Court File No. CV-14-10518-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT,*
R.S.C. 1985, c. C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE CASH STORE FINANCIAL SERVICES INC., THE CASH STORE INC., TCS CASH STORE INC., INSTALOANS INC., 7252331 CANADA INC., 5515433 MANITOBA INC., 1693926 ALBERTA LTD DOING BUSINESS AS "THE TITLE STORE"

APPLICANTS

REPLY FACTUM
(re: appointment of representative counsel for class action plaintiffs, returnable June 11, 2014)

June 6, 2014

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Agent for Harrison Pensa LLP, counsel to Timothy Yeoman (class plaintiff)

TO: SERVICE LIST

1. This is the reply factum of the proposed representative of the Class members to the factum of McCann.

2. McCann's opposition to the appointment of a Representative for the Class members and Representative Counsel can be distilled into the following arguments. None of their arguments are tenable and should be rejected:

a) the motion is premature;

b) the caselaw does not support a representation order;

c) a representation order for Class members should be denied because the representative would "improperly interfere" with the CCAA proceedings;

d) The class action is unlikely to be certified on a certification motion because:

i) Tim Yeoman is an unsuitable representative of the Class members; and

ii) Tim Yeoman has a conflict of interest with the Class.

e) the role of the Monitor is to "protect and represent" the Class members in the CCAA proceeding; and

f) the ulterior purpose of the representation order is to recoup legal fees of Class counsel.

a) The motion is not premature

3. Madam Justice Pepall in *Canwest* directly dispensed with the same prematurity argument now advanced by McCann at paragraphs 36-46 of its factum, holding that the "watch and wait suggestion is unhelpful to the needs of [the individuals] and to the interests of the Applicants". The law in *Canwest* on the appointment of representative counsel in an insolvency proceeding is not limited to employees or retirees and applies to all similarly situated groups of claimants.

> *Canwest Publishing Inc. (Re),* (2010), 2010 CarswellOnt 1344 (S.C.) ("*CanWest*") at paras. 23-24, Yeoman BOA, Tab 15.

4. In *Muscletech I*, the court was critical of parties because they had not sought a representation order earlier in the proceeding.

Muscletech Research and Development Inc. (Re), (2006), 2006 CarswellOnt 4929 (S.C.) ("*Muscletech I*") at para. 11, Book of Authorities of McCann ("McCann BOA"), Tab 2.

b) McCann misstates the caselaw

5. In paragraphs 23-24 of its factum, McCann incorrectly states that Justice Mesbur's decision in *Muscletech I* denied a representation order for the class members of an uncertified class action. In reality, the issue in that case was whether class action plaintiffs could file claims on behalf of other similarly situated U.S. plaintiffs after the claims bar date had passed, and without previously obtaining a representation order:

> [1] These motions raise the question of whether plaintiffs in uncertified class actions may file claims in the claims process in this CCAA proceeding on behalf of themselves and all other similarly situated plaintiffs.

Muscletech I at para. 1, McCann BOA, Tab 2.

6. Faced with two procedural defects (the passage of the claims bar date and no prior representation order) Justice Mesbur held that the late claims of class plaintiffs who did not have a representation order could not be filed in the claims process. Her Honour did not dismiss a motion for a representation order. The decision of Justice Mesbur in *Muscletech I* underscores the importance of the court issuing a representative order *early* in an insolvency proceeding so that a process for protecting the interests of class members can be implemented. It does not stand for the proposition that a representation order should not be made for class plaintiffs:

> [11] On February 8, 2006, an Ad Hoc committee of products liability claimants sought and was granted representative status in this CCAA proceeding. On March 3, 2006, this court made a Call for Claims order. American counsel for both the Representative Plaintiffs and the California Consumers were served with the motion and draft order in relation to the Call for Claims order, just as they have been served throughout these CCAA proceedings. Although many interested parties made submissions concerning the terms of the order both before the hearing and at the hearing itself, counsel for the Representative Plaintiffs and California Consumers did not. They took no steps, as did the Ad Hoc Committee, to obtain representative status, or direction as to how they might put forward their claims.
>
> ....

> [43] ...Simply put, all the arguments made by the Representative Plaintiffs and California Consumers ***should have been made before Farley J. when the Call for Claims order was made, or earlier motions should have been made to deal with these issues before the Call for Claims order was even made.***
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> [44] ... To allow representative or class claims ***at this date*** would be prejudicial to the entire claims process, and would impair the integrity of the CCAA process here.
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> *Muscletech I* at paras. 11, 43-44, McCann BOA, Tab 2.

7. McCann, at paragraph 25-26 of its factum, also misstates the ratio of Justice Ground in *Muscletech II*, alleging that the case is "a leading authority regarding representation orders in the context of proposed, uncertified class actions". In reality, that decision was about the interpretation of a Claims Resolution Order and whether a proof of claim on behalf of a group being asserted after the passage of the claims bar date should be accepted, and without the claimant having first obtained a representation order:

> [1] This motion is brought by the Applicants in the within proceeding (collectively "Muscletech") for an Order that the proof of claim filed by Krys Osborne ("Osborne") in this proceeding is invalid and a nullity to the extent that it purports to advance a representative claim on behalf of other persons.
>
> ...
>
> [35] ...The timing of the bringing of this motion in this proceeding is also problematic. The claims bar date has passed. The mediation process is virtually completed and the Osborne claim is one of the few claims not settled in mediation although counsel for the putative class were permitted to participate in the mediation process. The filing of the class action in California occurred prior to the initial CCAA Order and at no prior time has this court been asked to approve the filing of a class action proof of claim in these proceedings...
>
> *Muscletech Research & Development Inc., Re* (2006), 2006 CarswellOnt 7877 (S.C.) ("*Muscletech II*") at paras. 1, 35-36, McCann BOA, Tab 3.

8. McCann incorrectly asserts at paragraph 29 of its factum that the *Red Cross* case does not provide an example of a judge "considering and granting a representation order to a proposed class action". This is not true. The Canadian Red Cross Society filed for insolvency protection due to the numerous actions, including class actions, that had been filed against it due to its

distribution of tainted blood. In an order of July 29, 1998 (the "**Red Cross 1998 Order**"), Justice Blair initially appointed six different representative counsel in respect of different classes.

> Order of Blair J. dated July 29, 1998 (Re Appointment of Representative Counsels in Canadian Red Cross), Yeoman Supplementary BOA, Tab 2.

9. While the moving party's factum refers to the Order of Justice Blair of July 29, 1998, the Book of Authorities inadvertently includes reference to a decision of Justice Blair on a different motion released on July 28, 1999 (the "**Red Cross 1999 Decision**"). McCann capitalizes on this inadvertence and alleges at paragraph 31 of its factum that in "*Red Cross*" a representation order was not granted. However, no such order was sought in that case.

10. In the Red Cross 1999 Decision (the case that McCann discusses) an individual did not seek representative status but instead sought leave to *commence* a class action and to file a class proof of claim on behalf of the proposed class. This relief was not granted, however, Justice Blair states at paragraph 12 that he "does not rule out the possible appointment of ***Representative Counsel*** in this proceeding (***similar to those already appointed*** for the various groups of Transfusion Claimants)."

> *Re Canadian Red Cross Society,* 1999 CarswellOnt 3234 (S.C.) (*"Red Cross 1999 Decision")* at paras. 12, Yeoman BOA, Tab 17.

11. The *Red Cross* case is authority for the appointment of representative counsel for class members in a CCAA proceeding. In a further decision released August 19, 1998, the court appointed representative counsel in respect of two other class action groups:

> **[52] The Motions by Mr. Klein and by Mr. Lauzon to be appointed Representative Counsel for the British Columbia and Québec Pre86/Post 90 Hepatitis C Claimants, respectively, are granted...As I commented earlier, in making the original order appointing Representative Counsel, the Court endeavours to conduct a process which is both fair and perceived to be fair**. Having regard to the nature of the claims, the circumstances in which the injuries and diseases inflicting the Transfusion Claimants have been sustained, and the place in Canadian Society at the moment for those concerns, it seems to me that those particular claimants, in those particular Provinces, **are entitled if they wish to have their views put forward by those counsel**

> **who are already and normally representing them in their respective class proceedings.** [Emphasis added.]
>
> *Canadian Red Cross Society, (1998) 1998 CarswellOnt 3346* at para. 52, Yeoman Supplementary BOA, Tab 3.

12. McCann also incorrectly asserts that the *Sino Forest* case does not provide an example of a judge "considering and granting a representation order to a proposed class action". In fact, it does. In paragraph 27 of the *Sino Forest* Claims Procedure Order of May 14, 2012, Justice Morawetz (as he was then) authorized the filing of one claim "in respect of the substance of the matters set out in the Ontario Class Action". This order was issued prior to certification of the class proceeding.

> Order of Morawetz J. dated May 14, 2012 (Re Filing of Omnibus Claim by Representative Counsel in *Sino Forest*) Yeoman Supplementary BOA, Tab 4.

13. Further, in Justice Morawetz's order of March 20, 2013 in *Sino Forest*, His Honour "recognized and appointed [the Ontario Plaintiffs] as representatives" and Koskie Minsky LLP, Siskinds LLP and Paliare Roland Rosenberg Rothstein LLP as Representative Counsel for the Class Members "for all purposes in these proceedings". This order was issued prior to certification, and it was not simply that the "parties settled issues regarding representation orders" as alleged by McCann. Rather, it formed part of a court order that was issued by Justice Morawetz and as such was "considered" by the court.

> Order of Morawetz J. dated March 20, 2013 (Re Appointment of Representative Counsel in *Sino Forest*), Yeoman Supplementary BOA, Tab 5.

c) A representation order for Class members will not "improperly interfere" with the future course of the CCAA proceedings

14. First, this is a court-supervised process. Any allegations of "improper interference" when and if they occur, by any party, can be brought to the judge's attention for resolution.

15. Second, the appointment of representative counsel for the Class members is a procedural order, the purpose of which is to enable class members who do not have official status in the

CCAA proceeding, and who collectively have a substantial claim, to participate in the CCAA proceeding and protect their rights, given that the Class Action is stayed against the Applicants. Only McCann (with Trimor supporting) oppose the relief sought. The Class members are the same individuals from whom McCann (and Trimor) seek, in their own motions, to obtain unlawful fees and interest contrary to the *Payday Loans Act*. When a party makes a legitimate submission to protect one's rights in a CCAA proceeding, it is not "improper interference". On the contrary, McCann's attempt to pre-emptively suppress the representation of the class claimants is unfair and improper, and should not be countenanced by the court.

d) The test for a representation order is not the test for certification under the CPA

16. The moving party is not seeking the certification of the Class Action from this court. The criteria applicable to certification under the Ontario *Class Proceedings Act* do not apply. The applicable factors for a representation order are set out in *Canwest* and have readily been met.

17. Even so, Yeoman is an appropriate Class representative for any certification motion. He is also an appropriate representative for a representation order in the CCAA proceeding. The class representative in any given class proceeding is rarely able to obtain and state exact knowledge of the number of class members impacted in the litigation. In this matter, there are thousands of Cash Store customers across Ontario and elsewhere. Further, it is equally difficult for a class member to quantify the aggregate value of their claims in advance of documentary production and discovery of the defendant. Such data is within the knowledge of the Applicants and can be obtained in due course for the quantification of damages. McCann's criticism of Yeoman's lack of personal knowledge of such specifics is unreasonable and unrealistic, and in fact reinforces the need for representation for the Class members.

18. McCann's assertion, at para. 50 of its factum that "Yeoman has failed to materially advance the Proposed Class Action since commencing it" is not only irrelevant for the issue of appointing representative counsel, it is also false.

19. The Class Action is being case-managed by Mr. Justice Grace, sitting in London, Ontario. The Class Action has been prudently and appropriately advanced by competent Class

counsel (Harrison Pensa). A certification motion date has been set for September 15, 2014. Through the management of Mr. Justice Grace, a lengthy schedule of steps leading up to the certification has been established. Class counsel filed a substantial certification motion record with the court on February 5, 2014. In advance of that filing, Class counsel performed an extensive investigation into the Cash Store's business and research regarding the regulatory actions and interventions by the Ontario government. Further investigations were also undertaken against non-Applicant parties, who were subsequently added as parties to the Class action. Finally, Class counsel has prepared and filed a litigation plan which details how the Class Action is to proceed, including how notice will be provided to the Class and details of how the proceeding will be advanced.

20. All of this would have been readily made known to McCann had he cross-examined (or otherwise contacted) Class counsel which he was free to do, but did not do. Instead of cross-examining Class counsel, McCann now attempts to construct an artificial argument that the Class Action has not been prudently advanced. McCann's statements should be rejected.

Tim Yeoman does not have a conflict of interest

21. This court addressed the issue of a potential conflict of interest in a group when it appointed representative counsel in the *Nortel* CCAA proceedings. In granting the representation order, this Court indicated that a potential conflict was not a basis to deny a representation order, and that if a potential conflict becomes a real conflict in the future, then "such matters can be brought to the attention of the court by the representatives and their counsel on a *ex parte* basis for resolution".

> *Nortel Networks Corporation (Re)*, 2009 CanLII 26603 (ON SC), at para. 38, Yeoman BOA, Tab 14.

22. An argument that a class representative has a conflict of interest for a *certification motion* is to be based on the notion that the representative has a conflict with other class members *regarding the common issue* in the class action. The common issue for all class members in this case is whether the Applicants charged unlawful interest and fees on loans to Class members. There is no conflict within the Class in respect of the proposed common issue. In *Ayrton v. PRL*

Financial (Alberta) Ltd., another case involving a class action against a payday lender, the court held:

> [101] The arguments of the Defendants are arguments for the common issues judge to determine as they go to the merits of the case... ***[The class representative] and the class members share the common issue, namely, whether the Defendants charged interest at a criminal rate on their loans, therefore he is in a position to fairly and adequately represent the interests of the class. He has produced a workable plan for the proceeding to progress. There is no evidence to suggest that he is in a conflict of interest with other class members regarding the common issues.*** [Emphasis added; footnotes omitted.]
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> *Ayrton v. PRL Financial (Alberta) Ltd.,* 2005 ABQB 311, 2005 CarswellAlta 550, para. 101, Yeoman BOA, Tab 11.
>
> *Mortillaro v. Cash Money Cheque Cashing Inc.*, 2009 CanLII 35600 (ON SC), para. 5, Yeoman BOA, Tab 5
>
> *Joseph v. Quik Payday Inc.,* 2006 CanLII 40673 (ON SC), para. 16 Yeoman BOA, Tab 4
>
> *Tracy v. Instaloans Financial Solutions Centres (B.C.) Ltd. et a.l*, 2006 BCSC 1018 (CanLII), paras. 76 and 7, Yeoman BOA, Tab 13

23. In this case, there are two remedies arising from the Applicant's unlawful lending practices for the Class members: a) an entitlement to damages for customers who paid the unlawful charges, and b) the inability for the lender to collect outstanding interest and fees that were unlawfully charged. These are remedies which flow from the illegality of the loans in the Applicant's business model. They are not a conflict for the Class on the common issue.

e) The Monitor cannot "protect and represent" the Class members in the CCAA proceeding

24. The Monitor has duties to the body of creditors as a whole. It does not owe specific duties to specific creditors to protect their interests against the Applicants on other creditors. The CCAA sections cited in paragraph 57 of McCann's factum do not support McCann's argument.

25. In *Canwest*, Justice Pepall expressly considered the role of the Monitor in the context of a representative counsel motion (which she granted). She noted that the Monitor is not a substitute for a representation order for a group of employees because " ...The Monitor already has very extensive responsibilities... and it is unrealistic to expect that it can be fully responsive to the

needs and demands of all of these many individuals and do so in an efficient and timely manner."

CanWest at para. 24, Yeoman BOA, Tab 15.

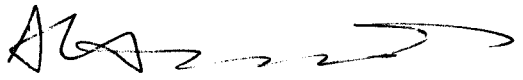
f) The purpose of the representation order is not to recoup legal fees for Class counsel

26. This is a baseless allegation by McCann with no evidentiary support. There is no fee request before the court by Class counsel on this motion. If the costs of the Representative and Representative Counsel are sought in the CCAA proceeding at a later date, arguments in respect of that relief can be made at that time. The comments of Mr. Yeoman referenced in the McCann factum refer to the typical manner in which cost awards are made in legal proceedings and are taken out of context by McCann. This is what Mr. Yeoman is referring to when he says "I would think the people they are suing" would cover the cost of Class counsel.

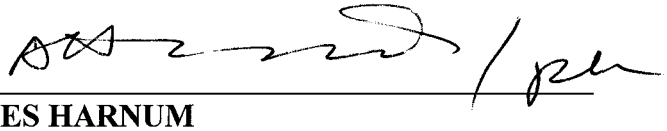
27. McCann (and Trimor) are maneuvering in this proceeding to obtain the interest and fees from the Class members. In these circumstances, it is especially important to appoint a Representative and Representative Counsel for the Class to allow the Class members to have representation in the CCAA proceeding and to protect their rights.

28. Finally, if a representation order is not granted and the Class members remain without status in the CCAA proceeding, the only alternative will be for Class counsel to bring lift-stay motions to allow for the advancement of the Class Action, including certification, against the Applicants. A representation order in this case is an appropriate alternative to lift-stay motions to allow Class members to be able to protect their rights in the CCAA proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th of June, 2014.



ANDREW J. HATNAY



JAMES HARNUM

SCHEDULE "A"

LIST OF AUTHORITIES

1. Order of Farley J. dated February 8, 2006 (Re Appointment of Representative Counsel in *Muscletech*)

2. Order of Blair J. dated July 29, 1998 (Re Appointment of Representative Counsels in *Canadian Red Cross*,)

3. *Canadian Red Cross Society,* (1998) 1998 CarswellOnt 3346 (S.C.)

4. Order of Morawetz J. dated May 14, 2012 (Re Filing of Omnibus Claim by Representative Counsel in *Sino Forest*)

5. Order of Morawetz J. dated March 20, 2013 (Re Appointment of Representative Counsel in *Sino Forest*)

SCHEDULE "B"
RELEVANT STATUTES

1. Ontario *Rules of Civil Procedure*, R.R.O. 1990, REGULATION 194

Representation of an interested person who cannot be ascertained

Proceedings in which Order may be Made

10.01 (1) In a proceeding concerning,

(a) the interpretation of a deed, will, contract or other instrument, or the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
(b) the determination of a question arising in the administration of an estate or trust;
(c) the approval of a sale, purchase, settlement or other transaction;
(d) the approval of an arrangement under the *Variation of Trusts Act*;
(e) the administration of the estate of a deceased person; or
(f) any other matter where it appears necessary or desirable to make an order under this subrule,

a judge may by order appoint one or more persons to represent any person or class of persons who are unborn or unascertained or who have a present, future, contingent or unascertained interest in or may be affected by the proceeding and who cannot be readily ascertained, found or served. R.R.O. 1990, Reg. 194, r. 10.01 (1).

2. Ontario *Rules of Civil Procedure,* R.R.O. 1990, REGULATION 194

Proceeding against representative defendant

12.07 Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so. O. Reg. 465/93, s. 2 (3).

3. *Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36)

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

4. *Payday Loans Act, 2008*, S.O. 2008, c. 9

Requirement for licence

6. (1) No person or entity shall act as a lender unless the person or entity,

(a) is licensed as a lender and, subject to section 17, has received notice in writing from the Registrar of the licence; or

(b) is deemed to be licensed under section 18. 2008, c. 9, s. 6 (1).

Same, loan broker

(2) No person or entity shall act as a loan broker unless the person or entity,

(a) is licensed as a loan broker and, subject to section 17, has received notice in writing from the Registrar of the licence; or

(b) is deemed to be licensed under section 18. 2008, c. 9, s. 6 (2).

Consequence

(3) If a lender who is not licensed enters into a payday loan agreement with a borrower, the borrower is only required to repay the advance to the lender and is not liable to pay the cost of borrowing. 2008, c. 9, s. 6 (3).

5. Criminal Code, R.S.C. 1985, c. C-46

347. (1) Despite any other Act of Parliament, every one who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate, is

(*a*) guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(*b*) guilty of an offence punishable on summary conviction and liable to a fine not exceeding $25,000 or to imprisonment for a term not exceeding six months or to both.

(2) In this section,

"credit advanced"
« capital prêté »

"credit advanced" means the aggregate of the money and the monetary value of any goods, services or benefits actually advanced or to be advanced under an agreement or arrangement minus the aggregate of any required deposit balance and any fee, fine, penalty, commission and other similar charge or expense directly or indirectly incurred under the original or any collateral agreement or arrangement;

"criminal rate"
« taux criminel »

"criminal rate" means an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement;

"insurance charge"
« frais d'assurance »

"insurance charge" means the cost of insuring the risk assumed by the person who advances or is to advance credit under an agreement or arrangement, where the face amount of the insurance does not exceed the credit advanced;

"interest"
« intérêt »

"interest" means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes;

"official fee"
« taxe officielle »

"official fee" means a fee required by law to be paid to any governmental authority in connection with perfecting any security under an agreement or arrangement for the advancing of credit;

"overdraft charge"
« frais pour découvert de compte »

"overdraft charge" means a charge not exceeding five dollars for the creation of or increase in an overdraft, imposed by a credit union or caisse populaire the membership of which is wholly or substantially comprised of natural persons or a deposit taking institution the deposits in which are insured, in whole or in part, by the Canada Deposit Insurance Corporation or guaranteed, in whole or in part, by the Quebec Deposit Insurance Board;

"required deposit balance"
« dépôt de garantie »

"required deposit balance" means a fixed or an ascertainable amount of the money actually advanced or to be advanced under an agreement or arrangement that is required, as a condition of the agreement or arrangement, to be deposited or invested by or on behalf of the person to whom the advance is or is to be made and that may be available, in the event of his defaulting in any payment, to or for the benefit of the person who advances or is to advance the money.

(3) Where a person receives a payment or partial payment of interest at a criminal rate, he shall, in the absence of evidence to the contrary, be deemed to have knowledge of the nature of the payment and that it was received at a criminal rate.

(4) In any proceedings under this section, a certificate of a Fellow of the Canadian Institute of Actuaries stating that he has calculated the effective annual rate of interest on any credit advanced under an agreement or arrangement and setting out the calculations and the information on which they are based is, in the absence of evidence to the contrary, proof of the effective annual rate without proof of the signature or official character of the person appearing to have signed the certificate.

(5) A certificate referred to in subsection (4) shall not be received in evidence unless the party intending to produce it has given to the accused or defendant reasonable notice of that intention together with a copy of the certificate.

(6) An accused or a defendant against whom a certificate referred to in subsection (4) is produced may, with leave of the court, require the attendance of the actuary for the purposes of cross-examination.

(7) No proceedings shall be commenced under this section without the consent of the Attorney General.

(8) This section does not apply to any transaction to which the *Tax Rebate Discounting Act* applies.

347.1 (1) The following definitions apply in subsection (2).

"interest"
« intérêts »

"interest" has the same meaning as in subsection 347(2).

"payday loan"
« prêt sur salaire »

"payday loan" means an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card.

(2) Section 347 and section 2 of the *Interest Act* do not apply to a person, other than a financial institution within the meaning of paragraphs (*a*) to (*d*) of the definition "financial institution" in section 2 of the *Bank Act*, in respect of a payday loan agreement entered into by the person to receive interest, or in respect of interest received by that person under the agreement, if

- (*a*) the amount of money advanced under the agreement is $1,500 or less and the term of the agreement is 62 days or less;

- (*b*) the person is licensed or otherwise specifically authorized under the laws of a province to enter into the agreement; and
- (*c*) the province is designated under subsection (3).

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

(4) The Governor in Council shall, by order, revoke the designation made under subsection (3) if requested to do so by the lieutenant governor in council of the province or if the legislative measures described in that subsection are no longer in force in that province.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at TORONTO

REPLY FACTUM
(re: appointment of representative counsel for class action plaintiffs, returnable June 11, 2014)

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