



DECISION OF THE DIRECTOR

In the Matter of: *Business Practices and Consumer Protection Act [SBC 2004] c. 2 & Payday Loans Regulation*

Respondent: Cashco Financial Inc. also carrying on business as Cashco

License Number: 51635

Case Number: 30309

Adjudicator: Robert Penkala

Date of Decision: June 12, 2020

INTRODUCTION

Consumer Protection BC administers the *Business Practices and Consumer Protection Act* and the *Payday Loans Regulation*. Cashco Financial Inc. carrying on business as Cashco (herein, respondent, or Cashco) is a licensed payday lender operating from a location at 9903 100th Ave, Fort St. John, BC. On October 08, 2019 Consumer Protection BC conducted an inspection of the respondent. On February 19, 2020 an inspector issued a Report to the Director alleging that Cashco had issued multiple payday loans whose terms did not comply under requirements of section 23 of the Regulation. Under the Act, Consumer Protection BC is authorized to make remedial orders or take licensing actions where persons have violated the Regulation. I note that the legislation does not authorize administrative monetary penalties for violations of section 23 of the Regulation.

OPPORTUNITY TO BE HEARD

Prior to an action being taken under the Act, the respondent must be provided with an opportunity to be heard. On March 2nd I sent Cashco notice of this hearing, giving it until March 19th to provide a response to the Report. The notice indicated that after the respondent's opportunity to respond to the Report an adjudicator for Consumer Protection BC would determine whether the alleged violations occurred and take enforcement action if warranted. On March 18th Cashco delivered an email to Consumer Protection BC attaching its response to the Report ["Response"]. Subsequently, in response to additional queries I put to Cashco regarding the context surrounding certain payday

loans referred to in the Report, Cashco provided email replies on June 2nd and June 9th giving further relevant information.

I therefore conclude the requirement for providing an opportunity to be heard has been met.

ALLEGED CONTRAVENTION

The Report alleges the respondent contravened section 23(2) of the Regulation in two ways:

1. by failing to ensure that payday loan repayment terms were spread over the borrowers' next two pay periods when that is required for third or subsequent payday loans in a 62-day period; or,
2. by failing to ensure that the terms of payday loans required repayment instalments of no more than 35% of the sum of the principal and the cost of borrowing in relation to loans where repayment was required to be spread over at least 3 pay periods.

LEGISLATION

Payday Loans Regulation

Section 23

(1) In this section, "pay period" means

- (a) the period from the date on which the payday loan is entered into until the day on which the borrower next receives his or her pay or other income, or
- (b) a period during the term of a payday loan from the day on which a borrower receives his or her pay or other income until the day on which the borrower next receives his or her pay or other income.

(2) A payday lender who enters into a third or subsequent payday loan agreement with a borrower in a 62-day period must,

- (a) if the borrower is paid or otherwise receives income on a bi-weekly, semi-monthly or more frequent basis, provide in the loan agreement that repayment is to be spread over at least 3 pay periods, or
- (b) if the borrower is paid or otherwise receives income on a less frequent basis than that referred to in paragraph (a), provide in the loan agreement that repayment is to be spread over at least 2 pay periods.

(3) A payday lender must not require a repayment under a loan agreement referred to in subsection (2) that is more than,

- (a) for a borrower referred to in paragraph (a) of that subsection, 35% of the sum of the principal and the cost of borrowing in relation to the loan, or
- (b) for a borrower referred to in paragraph (b) of that subsection, 50% of the sum of the principal and the cost of borrowing in relation to the loan.

Section 24

[...] if a payday lender contravenes section 23,

- (a) all amounts in relation to the payday loan other than the principal cease to be permissible charges, and
- (b) the borrower is not liable to pay the lender any amount that exceeds the principal of the payday loan.

THE INSPECTOR'S EVIDENCE

- The inspector obtained and reviewed certain payday loan agreements where the respondent acted as lender between April and July of 2019. [Exhibits 4 through 19, 21, 22, and 24 through 33]
- Tables 2 and 4 of the Report summarize evidence of 16 payday loan agreements involving five individual borrowers.
- The inspector asserts that all of the above loans are “third or subsequent loans” within a given 62-day period. As such, the loans fall within section 23 of the Regulation, which sets out requirements for repayment periods and amounts for such loans.
- According to the respondent’s records, the borrowers listed in Table 2 cite their income source as a federal payment of child tax benefits. The exhibits identify this income source and specific monthly benefit payment amounts.
- The Report also states that four of the five borrowers had another source of income “registered on file” other than Canada Child Benefit. According to the inspector, Cashco disclosed to him “each borrowers’ income source and frequency.”
- The inspector concludes “based on the information provided” that four of the borrowers were paid or otherwise received their income on a bi-weekly, semi-monthly or more frequent basis. He concludes that the respondent was required to comply with section 23(3)(a) in the cases of the loan agreements itemized in Table 5, by having repayment scheduled across at least 3 “pay periods”. He says none of the loans in Table 5 comply with this requirement.
- The inspector sets out in Table 5 that the same loans identified as having been extended on the basis of monthly Canada Child Benefit income failed to ensure

(because of income in addition to the CCB) that each repayment required under the payday loan agreements was no more than 35% of the sum of the principal and the cost of borrowing in relation to the loan (the scheduled repayments were in fact 50% each).

- Tables 6 to 9 of the Report set out information about 6 further loans (for 4 individual borrowers), some of which relate only to monthly CCB income and some to CCB and additional income received “on a bi-weekly basis”. The inspector states that in the cases of two loans repayment terms spread over at least two pay periods were required, while the other four loans involved non-CCB and more frequent borrower income, and triggered the requirement for repayment dates spread over at least three pay periods.
- Tables 10 and 11 further represent seven extended repayment loans (per section 23) for five individual borrowers, all of which are said to be issued based solely on monthly CCB income.
- The inspector observes that the second repayment dates in respect of the above loans (none of the agreements contain a third repayment instalment) occur in each case before the second CCB income is to be received by the borrower (in other words, before the completion of a second “pay period” in respect of the terms of loan repayment).

THE RESPONDENT’S EVIDENCE

The respondent submits, in relation to the alleged breaches of section 23(2)(b):

- These loans are offside and do not fit within our policy of setting loan repayment on the client’s pay dates as per the regulation.
- We have since corrected our software to **not allow** a loan to be executed if it would exceed 62 days when the repayment dates are set on the client’s pay dates. [...We] will advise the client that they must come back when their loan can fit within the parameters set out in the regulations.
- We have also done additional training with all BC staff, specifically dealing with payment frequency, the extended payment plan and appropriate repayment dates per the regulation.

In relation to the alleged breach of section 23(3)(a):

- All 26 loans in question were underwritten using the client’s Canada Child Tax [CCB] as the source of income and that is why the repayment was set up over 2 payments, as Canada Child Tax has a [monthly] pay frequency.
- When identifying the amount to fund, the **decision was made only on the Canada Child Tax income** and **we did not include the other income** in the underwriting process. Our assumption then would be, if we are underwriting only on the monthly income, the repayment or extended payment plan should also be set up based on a monthly payment frequency.
- There is no advantage to us setting the client up over two monthly payments. It is actually better for our cash position to set the client up over three payments as we would recognize

the revenue sooner but we don't feel that would be in the clients' best interest if they are choosing to borrow against [the CCB]

- When a client comes in and wants to borrow, we ask what income they want to borrow on and only lend against that income and up to 50% of it. We do not combine the income for underwriting or decisioning unless the pay date and frequency align, so we are setting the client up for success on repayment. We know that success for the client depends on setting them up when that income comes in, so we set the repayment based on the pay frequency of the income we decisioned on.
- We do take the other income information because our system runs a decision on our term loan product prior to offering the [payday] loan as this is a cheaper option for our clients. If they are declined for the term loan, it defaults to run a [payday loan] approval [which may also be declined].
- There may have been alternative income present in the file from a previous [...] term loan [application] but we only verify the income that the client is borrowing against at the time of the loan. If the client comes in for a [payday] loan against their CCB, we will only verify that income for lending. If they come in for a [payday] loan against their pay, we will only verify that income. Regarding [the payday loans in the Report], the amounts in any of the alternative incomes could have been entered months or even years ago during [...] a term loan product [offer].

In relation to the single allegation involving either section 23(2)(a) or 23(2)(b):

- We feel that this loan was a breach of PLR 23(2)(b) and I have addressed how we are going to ensure compliance in the future in my response to the inspector's first conclusion above.

In relation to the Report citing "previous enforcement" as evidenced by an Undertaking agreed to by Cashco in November 2018:

- For the background pieces provided by the inspector, although the contravention was of the same regulation as the current allegations, the context is completely different. The contravention that took place from the July 2017 audit was a result of us having documentation that was non-compliant. This was a result of an update to our software that reverted our documentation back to an older version that was non-compliant and our oversight in not catching it. In those instances, the documentation still had the extended payment plan properly documented where applicable and the repayment dates correctly set. Once notified by the inspector, we made immediate changes to ensure this issue was resolved now, and in future by having all documentation reviewed after each software update.
- Our history working with provincial regulators has been a positive one and we have always strived to be 100% compliant and best of class. There was no malicious or self-serving intent behind any transaction executed in our locations. There is an obvious training issue in these instances where we will leverage technology to limit the ability to go offside. We will also be increasing the reoccurring training at branch level.

ANALYSIS

The Report substantiates that all of the payday loans cited are subject to section 23 of the Regulation. That is, it demonstrates that in each case they are “third or subsequent” loans made by Cashco to the borrowers “in a 62-day period”. In most cases the borrowers took out several loans with Cashco. The inspector queried Cashco whether in relation to the borrowers’ first-cited loan agreements it had issued two previous loans in 62 days. In the original inspection Cashco confirmed that it had, and does not dispute the evidence in its Response. Further, having established that the first-cited loan for each borrower was a “third” loan in a 62-day period, all the subsequent loans exhibited in the Report to the same borrowers continue to be “third loans” in the preceding 62-day period. The three loans referred to in Tables 7 and 8 of the Report are single loans to three different borrowers confirmed by Cashco in the inspection to be “third loans” in a 62-day period without documentation of additional loans in the Report. I find therefore that all the relevant loans are subject to the requirements of section 23 with respect to repayment terms.

The inspector sets out his view that 16 loans in Tables 2 and 7 of the Report “initially appeared” to him to demonstrate Cashco’s failure to adhere to section 23(2)(b), i.e., having terms of repayment “spread over at least two pay periods”. He then says, based on “new information” obtained in the inspection, that the frequency of “pay periods” (borrowers’ receipt of income) actually cause the loans to contravene section 23(2)(a) and (3)(a), which require repayment terms of “at least 3 pay periods” and repayment amounts per instalment no greater than 35% of the total loan amount including fees.

In sum, then, the Report alleges that 11 of the loans in evidence failed to meet the requirement for terms of repayment “spread over at least 2 pay periods” (based on monthly income dates alone) and 16 loans failed to meet the requirement for terms of repayment “spread over at least 3 pay periods” (for weekly, bi-weekly, or semi-monthly income dates). Doubtless, none of the loans include a second repayment term allowing for completion of two pay periods relative to CCB income alone. I agree that the 11 “two pay period repayment” loans within the section 23 scheme are uniformly one to three days short of “completion” of the second pay period.

In the case of the 16 loans that “initially appeared” to be “two pay period repayment” loans, the evidence is not clear whether in fact breaches have occurred in respect of the requirement for “three pay period repayment” terms, per section 23(2)(a). If the loans were issued relative to bi-weekly, semi-monthly, or more frequent income dates, two scenarios are presented:

1. the second of two repayment dates for the loans falls after the third complete pay period and in that respect the loan complies with section 23(2)(a); or,
2. the second repayment date falls before the completion of three pay periods and the loan does not comply in that respect.

In scenario #1, despite meeting the “three pay period repayment” requirement, the loans will contravene section 23(3)(a) because their terms call for two repayments of 50% of the loan and fees, exceeding the 35% limit for such loans.

In scenario #2, the loans will contravene *both* the conditions of timing of the repayments and the allowable repayment instalment as to percentage of the total cost of the loan.

The evidence in the Report concerning the above scenarios consists of an email from Cashco sent during the inspection confirming that certain borrowers had “payroll” income on a weekly, bi-weekly, semi-monthly, or monthly basis. The inspector refers to these additional sources of income being “registered” with Cashco. The Report contains no further information to verify the income such as employer, payment amounts, dates of anticipated payments, or whether any such information was current and applicable to the payday loans cited. Due to the limitations of the evidence I am unable to determine which of scenario #1 or #2 above is factually accurate. If I accept the evidence as proving the “frequency” of income received by borrowers as contemplated by section 23(2)(a), without specifics but in terms of the hypothetical secondary income, then I am able only to conclude with certainty that the terms of the loans do not comply with the limitation on repayment instalment *amounts* in section 23(3)(a) because at least *some* additional income presumably applies to the loans in question. This would then be the case for all 16 loans.

Cashco’s submission in the hearing addresses the issue of the secondary or “more frequent” income relative to the monthly CCB payment schedule. It says that it extends payday loans “underwritten” only on the monthly CCB income, and that the borrowers “choose to borrow against” their CCB income. That is consistent with the business records obtained in the inspection, which identify CCB income amounts as part of the loan application. No similar documentation of additional or secondary income for the loans is found in the Report.

In this hearing I further queried Cashco about its payday lending practices in regard to the 16 loans the inspector alleges are subject to the Regulation’s requirements for “three pay period” loans. Cashco’s replies are consistent with its initial response, in which it stated that the borrowers specified that they wished to borrow against their CCB income alone. Cashco does not compel borrowers to disclose income additional to the type and amount the customer discloses for the purpose of obtaining the loan. It says that the records showing the existence of secondary income may have been obtained months or perhaps years ago in previous loan applications (including a non-payday type of loan term it offers). Nothing in the Report or in the hearing provides direct evidence or circumstantial evidence capable of supporting an observation or inference that any of the secondary income alluded to in Cashco’s email to the inspector entered into the payday loan transactions. In fact, it is not clear that the income could be said in principle to have been anticipated during the particular payday loan periods in question.

Consequently, I find that the evidence in the Report and Cashco’s submission together point to the loans in question having been in effect premised on monthly income requiring repayment terms

extended to at least the end of the second pay period. Thus, the allegations concerning “three pay period” repayment terms and repayment instalments requiring no more than 35% of the total loan and fees are not proven. Rather, I find that the loan terms uniformly included premature second payments relative to the required two complete pay periods. The breach of section 23(2)(b) is therefore the only contravention to have occurred.

Parenthetically I mention that the evidence generally indicates the respondent’s failure to correctly assign the second repayment date relative to pay periods was not a factor in the borrowers’ repayments (as opposed to technically breaching payday loan agreement requirements). It appears the borrowers paid the loans in full before the second instalment due date, as they are entitled to under the legislation, in order to take new loans.

DUE DILIGENCE

The respondent is entitled to a complete defence of due diligence regarding the allegation if it shows that it took all reasonable steps to prevent the contraventions. In this hearing, Cashco admits to having been “offside” the Regulation in respect of “two pay period” repayment loans (but not “three pay period” repayment loans). It does not specifically address steps taken or attempted at the time to ensure compliance with the Regulation. Further, it concedes that improvements in its systems and training are required in order to meet the section 23 requirements in future. I find it is not entitled to the defence of due diligence.

ENFORCEMENT ACTIONS

As an adjudicator determining that the violations occurred as alleged, I may take one or more of the following actions:

- Issue a compliance order (under section 155 of the Act), directing the Respondent to:
 - stop a specified act or practice and take specific actions to correct the issue; and,
 - repay Consumer Protection BC the costs of the relevant inspection, including the creation of the Report
- Impose conditions on, suspend, or cancel the payday lending licence

I have considered these actions and determined that imposition of a compliance order is warranted. Being mindful of the inspector’s reference to Cashco’s previous Undertaking related to apparently similar matters, I point to the following: no breach of the Undertaking is alleged; and, it is remedial in relation to matters affecting Cashco locations other than the subject licence in this hearing-- there is no direct connection between any of the Undertaking’s conditions and the Fort St. John licence. For these reasons I do not consider the existence of the Undertaking as grounds to amplify the enforcement response against Cashco in this instance, for example by suspending its licence.

Compliance Order

Having found the Respondent responsible for contravention of section 23 of the Regulation, I have authority to order reimbursement of Consumer Protection BC for costs of the inspection relating to the contravention. I believe an order for inspection costs per section 155 (4)(d) of the Act is appropriate. Considering the resources allocated to discovery and documentation of the contraventions, I will require it to pay to Consumer Protection BC **costs of \$600.**

Further, section 24 of the Regulation stipulates that in cases where a payday lender contravenes section 23, it is not entitled to keep any of the otherwise permissible fees in respect of agreements with affected borrowers. The order formally requires that Cashco reimburse all affected borrowers' payday loan fees consistent with the Report's documentation. Lastly, I order Cashco to implement any system, technical, or procedural changes required to identify and prevent recurrence of the above contravention, and report to Consumer Protection BC the steps taken, including means by which it will monitor or self-audit for compliance in this respect.

RECONSIDERATION OF DECISION & ORDER

The order may be reconsidered in accordance with Division 1 of Part 12 of the Act. A request for reconsideration must be submitted within 30 days of receiving this notice. The request must be in writing, identify the error the person believes was made or other grounds for reconsideration, and be accompanied by a \$252 application fee.

Please note that reconsideration of this determination is subject to the provisions outlined in sections 181 and 182 (2) of the Act.

Request for reconsideration should be addressed to:

Consumer Protection BC
Attention: Shahid Noorani, Vice President, Regulatory Services
200 – 4946 Canada Way, Burnaby, BC V5G 4H7
shahid.noorani@consumerprotectionbc.ca

Decided June 12, 2020 in Vancouver, BC.



Manager of Enforcement Hearings
Encl: Compliance Order