

ALBERTA CONSUMER SERVICES APPEAL BOARD

IN THE MATTER OF AN APPEAL

**BY LES SOLUTIONS PRETEURS/THE LENDER SOLUTION INC. PURSUANT TO
SECTION 179 (1) OF *THE CONSUMER PROTECTION ACT* RSA 2000 c. C-26.3**

AND

**IN THE MATTER OF THE DECISION BY CONSUMER PROGRAMS, SERVICE ALBERTA
AND RED TAPE REDUCTION, TO ISSUE AN ADMINISTRATIVE PENALTY OF \$22,500
TO LES SOLUTIONS PRETEUR/THE LENDER SOLUTIONS INC. FOR
CONTRAVENTIONS OF THE LICENSING AND REGULATORY REQUIREMENTS AND
FOR ENGAGING IN UNFAIR PRACTISES AND A DIRECTOR'S ORDER DIRECTING LES
SOLUTIONS PRETEURS/THE LENDER SOLUTIONS INC. AND VALERIA
LAMOLINARA TO CEASE OPERATING WITHOUT A HIGH-COST BUSINESS LICENCE,
CEASE ENGAGING IN THE IDENTIFIED UNFAIR PRACTISE AND TO MEET THE
REGULATORY REQUIREMENTS ESTABLISHED UNDER *THE CONSUMER
PROTECTION ACT* ON OCTOBER 10, 2023.**

DECISION of the APPEAL BOARD

THE PANEL:

Michael Swanson, KC. (Chair)
Kent Pallister (Member)
Joshua Selby (Member)

APPELLANTS:

- Stephen Walters, legal counsel, representing the Appellants Les Solutions Preteurs/The Lender Solutions Inc. ("LSP") and Valeria Lamolinara ("Lamolinara") (collectively "the Appellants")

RESPONDENT:

- Joseph O'Kurley, statute administrator representing the Respondent the Director of Fair Trading ("the Director")

NATURE OF APPEAL

[1] On October 10, 2023, the Director of Fair Trading for the Province of Alberta issued a Director's Order ("the Order") and Notice of Administrative Penalty ("the Decision") addressed to the Appellants pursuant to s. 127 and s. 158.1 of the *Consumer Protection Act* ("CPA").

[2] The Decision resulted from two separate complaints filed between May & June 2022. The first of these was filed by Suzanne Gardner and assigned file #45529 and the second was filed by Candace Roulette and assigned file #46098.

[3] Investigation of both complaints identified evidence of violations of the CPA, the Cost of Credit Disclosure Regulation ("the CCDR"), and the High-Cost Credit Regulation ("HCCR") by Les Solutions Preteurs/The Lender Solutions Inc. ("LSP") at Edmonton, Alberta between May and June 2022.

[4] The Director found that based upon the available evidence contained in the Director's letter dated October 10, 2023 (the "decision letter"), the Appellants had contravened the regulatory framework established under the CPA, the CCDR, and the HCCR and had also failed to adhere to the legislative and regulatory framework that governed high-cost credit lending businesses that lend to Albertans.

[5] The Order includes specific findings that LSP:

- entered into high-cost credit agreements with Albertans without the required high-cost credit business licence;
- engaged in unfair practices, including: misleading and deceiving borrowers with respect to the actual interest or annual percentage rates of credit agreements; misleading or deceiving borrowers about the amounts that would actually be charged as part of the loan; and entering into credit agreements when it knew or ought to have known that the consumer would be unable to receive any reasonable benefit from the credit agreement;

- failed to meet regulatory requirements, including: failing to disclose credit information required under the *Cost of Credit Disclosure Regulation*¹ (“CCDR”) charging dishonoured pre-authorized debit fees that exceed the maximum allowable fee set by the Director; and stated that the credit agreement included default fees and costs that are not allowed under the *Consumer Protection Act*²

[6] Given the Director’s findings, the Order directs that the Appellants and any employee, representative or agent thereof:

- must cease engaging in high-cost credit activities in Alberta without the High-Cost Credit Business Licence.
- must cease entering into high-cost credit agreements that do not meet the regulatory requirements set out under the legislation.
- must cease entering into transactions with consumers if they are unable to receive any reasonable benefit from the transaction.
- must cease engaging in activities intended to deceive or mislead consumers or misrepresent their rights, remedies or obligations.

[7] The Order also specifies that “any person who fails to comply with an Order of the Director under section 157 of the *Consumer Protection Act* contravenes the Act and is guilty of an offence and may be subject to prosecution pursuant to section 163 of the *Consumer Protection Act*.”

[8] Section 163 of the CPA provides that “any person who fails to comply with an order of the Director under section 129, 151(3) or 157, unless the order has been stayed contravenes this Act and is guilty of an offence.”

[9] Conviction of an offence under the CPA is punishable under s. 164 by a fine “of not more than \$300,000” or “three times the amount obtained by the defendant as a result of the offence”, or “to imprisonment for not more that two years, or both”

[10] The Administrative Penalty imposed on the Appellants, mandates payment of monetary penalties totaling \$22,500 for specific contraventions of the CPA, the

¹ *Cost of Credit Disclosure Regulation*, Alta Reg 198/1999

² *Consumer Protection Act*, RSA2000 C-26.3.

CCDR, and the HCCR payable within 30 days of service. Both the Order and the Administrative Penalty were served on October 10, 2022.

[11] In the form of a letter dated November 15, 2023, notices of appeal regarding both file #45529 and file #46098 were served on the Minister in accordance with s. 179(1) of the *CPA* and s. 4 of the *Appeal Board Regulation*³ (“the ABR”).

[12] The grounds of appeal originally recited were:

- i. the Borrower did receive reasonable benefit from the funds advanced and the terms of the Credit Agreement;
- ii. the Borrower had borrowed from LSP on prior occasions and was aware of the terms of the Credit Agreement and the benefits of entering into such a transaction;
- iii. the complaint by the Borrower was precipitated by the Borrower’s repeated unwillingness and unilateral efforts to frustrate compliance with the terms of the Credit Agreement and LSP’s unwillingness to amend the terms of the Credit Agreement or waive these defaults;
- iv. LSP is a registered lender;
- v. LSP provides borrowers with loans through a website and does not have a retail location in Quebec;
- vi. the Director failed to consider all documentation applicable to the loans advanced and which should be considered in review of the applicable Credit Agreement;
- vii. in its Decision, the Director miscalculated the interest rate and costs applicable to the loan and,
- viii. given the totality of the circumstances, the fine imposed on LSP is excessive and unnecessarily punitive.

[13] By email dated February 23, 2024, the Chair invited counsel acting for the Appellants to identify specific grounds of appeal that, in the opinion of the counsel, had a reasonable likelihood of success in terms of challenging the Order. On March 8, 2024, “revised grounds of appeal” were provided to the Appeal Board concerning the appeals.

[14] The revised grounds of appeal submitted were:

³ *Appeal Board Regulation*, Alta Reg 195/1999

- i. Jurisdiction: The transactions are governed by the laws of Quebec and not by the laws of Alberta.
- ii. Jurisdiction: The Appellant is not licensed to carry on business in Alberta and need not be. The Appellant does not carry on business in Alberta. The Appellant is registered to carry on business in the province in which it does carry on business.
- iii. Documentation: Documentation used by the Appellant did not comply with the laws of Alberta. The Appellant carries on business in Quebec.
- iv. Documentation: The loan documentation used by the Appellant in the transactions is sufficiently clear to permit the complainants to understand the obligations to which they would be bound, the obligations which they were to meet, and the consequences of failure to meet those obligations, including the setting out of interest rates and additional consequential charges that may arise in identified circumstances.
- v. Documentation: The Director has miscalculated the interest rates applicable to the transactions.
- vi. Disclosure: The Appellant did not mislead or deceive the complainants about the terms of the transactions, repayment terms, applicable interest rates or additional circumstantial charges.
- vii. Disclosure: The complainants had used such lending facilities frequently, including the lending facilities offered by the Appellant, and were familiar with the terms of these transactions, repayment terms, interest rate and additional circumstantial charges, and continued to utilize such lending facilities, without question, with the expectation that they could then avoid the obligations in the transactions. The complainants knowingly sought to unilaterally frustrate compliance with their obligations to the Appellant and avoid meeting their obligations.
- viii. Benefit: Neither the Director nor the Appellant may determine whether the complainant received benefit from the transactions, however transactions were completed and the complainants received funds as requested for their discretionary use.
- ix. Benefit: The complainants have received the advance of funds from the Appellant, have not repaid an advance of funds, have not paid interest for the use of those funds, and have not paid the additional charges incurred by the

Appellant arising from the default of the complainants in meeting the obligations under the transactions.

- x. Enforcement: The Appellant was reasonable and accommodating in its efforts to pursue, negotiate and renegotiate the terms of the transactions to permit the complainants to meet their obligations under the transactions. The complainants knowingly sought to frustrate compliance with their obligations in the transactions causing default and incurring the consequential additional charges.
- xi. Enforcement: The fines imposed by the Director are inapplicable to a business not falling within the jurisdiction of the Government of Alberta and, in the alternative, given the totality of the circumstances, are excessive and unnecessarily punitive.

[15] Initial disclosure was provided by the Director on January 31, 2024, and the remaining disclosure was provided on April 12, 2024.

[16] The Appellants did not seek a stay of the Order pursuant to s. 180(2) of the CPA pending the outcome of the appeal.

[17] As noted herein, two separate appeals are before this Appeal Board for adjudication. The two appeals have been assigned file #45529 and file #46098. Given that the grounds of appeal and the evidence, as well as the submissions on each appeal are virtually identical, to achieve efficiency and to properly manage resources the Chair (on his own motion), has ruled that for purposes of the hearing, the two appeals shall be joined into one and heard at the same time.

[18] The Appeal Board acknowledges receipt of Appeal Briefs and Written Submissions from both the Appellants and the Director. Rebuttal Submissions were also received from the Director.

[19] As a matter of housekeeping, the Chair directs that the Appeal Briefs and Written Submissions together with any attachments, as filed herein, shall be entered as separate Exhibits and marked accordingly.

[20] Under Part V. "Disposition" of the Appeal Brief filed on May 8, 2024, the Appellants request that the Appeal Board ("Administrative Board") "make the following rulings:

- (a) Valeria Lamolinara is dismissed from the Decisions and from responsibility for the Administrative Penalty;
- (b) The Director's Decision is dismissed as against the Appellant as the Director did not have sufficient jurisdiction in respect of the Appellant or the transactions forming the basis of the Decision;
- (c) Notwithstanding the foregoing and in the alternative, the Decision has been unfairly and unreasonably determined and the fines levied thereunder are excessive and unreasonably punitive; and
- (d) Such other relief as this Administrative Board deems appropriate."

[21] Under Part V. "Submissions Regarding Disposition", of the Written Submissions filed on August 19, 2024, the Appellants request that the Appeal Board ("Tribunal") make the following "determinations and orders:

1. The Director has failed:
 - (a) to demonstrate that is has jurisdiction over the Appellants;
 - (b) to demonstrate that the Appellants carried on business in Alberta;
 - (c) to demonstrate that the provisions of the CPA are applicable to the Appellants;
 - (d) to meet its onus of proof to demonstrate a transaction between the Appellants and Ms. Roulette or Ms. Gardner;
 - (e) to meet its onus of proof to demonstrate that activities of the Appellants were in contravention of the CPA;
 - (f) to meet its burden of proof to demonstrate a transaction between the Appellants and either Ms. Roulette or Ms. Gardner; and/or
 - (g) to meet its burden of proof to demonstrate that activities of the Appellants were in contravention of the CPA.
2. The Decision and the administrative fines imposed therein were not fair or Appropriate and were excessive and inappropriately punitive.
3. The Decision is dismissed as against the Appellants.
4. Costs as permitted by Alberta Regulation 135/2013, Section 6 of the Consumer Protection Act, be awarded to the Appellants.
5. Such other relief as this Tribunal deems appropriate."

[22] The Director requests that the Appeal Board confirm both the Director's Order and the Administrative Penalty as they apply to LSP and Lamolinara.

ISSUE(S)

[23] The issue(s) raised in this Appeal are:

- i) does the Director have proper jurisdiction given the characterization of the decisions under appeal, as well as the application of Alberta law?
- ii) is there any evidence upon which either the Director, or this Appeal Board can properly assess or determine a violation of the CPA?
- iii) has the Director met the onus of proof as well as the burden of proof regarding both LSP and Lamolinara?
- iv) were the Order and the Notice properly issued?
- v) after considering the totality of the evidence are the Director's Order and the Administrative Penalty unreasonable, unfair, excessive, and punitive in the circumstances of this matter?

JURISDICTION AND STANDARD OF REVIEW

[24] On October 10, 2023, a Director's Order was issued by the Director of Fair Trading for the Province of Alberta ("the Director") pursuant to s. 157 of the *Consumer Protection Act* ("the CPA").

[25] Section 157(1) of the CPA authorizes the Director to issue orders where, in the opinion of the Director, "a person is contravening or has contravened the Act or regulations." Pursuant to s. 157(2) a Director's Order may direct a person 'to stop engaging in anything described in the order' and take any measures specified in the order, within the time frame specified in the order' to ensure compliance with the Act or regulations.

[26] Section 157(3) provides that an Order may be appealed in accordance with s. 179 of the CPA and upon receiving notice of an appeal, the Minister must refer the appeal to an Appeal Board appointed under s. 179(2) of the CPA.

[27] The Appeal Board may confirm, vary or quash the decision, order or administrative penalty under appeal as provided in s. 179(6) of the CPA.

[28] Pursuant to s. 179(8) of the CPA an appeal is "a new trial of the issues that resulted in the decision, order or administrative penalty being appealed" (or *trial*

de novo). The burden of proof is on the Director to prove each of the allegations against the Appellants. In arriving at a decision, the Appeal Board must consider the totality of the evidence and determine whether both the Director's Order and the Administrative Penalty were properly issued.

DECISION

[29] For reasons that follow, the Appeal Board rules that:

- i. The Order and the Administrative Penalty are quashed as against the Appellant: Valeria Lamolinara,
- ii. The Order and the Administrative Penalty are confirmed as against the Appellant: Les Solutions Preteurs/The Lender Solutions Inc.

THE PROCEEDINGS

[30] The Appeal Board takes notice that two separate appeals are before it for adjudication. The two appeals are the result of two separate complaints: the first filed by Suzanne Gardner and the second filed by Candace Roulette. Upon being received by the Minister the complaints were assigned file numbers #45529 and #46098 respectively. Given that the grounds of appeal and that the evidence called in support of both appeals are virtually identical, to be efficient as well as properly manage resources, the Chair on his own motion has ruled that the two appeals should be joined as one and heard together. Accordingly, only one hearing date is needed for both matters. The ruling herein is retroactive to the date of service of the appeals on the Minister.

[31] A telephone Pre-Hearing Conference (PHC) was held on January 23, 2024. There were no objections raised concerning the jurisdiction of the Appeal Board nor concerning bias on the part of a member of the Appeal Board assigned to determine the appeal. Potential hearing dates were considered but remained to be confirmed. Finally, the parties were directed by the Chair to file Appeal Briefs prior to the hearing once a suitable date is agreed upon.

[32] A second telephone PHC was scheduled for February 28, 2024, but was cancelled by agreement of the parties after a suitable date was determined.

[33] The hearing of this appeal was originally scheduled for April 17 and April 18, 2024. On April 2, 2024, a request to adjourn the hearing was received on behalf of the Appellants and was unopposed by counsel for the Director. The hearing ultimately went ahead on May 29, 2024, and was continued on July 18, 2024.

[34] Appeal Briefs were received from both parties prior to the hearing. An Agreed Statement of Facts and a Book of Exhibits were not submitted.

[35] After conclusion of the evidence portion of the hearing on July 18, 2024, written submissions were requested by the Appeal Board.

THE HEARING

[36] Rhonda Ruzycki ("Ms. Ruzycki") was sworn and testified on behalf of the Director.

[37] Ms. Ruzycki testified as follows:

- i) she works as an investigator for the Consumer Investigations Unit and investigates complaints regarding possible Consumer Protection Act violations in consumer transactions,
- ii) Les Solutions Preteurs is incorporated in accordance with the laws of the Province of Quebec and operates lending services exclusively online under the name "Les Solutions Preteurs Inc." and "The Lender Solutions Inc.",
- iii) Valeria Lamolinara resides in the Province of Quebec and was a 50% shareholder and the sole director of LSP when the transactions with Gardner and Roulette were concluded,
- iv) Both Roulette and Gardner were residents of the Province of Alberta at the time that they negotiated and signed credit agreements with LSP,
- v) On May 13, 2022, LSP concluded two separate online credit agreements with Candace Roulette in the amounts of \$500 and \$250:

- a. The \$500 credit agreement specified that it would be repaid in six equal biweekly installments of \$142.03 which would total \$820.99 over the period May 20 and July 29, 2022,
 - b. The \$250 credit agreement specified that it would be repaid in six equal biweekly installments of \$71.02 which would total \$410.49 over the period May 20 and July 29, 2022,
 - c. The term of both credit agreements was 70 days,
 - d. Both credit agreements included a \$60 fee in the event of a dishonoured pre-authorized debit.
- vi) On June 21, 2022, LSP concluded a credit agreement with Suzanne Gardner which provided:
- a. A \$600 loan to be repaid in seven equal bi-weekly payments which would total \$981.11,
 - b. The actual withdrawal by LSP was \$146.38 resulting in a total of \$1,024.66,
 - c. The term specified was 84 days with simple interest calculated at 70.78%,
 - d. The credit agreement included a \$60 fee in the event of a preauthorized debit being dishonoured.
- vii) When the credit agreements were concluded with Gardner and Roulette, neither Lamolinara nor LSP had been issued a Province of Alberta high cost of credit business licence,
- viii) The credit agreements between LSP and Roulette and Gardner did not include:
- a. Total interest payable or the amounts payable,
 - b. Application of payments between interest and principal owing,
 - c. Annual percentage rates ("APR"),
 - d. Explanation of any fees other than the \$60 dishonoured pre-authorized debit fee, \$50 advance-notice late payment fee, and \$0.95 "per pre-authorized debit" fee,
 - e. A statement that borrower can repay the entire outstanding balance at any time without penalty or to make partial payments without penalty on any scheduled payment dates,

- f. A statement that includes the term or the amortization period regarding the loan that is clear, concise and in a logical order and will likely bring the information to the borrower's attention.
- ix) Section 23(3) of the *High Cost of Credit Regulation*⁴ ("HCCR") provides for (and publishes online) the "dishonoured pre-authorized debit fee" of \$25 which is set by the Director of Fair Trading,
- x) The website for LSP (thelender.ca) advertises an APR of 32% and also includes a statement that LSP complies with the laws of Canada,
- xi) Ruzycki calculated APR and subsequently received verification from a professional accountant that APR percentages in the case of both Gardner and Roulette exceeded 32%,
- xii) On August 4, 2023, Darren Thomas, as delegated Director of Fair Trading for the Province of Alberta, sent a letter (the "proposal letter" Exhibit #A5) to LSP and Lamolinara providing an explanation of the issues and facts considered as well as an explanation of the proposed Director's Order (Exhibit #A6) and Administrative Penalty (Exhibit #A7) before a final decision was made. The Appellants were invited to respond not later than September 29, 2023, and were given direct contact details for Mr. Thomas. No response to the proposal letter was received from (or on behalf of) either Lamolinara or LSP,
- xii) On August 22, 2022, Ms. Ruzycki notified LSP by email regarding concerns of possible Consumer Protection Act violations resulting from the Gardner and Roulette credit agreement transactions,
- xiv) A response to the email was not received from either LSP or Lamolinara,

[38] Neither Gardner nor Roulette testified at the hearing.

[39] Neither Lamolinara nor any other witness testified at the hearing on behalf of the Appellants.

⁴ High Cost of Credit Regulation, Alta Reg 132/2018

EXHIBITS

[40] The following AMENDED Exhibit List includes documents entered during the hearing:

- Exhibit #A1: Letter of Appointment
- Exhibit #A2: Notice of Appeal
- Exhibit #A3: Grounds of Appeal
- Exhibit #A4: Amended Notice of Virtual Hearing
- Exhibit #A5: Proposal Letter dated October 10, 2023
- Exhibit #A6: Director's Order dated October 10, 2023
- Exhibit #A7: Notice of Administrative Penalty dated October 10, 2023
- Exhibit #B: Recommendation Memo
- Exhibit #B1: Roulette's May 13, 2022, agreement with LSP and email re. \$500
- Exhibit #B2: Roulette's May 13, 2022, agreement with LSP and email re. \$250
- Exhibit #B3: Roulette's email re. \$250 transfer from LSP
- Exhibit #B4: Roulette confirmation of transfer & deposit
- *Exhibit #B5: Roulette email dated June 7, 2022, forwarding email from LSP re. collection and fees
- *Exhibit #B6: Roulette email dated June 26, 2022, forwarding email from LSP re. payment agreement schedule
- *Exhibit #B7: Roulette email dated August 2, 2022, forwarding email from from LSP re. collection and fees
- *Exhibit #B8: Roulette email dated August 16, 2022, forwarding email from Roulette's employer to investigate Ruzicki re. calls received at her workplace
- *Exhibit #B9: Roulette email dated August 16, 2022, forwarding email from LSP requesting response from Roulette within 24 hours or they would proceed with collections
- *Exhibit #B10: Roulette email dated November 30, 2022, forwarding email from We Call To Collect advising that calls will continue unless payment is arranged
- *Exhibit #B11: Roulette email dated December 2, 2022, forwarding email

- from LSP advising payment is due
- *Exhibit #B12: Roulette December 31, 2022, email from We Call To Collect that calls will continue unless payment is arranged
 - Exhibit #B13: Gardner email dated August 17, 2022, forwarding email thread with LSP regarding payment agreements, threats and IBV
 - Exhibit #B14: The Office of the Privacy Commissioner of Canada findings Regarding IBV May 30, 2022.
 - Exhibit #B15: Gardner email dated June 21, 2022, forwarding email thread re. agreement with LSP and email outlining loan amount of \$600
 - Exhibit #B16: Gardner's loan agreement re. \$600
 - Exhibit #B17: APR and Canadian Law
 - Exhibit #B18: Audio document recording-call to LSP
 - Exhibit #B19: Corporate Search Enterprise Registrar of Quebec (QER) search: Les Solutions Preteurs Inc. and The Lenders Solutions Inc. – Province of Quebec
 - Exhibit #B20: Les Solutions Preteurs Inc. / The Lenders Solutions Inc. Quebec High Cost of Credit License
 - Exhibit #B21: Certificate of No High Cost of Credit, Collection or Payday Loan License from the delegated Director of Fair Trading
 - Exhibit #B22: August 22, 2022, letter to Les Solutions Preteurs Inc and Directors regarding investigation
 - Exhibit C: activity notes re. file #45529 (Gardner)
 - Exhibit D: activity notes re. file #46098 (Roulette)
 - Exhibit #E1: pdf file re. Roulette rescinded contract in amount \$500
 - Exhibit #E2: pdf file re. Roulette rescinded contract in amount \$500

THE APPELLANTS SUBMIT THAT:

[41] The Government of Alberta has neither material nor adjudicative jurisdiction over the commercial activities of the Appellants.

[42] The “real and substantial connection” test in *Unifund*⁵ is the accepted test for discerning the presumptively intended reach of federal legislation as well as the

⁵ *Unifund Assurance Co. v. Insurance Corp. Of British Columbia*, 2003 SCC 40, at para. 140.

constitutionally permissible application of provincial legislation.⁶ This is because the test is concerned with the constitutional applicability of legislation and not with its constitutional validity.

[43] The test also functions as a principle of statutory interpretation: it limits or reads down, the territorial reach of otherwise broadly framed provincial legislation, consistent with the territorial restrictions on provincial legislative power in ss. 91 and 92 of the Constitution Act, 1867, by insisting on a “sufficient connection” between the legislation and the out-of-province defendant.

[44] There is jurisdiction over out-of-province parties if there is a “sufficient connection” or “real and substantial connection” with the province

[45] The CPA is not and should not be deemed to be trans provincial in nature. This is particularly so in circumstances where a business entity’s presence in a province is simply by virtue of being available to provincial residents through the internet.

[46] Such lending is not unique to Alberta; each province has its own legislation in respect of such lending. Trans provincial enforcement is not required as each province manages its own lender regulation and enforcement. A complaint about high-cost lenders from Quebec could and should have been brought Quebec where the Quebec regulatory registers and maintains compliance by lenders, has complaints process, manages and conducts enforcement activities and inherently has full jurisdiction over the Appellants.

[47] There is insufficient indicia or circumstances to support a claim by the Director as to a “sufficient connection” between the Appellants and the Province of Alberta for the Director to deem and assert jurisdiction over the Appellants.

[48] The Government of Alberta has acknowledged that it does not have jurisdiction over business entities whose transactions are deemed to fall within the provisions of the CPA and as such the CPA requires lenders to become an extra provincially registered corporation and maintain a registered office in Alberta.

⁶ *Unifund Assurance Co. v. Insurance Corp. of British Columbia* 2003 SCC 40 [2003 2 S.C.R. 63].

[49] As part of the registration process of such lenders in Alberta, the CPA requires a lender to become an extra provincially registered corporation and maintain a registered office in Alberta. By doing so, the business entity would be “resident in Alberta” and, as such, be subject to the laws of Alberta.

[50] For the Government of Alberta to deem a transaction between LSP and a borrower to be subject to the CPA, there are insufficient indicia or circumstances to support the claim for a “sufficient connection” such as to permit the Province of Alberta to claim oversight over the Appellants by the Director or to exert and enforce jurisdiction over the Appellants.

[51] In Ms. Ruzycki’s letter of August 22, 2022, it is clear that allegations made on behalf of the Director could support both penal proceedings pursuant to the Criminal Code and administrative charges under the CPA. As such, in light of the risk of penal proceedings under the Criminal Code, despite being entreated by Ms. Ruzycki to provide evidence in response, the Appellants had a right pursuant to Section 11 of the Canadian Charter of Rights and Freedoms against self-incrimination.

[52] Correspondingly, the Tribunal (“Appeal Board”) must ensure that it is vigilant in its consideration of the evidence entertained, conclusions drawn, and decisions rendered given the prospect of penal proceedings.

[53] The burden of proof accordingly must be “beyond a reasonable doubt”. If it is not

- a. The Appellants are not free to give evidence without risk of self-incrimination;
- b. More generous rules of evidence applicable in administrative hearings could permit inclusion of evidence under oath, both *viva voce* and documentary, that would not otherwise be admissible in penal proceedings; and
- c. A Tribunal decision against the Appellants could be prejudicial in any subsequent penal proceedings.

[54] During oral submissions on behalf of the Director, counsel for the Appellants objected to certain documentary evidence being entered into the Tribunal record.

[55] At the completion of oral submissions by the Director, it was confirmed that not all documentary evidence disclosed to the Director to the Appellants had been entered into the Tribunal record.

[56] Ms. Ruzycki's letter dated February 21, 2013, from Ms. Ruzycki to the Director and entered into evidence through Ms. Ruzycki as Exhibit B (Recommendation Memo) formed the basis of the Order and Administrative Penalty and should not be considered by the Tribunal because:

- a. The hearing is a hearing *ab initio* and as such, the Director must produce evidence *ab initio* in support of its onus to support the Order and Administrative Penalty. As such, any evidence relied upon as the basis of either must be presented to the Tribunal as fresh evidence; the conclusion and basis upon which others made determinations are irrelevant for the purposes of the Tribunal;
- b. The letter includes:
 - i) unsupported generalizations and opinions that have not been made specific, relevant or applicable to the Appellants
 - ii) documentary evidence some of which have not been entered into the record cannot be introduced by reference;
 - ii) references to mother allegations against the Appellants of which the Appellants were unaware and which did not form part of the matter before the Tribunal

[57] Exhibit B is not relevant for the purposes of the hearing and its inclusion in the record would be highly prejudicial to the Appellants.

[58] Exhibits B5-B15 should not be admitted because they were not identified, confirmed or referenced by a witness.

[59] It is unfair for the Tribunal to consider evidence which is not properly qualified as to do so would not require the Director to meet its specific onus, not permit the Appellants to understand and properly prepare a response to allegations., would

result in a hearing by ambush, and not require the parties to be thoughtful and discerning in the presentation of evidence and submissions

[60] Moreover, a general claim of “relevance” of evidence and documents without proper qualification of evidence cannot support a burden of proof.

THE DIRECTOR/RESPONDENT SUBMITS THAT:

[61] The Director of Fair Trading had valid jurisdiction to issue both the Order and the Administrative Penalty.

[62] Application of the CPA is not limited to businesses that are physically located in Alberta. To serve the public interest in Alberta, the CPA gives broad authority to the Director of Fair Trading to render administrative enforcement decisions against “any person” who contravenes the CPA or its regulations.

[63] By virtue of s. 5(a)-(c) unfair practice provisions under the CPA, explicitly apply to situations where the consumer is a resident of Alberta, where the consumer transaction’s offer or acceptance is made in or is sent from Alberta, or where an unfair practice is received in Alberta.

[64] The HCCR being a regulation under the CPA, explicitly applies (by virtue of HCCR s. 2) to out-of-province or internet lenders who enter into a high-cost credit agreement with a borrower located in Alberta.

[65] Where there is a dispute in terms of whether a provincial administrative regulator has jurisdiction over an out-of-province entity, the Supreme Court of Canada has repeatedly found that an out-of-province entity advertising, marketing, offering services and products to residents of a province, including over the internet, can be subject to that province’s jurisdiction. In support of this position, the Director cites the decisions in *Sharp*⁷, *Google Inc.*⁸ and *Unifund*⁹.

⁷ *Sharp v. Autorite des marches financiers*, 2023 SCC 29, at paras. 30, 114-116, 128, 129, 135.

⁸ *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, at para. 37.

⁹ *Unifund Assurance Co. v. Insurance Corp. of British Columbia*, 2003 SCC 40, at para 140.

[66] Exhibits B2 and B16 serve to prove that both Ms. Roulette and Ms. Gardner were residents of Alberta at the time that they entered into their respective credit agreements with LSP.

[67] The Director has authority to issue an order under s. 157 of the CPA if the Director is of the opinion that the subject of the order has contravened the CPA or its regulations or issue a notice of administrative penalty under s. 158.1 if the subject of the administrative penalty has contravened the CPA or its regulations. In either case the subject does not need to be physically located in Alberta or be a resident of Alberta.

[68] At the time of both the transaction with Ms. Roulette and the transaction with Ms. Gardner, LSP was operating a “high-cost credit business” in Alberta as defined by s. 124.01(b) of the CPA.

- a. The CPA defines a “high-cost credit agreement” as a credit agreement that provides for a rate of 32% or more as calculated in accordance with the regulations, and includes a lease but does not include a payday loan.”
- b. The CPA defines “high-cost credit business” as “the activity of offering, arranging for or entering into a high-cost credit agreement.”
- c. The consumer contracts between LSP and Ms. Roulette were high-cost credit agreements as defined under s. 124.01 of the CPA because the basic, non-annualized cost of credit rate for the \$250 loan and rescinded \$500 loan was approximately 64.2% over the 77 day term.
- d. The consumer contract between LSP and Ms. Gardner was a high-cost credit agreement as defined under s. 124.01 of the CPA because the basic, non-annualized payable cost of credit rate for the \$600 loan was approximately 63.65% over a 99 day term.
- e. Ms. Ruzicki testified and clarified in her evidence that she calculated APR on the loans as per the Cost of Credit Disclosure Regulations, and verified annual percentage rates (APR) with professional actuaries and accountants. The APR percentages calculated were approximate, but far exceeded 32% in both cases.

[69] Exhibit B21 proves that the Appellants contravened CPA s, 124.02 by entering into high-cost credit agreements in Alberta without the required high-cost credit

business licence because they did not possess a Province of Alberta high-cost credit business licence when they entered into high-cost credit agreements with either Ms. Roulette or Ms. Gardner.

[70] LSP contravened the CCDR and the HCCR by failing to meet the requirements of cost of credit disclosure for high-cost credit businesses and high-cost credit agreements because:

- a. None of the credit agreement between LSP and Ms. Roulette or Ms. Gardner included or were preceded or accompanied by a statement including:
 - i. Total interest rates or amounts
 - ii. The application of payments as between interest and principal,
 - iii. APR,
 - iv. The nature and amount of any fees or charges beyond the \$60 dishonoured pre-authorized debit fee, \$50 advance-notice late payment fee, and \$0.95 “per pre-authorized debit” fee,
 - v. The term or amortization period of the loan in a clear, concise, logical order and in a manner that is likely to bring the information to the borrower’s attention,
 - vi. A statement that the borrower is entitled to prepay the entire outstanding balance at any time without penalty and is entitled to make partial prepayments without penalty on any scheduled payment date.
- b. LSP failed to disclose elements of the credit agreement required by s. 8 of the CCDR and s. 62 of the CPA, particularly including annual interest and APR,
- c. The LSP credit agreement had dishonoured pre-authorized debit fees that exceed the maximum allowable fee set by the Director under s. 23(3) of the HCCR, and the Director has set and published online a dishonoured pre-authorized debit fee of \$25 under s. 23(3) of the HCCR,
- d. The LSP credit agreements include statements that default would result in the imposition of fees and costs that are not allowed under s. 69 of the CPA.

[71] The Appellants committed unfair practices under the CPA because:

- a. LSP misled or deceived borrowers about the actual interest or APR of the credit agreements in contravention of s. 6(4)(a) of the CPA:

- i. The LSP website, thelenders.ca, advertised an APR of 32% and stated the company complied with Canadian laws. The actual payable cost of credit on the credit agreement with Ms. Roulette and Gardner and on the rescinded agreement with Ms. Roulette, was more than double that on terms less than a third of a year,
- ii. Since the APR is the annual percentage rate, it is mathematically impossible for the APR on any of these credit agreements to be 32%,
- b. LSP misled or deceived borrowers about the amounts that would actually be charged as part of the loan in contravention of s. 6(4)(a) of the CPA:
 - i. The total amount LSP noted as payable did not add up to the total amount of the payments to be made by Ms. Roulette and Ms. Gardner under each credit agreement,
- c. LSP entered into credit agreements where it knew or ought to have known that the consumer would be unable to receive and reasonable benefit from the credit agreement in contravention of s. 6(3)(a) of the CPA:
 - i. The CPA does not say “no benefit whatsoever”; it says “the consumer is unable to receive any reasonable benefit”. A consumer may receive a negligible benefit from a transaction and the supplier could still commit an unfair practice as a result of the consumer not receiving a reasonable benefit,
 - 1. The Director has statutory discretion under the CPA to determine what constitutes a “reasonable benefit” and whether an unfair practice was committed.
 - ii. The borrowing costs to Ms. Roulette and Ms. Gardner were significantly beyond what a regulated high-cost lender is permitted by law to charge. Ms. Roulette and Ms. Gardner would therefore not receive any reasonable benefit from their credit agreements with LSP on this consideration alone,
 - iii. The Appellants argued that the actions of a consumer matter when determining whether a business has complied with consumer protection laws under the CPA. However, this is not a civil proceeding, and an administrative enforcement action in a commercial regulatory context is not the same as an assessment of damages being awarded to a party who had suffered a loss. A business is not absolved from complying with section 6(3)(a) in the event that a consumer knowingly

enters into a consumer transaction where they receive no reasonable benefit. The onus is on the business not to commit an unfair practice, not on the consumer to avoid being the victim of one.

- iv. The evidence indicates that both Ms. Gardner and Ms. Roulette were financially vulnerable. In emails dated August 9, 2022, between LSP and Ms. Gardner, Ms. Gardner's financial situation affected her ability to repay her loan. As outlined above, Ms. Roulette's ability to repay impacted LSP's willingness to lend her money, resulting in a reduction of the credit that LSP advanced from \$500 to \$250.
- v. Also to be considered when determining a reasonable benefit is the doctrine of unconscionability. The Supreme Court of Canada has recognized the doctrine of unconscionability as an equitable doctrine to set aside unfair agreements resulting from an inequality of bargaining power, with the intent that those who are vulnerable in the contracting are protected from loss or improvidence. A contract "is improvident if it unduly advantages the stronger party or unduly disadvantages the more vulnerable". While neither the Director nor the Appeal Board has jurisdiction to resolve contractual disputes, the doctrine of unconscionability is helpful to inform the Board on whether a consumer realized a reasonable benefit as a result of the transaction. Both Ms. Gardner and Ms. Roulette were in financially vulnerable positions, creating a bargaining imbalance that led to them accepting credit with attached extreme credit costs that provided no reasonable benefit.
- vi. In the cases of both Ms. Roulette and Ms. Gardner, there may have been a negligible benefit to the consumers in assessing credit from LSP, but it was not a reasonable one because of the subsequent negative impact of the extreme cost of credit on the consumers' finances. In the case of Ms. Gardner, LSP referred her loan to collections because she was unable to repay it.

[72]. The public interest is served by the Order and the Administrative Penalty.

- a. Protection of consumers from unfair business practices is a stated purpose in the preamble of the CPA. This included requiring that businesses cannot take advantage of a consumer's unfamiliarity with

- applicable rules or their vulnerable personal situations,
- b. Another stated purpose in the preamble of the CPA is to ensure that businesses that comply with legal rules should not be disadvantaged by competing against those that do not,
 - c. The operative provisions of the CPA and its regulations, including licensing, contract and disclosure requirements, prohibitions on unfair practices, and high-cost credit rules, are all in place to serve the public interest,
 - d. To further the public interest purposes, the Director has authority under s. 157 of the CPA to issue an order to any person whom, in the Director's opinion, has contravened or is contravening the Act or its Regulations,
 - e. The Director also has jurisdiction under s. 158.1 of the CPA to issue an administrative penalty to any person who has contravened or is contravening the CPA or its regulations,
 - f. Because the Appellants have demonstrated a repeat pattern of contraventions through multiple unrelated transactions, being the unrelated transactions with Ms. Gardner and Ms. Roulette respectively, the administrative penalty amount of \$22,500 and additional enforcement measures that accompany a s. 157 Director's Order is appropriate.
 - i. The Supreme Court of Canada has upheld the notion that "sizable [administrative] penalties are necessary" when the purpose is to ensure regulatory compliance, "so the penalty is not simply considered a cost of doing business".
 - g. Lamolinara was the sole director and 50% shareholder of LSP in May and June 2022, when the transactions with Ms. Gardner and Ms. Roulette occurred. While the administrative penalty was only issued to LSP as a corporate entity, the public interest is served by ensuring that Ms. Lamolinara as the controlling mind of LSP is subject to additional enforcement measures available under CPA s. 127(b)(i) and 158 of the CPA. The primary purpose of this is to ensure the controlling mind of LSP cannot evade accountability by continuing the same activities under a different legal entity.

[73] Confirming the Order and Administrative Penalty will comply with the principles of administrative fairness:

- a. The Appellants were provided with the opportunity to participate in investigator Ruzycki's investigation,
- b. Exhibit B (p 8) and Exhibit B22 demonstrate that the Director provided the Appellants with an explanation of the Director's proposed decision and time to respond before issuing a Director's Order under CPA s. 157, and an Administrative Penalty under CPA s. 158.1,
- c. The Order and Administrative Penalty were accompanied by an explanation of the Director's determination that the Appellants had contravened sections of the CPA, CCDR, and HCCR,
- d. On August 22, 2022, CIU investigator Ruzycki notified LSP by email that complaints were received regarding possible CPA violations in their consumer transactions with Ms. Roulette and Ms. Gardner,
- e. The Appellants copied the CIU general email correspondence addressed to Ms. Gardner but did not provide a response to Ms. Ruzycki's investigation,
- f. The Appellants were provided with the majority of the Director's disclosure on January 31, 2024, with the remainder following on April 12, 2024, well in advance of the appeal hearing commencing on May 29, 2024,
- g. The Appellants had ample opportunity to present their case and supporting evidence at the appeal hearing.

[74] The administrative penalty amount of \$22,500 is valid and justified:

- a. In their grounds of appeal, the Appellants claim that the administrative penalty is "excessive and unnecessarily punitive",
- b. Section 158.1(3) of the CPA allows a penalty of up to \$100.000 for each contravention of the CPA or its regulations, with the Director having the discretion to determine an appropriate amount based on specific circumstances,
- c. The Appellants' multiple unrelated instances of noncompliance indicated that enforcement measures were appropriate to address systemic contraventions,
- d. LSP should have been aware of the regulatory framework for both high-

- cost credit and cost of credit disclosure. There was no indication in the evidence available that LSP made any good faith due diligence efforts to be compliant with any elements of the regulatory framework at the time of the contraventions,
- e. The impact of the contraventions on the complainants was significant. In addition to engaging in unfair practices in these credit agreements with the complainants, LSP engaged in behavior that was clearly designed to mislead or deceive and to take advantage of the desperation of individuals seeking emergency credit. Courts have found that intentional and exploitative behavior leading the significant monetary benefit justifies larger administrative penalties under the CPA,
 - f. One of the key factors when determining the amount of a fine or administrative penalty under the CPA is that it should eliminate the benefits for the business that arose from the contravention. This is identified both in the policies guiding determination of administrative penalties generally, but also in the CPA itself, where the courts are given authority under s. 164(1) to issue a maximum fine of \$300,000 or three times the amount obtained by the defendant as a result of the offence. This factor has been a key consideration for the purposes of the administrative penalties proposed in relation to licensing and the unfair practices,
 - g. The Alberta Court of Appeal has found that simply because sanctions may have a punitive effect on the wrongdoer does not mean that they do not also serve a valid regulatory or administrative purpose. The power of an administrative decisionmaker, in this case the Director, “to determine the quantum of sanction should not be fettered by a court-made rule limiting the [decisionmaker’s] scope of sanction on the basis that the penalties that might be imposed are perceived to be punitive.”

[75] The enforceability of contract terms, the Appellants’ efforts to assist Ms. Gardner and Ms. Roulette with meeting their contractual obligations are separate issues from whether the Appellants contravened the CPA and is outside the scope of this matter. Contract terms and common law principles such as freedom of contract do not supersede legislation in this matter.

[76] The submissions on behalf of the Director conclude that the evidence supports the following:

- a. LSP entered into high-cost credit agreement with both Ms. Roulette and Ms. Gardner;
- b. The simple cost of credit on both credit agreements exceeded 60% on terms That were less than a third of a year;
- c. The CPA and its regulations apply to these transactions;
- d. LSP did not have a required high-cost credit business license in Alberta;
- e. LSP failed to disclose elements of the credit agreement required by the CPA and its regulations;
- f. LSP included in these credit agreements dishonoured pre-authorized debit fees that exceed the maximum allowable under the CPA and its regulations;
- g. LSP committed unfair practices in these transactions.

[77] Accordingly, the Director submits that the public interest would be served by confirmation of the Order and the Administrative Penalty, and requests that the Appeal Board confirm both as issued.

DECISION and REASONS:

[78] The Appeal Board rules:

- i. The Order and the Administrative Penalty are quashed as against the Appellant: Valeria Lamolinara
- ii. The Order and the Administrative Penalty are confirmed as against the Appellant: Les Solutions Preteurs/The Lender Solutions Inc.

[79] The Appeal Board finds that there was no evidence that Valeria Lamolinara took part in the alleged transactions. The only evidence presented as to Valeria Lamolinara's participation was her position as a director of the LSP. No further theory of her involvement was presented. In the Appeal Board's view this is not sufficient in the circumstances to conclude that Valeria Lamolinara took part in the transactions.

[80] The Appeal Board finds that there is insufficient evidence to either confirm or vary the Order and Administrative Penalty as against the Appellant Les Solutions Preteurs/The Lender Solutions Inc.

[81] The Appeal on behalf of the Appellants does not succeed for reasons that follow herein.

[82] The Appellants have not provided any law to support their claim that a criminal standard of proof and reasonable doubt must apply in the case before the Appeal Board.

[83] The Supreme Court of Canada held in *Guidon* that “Should an individual be assessed an administrative monetary penalty and subsequently face criminal prosecution for the same conduct (or vice versa), that individual may argue that bringing the second proceedings in the particular circumstances is an abuse of process”. That is recourse available to the SLP in the event of a criminal prosecution.

[84] The Supreme Court in *Unifund* did not rule that having a sufficient connection excludes all other jurisdiction’s business’s activities. Neither *Sharp* nor *Unifund* establish that a “sufficient connection” or “real and substantial connection” for that matter excludes the application of the regulatory jurisdiction of another.

[85] The Appeal Board that because LSP made its lending activities available in Alberta, it knowingly entered into transactions with Alberta residents, and LSP’s transactions caused financial loss to Alberta borrowers, there is a sufficient connection between the LSP and Albertans in the case before it. The CPA therefore applies, and the jurisdiction of the Director and the Appeal Board apply as well.

[86] By virtue of s.14 of the ABR, the Appeal Board is not bound by the rules of evidence in judicial proceedings. The Appeal Board is permitted to receive and consider evidence that is relevant to its decision including hearsay evidence.

[87] The Appeal Board is satisfied that the Director has both submitted and explained the relevance of the evidence presented to establish the specific

contraventions and violations committed by LSP. The Appeal Board does not agree with the submission that there is no evidence to indicate or prove any contraventions.

[88] The Appeal Board agrees that at the hearing on July 18, 2024, all parties present including counsel representing LSP agreed that the only Exhibits that were not to be admitted as Exhibits were B5-B12.

[89] The Appeal Board agrees that Exhibit B is admissible and should be given consideration because:

- i. it serves to provide a summary of Ms. Ruzycki's investigation and her findings and is fundamental to both the Order and Administrative Penalty which are the subject of this appeal,
- ii. the Director has identified the document and provided an explanation several times during the hearing,
- iii. it is the role of the Appeal Board as decisionmaker to weigh the evidence, consider arguments and opinions on both sides of the appeal, and determine relevance and applicability,
- iv. the fact that a decisionmaker reads, hears, or sees something that is unfavourable to a party does not render that inadmissible, irrelevant, or unfair.

[90] The Appeal Board rules in response to the claim regarding "hearing by ambush" and not providing a fair opportunity to understand and prepare for evidence and submissions:

- i. That the Director's disclosure was provided on January 31, 2024, and the remainder on April 13, 2024, and provided more than adequate time to review and prepare a response or provide contrary evidence,
- ii. The Director did not tender as an exhibit any documentary that had not been disclosed in advance,
- iii. The Appellants have not provided applicable or relevant law that renders evidence or opinion inadmissible in an administrative proceeding where the opposing party has been provided with such well in advance of the hearing.

[91] The Appeal Board agrees with the Director's counsel that evidence otherwise properly admitted, ignoring the informed conclusions of Ms. Ruzycki in Exhibit B

and any mention of previous complaints and investigations, the following are still supported and sufficiently demonstrated:

- i. LSP entered into high-cost credit agreements with both Ms. Roulette and Ms. Gardner,
- ii. LSP did not provide the statutory disclosure that is required for a high-cost of credit agreement pursuant to the CPA
- iii. The CPA and regulations under the CPA apply to the transactions,
- iv. LSP did not possess a high-cost credit business license for Alberta,
- v. LSP failed to disclose elements of the credit agreements required by the CPA and regulations under the CPA,
- vi. the dishonoured pre-authorized debit fees included by LSP in the credit agreements exceeded the maximum allowable,
- vii. LSP committed unfair practices in both transactions,
- viii. LSP demonstrated a pattern of non-compliance through multiple unrelated consumer transactions,

[92] The Appeal Board finds that the CPA is unequivocal as to its jurisdiction. Specifically, section 5 of the CPA is clear that it applies to consumer transactions where the supplier or consumer is resident in Alberta. There is no ambiguity to be resolved, and the intention of the CPA is clear. The Appeal Board is hesitant to provide a constitutional gloss over that would conflict with the plain wording of the CPA. The Appeal Board notes section 11 of the *Administrative Procedures and Jurisdiction Act*, which provides that the Appeal Board does not have jurisdiction to consider constitutional questions.¹⁰

[93] The Appeal Board accepts the evidence of Ms. Ruzycki with respect to her aborted transaction with LSP. No evidence was led that would suggest the website or process had changed between the use by Ms. Roulette or Ms. Gardner, and the Appeal Board concludes that on a balance of probabilities their experience was the same as Ms. Ruzycki's.

[94] The Appeal Board also finds the evidence presented by Ms. Ruzycki was sufficient on a balance of probabilities to establish that the transactions between

¹⁰ *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A 3

Ms. Roulette or Ms. Gardner and LSP occurred as described by Ms. Ruzycki. The forms and contracts were sufficiently similar to those arising from Ms. Ruzycki's aborted transaction to establish the same likely occurred.

[95] The Appeal Board is therefore satisfied that the contracts were entered into by Ms. Roulette or Ms. Gardner and LSP on the terms described. The Appeal Board finds the fees charged should be included in the cost of credit because these were part of the value to be given up by the borrower. These loans accordingly to be repaid with several hundred dollars in interest and fee, which was nearly $\frac{1}{2}$ the amount loaned, over a term of a loan of less than a year. A simple calculation would show each of these loans to be in excess of the 32% specified by s. 124.01 of the CPA. Accordingly, pursuant to s. 124.01(a) of the CPA, each transaction was a high-cost credit agreement.

[96] It is also clear from the materials that several disclosure items are missing from the LSE high-cost of credit agreement as identified in argument. The absence of these items was not disputed at the hearing.

[97] It was not disputed that LSP had no license. The Appeal Board has also found entered into a high-cost credit agreement for the purposes of the CPA. Section 125.01(b) describes entering into such a contract as a "high-cost credit business" in Alberta. Section 124.02(1) of the CPA requires a license for carrying on such a business. LPA does not have such a license. Hence the Appeal Board finds the relevant section to have been breached.

[98] The transactions provide for fees for dishonouring pre-authorized credit fees of between \$50.00. The CPA limits the maximum amount to be charged for these fees to be \$25.00 pursuant to Section 23(3) of the HCCR. This is less than the amounts described above. Accordingly, the Appeal Board finds LSP violated said section.

[99] The Appeal Board also agrees with the submission that Ms. Roulette and Ms. Gardner were unlikely to receive any benefit from this transaction because the high rate of interest deprived them of any value in the transaction. The failure to disclose the actual rate of interest including the fees was also likely to mislead a consumer

because it misstated the rate of interest by failing to include the various fees to be charged.

[100] Section 6(3)(a) of the CPA provides that it is an unfair practice for a supplier: “to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services.” Section 6(4)(a) of the CPA provides that it is an unfair practice for a supplier to do or say anything that may mislead a consumer.

[101] “Supplier” is defined as person who provides goods and services to consumers as part of its business. Section 1(1)(k) of the CPA defines services to include the offering credit agreements for personal purposes. The Appeal Board finds this applies to LSP whose business was to provide high-cost credit agreements, as per the reasoning above. The Appeal Board also finds that these agreements appear to be directed at individuals (not businesses) as there is no indication on the website that businesses are the target of the transaction or that the transaction is intended for anything other than personal use. Accordingly, LSP is a supplier.

[102] The Appeal Board also finds that Ms. Roulette and Ms. Gardner were consumers. “Consumer” is defined in section 1(1)(b) of the CPA as referring to an individual purchasing the service on its own behalf. Ms. Roulette and Ms. Gardner are individuals and there is no evidence that either Ms. Roulette and Ms. Gardner were entering into the agreements except on their own behalf. Ms. Roulette and Ms. Gardner were therefore consumers. Accordingly, the offences under ss. 6(3)(a) and 6(4)(a) of the CPA are met on these facts because LSP.

[103] The Appeal Board is satisfied that documentation regarding alleged multiple unrelated consumer transactions and incidences of noncompliance were disclosed to counsel acting on behalf of LSP and is also satisfied that previous complaints and investigations that did not result in enforcement action were not relied upon.

[104] Confirming the Order and Administrative Penalty is consistent with principles of administrative fairness, especially given that:

- i. The Appellants were invited to participate in Ms. Ruzycki's investigation and to respond to concerns, before the Order and Administrative Penalty were issued,
- ii. The Appellants were given the Director's disclosure on January 12, 2024^v and again on April 12, 2024,
- iii. The Appellants were given ample opportunity to present their case, including witnesses and documentary evidence at the hearing,
- iv. The Appeal Panel does not agree that the Administrative Penalty is excessive and unnecessarily punitive,
- v. The s. 164 of the CPA allows for a fine of not more than \$300,000 or three times the amount that resulted from the offence
- vi. The multiple unrelated instances of noncompliance deserve the administrative penalty that was issued by the Director,
- vii. There was no evidence led by LSP that any good faith due diligence efforts were made.

CONCLUSION AND ORDER

[103] In accordance with the reasons provided herein, the Panel confirms the decision of the Director to issue the Director's Order and Administrative Penalty on October 10, 2023.

ISSUED AND DATED in the Province of Alberta this 15th day of March, 2025

A blue ink signature of Michael Swanson, consisting of a large 'L' shape followed by a horizontal line and a small flourish.

Michael Swanson KC (Chair)

A blue ink signature of Kent Pallister, written in a cursive style.

Kent Pallister (Member)

A blue ink signature of Joshua Selby, written in a cursive style.

Joshua Selby (Member)