

ENHANCING PROTECTION FOR PAYDAY LOAN USERS IN CANADA



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

Written by:

Tahira Dawood

March 2019

Public Interest Advocacy Centre

285 McLeod Street, Suite 200

Ottawa, Ontario K2P 1A1

Canada

© Copyright 2019

Contents may not be commercially reproduced.
Any other reproduction with acknowledgment is encouraged.

The Public Interest Advocacy Centre
(PIAC)
Suite 200
285 McLeod Street
Ottawa, ON
K2P 1A1
Tel: (613) 562-4002 Fax: (613) 562-0007
E-mail: piac@piac.ca Website: www.piac.ca

Canadian Cataloguing and Publication Data

Enhancing Protection for Payday Loan Users in Canada

Acknowledgments

The Public Interest Advocacy Centre has received funding from the Law Foundation of Ontario, under its Access to Justice Fund (ATJF). While financially supported by The Law Foundation of Ontario, the Public Interest Advocacy Centre is solely responsible for all content.



Thank you to all our focus group participants and the stakeholders who responded to our survey and contributed to our better understanding of the issues raised in this report.

The author would also like to thank Jennifer Chow, PIAC's Counsel, for designing the consumer guide, and for her input on this project. Finally, many thanks to the Law Foundation of Ontario for this opportunity to research on this important matter.

Executive Summary

PIAC has been actively advocating for the rights of payday loan users; with this project it sought to better understand the problems faced by borrowers in repaying these loans; analyze existing recourse mechanisms to oversee payday loan complaints, disputes and violations; and seek to address any gaps, by presenting a model regulatory framework for enhanced protection of payday loan users. The research revealed that users remain significantly unaware of their payday loan rights, the structure of these loans, their high interest rates and costs; often resulting in users being involved in continuous debt cycles.

Many users remain unaware of the existing information and help resources. This report focused on evaluating the availability, and efficacy of existing resources, leading to a discussion of what new or additional regulations are needed to better protect the interests of payday loan users.

The first section of this report introduces its scope. The second section explores the problems faced by users of payday loans. The third section examines the existing complaint processes and recourse mechanisms. The fourth section explores the regulatory frameworks found in selected jurisdictions for addressing payday loan complaints, disputes and violations; and proposes a model policy framework. The final section summarizes and presents its recommendations. We aim for our suggestions to be useful for Ontario, and other provinces and territories in Canada.

Main findings:

- ❖ Many payday loan users lack awareness of their rights and the high costs involved. Payday loan users generally do not understand how to calculate the high interest and costs involved. The existing information and help resources are not well-known and remain of limited use and efficacy, with an imminent need to better publicize them.
- ❖ Payday loan agreements are often not read and/or well understood, with many users expressing a preference for agreements, drafted in clear and simple language, and some would prefer just reading short summaries of the terms and conditions.
- ❖ Several gaps were found in the existing complaint processes and dispute resolution schemes. Complaining to the payday lender could be a useful option, however, the extent to which it can adequately protect the vulnerable users of payday loans remains severely limited, given its current lack of transparency and accountability. At present, there is no easily accessible public data concerning the number and nature of complaints made, response times and outcomes. The utility of this process could be increased by regulators considering introduction of annual transparency reports.

- ❖ Small claims court remains a costly, time-consuming and burdensome mechanism to address payday loan complaints and disputes. Particularly, for indebted and/or low-income users who do not have the resources, knowledge and skills to file such cases, and cannot generally afford hiring a lawyer.
- ❖ Increased awareness of the provincial and government help resources is needed. Many users remain unaware about the option to complain to these agencies about their payday loan issues. It is important that these resources are made easy to access and use.

Recommendations: Based on its main findings, the report recommends:

Recommendation 1: Given the lack of awareness of payday loan rights, its high interests and costs amongst payday loan users, governments and regulators should adopt a more active role in developing consumer education and awareness initiatives on the risks involved in using these loans, and its high costs.

Provincial governments to convene and coordinate towards the creation of standardized consumer information resources and help avenues. As a part of this project, a user-friendly guide is attached, informed by our primary and secondary research. (See Annex A.)

Recommendation 2: Better publicizing of the existing redress resources needed for greater access and use. These resources should be kept simple and easy to use, with short and concise summaries of rights. This measure should be supplemented with workshops, guidance programs and information sessions on how to find and use these resources.

Recommendation 3: Distinctive display posters should be put up at the payday lending stores and websites. These posters must clearly disclose all fees, and charges; and also include information about the licensing status of the payday lender.

Recommendation 4: Introduce standard loan agreements for clarity and consistency; which clearly and accurately disclose the costs, length of a loan, when it is due and what costs would arise in case of missed deadlines.

Recommendation 5: Create a user database within each province and territory. It should consist of users' details concerning payday loan usage, repeat borrowing, defaults, and common borrowing practices. We believe this is important to limit repeat borrowing and stop rollover loans, with the latter in effect, banned in several provinces.

Recommendation 6: Current complaint processes and tools to be better publicized; and made easy to access and use. Also, a consumer complaint database should be introduced, as done in

different jurisdictions for the purposes of transparency and accountability. The database maintained by the CFPB could be referred as a prototype. This database should primarily include data on the nature of complaints, number of complaints and their outcomes. This data could be collected and maintained by the consumer protection offices in each province and territory, and provided to the FCAC for annual publications.

Recommendation 7: The Ombudsman for Banking services and Investments (OBSI) should exercise an enhanced role, with direct involvement in addressing payday loan complaints, violations and disputes. This would allow users to have one-stop-shop for resolving their complaints and disputes through a fair, and impartial medium.

List of Figures:

- Figure 2-1. Number of Respondents identifying the payday loans cost
- Figure 2-2. Screenshot of Consumer Protection Ontario webpage: Payday loan: your rights
- Figure 2-3. Screenshot of Consumer Protection BC webpage: Payday loans
- Figure 2-4. Screenshot of Access Nova Scotia webpage: Payday Loans
- Figure 2-5. Screenshot of Financial and Consumer Services Commission's webpage (New Brunswick): What is a Payday Loan?
- Figure 2-6. Screenshot of Consumer Protection Ontario webpage- Payday loan: your rights
- Figure 2-7. Example: Cost of a payday loan
- Figure 2-8. Alternatives if Payday loans were unavailable
- Figure 2-9. Methods adopted for repaying payday loans
- Figure 2-10. Frequency of borrowing payday loans
- Figure 2-11. Manitoba Survey on Use of payday loans over a 12-month period
- Figure 3-1. Screenshot- Ministry of Government and Consumer Services, Consumer Complaint Form
- Figure 3-2. Screenshot of Service Nova Scotia's webpage: I have a complaint
- Figure 3-3. Screenshot of Civil Resolution Tribunal
- Figure 4-1. Screenshot of the CFPB's Consumer Complaint Database
- Figure 4-2. Screenshot of the Complaints by Issue: PIRGIM's Report
- Figure 4-3. Screenshot of the Response to Consumer Complaints to the CFPB regarding payday loans: PIRGIM's Report
- Figure 4-4. Screenshot of the Financial Ombudsman Service website

List of Tables:

Table 2-1. Current Consumer Information Resources

Table 2-2. Links for checking Payday Lenders' Licensing Status

Table 2-3. Types of Payday Loan Costs

Table 2-4. Payday Loans: Laws and Regulations

Table 2-5. Information Resources on Debt Collection

Table 3-1. Data on Payday loans issues and complaints in Ontario

Table 3-2. Data on Payday loans taken in Ontario (July 1- December 31, 2015)

Table 3-3. Data on Payday loans in Nova Scotia (July 1, 2017-June 30, 2018 (last updated in February 2019)).

Table 3-4. List of Government Agencies to approach for making complaints

Table of Contents

Acknowledgements	iii
Executive Summary	iv
List of Figures.....	vii
List of Tables	viii
I. Introduction	1
II. Problems faced by consumers in repaying payday loans	
Introduction.....	3
2.1 <u>Lack of awareness about payday loan rights and costs</u>	3
2.1.1 Low Consumer Awareness.....	3
2.1.2 Efficacy and Use of Current Information Resources	5
2.1.3 What Communication Tools do Consumers want?	13
2.1.4 Incomprehensible Loan Agreements	14
2.1.5 Licensed Payday lenders.....	15
2.1.6 Payday loan costs, and how it works	19
2.2 <u>Managing Repayments and Challenges</u>	28
2.2.1- Repeat borrowing and incurring high debt	28
2.2.2- Increased Risk of Insolvency.....	33
2.2.3- Non-sufficient funds (NSF) fee and Late Payment Charges	35
2.3 <u>Debt Collection Issues</u>	37
III. Existing complaint processes and dispute resolution mechanisms to oversee payday loan complaints, disputes, and violations	39
Introduction.....	39
3.1 <u>Complaining to Payday lenders</u>	39
3.2 <u>Small Claims Court</u>	40
3.3 <u>Provincial Consumer Protection Agencies</u>	42
3.3.1-Ontario	42
3.3.2-Nova Scotia.....	46
3.3.3- British Columbia	49

3.3.4- Alberta.....	50
3.3.5- Current Complaint Tools and Processes.....	50
IV. Model Policy framework for addressing payday loan complaints, disputes and violation.....	53
Introduction.....	53
4.1 <u>International Practices</u>	53
4.1.1 United States of America.....	53
4.1.2 United Kingdom.....	57
4.1.3 Australia	58
4.2 <u>Proposed Regulatory Framework</u>	60
4.2.1- Ombudsman-type Regime	60
V. Conclusion and Recommendations	63
5.1 Problems faced by consumers in repaying payday loans	63
5.2 Existing complaint processes and dispute resolution mechanisms	64
5.3 Regulatory Framework	64
5.4 Main Findings and Final Recommendations	65
Annex A-Payday loans Consumer Guide.....	68

I. Introduction

PIAC's prior research indicated that payday loans are designed to encourage and operate on a cycle of debt business model; with payday lenders often creating loan structures that require the servicing of debt, rather than responsible lending with the primary goal of repaying the principal advanced.¹ This causes many payday loan borrowers to remain in a cycle of debt, exposing them to repeat borrowing and high debt.

This report examines the problems faced by borrowers in repaying these loans; analyze existing recourse mechanisms for overseeing payday loan complaints, disputes and violations; and determine what gaps need to be addressed by presenting a model regulatory framework for better protection of consumer interests. The goal of this project is to study borrowers' problems, and gauge their perspectives on whether new regulatory practices could be helpful in addressing present gaps in the payday loans recourse and dispute resolution regime; and promote access to justice for vulnerable consumers of payday loans.

The first section of this report introduces its scope and methodology, the second section explores the problems faced by users of payday loans, and notes the challenges encountered by them in making repayments. The third section examines the existing complaint processes and recourse tools. We focus on the province of Ontario, with necessary reference drawn to other provinces, and other consumer protection best practices concerning payday loans. We also assess the limiting factors affecting the adoption and efficacy of the existing recourse tools. The fourth section explores the regulatory frameworks found in selected jurisdictions for addressing payday loan complaints, disputes and violations; and proposes a model policy framework. The final section summarizes our findings and lists PIAC's recommendations. We aim for our suggestions to be useful for Ontario, and other provinces and territories.

Our primary research and findings are from six focus groups, with two focus groups conducted with ACORN's community members in Ottawa and Toronto, and four focus groups conducted by Environics Research Group, with two sessions held in each location, i.e. Halifax, and Vancouver. This report's findings also rely on a literature review concerning different issues relating to payday loan dispute resolutions mechanisms, and draws insight from stakeholder consultations, with input from regulatory bodies, industry representatives, consumer groups, and international organizations.

¹ Jonathan Bishop, John Lawford and Cynthia Khoo, "Strengthening Financial Consumer Protection" A Submission from the Public Interest Advocacy Centre (August 2015), online: <<http://www.piac.ca/wp-content/uploads/2015/08/PIAC-Comments-ON-Consumer-Financial-Protection.pdf>> at p.10.

While much discussion and research has been done on payday loans and their high interest rates, limited attention is given to the means available for resolving disputes related to payday loans. This report seeks to investigate and research on gaps found in the means available to resolve issues and disputes regarding payday loans.

We faced some challenges in writing this report, due to the lack of easily available provincial data as to the number of payday loans taken, number and frequency of defaulters, and repeat borrowers; our analysis is based on limited available data. The focus groups indicated low awareness of payday loan rights, costs, and the availability of any recourse options. Considering the limited awareness of existing consumer resources, we found it appropriate to focus on evaluating their availability, efficacy, and use, with the aim to explore what new or additional regulatory measures could improve the effectiveness of these resources.

II. Problems faced by consumers in repaying payday loans

Introduction

Our research indicates that the most common issue affecting consumers' understanding and ability to borrow and repay payday loans, is their lack of awareness about payday loan rights and costs; i.e. how the interest, charges, fees, and other costs are calculated and applied. In this section, we discuss these problems and analyze the existing consumer resources. We proceed to assess how consumers in general manage repayments, and what challenges do they face; and seek to determine common repeat borrowing practices. Prevailing debt collection issues are also briefly considered.

2.1- Lack of awareness about payday loan rights and costs

2.1.1- Low Consumer Awareness

Feedback from our focus groups revealed that many participants lacked awareness about their payday loan rights, and the loans' costs. A significant knowledge gap exists as to the actual costs and high interests involved.

A 2016 report by the Financial Consumer Agency of Canada (FCAC), "Payday Loans: Market Trends," also confirms this; it found that only 43% of its survey respondents could correctly identify that payday loans costs more than their alternatives.² Some alternatives to payday loans, include: credit cards, line of credit and others. The report noted that this awareness gap stemmed from consumers' lack of access to alternatives; with more than 60% respondents indicating that they do not have access to a credit card, and 88% said that they do not have access to a line of credit.³

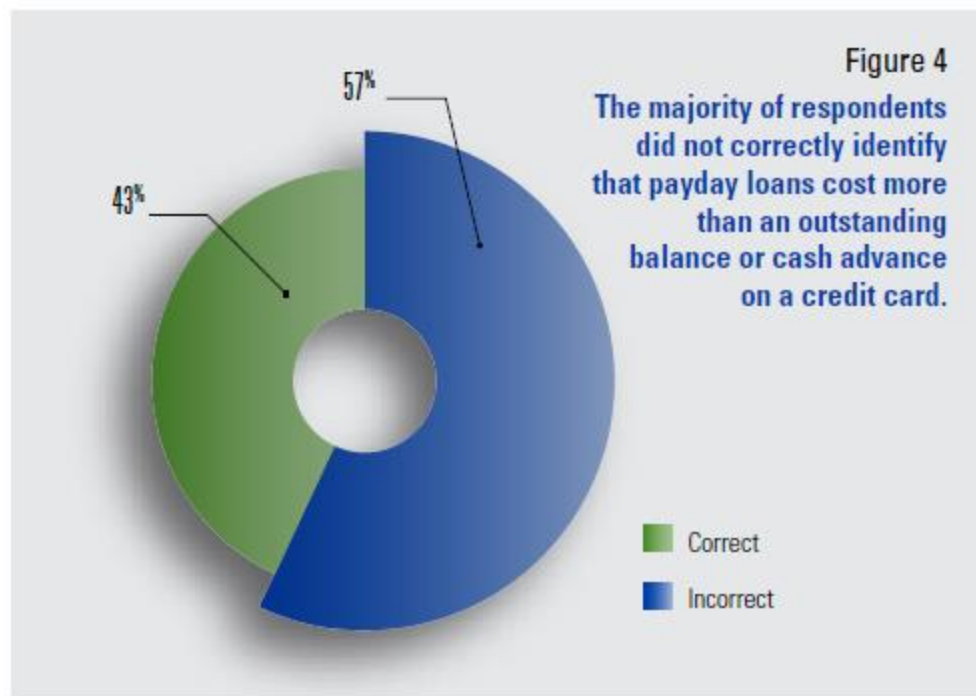
"[...] I live in social housing, a lot of the people in my building are mentally ill, and they are not explained exactly what they are paying for, they don't understand what a loan is at all. [...] They start borrowing money, and then they can't pay it back, then they borrow money again and they can't pay it back [...]. It's unfair to them because they don't have money to start with and they are not being educated properly [...]."

—PIAC Focus Group Participant-ACORN.

² Financial Consumer Agency of Canada, "Payday Loans: Market Trends" (October 2016), online: <<https://www.canada.ca/content/dam/fcac-acfc/documents/programs/research-surveys-studies-reports/payday-loans-market-trends.pdf>> at p.1.

³ *Ibid.*

Figure 2-1. Number of Respondents identifying payday loans cost



Source: Financial Consumer Agency of Canada, *Payday Loans: Market Trends* (2016)

FCAC's report aptly recommends public awareness initiatives regarding payday loans costs, and its alternatives.⁴ Its survey showed that the more financially literate respondents used fewer payday loans.⁵ Financial literacy has been defined by it as "[h]aving the knowledge, skills and confidence to make responsible financial decisions."⁶ Similarly, a report by the Conference Board of Canada calls for measures to increase consumers' financial literacy.⁷ It views formal education as not the same as financial literacy, revealing that nearly two-thirds of payday loan users have a technical, vocational or university credential.⁸ Vindication of rights, starts with knowing the product and legal rights, however, in case of payday loans, users remain vulnerable and ill-informed about the product, which is designed to create more demand for itself in a cycle of debt, and their rights.

Our research indicates that limited efforts have been made by regulatory authorities to educate consumers about managing financial matters, including payday loans; which remains critical to allow consumers to make well-informed financial decisions. We suggest that more needs to be

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Sabrina Bond, "Filling the Gap: Canada's Payday Lenders," Ottawa: The Conference Board of Canada, (written for the Canadian Consumer Finance Association) 2016, online: <https://canadiancfa.com/wp-content/uploads/2016/11/cboc-filling-the-gap_final-nov-2016.pdf>.

⁸ *Ibid.*

done to educate consumers on managing their finances and specifically, payday loan costs, which involves high interest rates, fees and other costs.

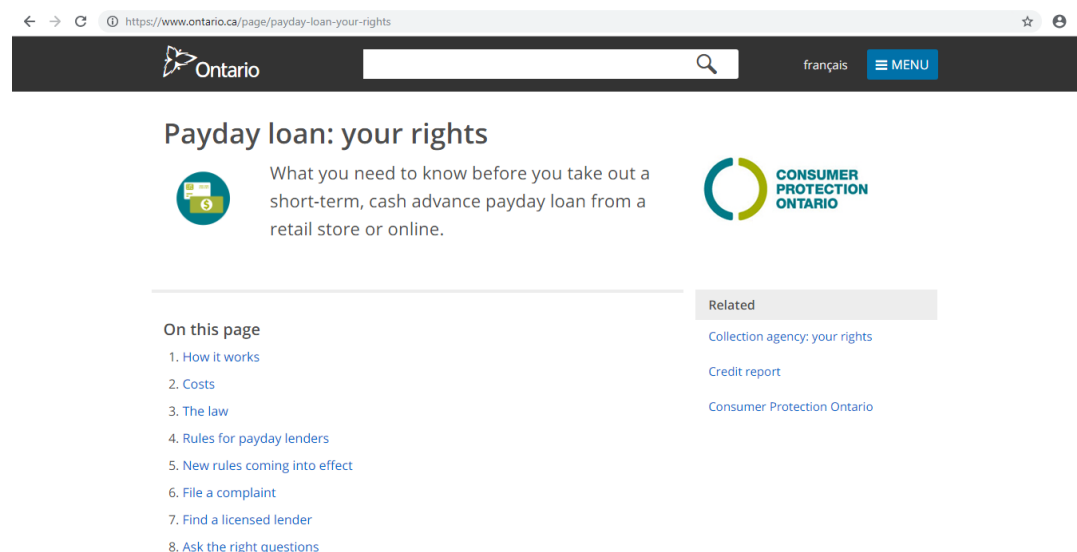
2.1.2- Efficacy and Use of Current Information Resources:

The focus group participants in general did not know about the availability of current information resources on payday loans. We believe that lack of awareness considerably reduces the effectiveness of the existing resources– and possibly results in a low volume of consumer complaints as many users appear to be unaware of their payday loan rights. We next examine some tools available to educate consumers about their rights; seeking to assess their accessibility, scope, and readability, and consider what gaps need to be addressed for increasing their effectiveness and use.

Ontario:

During the focus groups in Ontario, we circulated print outs of Ontario's Ministry of Government and Consumer Services webpage, “Payday loan: your rights;”⁹ (See figure 2-2) and asked whether the participants knew about this resource, and if yes, was it useful? Most of the participants did not recognize it, and stated that they were seeing it for the first time. Many participants indicated that it would be helpful to have this or something similar at their disposal.

Figure 2-2. Screenshot of Consumer Protection Ontario webpage: Payday loan: your rights



Source: Consumer Protection Ontario (2018)

⁹ Consumer Protection Ontario, “Payday loan: your rights,” online: <https://www.ontario.ca/page/payday-loan-your-rights>.

Figure 2-2 refers to the information page on payday loans, available at Consumer Protection Ontario's website. It provides information regarding what payday loans are; how they work, costs; applicable laws and rules for payday lenders; filing complaints; finding a licensed lender and asking the right questions, i.e. before getting a payday loan, a consumer should plan to have enough money to repay, understand the costs for an overdue loan, how much it all will cost, whether the payday lender is licensed and other related questions. Our focus group participants did not provide specific feedback as to the form and content of this web page, as they were seeing it the first time. This raises a need for enhanced communication methods by government agencies. It is crucial for such information to reach its intended audience, particularly, the vulnerable users of payday loans who remain trapped in continuous debt cycles.

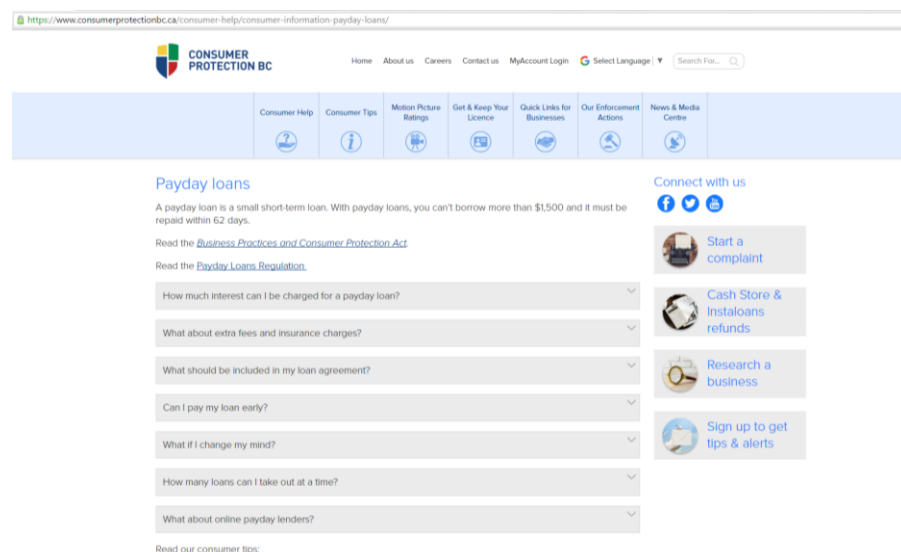
British Columbia:

In another focus group, held in Vancouver, participants were asked about the utility of government-based resources with specific help sections such as, frequently asked questions. In response to that, one participant expressed the difficulty in using government websites. Also, when asked, whether having one stop-shops, for instance, infoonpaydayloans.bc.ca would be useful; the participant noted that a lot of people have no cellphones or computers, or are homeless. This suggests that paper resources such as pamphlets or user guides, appear to be not only useful, but necessary for filling a gap as to the availability and access to consumer information.

"So, the problem is a lot of the government websites aren't easy to navigate. I'm not going to go... I'm going to google whatever and then go, and then I'm going to get stuck on a government website in a labyrinth and be frustrated."

*PIAC Focus Group Participant –
EnviroNics.*

Figure 2-3. Screenshot of Consumer Protection BC webpage: Payday loans



Source: [Consumer Protection BC](https://www.consumerprotectionbc.ca/consumer-help/consumer-information-payday-loans/) (2018)

Figure 2-3 is a screen shot of the webpage on payday loans, available at Consumer Protection BC’s website. It seeks to inform consumers about matters such as; what are payday loans; how much interest, extra fees, insurance charges can apply; details on what should be included in a loan agreement; repaying loans early, cancelling of payday loans; frequency of payday loans; and other related matters.¹⁰ The focus group participants expressed limited awareness and did not specifically, indicate whether BC’s current resources need to be modified as to their content and structuring. Though as noted earlier, one participant shared the difficulty in navigating through government resources.

Nova Scotia:

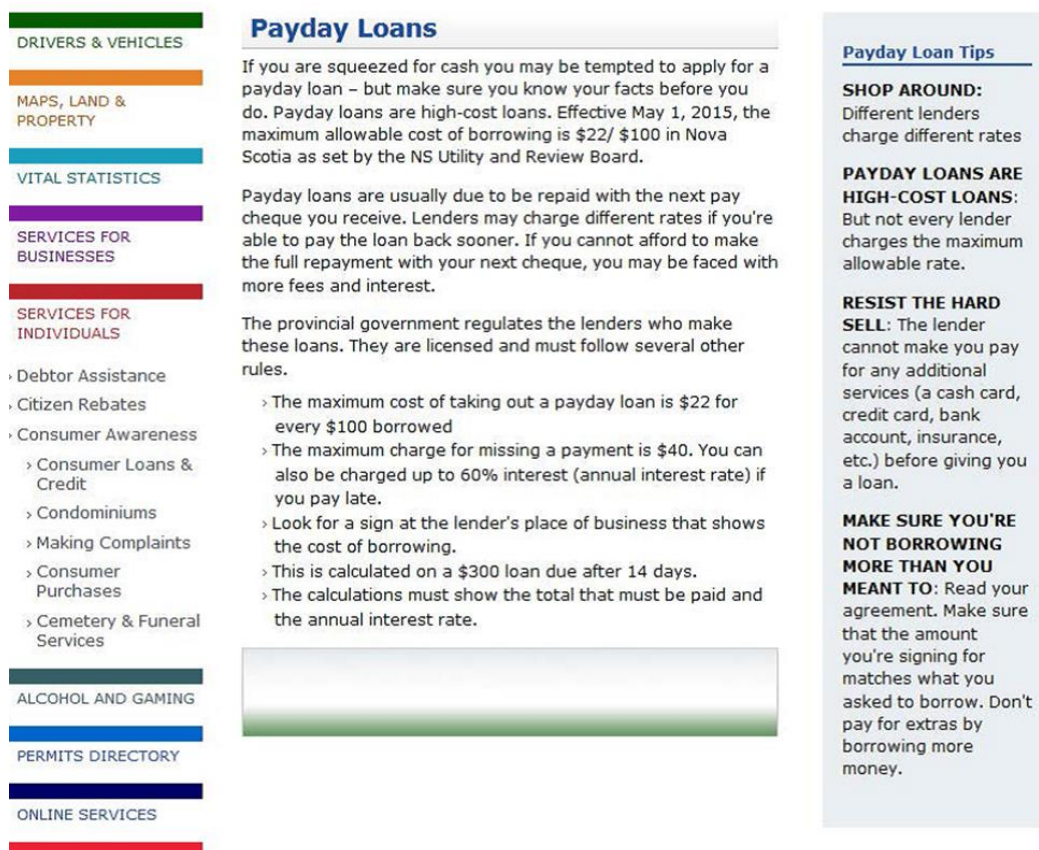
Few focus group participants in Halifax, knew about Access Nova Scotia, a provincial governmental portal, which provides help resources on payday loans, besides other matters. Many participants in general supported the idea of receiving upfront consumer resources on payday loans; in easy and plain language, and particularly information as to the applicable costs. The Business and Consumer Services division (division) of Service Nova Scotia, indicated in our stakeholder consultations, that they do not have any hard copy payday loan guides.¹¹ They have a

¹⁰ Consumer Protection BC, “Payday loans,” online: <<https://www.consumerprotectionbc.ca/consumer-help/consumer-information-payday-loans/>>.

¹¹ Business and Consumer Services, Service Nova Scotia, Response to PIAC’s Stakeholder Questionnaire, dated July 25, 2018.

one-page pamphlet and information sheet, distributed at their outreach events; and a webpage which informs users about the lending rates with some tips, available in English and French.¹²

Figure 2-4. Screenshot of Access Nova Scotia webpage: Payday Loans



Source: [Access Nova Scotia](#) (Last accessed in August 2018)

Finding current online information resources:

We contend that while most of the provinces and territories do provide some useful information online, this information is not always easy to find, and use. In the table below, we have listed the currently available information resources.

¹² *Ibid.*

Table 2-1. Current Consumer Information Resources

<u>Provinces and Territories</u>	<u>Government Agency to approach</u>	<u>Information Resource</u>	<u>Contact Details</u>
Alberta	Service Alberta	Payday Loans - How It Works	1-877-427-4088
British Columbia	Consumer Protection BC	Payday loans What would you do? A guide to being a savvy consumer: payday loans Payday lending basics	1-888-564-9963
Manitoba	Manitoba Consumer Protection Office	Payday Loans (Information for consumers - FAQs page)	1-800-782-0067
New Brunswick	Financial and Consumer Services Commission	Information for consumers on different web pages: What is a payday loan? Alternatives to payday loans Cost of Payday Loans Paying Back a Payday Loan It also has specific infographics on; How do payday loans work? What are the rules for payday lenders? What does a payday loan cost? Can a payday lender do that?	1-866-933-2222
Newfoundland Labrador	Service NL	Consumer Affairs (No specific page on payday loans found)	1-877-968-2600
Northwest Territories	Municipal and Community Affairs-Consumer Affairs Office	Northwest Territories - Consumer Affairs Bulletin – Payday lending	867-767-9161 ext 21022
Nova Scotia	Access Nova Scotia	Payday loans: your rights	1-800-670-4357
Nunavut	Community and Government Services- Consumer	Pay Day Loans	1-866-223-8139

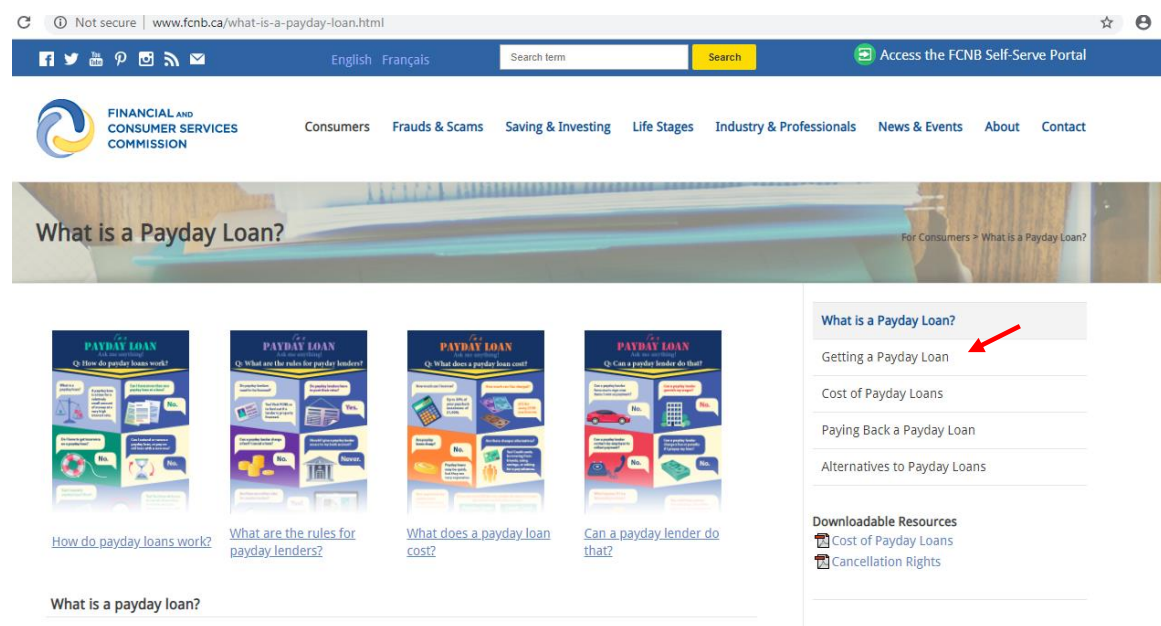
	Affairs		
Ontario	Ontario's Ministry of Government and Consumer Services; Consumer Protection Ontario is its awareness program.	Payday loan: your rights	1-800-889-9768
Prince Edward Island	Prince Edward Island Canada, Consumer, Labour and Financial Services	Payday Loans - Consumer Rights and Responsibilities	902-368-4580
Quebec	Office de la protection du consommateur	Section dedicated to consumers (No specific page found as payday loans are illegal in Quebec due to the operation of Civil Code and Consumer Protection Act).	1-888-672-2556
Saskatchewan	Financial and Consumer Affairs Authority	Payday Loan Borrowers What you need to know	306-787-6700
Yukon	Yukon Consumer Services	Consumer Protection [See: Payday Lenders— Learn the Cost]	867-667-5111

The process of compiling the above data revealed that navigation through these government websites was not always straightforward. The method adopted in most cases was to open the pertinent web page, and enter “payday loan” or “payday lending” in the search tab. In some cases clicking on consumer information or consumer resources was also helpful. However, finding these resources in general was not user-friendly, often requiring visits to more than one web page.

We also found that few websites did not display all information on one page, with specific information spread across different webpages, requiring access through a menu and or sub-menu; see figure 2-5. We do not suggest that all information should be presented on one-page, which may be impractical in instances; rather a summary of all basic information should be provided on

one-page, to enable easier access and navigation across these resources. We also encourage the use of paper pamphlets, to be handed out with each loan.

Figure 2-5. Screenshot of Financial and Consumer Services Commission’s webpage (New Brunswick): What is a Payday Loan?



Source: [Financial and Consumer Services Commission](http://www.fcnb.ca/what-is-a-payday-loan.html) (Last accessed, November 2018)

As for the content, some websites were found to lack comprehensive information, with minimal information on what payday loans are, and how they work. Few websites did not have any specific information guiding consumers about payday loans, and how they work, as noted in table 2-1 (see Newfoundland Labrador). Whereas, some provincial websites appeared to be quite resourceful, explaining payday loan rights and costs through tables, figures and infographics.¹³

We find that it could be useful for the provinces and different levels of governments to cooperate and coordinate towards standardizing the information available to consumers, this would allow for common, and consistent standards to be set, while also allowing for easier administration, review and compliance. More so, with the prevalence of online payday loans, unifying standards may help in reducing any discrepancies in the form of rights and redress available to consumers in case of any payday loan issues, across different provinces.

¹³ See Financial and Consumer Services Commission’s webpage and infographics, online: <http://www.fcnb.ca/what-is-a-payday-loan.html>.

A user-friendly guide designed by PIAC (see Annex A) could be referred for initiating the process of unifying the content of consumer information. PIAC's guide broadly covers payday loan users' rights and avenues for help. The content of this guide is specific to Ontario, but can be tailored to be useful for other provinces and territories.

Increasing the Efficacy and Use of Current Information Resources:

Given the consumer unfamiliarity of existing information resources, we suggest that public awareness initiatives should be introduced in each province and territory, educating consumers about the scope, implications and risks of using payday loans; particularly about their costs, and repayment obligations. In this respect, we suggest that payday loans education fund should be revived, as specified in the *Ontario Payday Loans Act 2008* as well; and in respect of this, regulations should be introduced requiring payday lenders to contribute to this fund for borrowers' education.¹⁴

Overall, we received limited feedback from the focus groups on the availability, content and form of the current online resources. Based on what we heard, we suggest that to start with, the content on existing resources, should be simplified with comprehensible text, and more graphics, which remain easier to read, understand, and apply. We suggest that such information should be provided to consumers at the point of purchase, which is both accessible and accurate.¹⁵

We also suggest that a summary of the basic information on payday loans should be made available on one web page, rather than several pages; which should be clearly labelled to enable easy search and access. This could be done by having public-facing webpages that are clearly visible, and at least easily found under consumer protection or consumer information. Also, such information should be available in paper, and other alternate formats at the stores, catering to the needs of people with no internet access, or any other special needs. Provision of this information at the stores provides an additional advantage of giving immediate access, at the time of borrowing.

¹⁴ Jonathan Bishop, John Lawford and Cynthia Khoo, "Strengthening Financial Consumer Protection" A Submission from the Public Interest Advocacy Centre (August 2015), at p.40.

¹⁵ *Id.* at 39.

2.1.3 - What Communication Tools do Consumers want?

We asked our focus groups how could they be best informed about their rights; and which communication tools in their view, would be most effective. They proposed:

- payday lenders to verbally communicate their rights;
- advertisements informing about risks; some called them warning advertisements;
- clear and distinct posters regarding costs at payday loan stores;
- information pamphlets, containing content in clear, plain and easy language. Some would like to see case studies, where the costs are explained in the form of a story. Also, recommendations were made for these resources to be provided in different languages; and
- information videos.

We asked our focus groups whether it would be useful to have an information pamphlet. Many focus group participants found it better to have some information than not. Generally, focus groups were open to the idea of pamphlets being available at the payday loan stores; allowing them easy and quick access to information about their rights and payday loan costs. Some participants suggested that these pamphlets should be stapled with the receipts and also that these should be provided with the contract on a mandatory basis. One participant suggested that a step-by-step guide would be quite useful.

That said, few participants were skeptical as to whether, and up to what extent, would this influence or affect their decisions on taking a payday loan. However, one participant stated that if he had the requisite information, then he would not have taken the payday loan.

We believe that written communication tools, presented in simple and plain language, are essential for raising consumer awareness. Verbal communication could supplement written methods, however, we are wary of

"It would be better if it was mandatory to them to actually say it to you verbally."

PIAC Focus Group Participant –
Envionics.

"I would think that the people that go into payday loans, do not realize exactly what's going on, and I think that a user-guide would be very friendly for them."

PIAC Focus Group Participant –
ACORN.

"I, I really think because a lot of people that are using this are lower education, so they really don't, and they don't have a vested interest in finance. ... So they really need to know [step by step?] step by step what's going on... And, I think that once they see what's going on, they would realize, you know. [Do you think then that some people wouldn't take loans if they went partway through the guide? They would actually not take it, or they need the money so badly, they take it anyway?] ... For me I wouldn't go to a payday loan anyhow [Okay] so I mean because I have heard enough horror stories that I wouldn't go... and I don't need to..."

PIAC Focus Group Participant –
ACORN, the comments in bold are of
the participant.

providing merely verbal information, as it carries the risk of inadequate disclosure by lenders, and would be hard to monitor and enforce.

As a part of this project, PIAC has designed a user-friendly guide, informed by our research and the feedback from our focus groups. It consists information on knowing payday loan rights, how costing works, what alternatives are available, and a useful list of existing help resources. We believe that a key step in mitigating the challenges relating to payday loans is to raise awareness about the existing information resources, and employ methods for simplifying the available content to make it easier to access, comprehend and apply.

2.1.4 Incomprehensible Loan Agreements:

Incomprehensible loan agreements are another factor that we find as severely limiting users' ability to know and apply their rights. Most focus group participants found a typical payday loan agreement to be unclear and hard to understand. The key reason cited was the use of technical language, often presented in fine print. Some participants viewed this as an obstacle in identifying and or voicing any concerns. In general, many participants, found these contracts confusing, and inconvenient to read. Only few attempted to read them. In effect, the current form of agreements discourages users from reading it all together.

"Who can read that fine print? The print is so tiny, like six pages... I can only speak for myself and how I felt, and I can certainly empathize with you, you know not wanting to voice up, because I, I myself hate feeling stupid and like oh the charge is there, okay, I will just go bite my tongue..."

PIAC Focus Group Participant-
ACORN

Incomprehensible loan agreements are not a new issue; however, they still pose problems for consumers, affecting their ability to identify and or contest any unclear clause in such contracts. One focus group participant mentioned that he was not sure if he could explain the problem as he did not understand it himself, he just felt something was not adding up. Another issue raised in the focus groups was about being misled as to what was owed, as many participants did not understand the terms and conditions of their contract.

Reliance on the market for self-regulation appears to have been inadequate, as also evidenced by the focus groups. Therefore, it is contended that regulatory measures are needed to allow for sufficient disclosure of contract terms. This could be achieved by requiring the payday lenders to ensure that their contracts' terms and conditions are written in clear and comprehensible language.

Another measure could be the introduction of a standard loan agreement, which would help ensure consistency and transparency. Standardizing these contracts would reduce confusion, and allow for relatively clear interpretation, application and use. It would also limit insertion of

additional requirements and obligations on borrowers. Ontario's current rules on payday loans require specific information to be included on the first page of contracts, such as the amount borrowed, number of days the loan is for, and what needs to be paid to borrow the money.¹⁶ However, low awareness about such rules mean that consumers in general are unlikely to be able to identify a contract which fails to satisfy this requirement.

When asked, many focus group participants said that they would prefer contracts written in plain and simple language, and few would like to see a summarized version of applicable terms and conditions.

That said, some focus group participants indicated that they only wanted easy access to money and were not interested in reading any documents. This suggests that even if regulatory initiatives such as clear and simply worded contracts are introduced, it is possible that merely some payday loan users may read them, and even less may alter their decision to take a payday loan. One focus group participant noted that at the point of borrowing money, one is desperate for cash and does not think or plan.

Nonetheless, we contend that simplifying contracts is an important step in the right direction, in creating awareness. It is certainly needed, to allow for users to have an opportunity to make well-informed decisions.

2.1.5- Licensed Payday lenders:

We asked the focus groups in Ontario, if they knew that the payday lenders had to be licensed. None of them seemed to be aware of the difference between unlicensed and licensed payday lenders. Some participants said that they presumed their lender to be "legit;" whereas, some said they have not checked or considered to check their payday lenders' licensing status.

"...Yeah, but that's the thing that's frustrating. There should be something that says that their language has to be plain and has to meet certain criteria, right? Because it has to be understandable to all the clients that come in, regardless if they have a grade 5-level education or a university or graduate-level... Everybody should be able to understand the same terms, and that means the language has to change, right?"

"I would say even their contract should be written out in plain English so that people are able to read it and go, "Oh, this says this. No, I don't like this." And can walk out."

"I don't read a lot of the fine print. I want a summary. I want to see... Unless... Who's going to go through, unless you're really particular?"

PIAC Focus Group Participants—Environics.

¹⁶ Consumer Protection Ontario, "Payday loan: your rights," online: <<https://www.ontario.ca/page/payday-loan-your-rights>>.

A 2015 report by the Consumers Council of Canada on “Consumer Experiences in Online Payday loans,” refers to a CPLA research, which found that nearly 60% of storefront customers were not aware of provincial licensing in 2013, despite the instore posters and contract language.¹⁷ This research was based on responses from people who had completed a payday loan, with the question phrased as “Before today, did you know that payday lending became a licensed and regulated industry...?” which may have influenced the feedback received.¹⁸ The Consumers Council’s report also found that unlicensed lenders show nearly no regulatory compliance; whereas licensed lenders show a high level of compliance with lending regulations.¹⁹

A shift towards online payday lending has been noted in a research by the Conference Board of Canada, finding that within Canada and abroad, there are many unlicensed online lenders.²⁰ It refers to the regulatory efforts made by Canadian provinces in terms of introducing a framework for minimizing harm, which is followed by licensed payday lenders, however, more needs to be done to address the increase of unlicensed online payday lenders.²¹

Based on our focus groups and the above research; we suggest that to begin with, consumers should be educated about the difference between licensed payday lenders and unlicensed; with the former required to comply with the provincial and or territories’ regulatory framework. This is necessary to allow consumers to avail the existing consumer protection measures. An easier method for implementing this could be to require payday lenders to post their license information at their stores and websites.

Finding licensed lenders:

Some provincial consumer agencies provide help tools for checking payday lenders’ licensing status. As an example, a screen shot is provided from Ontario's Ministry of Government and Consumer Services’ webpage on payday loans; providing a search tool for finding licensed lenders (figure 2-6).

¹⁷ Consumers Council of Canada, “Consumer Experiences in Online Payday loans,” (2015), online: https://www.consumerscouncil.com/site/consumers_council_of_canada/assets/pdf/ccc_online_payday_loans_web.pdf.

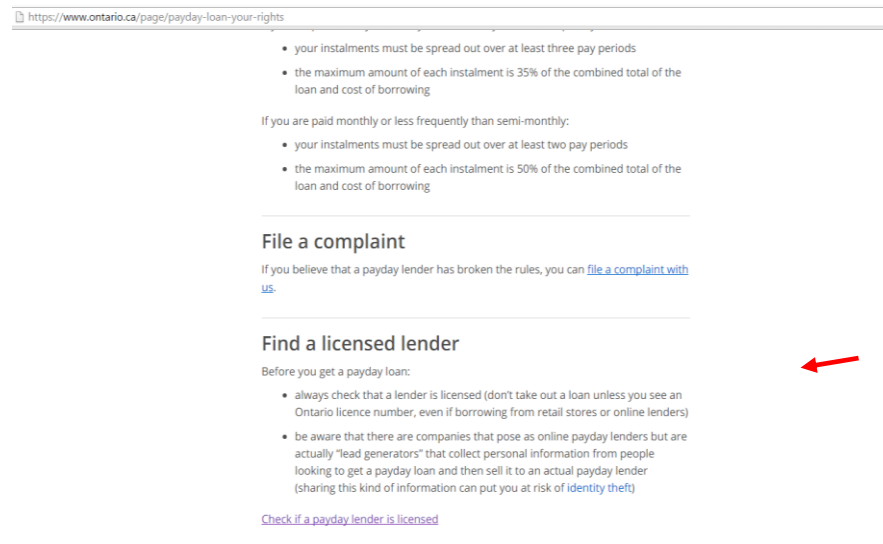
¹⁸ *Id.* at 19.

¹⁹ *Id.* at 6.

²⁰ Sabrina Bond, “Filling the Gap: Canada’s Payday Lenders,” Ottawa: The Conference Board of Canada, (written for the Canadian Consumer Finance Association) 2016.

²¹ *Id.* at 56.

Figure 2-6. Screenshot of Consumer Protection Ontario webpage- Payday loan: your rights



Source: [Consumer Protection Ontario](#) (2018)

The licensing information and status of a payday lender can be found on some provincial or government websites. That said, some provinces did not appear to have specific pages for checking businesses' licensing status. The websites which have pages dedicated to license checks were generally found to have drop down menus requiring users to enter the type of business and the name of business. For payday loans, either payday loans was required to be selected or the payday lenders' business name entered to check the lenders' licensing status. We have compiled a list of webpages based on the data available at the time of writing this report.

Table 2-2. Links for checking Payday Lenders' Licensing Status

<u>Provinces and Territories</u>	<u>Link to follow for Checking Licensing Status</u>
Alberta	Find Out If A Business Is Licensed - How It Works
British Columbia	Check a licence
Manitoba	Payday Loans [No direct page found]
New Brunswick	The Financial and Consumer Services Commission office may be contacted to check payday lenders' licensing status: Toll free number: 1 866 933-2222 Fax: 506 658-3059 info@fcnb.ca
Newfoundland Labrador	See Consumer Affairs page (No specific page found).
Northwest Territories	No specific page found.
Nova Scotia	See its webpage, Licensed Payday Lenders in Nova Scotia
Nunavut	No specific page found.
Ontario	Payday loan: your rights Search for a Licence, Registration or Appointment
Prince Edward Island	No specific page found.
Quebec	No specific page found.
Saskatchewan	Licensed Payday Lenders [Consists of a link to a list of licensed payday lenders in Saskatchewan].
Yukon	No specific page found.

2.1.6- Payday loan costs, and how it works

Feedback from our focus groups revealed that the payday loan costs often remain difficult for an average consumer to comprehend and apply. Most focus group participants stated that they did not understand how to calculate payday loans costs. Many said that they did not know how to calculate the principal amount owed coupled with the interest, charges, fees and any other costs. Some participants understood the basic rates, however, they remained unaware of the various charges and fees imposed.

When asked if they sought to inquire how costs applied, some focus group participants stated they were hesitant to inquire. Few said that the technical language and the underlying mathematics seemed overwhelming, which discouraged them from questioning the fiscal structure of these loans. Few who did inquire said that they did not receive clear answers.

One participant said he chose to not get involved in the calculations, as he felt that he would be required to pay the indicated amount anyways. Also, considering that consumers often stand at a relatively weaker bargaining position, negotiating contractual terms may not be seen as an option they can avail. Issues like these further exploit the vulnerable consumers of payday loans.

Also, the inclusion of these figures in a contract by itself appears to be inadequate in disclosing and informing consumers about the applicable costs, unless they are explained in a clear and comprehensible manner.

Generally, the focus groups indicated that they would like to know about payday loan costs; and would be willing to learn, and find out what and how interest, fees and charges apply. When asked as to what regulatory measures or practices would be helpful in this regard; some focus group participants indicated that the applicable costs should be posted at the walls of payday loan stores. We suggest that it is important to evaluate the existing measures to see how they could be improved to better inform consumers.

“It should be posted on their wall when you walk in, what you are paying. If somebody would have said, you are paying 590% interest bro, I would have turned around and walked out....”

PIAC Focus Group Participant –

“See what I think, what I think it might be is that the interest rate goes like, it fluctuates so at one point it goes down, but another point, the interest rate will pick up. So I didn’t understand that. [Okay, and you didn’t feel comfortable asking for an explanation?] Yeah, I just felt like they will tell me no, you owe it anyways. So I didn’t bother [...] because at that time I was working so I had the money, [...] but I understand that it doesn’t help people who cannot afford it, if it is an issue.”

PIAC Focus Group Participant-
ACORN, Comment in bold is of the participant.

Display Posters:

One of the most significant measure in informing consumers about costs are display posters. These could be an effective medium. The existing regulations require posters and other information resources to be provided to consumers. For example, the rules set by the Ontario's *Payday Loans Act, 2008* requires payday lenders to display a poster and also give out a flyer explaining the cost of payday loans.²² Many other provinces require such costs to be displayed at payday loan stores.

However, we believe that the efficacy of such posters might be limited because of the way they are presented. One focus group participant stated that the existing posters are vague, with the costs information often blended with other information. We suggest that every province and territory should require payday lenders to display payday loan costs information in a distinctive, easy to understand and comprehensive format, otherwise, it fails to serve its purpose. This could be in the form of distinctive and large fonts on posters, as long as the applicable costs are clearly stated.

Understanding Payday Loan Costs:

We find it important to review some basics for understanding the payday loans costs and explore some additional tools which could be introduced to provide consumers with, clear and easy to understand information.

What costs apply? To answer this, we refer to the data presented in the FCAC report, published in 2006-2007, "The Cost of Payday Loans," which provides a useful list of the most common types of costs associated with payday loans.²³ Please note that these specifics and any numbers cited here may vary; and may or may not apply. This list is meant to merely provide a general idea and provide an average consumer with the background information

*"...I know in money mart when I walk by, I looked at it and went...when you stop and look at it, they make it look enticing, oh come blend up, borrow off of us because its only and the banking is in a smaller print,...there is still using the percentage, but they are calling their an item. They are using the percentage right under it, so ... when you look at it, you are thinking, oh its percentage, 15% but they are not, unless you know it's an item, you know, which I never knew in the beginning. [So you are saying that the poster that they have to put up right now is still isn't clear enough] **it is misleading...** [Because of the dollars per 100, thing?] **Yeah, it's all in the wording.**"*

PIAC Focus Group Participant –ACORN, comment in bold is of the participant.

²² Consumer Protection Ontario, "Payday loan: your rights," online: <https://www.ontario.ca/page/payday-loan-your-rights>.

²³ Financial Consumer Agency of Canada, "The Cost of Payday Loans," online: <http://publications.gc.ca/collections/Collection/FC5-3-2006E.pdf>.

concerning the applicable interest, costs, fees, and charges.

Table 2-3. Types of Payday Loan Costs

<u>Type of Costs</u>	<u>How it applies?</u>
Interest	<p>It applies from the day a loan is taken till it is paid back in full.</p> <p>All fees and charges discussed below may be considered “interest,” pursuant to the <i>Criminal Code</i>.</p> <p>Payday lenders are not allowed to charge more than 60% interest on a loan.</p>
Administration fee/Processing fee/Convenience charges/verification fee	<p>These refer to service charges. Sometimes they include the interest charged.</p> <p>Usually ranging around \$10-\$35 for every \$100 borrowed.</p>
Brokers’ fee	This fee applies when a payday lender acts as an intermediary between a customer and undisclosed payday lender.
Collection fee	Payday lenders may charge a fee in case any outstanding debt is placed in collection. Likely to affect credit report.
Early repayment fee	Fee that may apply if the loan is paid back early.
Initial or one-time set-up fee	A onetime-set-up fee of \$10-\$15 may be charged.
Loan repayment fee/ First-party cheques cashing fee	This fee applies when the loan is not paid back in cash or before the due date. Some lenders may charge it in case a postdated cheque is deposited.
Locate fee	This applies if the mail sent by payday lender to the borrowers’ given address, is returned; or the borrowers’ phone number is disconnected.
Return fee/Non-sufficient funds (NSF) fee	If there is insufficient money in borrowers’ bank account to cover the cheque given to lender, a NSF fee may be charged.
Roll-over fee/Renewal fee/Finance charge/Additional charge/Extension fee	This fee applies when the loan is not paid in cash or before the due date, with the original loan being rolled over or extended.

Wage assignments or liens on personal property	Some lenders may require borrowers' employer to sign an agreement indicating that over all of borrowers' wages will go to the lender in case he is not able to pay. This is not allowed under law.
Insurance coverage	Some lenders may offer expensive death or disability insurance.
Electronic loan cards	Some lenders may offer electronic cards which allow access to different payday lenders' branches. These cards come with additional fees, and are not replaceable, if the card is lost so is the money left on it.

Source: FCAC, "[*The Cost of Payday Loans*](#)" (2006-2007)

We suggest that before taking a payday loan, consumers should ask upfront about all the applicable costs, and also any costs applicable in case of missed or late payments. This would give them a chance to budget and plan their finances better. Some participants supported the idea of consumers have basic awareness about costs beforehand. One participant in particular, noted that if we knew about the actual interest and costs involved, he would have never taken a payday loan.

Calculating Payday Loan Costs:

Payday loans remain the most expensive form of loan, with a maximum cost of \$15-21, for every \$100 borrowed, depending on the province.²⁴ In Ontario, effective from January 1, 2018, the maximum costs of borrowing is \$15 for every \$100 borrowed.²⁵ This means that, for a \$300 dollar loan taken for two weeks; the payday loan will cost; \$45 in payday loan.²⁶ Our research suggests that many consumers assume this to mean that for every \$100 borrowed, there will be an interest rate of 15%. However, this is not accurate; the payable interest is based on an annual percentage rate (APR). APR is an approximate measure of the amount of interest payable on a loan over the term of one year.²⁷ It is calculated as follows:²⁸

Annual Interest rate:

$$\frac{\$ \text{ Amount of Interest charged} \times 365 \text{ (days in a year)}}{\text{Amount of the Loan (Principal)} \times \text{Length of the loan (number of days)}} \times 100 \\ = \text{APR (\%)}$$

“Well...when I went to take a loan, they were calling it an item, there is no mention of interest, now on a how to user-guide for payday lenders... if you put in there you would be paying a 590% interest, I think that alone, just having armed with that knowledge, 590% interest, excuse me... I am pretty sure ninety percent of the people would walk away, who is going to pay 590% interest...you are out of your mind. But that’s what we are paying because we are thinking it’s only 21%, it’s not, it’s an item fee, it’s not even a percentage...If I would have been armed knowing that, I am going to be paying close to 600% on 200 dollars... I would never in a million years have taken that money.”

PIAC Focus Group Participant – ACORN.

²⁴ Judy Duncan, Claire Gallagher (from ACORN Canada) “Protecting Canadians from the high-interest debt trap,” *Policy Options Politiques* (20 June 2018), online: <<http://policyoptions.irpp.org/magazines/june-2018/protecting-canadians-from-the-high-interest-debt-trap/>>. This article is a part of IRPP’s (Institute for Research and Public Policy) special feature on Recalibrating Canada’s Consumer Rights Regime.

²⁵ Consumer Protection Ontario, “Payday loan: your rights,” online: <<https://www.ontario.ca/page/payday-loan-your-rights>>.

²⁶ *Ibid.*

²⁷ John Lawford, *Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and “Alternative” Banking* Public Interest Advocacy Centre, (November 2003), online: <<https://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt2.pdf>> at p 58.

²⁸ *Ibid.*

For an example, see a figure from FCAC's report which explains what a \$300 payday loan taken for 14 days would actually cost. Please note the numbers used here are only for illustration.

Figure 2-7. Example: Cost of a payday loan

Example: Cost of a payday loan

Let's find out the cost of a \$300 payday loan, taken for 14 days.

We'll assume that the lender charges you a one-time set-up fee of \$10 and a service fee of \$40, which includes interest on the loan.

Step 1: Determine how much interest you will pay. In this case, there is no interest fee. The interest is therefore \$0.

Step 2: Figure out the cost of the loan by adding together any fees that apply and the interest you will have to pay. In this case, you would add the \$10 set-up fee and the \$40 service fee together:

$$\$10 + \$40 = \$50$$

Step 3: Estimate the total annual cost of the loan, expressed as a percentage of the amount borrowed:

Annual cost of the loan (%)

$$= \frac{\text{Cost of the loan}}{\text{Amount of the loan}} \div \frac{\text{Length of the loan}}{\text{(number of days)}} \times 365 \text{ days}$$
$$= \frac{\$50}{\$300} \div 14 \text{ days} \times 365 \text{ days}$$
$$= 4.35 \text{ or approximately } 435\%$$

The total cost of the payday loan would be \$50 with an annual cost of 435 percent of the amount borrowed.

Source: FCAC, "[*The Cost of Payday Loans*](#)" (2006-2007)

A simpler but less accurate calculation method is:

\$ cost per \$100 borrowed \times maximum # of loans you could fit in a month \times 12 months (in a year) \approx APR (%).

It would be easier to understand this in the form of an example: Jane takes a 2-week loan, costing \$15 for every \$100 she borrows. What will be the interest rate on this?

- \$15 (cost per \$100 borrowed) \times 2 (maximum number of 2-week loans that could fit in a month) \times 12 (months in a year) \approx 360%. This is just to provide a quicker method for calculating the numbers. It is not meant to replace the exact calculation.

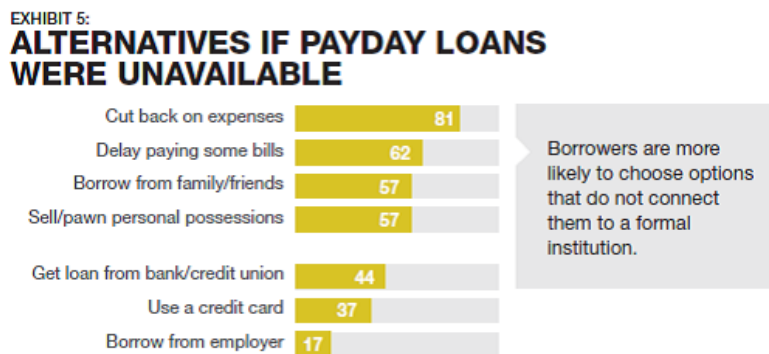
Consider Alternatives to Payday loans:

Considering, payday loans' high costs and charges, we contend it is crucial that consumers should know of any alternatives to payday loans. Some useful examples are provided in a report by FCAC, these include:²⁹

- Line of credit- this is a loan given by a financial institution to withdraw cash, up to a certain credit limit with interest charged till it is paid back in full.³⁰
- Overdraft protection—Allows money to be withdrawn even with nil balance, with interest paid on the amount taken, till the time it is repaid in full.³¹
- Cash advance on a credit card- cash given based on a credit card, on interest, with rates lower than in case of payday loans.³²

Few other options could include, borrowing from family or friends, employer or a credit union. A PEW study (2012) noted some cost cutting measures and alternatives consumers would adopt, in case payday loans were unavailable.³³ It finds that from 451 interviewed borrowers, most would cut back on expenses (81%), with other more prominent options being, delaying some bills (62%), borrowing from family/friends (57%) and selling personal possessions (57%).

Figure 2-8. Alternatives if Payday loans were unavailable



Source: [PEW Charitable Trusts Report](#) (2012)

²⁹ Financial Consumer Agency of Canada, “Payday Loans: An Expensive Way to Borrow- Mortgages and Loans” (February 2016) at p.5.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ The PEW Charitable Trusts, “Payday Lending in America: Who Borrows, Where They Borrow, and Why,” (July 2012), online:

http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pewpaydaylendingreportpdf.pdf.

Our research indicates that the need for payday loans continues to exist,³⁴ however, we believe this could be reduced if suitable alternatives are created, with increased know-how about their existence, and more risk awareness. We encourage users to continue exploring their options, rather than settle for payday loans.

Questions to Ask:

If and when consumers decide to take payday loans, we believe there are some issues they should consider. The Consumer Protection Ontario's website provides a useful list of questions to ask, and we encourage users to think about the following;³⁵

- Plan to have enough money to make loan repayments;
- Understand the costs in case the loan is overdue;
- How much will it costs to borrow;
- How much will it costs if you do not pay it back on time;
- Is the payday lender licensed; and
- Are you being charged as per the allowed limits, i.e. for Ontario it is \$15 for every \$100 borrowed.³⁶

The particulars such as the maximum costs of borrowing, time limits for cancelling a payday loan, limits on taking rollover loans, and other related details can be found within many provinces' laws and regulations. Also, the consumer protection agencies' web resources could be consulted, or the agency contacted for any inquiries.

Table 2-4. Payday Loans: Laws and Regulations

<u>Provinces and Territories</u>	<u>Applicable Laws and Regulations</u>
Alberta	Consumer Protection Act (Revised Statutes of Alberta 2000 Chapter C-26.3) Payday Loans Regulation, AR 157/2009
British Columbia	Business Practices and Consumer Protection Act (Part 6.1 – Payday Loans)

³⁴ Joe Fantauzzi, "Predatory Lending: A Survey of High Interest Alternative Financial Service Users," Canadian Centre for Policy Alternatives Ontario office, (December 2016), online: <https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2016/12/CCPA-ON%20predatory%20lending%20Dec%201.pdf>.

³⁵ Consumer Protection Ontario, Payday loan: your rights.

³⁶ *Ibid.*

	Payday Loans Regulation B.C. Reg. [includes amendments up to B.C. Reg. 231/2016, January 1, 2017]
Manitoba	<p>The Consumer Protection Act, C.C.S.M, c. 200.(referred to as the ‘Act’)</p> <ul style="list-style-type: none"> • The Consumer Protection Amendment Act (Payday Loans) S.M. 2006, c. 31. • The Consumer Protection Amendment Act (Payday Loans) S.M. 2009, c. 12. <p>The Payday Loans Regulation (Regulation 99/2007) (referred to as the ‘Reg’)</p> <ul style="list-style-type: none"> • The Payday Loans Regulation, amendment (Regulation 3/2009) • The Payday Loans Regulation, amendment (Regulation 50/2010) <p>Links to other related legislation can be found here.</p>
New Brunswick	Cost of Credit Disclosure and Payday Loans Act Regulation 2010-104: General
Newfoundland Labrador	Statutes of Newfoundland and Labrador 2016
Northwest Territories	No legislation found.
Nova Scotia	Consumer Protection Act Payday Lenders Regulations made under Section 18U of the Consumer Protection Act (N.S. Reg. 84/2015)
Nunavut	No legislation found.
Ontario	<p>Payday Loans Act, 2008, S.O. 2008, c. 9 Ontario Regulation, General, OR 98/09 [Other administrative, and Ontario Payday Lending Education Fund Corporation regulation can be accessed from here]</p>
Prince Edward Island	Payday Loans Act Payday Loans Act Regulations
Quebec	No specifics found.
Saskatchewan	The Payday Loans Act The Payday Loans Regulations
Yukon	No legislation found.

2.2- Managing Repayments and Challenges

Our research indicates that payday loan users face several challenges while making repayments. One of the more commonly cited problem is getting out of a debt cycle, generally resulting from repeat borrowing i.e. where new payday loans are taken to pay off the previous ones. We analyze issues regarding repeat borrowing, and rollovers, followed by a discussion about increased risk of insolvency; and incurring non-sufficient funds (NSF) fee.

2.2.1- Repeat borrowing, roll overs and incurring high debt:

The focus groups showed that participants have had different experiences with respect to managing repayments. Few participants shared that they were often paying off the owed amount and costs with nearly their whole paycheck. Some participants indicated that they remain trapped in a debt cycle, for over a year. Whereas, few participants stated that they had no issues as they stayed on track by making timely payments.

However, making these timely repayments for some meant taking up another payday loan to pay off the previous payday loan. When asked about the number of payday loans taken, some participants, stated they had taken on an estimate about 3, 6, 12 payday loans in a year; with one participant, Robbie from ACORN Canada, indicating that he has taken as many as 48 payday loans in a year. In general, focus groups recognized the risk of incurring high costs associated to payday loans, and that taking back to back loans can lead to debt cycles.

On a national level, we gather some insight from the FCAC's report on Market trends, which indicates that 70% of surveyed consumers repaid their payday loans

"Yeah, like, once you get into the cycle, like, you borrow it, and then it pays it back, but then you've got to borrow it again because now you're short the 250 dollars that you just paid back.

It almost becomes an addiction.

Yeah, constant cycle. There are extra charges associated. Like, you pay back a lot more than what you actually get, so you're spending money on that every pay cycle. And it's high...it's not...I mean, if you wanted the cash, you've got to pay for it, but it is a high amount of money."

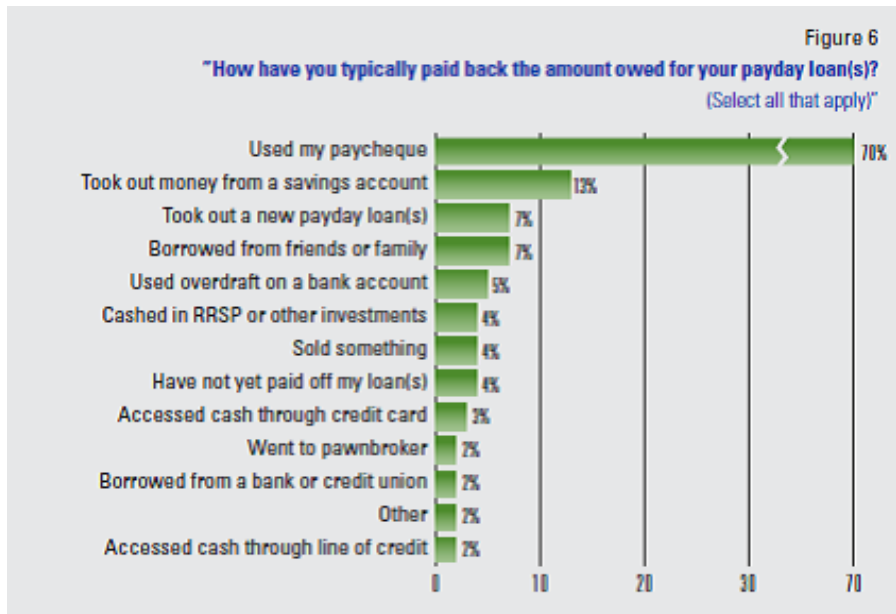
— PIAC Focus Group Participants-
Environics.

"Yeah, I was probably trapped in it for close to a year. Every two weeks, I was giving them almost my whole paycheck. I'd have like maybe 200 bucks left. I could never really catch up. Eventually, I...there's a thing called profit sharing that they gave me at my work, and that was like a couple grand, so I just went and paid it off and never reborrowed it."

PIAC Focus Group Participant-
Environics.

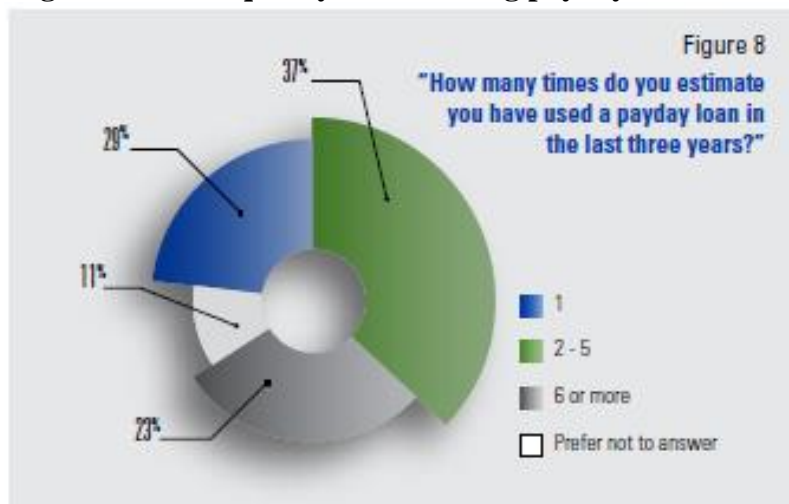
using their paycheque.³⁷ Whereas, 7% took another payday loan to pay back the amount owed.³⁸ As for the frequency of borrowing payday loans, FCAC finds that over a period of three years: 37% have taken 2 to 5 payday loans, 28% have taken 1, with 23% have taken 6 or more payday loans, and 11% preferred not to answer.

Figure 2-9. Methods adopted for repaying payday loans



Source: Financial Consumer Agency of Canada, [Payday Loans: Market Trends](#) (2016).

Figure 2-10: Frequency of borrowing payday loans



Source: Financial Consumer Agency of Canada, [Payday Loans: Market Trends](#) (2016)

³⁷ Financial Consumer Agency of Canada, "Payday Loans: Market Trends" (October 2016) at 7.

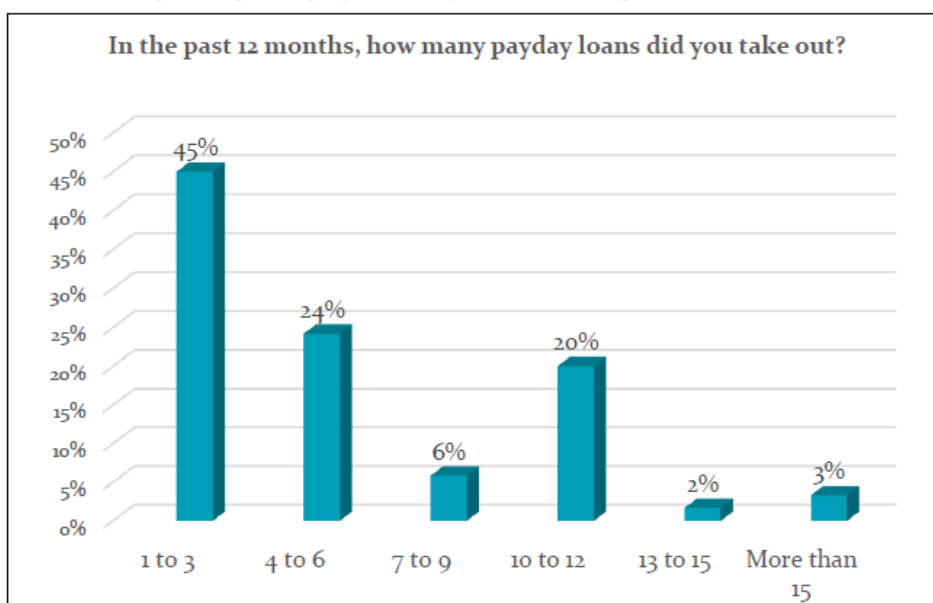
³⁸ *Ibid.*

A study on consumers' experiences with payday loans in Manitoba, based on focus groups and a survey, found that almost half of its survey respondents (45%) had received one to three payday loans in a year, with 31% found to have taken out seven or more payday loans in year.³⁹ The most common reasons for repeat use of payday loans were; not able to pay the first loan and meet current expenses; unexpected expenses; and due to emergency.⁴⁰ The less common reasons were; unexpected unemployment; and liked payday loans.⁴¹ This study's focus group participant who has been using payday loans for almost last ten years, explained that if she borrowed \$700, two weeks later, she has to pay it back, but then she has rent and other ancillary expenses to cover, leading to borrowing again.⁴² She notes:

"If you borrowing money, say you borrow \$700....Well now 2 weeks later you have to pay 700 back. But it might fall to your rent payment coming up, if you pay the \$700 back, you just got no money to pay the rent, or money for gas or anything else. So you might have to re-borrow maybe 400 back just to tie you over. So you know the amount might be little overwhelming to pay them back in one pay cheque as opposed to dragging over two." - Interview Participant 7, on-line and in-person repeat borrower.⁴³

Figure 2-11. Manitoba Survey on Use of payday loans over a 12-month period

Chart 1.13 Survey Participant Payday Loan Tally over a 12 month period, N=120



Source: [Manitoba Consumers Experience's with Payday Loans Research Study](#) (2016)

³⁹Zoe St. Aubin, "Manitoba Consumers Experience's with Payday Loans Research Study," conducted on behalf of the Public Interest Law Centre, (March 3, 2016), online: http://www.pubmanitoba.ca/v1/payday_loan_review2016/cac_8_tab_6a_field_research_report_z_aubin.pdf at p.14.

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² Zoe St. Aubin, "Manitoba Consumers Experience's with Payday Loans Research Study," (2016) at p.15-16.

⁴³ *Ibid.*

The cited evidence suggests consumers in general continue to experience difficulties in repaying payday loans, and remain in debt, particularly in case of repeat borrowing where they continue paying high interest and other charges. This quickly exceeds the initial value of the loan in order to avoid defaulting.⁴⁴ As noted by PIAC earlier, payday lenders promote and operate on a cycle of debt business, creating loan structures that require the servicing of debt, rather than responsible lending with the primary goal of repayment of the principle lend.⁴⁵

A 2013 report by Susan Montezemelo indicates that these predatory lending practices create a debt treadmill for borrowers, making them worse off than they were before.⁴⁶ Montezemelo finds this arising from five payday lending practices: lack of underwriting for affordability, high fees, short-term due date, single balloon payment and collateral in the form of a post-dated check or access to bank account; with the consequence of not paying, results in the check being used to get the due payment, and with the borrowers running out of money by the end of the month, and often taking out more payday loans, creating a likelihood of repeat borrowing, and a long-term debt cycle.⁴⁷

A recent survey by ACORN Canada indicated among other findings, that the 37% of individuals experiencing debt crisis have debt with Money Mart, and 22% have debt with Cash Money.⁴⁸ It is quite likely that without regulatory safeguards and lack of alternatives, more people will continue to take loans and fall in such debt traps to meet their financial needs.

Judy Duncan and Claire Gallagher, in an article for the Institute for Research on Public Policy, share the experience of Robbie McCall; an Ottawa ACORN member, living on social housing, whose payday loan repayment cycle began ten years ago.⁴⁹ They note that at the time of borrowing, it was not made clear to Robbie that the interest on his loan was being calculated bi-weekly, and he was paying about 500 percent, not 20 percent as appeared to be advertised.⁵⁰ McCall went into a vicious cycle, when he started taking new payday loans to make repayments on previous payday loans.⁵¹ It took McCall three years to pay off \$1400 with the interest on it being more than \$10,000.⁵² Speaking to *CBC News*, McCall shared that he is college educated,

⁴⁴ Andrew Kitching, and Sheena Starky, "Payday Loan Companies in Canada: Determining the Public Interest" *Library of Parliament* (26 January 2006), online: <<https://lop.parl.ca/Content/LOP/ResearchPublications/prb0581-e.html>>.

⁴⁵ Jonathan Bishop, John Lawford and Cynthia Khoo, "Strengthening Financial Consumer Protection" A Submission from the Public Interest Advocacy Centre (August 2015) at p.10.

⁴⁶ Susanna Montezemolo, "Payday Lending Abuses and Predatory Practices," Center for Responsible Lending (2013), online: <<http://www.responsiblelending.org/state-of-lending/reports/10-Payday-Loans.pdf>>. at p2.

⁴⁷ *Ibid.*

⁴⁸ ACORN Canada, "High Interest Debt Infographic," online: <<https://acorncanada.org/high-interest-debt-infographic>>.

⁴⁹ Judy Duncan, Claire Gallagher "Protecting Canadians from the high-interest debt trap," (2018).

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

and believed that he knew what he was getting into, however, “[I]tumbled out of control so fast.”⁵³

One focus group expressed concern about advertisements targeting low-income consumers, especially around or near the end of the month, when these consumers need money. This suggests that advertisements could be a potential cause for increased or continued borrowing, among other reasons.

Rollover loans is another problem causing high consumer debt. Rollover loans means renewing a loan or rolling it instead of paying it in full by the due date, in exchange for a fee.⁵⁴ This fee does not reduce the principal owed, it just delays the repayment schedule.⁵⁵ In other words, the payday loan borrower keeps on paying the interest. Nick Bourke, Director of consumer finance, Pew Charitable Trust, told CNCB, that it is normal to get caught in a payday loan as this is how the business model works.⁵⁶ Bourke states: “A lender isn’t profitable until the customer has renewed or re-borrowed the loan somewhere between four and eight times.”⁵⁷

Even though, rollovers have been banned from several provinces in Canada.⁵⁸ However, presently there is no system in place to keep a check on borrowers’ who can go to another payday lender to take a new loan, while their previous ones remain unpaid. This has become a standard practice,⁵⁹ keeping many payday loan borrowers in a cycle of debt; and aggravating their financial exploitation.

“They target low income, they target social housing, they target us... The 20th, around the 20th of any given month, there are fliers that go around different sections of the city, [Okay, so they heavily advertise around at the dates people are going to get cheques] or right before they know they are broke, well I am getting money next week, and then the cycle starts, you know.”

-PIAC Focus Group Participant-ACORN. Comment in bold is of the participant.

⁵³ Karla Hilton, “How a \$1,400 payday loan ballooned to more than \$10K” *CBC News* (5 October 2017), online: <<https://www.cbc.ca/news/canada/ottawa/payday-loans-interest-causeway-lenders-1.4328211>>.

⁵⁴ Consumer Financial Protection Bureau, “What does it mean to renew or roll over a payday loan?,” online: <<https://www.consumerfinance.gov/ask-cfpb/what-does-it-mean-to-renew-or-roll-over-a-payday-loan-en-1573/>>.

⁵⁵ *Ibid.*

⁵⁶ Megan Leonhardt, “Here's why 1 in 3 college-age Americans consider payday loans with interest rates of 400%,” *CNBC Make It* (1 August 2018), online: <<https://www.cnn.com/2018/08/01/1-in-3-college-age-americans-consider-payday-loans.html>>.

⁵⁷ *Ibid.*

⁵⁸ Financial Consumer Agency of Canada, “Payday loans,” online: <<https://www.canada.ca/en/financial-consumer-agency/services/loans/payday-loans.html>>.

⁵⁹ Judy Duncan, Claire Gallagher “Protecting Canadians from the high-interest debt trap,” (2018).

PIAC recommended mandatory waiting periods between payday loans as a solution since 2002, starting with its report, *Fringe Lending and “Alternative” Banking: The Consumer Experience*.⁶⁰ However, we believe that in the absence of consumer database, the waiting period on its own cannot resolve the problem of repeat borrowing, since there is no system to oversee these lending practices to stop borrowers from going to other payday lenders.

Taking a new payday loan to pay off the previous one, often triggers a burdensome debt cycle, adding significant financial stress on several consumers. We suggest that a provincially maintained user database is needed to monitor these borrowing practices and restrict reborrowing. ACORN Canada has also been asking for the creation of a user real-time database to oversee and avoid rollover loans.⁶¹ That said, this database should not be used for surveilling borrowers, but to create positive credit histories,⁶² and act as a filter limiting back-to-back borrowing. Additionally, this database could be subject to annual reviews for addressing any gaps. We also suggest that regulatory measures should be introduced to monitor and reduce targeted advertisements, as a measure to discourage borrowing and repeat borrowing.

We aimed to study the common borrowing and repeat borrowing trends in different provinces and territories, however, this task proved to be challenging due to lack of easily available data on the number and frequency of loans taken within a province, frequency of defaulters, and repeat borrowers. We suggest the user database should be supplemented with data concerning payday loan usage, including repeat borrowing and defaults, to raise consumer awareness and allow regulatory authorities to better understand these issues, and establish effective mitigating regimes.

2.2.2- Increased Risk of Insolvency:

A poll conducted in 2016, on behalf of Hoyes, Michalos & Associates Inc., a licensed Insolvency Trustee firm (“the firm”) in Ontario, found that more than half of its survey respondents took out more than one loan in a year, and of those 45% indicated that their debt load increased after taking a payday loan.⁶³ In 2017, the firm saw an increase in the use of payday loans among heavily indebted Ontarians.⁶⁴ It found that 3 in 10 (31%) of insolvencies in Ontario in 2017

⁶⁰ Sue Lott and Michael Grant, *Fringe Lending and “Alternative” Banking: The Consumer Experience*. Public Interest Advocacy Centre (November 2002), online:

<<http://www.piac.ca/wpcontent/uploads/2014/11/fringelendingrpt1.pdf>>.

⁶¹ Judy Duncan, Claire Gallagher “Protecting Canadians from the high-interest debt trap,” (2018).

⁶² John Lawford, *Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and “Alternative” Banking*, Public Interest Advocacy Centre (November 2003), online:

<<https://www.piac.ca/wp-content/uploads/2014/11/fringelendingrpt2.pdf>> at p.7.

⁶³ Sunny Freeman, “Payday loans a last resort for more than half of users: survey,” *Toronto Star* (24 May 2016), online: <<https://www.thestar.com/business/2016/05/24/payday-loans-a-last-resort-for-more-than-half-of-users-survey.html>>.

⁶⁴ Hoyes Michalos, “Payday Loan Use Among Heavily Indebted Borrowers on the Rise,” (12 February 2018), online: <<https://www.hoyes.com/blog/payday-loan-use-among-heavily-indebted-borrowers-on-the-rise/>>.

involved payday loans, rising from 27% in 2016.⁶⁵ Ted Michalos from the firm, states this is “[t]he sixth consecutive year-over-year increase” since they started studying payday loan’s impact on consumer insolvencies in Ontario.⁶⁶

The firm found that the insolvent debtors are taking fewer but larger loans.⁶⁷ With the average payday loan size in 2017 being \$1,095, which is an increase of 12.4% from \$974 in 2016.⁶⁸ It found that 9% loans were for \$2,500, moving up from 6% in 2016.⁶⁹ The average insolvent payday loan borrower was found to owe \$3,464 in payday loans.⁷⁰ The study found that debtors took payday loans to keep up with their existing debt repayments, which usually turns into a cycle of borrowing leading to multiple payday loans.⁷¹ The study revealed that younger debtors are much more likely to use payday loans than older debtors, however, their average loan size is much smaller.⁷² It notes that: “[a]lmost 1 in 2 (45%) insolvencies for those aged 18-29 involve payday loans.”⁷³ Debtors aged 30-59, took out the most number of payday loans, while seniors loan size remained at an average of \$1,568, with the highest overall payday loan debt at \$4,377.⁷⁴

The risk of younger debtors borrowing payday loans appears to be rising in the U.S. as well. CNBC reports that 1-3 college-age Americans consider taking a payday loan with the interest rate of 400% because of a lack of other alternatives.⁷⁵ In a survey of approximately 3700 Americans, conducted by CNBC Make it and Morning Consult, around 40% of those aged 18-21 years, said that they strongly contemplate taking a payday loan.⁷⁶ These loans remain an attractive option for young borrowers who do not have resources to provide as collateral or a credit history.⁷⁷

The increasing risk of insolvency for heavily indebted borrowers, including young borrowers is alarming, which calls for regulatory attention to limit the use of such loans that can have a drastic impact, particularly, on indebted borrowers’ financial obligations. In this regard, we believe it would be useful to consider some suggestions made by the firm, such as; providing consumers

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Hoyes Michalos, “Joe Debtor Study – Who’s Filing Insolvency & Why » How Are Insolvent Borrowers Using Payday Loans?” online: <<https://www.hoyes.com/press/joe-debtor/how-are-insolvent-borrowers-using-payday-loans/>>.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ Megan Leonhardt, “Here's why 1 in 3 college-age Americans consider payday loans with interest rates of 400%,” *CNBC Make It* (1 August 2018).

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

with the relevant information to make well-informed decisions;⁷⁸ advertising the annual percent rate cost of borrowing, rather than only the “cost per \$100;”⁷⁹ reporting all short-term loans to credit reporting agencies to make lenders aware about borrowers’ existing payday loans;⁸⁰ and helping out overly indebted borrowers with resources on debt management.⁸¹

We believe that creating a filter on who can take payday loans and or reborrow, based on debt management and previous repayments can be effective in reducing the use of payday loans, which may encourage users to more actively consider using alternative sources of funding, better financial planning or consider credit counseling. That said, there is a need to create more alternative sources of funding to cater to the financial needs of those who lack credit, and continue to rely on payday lending to meet their financial demands.

2.2.3- Incurring Non-sufficient funds (NSF) fees:

Another issue raised during our focus groups was incurring of non-sufficient funds (NSF) fee. NSF is a fee applied on a bank account that does not have enough money to cover transactions, it also applies when the cheque presented is not covered by the bank account’s balance.⁸²

We asked the focus groups if they had any experiences with NSF fees, particularly, when their payday lender was given authorization to take out money from their bank account, and the payday lender tried to withdraw it early or before the money was in the account, causing the bank to impose a NSF fee. We again received varied responses. Some focus group participants stated that were charged NSF fees, when the payday withdrew the money earlier than the due date or before it was deposited. One participant received as many as 18 NSFs. Another participant got 5 NSFs.

One participant shared that the NSF fee arose because a cheque for the 28th was taken out on the 26th of the month. Few participants indicated that they did not authorize

“Yeah. Or the wrong dates. So, they withdrew money before I had it. So, it caused me to have NSF fees.”

“So, altogether, I had 18 NSFs. I had quite a bit of money in the bank because I got ahead, and all of a sudden, I got...why do I have 4 dollars? 1900 dollars in the bank, and I had 4 dollars, and I’m like, are you kidding? But the bank actually straightened it out. And they tried three different times, and they tried to take it out under the name Money Mart, and then the next month, they tried to take it out under The Money Mart.”

*PIAC Focus Group
Participants-Environics*

⁷⁸ Hoyes Michalos, “Payday Loans and Bankruptcy,” online: <<https://www.hoyes.com/press/joe-debtor/how-are-insolvent-borrowers-using-payday-loans/>>.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² Investopedia, “Non-Sufficient Funds (NSF),” online: <<https://www.investopedia.com/terms/n/nsf.asp>>.

prepayment from their accounts, they paid in person. Few participants said they have not received any NSF fee.

Some participants noted that they were able to eventually resolve this issue by raising the problem with the payday lender. However, many participants said they had to give detailed explanations in order to get the charge reversed. Another participant stated that if she had not spoken up, she would not have been paid back.

We suggest that the amount of NSF fees should be reduced to mitigate the fees imposed. We have earlier advocated for limiting it to a modest amount, representing the real cost of administration.⁸³ We continue to advocate for that; and suggest that there should be explicit limits on the number of times a lender can re-perform withdrawal in one day and in a week to reduce the chances of users getting NSF fees.

"No, they acted like I was mentally incompetent, like, 'We didn't do it.' I said, 'Well, I wrote the cheque for the 28th. You took it out on the 26th. I got an NSF because the money wasn't there. And then I had to go and try to arrange it with the bank, and the bank wanted me to get you to pay, but you know, you didn't want to pay.' I said, 'It's actually not between me and the bank. It's between you and the bank.' They said, 'Oh.' I said, 'So, what do I get for all the legwork, the three or four hours that it took me to straighten out that.' And they said, 'Oh, I'm terribly sorry.' I said, 'You can't be terribly and sorry at the same time.'"

"Yeah, I've had one of those. About five times. I went to my bank and told them, like, this isn't supposed to come out even until this time. So, the bank said, 'Oh, you're not going to get charged the NSF.' I went to them, and I said, 'Look, you guys are stupid enough to cash the thing before I have my cheque in, then you're going to suck up the NSF, you know? Too bad.' And they cancelled both of them on both ends, my bank and them."

PIAC Focus Group Participants-
Environics

⁸³ John Lawford, *Pragmatic Solutions to Payday Lending: Regulating Fringe Lending and "Alternative" Banking* Public Interest Advocacy Centre, (November 2003) at p.6.

2.3- Debt Collection Issues

The focus groups show that debt collection practices remain another significant concern. One focus group participant shared that he is called by the collecting agencies around five times a day, and five days a week. Another participant shared his distress when the collection agency contacted his family.

Most participants seemed to be unsure about their rights, in relation to collection matters. Generally, they lacked awareness about the regulations limiting the frequency, time and whom can be contacted by the collecting agency. One participant from the focus group held in Toronto, shared that she was contacted as early as seven in the morning, or nine o'clock at night. The regulatory measures and limits on debt collection are laid down by the provinces. This means that the precise permissible time of contact, limits as to the medium and frequency of contact, and who can be contacted might vary in provinces, among other limitations.

"...Oh and they called my brother, and my sister, [...] I was a single dad, and I had medical issues at that time, ... I didn't want my family necessarily knowing that I couldn't take care of my household [...]. I get behind, a week, on these payday lenders, five phone calls a day, at the end of the week, they call my brother and my sister to tell them that I was delinquent on a 300 dollar loan ... that was a bit over the top."

PIAC Focus Group Participant-
ACORN

In Ontario, as per the rules for payday lenders, lenders cannot contact borrowers more than three times a week or on holidays, they cannot contact family members, spouse, household members, relatives, friends, neighbors and acquaintances at any time, process post-dated cheque or pre-authorized debit more than once, use threatening language or place unreasonable pressure.⁸⁴ Also, before making contact, a collecting agency must send a notice, wait for a period of 6 days, after that they can contact over the phone or in person.⁸⁵ Also, they cannot call on a holiday or on a Sunday, except between 1-5 pm or any other day between 9 pm and 7 am.⁸⁶ Generally, a collecting agency cannot contact debtor's family member, a relative, neighbour or friend except to get the debtor's address and telephone number, unless authorized otherwise.⁸⁷

We suggest that consumer awareness measures are needed to educate users about existing debt collection regulations. It is necessary to let them know when, how and whom can be contacted

⁸⁴ Consumer Protection Ontario, "Payday loan: your rights," online: <https://www.ontario.ca/page/payday-loan-your-rights>.

⁸⁵ Consumer Protection Ontario, "Collection agency: your rights," online: <https://www.ontario.ca/page/collection-agency-your-rights>.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

by the collecting agency in case of any default. Information about these regulations can be found on the provincial agencies' websites. Many agencies have separate pages allocated to debt collection issues. We have included a list of some available resources.

Table 2-5: Information Resources on Debt Collection

<u>Provinces and Territories</u>	<u>Resources</u>
Alberta	Bill Collection and Debt Repayment Information specific to payday lending and debt collection is available at: Payday Lending
British Columbia	Debt collection
Manitoba	Collection Practices – your rights and responsibilities Collection Practices
New Brunswick	Collection Agencies
Newfoundland Labrador	Collection Agency Requirements
Northwest Territories	No specific page found
Nova Scotia	Collectors
Nunavut	No specific page found, some information on payday loans includes reference to collecting agencies.
Ontario	Collection agency: your rights Some information is available at: Payday loan: your rights
Prince Edward Island	Collection Agencies - Rights and Responsibilities of Consumers
Quebec	Collection agencies: prohibited practices
Saskatchewan	Debt collectors
Yukon	[Tip sheet] for consumers dealing with collection agencies

III. Existing complaint processes and dispute resolution mechanisms to oversee payday loan complaints, disputes, and violations

Introduction:

In this section, we review the existing complaint processes and dispute resolution mechanisms available to consumers; and analyze the prevailing gaps and challenges. We focus on the province of Ontario, with necessary reference drawn to other provinces and territories. We particularly assess the limiting factors affecting the adoption and efficacy of the existing recourse mechanisms. We received limited evidence from the focus groups as to the use and efficacy of existing resources because of lack of awareness, therefore, most of this research and analysis is based on secondary resources, informed by our stakeholder consultations.

3.1- Complaining to the Payday lender

We asked the focus groups if they had any experience concerning complaining to the payday lenders, if so what was the issue, and outcome. Few participants recalled that they approached their payday lenders to sort out some issues, and some have been able to resolve them. Most of these issues pertained to the charging of NSF fees, as discussed earlier. One participant said that he talked to his payday lender about an unexpected bill, arising at a time when repayment was due; he shared that he was able to successfully resolve it with no extra fee. In particular, focus groups seemed most concerned about the applicable costs, and some expressed displeasure in paying more costs than expected.

In general, many participants seemed to be aware about the option to complain and or approach the lender concerning any payday loan issue, dispute or violation. The discussion in our focus groups suggested that some participants may not approach their lender because they believe it is not worth the hassle, or some may feel intimidated.

In general, few participants approached their lender to discuss any issue. Our secondary research also revealed a low volume of payday loan complaints. We understand that this could be because

“And has anybody approached the payday lender to fix the problem?”

“I had a payment due, and an unexpected bill came up that I had to take care of ...so instead of just ignoring it or freaking out, I just went, went directly to the lender, at the location and I spoke to them about what was going on... so they arranged it... [So they were happy to do that?] And not raise the interest rate or give me an extra fee.”

PIAC Focus Group Participant-ACORN, comment in bold is of the participant.

of lack of awareness. Many consumers do not know their rights to be in position to identify, and argue about any problems. Also, as indicated by some focus group participants that they take these loans in crisis, this may affect their choices and behavior when it comes to complaining to their payday lender.

We believe that complaining to the payday lender is an important option, however there are some gaps, which merit attention. Firstly, the lack of transparency of businesses' internal procedures limits the extent to which these could be assessed. Secondly, it remains challenging to evaluate whether the remedies provided are just and impartial, as presently, there is no easily accessible public data to measure what kind of issues have been complained about, against whom, how have companies responded and what was the outcome of such complaints. Thirdly, consumers who often stand at a relatively weaker bargaining position may feel restrained or apprehensive about approaching the business.

We contend that the overall lack of transparency and accountability restricts the extent to which complaining to the payday lenders can adequately protect the vulnerable users of payday loans. The utility of this process could be increased by regulators considering introduction of annual transparency reports.

3.2- Small Claims court

When asked if anyone from the focus groups had gone to the small claims court to complain about payday loan issues. Unsurprisingly, none of our participants seemed to have availed this option for payday loans because of its high costs and time involved. Though, some participants have used small claims court in relation to other matters. Some participants found it futile to approach the small claims court if the business would have a lawyer to argue the case. One participant said that if they do file a case, they would most likely hear that their claim has no merit, because the owed money is in fine print, which many users do not read.

"I don't know who would really go for them? What, the employee that gave you the loan?"

Who would you even mark on the thing as the defendant? In reality, if they have a lawyer, they're going to be far better than us..."

*PIAC Focus Group Participant-
Envionics*

Few participants indicated that they do not know much about small claims court, and some have never thought about filing a case with the small claims court. One participant did not know if it costs money to file a claim, and another participant suggested that it is worth approaching for only for a big amount.

Our literary research indicates that small claims court have seemed to be an ineffectual method for consumers' access to justice, particularly for low income consumers. One journal article notes:

“Early on the small claims court reaped high praise and was considered the one of the most far reaching and effective forms of legal reform, but critics soon turned their acclaim into harsh criticism. In fact, one scholar remarked that “to encourage use of the small claims court is to encourage disappointment and despair.” The current criticism of small claims courts falls into three categories: lack of access, improper use by business, and insufficient protection of the poor.

Studies concerning accessibility of small claims courts accuse the courts of being either “unavailable, unusable, or invisible.” Lack of access arises when the hours of the court are incompatible with the normal working hours of the average consumer or when the consumer doesn't even know the court exists. A New York study of consumers in low-income housing projects found that few “poor” consumers had actual knowledge of the small claims court.

The second criticism is that business rather than the intended individual consumer utilizes the court as a “judicial collection agency. Debt-collection use by business does not serve the average consumer; rather, it converts the process into a court of debt collectors, credit stores, corporate defendants, and insurance companies. This use of the court causes several problems: perceptions of the court as a “business court” discourages consumers from pursuing claims in such a forum, heavy use by business crowds the court docket, and most importantly, the court is not fulfilling its intended purpose of providing individuals access to speedy, informal dispute resolution.

For poor consumers, the small claims court is far from being a viable alternative. [...]”⁸⁸
[Footnotes within this quote are omitted].

Justin Malbon (2012) views the high costs associated to accessing courts as a denial of justice. He notes:

The cost of access to the courts is a significant issue. Lord Woolf noted in his *Access to Justice* report that ‘the problem of cost [of litigation] is the most serious problem besetting our litigation system’ and that ‘the unaffordable cost of litigation constitutes a denial of access to justice.’
[Footnotes within this quote are omitted].⁸⁹

We believe small claims remain a costly, time-consuming and burdensome medium to approach for making payday loan complaints, which in general might be for smaller amounts. In Ontario, the amount limit for bringing an in small claims court is \$25,000/- or less.⁹⁰ Its process starts with facts collection, gathering evidence and choosing a filing option. A fee has to be paid for filing a claim, which for infrequent claimants is \$95, and a frequent claimant will need to pay

⁸⁸ Editorial Comment, “Consumer Dispute Resolution in Missouri: Missouri's Need for a True Consumer Ombudsman” (1992) 1992:1 J. Disp. Resol. 67, available at: <https://scholarship.law.missouri.edu/jdr/vol1992/iss1/6/> at p.78-79.

⁸⁹ Justin Malbon, “Access to Justice for Small Amount Claims in the Consumer Marketplace: Lessons from Australia” (May 12, 2012), available at SSRN: <https://ssrn.com/abstract=2056647> at p 331.

⁹⁰ Ontario, Ministry of the Attorney General, “Small Claims Court,” online: <https://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/>.

\$200.⁹¹ These fees is exclusive of any other costs and expenses which may arise.⁹² The procedure may involve several steps and other costs for matters, such as filing a motion, filing for a notice of motion for an assessment, among others.⁹³ In Nova Scotia, the amount limit for suing in small claims court is \$25,000/- or less; and the filing fee starts \$99.70.⁹⁴

Based on our research, we contend that the small claims court have a limited role to play if any, in case of dealing with payday loan issues, violations and disputes; as they do not provide a user-friendly, and readily accessible medium for consumers to resolve disputes. It particularly remains challenging to avail for indebted and or low-income consumers who do not have the resources, knowledge and skills to file such cases, and cannot generally afford hiring a lawyer.

3.3- Existing Recourse Mechanisms and their Limitations: Provincial Consumer Protection Offices

Many focus group participants did not know that they could complain about payday loan issues to the provincial consumer protection offices. Few participants knew about these agencies, but did not know about their role or work regarding payday loans. Participants were generally receptive of approaching the consumer protection agencies for complaining about their payday loan issues, if they knew about it. Whereas, few participants remained skeptical of such offices, questioning the kind of process and outcome it would entail. We received limited feedback to determine how comfortable will the participants be in bringing their issues to the attention of such offices, and what procedural challenges need to be addressed. We strongly recommend that regulatory measures should be introduced for increased awareness about these agencies' and their complaint processes. We now study the current complaint processes of some provinces.

3.3.1- Ontario:

The Ministry of Government and Consumer Services administers and enforces Consumer Protection Ontario program through the ministry's Consumer Services Operations Division.⁹⁵ This program ensures that businesses act fairly and in accordance with law, including payday lenders.⁹⁶

⁹¹ *Ibid.*

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Small Claims Court Forms and Procedures Regulations made under Section 33 of the Small Claims Court Act R.S.N.S. 1989, c. 430, online: <<https://novascotia.ca/just/regulations/regs/sccfrmpr.htm>>.

⁹⁵ Ministry of Government and Consumer Services, "Complaint Notice: Payday Loans Act," online: <https://files.ontario.ca/cpo_0008-17_cpo_notices_payday_loans.pdf>.

⁹⁶ *Ibid.*

The ministry allows consumers to file a complaint with them against businesses acting unfairly or in breach of the applicable law. A general complaint form is available at their website.⁹⁷ Under the current complaint process, the ministry requires payday loan users to start by complaining to the business in writing, and preferably, include ministry's consumer complaint notice for payday lenders, which is available at their website,⁹⁸ and send this as registered mail for record purposes.⁹⁹ If the issue cannot be resolved at this stage, a complaint can be submitted to the Ministry, online or on paper. The ministry recommends providing supporting documents with a complaint, for investigating the matter. In the absence of supporting documents, the ministry may not act on it.¹⁰⁰

Figure 3-1. Screenshot- Ministry of Government and Consumer Services, Consumer Complaint Form

Consumer Complaint

Before you submit a complaint to the ministry

Please take a moment to review the guide for submitting a complaint to the Ministry at <https://www.ontario.ca/page/filing-consumer-complaint>.

If you have questions about your rights under the *Consumer Protection Act* or other laws under the ministry, contact us at:

Telephone: 1-800-889-9768 or 416-326-8800
TTY: 1-877-666-6545 or 416-229-6086

Submitting a complaint to the ministry

1. Fill in **all the details** in this form. Please note that there are **mandatory fields** that must be completed which are indicated by an asterisk (*).

2. We will review your form to see how we can help you. This will include checking to determine if the business may have violated Ontario consumer protection laws and if there has been a pattern of complaints against the business. The information you submit is also used to help us identify other possible contraventions of consumer protection legislation within a specific business sector.

3. We will let you know when we have received your complaint. If your submission indicates that a business may have contravened consumer protection legislation administered by the Ministry, and we determine that mediation of your complaint is appropriate, we will contact you regarding next steps. If your complaint is better addressed by another office, we may direct you to the appropriate entity.

Case file number _____ (leave blank if you have not filed a complaint with the ministry)

Consumer Information

1. Your Name and Mailing Address

Source-Ministry of Government and Consumer Services, [Consumer Complaint Form](#).

During the focus groups in Ontario, we showed the ministry's complaint form, and asked if anyone had seen it before. Only one participant recalled coming across it before. The ministry's form in general, requires users to provide; their name, mailing address, business's information i.e. its name, address and contact details, details about the complaint, including details about any prior complaint letter written to the business, date of the agreement, amount in dispute, and it

⁹⁷ Ministry of Government and Consumer Services, "Consumer Complaint [Form]," online: <https://www.consumerbeware.mgs.gov.on.ca/eseach/compform/english/complaint.jsp>.

⁹⁸ Consumer Protection Ontario, "Filing a consumer complaint," online: <https://www.ontario.ca/page/filing-consumer-complaint#payday-lender>.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

also provides an option to provide any additional details about the complaint as applicable, (question 10 of the form) in 500 words or less.¹⁰¹ The supporting documents generally required under this form are; a copy of the letter to the business, response letter from the business, a contract if applicable and an invoice.¹⁰²

Additionally, for payday loan issues, a copy of the contract, a record of payments made to date, and copies of bank statements may be required.¹⁰³ We asked the focus groups, if they would like to have a specific form for payday loan issues, possibly simpler and shorter than the available one. Many participants seemed to support the idea of a separate form, provided it was readily accessible and easy to complete.

We received some data from the ministry's Consumer Services Operations Division in June 2017, regarding payday loan usage, issues and complaints in Ontario. The given data indicates that the ministry received 391 inquiries, incidents and complaints from consumers regarding payday loans in 2016. The total disputed dollar value of related complaints in 2016 was \$8,652.¹⁰⁴ The most common issues complained about in 2015-2016, were allegations about; business practices conduct, billing disputes and harassment.¹⁰⁵ In 2014, the most common issues complained about were business practices conduct, billing disputes and cost of borrowing.

Table 3-1. Data on Payday loans issues and complaints in Ontario

<u>Type of Information</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>Total</u>
Total number of inquiries, incidents and complaints related to payday loans	505	381	391	1,277
Total disputed dollar value of inquiries, incidents and complaints related to payday loans	\$15,482	\$8,595	\$8,652	\$32, 729

Source: Data provided to PIAC by the Consumer Services Operations Division in June 2017

¹⁰¹ Ministry of Government and Consumer Services, "Consumer Complaint [Form]," online: <<https://www.consumerbeware.mgs.gov.on.ca/eseach/compform/english/complaint.jsp>>.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ Data provided to PIAC by the Ministry's Consumer Services Operations Division in June 2017.

¹⁰⁵ *Ibid.*

The ministry's Loan Activity Reports (LAR's) provide aggregate general lending and borrowing information.¹⁰⁶ The data cited here was provided to the ministry by 750 payday lenders regarding payday loan activity from July 1, to December 31, 2015.¹⁰⁷ The given data indicates the volume and approximate value of loans.¹⁰⁸ The average loan term for these loans was 16 days i.e. the amount of time between when the loan was first issued and repaid.¹⁰⁹ The ministry notes that this reported data only covers a six-month period, and that the number of individual borrowers is unlikely to represent the number of borrowers in Ontario, as it is based on each lender reporting individual borrowers using their services, which may include those who have used their service twice.¹¹⁰

Table 3-2. Data on Payday loans taken in Ontario (July 1- December 31, 2015)

	<u>In-person</u>	<u>Remote</u>	<u>Total</u>
Number of Loans	1,750, 556	218,363	1,968,919
Value of Loans	\$853M	\$114M	\$967M
Number of Individual Borrowers	412,633	58,313	470,946

Source: Data provided to PIAC by the Consumer Services Operations Division in June 2017

The Office of the Ombudsman of Ontario indicated in response to our consultation, that for a period of April 1, 2013 to March 31, 2018, they received 19 complaints.¹¹¹ These complaints were referred by the Ombudsman office to Consumer Protection Ontario, as Ombudsman office does not have jurisdiction over private companies.¹¹² These complaints pertained to; payday loan company's best practices in general; interest charged; difficulty in arranging payment plans, denial of payment plan, and the company being unreachable.¹¹³ The Ombudsman office stated that if the consumers are dissatisfied with the outcome of their contact with the Consumer Protection Ontario, and its internal complaint process, then the Ombudsman can be contacted.¹¹⁴ The Ombudsman office reviews the administrative processes and decisions of the Consumer Protection Ontario.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Office of the Ombudsman of Ontario, Response to PIAC's Stakeholder Questionnaire, dated July 12, 2018.

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

Considering the above discussion, we believe that it would be effective to introduce transparency measures for identifying and addressing any unfair business practices, and for greater accountability. We suggest that this could be achieved by introducing regulations requiring annual publications of data, including the number of payday loans borrowed, their value, number of repeat borrowers, loans defaulted upon, the nature and number of complaints, and their outcome.

3.3.2- Nova Scotia:

During the focus groups in Halifax, we asked the participants if they knew about Access Nova Scotia. Some participants indicated that they know about it, in relation to motor vehicles, licensing, and registration. None of the participants appeared to have a clear idea as to how Access Nova Scotia could be of any help in relation to payday loans. We have included a screenshot from Access Nova Scotia's website on filing a consumer complaints form.

Figure 3-2. Screenshot of Access Nova Scotia's webpage: I have a complaint

Government of NS > Service NS > Access NS > Services for Individuals > Consumer Awareness > Making Complaints > I have a complaint

I have a complaint

If you have a question, or are not sure whether we can help with your specific complaint, call Public Enquiries at 902-424-5200 or toll-free in Nova Scotia at 1-800-670-4357. Or submit your questions through [Online Enquiry Form](#).

General Instructions

- Please fill in the entire form. Make sure you include names and phone numbers.
- After completing the form, submit it online, or mail a printed, signed form to the nearest Access Nova Scotia site. You can find a list of Access Nova Scotia offices.
- Please print clearly. If you need more space, please attach a separate sheet.
- If you are acting for someone else,
 - For example, if you're making a complaint on behalf of a spouse or a senior parent please indicate this. Privacy laws require that the person give their consent to the sharing of information. Both you and the person on whose behalf you are acting will have to sign a printed version of the form and return it to an Access Nova Scotia office.

Consumer Online Complaints Form

Download

- I have a complaint [PDF]

Online

Your Information

Full Name:

Mailing Address:
(including postal code)

Telephone Number:
(daytime)

Fax:
(optional)

Email Address:

Source- Access Nova Scotia, [Complaint page](#) (Last accessed in November 2018).

It requires the complainant to fill in his or her full name, contact information, details of the business against whom the complaint is being filed, details about the complaint, measures taken

to resolve the complaint, and the desired action or outcome. This form can be submitted online, mailed, or a printed copy can be given to the nearest Access Nova Scotia office.¹¹⁵

In response to our consultation process, the Business and Consumer Services division of Service Nova Scotia (division), provided information on the number and nature of complaints received by it.¹¹⁶ It received 5 complaints in 2017, and 4 complaints in 2018, at the time of consultation.¹¹⁷ The typical issues complained about concern unlicensed lenders, consumers misunderstanding terms, scams and credit rebuilding programs.¹¹⁸ They have since the earlier consultation, received 2 more complaints about unlicensed online payday lending.¹¹⁹

When asked, whether information as to the nature of these complaints and amount of money claimed was available at their website or otherwise, the division noted that this is not publicly accessible.¹²⁰ However, annual payday loan data and a list of licensed lenders is available through the province's Open Data database.¹²¹ This database includes annual aggregate data on payday loans granted in Nova Scotia, based on information provided by the lenders.¹²² This data includes information on total loans granted, average size of loans, and information on defaults and repeat lending (selected data is reproduced here, see table 3-3).¹²³

Table 3-3. Data on Payday loans in Nova Scotia (July 1, 2017-June 30, 2018 (last updated in February 2019)).

<u>Type of Information</u>	<u>Statistics</u>
Number of Borrowers granted > 1 Loan	22,838
Number of repeat loans granted	111,031
Number of Borrowers granted repeat Loans	17,503

¹¹⁵ Access Nova Scotia, "I have a complaint," online: <<https://novascotia.ca/sns/access/individuals/consumer-awareness/making-complaints/have-a-complaint.asp>>.

¹¹⁶ Business and Consumer Services, Service Nova Scotia, Response to PIAC's Stakeholder Questionnaire, dated July 25, 2018.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ Business and Consumer Services, Service Nova Scotia, Response to PIAC's Stakeholder Questionnaire, email correspondence, November 26, 2018.

¹²⁰ Business and Consumer Services, Service Nova Scotia, Response to PIAC's Stakeholder Questionnaire, dated July 25, 2018.

¹²¹ Business and Consumer Services, Service Nova Scotia, Response to PIAC's Stakeholder Questionnaire, email correspondence, November 26, 2018.

¹²² Nova Scotia (Financial Services) Annual Payday Loan Data, online: <<https://data.novascotia.ca/Financial-Services/Annual-Payday-Loan-Data/5r5j-xye7>>.

¹²³ *Ibid.*

Number of 1-time Repeat	3,929
Number of 2-time Repeat	2,182
Number of 3-time Repeat	1,600
Number of 4-time Repeat	1,295
Number of 5-time Repeat	1,080
Number of 6-time Repeat s	868
Number of 7-time Repeat	792
Number of 8+-time Repeat	5,757
Total Loans granted	202,625
Average Amount Loan Granted	\$500.89
Estimated Total Value of Loans Granted	\$101,420,550.79
Default Rate	7.57%
Average Amount Loan defaulted	\$619.06

Source: Nova Scotia, *Annual Payday Loan Data* (last updated in February 2019)

The above data indicates that payday lending and repeat borrowing remains imminent in Nova Scotia, however, what specific issues led to such repeat borrowing is not evident. That said, the regular availability of such dataset, could prove quite useful in the long-term to assess the issues, and trends arising from these lending and borrowing practices; enabling a better check on any abusive practices, which expose vulnerable users of payday loans to continuous debts. We also approached the other consumer protection agencies to retrieve such data, but only received limited feedback on this aspect. It is important for such information to be made readily and frequently available to allow for greater study, and for it to have any behavioral impact.

The division informed us that in case of potential non-compliance, the complaint is referred to the Business Licensing team to investigate.¹²⁴ In cases of unlicensed lenders, the consumers are contacted to explain their rights, and Business Licensing also contacts the lender to order them to cease activity.¹²⁵ Similar, to what we suggested for Ontario, more consumer awareness initiatives are needed for the optimal use of available resources. It is important that such resources are well-

¹²⁴ Business and Consumer Services, Service Nova Scotia, Response to PIAC's Stakeholder Questionnaire, dated July 25, 2018.

¹²⁵ *Ibid.*

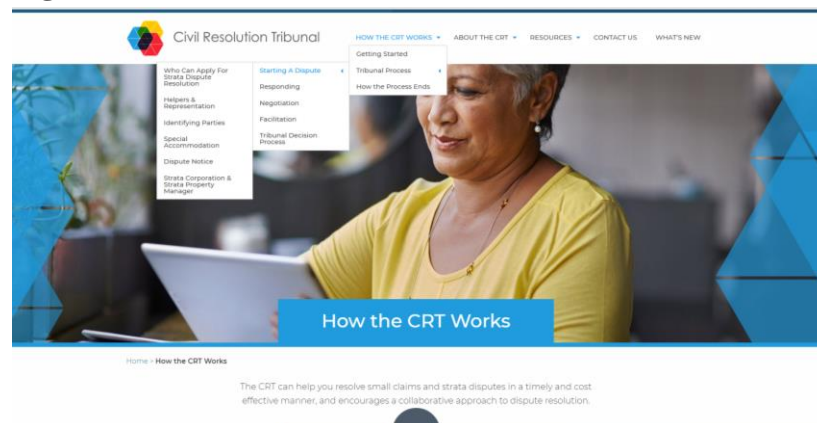
publicized so that more consumers can access them and make well-informed decisions, taking into account the available information.

3.3.3- British Columbia:

The focus groups in Vancouver were generally not sure if they knew about the Consumer Protection BC, and what it does in relation to payday loans. We specifically, asked the focus groups if they knew about the Civil Resolution Tribunal (“CRT”), an online tribunal for resolving disputes. None of these participants knew about it. The CRT assists in resolving small claims and disputes, amounting to \$5000 and below.¹²⁶ Its tool, Solution Explorer allows users to comprehend their problems, access legal information and self-help tools, and if the issue cannot be resolved, then it gives an option to start the Tribunal Process.¹²⁷

The tribunal process entails; starting a dispute or responding to it; negotiation; facilitation, this is where a facilitator collects information;¹²⁸ and tribunal decision process where the CRT’s tribunal member considering the evidence and parties’ arguments to make a binding decision.¹²⁹ The process is concluded with a decision made by the CRT, with these decisions being public and searchable.¹³⁰ The CRT provides an option to object to the tribunal small claims decision, with the objection to be filed within 28 days of receiving the Notice of Final Decision.¹³¹

Figure 3-3. Screenshot of Civil Resolution Tribunal



Source: [Civil Resolution Tribunal](https://civilresolutionbc.ca/)

¹²⁶ Civil Resolution Tribunal, online: <<https://civilresolutionbc.ca/>>.

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ Civil Resolution Tribunal, “Tribunal decision process,” online: <<https://civilresolutionbc.ca/how-the-crt-works/tribunal-process/tribunal-decision-process/#read-more>>.

¹³⁰ Civil Resolution Tribunal, online: <<https://civilresolutionbc.ca/>>.

¹³¹ Civil Resolution Tribunal, Tribunal decision process, FAQ, online: <<https://civilresolutionbc.ca/how-the-crt-works/tribunal-process/tribunal-decision-process/#what-if-i-disagree-with-a-small-claims-decision>>.

3.3.4-Alberta:

In response to our consultation, Service Alberta provided us some data from their Consumer Investigations Unit (CIU) on payday loan complaints received since January 1, 2015.¹³² The CIU in Alberta investigates consumer complaints regarding payday loans, among other issues. The unit indicated that they have opened 21 investigations into payday loan companies; out of which 14 investigations were initiated in response to consumer complaints and 7 were department generated.¹³³ The 14 consumer complaints mainly pertained to alleged disclosure failures, prohibited collection practices, and similar concerns.¹³⁴ Most of the seven department generated investigations related to unlicensed lending, by out of province online lenders.¹³⁵ As noted for other provinces, increased awareness about the available resources is recommended.

3.3.5- Current Complaint Tools and Processes:

Our study of the current consumer complaint tools revealed some gaps. To begin with, it remained challenging to navigate through some government websites to find information on how to complaint. Many websites consisted of general information on making complaints, with only few websites providing specific instructions in relation to making payday loan complaints (see Ontario's consumer complaint form). Few websites did not provide any general or specific form; and only few websites appeared to provide some clear instructions on how to file. Some complaint forms (see Nunavut's complaint form) did not generally allow consumers to make complaints to the agency, without sending a copy of the same complaint to the pertinent business.

Overall, we found several current tools difficult to access, and without clear and comprehensive guidance on how to use these tools, their efficacy may remain limited. We suggest that increased consumer awareness, guidance programs and workshops are needed with clear and simply worded instructions on where to find these tools, and how to use them. We believe that graphics can also be used to help consumers understand the pertinent complaint processes better. Having a provincial database with annual reports on the nature of complaints, number of complaints and their outcome could have a significant impact on consumer awareness about these loans, their costs and issues. We have included a list of available resources in this report.

¹³² Response to our Stakeholder Consultation by Service Alberta, dated July 31, 2018.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

Table 3-4. List of Government Agencies to approach for making complaints

Provinces and Territories	Government Agency to approach	Complaint Process	Applicable Form
Alberta	Service Alberta	File A Consumer Complaint- File a complaint	Consumer Complaint Form
British Columbia	Consumer Protection BC	Start a Complaint	Start a Complaint [Online form found]
Manitoba	Manitoba Consumer Protection Office	Filing a Complaint with the Consumer Protection Office Complaint Handling Process	No specific form found, general details provided under Filing a Complaint with the Consumer Protection Office
New Brunswick	Financial and Consumer Services Commission	Submit a Complaint	Submit a Complaint The form can be found on this same page.
Newfoundland Labrador	Service NL	No specific page found, see its Consumer Affairs page.	No specific form found
Northwest Territories	Municipal and Community Affairs-Consumer Affairs Office	Consumer Affairs- How we help.	Consumer Complaint Form
Nova Scotia	Access Nova Scotia	Making Complaints I have a complaint	Consumer Complaints Form
Nunavut	Community And Government Services-Consumer Affairs	Consumer Complaint Process	Consumer Complaint Form
Ontario	Ontario's Ministry of Government and Consumer Services; Consumer Protection Ontario is its awareness program.	Filing a consumer complaint	Consumer Complaint [form] , it is also available as a pdf, and can be emailed on request

Prince Edward Island	Prince Edward Island Canada, Consumer, Labour and Financial Services	Complaint Handling Process for Consumers	No specific form found
Quebec	Office de la protection du consommateur	No specific page found.	To file a complaint, their office must be contacted .
Saskatchewan	Financial and Consumer Affairs Authority	File a complaint	Payday Loan Complaint Form
Yukon	Yukon Consumer Services	[Tip sheet] for consumers dealing with complaints	No specific form found

IV. Model Policy framework for addressing payday loan complaints, disputes and violation

Introduction:

In this section, we explore the regulatory frameworks found in selected jurisdictions for addressing payday loan complaints, disputes and violations; and seek to gauge their relevance and application in Canada. We particularly study the measures adopted to accept, monitor and decide payday loan complaints. Based on our findings, we propose a model policy framework, entailing an evaluation of the viability and need for an Ombudsman-type regime for resolving payday loan issues; and measures needed to promote access to justice for vulnerable consumers of payday loans.

4.1- International Practices

The regulatory frameworks in different jurisdictions vary greatly; with the handling of complaints, and disputes often spread across different bodies, within a jurisdiction. For instance, in the U.S., the individual states regulate payday loans. With the Consumer Financial Protection Bureau (“CFPB”) involved in accepting complaints, and maintaining a public Consumer Complaint database, which keeps a track of complaints made to the CFPB and their outcomes. In U.K, the Financial Ombudsman handles payday loan disputes. In Australia, the Australian Securities & Investments Commission’s approved external dispute resolution schemes, accept and handle debt collection and payday loan disputes.¹³⁶ We do not engage in a comprehensive review of these complaint processes and dispute resolution schemes here, rather, we focus on those practices which we believe could be useful in designing a regulatory framework for addressing payday loan complaints, disputes, and violations in Canada.

4.1.1- United States of America

For the purposes of this report, we focus on the regulatory practices and initiatives of the CFPB, which we believe have been effective in increasing transparency and accountability. The CFPB is a federal government agency that identifies dangerous and unfair financial practices, educates consumers about these practices and regulates such financial institutions.¹³⁷ Consumers can submit complaints directly to the CFPB,¹³⁸ which connects financial companies to understand

¹³⁶ Australian Securities & Investments Commission, “ASIC-approved dispute resolution schemes,” online: <<https://asic.gov.au/regulatory-resources/financial-services/dispute-resolution/asic-approved-dispute-resolution-schemes/>>.

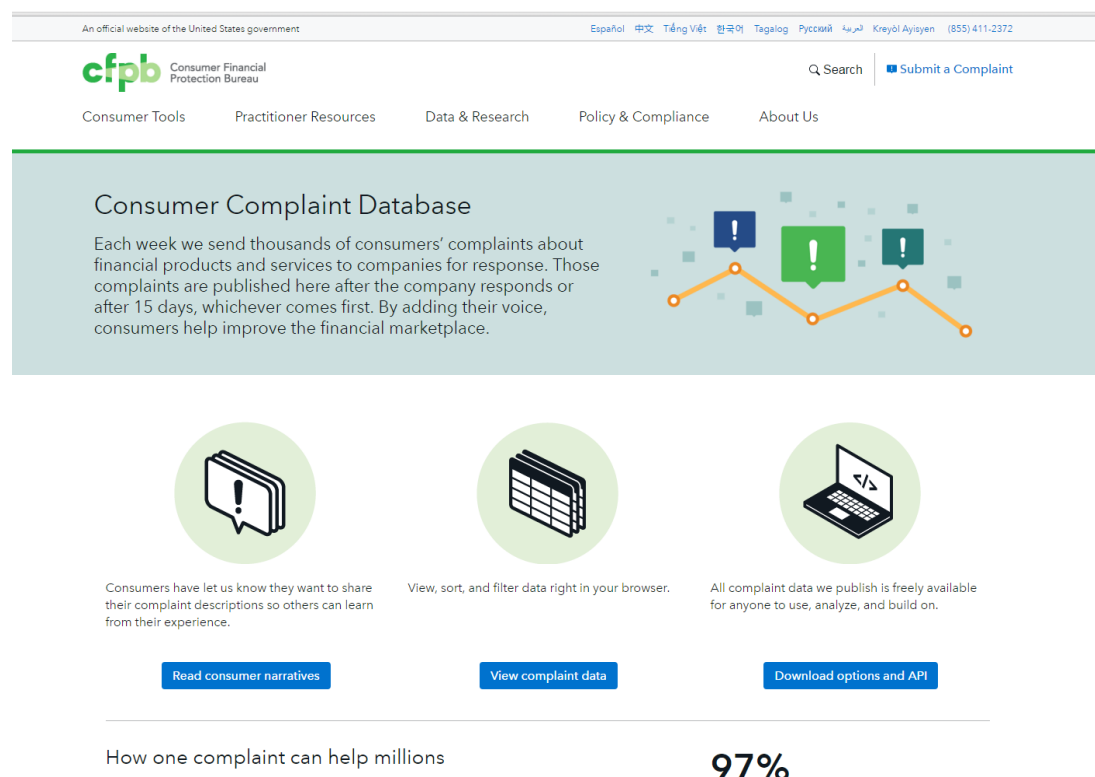
¹³⁷ Mike Litt and Edmund Mierzwinski, “Predatory Loans & Predatory Loan Complaints,” PIRGIM Education Fund (August 2016), online: <<https://uspirg.org/sites/pirg/files/reports/USPIRG%20Payday%20Report.pdf>> at p.1.

¹³⁸ *Id* at p.8

issues, fix errors and get direct responses about the problems raised.¹³⁹ It works with a consumer to get a response, and most companies respond to the complaints within 15 days.¹⁴⁰

The complaints received by the CFPB are published in its Consumer Complaint Database, which is freely available for anyone to access and use. The database also includes consumer narratives, which allow consumers to provide more details and written explanations about their problems.¹⁴¹ The complaint data includes the name of the company, date received, product and sub-product if applicable (for example, it could be payday loan and debt collection), specific problem, company response, and whether it was timely or not, and consumer complaint narrative.

Figure 4-1. Screenshot of the CFPB’s Consumer Complaint Database



Source: [Consumer Financial Protection Bureau](https://www.consumerfinance.gov/complaint/) (Last accessed in August 2018).

The CFPB’s complaint process involves the following steps; filing of complaint, either online or over the phone; review by the CFPB and routing to the company; company response; complaint

¹³⁹ Consumer Financial Protection Bureau (CFPB), “Having a problem with a financial product or service?” (webpage), online: <<https://www.consumerfinance.gov/complaint/>>.

¹⁴⁰ *Ibid.*

¹⁴¹ Consumer Financial Protection Bureau (CFPB), “Consumer Complaint Database,” online: <<https://www.consumerfinance.gov/data-research/consumer-complaints/>>.

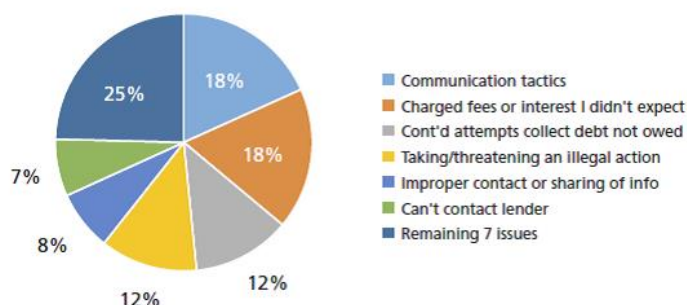
is published; consumer review for response or feedback to the CFPB; followed by analysis and reporting by the CFPB.¹⁴² This data is used by the CFPB to enforce applicable laws, and improve the regulatory practices and study trends.¹⁴³

CFPB's 2017 Consumer Response Annual Report for January 1-December 31, 2016 provides the types of payday loan complaints reported by consumers; with 31% about not finding lender, 30% about being charged unexpected fees or interest, 14% about receiving a loan not applied for, 7% about applying for a loan, but not receiving money, 7% about payment to account not credited, 7% about cannot stop lender from charging bank account and 4% about lender charging the bank account on wrong day or for the wrong amount.¹⁴⁴

A 2016 report by the PIRGIM Education Fund reviews complaints made to the CFPB. It notes that consumer submitted almost 10,000 complaints in the payday loan categories of the database in less than three years.¹⁴⁵ More than half of the complaints were against 15 companies, including storefront and online lenders, debt collectors, short-term payday lenders and others; and the rest against 626 companies.¹⁴⁶ The two most common problems were with communication tactics, and unexpected fees or interest.¹⁴⁷ The other issues were continued attempts to collect debt not owed, taking or threats of illegal action, improper contact or sharing of information, cannot contact lender.¹⁴⁸

Figure 4-2. Screenshot of the Complaints by Issue: PIRGIM's Report

Figure 2. Breakdown of Complaints by Issue⁵⁴



Source: [PIRGIM Fund Report](#) (2016).

¹⁴² Litt and Mierzwinski, "Predatory Loans & Predatory Loan Complaints," PIRGIM Education Fund at p. 9-10.

¹⁴³ *Id* at p.9.

¹⁴⁴ Consumer Financial Protection Bureau (CFPB), "Consumer Response Annual Report," (March 2017), online: <https://www.consumerfinance.gov/data-research/research-reports/2017-consumer-response-annual-report/>.

¹⁴⁵ Litt and Mierzwinski, "Predatory Loans & Predatory Loan Complaints," PIRGIM Education Fund at p. 2.

¹⁴⁶ *Ibid*.

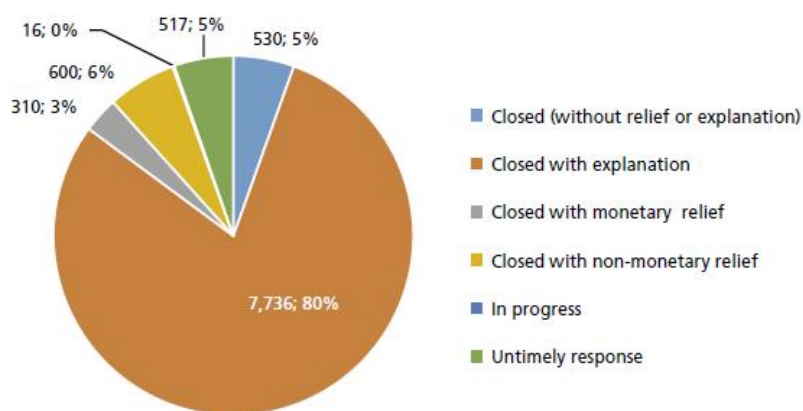
¹⁴⁷ *Id* at p.15.

¹⁴⁸ *Ibid*.

The remaining issues concern false statements or representations, disclosure verification of debt, received a loan they did not apply for, cannot stop charges to bank account, applied for loan but did not receive money, payment to account not credited and charged bank account wrong day or amount.¹⁴⁹ The PIGRM report notes that from a total of 7,736 complaints, 80% received an explanation from the company, with 9% of payday complainants receiving some relief i.e. monetary or non-monetary.¹⁵⁰

Figure 4-3. Screenshot of the Response to Consumer Complaints to the CFPB regarding payday loans: PIRGIM's Report

Figure 3. Responses to Consumer Complaints to the CFPB in the "Payday Loan" Categories



Source: [PIRGIM Fund Report](#) (2016).

The statistics concerning the outcome of payday loan complaints suggest that the regulatory practices followed by the CFPB allows for increased transparency and accountability, which is likely to proliferate the efficacy of the consumer complaint process. By setting a consumer complaint database, a universal yardstick is laid down to mitigate and monitor unfair business practices, including payday lending. We also contend that CFPB's active participation in the complaint process involving the businesses and consumers serves as a strong incentive for businesses to respond and accommodate vulnerable users of payday loans, as they know that their actions would be publicly reported. We find that the adoption of a similar database for addressing payday loan complaints and issues could prove quite effective for the Canadian regulatory landscape.

¹⁴⁹ *Id* at p.34.

¹⁵⁰ *Id* at p.17.

4.1.2- United Kingdom

In the U.K., the Financial Ombudsman Service (FOS) resolves disputes between businesses and consumers on financial services, free of costs.¹⁵¹ The FOS is an independent service; however, it cooperates and communicates with the Financial Conduct Authority (FCA) and other official bodies to ensure its effective functioning.

The FOS's complaint process requires consumers to first complain to the business, and if no final response is received within eight weeks; then the FOS may be approached.¹⁵² Complaints can be submitted to the FOS over the phone, online, or by emailing the complaint form. The applicable forms are available at its website.¹⁵³ It also has a consumer helpline to assist consumers with any queries and concerns.

The FOS's website consists of case studies, and stories about people whom they have helped. It also provides educational tools, informing consumers about their payday rights in simple and easy to understand language. FOS has helped consumers by making repayments easier by telling the lender to take off some interest and charges in consideration of an individual's personal circumstances; or working out an affordable monthly plan.¹⁵⁴ A media report by the Financial Times finds that complaints about payday lenders have tripled since 2016; from 3,216 to 10,529 over the year, until the end of March 2017.¹⁵⁵ The FOS finds that it could be because of increased consumer awareness after a crackdown on the payday loans market by the FCA.¹⁵⁶ The FOS's Annual Review 2017/2018, reports 17,256 new complaints about payday loans – an increase of 64%.¹⁵⁷

The FOS publishes complaint data every six months.¹⁵⁸ Users can access new cases and resolved cases.¹⁵⁹ FOS's website also provides links to FCA's complaints database, which consists of data

¹⁵¹ Financial Ombudsman Service, "about the Financial Ombudsman Service," online: <<https://www.financial-ombudsman.org.uk/about/index.html>>.

¹⁵² Financial Ombudsman Service, "how to complain," online: <<https://www.financial-ombudsman.org.uk/consumer/complaints.htm>>.

¹⁵³ *Ibid.*

¹⁵⁴ Financial Ombudsman Service, "people we've helped," (news and outreach), online: <<http://www.financial-ombudsman.org/keeps-you-awake/people-weve-helped.html>>.

¹⁵⁵ Aime Williams and Josephine Cumbo, "Complaints against UK payday lenders triple," *Financial Times* (12 June 2017), online: <<https://www.ft.com/content/1c425d1a-4f65-11e7-bfb8-997009366969>>.

¹⁵⁶ *Ibid.*

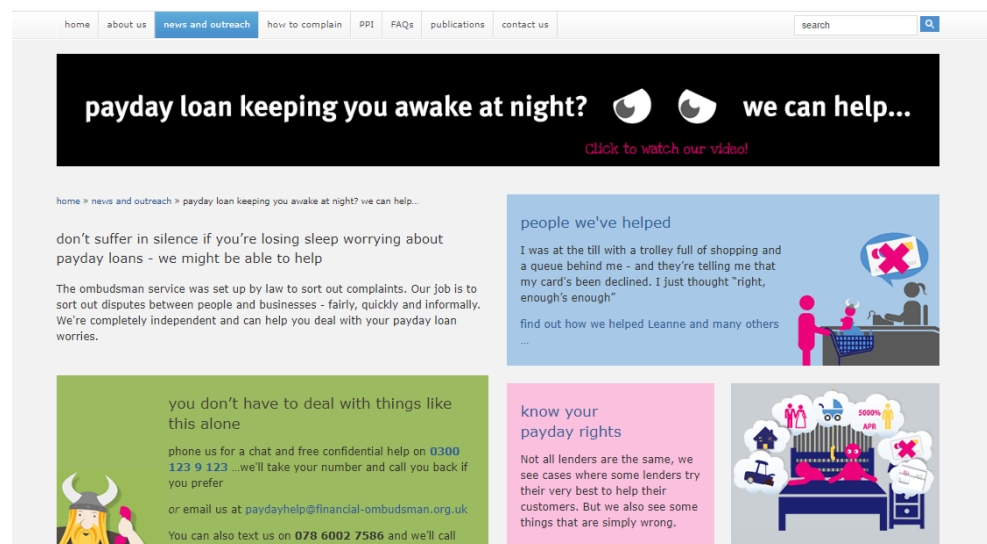
¹⁵⁷ Financial Ombudsman Service, "annual review 2017/2018," online: <<http://www.financial-ombudsman.org.uk/publications/annual-review-2018/index.htm>>.

¹⁵⁸ Financial Ombudsman Service, "complaints data," online: <<http://www.financial-ombudsman.org.uk/publications/complaints-data.html>>.

¹⁵⁹ Financial Ombudsman Service, "complaints data – showing individual financial businesses," online: <<http://www.ombudsman-complaints-data.org.uk/>>.

as firm specific, and in aggregate form.¹⁶⁰ Its general particulars include the number of opened, closed and upheld complaints, the amount of redress paid, type of firm and type of product the complaint was about and the reason for the complaint.¹⁶¹ It also provides tools on understanding the complaint data. Since June 30, 2016, all complaints are to be reported.¹⁶²

Figure 4-4. Screenshot of the Financial Ombudsman Service website



Source: [Financial Ombudsman Service](#) (Last accessed in August 2018).

We suggest that to begin with FOS's various educational tools are a useful reference for designing consumer awareness and measures in Canada. Particularly, its case studies and publications, including its consumer leaflets that explain the entire complaint process in plain language. Also, adopting an overall user-friendly approach as one underlying FOS's complaint process could also be effective in bridging any gap between users and these agencies, allowing consumers to feel more at ease in approaching agencies with their problems. We also contend that FOS and FCA's complaint data reporting practices could be quite effective in creating the requisite transparency and accountability within the local payday industry.

4.1.3- Australia

In Australia, the external dispute resolution scheme, i.e. the Credit and Investments Ombudsman (CIO) deals with complaints involving non-bank lenders, debt collectors, credit representatives and other related bodies.¹⁶³ Its complaint resolution process requires the complainant to first

¹⁶⁰ Financial Conduct Authority, "Complaints data," online: <<https://www.fca.org.uk/firms/complaints-data>>.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ Australian Securities & Investments Commission, ASIC-approved dispute resolution schemes.

contact their financial services provider, if the issue remains unresolved after receiving a response from the service provider, then it can be filed with the CIO.¹⁶⁴

The complaint process generally involves; registration of the complaint in CIO's complaint handling database within 48 hours of its receipt; with the financial service provider given 7 days to provide its internal dispute resolution response; followed with an initial review by the CIO, where it gathers information; investigation; and determination.¹⁶⁵ If the consumer does not accept the response, the matter could be taken elsewhere, otherwise if the determination is accepted by the consumer, it becomes binding on the financial service provider; and the file is closed when the determination is given effect by the service provider.¹⁶⁶

CIO's website provides some guidance on how to complete the form and other related inquiries under a section for frequently asked questions.¹⁶⁷ The complaint can be filed online, or the complaint form can be downloaded, emailed, faxed or posted.¹⁶⁸ This service is available free of cost to consumers. CIO does not provide any legal advice, just general information.

During our stakeholder consultations, the Consumer Action Law Centre ("Centre"), a consumer advocacy organization based in Australia, stated that it is not common for people who complain to it to identify the payday loan as the sole cause of their concern, though it may be in some cases.¹⁶⁹ Their organization is contacted more in relation to a range of debt problems.¹⁷⁰ The Centre notes that people who contact it with debt issues and who have used payday loans are generally repeat or recurrent users.¹⁷¹ Some other issues complained about include; debt collection, unexpected fees; and unsolicited marketing.¹⁷²

The Centre noted that around 500 people whom they have assisted in the last 12 months, disclose payday lending issues in some respect.¹⁷³ Some of the complaints are referred by it to the CIO.¹⁷⁴ The Centre finds that borrowers do not respond well to warnings, as they remain desperate to

¹⁶⁴ Credit & Investments Ombudsman, "Making a Complaint," online: <<https://www.cio.org.au/complaint-resolution/making-a-complaint>>.

¹⁶⁵ Credit & Investments Ombudsman, "Complaint handling process," online: <<https://www.cio.org.au/complaint-resolution/complaint-process.html>>.

¹⁶⁶ *Ibid.*

¹⁶⁷ Credit & Investments Ombudsman, "Complaint FAQs," online: <<https://www.cio.org.au/complaint-resolution/complaint-faqs.html>>.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Consumer Action Law Centre, Response to PIAC's Stakeholder Questionnaire, dated June 21, 2018.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

borrow.¹⁷⁵ It emphasized on the need to inform consumers about their rights, and to get help through independent assistance or from the Ombudsman.¹⁷⁶

Based on the above, we suggest that CIO's structural framework and comprehensive complaint filing resources could be relevant and a useful reference for introducing measures which better inform and prepare users for the complaint filing process.

4.2- Proposed Policy framework:

With this project, we endeavored to design a model policy framework to support the establishment of an ombudsman-type regime to oversee payday loan complaints, disputes, and violations; aimed at promoting and realizing access to justice for vulnerable consumers of payday loans. Our research revealed that payday loan users continue to face several problems, often arising from unchecked repeat lending and borrowing practices, in the absence of any user database and transparency measures in effect, and with increased risks of insolvency for heavily indebted borrowers. Gaps were found in the existing redress, complaints and dispute resolution regimes, particularly in getting the information on current resources out to consumers. The content of these resources was found to be inconsistent, and often inadequate in explaining the high interests and complex costs involved.

Our present research provided limited evidence to substantiate the need and effectiveness of a separate ombudsman-type regime; with some focus group participants expressing support for an ombudsman regime to address payday loan issues. That said, considering the potential harms arising from these predatory payday loans, this report proposes that the Ombudsman for Banking services and Investments (OBSI) should exercise an enhanced role and address payday loan complaints, violations and disputes. We believe that an independent and impartial regime is not only useful but much needed, to allow for a fair, timely and impartial redress and dispute resolution mechanism. We suggest that for better administration, a separate division within the OBSI could be set up. In the following section, we explore the viability of a regulatory model to be embodied within the OBSI.

4.2.1- Ombudsman-type Regime

It is argued that it would be appropriate to expand the role and involvement of the existing Ombudsman regime, i.e. the Ombudsman for Banking Services and Investments (OBSI) to payday loan issues, resulting in the application of standardized practices to address and resolve issues relating to payday loans, with a division within the OBSI dealing with these matters. We make the following observations in this regard:

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

Structure and Mandate: It is important to clearly define this regime’s mandate, in relation to payday loans; to allow for clarity and consistency as to its scope and operation. We suggest that it should be to resolve all complaints from payday loan users, concerning costs, repayments, and other ancillary issues. For reasons of feasibility, the regime should operate and adjudicate in coordination and cooperation with the existing provincial consumer protection agencies, as applicable. We also suggest regular collaboration and coordination with the existing provincial agencies in terms of adopting uniform help resources and dispute resolution practices.

Governance and Oversight: We propose that this regime should be subject to review by a Board of Directors, consisting of members from consumer groups, government organizations, and industry representatives. A balanced and rotating Board membership could help in ensuring the independence of this regime. It is important to establish the independence of this regime, with regular reviews to maintain checks and balance.

Funding: We draw some insight from the funding model of the Commission for Complaints for Telecommunications Services (CCTS). The CCTS is an independent body, created in 2007, which resolves disputes between telecommunications service providers and consumers in Canada.¹⁷⁷ It was created in response to an order from the governor in Council to create an independent consumer agency with the mandate to resolve complaints from individual and small retail customers.¹⁷⁸ This order required that all telecommunication service providers to contribute to its financing. We find that requiring businesses to finance it would be useful, given that we have measures for review, compliance and transparency to negate any potential conflicts, and allow for open dialogue and efficacy.

Complaint Process and Review: We suggest that a complaint process similar to that adopted by the CFPB could be quite effective in ensuring that consumers receive timely responses, with a consumer database and publication of annual consumer reports. We contend that these annual reports, should be comprehensive and clear, with details on the number of complaints received, nature of complaints, against whom, and their outcomes. These should be made available in both forms, i.e. firm specific and in aggregate form, similar to the FCA’s data collection and analysis practices.

Publications remain crucial for greater transparency, and accountability. We believe that they would be also valuable in informing future regulatory practices; by allowing regulators,

¹⁷⁷ Commission for Complaints for Telecommunications Services, “About us” (webpage), online: <<https://www.ccts-cprst.ca/about-ccts/overview/>>.

¹⁷⁸ Commission for Complaints for Telecommunications Services, “Regulatory and corporate history,” online: <<https://www.ccts-cprst.ca/about-ccts/governance/regulatory-and-corporate-history/>>.

consumers and other stakeholders to identify common problems, recurring issues, monitor companies that are receiving more complaints, and review complaint trends.

Enforcement and Compliance: We recommend that the OBSI's dispute resolution model to be adopted with enhanced enforcement powers. Otherwise, the effectiveness of its decisions would be greatly reduced, i.e. if companies are not bound by their decisions, they not follow them, much to the detriment of the complainants who invested their time and resources in pursuing the complaint process.

We suggest that the OBSI should be given increased enforcement power in relation to payday loans, because of the high vulnerability of its users and significant exposure to financial risks. Such as, being involved in debt cycles lasting for several months to years, increased risk of insolvency, and continued dependency, particularly for low-income consumers, who lack credit to easily avail other financial services. Australia's CIO's framework could be referred, whose determinations are binding on the financial service provider, provided they are accepted by the consumer.

V. Conclusion and Recommendations

5.1- Problems faced by consumers in repaying payday loans

Our research indicates that payday loan users continue to face several problems in making repayments. The foremost challenge appeared to be lack of awareness about their rights and the high costs involved. The focus groups showed low awareness about payday loan rights, how costing works and about the availability of existing information resources. Some participants expressed lack of confidence in approaching their lender for clarification as to the applicable costs, and even when they did, the answers remained unclear.

Three issues in relation to low awareness require particular attention; the display posters, loan agreements and existing information resources of the provinces and territories. Some focus groups indicated that the display posters remained blended with other information, and thus served limited to no purpose. We suggest that such posters should be required to be distinctive, which clearly identify the applicable costs, specifically, the annual percentage rate (APR). Additionally, we suggest that the licensing status of payday lenders should also be displayed at the stores and online. As many focus group participants did not know that payday lenders need to be licensed.

The loan agreements remain hard to read and understand because of their technical language, with many users not fully understanding what they are agreeing to. We suggest simplifying of such contracts, and considering the implementation of standard loan agreements, to allow for clarity and consistency.

We found that the existing web resources were not always easy to find, access and use. We believe that increased awareness about these resources is needed to begin with. Our research indicates that limited efforts have been made by regulatory authorities to educate consumers about managing financial matters, including payday loans. This could be initiated with placing public posters, and arranging workshops informing users about the information resources. We also contend that the existing resources should be made easy to access, with its content written in simple, and plain language; with more use of graphics and figures, than text.

Other common issues pertained to repeat borrowing, with increased risk of incurring high debt, and insolvency. The focus groups also showed high prevalence of NSF fees. Our findings on this remain limited from the lack of easily available data on the number and frequency of loans taken within a province, frequency of defaulters, and repeat borrowers. That said, we strongly advocate for the creation of a provincially maintained user database to monitor borrowing practices, in order to effectively restrict reborrowing. That said, this database should not be used for surveilling borrowers, but to create positive credit histories, and be a filter limiting back-to-back

borrowing. Additionally, this database could be subject to annual reviews for addressing any gaps.

5.2- Existing complaint processes and dispute resolution mechanisms

We found several gaps in the existing complaint processes and dispute resolution schemes. Complaining to the payday lender is an important option, however, we contend that the overall lack of transparency and accountability of this process restricts the extent to which it can adequately protect the vulnerable users of payday loans. Presently, there is no easily accessible public data concerning their internal complaint procedures, response times and outcomes; making it challenging to evaluate its utility, and assess what steps are required to improve the dispute resolution process. We believe that the utility of this process could be increased by requiring annual publication of transparency reports.

Small claims court were found to remain a costly, time-consuming and burdensome mechanism for addressing payday loan complaints and disputes. Particularly for indebted and or low-income consumers who do not have the resources, knowledge and skills to file such cases, and cannot generally afford hiring a lawyer.

Our study of the current provincial and territories' consumer complaint tools revealed issues, which need to be addressed for greater efficacy. To begin with, increased awareness about these resources is needed. Most of the focus groups did not know that they could complain to these agencies about their payday loan issues. It is important that these resources are made easy to access and use. It remained challenging to navigate through some government websites to find information on how to complain; many websites consisted of general information on making complaints, with only few websites providing specific instructions in relation to making payday loan complaints (see Ontario's consumer complaint form). We suggest that increased consumer awareness, guidance programs and workshops are needed with clear and simply worded instructions on where to find these tools, and how to use them.

5.3- Regulatory Framework

With this project, we endeavored to design a model policy framework, to support the establishment of an ombudsman-type regime to oversee payday loan complaints, disputes, and violations. However, our primary and secondary research provided limited evidence to substantiate the need and effectiveness of a separate ombudsman-type regime. Though, some focus group participants appeared to support the idea of having to go to one office or person for dealing with their payday loan issues. In this regard, we suggest that presently, it would be useful to adopt a regulatory framework where the Ombudsman for Banking services and Investments

(OBSI) should exercise an enhanced role and involvement for addressing payday loan complaints, violations and disputes.

5.4– Main Findings and Final Recommendations:

Based on the above conclusions, this report's **main findings** are:

- ❖ Many payday loan users lack awareness of their rights and the high costs involved. Payday loan users generally do not understand how to calculate the high interest and costs involved. The existing information and help resources are not well-known and remain of limited use and efficacy, with an imminent need to better publicize them.
- ❖ Payday loan agreements are often not read and/or well understood, with many users expressing a preference for agreements, drafted in clear and simple language, and some would prefer just reading short summaries of the terms and conditions.
- ❖ Several gaps were found in the existing complaint processes and dispute resolution schemes. Complaining to the payday lender could be a useful option, however, the extent to which it can adequately protect the vulnerable users of payday loans remains severely limited, given its current lack of transparency and accountability. At present, there is no easily accessible public data concerning the number and nature of complaints made, response times and outcomes. The utility of this process could be increased by regulators considering introduction of annual transparency reports.
- ❖ Small claims court remains a costly, time-consuming and burdensome mechanism to address payday loan complaints and disputes. Particularly, for indebted and/or low-income users who do not have the resources, knowledge and skills to file such cases, and cannot generally afford hiring a lawyer.
- ❖ Increased awareness of the provincial and government help resources is needed. Many users remain unaware about the option to complain to these agencies about their payday loan issues. It is important that these resources are made easy to access and use.

The report's **final recommendations** are:

Recommendation 1: Given the lack of awareness of payday loan rights, its high interests and costs amongst payday loan users, governments and regulators should adopt a more active role in developing consumer education and awareness initiatives on the risks involved in using these loans, and its high costs.

Provincial governments to convene and coordinate towards the creation of standardized consumer information resources and help avenues. As a part of this project, a user-friendly guide is attached, informed by our primary and secondary research. (See Annex A.)

Recommendation 2: Better publicizing of the existing redress resources needed for greater access and use. These resources should be kept simple and easy to use, with short and concise summaries of rights. This measure should be supplemented with workshops, guidance programs and information sessions on how to find and use these resources.

Recommendation 3: Distinctive display posters should be put up at the payday lending stores and websites. These posters must clearly disclose all fees, and charges; and also include information about the licensing status of the payday lender.

Recommendation 4: Introduce standard loan agreements for clarity and consistency; which clearly and accurately disclose the costs, length of a loan, when it is due and what costs would arise in case of missed deadlines.

Recommendation 5: Create a user database within each province and territory. It should consist of users' details concerning payday loan usage, repeat borrowing, defaults, and common borrowing practices. We believe this is important to limit repeat borrowing and stop rollover loans, with the latter in effect, banned in several provinces.

Recommendation 6: Current complaint processes and tools to be better publicized; and made easy to access and use. Also, a consumer complaint database should be introduced, as done in different jurisdictions for the purposes of transparency and accountability. The database maintained by the CFPB could be referred as a prototype. This database should primarily include data on the nature of complaints, number of complaints and their outcomes. This data could be collected and maintained by the consumer protection offices in each province and territory, and provided to the FCAC for annual publications.

Recommendation 7: The Ombudsman for Banking services and Investments (OBSI) should exercise an enhanced role, with direct involvement in addressing payday loan complaints,

violations and disputes. This would allow users to have one-stop-shop for resolving their complaints and disputes through a fair, and impartial medium.

Annex A- Payday loans Consumer Guide

WHAT ARE PAYDAY LOANS?

PAYDAY LOANS ARE TYPICALLY:

- Short term loans (2 weeks or less)
- Determined based on your net pay until your next payday
- Have very high interest rates, fees, and charges



CONSIDER CHEAPER ALTERNATIVES TO PAYDAY LOANS

PAYDAY LOANS SHOULD BE A LAST RESORT

Try Approaching:	Try Asking For:
Family / Friends	Personal loan
Bank or credit union	Line of credit
Credit card company	Overdraft protection
Your billing companies	Cash advance
Your employer	Extension on your bill payment due dates
Financial Advisor	Pay advance
Accredited Credit Counselor	Cash instead of vacation
Licensed Insolvency Trustee	Options they may have to address your specific financial situation

IF YOU MUST TAKE OUT A PAYDAY LOAN

MAKE SURE YOU:

- Borrow from a licensed lender
- Borrow the least amount possible
- Know the total cost of your loan and ask questions to clarify any confusion
- Read the loan agreement before signing
- Keep a copy of your loan agreement



KNOWLEDGE IS POWER. KNOW YOUR RIGHTS.

WHAT IS THE LAW IN ONTARIO? THE PAYDAY LOANS ACT, 2018



YOUR PROTECTIONS:

You can't be charged more than \$15 for every \$100 you borrow	You can't be sold or offered any products or services in connection with a payday loan
You have 2 business days to cancel a payday loan agreement and give back the loan without paying a penalty or giving a reason	
You can't get a second payday loan from the same lender until you repay the first loan (i.e. NO rollover loans)	

PAYDAY LENDERS MUST:

✓ Have a provincial license	
✓ NOT lend more than 50% of your net income per loan	
✓ Never ask for or accept loan repayment by automatically deducting from your paycheck (i.e. NO assignment of wages)	
✓ State on the first page of the agreement: <ul style="list-style-type: none"> ✓ The amount borrowed ✓ The length of the loan ✓ The cost to borrow 	
✓ Display a poster and provide a flyer explaining the cost of a loan over time	
✓ Display the loan cost as an Annual Percentage Rate (APR)	

NOTE: this pamphlet contains general financial information and is NOT intended as legal advice.

PAYDAY LOANS ARE HARD TO REPAY. HERE'S WHY.

THE DURATION OF THE LOAN AFFECTS THE COST



Consider this example:

Suppose you need \$100 for a medical emergency. Lender A says it will cost \$15 for a 2-week loan. Lender B says it will cost \$21 for a 1-month loan. Which \$100 loan is cheaper?

Lender A: \$15 per \$100 for 2 weeks = 391% APR*
\$15 2-week period 2-week period
Lender B: \$21 per \$100 for 1 month = 252% APR*
\$21 1-month period (4 weeks)

*NOTE: see reverse for more about APR.

Lender B is *cheaper* because the loan term is *longer*. The shorter the term, the more expensive the loan will be.



THE TIME CONSTRAINTS ARE UNREALISTIC

Illusion	Reality
Payday lenders want you to think you can reasonably repay your loan within 2 weeks	Payday loans are designed to distort your perception of time and to profit from late payments & repeat borrowing
How Payday Lenders Trick You & Make Money	
1. The standard time frame to calculate interest for non-payday loans is 1 year.	In contrast: the time frame to calculate interest for payday loans is 2 weeks. This means you have to come up with the money to repay payday loans 26x faster than you would for non-payday loans (1 year = 52 weeks = 26 two-week time periods).
2. Payday lenders want you to incorrectly assume that payday loans are calculated and repaid over 1 year (since 1 year is the standard time frame non-payday lenders use) rather than 2 weeks.	Payday lenders know 2 weeks is too short: they expect to profit from late payments (via interest on the loan) and repeat borrowing. This is how they run their business and trap you in debt. For you: quick money = quick debt. For them: late payments and repeat loans = more profits.

HOW TO CALCULATE THE INTEREST RATE FOR A PAYDAY LOAN



INTEREST is the cost of your loan. Interest includes all fees and charges EXCEPT NSF or insurance charges.

"ANNUAL PERCENTAGE RATE" (APR) is the interest rate you pay on a loan per year. Knowing how to calculate APR will let you compare interest rates for different types of loans, so you can pick the cheapest option available to you.

How to calculate APR:

\$ charge (interest)	365 days in a year	100 (to turn the value into a %)	
\$ loan amount (principal)	X # days your loan is for	X	= APR (%)

A simpler but less accurate calculation will give you an approximate APR:

\$ cost per \$100 borrowed	X maximum # of loans you could fit in a month	X 12 months in a year	≈ APR (%)
----------------------------	---	-----------------------	-----------

Consider this example:

Suppose you need \$300 to repair your car. The payday lender says a 2-week loan will cost \$15 for every \$100 you borrow. What is the interest rate?



Using the proper APR calculation:

\$45 charge (\$15 per \$100 borrowed)	365 days in a year	100 (to turn the value into a %)	
\$300 loan	X 14 day loan	X	= 391% APR

Using the approximate calculation:

\$15 (cost per \$100 borrowed)	X 2 (maximum # of 2-week loans you could fit in a month)	X 12 months in a year	≈ 360% APR
--------------------------------	--	-----------------------	------------

NOTE: the approximate calculation is intended to give you a quicker way to determine the APR and is NOT intended to replace the proper calculation.

RESOURCES TO HELP YOU

CONTACT YOUR CONSUMER AFFAIRS OFFICE:

Alberta: 1-877-427-4088
www.servicealberta.ca/payday-loans.cfm

British Columbia: 1-888-564-9963
www.consumerprotectionbc.ca

Manitoba: 1-800-782-0067
<http://www.gov.mb.ca/consumerinfo/initiatives/money-matters/payday-loan-regulations.html>

New Brunswick: 1-866-933-2222
<http://fcnb.ca/what-is-a-payday-loan.html>

Newfoundland and Labrador: 1-877-968-2600
https://www.servicelnl.gov.nl.ca/consumer/consumer_affairs/index.html

Northwest Territories: 867-767-9161 ext 21022
www.maca.gov.nt.ca/en/services/consumer-affairs

Nova Scotia: 1-800-870-4357
www.novascotia.ca/sns/access/individuals/consumer-awareness/consumer-loans-credit/payday-loans.asp

Nunavut: 1-866-223-8139
www.gov.nu.ca/community-and-government-services/information/consumer-affairs

Ontario: 1-800-889-9768
www.sse.gov.on.ca/mcs/en/

Prince Edward Island: 902-368-4580
www.princeedwardisland.ca/en/information/justice-and-public-safety/payday-loans-consumer-rights-and-responsibilities

Quebec: 1-888-672-2556
www.qpc.gouv.qc.ca/en/consumer/

Saskatchewan: 306-787-6700
<http://fcaa.gov.sk.ca/consumers-investors-pension-plan-members/consumers/payday-loan-borrowers>

Yukon: 867-867-5111
www.community.gov.yk.ca/consumer/cp.html



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

BEFORE YOU GET
A PAYDAY LOAN
WHAT YOU
NEED TO KNOW

