

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

**Action No.: 0301-15879**

**BETWEEN:**

**JACOB AYRTON, as representative Plaintiff**

Plaintiff

- and -

**PRL FINANCIAL (ALTA.) LTD., PAYROLL LOANS (ALBERTA) LTD., AND DAVID  
ASH**

Defendants

**Action No.: 0401 - 12407**

**AND BETWEEN:**

**JACOB AYRTON, as representative Plaintiff**

Plaintiff

- and -

**HORNBY LOAN BROKER (ALBERTA) INC., THURLOW CAPITAL (ALBERTA)  
INC., DAVID FELLER, PRAVEEN VARSHNEY, SOKHIE PUAR AND PATRICK  
WARREN**

Defendants

**NOTICE OF REPRESENTATIVE ACTION**

TO: Persons resident in Alberta, except the Defendants, who:

- i. borrowed money as a short term loan payable on or about the borrower's next pay day (a "Payday Loan") from the Defendants PRL Financial (Alta.) Ltd. and Payroll Loans (Alberta) Ltd. or from the Defendants Hornby Loan Broker (Alberta) Inc. and Thurlow Capital (Alberta) Inc. subsequent to January 1<sup>st</sup>, 1997;

- ii. were charged interest fees and a loan brokerage fee ; and,
- iii. repaid some portion of the loan amount, the brokerage fee or interest.

Please read this notice carefully in its entirety. This notice relates to the certification of a Class Action. If you are a Class Member, this notice contains important information about your rights described below.

If you are a Member of the Class and you do not opt-out, you will be bound by the determination of the common issues as decided by the Court.

If you opt-out, you will not be able to participate in any monetary recovery whether by way of judgement or settlement.

This notice has been provided to you in accordance with the Order of the Alberta Court of Queen's Bench.

### Purpose of this Notice

This Notice is being provided because you may be a Member of a Class of persons whose rights may be affected by this lawsuit. The purpose of this notice is to inform you that the Alberta Court of Queen's Bench and the Alberta Court of Appeal has determined that this lawsuit may proceed as a Representative Action on behalf of all persons resident in Alberta, except the Defendants, who:

- i. borrowed money as a Payday Loan from the Defendants PRL Financial (Alta.) Ltd. and Payroll Loans (Alberta) Ltd. or from the Defendants Hornby Loan Broker (Alberta) Inc. and Thurlow Capital (Alberta) Inc. subsequent to January 1<sup>st</sup>, 1997;
- ii. were charged interest fees and a loan brokerage fee ; and,
- iii. repaid some portion of the loan amount, the brokerage fee or interest.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court as to the truth of the allegations in the lawsuit or the merits of the claims or defences asserted in the lawsuit.

### **Class Definition**

Class Members are all persons as described above in the prior section of this notice.

Class Counsel estimates that there are tens of thousands of people who are part of the Class.

## **Rights of the Class Members**

If you are a Class Member, you may receive the benefit of and will be bound by the terms of any order of the Court with respect to the common issues.

If you are a Class Member, you have the following **options**:

1. You may await the outcome of the proceedings, following which you may be entitled to the benefit of any settlement or judgment. If you choose this option, you will remain a Class Member and, subject to proving your loss, you will share in the proceeds of any settlement or judgment.
2. You may elect to opt-out of the Class. If you opt-out of the Class, you will not participate in any settlement or judgment and you will not receive the benefits of any settlement or judgment. However, you will also not be bound by any settlement with or judgment against the defendants and your claim, if any, will remain unaffected. If you wish to opt-out of the Class, you must mail or deliver a written request for exclusion in the appropriate Opt- Out Form by no later than August 11<sup>th</sup>, 2006. Opt-Out Forms may be downloaded from the website [www.mcnallycuming.com](http://www.mcnallycuming.com) or may be obtained by phoning 1-800-682-2480.

## **Time To Opt-Out**

Class Members who want to be excluded from the class action must mail or deliver a signed Opt-Out Form in the form attached to Class Counsel at the address indicated below on or before August 11<sup>th</sup>, 2006. Class Members who do not complete and mail or deliver an Opt-Out Form to Class Counsel on or before August 11<sup>th</sup>, 2006, will automatically be part of the Representative Action.

## **Legal Fees and Disbursements**

Pursuant to the various fee agreements entered into with the Representative Plaintiffs at the commencement of the litigation, Class Counsel will seek approval of a fee of 33.33% of any amount recovered, alternatively, a multiplier of 4x the number of hourly rate of Class Counsel, whichever is the greater, plus disbursements, which will be funded by Class counsel, plus applicable GST.

## Description of the Proceeding

On October 8<sup>th</sup>, 2003, an action was commenced against the Defendants **PRL FINANCIAL (ALTA.) LTD., PAYROLL LOANS (ALBERTA) LTD., AND DAVID ASH** of Alberta and elsewhere. Subsequently, on August 10, 2004, a further action was commenced against the Defendants **HORNBY LOAN BROKER (ALBERTA) INC., THURLOW CAPITAL (ALBERTA) INC., DAVID FELLER, PRAVEEN VARSHNEY, SOKHIE PUAR, PATRICK WARREN**. Both actions were subsequently consolidated by Court Order granted February 18<sup>th</sup>, 2005.

The Representative Plaintiff alleges losses suffered as a result of the conduct of the Defendants in granting **PAYDAY LOANS**. Specifically, the Representative Plaintiff complains of the conduct of these Defendants, in lending money at rates or interest that exceed the maximum annual amount of 60% permitted by s.347 of the *Criminal Code*. The proceedings seek the following relief:

- (a) a declaration that the Payday Brokerage Fees charged by the Defendants PRL Financial (Alta.) Ltd., Payroll Loans (Alberta) Ltd. Hornby Loan Broker (Alberta) Inc., and Thurlow Capital (Alberta) Inc. are interest within the meaning of s.347 of the *Criminal Code*;
- (b) a declaration that all agreements and arrangements made by the Defendants PRL Financial (Alta.) Ltd., Payroll Loans (Alberta) Ltd. Hornby Loan Broker (Alberta) Inc., and Thurlow Capital (Alberta) Inc. for the advance of a Payday Loan resulted in the receipt of interest at a criminal rate contrary to s. 347 of the *Criminal Code* and as such the agreements or arrangements are unlawful and void;
- (c) a declaration that all agreements and arrangements made by the Defendants PRL Financial (Alta.) Ltd., Payroll Loans (Alberta) Ltd. Hornby Loan Broker (Alberta) Inc., and Thurlow Capital (Alberta) Inc. for the advance of a Payday Loans failed to comply with *Fair Trading Act* or the *Consumer Credit Transactions Act* and as such they are unlawful and void;
- (d) an accounting and tracing of all monies received by the Defendants, or one or any of them;
- (e) an order directing repayment of, or damages for, all monies received by the Defendants, or one or any of them, in the amount of \$15,000,000;

- (f) alternatively, an order directing the repayment of, or damages for, any amount paid in excess of a sum fairly due to the Defendants, or one or any of them;
- (g) alternatively, repayment of, or damages for, the amount by which the interest and Payday Brokerage Fees exceeded a rate of interest of 60% per annum being the maximum rate of return to the Defendants permitted by s.347 (1) of the *Criminal Code*;
- (h) statutory damages from the Defendants, or one or any of them, in the amount equal to the lesser of \$500 or 5% of the maximum outstanding balance of the Payday Loan and other financial charges as provided by s 98(3) of the *Fair Trading Act*;
- (i) punitive and /or exemplary damages;
- (j) an injunction to prevent the Defendants, or one or any of them, from continuing to carry on their unfair practices as provided by s. 13(2) of the *Fair Trading Act* ;
- (k) interest on all amounts found to be owing pursuant to the *Judgment Interest Act*, R.S.A. 1980, c. J-0.5, and amendments thereto;
- (l) costs, subject to the Plaintiff’s right to argue for a “no costs regime”;
- (m) such other relief as to this Honourable Court may seem just and meet.

### **Financial Consequences of the Class Proceeding**

Class Members will be entitled to the benefit of a successful judgment of the Court or settlement on the common issues. Class Members who opt-out of the Class will not benefit from any successful judgment or settlement.

The Representative Plaintiff has entered into fee agreements with Plaintiff Class Counsel that provide for the Plaintiff Class Counsel to be paid, for legal services rendered, one-third of the settlement or favourable judgment, alternatively, a multiplier of 4x the number of hourly rate of Class Counsel, whichever is the greater, and to be reimbursed for disbursements incurred in the litigation. The fees and disbursements will form a first charge on any recovery, in favour of Plaintiff Class Counsel, if the settlement is approved or a favourable judgment is obtained. Plaintiff Class Counsel will apply for Court approval of their fees and disbursements.

No Class Member will be responsible for Plaintiff Class Counsel's legal fees or disbursements unless money is recovered in a settlement or judgment.

If the claims of the Class are dismissed against some or all of the Defendants, then those Defendants may seek to recover their legal costs of defending the claims against the Representative Plaintiff but not against Class Members.

## Common Issues

The following were determined to be common issues:

- i. Do the Payday Brokerage Fees set out in the Statement of Claim and collected by the Defendant Payroll Loans (Alberta) Ltd. and subsequently by Hornby Loan Broker (Alberta) Ltd., and the Ainterest fee@ remitted to the Defendant PRL Financial (Alta.) Ltd. and subsequently Thurlow Capital (Alberta) Inc., in respect of the Payday Loans advanced to the representative Plaintiff and other Class members:
  - A. constitute interest for the purpose of s.347(1) of the *Criminal Code*;
  - B. exceed 60% on the principal amount of each Payday Loan advanced and constitute a criminal rate of interest as defined in s.347(1) of the *Criminal Code*;
  - C. constitute agreements or arrangements to receive interest at a criminal rate, contrary to s.347(1) (a) of the *Criminal Code*;
  - D. constitute receipt of interest at a criminal rate, contrary to s 347(1)(b) of the *Criminal Code*.
- ii. Have the Defendants knowingly and deliberately received payment of a criminal rate of interest on the Payday Loans by way of the Payday Brokerage Fees in conjunction with the other interest payable to the Defendants?
- iii. Are the Payday Loans are also "unconscionable and harsh" within the meaning of s. 2 of the *Unconscionable Transactions Act* RSA 2000, c. U-2 ("UTA")?
- iv. Are the representative Plaintiff and other Class members Aconsumers@ within the meaning of the *Fair Trading Act*?
- v. Are the Payday Loans advanced to the representative Plaintiff and other Class members Aconsumer transactions@ within the meaning of the *Fair Trading Act*?

- vi. Are the Defendants Payroll Loans (Alberta) Ltd. and Hornby Loan Broker (Alberta) Inc. Aloan brokers@ and are the Defendants PRL Financial (Alta.) Ltd. and Thurlow Capital (Alberta) Inc. Acredit grantors@ within the meaning of the *Fair Trading Act* or the *Consumer Credit Transactions Act*?
- vii. Have the Defendants complied with s.59 (5)(b) of the *Fair Trading Act* in calculating the cost of credit by properly disclosing the value given by the representative Plaintiff and other Class members to the Defendants?
- viii. Have the Defendants failed to provide a proper or any disclosure statement setting out the APR as required by ss.73(2), 73(3) and s.77 of the *Fair Trading Act* and ss 8(1) (o) of the CCD Regulation?
- ix. Have the Defendants been unjustly enriched at the expense of the Plaintiff Class Members in circumstances where:
  - a. the Defendants have been enriched to the corresponding detriment of the Representative Plaintiff and other Class Members; and
  - b. there was no valid legal basis for the enrichment?
- x. Are the representative Plaintiff and other Class members entitled to repayment of or damages for all amounts paid by them to the Defendants, on the basis that the agreements or arrangements are void for illegality and as provided by s.96 of the *Fair Trading Act* or any amount in excess of the principal of the loan as provided by s. 8(a) (iii) of the *Consumer Credit Transactions Act*?
- xi. Are the representative Plaintiff and other Class members are entitled to repayment of or damages for any amount paid by them in excess of a sum fairly due to the Defendants for the Payday Loans and Payday Brokerage Fees as a result of a breach of s. 2 of the UTA, if any?
- xii. Are the representative Plaintiff and other Class members entitled to repayment of or damages for any amount paid by them in excess of the rate of 60% per annum being the maximum rate of return permitted by s.347 (1) of the *Criminal Code*?
- xiii. Are the representative Plaintiff and other Class members entitled to statutory damages from the Defendants in the amount of the lesser of \$500 or 5% of the maximum outstanding balance of the Payday Loan and Brokerage Charges as provided by s 98(3) of the *FTA*?

xiv. Is the conduct of the Defendants intentional and deliberate and undertaken by the Defendants, or one or any of them, to exploit the economic vulnerability and necessitous circumstances of the representative Plaintiff and other Class members?

xv. In any event, does the conduct of the Defendants merit sanction by the Court pursuant to its inherent jurisdiction and/or pursuant to s. 99 of the *Fair Trading Act*?

xvi. Are the personal Defendants jointly and severally liable to the representative Plaintiff and other Class members for the action of the corporate Defendants?

xvii. Does the Alberta Limitations Act apply in this matter, or is it set aside because the Criminal Code of Canada is paramount legislation? ( This issue is restricted solely to the public policy ground of “paramountcy” and the Representative Plaintiff has specifically agreed not to raise the issue of “discoverability.”)

### **Disclosure Consequences of the Class Proceeding**

Class Members will be deemed to have consented to the disclosure by Plaintiff Class Counsel to Defendants’ Counsel of all information relating to their respective claim. The information will go to the Defendants’ Counsel for use in the litigation or settlement, but cannot by law be used outside the litigation.

### **Further Information**

Class Counsel in this matter is:

McNally Cuming Raymaker  
Barristers & Solicitors  
1500, 635 8<sup>th</sup> Ave SW  
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Class Members who wish to obtain more information about the representative action should contact Margaret Ferner at McNally Cuming Raymaker.

