Strengthening Financial Consumer Protection

A Submission from the Public Interest Advocacy Centre

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August 2015

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Canadian Cataloguing and Publication Data

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Strengthening Consumer Financial Protection

A discussion of potential approaches to strengthening consumer protection for consumers of alternative financial services and consumers with debts in collections

Draft Responses by the Public Interest Advocacy Centre

The Need for Consumer Financial Protection

Questions:

1. What can you tell us about the risks faced by consumers using alternative financial services or with debts in collections?

Of the number of financial services outlined in this consultation, PIAC has most recently analyzed the debt collection industry. In a report released in March 2015, PIAC raised concerns of questionable practices by collection agencies and the need for enhanced communication methods by government agencies. Among the recommendations, PIAC advocated for the distribution of a notice from government consumer protection agencies explaining to consumers their rights when they are contacted by a debt collection agency. The report suggested calls between debt collectors and consumers be recorded, and the relevant consumer affairs agency review random samples of these recordings for the protection of all parties and to ensure industry best practices. Moreover, PIAC proposed that debt collection industry regulators consider introducing annual transparency reports related to debt collection complaints. These transparency reports could publicly outline how many complaints were brought forward against each individual collection agency, as well as against each original creditor. Other recommendations in PIAC's report included the introduction of universal standards concerning the provision of written notice of a debt before debt collection calls can commence, the ending of collection calls once the identity of a non-debtor has been confirmed, as well as the right for consumers to stop collection calls and request subsequent communication by other means.

PIAC has been actively commenting on issues related to Payday lending practices for over a decade. PIAC's Executive Director was a participant in the "panel of experts" who recently gathered as part of the *Payday Loans Act* review in 2013 referred to on page 4 of "Strengthening Consumer Financial Protection." Therefore, we welcome the opportunity to share PIAC's thoughts in response to the questions posed in the consultation document concerning payday lending practices.

A number of issues related to those alternative financial services listed in this consultation were reviewed in a report released by Option consommateurs in May 2015. The Montreal-based group reviewed the potential pitfalls experienced by consumers financing of purchases over ever longer periods through the use of personal loans, instalment plans, rental plans or long-term financing

plans. A substantial portion of the empirical evidence collected during this study were from residents of the Province of Ontario. The report found retailers and financial institutions deploy a wide range of advertising techniques designed to entice consumers to subscribe to long-term financing. This has resulted in many (over half of consumers surveyed) using long-term financing to buy a much more expensive item than they had originally planned. Option consommateurs also noted the reluctance of large financial institutions to facilitate access to low interest micro-credit.

As a result of this study, Option consommateurs concluded current legal solutions will remain insufficient until principles of responsible lending are incorporated within the law. The report recommended merchants and financial institutions be required to verify consumers' capacity to repay their debts before entering into a credit agreement with them. This obligation should include the requirement that the lender base their assessment not only on the credit file of the consumer, but on their entire situation, taking into account unexpected events such as job loss or difficult economic situations that could arise during the term of the agreement. The lender should also ensure that the credit agreement is suited to the needs of the consumer and does not promote over-indebtedness, particularly as a result of its duration.

A Note on Peer to Peer Online Lending

An alternative financial service not included in this consultation are online peer-to-peer lending arrangements. The Ontario Securities Commission (OSC) is warning companies moving into the nascent world of peer-to-peer lending that they may be subject to regulation and could even be required to register as investment dealers.[1] The OSC does not regulate ordinary loans, which are not considered securities under Ontario legislation. But it can regulate if investors are receiving loan-related securities, such as bonds, debentures or other "investment contracts."[2] From the consumer perspective, PIAC contends there is uncertainty regarding the regulation of the online peer-to-peer lending industry. The OSC has noticed there are certain elements of the industry that may invoke securities regulation. However, on the whole, no one regulatory body has accepted responsibility for the industry and that should be disconcerting for the Ministry. Therefore, PIAC suggests the Ministry take a detailed look at this emerging industry to ascertain if further protections are need for Ontario consumers under the *Consumer Protection Act, 2002* or other financial services or other Acts.

[1] McFarland, J. and C. O'Hara (2015). "OSC warns peer-to-peer lenders may be subject to securities regulation." *Globe and Mail*, June 19, 2015.
[2] McFarland, J. and C. O'Hara (2015). "OSC warns peer-to-peer lenders may be subject to securities regulation." *Globe and Mail*, June 19, 2015.

Alternative Financial Services

Questions:

2. What do you think is driving the use of alternative financial services?

The potential causes for the growth in popularity of alternative financial services in Ontario are diverse. However, we contend one of the principal drivers falls under a broad theme of access. A significant portion of Ontarians have limited or no access to traditional financial institutions. As a result, this financial exclusion and the growth of alternative financial institutions can partially be attributed to the failure of Canada's mainstream banks to offer appropriate financial products, services and advice to low-income and other financially underserved groups.[3] However, an even larger driver is on the supply, rather than the demand, side. Payday loans and similar high-cost loans and products are plentiful because they are designed to create more demand for themselves in a cycle of debt.

Demand Side

In 2008, Jerry Buckland estimated at least 3% of Canadians adults and 8% of low-income Canadian adults did not have a bank account, relying solely on alternative financial services.[4] Dr. Buckland outlined a series of reasons why access to banking has become a significant issue for some Canadians in a paper written for the Canadian Centre for Policy Alternatives in 2008. We contend many of the concerns outlined by Dr. Buckland remain valid today.

For instance, Dr. Buckland noted evidence banks were disproportionately closing branches in low-income areas of inner cities in Canada.[5] This in a time when Canadian banks are experiencing large profits and continue to benefit from high levels of concentration.[6] This potential "redlining" of neighbourhoods[7] results in financially excluding residents of these communities from conveniently accessing basic banking services. Part of the growing popularity of alternative financial services is a practical response to declining levels of access to traditional banking services. For instance, there are over 800 licensed payday lenders in Ontario, according to the

[3] Rohan, Shannon (2013). *Investor Brief: Promoting Financial Inclusion in Canada's Financial Services Sector*. Page 2. Online: <http://prospercanada.org/prospercanada/media/PDF/News/Financial-Inclusion-Investor-Brief.pdf>

[4] Buckland, J. (2008). *Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians*. Centre for Policy Alternatives. Page 1.

[5] Buckland, J. (2008). *Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians*. Centre for Policy Alternatives. Page 1.

[6] Buckland, J. (2008). *Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians*. Centre for Policy Alternatives. Page 1. See also Posadzki, Alexandra. "Canadian Banks Profits Top $31.7 Billion in Fiscal Year, But Challenges Loom." *Huffington Post*. December 5, 2014. Online: <http://www.huffingtonpost.ca/2014/12/05/canadian-bank-profits-2014_n_6278166.html>.

[7] Buckland, J. (2008). *Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians*. Centre for Policy Alternatives. Page 15. 'Redlining' refers to the practice of closing branches and not providing services in low-income or remote locations.

Ministry of Government and Consumer Services.[8] There were no payday lenders in Canada in 1993 and now the sector has more storefronts and online lenders in Canada than Royal Bank of Canada or McDonald's locations.[9] Therefore, as banks continue to leave inner cities, alternative financial services will continue to grow, and a self-reinforcing cycle begins. Those who can least afford it pay higher fees to access basic banking services through alternative financial services. Since those using alternative financial services may not have savings or a positive credit rating, other services such as credit cards and lines of credit are largely unattainable.[10]

The traditional financial institutions, on the other hand, have focused their attention during the past two decades on consumer credit products that deliver higher profit margins than those basic services they were delivering in now "redlined" neighbourhoods. Another contributing factor to this financial exclusion is the notion Canadian banks do not widely publish information on those services that would be of interest to customers migrating to alternative financial services. The provision of no-fee or low-fee bank accounts and the cashing of government cheques of up to $1,500 for no fee are examples of underpublicized services of interest to customers of alternative financial services.[11] These factors, acting in concert, have contributed to the perception, if not the reality, that access to traditional financial institutions is out of reach for a segment of Canadian society. As professor Olena Kobzar explains, "as banks increasingly made their profits from newer financial products, and from an ever–growing array of service fees, the monetary incentive for them to quit low-income markets, where individuals had marginal savings to begin with, was understandably powerful."[12]

Another retail trend occurring during the recent past that has likely contributed to the proliferation of alternative financial services in urban areas is the rise of retailers such as Wal-Mart, Home Depot, etc. at the expense of local retailers. While this evidence is anecdotal, it was routinely local retailers who cashed paycheques or offered intermittent personalized credit, in large measure because this was a way for them to continue to sell their wares to these consumers.[13] In 2013, Industry Canada's Office of Consumer Affairs noted the potential impact of the growth of big box stores on urban consumers in Canada as follows:

[8] Hayes, Molly. "City and Province looking at tightening rules around payday loans." *Hamilton Spectator*. July 14, 2015.
[9] Sanford, Jeff. "A Matter of Interest: Payday Loans." *Canadian Business*. July 17, 2006. Online: <http://www.canadianbusiness.com/business-strategy/a-matter-of-interest-payday-loans/>. See also Tavia Grant and Janet McFarland. "Payday Loans: Predatory loan sharks or crucial fix in a pinch." *Globe and Mail*. May 15, 2015. Online: <http://www.theglobeandmail.com/report-on-business/payday-loans-predatory-loan-sharks-or-crucial-fix-in-a-pinch/article24463029/>.
[10] Buckland, J. (2008). *Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians*. Centre for Policy Alternatives. Page 1.
[11] Buckland, J. (2008). *Strengthening Banking in Inner-cities: Practices & Policies to Promote Financial Inclusion for Low-income Canadians*. Centre for Policy Alternatives. Page 8.
[12] Kobzar, Olena. 2012. *Networking on the Margins: The Regulation of Payday Lending in Canada*. PhD Thesis submitted to University of Toronto. P. 105.
[13] Kobzar, Olena. 2012. *Networking on the Margins: The Regulation of Payday Lending in Canada*. PhD Thesis submitted to University of Toronto. P. 105.

> "some consumers may be negatively impacted by the lack of preservation and/or development of retail outlets in central locations. Some demographic segments may face accessibility issues with respect to power centres as they do not own a vehicle nor do they have other means to easily travel to such locations. This may also limit an individual's choice in terms of products and prices available in retail outlets that are close in geographic proximity."[14]

Thus, not only does this retail trend mean the loss of local retailers, and a potential source of basic financial services for urban consumers, it may also contribute to a rise in prices for goods and service provided by remaining retailers. The resulting reality in the United States was once described by Congressman Earl Blumanauer, but could easily apply to Canadian cities, when he said:

> "The poor pay more for a gallon of milk; they pay more on a capital basis for inferior housing. The poor and 100 million who are struggling for the middle class actually end up paying more for transportation, for housing, for health care, for mortgages. They get steered to subprime lending. . . . The poor pay more for things middle-class America takes for granted."[15]

Ontario has recently vaunted its reforms to reduce, in particular, child poverty.[16] However, adult Ontario Works (welfare) and Ontario Disability Support Program (ODSP) recipients have, over the long run, been increasingly left in a state of income insecurity that has rendered them more vulnerable over recent decades and less likely to be able to meet sudden, chronic or unexpected needs – or even to bridge the gap for food, heating, electricity or rent.[17] This has created a demand for credit to fill the basic gap between what these programs provide and the bare necessities of life. This gap has been filled by AFS lenders that were willing to lend based on the welfare and disability cheques.

Walking into this vacuum left by financial institutions, local retailers and governments are the providers of alternative financial services. Therefore, in a sense, it can be argued that alternative financial services are providing a utility to consumers. However, this should not be confused with the provision of a financially healthy alternative to banks or credit unions. Another indication of financial exclusion may be related to home ownership. According to the 2011 National Household

[14] Office of Consumer Affairs (2013). *Consumer Trends Update: Canada's Changing Retail Market*. Industry Canada. P. 10.

[15] Brown, D. "The High Cost of Poverty: Why the Poor Pay More." *Washington Post*, May 18, 2009. Page C01.

[16] See Ontario, "Realizing Our Potential: Ontario's Poverty Reduction Strategy, 2014-2019" online: http://www.ontario.ca/home-and-community/realizing-our-potential-ontarios-poverty-reduction-strategy-2014-2019

[17] See Hamilton Community Legal Clinic, "Thoughts on the Ontario Poverty Reduction Strategy", November 28, 2014: "The social assistance system has been substantially eroded over the past twenty years. People who rely on Ontario Works (OW) live in deep poverty. Benefit rates were cut by 21.6% in 1997. Since then, small annual percentage increases to rates that began in 2005 have not even kept up with inflation. OW rates are effectively lower now than they were when the program was created. And, even with other tax-delivered benefits and credits, incomes are still grossly inadequate." Online: http://www.hamiltonjustice.ca/blog/?post=Thoughts+on+the+Ontario+Poverty+Reduction+Strategy&id=276

Survey (NHS), the homeownership rate in Ontario was 71.4%.[18] However, only 18% of Ontario Payday lenders surveyed for the Canadian Payday Lenders Association in 2013 had a home mortgage.[19] Thus it appears that non-home owners may be more predisposed to using an alternative financial service.

As a result, PIAC believes the following factors are driving the demand for alternative financial services:

- Convenience
- Desperation
- Reduction of and insecurity of welfare, workfare, disability and similar programs
- Ignorance of alternatives
- Removal of bank branches
- Disappearance of local retailers
- Increased availability of alternative financial services providers
- Limited alternatives offered

Supply Side

PIAC contends that payday and other AFS lenders promote and operate on a cycle of debt business model. In short, these lenders have proliferated as they have created loan structures that require the servicing of debt rather than responsible lending with the main goal of repayment of the principal advanced. Such a structure creates its own demand, as consumers effectively "mortgage" their other creditors (or debts) to pay payday and AFS lenders who place their loan "first in line" on a debtor's payday or the day they expect to receive government benefits.

This debt-cycle business model has been extensively studied and commented upon by academics and consumer advocates in the United States. One of the clearest expositions of the model is from the Center for Responsible Lending, a North Carolina-based "nonprofit, non-partisan organization that works to protect homeownership and family wealth by fighting predatory lending practices". In a 2013 report, Susan Montezemolo details the model:

> The following five payday lending practices contribute to the creation of a debt treadmill for borrowers:
>
> > Payday loans create a debt treadmill that makes struggling families worse off than they were before they received a payday loan.

[18] Ontario, 2011 *National Household Survey Highlights: Factsheet 7*. Ministry of Finance. Online: <http://www.fin.gov.on.ca/en/economy/demographics/census/nhshi11-7.html>.
[19] Environics Research Group (2013). *Payday Loans Users Study – Ontario*. February 2013. Page 8. Online: <http://www.cpla-acps.ca/english/reports/CPLA%202013%20e%20Users%20ON.PDF>.

- Lack of underwriting for affordability. The payday lending business model depends on borrowers' inability to afford their loan and their subsequent need to borrow—paying more fees—multiple times.

- High fees. Payday lenders typically charge the maximum possible rate allowed in a state. As a result, the annual percentage rate (APR) on payday loans is often 400% or higher.

- Short-term due date. Most borrowers cannot repay their payday loan principal within a two-week period—let alone the principal plus a fee. In fact, some payday lenders offer a "free" first payday loan with no fee,2 knowing that borrowers who cannot afford to repay the principal in two weeks will incur many repeat borrowings and fees in subsequent pay periods.

- Single balloon payment. The entire payday loan balance typically is due in one lump sum; combined with the short-term due date, this single-payment feature makes payday loans especially difficult to repay.

- Collateral in the form of a post-dated check or access to a bank account. The consequence of not repaying a payday loan is that the check used as collateral will be deposited or ACH transaction debited, which puts lenders "first in line" to be paid (rather than being "just another bill"). Because the payday loan is tied to the borrower's payday, the lender can be reasonably sure the check will clear. Most borrowers will simply run out of money to cover their expenses before the end of the month, often taking out more payday loans (and paying more fees) to pay for the expenses.

Any of these five factors alone creates problems for borrowers. Together, they create a high likelihood of repeat borrowing and a long-term cycle of debt.[20]

PIAC notes that "rollovers" are not the culprit in this model. Instead, it is, as coined by the CRL, the "phantom demand" of customers, the "high level of payday loan "churn"—when borrowers either directly renew loans or pay back a loan but take out another shortly thereafter—underscores the existence of a long-term debt trap."[21]

[20] Montezemolo, Susanna. 2013. Payday Lending Abuses and Predatory Practices. Center for Responsible Lending. http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf at p. 2.

[21] *Ibid.* at p. 3. The source further noted that the: "Center for Responsible Lending (CRL) published "Phantom Demand" (Parrish & King, 2009), which quantified the level of loan churn by examining the length of time between successive payday loans. The paper found that most successive loans are originated shortly after a previous loan is paid back. Half of repeat loans were opened at the borrower's first opportunity,4 87% within two weeks, and 94% within one month of the previous loan."

This pattern holds in Ontario. A recent Strategic Counsel Survey of 500 Ontario payday loan users noted more than half of borrowers surveyed said they are using the service for recurring expenses, not crisis situations.[22] Just as concerning is almost one in five borrowers surveyed took out more than 10 loans in a year.[23] This is no coincidence, but the results of employing a strategy, according to one former payday lending employee:

> "[Lenders] may say they are providing a service to people who just need some money once in awhile until payday. But we were trained to encourage customers the day they paid a loan off to make another loan as early as the next day…We tried to get customers to keep getting loans and borrow up to their maximum approval amount whether they wanted it or not."[24] (CRL 2001)

The Strategic Counsel Survey also noted 27% of respondents reported making less than $30,000 a year, while 62% of borrowers who defaulted on a loan took out another loan to cover the previous one.[25]

In addition, recent research from one of Ontario's largest Trustees in Bankruptcy, Hoyes, Michalos & Associates Inc., entitled "Joe Debtor: Marginalized By Debt" (May 2015) was "based on a review of 6,000 insolvency filings from January 1, 2013 to December 31, 2014. We then compared the results of this profile with our previous report conducted in 2013 to identify any trends." This report found "an alarming increase in the number of seniors turning to payday loans". However, besides changing demographics of borrowers, the report, firstly, provided actual evidence from Ontario that consumers are taking out several payday loans at once (so that the average outstanding payday loan debt is over $700 and the number of outstanding loans at the time of bankruptcy or insolvency is 3.5). Secondly, the report noted: "an alarming increase in the use of high interest subprime debt by many insolvent debtors as a way to make their minimum payments. Individuals with poor credit are increasingly turning to payday and new quick cash loans as a form of revolving credit to make ends meet and this has become a leading indicator of insolvencies today. Debtors experiencing cash shortfalls due to severe financial problems are borrowing money from payday lenders to make their minimum payments on their credit cards, and then are forced to turn to more payday lenders to pay off their existing payday loan."[26] The report noted that the percentage of consumers declaring bankruptcy or filing a consumer proposal who had at least one payday loan at the time of filing had risen to 18% from 12% in the last two years and that "For those using

[22] Hayes, Molly. "City and Province looking at tightening rules around payday loans." *Hamilton Spectator*. July 14, 2015.
[23] Hayes, Molly. "City and Province looking at tightening rules around payday loans." *Hamilton Spectator*. July 14, 2015.
[24] Kobzar, Olena. 2012. *Networking on the Margins: The Regulation of Payday Lending in Canada*. PhD Thesis submitted to University of Toronto. P. 124. See also Centre for Responsible Learning (CRL) (2001*). Fact v. Fiction: The Truth about Payday Lending Industry Claims*.
[25] Hayes, Molly. "City and Province looking at tightening rules around payday loans." *Hamilton Spectator*. July 14, 2015.
[26] Hoyes, Michalos & Associates Inc., "Joe Debtor: Marginalized By Debt" (May 2015) at pp. 9-10. Online: http://www.hoyes.com/wp-content/uploads/2015/05/Joe-Debtor-2015-Marginalized-By-Debt.pdf

payday loans, the average total payday loan debt increased 12% to $2,749, an amount that equaled 113% of their monthly take-home pay."

3. What alternative financial services should be considered for legislative / regulatory reform? Which services are adequately regulated today?

PIAC has combined the response to this question with the responses to questions 1.1 and 1.2 below.

Proposals

1. Specifically regulate alternative financial services.

Questions:
1.1 Which alternative financial services do you think require specific regulation in Ontario? Are general consumer protection rules that cover all services sufficient?

As the Ontario government is aware, payday lending regulation requires provincial "legislative measures that protect recipients of payday loans and that provide for limits on the total cost of borrowing under the agreements" (*Criminal Code*, s. 347.1(3)). Therefore, legislation that "protects recipients" of payday loans and "limits [. . .] the total cost of borrowing" must exist in the province, arguably in a clearly identifiable act. Ontario already has passed the *Payday Loans Act, 2008*, S.O. 2008, c. 9 and attendant regulations. This act, unless the province wishes to relinquish setting the interest rate for payday loans, must be continued, with the two features above satisfied. PIAC is of the view that the criminal usury exemption required by s. 347.1 of the *Criminal Code* for payday loans requires active consumer protection and authorizes the province to take extensive measures to control any business, social or consumer protection aspect of payday lending, providing the goal is to "protect recipients of payday loans" or to "limit[] […] the total cost of borrowing."

As noted above, certain aspects of peer-to-peer lending mirror payday lending. PIAC is of the view that the province would be within its *Payday Loans Act, 2008* jurisdiction to regulate P2P lending under that statute where the loan amounts and repayment periods were within the exemption provided in the *Criminal Code*, subs. 347.1(3). Where other aspects would not be caught by that legislation, PIAC believes that it may be necessary to design a specific regulatory regime, possibly including special legislation, to control the P2P loan business.

PIAC also notes the rise in Ontario of new loan "products" such as debt consolidation or "installment" loans that may carry, under the definition of "interest" in subs. 347(2) of the *Criminal Code*, a criminal rate of interest. PIAC is of the view that while the province may design legislation to control the business aspects of these new products, but that nonetheless where the interest rate is exceeded and the product does not meet the payday loans exemption definition in s. 347.1 of the *Criminal Code*, that the province would refer possible *Criminal Code* charges to the local

Crown attorney and would recommend that the Attorney General of Ontario both grant the required prosecution fiat and cover the costs of the required actuarial report.[27]

Similarly, many slightly more established products such as rent-to-own and car-title loans may fall afoul of the *Criminal Code* usury requirements and not qualify for exemption under the payday loans exemption. PIAC likewise would expect the province to refer these situations to prosecution. As for high cost credit in these forms that is otherwise under 60% effective annual interest, it may also be that the Ministry, at the conclusion of this consultation and hopefully its own independent inquiry, may well conclude that these areas are not adequately controlled by the general *Consumer Protection Act, 2002*. In that case, PIAC would recommend a general AFS law for the province to cover all forms of high cost credit that are not payday loans.

1.2 What kinds of additional protections are needed?

In the consultation document accompanying the questions under consideration, the Ministry of Government and Consumer Services noted "using alternative financial services can be risky for consumers." Moreover, the Ministry stated "the full costs of these services can be unclear" and "in some cases, the high cost of using these services may create new burden rather than easing an existing one." The views expressed by the Ministry in describing the concern regarding the use of alternative financial services appear to suggest that the Ministry is operating on a standard of abusiveness, that is, avoidance of and resolution of actual consumer hardship. This has been expressed by the Ministry as two aspects of this same standard. In one case, the companies offering the product may make it difficult to understand the products, and in the other, they have structured the product to be expensive to pay, hard to leave and overall excessively financially risky for borrowers.

This abusiveness standard is appropriate given the Ontario government's mandate over payday loans, for example, under s. 347.1 of the *Criminal Code*, as outlined above, where the province is called upon to "protect recipients of payday loans". It is also appropriate under the province's general responsibility for consumer protection, as outlined in the 2014 Mandate Letter to the Ministry of Government and Consumer Services, which commits the Ministry to: "Exploring opportunities to increase protection for vulnerable indebted consumers, such as modernizing payday loan legislation."

The abusiveness standard also informs the work of consumer protection advocates such as PIAC. In February 2014, PIAC compiled a comprehensive submission to Canada's Financial Consumer Protection Framework that outlined a series of consumer concerns with Canada's traditional financial services industry and relied in part upon an abusiveness standard to guide the proposed

[27] For these requirements, see *Criminal Code*, s. 347(4) – (7).

framework.[28] PIAC has already made a series of suggestions relying upon the same standard relating to the debt collection industry,[29] and has been a frequent commentator on the payday loans industry for more than a decade from this general perspective.

Given the Ministry of Government and Consumer Services admission that alternative financial services are risky and potentially burdensome, we contend all of the services listed in the consultation paper could be considered under the abusiveness standard for legislative or regulatory reform. PIAC believes that on this standard the Government of Ontario would be justified in adopting a wide range of measures, from licensing and disclosure requirements at one end of the spectrum, all the way to specifying product requirements and outright prohibition of certain abusive practices, with serious enforcement measures to ensure compliance.

2. Regulate cost of a broader range of alternative financial services.

Questions:

2.1 Should Ontario regulate the cost of some alternative financial services? Why?

The Province of Ontario should regulate the provision, cost and terms of all alternative financial services, based on the abusiveness standard and the vulnerability of many consumers accessing these services.

PIAC suggests there is even evidence that some alternative financial services providers are beginning to work together in a system in Ontario to push consumers into using other alternative financial services. For instance, a recent *Huffington Post* article describes the activities of a collection agency when dealing with an Ontario-based client.[30] The consumer, allegedly owing $8,500 from three credit card accounts, was advised by the debt collection agent a lump-sum payment of the account was required immediately.[31] Moreover the collection agent provided the names of two lenders willing to make a quick loan. One of the lenders offered the consumer

[28] PIAC (2014). *Submission to Canada's Financial Consumer Protection Framework*. Finance Canada. Online: <http://www.piac.ca/wp-content/uploads/2014/11/piac_financial_code_28_feb_2014_final_for_finance_smaller.pdf>

[29] PIAC (2015). *All Along the Watch Tower: A Review of the Canadian Consumer Debt Collection Industry*. Ottawa. Online: <http://www.piac.ca/wp-content/uploads/2015/03/All-Along-the-WatchTower-EN1.pdf>.

[30] Freeman, Sunny. "'I Don't Care': Cancer Patient's Struggle With Debt collectors A Sign Of Our Indebted Times," Huffington Post. July 27, 2015. Online: <http://www.huffingtonpost.ca/2015/07/27/debt-collection-canada_n_7867232.html>.

[31] Freeman, Sunny. "'I Don't Care': Cancer Patient's Struggle With Debt collectors A Sign Of Our Indebted Times," Huffington Post. July 27, 2015. Online: <http://www.huffingtonpost.ca/2015/07/27/debt-collection-canada_n_7867232.html>.

$4,200 at an annual interest rate of 46.95 per cent.[32] At $315.42 per month for three years, that would add up to $11,355.12 in total borrowing cost.[33] The other lender reportedly suggested offering a rate that would amount to 45 per cent, according to the consumer.[34]

The Ontario Government should be aware of the nature of these services and their tendency to work in concert to create an overall hardship for Ontario consumers.

2.2 Would reducing access to these services help or harm consumers? Why?

The Ontario government faces a situation, as regulator of the AFS market, akin to that recently handed to the federal U.S. Consumer Financial Protection Bureau (CFPB).[35] The Canadian provinces, including Ontario, were effectively "assigned" the regulation of the sector by the federal government, through the addition of s. 347.1 to the *Criminal Code* in 2007. At that time, the AFS sector and in particular payday loan operations, were well entrenched in Ontario, with already hundreds, if not thousands, of storefronts and several main operators.[36]

Unfortunately, whatever opportunity there was to prevent reliance by lower-income Ontarians on payday loans for access to credit was lost during the period 1990 to 2006 and the practice then cemented by the "legalization" of payday loans with the *Criminal Code* amendment. A sudden removal of payday loans and similar products such as installment loans now would likely lead to some hardship for some consumers thus "caught short" with no "alternative" to the AFS market. The same challenge thus can be stated for Ontario regulators as for the CFPB as outlined in the above-cited "CFPB and PDLs" paper: "how to make sure that credit is available to low-income, high-risk borrowers while assuring that prices, loan terms, and financial practices do not take unfair advantage of the average borrower's financially stressed situation."

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[32] Freeman, Sunny. "'I Don't Care': Cancer Patient's Struggle With Debt collectors A Sign Of Our Indebted Times," Huffington Post. July 27, 2015. Online: <http://www.huffingtonpost.ca/2015/07/27/debt-collection-canada_n_7867232.html>.

[33] Freeman, Sunny. "'I Don't Care': Cancer Patient's Struggle With Debt collectors A Sign Of Our Indebted Times," Huffington Post. July 27, 2015. Online: <http://www.huffingtonpost.ca/2015/07/27/debt-collection-canada_n_7867232.html>.

[34] Freeman, Sunny. "'I Don't Care': Cancer Patient's Struggle With Debt collectors A Sign Of Our Indebted Times," Huffington Post. July 27, 2015. Online: <http://www.huffingtonpost.ca/2015/07/27/debt-collection-canada_n_7867232.html>.

[35] On this challenge, please see the excellent paper in the The Journal of Consumer Affairs, Spring 2014: 1–16 by Kirsch, L., Mayer, R.N. and Silber, N.I., entitled "The CFPB and Payday Lending: New Agency/Old Problem". Online: http://citation (hereafter "CFPB and PDLs").

[36] Largely due to the procedural and evidentiary requirements of s. 347, the inaction of federal authorities referring criminal interest rates for prosecution and the inaction of provincial attorneys-general and crown attorneys. See PIAC 2 and Jesse Bellam & Aiden Talai, "Short-Term Emergency Lending: Examining Usury Law in the United States and Canada", (2012) 2:1 Online: UWO J Leg Stud 1<http://ir.lib.uwo.ca/uwojls/vol2/iss1/1>

PIAC contends this is dependent upon the reduction of the most regressive practices and operators out of the alternative financial services market, so that those consumers who lost convenient access to an expensive or abusive alternative financial service provider could locate a service provider who could provide services at a lower cost and on less risky terms.

PIAC contends the suggestion of alternative providers in instances where a financial institution (regardless of whether it is considered an alternative financial service) removes itself a neighbourhood could be a role for the Ministry of Government and Consumer Services to undertake. The Ministry, in PIAC's view, would be considered a trusted source of information and in this manner may prevent some Ontario residents from entering financial agreements that may not be in their best interest.

Ontario may also consider supporting legitimate micro-credit initiatives to replace high cost AFS loans with microcredit options for consumers with particular credit needs. Such an undertaking would require significant investment, likely partnership with progressive credit providers such as credit unions and the involvement of non-profit consumer advocacy groups. This approach is being attempted in Montreal.[37] Ontario could consider progressive moves to encourage this sort of development, through promotion, grants or tax breaks for legitimate micro-credit initiatives.

However, overall, PIAC is of the opinion reducing access to these AFS services, as presently structured, would help Ontario consumers. Ideally, Ontario would take steps to reduce several of the factors identified in the CRL Montezemolo paper cited above, by reducing the number of loans per year, lengthening time to repay, reducing the allowable cost of borrowing, considering ability of borrowers to repay and restricting the instruments guaranteeing a repayment prior to other creditors. Ontario should in particular consider the innovations in the states of Colorado and Washington, U.S.A.

[37] Option consommateurs, in partnership with the Desjardins Movement, Centraide, Alerte Centre-Sud and Action solidarité grand Plateau, runs the "Neighbourhood Loan" program, for loans of $200 to $800 repayable in one year with no interest for an "unforeseen expense related to an immediate need". See online: http://option-consommateurs.org/en/budget_advisers/neighbourhood_loan/

Payday Lending

3. Confirm assumptions underlying regulation of the payday lending industry

Questions:

3.1 How would you describe the impact of payday lending on individuals and on communities?

In a word – Debilitating.

As noted earlier in this submission, in general, payday lenders have filled a vacuum left by a combination of factors, such as the loss of local retailers, and the pursuit of higher returns by traditional financial institutions. As a result, there are providers of a service which operate near a 50 per cent margin in an area where previously, these services were provided for nominal charges.[38] This development cannot be described as anything other than detrimental for Ontario consumers.

Many researchers would point to the study published by Dr. David Caplovitz in 1967, entitled *The Poor Pay More*, as the initial examination of the impact of alternative financial services, including payday loans, has on individuals and communities.[39] The study noted financial exclusion in New York City neighbourhoods allowed alternative financial services to move in and profit from residents who felt they had limited options. Over the past two decades, a series of studies have been undertaken in Canada, the United Kingdom and the United States that examine the impacts of financial exclusion.[40]

In her PhD thesis, York University professor Lena Kobzar cited a Statistics Canada Wealth of Canadians Study documenting the percentage change in median net worth of different income groups between 1999 and 2005.[41] The study revealed that persons earning between $20,000-

[38] Consumers Council of Canada (2015). *Consumer Experiences in Online Payday Loans*. P. 101. See also FC Global Corp. United States Securities and Exchange Commission Form 10-K Filing for the year ended June 30, 2013. P. 60. Online: <http://www.sec.gov/Archives/edgar/data/1271625/000119312513352311/d590562d10k.htm#toc>.
[39] Caplovitz, David (1967). *The poor pay more: consumer practices of low-income families* (1st Free Press pbk. ed. ed.). New York: Free Press.
[40] These studies include the Job Opportunities Task Force (2007). *Overpriced and Underserved: How the Market is Failing Low-Wage Baltimoreans*, Baltimore, MD, Bland, R.M. and Michael Barr, eds. (2009). *Insufficient Funds: Savings, Assets, Credit, and Banking among Low-Income Households*. New York: Russel Sage, Squires, G. and S. O'Connor (1998). "Fringe Banking in Milwaukee." *Urban Affairs Review* 34, 126-149, Kempton, E. and C. Whyley (1999). *Kept Out or Opted Out? Understanding and Combating Financial Exclusion*. Bristol, UK: Policy Press, Rogaly, B. T. Fisher and E. Mayo (1999). *Poverty, Social Exclusion and Microfinance in Britain*. London: Oxfam, J. Buckland and T. Marti (2005) "Two-Tier Banking: The Rise of Fringe Banks in Winnipeg's Inner City." *Canadian Journal of Urban Research* 14, no. 1:158-1:1581.
[41] Kobzar, Olena. 2012. *Networking on the Margins: The Regulation of Payday Lending in Canada*. PhD Thesis submitted to University of Toronto. P. 103.

39,999 endured a 19 per cent decline in their net worth, while those earning $75,000 or more experienced a 15.2 per cent increase.[42] Kobzar concluded that "what particularly bears comment in these figures is that the income group suffering the decline in net worth was precisely the group that other studies have shown to be most likely to take out payday loans."[43]

As noted above, contrary to the claims of the payday loan industry that their product assists with occasional cash shortages, the recent Joe Debtor report cited above notes the effect of payday loans on many debt-laden Ontarians is to finally force them into insolvency.

Researchers at St. Michael's Hospital, Toronto, recently have published a paper linking premature mortality in Toronto with the concentration of "cheque cashing places" and liquor outlets.[44]

While the "effect on communities" of AFS businesses requires dedicated social sciences research methods, a number of papers have explored the possible link between such businesses and elevated crime rates (including Toronto and the U.S.).[45]

Payday loans, as presently structured are socially and personally negative for individuals and communities in Ontario.

3.2 What other alternatives exist for persons using payday loans?

The Centre for Responsible Learning has pointed out that Pew Research asked borrowers in 2012 what they would do if they did not have access to payday loans. Eighty-one percent said they would cut back on expenses, and many would delay paying some bills, borrow from friends and family, or sell or pawn personal possessions.[46] These survey findings are consistent with the results of a focus group Pew conducted of former payday borrowers in New Hampshire, which has eliminated high-cost payday lending from the state. In these focus groups, borrowers said

[42] Kobzar, Olena. 2012. *Networking on the Margins: The Regulation of Payday Lending in Canada*. PhD Thesis submitted to University of Toronto. P. 104. See also Statistics Canada. "The Wealth of Canadians: An Overview of the Results of the Survey of Financial Security 2005". Pension and Wealth Research Paper Series. Ottawa, Statistics Canada, 2006. (Cat. No. 13F0026MIE-No. 001). P. 9.

[43] Kobzar, Olena. 2012. *Networking on the Margins: The Regulation of Payday Lending in Canada*. PhD Thesis submitted to University of Toronto. P. 104.

[44] Matheson FI, Creatore MI, Gozdyra P, et al., A population-based study of premature mortality in relation to neighbourhood density of alcohol sales and cheque cashing outlets in Toronto, Canada. BMJ Open 2014;4:e006032.doi:10.1136/bmjopen-2014-006032

[45] Kubrin, C. E., Squires, G. D., Graves, S. M. and Ousey, G. C. (2011), Does fringe banking exacerbate neighborhood crime rates?. Criminology & Public Policy, 10: 437–466. doi: 10.1111/j.1745-9133.2011.00719.x; Joel G. Ray, Talia Boshari, Piotr Gozdyra, Maria Isabella Creatore, Flora I. Matheson, Cheque Cashing Places: Preying on Areas with High Crime, Sociology Mind 2013. Vol.3, No.4, 278-283. Online: http://dx.doi.org/10.4236/sm.2013.34037

[46] Pew Safe Small-Dollar Loans Research Project (2012). *Payday lending in America: Who borrows, where they borrow, and why*. Online: <http://www.pewtrusts.org/en/multimedia/data-visualizations/2012/payday-lending-in-america>. See also Centre for Responsible Lending (2013). *Payday Lending Abuses and Predatory Practices*. P. 8.

that they would turn to lowering overall expenses and re-budgeting, borrowing from friends and family, using payment plans for bills, and the like.[47] Similar findings were reported by the University of North Carolina's Center for Community Capital in 2007. Researchers concluded that the absence of storefront payday lending had no significant impact on the availability of credit for North Carolina households.[48] Those who faced a financial shortfall in the absence of payday lending chose to delay paying a bill, tap into savings, borrow from friends and family, visit a pawnshop, or take advantage of other available options.[49] In addition, more than twice as many former payday borrowers reported that the absence of payday lending had had a positive rather than a negative effect on them; nearly 90% of households thought that the loans were bad for their finances.[50]

In a number of Canadian communities, the alternatives exist, they are simply not very well known to consumers. For instance, in Thunder Bay, Bay Credit Union has instituted a policy of cashing post-dated government cheques for their customers in an effort to provide a low-cost alternative to payday lenders.[51] Vancity Credit Union has a *Vancity Fair and Fast Loan* product, which provides loans of up to $1,500 offered to members at much lower interest rates than payday lenders. Members have up to two years to repay the loan, which is a longer term than most payday lending loans with two month terms.[52]

In the province of Quebec, Option Consommateurs provides Montreal area residents with financial literacy education on budgeting, financial institutions, costly credit, and the *Consumer Protection Act*.[53] Option Consommateurs provides low dollar loans of up to $800 for as long as 12 months at an annual interest rate of 5%. To qualify one must be living on a low income, face an unforeseen expense, have an ability to repay, and live within a certain geographic area in

[47] Centre for Responsible Lending (2013). *Payday Lending Abuses and Predatory Practices*. P. 8.
[48] Centre for Responsible Lending (2013). *Payday Lending Abuses and Predatory Practices*. P. 8. See also University of North Carolina (UNC) Center for Community Capital. (2007). *North Carolina consumers after payday lending: Attitudes and experiences with credit options*. P. 18. Online: <http://ccc.sites.unc.edu/files/2013/08/NC_After_Payday.pdf>.
[49] Centre for Responsible Lending (2013). *Payday Lending Abuses and Predatory Practices*. P. 8-9. See also University of North Carolina (UNC) Center for Community Capital. (2007). *North Carolina consumers after payday lending: Attitudes and experiences with credit options*. P. 5-7. Online: <http://ccc.sites.unc.edu/files/2013/08/NC_After_Payday.pdf>.
[50] Centre for Responsible Lending (2013). *Payday Lending Abuses and Predatory Practices*. P. 9. See also University of North Carolina (UNC) Center for Community Capital. (2007). *North Carolina consumers after payday lending: Attitudes and experiences with credit options*. P. 1, 4, 5 and 18. Online: <http://ccc.sites.unc.edu/files/2013/08/NC_After_Payday.pdf>.
[51] Martin, Kate (2014). "Credit Unions Provide Alternatives to Payday Lenders." *Credit Union Central of Canada*. Blog Post, July 31, 2014. Online: <http://www.cucentral.ca/cusr/Blog/Lists/Posts/Post.aspx?List=e4cb5492-5cf4-4140-8115-4080a4d17632&ID=309&Web=d08da9d3-960e-4a4e-a7f9-9c78fad69c84>.
[52] Martin, Kate (2014). "Credit Unions Provide Alternatives to Payday Lenders." *Credit Union Central of Canada*. Blog Post, July 31, 2014. Online: <http://www.cucentral.ca/cusr/Blog/Lists/Posts/Post.aspx?List=e4cb5492-5cf4-4140-8115-4080a4d17632&ID=309&Web=d08da9d3-960e-4a4e-a7f9-9c78fad69c84>. See also, Vancity, *Vancity Fast & Fair Loan*. Online < https://www.vancity.com/Loans/TypesOfLoans/FairAndFastLoan/>.
[53] Momentum (2014). *The Real Cost of Payday Loans*. P. 8.

Montreal.[54] Additional programs also exist in Quebec through Caisse Populaire Desjardins and several consumer advocacy groups. These stakeholders have come together to offer financial literacy and 'tide-over' loans that are often interest free for up to 24 months.[55]

The ongoing challenge associated with alternatives are three-fold. First, getting the information on available alternatives out to consumers. Second, to convince traditional providers of financial services such as banks and credit unions to either introduce products that would serve as alternatives to payday loans, or expand and promote their existing alternatives. Finally, since it is the provincial government who has decided to allow the proliferation of payday lenders in Ontario largely unchecked, perhaps the provincial government should work in partnership with stakeholders to introduce and financially back a chain of consumer credit offices in Ontario communities. These proposed consumer credit offices could offer products similar in nature to alternative financial services, but on a basis that would only recover costs or provide a modest level of return on investment. Using this approach, Ontario consumers would have a trusted source for alternative financial services whose motives were not solely based upon keeping their customers in a cycle of debt repayment.

It has been proposed in the past by some stakeholders that these basic financial services might be a good fit for the Canada Post Corporation.[56] Canada Post has been hard hit financially by a reduction in letter mail, and other jurisdictions have shown the basic financial services and post office provider model can be an effective one.[57] For example, data collected by Canada Post concluded banking was a proven money-maker, accounting for 13 percent of profits for the U.K. post office; 25 percent for Australian post; 30 percent for France's La Poste; 54 percent in Switzerland; 71 percent at New Zealand Post Group's Kiwi Bank; and 78 percent of profits for Italy's Banco Posta.[58] It has been argued that Canada Post would benefit financially by a new revenue stream, while Canadians would benefit, especially in those rural and urban locations where traditional financial institutions have removed themselves.[59] Moreover, Canada Post provides a well-known and relatively trusted corporate image, as well as an extensive geographic

[54] Momentum (2014). *The Real Cost of Payday Loans*. P. 8.
[55] Momentum (2014). *The Real Cost of Payday Loans*. P. 8.
[56] Watson, H.G. "Why Postal Banking May Save Canada Post." *Rabble*. May 1, 2014. Online: <http://rabble.ca/news/2014/04/why-postal-banking-may-save-canada-post>.
[57] LeGoff, P. (2005). *Canada Post Corporation as a Provider of Financial and Government Services: The Way of the Future?* Library of Parliament, Parliamentary research Branch, PRB 05-14E. Online: <http://www.parl.gc.ca/content/lop/researchpublications/prb0514-e.htm>.
[58] Korski, T. "Canada Post Banks 'Win-Win', Secrets Records Show." *Blacklock's Reporter*. February 10, 2014.
[59] Watson, H.G. "Why Postal Banking May Save Canada Post." *Rabble*. May 1, 2014. Online: <http://rabble.ca/news/2014/04/why-postal-banking-may-save-canada-post>. See also John Anderson (2013). *Why Canada Needs Postal Banking*. Canadian Centre for Policy Alternatives. P. 62-69, and LeGoff, P. (2005). *Canada Post Corporation as a Provider of Financial and Government Services: The Way of the Future?* Library of Parliament, Parliamentary research Branch, PRB 05-14E. Online: <http://www.parl.gc.ca/content/lop/researchpublications/prb0514-e.htm>.

coverage throughout Canada. Alas, Canada Post has outright rejected the notion of introducing financial services into its portfolio.[60]

3.3 What does a better alternative look like? Could it succeed if it was in competition with payday lending?

In PIAC's view the model employed in the province of Quebec appears to work well, largely in the absence of payday lenders. However if the government insists on retaining payday lenders in Ontario communities, PIAC contends the provincial government explore working in partnership with stakeholders to introduce and financially back (if necessary) a chain of consumer credit offices offering true micro-credit at affordable rates in Ontario. Stakeholders could include anyone from advocacy groups to traditional financial institutions. These proposed consumer credit offices could offer products similar in nature to alternative financial services, but on a basis that would only recover costs or provide a modest level of return on investment. The proposed level of return on investment would be publicly transparent.

By proceeding in the manner proposed here, PIAC believes these consumer credit offices would provide ample competition for existing payday lenders. In fact, PIAC speculates that in those areas home to a consumer credit office, Ontario residents would benefit from a reduction in fees and rates applied to them by payday lenders as well as other providers of alternative financial services.

3.4 Are there similar consumer protection concerns with potential substitutes?

It is PIAC's position that in this instance, potential substitutes will consist of either federally regulated financial institutions or a new entrant with a mandate to provide these services on a basis that does not solely rest upon the profit motive. As a result, these substitutes, as proposed, would not pose similar consumer protection concerns as the present providers of payday lending services in Ontario.

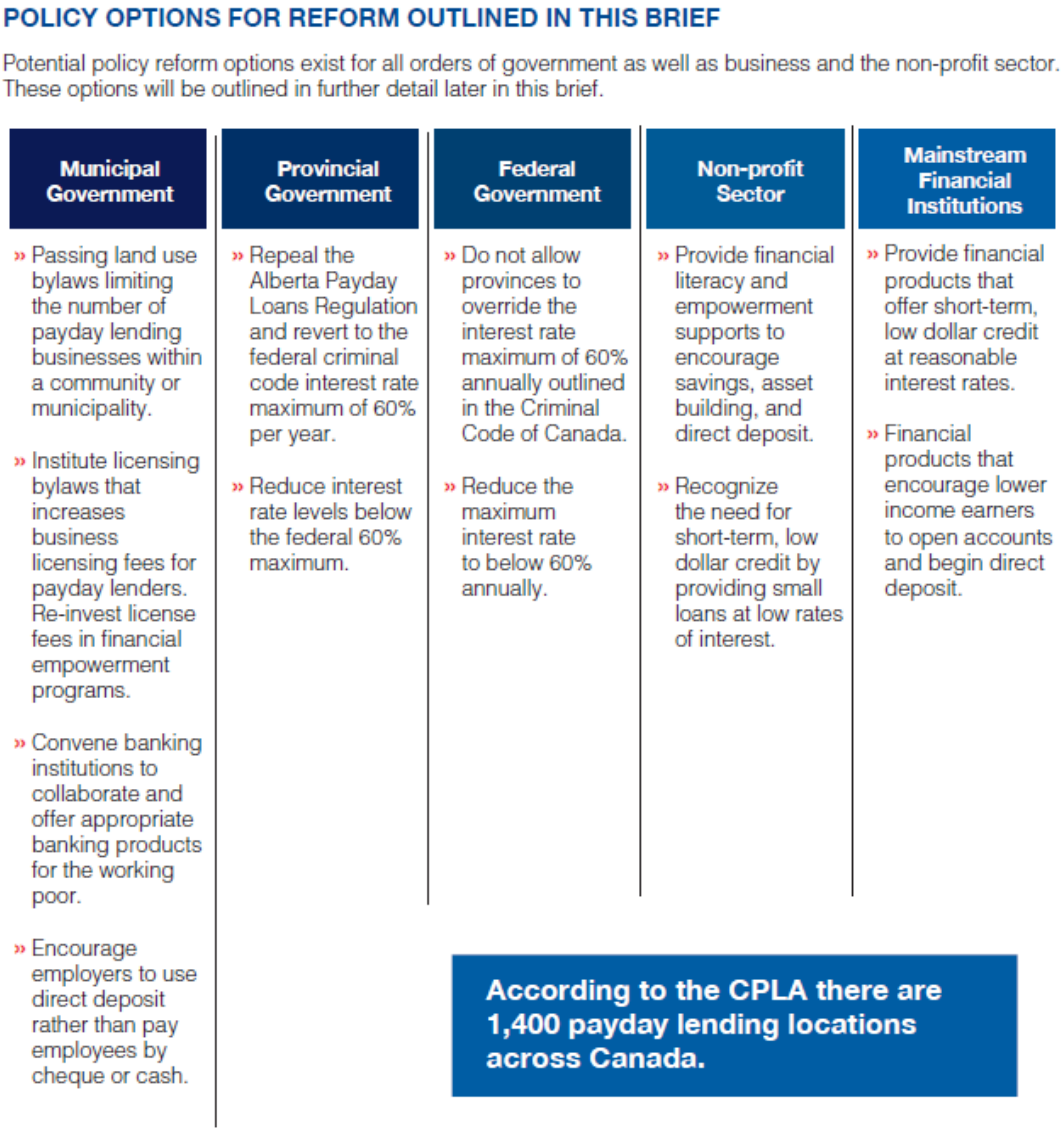
3.5 Are there other fundamental changes that should be made to how the industry operates in Ontario or regional differences in the need for the industry?

A series of proposed changes to the payday lending industry have been suggested by Momentum in their 2014 report entitled, *The Real Cost of Payday Lending*. Momentum concluded that each level of government, along with the non-profit sector and mainstream financial institutions could

[60] Watson, H.G. "Canada Post Provided 800Pages on Postal banking, but 700 are Redacted." *Rabble*. March 4, 2014. Online: <http://rabble.ca/news/2014/03/canada-post-provided-800-pages-on-postal-banking-700-are-redacted>. See also, Korski, T. "Canada Post Banks 'Win-Win', Secrets Records Show." *Blacklock's Reporter*. February 10, 2014.

alter their existing efforts and play a role in addressing predatory payday lending. Figure 1 below is an excerpt from Momentum's report that summarizes the reform options available to various stakeholders.

Figure 1 - Policy Options for the Payday Loan Industry Suggested by Momentum in 2014[61]



PIAC's other suggestions for fundamental changes to the industry are detailed in the answers to the questions below.

[61] Momentum (2014). *The Real Cost of Payday Loans*. P. 1,

4. Base a review of the maximum total cost of borrowing on specified factors

The Payday Lending Panel identified key factors for such a review, including:

- Reflecting the cost of lending,
- Balancing industry viability and affordability for consumers,
- A five year review cycle, and
- Seeking external advice from a wide range of stakeholders.

Questions:

4.1 Are these the right factors for a review of the maximum total cost of borrowing? Should some be dropped or modified? Are there missing factors?

The above factors listed appear to be appropriate for a future review of the maximum total cost of borrowing, but not exhaustive. PIAC would add that the discussion of "affordability" of consumer loans should also be augmented by an inquiry into responsible lending on the part of lenders. Likewise, the "cost" to consumers should be widened to a consideration of the social cost to communities of this type of loan.

However, PIAC also would like to reiterate that while they are participating in this consultation process, that they would prefer an open, transparent and administrative rate-setting process as opposed to the course taken by the Government of Ontario to advise the Cabinet and permit Cabinet to choose a maximum rate of borrowing in Ontario.[62] Such a process exists in Manitoba and evidence suggests that this approach is beneficial to consumers, is more transparent than the policy approach taken in Ontario, and appears to cover the considerations identified by the Payday Lending Panel.

Firstly, regarding "viability of the industry"; payday loan providers in Ontario operate with close to a 50 percent profit margin.[63] It is clear that this industry has no problem with viability and will not lower interest rates/cost of borrowing even in the face of increased competition.[64] Only a significant reduction in the mandated allowable cost of borrowing will reduce industry profitability.

[62] Please see PIAC and NAPO's Comments to the Standing Committee on General Government on Bill 48, filed 30 May 2008, pp. 5-6.

[63] Consumers Council of Canada (2015). *Consumer Experiences in Online Payday Loans*. P. 101. See also FC Global Corp. United States Securities and Exchange Commission Form 10-K Filing for the year ended June 30, 2013. P. 60. Online: <http://www.sec.gov/Archives/edgar/data/1271625/000119312513352311/d590562d10k.htm#toc>.

[64] See Hayes, Patrick L. (2009) "A Noose Around the Neck: Preventing Abusive Payday Lending Practices and Promoting Lower Cost Alternatives," William Mitchell Law Review: Vol. 35: Iss. 3, Article 10, speaking about the payday loan market in various U.S. states. However, the markets are similar, in PIAC's view, to Ontario's in this respect. Available at: http://open.wmitchell.edu/wmlr/vol35/iss3/10, at p. 1148:

Secondly, regarding industry costs, PIAC, along with Canada Without Poverty (formerly National Anti-Poverty Organization) presented a submission to the Ontario Maximum Total Cost of Borrowing Advisory Board in October 2008. Many of the comments pertain to the actual costs borne by the PDL industry and remain relevant to this discussion.[65]

PIAC notes that the essential structure of the payday loan product proposed in the above submission is essentially that used in Colorado for the update to Colorado law that modified the payday loan product there into a more small value loan with time to repay and a reasonable origination and administration fee, given the industry's claims that loan origination and lack of security (in the form of physical collateral or other assets) raise lender's costs for these loans. In other words, if the government is seriously considering an inquiry in the costs of originating an administering these loans, it should look at the PIAC/CWP submission and Colorado law, both of which describe the likely factors in industry cost and a more realistic structure for allowing a reasonable recovery of those costs without any excessive markup or the addition of an unrealistically high risk premium.

Finally, regarding what Ontario consumers can "afford" – we again note that the research in the United States suggests that for most borrowers using PDLs, there is no realistic prospect of repayment without starting a debt spiral unless the cost to borrowers is actually reduced to approximately 5% of monthly income and no higher.[66] This means that lump sum repayment models are not affordable to consumers (and therefore also are not "responsible lending") and that Ontario should be seriously considering requiring the PDL industry to move to installment structures.

> Despite industry assertions, interest rate caps are necessary to correct a market failure in the payday loan industry. While competition has increased between payday lenders, the market has failed to produce lower interest rates. Studies show that interest rates have increased or remained the same despite the industry's growth. In states with interest rate caps, a vast majority of the payday lenders continue to charge the highest legal interest rate permitted. Moreover, payday lenders do not compete based on price but instead primarily on name recognition, speed, and promotions or specials. Furthermore, payday lenders frequently refuse to disclose the interest rate and other loan terms until after the consumer applies for the loan, thereby preventing price shopping. Thus, capping interest rates as opposed to relying upon market pressures will effectively prevent payday lenders from charging triple-digit interest rates. [footnotes omitted]

[65] See "Comments of the Public Interest Advocacy Centre (PIAC) and the National Anti-Poverty Organization (NAPO) To the Maximum Total Cost of Borrowing Advisory Board on The Consultation on the Maximum Total Cost of Borrowing on Payday Loans in Ontario", October 31, 2008. Online: http://www.piac.ca/wp-content/uploads/2014/11/piac_napo_payday_loan_rate_comments_final.pdf

[66] Bourke, Nick, Alex Horowitz, and Tara Roche. 2012. Payday Lending in America: Who Borrows, Where They Borrow and Why.Washington, DC: Pew Charitable Trusts, July. Online: http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Payday_Lending_Report.pdf at p. 29: "These findings suggest that any loan requiring payments of more than 5 percent of the borrower's paycheck should be treated as unaffordable, unless thorough underwriting demonstrates otherwise."

5. Restrict how consumers can use payday loans through a transaction tracking system.

Questions:

5.1 Should the Act restrict borrowers from seeking simultaneous loans from multiple payday lenders?

See 5.2 below.

5.2 Would a central tracking system strengthen protections for payday borrowers? What would the impact be on the payday lending industry?

In 2003, PIAC recommended the creation of a Lender Database (of borrowers and of loans) for the purpose of assisting Payday loan customers obtain improved credit reporting results.[67] At that time, PIAC noted that such a database should not be used as surveillance of borrowers but to create positive credit histories. Moreover, PIAC recommended positive payday lending records should be made portable to mainstream credit reporting agencies to allow borrowers to improve their credit rating while taking payday loans.[68]

In South Africa, lenders submit loans details to the "National Loans Register" (NLR) – an independent credit reporting system for small loans. This rule is designed to defend against "reckless lending", and is implemented in concert with a separate rule requiring the lender to consider the borrower's ability to repay (with the assistance of the NLR) and still meet living expenses.[69]

Several states, notably Florida and Washington, track outstanding loans and borrowers in order to prohibit simultaneous loans to one customer or to enforce state laws limiting the number of PDLs a customer may have access to over the course of a year.

Many of the reforms suggested below require such a borrower database to implement. PIAC strongly supports this database for the purposes of limiting loans to repeat borrowers and halting simultaneous loans. In addition, PIAC underlines the importance of extensive record-keeping and reporting requirements, which could be added functionality to the database.

[67] PIAC (2003). *Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and "Alternative Banking."* P. 7.
[68] PIAC (2003). *Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and "Alternative Banking."* P. 7.
[69] Porteous, D. and Ethel Hazelhurst. *Banking on Change: Democratising Finance in South Africa 1994-2004*. (Double Story, 2004). P. 94-95.

6. Require payday lenders to take the borrowers' ability to repay into account.

Questions:

6.1 Should payday lenders be required to limit how much they lend to reflect borrowers' circumstances?

In 2003, PIAC recommended a limit on amount of a payday loan to 25% of borrower's net income from their next paycheque, and we continue to contend this is a reasonable limit.[70] The Province of Manitoba introduced a limit of 30% of a borrower's net income in 2010.[71] In 2013, the Manitoba Public Utilities Board (PUB) reviewed the payday loans industry and regulations. The Manitoba PUB said the following in relation to the application of the 30% limit:

> "(The Moneytree Payday Loans) MPL reports that although its frequent user's percentage has decreased from a reported annual average number of loans per client of 16.21 in 2008, it still has an annual average frequency rate of 6.78 loans per customer in 2012. All of the evidence supports the Board's finding that the debt spiral/debt trap issue is a key concern. Indeed, using MPL's figures, it is clear that the 2010 regulatory restrictions including a 5% rate on extension and replacement loans and the borrowing limit at 30% of net pay has drastically reduced the volume of loans being made by MPL."[72]

The provinces of British Columbia and Saskatchewan have borrowing limits of 50% of the net amount of the individual's next pay. However, PIAC now believes, based on the CRL research noted above, that the upper limit of borrowing should be approximately 5% of monthly income and no higher. PIAC is aware that such a limit fundamentally changes the nature of the present PDL industry in Ontario and requires business model change of operators in Ontario. However, the "ballparking" of selecting percentages of income that are unsustainable in fact as not a proper policy choice and dooms these borrowers to a debt spiral from which some may never recover.

[70] PIAC (2003). Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and "Alternative" Banking. P. 50. Online: <http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt2.pdf>.

[71] Manitoba, *Consumer Protection Act*. Reg. 50/2010, s. 2.2 (1), s. 2.2 (2).

[72] Manitoba Public Utilities Board (2013*). Report of the Public Utilities Board of Manitoba in Respect of the 2013 Payday Loans Review*. P. 44. Online: <http://www.pub.gov.mb.ca/payday_loan/final_payday_loans_triennial_report_sep_23_2013.pdf>.

6.2 Is a proportion of net income an appropriate means of restricting the amount lent?

The Canadian Payday Loan Association continues to assert, as recently as 2013 that "Payday Loans are meant for occasional and unusual use only. Payday loans are not meant to be used continuously, or as long term loans."[73] However, Manitoba's PUB concluded there is a pattern of frequent use of payday loans by individuals with ongoing cash flow problems.[74] Given the predatory tactics employed by payday loan providers in Ontario, PIAC contends any restriction that can be applied to avoid a scenario where consumers feel compelled to repeatedly borrow funds in this manner should be undertaken by the Ministry.

As noted above, Colorado's PDL law effectively limits the percentage of income borrowers must expend on the loan by extending the time for repayment. It is possible to limit the lender's advance to a percentage of the borrower's next expected pay given the evidence provided to the lender (usually a pay or cheque stub or other direction to pay into an account). This is done as noted in B.C. and Saskatchewan. However, the Ministry should consider both the Colorado rework of the product and the total loans in a year method of Washington State, together, as more direct methods to reduce the overall percentage of income required to service these loans to something within the means of the borrowers.

6.3 If general lending standards are set, what should they consider (e.g., rent, groceries, utilities)?

PIAC argues that if general lending standards are set, the ability of the borrower to repay the outstanding loan while being able to retain their basic human needs should be the primary concern. In other words, in order to service the loan, the customer should not have to reduce spending on other essential services, including rent, food, clothing, heat and electricity, transportation, health care and "basic communications services."[75]

[73] Manitoba Public Utilities Board (2013*). Report of the Public Utilities Board of Manitoba in Respect of the 2013 Payday Loans Review*. P. 44-45. Online: <http://www.pub.gov.mb.ca/payday_loan/final_payday_loans_triennial_report_sep_23_2013.pdf>. See also Canadian Payday Loan Association (2010). "Using Payday Loans, A Guide to Responsible Borrowing." Online: <http://www.cpla-acps.ca/english/reports/10-1532%20CPLA%20Brochure.pdf>.

[74] Manitoba Public Utilities Board (2013*). Report of the Public Utilities Board of Manitoba in Respect of the 2013 Payday Loans Review*. P. 45. Online: <http://www.pub.gov.mb.ca/payday_loan/final_payday_loans_triennial_report_sep_23_2013.pdf>.

[75] For a definition of essential communications services, please see PIAC report: "No Consumer Left Behind: A Canadian Affordability Framework for Communications Services in a Digital Age" (January 2015). Online: http://www.piac.ca/wp-content/uploads/2015/03/PIAC-No-Consumer-Left-Behind-Final-Report-English.pdf

7. Waiting periods between payday loans.

Questions:

7.1 Should Ontario rely only on a waiting period between payday loans? If so, how long?

The Province of Ontario should rely on a waiting period between payday loans, but not *only* on such, as waiting periods are only one of several mechanisms that mitigate the harms of the payday loan industry on consumers. As part of a larger regulatory schema, mandatory waiting periods are critical, considering that "one of the greatest risks associated with payday loans is rollovers or repeat usage,"[76] and that a high proportion of consumers end up borrowing loans back-to-back.[77] PIAC has been recommending mandatory waiting periods as a solution since 2002, beginning with its report, *Fringe Lending and "Alternative" Banking: The Consumer Experience*.[78]

The first reason to implement waiting periods is to reinforce the pre-existing ban on rollover loans in Ontario payday loan legislation. While regulations prohibit rollover loans, two things undermine their effectiveness. First, rollover loans may occur in any case, due to low accountability and enforcement within the industry.[79] Second, the lack of a waiting period means that instead of a rollover loan, borrowers may take out back-to-back loans, in which they pay off their current loan and immediately after take out a new one, with the attendant extra charges and fees. This is a rollover loan in function if not form, and exacerbates the problems that the rollover ban is meant to address.[80] For example, a study in Toronto related the existence of a popular "pick-up option" at Cash Money, while Money Mart, a member of the CPLA (which bans rollovers under its Best Practices, to which all members must adhere as a requirement of membership) allowed borrowers to apply for back-to-back loans, again with additional fees.[81] In fact, there have been calls among

[76] "As identified above, one of the greatest risks associated with payday loans is rollovers or repeat usage. … Thirty percent of payday loan customers indicated that they sometimes or frequently used the same source for more than one pay period in a row. There may be as many as 75 to 100 thousand Canadians who are using payday loans in this way and generating APR's in the thousands of percent in the process." PIAC (2002). Fringe Lending and "Alternative" Banking: The Consumer Experience. p. 52. Online < http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt1.pdf>.

[77] Ibid.

[78] "Rollovers must be prohibited. Loan extensions (for a further fee) and back-to-back loans without a cooling off period must likewise be prohibited. Payday loans must be limited to industry-stated rationale that they are an 'occasional' loan and not long-term source of credit." PIAC (2002). Fringe Lending and "Alternative" Banking: The Consumer Experience. p. 50-51. Online < http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt1.pdf>.

[79] "Most repeat loans are either 'rolled over' (loan extension with principal intact and repayment of interest and charges only) – which is illegal under the Payday Loans Act, 2008 subs. 35(1) but may well be occurring in any case…." Please see PIAC and NAPO's Comments to the Maximum Total Cost of Borrowing Advisory Board on the Consultation on the Maximum Total Cost of Borrowing on Payday Loans in Ontario, filed 31 October 2008, para. 46.

[80] Ontario Ministry of Consumer Services (2014). Strengthening Ontario's Payday Loans Act: Payday Lending Panel Findings and Recommendations Report. pp. 17, 20. Online: <http://www.ontariocanada.com/registry/showAttachment.do?postingId=17182&attachmentId=26292>.

[81] "Money Mart would also receive new fees from my 'back-to-back' loan every two weeks. For example, if I pursued 'back-to-back' loans for one year (26 loans) on a principal amount of $300 I would pay roughly $60 in interest every two weeks. In this

regulators to define back-to-back payday loans as effectively rollovers.[82] A mandatory waiting period would close this regulatory loophole and ensures existing legislation does what it is already supposed to be doing.

The second reason to implement waiting periods is to help disrupt the dependence-entrenching "cycle of debt" that back-to-back loans often draw borrowers into, which finds them "continually paying interest and other charges that quickly exceed the initial value of loan".[83] If forced to wait a certain amount of time in between payday loans, the borrower has a period in which they may find a way to lessen their dependence on payday loan companies,[84] whether through alternative sources of funding, more effective financial management, discovering a small-loans bank product, or turning to credit counseling, many of which would likely be better options than payday loans in the long run.

In the United States, where payday loan regulation has a long and storied history, many states have implemented waiting periods of various kinds and durations, including Illinois, Indiana, Alabama, Oklahoma, and others. In its most common form, waiting periods do not come into play until after the borrower has taken out several consecutive loans. In Indiana, for example, the borrower may take out five small loans consecutively after their first, with the fifth loan triggering a seven-day waiting period.[85] While this goes some way towards disrupting the cycle of debt, it may be worth considering preventing the cycle from occurring in the first place, by having the waiting period triggered earlier, or after every loan.

As for the length of the waiting period, a duration of one week to fourteen days might be ideal, though more research may be required to establish an exact number. This is a long enough time that the borrower may be forced to consider alternative strategies, but not so long that the borrower cannot ultimately obtain relief in a relatively short period of time if taking out another payday loan becomes of absolute necessity. From the point of view of industry, studies have shown that the majority of business comes from borrowers who take out anywhere from six to sixteen loans per year[86] so a waiting period of two weeks or less would have little impact on lenders, but could make all the difference for borrowers.

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case, Money Mart would receive over $1,560 in interest (520% APR), for a $300 loan." Ben-Ishai, Stephanie (2008). "Regulating Payday Lenders in Canada: Drawing on American Lessons." *Comparative Research in Law & Political Economy*. Online: <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1189&context=clpe>. Page 28.

[82] PIAC (2002). Fringe Lending and "Alternative" Banking: The Consumer Experience. p. 56. Online < http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt1.pdf>.

[83] Kitching, Andrew and Sheena Starky (2008). *Payday Loan Companies in Canada: Determining the Public Interest*. Library of Parliament. Page 10-11.

[84] Ontario Ministry of Consumer Services (2014). Strengthening Ontario's Payday Loans Act: Payday Lending Panel Findings and Recommendations Report. p. 20. Online: <http://www.ontariocanada.com/registry/showAttachment.do?postingId=17182&attachmentId=26292>.

[85] Ontario Ministry of Consumer Services (2014). Strengthening Ontario's Payday Loans Act: Payday Lending Panel Findings and Recommendations Report. p. 17. Online: <http://www.ontariocanada.com/registry/showAttachment.do?postingId=17182&attachmentId=26292>.

[86] "Consumers who borrow twelve-or-more times a year account for nearly two-thirds of the typical DDLA licensee's unit volume." See PIAC and NAPO's Comments to the Maximum Total Cost of Borrowing Advisory Board on the Consultation on the Maximum Total Cost of Borrowing on Payday Loans in Ontario, filed 31 October 2008, paras. 43-44.

While the above details why the Province of Ontario should incorporate mandatory waiting periods into its payday loan regulation, there remain several issues that waiting periods would not address. This is why Ontario should not rely *only* on waiting periods.

First, borrowers would still be able to take out simultaneous payday loans from different companies, or take out back-to-back loans in between different companies (where the borrower pays off their loan at one company, triggers the waiting period rule, but then goes to another company immediately and takes out a new loan there). In this case, the cycle of debt would continue, but across multiple companies instead of just one. The United States has recognized this problem and addressed it in several states: Florida, Virginia, and Oklahoma prohibit or limit the number of simultaneous loans, while Delaware established a $1000 cap on total outstanding loans value per borrower, regardless of number of loans.[87] While Ontario law currently prevents loan *brokers* from arranging concurrent loans for borrowers with multiple lenders,[88] there is nothing that puts limits on either the lenders or borrowers themselves.

Second, as the Delaware solution highlights, waiting periods would not address either the total number of loans borrowers could take out in a year, nor the total value of outstanding loans a borrower could carry, whether in a year or at any given point. While waiting periods may slow down the rate at which loans are taken out, there is still no reasonable cap in place, to prevent a borrower from taking out loans at the end of every single waiting period throughout a year.

Third, waiting periods do not address the total cost of loans that borrowers pay, on top of the outstanding principal amounts. Companies could raise fees and charges in order to make up for any losses that waiting periods might induce, which would defeat part of the purpose from the perspective of borrower protection.

Finally, some critics of waiting periods, and payday loan restrictions generally, say that such policies will either redirect borrowers towards less regulated alternative financial services, such online lending or loan sharking, or failing that, prevent borrowers from accessing funds that they may need direly, when they have nowhere else to go.[89] However, a PEW report found that the vast majority of borrowers surveyed would find other ways to make do if payday loans were unavailable, such as delay or prioritize bills, cut back, turn to friends and family, sell possessions, negotiating with other creditors, or other options that did not involve alternative financial institutions.[90] The report further stated that there is "significantly less payday loan usage in states

[87] Ontario Ministry of Consumer Services (2014). Strengthening Ontario's Payday Loans Act: Payday Lending Panel Findings and Recommendations Report. p. 17. Online: <http://www.ontariocanada.com/registry/showAttachment.do?postingId=17182&attachmentId=26292>.
[88] Ibid.
[89] Ontario Ministry of Consumer Services (2014). Strengthening Ontario's Payday Loans Act: Payday Lending Panel Findings and Recommendations Report. p. 21. Online: <http://www.ontariocanada.com/registry/showAttachment.do?postingId=17182&attachmentId=26292>.
[90] Pew Charitable Trusts (2012). Payday Lending in America: Who Borrows, Where They Borrow, and Why. Pew Charitable Trusts. Online: <http://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why >. Pages 5, 17.

with strong legal protections because most people are not getting payday loans from the Internet or other sources instead".[91] If, however, a borrower truly is at the end of their rope, then perhaps rather than allowing the debt spiral to continue, this is the point at which they could be redirected into credit counselling or even bankruptcy proceedings, as opposed to allowing the situation to get progressively worse and even harder to recover from.

8. Restrict the number of payday loans a borrower can take out in a year.

Questions:

8.1 Should there be a restriction on the number of payday loans a borrower can take out in the year?

The Province of Ontario should place a restriction on the number of payday loans a borrower may take out in the year. Contrary to what payday loan advertisements and marketing imply, frequent repeat loans form a significant proportion of the payday loan business, as opposed to one-time emergency loans. For example, one study in Colorado found that borrowers who take out twelve or more loans per year "account for nearly two-thirds of the typical DDAA licensee's [payday loan company's] unit volume", while nearly half the volume is accounted for by borrowers who took out a minimum of sixteen loans within a twelve-month period.[92] Indiana regulators found that 77% of borrowers renewed loans an average of ten times each, while Illinois, Iowa, and Wisconsin revealed an average of 13, 12, and 11.9 loans per borrower per twelve-month period, respectively.[93] In Canada, industry research has found that nearly a quarter of borrowers transact 14 or more payday loans per year.[94] In all of these situations, borrowers further entrench themselves into a cycle of debt, paying exorbitant amounts in interest and fees far beyond the original principal, which itself is never paid down. Limiting the number of payday loans that a borrower may take out in one year will address the harms of payday loans in multiple ways.

[91] Pew Charitable Trusts (2012). Payday Lending in America: Who Borrows, Where They Borrow, and Why. Pew Charitable Trusts. Online: <http://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why >. Page 23.
[92] See PIAC and NAPO's Comments to the Maximum Total Cost of Borrowing Advisory Board on the Consultation on the Maximum Total Cost of Borrowing on Payday Loans in Ontario, filed 31 October 2008, para. 43.
[93] PIAC (2002). Fringe Lending and "Alternative" Banking: The Consumer Experience. pp. 23-24. Online < http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt1.pdf>.
[94] PIAC (2002). Fringe Lending and "Alternative" Banking: The Consumer Experience. p. 23. Online < http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt1.pdf>.

Washington State has most aggressively used the limitation of number of payday loans a borrower may take out yearly as an indirect way to manage the affordability of these loans to consumers:

> Washington State's limit of eight payday loans per year. Despite an increase in the allowable loan size in Washington to $700, a before–after comparison (2009 vs. 2011) there revealed a sharp reduction in annual loans per borrower from 7.9 to 3.7, a corresponding decline in days of indebtedness (155 reduced to 105 per year), a 76% reduction in statewide loan volume (with 43% fewer borrowers), and a lowering of the average APR from 256% to 182% (mainly because of longer loan terms).

First, restricting how many payday loans lenders may give any particular borrower in a year will encourage responsible lending, and hold the payday loan industry to its ostensible claims regarding the nature of payday loans. If a lending company knows that it may only give out a certain number of loans, it may be more discerning when it comes to assessing a borrower's financial state. As the Ontario Maximum Total Cost of Borrowing Advisory Board concluded, "payday loans should be available only to consumers who can realistically be expected to pay them back on time and use them as a tool for personal financial recovery. Some payday loans simply should not be made because they are too risky for both borrower and lender."[95] Restricting the annual number of loans would encourage more secure lending as well as more responsible borrowing in the long run, if borrowers also knew of this limit.

An annual restriction on payday loans would also do more to prevent unconscionable behaviour on the part of lenders, again by encouraging lenders to more judiciously assess whether or not to give out a particular loan. Ontario has established that in determining "unconscionable representation" for purposes of the *Consumer Protection Act*, "it may be taken into account that the person making the representation knows or ought to know that there is no reasonable probability of payment of the obligation in full by the consumer",[96] and a loans restriction may promote closer scrutiny of a borrower's ability to pay. If a lender determines that a borrower would likely have to continue renewing loans indefinitely, whether through rollover-imitating schemes or other back-to-back loans, then they may wait until the borrower returns in a better financial state, or lend regardless but then be stopped by the annual restriction. In both situations, the borrower's cycle of debt is disrupted and they have an opportunity to seek solutions elsewhere, while "[p]ayday lenders should not be allowed to profit from the desperation of borrowers who have nowhere else to turn" in any case.[97] This is particularly so when one considers that one study found "no evidence that payday loans alleviate hardship … [but] leads to increased incidence of

[95] "Capping Borrowing Costs: A Balanced Approach to Payday Loans in Ontario" (2009). Report of the Maximum Total Cost of Borrowing Advisory Board for the Ontario Payday Lending Industry. Online < https://www.sse.gov.on.ca/mcs/Documents/264305.pdf>. Page 3.
[96] *Consumer Protection Act,* 2002, S.O. 2002, c. 30. Schedule A. s. 15(2)(d). Online < www.ontario.ca/laws/statute/02c30 >.
[97] "Capping Borrowing Costs: A Balanced Approach to Payday Loans in Ontario" (2009). Report of the Maximum Total Cost of Borrowing Advisory Board for the Ontario Payday Lending Industry. Online < https://www.sse.gov.on.ca/mcs/Documents/264305.pdf>. Page 19.

difficulty paying mortgage, rent and utilities bills; moving out of one's home due to financial troubles; and delaying needed medical care, dental care and prescription drug purchases".[98]

As with waiting periods, limiting the annual number of loans may ultimately encourage borrowers towards less destructive financial solutions, and prevent or reduce the continued impact of falling into a debt cycle.[99] While payday loan companies flourished in part because banks closed their branches or were otherwise inaccessible to borrowers,[100] it is possible that limiting the total availability of loans per year may force demand to rise at traditional financial institutions and initiate a virtuous cycle that begins to reverse the trend. Furthermore, to reiterate the response to Question 7 above, research has shown that borrowers often do not turn to more harmful or even other alternative financial sector options if payday loans are unavailable.[101]

More Ontario-specific research may be needed to determine what the exact number of allowed payday loans per year should be, in addition to taking into account the fact that borrowers may transact with multiple different companies concurrently. However, there is no doubt that borrowers would benefit and the payday loan industry would be improved if the Province were to implement a restriction on the number of payday loans borrowers could take out in a year, perhaps in conjunction with the development of an extended repayment loan option or requirement (see below).

[98] Melzer, Brian T. 2011. "The Real Costs of Credit Access: Evidence from the Payday Lending Market." Quarterly Journal of Economics. Online: <http://qje.oxfordjournals.org/content/126/1/517.full.pdf+html>. Abstract, Page 30.
[99] Ontario Ministry of Consumer Services (2014). Strengthening Ontario's Payday Loans Act: Payday Lending Panel Findings and Recommendations Report. p. 20. Online: <http://www.ontariocanada.com/registry/showAttachment.do?postingId=17182&attachmentId=26292>.
[100] "The growth of the payday loan industry is directly linked the inaccessibility of bank loans and other supports in Canada." Mackenzie, Kaitlin (2015). "Cashing in on Poverty: Predatory Lending Explained." Canada Without Poverty. Blog Post, March 16, 2015. Online: <http://www.cwp-csp.ca/2015/03/cashing-in-on-poverty-predatory-lending-explained>.
[101] PIAC (2002). Fringe Lending and "Alternative" Banking: The Consumer Experience. p. 53. Online < http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt1.pdf>.

9. Require payday lenders to provide an extended payment plan to frequent borrowers.

Questions:

9.1 Should payday lenders be required to provide an extended payment plan to frequent borrowers?

PIAC believes that, as in Colorado, a longer time to repay would go a long way to assisting individual borrowers break out of a cycle of debt.

9.2 If yes, when should an extended payment plan be required (e.g., when the borrower has received more than X number of loans in Y number of periods)? Why?

Payday lenders should be required to provide an extended payment plan option at all times and manditorily to frequent borrowers as a requirement. In British Columbia, borrowers who take out three loans within 62 days are put on an extended payment plan, where the loan is repaid over the borrower's subsequent two or three pay periods.[102]

First, implementing an extended payment plan requirement for payday loan lenders would "[e]ncourage a socially responsible industry, with no reckless or predatory lending".[103] Responsible lending involves structuring loans in a way that aligns with a lender's ostensible intent to retrieve the original principal as soon as reasonably possible, over a period of time that is proportional to the principal amount and the borrower's ability to pay it back. As they currently work in practice, payday loans do not adhere to this notion of responsible lending. While a recent PEW report found that most Americans consider four to six months a reasonable period of time over which to pay back a $300 loan,[104] most payday loan companies loan the same amount set to mature in just two weeks. Such a system exploits borrowers' vulnerable circumstances for profit, and the principal becomes a mere vehicle through which payday loan companies maintain the true core of their business model: the associated charges and fees that entrench the borrower in a cycle of debt that continues even long after they have already paid far more than the original principal back. Requiring extended payment plans as an option and then mandatorily after a certain point would allow presently structured payday loans to maintain their supposed convenience and advantages for supposed “one off” borrowers but, with a mandatory requirement to also offer lengthier term loans at the start, would give consumers who were not able to service loans the chance to avoid the debt cycle. If a customer took a certain number of ‘traditional’ PDLs, likely 3 or four a year, the new rule would, as in B.C., automatically convert the loan into a more

[102] Money Mart. “Extended Payment Plan FAQ”. 2015. Online: <http://www.moneymart.ca/payday-loans/faq/extended-payment-plan.aspx>.
[103] PIAC (2003). Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and “Alternative” Banking. p. 18. Online: <http://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt2.pdf>.
[104] Pew Charitable Trusts (2015). “CFPB Proposal for Payday and Other Small Loans: A Survey of Americans.” Chartbook. Online: <http://www.pewtrusts.org/~/media/Assets/2015/07/CFPB_Chartbook.pdf>.

responsible and less predatory loan once it became clear that the borrower would not likely be able to pay the company back in full without repeat borrowing in the near future.

The extended payment plan loans (optional, then mandatory when repeat traditional balloon PDLs added up) would be a way for regulators to hold payday loan companies to their word regarding the nature of payday loans being "short-term, small-dollar credit intended for emergency or special use",[105] as opposed to "a stop-gap measure to delay an inevitable slide into financial collapse".[106] One response that the payday loan industry offers to critiques of astronomical interest rates is that the rates are not meant to ever be considered on an annual basis, as the loans are intended to be short-term. However, due to borrowers regularly taking out repeat loans as described throughout the rest of this document, oftentimes the loans of one borrower all put together in effect become one year-long loan, with the same interest rate that was based on a two-week term. Requiring extended payment plans would convert exploitative, predatory loans into responsible loans that borrowers have a reasonable chance of paying back, and is a requirement that would not harm companies who truly base their business on the concept of payday loans as "one-time" and "short-term".

As with most other regulatory recommendations for the payday loan industry, extended payment plans are another means through which borrowers might break the cycle of debt into which many payday loan users fall. By breaking up total debt into more manageable and reasonably timed amounts, borrowers are more likely to ultimately pay off their loans and will undergo less financial pressure in the meantime, or may redirect funds to priorities such as bills or health care. At the same time, if lower amounts are due each time the company withdraws from the customer's bank account, the full payment for that day is more likely to be available, meaning the borrower may avoid late fees, NSF fees, and other additional charges that only bring them further away from escaping payday loan debt.

[105] Pew Charitable Trusts (2012). Payday Lending in America: Who Borrows, Where They Borrow, and Why. Pew Charitable Trusts. Online: <http://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why >. Page 13.

[106] "Capping Borrowing Costs: A Balanced Approach to Payday Loans in Ontario" (2009). Report of the Maximum Total Cost of Borrowing Advisory Board for the Ontario Payday Lending Industry. Online <https://www.sse.gov.on.ca/mcs/Documents/264305.pdf>. Page 19.

10. Lower the total cost of defaulting on a loan.

Questions:

10.1 Should Ontario control the total cost of defaulting on loans?

For many of the same reasons that the province should control various aspects of payday loans in order to mitigate the risks of endless mounting debt to frequent borrowers, Ontario should also control the total cost of defaulting on such loans. It makes little sense to control the total cost of borrowing[107] on a loan in order to ameliorate the situation of payday loan borrowers, but exempt default charges from the same kind of restrictions. This would enable payday loan companies to raise default charges to make up for any losses seen in costs and charges that have been restricted by regulation, thus somewhat defeating the purpose.

Furthermore, the benefit of lowering the total cost of default, to vulnerable consumers, would far outweigh the risk or potential harm to lenders, whose assertions regarding the level of financial risk in their business have been largely undermined. As PIAC and NAPO (now CWP) pointed out in their 2008 submission to the Maximum Total Cost of Borrowing Advisory board, payday loans are unofficially if not formally secured in practice, due to how the nature of the loan works in conjunction with the borrower's personal cheque and the deliberately timed loan maturity dates, such that payday lenders are nearly always paid first by the borrower's account, as a matter of course.[108] An ACORN report also states that the payday lending "portfolio is very diversified in the form of many very small loans, and hence the loss rate is reasonably stable. A single corporate default can cost a bank far more in loan losses than the total loan losses of the entire payday lending industry in Canada for a year."[109] Finally, a 2009 Ernst & Young report completed for the Ministry of Small Business and Consumer Services on the cost of providing payday loans in Ontario found that payday lenders' profit margins reached up to 17.56% in some cases, over twice the average for all Canadian industries and nearly three times the profit margin of non-financial Canadian industries.[110] In light of these findings, it seems clear that there is room for the Province to act when it comes to lowering the total cost of defaulting on a loan.

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[107] "To be entirely clear, we reiterate the definition of 'cost of borrowing': it represents the total of all amounts that a borrower is required to pay under, or as a condition of entering into, a payday loan agreement, *except default charges* and repayment of the advance" (emphasis added). "Capping Borrowing Costs: A Balanced Approach to Payday Loans in Ontario" (2009). Report of the Maximum Total Cost of Borrowing Advisory Board for the Ontario Payday Lending Industry. Online <https://www.sse.gov.on.ca/mcs/ Documents/264305.pdf>. Page 19.

[108] See PIAC and NAPO's Comments to the Maximum Total Cost of Borrowing Advisory Board on the Consultation on the Maximum Total Cost of Borrowing on Payday Loans in Ontario, filed 31 October 2008, paras. 33-37.

[109] Robinson, Chris. 2006. *Regulation of Payday Lending in Canada: A Report to ACORN*. Online: <http://www.scribd.com/doc/35804058/Regulation-of-Payday-Lending-in-Canada>. Page 3.

[110] Ernst & Young (2009). "The Cost of Providing Payday Loans in Ontario: A Report Prepared for the Ministry of Small Business and Consumer Services." Ministry of Consumer Services. Online <https://www.sse.gov.on.ca/mcs/Documents/264303.pdf>. Page 20.

Lastly, section 33 of the *Payday Loans Act, 2008* already places restrictions on default charges, by tying chargeable costs directly to those incurred in collecting or attempting to collect payment, or incurred in trying to cash an NSF cheque. As PIAC and NAPO (now CWP) submitted to the Maximum Total Cost of Borrowing Advisory Board, "[a]ny attempt to widen this concept [of charges incurred due to dishonoured cheques] to allow any collection fees or additional interest upon 'default' would run contrary to the clear wording" of section 33. Multiple public interest and consumer interest groups, such as PIAC, ACORN, NAPO, and Option Consommateurs, have spoken out against default charges,[111] and the CPLA itself has incorporated a default charge limit into its code of best practices.[112] The Province of Saskatchewan takes this one step further, by capping default charges at up to 30% per annum on the loan principal amount in default, and restricting NSF charges to a maximum of $50, chargeable only once per loan agreement regardless of the number of times the borrower has defaulted on that agreement.[113] This may be a good model for Ontario to consider emulating.[114]

11. Increase the information available to the consumer.

Questions:

11.1 Would you add anything to the information that currently must be provided?

PIAC suggests implementing the recommendation of the Panel to include available Credit Counseling Services information to borrowers.

11.2 Is too much information currently being provided?

The little research available suggests that PDL providers are not even providing the required information to borrowers at present.[115] It is therefore impossible to determine if "too much" information about a PDL is being provided if, through the fault of the industry itself, the information presently required is not being provided to consumers. The present disclosure requirements are

[111] Please see the Joint Letter of Agreement between PIAC, ACORN, NAPO, and Option Consommateurs, submitted to the Maximum Total Cost of Borrowing Advisory Board on the Consultation on the Maximum Total Cost of Borrowing on Payday Loans in Ontario, filed 31 October 2008.

[112] Ben-Ishai, Stephanie (2008). "Regulating Payday Lenders in Canada: Drawing on American Lessons." *Comparative Research in Law & Political Economy*. Online: <http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1189&context=clpe>. Page 21.

[113] Financial and Consumer Affairs Authority. "Defaulting on a Payday Loan." 2012. *Government of Saskatchewan*. Online: <http://www.fcaa.gov.sk.ca/Defaulting-on-a-Payday-Loan>.

[114] The Ontario government also should note that the CRL in the U.S. has highlighted NSF fees that result from attempts by regular creditors to cash things like rent cheques, but which bounce due to a PDL payment that already has gone through the account but left insufficient funds for regular withdrawals for necessities. The CRL report found "Nearly half of payday borrowers incurred an overdraft or NSF fee in the two weeks after a payday loan transaction, and 64% paid overdraft or NSF fees at some point." See: http://www.responsiblelending.org/payday-lending/research-analysis/finalpaydaymayday_defaults.pdf

[115] Ben-Ishai, Stephanie, "Regulating Payday Lenders in Canada: Drawing on American Lessons" (2008). *Comparative Research in Law & Political Economy. Research Paper No. 16/2008.* See p. 22-28. Online: http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1189&context=clpe

intended to inform consumers of the cost and term of the loan; it is difficult to see how reduction of this information, even were it provided, could in any way assist a payday loan customer, or in any real way the lender, if the lender were actually interested in having the loan understood, be affordable and ultimately be repaid.

12. Increase the effectiveness of disclosures

Questions:

12.1 Do you think information could be provided more effectively to consumers?

PIAC suggests the Ministry could simply ask payday loan consumers, either through focus groups or survey data, which communications products were most effective for them. During this research, the Ministry could include a few proposed communications products for the consideration of the participants. By employing this method, Ministry officials could ascertain which existing products or methods are most effective, while evaluating the potential effectiveness of products under consideration.

12.2 Are fewer words and more information graphics preferred?

PIAC believes this is a consideration that should be included in the suggested research activities in response to Question 12.1. PIAC forcefully advocated for more graphics and information to be provided to payday loans consumer at the point of purchase in 2002 and 2003.[116] Forty-nine percent (49%) of Canadians score below three (on a scale of five) in an assessment of literacy proficiency levels,[117] essentially marking them as functionally illiterate. Adding layers of dense or even simplified written description may not assist borrowers as much as graphics, provided they are actually provided or displayed to borrowers.

PIAC observes that a critical role the Ministry is to ensure the information that is provided to consumers at payday lending points of purchase is both accessible and accurate. Moreover, PIAC reminds the Ministry that in 2003 it made the following recommendations in relation to raising payday loan consumer awareness that remain relevant in 2015, including:

[116] PIAC (2003). *Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and "Alternative Banking."* P. 49-51. See also PIAC (2002). *Fringe Lending and "Alternative" Banking: The Consumer Experience.* P. 8, 60.
[117] Statistics Canada; Employment and Social Development Canada; Council of Ministers of Education, Canada. *Skills in Canada: First Results from the Programme for the International Assessment of Adult Competencies (PIAAC)*. Ottawa, Minister of Industry, 2013. 102 p. See *inter alia* pp. 16-17. Consulted at http://www.statcan.gc.ca/pub/89-555-x/89-555-x2013001-eng.pdf.

- FCAC and provincial regulators should undertake campaigns to increase financial literacy of payday borrowers, with specific emphasis on cost of this form of credit and alternative credit sources
- Payday lenders should help fund consumer borrowing education either through license fees or particular education levies.[118]

PIAC notes at this time that the payday loans education fund specified in the Payday Loans Act, 2008 has yet to be created and that payday lenders should be required to contribute to a fund for the education of borrowers about the risks of payday loans and other high cost credit, paid for from required industry payment into the Fund. It is frankly a complete scandal that the Ontario government has allowed this provision to languish given the glaring need for such financial education amongst Ontario AFS users. PIAC insists that the government revive this legislative requirement to create a fund and strongly counsels the government to independently develop the Fund without any contact with the AFS industry whatever, as this will compromise the creation, function or utility of any such fund.

13. Limit price escalation from promotional rates

Questions:

13.1 Do promotional rates create risks for consumers?

PIAC believes the use of promotional rates – such as the first PDL being "free" – are highly misleading and should be prohibited by the Act. Such promotions hide the actual cost of payday loans yet achieve the most important goal for the PDL provider – customer acquisition. It is clear that repeat borrowing is the profitable aspect of payday lending – this practice, to the extent that it draws any borrower into the cycle of debt created by PDLs, is an irresponsible and misleading lending practice that easily outweighs any advantage to the few borrowers who may take only one PDL in a year.

13.2 If promotional rates create risk, what is the appropriate means to reduce this risk?

The only effective means of avoiding the harms created by "promotions" in this industry is a complete prohibition of the practice. The Ontario government has, in the Act, already prohibited many practices that are harmful to consumers, including rollovers.

[118] PIAC (2003). *Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and "Alternative Banking."* P. 51.

14. Prohibit payday lenders from purchasing gift cards.

Questions:

14.1 Should payday lenders be permitted to buy gift cards from consumers? If not, why?

This practice may violate the terms and conditions of the organization that originally issued the gift card. The issue identified by the consultation document, however, appears to be the discounted rate the payday lenders purchase gift cards from consumers. Therefore, PIAC suggests if the Ministry chooses to condone the practice of payday lenders purchasing gift cards from borrowers, the Ministry should prescribe by regulation a reasonable rate of purchase. If the Ministry does not intend to prescribe a minimum exchange rate of at least 80% of face value, it should proceed to prohibit the practice.

14.2 Should payday lenders be restricted in the types of services they can offer?

Payday lenders should be permitted to provide any type of service they choose, as long as that service does not violate any law or regulation. PIAC's main concerns with such diversification of PDL lenders into other areas are two-fold, however. First, PDL lenders use "soft" on-ramp products such as cheque-cashing and international remittance services to acquaint potential borrowers with lending products and then, in combination with teaser rates such as "first loan free" incite consumers to take a first PDL. Secondly, PDL lenders in the U.S. have been shown to offer installment loans simply to circumvent restrictions of state payday loan legislation. As noted above, PIAC is of the opinion as noted above, that any product that is offered with an effective annual interest rate of more than 60% interest and does not qualify as a payday loan under provincial legislation is in violation of s. 347 of the Criminal Code, and we would expect payday loan inspectors from the Province of Ontario to refer these cases to prosecution.

In the result, we suggest that Ministry undertake research to determine what products are being offered in businesses claiming to offer payday loans under provincial legislation and to examine if either concern (soft on-ramp or illegal ancillary loans) are causing consumer detriment and, if necessary, to act to control or prohibit any such harmful activities.

14.3 Are consumers better served by having fewer services at an alternative financial service provider like a payday lender?

See above, 14.2.

14.4 Is a gift card purchase different from purchasing gold, money transfer, and other services offered by some payday lenders? Do all services offered by payday lenders require additional scrutiny because their clients are likely under financial strain?

PIAC contends purchasing a gift card differs from the alternatives listed in that reselling the gift card likely violates the terms and conditions of the card itself, unlike the other services mentioned in the consultation document. We note as well that prohibition (or regulation of the discount rate) of this practice arguably is more consistent with the legal treatment of gift cards than a laissez-faire approach, since Ontario's gift card legislation makes most gift cards nearly the equivalent of cash (at least vis-à-vis the issuer), in that they do not have an expiry date.

14.5 Should payday lenders be under an obligation to provide the regulator with advance notice of other services they propose to offer? Should their ability to provide other services be subject to approval?

Payday lenders should be permitted to provide any type of service they choose, as long as that service does not violate any law or regulation. However, the Ministry should review any new service offered to payday loan customers to determine any potential harm to consumers. In the instance a new services effectively harms consumers, the Ministry should take action.

15. Relax the requirement to make funds accessible within an hour of granting a payday loan online.

Questions:

15.1 How would consumers be affected by amending the legislation to permit a delay in making the loan available in online payday transactions?

A myriad of concerns from the consumer perspective have recently been presented by the Consumer's Council of Canada related to the provision of online payday loans to Canadians.[119] As a result, the Ministry should be very cautious before granting any special privilege to online payday loans providers. However, a short delay may allow a stakeholder to review the transaction in an effort to determine if the financial institution was facilitating business with ideologically suspect business. However, in Canada, it is difficult to determine what stakeholder would be willing or able to undertake this role in relation to online payday loan transactions.

[119] Consumers Council of Canada (2015). *Consumer Experiences in Online Payday Loans*. Online: <http://s3.documentcloud.org/documents/2189907/online-payday-loans.pdf>.

In the United States, on the other hand, the Department of Justice led an operation focused on banks that did business with payday lending firms.[120] The idea was to identify and prohibit a number of "ideologically suspect businesses," including licensed arms dealers and illegal payday loans.[121] Critics of the operation say the heightened scrutiny and threat of prosecution will lead banks and payment processors to stop doing business with any merchant on the high-risk list.[122] By increasing disclosure requirements, a number of banks were motivated to stop dealing with all payday lenders, not just those who were unlicensed.

As a result, it is difficult to determine if permitting a delay in making the loan available in online payday transactions represents a positive development for consumers. This may be a practice that deserves more detailed consultation by the Ministry.

16. Expand inspection authorities to include unlicensed payday lenders and loan brokers.

Questions:

16.1 Should Ontario's inspection authorities under the Payday Loans Act be expanded to include unlicensed payday lenders and loan brokers?

PIAC contends if the Ministry has determined having the ability to inspect unlicensed payday lenders and loan brokers is in the best interest of Ontario consumers, than the inspection authority should be expanded accordingly.

[120] Consumers Council of Canada (2015). *Consumer Experiences in Online Payday Loans*. P. 24-25. Online: <http://s3.documentcloud.org/documents/2189907/online-payday-loans.pdf>.
[121] Consumers Council of Canada (2015). *Consumer Experiences in Online Payday Loans*. P. 25. Online: <http://s3.documentcloud.org/documents/2189907/online-payday-loans.pdf>.
[122] Douglas-Gabriel, D. (2014). "Operation Choke Point: The battle over financial data between the government and banks." *Washington Post*, April 16, 2014. Online: <http://www.washingtonpost.com/news/wonkblog/wp/2014/04/16/operation-choke-point-the-battle-over-financial-data-between-the-government-and-banks/>. See also Todd Zywicki, "FDIC retreats on Operation Choke Point?" *Washington Post*, January 26, 2015. Online: <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/01/29/fdic-retreats-on-operation-choke-point/>.

Remittances

Questions:

17.1 Would requirements for transparency and disclosure around fees related to money transfer (remittance) transactions help or harm Ontario consumers? Why?

17.2 What information would be beneficial for a consumer when selecting a money transfer service and using these services in Ontario?

18.1 Should Ontario consider engaging in partnerships at the national and international level or focus on an "Ontario" only approach? Why?

PIAC is not familiar with the system of remittances currently in use in the Province of Ontario. Remittances have not been the subject of PIAC's policy research in the recent past. Therefore, PIAC would refer you to submissions to this consultations by other organizations more familiar with remittances. In particular, PIAC recognizes the expertise that ACORN Canada possesses in this policy area and encourages the Ministry to review their submission.

Debt Collection

19. Apply debt collection rules to purchasers of overdue debts.

Questions:

19.1 Do you agree with the proposed expansion of the CDSAA to include any person who has purchased a debt or debts that is or are in arrears?

PIAC contends the proposed expansion of the CDSAA to include any person who has purchased a debt or debts that is or are in arrears is in the spirit of PIAC's review of the debt collection industry in Canada released March 30, 2015.[123] As a result, PIAC agrees with the proposal outlined in the consultation document.

19.2 What additional exemptions may be required to avoid capturing situations that arise in the course of various normal business transactions? Would the following be sufficient?

- a business that purchases a debt or debts through acquiring or merging with a business in a transaction that includes the transfer of accounts receivable,
- a business that enters contracts and then assigns rights to payments under them to a third party, when it continues to collect payments on behalf of that third party,
- a business that acts as a billing service through which third parties bill for goods or services provided (e.g., as is done on the Enbridge billing service and by many wireless suppliers),
- a business that acquires a debt or debts through the seizure of accounts receivable under a security agreement, or
- a person to whom the contract that gave rise to the debt was assigned for the purpose of financing the transaction.

PIAC is of the opinion the exemptions listed represent an initial starting point and other potential exemptions may need to be considered and discussed during the course of a regulatory approval process.

[123] Public Interest Advocacy Centre (2015). *All Along the Watch Tower.* Online: <http://www.piac.ca/wp-content/uploads/2015/03/All-Along-the-WatchTower-EN1.pdf>.

19.3 What provisions of the CDSAA regulation should be adjusted if the proposed amendment is made?

PIAC has no comment on this matter.

20. Adjust the timing and content of the initial notice sent at the start of collection activity.

Questions:

20.1 Do you agree with the proposal to adjust the timing and content of initial notices?

What is proposed by the Ministry in the consultation document under this section represents a series of positive developments for Ontario consumers, in PIAC's view. The permitting of limited initial contact between debt collectors and debtors to verify contact information would have to be monitored to prevent future aggressive behavior by collection agents.

PIAC also realizes this initial limited contact between debt collectors and debtors represents an opportunity for subsequent communication by electronic messages. PIAC recommended provincial government ministries explore this method of contact in its debt collection study.[124] By using electronic messages to communicate rather than telephone calls, collection agents may be less willing to make statements that may be in contravention of CDSAA regulations. While collection agents may still choose to engage in questionable practices using e-mail, as recently observed by Mark Silverthorn, PIAC suspects the existence of a written record may dissuade the vast majority of collection agents from this activity going forward.[125]

PIAC also recommended provincial governments consider amending debt collection laws and regulations to ensure a collection agency includes a 1-2 page memo explain to consumers their rights in these unique circumstances. The memo would be drafted and supplied by the relevant provincial/territorial consumer affairs agency in the jurisdiction where the consumer resides.[126] PIAC made this recommendation based on the evidence collected from focus group participants. As a result, this effort to make consumers more acutely aware of their rights and obligations, as well as those of the debt collector, can only enhance the current debt collection environment.[127]

[124] Public Interest Advocacy Centre (2015). *All Along the Watch Tower.* P. 9.
[125] Silverthorn, Mark (2015). *Mistake for frontline collectors to be sending e-mails to consumers*. Blog Post. May 29, 2015. Online: < http://blog.comprehensivedebtsolutions.ca/2015/05/mistake-for-front-line-bill-collectors-to-be-able-to-send-e-mails-to-consumers/>.
[126] Public Interest Advocacy Centre (2015). *All Along the Watch Tower.* P. 8.
[127] Public Interest Advocacy Centre (2015). *All Along the Watch Tower.* P. 48.

20.2 Do you have suggestions for the information that would be useful for debtors to receive in initial notices?

PIAC suggests the information contained in the Consumer Protection Ontario webpage with the URL http://www.ontario.ca/home-and-community/collection-agency-your-rights would be an excellent resource for consumers about to be contacted by debt collection agents. PIAC, as a post-production product associated with the publication of its study on debt collection, created a draft memo intended to provide consumers information when faced with debt collection agencies. We have attached a draft of the memo with this submission under Appendix 2.

21. Allow debtors to require contact by a collection agency continue only in writing.

Questions:

21.1 Do you agree with the proposal debtors be able, at some point, to require contact continue only in writing?

PIAC agrees with the proposal debtors be able, at some point, to require contact continue only in writing. PIAC recommended provincial debt collection laws and regulations be amended so consumers have the right to stop collection calls and request subsequent communication by other means in every Canadian jurisdiction.[128]

[128] Public Interest Advocacy Centre (2015). *All Along the Watch Tower.* P. 8.

21.2 What period of time or number of verbal contacts should be given before invoking this requirement, in order to give collection agencies a reasonable opportunity to engage in negotiation?

Using the frequency or number of calls from a collection agent to a debtor as a metric for triggering a consumer's right to request contact in writing will prove challenging. PIAC bases this assertion on the notion a "he said-she said" scenario being created, unless the Ministry is willing to obtain call-logs from collection agencies. Alternatively, the ministry could adopt the recommendation in PIAC's study that every call between a debt collector and consumer be recorded, and the Ministry to have access to those recordings, for the protection of all parties and to ensure industry best practices.[129]

The second metric proposed in the consultation document, a period of time to have passed, may be more easily verified. However, does the Ministry really desire a scenario where a consumer is waiting for a specific number of days to pass before being able to employ their right to be contacted in writing from a collection agency? Furthermore, the Ministry could find collection agents have the date circled on their calendars where they know they can verbally contact debtors without fear of being instructed to stop and be asked by consumers to contact them in writing. PIAC could foresee potential negative implications for consumers if either of the metrics proposed by the Ministry were employed.

While verbal communication may be useful for the debtor to work out a payment solution, PIAC contends written communication is even more effective, since consumers will have documentation of the debt to be paid. Moreover, consumers rarely have to make payment decisions in any other environment without written documentation to support the proposed payment arrangement. Therefore PIAC suggests not placing a limitation or a triggering mechanism on when a consumer can request to be contacted only in writing. To be candid, PIAC suspects the percentage of Ontario consumers invoking this proposed right in order to undermine the verbal negotiation process would be remarkably low. More likely, consumers would remain less knowledgeable than they could be until they contacted the Ministry or reviewed the proposed information memo outlining their rights when dealing with collection agents.

[129] Public Interest Advocacy Centre (2015). *All Along the Watch Tower.* P. 8.

Appendix 1 - All Along the Watch Tower: A Review of the Canadian Consumer Debt Industry. Public Interest Advocacy Centre (2015).

ALL ALONG THE WATCH TOWER:

A REVIEW OF THE CANANDIAN CONSUMER DEBT COLLECTION INDUSTRY

PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DÉFENSE DE L'INTÉRÊT PUBLIC

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March 2015

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Canadian Cataloguing and Publication Data

All Along the Watch Tower:
A Review of the Canadian Consumer Debt Industry

Acknowledgement

Financial support from Industry Canada to conduct the research on which this report is based is gratefully acknowledged. The Public Interest Advocacy Centre has received funding from Industry Canada's Contributions Program for Non-profit Consumer and Voluntary Organizations. The views expressed in this report are not necessarily those of Industry Canada or of the Government of Canada.

The author would also like to thank John Lawford for his support and guidance in the writing of this report. In addition, the author greatly appreciates those stakeholders who provided input in response to requests for consultation in association with this project. The insights provided were instrumental in the completion of this study.

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Executive Summary

Like a room full of precocious preschoolers using glue for the first time, it seems no one who walks into the debt collection industry walks away with their hands clean. Consumers, for instance, could be more diligent in their search for guidance. Collection agencies could alter their approach towards consumers, while original creditors consider seeking alternative methods to incentivize collection agencies. Consumer protection agencies could employ more effective communication methods. Law societies should establish specific guidelines to deal with the practices of lawyers who participate in debt collection. Meanwhile, the law itself could be amended to better protect consumers engaged with debt collectors. These were just a few of the conclusions arrived at during this investigation of the debt collection industry in Canada.

We found debt collection agencies in Canada are employed to obtain overdue payment on unsecured debts. By and large, these are debts without collateral tied to them, such as credit cards, lines of credit, income taxes, student loans, personal loans and utility charges, for example. Debt collection agencies usually began establishing contact with consumers once an overdue account was 90 days old.

Debt collection law in Canada aims to regulate the conduct of debt collectors when dealing with consumers and to deal with the business issues relating to the operation of a debt collection corporation. Collection agencies are regulated through licensing and or registration requirements while provinces have specific recourse mechanisms through a mixture of powers including inspections, investigations and fines or penalties for collection agency offences. In addition to provincial debt collection law, collection agencies are subject to privacy law, human rights law, and federal regulation when collecting debt on behalf of a bank.

Consumers we consulted for this project generally reported the calls they received were aggressive and threatening, with collection agents who are often unwilling to negotiate a solution that will resolve the debt, except full and immediate payment. Misleading claims regarding potential financial and legal repercussions for debtors were common. The volume of complaints submitted to provincial consumer protection agencies and the FCAC regarding the conduct of collection agents appears to support the evidence provided by the focus groups that were conducted.

As a result of their experiences, consumers suggest collection agents improve their communication skills and encourage collection agents to work with the person in debt.

Consumers further propose collection agents undertake further research before making contact with a debtor, as well as listen to their current circumstances. These steps, along with a greater willingness by collection agents to work out payment plans would improve the relationship between collection agents and consumers.

Consumers, however, also have a responsibility to improve the collection agent-debtor relationship. The evidence reveals consumers lacking awareness of their rights when dealing with debt collection agencies allow some collection agents to push the envelope regarding adherence to debt collection law. Between online sources, provincial consumer protection agencies and legal counsel, for example, there are no shortage of avenues consumers can pursue if they have questions concerning debt collection practices and resolutions. As a result, we strongly suggest consumers increase their knowledge when a debt collection agency comes calling. We suspect future encounters with debt collection agents will be less intimidating and more productive if consumers have a greater awareness of their rights and responsibilities.

The extent to which these consumers were unaware of their rights and recourses related to debt collectors cannot be understated. The evidence provided by consumers indicate a greater emphasis is required by provincial governments on communicating consumers' rights and available avenues of recourse when interacting with debt collection agencies. Moreover, the evidence suggest a series of policy options designed to address the lack of consumer knowledge and the questionable conduct of debt collection agents be explored by consumer protection policymakers.

Debt accounts in Canada typically go through three distinct phases as they age. Collection of debts that are three to six months old are usually undertaken by collection agents employed by the original creditor. Under the second phase of a debt account, an original creditor employs a debt collection agency, operating on commission, to obtain payment. During this phase the debt account may be reassigned multiple times by the original creditor to a number of debt collection agencies. It is under this phase that provincial rules and regulations relating to the collection of debts are applicable. The third phase typically begins after 30 months of attempting to collect on an overdue account. At this point, a debt may be sold by the original creditor to debt buyer or debt collection agency.

While investigating treatment of debt accounts under the second and third phases two distinct narratives emerged regarding the operation of the Canadian debt collection industry. The first narrative described a debt collection industry where collection agencies were described as "client compliant." Under this narrative, collection agencies were

acutely aware of the image they project when conducting business as an agent for an original creditor. Therefore, the collection agency operates over and above the relevant provincial regulations, and adheres to agreements designed to protect the reputation of the original creditor. Collection agencies failing to adhere to these compliance agreements risk financial penalties levied by the creditor, damage to their reputation, as well as losing a collection account to a competitor.

The second narrative suggests the generation of revenue is the primary incentive of collection agencies and original creditors in Canada. Under this interpretation, constant intimidation tactics are used and fear serves as the primary theme for the industry. Original creditors, such as large banks, intimidate collection agency executives by providing regular progress reports to a number of competitors simultaneously, in an effort to motivate collection agencies to “outperform” each other. Collection agencies then know how they are progressing, as well as their competition. In turn, collection agency executives tell their collection agents to keep performing or run the risk of losing their job due to poor personal results, or through the loss of a corporate account due to poor agency performance. Under this narrative, the use of monthly quotas by collection agency executives serves as both the proverbial carrot and the stick to incentivize collection agents. This interpretation suggest the culture of fear created by the continuing race to beat the competition or lose clients is justification to disregard employee behavior and look the other way when the rights of consumers are abused or consumer protection law is violated.

Regardless of your narrative of choice, the continuing volume of complaints filed with provincial consumer protection agencies and the FCAC regarding the conduct of collection agents and agencies is cause for alarm. Steps should be taken by provincial policymakers to alter the fundamental structure of the debt collection industry in Canada in an effort to protect consumers. If the second narrative described above is true, original creditors must be prevented from pitting collection agencies against each other in a real-time competitive race. However, if these intimidation tactics are not being employed, and debt collection agencies are employing a client compliant model, than there will be little harm in policymakers considering measures such as the recording of all telephone communications between collection agencies and consumers. Moreover, there should be little resistance to provincial regulatory bodies issuing annual transparency reports. These proposed reports would list the number of complaints associated with each collection agency, as well as the corresponding original creditor.

As a result of this review, we contend provincial policymakers need to draw a direct line between the actions of original creditors and any abuse of consumers' rights, as well as applicable provincial consumer protection law, privacy law and human right law by collection agents. We feel an annual transparency report will compel original creditors to alter their approach toward the collection of their outstanding debt accounts in a manner that will benefit consumers. We suspect those original creditors and collection agencies not employing a client compliant model may amend their behaviour in those jurisdictions that choose to issue transparency reports. In addition, we foresee the number of consumer complaints in those jurisdictions eventually declining under a regime employing transparency reports.

As for lawyers, in the realm of Canadian debt collection law, lawyers are subject only to the common law and the rules established by the provincial law society where they are operating. Unfortunately, we found instances where law societies have failed to establish specific guidelines regarding the conduct of lawyers acting as debt collection agents. Thus, lawyers who employ tactics that would violate regulations applicable to collection agents faced little sanctions for their transgressions.

The existing lack of guidelines and enforcement measures applicable to lawyers engaged in debt collection is disappointing. As a result, we suggest provincial law societies introduce guidelines to govern their members. Otherwise, provincial government policymakers should investigate the possible removal or amendment of existing exemptions to provincial debt collection laws and regulations that currently apply to the legal profession. We contend the exemption currently extended to lawyers engaged in debt collection is a professional courtesy, not an inalienable right. A review of other jurisdictions reveals this exemption for members of the legal professional can be dependent upon their level of debt collection activity.

As a result of this study of the Canadian debt collection industry, the Public Interest Advocacy Centre (PIAC) issues the following recommendations:

- Provincial governments should consider amending debt collection laws and regulations to ensure a collection agency includes a 1-2 page memo explain to consumers their rights in these unique circumstances. The memo would be drafted and supplied by the relevant provincial/territorial consumer affairs agency in the jurisdiction where the consumer resides.

- Amending provincial debt collection laws and regulations so collection agencies must provide written notice before collection calls commence in every Canadian jurisdiction.

- Amending provincial debt collection laws and regulations so once it is known a consumer contacted is not the debtor, attempts at collection must end in every Canadian jurisdiction.

- Amending provincial debt collection laws and regulations so consumers have the right to stop collection calls and request subsequent communication by other means in every Canadian jurisdiction.

- Every call between debt collector and consumer should be recorded, for the protection of all parties and to ensure industry best practices.

- The relevant provincial/territorial consumer affairs agency should implement random “spot checks” on collection agency telephone conversations by obtaining recordings from agencies. Any tampering would result in large administrative monetary penalties up to an immediate licence suspension.

- Provincial governments should consider amending debt collection laws and regulations to amend or remove the exemption now enjoyed by lawyers.

- Provincial governments should consider amending debt collection laws and regulations to introduce annual transparency reports related to debt collection complaints. These reports would publicly outline how many complaints were brought forward against each individual collection agency, as well as against each original creditor, during the previous year.

- Provincial governments should consider exploring the opportunity for debt collection agencies to contact clients by email, once the debtor’s identity and the validity of the overdue account have been verified.

Section 1 - Introduction

The decision to undertake this examination of the consumer debt collection industry in Canada was straightforward based on a few facts. Statistics Canada reported in September 2013 that Canadian consumer credit debt reached $500 billion.[130] Over the past 10 years, household debt in Canada has risen by 135%, while disposable income and nominal GDP have risen by 54%.[131] In 2012, former Bank of Canada Governor Mark Carney warned that household debt, in its current capacity, is the largest major domestic threat to the Canadian economy.[132] According to the Vanier Institute of the Family, an estimated 1 million Canadians are spending more than 40 per cent of their income on debt repayment.[133] Moreover, the Ontario Ministry of Government and Consumer Services posts a list on its website of the top ten complaints they receive by consumers on an annual basis. In each year from 2004 to 2013, debt collection agencies were the subject of the largest number of complaints.[134] In some years, the number of consumer complaints regarding debt collection agencies doubled the subject that received the second highest number of complaints.[135] As a result of these trends, it is plausible that as debt levels continue to grow it can be expected that more and more consumers will be engaged in the debt collection industry in Canada.

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[130] Statistics Canada, "National balance sheet and financial flow accounts, second quarter 2013," The Daily, September 13, 2013. Last accessed December 23, 2013, at http://www.statcan.gc.ca/daily-quotidien/130913/dq130913a-eng.htm. Raj K. Chawla and Sharanjit Uppal state consumer debt "includes debt outstanding on credit cards, personal and home equity lines of credit, secured and unsecured loans from banks and other institutions, and unpaid bills (including taxes, rent, etc.)." Raj K. Chawla and Sharanjit Uppal, "Household Debt in Canada," *Perspectives on Labor and Income*, Fall 2012, vol. 24 no. 3. Last accessed December 23, 2013, at http://www.statcan.gc.ca/pub/75-001-x/2012002/article/11636-eng.htm#source

[131] "Is household debt threatening Canada's economy," *Globe and Mail*, September 7, 2012. Last accessed December 23, 2013, at http://www.theglobeandmail.com/globe-investor/great-debate/is-household-debt-threatening-canadas-economy/article4523320/

[132] Furtado, Aylssa, "Bank of Canada Interest Rate Announcement, October 23, 2012," *RateHub*, October 23, 2012. Last accessed October 23, 2014, at http://www.ratehub.ca/mortgage-blog/tag/mark-carney/page/4/, and Jessica Ferlaino, "Maintaining Debt on the Edge of a Fiscal Cliff," *Business in Focus*, February, 2013. Last accessed October 23, 2014, at http://www.businessinfocusmagazine.com/2013/02/the-canadian-debt-industry/.

[133] Flavalle, Dana, "Why Canadians have Record high Debt," *Toronto Star*, October 27, 2012. Last accessed October 23, 2014, at http://www.thestar.com/business/2012/10/27/why_canadians_have_recordhigh_debt.html

[134] Ontario Ministry of Government and Consumer Services, *Top 10 Complaints Archive*. Last accessed October 8, 2014 at http://www.sse.gov.on.ca/mcs/en/Pages/top_Complaints_archive.aspx

[135] Ontario Ministry of Government and Consumer Services, *Top 10 Complaints Archive*. Last accessed October 8, 2014 at http://www.sse.gov.on.ca/mcs/en/Pages/top_Complaints_archive.aspx. This occurred in 2006 and 2007.

This PIAC study examines the conduct of debt collection agencies in Canada and the impact of these practices on consumers. The study attempts to provide an overview of the current size of the Canadian debt collection industry. Over the course of this study, PIAC has collected information from relevant stakeholders, including provincial consumer ministries, and conducted focus groups to seek consumer views and experiences with respect to the conduct of debt collection agencies and their staff.

In Canada, regulation of debt collection agencies is provided by the province or territory in which a debt collection agency operates. In addition, if a federally regulated financial institution (FRFI) or another party acting on its behalf contacts Canadians, Financial Consumer Agency of Canada (FCAC) regulations apply to the financial institution. Regulations include calling times and frequency of calls.

Collection procedures often depend heavily on psychological tactics, particularly in the early stages, before the collector may recommend to the creditor that the debt be referred to a court. A review of literature associated with the debt collection industry has indicated there are some collection measures chosen with the aim of intimidating debtors to some degree. For example, legal-looking forms and letterheads, referring the debt to a lawyer or an agency or by making threats that may not be enforceable but that will go unchallenged by uninformed debtors.[136] Section 372 of the *Criminal Code* of Canada prohibits indecent, threatening or harassing telephone calls.[137] This applies to all collection endeavors and it provides some recourse for the consumer who is being pursued for payments by someone whose activities are not regulated under the provincial legislation. Section 264 (criminal harassment), Section 264.1 (uttering threats) and Section 372(1) (false messages) may also apply to those engaged in debt collection in Canada.

Recent media reports indicate some of Canada's largest debt collection agencies have routinely and knowingly contacted people who did not owe debt, including relatives of debtors and unrelated people with a similar last name to a debtor.[138] It is currently unknown how prevalent these practices are or if debt collection agencies have begun to use the internet as another tactic in their debt recovery efforts.

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[136] *Debt Canada*, "Say it Isn't So," Blog Post. Last accessed November 4, 2014, at http://www.debtcanada.ca/news/archive/debtors-rights/95-say-it-is-not-so

[137] *Criminal Code of Canada*, Last accessed December 24, 2013, at http://laws-lois.justice.gc.ca/eng/acts/C-46/section-372.html

[138] Shprintsen, Alex and Annie Burns-Pieper, "Collection agency harassed debt-free Canadians," *CBC News*, November 1, 2012. Last accessed December 24, 2013, at http://www.cbc.ca/news/canada/collection-agency-harassed-debt-free-canadians-1.1153123

In 2012, Nova Scotia and Manitoba have introduced legislative initiatives to amend their debt collection regimes to update consumer protections for collection and debt management agencies. In Nova Scotia, the *Debt Collection and Management Reform (2012) Act* has not yet been proclaimed in force.[139] In addition, the United States recently gave the Consumer Financial Protection Bureau (CFPB) the authority to federally supervise consumer debt collectors that have more than $10 million in annual receipts from consumer debt collection activities, starting on January 2, 2013.[140] The CFPB estimates this authority will extend to about 175 debt collectors, which account for over 60 percent of the industry's annual receipts in the consumer debt collection market in the U.S.[141]

This study will examine the conduct of debt collection agencies in Canada and the impact of these practices on consumers. It will ascertain whether consumers are aware of their rights and available avenues of recourse when interacting with debt collection agencies, or if a greater emphasis on communicating these rights on behalf of provincial governments are required. It will also obtain information concerning the experience of international consumer groups, agencies and regulators with the conduct of debt collection agencies. PIAC will examine whether the level of consumer awareness could be improved regarding their responsibilities when dealing with debt collection agencies and how that level of awareness could be improved. As a result, there may be a need for recommendations aimed at increasing consumer protection for those engaged in the debt collection market.

1.1 Methodology

For this project, PIAC employed a number of research methods, such as consulting with Canadian government and regulatory stakeholders. These included the Financial Consumer Agency of Canada, as well as provincial and territorial consumer affairs

[139] Adam Grant, personal communication, March 25, 2014. A response from the Government of Manitoba was requested, but not obtained.
[140] *Consumer Financial Protection Bureau*, Consumer Financial Protection Bureau to Oversee Debt Collection Market, Fact Sheet. Last accessed December 24, 2013, at http://files.consumerfinance.gov/f/201210_cfpb_debt-collection-factsheet.pdf
[141] *Consumer Financial Protection Bureau*, "CFPB Proposes Rule to Supervise Larger Participants in Consumer Debt Collection and Consumer Reporting Markets," News Release, February 16, 2012. Last accessed December 24, 2013, at http://www.consumerfinance.gov/newsroom/consumer-financial-protection-bureau-proposes-rule-to-supervise-larger-participants-in-consumer-debt-collection-and-consumer-reporting-markets/

ministries. The goal of this exercise was to learn the number of consumer complaints, investigations, enforcement actions and common tools employed by these organizations in relation to the debt collection industry.

In addition, PIAC identified and invited commentary from Canadian groups and academics that have experience and interest in undertaking research and advocacy regarding debt collection. This was done in order to obtain a better understanding of the consumer perspective. Further to this end, PIAC commissioned a research firm to conduct tele-focus groups seeking consumer views and experiences with respect to the conduct of debt collection agencies. Specifically, PIAC sought to ascertain whether consumers are generally aware of their rights and available avenues of recourse when interacting with debt collection agencies, or if a greater emphasis on communicating these rights on behalf of provincial governments are required. Moreover, PIAC also consulted focus group participants to explore how people who have experienced debt collection would change the process. The screening for the focus groups ensured consumers with experience within the debt collection sector will be included.

PIAC engaged with international consumer groups, agencies and regulators regarding the conduct of debt collection agencies in other jurisdictions for the purpose of comparison. A secondary source review of the Canadian debt collection industry was also undertaken.

Section 2 – How the Debt Collection Industry Functions

Over the course of this investigation, we had the opportunity to speak to numerous stakeholders in an effort to determine how the Canadian debt collection industry operates. In this chapter, we attempt to provide a brief industry overview as well as a description of the industry with input from industry operators. Moreover, we attempted to ascertain the approximate size of the debt collection industry in Canada.

When it comes to debt in Canada, it usually takes one of two forms – *secured* and *unsecured* debts. A *secured* debt is usually one where there is something you can lose if you fail to make payments. Things such as your vehicle or home financing are usually secured debts. For example, if consumers fail to make payments on their car, the car can be repossessed by the creditor. The creditor is the agency from whom you purchased the good or service, such as your vehicle.[142] The debtor is the consumer who holds the debt.

A *creditor* is an agency from whom you purchase goods or services.

An *unsecured debt* is a debt where a creditor has nothing physical tied to the debt, and therefore nothing to immediately take away from you should you fail to repay.

An *unsecured* debt is a debt where a creditor has nothing physical tied to the debt, and therefore nothing to immediately take away from you should you fail to repay. When a debt collection agency wishes to locate you, it is usually in reference to an unsecured debt. The most common form of unsecured debt are from credit cards.[143] Other forms of unsecured debt include lines of credit, income taxes, student loans, personal loans and overdue utility charges.[144]

[142] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 8.
[143] Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry*, Report, January 2013, page ii. See also Mark Silverthorn, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 8.
[144] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 8-9. Please be advised that some forms of debt listed here may be subject to a Master Credit Agreement with a financial institution. The signing of Master Credit Agreements is a recent trend where financial institutions make credit available if the Agreement is signed where a consumer's property is used as collateral. This turns previously unsecured debt into secured debt. For those consumers who are unsure, they should consider asking for details regarding the sources of credit with their financial institution.

Original Creditor as its Own Debt Collection Agent (Scenario A)

It is our understanding the debt collection industry obtains revenue using a few primary methods. In Figure 2-1 labelled “Scenario A,” a consumer has stopped making payments on their account. A creditor, such as a credit card provider or retailer will typically employ their own collection agents who attempt to obtain payment for the first 3 to 6 months that a debt is outstanding.[145]

Figure 2-1 – Original Creditor as its Own Debt Collection Agent (Scenario A)

As a result, this 3 to 6 month period is when consumers begin to be contacted by debt collectors. Surprisingly, some commentators argue collectors who are employed by a creditor do not operate under the same rules as collectors who work for debt collection agencies. In fact, it can be argued that except for the sections of the *Criminal Code* prohibiting criminal harassment, uttering threats, false messages and indecent, threatening or harassing telephone calls, there are few rules that apply to these collectors in most of Canada.[146] Mark Silverthorn believes this can be a source of frustration for representatives of debt collection agencies since collectors employed by original creditors can engage in

There are effectively few rules that apply to debt collectors employed by a creditor in most of Canada.

[145] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 14

[146] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 16, and Service Alberta, *Response to Stakeholder Questionnaire*, June 21, 2013. In British Columbia, section 113 and the *Business Practices and Consumer Protection Act* states, without exception, a "collector" means “a person, whether in British Columbia or not, who is collecting or attempting to collect a debt.”

behavior that, if undertaken by collectors working for debt collections agencies, would be in violation of provincial law and regulations.[147]

For instance, it is legal for an employee of your original creditor to come to your home to ask for payment.[148] A debt collection agency employee is prohibited from this action in most provinces. Another example is that collectors employed by original creditors are under no obligation to be licensed or to disclose their name when speaking with consumers. Meanwhile, once a debt collection agency collector confirms they are speaking with a debtor, they are obligated to disclose their full name.[149]

Contrary to Mr. Silverthorn's assertion, the Financial Consumer Agency of Canada (FCAC) notes when a bank employee or a collection agency is collecting a debt on behalf of a bank, the *Credit Business Practices Regulations* apply.[150] The FCAC administers these regulations, which look very similar to various provincial laws that are applicable to debt collection agents. For example, the *Credit Business Practices Regulations* state anyone who communicates with a debtor in order to collect payment of a debt from the debtor must inform them of their identity or provide a unique identifier.[151] It is our understanding that in the instance of a potential violation of the *Credit Business Practices Regulations* by a collection agency employed by a bank, FCAC officials would communicate with the financial institution involved and not the collection agency directly.[152]

We will review the contents of the *Credit Business Practices Regulations* in detail in Section 4 of this report. The FCAC further contends if a collection agency is collecting on behalf of a bank and a consumer believes that the regulations are not being respected, they should ask FCAC to investigate.[153] From April 2011 to July 2013, FCAC received 776 complaints regarding debt collection, and 73 debt collection practices investigations were opened in 2013-2014.[154] However, there is no indication the *Credit Business Practices Regulations* were violated from April 2011 to December 2014.

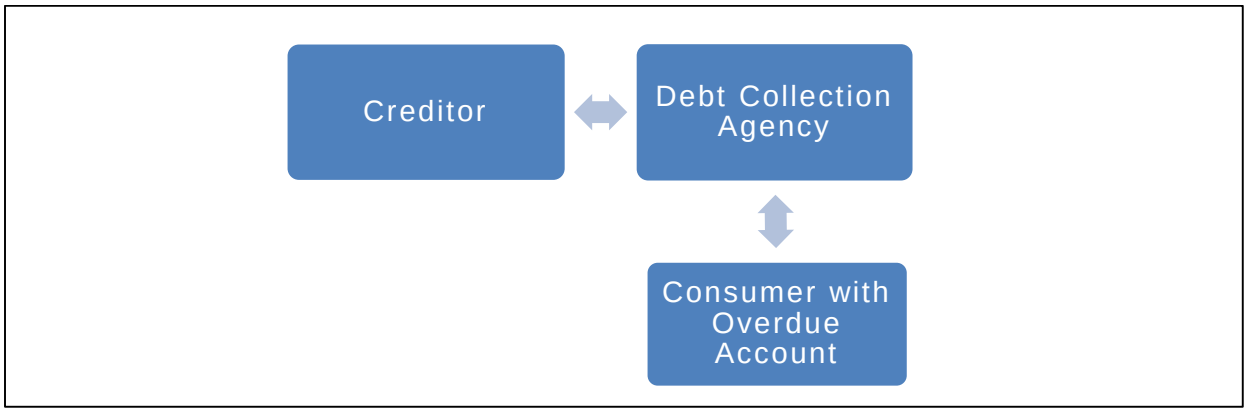
[147] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 16-17.
[148] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 17.
[149] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 17.
[150] Financial Consumer Agency of Canada, *Response to Stakeholder Questionnaire*, July 12, 2013.
[151] *Credit Business Practices Regulations*, SOR 2009-257, s. 7(1)(b).
[152] Compliance and Enforcement Branch, Financial Consumer Agency of Canada, *Personal Interview*, November 5, 2014.
[153] Financial Consumer Agency of Canada, *Response to Stakeholder Questionnaire*, July 12, 2013.
[154] Financial Consumer Agency of Canada, *Response to Stakeholder Questionnaire*, July 12, 2013, and Financial Consumer Agency of Canada, *Annual Report 2013-2014*, p. 30.

Regardless of the FCAC's enforcement efforts, consumers fail to make a distinction between collectors employed by original creditors and those employed by debt collection agencies. The presence of regulations administered by the FCAC may have limited impact on the conduct of debt collection agents. All consumers know is they are sometimes subject to abusive behavior and their phones are ringing, in some cases multiple times per day. This report investigates tactics by debt collectors and the view of consumers in further detail in section 3.

Debt Collection Agencies as Agents of Creditors (Scenario B)

If the collection agents employed by a creditor are unsuccessful in obtaining payment from consumers, a creditor will enter a contractual agreement with a debt collection agency. The debt collection agency acts as an agent of the retailer in an effort to collect payment for accounts that are past due. In exchange, the debt collection agency collects a percentage commission on the funds collected from consumers with overdue accounts.

Figure 2-2 - Debt Collection Agencies as Agents of Creditors (Scenario B)



In debt collection parlance, the first time your now delinquent account is moved to a debt collection agency, the account is referred to as a first assign.[155] This contractual agreement between creditor and a debt collection agency typically lasts from 6 to 12 months.[156] During this time, the account, if less than 6 months in default and valued at

[155] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 14.
[156] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 14.

over $400, will usually be managed by a single debt collector.[157] Otherwise, it may be managed by a group of collectors until the contractual agreement has expired.

If the initial debt collection agency is unsuccessful, the creditor will likely forward the account to another debt collection agency, and this is referred to as a second assign.[158] This process may repeat itself 1 or 2 more times, however, it is important to note that a creditor will only submit an account to one debt collection agency at a time. This partially explains the notion of why consumers with delinquent accounts feel they have to explain themselves on numerous occasions when contacted by a debt collection agency.[159]

In most provinces, when a collection agency attempts to collect on an account that has been re-assigned, the agency must notify the debtor that the debt has change agencies.[160] Collectors might appropriately be required to include the name of the current owner of the debt, if different from the original creditor when providing notification.[161]

Typical Treatment of Overdue Account

First 3-6 months - debt collectors employed by creditor, who operate under few rules, attempt to obtain payment. (Scenario A)

Next 6-12 months – creditor enters agreement with a debt collection agency. Debt collection agency operates on commission and is subject to provincial rules and regulations. (Scenario B)

After 30 months – debt is sold by creditor to debt buyer or debt collection agency. (Scenario C)

What is Really Happening Here, A Race for Cash or Maintaining a Healthy Image?

It is at precisely this point in the discussion where there exists two separate narratives regarding the operation of Canadian debt collection agencies and the conduct of

[157] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 14.
[158] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 15.
[159] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 12, and *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 12.
[160] Consumer Protection BC, *Response to Stakeholder Questionnaire*, July 4, 2013.
[161] Consumer Protection BC, *Response to Stakeholder Questionnaire*, July 4, 2013.

collection agents. The first details the importance of corporate image and integrity. The second outlines the relentless pursuit of revenue with little regard for laws and regulations.

First Narrative - Maintaining a Healthy Image

Under the first narrative, it is our understanding that a debt collection agency operating under such an agreement, whether it is a first assign or a third assign, is acutely aware of the image it projects when it conducts business as an agent. It can be argued that since the creditor remains involved in the relationship with consumers, there is a high degree of market-driven compliance incorporated into the service agreement between the original creditor and the debt collection agency. In fact, the Canadian Bankers Association has noted, "banks consider debt collection agencies as an extension of their own operations."[162] Moreover, the creditor is well aware the debt collection agency is compelled to comply with provincial law and regulations that their own employees may not be subject to when attempting to collect. For the creditor, that means the name of their business may come up in a conversation between a debt collection agency and a consumer. Best to have the debt collector act on their best behavior.

Under these conditions, creditors, at the very least, want a debt collection agency that complies with provincial regulations designed to protect consumers. More likely, a service agreement between a debt collection agency and a creditor spells out a series of parameters designed to ensure a debt collection agencies act in a manner that will not permanently damage the reputation of the creditor. One industry executive, Peter Sorrentino, described this awareness as "client compliant." Mr. Sorrentino noted that under a retail collection agency service scenario, market-driven compliance is as important to a debt collection agency as regulations established by a provincial regulating body.[163] He further noted that "the intent is to do the right thing" in the conduct of their business.[164]

This view appears to be echoed by the Canadian Bankers Association:

> "Banks conduct extensive due diligence and provide ongoing oversight to ensure that debt collection agencies are representing them in a responsible, professional and courteous manner. The banks have a strong culture of

[162] Canadian Bankers Association, *Response to Stakeholder Questionnaire*, July 15, 2014.
[163] Sorrentino, Peter, President, General Credit Services Inc. *Personal Interview*, October 3, 2013.
[164] Sorrentino, Peter, President, General Credit Services Inc. *Personal Interview*, October 3, 2013.

customer service and compliance that they apply to both their own operations and those of their third-party contractors."[165]

Examples of these parameters can include monitoring of consumer complaints, quality control and performance monitoring.[166] However, it is clear if a debt collection agency does not comply with a creditor's service agreement, it risks losing the account to a competitor while damaging its own brand and ability to obtain future creditors as customers. An interim step is a performance review undertaken by the client. According to the Canadian Bankers Association, negative results on a performance review could lead the bank to end or suspend its relationship with the company, amend the allocation of inventories, or impose specific financial penalties that may be included in the contract.[167] The scenario described by Mr. Sorrentino and the Canadian Bankers Association is drastically different than the one above describing what occurs when consumers deal with collectors employed by an original creditor.

Evidence obtained from Consumer Protection BC also appears to support of this view of a client compliance model. We asked Consumer Protection BC if they suspected debt collection agencies were violating the law in their jurisdiction. In response, Consumer Protection BC noted, "apart from rogue collection *agents*, most debt collection companies (agencies) adhere to the legislation potentially in part because of the low toleration creditors have about becoming involved in debt collection complaints."[168] Mr. Sorrentino contends that while the debt collection industry is easy to vilify, their "communication with consumers often results in many consumers actually being able to pay down their debt, get back on track, and rebuild their credit relationships."[169]

Second Narrative – A Race for Cash

The second narrative is drawn from evidence supplied by Mark Silverthorn, former counsel for numerous debt collection agencies. Mr. Silverthorn outlines a different Canadian debt collection industry where revenue is the primary incentive. This narrative

[165] Canadian Bankers Association, *Response to Stakeholder Questionnaire*, July 15, 2014.
[166] Canadian Bankers Association, *Response to Stakeholder Questionnaire*, July 15, 2014.
[167] Canadian Bankers Association, *Response to Stakeholder Questionnaire*, July 15, 2014.
[168] Consumer Protection BC, *Response to Stakeholder Questionnaire*, July 4, 2013.
[169] Sorrentino, Peter, President, General Credit Services Inc. *Personal Correspondence*, October 30, 2013.

suggests the emphasis on agency image, either for the original creditors or debt collection agencies, is not a genuine consideration in the collection of overdue accounts.

Mr. Silverthorn notes that about 30 of the largest debt collection agencies in Canada collect the majority of large creditor accounts.[170] Moreover, he contends that between 50 and 75 percent of the outstanding consumer debt in Canada is owed to the "big Canadian chartered banks."[171] Each large creditor uses multiple debt collection agencies for first assigns (from 5-15), another set of agencies for second assigns, and a separate set of debt collectors for third assigns.[172] A large creditor reviews the progress of debt collection agencies and routinely compares their relative performance, a process Mr. Silverthorn refers to as a *competitive race*.[173] In some instances, debt collection agencies will have daily access to reports on how much money is collected by each debt collection agency in a particular competitive race.[174] Debt collection agencies that perform well will receive more business in the future while those performing poorly risk losing an account from a major creditor. Thus, it literally is a race to the figurative bottom line.

If Mark Silverthorn's assessment holds, then the Canadian debt collection industry is a literal race to the figurative bottom line

Under this narrative, the consequences of losing a large creditor account for a Canadian debt collection agency are immediate, contends Mr. Silverthorn. Losing such an account may result in immediate layoffs and financial harm, a message that is continuously conveyed to all employees of a debt collection agency.[175] Under this narrative, it appears the culture of fear created by the continuing race to beat the competition or lose clients is justification to disregard employee behavior.

[170] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 219.
[171] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 15.
[172] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 219.
[173] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 220.
[174] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 220.
[175] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 220.

How Debt Collection Agents Get Paid

If fear of getting fired weren't enough incentive, debt collection agents have additional incentive to disregard laws and regulations governing them – quotas. Debt collection agencies typically pay collection agents a base salary, and then they are subject to a monthly quota.[176] Collections agents exceeding their monthly quota receive a bonus that may represent a significant percentage of their monthly income.[177] Agents who fail to meet their monthly quota are demoted or dismissed. This is strong evidence suggesting the competitive pressure to maintain employment is a primary reason why debt collection agents appear to willingly abuse the rights of consumers, and in some cases, the law.

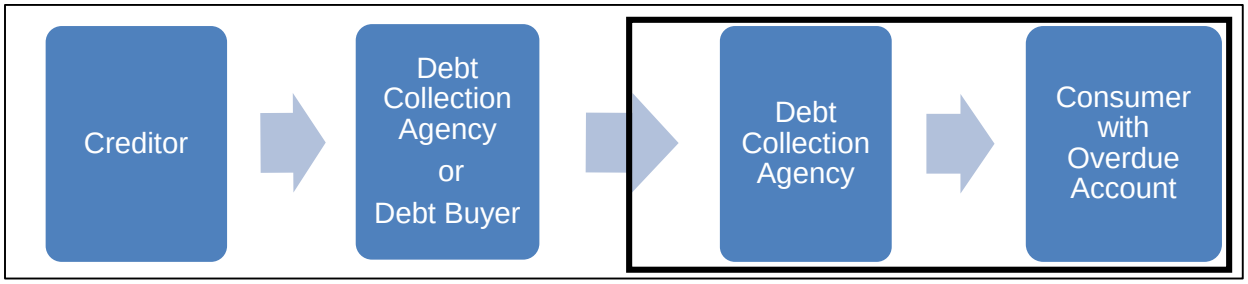
Debt Collection Agencies Work on Outstanding Debt Accounts Purchased by Debt Buyers (Scenario C)

Debt Collection agencies operating under Scenario C usually work in one of 2 ways. Either debt collection agencies purchase debt accounts themselves from the original creditor, or they work under contract on outstanding debt accounts purchased from creditors for a set amount by debt buying agencies.

After a period of time, the creditor selling the debt has determined they will achieve limited success recouping outstanding payments. Rather than continuing to pursue the overdue amounts, they sell the remaining debts to a debt collection agency or a debt buyer for a set amount per dollar of outstanding debt. In Canada, this typically takes place after 3 years, but can be sooner.[178]

[176] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 220.
[177] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 220.
[178] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 15.

Figure 2-3 Debt Collection Agencies Purchase Outstanding Debt (Scenario C)



When debt collection agencies purchase the debt accounts themselves, they proceed to collect as much revenue as possible from the outstanding accounts that were purchased. The difference between what debt collection agencies collect from the outstanding accounts that were purchased and the amount collection agencies have paid represents the profit for debt collection agencies. Debt collection agencies acting under these "debt-buying" circumstances are sometimes referred to as third-party collectors. For a debt buyer, they will usually hire a debt collection agency to attempt collection on their behalf, since few debt buyers actually employ their own collectors.[179]

Figure 2-4 How Debt Collection Agencies Profit from Purchasing Outstanding Debt

[179] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 15.

Figure 2-5 How Debt Buyers Profit from Purchasing Outstanding Debt

The significant difference between Scenarios A and B and Scenario C is that once the debt is purchased, the creditor no longer has a role to play in the relationship. This essentially leaves the debt collection agencies to their own devices regarding the tactics employed to obtain a return on their investment. Since the retailer's image is not a consideration in this scenario, a debt collection agency is only constrained by regulations established by provincial regulating bodies. We contend that a portion of the criticism leveled at Canadian debt collection agencies outlined in Section 3 of this examination occurs when they are operating under these conditions. In what manner the relationship between the consumer and the debt collection agency changes under each of these scenarios may be key to understanding the challenges faced by Canadian consumers when engaging in the debt collection industry.

If a debt buyer or debt collection agency has purchased a debt from the original creditor, the purchaser is legally required to inform the debtor that it is not the original creditor.[180] Once a consumer receives such notification, it may be prudent for them to obtain a copy of their credit report to find out if the debt in question is listed. If it does not appear on a credit report, it can have no impact on their existing credit score.[181] The damage may have already be done to a consumer's credit rating and the item has been removed by the credit reporting agency, or, it may not be their debt to pay. Consumers are within their rights to request documentation proving they owe the debt.

[180] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 136.
[181] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 137.

Moreover, it is always possible a consumer receiving such a letter may be misidentified. A recent example of misidentification is an Ontario man, Dave Johnson, who was being contacted by a collection agency working on behalf of Rogers Communications in 2010. In this case, the consumer informed the collection agency he did not owe Rogers the $5,400 in question.[182] Three years later, the Mr. Johnson was still attempting to clear his name. In the meantime, he found out his credit score was ruined, he was unable to assist his son by co-signing on a mortgage, and that another man with the same name was also being wrongly pursued for the same bill.[183] In another example, Deborah Bruneteau of Winnipeg received a bill for over $2,600 from a collection agency hired by Rogers.[184] The bill was addressed to her father, William Spence who had died two years ago and never had a Rogers account.[185] As a result, if a collection agency working with an original creditor can routinely misidentify customers, it is possible a debt buying agency may as well.

Consumers can request documentation proving they owe the debt when contacted by a debt collection agency or a debt buyer.

Misidentification does occur.

[182] *CBC News*, "Rogers Bill Ruins Credit Rating of Man Who Doesn't Have a Rogers Account," October 14, 2013. Last accessed October 15, 2014, at http://www.cbc.ca/news/canada/rogers-bill-ruins-credit-rating-of-man-who-doesn-t-have-rogers-account-1.1959175

[183] *CBC News*, "Rogers Bill Ruins Credit Rating of Man Who Doesn't Have a Rogers Account," October 14, 2013. Last accessed October 15, 2014, at http://www.cbc.ca/news/canada/rogers-bill-ruins-credit-rating-of-man-who-doesn-t-have-rogers-account-1.1959175

[184] *CBC News*, "Rogers Bill Ruins Credit Rating of Man Who Doesn't Have a Rogers Account," October 14, 2013. Last accessed October 15, 2014, at http://www.cbc.ca/news/canada/rogers-bill-ruins-credit-rating-of-man-who-doesn-t-have-rogers-account-1.1959175

[185] *CBC News*, "Rogers Bill Ruins Credit Rating of Man Who Doesn't Have a Rogers Account," October 14, 2013. Last accessed October 15, 2014, at http://www.cbc.ca/news/canada/rogers-bill-ruins-credit-rating-of-man-who-doesn-t-have-rogers-account-1.1959175

In the example of the Ontario man misidentified by a debt collection agency employed by Rogers Communications, it would have been prudent of him to obtain a written confirmation that he did not owe the debt in question. Similarly, we suggest consumers obtain a written agreement sent to them called a *settlement letter* before making a payment if they decide to settle their outstanding debt with a debt collection agency. Otherwise, it is not unheard of for a consumer to be under the impression the matter is resolved, only for it to reappear later, such as the case with Mr. Johnson.

In addition, there can be situations where a consumer believes they reached a verbal agreement with a debt collection agent on the telephone and makes a payment before obtaining a settlement letter. Paying before receiving a settlement letter leaves consumers vulnerable to having another collection agent or another debt collection agency attempt to obtain further payment at a later date.[186] Keep in mind, under one of the narratives outlined here, it is possible debt collectors would not hesitate to phone someone's 90 year-old grandmother in an effort to extort information about a consumer if they felt it would assist them in meeting their monthly quota. Thus, telling a consumer that an account is settled, collecting a payment, then keeping an account open is not out of the realm of possibility. The tactics employed by debt collection agents that are the subject of focus groups conducted for this investigation are reviewed in detail in section 3 of this report. They may be part of the reason debt collection agencies have been the subject of the largest number of complaints by consumers to the various provincial consumer affairs ministries in recent years.

A settlement letter is a statement prepared by a debt collection agency outlining the terms under which a creditor is prepared to accept one or more payments as settlement of a debt in full.

Others within the debt collection industry refute the premise collection agents will go to extreme measures in effort to collect payment for an outstanding debt. Peter Sorrentino, the President of General Credit Services Inc. describes the current approach to debt settlement of the Canadian debt collection industry as follows:

[186] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 124-125.

> "We are not in the business of harassing people, and would much prefer to set up regular payment schedules with consumers – our firm, as with most others, has a mandate to set up regular payment schedules with any and all consumers that are unable to pay their accounts in full, and we regularly help consumers set up monthly budgets, payment plans, and in some cases even work with them to get creditors to reduce the amount of the debt that they have by eliminating some, or all of the interest that they have incurred and in some cases even dramatically reducing the principal amount of the debt in what is known as a compromise settlement."[187]

Value of Debt and the Ability to Settle for Less

Even though years have passed since some debt accounts became delinquent, the debt still retains some value. Figures in Canada were difficult to find, however, the United States Federal Trade Commission (FTC) reported in 2013 that debt buyers paid an average of 4 cents per dollar of debt face value in that country, and that older debt sold for significantly lower prices than newer debt.[188] The FTC report suggests debt buyers paid on average 3.1 cents per dollar of debt for debts that were 3 to 6 years old and 2.2 cents per dollar of debt for debts that were 6 to 15 years old compared to 7.9 cents per dollar for debts less than 3 years old.[189]

From these figures a clear picture emerges where debt continuously loses value as it ages. As a result, some consumers are able to resolve their outstanding unsecured debt accounts by negotiating with a debt collection agency. This typically takes the form of negotiating a lump sum payment in exchange for the retirement of the debt. The older the unsecured debt in question, the more likely consumer can negotiate to make a smaller payment to a debt collection agency to retire a debt.[190]

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[187] Sorrentino, Peter, President, General Credit Services Inc. *Personal Correspondence*, October 30, 2013.
[188] Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry*, Report, January 2013, page ii.
[189] Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry*, Report, January 2013, page 23-24.
[190] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 132-133.

Limitation Periods

The notion that debt accounts delinquent for more than 6 years is also of interest, due to the existence of limitation periods in Canada. A statute of limitations is a law that forces creditors to sue debtors within a specified number of years.[191] A creditor will effectively lose the ability to sue a consumer for outstanding unsecured debt after the limitation period in their jurisdiction expires, unless:

- A creditor sues you and you fail to file an appropriate defence with the court
- You choose to pay your debt voluntarily.[192]

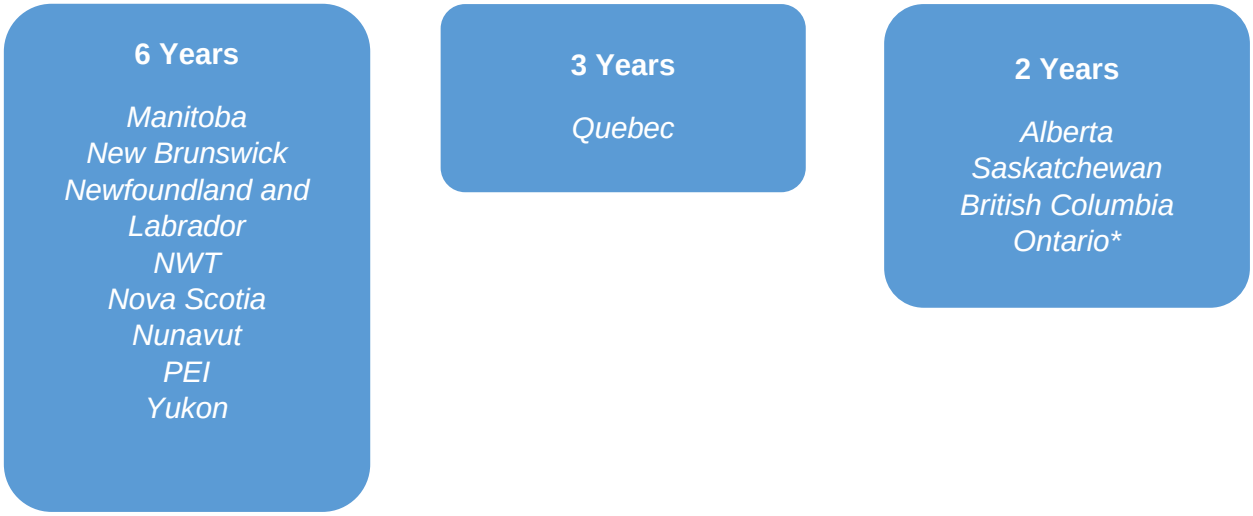
Debt collection expert Mark Silverthorn contends,

> "Regardless of where you live in Canada, if you have an unsecured consumer account for which (1) you have not made a payment for the last six years and (2) and you have not made a written acknowledgement of the debt during the past six years, you are in a position to avoid paying this account with no adverse consequences on your credit score."[193]

Mr. Silverthorn refers to the limitation period as a clock, and notes that if a consumer makes a payment or acknowledges a debt account in writing, it effectively restarts the clock on the statute of limitations.[194] The limitation period varies from one province to another, as Figure 2-6 indicates.

[191] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 61.
[192] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 61. It is important to note in most cases the expiry of a limitation period does not apply to a debt owed to a government or a secured debt.
[193] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 62.
[194] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 63.

Figure 2-6 Limitation Periods in Canada[195]



The power associated with the expiry of a limitation period varies by province. For example, if the limitation period expires for residents of British Columbia or Newfoundland and Labrador, the unsecured debt account no longer exists and it is illegal for anyone to attempt to collect on the account.[196] For the rest of Canadians, the debt account still exists after the limitation period expires, but it allows consumers what is referred to as an affirmative defence.[197] In this scenario, if a debt collection agency attempts to sue a consumer, and consumer files a defence with the court citing the limitation period has expired, the debt collection agency will be unsuccessful.[198] However, if the consumer fails to file a defence at all, than a debt collection agency can obtain a *default judgment*, even if the debt has exceeded the limitation period.[199]

A *default judgment* is an order of the court in favor of a creditor against a consumer. Once a creditor has obtained a judgment, it is known as a *judgment creditor* and the consumer is referred to as a *judgment debtor*. There are a number of ways a judgment creditor can

[195] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 63-64. See also *Bankruptcy Canada Inc.*, "Can a Collection Agency Take Me to Court." Last accessed October 14, 2014, at http://www.bankruptcy-canada.ca/money-management-and-problems/can-collection-agency-take-me-to-court.htm, and Consumer Protection BC, *Response to Stakeholder Questionnaire*, July 4, 2013. * indicates the limitation period in Ontario is 2 years for claims arising after January 1, 2004, and 6 years claims arising before January 1, 2004.
[196] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 64.
[197] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 64.
[198] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 64.
[199] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 64.

potentially recover monies from a judgment debtor. While the enforcement remedies available to a judgment creditor vary depending on provincial law, generally remedies consist of the following actions:

- Judgment creditor can ask the judgment debtor to make a payment or payments to the judgment creditor on a voluntary basis
- Wage garnishment
- Garnishment of a bank account
- Placing a lien against the judgment debtor's real property[200]

A wage garnishment is an order requiring an employer to pay a portion of the judgment debtor's salary to the court, and those funds are forwarded to the creditor.[201] This action usually continues until the judgment is satisfied, the judgment debtor files for bankruptcy, the creditor terminates the garnishment or a judgment debtor ceases to be employed.[202] A judgment creditor may also decide to issue a garnishment of a bank account. If the creditor has determined a judgment debtor has a bank account, it can order the financial institution to remove all the funds from it, up to the amount owed.[203] Finally, a judgment creditor may decide to place a lien against the judgment debtor's real property. This is a seldom-used tactic in the re-payment of an unsecure debt. This is due to the time and expense that can be involved in the seizure of personal property.[204] Moreover, some items are exempt from seizure, and in some cases, a provincial Sherriff may decline to seize the personal property unless they are convinced no one else has a financial security interest in the item.[205] For instance, a Sherriff will likely be reluctant to seize a vehicle for settlement of an unsecured debt if they know the agency who financed the purchase of the vehicle has a lien on it.[206]

[200] *Bankruptcy Canada Inc.*, "Can a Collection Agency Take Me to Court." Last accessed October 14, 2014, at http://www.bankruptcy-canada.ca/money-management-and-problems/can-collection-agency-take-me-to-court.htm
[201] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 81.
[202] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 81.
[203] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 84. See also Justice Education Society of BC, *Enforcing Court Orders*, July, 2010, p.5.
[204] Justice Education Society of BC, *Enforcing Court Orders*, July, 2010, p.5.
[205] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 86.
[206] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 86.

Lawyers as Debt Collectors

There are occasions when lawyers are retained in an effort to recover money on behalf of creditors.[207] They are also a small number of law practices in Canada that operate in a similar fashion as collection agencies.[208] Except in British Columbia, when a lawyer is engaged in debt collection practices, they are subject only to the common law and the rules established by the provincial law society where they are operating.[209] In short, except in British Columbia, debt collection laws and regulations do not apply to lawyers.

However, Consumer Protection BC has noted occasionally there are instances of lawyers lending their names to businesses using hundreds of debt collectors collecting on thousands of debts, all under the guise of the lawyer's law practice.[210]

What applies instead is the expectation that lawyers will conduct themselves to a higher standard than non-lawyers. According to Minden Gross, L.L.P., a Toronto-based law firm, rules of professional conduct established by law societies serve as guidance on what is expected from members of the legal profession.[211] In British Columbia, where the definition of "collector" means "a person, whether in British Columbia or not, who is collecting or attempting to collect a debt," there may be an argument for a clarification of the law applying to lawyers as debt collectors.[212] Consumer Protection BC contends:

> "If the legislation were clarified to only exempt from licensing a lawyer with personal knowledge of a debt, it would stop this practice and if a lawyer is personally involved in collection activities those activities are governed by the *Legal Profession Act* and law societies are well positioned to take disciplinary action for problematic behavior."[213]

However, there are cases, as in any profession, where this expectation of a higher standard is not met. The 2013 case of Ontario lawyer Deanna Natale before a Hearing

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[207] "Lawyers as Debt Collectors-How Far is Too Far?" *Minden Gross, L.L.P.*, June 22, 2000. Last accessed October 7, 2014 at http://www.mindengross.com/docs/publications/lawyers-as-debt-collectors---how-far-is-too-far

[208] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 19-20.

[209] Lawyers as Debt Collectors-How Far is Too Far?" *Minden Gross, L.L.P.*, June 22, 2000. Last accessed October 7, 2014 at http://www.mindengross.com/docs/publications/lawyers-as-debt-collectors---how-far-is-too-far, Service Alberta, *Response to Stakeholder Questionnaire*, June 21, 2013, and Mark Silverthorn, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 20.

[210] Consumer Protection BC, *Response to Stakeholder Questionnaire*, July 4, 2013.

[211] Lawyers as Debt Collectors-How Far is Too Far?" *Minden Gross, L.L.P.*, June 22, 2000. Last accessed October 7, 2014 at http://www.mindengross.com/docs/publications/lawyers-as-debt-collectors---how-far-is-too-far

[212] British Columbia, *Business Practices and Consumer Protection Act*, SBC 2004, Chapter 2, s. 113.

[213] Consumer Protection BC, *Response to Stakeholder Questionnaire*, July 4, 2013.

Panel of the Law Society of Upper Canada is informative since it describes how a legal practice might take advantage of the lack of debt collection law that applies to lawyers.

Contrary to the position taken above by Consumer Protection BC, the Natale case raises the question, are law societies well positioned to take disciplinary action for problematic behavior in the field of debt collection? We contend the Natale case reveals there may be few guidelines for lawyers operating as collection agents in most of Canada. Finally, it serves notice to consumers that in instances where an appropriate standard of care is not met by lawyers, lawyers may face little to no consequences in comparison to other debt collection agents.

There were two issues at the root of the dispute between the Law Society and Ms. Natale. The first was the structure of the practice: the high volume of files produced in a one-lawyer office, the use of standardized letters and forms generated by computers, the absence of individualized file review, the issuing of 200,000 demand letters within four years indicating that an action may be commenced, with 1% or fewer claims actually pursued in court.[214] The second issue in dispute was Ms. Natale failed to directly and effectively supervise the staff of her law office and failed to assume complete professional responsibility for her practice.[215]

In regard to the structure of the office, the Law Society Hearing Panel noted:

> "lawyers who do collections work have found themselves operating without the benefit of regulatory guidelines. There are no regulatory rules prohibiting the sending of demand letters, or draft statements of claim. Counsel for the Law Society was unprepared to offer any assessment of what ratio of lawyer to staff might run afoul of professional regulatory standards. Nor was she prepared to suggest how many files a lawyer could safely take on. Indeed, neither party was able to offer assistance on the matters that formed the heart of the dispute."[216]

Thus, even though lawyers are granted the privilege of not having to adhere to provincial debt collection law in most of Canada, in Ontario, as of 2013, there were essentially no guidelines to assist the law society or the hearing panel in this instance. As a result of this lack of evidence, the hearing panel found the manner in which Ms. Natale sent out demand letters and draft statements of claim *en masse*, on its own, did not constitute

[214] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[215] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[216] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.

professional misconduct.[217] The hearing panel stated the profession requires guidance on these important issues and recommended the Law Society refer these and other matters relating to newly-structured ways of delivering legal services to a committee that can obtain expert input, conduct policy analysis, and provide a comprehensive review.[218] To date, there has been no evidence of further development leading to resolution of this glaring omission in the Law Society of Upper Canada's regulation.

In the absence of any guidelines in place, in 2013 the Law Society of Upper Canada found one of their members not guilty of professional misconduct for issuing 200,000 demand letters and draft statements of claim over 4 years.

If draft statements of claim were distributed by a debt collection agency, it would violate provincial law

On the issue of whether Ms. Natale failed to effectively supervise the staff of her law office or assume complete professional responsibility for her practice, the hearing panel was more decisive. The evidence presented by the Law Society demonstrated that some of the non-lawyer staff members of the Natale law office were rude, misleading, harassing, and threatening in their efforts to follow up the claim letters.[219] For instance:

> "In some instances, the staff requested the individuals they contacted provide documentation to prove that they were not indebted, when the Lawyer herself was unable to provide for them any details of the alleged debt. In some instances, the staff followed up the claim letters erroneously, with individuals who were not the debtors – because they had already paid off the debt, because they had declared bankruptcy, and in some cases because they had simply been misidentified as the debtors when they had nothing to do with the case at all. In some instances, the staff members repeatedly followed up with such individuals, over and over again, harassing, misleading, and threatening them."

According to the Law Society Hearing Panel, this activity went on over a 4 year period, resulting in 155 complaints for behavior that was rarely, if ever, corrected.[220] This is in contradiction to comments made by Ms. Natale's lawyer prior to a Law Society disciplinary hearing in 2011 when he noted, "Ms. Natale should be given credit for bringing an ethical approach to this. We're talking about people who are refusing to pay their debts, and a method to assist businesses to get them to do that."[221] By Decision and Order dated June 13, 2013, the hearing panel ordered Ms. Natale to be reprimanded at a final convening of

[217] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[218] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[219] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[220] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[221] Castaldo, Joe, "Debt Agencies Imitation Ethics," *Canadian Business*, April 7, 2011. Last accessed October 8, 2014 at http://www.canadianbusiness.com/business-strategy/debt-agencies-imitation-ethics/

the hearing panel.[222] In real terms, the lawyer in question received no penalty for their actions.

In another case heard by the Law Society of Upper Canada in 2006, Mr. Paul Kupferstein issued between 15,000 and 20,000 demand letters each month using his letterhead, but listing the address and telephone number of a collection agency.[223] After 19 complaints were received, the hearing panel concluded that Mr. Kupferstein had failed to supervise his staff and failed to assume complete professional responsibility for his practice.[224]

Bob Richards, executive vice-president of CBV Collection Services, noted, "I find the ethics behind it unfavourable."[225] He also noted, "At the point in time when the credit community says we don't want it used, it'll stop…but it's like steroids. It will enhance your performance."[226] In addition, the Ontario Registrar of Collection Agencies, wrote a letter in October 2008 advising against the practice of sending draft legal documents, calling it "deceitful and misleading."[227] He also wrote that hiring a lawyer to do so is just as inappropriate.[228]

Clearly, if the Law Society of Upper Canada knew in 2006 there were no guidelines in place in instances where lawyers acting as debt collectors were sending out demand letters and draft statements of claim *en masse*. Yet, these practices were not addressed. Again in 2013, the hearing panel admonished the Law Society for not establishing guidelines, yet there remains no evidence the Law Society of Upper Canada is prepared to act on the issues raised in *Law Society of Upper Canada v. Deanna Lynn Natale*.

The absence of any action from the Law Society to these address outstanding issues is disconcerting. The continuing absence of guidelines for lawyers operating as debt collectors, combined with no substantial penalties in place for violating the ethical code of conduct, would not inspire confidence in consumers if they were aware of the situation. We suspect until guidelines and penalties are introduced, there is no intention of some lawyers to end the practices described in *Law Society of Upper Canada v. Deanna Lynn Natale*. As a result, perhaps it is time for the Province of Ontario to consider amending debt collections law to remove the exemption now enjoyed by lawyers in that province.

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[222] Law Society of Upper Canada, *Orders and Dispositions*, *Deanna Lynn Natale*. Last accessed November 5, 2014, at http://www.lsuc.on.ca/orders.aspx?folderID=2147483913&id=689
[223] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[224] *Law Society of Upper Canada v. Deanna Lynn Natale,* 2013 ONLSHP 0094.
[225] Castaldo, Joe, "Debt Agencies Imitation Ethics," *Canadian Business*, April 7, 2011. Last accessed October 8, 2014 at http://www.canadianbusiness.com/business-strategy/debt-agencies-imitation-ethics/
[226] Castaldo, Joe, "Debt Agencies Imitation Ethics," *Canadian Business*, April 7, 2011. Last accessed October 8, 2014 at http://www.canadianbusiness.com/business-strategy/debt-agencies-imitation-ethics/
[227] Castaldo, Joe, "Debt Agencies Imitation Ethics," *Canadian Business*, April 7, 2011. Last accessed October 8, 2014 at http://www.canadianbusiness.com/business-strategy/debt-agencies-imitation-ethics/
[228] Castaldo, Joe, "Debt Agencies Imitation Ethics," *Canadian Business*, April 7, 2011. Last accessed October 8, 2014 at http://www.canadianbusiness.com/business-strategy/debt-agencies-imitation-ethics/

If justification for the exemption rested on the notion that lawyers were subject to an ethical code of conduct, it is clear through these disciplinary hearings that some lawyers intend to continue violating the spirit of that code. Moreover, the self-regulator appears to be conflicted and unable to conjure up the political will to address issues brought before it. In addition, it appears the Canadian Bar Association has not expressed a position on the ability of lawyers to undertake debt collection activities without being subject to provincial debt collection laws; or issued a document establishing rules or guidelines applicable to lawyers when undertaking debt collection.[229] As a result, it is possible the legal profession, in this instance at least, has lost the credibility required to warrant an exemption to the laws and regulations that apply to other debt collection professionals operating in Ontario.

The notion that issues can arise when self-regulating organizations take on policy and other decision-making roles traditionally held by governments is the subject of a report released by the C.D. Howe Institute in October 2014. The evidence brought forward here appears to reflect the C.D. Howe report's premise. The report recommended governments tighten the procedural and substantive rules that affect the operation and scope of powers of self-regulatory and other organizations delegated authority by legislation.[230]

Size of Canadian Debt Collection Market

In an effort to determine the size of the debt collection market in Canada, we were compelled to use a variety of figures to suggest an estimate. We will begin by examining the amount of delinquent credit card debt in Canada. We will then calculate the amount of total delinquent consumer debt in Canada. These two figures will provide the floor and the ceiling, respectively, to indicate the size of the Canadian debt collection industry.

Following this, we will observe figures obtained in the 2012 Survey of Financial Security that outline amounts of debt owed by type. Finally, we will use debt collection agency revenue data obtained by Statistics Canada. This should provide an estimate of the amount of delinquent unsecured debt exists in Canada, and an estimate of how much money has been successfully collected by Canadian debt collection companies. As a result of these calculations, we should arrive at a reasonable estimate of the debt collection industry in Canada.

[229] MacKenzie, Sarah, Canadian Bar Association, *Personal Correspondence*, December 3, 2014.
[230] Mysicka, Robert, *Who Watches the Watchmen? The Role of Self-Regulator*, C.D. Howe Institute, October 8, 2014, p. 1.

Statistics Canada recorded there were 432 debt collection agencies operating in Canada in December 2012.[231] Of those, 144 collection agencies were determined to be effectively owner operated, or in some cases the employment type of an establishment could not be determined.[232] In addition, Statistics Canada found over 90% of collection agencies operating in Canada with employees recorded employing less than 100 people.[233] Statistics Canada found there were at least one collection agency located in every Canadian province, with Ontario and Quebec home to over 60 per cent of all Canadian collection agencies.[234]

In September, 2014, Statistics Canada reported total household debt in Canada was $1.797 trillion.[235] This figure includes $1.17 trillion in mortgage debt, as well as the $513 billion in consumer credit debt. According to the Bank of Canada, credit card debt makes up five per cent of total household debt in Canada, as of February 2014.[236] In April 2014, the Canadian Bankers Association noted credit card delinquency rates, which is the amount past 90 days delinquent for quarter ending divided by the total outstanding balance for the quarter ending, was 0.80 per cent of total outstanding balances.[237] By

[231] Industry Canada, *Canadian Industry Statistics: Collection Agencies (NAICS 56144) Establishments*, December 2012. Last accessed on October 28, 2014, at https://www.ic.gc.ca/app/scr/sbms/sbb/cis/establishments.html?code=56144&lang=eng
[232] Industry Canada, *Canadian Industry Statistics: Collection Agencies (NAICS 56144) Establishments*, December 2012. Last accessed on October 28, 2014, at https://www.ic.gc.ca/app/scr/sbms/sbb/cis/establishments.html?code=56144&lang=eng
[233] Industry Canada, *Canadian Industry Statistics: Collection Agencies (NAICS 56144) Establishments*, December 2012. Last accessed on October 28, 2014, at https://www.ic.gc.ca/app/scr/sbms/sbb/cis/establishments.html?code=56144&lang=eng
[234] Industry Canada, *Canadian Industry Statistics: Collection Agencies (NAICS 56144) Establishments*, December 2012. Last accessed on October 28, 2014, at https://www.ic.gc.ca/app/scr/sbms/sbb/cis/establishments.html?code=56144&lang=eng

[235] Statistics Canada, *National balance sheet and financial flow accounts, second quarter 2014*, September 12, 2014. Last accessed October 23, 2014, at http://www.statcan.gc.ca/daily-quotidien/140912/dq140912a-eng.htm.
[236] Canadian Bankers Association, *House Borrowing in Canada*, August 26, 2014. Last accessed on October 27, 2014, at http://www.cba.ca/en/media-room/50-backgrounders-on-banking-issues/548-household-borrowing-in-canada, and Bank of Canada, *Banking and Financial Statistics*, February 2014, page S-23. Last accessed October 23, 2014, at http://www.bankofcanada.ca/wp-content/uploads/2014/02/bfs_february14.pdf
[237] Canadian Bankers Association, *Household Barrowing in Canada*, Backgrounder, August 26, 2014. Last accessed October 23, 2014, at http://www.cba.ca/en/media-room/50-backgrounders-on-banking-issues/548-household-borrowing-in-canada, and Canadian Bankers Association, *Credit Card Delinquency and Loss Statistics - VISA and MasterCard*, August 1, 2014. Last accessed October 23, 2014, at http://www.cba.ca/contents/files/statistics/stat_creditcarddelinquency_en.pdf.

using these figures, we can obtain an estimation of the amount of debt held by Visa and MasterCard credit card holders in Canada that is more than 90 days overdue.[238]

Figure 2-7 Estimated Total Credit Card Debt More than 90 Days Overdue in Canada – September, 2014

Total Household Debt	$1,797,000,000,000
Credit Card Debt	x 5%
Total Credit Card Debt	$89,850,000,000
Credit Card Delinquency Rate	x 0.80%
Total Credit Card Debt	
90+ Days Overdue	$718,800,000

As Figure 2-7 reveals, in September 2014, it is estimated Canadians were 90 days or more past due on $718.8 million in credit card debt. Credit card debt is just one source of consumer debt that can be sent to a collection agency. Therefore we suggest this is the minimum estimated size of the debt collection industry in Canada.

Another indication of the estimated size of the Canadian debt collection industry is the total delinquency rate on all debt in Canada. In September 2014, Equifax Canada announced that in the second quarter of 2014, the total delinquency rate in Canada is 1.11 per cent.[239] If we apply this rate to the total consumer credit debt of Canadians, noted by Statistics Canada as $513 billion, we can estimate the total amount of delinquent consumer debt in Canada during the second quarter of 2014 was $5.69 billion.[240]

[238] Okalow, Samson, "Howard Grosfield, President and CEO, Amex Bank of Canada," *Canadian Business*, June 6, 2012. Last accessed October 27, 2014, at http://www.canadianbusiness.com/business-strategy/howard-grosfield-president-and-ceo-amex-bank-of-canada/, and Karen Johnson, "Deadline Looms for Big Visa, MasterCard Decision in Canada," *Canada Real Time: Wall Street Journal Blog*, June 22, 2013. Last accessed October 27, 2014, at http://blogs.wsj.com/canadarealtime/2013/07/22/deadline-looms-for-big-visa-mastercard-decision-in-canada/. The Competition Bureau estimates Visa and MasterCard processed more than 92% of all Canadian consumer transactions in 2011. American Express figures were not included CBA calculations.

[239] Equifax Canada Co., *Equifax Canadian Consumer Credit Trends: Q2 2014*, September 4, 2014. Last accessed October 27, 2014, at http://www.equifax.com/international/canada/documents/Equifax_Canadian_Consumer_Credit_Trends_Q2_2014.pdf

[240] $513,000,000,000 x .0111 = $5,694,300,000.

However, the use of the Statistics Canada figure of $513 billion is troubling, since the goal is to ascertain the total amount of unsecured debt that is delinquent in Canada. Included in the $513 billion figure are auto financing loans, which are secured debts. According to Equifax Canada, auto financing loans accounted for $57.6 billion of the total consumer credit debt held Canadians during the second quarter of 2014. As a result, we will subtract auto financing loans in Figure 2-8 to obtain a more accurate estimate of the maximum size of the Canadian debt collection industry.

Figure 2-8 Estimated Maximum Size of the Canadian Debt Collection Industry, Adjusting for Automotive Financing

Total Consumer Debt	$513,000,000,000
Estimated Auto Financing	-$57,600,000,000
Adjusted Total consumer Debt	$455,400,000,000
Total Delinquency Rate	x 1.11%
Est. Max. Size of the Canadian Debt Collection Industry	$5,054,940,000

Another variable in the search for an estimate of the size of the Canadian debt collection industry are the recent introduction of master credit agreements between consumers and financial institutions. Under a master credit agreement, a financial institution may make credit available if an agreement is signed where a consumer's property is used as collateral. This turns previously unsecured debt into secured debt. Unfortunately, data to demonstrate the use of master credit agreements was unavailable. Thus, it is contended here the size of the debt collection industry in Canada is certainly less than the $5 billion suggested in Figure 2-8, but substantially more than the $718.8 million suggested by Figure 2-7.

In an effort to more accurately reflect of the estimated size of Canada's debt collection industry, we can also incorporate figures from the 2012 Survey of Financial Security, issued by Statistics Canada. This survey lists debt held by type, and if we apply the overall delinquency rate used by Equifax Canada of 1.11 per cent to these figures, an estimate of the size of the Canadian debt collection industry in 2012 can be made.

Figure 2-9 Estimated Total Unsecured Delinquent Debt in 2012[241]

Type of Debt	Amount	x Delinquency Rate of 1.11%	Total Delinquent Debt (Estimated)
Line of Credit	$144,946,000,000	.0111	$1,608,900,600
Credit Cards	35,321,000,000	.0111	392,063,100
Student Loans	28,272,000,000	.0111	313,819,200
Other Debt	22,908,000,000	.0111	254,278,800
Total	**$231,447,000,000**		**$2,569,061,700**

Figure 2-9 provides evidence supporting the assertion made earlier that, in 2012 at least, the size of the Canadian debt collection industry was less than the $5 billion suggested in Figure 2-8. However, even if the $2.5 billion figure is used as a benchmark, there remain unaccounted variables affecting the accuracy of such an assertion, such as the growth in popularity of master credit agreements.

The next figure we will determine is the amount of revenue collected by Canadian debt collection agencies. Using Statistics Canada's Small Business Profiles finding from 2011, we can ascertain those Canadian debt collection agencies who reported gathered approximately $145 million in revenue during 2011.[242] However, this does not account for the 144 non-reporting collection agencies in Canada who were either self-employed or otherwise unclassified.[243] They represent one-third of the number of collection agencies operating in Canada. As a result, it is suspected Canadian collection agencies obtained

[241] Statistics Canada, "Assets, debts and net worth held by all family units in Canada," *Survey of Financial Security, 2012*. Last accessed October 28, 2014, at http://www.statcan.gc.ca/daily-quotidien/140225/t140225b002-eng.htm

[242] Industry Canada, *Financial Reporting Data: Report for NAICS 56144: Collection Agencies*, 2011. Last accessed on October 28, 2014, at https://www.ic.gc.ca/app/sme-pme/bnchmrkngtl/rprt-flw.pub?execution=e1s2. The revenue data for the 291 reporting collection agencies in this table was listed by average. Furthermore, the data was broken down by 70.1% profitable and 29.9% non-profitable debt collection agencies. The 204 profitable collection agencies had revenue of $463,600 each, for a total of $94,574,400, and the 87 non-profitable collection agencies had revenue of $581,600 each, for a total of $50,599,200. The following calculation provides an estimate of the revenue collected by Canadian debt collection agencies who reported in 2011: $94,574,400 + $50,599,200 = $145,173,600.

[243] Industry Canada, *Canadian Industry Statistics: Collection Agencies (NAICS 56144) Establishments*, December 2012. Last accessed on October 28, 2014, at https://www.ic.gc.ca/app/scr/sbms/sbb/cis/establishments.html?code=56144&lang=eng

about $193 million from Canadians in 2011, once the $145 million figure is simply multiplied by 33 per cent.[244]

It is unfortunate that even after this series of calculations, a useful estimation of the size of the Canadian debt collection industry remains elusive. Canadian debt collectors could have between $2.5 and $5 billion in delinquent debt accounts pass their collective desks. The data collected here indicates collections agencies collected an estimated $193 million in revenue from debt accounts in 2011. As a result, all that can be argued is that the debt collection industry in Canada is certainly less than the $5 billion suggested in Figure 2-8, but substantially more than the $718.8 million in delinquent credit card debt suggested by Figure 2-7.

Conclusion

In this section we learned that most debt acted upon by debt collection agencies in Canada are unsecured debts, meaning they have no collateral tied to them. The most common form of unsecured debt are from credit cards, and other examples include lines of credit, income taxes, student loans, personal loans and overdue utility charges. One industry stakeholder estimates between 50 and 75 percent of the outstanding consumer debt in Canada is owed to large Canadian banks.

It was found calls from collections agents usually began once an overdue account was 90 days old. For the next three months, it is typical for the original creditor to employ its own debt collectors in an effort to obtain payment. We referred to this as Scenario A, and found there appears to be few rules that apply to debt collectors employed by a creditor in most of Canada. The limited number of rules may contribute to the frustration experienced by consumers subject to collection attempt by agents of original creditors.

After this initial attempt at collection, original creditor routinely spends the following 6 to 12 month period, Scenario B, employing a debt collection agency to obtain payment of the debt. Debt collection agencies operate on commission and are subject to provincial rules and regulations. The debt account may be reassigned multiple times by the original creditor to a number of debt collection agencies. However, the debt account will only be with one debt collection agency at any given time.

It is here we found varying descriptions explaining the activities of debt collection agencies and their agents. One the one hand, a debt collection agency operating as a collector for an original creditor is acutely aware of the image it projects when it conducts business as an agent. Thus, the agency will not only comply with provincial regulations designed to protect consumers, but will agree to act in a manner that will not permanently damage the reputation of the original creditor. If a collection agency violates this client

[244] $145,173,600 x 0.33 = $47,907,288. $$145,173,600 + $47,907,288 = $193,080,888

compliance it risks losing a collection account to a competitor while damaging its own brand.

The alternative description outlines a Canadian debt collection industry where revenue is the primary incentive. A collection industry where constant intimidation tactics are used as motivation by original creditors, such as large banks, against collection agency executives. Original creditors set up a structure referred to as a competitive race, pitting multiple debt collection agencies against each other and providing sometimes daily performance feedback. In turn, collection agency executives tell their collection agents to keep performing or run the risk of losing their job due to poor personal performance, or through the loss of a corporate account due to poor agency performance. Thus, the culture of fear created by the continuing race to beat the competition or lose clients is justification to disregard employee behavior and look the other way when the rights of consumers are abused or consumer protection law is violated.

Typically, after 30 months of attempting to collect on an overdue account, a debt may be sold by the original creditor to debt buyer or debt collection agency, referred to a Scenario C in this discussion. It was discovered here that it was possible for debt collection agencies to misidentify a consumer with an outstanding account. As a result, we encourage consumers to request documentation proving they owe the debt when contacted by a debt collection agency or a debt buyer. Even in instances where consumers decided to settle with collection agencies, we observed evidence leading us to conclude it is wise for consumers to obtain a written agreement before submitting payment.

The existence of limitation periods in Canada applicable to unsecured debt was also worth noting. A creditor will effectively lose the ability to sue a consumer for outstanding unsecured debt after the limitation period in their jurisdiction expires, unless a creditor sues and the accused fails to file an appropriate defence with the court or a consumer chooses to pay a debt voluntarily.

Occasionally, lawyers are retained in an effort to recover money on behalf of creditors, and there are a small number of law practices in Canada that operate like collection agencies. In most Canadian jurisdictions, lawyers engaged in debt collection are subject only to the common law and the rules established by the provincial law society where they are operating. Unfortunately, we found instances where a lawyer issued thousands of demand letters and draft statements of claim over a multi-year period. When this conduct was challenged, the applicable law society had no guidelines established even though similar cases had occurred. With an existing lack of guidelines and enforcement measures, it is tempting to recommend the legal profession lose the existing exemption to the laws and regulations that apply to other debt collection professionals operating in many parts of Canada. Finally, it was determined any estimate regarding the size of the debt collection industry in Canada was pure speculation. The attempts displayed in this

section revealed a debt collection industry ranging between $718 million and $5 billion in estimated size.

Section 3 - What Did Consumers Tell Us?

In an effort to obtain the views of consumers and their experiences with respect to the conduct of debt collection agencies, PIAC commissioned a research firm to conduct a series of 4 tele-focus groups. The focus groups were held among 2 groups of Albertans and two groups of New Brunswickers, and conducted in August, 2013. One of the tele-focus groups conducted with New Brunswick consumers was conducted in French. The screening for the focus groups ensured consumers with experience within the debt collection sector were included in the proceedings.

The research was designed with the following objectives in mind:

- To understand consumer experiences with debt collection agencies and the impact this has had on their lives;
- To explore how people who have experienced debt collection would change the process; and
- To explore the extent to which consumers are aware of their rights and recourses related to debt collectors.

The evidence provided by these consumers may indicate if a greater emphasis is required by provincial governments on communicating consumers' rights and available avenues of recourse when interacting with debt collection agencies

Reasons for Debt

Confirming the information we learned in the previous section, focus group participants acknowledged credit card debt was the most common reason for their interactions with debt collectors.[245] However, participants also reported dealing with collection agencies for utility bills, student loans and for the provision of emergency medical services.[246] This result is also consistent with evidence released by the U.S. Federal Trade Commission in a 2013 report that bank sales of credit card debt directly to debt buyers account for 75% or more of all debt sold in the United States.[247]

[245] *Debt Collection Industry Experiences Focus Group*, August 12, 2013, p. 5-10, and *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 5-7.
[246] *Debt Collection Industry Experiences Focus Group*, August 12, 2013, p. 5-10, *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 4, and *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 5-7.
[247] Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry*, Report, January 2013, p. 13.

Tactics Employed

Focus group participants generally reported the calls they received were aggressive and threatening.[248] Moreover, respondents were faced with multiple phone calls throughout the day, and collection agents who are often unwilling to negotiate a solution that will resolve the debt, except full and immediate payment.[249] One participant reported threats of having her car towed; another said a student loan that had been co-signed for a child had been threatened.[250] Others recalled that their homes or possessions were threatened, but these threats never resulted in action on part of collectors.[251] Some participants also reported being threatened with legal action.[252] This is consistent with the information reviewed in the previous section, when it was estimated one half to three quarters of all Canadian consumer debt was held by large banks. According to lawyer Mark Silverthorn, it is very rare for Canadian banks to allow a collection agency to sue on the accounts they provide.[253] He concludes, "This means when a collector threatens to sue you on the phone, there is a good chance the collector is breaking the law."[254]

It is also consistent with the number of complaints and inquiries logged by provincial consumer affairs ministries or debt collection industry regulators. In New Brunswick for instance, the Financial and Consumer Services Commission noted "Our office has received 287 individual inquiries regarding the collection practices of collection agencies and lenders from April 2011 to March 2012. During this time frame our office received a total of 137 complaints which required the intervention of the enforcement officer."[255] In 2012-2013 fiscal year, Service Alberta received 1,281 calls regarding debt collection activity in that province, while debt collection inquiries account for one in five inquiries made to Consumer Protection BC each year since 2011.[256]

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[248] *Debt Collection Industry Experiences Focus Group*, August 12, 2013, p. 4-8, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 4-5, 11, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 3.
[249] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 8-9, and *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 7
[250] *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 7, 17-19.
[251] *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 21, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 18-19.
[252] *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 18.
[253] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 230.
[254] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 230.
[255] Financial and Consumer Services Commission of New Brunswick, *Response to Stakeholder Questionnaire*, July 12, 2013.
[256] Service Alberta, *Response to Stakeholder Questionnaire*, June 21, 2013, and Consumer Protection BC, *2013 Annual Report*, p. 18.

Some participants reported incidents where they were unsure why the collection agency was calling them in the first place. For one participant, the calls were for the debt of a business partner; another reported getting a new phone number, and having a collection agency call frequently to collect a debt belonging to the previous owner of that number.[257] In these situations, it became difficult for the participants to get any information from the collectors regarding the nature of the debt, and who they were looking for. Participants also noted that the collectors were unwilling to believe that they had contacted the wrong person, or there had been a misunderstanding, and continued to call regularly.[258]

How regularly depends on whom you ask. Many focus group participants recall being phoned multiple times per day without regard to the time of day or day of the week.[259] This is unfortunate since provincial laws applying to collections specifically prohibits calls on Sunday or calls between the late evening and early morning hours. Moreover, multiple participants claim they were contacted at their workplace in a manner that would be a prohibited practice in many provinces.[260]

Participants understood that is the job of collection agencies to get a payment from them, but also believe that the way they go about this could be improved. Focus group participants offered the following feedback on how the relationship between debt collector and client could be enhanced:

- The most common response among participants is that collection agencies should learn to talk on a personal level, and work with the person in debt.[261]
- Participants also suggested that the collectors should do some background work, and have some context regarding the situation before making contact with a person in debt.[262]

[257] *Debt Collection Industry Experiences Focus Group*, August 12, 2013, p. 9-12.
[258] *Debt Collection Industry Experiences Focus Group*, August 12, 2013, p. 9-12, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 2-3.
[259] *Debt Collection Industry Experiences Focus Group*, August 12, 2013, p. 6, 9, 24-25, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 11, 17 and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 13-14.
[260] *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 11, 17, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 1-2, 15, 20-21, 29-30.
[261] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 45, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 4-5, *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 5, and *Debt Collection Industry Experiences Focus Group #4*, August 14, 2013, p. 11-12.
[262] *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 5, and *Debt Collection Industry Experiences Focus Group #4*, August 14, 2013, p. 11-12.

- Collectors should also be willing to listen to the current circumstances in a person's life that will dictate their ability to pay back the debt, and be willing to work out a payment plan that will be beneficial to all parties involved.[263]

In regard for the need for further background work by collection agents, Professor Jim MacGee, an economics professor at the University of Western Ontario, suggests if debt collection agencies were subject to requirements to quickly update databases upon learning of disputes, this development would be beneficial to consumers.[264] Given the pressures facing collection agents discussed in the previous section, it is doubtful that agents would take the time required to make changes to a file, even if they were subject to regulation compelling them to update debtor information.

On the other hand, many collection agents are taught that all debtors are compulsive liars, and no matter what a consumer tells them, they're supposed to keep pushing.[265]

They also note hearing a consumer's hard luck story is a waste of their time, and time is money.[266] These sentiments appear to be consistent with the evidence provided in the previous section regarding the pressure collection agents are under in an effort to meet monthly quotas. The Canadian Bankers Association also appears to argue some consumers possibly have ulterior motives when issuing complaints to consumer protection agencies concerning debt collection:

> "Banks are aware and understand that consumers who are contacted by debt collection companies are generally not favourably disposed to the company given the nature of the interaction. This could result in a predisposition for the debtor to complain about the debt collection company, which must be factored into the bank's assessment of any complaints."[267]

[263] *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 5.
[264] Dr. Jim MacGee, University of Western Ontario, Department of Economics, *Response to Stakeholder Questionnaire*, July 12, 2013.
[265] Crouch, Michelle, "13 Things a Debt Collector Won't Tell You," *Readers Digest*, October, 2011. Last accessed October 22, at http://www.rd.com/slideshows/13-things-a-debt-collector-wont-tell-you/#slideshow=slide4
[266] Crouch, Michelle, "13 Things a Debt Collector Won't Tell You," *Readers Digest*, October, 2011. Last accessed October 22, at http://www.rd.com/slideshows/13-things-a-debt-collector-wont-tell-you/#slideshow=slide4
[267] Canadian Bankers Association, *Response to Stakeholder Questionnaire*, July 15, 2014.

Misinformation & Attempts to Collect More than is Owed

Most provinces have a consumer protection law specifically addressing the use of false information to mislead the debtor. Misinformation can include:

- being creative about the amount of debt owed;
- pretending to be someone different (for example, posing as a lawyer); and,
- threatening to sue when the collection firm has no intention or authority to do so.[268]

As a result, focus group participants were asked a series of questions to find evidence of whether misinformation is being used as a tactic by Canadian debt collection agencies and their employees. In response, several participants noted examples where collectors attempted to collect more money than was initially owed.[269] Respondents stated this would occur in telephone conversations where collection agents would refer to the excess amount as a penalty, or interest. In one instance, the collection agency claimed a flat fee monthly to be added to the total debt.[270] One participant noted:

> "Yes, that's me. They wanted me to pay double on the original debt."[271]

Another commented:

> "It started out as a credit card with a $300.00 limit. It's my wife's credit card. Anyway, she got it maxed and things happened and she didn't pay it. And then it went to the collection agency and now they want over $700.00 for it…All this interest plus they have some other fee, $25.00 a month for every month you don't pay it."[272]

Misinformation regarding debts rarely occurs in writing, according to the individuals we spoke with who have experience communicating with deal collection agencies.[273]

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[268] Matt Kwong, "4 Things to Know if you're Harrassed by Debt Collectors," *CBC News*, November 2, 2012. Last accessed September 25, 2014, at http://www.cbc.ca/news/canada/4-things-to-know-if-you-re-harassed-by-debt-collectors-1.1153120

[269] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 32-33, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 23-24, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 21-22.

[270] *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 22.

[271] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 32.

[272] *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 22.

[273] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 32, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 21.

Consumers' Awareness of Rights

When asked about their rights when dealing with debt collectors, most participants were unsure of any rules that debt collectors had to follow, or recourse for dealing with collectors who were abusive. For instance, most agreed there should be some limits on the time of day in which they could be contacted, and that threats should not be allowed.[274] This is unfortunate since both abusive language and calls after 9 or 10 pm are already prohibited in all provinces.

Unsurprisingly, focus group participants would also institute placing a limit on the number of phone calls debt collectors can make in one day and reducing the amount of personal information they can ask for over the phone.[275] One participant suggested online case files, where those in debt could be notified, and then review the details of their case before proceeding.[276] This would reduce confusion over the source and amount of the debt, and also cut down the number of cases of mistaken identity.

A few focus group participants recalled receiving notification in writing that their debt had gone to a collection agency, while others recall having been contacted over the phone serving as their notification.[277] In some provinces, it is mandatory for collection agents to contact debtors in writing before attempting to contact them via the telephone.[278] Admittedly there are a number of reasons why an individual may not be successfully contacted in writing. Consumers move, mistake the written information as junk mail, or simply ignore the mailed notice supplied by the debt collection agency. However, we believe that an initial written attempt at communication may be more effective in eventually resolving disputes with debtors when compared to cranking out continuous cold calls, as reported by numerous focus group participants.

In Ontario, for instance, the first step a collection agency must take is to send you a written notice through the mail, according to the provincial Ministry of Government and Consumer Affairs. This notice must include:

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[274] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 13, and *Debt Collection Industry Experiences Focus Group #4*, August 14, 2013, p. 54-55.
[275] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 45-46, and *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 41.
[276] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 11.
[277] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 15-16, 18, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 12, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 8.
[278] This is the case in the provinces of Ontario, BC, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, Nunavut and the Northwest Territories. Please consult Figure 5-1 of this report for further details.

- the name of the creditor (the person or business that says you owe them money)
- the amount the creditor says you owe
- the name of the collection agency and its authority to demand payment on behalf of the creditor.

After sending the notice, the agency must wait six days before it can contact you in person or by phone.[279] Based on the evidence collected from focus group participants, we strongly suggest the provincial and territorial ministries responsible for regulating collection agencies should create a 1-2 page memo explaining to consumers their rights in these unique circumstances. Further, it should be required that this memo be included in, at the very least, the initial correspondence from a collection agency to a consumer. In addition, we contend that attempting to contact a debtor in writing before commencing with telephone calls should become the standard in all Canadian jurisdictions. This effort to make consumers more acutely aware of their rights and obligations, as well as those of the debt collector, can only enhance the current debt collection environment.

In terms of the method of contact employed by debt collection agencies, in general, focus group members reported that contact with debt collectors was over the phone, although a few were contacted in writing or by email.[280] Most were unaware that in a number of provinces consumers had the right to request contact through the mail only in order to stop the phone calls a number of participants described as harassing.[281]

Over the past few years, the media has reported a disturbing tactic of debt collectors in other jurisdictions using social media applications to impersonate a consumer's friends or otherwise use it for harassment.[282] This is mild treatment compared to the more extreme

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[279] Government of Ontario, *Your rights When Dealing with Collection Agencies*, Ministry of Government and Consumer Affairs. Last Accessed September 25, 2014, at http://www.sse.gov.on.ca/mcs/en/Pages/Personal_Finance_Collection_Agency_Rights.aspx. The province of Saskatchewan operates under similar provisions.

[280] *Debt Collection Industry Experiences Focus Group #4*, August 14, 2013, p. 21-22, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 12-13, , and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 8-9.

[281] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 17-18, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 13-14, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 9.

[282] Dougherty, Carter, "Debt Collectors Posing as Facebook Friends Spurs Watchdogs," *Bloomberg*, January 24, 2013. Last accessed September 25, 2014, at http://www.bloomberg.com/news/2013-01-24/facebook-friends-fronting-debt-collectors-draw-u-s-regulation.html. See also H. Weisbaum, "Debt Collectors Troll Facebook: Are they Going too Far?," *Consumerman on NBC* News. Last accessed September 25, 2014, at http://www.nbcnews.com/id/42687734/ns/business-consumer_news/t/debt-collectors-troll-facebook-are-they-going-too-far/#.VCQyKRa_73Y, Kate Knibbs, "Careful – that Facebook Friend Request Could be an Invisible Debt Collector," Digital Trends, November 16, 2013. Last accessed September 25, 2014, at http://www.digitaltrends.com/social-media/friend-request-debt-collector/, and Susan Johnston, "Can Debt Collectors Contact You via Social Media?," *US News & World Report*,

examples found elsewhere. In Spain and Portugal for instance, at least one debt collection agency employs individuals to wear costumes and follow their clients around in an effort to shame them in paying their accounts.[283] These individuals, referred to as the *El Cobrador del Frac* (frock coated debt collector) are used as a last resort, according to their employer.

The agency works either for a fixed fee or for a percentage of the debt recovered, and claimed an 80% success rate in 2013 and a 70% success rate in 2010.[284] A spokesperson for the agency contends they only pursue "people who are able to pay but refuse to pay. We don't pursue people who have no money, but people who may have concealed their money in fake agencies for example."[285] It begins like any other debt settlement negotiation, however, if unsuccessful the agency will send out the man in the frock coat.[286]

February 13, 2012. Last accessed September 25, 2014, at http://money.usnews.com/money/personal-finance/articles/2012/02/13/can-debt-collectors-contact-you-via-social-media.

[283] Burgen, Stephen, "Send for the Cobrador: Business Booms for Spanish Debt Collectors," *The Guardian*, August 9, 2013. Last accessed September 25, 2014, at http://www.theguardian.com/business/2013/aug/09/spain-debt-collectors-cobrador-del-frac. See also Danna Harman, "Spain Uses Public Shame to Collect Debts," The Christian Science Monitor, February 17, 2010. Last accessed September 25, 2014, at http://www.csmonitor.com/World/Europe/2010/0217/Spain-uses-public-shame-to-collect-debts.

[284] Burgen, Stephen, "Send for the Cobrador: Business Booms for Spanish Debt Collectors," *The Guardian*, August 9, 2013. Last accessed September 25, 2014, at http://www.theguardian.com/business/2013/aug/09/spain-debt-collectors-cobrador-del-frac. See also Danna Harman, "Spain Uses Public Shame to Collect Debts," The Christian Science Monitor, February 17, 2010. Last accessed September 25, 2014, at http://www.csmonitor.com/World/Europe/2010/0217/Spain-uses-public-shame-to-collect-debts.

[285] Burgen, Stephen, "Send for the Cobrador: Business Booms for Spanish Debt Collectors," *The Guardian*, August 9, 2013. Last accessed September 25, 2014, at http://www.theguardian.com/business/2013/aug/09/spain-debt-collectors-cobrador-del-frac

[286] Burgen, Stephen, "Send for the Cobrador: Business Booms for Spanish Debt Collectors," *The Guardian*, August 9, 2013. Last accessed September 25, 2014, at http://www.theguardian.com/business/2013/aug/09/spain-debt-collectors-cobrador-del-frac. See also Jason Webb, "In top hat and tails, Spanish debt agents prosper," *Reuters*, August 21, 2008. Last accessed September 21, 2014, at http://www.reuters.com/article/2008/08/21/us-spain-debtors-idUSLJ55251720080821.

Figure 1 An employee of El Cabrador del Frac, who use public shaming as a technique to collect outstanding debts

As a result, focus group participants were asked directly if they had been contacted through social media networks or in person. To the credit of Canadian debt collection agencies, no respondents indicated they had been contacted through social media applications or in person.[287] The use of social media remains largely uncharted legal territory for debt collectors, although we suspect social media resources are used to assist in verifying the location and identity of debtors. Moreover, much to their relief, neither focus groups participants nor Canadians in general have recently reported any sighting of El Cobrador del Frac or any other person from a debt collection agency.

Consumer Resources

If a collection agency had crossed the line into threatening behaviours or harassment, most participants were unaware of any legal recourse they could take.[288] A number of

[287] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 22-23, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 15-16, *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 11-12, and *Debt Collection Industry Experiences Focus Group #4*, August 14, 2013, p. 23.
[288] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 37-38, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 31, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 31-32.

consumers contemplating legal help in dealing with debt collectors feared incurring another set of costs.[289] Many were unaware of the potential availability of free legal resources. As a result of their engagements with debt collectors, a number of participants suggested the establishment of an ombudsman or moderator to deal with complaints.[290] Consumers also suggested a 1-800 number, pamphlets or a website, to inform those in debt of their rights. Moreover, many believe it should be the responsibility of the provincial government to provide these services.[291]

A number of participants identified an outstanding issue with providing free information and counsel on debt issues. They contend given the volume of available information, it is challenging to know who to trust. Thus, any information or services would have to come from a trusted source – such as the provincial government – or it would likely be dismissed.[292] On this point, we take issue with the finding of the focus groups. A number of provincial governments, as well as Industry Canada, have provided materials online available to consumers in an effort to communicate what rights consumers have when faced with communications from debt collection agencies. Perhaps these organizations could do a more comprehensive job distributing their messaging, however, the resources do exist, if consumers take the time to seek them out.

We contend there exists a real disconnect between the information available to consumers and their lack of desire to use it. We suspect part of the explanation for this is the mental mindset of consumers when faced with a call from the collection agency. We feel the "on the spot" nature of an initial telephone conversation between a consumer and a debt collection agency does not lend itself to a productive conversation.[293] Consumers, sometimes hearing the news that a debt collection agency is looking for them only moments before, and faced with the sometimes aggressive tactics described here, get defensive, respond aggressively, panic or simply ignore the request for payment. On numerous occasions focus group participants noted if the caller was a little less aggressive, they may have been able to address the situation in a more productive manner.[294] Moreover, while engaged with the debt collection agent the first time, it is

[289] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 40.
[290] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 14, 44, and *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 27-29.
[291] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 41, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 30, 32, 35, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 34-35, 38.
[292] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 44-45, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 34, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 35-36.
[293] *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 32.
[294] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 7-8, 12-13, 46, *Debt Collection Industry Experiences Focus Group #2*, August 12, 2013, p. 4-7, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 5.

expected that many consumers are vulnerable and would not know the rights available to them. However after the initial contact, we contend some fault lies with the consumer for not educating themselves on what recourse are available in a situation involving a debt collection agency.

We contend that, much like a recipe, a combination of ingredients have led to a series of unintended consequences regarding the current operation of the Canadian debt collection industry. One ingredient are the less than effective outreach efforts by government agencies committed to informing consumers. Added to this is the apparent hesitance of consumers to seek out further information. Mix this with the incentive for collection agents to violate the rights of consumers in order to meet their monthly quotas or be demoted or dismissed. The result, we suspect, is a recipe that paves the way for a number of the issues raised by focus group participants.

For instance, focus group participants feel that public awareness regarding the debt collection process is low, and that the industry should be better regulated.[295] However, when asked, many participants had no idea collection agents could not contact consumers after certain times, usually between 9 pm and 7 am. Focus group participants also were largely unaware they could request for information to be sent in writing, or to be contacted through a lawyer.

We suspect if consumers made themselves more aware of their rights, they would be more inclined to report aggressive collection agents instead of feeling vulnerable or shame about their interaction with collection agencies. Some collection agencies, who may not place an emphasis on professionalism, may take advantage of the current consumer mindset to violate those rules in place. If the collection agency does not fear being reported, and they think consumers won't report them, some will not use discipline when approaching consumers. This puts those debt collection agencies who do place an emphasis of professionalism in an unenviable position. They realize competitors in their industry are violating present rules, yet end up feeling the effects of the public perception that each and every debt collection agency flagrantly disregards the legislation and regulations that apply to them.

As a result, we feel there is an onus on all stakeholders if they desire to improve the debt collector-consumer relationship.

[295] *Debt Collection Industry Experiences Focus Group #1*, August 12, 2013, p. 44-46, and *Debt Collection Industry Experiences Focus Group #3*, August 14, 2013, p. 41.

Suggestions for Debt Collection Agencies

For the debt collection agencies, we would encourage them to train their agents to be less aggressive in their interaction with consumers. To achieve this goal, a number of alternative approaches could be explored. For instance, collection agents could be more upfront with consumers, explaining in detail why they are calling and potential avenues of resolution of the debt in question. They could also offer to send customers information on their accounts in writing, so consumers know the details of the debt in question.

We would also encourage debt collection agencies to provide information to their clients that is produced by provincial consumer affairs ministries or an agency such as the FCAC. This government-produced information, perhaps a 1-2 page document, would advise consumers what their rights are when involved in a debt collector-debtor relationship. Armed with this knowledge, consumers may be able to manage this relationship in a manner that will eventually benefit both themselves and the debt collection agency.

We suspect the influence of immediate financial incentives for collection agents are a catalyst for the tactics employed that agitate consumers engaged with debt collectors across Canada. The potential use of quotas, commissions, or incentives based on short-term collection performance may serve to undermine the legislation and regulations put in place by federal and provincial governments and enforced by consumer protection and finance agencies.

In an effort to lessen the influence of immediate financial incentives for collection agents, we encourage debt collection agencies to consider a number of options. For instance, we encourage debt collection agencies to place as much emphasis and reward collection agents for long term resolution of accounts as they currently place in immediate resolutions of accounts. This may allow collection agents greater flexibility to engage with consumers in a more congenial manner. Under these conditions, even if account resolution takes more time, a collection agent would be confident a similar level of financial incentive would be waiting for them at the conclusion of repayment as there would have been if harsher tactics were employed in an effort to secure immediate payment.

Secondly, we suggest debt collection agencies negotiate with large original creditors to adjust the manner in which debt collection efforts are analyzed and recorded in Canada. We question the need for original creditors to intimidate collection agencies, sometimes on a daily basis, as alluded to in Section 2 of this report. Perhaps a public registry, administered by provincial and territorial agencies responsible for debt collectors, that reveals which original creditor has hired which collection agencies to work on accounts,

might serve as a partial deterrent to conducting a competitive race among collection agencies. If consumers and the public at large know a specific collection agency is employed by a specific large Canadian corporation, perhaps that corporation would become more vigilant in ensuring debtors are treated within the confines of the law by collection agents. By being able to draw a direct link between an indebted consumer being illegally contacted and the large Canadian corporation holding the debt, it may result in a debt collection agency becoming more "client compliant."

University of Western Ontario economics professor Jim MacGee suggested collections agencies should file their call logs annually with the appropriate regulator with a brief summary of the number of incorrect consumers contacted.[296] We would encourage debt collection agencies to go further, by recording every outgoing and incoming telephone conversation with a client, and to make these recordings available to the government agencies that regulate them upon request. This would protect both consumers, as well as debt collection agencies. If a debt collection agency is employing best practices, then they should have nothing to fear regarding the occasional monitoring of their interactions with consumers. Consumers would be confident in the knowledge that if they feel they have been treated unfairly or suspect rules have been broken, they can request a consumer protection agency or regulator review the telephone recordings to determine if any wrongdoing has occurred. The knowledge that any call might be reviewed by a regulator may serve as a deterrent to employing overly-aggressive tactics by collection agents. It may also deter the employers of collection agents from looking the other way when their agents attempt to abuse the rights of consumers.

This is not a precedent-setting proposal. In fact, the Ontario Ministry of Government and Consumer Services has suggested the preservation of telephone recordings between merchants and consumers as part of a regulatory proposal designed to address consumer irritants in the home water heater industry.[297] Since this sector has been the second most-complained about sector in Ontario from 2011 to 2013, perhaps the recording and preservation of communications between debt collections agents and consumers would be a prudent measure for all stakeholders.[298]

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[296] Dr. Jim MacGee, University of Western Ontario, Department of Economics, *Response to Stakeholder Questionnaire*, July 12, 2013.
[297] Service Ontario, "Better Decisions at the Door Draft Regulation," Regulatory Registry, *Ministry of Government and Consumer Services, Regulation 17/05*, October 10, 2014. Last accessed on October 14, 2014, at http://www.ontariocanada.com/registry/view.do?language=en&postingId=16643.
[298] Ontario Ministry of Government and Consumer Services, *Top 10 Complaints and Inquiries*. Last accessed October 14, 2014 at http://www.sse.gov.on.ca/mcs/en/Pages/Top_Ten_Complaints.aspx. See also Ontario Ministry of Government and Consumer Services, *Top 10 Complaints Archive*. Last accessed October 8, 2014 at http://www.sse.gov.on.ca/mcs/en/Pages/top_Complaints_archive.aspx

Finally, we encourage debt collection agencies to report those agencies violating the laws and regulations in the jurisdictions in which they operate to the appropriate authorities. Any instance where a debt collection agency stands idly by while competitors employ illegal tactics tarnishes the reputation or all entrants in the debt collection sector and the sector as a whole.

Suggestions for Government Agencies

For provincial government agencies charged with protecting consumers or those enforcing law and regulations applicable to debt collectors, there are a number of suggestions that may benefit the debt collection industry. We have found numerous government agencies produce communications products designed to educate consumers on their rights when dealing with debt collection agencies. However, focus group participants were clearly unaware of a vast majority of the resources available to them when dealing with debt collection agencies. Most were unaware a provincial government agency would even be able to assist them, let alone identify the agency.

As a result, we encourage provincial government agencies charged enforcing the law and regulations applicable to debt collectors to produce a one or two-page document clearly explaining the rights of a consumer. In addition to making the information publicly available, we suggest amending the relevant regulation to ensure that when written information is sent to a consumer by a debt collection agency outlining their account, the document, produced by the relevant provincial government agency, be included with that information. We would further suggest these documents be provided to debt collection agencies free of charge, since they will be distributing them on the government's behalf.

This suggestion appears to be supported by the Financial and Consumer Services Commission of New Brunswick. The Commission noted:

> "A proactive approach to consumer and collector education would improve the regulation of the debt collection industry. By educating consumers on their rights when dealing with collection agencies they would know when to call the regulator if the agency or collector did not comply with legislation. Regulators Compliance with debt collection laws could be improved by

> regularly providing industry members with consumable information on prohibited debt collection practices."[299]

The Commission also noted educating individuals employed in the debt collection industry is a challenge due to a high rate of turnover among collection staff. Secondly, collection agents often collect from more than one jurisdiction on any given day and must be knowledgeable of the varying collection laws.[300]

As was noted above, we suggest debt collection agencies record every outgoing and incoming telephone conversation with a client, and to make these recordings available upon request for review. In fact, we encourage those government agencies responsible for debt collection practices to make it the law to record these conversations, and make the recordings available to the relevant provincial ministry or agency in their jurisdiction upon request. This may protect the consumer since, if the debt collection agent uses tactics that violate the relevant law or regulation, it will be readily apparent to a provincial regulator. It would serve to protect a debt collection agency since it would allow agencies to prove themselves and their employees are following the letter of the law in the jurisdiction of the debtor. We contend this practice serves government ministries and agencies, since they would able to more effectively determine if a violation of the law or regulation has occurred and take corrective action. Moreover, the relevant government agency could monitor these communications to ensure the one or two-page information kits mentioned in the previous paragraph are being distributed.

Related to the suggestion to record telephone conversations is a final suggestion requesting government agencies responsible for debt collection to meet with industry stakeholders in an effort to amend the structure of the debt collection industry in their jurisdiction. It is suspected that debt collection regulators may require sufficient leverage to bring collection agencies and original creditors to the table to discuss potential policy changes. We suggest this leverage take the form of annual transparency reports. These reports, produced in each province, would publicly outline how many complaints were brought forward against each individual collection agency. Moreover, they would detail the number of complaints brought forward on accounts from each major original creditor responsible, regardless of which collection agency was employed. Figure 3-1 provides examples of how these transparency table might appear in reports issued by relevant

[299] Financial and Consumer Services Commission of New Brunswick, *Response to Stakeholder Questionnaire*, July 12, 2013, and Government of Nunavut, Department of Community and Government Services, *Response to Stakeholder Questionnaire*, June 13, 2013.
[300] Financial and Consumer Services Commission of New Brunswick, *Response to Stakeholder Questionnaire*, July 12, 2013.

government agencies that process consumer complaints generated by the debt collection industry.

Figure 3-1 Examples of Tables in Debt Collection Transparency Reports

Original Creditor	Number of Complaints
Bank A	
Retailer B	

Name of Collection Agency	Number of Complaints
Collection Agency Y	
Collection Agency Z	

We suggest a debt collection enforcement regime that requires telephone recording and publicly issues transparency reports on an annual basis may eventually witness a decline in the volume of consumer complaints they receive concerning the debt collection industry. That being said, it is entirely possible the volume of complaints rises at first, due to increased awareness among consumers that an avenue of recourse with a provincial or territorial government agency is available. Even the notion that publicly displaying the volume of consumer complaints in the manner described above should provide enough incentive for debt collection industry stakeholders to discuss industry issues with policy makers.

Suggestions for Government Agencies to Consider

- *Produce 1-2 page memo clearly explaining the rights of a consumer.*
- *Include government-issued memo with written information sent to a consumer by a debt collection agency*
- *Consider compelling debt collection agencies to record every outgoing and incoming telephone conversation with a client*
- *Consider issuing transparency reports*

Suggestions for Consumers

Consumers also have to take some responsibility for the challenges they encounter when dealing with the current debt collections regimes operating in Canada. Consumers lacking awareness regarding their rights when dealing with debt collection agencies have seemingly allowed some collection agencies to push the envelope regarding adherence to debt collection law. As a result, the initial suggestion we have for consumers is to increase their knowledge when a debt collection agency engages them.

Between online sources, provincial consumer protection agencies, reputable credit counselling services and legal counsel, for example, there are no shortage of avenues consumers can pursue if they have questions concerning debt collection practices and resolutions. Some of these sources have little or no cost associated with them. As a result, we contend once an initial contact is made by a debt collection agency, consumers should be collecting information themselves for their own protection. We suspect future encounters with debt collection agents will be less intimidating and more productive if consumers have a greater awareness of their rights and responsibilities.

For instance, in many Canadian jurisdictions, debt collectors are prohibited from contacting consumers by telephone until a certain number of days after they have mailed out a paper statement indicating the amount of the debt and its origin. If a consumer did not receive such a notice, they can request it when the collection agent calls again.

Secondly, we encourage consumers contacted by a debt collection agency to contact their provincial consumer protection agency if they feel they're not being engaged properly. A provincial consumer affairs agent can assess the situation and provide advice on what next steps are available to consumers.

We would also advise consumers who have been engaged by a debt collection agency not to proceed with a payment until they receive something in writing, and had the opportunity to review the documentation. This is a moderate approach compared to the advice provided by other stakeholders. For example, CanLaw, a national lawyer referral service, notes that if consumers feel a debt collection agency is harassing them, "Do not tell them anything at all," as well as the following:

- "If you have a debt in collection, the damage to your credit rating is already done. You may as well let them sue you. It will take many, many months, possibly years, for them to sue you and they may or may not proceed.

- Even if they do sue you, there is no guarantee they will get a judgement.

- They cannot touch your assets or garnishee your pay without first suing you and winning a judgement against you. That could take years.

- Collection agencies do not like to sue. When they sue, they need their client's permission and usually it is not worth their while. They will huff and puff and bluster and do anything to trick you into paying today. Do not be conned.

- Do not ever trust or believe anything the human vultures in collection agencies tell you. They make their living by preying on people having problems. The only thing they are interested in is in tricking or frightening you into sending them some money so they can get their commission. Collection agents are the scum of the earth."[301]

A similar tone was taken by Antonin Pribetic in a blog post relating to the deceptive nature of a collection agency notice letter. Mr. Pribetic is a commercial litigator and arbitrator and serves as Chair of the Ontario Bar Association's International Law Section. After providing a detailed analysis of the contents of a debt collection notice, Mr. Pribetic noted the Ontario *Collections Agencies Act* and Regulation are explicit: collection agency notice letters are not to be used as fishing expeditions.[302] In this instance, Mr. Pribetic contends the collection agency was trying to spring a trap on the unwary.[303]

There are limitations on the length of time a debt is the legal responsibility of the debtor. In many occasions, debt accounts are retained by debt collection agencies long after the limitation has been exceeded in an effort to extract payment. In the province of Ontario, for instance, if a consumer stopped paying for a debt after January 1, 2004, the debtor has the option to sue for two years.[304] After two years, whoever holds the debt account can attempt to get you to pay, but they cannot force a consumer to pay using the courts.[305] However, if a consumer makes a payment, the clock resets, and the debt collector regains the right to employ the court system all over again for another two years starting from the

[301] CanLaw, *What to do When the Collection Agency Calls*. Last accessed October 1, 2014 at http://www.canlaw.com/credit/collect.htm#.VCwKvBa_73Y
[302] Pribetic, A. "Caveat Beditor: Don't Respond to This Collection Notice," *The Trial Warrior Blog*, June 22, 2010. Last accessed October 1, 2014 at http://thetrialwarrior.com/2010/06/22/caveat-debitor-dont-respond-to-this-debt-collection-notice/.
[303] Pribetic, A. "Caveat Beditor: Don't Respond to This Collection Notice," *The Trial Warrior Blog*, June 22, 2010. Last accessed October 1, 2014 at http://thetrialwarrior.com/2010/06/22/caveat-debitor-dont-respond-to-this-debt-collection-notice/.
[304] Bankruptcy Ontario, *The Ontario Limitations Act*. Last accessed October 1, 2014 at http://bankruptcy-ontario.org/bankruptcy-in-ontario/bankruptcy-laws/statute-of-limitations/
[305] http://ontariodebt.org/ontario-debt-statute-of-limitations/

day a payment is made.[306] Moreover, in Ontario, for example, certain debts, like taxes, government guaranteed student loans, and debts for child support are not subject to the two year limitation period.[307] As a result, we encourage consumers contacted by a debt collection agency to obtain paper records of the account in question. Consumers should also seriously consider speaking to a legal professional or the consumer affairs agency in their jurisdiction to ensure fair treatment and to prevent being misled. We also suggest once a consumer has verified the debt in question, the type of debt it is, the length of time the debt has been outstanding, as well as the ramifications of their actions, they may proceed with a response to the debt collection agency.

[306] Bankruptcy Ontario, *The Ontario Limitations Act*. Last accessed October 1, 2014 at http://bankruptcy-ontario.org/bankruptcy-in-ontario/bankruptcy-laws/statute-of-limitations/. See also Pribetic, A. "Caveat Debitor: Don't Respond to This Collection Notice," *The Trial Warrior Blog*, June 22, 2010. Last accessed October 1, 2014 at http://thetrialwarrior.com/2010/06/22/caveat-debitor-dont-respond-to-this-debt-collection-notice/, and "Ontario Debt Statute of Limitations," *Avoiding the Debt Collector in Canada*, Blogpost, August 15, 2012. Last accessed October 1, 2014 at http://ontariodebt.org/ontario-debt-statute-of-limitations/

[307] Bankruptcy Ontario, *The Ontario Limitations Act*. Last accessed October 1, 2014 at http://bankruptcy-ontario.org/bankruptcy-in-ontario/bankruptcy-laws/statute-of-limitations/

Section 4 - A Review of Debt Collection Laws in Canada

The debt collection industry is subject to regulations in order to protect consumers from overzealous collectors and harassment. In Canada, each province is governed by its own debt collection legislation through the enactment of an act, regulations, or both. Generally, debt collection laws in Canada have two aims-to regulate the conduct of debt collectors when dealing with consumers and to deal with the business issues relating to the operation of a debt collection agency. Accordingly, those who are subject to the laws vary from province to province but generally include licensed collecting agencies and/or collectors. A collecting agency or a collection agent is generally defined as a person or entity who obtains or arranges for payment of money owing to another person, or who holds oneself out to the public as providing such a service, but this definition varies subtly from province to province.[308]

Concerning consumers, debt collection laws are in place to ensure that individuals are protected from prohibited practices and specify acceptable behaviour and methods for collectors when interacting with consumers. For example, they establish the hours and days that collectors can contact individuals, how they can contact an individual, who else they can contact regarding an individual's outstanding payment, and under what circumstances.[309]

The other aim of debt collection legislation is to regulate the business of debt collection agencies through various methods. For example, some provinces may require licensing and/or registration; others require that agencies maintain adequate documentation; while some provinces have specific recourse mechanism through inspections, investigations and fines or penalties for agencies offences.[310]

Over the past five years there have been amendments to provincial legislation that regulate debt collection across the country. These changes, however, can be characterized as minor and largely administrative in nature. It would appear that most of the changes are aimed at increasing regulation of collection agencies by ensuring they have adequate bonds in place, are financially viable agencies and maintain certain transactional records. Additionally, changes to regulations have been made to increase the amount of penalties owed by non-compliant agencies in order to promote deterrence.

[308] See e.g. *Collection Agencies Act 2011*, c 126 s 1, "collection agency" definition, see also *Collection Agencies Act*, RSO 1990, c C-14, s 1 "collection agency" definition [Collection Agencies Act Ontario].
[309] See e.g. Collection Agencies Act Ontario, *supra* note 1.
[310] *Ibid.*

Privacy Law

In addition to provincial debt collection law, collection agencies are subject to privacy law and human rights law. Under privacy law, a creditor cannot disclose the existence of a debt to anyone except those persons legally obligated to pay the debt.[311] If a creditor or collection agent discloses of a debt to anyone else, they have committed an illegal third-party disclosure.

Even alluding to a consumer having a debt can be grounds for future litigation. For instance, if a collection agent contacts a consumer's workplace, speaks with the human resources department, asks if they are responsible for wage garnishments after confirming the debtor in question is employed at the firm, and then the employee is subsequently fired, this action is illegal.[312] It is our understanding that in most provinces, a collection agent can only confirm the debtor is employed at the agency in question. In this scenario, it is possible for the debtor to seek damages from the following actors:

- Collection Agent
- Collection Agency
- Original Creditor who hired the Collection Agency[313]

Consumers who believe they are a victim of third party disclosure may wish to contact the provincial government agency responsible for administering privacy laws as well as the agency responsible for the licensing of collection agencies and their agents (if applicable).[314]

Consumers also have rights under the *Personal Information Protection and Electronic Documents Act (PIPEDA)* or the corresponding provincial privacy legislation. PIPEDA sets out ground rules for how private sector organizations may collect, use or disclose personal information in the course of commercial activities. The law gives individuals the

[311] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 222. See also Debt Care Canada, "Collection Agency Harassment is Common and You Can Stop It." Last accessed October 16, 2014, at http://www.debtcare.ca/articles/collection-agency-harassment-is-common-and-you-can-stop-it/

[312] **Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 223. See also *Tran v. Financial Debt Recovery Ltd*., 2000 CanLII 22621 (ON SC).**

[313] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 223.

[314] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 224.

right to access and request correction of the personal information these organizations may have collected about them.

In the realm of debt collection, this means a consumer can request the following from a debt collection agency:

- Any recording of telephone calls between the collection agency and the consumer;
- The contents of the file on their account, whether the documents are electronic or hard copy;
- Outgoing or incoming correspondence with respect to the account, regardless of format; and,
- Any credit reports in their possession.[315]

Under PIPEDA, a collection agency has 30 days from the date of receipt to respond to a written request, although the collection agency can state it wishes to extend the response deadline for an additional 30 days.[316] This ability to request information directly from a collection agency appears to be a very powerful tool for consumers. It is unfortunate the overwhelming majority of consumers have no knowledge they could exercise this right or how to proceed.

Human Rights Law

Another area of the law applicable to the debt collection industry in Canada is human rights law. Collection agents are not allowed to make inappropriate or offensive remarks about a consumer's race, religion, ancestry, sexual orientation, mental or physical challenge or family situation. Consumers who had evidence of such behavior may be able to subject the collection agent and their employer to a case before a provincial human rights commission.[317] A complaint could be made to the provincial human rights commission in the province the call originated in, and where the call was received.

[315] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 242-245.
[316] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 244-245. See also *Personal Information Protection and Electronic Documents Act*, 2000, Statutes of Canada ch. 5, s. 8.
[317] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 224.

Credit Business Practices Regulations

The Financial Consumer Agency of Canada (FCAC) is responsible for administering the *Credit Business Practices Regulations*. Section 7 of these regulations, introduced in 2010, refers to debt collection practices. Section 7 applies when a bank employee, or a collection agency on behalf of a bank, is collecting a debt. Provisions under this section include:

- An institution that communicates with a debtor in order to collect payment must inform the debtor of the details of the debt, such as the amount owed and the type of debt; and the identity of, or a unique identifier for, any person who is attempting to collect the payment.

- An institution may not communicate or attempt to communicate with a debtor, or anyone related to them in a manner or with a frequency that constitutes harassment, except for the sole purpose of obtaining a debtor's address or telephone number, unless the debtor's consent is obtained or the debtor has guaranteed to pay the debt.

- Except with the written consent of the debtor, an institution may not contact a debtor, or anyone related to them on holidays, on a Sunday, except between the hours of 1:00 p.m. and 5:00 p.m. local time for the person being contacted, or on any other day, except between the hours of 7:00 a.m. and 9:00 p.m. local time for the person being contacted.

- An institution may not collect or attempt to collect payment in respect of a debt from any person who is not liable for the debt.

- An institution may not directly or indirectly threaten or state an intention to proceed with any legal action if it does not actually intend to do so.[318]

The provisions listed in section 7 of the *Credit Business Practices Regulations* are similar in nature to those found in debt collection regulation and legislation found in most Canadian jurisdictions. Our understanding is that when a potential violation of the *Credit Business Practices Regulations* by a collection agency employed by a bank is

[318] *Credit Business Practices Regulations*, SOR 2009-257, s. 7(1), 7(2), 7(3), 7(7), 7(12) and 7(13).

investigated, FCAC officials would communicate with the financial institution involved and not the collection agency directly.[319]

Since these regulations were only brought into force in 2010, it's possible that too little time has passed to adequately assess the effectiveness of these regulations. No evidence was found to suggest a Canadian financial institution or a debt collection agency employed on their behalf has ever been sanctioned, fined, or been the subject of a compliance agreement as a result of violating section 7 of the *Credit Business Practices Regulations* since 2010. This during a time period when provincial consumer protection agencies in Canada have literally received thousands of complaints regarding the conduct of debt collectors each year. The FCAC's 2013-2014 Annual Report notes the Enforcement and Compliance Branch has 24.1 full-time equivalent employees and spent $2.79 million.[320] These resources were responsible to review the activities of 368 federally regulated financial entities while investigating 1,358 cases of actual or potential non-compliance with federal legislation, regulations, codes of conduct and public commitments.[321]

Provincial Debt Collection Law

Each province has its own set of debt collection laws, however, there are a few general rules applicable to all Canadians. For instance, each province has licensing requirements for debt collections agencies. A debt collection agency has to be licensed in the province where a consumer lives. Moreover, in every Canadian jurisdiction except Quebec, Newfoundland and Labrador, Prince Edward Island and the three territories, each individual collection agent must possess a valid license.[322] In addition, virtually every province and territory in Canada has a law making it illegal for a collection agency to make false or misleading statements to you.[323] Each province also has a time of the day and week when calls from collection agencies are prohibited. However, there are circumstances where calls from collection agents are prohibited even during permitted times, including:

[319] Compliance and Enforcement Branch, Financial Consumer Agency of Canada, *Personal Interview*, November 5, 2014.
[320] Financial Consumer Agency of Canada, *Annual Report 2013-2014*, p. 53.
[321] Financial Consumer Agency of Canada, *Annual Report 2013-2014*, p. 29.
[322] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 227.
[323] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 228-229.

- After exercising the right to stop collection calls;
- Being called at work if workplace call are not permitted in that province;
- Being contacted on a wireless device if this prohibited in that province; and,
- If a collection agency is calling frequently enough to be considered harassment.[324]

In addition to these measures, there are other practices relating to debt collection that is treated differently by province or agency, indicated by the table below:

Figure 4-1 Comparative Debt Collection Practices by Province

Action	Yes	No
Collection Agency must provide written notice before collection calls commence[325]	BC, ON, QC, NF, NS, NB, NT, NWT	AB, SK, MB, PEI, YK,
Once it is known a consumer contacted is not the debtor, attempts at collection must end[326]	AB, NS, QC, ON, BC, NB, NT, NWT,	SK, MB, PEI, YK
Consumers have the right to stop collection calls[327]	AB, BC, NWT, NS, ON, QC,	MB, NB, NF, NT, PEI, SK, YK

[324] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 231-232. Every province and territory except Alberta, Quebec and Nunavut prohibit calls from debt collection agents on a consumer's wireless device. In Alberta and Ontario, collections agencies may only contact a debt three times and a seven-day period. In other provinces, it is up to the discretion of debt collection agency regulators to determine what frequency is considered harassment.

[325] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 227. See also, Government of New Brunswick, *Collection Agencies Act,* RSNB 2011, c 126, s. 14(1)(j) and s. 14(3), and Government of Nunavut, *Consolidation of Consumer Protection Regulations*, RRNWT 1990, cC-16, s. 8.5.

[326] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 228. See also, Government of British Columbia, *Business Practices and Consumer Protection Act,* SBC (2004), ch. 2, s. 120, Government of New Brunswick, *Collection Agencies Act,* RSNB 2011, c 126, s. 14(1)(m), Government of Nunavut, *Consolidation of Consumer Protection Regulations*, RRNWT 1990, cC-16, s. 8.15, *Credit Business Practices Regulations*, SOR 2009-257, s. 7(12), and Government of Northwest Territories, Debt Collection Practice Regulations, R-049-2003, s. 11(1).

[327] Silverthorn, Mark, *The Wolf at the Door: What to Do When Collection Agencies Come Calling* (McClelland & Stewart, 2010), p. 36 and *Credit Business Practices Regulations*, SOR 2009-257, s. 7(9).

British Columbia

In British Columbia, the *Business Practices and Consumer Protection Act*[328] contains prohibited debt collection practices while the *Debt Collection Industry Regulation* (pursuant to the *Business Practices and Consumer Protection Act*)[329] contains conditions of licensing and financial requirements for debt collectors which include agents, bailiffs and debt poolers. Regarding the changing landscape to debt collection laws, there have been no amendments to debt collection legislation in British Columbia in the last five years. The last amendments made in 2008, however, were made to enhance the definitions of the *Debt Collection Industry Regulation.*[330]

British Columbia is unique in that section 113 of the B.C. *Business Practices and Consumer Protection Act* states, without exception, a "collector" means “a person, whether in British Columbia or not, who is collecting or attempting to collect a debt.” This can be interpreted as meaning a collection agent working directly for an original creditor is subject to the *Business Practices and Consumer Protection Act* when the debtor or the original creditor is located in that province.

Alberta

Alberta’s *Fair Trading Act*, although a consumer protection law, contains licensing conditions while the *Collection and Debt Repayment Practices Regulation* (pursuant to the *Fair Trading Act*) lists provisions to protect consumers from unfair collection practices. The *Collection and Debt Repayment Practices Regulation* was updated in 2013 by adding a provision for the regulation to read “President of Treasury Board and Minister of Finance” instead of “Minister of Finance.” These changes were made in sections 19(1), (2) and (3), 19.1(1), (2) and (3) and 23.3(1)(j).[331] Over the years, the *Collection and Debt Repayment Practices Regulation* has evolved to include more consumer protection provisions through the addition of prohibited practices for debt repayment agencies (collection agencies that help consumers negotiate arrangements), and more stringent

[328] SBC 2004, c 2, part 7.
[329] BC Reg 295/2004
[330] “BC Debt Collection Industry Regulation 295/2004”, online: BC Legislation Portal <http://www.bclegislation.ca/2008/12/15/bc-debt-collection-industry-regulation-2952004/>.
[331] Service Alberta, *Collection and Debt Repayment Practices Regulation* (AR 194/99), s 19(1), (2) and (3), s 19.1(1), (2) and (3) and s 23.3(1)(j)

<http://www.qp.alberta.ca/documents/gazette/2013/pdf/10_May31_Part2.pdf>

documentation requirements of all activities.[332] However, the regulation has not significantly amended since 2006.

Saskatchewan

The province's *The Collection Agents Act* enumerates the conditions of licensing, unlawful collection practices, in addition to offences and the resulting penalties for failure to adhere to the act. Saskatchewan has a minister designated registrar to administer and enforce the act. The registrar is responsible for various provisions such as the application for licenses (s 6), receiving annual reports from agencies (s 27), investigating and inquiring into matters which he deems necessary pursuant to the act (s 30), and appeals from his or hers decision (s 23). *The Collections Agents Act* was last amended in 2000.[333] *The Collection Agents Regulations* was amended in 2010, increasing the fees for licensing from $250 to $300 for a "collector" and from $1250 to $1,500 for a "collection agent."[334]

Manitoba

In Manitoba, *The Consumer Protection Act* regulates debt collection agencies.[335] As with other jurisdictions, this act aims to achieve the two main goals of debt collection law by regulating agencies through licensing and lawful collection practices. Like Saskatchewan, Manitoba has a designated individual (the director) that ensure compliance of the act.

In May 2010, the Manitoba government embarked upon *Let's Make a Better Deal,* a five-year plan for stronger consumer protection. Two elements of this plan were directed at assisting consumers when dealing with issues related to debt collection. Grant funding to Community Financial Counselling Services has been increased to enable this non-profit organization to provide financial counselling and debt management services to Manitobans.[336] Amendments to *The Consumer Protection Act* regulation were made in February 2012 to protect Manitoba consumers from unfair business practices by debt

[332] See e.g. Alta Reg 194/1999, s 12.1 and 23.3.
[333] *The Collection Agents Act*, RSS 1978 c C-15.
[334] *The Collection Agents Regulations,* RRS C-15, Reg 1. See also Government of Saskatchewan, *The Collection Agents Amendment Regulations, 2010 (Minister of Justice and Attorney General)* <http://www.publications.gov.sk.ca/details.cfm?p=30461>

[335] *The Consumer Protection Act,* CCSM c C200.
[336] Government of Manitoba, *Progress Report – March, 2013*, Ministry of Tourism, Culture, Heritage, Sport and Consumer Protection. <http://www.gov.mb.ca/cca/cpo/progress.html>

settlement agencies by banning upfront charges and setting maximum fees.[337] Under these new rules, the wording of the legislation has been expanded from "collection agents" to "persons." As a result, the fee limits set in the amendments are being extended to include creditors as well as collection agencies.[338]

However, critics of the system in Manitoba remain. The Canadian Broadcasting Corporation (CBC) aired a story in November 2012 explaining that over the previous year, debt collectors were found to violate the law 25 times in Manitoba. The cases included:

- 14 cases of improper licensing
- 5 for over-collecting
- 5 for mistaken identity
- 1 for calling before 7 am on Sunday[339]

The CBC story noted every Canadian province except Manitoba will publicize the name of the debt collector who violates the law, even though the director of the department responsible for enforcing Manitoba's *Consumer Protection Act* can release the name of offenders if it is in the public interest to do so.[340] Upon consultation, a representative of Manitoba's Consumer Protection Office indicated that Saskatchewan also employs the tactic of withholding the identity of businesses that violates the applicable consumer protection legislation.[341]

In 2013, new provisions were added to strengthen collection agencies' documentation requirements to ensure compliance.[342] New inspection provisions were also added allowing consumer service officers or persons authorized by the director to carry out any

[337] Government of Manitoba, *Progress Report – March, 2013*, Ministry of Tourism, Culture, Heritage, Sport and Consumer Protection. <http://www.gov.mb.ca/cca/cpo/progress.html>
[338] Jetten, Dawn and Elizabeth Sale, *New Regulations for Debt Collectors in Manitoba*, Blakes Bulletin, February 27, 2012. <http://www.blakes.com/English/Resources/Bulletins/Pages/Details.aspx?BulletinID=1458>
[339] Canadian Broadcasting Corporation, "Protection from Debt Collectors Questioned." *CBC News: Winnipeg at 6:00*, November 1, 2012. <http://www.cbc.ca/player/Embedded-Only/News/Canada/Manitoba/ID/2299273327/>

[340] Canadian Broadcasting Corporation, "Protection from Debt Collectors Questioned." *CBC News: Winnipeg at 6:00*, November 1, 2012. <http://www.cbc.ca/player/Embedded-Only/News/Canada/Manitoba/ID/2299273327/>. See also, Government of Manitoba, *The Consumer Protection Act*, Section 73(5). <http://web2.gov.mb.ca/laws/statutes/ccsm/c200e.php>

[341] Government of Manitoba, Ministry of Tourism, Culture, Heritage, Sport and Consumer Protection, Office of Consumer Protection, Electronic Correspondence, August 15, 2014.
[342] *The Consumer Protection Act,* CCSM c C200., s 135.1

inspection, examination, audit or test for various reasons such as verifying compliance with the act or the accuracy and completeness of documentation.[343] Additionally, new orders for compliance provisions were added allowing the director to order agencies to comply or to refrain from doing specific activities pursuant to the act.[344]

Ontario

While a number of laws govern the operation of collections agencies in Ontario, the *Collection Agencies Act* ("CAA") regulates the business of debt collection agencies. The regulation associated with the CAA enforces prohibited practices and methods.[345] Over the course of the last few years, the act has undergone quite a few changes. In 2009, amendments were introduced to bolster the inspection powers of the Registrar when there are grounds to believe a particular agency is not complying with the law. The change granted inspectors with the Ministry of Consumer Affairs (now Ministry of Government and Consumer Services) the authority to enter the premises of a collection agency in order to carry out an inspection and assess compliance with the CAA.[346] Inspectors can access any and all form of records of a collection agency that are relevant to an inspection.[347]

More recently, *The Stronger Protection for Ontario Consumers Act* introduced amendments to the CAA aimed at strengthening protection for Ontario consumers who make use of debt settlement services. The title of the CAA will shortly be changing to the *Collection and Debt Settlement Services Act* ("CDSSA"). As of September 1, 2014, the following amendments have not taken force and shall come into force on a day proclaimed by the Lieutenant Governor.[348]

The CDSSA amends the CAA to regulate debt settlement services that a collection agency, or a collector acting on behalf of a collection agency, provides to a consumer in consideration of remuneration payable by the debtor. Those services are defined as offering or undertaking to act for the consumer in arrangements or negotiations with the consumer's creditors or receiving money from a debtor for distribution to the consumer's creditors.[349]

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[343] *Ibid,* s 135.2 – 135.5
[344] *Ibid,* s 135.6 – 135.12
[345] RRO 1990 Reg 74, as amended by O Reg 103/06.
[346] *The Collection Agencies Act*, RSO 1990, c C-14, ss 13(1)-(7).
[347] *Ibid*, s 13(2).
[348] SO 2013, c 13, s 19.
[349] *Ibid*, s 2(1).

In order to provide debt settlement services to a debtor, a collection agency is required to enter into an agreement with the debtor.[350] Regulations made under the Act can specify what representations relating to a debt settlement services agreement a collection agency or a collector is prohibited from making and what representations they must make.[351] The regulations can also specify restrictions on the amount of payment that a collection agency or a collector can require from a debtor in advance of providing services under the agreement. No such regulations have come into force as of September 1, 2014.

A debtor who is a party to a debt settlement services agreement may, without any reason, cancel the agreement at any time from the date of entering into it until 10 days after receiving the written copy of the agreement or within one year after the date of entering into it if the debtor does not receive that copy.[352]

Quebec

Quebec's debt collection legislation, *An Act Respecting the Collection of Certain Debts*[353]*,* establishes debt collector's requirements and obligations towards consumers and is under the supervision of the office de la protection du consummateur. Its corresponding regulation indicate what is required to obtain and maintain a license as a debt collector.[354] It would appear that Quebec has not made any amendments to its debt collection laws since 2006 where the most notable amendment was provision relating to the prescription period for offence.[355]

New Brunswick

In 2009 New Brunswick's *Collection Agencies Act* and its regulations were amended, affording consumers additional protection. Some of these amendments include requiring collection agencies to identify themselves when speaking to consumers; send written notice to debtors advising of the assignment of the debt to their agency 5 days prior to making telephone calls; only make telephone calls during permissible calling times

[350] *Ibid*, s 16.5(1)-(5).
[351] *Ibid*, s 16.3-16.4.
[352] *Ibid*, s 16.7.
[353] *An Act Respecting the Collection of Certain Debts,* CQLR, c R-2.2 [An Act Respecting the Collection of Certain Debts].
[354] RRQ 1981, c R-2.2, r 1.
[355] An Act Respecting the Collection of Certain Debts, *supra,* note 32, s 63.

outlined in the regulation; and to respect a consumer's written request to be contacted by mail only.[356]

In 2011, New Brunswick consolidated the *Collection Agencies Act* that continues to require a licensing regime and prohibits harsh or abusive collection methods and provides penalties for violations.[357] The Act is enforced by the Financial and Consumer Services Commission, an arm's length self-funded independent Crown Corporation established by the provincial government on July 1, 2013. This Commission is funded by the regulatory fees and assessments paid by the regulated sectors. The Commission's mandate is protect consumers while enhancing public confidence in the financial and consumer marketplaces through the provision of regulatory and educational services.[358]

New Brunswick's *Collection Agencies Act* allows the Financial and Consumer Services Commission to examine financial records and investigate complaints. Over the last two years, the act has been amended by the inclusion and repealing of definitions, addition of provisions relating to licenses, and a change in authority from a Minister to the Director of Consumer Affairs or any person designated by the Commission or the Director to act on the Director's behalf.[359]

The Financial and Consumer Services Commission of New Brunswick contends the debt collection legislation it administers provides adequate protection to consumers from undesirable debt collection practices.[360] However, the Commission indicated the implementation of further monetary penalties would allow the regulator to better protect consumers by providing collection agencies and collectors with additional incentive to comply with debt collection legislation.[361]

Nova Scotia

In line with other jurisdictions, Nova Scotia's debt collection legislation aims at protecting consumers and regulating agencies through licensing and other requirements. In 2013, the Collection Agencies Regulations were updated to increase the fees to obtain

[356] New Brunswick Financial and Consumer Services Commission, *Response to Stakeholder Questionnaire*, July 12, 2013.
[357] *Collection Agencies Act,* RSNB 2011, c 106, ss 4-9.
[358] *Financial and Consumer Services Commission Act*, RSNB 2013, c.30, s. 2.
[359] An Act Respecting the Collection of Certain Debts, *supra,* note 32, s 2, 4,2, 8-10,
[360] Financial and Consumer Services Commission of New Brunswick, *Response to Stakeholder Questionnaire*, July 12, 2013.
[361] Financial and Consumer Services Commission of New Brunswick, *Response to Stakeholder Questionnaire*, July 12, 2013.m

collection licenses.[362] The Nova Scotia *Collection Agencies Act* was enacted in 1975. In 1981, the Nova Scotia *Consumer Creditors' Conduct Act* was enacted to regulate businesses that perform their own collection activities. Both acts were amended in December 2012, when the *Debt Collection and Management Reform (2012) Act* received Royal Assent.[363] This act amends the *Collection Agencies Act* and *Consumer Creditors' Conduct Act* by adding new requirements that must be abided by agencies and collectors, and by creating new requirements for debt management agencies. Changes to the acts include:

- limiting collection agencies to three contacts in seven days
- requiring written authorization from creditors for collections agencies to collect a debt
- stopping ongoing calls when the wrong person is reached or the debt is disputed
- creating authority for government to cap fees for debt management services and allowing fees to be charged only after a settlement has been reached with creditors
- creating a debt management agency and debt management agent licenses
- prohibiting unlicensed debt management agencies.[364]

In an effort to assist consumers, Service Nova Scotia offers a Debtor Assistance program, where consumers can meet with a licensed administrator. The administrator will review the situation and discuss available options free of charge.[365]

Newfoundland and Labrador

Newfoundland and Labrador's *Collections Act* regulates the debt collection industry in the province. The corresponding regulation provides the necessary conditions of application for registration in addition to collector's code of conduct vis-à-vis consumers and the consequences of failing to abide by the code of conduct. In 2006, a provision was amended to exempt charitable debt settlement services from the *Collections Act*.[366] Furthermore, in 2013, changes were made that require a collection agency to hold a $20,000 bond in order to be licensed by the Province.[367] In Newfoundland, it's illegal for

[362] NS Reg 104/75, s 17. See also An *Act Respecting Collection Agencies (Collection Agencies Act)*, RS NS 1989, c 77
[363] *Debt Collection and Management Reforms Act 2012, c 40.*
[364] *Government of Nova Scotia*, "Nova Scotians to Benefit from Responsible, Respectful Debt Collection," October 31, 2012 < http://novascotia.ca/news/release/?id=20121031008>
[365] Government of Nova Scotia, *Debtor Assistance: Managing Your Debt*, Access Nova Scotia <http://www.novascotia.ca/snsmr/access/individuals/debtor-assistance.asp#debto>
[366] CNLR 986/96 s 3.
[367] *Ibid*, s 6.

an agency to call a consumer at their workplace or to contact a debtor's employer without their consent.[368]

Prince Edward Island

Prince Edward Island (PEI) regulates its debt collection agencies through the *Collection Agencies Act.* In 2013, PEI updated its *Collection Agencies Act* in an effort to support debt settlement agencies operating in the province serving as effective mediators between people with debt issues and creditors seeking payment. To curtail unethical agencies from operating in PEI, the amendments the *Collection Agencies Act* include:

- limiting the amount of money that a debt settlement agency may collect for acting for a debtor;
- prohibiting provision of false information about a debtor, including credit history; and
- banning collection of a fee from a debtor before the client and agency have entered into the required written agreement.[369]

Prior to the introduction of these amendments, the PEI Department of Environment, Labour and Justice encouraged residents to contact the government before entering into agreements with debt settlement agencies.[370] The department also drafted a consultation paper as part of a public consultation process in an effort to protect people who are approached by these agencies at a time when they are financially vulnerable.[371] Regulations associated with PEI's *Collection Agencies Act* were amended in July 2012. License fees were increased as well as introducing administrative changes allowing the Registrar of Collections Agencies to approve current and future licensing applications for collectors and collection agencies.[372]

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[368] Government of Newfoundland and Labrador, *Collection Agencies*, Service NL <http://www.servicenl.gov.nl.ca/consumer/collection>

[369] Government of Prince Edward Island, Department of Environment, Labour and Justice, *Newly-approved legislation regulates activities of debt settlement agencies*, News Release, May 27, 2013 <http://www.gov.pe.ca/jps/index.php3?number=news&dept=&newsnumber=9013&lang=E>

[370] Government of Prince Edward Island, Department of Environment, Labour and Justice, *Consumers advised to contact government before signing with debt settlement agencies*, News Release, November 27, 2012 <http://www.gov.pe.ca/jps/index.php3?number=news&dept=&newsnumber=8709&lang=E>

[371] Government of Prince Edward Island, Department of Environment, Labour and Justice, *Consumers advised to contact government before signing with debt settlement agencies*, News Release, November 27, 2012 <http://www.gov.pe.ca/jps/index.php3?number=news&dept=&newsnumber=8709&lang=E>

[372] Government of Prince Edward Island, *Royal Gazette*, July 7, 2012, Part II, EC2012-346 and EC2012-347 <http://www.gov.pe.ca/royalgazette/pdf/20120707.pdf>

Other Considerations

CRTC Unsolicited Telecommunications Rules - The Use of Automatic Dialers

In 2007, the CRTC enacted a framework that regulates unsolicited telecommunications received by consumers, such as calls made by debt collectors.[373] Pursuant to this framework, "solicitation" is defined as the selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another person.[374] At least one collection industry executive contends efforts by the regulator to raise awareness among those industries affected by this policy change were lacking. Paul Esteves, President of Action Collections and Receivables Management, noted their industry was completely unaware of these regulations or their implications until CRTC representatives made a number of unannounced visits to debt collection agencies in early 2014.[375]

In 2011, the Canadian Marketing Association (CMA) filed an application with the CRTC requesting amendments to rules regarding the use of automatic dialing-announcing devices (ADADs). Specifically, the CMA wanted ADADs to be permitted for telemarketing when there is an existing business relationship between the telemarketer or the client of the telemarketer and the called party.[376] The CRTC suspended the application by the CMA and instead studied a number of areas relating to the Unsolicited Telecommunication Rules (UTRs) that it considered would benefit from public consultation, and the matters raised in the CMA's application.[377] Examples of issues that were examined include:

- ADAD Rules
- Caller name display
- Record keeping
- Duration and scope of an internal do not call request
- Grace period for a do not call request
- Application of the Telemarketing Rules regarding internal Do Not Call List (DNCL) requests to telecommunications whose purpose is not solicitation
- Business-to-business exemption

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[373] Telecom Decision 2007-48, Canadian Radio-television Commission Unsolicited Telecommunications Rules.
[374] *Ibid*, Part I.
[375] Esteves, Paul, President, Action Collections and Receivables Management. *Personal Correspondence*, October 14, 2014.
[376] CRTC 2014-155, Compliance and Enforcement Regulatory Policy.
[377] *Ibid.*

- Period of validity of contact information
- Other changes to the UTRs[378]

The CRTC ADAD rules state that a telecommunication must begin with a clear message identifying the caller and include an address and a local or toll-free number where the organization placing the call can be reached.[379] The call must also identify on whose behalf the call is initiated and a brief description of the nature of the call. The assumption here is it addresses the issues of annoyance and nuisance. This is at odds with some provincial laws and regulations stipulating that debt collection agencies are not to reveal their identity to a call recipient during a telecommunication until they have confirmed the identity of the call respondent as the client responsible for the debt in question.

Many in the debt collection industry have invested in ADAD technology in an effort to lower costs. In fact, TELUS has indicated that an ADAD call is a thousand times more efficient to place than a similarly messaged live voice call.[380]

While the industry is occasionally painted in a negative light, the existence of two sets of conflicting rules affecting the use of substantially more effective technology is of great concern to debt collection industry stakeholders. A number wish to just "follow the rules while continuing to use ADAD technology, not accrue fines and be branded with a poor reputation."[381] Until the collections industry can convince the CRTC or provincial ministries responsible for debt collection to amend their rules, it appears that ADAD technology will have to remain on hold. It is possible this was the policy objective of provincial and federal governments all along. However, it is more likely this was merely and unfortunate coincidence for the dozens of debt collection entities employing ADAD technology in Canada.

As a Result

Over the past 5 years, a number of provinces have amended the laws and regulations applicable to the debt collection industry. One of the most common changes applies to conditions placed on debt repayment agencies, by either banning upfront charges, setting caps on the fees they can collect, or both. In addition, Alberta and Manitoba have

[378] *Ibid.*
[379] CRTC 2014-155, Compliance and Enforcement Regulatory Policy. See also CRTC, *Unsolicited Telecommunications Rules*, Part IV, 4 (d).
[380] CRTC 2014-155, Compliance and Enforcement Regulatory Policy.
[381] Esteves, Paul, President, Action Collections and Receivables Management. *Personal Correspondence*, October 14, 2014.

introduced revisions to their debt collection regime to strengthen collection agencies' documentation requirements.

In addition to provincial debt collection law, it is noted collection agencies are subject to privacy law, human rights law, and regulation when collecting on behalf of a bank. For instance, under privacy law, a creditor cannot disclose the existence of a debt to anyone except those persons legally obligated to pay the debt. The *Personal Information Protection and Electronic Documents Act (PIPEDA)* or corresponding provincial privacy legislation provides consumers with an opportunity to request recordings of telephone calls between the collection agency and the consumer, the contents of the file on their account, correspondence with respect to the account and any credit reports in their possession. Human rights law applies in the instance collection agents make inappropriate or offensive remarks about a consumer's race, religion, ancestry, sexual orientation, mental or physical challenge or family situation. While we acknowledge the FCAC's *Credit Business Practices Regulations*, the fact no party has ever sanctioned under these rules since 2010 is cause for concern, given the volume of debt collection complaints submitted to the agency since that time. Whether these regulations are effective in protecting the interest of Canadian consumers remains an open question.

We are somewhat sympathetic to those debt collection industry stakeholders who have invested in ADAD technology in the name of efficiency. However, until the CRTC or provincial ministries responsible for debt collection amend rules that will allow the use of ADAD equipment, it appears collection agencies will have to make their calls in person, or make contact employing an alternative method.

Section 5 - International Approaches

The problems and consumer concerns associated with the debt collection industry are not unique to Canada. Other developed countries around the world face similar issues, and likewise have their own rules and regulations. This section takes a brief look at the regulation of debt collection industries in three countries with similar cultural and legal structures as Canada: Australia, the United Kingdom and the United States.

These countries are compared on the basis of three main characteristics:

(1) the source of regulation, such as what level of government regulates the industry and who enforces those regulations;

(2) on whom the regulation is imposed, such as the original creditor, third party collectors or lawyers; and

(3) the general regulatory approach, such as whether debt collectors must be licensed, and examples of prohibited behaviour.

Section 4 above describes Canada's approach in detail, however for the sake of comparison the following is a brief summary of Canada's rules:

(1) on the whole, debt collection is regulated at a provincial level, with provincial consumer protection agencies charged with enforcing them;

(2) original creditors and lawyers are generally exempt from the regulation, therefore the laws target third party collectors and debt purchasers; and

(3) most provinces require collectors to be licensed, and collectors' behaviour is restricted under several categories including how, where, when and how often they can contact debtors, with punishment imposed by the provincial regulators for collectors who do not follow the rules.

Australia

Source of Regulation

Australia has a government structure very similar to Canada, with Australian states having similar powers and responsibilities as Canadian Provinces, and the Australian Commonwealth Government having similar powers and responsibilities as the Canadian Federal Government. Similar to Canada, some responsibility for regulating debt collection is split between the states and the Commonwealth.

In order to have a uniform consumer protection code (which regulates activities such as debt collection) throughout Australia, the Commonwealth and the Australian states signed an Intergovernmental Agreement[382] whereby the states and the Commonwealth agreed to enact the same legislation, the *Australian Consumer Law* (*ACL*).[383] Minor variations do exist in the *ACL*'s implementation across the different states, but they are mainly rules based on supporting the application of the *ACL.*[384]

As a result of the shared law, the responsibility for enforcement is also shared between the state-level consumer protection agencies[385] and the Commonwealth-level regulators. At the Commonwealth level, the regulators are the Australian Competition and Consumer Commission (ACCC)[386] and the Australian Securities and Investments Commission (ASIC).[387] To promote uniform enforcement of the *ACL*, the state and Commonwealth regulators agreed under a Memorandum of Understanding[388] to communicate, share interpretations and refer complaints to each other when it is appropriate. A variety of other laws are also applicable to debt collectors,[389] however the main source of regulation is the *ACL*.

Application of Regulation

The *ACL* rules apply to anyone who is collecting debts, whether it is the original creditor, a third party collection agency, a lawyer or any other person.[390]

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[382] Council of Australian Governments, "Intergovernmental Agreement for the Australian Consumer Law" (2009), online: <http://www.consumerlaw.gov.au/content/the_acl/downloads/acl_iga.pdf>.
[383] *Competition and Consumer Act 2010* (Cth), Schedule 2 [*ACL*].
[384] See e.g. *Fair Trading Act 1989* (Qld), Part 3A, which creates, for example, infringement notices that issue fines to businesses for violations of the *ACL* without the need to take the business to court.
[385] For example, the Queensland Office of Fair Trading, who regulates the *ACL* over: people carrying on business in the jurisdiction, corporations incorporated under Queensland law, people ordinarily resident in Queensland or people otherwise connected with Queensland (*Fair Trading Act 1989*, *supra* note 384, s 20(1)).
[386] The ACCC regulates businesses who engage in debt collection based on goods and services other than financial products, for example telephone service, utilities or retailers. The ACCC's authority comes from the *Competition and Consumer Act 2010* (Cth).
[387] The ASIC regulates businesses who engage in debt collection based on financial products or services, for example credit cards, home loans or fees for insurance. The ASIC's authority comes from the *Australian Securities and Investment Commission Act 2001 (Cth)* [*ASIC Act*].
[388] "Australian Consumer Law Memorandum of Understanding" (2010), online: <http://www.consumerlaw.gov.au/content/the_acl/downloads/acl_mou.pdf>.
[389] See: Australian Competition and Consumer Commission, "Debt collection guideline: for collectors and creditors" (July 2014), online: <https://www.accc.gov.au/system/files/Debt%20collection%20guideline%20for%20collectors%20and%20creditors.pdf> at 58-60 [ACCC Guidelines].
[390] ACCC Guidelines, *supra* note 389, at 5. This follows from the *ACL*'s application of the rules to a "person" which includes businesses and corporations.

General Regulatory Approach

Most states and territories require collectors to be licensed,[391] though many licensing requirements flow from existing broader licensing regimes rather than by application of the *ACL*. For example in Queensland, a debt collector must obtain a "commercial agent" license under a regime that also covers real estate agents and auctioneers.[392]

The *ACL* prohibits certain types of behaviour, grouped broadly under 'unconscionable conduct' and 'undue harassment or coercion.'[393] Some states have gone farther and prohibited specific behaviour in their implementation of the *ACL*, for example, "doing or threatening to do any act that may expose to ridicule a person or member of that person's family."[394]

In July, 2014, the ACCC and ASIC released a report entitled *Debt collection guideline: for collectors and creditors*,[395] which extensively details the types of behaviour it finds acceptable and unacceptable under the *ACL* and the *ASIC Act*. It is unclear whether this document represents 'bright lines' that collectors must not cross, or whether it is simply the interpretive guideline regulators use when assessing a complaint; however, it provides several examples where the ACCC took a collector to court over practices that violated the guidelines.

The ACCC Guidelines provide guidance for collectors under twenty-four different categories, including the appropriate frequency of contact with a debtor, the documentation a collector must provide upon request, and limitations on how collectors can deal with old debt (i.e. a debt that is older than the statute of limitations).[396] The guidelines also discuss the meaning of some undefined terms in the *ACL*, such as "undue coercion," and give examples of other laws that could be relevant in the debt collection business such as privacy and bankruptcy laws.[397]

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[391] ACCC Guidelines, *supra* note 389 at 58. The ACCC Guidelines name New South Wales, Northern Territory, Queensland, Southern Australia, Tasmania and Western Australia as regions requiring licensing.
[392] *Property Agents and Motor Dealers Act 2000* (Qld), Part 5. New legislation that will deal with licensing on an industry-specific basis in Queensland is set to come into force in December 2014, see: Queensland Office of Fair Trading, "Overview of PAMDA Split" (July 2014), online: <http://www.fairtrading.qld.gov.au/about-us/latest-news/upcoming-changes-property-motor-auctioneer-debt-collectors/pamda-split>.
[393] *ACL*, *supra* note 383, ss 20-21, 50.
[394] *Australian Consumer Law and Fair Trading Act 2012* (Vic), s 45(2)(f).
[395] ACCC Guidelines, *supra* note 389.
[396] ACCC Guidelines, *supra* note 389 at 6-44. The statutory limitation on debt varies by State and Territory from 3 to 6 years.
[397] ACCC Guidelines, *supra* note 389 at 45-55, 58-60.

A final notable aspect of Australia's regime is that some states have enacted laws that hold executive directors jointly liable for fines imposed on a corporation, if the corporation does not have enough assets to pay the fine.[398]

Brief Comparison to Canada's Regime

Overall, Australia's regulatory regime serves as a very helpful point of comparison to Canada's regime. The high similarity in culture, government structure and legal systems allows for Canada to look to Australia as an indicator for the effects of potential changes to the Canadian regime.

The clearest difference between the Canadian and Australian regimes is the *ACL*'s uniform applicability over all states and territories, allowing state and Commonwealth regulators to co-operate, resulting in a more efficient regulatory system. This benefits consumers by allowing easier access to information and complaint systems, and ensures no consumers in one region are disadvantaged with less rights than if they had lived in a different region. The country-wide uniform law also benefits businesses operating in multiple regions, through reduced costs for compliance.

While it is less clear how the *ACL* and related laws apply specifically to debt collection from a plain reading of the text of the laws, since they are applied to all commercial sectors, documents such as the ACCC Guidelines (and a more consumer-friendly version[399]) created by the regulators are far more comprehensive and informative than those available from Canadian regulators.

The applicability of the regulation to *anyone* who collects debts, including the original creditor and lawyers is also a bonus for Australian consumers. While broad applicability may result in some inefficiencies for businesses, businesses are the more appropriate party to manage the risk and costs associated with debt collection, and it would ensure that lawyers engaging in questionable conduct would be held to the same standards as other businesses.

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[398] *Fair Trading Act 1989* (Qld), s 52(2).

[399] Australian Competition and Consumer Commission & Australian Securities and Investments Commission, "Dealing with debt: Your rights and responsibilities" (February 2011), online: <https://www.accc.gov.au/system/files/Dealing%20with%20debt.pdf>.

United Kingdom

Source of Regulation

In the United Kingdom, debt collection falls under the "consumer credit" industry. Until April 2014, the Office of Fair Trading was responsible for regulating the consumer credit industry under the *Consumer Credit Act*.[400]

As a result of the 2008 financial crisis, the United Kingdom passed the *Financial Services Act*[401] which updated the regulatory regime of all financial services industries. Reforms included abolishing the Office of Fair Trading and creating the Financial Conduct Authority to take over many of its responsibilities, including regulating consumer credit (and therefore, debt collection as well).

The Financial Conduct Authority (FCA) publishes regulations under the Financial Conduct Authority Handbook, which includes a variety of sourcebooks for business standards and industry-specific regulation. For example, the debt collection industry regulations are provided under a specialist sourcebook called the Consumer Credit Sourcebook.[402] These regulations reference the *Consumer Credit Act* and the *Financial Services and Markets Act*,[403] among others, as the source for definitions and powers to regulate the industry.

Other laws prohibit certain behaviour related to debt collection, such as section 40 of the *Administration of Justice Act*, which criminalizes the "unlawful harassment of debtors."[404] However, the FCA regulating debt collectors through licensing and the rules in the Consumer Credit Sourcebook are the main forms of regulation.

Consumers can also file a complaint about a debt collection agency with the Financial Ombudsman Service, who will investigate the complaint, and can issue orders to the debt collector if the complaint has merit, such as directing the collector to accept a reasonable payment schedule or provide compensation to a consumer for unreasonable behaviour by the collector.[405]

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[400] Financial Conduct Authority, "Enforcement" (4 July 2014), online: <http://www.fca.org.uk/firms/firm-types/consumer-credit/regulation/enforcement>; *Consumer Credit Act 1974* (UK), c 39.
[401] *Financial Services Act 2012* (UK), c 21.
[402] Consumer Credit Sourcebook, online: <http://fshandbook.info/FS/html/handbook/CONC/7>, Chapter 7.
[403] *Financial Services and Markets Act 2000* (UK), c 8.
[404] *Administration of Justice Act 1970* (UK), c 31.
[405] Financial Ombudsman Service, "online technical resource – debt collecting" (2014), online: <http://www.financial-ombudsman.org.uk/publications/technical_notes/debtcollecting-note.html>.

Application of Regulation

Regulation of the consumer credit industry, of which debt collection is a part, is based on licensing, or "authorisation" in the terms of the FCA. Anyone engaging in consumer credit services must be authorised, unless they are excluded (i.e. the specific activity is not regulated at all) or exempted (i.e. specific parts of the regulatory regime do not apply). In general, regulation only applies to third party creditors and debt purchasers.

Debt collecting is a regulated activity, defined as "Taking steps to procure the payment of a debt due under a credit agreement…"[406] This definition is extremely broad, and on its face, it seems to apply to any entity.

However, several entities are *excluded* from this definition; their activity is therefore not subject to the regulatory regime at all.[407] This includes the original creditor, barristers acting in the capacity of a barrister, and solicitors acting in the course of contentious business.[408] The purpose of this barrister and solicitor exclusion is for those lawyers who engage in debt collection as part of an otherwise non-consumer credit issue, such as a bankruptcy proceeding.

More generally, barristers and solicitors are *exempted* from the authorisation scheme under the exemption for "professional firms." This regime allows the self-regulating body of certain professions to regulate the activities of their members under of a code of conduct, instead of through the FCA.[409] To qualify, a regulated activity (e.g. debt collection) must be "incidental" to the professional firm's activities.[410] What qualifies as incidental is a matter of interpretation, and both the Law Society of England and Wales and the Solicitors Regulation Authority have cautioned their members from crossing the blurry line.[411]

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[406] The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013, SI, 2013/1881, art 39F.
[407] *Ibid*, arts 39H-39K.
[408] *Ibid*, arts 39H(1), 39K(1)(a)-(b).
[409] The Professional Firms Sourcebook lists the various Law Societies in the United Kingdom as exempt professional firms, see: online: <http://fshandbook.info/FS/html/FCA/PROF/2/Annex1>.
[410] *Financial Services and Markets Act 2000* (UK), c 8, s 327(4).
[411] Law Society of England and Wales, "Consumer credit regulation" (16 October 2014), online: <http://www.lawsociety.org.uk/advice/practice-notes/consumer-credit-regulation/>; Solicitors Regulation Authority, "SRA Financial Services (Conduct of Business) Rules 2001" (31 October 2014), online: <http://www.sra.org.uk/solicitors/handbook/finserconduct/content.page>. Also note the Solicitors Regulation Authority has recently launched a consultation to remove the professional firm exemption for the Law Societies of the UK, therefore requiring them to be authorised as any other entity, on the basis that the FCA's rules are too prescriptive to be included in a code of conduct for lawyers, see: Crispin Passmore, "Consumer credit activities regulation: SRA plans" (14 October 2014), online: <http://www.lawgazette.co.uk/law/legal-updates/consumer-credit-activities-regulation-sra-plans/5044168.fullarticle>.

General Regulatory Approach

As stated above, the general approach for regulating behaviour is requiring debt collection businesses to be licensed, or "authorised."

An authorisation application requires an extremely detailed and extensive description of the applicant's business model, including the specific systems and processes that will be used in the business.[412] Fees for authorisation range from £800 to £10,000, and firms are required to report to the FCA every 6 or 12 months, for use by FCA in their supervisory role.[413]

Violation of FCA regulations could result in a firm being fined, or having their authorisation revoked. The "general prohibition" of carrying on a regulated activity without authorisation is a criminal offence, punishable with a fine or imprisonment, or both.[414]

The FCA's Consumer Credit Sourcebook has several sections describing how debt collection firms must operate. Many of the requirements are broad and vague, such as "… a firm should pay due regard to its obligations … to treat its customers fairly" or "A firm must not take disproportionate action against a customer…" but there are also specific prohibitions, such as a firm cannot charge a debtor an extra fee for collecting the debt, unless the original debt agreement allows it to.[415]

Brief Comparison to Canada's Regime

The difference in the structure of the United Kingdom and Canada's government, i.e. that there is no UK equivalent to a province with powers similar to Canadian provincial governments,[416] means that the regulatory regime for debt collectors is significantly more straightforward in the UK. A collector wishing to operate across the UK has one set of

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[412] Financial Conduct Authority, "Consumer credit application for authorisation with full permissions example form" (September 2014), online: <http://www.fca.org.uk/your-fca/documents/consumer-credit-application-authorisation-full-permissions-example>.
[413] Financial Conduct Authority, "FEES 3 Annex 1 Authorisation fees payable," (April 2014) online: http://fshandbook.info/FS/html/handbook/FEES/3/Annex1, see also Financial Conduct Authority, *Integrated Regulatory Reporting*, "SUP 16.12.29C," (April 2014) online: <http://fshandbook.info/FS/html/handbook/SUP/16/12#DES1217>.

[414] *Financial Services and Markets Act 2000* (UK), c 8, s 23.
[415] Consumer Credit Sourcebook, online: <http://fshandbook.info/FS/html/handbook/CONC/7>, s 7.3.2, 7.3.14(1), 7.7.2.
[416] Potentially the devolved governments in the UK are similar, however the devolved governments do not have the power over the areas where the FCA regulates.

standards to follow and one regulator to account to, and therefore can manage their risks more easily than if there were small differences across the different regions of the country.

Similarly, we suspect consumers in the UK should benefit from the relative simplicity in the rules, since it should be easier for regulators and consumer interest groups to educate consumers on their rights. However, there does not seem to be as much information about the UK debt collection industry that is readily accessible for consumers.

This could be a result of recent regulatory reform; the Financial Conduct Authority only assumed responsibility over the consumer credit industry in early 2014. A significant amount of information available for consumers still references the old regime under the Office of Fair Trading. It will likely take a few years for consumers and regulators to adjust to the new rules and develop new best practices, as the industry is still in a transitional state.

The UK's broad licensing requirement is very similar to the requirements by Canadian provinces. Both the UK and Canada do not regulate debt collection performed by the original creditor, however the difference is less clear for lawyers. The "professional firm" exemption under the UK regime is similar to Canada's lack of direct regulation of lawyers, instead putting the burden on the provincial Law Societies' codes of conduct.

However as the example of Deanna Natale (in section 2 above) shows, the Canadian regime may not adequately protect consumers from lawyers who engage in questionable conduct. The 'incidental' requirement under the UK's regime would have clearly required Deanna Natale to be authorised by the FCA and therefore subject to the behaviour restrictions the FCA imposes. If the Solicitors Regulation Authority's suggestion of removing the UK Law Societies from the professional firm exemption passes, lawyers in the UK would be even less likely to engage in such conduct than Canadian lawyers.

In general, the types of behaviour prohibited by the FCA are similar to those prohibited by Canadian law. The Consumer Credit Sourcebook includes several broad-themed requirements which could benefit consumers when FCA examines behaviour that is within the grey area, though it is unclear if these rules and their interpretation have struck the optimal balance between consumer benefit and the ability for firms to appropriately manage their behaviour. The existence and powers of the Financial Ombudsman Service and the powers of the FCA to impose fines or subject firms to criminal prosecution provide powerful accountability mechanisms for firms in the UK, which likely have a significant deterrent effect as compared to the powers available to Canadian provincial regulators.

United States of America

Source of Regulation

The United States has a similar structure of government to Canada, with a split between the powers of the Federal Government and the State Governments.

Debt collection is regulated by both federal and state law in a 'minimum standard and fill in the gap' structure. The *Fair Debt Collection Practices Act* (*FDCPA*)[417] passed at the federal level applies to all debt collection activity across the United States. State laws can then pass their own laws to 'fill in the gaps' where the *FDCPA* does not regulate. State law cannot conflict with a rule existing in the *FDCPA* while providing less protection for consumers,[418] thereby making the *FDCPA* a 'minimum standard' of protection across the country. Many states have passed laws that provide greater protection for consumers than the *FDCPA*.[419]

The Federal Trade Commission (FTC) has been tasked with enforcing the *FDCPA* since the *FDCPA* was passed in 1978, including accepting and investigating consumer complaints, bringing collectors to court for violating *FDCPA* rules, and submitting an annual report to Congress. However, after the 2008 financial crisis, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* created the Consumer Financial Protection Bureau (CFPB), which has been given a broad consumer protection mandate in the financial services industry, with responsibilities that overlap with the FTC.[420]

As a result, the CFPB and FTC jointly drafted a memorandum of understanding[421] which details how the two agencies will split their shared duties, work together on common goals, and share information where appropriate. At a high level, the duties of the FTC are now more of a 'legal enforcer' who takes consumer complaints, evaluates whether the complaints are valid, and prosecutes collectors who are violating the relevant laws. The duties of the CFPB then are more of the 'policy maker' who investigates trends in the industry and has the power to create rules to address them.

The *FDCPA* also creates a cause of action for individual consumers against debt collectors who violate the *FDCPA*. However unless the case is brought as a class action, the maximum an individual can recover is $1,000 plus actual damages incurred.[422] We

[417] *Fair Debt Collection Practices Act*, 15 USC § 1692 *et seq* [*FDCPA*].
[418] *FDCPA, supra* note 417, § 1692n.
[419] See e.g., California's *Rosenthal Fair Debt Collection Practices Act*, Cal Civ Code § 1788.2(c), which extends debt collection regulation to the original creditor.
[420] Other agencies also have lesser roles, see *FDCPA, supra* note 417, §§ 1692l(b)(1)-(6).
[421] "Memorandum of Understanding Between the Consumer Financial Protection Bureau and the Federal Trade Commission" (20 January 2012), online: <http://www.ftc.gov/system/files/120123ftc-cfpb-mou.pdf>.
[422] *FDCPA*, *supra* note 417, § 1692k(a).

also noted that unlike most other jurisdictions in this comparison, the federal and state-level laws regulating debt collection tend to be focused specifically on the debt collection industry, rather than regulation coming from a broader financial services or consumer protection regime.

Application of Regulation

The *FDCPA* applies primarily to third party creditors and debt purchasers. Original creditors are excluded from the definition of "debt collector."[423]

Lawyers are subject to the *FDCPA* if they "regularly" engage in debt collection activities, which a court will evaluate on a case-by-case basis.[424] In general, this distinction is meant to separate lawyers who engage in debt collection as a necessary part of otherwise non-debt collection work, and those lawyers who intentionally attract clients based on their debt collection services.

Note that each state may have its own laws that apply its debt collection rules to a broader set of entities.[425]

General Regulatory Approach

The *FDCPA* regime is based on penalties for violation of its rules, imposed after the conduct in question has occurred, with no requirement for licensing approval before a debt collector can operate.

The FTC has full authority to use its powers under the *Federal Trade Commission Act*[426] to enforce the provisions of the *FDCPA*, including obtaining court orders to stop unlawful conduct, freeze assets, or refer the issue to the department of justice for fines or criminal

[423] *FDCPA*, *supra* note 417, § 1692a(6)(A). Note the other exclusions in §§ 1692a(6)(B)-(F).
[424] *Goldstein v Hutton, Ingram, Yuzek, Gainen, Carroll & Bertolotti*, 374 F (3d) 56 (2d Cir 2004) gives several possible characteristics: "including (1) the absolute number of debt collection communications issued, and/or collection-related litigation matters pursued, over the relevant period(s), (2) the frequency of such communications and/or litigation activity, including whether any patterns of such activity are discernable, (3) whether the entity has personnel specifically assigned to work on debt collection activity, (4) whether the entity has systems or contractors in place to facilitate such activity, and (5) whether the activity is undertaken in connection with ongoing client relationships with entities that have retained the lawyer or firm to assist in the collection of outstanding consumer debt obligations."
[425] See e.g. *supra* note 419: California's debt collection law includes the original creditor in the definition of debt collector.
[426] *Federal Trade Commission Act*, 15 USC § 41 et seq.

prosecution.[427] The *FDCPA* also provides individuals the ability to sue debt collectors for violation of *FDCPA* rules, as an individual or as part of a class action.[428]

Many states require licensing or posting a bond, or both, before debt collectors can operate, based on state-level laws.[429] With a wide variety of state laws varying in their licensing requirements and types of prohibitions, licensing services exist to assist collection firms wishing to operate in several states.[430]

The *FDCPA* regulates a wide range of conduct, including false or misleading representations, communication with third parties such as family or employers, abusive or harassing behaviour, and how collectors must validate debts.[431] Some requirements are very prescriptive, for example, requiring what has been called a 'mini-Miranda warning' where on first contact, the collector must state he or she is attempting to collect a debt and information obtained by them will be used for that purpose.[432] Others are broadly worded and open to interpretation, such as a prohibition on "obscene or profane language."[433]

The statute of limitations for old debts varies by state, from 3 years[434] to 10 years.[435]

Brief Comparison to Canada's Regime

The United States' regulation of debt collection has a very different structure than Canada's, which has its advantages and disadvantages. The *FDCPA*, which provides a 'minimum level of protection' across the United States, provides certainty for consumers in that they can always turn to a federal district court to enforce the protections the *FDCPA* provides.

However in keeping with the tradition of United States federal-state governance, states are given significant space to legislate in the gaps of the *FDCPA*. This results in the 'minimal protection level' of the *FDCPA* being somewhat minimal compared to the level of protection of Canadian provincial laws.

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[427] See FTC, "A Brief Overview of the Federal Trade Commission's Investigative and Law Enforcement Authority" (July 2008), online: <http://www.ftc.gov/about-ftc/what-we-do/enforcement-authority>.
[428] *FDCPA*, *supra* note 417, § 1692k.
[429] See e.g., Washington State: RCW § 19.16.110.
[430] See e.g. Cornerstone Support Inc., online: <http://www.cornerstonesupport.com/aboutus.html>.
[431] *FDCPA*, *supra* note 417, §§ 1692c-1692g.
[432] *FDCPA*, *supra* note 417, § 1692e(11).
[433] *FDCPA*, *supra* note 417, § 1692d(2).
[434] See e.g. Delaware: Del Code Ann tit 10 § 8106(a).
[435] See e.g. Rhode Island: R I Gen Laws § 9-1-13(a).

For example, the lack of a licensing regime means that in some states, a collection firm can purchase a list of debts, harass debtors to obtain as much money as possible and shut down the firm all within a short period of time, making it very difficult for regulators to find and prosecute those individuals.[436] A licensing regime that requires collectors to provide contact information, an address of a place of business, and other important information provides a much greater deterrent for this type of behaviour than after-the-fact penalties can alone.

However, both regulatory regimes have the same problem of there being a 'patchwork' of different laws across the country due to variations at the state or provincial level, which can cause confusion among consumers. Consumers in the United States face the extra confusion of having both a state law and the *FDCPA* apply, and being unsure how or which law applies when they are seeking help.

On the enforcement side, the *FDCPA* being a federal law allows the FTC, a large well-funded federal agency, to investigate and enforce the law. This allows a greater centralization of expertise and more efficient use of resources than some Canadian provincial consumer protection agencies may be able to achieve, potentially leading Canadian agencies to enforce debt collection laws unevenly across different provinces.

The *FDCPA*'s inclusion of lawyers in the definition of debt collector is clearly superior to Canada's general exclusion of lawyers from the regime. The requirement that lawyers 'regularly' engage in debt collection activity seems to provide an appropriate balance between the regime being overbroad and properly protecting consumers from abusive behaviour. In general, both regimes prohibit the same types of abusive or misleading behaviour. Moreover, both regimes claim the same goals of consumer protection while balancing the rights of creditors to recover legitimate debts.

[436] See Jake Halpern, "Paper Boys" (15 August 2014), online: New York Times <http://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html>.

Summary

Overall, the three countries surveyed have very similar goals and very similar regulatory regimes to Canada's. All countries have identified similar unreasonable behaviour that must be prohibited in order to protect consumers, and all countries have achieved a similar balance between consumer protection and regulatory requirements for business.

The main differences where Canada could learn are:

(1) a uniform law across the country, with regulators actively working together to share information and best practices for enforcement;

(2) greater clarity in the application of existing rules, for the benefit of consumers and businesses alike, similar to Australia's guidelines; and

(3) applicability of the regulatory regime to lawyers, subject to an exclusion for lawyers engaging in debt collection 'incidentally' or not 'regularly.'

While there can always be improvements with the types of behaviour prohibited, the Australian model of having broad prohibitions with a guideline created by the regulator, extended with specific prohibitions where necessary seems like best for consumers and businesses. Since all three of these countries have recently undergone significant changes in their consumer protection or financial services regulation, time will tell which model proves to be the best for consumers.

Section 6 – Conclusions and Recommendations

During this investigation we discovered most debt accounts pursued by debt collection agencies in Canada are unsecured debts without any collateral tied to them. The most common form of unsecured debt are credit cards, although lines of credit, income taxes, student loans, personal loans and overdue utility charges can also be included. Debt collection agencies usually began establishing contact with consumers once an overdue account was 90 days old.

Debt collection laws in Canada aim to regulate the conduct of debt collectors when dealing with consumers and to deal with the business issues relating to the operation of a debt collection corporation. Collection agencies are regulated through licensing and or registration requirements while provinces have specific recourse mechanisms through a mixture of powers including inspections, investigations and fines or penalties for collection agency offences. In addition to provincial debt collection law, collection agencies are subject to privacy law, human rights law, and regulation when collecting debt on behalf of a bank.

Debt accounts in Canada typically go through three distinct phases as they age. Collection of debts that are three to six months old are usually undertaken by collection agents employed by the original creditor. We found that until a debt account is transferred to a debt collection agency, there are effectively few rules, absent the relevant *Criminal Code* provisions, that apply to debt collectors employed by a creditor in most of Canada. The apparent lack of rules, or their lack of enforcement, may be contributing factors to the frustration experienced by consumers subject to collection attempt by agents of original creditors.

Under the second phase of a debt account, an original creditor employs a debt collection agency, operating on commission, to obtain payment. During this phase the debt account may be reassigned multiple times by the original creditor to a number of debt collection agencies. It is under this phase that provincial rules and regulations relating to the collection of debts are applicable. The third phase typically begins after 30 months of attempting to collect on an overdue account. At this point, a debt may be sold by the original creditor to debt buyer or debt collection agency.

While investigating treatment of debt accounts under the second and third phases we encountered two distinct narratives regarding the operation of the Canadian debt collection industry. The first narrative described a debt collection industry where collection

agencies were “client compliant,” acutely aware of the image they project when they conduct business as an agent for an original creditor. Under this narrative, the collection agency operates over and above the relevant provincial regulations, and adheres to agreements designed to protect the reputation of the original creditor. Collection agencies failing to adhere to these compliance agreements risk financial penalties levied by the creditor, damage to their reputation, as well as losing a collection account to a competitor. Evidence to support this narrative was supplied by industry executives, the Canadian Bankers Association and at least one provincial consumer protection agency.

The alternative narrative suggests the generation of revenue is the primary incentive of collection agencies and original creditors in Canada. Under this interpretation, constant intimidation tactics are used as motivation and serves as the primary theme for the industry. Original creditors, such as large banks, intimidate collection agency executives by providing regular progress reports to a number of competitors simultaneously, in an effort to motivate collection agencies to “outperform” each other. In turn, collection agency executives tell their collection agents to keep performing or run the risk of losing their job due to poor personal results, or through the loss of a corporate account due to poor agency performance. Under this narrative, the use of monthly quotas by collection agency executives serves as both the proverbial carrot and the stick to incentivize collection agents. This interpretation suggest the culture of fear created by the continuing race to beat the competition or lose clients is justification to disregard employee behavior and look the other way when the rights of consumers are abused or consumer protection law is violated. Evidence to support this narrative was supplied by Mark Silverthorn, former counsel for numerous debt collection agencies.

Given the continuing volume of complaints filed with provincial consumer protection agencies and the FCAC regarding the conduct of collection agents and agencies, one has to consider the possibility the second narrative described here accurately describes the operation of the Canadian debt collection industry. If this is the case, steps should be taken by provincial policymakers to alter the fundamental structure of the debt collection industry in Canada in an effort to protect consumers. Original creditors must be prevented from pitting collection agencies against each other in a real-time competitive race.

However, if the intimidation tactics described above are not being employed, and debt collection agencies are employing a client compliant model, than there will be little harm in policymakers considering measures such as the recording of all telephone communications between collection agencies and consumers. Moreover, there should be little resistance to provincial regulatory bodies issuing annual transparency reports. These

proposed reports would list the number of complaints associated with each collection agency, as well as the corresponding original creditor.

As a result of this review, we contend provincial policymakers need to draw a direct line between the actions of original creditors and any abuse of consumers' rights, as well as applicable provincial consumer protection law, privacy law and human right law by collection agents. We feel an annual transparency report will compel original creditors to alter their approach toward the collection of their outstanding debt accounts in a manner that will benefit consumers. We suspect those original creditors, and the collection agencies vying for their services, who do not employ a client compliant model to the collection of overdue debt may amend their behaviour in those jurisdictions that choose to issue transparency reports. In addition, we foresee the number of consumer complaints in those jurisdictions eventually declining under a regime employing transparency reports.

In most Canadian jurisdictions, lawyers engaged in debt collection are subject only to the common law and the rules established by the provincial law society where they are operating. Unfortunately, we found instances where the applicable law society had no specific guidelines regarding the conduct of lawyers acting as debt collection agents. Evidence suggesting debt collecting lawyers employ tactics that would violate regulations applicable to debt collection agencies poses a significant oversight that we feel requires immediate attention of provincial law societies or provincial government policymakers. Given the existing lack of guidelines and enforcement measures applicable to lawyers in this field, we suggest provincial policymakers investigate the possible removal of existing exemptions to provincial debt collection laws and regulations that currently apply to the legal profession.

Focus group participants generally reported the calls they received were aggressive and threatening, with collection agents who are often unwilling to negotiate a solution that will resolve the debt, except full and immediate payment. Misleading claims regarding potential financial and legal repercussions for debtors were common. The volume of complaints submitted to provincial consumer protection agencies and the FCAC regarding the conduct of collection agents appears to support the evidence provided by the focus groups.

Consumers who have experienced debt collection would change the process to improve the relationship between debt collector and client by improving the communication skills of collection agents and encouraging agents to work with the person in debt. Moreover, consumers suggested collection agents undertake further research before making contact with a person in debt, as well as listen to the current circumstances of a debtor.

These steps were suggested in conjunction with a greater willingness by collection agent to work out a payment plan that will be beneficial to all parties involved.

The extent to which the consumers we consulted were unaware of their rights and recourses related to debt collectors cannot be understated. The evidence provided by consumers indicate a greater emphasis is required by provincial governments and the FCAC on communicating consumers' rights and available avenues of recourse when interacting with debt collection agencies. Moreover, the evidence suggest a series of policy options designed to address the lack of consumer knowledge and the questionable conduct of debt collection agents be explored by consumer protection policymakers.

A comparative review of debt collection law in Australia, the United Kingdom and the United States reveals all three of these jurisdictions recently completed significant changes to their consumer protection or financial services regulation. As a result of these reviews, there are a number of avenues for potential study by Canadian policymakers. For instance, we noted with interest Australia's and the United Kingdom's uniform debt collection law, complete with near-universal applicability. The Australian models appears to allow regulators to actively work together to share information and best practices for enforcement. In the United Kingdom, lawyers are exempt for debt collection regulation, but only if they are engaging in debt collection incidentally as part of their duties. In the United States, we find a federal law serving as the base for consumer protection efforts related to debt collection practices, with state law providing additional consumer protection provisions. This model allows for the Federal Trade Commission the potential to centralize expertise in order to investigate and enforce debt collection law. However, it can be argued the U.S. model also results in a 'patchwork' of different debt collection laws across the country, depending on the level of state regulation, which can cause confusion among consumers.

Recommendations

As a result of this investigation into the Canadian debt collection industry, PIAC recommends the following:

- Provincial governments should consider amending debt collection laws and regulations to ensure a collection agency includes a 1-2 page memo explain to consumers their rights in these unique circumstances. The memo would be drafted and supplied by the relevant provincial/territorial consumer affairs agency in the jurisdiction where the consumer resides.

- Amending provincial debt collection laws and regulations so collection agencies must provide written notice before collection calls commence in every Canadian jurisdiction.

- Amending provincial debt collection laws and regulations so once it is known a consumer contacted is not the debtor, attempts at collection must end in every Canadian jurisdiction.

- Amending provincial debt collection laws and regulations so consumers have the right to stop collection calls and request subsequent communication by other means in every Canadian jurisdiction.

- Every call between debt collector and consumer should be recorded, for the protection of all parties and to ensure industry best practices.

- The relevant provincial/territorial consumer affairs agency should implement random “spot checks” on collection agency telephone conversations by obtaining recordings from agencies. Any tampering would result in large administrative monetary penalties up to an immediate licence suspension.

- Provincial governments should consider amending debt collection laws and regulations to amend or remove the exemption now enjoyed by lawyers.

- Provincial governments should consider amending debt collection laws and regulations to introduce annual transparency reports related to debt collection complaints. These reports would publicly outline how many complaints were

brought forward against each individual collection agency, as well as against each original creditor, during the previous year.

- Provincial governments should consider exploring the opportunity for debt collection agencies to contact clients by email, once the debtor's identity and the validity of the overdue account have been verified.

Appendix 2 – Draft Information Memo Produced by PIAC

Things to Note:

- "Contact" means the agents must actually speak with you, email you or leave you a voice mail. If you don't answer the phone and the agents don't leave a message, it doesn't count as a contact. A letter sent by regular mail also does not count as a contact." (Ontario Consumer Protection. Collection Agency: Your Rights)
- While it's rare, lawyers may act as debt collectors and aren't subject to debt collection laws and regulations. Be careful. In this situation, you should seek council.
- Collection agents directly employed by creditors have fewer rules applied to them than those from a debt collection agency.
- Be careful when dealing with debt settlement companies. There are scams out there, so make sure you understand your contract.
- You have the right to obtain any information regarding your debt from the collector. Use it!

Put together by PIAC based on the debt collection report "All Along the Watch Tower: A Review of the Canadian Consumer Debt Collection Industry"

To learn more about PIAC please visit: www.piac.ca

Need more Information?

Here's who to contact

FOR CREDIT REPORTS

Equifax Canada
WEBSITE: www.consumer.equifax.ca

TransUnion Canada
WEBSITE: www.transunion.ca

CREDIT COUNSELLING SERVICES

Ontario Association of Credit Counselling Services
WEBSITE: oaccs.com
EMAIL: info@oaccs.ca

Credit Counselling Canada
WEBSITE: www.creditcounsellingcanada.ca
EMAIL: contact@CreditCounsellingCanada.ca
PHONE: 1.866.398.5999

Canadian Association of Insolvency and Restructuring Professionals (CAIRP)
WEBSITE: www.cairp.ca
EMAIL: info@cairp.ca
PHONE: 416.204.3242

COMPLAINTS AND INFORMATION

Ontario Consumer Protection – Debt Collection
WEBSITE: http://www.ontario.ca/home-and-community/collection-agency-your-rights
PHONE: 416.326.8800 or 1.877.666.6545

Financial Consumer Agency of Canada (FCAC)
WEBSITE (FOR INFO): http://www.fcac-acfc.gc.ca/Eng/forConsumers/lifeEvents/dealingDebt/Pages/home-accueil.aspx
(FOR COMPLAINTS): http://www.fcac-acfc.gc.ca/Eng/resources/lodgeComplaint/Pages/home-accueil.aspx

Dealing with Debt Collection

A Helpful Information Guide

This guide is intended to provide consumers with basic information about debt collection and what to consider when debt collectors call.

DISCLAIMER: This brochure was created to inform consumers about the law and their rights when it comes to debt collection. This is NOT meant in anyway to give legal advice.

Know Your Rights

It's Important to Have All the Information When Dealing with Debt Collection.

Every day various Canadians in debt receive calls from collection agents, some of whom are eager to fulfill their collection quotas. They aren't always friendly and issues sometimes arise between debtors and collection agents.

Most people don't know enough information about their rights or how to handle situations with agents when it comes to debt collection.

This guide will provide some basic information Canadians dealing with unsecured debt collection should know.

When Being Contacted by a Collection Agent

Creditors often hire debt collection agencies. These agencies employ agents who are usually the ones contacting you, and there are certain rules they must follow.

Here are some of them for Ontario:

- Debt collectors must send a written notice by mail to you (the debtor) about the debt. They must then wait 6 days before contacting you in person or by phone.
- The first time an agent contacts you, and confirms it's the correct person, they must give their full name or supply a unique identifier.
- Creditors & agencies can't disclose a debt to anyone other than the debtor without consent.
- Without written consent, an agency can't contact you in your local time: between 9PM and 7AM Monday through Saturday, holidays, more than 3 times a day in a 7-day period, and only between 1PM and 5PM on Sundays.
- Debt collectors can only contact your employer once, and only for employment information. The only way they may contact your employer again is if you give written consent or their employer obtains a court order.
- If the collection contract is given to a different agency or the debt owner changes, you must be notified.
- A collector can't harass, threaten, or provide misinformation in any way. This consists of calling too frequently, or suggesting directly or indirectly they will take legal action if there isn't intention to do so.

A Notice Must Contain:

- The creditors name
- The amount owed
- The agency's name and a statement that they are collecting on the creditor's behalf.

In Case of Mistaken Identity...

Let them know and ask for proof of the debt. If the agency can't prove you're the debtor, they must stop contacting you.

You (or your lawyer) may send a registered letter to the agency disputing the debt and suggest taking the dispute to court.

Paying Off the Debt

Before sending money to a collection agency, you should get a Settlement Letter. Without one you may be asked to make additional payments later. Verbal agreements with an agent are not enough.

A Settlement Letter is a statement prepared by a debt collection agency outlining the terms where a creditor is prepared to accept one or more payments (depending on the amount) as a full debt settlement.

Other Things You Should Know About Debt Collection

Each province has their own laws for regulating debt collection and the agents who collect them. In addition, debt collection agencies are subject to privacy and human rights laws. If you suspect these are being violated, make a complaint to the appropriate resource on the back of this brochure.

You have the right to request any information regarding your debt from the debt collector under Canadian privacy laws. Agencies have 30 days to respond in some manner.

Debt settlement (debt reduction or relief) services can only be provided if the agency has an agreement with them. If an agency offers this service, check to make sure they are authorized.