

**IN THE MATTER OF**  
***THE PAYDAY LOANS ACT***  
**c. P-4.3**  
**AND**  
**IN THE MATTER OF MR. TRENT SCHWAN**

**ORDER**

**WHEREAS:**

1. The activities and operations of payday lenders in Saskatchewan are regulated under *The Payday Loans Act* (the “Act”) and by reason of sections 2(1)(d) and 4 of the Act, I, as deputy director, have the responsibility of administering the Act and the regulations made pursuant to it;
2. Sometime in January of 2016, I received information from the Saskatchewan Crown Prosecution Office (“Prosecution Office”) regarding the lending business operations of Mr. Trent Schwan (“Mr. Schwan”);
3. The information I received from the Prosecution Office included a PDF document with columns and rows which contained transactions with a list of names of persons described as “Customers”. This document (the “Complete Transaction List”) contained around 16,000 separate entries dating back to July 7, 2003, and has headings such as *Customer Name, Amount, Fee, Date, Due, and Date Paid*;
4. By a letter dated June 16, 2016, (the “Letter”) Ms. Lisa Liesch, Audit Manager with the Financial and Consumer Affairs Authority of Saskatchewan (“FCAA”) invited Mr. Schwan for an interview on July 16, 2016 with Ms. Liesch and Mr. Olumide Adetunji, legal counsel with FCAA, regarding his business operations (the “Interview”);
5. Information in the package I received from the Prosecution Office indicated that the Complete Transaction List was obtained from Mr. Schwan’s computer. At the Interview, Mr. Schwan confirmed that the Complete Transaction List were his records from transactions he carried out;
6. At the Interview, Mr. Schwan confirmed that he was carrying on business that involved the advancement of money to persons who came to his place of business. However, Mr. Schwan explained at various times during the Interview that he was simply engaged in the business of “cheque cashing”, and that he was not granting loans or doing any form of payday lending;

7. Section 2(1)(i) of the Act provides the following definition for a “payday loan” :  
    “**payday loan**” means any advancement of money that is:
  - (i) in an amount of \$1,500 or less;
  - (ii) for a term of 62 days or less; and
  - (iii) 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;
  
8. Section 5(1) of the Act provides that “no person shall carry on business as a payday lender unless that person has a licence authorizing the person to carry on business as a payday lender.” Similarly, section 2(1)(h) of the Act defines a “payday lender” as “a person that offers or provides a payday loan, and includes any person that arranges a payday loan or that facilitates, enables or acts as a conduit for another person that offers or provides a payday loan”;
  
9. At the Interview, Mr. Schwan did not dispute the fact that he advanced money to persons on the Complete Transaction List, and that these persons would repay these advancements by way of cash, debit, or postdated cheques made out payable to him;
  
10. Mr. Schwan does not, and has never, been issued a licence to operate a payday lending business. On January 16, 2017, and pursuant to section 17(2) of the Act, I issued a Notice of Opportunity to be Heard (the “Notice”) to Mr. Schwan;
  
11. In the Notice, I indicated my inclination to impose an administrative penalty of \$8,500 on Mr. Schwan for operating a business I considered to constitute payday lending under the Act, without having a licence under the Act to do so. The Notice set out the grounds and circumstances that justify my proposed imposition of the administrative penalty, including the identification of 1,718 transactions entered into on or after January 1, 2012, the date the Act came into effect, that appeared to be payday loans as defined by the Act. The Notice described that these 1,718 transactions represented \$348,832 in loans, with total fees on those loans of \$95,376;
  
12. The Notice, pursuant to section 17(2)(b) and 17(3) of the Act, informed Mr. Schwan of his rights to request an oral hearing or to make written representations to me respecting why I should not impose the proposed administrative penalty of \$8,500. The Notice referenced a number of considerations relating to the amount of the proposed administrative penalty including:
  - a. Section 51(1)(a) of the Act contemplates an administrative penalty of up to \$10,000;

- b. Mr. Schwan operating without a licence resulted in borrowers being deprived of protections provided by the Act;
  - c. The total number of loans, and that there was ongoing lending activity between January 1, 2012 and February 17, 2015;
  - d. By not obtaining a licence to operate as a payday lender, Mr. Schwan avoided paying the annual licence fee for the years 2012-2015, thereby receiving a monetary advantage relative to duly licensed payday lenders;
  - e. That Mr. Schwan has since ceased payday operations, was cooperative with staff throughout, and stated that when he ceased operations he did not pursue any amounts outstanding.
13. On January 17, 2017, upon receiving the Notice, Mr. Schwan advised my office, in a phone conversation with Ms. Liesch, that he did not wish to exercise his rights to have an oral hearing or make any written representation as to why I should not take the proposed action set out in the Notice. Mr. Schwan advised he was prepared to pay the administrative penalty of \$8,500;
14. In consequence, Mr. Schwan has voluntarily elected not to avail himself of the opportunity to request an oral hearing or make written representations. Section 17(6) of the Act empowers me to take the action proposed in the Notice (*viz*, imposition of the \$8,500 administrative penalty) if Mr. Schwan does not request an oral hearing or make any written representation; and
15. I have determined that Mr. Schwan operated as a payday lender on or after January 1, 2012 while not being licensed pursuant to the Act, in contravention of section 5(1) of the Act, and for which I am proceeding to impose the administrative penalty of \$8,500 as proposed in the Notice.

#### **DEPUTY DIRECTOR'S ORDER**

16. **IT IS HEREBY ORDERED AS FOLLOWS:**
  - a. By virtue of the powers conferred on me under section 51(1)(a) of the Act, I hereby impose an administrative penalty of \$8,500 on Mr. Schwan as penalty for operating a payday lending business without a licence issued under the Act in contravention of section 5(1) of the Act.
  - b. Pursuant to section 51(5) of the Act, I hereby order Mr. Schwan to pay the administrative penalty of \$8,500 not later than March 31, 2017.
17. By virtue of section 42 of the Act, Mr. Schwan has the right to appeal my order to the Court of Queen's Bench on a question of law only. Mr. Schwan must exercise his right of

appeal within 30 days after my order. Where Mr. Schwan decides to proceed with an appeal, he is required to serve me with a notice of appeal.

Dated at the City of Regina in the Province of Saskatchewan this 31<sup>st</sup> day of January, 2017.



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Cory Peters  
Deputy Director of Payday Loans