already sort of, you know, accepted the loan and realised that they've made a mistake. Or they phone us and say, you know, we're worried, we're calling you because we're not ... something doesn't sit right with us, can you tell us whether there is something that we should do or not? And so, you know, there are ... the company is doing all the kinds of things that I described. They'll still give you the loan but they'll, you know, sort of charge you more than they should. They'll take your PINs and passwords, banking information, all of that.

Then there are companies who have no intention of giving you a loan. They're not going to give you a loan. They just want to get money out of you. So you know, we've put on our website, any time someone asks you for money before getting money, don't transact with that ... with that business. It's not legitimate. No licensed, reputable lender will ask anyone to send them money to get money, but there are lots of companies ... or I say companies. I know, I think that's being insulting to actual companies. Lots of entities out in the ... in the online space who are doing that every day and people are being victimised.
[Emphasis added]

[Transcript, pp. 58-59]

[73] In its pre-filed evidence, the CCFA filed a report entitled "Consumer Experiences in Online Payday Loans" prepared by the Consumers Council of Canada. The Council received funding for the report from Industry Canada's Contributions Program for Non-profit Consumer and Voluntary Organizations. Among its conclusions, the report found that:

1. Licensed lenders show a high level of compliance with regulations.
2. Unlicensed lenders show virtually no compliance with regulations.
3. In provinces without regulation, consumers who seek a payday loan online are likely to encounter only the least compliant and least consumer-friendly lenders.

There was no middle ground. The study did not find licensed lenders that do a poor job of compliance, nor did it find unlicensed lenders that were broadly compliant. In many provinces, consumers were as likely to find unlicensed lenders as licensed ones.

[Exhibit P-2, p. 216]

[74] In Information Requests (IRs) issued to the Province by the Board, Service NS confirmed that of the 11 consumer complaints about payday loans received since

January 2015, three of the 11 complaints related to lenders which were not licensed to operate in Nova Scotia (see: Exhibit P-8, Board IR-1).

[75] The Board also notes the testimony of Mr. Irwin of the CCFA, in questioning by the Board, that the presence of actual “bricks and mortar” payday lender locations in Nova Scotia will serve to provide a disincentive to unregulated lenders from entering the jurisdiction, or from borrowers seeking out such unregulated lenders, be they online or otherwise:

Q. Just like to ask you a question about just a recent increase in mobile phones and [F]intech, as the terminology is now, and the progress that's been made in that technology. And just your association's views in relation to an increase in ... or the ease of using that technology to increase an online presence for licensed members ...

A. Mm-hmm.

Q. ... vis-a-vis the importance of having bricks and mortar establishments in a market.

A. So certainly, our experience with our customers is that they still far prefer going into an outlet, going into a store, speaking with somebody sort of across the counter. That's how they like to transact and that's how they like to ... to obtain credit. That said, obviously online is becoming an increasing sort of part of our ... of our life and it's the way people are doing things.

...

However, we are seeing an increase in the number of unlicensed online lenders. That grows all the time and that's ... companies who are not licensed don't belong to our association, are located who knows where: Panama, Cayman Islands. You can go online any time and you can find all kinds of sites of companies who purport to be licensed and regulated but are not. So that seems to grow, but within our licensed sector I'm not seeing the growth as much as many people assume is happening.

Q. So studies you filed indicate that the more that there is regulation, the higher the incidence of online ... unlicensed online lenders. Is that correct?

A. That's our ... certainly, that's our position based on what we've seen.

Q. And is it fair to say from what you observed, your members have observed, that the unlicensed, non-compliant lenders are more on the online sphere than they would be in bricks and mortar outlets?

A. I can't name a single bricks and mortar outlet that I'm aware of that is ... that is non-compliant.

Q. Okay, so ... and just ...

A. Sorry.

Q. Just a presumption? Or the inference would be that, in terms of enforcement, it's a lot easier to enforce bricks and mortar than it is an online lender.

A. Absolutely.

Q. Okay. Does the presence of storefront outlets, bricks and mortar outlets in a jurisdiction, in your view, have an impact on the number of unlicensed online lenders?

A. Well, I think the fewer licensed storefront lenders there are, the greater the risk is of unlicensed online lenders are going to ... are going to grow and are going to crop up. ... The need for credit doesn't go away. So people are going to figure out how to service it, and if they see that there's an opportunity, they're going to ... they're going to capitalise, and in our industry that means they set up websites and they attempt to sort of provide product ... a product that is not being provided as much by the license base.

Q. And in your experience from what you've seen, and your members have seen, when you have a greater online presence, is it the online lenders who are coming into the market to fill that void, or is it because the lender ... the borrowers in that market are looking for alternatives or a combination?

A. Probably a combination of both, but at the end of the day, the driving force factor here is that people need credit regardless and if they can't go to the payday lender they used to be able to go to, to obtain a loan when they need it, they're going to figure out another way. [Emphasis added]

[Transcript, pp. 53-58]

[76] On this point, the Board again refers to the Province's above submission that "maintaining Nova Scotia's 'place-of-business' requirement for all payday lenders, including those operating online or via Fintech applications, strengthens consumer protections."

[77] Thus, from its review of the above evidence and submissions respecting the deterrent effect of "bricks and mortar" payday lender outlets on the entry of unregulated lenders, particularly unlicensed online lenders, the Board considers that it must set a maximum cost of borrowing that will allow a viable market in which payday lenders can participate. Based on the evidence, if the maximum cost of borrowing is set too low, that will deter compliant payday lenders that wish to participate in the regulated market, and create an environment where unregulated and unlicensed lenders will enter to fill the void.

[78] Another factor that the Board considers relevant is the overall regulatory burden upon payday lenders. While other regulatory requirements are addressed elsewhere in this Decision (including the maximum level of default fees and interest rates, disclosure requirements, and the recommended addition of extended repayment terms), any change in the maximum cost of borrowing should, in the Board's opinion, take into account the entire regulatory burden upon payday lenders. All such requirements impact the financial viability of the payday lending market. As noted in the hearing, it appears Nova Scotia is one of only two provinces (British Columbia being the other) that requires, as a licensing condition, payday lenders to track and submit aggregated data respecting their payday lending activities. While such data is valuable to the review of the industry in this province, including Service Nova Scotia's monitoring of the industry and the Board's hearings on payday loans, these disclosure requirements impose a material cost on payday lenders that must be taken into account when setting the maximum cost of borrowing.

[79] In considering an appropriate maximum cost of borrowing, parties placed much emphasis on the lowering of the maximum cost of borrowing set in other Canadian provinces in the past few years. The Consumer Advocate submitted that Nova Scotia should follow the "consensus among most provinces in Canada ... that payday lenders should not be able to charge consumers more than \$15 to \$17 for every \$100 borrowed". On the other hand, the industry representatives at the hearing (i.e., the CCFA and IPLAC), submitted that the lowering of the maximum borrowing rates in other provinces had negatively impacted the industry, causing many lenders to leave the market.

[80] The Board accepts the evidence of the CCFA and IPLAC on this point. In the Board's view, it is clear from the evidence that the lowering of maximum rates in other provinces has caused some payday lenders to leave their respective payday markets, or has caused them to develop new short term credit products like longer term lines of credit and installment loans (both of which are not the subject of payday loan regulation).

[81] The Board notes two things from the experience in other provinces. First, the lower the maximum cost of borrowing, the greater it appears has been the impact on the industry in terms of those exiting the market. Second, as noted by Mr. Mohan in his testimony, the lowering of rates first impact the smaller independent lenders, before the larger national payday lending firms. The latter lenders would, the Board infers, have business models that would operate more efficiently than the small independent firms. In the Board's view, these factors are relevant to the Board's application of the Market Approach, which the Board has decided earlier in this Decision should continue to apply in this matter. The Board finds that the lowering of maximum rates, to the levels being experienced in other provinces, is having an impact on the breadth of the industry in the respective provinces. In the cases involving the lowest rates, there have been numerous departures from the market of licensed payday lenders, and a reduction in the number of "bricks and mortar" outlets.

[82] Having reviewed all of the evidence before it, the Board sets the maximum cost of borrowing at \$19 per \$100, 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. With respect to any loan for an amount other than \$100, the rate of \$19 shall be applied *pro rata*.

[83] As noted in *Payday 2011*, the Board decided to include any cost to the consumer of insurance sold by or through the payday lender within the maximum cost of borrowing of \$19 per \$100.

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

[84] The CCFA submitted that the Board should not vary the \$40 maximum fee charged in respect of the default. On this point, it highlighted Mr. Gardner's testimony on cross-examination:

... The lender is faced with costs of collection as well as their own bank fees when a borrower defaults on a payment. We note Mr. Gardner expressed the view in his cross examination that a \$40.00 default fee is "perfectly reasonable" (Page 152, Line 18-19) and we agree with that assessment.

[CCFA Final Argument, October 9, 2018, p. 3]

[85] IPLAC and the Consumer Advocate made no written submissions on the maximum fee that should be charged on default.

[86] The Province submitted that the Board should consider either maintaining or reducing the current \$40 default rate, but also noted that maximum allowable fees should promote competition and be fair to consumers.

[87] 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 evidence suggests some of the default rates now being charged by the chartered banks have seen a modest increase.

[88] The Board is satisfied that the maximum penalty chargeable with respect to a default on a payday loan should remain at \$40 per payday loan.

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

[89] In *Payday 2008*, and as confirmed in *Payday 2011* and *Payday 2015*, 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.

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

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

[92] The Board received no submission on this issue.

[93] The Board considers that 60% (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.

[94] 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 \$19 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 again sets the maximum interest rate chargeable at 60% (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*.

[95] The Consumer Advocate noted that the number of unique borrowers is not required to be disclosed by lenders. The Consumer Advocate argued that without knowing the number of unique borrowers it is impossible to estimate the proportion of the workforce in Nova Scotia that uses payday loans or the proportion of borrowers who take out repeat loans. The Consumer Advocate recommended that the Board should request the Minister adopt regulations requiring payday lenders to report the number of unique borrowers to whom they provide a payday loan or loans in a given year.

[96] The Province of Nova Scotia would be responsible for administering such a regulation. Counsel for the Province, Mr. Smith, argued that it would not be possible to tally the total number of unique borrowers without some form of centralized database, which could involve serious privacy concerns given that this database could contain information about individual borrowers. Mr. Smith went on to say:

...Operating and maintaining a centralized database would also incur additional costs for lenders, borrowers, and possibly government, depending on legal and structural requirements. SNS could ask each lender to provide the number of unique borrowers at each of their locations. However, this information would not tell us if a certain borrower was obtaining loans from more than one payday lender.

[Province of Nova Scotia Reply Submission, p.1]

[97] As noted later in this Decision, the Province has identified privacy concerns relating to certain data which could be requested from lenders.

[98] Having considered the matter, the Board accepts the submissions of the Province, that there are privacy concerns and cost concerns associated with this recommendation. Accordingly, the Board finds that it should not make the recommendation at this time.

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

[99] A significant issue in the *Payday 2015* hearing was concern about concurrent or repeat loans. As a result of those concerns, the Board recommended “that the Minister consider amending the *Regulations* to place restrictions on repeat and concurrent loans”.

[100] In a letter dated August 31, 2018, Mr. Smith on behalf of the Province, responded to that recommendation:

[10] SNS has not adopted Recommendation (b). Section 18N(c) of the Act restricts concurrent lending from individual payday lenders. SNS conducted research and analysis into further repeat and concurrent loan restrictions involving multiple lenders and determined that implementing further restrictions, including using loan-tracking databases, was not feasible because of privacy implications and costs.

[Province of Nova Scotia, August 31, 2018, p. 3]

[101] Again, in this hearing, concern was raised about repeat or concurrent loans.

[102] Mr. Gardner, based on information supplied by the Province, provided statistics concerning those loans.

...Borrowers with more than one loan and with repeat loans (as defined) have increased since 2012, but are holding steady. The number of loans granted between 2012 and 2017 recorded as repeat loans ranged from 46% to 56% of total loans (Table 9).

Table 9: Payday loan borrowing profile, Nova Scotia, 2011-2017

	2011	2012	2013	2014	2015	2016	2017
Borrowers with > 1 loan	-	-	19,630	24,788	-	23,744	24,050
Borrowers with repeat loans	-	-	15,545	18,794	-	17,665	18,795
Total number loans granted	148,348	172,023	194,794	206,165	-	213,165	209,000
Number of repeat loans granted	-	-	89,218	107,274	-	115,378	117,896
Repeat loans as % of total	-	-	46%	52%	-	54%	56%

Source: Service Nova Scotia

Between approximately 16,000 and 19,000 borrowers were granted repeat loans annually over the same period, with about 30% of repeat borrowers incurring more than 8 loans per year (Table 10).

Table 10: Percentage of borrowers granted repeat payday loans by number of loans, Nova Scotia, 2013 - 2017

	2013	2014	2015	2016	2017
Number borrowers granted repeat loans	15,545	18,794	-	17,665	18,795
% of repeat borrowers that incurred the following number of repeat loans:					
1	24%	26%	-	23%	23%
2	14%	14%	-	13%	13%
3	11%	10%	-	9%	10%
4	8%	7%	-	7%	7%
5	9%	6%	-	6%	6%
6	4%	5%	-	5%	5%
7	4%	4%	-	5%	5%
8+	26%	29%	-	33%	32%

Source: Service Nova Scotia

[Exhibit P-1, p. 12]

[103] Mr. Gardner and the Consumer Advocate saw the issue of repeat and concurrent loans as a continuing concern. It was also the focus of the presentation by Credit Counselling Services.

[104] The CCFA argued the Board should not recommend regulations to control the provision of repeat or concurrent loans beyond the provision discussed below. It also cited privacy and cost issues and noted that credit counsellors have indicated that payday loans comprise only approximately three percent of the overall household indebtedness.

It suggested this is the tip of the iceberg and borrowers struggle to deal with debt which otherwise includes car loans, credit cards, furniture loans, etc. It suggested implementing a database that would prevent a borrower from getting another payday loan is meaningless if it does not address the borrower's overall debt problem.

[105] On the other hand, Credit Counselling Services, who deal with debtors regularly, say that concurrent or repeat loans is the most serious and damaging issue it deals with when it comes to payday loans. Mr. Arsenault related the story of a married couple that had 11 payday loans, owing upwards of \$8,000; a problem he says Credit Counselling Services is seeing frequently.

[106] The submissions of the parties to this proceeding largely mirrored the positions taken in *Payday 2015*. While the Board accepts the Province's ultimate decision with respect to amending regulations, it continues to be the Board's view that regulations should place restrictions on repeat or concurrent loans from multiple lenders.

[107] Another recommendation in *Payday 2015* was that the *Regulations* should be amended to provide that where a borrower takes out more than two loans in a 62 day period, repayment of a third and any subsequent loan should 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.

[108] In his letter of August 31, 2018, Mr. Smith advised that that recommendation is still under consideration.

[109] In this proceeding, CCFA supported a provision, which would be voluntary, at the option of the borrower, that would see an extension granted if the borrower had three or more loans within a 62 day period.

[110] In his Reply Submission, dated October 16, 2018, the Consumer Advocate agreed with that proposal.

The Consumer Advocate agrees with the proposal of the CCFA concerning an extended payment plan. The Board should recommend that lenders be required to offer an extended payment plan whenever a borrower takes out three or more payday loans in a 62-day period. Adoption of the EPP by a borrower would be optional as proposed by the CCFA.

[CA Reply Submission, p. 2]

[111] While the wording of the previous recommendation to the Minister referred to more than two loans, the Board supports the proposal of the Consumer Advocate and CCFA 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 on a less frequent basis.

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

[112] 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.

[113] In his submissions, the Consumer Advocate suggested that the next review should occur in two years, stating that the payday loan industry is in a “state of flux”, that provincial regulators are moving collectively to lower the amount payday lenders can charge, and that the industry is continuing to consolidate.

[114] In its Reply Submissions, the Province supported the triennial rate setting hearings: see letter dated October 16, 2018.

[115] Since it was first regulated, the payday loan industry has seen constant change. The Board is satisfied that a three year review period provides an appropriate time span to review the industry. The Board considers it appropriate that the next review be scheduled in three years.

[116] 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) might occur in less than three years.

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

[117] Except as canvassed elsewhere in this Decision, there is no other issue to be considered by the Board.

VII SUMMARY

[118] The Board conducted a public hearing under the *Consumer Protection Act* respecting payday loans. The purpose of the hearing was to conduct a review of the Board's existing Order on payday loans issued in 2015.

[119] In considering this matter, the Board accepted evidence that 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.

[120] The Board also accepted evidence that the presence of actual “bricks and mortar” payday lender locations in Nova Scotia will serve to provide a disincentive to unregulated lenders from entering the jurisdiction, or from borrowers seeking out such unregulated lenders, particularly unlicensed online lenders. The Board considers that it must set a maximum cost of borrowing that will allow a viable market in which payday lenders can participate. Based on the evidence, if the maximum cost of borrowing is set too low, that will deter compliant payday lenders that wish to participate in the regulated market, and create an environment where unregulated and unlicensed lenders will enter to fill the void.

[121] Having reviewed all of the evidence, the Board sets the maximum cost of borrowing at \$19 per \$100. The Board maintains the maximum penalty chargeable on default on a payday loan at \$40 per loan and maintains the maximum interest rate at 60% (the maximum rate that can be charged under the *Criminal Code*).

[122] The Board was requested to make a recommendation that the *Regulations* be amended to place restrictions on repeat and concurrent loans, as it had following its prior 2015 proceeding. It continues to be the Board’s view that regulations should place restrictions on repeat or concurrent loans from multiple lenders, but the Board accepts the Province’s ultimate decision that the *Regulations* not be amended, stating that this would require loan-tracking databases, which is not feasible because of privacy implications and cost.

[123] The Board will recommend 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 on a less frequent basis.

[124] The next review to be conducted by the Board will be scheduled in three years.

[125] An Order will issue, effective February 1, 2019, to allow sufficient time for payday lenders and the Minister to implement this Decision.

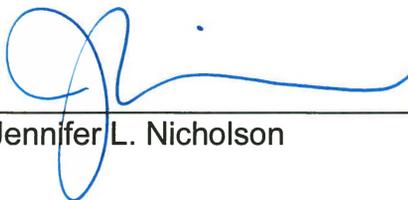
DATED at Halifax, Nova Scotia, this 27th day of November, 2018.



Peter W. Gurnham



Roland A. Deveau



Jennifer L. Nicholson