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Mercredi 28 mai 2008

Standing Committee on General Government

Comité permanent des affaires gouvernementales

Payday Loans Act, 2008

Loi de 2008 concernant les prêts sur salaire

Chair: Linda Jeffrey
Clerk: Trevor Day

Présidente : Linda Jeffrey
Greffier : Trevor Day

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Wednesday 28 May 2008

Mercredi 28 mai 2008

The committee met at 1603 in committee room 1.

PAYDAY LOANS ACT, 2008

LOI DE 2008 CONCERNANT LES PRÊTS SUR SALAIRE

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

The Chair (Mrs. Linda Jeffrey): I'm going to bring the Standing Committee on General Government to order. We're here to consider Bill 48, An Act to regulate payday loans and to make consequential amendments to other Acts.

UNITED WAY TORONTO

The Chair (Mrs. Linda Jeffrey): Our first delegation is the United Way of Greater Toronto. Could they come forward? Make yourselves comfortable and get yourselves settled. If you're both going to speak, please say your name and the organization you speak for, and then once you've had a chance to do that, you get 15 minutes. If you leave us a little bit of time at the end, we'll go around and the parties will be able to ask you questions. Welcome.

Ms. Gillian Mason: My name is Gillian Mason. I'm vice-president of strategic initiatives and community partnerships at what is now known as United Way Toronto. We recently changed our name to United Way Toronto. I'm here with Peter Alexander.

Mr. Peter Alexander: I'm Peter Alexander. I'm senior policy adviser. I plan to only speak when spoken to.

Ms. Gillian Mason: Thank you very much for the opportunity to address the committee today regarding Bill 48, the Payday Loans Act. My message on behalf of the United Way is not very long and not very complicated. It should not take too much time for me to say, "Well done."

Simply put, we wish to signal our support for this legislation introduced by the government. We also would like to acknowledge the work done and the efforts made by members from all parties to develop some form of industry regulation and consumer protection through various private members' bills.

United Way is pleased to see that the need for regulating payday lenders is something that all political parties in the Legislature indicate they can support. We would like to convey our appreciation that Ontario has taken the opportunity provided by the federal government to regulate this growing niche of financial services.

Having access to capital, as you know, in a modern economy is like having access to arable land in an agrarian economy. Along with knowledge, skills and hard work, access to capital is the building block for economic activity and the generation of wealth. So we recognize that the payday lending industry can and should have a role to play. They can occupy an important niche between conventional lenders who may be more risk-averse, and on the other hand, unlawful or illegal lending—what one might call "under the table" activity—that operates with no framework for consumer protection and can amount to usury.

The Criminal Code of Canada, as you know, makes it a crime to charge more than 60% interest per annum. As we know, without a legal framework in place, a short-term loan from a payday lender can potentially have an effective annual rate of interest far in excess of 60%. As we heard from the minister's parliamentary assistant during the second reading debate on this bill, "Based on a typical payday loan, these businesses lend at an annualized rate commonly in excess of 750% and sometimes even as high as 1,000%."

The law has not kept pace with this new form of lender, and we cannot allow a policy vacuum to implicitly condone lending at criminal rates of interest. I think we can all agree that the public interest will not be served if an industry develops based on a business model of criminal exploitation of the poor and otherwise vulnerable.

Consider a low-income family facing the prospect of hungry children, eviction or another missed car payment that could mean no way to get to work. For anyone in that predicament, there could be a powerful incentive to agree to what seems like a short-term solution but really only digs a person deeper into a hole. It serves the public interest to prohibit lending practices that might look like a solution but in practical terms will only magnify the borrower's problems.

We support legislation that would prohibit a variety of harmful practices that currently exist in the payday lending industry, such as rollovers, back-to-back or concurrent loans, inflated default charges and hidden fees.

United Way started to become aware of the dramatic proliferation of payday lenders in 2007 while we were conducting research into the persistent growth of poverty here in Canada's largest city. Part of the research looked at median income from Statistics Canada, and by mapping that data onto census tracks, we were able to identify pockets of persistent and growing poverty in particular neighbourhoods. Through our dialogue with our member agencies across the city, we followed a hunch, so to speak, that got us wondering about some of the other kinds of changes going on in poor neighbourhoods.

We suspected that another part of the story was the kind of industries that flourish in the context of poverty. Based on our research as published in our report Losing Ground—we have a copy of the executive summary here—we estimated that in 1995 there were about 39 payday lending and cheque-cashing outlets in Toronto. In 2007, through our own survey on the ground, we counted 317. That's an eightfold increase.

Our timing was fortunate. While preparing this study, there was a request made for public comments on regulating payday lenders by the Honourable Ted McMeekin, Minister of Government and Consumer Services. United Way Toronto president and CEO, Frances Lankin, wrote to the minister and made two recommendations. I believe you have a copy of the letter in front of you; it's attached to our submission. One was to regulate the industry and the other was to improve consumer education to permit potential customers of payday lenders to make informed decisions. We see the government moving on both these fronts and we commend you for this prudent enhancement to public policy.

We note with favour the amended regulations already made under the Consumer Protection Act that require lenders to provide more information upfront to their customers in a clear, standardized way so that borrowers can compare lending rates.

This is a good start on consumer education, and it appears there may be many more good things to come. We look forward to learning more about the proposed Ontario payday lending education fund to be financially supported by the payments from payday lenders and loan brokers. We agree with you on the need to educate the public, particularly with respect to financial planning. We share your expectation that this can result in better informed consumers.

United Way, through its funding of community agencies, has been involved in aspects of consumer education and financial literacy for some years, and we hope to do more in this area. We remain optimistic that the Ontario payday lending education fund will have a positive impact, and we look forward to more details on how it will work.

We are pleased that your regulatory framework does appear to have teeth. It is sound public policy that lenders who do not follow the rules will risk penalties, prosecution and possibly revocation of their licence. A balanced approach of meaningful enforcement and enhanced consumer education makes sense to us.

We are not here to claim expertise in the specific regulatory measures that will work best for various financial services. The creation of an advisory panel to recommend a cap on lending rates does make sense to us. It seems likely that over time, as the industry evolves, the community learns about options and consumers make choices. The specific measures for regulating payday lenders may indeed evolve.

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In conclusion, we commend the government and MPPs from all parties for their attention to this important matter, and thank you again for the opportunity to address this committee on this important issue.

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

Ms. Lisa MacLeod: Thank you very much for coming today. I appreciate all the work that the United Way does in Toronto, but I particularly appreciate what they do in Ottawa. I just wanted to welcome you here today. I appreciate the amount of effort that you've put into your presentation.

I just had two brief questions. One is just out of interest in terms of your Losing Ground report. You were able estimate in 1995 that there were 39 payday lending and cheque-cashing outlets in Toronto. How did you arrive at that estimation?

Ms. Gillian Mason: In that particular case, we used city of Toronto directories. To some extent, it doesn't necessarily reflect what was on the ground because we didn't have the occasion at that time to drive around. But when we compared the directories and then did the drive around, and we saw the number, we're talking about an order of magnitude change.

Ms. Lisa MacLeod: Not only in terms of the eightfold increase, did you notice—it's not documented here—where they were located in different pockets in the city?

Ms. Gillian Mason: Indeed, and we did map them against the priority neighbourhoods in Toronto, and in fact there is a concentration of the 300-plus in those neighbourhoods. In our Losing Ground report, there is a map that indicates where they are. We actually mapped all 300-plus in our report, which is also available on our website for handy reference.

Ms. Lisa MacLeod: Great. I only have one other question, and I'm not sure if my colleague does, but we do have a short period of time. I commend you for talking about consumer education and fiscal literacy. That's certainly an issue that I think needs to be addressed, regardless of income. A new generation has become very easily seduced by the credit card economy that we're in today, and with a slumping economy, it could get worse. I'm wondering, do you think the Ontario payday lending education fund might actually just be more bureaucracy, or how, as a major community stakeholder, do you see improving fiscal literacy throughout the province?

Ms. Gillian Mason: There are a number of programs that exist in Toronto, some of which we've had a hand in funding, or some of the agencies, I should say, that support them, including St. Christopher House. One of the recommendations in Losing Ground was that we would start to put some of our resources behind this. Part of that exercise will be to understand better who is out there doing what kind of work in front-line advice to people living in poverty, with respect to their financial literacy or simple information about access to credit, understanding better what benefits they have access to etc. We're hoping over the summer, actually, to pull together parties from across Toronto to understand who's doing what, and then we're hoping to work with the business sector as well, to see whether or not we can be helpful and fill a niche in supporting that.

Ms. Lisa MacLeod: Just a quick—

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

Ms. Cheri DiNovo: Thank you both for coming here—big fans, as you know. I tabled a payday lending bill quite a while back that asked for a hard cap of 35%. I see in Ms. Lankin's first recommendation, she's looking for a hard cap too, under the usurious rate of 60%. Our problem with the bill, and we're going to be bringing forth an amendment to this effect, is that there's no hard cap mentioned here for the total cost of borrowing. I really welcome that; it was wonderful to hear from Ms. Lankin that she's looking for a hard cap too.

Number two, about the education fund: We're concerned about it from a slightly different angle. We're concerned that the education fund be managed by some organization that is operating in the interests of the clients of payday lending and not by the payday lending association and its clients. I wonder if United Way would be supportive of such an amendment? This could be yourselves, it could be ACORN, it could be any number of organizations, but we're concerned that this not simply be a way of giving more money back to the industry, but that this really be handled for and about the clients of said industry.

Ms. Gillian Mason: Certainly our position is that the complex situation that people in poverty find themselves in financially requires a deft hand to manage the information well and to provide the breadth of information that is really valued, depending on your particular circumstances. Our observation has been that there isn't a great deal or depth or breadth of expertise on this in the community, and so I think we all have to very thoughtful about whom we support in actually carrying out that kind of activity.

Ms. Cheri DiNovo: Is this something that United Way itself might be interested in managing?

Ms. Gillian Mason: Good question. We're a busy lot at the moment, so we certainly would like to be brokers and involved in the decision-making.

Ms. Cheri DiNovo: Thank you very much.

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

Mr. Charles Sousa: Thank you very much for attending. We appreciate the leadership that United Way has come forward with on this and the work that you do.

In regard to the industry itself, do you see the need for the industry and the continuation of this industry to continue to be in effect for the consumer?

Ms. Gillian Mason: We certainly see the need for the kind of service that is provided; yes.

Mr. Charles Sousa: Right. And I appreciate your comments around the education fund. That's a big part of our bill, and we took into consideration some of the requests made by the United Way and the leadership you've taken in this realm. We see that also as an important factor of the bill.

In respect to the interest rate cap, we've determined that we need to have further discussion with some expert panels. What do you see, then, as a means by which to incorporate the business and the industry in such a way as to enable them to survive with the respective rates that exist?

Ms. Gillian Mason: That's a very good question. I'm not sure I'm in a position to answer that question. Peter, you've given this a little bit more thought. Would you—

Mr. Peter Alexander: I would just add that I think we don't want to put ourselves in the position of having expertise in financial analysis or actuarial considerations and so on that we don't possess. I think our point is that there's a rate that would be too high and a rate that would be too low. We would invite other people with more expertise to provide advice to the government on that. We're very pleased that the government has gone as far as it has. That would represent the extent of the highly technical advice that we feel comfortable providing to you.

Mr. Charles Sousa: Thank you for your time.

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

NATIONAL MONEY MART CO.

The Chair (Mrs. Linda Jeffrey): Our next delegation is National Money Mart Co. Ms. Patti Smith, welcome. I understand that we're handing out your package right now. If you could state your name and company name for Hansard, once you've begun, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you questions.

Ms. Patti Smith: Patti Smith, National Money Mart Co.

Good afternoon, Madam Chair and members of the committee. On behalf of National Money Mart, I appreciate the opportunity to appear before the committee to discuss Bill 48, the Payday Loans Act, 2008. I have been the president of National Money Mart since January, 2007, and am responsible for all aspects of the retail side of our business. That would include our operating, human resources, training and education, compliance and product development. I've enjoyed a 15-year history with Money Mart and have served in a number of different roles within the company prior to assuming the role of president last year.

Money Mart is Canada's leading convenience-based financial services provider and an industry leader in consumer protection. We've established a credible brand in the industry. We first opened our doors in 1982, with the belief of putting people first. Last year we celebrated our 25th anniversary of operation.

We're a founding member of the Canadian Payday Loan Association, which has been working for several years toward regulation of the industry. Our company believes that strong consumer protection that allows for a viable payday loan industry would be very important. We've been national members in good standing with the Better Business Bureau for 24 years and have served as board members for many years as well.

We're proud of the partnership that we have with reputable, not-for-profit credit counsellors, working with programs in each province across Canada. We donate a portion of the funds that they collect on our behalf to help sustain their operations. In Ontario, we work in partnership with the Ontario Association of Credit Counselling Services.

I have brought copies with me of their brochures, which you will find in every one of our stores in Ontario. Inside, it will explain to consumers who they are, how they go about calling and what will happen when they call, to put consumers at ease if they decide to take this approach. In fact, for the past seven years, Money Mart has been making yearly donations to the not-for-profit credit counselling programs in every province across Canada.

We also believe in giving back to the communities in which we operate. Money Mart sponsors a large range of organizations and charities that benefit the well-being of children, support health care, protect the environment and support local amateur sports. For example, once again this year we'll be the proud national presenting sponsor for the Easter Seals 24-hour relay. Money Mart will donate an excess of $400,000 to this cause, along with hundreds of volunteers to run this program.

Money Mart offers a wide range of products and services to its customers. We find that not everyone really understands the services we provide, so please allow me to speak about some of them.

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Cheque cashing, for example: People often ask, "Why do people use you when they can just go to the bank," so I'll just give you a couple of examples that might illustrate that better. If you're an employee who gets paid on Friday at 5 o'clock and you run to the bank machine to deposit your cheque, in most cases the bank will issue a hold on those funds for two to five days. If you have rent due that weekend or you have plans that weekend or bills due, you really are out of luck until the bank clears those funds on Tuesday, so that would make Money Mart a viable opportunity. Also, we do a lot of work for commercial customers, which would be small business owners. For example, if you had a roofing client who had just completed a roofing job, he would come to Money Mart with his cheque instead of going to the bank, which would hold it for two to five days, and by cashing it with us, it would allow him to pay his employees on the Friday as well as buy materials for the next job he needs to start, without having the bank put holds on those funds.

We also do foreign currency exchange. Banks have recently made a change in their policies whereby if you're not an account holder and at your branch, you can't do a foreign currency transaction. We have offered foreign currency transactions to all of our customers for years. We offer almost all of the currencies and we keep them on hand. Most often, we have better-than-bank rates, so it's a very convenient option for people.

We also have Canadian and US-dollar money orders available, and we are the lowest-cost provider of those in Canada. So if you are someone who purchases things online or you have American magazine subscriptions, this is a very easy and cost-effective way for you to make payments into the United States.

We are also the largest North American Western Union agent, which means we do money transfers all over the world.

We're the third-largest tax-preparation company in Canada. We processed about 100,000 tax returns this year for our clients.

And of course, we're the lowest-cost provider of payday loans in Canada.

We offer a very broad suite of financial solutions, with a focus on ease of access, customer service and convenience. Money Mart has been a trusted provider of payday loans for over 10 years.

Our company currently operates just under 500 retail stores in Canada, and 234 of those are located in cities and towns across Ontario. We employ close to 1,150 full and part-time staff in Ontario, whose feedback we solicit annually through employee surveys.

For over a quarter century, Money Mart had prided itself on providing excellent service to its customers. Every day, our front-line customer service representatives witness first-hand why people seek our services. They know the degree to which our convenient locations, late hours, friendly service and speedy processing are valued by our customers.

Earlier this week, the committee was taken through a presentation by Pollara about its fall 2007 survey of payday loan consumers. I cannot stress enough how important I feel the survey's findings are. Too often, legislators only hear alarming anecdotes about consumers who have been harmed by unscrupulous lenders. The Pollara survey delves beyond those headlines to talk to CPLA-member customers, confirming what Money Mart sees reflected in its day-to-day operations. This is knowledge that I personally have gained first-hand, having started out in the business 15 years ago on the front lines. I've seen the demand for the product grow over time to where it is today.

Our consumers are educated, middle-income Ontarians who have been making an informed decision. They're employed, and they have bank accounts. They have salaries that are on par with average household wages. They're educated, and they understand the cost of the product. They do have other options available to them, and they're making a conscious choice in taking out a payday loan. The majority of them pay their loans off on time, as well. We hear every day from our customers how satisfied they are with the service that they receive—over 90% rate our service good to very good.

We're often asked why the payday loan product is necessary. Our customers are typical of those seen right across the industry. They need a payday loan because they've encountered an emergency, or some unexpected situation has come up and they need extra cash. Sometimes it's because they want to avoid paying the higher cost of bouncing a cheque. They really like the ease of a payday loan. It's a quick and easy process, our locations are convenient, and there are no hassles. In response to consumer demand, Money Mart stores are open longer hours and seven days a week.

As a market leader, I can assure you that the demand is there today and has been for several years. It's a demand that deserves to be met by responsible providers working within a legislative framework that protects consumers and encourages competition within the industry. In each one of our branches across Canada, you'll see the CPLA guide to responsible borrowing, which counsels people about the proper use of loans—and I brought some that we can hand out later. It's a guide about using payday loans. Consumers can read through here on why people use payday loans, the proper use of payday loans and what they're intended for, understanding the terms of your loan—so encouraging people to read some of the finer print, and other options. It also lists the Canadian Payday Loan Association, if they have any other questions about members or non-members. This is in every one of our branches. As well, we have the new consumer protection listing all of the best practices that the Canadian Payday Loan Association has implemented with their members. I encourage you to take a look at those.

As I indicated earlier, Money Mart is a founding member of the CPLA. We're very proud of the founding role we've played in forming the association. From the outset, the work of the CPLA has been based on the need to develop standardized practices across the industry that protect the consumer. That's a need that Money Mart understands well. I'm proud to say that Money Mart's own practices served as the foundation for the code of best business practices that was adopted in 2004 by the CPLA. For years, we have lived by those rules because they were the right thing for our customers.

Let me just give you an example of how Money Mart has put its belief in customer protection into everyday practice: We have never allowed rollovers, ever. Rollovers constitute a harmful practice that must be outlawed across the remainder of the industry. Consumers deserve a very level playing field which ensures that they will not be subject to a cycle of ever-mounting charges if they cannot pay off their loans.

As an industry leader, Money Mart is pleased to see that many of the provisions contained in the CPLA's code of best business practices are reflected in Bill 48. In particular, we note that the legislation contains a prohibition against rollovers. This is utterly essential in this industry. As well, there are restrictions on default charges and the customer's right to rescind. These are all protections that Money Mart has voluntarily adhered to for many years.

Speaking on behalf of a company that's actively sought government regulation for a number of years, I am delighted to see these provisions upheld in legislation. Voluntary adoption of best business practices, as Money Mart has done for years, can only go so far. We need a government-mandated level playing field for all operators so that we deliver industry-wide protection to our consumers.

Money Mart is proud of the leading role we play in the payday loan industry. We are providing customers with a convenient financial product whose demand is clearly evident. We're an industry leader with sound business practices that are rooted in consumer protection. We invite regulation and in fact have been quite vocal in advocating the need for a regulatory framework for several years.

Money Mart is pleased to see legislation introduced in Ontario and looks forward to working with government to ensure that at the end of the day a viable industry is there to meet the consumer demand for the payday loan product.

Thank you very much for the opportunity to appear. If you have any questions, I'm available.

The Chair (Mrs. Linda Jeffrey): Not a lot of time—about a minute and a half.

Ms. Cheri DiNovo: First of all, could you tell us, Ms. Smith, about the class action lawsuit against Money Mart that is being held in Ontario?

Ms. Patti Smith: It's currently before the courts, so I'm unable to speak about that.

Ms. Cheri DiNovo: Second question: The Criminal Code defines usurious interest rates at 60%. Would you agree with the Criminal Code definition of usurious interest rates?

Ms. Patti Smith: The Criminal Code defines them at 60%: Is that what you're saying?

Ms. Cheri DiNovo: At 60%, the total cost of borrowing. Would you agree?

Ms. Patti Smith: Yes, I agree that that's what the Criminal Code reads.

Ms. Cheri DiNovo: You charge more than that for the total cost of borrowing.

Ms. Patti Smith: We charge 59%.

Ms. Cheri DiNovo: You actually charge more than that in terms of the total cost of borrowing for most of your clients, according to the Toronto Star and others.

Carol Goar headlined one of her articles "1,000% Interest 1,000% Wrong." She cited you, among others. We also heard, by the way, ACORN completely refuting the Pollara survey. First of all, the Pollara survey was done by you, by the Canadian Payday Loan Association. Also, it was done by phone, and a lot of the worst-hit clients who are preyed upon by your industry don't have land lines, don't have phones, for the obvious reason that they don't have the money to pay for them.

Finally, Bob Whitelaw, who was the original president of the Canadian Payday Loan Association, has said that you can make money at 28% and under. Would you agree?

Ms. Patti Smith: This is an extremely expensive product to offer. There's an advisory committee being formed to look at the cost of providing this loan. I think they need to take into account the cost of rent, the cost of employees, the cost of capital and the cost of debt.

Mr. Charles Sousa: Congratulations on 25 years of existence. I appreciate your comments around partnering with reputable counsellors and others. I think you would appreciate that the bill is there to try to enforce some integrity with some of your competitors going forward.

Two questions: One, it was insinuated yesterday that the industry is owned by the banks. Are you owned or controlled by any major bank in Canada?

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Ms. Patti Smith: No, we're a publicly traded company.

Mr. Charles Sousa: In regard to the rollovers, I'm very pleased to hear what you have to say in regard to back-to-back. How do you satisfy yourself that the loans are paid before you provide a separate loan?

Ms. Patti Smith: The onus for that is on the customer. They need to bring in proof that the cheque has cleared the bank, or they bring in a bank statement showing that that's cleared.

Ms. Lisa MacLeod: Thank you very much for coming here today. I appreciate that you've been a member of the Better Business Bureau in good standing for over 20 years. I think that's quite remarkable. I also want to personally congratulate you for working up from right at the front line to becoming president. It's nice to see strong women getting ahead.

Ms. Patti Smith: Thank you.

Ms. Lisa MacLeod: Congratulations there.

In terms of growth, we just heard from the Toronto United Way. They talked about how the industry has grown eightfold—in the city of Toronto at least—in certain pockets where there are people of low and medium income. I'm wondering if the growth of Money Mart in the city of Toronto has been in low-income areas.

Ms. Patti Smith: Our growth follows our customers, and our customers' average income for the payday loan product is just under $40,000. So we go where those people live, shop and work. For example, we recently opened a store just off Bloor Street, on Yonge, so we get a lot of people who are shopping and working in office towers and things like that.

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

JUSTICE MATTERS

The Chair (Mrs. Linda Jeffrey): Our next delegation is Justice Matters, Charles Foster. Welcome, Mr. Foster. As you get yourself settled, we'll just be delivering your handout before you speak. If you can state your name and the organization that you represent for Hansard, once you begin, you'll have 15 minutes. Should you leave us any time at the end, we'll be able to ask questions of your deputation.

Mr. Charles Foster: Greetings to the committee. My name is Charles Foster. I'm a Small Claims Court paralegal and the principal of a paralegal firm called Justice Matters.

I'd like to congratulate the government and this committee for introducing legislation to regulate an industry that the courts on numerous occasions have found to be operating in contravention of section 347 of the Criminal Code, and that some of your peers, past and present, have referred to as loan sharks. I wouldn't necessarily categorize them all that way. Not all payday lenders operate the same, Money Mart being a notable exception, but certainly there are lenders out there who are charging triple-digit and in some cases quadruple-digit interest.

The problem, as I see it, with a typical payday loan is a combination of three factors: number one, you're dealing with a borrower who is living paycheque to paycheque; secondly, the typical loan involves triple-digit interest; and thirdly—and I think this point may have been overlooked by many—is the fact that the loan is only for two weeks. It is the combination of these three factors, when they come together, that can create a situation that can be very difficult, even devastating, for the borrower of a payday loan, and I'd like to explain why.

When you are dealing with somebody who is living paycheque to paycheque and apparently without any savings, they have a monthly budget and so many things they need to deal with on a monthly basis. They're going to need to cover their cost of living, be it rent or mortgage. They're going to need to eat. They're going to need to clothe themselves. They're going to need to get to and from work. That encompasses the bulk of their monthly expenses. If anything comes up outside of those expenses, they don't have any money to deal with this unanticipated expense and therefore they're going to have a shortfall for that month's budget.

According to the Pollara study, we know that approximately 60% of users of payday lenders are using them because they have an emergency or some type of unexpected expense, like a car repair. The borrower does not have the monies on hand to cover these emergencies or unexpected expenses, so they go to a payday lender. While the payday lender will provide them with funds to immediately satisfy this emergency or unexpected expense, the end result is that at the end of the month the borrower still has a shortfall in their monthly budget. All the payday lender does is provide an immediate solution to the problem and take a premium for doing so. But at the end of the day, the borrower still has a gap in their finances. When you're dealing with triple-digit or quadruple-digit interest, the hole in this person's finances is actually worsened.

Getting back to those three factors I mentioned with respect to payday loans, obviously we cannot change the first factor, which is that the borrower is living paycheque to paycheque, but we can look to improve the payday loan product by looking at the other two components.

In particular, I suggest that the term ought to be in excess of two weeks, that the legislation should mandate it for a minimum of 60 days. This would allow the borrower to spread out the cost of this unexpected expense over multiple pay cycles.

I wasn't planning on mentioning this, but there's been some talk about how everyone's glad that the legislation is going to put a prohibition on rollovers. What we've seen in the past is that when a payday loan is due, if the borrower does not have the money, they'll just go to another payday lender, and the prohibition on rollovers will not prevent that. People who come to me often have five or more payday loans, and that's because these payday lenders do not permit rollovers. Thus, they're forcing these borrowers to go to other payday lenders to, effectively, rob Peter to pay Paul. I would suggest that a 60-day term would alleviate part of the problem.

In addition, the interest rate ought to be capped at 60%. Unfortunately, the bill does not explicitly speak to either of these remedies or recommendations that I would advance. The maximum legal rate of interest in this country has been 60% for some time. It's a rate that society accepts as a maximum, and the courts have deemed higher rates to be usurious and criminal. Our concern is that if the government goes beyond the 60%, then what we're talking about is the decriminalization of usury in the province of Ontario, and I'd submit that that would create a whole host of other problems.

Number one, we have seen, and I submit that it would remain the case, that interest in excess of 60% would create hardship for borrowers. I won't provide you with war stories or incidents I've seen. I'm sure that's been well documented in the past and people before the committee have made such submissions.

The second problem with decriminalizing usury is that it will create upward pressure on consumer interest rates. We are already seeing that happen with certain second-tier lenders who are offering interest at 36% to 59% for, of all things, loans to pay off payday lenders. While the people in the room might think 59% is obnoxious as an interest rate, it looks pretty good to somebody who's already paying 590% to a payday lender.

The third problem we'd have with the decriminalization of usury for a select group of people is that it would create a legal paradox. C-26 codified what type of loans would be exempt. For a licensed payday lender, it would be for loans of $1,500 or less for 62 days or less. If we take the Manitoba situation—and I would refer you to page 3 of my handout—since we don't know what the interest rate is, and if we hypothesize for a moment that it could end up being 320% like is happening in Manitoba, you could have a situation where somebody could borrow $2,000 at 80% interest for 90 days. That would not be captured by this bill or the exemption allowed under section 347(1) of the Criminal Code. That product, nevertheless, would be superior to a $1,000 legal payday loan at 320% interest over 60 days. This then begs the question, since there's been no enforcement against payday lenders in the past, will there be enforcement against these people who lend in excess of 60%, and if so, what type of message does that send to the public when somebody who is technically offering a superior consumer product would be facing charges, where a select few would not?

1640

Lastly, I'd just like to say I understand a business colleague of mine, Ed Portelli, from Ontario Consumer Credit Assistance, was here on Wednesday. He apparently may have raised some issues that were not satisfactorily answered. I am prepared to answer any questions that may have arisen from any of his comments that day.

The Chair (Mrs. Linda Jeffrey): Thank you very much. We have two minutes for each party to ask questions, beginning with Mr. Sousa.

Mr. Charles Sousa: Thank you very much, Mr. Foster, for being here today. I can appreciate your consideration for extending the amortization of the loan, or the term of the loan, because as it would extend, it would lower the rate.

Mr. Charles Foster: Yes.

Mr. Charles Sousa: But payday loans by their nature are paycheque to paycheque, hence it could be a two-week period, it could be a three-week period or it could be a monthly period, depending on when the person gets paid. There are instruments that exist to provide loans for individuals outside payday-type instruments which would then extend the term, as you've indicated.

I'm interested in your analysis in respect to what's happening in Manitoba, because we're also looking at that as an alternative or as a means by which to establish a rate. We had a witness here on Monday, Mr. Robinson, who proposed a similar scenario as is in Manitoba.

Your premise is, then, if I understand correctly, that it shouldn't be a payday instrument at all. It should be just a regular loan amortized over a longer period of time to enable the consumer to have a lower rate.

Mr. Charles Foster: I don't think we have to contort ourselves into confining it to two weeks just because people are using the phrase "payday loan." The bill allows, or the Criminal Code amendment allows, it to be up to 62 days. So, already it's anticipated that people could borrow for in excess of two weeks. I wouldn't confine ourselves to two weeks just because we're referring to it as a payday loan. Perhaps we could refer to them as we used to in the past, where you'd have something like a small loans act, and just refer to them as small loans, and stop thinking it's for payday to payday only.

Mr. Charles Sousa: Well, something to consider. Thank you.

Ms. Lisa MacLeod: On page 3 of your presentation, are you suggesting that it's more feasible for somebody to take out an illegal loan?

Mr. Charles Foster: You mean $2,000 at 80% interest over 90 days?

Ms. Lisa MacLeod: Yes.

Mr. Charles Foster: Well, what I'm suggesting is, right now you have people who are lending $1,000 at 520% interest. I'm putting forward as a hypothetical that, if you legalize that, you could have a next tier of lenders manifest themselves, feeling comfortable in knowing that their product is superior to one that is protected by legislation.

We are already seeing people who are on the edge of this, very close to doing it, and I don't believe it will take much to tip them over and to take the first step and try to do this.

Ms. Lisa MacLeod: Who?

Mr. Charles Foster: I'm not prepared to give any names.

Ms. Lisa MacLeod: Quite a statement to make. If lenders such as some of those that are here today, some of those who abide by best business practices under the CPLA—if we were to take away consumer choice by telling them they couldn't be in the market, where would you expect these folks that need payday loans to go?

Mr. Charles Foster: I'm not saying to get rid of payday loans or small loans, however you wish to coin them. I'm saying that it can be done and ought to be done at 60%. Money Mart believes, and has said, it can be done at 59% interest.

Ms. Lisa MacLeod: I'd like to have some more information from you on the Small Claims Court proceedings where you won a landmark decision against payday lenders.

Mr. Charles Foster: I don't believe I used the phrase "landmark." That may have been Mr. Portelli who said something like that.

We've been in court many times, dealing with payday lenders, and I've brought the respective cases here. I do not have copies, because technically I'm not permitted to make a photocopy of a transcript, but I would be prepared to leave the transcript of all the judges' decisions on those cases with this committee.

Ms. Lisa MacLeod: Could you read some of them into the record?

The Chair (Mrs. Linda Jeffrey): Sorry, we don't have time for you to read into the record, but certainly if it can be made available—

Mr. Charles Foster: If there's a way for me to leave them with the committee, I will, if I can get them back.

The Chair (Mrs. Linda Jeffrey): I think the clerk will find a way to be of assistance to all the parties to have that information.

Mr. Charles Foster: I'll just make note that we've been in court three times. Every single time, the court made a conclusion that the payday lender was operating in contravention of the Criminal Code and denied the payday lender their interest and their principal.

Ms. Cheri DiNovo: It was a very thoughtful and provocative presentation, so thank you very much for that.

So you would characterize payday lenders, as now constituted, as being basically the same as loan sharks?

Mr. Charles Foster: I would not use that phrase necessarily. I don't feel comfortable using that phrase. To me, "loan shark" also implies some type of threat of violence if you don't pay. But, as I said, many of your peers, including Jim Flaherty and Bob Runciman, have categorized them that way.

I certainly believe they're usurious, and the courts have also used the phrase that they are usurious and not entitled to any repayment whatsoever should they go before the courts.

Ms. Cheri DiNovo: Thank you for pointing out that without a hard cap on the total cost of borrowing, really this bill will be a way of legalizing usurious lenders in an unregulated area right now. It's so important.

I brought forward a bill to cap interest rates at 35%. In Ohio, where it's 28%, in Quebec, where it's 35%—I could go through the whole list of jurisdictions—Pentagon military personnel, 36%—do you think it's entirely possible for payday lenders to still make a profit at 36% or less?

Mr. Charles Foster: I believe so. Again, I'll repeat that Money Mart maintains that it is making money at 59% interest. We made written submissions back in July when the government was contemplating whether or not it should seek an exemption pursuant to section 347(1) of Bill C-26. In our written submissions, we put together a business model clearly showing how a payday lender could make money at 60% interest.

Ms. Cheri DiNovo: Finally, it has been raised at this committee that banks are not invested in payday lenders. We happen to know that banks are invested in some payday lenders. Has that been your experience as well?

Mr. Charles Foster: I am unaware of who the investors are of any particular payday lender.

Ms. Cheri DiNovo: Okay. Thank you.

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

TORONTO AND YORK REGION LABOUR COUNCIL

The Chair (Mrs. Linda Jeffrey): Our next delegation is the Toronto and York Region Labour Council. Is it Ms. Persad?

Ms. Judy Vashti Persad: Yes.

The Chair (Mrs. Linda Jeffrey): Great. Make yourself comfortable. I understand you have a presentation that you'll be submitting to us after you've spoken?

Ms. Judy Vashti Persad: Yes.

The Chair (Mrs. Linda Jeffrey): If you could state your name and the organization you speak for, for Hansard, once you begin you'll have 15 minutes. Hopefully you'll leave some time at the end for us to ask questions of your deputation.

Ms. Judy Vashti Persad: Thank you. My name is Judy Vashti Persad. I am with the Toronto and York Region Labour Council. First of all, thank you for the opportunity to present our position on the payday loan legislation.

The Toronto and York Region Labour Council is made up of over 150 union locals, and we represent 195,000 working men and women in the city of Toronto and York region. During the past two years, we have been working with local community organizations throughout Toronto—in Rexdale, Scarborough, Jane-Finch, Thorncliffe-Flemingdon and south Etobicoke neighbourhoods—organizing town hall meetings around our campaigns. One such campaign was around raising the minimum wage.

We listened to people's life experiences of survival, stories of working and still living in poverty. People spoke of being trapped in poverty, working for low wages and having to work two to three jobs to support their families, to make ends meet. But people were trying to get out of poverty.

We are pleased that the government has recognized the need for legislation to regulate the payday lending industry. We are encouraged that there will be a licensing of all payday lenders, that there will be inspections and that there will be a ban on hidden fees that have caused so many problems for low-income people. However, we are extremely concerned that Bill 48 fails to put a cap on the interest rates charged by lenders. Waiting longer for an advisory board of experts to talk and then decide and recommend a cap on the total cost of borrowing is not acceptable from our point of view.

Is it acceptable for low-income people to continue to be pulled into and trapped in a cycle of debt? Is it acceptable to allow the payday lending industry to get away with targeting the lowest-income neighbourhoods, feeding off the poverty in our city and in our communities and feeding off people who are financially excluded from using banks to get small loans?

1650

The United Way of Greater Toronto's report, Losing Ground: The Persistent Growth of Family Poverty in Canada's Largest City, states that there were 29 payday lending locations in 1995. In 2007, there were 222. Their drive-by audit identified 317 outlets.

Payday lenders are being set up in the lowest-income neighbourhoods. They are targeting poor neighbourhoods. Who are the majority of people living in these poor neighbourhoods? I speak to you as the Toronto and York Region Labour Council, but I also speak as a woman of colour. According to Statistics Canada, 38% of women of colour receive poverty wages. The Colour of Poverty campaign states that 59% of poor families in Toronto are from racialized communities.

The government of Ontario is speaking of poverty reduction and for children living in poverty. Let us get children out of poverty by breaking the cycles that trap families in poverty. There must be recognition of the vicious cycle of payday lending and that this cycle must be broken. Including, as part of this legislation, a cap on the interest rate would be a great anti-poverty strategy and of course an immediate one.

We are pleased that the legislation requires payday lenders to contribute to a public education fund but support the call for this fund to be controlled by consumer organizations, community organizations and credit unions, as opposed to the payday lending industries. This fund should support financial literacy initiatives in local communities.

Lastly, the existence of payday lenders is a symptom of a larger problem, in our opinion. In low-income neighbourhoods, mainstream financial institutions are moving out and the void is being filled with fringe financial institutions. Payday lenders are then stepping in to fill a need for small amounts of money. We need the government to take this legislation a step further and set up a standing committee to work with credit unions and banks to develop strategies to help low-income communities get their banking needs met.

Once again, thank you for this opportunity to present to this committee. I personally am no different than a person who uses a payday lender. My question to you will be, are you? Maybe by opportunity, access and privilege, but we all want to support ourselves and our families and live a life that is meaningful to each and every one of us.

Let us develop opportunities and strategies for those communities and those people in our communities who are pushed into using payday lenders. Please make this legislation truly valuable by including a cap and lowering the cost of payday loans.

Thank you very much for this opportunity.

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

Ms. Lisa MacLeod: Thank you very much, Ms. Persad. I thought you had a really good presentation. I thought you painted a good picture of why we're here.

I was really interested in how you discussed the cycle of debt in Ontario and the educational funds that are needed. I thought it was a very interesting take, actually, from someone who agrees with the bill. I'm always wondering if there's a better way to deal with the fiscal literacy issues that we have in Ontario. I was really taken with your ideas that a fund be led by credit unions and other service groups throughout the province. I'm wondering if you could elaborate on that.

Ms. Judy Vashti Persad: It would not be, in my opinion, something that's just led by credit unions. In all of our work, we strongly support the involvement of the people who are affected by the issue or the legislation. So if something is going to be set up to benefit the individuals and families in poor communities, they also need to be involved in determining what the strategies are, what the areas are that need educating on. Personally, I learned financial management from my mother. How do we get adults, how do we get families—is that the answer?

Again, that's just one piece of it. Being trapped in poverty is not so much an individual problem, that there is a mismanagement. We have to look at the structures that keep people in poverty. I think one of the things—this is just a small part of it; why we're saying there needs to be a cap on interest rates is that that's such an immediate way of helping families and individuals get out of poverty.

Ms. Lisa MacLeod: Could I just ask one quick question relating back to fiscal literacy, though, in those communities? You talked about the need for adults to have this. I'm wondering, do you not think it needs to start a little bit earlier, with children in school, whether it's in grade 10 or 11, through a math class, that we're actually teaching kids the fundamentals of fiscal literacy? You mentioned yourself that you learned how to financially plan from your mother. This isn't the first time that we're hearing, in life, that parents are working. They're not getting what they used to get at home anymore. It's just the reality of parents working. I'm wondering if you think that there is a need to teach kids at an earlier age.

Ms. Judy Vashti Persad: On financial literacy?

Ms. Lisa MacLeod: Yes.

Ms. Judy Vashti Persad: I think that's something everyone in our society learns, right? But again, it worries me that that would be the focus. I think education is important, of any strategy—if you're taking something down into communities, just talking with the communities and finding out what is important to them.

So I can't really sit here and say, "You know what? A literacy program needs to incorporate this, this and this, start at this age and end at a certain age." Education in our society, to me, is always important. But if children grow up seeing their parents having to work three jobs, and yet having to go every paycheque to borrow money, then continually being trapped that way, what is the message given to children? To me, there's a larger picture here.

Ms. Cheri DiNovo: Thank you for coming, Ms. Persad. Just going back, I've been asking other deputants about the role of the banks in the payday lending industry. I understand—I was just looking at this file here—that the Toronto Dominion Bank, for example, has 250,000 shares in Money Mart, one of the deputants here. The Royal Bank has invested in the payday lending industry as well. I just want that on the record. So we have major banks here now propping up what is a usurious industry.

Would you agree that anything over 60% of total costs of borrowing—interest rate—is usurious? That's the Criminal Code definition. Would you agree with that Criminal Code definition of what a usurious interest rate is?

Ms. Judy Vashti Persad: Definitely. Toronto and York Region definitely agrees that that would be the highest it should be. It should actually be lower than that.

Ms. Cheri DiNovo: Absolutely. A number of jurisdictions, as you're probably aware, have lower interest rates, Ohio being the lowest that I'm aware of at 28%, Quebec at 35%—hard caps. There are still payday lenders in Ohio seemingly making money at 28% or less, and of course now Manitoba has come in. The Pentagon: 36% for military personnel. All of these organizations and a number of others—Delaware, and I could go on—have hard caps.

One of the fears is that, because they have hard caps and we don't, payday lenders will essentially invade Ontario as the last fertile ground for usurious lending rates. Would your clientele be worried about that too? So instead of having a tenfold growth, let's say, in payday lenders, we'd have a twentyfold, thirtyfold growth, and instead of borrowing from one to another to another, they'd just keep going. Is that a fear of your?

Ms. Judy Vashti Persad: It is definitely a fear of mine and of the councils. I think that's why we brought up the point of looking at strategies to assist low-income communities and low-income individuals in getting these small—it's really small loans. So how can our financial institutions help and work in that way? Maybe we need to look outside of the parameters we have in our financial institutions, to look at ways of making it work for poor communities, for people of colour living in those communities, immigrant people, poor working people who work hard. We just have to find a way to do that. This is what we hear.

When we go to community organizations, we hold town halls, like on the $10 minimum wage. People said, "Yes, a minimum we want is $10.25 now, but there's so much more we also need in our lives."

1700

This was one of the items that was identified, as well as good-paying jobs. So I guess I just urge the committee to look at a larger picture and look at a way for us to get these individuals and communities out of poverty.

Mrs. Carol Mitchell: Thank you, Judy, for your presentation. It was very thoughtful, and you've put a great deal of work into it, so I thank you for that.

I wanted to give you the opportunity to tell the committee what you would recommend as a percentage for the cap.

Ms. Judy Vashti Persad: The Toronto and York Region Labour Council works closely with ACORN. I know they have made a presentation. We would take our guidance from ACORN. In speaking with them, they have recommended anywhere from 40% to 60%. It's a hard thing to identify. It depends on what it's going to include, how you're going to determine it. We would give our support to what they are calling for.

Mrs. Carol Mitchell: So your recommendation is somewhere from 40% to 60%. Have you had the opportunity to see what has happened with the hard cap that was put in place in Quebec and the changes that resulted because of that hard cap? It being too low is the argument that's been made in Quebec.

Ms. Judy Vashti Persad: Have I had the opportunity?

Mrs. Carol Mitchell: Yes.

Ms. Judy Vashti Persad: No, I haven't.

Mrs. Carol Mitchell: You won't know this, but I'll share this with you. I represent a rural area, and the financial institutions we rely on in rural Ontario are credit unions. Because of the absence of banks, we have more credit unions. One of your recommendations was that the credit unions—you said, "controlled by credit unions." I just wanted to give you a chance to speak to that. I don't think that's what you meant, maybe, but you were looking for direction from financial institutions such as credit unions?

Ms. Judy Vashti Persad: With regards to—

Mrs. Carol Mitchell: Your recommendation was, "controlled by credit unions." I don't want to put words in your mouth.

Ms. Judy Vashti Persad: This is regarding the fund?

Mrs. Carol Mitchell: Not the fund, but I'm going to say the conduct of the payday loans and that type of thing. I'm assuming that's what you meant. I just want to give you the opportunity to speak to it.

Ms. Judy Vashti Persad: When I was speaking of the credit unions, I thought I was speaking of the fund that would be developed around the literacy. That's what I referred to.

Mrs. Carol Mitchell: So your thoughts are that it's the education fund that the credit unions and the banks could provide input into. I want to give you the opportunity to expand on it.

Ms. Judy Vashti Persad: Well, I think the credit unions, working with community organizations and consumer organizations, could come up with a strategy of how this money would be used. I guess my concern would be that it does not go into the hands of the payday lending industry to use for their purposes. That would be our concern.

Mrs. Carol Mitchell: So you're looking at it as—you support the educational component but you want to ensure that it is driven by the community.

Ms. Judy Vashti Persad: Yes.

Mrs. Carol Mitchell: Okay. Thank you.

The Chair (Mrs. Linda Jeffrey): That completes our time with you. Thank you very much for being here today. We appreciate it. We have your presentation, I believe? Yes. Great. Thank you very much.

PARKDALE COMMUNITY LEGAL SERVICES

WORKERS' ACTION CENTRE

The Chair (Mrs. Linda Jeffrey): Our next delegation: Parkdale Community Legal Services and the Workers' Action Centre. Welcome. Make yourself comfortable. If you're all going to speak, could you say your name and the organization you speak for so that Hansard has a record of that. Do you have a handout today?

Ms. Sonia Singh: No, we don't.

The Chair (Mrs. Linda Jeffrey): Okay. When you begin, you'll have 15 minutes. If you leave some time at the end, we'll be able to ask you questions. The floor is yours.

Ms. Sonia Singh: Thank you very much. My name is Sonia Singh. I am a staff person with the Workers' Action Centre. My colleagues here are Chris Ramsaroop and Ben Rossiter from the Parkdale Community Legal Services, workers' rights division.

The Workers' Action Centre and Parkdale Community Legal Services work with people with low wages and precarious work to provide support around workplace problems. Our members are mainly immigrant workers, workers of colour and women. We know that many of our members are forced to use payday lenders and cheque-cashing outlets due to financial difficulties, often due to low wages or other employment standards violations that cause financial difficulties. So we are certainly in support of increasing regulation for these types of businesses, and we feel that it's a very important step in addressing the types of pressures that are pushing low-wage workers further into poverty.

I want to thank the standing committee for giving us this opportunity today to address you and to provide some of our recommendations.

As I'm sure the committee has heard from previous presentations, we know—as presented, for example, in the United Way report Losing Ground—that there has been a lot of documentation of what a lot of our members have been describing as a huge increase in payday lending operations in our city. As you've likely heard, the United Way found that there were more than 317 outlets in Toronto alone in 2007, and this was a huge increase from the 39 locations they had documented in 1995. It's certainly no surprise that these locations were increasingly found to be in low-income neighbourhoods.

We have to ask, who is it in our city, in our province, who are living paycheque to paycheque, who would require the services of a payday lender?

We know that people who require these services are workers who are earning minimum wage, who are working two or three jobs just to survive. We know that even with the increase of the minimum wage to $8.75 this past March, minimum-wage earners are still $4,000 below the poverty line. That shortfall has to be met somehow. We know that it's workers who have faced bounced cheques and other employment standards violations, who need income immediately, who are using these services. We know that it's low-wage workers who cannot access loans, credit cards or other types of credit from mainstream financial institutions. And we certainly know from our experience that as poverty is increasingly racialized and gendered, it is workers of colour, it is immigrants, and it is women, who are increasingly concentrated in low-wage work.

As has been quoted by the United Way, “Those least able to afford credit end up paying the most for it.”

We know that research by a whole variety of community organizations and academics has shown that low-wage workers are ending up in a spiral of debt, paying astronomical interest rates, anywhere from 300% to 1,000%.

We have to ask, why is it that low-wage workers are absorbing these kinds of enormous costs, when other citizens who have access to credit can pay interest rates between 10% to 20% on a line of credit, on a credit card cash advance, on a bank loan?

We very clearly feel that we must see a cap on fees and a fair interest rate clearly articulated in Bill 48, and when we get to our recommendations, we’ll speak more to that.

I want to introduce a member of the Workers’ Action Centre, Robert Keller, who will just add a few more points in terms of why we need to see regulation of these businesses.

Mr. Robert Keller: I’m here today to add input into the decision-making process on legislation on payday loans, to help find a reasonable perspective on interest rates and how they affect working people who use payday loan companies.

I would, first of all, like to say that it is pointless to license these companies without having some limit on what is charged. The payday loan companies say that they are justified in charging such interest rates. Yet, if you look at other companies such as ones advancing money on tax returns, they previously retained more than 50%, in some cases, of people’s tax returns. However, after legislation, with 15% on the first $300 and 5% on the remaining, these companies seem to have managed to stay in business everywhere. The same could be said for pawnshops, where there is strong legislation as to what they can charge for interest and other charges. This pertains to short terms as well, such as 2% per month.

I think there is a need to look at all regulation into interest rates around types of borrowing, and especially the limit, where 60% on loans becomes a criminal matter.

Mr. Chris Ramsaroop: The Workers’ Action Centre and Parkdale Community Legal Services has five recommendations for this committee:

(1) that a hard cap be put on the interest rates charged by lenders;

(2) that there be full disclosure;

(3) that there be enforcement of the act; we have to ensure that there’s hiring of inspectors to actually enforce the act;

(5) language requirements; particularly in communities where English is a second language, we have to ensure that information provided is multilingual, not simply in English;

(6) finally, around interest rates charged on borrowers in default, we think that could be very problematic, and we don’t think there should be interest rates being charged on people who have defaulted.

1710

Once again, Sonia has mentioned the fact that many people are from low-income communities, and it’s definitely having a tremendous impact on them when they have to keep going through exorbitant fees and exorbitant rates. We think that it’s really important, and I guess you’ve seen various news stories of up to 1000% for some people. We know that there definitely has to be a limit, a limit that’s reasonable for people, particularly in low-income communities.

With full disclosure, the loan process should be simple and easy to understand for those who are attempting to borrow from lending agencies. We urge the government to undertake, in the language of the act itself, provisions where payday loan agreements must disclose to borrowers the annual percentage rate. This means both interest rates and fees combined. Simplifying it to one figure shows the borrower the true cost of the loan.

Furthermore, it is paramount that the government enshrine the rights of borrowers by ensuring that the legislation guarantees that borrowers will be informed of their rights under the new legislation, and this should be multilingual as well.

With enforcement of the act and hiring of inspectors: An act can only be effective if there is enforcement. It is not clear so far what steps the government will undertake to enforce the act and ensure that marginalized communities are provided with the resources to undertake complaints against predatory lending. Is the government committed to hiring inspectors to ensure that the nearly 1,000 payday lending locations are following the act? Will there be snap inspections if community members request this of the government? How many inspectors will be hired to ensure that there’s adequate enforcement? Finally, will results of these inspections be posted?

Finally, just around language, both WAC and PLS organize with community members, particularly from racialized and immigrant communities. In the advocacy that we collectively undertake, we see how communities where English is a second language are subject to violations of minimum standards of employment, health and safety, and numerous other violations of their basic rights. We want to ensure that recent immigrants and members of racialized communities are provided with equitable protection under the act. We believe that one way for this to be undertaken is to ensure that information about borrowing loans is provided in languages that are reflected in the community that they’re located in. Once again, we have to ensure that it’s multilingual.

I think I’ll stop there.

Ms. Sonia Singh: Just to conclude, the last point, what we would like to say to the community is that we commend you for looking at this issue. We think there needs to be strong regulation, but we really encourage you not to create a second regime where low-income poor people are paying huge exorbitant interest rates while others who have access to other mainstream credit have a different system.

If there is a potential economic downturn, we need to be putting money in people's pockets, not taking money out. This is an important step in breaking the cycle of poverty.

Ultimately, this is just one step that we encourage in terms of a comprehensive anti-poverty strategy to address the roots of poverty. We also need to be looking at increasing the minimum wage to at least $10.25 immediately and making sure that we do have strong and enforced labour laws, because we see that that is a big reason why people are being forced to use payday lending companies. Thank you very much for your time.

The Chair (Mrs. Linda Jeffrey): You've left about a minute and a half for each party, beginning with Ms. DiNovo.

Ms. Cheri DiNovo: Thank you for coming here. Just very quickly, without a hard cap on the percentage—my bill brought in a 35% hard cap—Bill 48 basically legalizes usury because it's an unregulated industry right now. Without a hard cap in this bill, that is what's going to happen. That was very well pointed out by our deputant from Justice Matters. You need to be aware of that. It's nefarious in its details, this bill. That means that 60%, which is usurious under the Criminal Code, will be eliminated. No new percentage will be put in place, which is very dangerous indeed. I thank you for your deputation. I would like you to simply affirm what the Criminal Code says right now. Do you believe that a 60% interest rate is usurious?

Ms. Sonia Singh: I think that we would certainly like to see an amendment in this legislation for a cap on interest rates far below 60%. I understand that other jurisdictions have looked at 35%. We would even go beyond that and say, "Let's look in the range of 25%." That is what someone who is taking out a cash advance on a credit card or a line of credit—very rarely would you be seeing an interest rate higher than that, so why should we have a separate, higher rate for people who are low income?

Ms. Cheri DiNovo: In Quebec, it's 35%; in Ohio, it's 28% right now. So we'll get their bad business if we don't act, and act soon.

Are you also aware that the banks, like the Toronto Dominion Bank and the Royal Bank, are invested in payday lenders, that that's why you don't see banks moving into poorer neighbourhoods and making microloans themselves or dealing with the issue of poverty?

Ms. Sonia Singh: No, and that's certainly a very concerning fact.

Mr. Charles Sousa: Thank you very much for your attendance here and the thoughtful deputation that you brought forward.

The bill is intended, of course, to protect those most vulnerable. We do have a degree of default, so there's an underlying higher cost of capital in this instrument. I appreciate your recommendations. For the record, the hard cap is one that is being considered with the expert panel. Certainly full disclosure and enforcement are priorities within this act.

The issue of default charges: We're trying to prevent rollovers and back-to-backs, so there is not an intention, then, that as a result, if they default, they've got to continue to pay interest. The education fund would be there to support even those with language skills—and I like that idea, I must admit.

Recognizing, then, that there's a high cost of capital and there are other instruments that exist to support the things that we've asked for, that consumers can get—and yet this particular instrument is being used by those who are using it as a last means or who are unable to source credit elsewhere.

For the record, in Parkdale, are you aware of a bank doing cheque-cashing or discounted services in the area?

Mr. Chris Ramsaroop: No, I'm not. But I think it's also not just around Parkdale; it's around other regions as well. I think you have to look at—

Mr. Charles Sousa: I just want to clarify the issue of banks taking ownership or having direct influence over the industry. There is a Cash & Save store in Parkdale. Do you know what that is?

Mr. Chris Ramsaroop: I have an idea of where that is, yes. But I think that the fact that you're seeing—

Mr. Charles Sousa: So you're aware of a storefront called Cash & Save in Parkdale.

Mr. Chris Ramsaroop: Yes.

Mr. Charles Sousa: It's a discounted service for cheque-cashing and it doesn't charge usury fees. It is the Royal Bank, just to clarify for people, to understand where we're at. What happens, then—

The Chair (Mrs. Linda Jeffrey): Sorry, we've exceeded our time. So I'm going to have to let that go.

Ms. Lisa MacLeod: Thank you very much. It was a great presentation. You guys did a really good job, and I've written down all of your points. I definitely will take a look at them. I applaud the work that you're doing, because I know it's not easy.

Just quickly—because you are talking about poverty, I think it's acknowledged that people of low income do tend to use this type of service. But there's a larger issue as well: There are a lot of people who are using this service for currency exchange. They're using it for quick cheque-cashing on the weekends to pay right away, as soon as possible. It's a service that was created because there was a niche in the market, quite frankly. So what we're trying to establish here today is the best way to make sure that people have consumer choice, with a fair amount of consumer protection attached to it.

I guess the question that I do have is—you were talking about it in terms of a poverty agenda. I think that if we're going to tackle poverty in this province, we have to do a whole lot more than deal with it just right here in this piece of legislation. And I'm not even sure if this fits in terms of that agenda. But I'm wondering, where will the folks who you represent go if this service isn't available for them? At the end of the day, we have to realize that it's a business. It was created because there was a niche in the market. It's not perfect, but it exists, and it provides a consumer choice. We can't tell people what to do. We can only make sure that we regulate an environment so that they make their own choices. I would be really interested to know from your perspective from working on the ground how we do that. I appreciate the recommendations that you've given us already, and I'll be very serious in looking at them when we make our amendments with the official opposition. But it's a bigger issue, and I'd just be interested for you to comment on that.

Ms. Sonia Singh: I think you raise a good point, that this is certainly not the only measure we'd be calling on the government to adopt in addressing poverty. We have a whole campaign, Ontario Workers Need a Fair Deal, that has a whole range of recommendations that we support. The 25 in 5 Network for Poverty Reduction has an even broader range of recommendations.

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In terms of your question about what our members would do if these services weren't available, I think a lot of our members are using these locations due to the need to get income immediately; we need to look at the broader issues of why that is.

Further to Robert's point, when these businesses have been regulated in other jurisdictions, or other types of businesses in this jurisdiction, in Ontario, we have not seen a mass exodus of businesses or tax-refund outlets shutting down, pawnshops shutting down; we've not seen a mass exodus in other jurisdictions where we have seen—for example, Ohio—a 28% annual cap on interest, so I don't think that that's even something we need to be looking at right now. It's about regulating to make sure these businesses are operating in a fair manner. We know they will continue to exist, but the people will not be gouged to the extent that they are right now.

The Chair (Mrs. Linda Jeffrey): We appreciate your being here today and your deputation. That was very interesting.

Ms. Sonia Singh: Thank you very much for your time.

CANADIAN PAYDAY LOAN ASSOCIATION

The Chair (Mrs. Linda Jeffrey): Our next group is the Canadian Payday Loan Association. This will be our last deputant today.

Welcome. As you make yourselves comfortable, please remember that we need you to state your name and your organization, if you're both going to speak today, for Hansard. Once you begin, after you've introduced yourself, you'll have 15 minutes. Hopefully, you'll leave some time at the end for us to ask you questions. The floor is yours.

Hon. Stan Keyes: Thank you for providing the Canadian Payday Loan Association with the opportunity to present its views on Bill 48, the Payday Loans Act, 2008.

My name is Stan Keyes. I'm president of the Canadian Payday Loan Association. Joining me is Mr. Norm Bishop, who is secretary to the CPLA.

The Canadian Payday Loan Association congratulates the government of Ontario, congratulates the minister, Ted McMeekin, and is supportive of Bill 48.

I'd like to provide a few words about the Canadian Payday Loan Association.

The CPLA is a proud member of the Better Business Bureau and represents legitimate lenders of all sizes, from the smallest to the largest. We represent 20 companies, with 543 retail financial service outlets in rural and urban communities right across Canada. Here in Ontario, the CPLA currently represents eight companies, with 269 outlets.

It's important to note that each of these companies is led by entrepreneurial business people, all competitors who have come together to share a common goal. For four years, they have been calling for legislation and regulation of the payday loan industry, not fighting it.

The CPLA was established back in 2004, four years ago, with a two-part mandate: to work with governments to achieve a regulatory framework that protects consumers and allows for a viable industry; and to enforce a code of best business practices that was designed to protect consumers in the absence of appropriate regulations.

The code is a set of rules that are ethically based, that our members must comply with. It's the most important, most stringent code for payday lenders anywhere, and we are very proud of it.

Our members support regulation that fosters a viable, competitive industry, coupled with strong consumer protection, in order to provide services to those two million Canadians who use payday loans. We believe in educated, informed consumers making informed decisions about their own money.

We remain committed to continually increasing consumer awareness of available credit counselling assistance programs. The code requires every member to have credit counselling brochures prominently displayed in their stores and to advise customers who have defaulted twice within one year of credit counselling services available to them.

What binds our members together is a commitment to voluntarily submit to the CPLA code of best business practices and independent oversight.

On Monday, you heard from the CPLA's independent, arms-length ethics and integrity commissioner. Mr. Sid Peckford monitors compliance with our code, conducts regular mystery shopping of our members' stores and has the authority to fine our members up to $30,000 per infraction of our code.

The office of the independent ethics and integrity commissioner was created by the CPLA close to two years ago to ensure compliance with our code of best business practices amongst our members.

Commissioner Peckford has a full-time compliance officer who receives complaints from customers and recommends an investigation where required. This officer also seeks redress of complaints that are received from non-members. The mystery shopping conducted by the commissioner is done independently by trained individuals who specifically look at members' business practices to ensure that the code of conduct is being followed. Notably, there are provincial consumer protection officers who now refer any complaints they receive regarding payday loans to the commissioner's office directly.

I'd like to spend a little time now talking about the consumers who make use of the payday loan product.

The presentation provided to this committee on Monday by Canada's leading polling firm, Pollara, represents the first-ever statistically relevant data collected on payday loan customers in Canada. The survey indicates that customers are educated and informed, and their overall household income is on par with the overall population. They typically seek payday loans to cover emergency situations or unexpected circumstances. Customers often require only a small amount of money to hold them over until their next payday, and prefer to borrow a few hundred dollars rather than getting more credit than they want with a credit card or a line of credit.

Payday loan customers are deliberate in choosing the payday loan product. They have access to a variety of credit options at banks and credit unions but consistently opt for a payday loan. Customers choose the convenience of borrowing small sums of money for short periods of time, and as the poll reveals, the vast majority pay their loans back on time.

Let there be no doubt that there are many examples of payday loan customers who have been taken advantage of by unscrupulous lenders, but this is not the experience for the majority of payday loan customers.

I understand the attraction for the news media and long-time critics of the industry who point to the worst and most abused payday loan customer. But I would ask everyone to closely consider our evidence, available on the CPLA website, which includes Pollara's groundbreaking surveys of customers in several provinces right across the country.

The CPLA is the only national association that has worked closely with governments to introduce legislation and rules that protect consumers and make sense for the industry. We continue to work closely with elected representatives and public servants in provinces from coast to coast. Several elements of the CPLA's code of best business practices are reflected in the legislation that is now before this committee, rules that are already followed by our members. The most important of these is the prohibition against rollovers, a harmful practice that the CPLA and its members banned four years ago.

The legislation also includes a cancellation provision that is similar to the right-to-rescind requirement already contained in our code. The code also places a restriction on default charges, as envisaged by section 33 of the bill before you.

Bill 48 follows legislative changes enacted in 2007 to improve disclosure and transparency for customers. This includes the requirement to prominently display posters that disclose the cost of borrowing for payday loans—something we advocated for—and the use of a standard form disclosing the details of a loan. By adding to those disclosure provisions by prohibiting rollovers and ending abusive charges, the government will ensure that payday loan customers are able to understand and compare rates and be protected from abusive practices. These are fundamental issues and we are pleased to see them dealt with in legislation.

On a final point, we believe it's very important that all committee members have a full understanding of the product, the industry and the consumer. Therefore, we'd like to offer anyone on this committee the opportunity to visit one of our members' facilities. We believe this would provide members with hands-on knowledge of the experience of Ontario consumers who have come to appreciate dealing with CPLA members.

Madam Chair and members of the committee, thank you for the opportunity to present to you this afternoon. With your permission, my colleague Norm Bishop has a few short comments to make, following which we'd be happy to answer any and all of your questions.

Mr. Norm Bishop: I'd like to first make a few comments about bonding. On Monday, you heard from the Surety Association of Canada, who were encouraging the sale of their bonding products as part of the legislation. As a representative for industry, the CPLA is not in favour of a bonding requirement in legislation, naturally, because it adds to the cost of business.

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I would ask the committee to consider the following points: First, in the consumer protection area, bonding is customarily used for businesses such as travel agencies; direct sellers or collection agencies in a situation where a consumer is giving money to a company for goods and services that are provided in the future and they haven't received those goods and services at the time; or where a consumer is giving money to a third party, like a collection agent, to whom they do not owe the money—they owe it to another party.

In this case the business, the lender, is loaning their own money to consumers; they're not taking it in. So there isn't the same risk there. In fact, a lender will have their pool of capital out in the field in multiple loans, which in essence acts as security. So we don't feel the security is needed.

Secondly, the provinces of Saskatchewan and Nova Scotia have in fact been licensing payday lenders for several years. They do not have bonding requirements and they have not, to our knowledge, had any problems in forcing compliance with their regulations and regulatory scheme. We're not aware of any province, other than Manitoba, that is in fact planning to introduce bonding requirements.

Thirdly, as you are aware, there are costs to operate a payday loan business and to offer loans. You have to cover rent, staff and things like that. In order for companies to remain in business, lenders have to charge fees that will allow them to recover their costs. If an unnecessary bonding requirement is added, it just adds to the costs that lenders will have to recover through fees. So at the end of the day, this does not help consumers.

One final point: We heard reference today to a couple of other jurisdictions. For example, the state of Ohio has a 28% interest rate. We'd just like to clarify for the record that that is a new bill that has been passed in Ohio. It's not law yet and will not become law for three or four months, but we've seen that one large company has already announced that they will be closing over 200 stores as a result. Our information is that the remaining stores, that actually remain open, will cease to offer the product if they have a suite of financial products like cheque cashing or currency exchange and can remain viable. They will continue to offer those, but the day that the bill goes into force, loans will no longer be offered. So it will create the situation where access to credit is denied.

Just to give you an understanding of why: We've heard a lot of discussion about interest rates. A 28% interest rate may sound high, but when you're giving a loan of $100 for a week, that means you can charge 43 cents. Well, you'd have to give a lot of loans of $100 a week to pay your premise's rent, your staff, your utilities and things like that. So in fact, that does not provide for a viable industry.

Thank you again for allowing us to have the opportunity to appear before you today. We again congratulate the government on moving forward with this important legislation.

The Chair (Mrs. Linda Jeffrey): You've left exactly a minute for each party to ask questions, beginning with Mr. Sousa.

Mr. Charles Sousa: I appreciate your coming today. I have three issues that I'd like to address. It's my understanding that the banks do not have a controlling interest of any of the payday loan companies out there in Ontario. In fact, the banks are federally regulated through finance and the Bank Act, which has strong provisions, and they are measured through the federal finance ministry. Is that correct?

Hon. Stan Keyes: That's correct.

Mr. Charles Sousa: We've heard about some of the other jurisdictions. Quebec has established a cap rate. Tell me what's happening in Quebec, noting that you've just mentioned the high cost of capital in this industry.

Mr. Norm Bishop: I think it's fair to say that there is no payday loan industry in Quebec. As a result, they have a huge pawnshop industry where you can get that same amount of money. It will cost you more, in terms of a cost, to get those funds. Not only that, if you're borrowing, say, $300, you'll have to bring in goods as security worth maybe three or four times that amount. So it's not a solution.

Ms. Lisa MacLeod: Welcome, Minister—former minister. It's great to see you here. I want to congratulate the Canadian Payday Loan Association for being a leader in terms of regulation here in the province of Ontario and bringing forward a strict code of best practices and best business practices, but also for employing an ombudsman, who was one of our deputants.

I don't really have any questions. I've read all of your material, and certainly the Pollara and other deputations were extremely helpful. My colleague and I from Burlington would like to take you up on the offer to go to one of the sites of your members. We would like to do it before third reading, and we would like to do it in the least affluent area of this city. Perhaps we could do that together with the United Way, or even our friends here from Parkdale Community Legal Services, and really learn as much as possible. Perhaps our colleague from the New Democrats and the government party would like to do that as well. So I appreciate that.

Hon. Stan Keyes: All are invited, and we'll arrange it with you.

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

Ms. Cheri DiNovo: As was mentioned by my colleague Ms. MacLeod, you were Minister of National Revenue for the Liberal Party. Is that correct, Mr. Keyes?

Hon. Stan Keyes: I was Minister of National Revenue, minister of sport, minister responsible for Canada Post, and minister responsible for the Canadian Mint.

Ms. Cheri DiNovo: And just for the record: Mr. Sousa, who's a parliamentary assistant on this, used to work for the Royal Bank, just so we know who we're sitting around the table with.

First of all, the Pollara study was paid for completely by the Canadian Payday Lending Association. Correct?

Hon. Stan Keyes: The Pollara study you're speaking to?

Ms. Cheri DiNovo: The Pollara.

Hon. Stan Keyes: Yes, that's correct.

Ms. Cheri DiNovo: Thank you. And rollovers—as we heard deputed here earlier, they don't make any difference, because all it means is that the client goes from one payday lender to the next payday lender. That's the only difference.

Do you consider a 60% cost of borrowing, defined by the Criminal Code, as usurious? Do you consider it usurious?

Hon. Stan Keyes: Madam Chair, this is a very important question, and I've heard it repeated on a number of occasions over the last two days of hearings. I think what should be understood is that both the federal government and provincial governments across this country have agreed that the APR, or annualized percentage rate, is the wrong measure for a product that you only offer for two weeks; that is, you lend some money and then you collect that on the next payday.

When the federal government and provincial government recognized that businesses cannot stay in business at a rate of under 60%, and that Canadians have generated a demand for this particular product, then it was necessary that the issue be revisited and that the payday loan per se would not be part or exempt from section 347 of the Criminal Code. So it was left to the provinces then to legislate and regulate a product.

So what has happened now in five provinces across the country? Legislation has been passed. Now the provinces are working on regulations to set a cap on all fees and charges for a loan. Most recently, even Dr. Robinson himself has proposed a rate—not based on an APR, because everyone understands that, again, an APR is a rate that you take out over a year. This is a loan you borrow for two weeks, and therefore a meaningless number is applied. So an amount as a dollar per $100 borrowed is not only more accurate—not only does it make it very clear for the borrower who enters a store to know exactly what they're paying for to receive $100, $200 or $300 until their next payday, I think it's important that we not prejudge any calculations of what it might cost to provide the product. We very much encourage and congratulate the government on formulating an advisory committee that will hear witnesses and testimony, that will hear what it costs to provide the product to the consumer to ensure, as the minister himself has stated, a viable and competitive industry coupled with strong consumer protection.

The Chair (Mrs. Linda Jeffrey): Thank you, Mr. Keyes. That concludes our time today. Thank you very much for being here today. We appreciate it.

Thank you, committee. That is our last deputant on this issue. I remind you that, for administrative purposes, the amendments must be filed with the committee clerk tomorrow by 5 o'clock, and that this committee will meet for the purposes of clause-by-clause consideration of the bill on Monday, June 2 at 2 o'clock.

I'll also just give a heads-up to the subcommittee members that while we were here, Bill 69 got referred to us, so there will be a call going around, so that subcommittee members should consider their availability when Trevor Day calls you.

That concludes today's hearings. Thank you very much.

The committee adjourned at 1740.

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