

Credit Reporting: How Are Consumers Faring?

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Executive Summary

This report looks at the consumer's experience of credit reporting. Credit reporting agencies are private companies that collect and organize information about a consumer's credit history and current transactions and then sell it in the form of a consumer report.

We have become an increasingly credit dependent society, thus the credit-reporting system can have a major impact on all aspects of our lives. It is one of the means by which credit grantors obtain information that they use as a part of the credit decision process to determine our ability to get a bank account, a mortgage, a credit card, and even employment and rental accommodation. Knowledge about the credit reporting system as well as the accuracy and reliability of such reports is therefore critical for consumers.

There is little actual data in Canada about how consumers use and understand the credit reporting system. This report is an attempt to go beyond anecdotal evidence by conducting a national survey of consumers. We also undertook in-depth interviews with a range of key stakeholders in the credit reporting system in order to better understand the issues in credit reporting and test assumptions about credit reporting.

Key findings of the survey

Percentage that have received credit report

- 17% of Canadian adults (18 and over) have checked credit rating in last 3 years (approx. 4.2 million Canadian adults)

Demographic characteristics of users of the credit reporting system

- The demographic characteristics of respondents are generally the same as for Canadian households. The age distribution and income profile is similar to the overall population. The average household size is three and most respondents are married.
- The respondents are somewhat more likely to own their own home and are more likely to participate in the labour force and be employed than Canadians overall
- The respondents are also slightly more likely to be female and somewhat higher educated than Canadians in general

Accuracy of credit reports

- 18% have found inaccuracies on their credit report
- 80% had taken steps to correct the inaccuracy
- It took on average, 4 hours to correct problem (half a day of work time)
- Main implication of the inaccuracy, 10% believe they were denied access to financial services

Views of credit reporting system

- Credit reporting agencies scored highest on respect for privacy
- Credit reporting agencies scored lowest on transparency of the process for getting changes made
- 54% indicated they understood the terms used by the credit reporting system
- 45% were either neutral or did not understand the terms used by the credit reporting system
- 51% indicated understanding what the various credit scores mean
- 46% were either neutral or indicated that they did not understand what the various credit scores mean
- 63% indicated that the credit-reporting system is understandable and a good way to determine access to financial services like bank loans
- Respondents are least likely to believe that it is a good way to determine access to non-financial services such as utilities or apartments (55%)
- 4.8% have lodged a complaint about a credit-reporting agency
- Respondents were most likely to complain to a financial institution or government agency
- Why had they not lodged a complaint? The majority said that they thought it would be too time consuming

Conclusion

Our survey findings and interviews with key stakeholders suggest that credit reporting may not be assisting either consumers or the marketplace as well as it could. Consumers are not sufficiently aware of credit reporting and there is a lack of public attention to and transparency around credit reporting by credit reporting agencies, credit grantors and government. This lack of awareness means that consumers may be subject to inaccuracies on their credit file, may be vulnerable to the lure of services that may not deliver on promises of consumer protection or may be increasingly subject to the use of credit reporting in areas that do not appear to have any readily discernable link. Our research suggested some key findings and recommendations about credit reporting, which are described below.

Recommendations

Public awareness of credit reporting

- Consumer reporting agencies and credit grantors should participate in public campaigns that would encourage consumers to access their credit report.
- A consumer notification provision found only in some legislation (B.C., Saskatchewan and Nova Scotia) should be part of new harmonized

legislation in all jurisdictions. This provision would notify a consumer when the user of a credit report denies or increases the cost of a benefit as result of information in credit report. Such a provision would help increase consumer awareness of credit reporting and reduce inaccuracies.

- Provincial governments need to do more to publicize and educate consumers about the use of credit reporting in financial (and non-financial services), their credit reporting legislation and its consumer protections

Accuracy

- Saskatchewan, Ontario, Manitoba, B.C., and PEI, have provisions in their credit reporting legislation that state if a user of information contained in a credit report either turns down a benefit or increases the cost of the benefit as a result of information contained in the credit report, they must provide written notice to the consumer of the denial or increase within a short time period of the decision. We would support this as a minimum requirement in harmonized credit reporting legislation.
- Nova Scotia's legislation contains a more responsive provision. It further adds that the user of the information must inform the consumer of his/her right to have disclosure of all information in the consumer report and of the name and address of the consumer reporting agency or other source of the information contained in the report
- An Ontario private member's bill contains a more comprehensive provision that would assist in improving accuracy of credit reports, by requiring more than simply notification be given to the consumer. The person who takes an adverse action based on a credit report would be required to provide a copy of the credit report to the consumer, including the name and address of the agency that prepared it and notify the consumer of their right to correct incomplete or inaccurate information. We support this as the most consumer responsive legislative provision.

Transparency

- We support proposals for more information to consumers about credit scores. In Ontario a private member's bill has been introduced that would require a credit reporting agency, upon written request of the consumer, to disclose the current credit score, the range of possible credit scores under the model used, all the key factors that adversely affected the score, the date the score was created and a summary of how the credit score was calculated

Privacy

- Credit reporting agencies should work with credit grantors, governments and consumer groups to define an alternative unique identifier to the Social Insurance Number.
- The three major credit-reporting agencies voluntarily offer to place fraud alerts on consumer credit files, where identity theft is suspected. However, they should be required by law to do upon request, at no cost, or upon notification

by a creditor of a possible information leak. Credit grantors should be required to check for and observe fraud alerts on credit reports.

- Consumers should be entitled to put a “security freeze” on their credit report which means that the report cannot be shared with potential creditors, insurance companies or employers doing background checks. Consumers should be permitted to lift these freezes with a special code or for certain creditors, either permanently or for specified time period.
- Credit bureaus should notify consumers of attempts to access credit reports or credit scores after a fraud alert has been issued.
- Credit bureaus should be required to remove entries relating to fraudulently obtained credit (consumers should have the right to a credit report clean-up).

Use of credit reports for non-financial reasons

- We need impartially produced, Canadian-based research about whether there is a disproportionate impact on specific groups by the use of credit scores and whether there is a correlation between credit scores as a risk factor in non-financial services such as insurance claims experience.

Expanded use of credit scoring

- There is a concern about any possible linking of credit reporting services now offered to payday lenders in Canada to the main credit reporting agencies. There are potentially very significant risks for consumers that would result, due to the nature of these loans and the resulting high rates of delinquency.

Content of credit reports

- Consumer participation in credit counselling should not be reported on consumer credit reports as participation in bankruptcy processes.
- Consumer reporting agencies should only report inquiry records that result from actual applications for credit.

Regulation of credit reporting

- There needs to be credit-reporting legislation in all provinces/territories. Currently, New Brunswick, the Northwest Territories, the Yukon Territory and Nunavut have no consumer reporting legislation.
- Licensing powers are a critical element of effective credit reporting legislation. Consumer reporting legislation with weak oversight powers is not sufficient to effectively protect consumers.
- The provincial-territorial governments need to have better tracking and reporting processes related to consumer contacts/complaints generally. Harmonized consumer reporting legislation should also include strict regulation of credit repair businesses.
- The length of time that a discharged bankruptcy can stay on credit report varies between provinces (6-7 years). This should be harmonized and some thought given to reducing this figure.

- There needs to be clarity and uniformity between provinces about what free access to a credit report means.
- At a minimum, provincial/territorial privacy protections related to credit reporting should not be less than what is provided by federal privacy legislation.

Introduction

This report looks at the actual consumer experience of credit reporting. This includes how frequently consumers access their credit reports, the accuracy of credit reports, how responsive the credit reporting industry is to correcting errors in credit reports, the personal information requirements of consumers by credit reporting agencies, the impact of a 'bad' credit rating on a consumer, and how credit reports are being used.

In a previous report by PIAC on credit reporting,¹ the author suggested that there was an information gap about the accuracy of credit reporting information and recommended that a survey about the accuracy of credit reports be undertaken. This report responds to that recommendation.

We have become an increasingly credit dependent society. The indicators for this are the pace and change in household debt and the high use of credit instruments. Even banks are sounding alarms about the growth of consumer debt.² They have produced research indicating that household debt is at dangerous levels. Since 1989, growth in household debt outpaced growth in income by an annual average of more than 3 percentage points.³ At the same time, real incomes have remained stagnant for the last fifteen years.⁴

A key factor behind the alarming growth of consumer debt is that real after tax incomes of some income groups have remained stagnant.⁵ Specifically, it is those with median family incomes (approximately \$55,000 in 2000) that have remained virtually unchanged for the past fifteen years, while those with incomes just below the median actually fell since 1990.⁶

Canadians' use of credit cards is also an indicator of our dependence upon credit. The Canadian Bankers Association website indicates that the number of VISA and MasterCard credit cards alone in circulation in Canada in 2004 was 53 million, well exceeding our total population.⁷

¹ Angie Barrados, *Consumer Reporting and Privacy: The Need for Better Consumer Protection* (Ottawa: Public Interest Advocacy Centre, 2000).

² Don Drummond, "In Search of Well-Being: Are Canadians slipping down the economic ladder?" TD Bank Financial Group, *TD Economics Topic Paper* (18 January 2005) and Benjamin Tal, "Are We Sitting on a Debt Time Bomb?" CIBC World Markets, *Consumer Watch Canada* 20 January 2005).

³ Benjamin Tal, *Ibid.* at 1.

⁴ Drummond, *supra* note 2 at 2.

⁵ Drummond, *supra* note 2 at 2 and Tal, *supra* note 2 at 3.

⁶ Canadian Council on Social Development, "Census shows growing polarization of income in Canada" (16 May 2003).

⁷ Statistics Canada reports the latest population estimate as over 32 million (October 2004), online: <http://www.statcan.ca/start.html>

As an extremely credit-dependent society, the credit-reporting system can have a major impact on all aspects of our lives. It is one of the means by which credit grantors obtain information that they use as a part of the credit decision process to determine our ability to get a bank account, a mortgage, a credit card, and even employment and rental accommodation. Thus, the accuracy and reliability of such reports is critical for consumers.

The marketplace is also heavily invested in a properly functioning credit system. Without credit, it is difficult to imagine an effective marketplace in goods and services. Credit information is widely used by an increasing number of entities to assess and mitigate financial and economic risk. This importance of credit to all participants in the marketplace means that credit information must be accurate and reliable and its use must be transparent to consumers. The increasing collection and transmission of personal information electronically also means that consumers must be assured that it is not misused and is properly protected.

The purpose of this study was to better understand the consumer's experience of credit reporting. In addition to determining the number of Canadians who have received their credit report (also known as a credit file), it explores the accuracy of credit reports, why consumers go through the credit reporting process, what they understand about credit reporting and their views of the process and the credit reporting system overall. There is anecdotal evidence of problems faced by consumers concerning accuracy of credit reports and difficulties in correcting credit reports, but there has been little available data indicating how significant or widespread this issue actually is for consumers.

This report also examines the current treatment by the Privacy Commissioner of privacy issues raised by the collection and withholding of personal information about consumers by credit reporting agencies and financial institutions. There are significant privacy and identity theft issues raised by the sensitive personal information collected by credit bureaus. Over the past twenty years, increasing consumer use of credit and debit cards has made more information available to credit bureaus in electronic form. Recently developed technology allows for sophisticated data matching and warehousing techniques. The type of information that credit bureaus are allowed to collect and the uses to which it can be put raise questions in the context of recent thinking about privacy and identity theft.

Credit Reporting – Brief Background

What is credit reporting and who are the participants?

Credit reporting agencies (CRAs), also known as credit bureaus are private companies that collect and organize information about a consumer's credit history and current transactions and then sell it in the form of a consumer report (also known as a credit report).

Credit information about a consumer is created whenever a consumer applies for credit or applies to borrow money. Companies that lend money or issue credit, which typically includes banks, finance companies, credit unions and retailers send specific factual information related to the financial transactions they have with consumers to credit reporting agencies on a regular basis.

Credit information about individuals is supplied, usually without charge, to credit reporting agencies by credit grantors, government agencies and individuals. The information is then compiled and organized in the form of a credit report, which is purchased by those entities that are allowed to become members of the credit-reporting agency. In interviews, at least one credit reporting agency indicated to us that they screen potential members and that certain businesses (such as credit repair agencies, for example) may not become members.⁸

Credit reporting in North America is delivered by the private sector, unlike some parts of the globe, where public registries hold credit information. It has become a very lucrative industry, dominated in Canada and the United States by a few major companies.

There are three major credit-reporting agencies in Canada: Equifax Canada Inc., Trans Union of Canada, Inc. and Northern Credit Bureaus Inc. Equifax Canada Inc. and Trans Union of Canada, Inc. are subsidiaries of U.S. based companies, which comprise two of the three major credit-reporting agencies in the United States. Equifax Inc., the parent company of Equifax Canada Inc. indicates on its website that it has 4,600 employees in 13 countries, with revenues of \$1.2 billion. It has operations in Europe and Latin America.⁹

TransUnion LLC, the parent company of Trans Union of Canada, Inc. specifies on its website that it has 3,600 employees in 24 countries. The website indicates a presence in Columbia, South Africa and Mexico.¹⁰

Northern Credit Bureaus is a wholly Canadian-owned credit-reporting agency, which operates in Quebec and across Canada. It is somewhat smaller in size than Equifax Canada Inc. and Trans Union of Canada, Inc.

What's in a consumer credit report?

The information contained in a consumer credit report from Equifax, TransUnion and Northern Credit Bureaus is generally similar. It consists of:

- Personal identifying information

⁸ Interview of Joel Heft, Vice-President, Corporate Counsel and Chief Privacy Officer, Equifax Canada (31 January 2005).

⁹ <http://www.equifax.com/>

¹⁰ <http://www.transunion.com/>

- Credit history or trade lines – your history of paying bills and debt payments with credit grantors (Equifax’s website indicates that each transaction is evaluated by the credit grantor and assigned a rating on a scale of R0 to R9; R0 indicates that the consumer is too new to rate; R1 indicates that the consumer pays within 30 days of payment due date or not over one payment past due; R9 indicates a bad debt, placed for collection, moved without giving a new address)¹¹
- Public record information – information about secured loans, bankruptcies and/or judgments –registered items that may affect a consumer’s creditworthiness
- Third party collection agency – information about any involvement with a collection agency trying to settle a debt (TransUnion also includes, in its website description related to collections, that it “could include banking information”)
- Consumer statement (only Equifax adds this item on its website description, indicating that the consumer may add a brief comment about any information contained in the file; Northern Credit Bureau indicated that this is also included on the credit report¹²)
- Inquiries

TransUnion also has a list on its website indicating what is not included in a credit report such as: medical histories, major purchases paid in full with cash or cheques, credit scores, race, creed, colour, ancestry, ethnicity or political affiliation.¹³

Credit reports are required, where provincial legislation exists, to be provided free of charge to consumers. This has been interpreted by most provinces (except Nova Scotia) to mean that a copy of a consumer credit report sent by surface mail must be free. Credit reporting agencies may charge for credit reports ordered on-line and they do.¹⁴ Because Nova Scotia has interpreted this to mean that any form of a consumer credit report must be free of charge, Equifax and Trans Union have indicated that they do not offer the online option to obtain consumer credit reports in Nova Scotia.

Interviews with stakeholders about the content of credit reports revealed some practices that may have the effect of misrepresenting a consumer’s creditworthiness. One credit counsellor expressed strong concerns that consumer participation in credit counselling was being reported on consumer

¹¹ Online:

http://www.equifax.com/EFX_Canada/consumer_information_centre/faqs_e.html

¹² Interview with Richard Huot, President of Northern Credit Bureaus Inc. (11 March 2005).

¹³ Online: <http://www.tuc.ca/>

¹⁴ Equifax charges \$14.50 and TransUnion charges \$14.95 for online access; Northern Credit Bureaus charges \$12.00 to receive the report by registered mail.

credit reports as participation in bankruptcy processes.¹⁵ This results in the lowest possible credit rating of I9 or R9, causing a denial of credit. It is also not clear whether frequency of credit inquiries appearing on a credit report has the effect of lowering the overall credit rating.

There is also a concern about the effect of credit inquiries on a consumer credit report. A complaint by a consumer about the number of credit inquiries on their credit report being used by credit reporting agencies and negatively affecting their credit rating was considered by the federal Privacy Commissioner.¹⁶ The Commissioner was persuaded by the credit reporting agencies' argument that credit inquiries are a "proven predictor of credit risk and that, in general, the higher the number of inquiries, the greater the credit risk". The Commissioner also considered the credit reporting agencies' argument that credit grantors do obtain the consent of consumer to use the number of credit inquiries to calculate their credit score and assess their credit worthiness. The Commissioner found the complaint to be unfounded: "a reasonable person would consider the purpose for using the number of credit inquiries to assess an individual's credit worthiness to be entirely appropriate, particularly since it is only one of several factors used to calculate a credit score."¹⁷

Fair Isaac, Equifax and TransUnion have stated that credit scoring does not penalize consumers who shop for credit, that the scores include logic to identify and properly evaluate this behaviour.¹⁸

The Canadian Bankers Association offered a perspective by credit grantors on this matter for PIAC, suggesting that it is the nature of the credit that determines whether the inquiries related to it appear on a credit report:

The consumer practice of "shopping around" for the best credit offer is already a factor that is considered by industry practice. With mortgages, for example, where the rate offered by the credit grantor is based on the consumer's creditworthiness, the person must actually apply for the mortgage (and have creditworthiness determined) to be offered a specific rate. Since most consumers contemplate only one mortgage at a time, credit scoring models currently take into consideration such inquiries made by a consumer within a determined period of time to ensure that multiple inquiries related to obtaining one mortgage are not considered multiple credit when a score is calculated. Such inquiries are posted to a

¹⁵ Interview with Al Antle, Credit Counselling Services of Newfoundland and Labrador (30 July 2004).

¹⁶ *PIPEDA Case Summary #171*.

¹⁷ *Ibid.* Fair Isaac points out that the FICO score only uses inquiries that have been initiated by the consumer. (Source: Written response provided to PIAC (6 July 2005) (notes with author).

¹⁸ Fair Isaac's response to this statement: "Consumers are not punished for exhibiting smart credit shopping behaviours. The current FICO scores include logic to identify and properly evaluate and score this positive change in consumer behaviour." (Source: *Ibid.*)

consumer file so that a consumer is aware of what organizations have accessed his or her file but they do not affect the overall score.

With credit cards, however, the rate is usually on the application form or available without actually applying for the card. Since consumers could conceivably apply for more than one credit card at a time and with each card add to the amount of credit they have outstanding, it is important for credit granters to factor all such applications into consideration in their credit granting decision. As a highly relevant predictor, multiple applications for credit cards should be included in any credit-scoring model.¹⁹

Credit ratings and credit scores

Credit ratings and credit scores are key concepts in the consumer credit reporting system. It is not clear, however, how well they are understood by or differentiated by consumers.²⁰ As indicated above, the items in a consumer's credit history are each assigned a rating by each credit grantor. The most common ratings are "R" ratings, which refer to revolving credit²¹ items. Credit ratings are a critical component of a consumer credit report because they indicate a consumer's actual behaviour regarding credit.

A credit score is not part of a consumer credit report. It consists of a single numeric value that can be ordered from a credit-reporting agency, but it is generated separately from a credit report. It acts more as an indicator of a consumer's future performance with respect to credit. A credit score has been defined as:

[A] numeric value assigned by credit grantors to indicate how likely someone is to pay back a loan or credit card according to the agreed repayment terms. It is an indicator of the level of risk that a borrower might represent. It is used as a predictor of future performance.²²

Various individual credit information is analysed using an algorithm and weighted against the total population to produce the numeric credit score (usually in a range from 300 to 900).

¹⁹ Letter from Linda Routledge, Canadian Bankers Association to Sue Lott, Public Interest Advocacy Centre (20 July 2005).

²⁰ In the 2003 MasterCard Canada survey of Canadians, *infra* note 47 more than one-quarter of Canadians indicated that they don't know what a credit rating is.

²¹ Defined as "type of consumer credit arrangement which permits a buyer or a borrower to purchase goods or secure loans on a continuing basis so long as the outstanding balance of the account does not exceed a certain limit." Black's Law Dictionary, 6th ed., s.v. "revolving credit". An example of revolving credit is a credit card.

²² Equifax Canada Inc. online:

http://www.equifax.com/EFX_Canada/consumer_information_centre/faqs_e.html

The major credit reporting agencies, Equifax and TransUnion indicated in interviews that the scores most widely used in the market place are FICO® scores which are owned by Fair Isaac Corporation, a U.S. firm.²³ The credit reporting agencies indicated to us that they simply generate the request for the score from the consumer and provide it to them for a fee.²⁴ Some of the major banks also indicated that they generate and use their own internal credit scores.²⁵

How is credit reporting regulated?

Credit reporting is regulated by federal privacy legislation, provincial privacy legislation (where it exists) and provincial legislation pertaining specifically to credit reporting. There has also been some recent case law in Ontario that has point towards protections for consumers under credit reporting. These cases (see below) indicate that a credit-reporting agency may be sued for negligence concerning a consumer credit report.

Credit reporting involves the gathering, use and disclosure of personal financial information of individuals. As a result, it is subject to legislation dealing with the protection of personal information. The federal legislation that pertains to credit reporting is the *Personal Information Protection and Electronic Documents Act (PIPEDA)*.²⁶ One part of this legislation establishes principles governing the collection, use and disclosure of personal information by federally and provincially regulated businesses. It also sets out the Office of the Privacy Commissioner of Canada to oversee these principles under an “ombudsman” model. This means that the Privacy Commissioner has few traditional enforcement powers such as the ability to make orders or levy fines on offenders. The Act is effectively enforced by the individual complaints that come before the Commissioner.²⁷

PIPEDA does not apply in Quebec, Alberta and British Columbia, as those provinces have passed their own “substantially similar” privacy legislation.

²³ The credit scoring business appears to be quite lucrative. In its 2003 Annual Report to the U.S. Securities and Exchange Commission, Fair Isaac Corp. reported over \$600 million in annual revenues.

²⁴ Equifax Canada Inc. indicates on its website that it charges \$21.95 for a credit report that includes a credit score. TransUnion charges \$22.90 for a credit report that includes a credit score. (date accessed: 1 April 2005). Northern Credit Bureaus Inc. does not yet provide credit scores. It should be noted that Fair Isaac Corporation slightly disputed the inference by Equifax Canada and TransUnion Canada that they do not own credit scores: “Both TUC and EFXC have and sell their own proprietary credit scores to credit grantors for decisioning purposes.” (Source: Fair Isaac, *supra* note 17.)

²⁵ Interview with Royal Bank (8 February 2005) and written responses to questions provided by Bank of Nova Scotia (14 March 2005).

²⁶ *Personal Information Protection and Electronic Documents Act*, 2000, c. 5 [*PIPEDA*].

²⁷ John Lawford, *Consumer Privacy under PIPEDA: How are We Doing?* (Ottawa: Public Interest Advocacy Centre, 2004) at 6-7.

Credit reporting has been the focus of a significant number of complaints that resulted in findings by the federal privacy commissioner.²⁸ As indicated in a recent PIAC report on the status of the federal privacy legislation, this could be due to a number of factors. Banks, which employ credit reports, have been subject to the largest number of complaints since the legislation's inception (*PIPEDA* applied only to federally regulated businesses, such as banks, for the first three years of its existence. Credit-reporting agencies have also been subject to *PIPEDA* since its implementation, as they are an inter-provincial commercial business.)

The fact that credit reports deal with highly personal information may also explain the number of complaints that have led to findings. Personal financial information has been deemed as highly sensitive by the legislation itself.²⁹ As well, PIAC points out that its use is therefore associated with high standards "requiring, generally, the highest form of consent to collect, use or disclose it – explicit consent."³⁰

This report examines the status of federal privacy protection law in relation to consumer credit reports, with a focus on specific issues raised by PIAC with the Office of the Federal Privacy Commissioner, following our 2000 report on credit reporting.³¹

Provincial credit reporting legislation exists in all provinces except New Brunswick and the territories (Yukon, Nunavut and the Northwest Territories). The contents of the legislation vary somewhat between provinces as well as how credit reporting is administered. Some provinces (Ontario, Prince Edward Island (P.E.I.), Newfoundland, Nova Scotia, Saskatchewan) have a registrar, empowered to license or register credit-reporting agencies and investigate complaints.³² The Saskatchewan government also provides credit-counselling services through its Provincial Mediation Board.³³

British Columbia (B.C.) has a director who is given powers under the Act to determine who may act as a credit-reporting agency and investigate contraventions of the Act.³⁴ Manitoba's Consumers' Bureau administers its credit reporting legislation and the director is empowered to investigate complaints

²⁸ Credit reporting findings were number three, behind banking and telecommunications for the period from 2001-2003. (Source: *Consumer Privacy Under PIPEDA*, *supra* note 27 at 22.

²⁹ *PIPEDA*, *supra* note 26, Principle 4.3.4. states "Although some information (for example, medical records and income records) is almost always considered to be sensitive..."

³⁰ *Consumer Privacy under PIPEDA*, *supra* note 27 at 14 and 22.

³¹ See *Consumer Reporting and Privacy*, *supra* note 1.

³² *Consumer Reporting Act*, R.S.O. 1990, c. C.33, *Consumer Reporting Act*, R.S.P.E.I., c. C-20, *Consumer Reporting Agencies Act*, R.S.N.L., c. C-32, *Consumer Reporting Act*, R.S., c. 93, *The Credit Reporting Act*, S.S. 2004, c. C-43.2.

³³ Saskatchewan Government online:

<http://www.saskjustice.gov.sk.ca/provmediation/default.shtml>

³⁴ *Credit Reporting Act*, R.S.B.C. 1996, c. C.81.

under the legislation.³⁵ Alberta's credit reporting provisions are found in its general consumer protection legislation, the *Fair Trading Act*.³⁶ In Quebec, the Commission d'accès à l'information (the privacy commission) registers and regulates credit-reporting agencies.³⁷

The legislation generally provides for:

- limitations on the purposes for which credit reports may be released (B.C., Ontario, Alberta, Manitoba, Saskatchewan, P.E.I., Newfoundland, Nova Scotia)
- limitations on the type of information that may be collected (B.C., Ontario, Alberta, Manitoba, Saskatchewan, P.E.I., Newfoundland, Nova Scotia)
- requirements for disclosure of credit reports (B.C., Ontario, Alberta, Manitoba, Saskatchewan, P.E.I., Newfoundland, Nova Scotia)
- procedures to ensure accuracy of credit reports (B.C., Alberta, Ontario, Manitoba, Saskatchewan, P.E.I., Newfoundland, Nova Scotia)

Quebec is unique in placing its consumer reporting provisions within its privacy legislation.³⁸ The general provisions place limitations on the purposes for which personal information may be released, limitations on the use of personal information, the requirement to ensure accuracy, and disclosure requirements. There are also provisions specific to credit reports that place requirements on anyone involved in money lending who consults credit reports to inform the subject of the report of their right of access and rectification in relation to the file. Upon request, they must also communicate the content of "any credit report or recommendation he has consulted for the purpose of making a decision concerning the person".³⁹

Court cases on credit reporting

The existence of consumer-reporting legislation in most provinces with licensing and enforcement powers in many, probably accounts for credit reporting not being highly litigated. However, recent legislative and administrative changes in provinces such as Ontario that facilitate class action litigation, may be the reason behind the appearance of some recent case law involving consumer credit reports.

In a recent Ontario case, *Haskett v. Equifax Canada Inc.*⁴⁰ the Court of Appeal found that a claim could proceed against a credit-reporting agency on the basis of negligence. This means that there is a possibility that a credit-reporting agency could be found to have a duty of care in its relationship with a consumer.

³⁵ *Personal Investigations Act*, C.C.S.M. c. P34.

³⁶ *Fair Trading Act*, R.S.A. 2000, c. F-2.

³⁷ *Loi sur la protection des renseignements personnels dans le secteur privé*, L.R.Q. c. P-39.1.

³⁸ *Ibid.*

³⁹ *Ibid.* s. 19.

⁴⁰ *Haskett v. Equifax Canada Inc.*, [2003] 63 O.R. (3d) 577 (C.A.).

The case involved a bank customer's attempt to bring a class action forward concerning inaccurate information on his credit report reported by two credit reporting agencies. The credit reporting agencies brought a motion to strike out the claim, arguing that there was no reasonable cause of action. The motion judge struck the claim, finding that there could be no claim in negligence because the plaintiff couldn't meet the second part of the test for a duty of care (which must be there in order to have a cause of action in negligence), which involve policy considerations or the broader effect that the recognition of a duty of care would have. The policy considerations determined by the motion judge were that there was a potential for imposing liability of an "indeterminate amount for an indefinite time to an indeterminate class" and that there existed an alternative legal remedy, provincial consumer reporting legislation.⁴¹

The plaintiff, Haskett, appealed the decision to the Court of Appeal, which overturned the decision of the motion judge. It did not agree with the motion judge's conclusion that policy considerations should limit or deny the existence of a duty of care, therefore a claim could be brought in negligence against a consumer-reporting agency. The Court did not agree that to extend liability would create a risk of liability of an indeterminate amount for an indefinite time to an indeterminate class. The Court found that there is an identifiable group to which the duty would be owed both within the knowledge and control of the credit-reporting agencies; the timing of the potential harm is not indefinite, because if errors in a report are corrected the negative effect of the inaccuracy is presumably curtailed; and the amount of liability is limited by the purposes for which the report is sought, which is known to the credit-reporting agency.

The Court also dismissed the finding that there is an alternative legal remedy for the plaintiff in provincial consumer reporting legislation. The Court found that the legislation had no provisions to provide a remedy in the form of damages, unlike a civil action, that there could be an issue of difficulty, expense and inconvenience of attempting to use the legislative procedure, which could be fully explored at a trial.⁴²

This case has been cited in other cases that have considered disputes over accuracies of consumer credit reports.⁴³

Another Ontario case decided before *Haskett v. Equifax Canada Inc.* affirmed the obligation of creditors to report to credit agencies consumer credit information that is "accurate, complete and not misleading."⁴⁴

⁴¹ *Haskett v. Trans Union of Canada Inc.*, [2001] O.J. No. 4949 at para. 65-66.

⁴² *Haskett v. Equifax Canada Inc.*, *supra* note 40 at para. 42-52.

⁴³ See *Clark v. Scotiabank*, [2004] O.J. No. 2615, *Fruchter v. Allied International Credit Corp.*, [2004] O.J. No. 4857, and *Houseley v. Global Credit Collection Inc.*, [2003] O.J. No. 5679.

⁴⁴ *Millar v. General Motors of Canada Ltd.*, [2002] O.J. No. 2769.

The Survey Results

Research methodology

The research methodology consisted in the first part, of a large-scale telephone household survey, conducted by a survey research firm, Grant Insights. A randomly selected sample (through Random Digit Dialing) allowed PIAC to compute statistically significant estimates of the incidence. We contacted over 3000 people and interviewed 526 people in this study. In this case, the resulting estimates of incidence are accurate within +/-4.3 per cent, 19 times out of 20.

The other part of the research consisted of consultations (mainly in the form of personal interviews over the phone), with a range of key stakeholders.⁴⁵ This formed an important part of the research for this report, because it provided background, context and a range of perspectives in addition to the household survey of consumers' experience of credit reporting.

Credit reporting involves a number of parties: credit grantors, consumers, credit reporting agencies, regulators and other entities such as credit counsellors. Therefore, in order to better understand the credit-reporting context within which consumers interact, we thought that it was critical to seek the views and perspectives of these parties as much as possible.

The questions asked of all stakeholders were generally similar, with some questions specifically tailored to the respondents' specialized knowledge.

Key findings

Frequency of checking credit rating⁴⁶

We estimate that 17 percent of Canadian adults (18 and over) have checked their credit rating in the last three years. Based on current estimates of the Canadian adult population, about 4.2 million Canadian adults have checked their credit rating in the last three years. It is important to add that this is a conservative estimate. It is based on respondents to the telephone survey. Over three thousand people refused to be surveyed (from over eleven thousand calls). If these refusals have the same incidence rate of the overall population, another five hundred thousand Canadians could be added to the top line estimate of those who have checked their credit rating in the last three years.

Other survey results on incidence of checking credit rating

⁴⁵ See Appendix D for list of stakeholders.

⁴⁶ Questions were posed in the form of asking about a credit "rating" rather than a credit "report" as it was felt that respondents would be more familiar with this term, although in fact the "rating" refers to the rate assigned by credit grantors to each trade line. Thus the rating is part of a larger credit report.

Our findings on the frequency of Canadians' checking their credit reports seems to be consistent with existing survey research in Canada.

There is very little survey research on Canadians' experience of credit reporting, which was a major reason for PIAC's desire to do this survey. However, in 2003 MasterCard Canada conducted a survey of 2000 Canadians concerning their credit rating knowledge and behaviour.⁴⁷ The surveyed showed that less than one third (31%) of Canadians have ever checked their credit report and that from the period of 2002-2003, 18% of Canadians had checked their credit report.

Source of checking credit rating

When asked if they could recall with whom they had checked their credit rating, a slight majority (45%) indicated it was through a financial institution. This is usually triggered by loan applications. However, 43% indicated they had checked their credit rating through a credit-reporting agency, with Equifax identified as the agency by 38% of respondents (4% of respondents indicated they had checked their credit rating with TransUnion).

Reason for checking credit rating

The majority of respondents (41.6%) indicated that the reason they had checked their credit rating was that they wanted to apply for a loan or a mortgage. However, 40 percent indicated that they had checked for their own personal interest. This is significant and may indicate that there are concerns about privacy and accuracy of information around credit reporting even when people do not intend to apply for credit.

Demographic characteristics of users of credit reporting system

The demographic characteristics of the respondents are generally the same as for Canadian households. The age distribution and income profile is similar to that of the overall population. The average household size is three and most respondents are married.

There are a few differences between the respondents and average Canadians. The respondents were somewhat more likely to own their own home and are more likely to participate in the labour force and be employed than Canadians overall. The respondents were also slightly more likely to be female and somewhat higher educated than Canadians in general.

The issue of gender and level of education were areas that were of interest to us, given the slightly greater incidence of females and higher education in the survey. We were interested in knowing whether there were any possible impacts of gender and level of education on the survey findings. Were specific

⁴⁷ MasterCard® Canada, Press Release "MasterCard Launches Credit Report Week Encouraging Canadians to Understand their Credit Information" (8 September 2003). Online: http://www.mastercard.com/canada/general/press/pr_2003_09_08.html

groups more likely to contact credit-reporting agencies and/or experience the process of credit checking? Although we found some interesting variations, the differences in responses by gender and educational attainment were not significant enough to generalize about the impact of gender and/or educational attainment on the survey responses.⁴⁸

Impact of gender on survey responses

Females were slightly more likely to say that their credit rating was inaccurate (19.5 per cent versus 16.1). The nature of these inaccuracies was roughly the same, with inaccurate items being the most popular. Similarly, the implications of the inaccuracies were very similar, with people being denied financial services being the most prevalent.

Females were more likely to experience poor service from credit reporting agencies especially in areas such as accuracy and timely changes to credit reports.

Females were somewhat less likely than males to understand the terms of the credit reporting system, although males and females are very similar in their understanding of credit reporting scores and the implications of those scores.

Males and females express broadly similar views on the use of credit reporting for access to financial and non-financial services.

Females were slightly less likely to report problems with credit reporting agencies, but these numbers are small and should be used with caution.

The interviews with stakeholders shed some light on some aspects of gender and credit reporting. One credit counselor suggested that women may be getting short-changed under the credit reporting system if their partners incur bad credit and then leave the relationship, since women's credit scores may be assessed based on that of their partner if they agreed to co-sign or guarantee debt obligations of partners or spouses (particularly in heterosexual relationships). This person indicated that it is important for women to be informed about the importance of building their own credit files.⁴⁹

Impact of education on survey responses

The sample was somewhat more likely to have achieved mid level education, particularly high school and community college than the overall population.

⁴⁸ Grant Insights, *Public Interest Advocacy Centre Credit Reporting Project: Supplementary Report* (22 November 2004).

⁴⁹ Interview with Al Antle, Credit Counselling Services of Newfoundland and Labrador (30 July 2004).

Aspects of the survey that may relate to education were explored. Very few people indicated that they do not understand what a credit rating is and education therefore has a marginal impact on this.

People with very low or very high levels of education generally not do engage in credit checking. It tends to be done by people with at least high school and up to and including bachelors degrees.

The accuracy of the credit rating was more or less in line with the overall sample and therefore education did not appear to be a factor in whether the credit rating was found to be accurate. Similarly, overall education did not seem to play a factor in how respondents assessed the credit reporting system.

Accuracy of credit reports

Because this research had in large part been prompted by the desire to determine whether anecdotal evidence about inaccuracy of credit reports was in fact borne out by consumers' experience, we wanted to determine the incidence of inaccuracy. But we also wanted to ask a series of questions around the issue of inaccuracy including the consumer's experience dealing with inaccuracy and any implication for the consumer of an inaccurate credit report.

We also asked this question in our interviews with key stakeholders, which is discussed below.

We found initially that the percentage of people who have found inaccuracies on their credit report is significant – 18%. When asked what the nature of the inaccuracy was, respondents indicated that there were items on the report that were inaccurate or there were items that should have been removed.

When asked if they had tried to correct the inaccuracy, 80 percent indicated that they had taken steps to correct the inaccuracy.

Respondents were asked how long it took to correct the inaccuracy. It took on average, about four hours of total time to correct the problem or about half a day of the consumer's work time.

The main implication of inaccuracies was that people indicated that they were denied access to financial services. This percentage is just over 10% and therefore isn't necessarily a highly alarming proportion, it takes on more significance when translated into actual population numbers. More than three-quarters of a million adult Canadians believe that they were denied access to financial services due to an inaccuracy in their credit report.⁵⁰

⁵⁰ We found 95 people who said they found inaccuracies out of a total sample of 3085 that responded to our topline question about checking their credit rating. Therefore $95/3085=3.08$ per

People also reported relatively high levels of stress and wasted time as a result of inaccuracies.

Other survey results on credit report accuracy

As indicated above, there is little existing research about the consumer experience of credit reporting, generally. The 2003 MasterCard Canada survey of Canadians does not report on any questions related to accuracy of credit reporting. There is some U.S. based research on accuracy of consumer credit reports but it is not as statistically valid as PIAC's survey.

The U.S. Public Interest Research Group (PIRG) conducted a study in 2004 on consumer credit report accuracy.⁵¹ They asked 200 adults in 30 states to order their credit report and review it for accuracy. One of the key findings was that 25% of credit reports surveyed contained serious errors. The report's authors concluded that the errors were significant enough that they "could result in a denial of credit, such as false delinquencies or accounts that did not belong to the consumer."⁵²

Surprisingly, the report's authors found that 79% of the credit reports surveyed contained a mistake of some kind.⁵³

It is important to note that the self-selection of 200 individuals who agree to obtain and analyse their individual credit reports, however interesting, does not constitute a statistically valid sample. This approach fails requirements of randomness, demographics or survey size to be able to generalize from its findings about the experience of the U.S. population at large concerning the accuracy of individual credit reports.

Government statistics on complaints/accuracy issue

Detailed statistics on consumer reporting complaints or inquiries by province are not available. Interviews with provincial government representatives indicated that many do not systematically track or log consumer complaints. However, interviews produced some anecdotal information about the extent and nature of credit reporting complaints.

Service Nova Scotia and Municipal Relations, the department that oversees consumer issues, indicated that it tracks written complaints by category, but it

cent x 24,700,000(current adult Canadian population at the time of the survey) =760,615 adult Canadians.

⁵¹ National Association of State PIRGs, *Mistakes Do Happen: A Look at Errors in Consumer Credit Reports* (June 2004).

⁵² *Ibid.* at 4.

⁵³ *Ibid.*

does not keep statistics on the number of phone calls it receives from consumers. The department's records for 2003 indicate one complaint per month about consumer reporting agencies.⁵⁴

The Provincial Mediation Board and Office of the Rentalsman in Saskatchewan, which, among other duties, provides budgeting advice and counselling to individuals with personal debt problems, indicated that it receives approximately six calls per week from consumers inquiring about credit reporting issues.⁵⁵ The Consumer Protection Branch office of the Government of Saskatchewan indicated that since 1999, they have received 305 phone inquiries about credit reporting, of which 118 were complaints for which a file was opened. They indicated that based on these statistics, in their view credit reporting is not a significant issue, given that they open approximately 3,000 files per year.⁵⁶

The P.E.I. Department of Consumer Services did not provide any statistics on consumer inquiries or complaints about credit reporting, but did indicate that the majority of complaints are about inaccuracies of credit reports and the responsiveness of credit reporting agencies.⁵⁷

The Consumer's Bureau of Manitoba, which oversees credit reporting in that province indicated that they do not keep such detailed statistics; they estimate that they receive approximately 5 calls per week from consumers either inquiring or complaining about consumer reporting agencies.⁵⁸ The Office of the Ombudsman/Access and Privacy Commissioner's office indicated that they receive approximately 12 inquiries or concerns about credit reporting per year. They refer those complaints to the Consumer's Bureau.⁵⁹

The Ontario Ministry of Consumer and Business Relations, which is responsible for the province's consumer reporting legislation, indicated that in 2003 they received a total of 1001 complaints and inquiries about consumer reporting agencies. Of the total, 142 were written complaints and 859 were inquiries. The major issues were incorrect information (particular items are false, inaccurate) (35%) and requests for general information about consumer reporting agencies (50%). These included: is the consumer reporting agency registered? how can I get a copy of my credit file?; the consumer reporting agency is not responding to my request; who can get access to my credit file?; what sort of information can

⁵⁴ Interview with Richard Shaffner, Director of Consumer and Business Policy (5 August 2004).

⁵⁵ Interview with Terrance Chinn, Rentalsman/Chairman, Provincial Mediation Board and Office of the Rentalsman (6 August 2004).

⁵⁶ Interview with Al Dwyer, Registrar, Consumer Protection Branch, Saskatchewan Justice Department (12 April 2005).

⁵⁷ Interview with Gwyneth Jones, Consumer Services Officer and Linda Peters, Compliance Officer (11 August 2004).

⁵⁸ Interview with Marjorie Kolbe, Director, Consumers' Bureau (4 August 2004).

⁵⁹ Interview with Barry Tuckett, former Ombudsman for Manitoba (retired February 2005) (30 August 2004).

appear on my credit file?; the consumer reporting agency has not responded/is very tardy in responding to my request for correction of errors on my file.⁶⁰

Views of other parties on issue of accuracy

Despite the somewhat inconclusive statistics from provincial government sources about the nature of credit reporting complaints, the issue of accuracy of consumer credit reports is a theme that ran throughout our conversations with key stakeholders. Credit grantors, credit reporting agencies, government officials, credit counsellors and consumers we spoke to are unanimous about the importance of accuracy of credit reports. One financial institution stated: “The Bank has a legal and moral responsibility to ensure the data it reports is accurate.”⁶¹

However, stakeholders differ on the depth of the problem of credit report accuracy and potential solutions to improve accuracy, as the following summary indicates.

We have limited knowledge about the mechanics of credit reporting that might account for or explain inaccuracies. It is our understanding that credit grantors record updates and changes and provided as monthly updates in electronic form to credit reporting agencies. This process may account for some inaccuracies due to delays in receiving updated information and/or delays due to investigations. Credit reporting agencies often interpret provincial legislation that allows for ‘reasonable procedures’ for ensuring accuracy as giving 30 days to investigate complaints.⁶²

Banks themselves acknowledge the challenges of the electronic environment of matching information between the credit grantor and credit reporting agencies. Providing updated information to an existing file and matching information such as name, address and date of birth, can result in “small errors.”⁶³

But our survey and comments from key stakeholders indicates that there can also be inaccuracies that persist for periods much longer than a month or two and can lead to denial of credit.

PIAC spoke to representatives from credit-counselling agencies across the country. All four identified accuracy of credit reports as a key issue.

⁶⁰ Email from Rob Harper, Manager, Consumer Protection Reform, Ministry of Consumer and Business Services (13 October 2004).

⁶¹ Bank of Nova Scotia, *supra* note 25.

⁶² Alberta’s legislation allows for 90 days to investigate disputes over accuracy and completeness. (See *Fair Trading Act*, *supra* note 36 at s. 48(2).)

⁶³ Interview with Royal Bank, *supra* note 25.

Credit counselling agencies have a very direct relationship with consumers and credit reporting because they counsel clients on debt and credit related issues and often set up debt repayment plans for their clients. One credit-counselling agency identified an issue of inaccuracy in credit reports related to their work. They were receiving 12-15 contacts per month from current or former clients who had successfully completed debt repayment plans or credit counselling with the agency that these reports from the credit counselling agency were showing up on credit reports as equivalent to bankruptcies, creating significant problems for some clients' existing creditors (such as a client's mortgage coming up for renewal).⁶⁴

The credit counselling agency indicated that it no longer reports its clients' files to the credit reporting agencies. This is the result of the agency unsuccessfully attempting to contact the credit reporting agencies to request such corrections and the less than fully successful requests for corrections by the clients themselves.⁶⁵ This is a significant problem because it completely defeats the purpose of a credit report to show all of the consumer's credit history, both positive and negative.

Another credit counsellor reported that they did not experience the same difficulties with credit reporting agencies. They indicated that the credit reporting agencies accept the information provided by the agency as grounds for revising inaccuracies in clients' files without clients having to contact the credit reporting agencies directly.⁶⁶

One credit counsellor identified accuracy of credit reports being affected by the reappearance of information that has been removed from consumer credit reports. The concern is that there is no mechanism in place to ensure that inaccurate information that has been removed from a person's credit report stays off the report. The result: consumers feeling and effectively being powerless in relation to their own personal financial information.⁶⁷

Government officials also focused on accuracy in their comments to us, some of which echoed concerns raised by credit counsellors. One government official corroborated the concern raised by credit counsellors about people's successful engagement in debt repayment programs through credit counselling agencies not being given due recognition by credit reporting agencies.⁶⁸ The same official

⁶⁴ Interview with Al Antle, Credit Counselling Services of Newfoundland and Labrador (30 July 2004).

⁶⁵ *Ibid.*

⁶⁶ Interview with Fran Smith, Credit Counselling Services of Alberta (3 August 2004).

⁶⁷ Interview with Margaret Johnson, Solutions Credit Counselling Service Inc., B.C. (5 August 2004).

⁶⁸ Interview with Terrance Chinn, Chairman, Provincial Mediation Board/Office of the Rentalsman, Government of Saskatchewan (6 August 2004).

also identified the problem of items on consumer credit reports either not being removed when they should be or reappearing later without cause.⁶⁹

Government representatives from a provincial consumer services department indicated that they intervene with credit reporting agencies on behalf of consumers when the consumer can substantiate complaints. They note that there are differences in the time taken to correct inaccuracies, depending upon the source of contact to the credit-reporting agency. They indicated that when they call to correct inaccuracies on behalf of a consumer they will often get the error fixed immediately, contrary to what consumers are told when they contact credit reporting agencies (normally told that it takes 30 days). Their view is that 30 days is too long for consumers to have to wait to obtain corrections in their credit reports.⁷⁰

Credit reporting agencies are extremely sensitive to the concern about accuracy of consumer credit reports. This is not surprising, given that it goes to the core of their business. They indicated that it was in the interest of all parties that consumer credit reports be accurate. They also point out, rightly, that they receive and report information from credit grantors; they do not originate credit-reporting information.

However, when we asked about whether they kept records of the number of requests to correct inaccurate information and whether they would provide them to us, both Equifax and TransUnion declined our request, but for different reasons.

TransUnion indicated that information about the number of disclosures they do per year constituted competitive business information that they would not want to release publicly.⁷¹

Equifax's response was that obtaining general information about corrections in consumer credit files would not be helpful in illuminating the issue of inaccuracy. They suggested to us that accuracy has to be understood in relation to its purpose, to facilitate access to credit; that there are inaccuracies in credit reports that do and do not affect credit worthiness.⁷²

In response to Equifax's qualifications about the impacts of differing levels of inaccuracy, it is useful to point out that privacy legislation places specific requirements around accuracy for those who use personal information on an ongoing basis and which is disclosed to third parties, such as credit reporting

⁶⁹ *Ibid.*

⁷⁰ Interview with Gwyneth Jones and Linda Peters, *supra* note 57.

⁷¹ Interview with Chantal Banfield, General Counsel, TransUnion Canada (25 November 2004).

⁷² Interview with Joel Heft, Vice-President Corporate Counsel and Chief Privacy Officer, Equifax Canada Inc., Debbie McCartney, Director of Legal Services, Equifax Canada Inc. and Odette Auger, Vice-President, Operations, Equifax Canada Inc. (10 November 2004).

agencies. Accuracy regarding personal information is deemed as a privacy principle under PIPEDA, with these specific requirements:

4.6 Principle 6 -- Accuracy

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

4.6.3

Personal information that is used on an ongoing basis, including information that is disclosed to third parties, should generally be accurate and up-to-date, unless limits to the requirement for accuracy are clearly set out.⁷³

Surveys show that consumers have a very limited understanding of what aspects of a consumer credit report affects their ability to get credit.⁷⁴ Unless and until consumers are made aware of the existence of credit reports, educated by consumer arms of government about their specific rights in relation to credit reporting, and given more information by credit grantors and credit reporting agencies about how credit reporting works, they will exercise little to no influence on accuracy of credit reports. They will also remain in the dark about what information must be accurate to enable their ability to get credit.

The fact that our survey shows that only 17% of adult Canadians have checked their credit report in the last three years, suggests very low activity on the part of Canadians around ensuring credit report accuracy.

Credit reporting agencies do have more consumer friendly information on their websites, which is helpful. But the presence of this information presupposes an existing consumer awareness of credit reporting that isn't borne out by our survey.

The larger question raised by the issue of inaccuracy is to what extent can consumers be in the driver's seat on this issue? Consumers need to be aware of existence of their credit report and receive it regularly from the major credit reporting agencies to ensure accuracy. But consumers don't control how data is transferred by credit grantors or processed by credit reporting agencies.

Northern Credit Bureau focused their comments on the issue of inaccuracy on the factors that impact inaccuracy in a credit report. They pointed out that the restrictions on the use of a unique identifier such as Social Insurance Number

⁷³ PIPEDA, *supra* note 26, Schedule 1.

⁷⁴ A 2005 survey by the Consumer Federation of America and Fair Isaac Corporation found that almost 49% of Americans thought a credit score represents either credit availability, debt levels, credit IQ or didn't know what it represented; 45% thought that increasing one's income increases one's credit score (source: Consumer Federation of America and Fair Isaac Corporation, News Release, "Many American Misunderstand Credit Scores According to New National Survey" (15 March 2005).

(SIN) due to privacy concerns means that the credit reporting agency is relying on names and addresses to establish individual credit reports. This can result in potential duplication: mixing up of spouses information or juniors and seniors living at same address, or potential duplication of files due to mixing up of addresses, a unique problem in Atlantic Canada, where many of the addresses are post office boxes.⁷⁵

Northern Credit Bureaus views that the lack of a unique identifier is a source of inaccuracy of credit reports. It indicated that it is not proposing that the SIN be used, but that unique identifier be created (not linked to government issued personal information). It would, in their view, assist both in reducing inaccuracies of credit reports and in fraud detection. If a credit report application containing a unique identifier is used which is similar to another but with a totally different address or birth date attached, it allows them to detect fraud more easily.⁷⁶

Views of credit reporting system

We also asked a number of qualitative questions to determine people's views of the credit reporting system.

We asked respondents to rank the credit-reporting agency they dealt with on a scale of 1 to 5 (with 1 being poor and 5 being excellent) in terms of:

- Accuracy
- Willingness to correct inaccuracies
- Responsiveness
- Welcoming questions and concerns
- Transparency (making it clear how you can get changes made)
- Making changes in a timely manner (change is made soon after inaccuracy pointed out)
- Respect for privacy

For the items where the credit-reporting agency scored poorly, respondents were asked to explain why the low score had been given.

Transparency

Credit reporting agencies scored highest on respect for privacy and lowest on the transparency of the process for how one can get changes made.

The issue of transparency showed one area in which educational attainment produced a statistically significant difference in response from the general population. Individuals with lower educational attainment found the system less transparent and were somewhat more concerned about privacy.

⁷⁵ Interview with Richard Huot, *supra* note 12.

⁷⁶ *Ibid.*

TransUnion did not score particularly well on transparency. About half of the respondents who had checked their credit rating with TransUnion and who had experienced problems ranked them either 1 or 2 (out of five) on transparency.

People between the ages of 40 and 49 were especially concerned about transparency. Employment or marital status did not seem to have any effect on assessments of transparency.

We also asked stakeholders about transparency in the credit report system and received differing responses. There are divergent views held by key stakeholders knowledgeable about credit reporting about the transparency of the credit reporting system. An example of this is the questions of whether all the information in a credit report is being provided to the consumer. Equifax indicated that the full and complete report is disclosed as required by law. Representatives from TransUnion and Equifax also indicated that they viewed provision of the consumer credit file for free met the standard of transparency. One representative stated: "I don't know how much more transparent and open we can be than giving the entire file for free."⁷⁷

However, other stakeholders we interviewed expressed concerns about whether credit-reporting agencies provide the full consumer credit report to consumers. Some stakeholders we spoke to expressed the view that there is a distinction between the credit report provided to consumers and the total credit file on a consumer.⁷⁸

We also asked respondents to what extent they agreed or disagreed with a number of statements about the credit reporting system:

- "I understand the terms used by the credit reporting system."
- "I understand what the various credit scores mean."
- "I understand how the credit reporting system relates to access to goods and services."
- "The credit reporting system is a good way to determine whether I get access to financial services like bank loans."
- "The credit reporting system is a good way to determine whether I get access to non-financial services like apartments, telephones and utilities."

A majority of respondents (54%) indicated that they understood the terms used by the credit reporting system, while 45% were either neutral or indicated that they did not understand the terms used by the credit reporting system.

Transparency and credit scores

⁷⁷ Interview with Joel Heft, *supra* note 8.

⁷⁸ Interview with Zoran Maksimovich, Community Financial Counselling Services, Manitoba (3 August 2004); Interview with Margaret Johnson, *supra* note 67.

Similarly, a slim majority of respondents indicated that they understood what the various credit scores mean (51%). It is important to note that people were not given an explanation of the difference between a credit rating and a credit score, nor were respondents further tested on their knowledge of these two elements. Forty-six per cent were either neutral or indicated that they did not understand what the various credit scores mean.

Our survey indicates that consumers are not very confident about what a credit score is and how it is used. However, the treatment of credit scores by the oversight bodies and the credit reporting system only exacerbates this confusion. The credit scores created by and used by credit grantors such as banks, and those provided to consumers by credit reporting agencies are not necessarily the same, having been produced using different information and differing algorithms.

The financial institutions we talked to indicate that they may use their own internal model of credit scoring, which the privacy commissioner has deemed they are not required to divulge. As a result, consumers do not necessarily know what credit score a lender may be using to determine their credit worthiness.⁷⁹

In PIAC's previous study on credit reporting the privacy related issue of credit scores was identified and subsequently followed up on with the Federal Privacy Commissioner's office. The concern raised was about the lack of transparency by financial institutions and credit reporting agencies concerning the existence and use of credit scores. The Privacy Commissioner's office responded by indicating that it had secured a commitment from the consumer reporting agencies that "for a nominal charge, credit scores will be released, and an explanation of the meaning and impact of the score will be provided".⁸⁰

There is a considerable amount of mystery regarding credit scores and how they are used. In an interview, a representative from Equifax described scores as removing subjectivity from the assessment of an individual's credit risk. However, the representative also indicated that the data used to make up the credit score goes through a 'black box' algorithm, which is the proprietary information of the owner of the algorithm.⁸¹

That same representative also indicated that credit granting decisions are not made simply on the basis of a credit score.⁸² The problem, however, is that consumers have no ability to assess this assertion, since very little is revealed by credit grantors who generate their own credit scores or the corporations that own and sell credit scores as to their meaning, configuration and use.

⁷⁹ American Association of Retired Persons (AARP) Public Policy Institute, *Issue Brief*, "Credit Scores and Mortgage Lending" IB Number 52 at 3.

⁸⁰ Letter from P. Awlyn Child, Director General, Privacy Practices and Reviews, Office of the Privacy Commissioner of Canada to Public Interest Advocacy Centre (14 January 2002).

⁸¹ Interview with Joel Heft, *supra* note 72. Mr. Heft has indicated that credit scoring is "explained with considerable detail" on the Equifax website.

⁸² *Ibid.*

Existing surveys confirm this assertion. As discussed above, a recent survey in the U.S. found that almost one-half (49%) of U.S. consumers do not understand that credit scores measure credit risk. Forty-five percent incorrectly think that increasing one's level of income will increase one's credit score.⁸³ As indicated above, our own survey revealed that forty-five per cent of adult Canadians are either neutral about or indicated that they do not understand what the various credit scores mean.

Credit scores are now made available to consumers by Equifax Canada Inc. and TransUnion (Northern Credit Bureaus does not yet provide this service). It is questionable whether the charge is "nominal" as recommended by the Federal Privacy Commissioner.⁸⁴ There is also a serious question, based on findings of the Federal Privacy Commissioner, whether a consumer in fact has a right to have free access to a credit score obtained from a credit-reporting agency.

In a 2002 finding, the Privacy Commissioner ordered the release of credit scores whose source had been a credit-reporting agency. The complainant had asked for access to all of the personal information used in assessing an application for a credit card, which had been turned down by a bank, which included two credit scores provided by a credit-reporting agency.⁸⁵ In making the decision to require the bank to provide the credit scores to the complainant, the Commissioner noted that the bank had not argued that the credit reporting information constituted confidential commercial information, which exempts it under the Act. The Commissioner relied on Principle 4.9 of *PIPEDA*, which requires that upon request, an individual shall be informed of the existence, use and disclosure of their personal information and be given access to it.

However, the federal privacy commissioner has ruled that banks are not required to release a customer's internal credit score, as generated by the bank.⁸⁶ In response to complaints by bank customers who had unsuccessfully requested access to their credit score held by their banks, the Privacy Commissioner found these complaints unfounded. It determined that a credit score was personal information and therefore subject to *PIPEDA*, but fell under one of the exceptions to disclosure for confidential commercial information.⁸⁷

⁸³ Consumer Federation of America and Fair Isaac Corporation, *supra* note 74.

⁸⁴ It does not appear to be possible, from the website of Equifax Canada Inc. or Trans Union, to receive a credit score apart from a credit report and it appears to be available only through the companies' websites. The cost of receiving one's credit score and credit report online from Trans Union is \$22.90 (the credit report alone is \$14.95). The cost of receiving one's credit score and credit report from Equifax Canada Inc. is \$21.95 (the credit report alone is \$14.50). (Date accessed: April 1, 2005)

⁸⁵ Office of the Privacy Commissioner of Canada, Case Summary #47.

⁸⁶ *PIPEDA* Case Summary #39 and #63.

⁸⁷ *PIPEDA*, *supra* note 26, s. 9(3)(b).

The Commissioner reasoned that if a critical number of customers were able to obtain their credit scores they would be able to reverse-engineer the algorithm the bank used and would be able to discover a proprietary trade secret of the bank. In a report assessing *PIPEDA*, PIAC expressed concerns about the Commissioner's failure to protect a customer's right to personal information in these findings:

What this analysis clearly missed is that the potential problem of fraudulent purposes by a conspiracy of applicants seeking personal credit scores was not the problem of the individual seeking access to his discrete credit score. It was a bank fraud problem; to be dealt with in whatever manner the bank chose to do so by setting up internal safe guards. In effect, the individual's clear access rights to personal information were sacrificed to the bank so that it did not have to spend the money or take the time to set up proper fraud standards.⁸⁸

Analysis of *PIPEDA* and its interpretation with respect to credit reporting raises more questions than it answers. Some of the findings raise questions about how to draw the balance between supporting the credit reporting system and protecting individual privacy regarding personal information. The Privacy Commissioner seems to have weighed in on the side of the credit reporting system, leaving much uncertainty for consumers regarding their privacy concerns with respect to credit reporting.

Credit reporting used for non-financial services

Most people indicated that they felt that the credit reporting system is understandable and that it is a good way to determine access to financial services like bank loans (63%). However people are least likely to believe that it is a good way to determine access to non-financial services such as utilities or apartments (55%).

Lodging complaints about credit reporting

We also asked respondents questions about lodging complaints about the credit reporting industry. Only 4.8% of the sample has lodged a complaint about a credit-reporting agency. They are most likely to complain to a financial institution or to a government agency. When asked why they had not lodged a complaint, the majority said that they thought it would be too time consuming.⁸⁹

⁸⁸ *Consumer Privacy under PIPEDA, supra* note 27 at 25.

⁸⁹ Given the small number of complaints, one should be cautious about generalizing these findings.

Beyond the survey – other issues

Privacy and credit reporting

Although the survey does not show consumers having strong concerns about the use of their personal information by credit reporting agencies, it is important to indicate that the survey did not test consumers' actual knowledge of privacy law and/or credit reporting agencies' privacy protection policies. There have been a number of findings about individual privacy related to credit reporting by the Office of the Privacy Commissioner of Canada, that illuminate how effectively consumers' personal financial information is being protected under *PIPEDA*.

There is a related privacy issue concerning credit reporting and consumers: the issue of consent to collection, use and disclosure of the personal information when someone applies for credit. Consumer information in the private sector is widely used and shared for the purposes of unsolicited marketing:

There is, indeed, a whole industry now of consumer profiling, data sharing, and direct marketing. These practices feed into the ID theft problem in a number of ways, including by exposing sensitive personal information to more people and thus making it more vulnerable to theft, as well as by sending mailings that contain sensitive personal information.⁹⁰

A previous PIAC report on credit reporting written just before the federal privacy legislation came into force in 2001, had recommended that credit-reporting agencies be subject to both federal data protection legislation as well as provincial consumer reporting legislation.⁹¹ It also examined consumer consent clauses in credit agreements and suggested that they were too broad and non-specific. Following the publication of the report, PIAC contacted the Federal Privacy Commissioner expressing the concern that the forms in which consumers give their consent to having their personal information disclosed to consumer reporting agencies did not clearly explain how the information is used and disclosed.⁹²

The Privacy Commissioner responded by indicating that they had secured a commitment from credit reporting agencies to work with credit grantors to improve the wording of consent clauses, even though credit-reporting agencies do not have any direct control over this matter.⁹³

Federal data protection legislation has since come into effect⁹⁴ and credit reporting agencies are subject to the provisions of the federal Act. However, a

⁹⁰ *Identity Theft, infra* note 95 at 29.

⁹¹ Barrados, *supra* note 1 at 29.

⁹² Letter from Angie Barrados to George Radwanski (4 December 2000).

⁹³ Letter from P. Awlyn Child to Angie Barrados (14 January 2002).

⁹⁴ *Personal Information Protection and Electronic Documents Act, 2000*, c. 5 [*PIPEDA*].

recent PIAC report that focused on the issue of identity theft⁹⁵ examined issues of privacy and security in relation to private sector companies and consumer information and expressed a number of concerns about the efficacy of certain provisions of the Act. It found that the Act's provisions are weak with respect to ensuring that there is informed consent by individuals to the collection, use and disclosure of personal information. It concluded, "consent clauses used in credit contracts remain, in large part, broad and unpecific."⁹⁶

It also concluded that there is inadequate consumer control of how personal information contained in credit reports is being used:

Moreover, consumers are typically not informed at the time that unfavourable credit information is placed on their file. It is unclear what efforts, if any, credit bureaus make to corroborate such information, even where required by law. And there is no requirement for credit bureaus to obtain proof of customer consent before releasing personal information to third parties. Nor are credit bureaus required to notify consumers of possible fraudulent activity when, for example, numerous credit applications are submitted within a short time period. The onus is instead on consumers to review their credit reports periodically in order to check for fraudulent activity.⁹⁷

A recent PIAC report assessing the status of consumer privacy under *PIPEDA*, included an examination of the federal privacy commissioner's treatment of credit reporting related complaints that have come before it.⁹⁸ The analysis found that in general the Privacy Commissioner has been deferential to the credit reporting system when weighing it against individual privacy concerns.

The Privacy Commissioner's findings illustrate this assertion. A complaint was made by a small business owner about the bank's requirement for a line of credit that he consent to ongoing collection of his personal credit information from credit bureaus and other financial institutions. The bank maintained it had a right to continue to provide information to credit bureaus, even after the banking relationship had ended, until the time limit provided for in provincial credit reporting legislation. The bank also maintained that initial consent had been obtained by reference to the consent clause on the application form. The Privacy Commissioner did not find the complaint well founded, stating the bank was contractually bound to provide such information as well as being "duty bound as good corporate citizens."⁹⁹

⁹⁵ Philippa Lawson & John Lawford, *Identity Theft: The Need for Better Consumer Protection* (Ottawa: Public Interest Advocacy Centre, 2003).

⁹⁶ *Ibid.* at 33.

⁹⁷ *Ibid.*

⁹⁸ John Lawford, *Consumer Privacy Under PIPEDA: How are we doing?* (Ottawa: Public Interest Advocacy Centre, 2004) at 24.

⁹⁹ Office of the Privacy Commissioner of Canada, Case Summary #206 as reported in Lawford, *Ibid.* at 24.

In another finding a couple objected to the bank disclosing personal information to another bank and a refusal of their request to withdraw their consent for future disclosure of personal information to other lenders and credit bureaus. In terms of the consent issue, they relied on Principle 4.3.8 of *PIPEDA*, which states:

An individual may withdraw consent at any time, subject to legal or contractual restrictions and reasonable notice. The organization shall inform the individual of the implications of such withdrawal.¹⁰⁰

The bank maintained it had obtained consent when the credit reserve had been arranged years earlier. The Privacy Commissioner concluded that the complaint was not well founded, citing that the need for a functioning credit system requires the fulfillment of a number of contractual and legal obligations and stating: “If individuals could withdraw their consent to disclosure of their credit history with a particular lender, the credit system would not work.”¹⁰¹

The concern evidenced by these findings is that there was no serious and balanced assessment of the limits on the use of this most sensitive level of personal information and the correlative standard that the most explicit form of consent is required for its use. By these findings the Commissioner suggests that the integrity of the credit reporting system is a counterbalance to privacy rights, which, as PIAC points out, is not stated in *PIPEDA*.¹⁰²

However, there are some more recent findings by the Privacy Commissioner’s Office that suggest a more serious consideration of consent requirements under *PIPEDA*. In response to a number of complaints¹⁰³ about open-ended, vague consent clauses on bank credit card application forms and other forms of credit and lack of meaningful consent procedures by banks, the Commissioner upheld the complaints and suggested that the banks amend their consent clauses and procedures to comply with *PIPEDA*.

There has also been a Federal Court of Appeal decision concerning consent and release of personal information under *PIPEDA* that may have the effect of ‘raising the bar’ regarding informed consent. A consumer initially made a complaint to the Federal Privacy Commissioner that a telecom company had not given to the consumer sufficient information about how their personal information would be disclosed to a third party in order for the consumer to make an informed consent to the release of that information.¹⁰⁴ The Privacy Commissioner did not uphold the complaint. The consumer then appealed the Privacy Commissioner’s

¹⁰⁰ *PIPEDA*, *supra* note 26.

¹⁰¹ Office of the Privacy Commissioner of Canada, Case Summary #211 as reported in Lawford, *supra* note 98 at 25.

¹⁰² Lawford, *supra* note 27 at 24.

¹⁰³ Office of the Privacy Commissioner of Canada, Case Summary #184, #192, #203, #238, #246, #250, #266.

¹⁰⁴ Office of the Privacy Commissioner of Canada, Case Summary #8.

finding to Federal Court and ultimately to the Federal Court of Appeal. The Federal Court of Appeal upheld the consumer's original complaint. It found that the telecommunications company did not obtain valid consent for the release of personal information.¹⁰⁵

Privacy was identified by a number of stakeholders as an important issue in credit reporting. Credit counsellors raised the issue of credit reports containing too much information combined with lack of consumer awareness. They suggest that the information is not necessary in order to determine credit risk and that this information is not released to the consumer, so they are not aware what personal information is being released.¹⁰⁶

Government representatives focused on the issue of consent. A representative from Manitoba expressed concern about her province's provincial privacy legislation falling short of the federal privacy law requirements concerning consent to the use of personal information.¹⁰⁷ Federal law requires consent prior to release of personal information while Manitoba's legislation allows for notice to be provided *after* a personal inquiry is conducted.¹⁰⁸

Other representatives focused on the lack of meaningful consent to the use of information contained in credit reports. They indicate that there needs to be more public awareness about what it means to enter into a credit relationship and the meaning of consent clauses.

One representative expressed concerns about documents containing personal information being offered to third parties. This representative was aware of a credit reporting agency bulletin that is circulated to all of its members that contains detailed personal information such as court related documents about judgments, liens, notice of claims, who is enrolled in orderly payment of debt programs.¹⁰⁹

We also had some discussions with provincial privacy officials about their views of privacy and credit reporting. One official expressed the view that credit reporting agencies should be limiting the collection of information to what is absolutely necessary and limit disclosure only to those parties with a legitimate need to know.¹¹⁰ The view was also expressed that credit-reporting agencies gather and distribute information without the participation of the majority of the people who are the subject of that information. Credit reporting agencies

¹⁰⁵ *Englander v. Telus Communications Inc.*, 2004 FCA 387.

¹⁰⁶ Interview with Zoran Maksimovich, *supra* note 78.

¹⁰⁷ Interview with Marjorie Kolbe, Consumers' Bureau, Manitoba (4 August 2004).

¹⁰⁸ *The Personal Investigations Act*, C.C.S.M. c. P34, s. 3.

¹⁰⁹ Interview with Gwyneth Jones and Linda Peters, Prince Edward Island Consumer Services (11 August 2004).

¹¹⁰ Interview with Barry Tuckett, Ombudsman, Manitoba (30 August 2004). Mr. Tuckett retired from this position in February 2005.

therefore need to be more open and transparent in those practices and with respect to the process as a whole.¹¹¹

We also asked financial institutions specific questions about how they protect customers' informational privacy and how they elicit their consent to use of their personal information. The financial institutions we spoke to indicated that at the time of a credit application, bank staff are instructed to bring the privacy agreement, containing a consent clause for the collection, use and disclosure of personal information to the customer's attention.¹¹²

The Bank of Nova Scotia provided written responses to our questions. In response to the question of obtaining consent, they indicated that when a customer approaches the bank for a new service, they are given a plain language booklet relevant to the product or service they are interested in and which also contains a copy of the privacy agreement. The branch sales representative is then required to explain the product and the service to the customer. Bank staff are also instructed to advise the customer of the purpose of the privacy agreement, which includes stating that the privacy agreement is used to:

- Identify to customers why and how we will collect, use and disclose their personal information;
- Obtain customers' consent to our collection, use and disclosure of their personal information;
- Inform customers of their right, subject to legal and contractual requirements, to withhold or withdraw consent and the consequences of their doing this; and
- Provide customers with further information about our privacy policies via a cross-reference to the customer brochure.¹¹³

The Bank of Nova Scotia then states that the customer is then asked to sign the appropriate application form, which includes an acknowledgment that they have received the companion booklet and the privacy agreement and that they agree to be bound by the terms and condition in these agreements. The bank then states that consumers retain control over their personal information:

The agreement informs customers that they are not required to consent to the sharing of their personal information for marketing purposes, and that they may withdraw a consent previously given for this purpose. Accordingly, the customer retains control of the use of their information even after the agreement is acknowledged and agreed to.¹¹⁴

¹¹¹ *Ibid.*

¹¹² Interview with Royal Bank, *supra* note 25 and written responses from the Bank of Nova Scotia, *supra* note 25.

¹¹³ Written response to PIAC questions by Bank of Nova Scotia (11 March 2005).

¹¹⁴ *Ibid.*

We also spoke to the three major credit-reporting agencies about consumer privacy. We asked them how they protect consumers' informational privacy and what steps, if any they are taking to address the issue of identity theft, in particular. In response, all of the agencies focused more on describing the processes they have in place when a consumer indicates that they were a victim of identity theft or fraud. The agencies will put a warning on credit reports indicating to credit grantors that the person is a potential victim of fraud. Trans Union also indicated that they work with credit grantors to analyse data if they think there has been a compromise and cooperate regularly with police on fraud matters. They also screen companies who seek to become members of the credit -reporting agency and perform spot audits of their members, in their efforts to reduce fraud and protect consumer privacy.¹¹⁵

Equifax took the time to provide PIAC with a detailed presentation on the steps they are taking to prevent and deal with fraud and identity theft. They indicated that they screen carefully those businesses that may become members of the credit bureau. They place fraud alerts on files, tagged either as a 'lost or stolen ID' flag or a 'victim of fraud' flag. They indicated that they are protecting approximately 5,000 files/month for identity theft and that they will put in place an automated fraud detection protection by the end of 2005. With respect to the handing of Social Insurance Numbers, they stated that the credit grantor could only get a social insurance number from Equifax if they gave Equifax the number initially.¹¹⁶

Both Equifax and TransUnion indicated that no further delays are incurred if credit grantors make requests concerning credit files without including the social insurance number.

We asked credit reporting agencies about the Federal Privacy Commissioner's assurance made in 2002 that they had received a commitment from credit reporting agencies' that they would work with credit grantors to improve the wording of consent clauses.

Trans Union indicated that on a regular basis, as part of their due diligence, they review consent clauses with their new clients upon entering into a new membership with a company. In their view, consent clauses have improved compared to five years ago.¹¹⁷

Equifax Canada indicated that they also check every new client's consent clauses, a practice they have done for many years. They noted that both the credit marketing and the retail market have put out new consent wording. They also added that they viewed consumers having some responsibility to read the

¹¹⁵ Interview with Richard Huot, *supra* note 12; Interview with Chantal Banfield, *supra* note 71.

¹¹⁶ Interview with Joel Heft and Odette Auger, *supra* note 8.

¹¹⁷ Interview with Chantal Banfield, *supra* note 71.

consent clauses. In their view if the consumer is sophisticated enough to obtain credit they should be sophisticated enough to read their credit agreements.¹¹⁸

Expanded use of credit scoring

There is some indication in the U.S. that it is moving towards an expanded use of credit scoring models for credit grantors. Fair Isaac has introduced a FICO Expansion score utilizing non-traditional sources of credit information such as payday loan information. The rationale for this is to assist those with thin credit histories, but it raises serious questions, due to the nature of these loans and the resulting high rates of delinquency, as to whether this would be of any benefit to the consumer but would in fact be very harmful.¹¹⁹

Credit reporting agencies in Canada have indicated that payday loan companies are not currently allowed to be members. However, there is a service that is being offered to payday lenders, called Teletrack Canada¹²⁰ that is like a credit-reporting agency. Consumers with a history of using payday lenders, rent-to-buy or certain consumer finance companies will likely be on a database held by this company. Payday lenders can get access to this information before offering payday loans or may report dealings with them to this company.

It is possible that in future, this kind of service may be linked with the main credit reporting agencies. If so, it could have a very significant impact on many Canadian consumers who are already dealing with negative credit ratings and risk even greater problems if financially perilous payday loans are being reported to credit reporting agencies.

The debate about use of credit reports for non-financial reasons

Our survey suggested that Canadians do not support the use of credit reports for non-financial reasons. However, all provincial credit reporting legislation allows for the use of credit reports for employment purposes and most also allow disclosure for insurance underwriting.¹²¹ This raises some important questions about the foundation for this kind of use of credit reports.

¹¹⁸ Interview with Joel Heft, *supra* note 72. Equifax has read this portion of the report and denies that they made the statement attributed to them about a consumer's responsibility to read consent clauses and the credit agreement (written comments provided to PIAC, July 6, 2005).

¹¹⁹ Fair Isaac takes issue with this statement: "The statement wrongly creates the impression that the Expansion Score is primarily reliant on Payday loan information. In actuality, Expansion Score utilizes a range of both positive and negative data from a variety of data sources to determine the credit risk of consumers with little to no traditional credit histories." (Source: Fair Isaac, *supra* note 24)

¹²⁰ Online: <http://www.teletrack.ca/>

¹²¹ Quebec is the only province that doesn't explicitly state the purposes for which a credit report may be disclosed. Newfoundland and Labrador's legislation limits disclosure to business or credit transactions with the consumer or for employment purposes.

To what extent should personal credit information be allowed to play a significant or even determining role in someone's professional life or a contract that is non-financial in nature? There have been suggestions made in the U.S. that the use of credit reporting information for employment and insurance purposes may have the indirect effect of discriminating on the basis of race or income. The attorney of a woman who complained of discrimination on the basis of race when a job offer was retracted due to her credit report explained the link:

Statistically speaking, blacks earn much less than whites, have far fewer accumulated savings and are more at risk in terms of health care...those are stressors that cause credit scores and credit histories to be less than perfect.¹²²

The concern raised is that there is no necessary link or evidence to indicate that one's credit history reveals anything about one's suitability for employment.

The U.S. federal legislation that applies to credit reporting, the *Fair Credit Reporting Act*,¹²³ contains specific conditions on the use of credit reporting information for employment purposes. There must be written disclosure to the consumer prior to the report being procured and the consumer must authorize its procurement in writing. The information may not be used in violation of any applicable federal or state equal opportunity law. If in using a consumer report, the person intends to take adverse action based on the report, they must first provide to the consumer a copy of the report. There are no similar provisions in Canada's provincial credit reporting legislation.

The use of credit reports or credit scores for insurance underwriting also raises questions about the relationship of a measurement of one's financial history or risk to an insurance contract, which is about indemnifying one party against loss by a specific contingent event. U.S. consumer groups have argued that there is no necessary correlation between ongoing eligibility for insurance coverage and one's credit report:

J. Robert Hunter, director of insurance for the Consumer Federation of America, a non-profit advocacy group says: "I've debated Fair Isaac and Allstate and they can't answer the simple question: Suppose I'm laid off and it take me a year to get back to work, and in that year my payments fall behind. Why am I a worse driver or a worse homeowner?"¹²⁴

¹²² Cathleen Flahardy, "Applicants Cry Foul Over Employment Credit Checks" (2005) 15 Corporate Legal Times 14. Fair Isaac disputes this assertion: "The presence of lack thereof of savings or adequate health or health care has no bearing nor impact on the FICO credit score. The FICO score is derived entirely from credit bureau data – and these data elements are not included in the contents of the credit bureau file." (Source: Fair Isaac, *supra* note 24.)

¹²³ *Fair Credit Reporting Act (FCRA)*, 15 U.S.C. §1681 et seq.

¹²⁴ Consumer Reports, "Surviving the 'hard market' in homeowners insurance" (September 2004) at 38.

Fair Isaac asserts that the correlation between credit-based insurance scores and future insurance losses has been proven by their own research, insurance industry clients and independent organizations: “Credit-based insurance scores (CBIS) are indicative of future insurance loss ratio relativity (or the relative propensity of a consumer to have insurance losses) based on statistical measures of certain predictive credit report characteristics.”¹²⁵

Research conducted in Texas by the Texas Department of Insurance concerning the use of credit scoring in insurance produced findings about the differential impact of credit scoring on certain racial and income groups and showed a correlation between credit scores and insurance claims experience.¹²⁶

The study examined individual policyholder data, which showed that the average credit scores for Whites and Asians were found to be better than those for Blacks and Hispanics. Blacks and Hispanics tend to be over-represented in the worse credit score categories and under-represented in the better credit score categories.¹²⁷ Commenting on the study’s results, the Texas Commissioner of Insurance attempted to clarify the concerns raised by the study. He suggested there is a distinction between something that has a disproportionate impact and discrimination:

Disproportionate impact is a lack of symmetry, or unequal percentages. In other words, disproportionate impact is an uneven distribution of each racial group within a given risk factor, although the uneven distribution is not caused by one’s race...By the nature of risk-based pricing and underwriting, all factors used in insurance have a disproportionate impact to some extent. One could make a convincing argument to ban the use of all risk-related factors based solely on disproportionate impact. Effectively, we would ban risk-based pricing and underwriting and revert to a pricing system where we homogenize the risk and essentially charge everyone the same price – regardless of risk. That would be a setback to all Texans, of all races, especially those of moderate to lower-income whose risk remains low.¹²⁸

The study also found that credit scores provide insurers with additional predictive information distinct from other rating variables: “By using credit score, insurers can better classify and rate risks based on differences in claim experience.”¹²⁹

¹²⁵ Fair Isaac, written comments to PIAC, *supra* note 24.

¹²⁶ Texas Department of Insurance, *Report to the 79th Legislature. Use of Credit Information by Insurers in Texas* (30 December 2004) at 3.

¹²⁷ *Ibid.*

¹²⁸ Letter to The Honourable Rick Perry, Governor of Texas from Jose Montemayor, Commissioner of Insurance (31 January 2005).

¹²⁹ Texas Department of Insurance, *Supplemental Report to the 79th Legislature. Use of Credit Information by Insurers in Texas: The Multivariate Analysis* (31 January 2005) at 2.

We are not aware of any evidence or research in Canada to suggest any link between the use of credit reports for non-financial purposes and the issue of discrimination, as has been raised by U.S. consumer advocates or even disproportionate impact on some groups by the use of credit scores.

However, there is a question as to whether the disclosure and use of personal financial information in areas such as employment and insurance meets standards set out in privacy legislation. Section 5(3) of PIPEDA describes a reasonableness standard for use and disclosure of personal information: "An organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances." In our survey, the use of credit reports for non-financial reasons was not seen as appropriate.

The use of credit reporting for non-financial purposes is becoming more prevalent; therefore it merits further research and analysis. It needs to be determined if there is a correlation between credit scores and insurance claims experience in Canada. If so, is there is a disproportionate impact on certain groups that may affect their ability to receive certain products or services or affect the cost for them of those products or services?

Credit repair and credit monitoring/credit insurance

Credit repair and credit insurance are businesses or commercial practices associated with credit reporting that purport to assist consumers with various aspects of credit reporting.

Credit repair

Credit repair is a commercial service offered to consumers in which the company claims to be able to improve a consumer's bad credit rating. There is, however, a serious question whether there is any real service being provided to the consumer by credit repair businesses.

In Ontario, credit repair is regulated by legislation. In that province, the government has effectively acknowledged the questionable status of credit repair services by the warnings it gives to consumers. The Ontario consumer ministry states on its website: "[I]n reality no credit repairer has the power to change or erase accurate information in a consumer's file."¹³⁰ The regulations accompanying the changes to credit repair legislation, which are contained in the new consumer protection act in Ontario, include this statement:

¹³⁰ Ontario Ministry of Consumer and Business Services online:
<http://www.cbs.gov.on.ca/mcbs/english/56VLYZ.htm>

If a consumer reporting agency maintains a credit file with respect to you, you have the right to dispute with the agency, at no cost to you, the accuracy or completeness of the information about you in its file. You do not need to hire a credit repairer, or anyone else, to exercise this right. If the file contains inaccurate or incomplete information, the consumer reporting agency must correct it within a reasonable period of time.¹³¹

There have been ongoing complaints to the Ontario government about the activities of credit repair agencies. PIAC is aware of one business that applied significant upfront fees (that well exceeded the amount of debt that was negatively impacting on the individual's credit report) without having had any impact on the consumer's credit report.

The implication of the limiting messages and provisos contained in Ontario's consumer protection legislation is that credit repair agencies are not viewed as providing a necessary service for consumers. It is also interesting to note that the two largest credit-reporting agencies, Equifax and TransUnion, indicated to us that credit repair agencies are not allowed to be members.¹³²

Reducing the influence of these businesses is an important step. However, it would be of greater benefit to see the activities of credit repair agencies severely curtailed by regulation in all provinces, with a view to effectively eliminating the industry.

Credit monitoring/credit insurance

Credit monitoring services are services consumers pay for, which claim to help guard against identity theft or the unwarranted use of personal information. The credit monitoring industry is less prevalent in Canada than in the U.S., where the banking, credit and insurance sectors offer such services. However, the Canadian market has recently begun to follow the American example.

TransUnion Canada offers a credit monitoring service to individual consumers through weekly email updates alerting to changes in their credit profile, including fraudulent activity, new inquiries, new accounts or late payments.¹³³ The cost is approximately \$90 per year.

Consumers can also obtain credit monitoring through CreditProtect,¹³⁴ a service offered by Intersections Inc., a U.S. and Canada-based marketing company. This service provides daily credit monitoring of customer files through the Equifax

¹³¹ O. Reg. 17/05, s. 93 The regulation comes into force on July 30, 2005.

¹³² Interview with Joel Heft, *supra* note 8.

¹³³ Online, <<http://www.tuc.ca/TUCorp/home.asp>>.

¹³⁴ Online, <<https://www.identityguard.ca/gs/English/index.asp>>. Intersections offers a similar product to its American customers called CreditProtectX3.

Canada and TransUnion Canada. Customers are alerted via mail or email when new accounts are opened, inquiries made or address changes occur.

Finally, consumers can obtain credit-monitoring services through a program called Credit Alert, or its French version, Alerte Credit,¹³⁵ although it does not appear that consumers can register with Credit Alert directly. The only apparent means of obtaining its credit monitoring services is by registering as a Hudson's Bay Company cardholder through Hudson's Bay (HBC).¹³⁶ Consumers who do so receive monitoring of their credit profile under Equifax Canada and TransUnion Canada. Individuals are sent information once every 90 days regarding all credit-related activities occurring under their name and credit profiles. Generally in Canada, the cost of a credit monitoring service is between \$10 and \$15 per month.

The market for anti-identity theft insurance coverage is also much broader in the U.S. than in Canada. In Canada, this insurance is offered through Intersections Inc. under its CreditProtect service, which covers up to \$2500 (after a \$250 deductible) for certain fraud-related expenses, including some lost wages, administrative and communication costs, and certain legal fees incurred through the identity theft.¹³⁷ Identity theft insurance is also available through at least one Canadian insurance company, Chubb Insurance.¹³⁸ Chubb offers this insurance as a free enhancement of its liability coverage, and will cover up to \$25,000 for fraud-related expenses per occurrence.

Anti identity-theft insurance is offered under a number of American insurance companies.¹³⁹ This insurance provides reimbursement to fraud victims for the cost of restoring their identity and repairing credit reports. Some companies now include it as part of their homeowner's insurance policy. Others sell it as either a

¹³⁵ Carlson Marketing Group, an international marketing company, and Intersections Inc., a North American marketing company, both with offices in Canada, operate Credit Alert in partnership. See "Intersections and Carlson Marketing Group Launch Consumer Credit Monitoring Services in Canada" 14 July 2003 (Carlson Marketing Group), online:

<<http://www.carlsoncanada.com/english/pr4.asp>>. Alerte Credit was launched in Nov. 2004: online, <<http://news.moneycentral.msn.com/ticker/sigdev.asp?Symbol=INTX>>.

¹³⁶ Online, <http://www.aondirectgroup.biz/HBC/en/credit_alert_2.htm>.

¹³⁷ Online, <<https://www.identityguard.ca/gs/English/index.asp>>. Intersections offers a similar product to its American customers called CreditProtectX3.

¹³⁸ Chubb Insurance Company of Canada has provided anti-identity theft insurance as an enhancement to its policy in July 2001. At no additional charge, coverage is provided under the "Extra Coverages" section of its Liability section. The clause reads that, "We will pay for a covered person's identity fraud expense, up to a maximum of \$25,000 for each identity fraud occurrence." Email reply from Paul Johnstone of Chubb on Tuesday, May 24, 2005. More detailed information is available to customers through their actual policy or to potential customers through individual brokers.

¹³⁹ American International Group <<http://www.aig.com/gateway/home>>, Chubb Group of Insurance Companies <<http://www.chubb.com/>>, Encompass Insurance <<http://www.encompassinsurance.com/>>, Farmers Group, Inc. <<http://www.farmers.com/FarmComm/WebSite/html/common/index.html>>, Travelers Insurance <<http://www.travelers.com/>>.

stand-alone policy or as an endorsement to a homeowners or renters insurance policy. On average, these policies cost between \$25 and \$50 for \$15,000 to \$25,000 worth of coverage.

Identity theft insurance provides reimbursement for expenses such as phone bills, lost wages, notary and certified mailing costs and sometimes attorney fees with the prior consent of the insurer. Like Intersections Inc., other companies offer clients packages combining credit monitoring and insurance. Washington Mutual, a leading U.S. “retailer of financial services,” has provided its clients access to two products since March 24, 2004: Free ID Theft Services and ID Theft Inspect(TM).¹⁴⁰ The first provides up to \$5000 insurance in relation to costs incurred as a result of ID theft, among general information services. The second is available to certain cardholders who, for a monthly fee, receive a credit monitoring service and greater insurance coverage, among other services.

The growing prevalence of identity theft insurance and credit monitoring services in an era where identity theft is becoming part of the public discourse, raises questions about its need, its effectiveness, its cost and who should be primarily responsible for protecting against identity theft.

The commercialization of identity theft protection in general contributes to the shift in the cost of anti-identity theft protection on to consumers. These tools require financial commitments from consumers and thus require some examination to determine the extent of financial security provided. Do they provide a degree of financial security or do they simply enable consumers to prevent further insecurity?¹⁴¹ On one hand, consumers pay to be advised of identity theft and to insure against expenses that they may or may not incur in the event of fraud. Financial losses directly arising from fraud—where consumers are most vulnerable—are not covered under insurance plans, though they are covered under the zero-liability policies of the major credit cards, for instance, which factor these costs into interest rates and other fees.

In terms of credit monitoring services specifically, consumers who can make the most use of this service are those who have already experienced ID theft and need to prevent against further violations, where investigations of fraud have neither resulted in the determination of thieves’ identities nor their prosecutions. However, these individuals are relatively rare.

It is important to note that credit monitoring cannot protect consumers against identity theft. Rather, it may enable consumers to identify its occurrence early

¹⁴⁰ Online, ScamSafe <http://www.scamsafe.com/scamsafe/2004/03/washington_mutu.html>; Washington Mutual, <<http://www.idtheftinspect.com/>>.

¹⁴¹ This appears to be a significant point of contention in the discourse on anti-identity theft protection. See Paul Lima, “ID double-check systems stymie on-line thieves” *Globe and Mail* (28 April 2005); see Mary Kirwan, “The horns of a security dilemma” *Globe and Mail* (16 May 1005). Both online: <http://www.the_globeandmail.com>.

on. The best-case scenario is that a credit bureau or company detects that fraud has occurred after the fact, and a consumer becomes aware of the fraud and is responsible for initiating repair to any damage done. The worst case is that a consumer pays for this service and fraud occurs undetected, as it can even with such services.

The other issue raised by the proliferation of such services is that they may create a false sense of the individual consumer being equally responsible or on par with the credit industry in terms of controlling identity theft. Consumers are not the repositories of large databases of personal financial information moving between creditors and credit-reporting agencies on a daily basis. Consumers do not have the information or the means to getting the information in order to evaluate whether the products and services offered to them are valuable, necessary or at all in their interests.

Some have suggested that consumer education, rather than reliance upon commercial products or services, is the best tool to fight identity theft.¹⁴² PIAC has also called for stronger enforcement of existing criminal laws against identity theft.¹⁴³

Credit counselling

Credit counsellors, who assist consumers who are having problem dealing with their personal financial situations or need help to improve their credit rating, have become an important element of the credit system and provide invaluable assistance to consumers.

There are, however, differences in how credit counselling agencies may be structured, which may have implications for consumers. One form of credit counselling is not-for-profit credit counselling. It is financially supported by the banking sector through a donations policy that helps offset costs. The banking industry indicated to us that it doesn't coordinate this sector, but assists with the funding, particularly since provincial governments in many jurisdictions have withdrawn support to credit counselling agencies.¹⁴⁴

Under not-for-profit credit counselling, if the consumer owes money to credit grantors, such as a bank, for every \$1 that the credit counselling agency receives from the consumer (debtor) and pays to the bank, the bank allows the agency 22¢. In other words, 22% of revenues are deducted at the source. The bank credits the consumer (debtor) with 100% of the payment, but 22% is a donation

¹⁴² Consumer Bankers Association, "Comments on Federal Deposit Insurance Corporation - Study 'Putting an End to Account-Hijacking Identity Theft'" (Virginia, U.S. 11 Feb. 2005), online, <<http://www.cbanet.org/>>.

¹⁴³ Philippa Lawson, *supra* note 95 at 50.

¹⁴⁴ Interview with Linda Routledge, Director, Consumer Affairs, Canadian Bankers' Association (8 November 2004).

to the credit counselling agency. The payments may also be prorated depending upon the number of outstanding debts owed, for example, a retailer may receive a portion of the payment or Revenue Canada may receive a portion.¹⁴⁵

Credit counselling agencies that are not part of this structure, refer to themselves as independents. The Canadian Association of Independent Credit Counsellors¹⁴⁶ does not collect on behalf of creditors and creditors do not fund its members. They charge a flat fee of 15% up front to the consumer as well as a set up fee, which is a percentage of the first monthly payment.¹⁴⁷

Quebec's credit counselling services are different from other provinces because they only provide credit counselling, they do not set up debt collection arrangements with the clients. These non-profit counselling services are not funded by financial institutions but are funded through the Quebec Government Office of Consumer Protection and the United Way.

What, if any, is the significance of these different types of credit counselling services for the consumer? Initially, it would appear that there is no negative impact to the consumer from not-for-profit credit counselling, since they are credited with 100% of the payment owed to the creditor(s). However, it can be argued that in the case of not-for-profit credit counselling, it is not as clear who the client is as with the independents.

If the not-for-profit credit counsellors are collecting money from the consumer/debtor that is paid to the creditor, from which their own funding derives, it creates the possibility for a conflict of interest. Is the credit counsellor's first loyalty to their consumer client or to the creditor by whom they are paid? What if those interests are in conflict? It is also not known how much the consumer is informed of the specifics of how their debt payments are managed when they sign up with not-for-profit credit counselling.

Despite the importance of credit counselling services for consumers and the dominance of not-for-profit credit counselling in Canada,¹⁴⁸ the structure of the industry an issue for which consumers would benefit from further examination. This is particularly important given that the credit counselling industry is not regulated in Canada.

¹⁴⁵ *Ibid.*

¹⁴⁶ Online: <http://www.caicca.ca/>

¹⁴⁷ Interview with Margaret Johnson, Solutions Credit Counselling Service Inc. (21 April 2005).

¹⁴⁸ The Canadian Association of Independent Credit Counsellors currently has 7 member agencies (Date accessed: 25 May 2005). Credit Counselling Canada, the national association of not-for-profit credit counselling agencies has members in all provinces and territories, with 14 in Ontario alone. Online: <http://www.creditcounsellingcanada.ca/> (Date accessed: 25 May 2005).

Conclusions

It has been suggested that credit reporting should have a democratizing effect on the credit market, helping low-income consumers in particular:

Since these borrowers often lack physical collateral that can be used as a loan guarantee, credit reporting can help them create “reputational collateral,” which can be more valuable in the credit market. In this way, credit reporting can be seen as part of a strategy to “democratize” financial systems, increasing opportunities for poorer borrowers to participate and contributing to more equitable economic growth.¹⁴⁹

Credit reporting should assist the marketplace, by reducing transaction costs for credit grantors by having accurate and timely information to more precisely be able to assess and reduce risk. Credit reports and credit scoring should also, in theory, create a more objective and standardized criteria for analysing credit granting, thus improving supervision of financial institutions.

The reality is that it may not be assisting either consumers or the marketplace as well as it could. Our research suggested some key findings and recommendations about credit reporting, which are described below.

Public awareness of credit reporting

The most important finding from the survey and interviews with key stakeholders is that consumers are not nearly as aware of credit reporting as they need to be. Given that most adult Canadians have a credit report, our finding that only 17% have accessed their credit report in the last three years is an alarmingly low number. The MasterCard Canada survey found that less than one third of Canadians have ever checked their credit report

This is not the fault of any one party, consumers, government, the credit reporting industry, credit grantors or credit counsellors. The survey results simply point out the need for a much more concerted effort by all parties to raise the public profile of credit reporting. We also need public education campaigns to increase financial literacy, including discussions about credit and its use. Many stakeholders indicated that they are already involved in and would urge that there be more effort put towards public education on financial matters.

Credit reporting agencies could publicize credit reporting by participating in promotions similar to that engaged in last year by MasterCard and TransUnion Canada. In conjunction with the publication of a survey on credit reporting, a free

¹⁴⁹ Margaret J. Miller, *Credit Reporting Systems and the International Economy* (London: The MIT Press, 2003) at vii.

online credit report was offered to the first 10,000 people who entered a special website.¹⁵⁰

Recommendations

- Consumer reporting agencies and credit grantors should participate in public campaigns that would encourage consumers to access their credit report.
- A consumer notification provision found only in some legislation (B.C., Saskatchewan and Nova Scotia) should be part of new harmonized legislation in all jurisdictions. This provision would notify a consumer when the user of a credit report denies or increases the cost of a benefit as result of information in credit report. Such a provision would help increase consumer awareness of credit reporting and reduce inaccuracies.
- Provincial governments need to do more to publicize and educate consumers about the use of credit reporting in financial (and non-financial services), their credit reporting legislation and its consumer protections.¹⁵¹

Accuracy

Our survey found that the percentage of people who have found inaccuracies on their credit report is not insignificant – 18%. Of that percentage, 10% indicated to us that they viewed that the inaccuracy had resulted in a denial of financial services. Clearly, accuracy of credit reports is an important issue for consumers and for all of the participants in the credit reporting system.

A major factor in reducing inaccuracy is increased public awareness of credit reporting. This would result in more people accessing their reports and accessing them regularly. But the question remains as to who should have the responsibility to ensure accuracy. Most credit reporting legislation places the onus on the consumer, but there are useful provisions in some provincial legislation that reduce the onus on the consumer to ensure accuracy.

Recommendations

- Saskatchewan, Ontario, Manitoba, B.C., and PEI, have provisions in their credit reporting legislation that state if a user of information contained in a credit report either turns down a benefit or increases the cost of the benefit as a result of information contained in the credit report, they must provide written notice to the consumer of the denial or increase within a short time period of the decision. We would support this as a minimum requirement in harmonized credit reporting legislation.
- Nova Scotia's legislation contains a more responsive provision. It further adds that the user of the information must inform the consumer of his/her right to have disclosure of all information in the consumer report and of the name

¹⁵⁰ "Your rating's important" *Metro* (21 September 2004) at 13.

¹⁵¹ A credit counsellor we spoke to in a province with credit reporting legislation was unaware of its existence.

and address of the consumer reporting agency or other source of the information contained in the report.¹⁵²

- An Ontario private member's bill contains a more comprehensive provision that would assist in improving accuracy of credit reports, by requiring more than simply notification be given to the consumer. The person who takes an adverse action based on a credit report would be required to provide a copy of the credit report to the consumer, including the name and address of the agency that prepared it and notify the consumer of their right to correct incomplete or inaccurate information.¹⁵³ We support this as the most consumer responsive legislative provision.

Transparency

Our survey indicates that credit reporting agencies scored lowest on the transparency of the process for getting changes made with the Canadian public. Clearly, credit reporting agencies and government regulators need to do more to ensure a greater familiarity with the credit reporting system.

Inconsistent treatment by the Federal Privacy Commissioner of credit scores and informational privacy depending upon the source of the credit score (credit scores from credit reporting agencies should be revealed to consumers while credit scores generated by banks do not have to be revealed to consumers) do not promote greater understanding of or a sense of transparency for consumers.

The continued secrecy by credit grantors about their own internal credit scores also contributes to the sense of non-transparency around this aspect of credit reporting.

Recommendations

- We support proposals for more information to consumers about credit scores. In Ontario a private member's bill has been introduced that would require a credit reporting agency, upon written request of the consumer, to disclose the current credit score, the range of possible credit scores under the model used, all the key factors that adversely affected the score, the date the score was created and a summary of how the credit score was calculated.¹⁵⁴

Credit reporting and privacy

Despite the concerted efforts by the credit reporting industry and financial institutions to protect privacy and reduce identity theft, there remain significant

¹⁵² *Consumer Reporting Act*, *supra* note 32, s. 11(3).

¹⁵³ Bill 174, *supra* note 154, s. 4. (5).

¹⁵⁴ Bill 174, *An Act to amend the Consumer Reporting Act*, 1st Sess., 38th Leg., Ontario, 2005, s. 6.(3).

gaps in provincial credit reporting legislation that could provide increased consumer protections.

Recommendations

These have already been stated by PIAC in previous reports and they include:

- Credit reporting agencies should work with credit grantors, governments and consumer groups to define an alternative unique identifier to the Social Insurance Number.
- The three major credit-reporting agencies voluntarily offer to place fraud alerts on consumer credit files, where identity theft is suspected. However, they should be required by law to do upon request, at no cost, or upon notification by a creditor of a possible information leak. Credit grantors should be required to check for and observe fraud alerts on credit reports.
- Consumers should be entitled to put a “security freeze” on their credit report which means that the report cannot be shared with potential creditors, insurance companies or employers doing background checks. Consumers should be permitted to lift these freezes with a special code or for certain creditors, either permanently or for specified time period.
- Credit bureaus should notify consumers of attempts to access credit reports or credit scores after a fraud alert has been issued.
- Credit bureaus should be required to remove entries relating to fraudulently obtained credit (consumers should have the right to a credit report clean-up).¹⁵⁵ There has already been some movement on the legislative front to address some of these concerns. In Ontario a private member’s bill includes a provision that states where a consumer-reporting agency discovers that there has been unlawful disclosure of consumer information, it shall immediately inform the consumer.¹⁵⁶
- Anyone collecting personal information and using it should do a privacy impact assessment of his or her practices. The Ombudsman’s Office in Manitoba has such an assessment tool on their website that they provide to the private sector as a guideline to conduct best practices. Agencies can ask themselves the questions set out and determine where their practices may not be meeting current expectations and legal requirements regarding consumer privacy rights.¹⁵⁷

Use of credit reports for non-financial reasons

Consumers are sceptical about the use of credit reporting in non-financial services areas where there is no readily discernable causal link to risk.

¹⁵⁵ For more details on these recommendations see Philippa Lawson & John Lawford, *supra* note 95 at 54-56.

¹⁵⁶ Bill 174, *supra* note 154, s.7.

¹⁵⁷ Interview with Barry Tuckett, *supra* note 110.

Recommendation

- We need impartially produced, Canadian-based research about whether there is a disproportionate impact on specific groups by the use of credit scores and whether there is a correlation between credit scores as a risk factor in non-financial services such as insurance claims experience.

Other issues

Content of credit reports

Two concerns about the content of credit reports were raised by our interviews with stakeholders. The first involves the way that participation in credit counselling may be reported on credit reports as participation in a bankruptcy process. This results in the lowest credit rating and may result in a denial of credit. Seeking help from a credit counselling service is an activity that should be encouraged and not punished, by negatively influencing one's credit rating. This change would also encourage consumers to participate in debt management programs.

The second involves the frequency of credit inquiries appearing on a credit report that may have the effect of lowering the overall credit rating. Credit grantors indicated to us that certain types of multiple credit inquiries may affect one's credit score. The number of credit inquiries may simply be the result of a consumer simply doing what a consumer would be expected to do in a competitive marketplace for credit i.e. shopping around for the best credit option. Why should consumers be punished for fulfilling the requirements of the competitive marketplace for credit?

Recommendations

- Consumer participation in credit counselling should not be reported on consumer credit reports as participation in bankruptcy processes.
- Consumer reporting agencies should only report inquiry records that result from actual applications for credit.¹⁵⁸

Expanded use of credit scoring

We are very concerned about any possible linking of credit reporting services now offered to payday lenders in Canada to the main credit reporting agencies. There are potentially very significant risks for consumers that would result, due to the nature of these loans and the resulting high rates of delinquency.

¹⁵⁸ *Bill 174, supra note 154, s. 3.(2).*

Regulation of credit reporting

We understand that the federal-provincial-territorial committee that deals with cross-jurisdictional consumer issues, the Consumer Measures Committee is looking at harmonizing and improving consumer reporting legislation. We strongly support such a goal, particularly since the major credit reporting agencies operate across provincial boundaries.

Recommendations

- There needs to be credit-reporting legislation in all provinces/territories. Currently, New Brunswick, the Northwest Territories, the Yukon Territory and Nunavut have no consumer reporting legislation. It is not sufficient in these provinces/territories for consumers to rely on credit-reporting agencies *voluntarily* providing the same protections to consumers as are provided by law in provinces with consumer reporting legislation.
- Licensing powers are a critical element of effective credit reporting legislation. Interviews with government officials suggest that when there is a licensing relationship with credit reporting agencies, government is able to carry out its consumer protection function in this area much more effectively.¹⁵⁹ Consumer reporting legislation with weak oversight powers is not sufficient to effectively protect consumers.¹⁶⁰
- However, comprehensive legislation is of limited use if the government does not have the resources or the desire to take an active consumer protection role in this area. Alberta has been very pro-active in its dealings with credit reporting agencies on behalf of consumers, even though it does not license credit-reporting agencies. Last year it charged Equifax Canada Inc. with credit reporting violations under its provincial legislation applicable to credit reporting, the *Fair Trading Act*.¹⁶¹
- The provincial-territorial governments need to have better tracking and reporting processes related to consumer contacts/complaints generally. We were surprised, as we attempted to learn more about the nature of the issues related to credit reporting, that many provincial ministries indicated to us they do not systematically track consumer contacts or complaints regarding credit reporting.
- Harmonized consumer reporting legislation should also include strict regulation of credit repair businesses.

¹⁵⁹ Interview with Al Dwyer, *supra* note 56. Mr. Dwyer suggested that when they contact CRAs on behalf of consumers, the agencies are quite responsive, given the fact that the province licenses CRAs.

¹⁶⁰ For example, while there is credit-reporting legislation in Newfoundland and a registrar who may investigate consumer complaints, they have no licensing function. The result may be little active monitoring of the industry. A privacy official in Newfoundland suggested that although its credit reporting legislation allows credit-reporting agencies to be fined if they do not follow its provisions, no one has been fined under the Act since its inception in 1990. Interview with Sandy Hounsell, Director, Access to Information and Protection of Privacy, Department of Justice, Newfoundland (23 August 2004).

¹⁶¹ Government of Alberta, New release, "Equifax charged with credit reporting violations" (30 April 2004).

- The length of time that a discharged bankruptcy can stay on credit report varies between provinces (6-7 years). This should be harmonized and some thought given to reducing this figure.
- There needs to be clarity and uniformity between provinces about what free access to a credit report means. The vacuum has created an ironic situation. In the single province that has interpreted this vigorously on behalf of consumers, consumers have less ability to access credit reports. In Nova Scotia, credit-reporting agencies responded to Nova Scotia interpreting its own legislation to state that access to a credit report in any form must be free by denying Nova Scotia consumers online access to their credit report. A Nova Scotia government representative indicated that the result has left consumers with no online access to credit reports and sense of being discriminated against. On-line access to credit reports needs to be available in all provinces/territories.
- Credit reporting legislation and privacy legislation. It is not clear whether privacy legislation concerning credit reporting should be hived out from credit reporting legislation or should be part of it. At a minimum, provincial/territorial privacy protections related to credit reporting should not be less than federal privacy legislation. There is an argument for keeping privacy related protections within credit reporting legislation because it reinforces an important recognition that a consumer report is personal information requiring important privacy considerations.

Areas for further research

- The current charges for online access require some examination. The current fees are more than 'nominal' fee as recommended by the federal privacy commissioner. Credit reporting agencies need to justify why this amount of charge is justified.
- Little is known about the role and impact of debt purchasing companies on the credit reporting system and the accuracy of consumer credit reports.
- The structure of the credit counselling industry in Canada needs more examination.
- Credit monitoring and credit insurance are becoming a growth industry for credit reporting agencies and credit grantors. More consumer-based research to assess its relevance and effectiveness is needed.

Appendix A – Household Survey Questionnaire



Credit Reporting Project
Final Questionnaire
September 16, 2004

Preamble

Hello, my name is _____ and I am calling from R.A. Malatest & Associates Ltd., a research company. We're calling on behalf of the Public Interest Advocacy Centre (PIAC). PIAC has been asked by the Canadian Government to conduct a survey on people's experience with credit reporting in order to advocate for improvements to the credit reporting system. We would like to speak to the person in your household who is at least 16 years old or older and whose birthday is coming up next. Would that be you?

- Yes
- No

If no, may I speak with the person 16 years old or older with the next birthday coming up? (If not available make appointment for call-back).
If another person is available, re-read preamble.]

If yes, are you 18 years of age or older?

- Yes
- No

If no, are you living independently (not living with parents or guardians)?

- Yes- Continue with survey
- No - Can I speak to someone who is 18 years or older whose birthday is coming up next? (If not available make appointment for call-back). If another person is available, re-read preamble.]

1. Do you understand what a credit rating is?

- Yes **Go to 2**
- No *Read the following explanation*
- Not Sure *Read the following explanation*

Your credit rating is found in your credit file that is created when you first borrow money or apply for credit. On a regular basis, companies that lend money or issue credit cards to you - including banks, finance companies, credit unions, retailers - send specific information related to the financial transactions they have with you to credit reporting agencies. Each credit grantor assigns a credit rating to the information submitted.

Credit reporting agencies organize and store this information so that it can be referred to in the future, with your consent. For example, your file might include a listing of your credit cards or lines of credit, along with a history of whether or not you have paid on time. In summary, your credit file is a report of your financial history and performance with credit grantors in the form of a rating.

Top Line Screener

- 2. Within the last three years, have you ever checked your credit rating?
 - Yes
 - No *End Interview. We are only interested in speaking with people who have checked their credit rating. Thanks for your time*

Main Body of Interview for Those with Experience of Credit Reporting

- 3. How many times have you checked your credit rating in the last three years?
 - Once
 - 2-3 times
 - 4-5 times
 - Over 5 times

Thinking about the last time you checked your credit rating...

- 4. Do you recall with whom did you check your credit rating? [Read list]
 - Trans Union
 - Equifax
 - Financial institution
 - Other Please Specify _____
 - Do not recall

- 5. What was the reason that you checked your credit rating? [Do not read list]
 - I was being denied access to credit (e.g., refused a bank loan, credit card, etc.)
 - I was being denied access to other services (like apartment, telephone, cable etc.)
 - For my personal interest
 - Other Please Specify _____

- 6a. Was the credit rating accurate?
 - Yes *Go to 8.*
 - No *Go to 6b*

- 6b. What was the inaccuracy (Check as many as apply)?
 - There were items which were inaccurate
 - There were items that should have been removed
 - There was no explanation for why items were on the report [not substantiated or respondent could not recall]
 - Other Please Specify _____

- 6c. Have you tried to correct the inaccuracies?
 - Yes *Go to 6d*
 - No *Go to 6g*

- 6d. Is the inaccuracy now corrected, are you still working on it or have you given up?
 - Now corrected *Go to 6e*
 - Still working on it *Go to 7*
 - Given up *Go to 7*
 - Don't know *Go to 7*

Ask 6e and 6f only if the 6d = Now corrected

- 6e. How much **time elapsed** between when you first tried to correct the inaccuracy and when it was finally corrected?
 _____ Indicate *hours, days, weeks or years*

6f. How much **total time did you have to spend to get the inaccuracy corrected?**

_____ Indicate *hours*

Go to 7.

Ask 6g only if 6c = No

6g. Why haven't you tried to correct the inaccuracy?

- I did not think I could correct it
- I did not understand how to correct the inaccuracy
- It would be too time consuming to try
- Other Please Specify _____

7. What were the implications of the inaccurate information (Indicate as many as apply)

- I was denied access to financial services (e.g. bank loan, bank account)
- I was denied access to non-financial services (e.g. Telephone, apartment, cable, utilities)
- I suffered stress
- It was time consuming
- Other Please Specify _____

8. On a scale of 1 to 5 where 1 is poor and 5 is excellent, how would you rank the **credit reporting** agency that you dealt with in terms of;

	1 Poor	2	3	4	5 Excellent	Not Applicable
a. Accuracy						
b. Willingness to correct inaccuracies						
c. Responsiveness (e.g. Returns telephone calls quickly)						
d. Welcoming your questions and concerns						
e. Making it clear how you can get changes made (transparency)						
f. Making changes in a timely manner (change is made soon after inaccuracy pointed out)						
g. Respect for your privacy						

For any item where you scored 1 or 2, please explain why you gave the credit reporting agency this score.

9. On a scale of 1 to 5, where 1 is strongly disagree and 5 is strongly agree, to what extent would **you agree or disagree with the following statements**

	1 Strongly Disagree	2 Disagree	3 Neutral	4 Agree	5 Strongly Agree	Not Applicable
I understand the terms used by the credit reporting system						
I understand what the various credit scores mean						
I understand how the credit reporting system relates to access to goods and services						
The credit reporting system is a good way to determine whether I get access to financial services like bank loans						
The credit reporting system is a good way to determine whether I get access to non financial services like apartments, telephones and utilities						

10a. Have you ever lodged a complaint about a credit reporting agency?

- Yes *Go to 10b*
- No *Go to 10c*

10b. To whom did you complain (Check all that apply)?

- A government agency
- A credit counselling agency
- A financial institution
- Other Please Specify _____

10c. Why did you not lodge a complaint? (Check all that apply)

- I was satisfied, so there was no need to complain
- I did not think it would help to complain
- I did not understand to whom to complain
- It would be too time consuming
- Other Please Specify _____

Demographic Section

11. Record Gender

- Male
- Female

12. How many people live in your household?

- One [Just the respondent]
- Two [Respondent and one other]
- Three [Respondent and two others]
- Four [Respondent and three others]
- Five or more [Respondent and four or more other people]
- No response

13. What is your marital status?

- Married/Common law
- Single (Never married)
- Separated
- Divorced
- Widow/Widower
- No response

14. Does the head of the household own or rent the home?

- Rent
- Own
- Don't rent or own (e.g., live with family/friends)

15a. Are you currently employed?

- Employed/Self-employed *Go to 15b*
- Not employed *Go to 15e*

15b. In your main job (the one in which you work the most hours), what is your occupation or job title?

15c. In what kind of business, industry or service do you work?

15d. What kind of work do you do? What are your main responsibilities?

Go to 16

Ask 15e if 15a = Not employed

15e. What would best describe your current main activity?

- Retired
- A student
- A homemaker (taking care of family/children/household)
- Unemployed - looking for work
- Unemployed - not looking for work (on income assistance, on disability insurance, etc.)
- Other Please specify _____

16. What is the highest level of education you have completed to date?

- No formal schooling
- Some/completed primary (elementary) school (kindergarten to grade 7)
- Some/completed high school or secondary school (grades 8 to 13)
- Some/completed community college (including trade school)
- Some/completed university
- Some/completed postgraduate

17. Please tell me which age category you are in...

- Under 20 years of age
- 20-29
- 30-39
- 40-49
- 50-59
- 60 years of age or older

18. And finally, which of the following categories best describes your annual household income before taxes?

- Under \$20,000
- \$20,000-\$39,999
- \$40,000 to \$59,000
- \$60,000to \$79,000
- \$80,000 to \$99,999
- \$100,000 or over
- Don't know/No response

Thank you very much for your cooperation. Your answers will be used to advocate for improvements to the credit reporting system.

Appendix B – Survey Data Tables

1. Do you understand what a credit rating is?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	505	96.0	96.0	96.0
No	14	2.7	2.7	98.7
Not Sure	7	1.3	1.3	100.0
Total	526	100.0	100.0	

2. Within the last three years, have YOU ever checked your credit rating?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	526	100.0	100.0	100.0

3. How many times have you checked your credit rating in the last three years?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Once	277	52.7	52.7	52.7
2-3 times	195	37.1	37.1	89.7
4-5 times	30	5.7	5.7	95.4
Over 5 times	24	4.6	4.6	100.0
Total	526	100.0	100.0	

4. Do you recall with whom did you check your credit rating...

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Trans Union	25	4.8	4.8	4.8
Equifax	203	38.6	38.6	43.3
Financial institution	236	44.9	44.9	88.2
Other [Please Specify]	18	3.4	3.4	91.6
Don't Know [Respondent could not recall]	43	8.2	8.2	99.8
No Response	1	.2	.2	100.0
Total	526	100.0	100.0	

5. What was the reason that you checked your credit rating?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid I was being denied access to credit	49	9.3	9.3	9.3
I was being denied access to other services	12	2.3	2.3	11.6
For my personal interest	215	40.9	40.9	52.5
Other	19	3.6	3.6	56.1
I was wanting to apply for a loan or remortgage	219	41.6	41.6	97.7
Don't Know [Respondent could not recall]	5	1.0	1.0	98.7
No Response	7	1.3	1.3	100.0
Total	526	100.0	100.0	

6a. Was the credit rating accurate?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	410	77.9	77.9	77.9
No	95	18.1	18.1	96.0
Don't Know	19	3.6	3.6	99.6
No Response				100.0
Total	2 526	.4 100.0	.4 100.0	

6b_1. What was the inaccuracy? (Field 1)

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid There were items which were inaccurate	52	9.9	54.7	54.7
There were items that should have been removed	29	5.5	30.5	85.3
There was no explanation for why items were on the report	5	1.0	5.3	90.5
Other	2	.4	2.1	92.6
Don't Know	5	1.0	5.3	97.9
No Response	2	.4	2.1	100.0
Total	95	18.1	100.0	
Missing System	431	81.9		
Total	526	100.0		

6b_2. What was the inaccuracy? (Field 2)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	There were items which were inaccurate	3	.6	13.0	13.0
	There were items that should have been removed	10	1.9	43.5	56.5
	There was no explanation for why items were on the report	10	1.9	43.5	100.0
	Total	23	4.4	100.0	
Missing	System	503	95.6		
Total		526	100.0		

6b_3. What was the inaccuracy? (Field 3)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	There was no explanation for why items were on the report	3	.6	100.0	100.0
Missing	System	523	99.4		
Total		526	100.0		

6c. Have you tried to correct the inaccuracies?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	76	14.4	80.0	80.0
	No	18	3.4	18.9	98.9
	Don't Know	1	.2	1.1	100.0
	Total	95	18.1	100.0	
Missing	System	431	81.9		
Total		526	100.0		

6d. Is the inaccuracy now corrected, are you still working on it or have you given up?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Now corrected	29	5.5	38.2	38.2
	Still working on it	28	5.3	36.8	75.0
	Given up	16	3.0	21.1	96.1
	Don't Know	3	.6	3.9	100.0
	Total	76	14.4	100.0	
Missing	System	450	85.6		
Total		526	100.0		

6e. How much TIME ELAPSED between when you first tried to correct the inaccuracy and when it was finally corrected? (Time unit)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Hours	1	.2	3.4	3.4
	Days	15	2.9	51.7	72.4
	Weeks	5	1.0	17.2	89.6
	Years	2	.4	6.9	96.5
	Don't Know	6	1.1	20.7	100.0
Total		29	5.5	100.0	
Missing	System				
Total		497	94.5	100.0	

6g. Why haven't you tried to correct the inaccuracy?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	I did not think I could correct it	5	1.0	26.3	26.3
	I did not understand how to correct the inaccuracy	4	.8	21.1	47.4
	It would be too time consuming to try	5	1.0	26.3	73.7
	Other [Please Specify]	4	.8	21.1	94.7
	No Response	1	.2	5.3	100.0
	Total	19	3.6	100.0	
Missing	System	507	96.4		
Total		526	100.0		

7_1. What were the implications of the inaccurate information? (Field 1)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	I was denied access to financial services	49	9.3	51.6	51.6
	I was denied access to non-financial services	3	.6	3.2	54.7
	I suffered stress	13	2.5	13.7	68.4
	It was time consuming	13	2.5	13.7	82.1
	Other	4	.8	4.2	86.3
	Don't Know	5	1.0	5.3	91.6
No Response Total		8	1.5	8.4	100.0
Missing	System				
Total		431	81.9	100.0	

7_2. What were the implications of the inaccurate information? (Field 2)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	I was denied access to financial services	3	.6	8.1	8.1
	I was denied access to non-financial services	8	1.5	21.6	29.7
	I suffered stress	16	3.0	43.2	73.0
	It was time consuming	10 37	1.9 7.0	27.0 100.0	100.0
	Total				
Missing	System				
Total		489 526	93.0 100.0		

7_3. What were the implications of the inaccurate information? (Field 3)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	I was denied access to financial services	4	.8	19.0	19.0
	I suffered stress	4	.8	19.0	38.1
	It was time consuming	13	2.5	61.9	100.0
	Total	21	4.0	100.0	
Missing	System	505	96.0		
Total		526	100.0		

7_4. What were the implications of the inaccurate information? (Field 4)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	It was time consuming	2	.4	100.0	100.0
Missing	System	524	99.6		
Total		526	100.0		

8. Rankings of the Credit Reporting On...

	N	Mean
8a. Accuracy	526	4.01
8b. Willingness to correct inaccuracies	95	3.55
8c. Responsiveness (e.g., returns telephone calls, e-mails or mailed items quickly)	526	4.22
8d. Welcoming your questions and concerns	526	4.29
8e. Making it clear how you can get changes made (transparency)	95	2.86
8f. Making changes in a timely manner (change is made soon after inaccuracy is pointed out)	95	3.40
8g. Respect for your privacy	526	4.57
Valid N (listwise)	95	

9. To What Extent Do You Agree or Disagree with these statements...

9b. I understand what the various credit scores mean

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	44	8.4	8.4	8.4
Disagree	87	16.5	16.5	24.9
Neutral	113	21.5	21.5	46.4
Agree	159	30.2	30.2	76.6
Strongly Agree	111	21.1	21.1	97.7
Don't Know	9	1.7	1.7	99.4
No Response	3	.6	.6	100.0
Total	526	100.0	100.0	

9a. I understand the terms used by the credit reporting system

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	36	6.8	6.8	6.8
Disagree	61	11.6	11.6	18.4
Neutral	132	25.1	25.1	43.5
Agree	167	31.7	31.7	75.3
Strongly Agree	121	23.0	23.0	98.3
Don't Know	9	1.7	1.7	100.0
Total	526	100.0	100.0	

9c. I understand how the credit reporting system relates to access to goods and services

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	52	9.9	9.9	9.9
Disagree	54	10.3	10.3	20.2
Neutral	89	16.9	16.9	37.1
Agree	185	35.2	35.2	72.2
Strongly Agree	131	24.9	24.9	97.1
Don't Know	11	2.1	2.1	99.2
No Response	4	.8	.8	100.0
Total	526	100.0	100.0	

9d. The credit reporting system is a good way to determine whether I get access to financial services like bank loans

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	57	10.8	10.8	10.8
Disagree	65	12.4	12.4	23.2
Neutral	63	12.0	12.0	35.2
Agree	179	34.0	34.0	69.2
Strongly Agree	154	29.3	29.3	98.5
Don't Know	6	1.1	1.1	99.6
No Response	2	.4	.4	100.0
Total	526	100.0	100.0	

9e. The credit reporting system is a good way to determine whether I get access to non-financial services like apartments, telephones and utilities

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Strongly Disagree	96	18.3	18.3	18.3
Disagree	89	16.9	16.9	35.2
Neutral	106	20.2	20.2	55.3
Agree	125	23.8	23.8	79.1
Strongly Agree	87	16.5	16.5	95.6
Don't Know	16	3.0	3.0	98.7
No Response	7	1.3	1.3	100.0
Total	526	100.0	100.0	

10. Complaints Lodged

10a. Have you ever lodged a complaint about a credit reporting agency?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	25	4.8	4.8	4.8
No	500	95.1	95.1	99.8
Don't Know	1	.2	.2	100.0
Total	526	100.0	100.0	

10b_1. To whom did you complain? (Field 1)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	A government agency	6	1.1	24.0	24.0
	A credit counseling agency	5	1.0	20.0	44.0
	A financial institution	6	1.1	24.0	68.0
	Other	4	.8	16.0	84.0
	Don't Know	2	.4	8.0	92.0
	No Response	2	.4	8.0	100.0
	Total	25	4.8	100.0	
Missing	System	501	95.2		
Total		526	100.0		

10b_2. To whom did you complain? (Field 2)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	A government agency	1	.2	33.3	33.3
	A financial institution	1	.2	33.3	66.7
	Other	1	.2	33.3	100.0
	Total	3	.6	100.0	
Missing	System	523	99.4		
Total		526	100.0		

10c_2. Why did you not lodge a complaint? (Field 2)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	I did not think it would help to complain	1	.2	9.1	9.1
	I did not understand to whom to complain	4	.8	36.4	45.5
	It would be too time consuming	6	1.1	54.5	100.0
	Total	11	2.1	100.0	
Missing	System	515	97.9		
Total		526	100.0		

10c_3. Why did you not lodge a complaint? (Field 3)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	I did not think it would help to complain	2	.4	50.0	50.0
	It would be too time consuming	2	.4	50.0	100.0
	Total	4	.8	100.0	
Missing	System	522	99.2		
Total		526	100.0		

Demographic Section**11. Record Gender**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	223	42.4	42.4	42.4
	Female	303	57.6	57.6	100.0
	Total	526	100.0	100.0	

12. How many people live in your household?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	One [Just the respondent]	64	12.2	12.2	12.2
	Two [Respondent and one other]	162	30.8	30.8	43.0
	Three [Respondent and two others]	113	21.5	21.5	64.4
	Four [Respondent and three others]	124	23.6	23.6	88.0
	Five or more [Respondent and four or more other people]	58	11.0	11.0	99.0
	Don't Know	1	.2	.2	99.2
	No Response	4	.8	.8	100.0
	Total	526	100.0	100.0	

13. What is your marital status?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Married/Common law	343	65.2	65.2	65.2
Single (Never married)	95	18.1	18.1	83.3
Separated	22	4.2	4.2	87.5
Divorced	44	8.4	8.4	95.8
Widow/Widower	14	2.7	2.7	98.5
No Response	8	1.5	1.5	100.0
Total	526	100.0	100.0	

14. Does the head of the household own or rent the home?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Rent	146	27.8	27.8	27.8
Own	371	70.5	70.5	98.3
No Response	9	1.7	1.7	100.0
Total	526	100.0	100.0	

15a. Are you currently employed?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Employed/Self-employed	403	76.6	76.6	76.6
Not Employed	116	22.1	22.1	98.7
No Response	7	1.3	1.3	100.0
Total	526	100.0	100.0	

15e. What would best describe your current main activity?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Retired	54	10.3	43.9	43.9
A student	11	2.1	8.9	52.8
A homemaker (taking care of family/children/household)	28	5.3	22.8	75.6
Unemployed - looking for work	12	2.3	9.8	85.4
Unemployed - not looking for work (on income assistance)	11	2.1	8.9	94.3
Other [Please specify]	1	.2	.8	95.1
No Response	6	1.1	4.9	100.0
Total	123	23.4	100.0	
Missing System	403	76.6		
Total	526	100.0		

16. What is the highest level of education you have completed to date?

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid No formal schooling	1	.2	.2	.2
Some or completed primary (elementary) school	10	1.9	1.9	2.1
Some or completed high school or secondary school	154	29.3	29.3	31.4
Some or completed community college	176	33.5	33.5	64.8
Some or completed university	146	27.8	27.8	92.6
Some or completed postgraduate	26	4.9	4.9	97.5
No Response	13	2.5	2.5	100.0
Total	526	100.0	100.0	

17. Please tell me which age category you are in...

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Under 20 years of age	2	.4	.4	.4
20 to 29	92	17.5	17.5	17.9
30 to 39	146	27.8	27.8	45.6
40 to 49	133	25.3	25.3	70.9
50 to 59	83	15.8	15.8	86.7
60 years of age or older	62	11.8	11.8	98.5
No Response	8	1.5	1.5	100.0
Total	526	100.0	100.0	

18. And finally, which of the following categories best describes your annual HOUSEHOLD income before taxes...

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Under \$20,000	39	7.4	7.4	7.4
\$20,000 to \$39,999	99	18.8	18.8	26.2
\$40,000 to \$59,999	106	20.2	20.2	46.4
\$60,000 to \$79,999	81	15.4	15.4	61.8
\$80,000 to \$99,999	61	11.6	11.6	73.4
\$100,000 or over	68	12.9	12.9	86.3
Don't Know	9	1.7	1.7	88.0
No Response	63	12.0	12.0	100.0
Total	526	100.0	100.0	

Appendix C – Call Record

1. Delivery of Final Data File

Accompanying this Final Report is a data file containing all survey completions obtained (n=526). Variable and value labels have been applied to the file. Region and province information are also included in the file.

2. Call Status Disposition

Detailed below is a comprehensive listing of the call-status disposition. As noted, the response rate for the Credit Reporting Household Survey was 4.5%.

Total Completions	526	4.5%
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A. *Total Numbers Attempted*

	#	%
Total Call Records	11,592	100%
Total Unallocated	0	0%
Quota Full – No Dial	0	0%
Total Numbers Attempted (Net Potential Sample)	11,592	100%

B. *Total Eligible Numbers*

	#	%
Number Changes/NIS	2,053	17.7%
Business/Fax/Cell Phone/Computer	613	5.3%
Phone Number Problem	0	0.0%
Call Blocked	6	0.0%
Quota Full	21	0.2%
Duplicate Numbers	0	0.0%
<i>Total Invalid Numbers</i>	2,693	23.2%
<i>Total Eligible Numbers (Net potential Sample minus Total Invalid Numbers)</i>	8,899	76.8%

C. Total Asked

		#	%
Call Back	Hard Appointments	107	0.9%
	Soft Appointments	13	0.1%
Partial Complete		0	0.0%
Not Available Until After Survey		0	0.0%
No Answer		731	6.3%
Answering Machine		1,517	13.1%
Busy		15	0.1%
Language Problem: French (to be called back by French-speaking surveyor; province not Quebec)		185	1.6%
Language Problem: Other		0	0.0%
Respondent Not Available		0	0.0%
Communication Problem/Illness		40	0.3%
Didn't Dial		0	0.0%
<i>Total Unreachable</i>		2,608	22.5%
Total Asked (Total Eligible Numbers minus Total Unreachable)		6,291	54.3%

D. Refusals

	#	%
Upfront	2,899	25.0%
2 nd Refusals	305	2.6%
Eligible Respondent Refusal	0	0.0%
Middle Refusal	2	0.0%
Total Refusals	3,206	27.7%

E. Cooperative Contacts (Total Asked minus Refusals)

	#	%
No 18+	0	0.0%
Respondent ineligible (did not check credit rating)	2,559	22.1%
No Call Status	0	0.0%
Completed Interviews	526	4.5%
Total Cooperative Contacts	3,085	26.6%

All quotas were met, as shown in Table F.

F. Completions by Region

	#	%
Atlantic Canada	39	7.4%
Quebec	124	23.6%
Ontario	200	38.0%
Western Canada	163	31.0%
Total	526	100%

Survey administration was completed on Tuesday, November 2.

Appendix D – List of Stakeholders

Joel Heft, Vice-President, Corporate Counsel and Chief Privacy Officer, Equifax Canada

Richard Huot, President of Northern Credit Bureaus Inc.

Interview with Royal Bank representative

Written responses to questions provided by Bank of Nova Scotia

Al Antle, Credit Counselling Services of Newfoundland and Labrador

Fair Isaac Inc., written comments to PIAC

Richard Shaffner, Director of Consumer and Business Policy, Service Nova Scotia and Municipal Relations

Terrance Chinn, Rentalsman/Chairman, Provincial Mediation Board and Office of the Rentalsman, Government of Saskatchewan

Al Dwyer, Registrar, Consumer Protection Branch, Saskatchewan Justice Department

Gwyneth Jones, Consumer Services Officer and Linda Peters, Compliance Officer, P.E.I. Department of Consumer Services

Marjorie Kolbe, Director, Consumers' Bureau, Government of Manitoba

Barry Tuckett, former Ombudsman for Manitoba (retired February 2005)

Fran Smith, Credit Counselling Services of Alberta

Margaret Johnson, Solutions Credit Counselling Service Inc., B.C.

Chantal Banfield, General Counsel, TransUnion Canada

Debbie McCartney, Director of Legal Services, Equifax Canada Inc.

Odette Auger, Vice-President, Operations, Equifax Canada Inc.

Zoran Maksimovich, Community Financial Counselling Services, Manitoba

Linda Routledge, Director, Consumer Affairs, Canadian Bankers' Association

Sandy Hounsell, Director, Access to Information and Protection of Privacy,
Department of Justice, Newfoundland

Scott Hood, Policy Advisor, Consumer Programs, Alberta Government Services

Donna Chilton, Project Advisor, Consumer Programs, Alberta Government
Services

Ken Vincent, Manager, Consumer Programs, Alberta Government Services

Judy Cuff, Senior Investigator, Alberta Government Services

David W. Jones, Q.C., High Sheriff of Newfoundland and Labrador