

**The Consumer Reporting Act - Proposals Under
Consideration for Providing Access to Security Freezes,
Credit Scores and Reports**

**A Submission from the Public Interest
Advocacy Centre**



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

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Introduction

The Public Interest Advocacy Centre (“PIAC”) is a national non-profit organization and registered charity that provides legal and research services on behalf of consumer interests, and, in particular, vulnerable consumer interests, concerning the provision of important public services. PIAC has been active in the field of consumer protection for over 40 years.

PIAC welcomes this opportunity to comment on the Ministry of Government and Consumer Services (ministry) consultation on the *Consumer Reporting Act* with proposals for providing access to security freezes, credit scores and reports.¹ Credit reports and scores are often difficult for many consumers to understand. It is hardly surprising to note that not many consumers review these reports on a regular basis and generally view these ratings as overwhelming and hard to follow.

We are pleased to see the ministry’s efforts to revise the legal framework and hope that this leads to greater transparency and more clarity for consumers. We seek to provide a consumer perspective on the various issues raised by this consultation and hope that our comments will assist the ministry in its inquiry.

¹ Ontario’s Regulatory Registry, The Consumer Reporting Act - Proposals Under Consideration for Providing Access to Security Freezes, Credit Scores and Reports (10 February 2021), online: <<https://www.ontariocanada.com/registry/view.do?postingId=36227&language=en>>. (Proposal - 21-MGCS003).

Also see the consultation paper from the Ministry of Government and Consumer Services, “The Consumer Reporting Act – Proposals Under Consideration for Providing Access to Security Freezes, Credit Scores and Reports,” (Winter 2021).

Question 1: Do you agree that consumer reporting agencies should no longer be required to provide consumer information to consumers in-person?

- Yes
- No - please explain below
- Other - please explain below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

1. Consumer agencies should be required to provide consumer information to consumers in-person along with providing other options as many consumers might not be comfortable receiving this information through other means, such as electronically, over the telephone or by mail. Accessing credit related information generally involves providing sensitive information for verification such as copies of one's identity cards and documents,² sometimes including one's social insurance number,³ which many consumers might not be comfortable providing electronically or over the phone. There is also a section of consumers, particularly vulnerable consumers who do not have access to the internet and/or smart phone and would prefer receiving this information in-person. Thus, it is integral to ensure that consumers have all the options to their disposal to opt for one that they would prefer.
2. We understand the need for increasing ease and convenience for accessing and sharing such information, for both consumers and consumer reporting agencies so we suggest that instead of removing this option, consumers should be given a choice.
3. At the same time, it is important that the ministry considers introducing guidelines and details as to the application process and indicate whether the application process would differ depending on the method used. If one method would involve greater verification steps than the other, then this should be disclosed from before to enable consumers to make a well-informed decision.

² Equifax, "How Do I Get My Free Credit Report?" online:
<<https://www.consumer.equifax.ca/personal/education/credit-report/how-to-get-a-free-credit-report/>>.

³ *Ibid.*

Question 2: Do you have any concerns about providing consumers with free access to a copy of their current consumer scores on request two times per year?

Yes - please explain below

No

Other

You may enter any explanation and additional comments here

4. We have no concerns about providing consumers with free access to a copy of their current consumer scores on request two times per year. We assume that this procedure will involve the requisite verification checks each time to ensure that the copy is only given to the concerned consumer(s) and to avoid any misuse of such information.

Question 3: Do you have any concerns about consumer reporting agencies providing consumers with a score that is generated using the method that is the “most commonly used by the agency to generate scores”?

Yes - please explain below

No

Other

You may enter any explanation and additional comments here

5. The method used for generating credit scores is often unclear and difficult for many consumers to understand. It is also not clear what factors affect this score and how are these weighed. We do not have any specific concerns about consumer reporting agencies providing scores based on the most commonly used method as long as the details and specifics of such a method are clearly disclosed and explained in simple and plain language. We raised similar concerns regarding lack of transparency in our earlier report, which involved a consumer survey (with over 3000 people contacted and 526 people interviewed) regarding how consumers use and understand the credit reporting system,⁴ we noted that:⁵

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

⁴ Susan Lott, “Credit Reporting: How Are Consumers Faring?” Public Interest Advocacy Centre (2005), online: <https://www.piac.ca/wp-content/uploads/2014/11/piac_credit_reporting.pdf> at p.6 and p.21.

⁵ Susan Lott, “Credit Reporting: How Are Consumers Faring?” Public Interest Advocacy Centre (2005) at p.6 and p.33.

cent were either neutral or indicated that they did not understand what the various credit scores mean.

Our survey indicates that consumers are not very confident about what a credit score is and how it is used. However, the treatment of credit scores by the oversight bodies and the credit reporting system only exacerbates this confusion. The credit scores created by and used by credit grantors such as banks, and those provided to consumers by credit reporting agencies are not necessarily the same, having been produced using different information and differing algorithms.”⁶

6. We reiterate our earlier concerns regarding lack of transparency in relation to credit scores and suggest that the ministry should require the credit reporting agencies to provide clear information in simple and plain language regarding this most commonly used method for calculating scores.

Question 4: Do you have any concerns if the unproclaimed requirement to provide certain past scores is removed? Please provide as much detail as possible in your response.

Explanation and Comments:

You may enter any explanation and additional comments here

7. Consumer reporting agencies should be required to provide consumers with any past scores that were provided to third parties in the prior one year.⁷ This is particularly important when consumers have been denied credit and/or any other form of financing and they would like to better understand their credit file and how it affected their ability to secure financing.
8. The consultation paper notes that consumer reporting agencies have indicated these scores may be difficult to provide and some stakeholders have pointed to past scores being not so valuable to consumers and being difficult to understand, while reference is made to the use of individual formulas that depend on thousands of factors, and that these scores might be hard to understand without additional context from the lender who used it.⁸ Some of these concerns seem to be merely pragmatic limits on how easily the agencies can provide past scores along with other clarity issues. However, none of them can justify denying consumers access to such scores that in many ways shape their lives. As for the difficulty of calculating and understanding these scores, the law should require the

⁶ Susan Lott, “Credit Reporting: How Are Consumers Faring?” Public Interest Advocacy Centre (2005), at p.33.

⁷ See Ministry of Government and Consumer Services, Consultation paper: “The Consumer Reporting Act – Proposals Under Consideration for Providing Access to Security Freezes, Credit Scores and Reports,” at p.6.

⁸ Ministry of Government and Consumer Services, Consultation paper: “The Consumer Reporting Act – Proposals Under Consideration for Providing Access to Security Freezes, Credit Scores and Reports,” at p.6-7.

agencies to provide a clear and simplified summary of the method used for calculating these past scores along with complete details.

Question 5: Would you have concerns if the unproclaimed requirement to provide certain past scores is not removed? Please provide as much detail as possible in your response.

Explanation and Comments:

You may enter any explanation and additional comments here

9. See our response to question 4.

Question 6: What contact information regarding any recipients of the consumer's information is important for a consumer to have included in their consumer report?

Explanation and Additional Comments:

You may enter any explanation and additional comments here

10. The consultation paper notes that to provide additional transparency to consumers, the unproclaimed amendments require the consumer reporting agencies to provide contact information, including the address and telephone number or email address of every person on whose behalf a consumer's file has been accessed within the last three years together with the current provision of providing the names of those persons.⁹ It also notes stakeholders' concern regarding this amount of information to be excessive.¹⁰ We support these unproclaimed amendments regarding the contact information- that is to provide the address, and telephone number or an email address along with the name of person on whose behalf the consumer file was accessed.
11. We do not view the proposed contact information to be excessive, and rather see it as a necessary and integral part of a consumer's file. Consumers should be provided with both the address and a telephone number or an email of any person(s) on whose behalf their file was accessed so that they know who accessed their file and better understand the implications of this access-if any and importantly, are able to immediately contact these persons and get any errors corrected as need be.
12. We note that if the Act only requires provision of a mailing address, then it could take time for a consumer to contact such persons and result in delays in getting any details and/or in getting any corrections done. Conversely, if just an email address or a telephone number is provided, and if no contact can be established through either means, then in

⁹ Ministry of Government and Consumer Services, Consultation paper: "The Consumer Reporting Act – Proposals Under Consideration for Providing Access to Security Freezes, Credit Scores and Reports," at p.7.

¹⁰ *Ibid.*

the absence of a mailing address, the consumer will either be left with no other means to contact or could face significant delays in getting any errors corrected.

13. Fixing any errors on consumers' file is extremely important as it could affect their score and their chances of securing any loan, credit cards, and other types of financing¹¹ and in some cases even getting jobs.¹² A survey conducted in our earlier report revealed that 18% of respondents found inaccuracies on their credit report and 80% had taken steps to correct the inaccuracy.¹³ Whereas 10% believed they were denied access to financial services due to this inaccuracy.¹⁴ The report clarified that even though 10% might not sound like an alarming percentage but it is significant when viewed in relation to the actual population numbers, noting that more than threequarters of a million adult Canadians believe that they were denied access to financial services due to an inaccuracy in their credit report.¹⁵
14. Likewise, CBC News reported in 2012 that credit rating mistakes are costing unsuspecting consumers thousands of dollars in higher interest rates and preventing some consumers from getting much needed loans.¹⁶ It also noted that in the past few years, more than 500 complaints have been filed with provincial consumer affairs agencies across Canada about credit reporting agencies, many alleging errors by companies led to their poor credit scores.¹⁷ This number is likely going to be much higher in today's time with a rise in data breaches and increased risk of consumers' personal and financial data being misused.
15. Notably, the Financial Consumer Agency of Canada's (FCAC) webpage regarding checking for errors on your credit report, notes that one may be able to speed up the process by contacting the creditor themselves about the error.¹⁸ However, if there is limited contact information given by the credit reporting agencies then it could be challenging for consumers to get these errors corrected, which could already be a cumbersome and lengthy process.
16. Considering the importance for consumers to have access to pertinent persons' contact information, we strongly urge that an address, and a telephone number or email address

¹¹ Alex Shprintsen and Annie Burns-Pieper, "Credit reporting errors costing Canadians," *CBC News* (19 November 2012), online: <<https://www.cbc.ca/news/canada/credit-reporting-errors-costing-canadians-1.1185972>>.

¹² Mark Swartz, "How Your Credit History Affects Employment," Monster website, online: <<https://www.monster.ca/career-advice/article/credit-affects-employment>>.

¹³ Susan Lott, "Credit Reporting: How Are Consumers Faring?" Public Interest Advocacy Centre (2005) at p.6, 24-25.

¹⁴ *Ibid.*

¹⁵ Susan Lott, "Credit Reporting: How Are Consumers Faring?" Public Interest Advocacy Centre (2005) at p.24-25.

¹⁶ Alex Shprintsen and Annie Burns-Pieper, "Credit reporting errors costing Canadians," (19 November 2012) *CBC News*.

¹⁷ *Ibid.*

¹⁸ Financial Consumer Agency of Canada, "Checking for errors on your credit report," online: <<https://www.canada.ca/en/financial-consumer-agency/services/credit-reports-score/check-errors.html>>.

should be provided by consumer reporting agencies along with the names of persons on whose behalf the consumer file was accessed.

17. As for the concern regarding this additional contact information cluttering the consumer file, such information could be better organized to allow for a more clear presentation. Though, we reiterate that the ministry should prioritize protecting consumers and a better presentation of information in the consumer's file should certainly not come at the cost of compromising consumer transparency.

Question 7: Should the contact information of any recipients of a consumer's information be maintained on the consumer's file for three years or one year?

Three years

One year

Other

You may enter any explanation and additional comments here

18. As noted earlier, it is extremely important for consumers to know and be able to contact any person(s) on whose behalf their file was accessed to be able to fix any errors and/or get any other details. This should date back to at least three years as many consumers do not regularly check their credit reports so they might not know about many older inaccuracies and errors until much later. Thus, when consumers get to know about these issues, they should be able to contact any recipient who received their report and/or get any errors fixed, dating back to at least three years.

19. Notably, PIAC's earlier survey found that only 17% of Canadian adults (18 and over) have checked their credit rating in last 3 years (approx. 4.2 million Canadian adults).¹⁹ A 2017 Ipsos survey for Capital One conducted between October 15 and October 17, 2016, with 2,001 Canadians, also indicated a similar trend and also highlighted consumers' concerns regarding getting their credit score.²⁰ It noted:

[A] new Ipsos survey for Capital One has found that while eight in ten Canadians (80%) currently own a major credit card, more than half (57%) have never attempted to obtain their score. Seven in ten (69%) don't know their current credit score, while it seems that many others are reluctant to learn it: of those Canadians

¹⁹ Susan Lott, "Credit Reporting: How Are Consumers Faring?" Public Interest Advocacy Centre (2005) at p.6, 30 and 51.

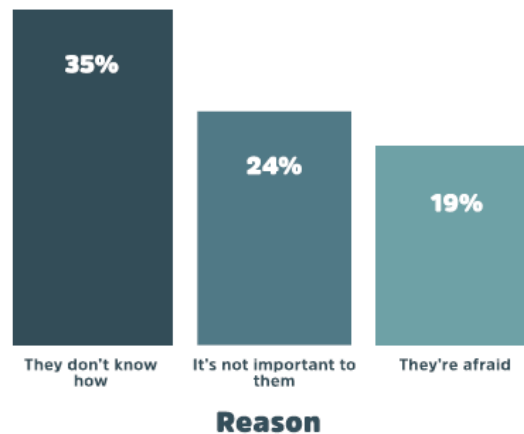
²⁰ Ipsos, "Over Half of Canadians (57%) Have Never Obtained their Credit Score," (3 May 2017) online: <<https://www.ipsos.com/en-ca/news-polls/over-half-canadians-57-have-never-obtained-their-credit-score>>.

who don't track their score, four in ten (40%) say they don't need or want to know what it is.

Those who have obtained their score in the past (43%) are most likely to have sought it from a banker, mortgage professional or financial services provider (18%) or directly from their credit report (9%).²¹



WHY DO ONLY 41% OF CANADIANS ACTUALLY KNOW THEIR CREDIT SCORE?



They don't know how: 35% of Canadians don't know how to check their score. (Free online tools and websites have made this process simple.)

They don't see the importance: 24% of Canadians don't view their credit score as an important part of their financial well-being.

They are afraid: 19% of Canadians are afraid to check their score. Credit score causes negative emotions (anxiety, fear, depression, hopelessness) in 27% of Canadians.

Source: Credit in Canada, Study by Leger, commissioned by Refresh Financial

20. Another research from a Fintech (Refresh Financial), which involved an online survey of 1901 Canadians completed between June 4 and 11, 2018 using Leger's online panel of approximately 400,000 members nationally²² found that while 96% of Canadians believe

²¹ *Ibid.*

²² Refresh Financial, Inc, "Credit in Canada," (A National survey to assess Canadians' understanding of Consumer Credit, how it differs amongst age groups, and the impact of poor credit on financial and emotional wellness- this was conducted in 2018), a study by Leger, commissioned by Refresh Financial (2019), online: <https://refreshfinancial.ca/wp-content/themes/refresh/images/bankruptcy/pdf-guide/CreditInCanada_guide.pdf> at p.4.

a good credit score is important but less than half (41%) actually know their score.²³ With 35% stating that they don't know how to check their score, 24% said it is not important to them and 19% said they are afraid to check it.²⁴ Meanwhile, 27% of Canadians stated that they experience negative emotions such as anxiety and fear in relation to their credit score.²⁵

21. It is also important to point out that sometimes banks and other creditors do not provide timely updates to the reporting agencies with important details missing and/or updates not reflected in the consumer files for many years. For instance, Global News shared the story of Robin Harvey who found reporting errors in her credit report that had not been fixed for several years.²⁶ One error was related to a \$30,000 CIBC line of credit that Harvey said should have been closed in 2013.²⁷ The other was an even older account she had already sought to cancel twice.²⁸ Reportedly, Harvey had opened the \$10,000 line of credit with Royal Trust, now owned by RBC, in 1997 and had asked that the account be closed in 2006 but even ten years later, it was not closed.²⁹ This was eventually closed after getting in touch with RBC in the fall of 2017, though this credit line remains on her record with a date of last activity reported as October 2017 despite the initial request to close from almost 10 years ago.³⁰
22. The above instances illustrate some of the issues found in the credit reports and the delays in getting these issues resolved. We submit that the contact information of any recipient of a consumer's information should be maintained in the file for at least three years to allow for greater transparency and to make it easier for consumers to contact the different recipients of their file to get any errors corrected and/or to provide these recipients with any updated versions of these files as need be.

²³ Refresh Financial, Inc, "Credit in Canada," a study by Leger, commissioned by Refresh Financial (2019) at p.8-9.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Erica Alini, "'It makes no sense': Toronto woman with no debt calls out credit score swing, credit report errors," Global News (19 March 2019), online: <<https://globalnews.ca/news/5043685/credit-score-drop-credit-report-errors-equifax-canada/>>.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

Question 8: Do you agree that consumers should be able to place an explanatory statement on their file?

Yes

No

Explanation and Additional Comments:

You may enter any explanation and additional comments here

23. We agree consumers should be able to place an explanatory statement on their file. This is particularly important in today's increasingly digitalised society where so many transactions happen online, which has significantly increased the risk of data breaches, and misuse of consumers' data.³¹ Even consumer reporting agencies have been targets of data breaches. For instance, Equifax's massive data breach in 2017 affected 19,000 Canadians,³² and TransUnion data breach in 2019 affected about 37,000 Canadians.³³ There have been several other incidents of data breaches in recent years. For instance, Capital One disclosed in July 2019 that data of 6 million Canadians was hacked, with approximately one million social insurance numbers compromised.³⁴ Desjardins suffered a data breach in June 2019 that affected 4.2 million accounts, which was initially thought to have affected 2.7 million accounts.³⁵
24. The FCAC's webpage notes that consumers should check their credit report for fraud by looking out for accounts being added to consumers' files that don't belong to them, which means that someone might have applied for a credit card, line of credit, mortgage or other loan under their name.³⁶ Or this could just be an administrative error.³⁷ In either case,

³¹ CS staff, "Cost of data breaches on the rise in Canada: IBM report," *Canadian Security* (29 July 2020), online: <<https://www.canadiansecuritymag.com/cost-of-data-breaches-on-the-rise-in-canada-ibm-report/>>.

³² The Canadian Press, "Equifax says more than 19,000 Canadians affected by security breach," *CBC News Business* (28 November 2017, last updated 29 November 2017), online: <<https://www.cbc.ca/news/business/equifax-canadians-affected-update-1.4424066>>. Also see: Vito Pilioci, "Equifax forced to report to the Privacy Commissioner of Canada for six years as a result of 2017 data breach," *Ottawa Citizen* (9 April 2019), online: <<https://ottawacitizen.com/news/local-news/equifax-forced-to-report-to-the-privacy-commissioner-of-canada-for-six-years-as-a-result-of-2017-data-breach>>.

³³ The Canadian Press, "TransUnion says data on 37,000 Canadians may have been compromised," *CBC News Business* (9 October 2019), online: <<https://www.cbc.ca/news/business/transunion-data-breach-1.5315488>>.

³⁴ Maham Abedi, "Capital One data breach: here's what Canadians need to know," *Global News* (30 July 2019, last updated 1 August 2019), online: <https://globalnews.ca/news/5702026/capital-one-data-breach-what-to-know/>

³⁵ John MacFarlane, "4.2 million Desjardins members affected by data breach, credit union now says," *CBC News* (1 November 2019), online: <<https://www.cbc.ca/news/canada/montreal/desjardins-data-breach-1.5344216>>.

³⁶ Financial Consumer Agency of Canada, "Checking for errors on your credit report."

³⁷ *Ibid.*

consumers would certainly want to take steps to correct this and/or notify creditors about it by adding an explanatory note on their consumer report along with having any fraud alert as applicable.

25. Additionally, there are other instances when a consumer might want to add an explanation to their file. Such as when there is a dispute regarding any information in their credit report, and the consumers would like the existing and potential creditors to know about their concerns. In such circumstances and otherwise, consumers should have a right to add explanatory statements to their files.
26. Such explanatory statements are already allowed by some jurisdictions and we strongly support their inclusion in Ontario. For instance, the *Credit Reporting Act* of BC gives consumers a right to provide explanations or additional information about the circumstances surrounding any item of information in their file of not more than 100 words, and which shall be maintained by the reporting agency.³⁸ Similarly, the *Credit Reporting Act* of Saskatchewan provides consumers with a right to add a 200 words statement to their file, setting out the nature of their dispute regarding any information in their file with additional rights as to who should be provided this statement.³⁹ The Quebec's Bill 53 (2020, chapter 21) *Credit Assessment Agents Act*, (assented to on 28 October 2020) also provides similar rights and notes that these explanatory statements should not exceed the number of words prescribed by government regulation and comply with any other conditions so prescribed.⁴⁰

Question 9: Do you agree that the statement should be limited to 200 words?

- Yes**
- No – please explain below**

Explanation and Additional Comments:

You may enter any explanation and additional comments here

27. We agree that the explanatory statement should generally be limited to 200 words. However, the ministry should consider extending this limit in exceptional cases, involving data breaches to allow consumers to provide more explanation and any other details they find necessary.

³⁸ *Credit Reporting Act* [RSBC 1979] CHAPTER 78, s.15 (Explanation by consumer), online: <<https://www.bclaws.gov.bc.ca/civix/document/id/92consol16/92consol16/79078>>.

³⁹ *The Credit Reporting Act*, SS 2004, c C-43.2, <https://canlii.ca/t/53gng>, see s.24(3).

⁴⁰ Bill 53 (2020, chapter 21) *Credit Assessment Agents Act*, s.11, 17-20. See online: <<https://www.canlii.org/en/qc/laws/astat/sq-2020-c-21/latest/sq-2020-c-21.html>>.

Question 10: Do you agree that the statement should remain on a consumer's file until it is removed by the consumer or six years have passed?

Yes

No – please explain below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

28. We agree that the statement should remain on a consumers' file until it is removed by the consumer or six years have passed. Many times, such statements would reflect consumers' explanation regarding an error, or a misuse of their information and credit as a result of any data breach, or other disputed information, which might be important to maintain. That said, sometimes some explanatory statements, which are no longer relevant could negatively affect consumers' credit file, for instance when the pertinent account is no longer open.⁴¹ For such situations, the ministry could consider providing guidelines to consumers so that they can make well-informed decisions regarding if and/or when they should remove these explanatory statements from their files.

Question 11: Should consumers have a right of action under the Consumer Reporting Act? Why or why not?

Yes

No

Explanation and Additional Comments:

You may enter any explanation and additional comments here

29. Consumers should definitely have a right of action under the *Consumer Reporting Act* (Act). The consultation paper aptly notes that inaccurate, incomplete or wrong information on a consumer's file could damage consumer's ability to get credit or credit on more favourable terms.⁴² Moreover, correcting this information and getting in touch with

⁴¹ Jennifer White, "Should I Add a Consumer Statement to My Credit Report?" Experian (4 April 2020), online: <<https://www.experian.com/blogs/ask-experian/be-cautious-about-adding-statements-to-your-credit-history/>>. Also see: Melody Warnick, "How to add a 100-word written statement to your credit report," CreditCards.com, online: <<https://www.creditcards.com/credit-card-news/help/add-written-statement-to-credit-report-6000/>>.

⁴² Ministry of Government and Consumer Services, Consultation paper: "The Consumer Reporting Act – Proposals Under Consideration for Providing Access to Security Freezes, Credit Scores and Reports," at p.9.

creditors as need be to inform them about these updates could be an arduous and time-consuming process.

30. We note that the unproclaimed amendments to Ontario's Act consist of an updated section 12 that pertains to the right of consumer to request disclosure, which includes disclosure of right to dispute with other provisions regarding the request for disclosure, and method of disclosure.⁴³ Its updated subsection 13(1) regarding correction of errors, notes that subject to any prescribed limitations, a consumer may dispute the accuracy or completeness of any item of information in his or her file, and the consumer reporting agency shall within a reasonable time and in accordance with any prescribed requirements, use its best endeavours to confirm or complete the information and shall correct, supplement or delete the information in accordance with good practice,⁴⁴ with the other parts of s.13 requiring sharing of details regarding any corrections or updates to the consumer report with previous recipients of the credit report.⁴⁵ That said, it is not clear from this section what are these prescribed limitations regarding when a consumer can dispute the accuracy or completeness of an item of information in his or her file. We would urge the ministry to clarify this in the law.
31. We generally support the above mentioned provisions, which are similar to those found in some other jurisdictions. That said, some of these rights are limited in scope and Ontario could seek guidance from other provincial laws to adopt a stronger regime that better protects the consumer interest.
32. For example, s.21(1)(b) of *The Credit Reporting Act* of Saskatchewan requires the consumer reporting agency to inform the consumer of his or her right to dispute any information contained in the file pursuant to its Division 3 (concerning disputes) and provides the manner in which a dispute may be made.⁴⁶ The main aspects covered by Division 3 are that consumers must notify the credit reporting agency (agency) of the dispute in writing, and the agency shall investigate the dispute within a reasonable time.⁴⁷ The Act also lists the measures to be take by the agency if any information in the file respecting the consumer is found to be incomplete or inaccurate or can no longer be verified- the agency shall within a reasonable time update the information by completing or correcting it or deleting it if the information cannot be verified, notify the consumer in writing of the changes and notify any person who received a credit report in relation to that file within six months preceding the changes unless the consumer requested otherwise.⁴⁸
33. Alternatively, Division 3 provides that if the information is in the agency's opinion complete, accurate and verified, the agency shall advise the consumer in writing of his or her right

⁴³ *Consumer Reporting Act*, R.S.O. 1990, c. C.33, unproclaimed amendments, s.12, online: <<https://www.ontario.ca/laws/statute/90c33#BK12>>.

⁴⁴ *Consumer Reporting Act*, R.S.O. 1990, c. C.33, unproclaimed amendments, s.13(1).

⁴⁵ *Consumer Reporting Act*, R.S.O. 1990, c. C.33, s.13(2).

⁴⁶ *The Credit Reporting Act*, SS 2004, c C-43.2, <https://canlii.ca/t/53gnq>, see s.21(1)(b).

⁴⁷ *The Credit Reporting Act*, SS 2004, c C-43.2, ss.23-24.

⁴⁸ *Ibid.*

to file a written statement of not more than 200 words stating his or her nature of dispute regarding the information.⁴⁹ This statement of dispute is required to be sent to any person who received a credit report for that file within six months preceding the date the consumer filed a dispute unless requested otherwise by the consumer, and a copy is also to be provided in any subsequent credit report containing the information that the consumer disputes.⁵⁰ *The Credit Reporting Act* in British Columbia includes similar requirements and protections.⁵¹

Question 12: Should consumer reporting agencies be required to meet specific timelines to address consumer disputes about the accuracy or completeness of their information?

Yes – please specify below

No – please explain below

Explanation and Additional Comments:

You may enter any explanation and additional comments here

34. Consumer reporting agencies should be required to meet specific timelines to address consumer disputes about the accuracy or completeness of their information, which should be no more than 30 business days. This should be more than enough for the agencies to do the required investigations and to provide detailed updates to consumers. We do not support the use of reasonable timelines, as these often remain unpredictable and arbitrary, leaving consumers in the state of uncertainty with no clarity as to when they can expect their issue to be addressed. Also, if a time frame would be prescribed under the law, the agencies are likely to make an effort to deal with these issues expeditiously.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Credit Reporting Act* [RSBC 1979] CHAPTER 78, ss.14-16.

Question 13: Should a security freeze only apply to new credit, increased credit, and new long-term contracts for the lease of goods?

- Yes
- No – please explain below
- Other - please explain below

Explanation and additional comments:

You may enter any explanation and additional comments here

35. We strongly support placing a security freeze on a consumer's file if requested by the consumer and to require consumer reporting agencies to suspend or terminate it upon a consumer's request as provided in the unproclaimed amendments to the *Consumer Reporting Act*.⁵² A CBC Marketplace investigation in 2019 reported that Canada lags behind in protecting consumers and noted that Canada's two credit-reporting bureaus TransUnion and Equifax, both offer credit freezes in the U.S. for free as required by a law that was passed in 2018, but the same is not available in Canada.⁵³
36. The U.S Federal Trade Commission (FTC) refers to credit freeze (also known as a security freeze) as a free tool that lets consumers restrict access to their credit report, which in turn makes it more difficult for identity thieves to open new accounts in their name as most creditors need to see the credit score before approving a new account.⁵⁴ If the purpose of a security freeze is seen as protecting consumers against any unauthorized transactions including opening of new accounts, and/or increasing of credit limits and other fraudulent transactions, this for the most part appears to be fulfilled by applying a security freeze to only new credit, increased credit and new long-term contracts for the lease of goods to protect consumers.
37. However, this means that some entities such as prospective employers doing background checks, insurance companies, existing creditors and other entities would still be able to access consumers' information. Such a broad range of access can raise concerns for consumers in case of an identity theft, when many consumers might not be comfortable

⁵² Ministry of Government and Consumer Services, Consultation paper: "The Consumer Reporting Act – Proposals Under Consideration for Providing Access to Security Freezes, Credit Scores and Reports," at p.10.

⁵³ Jenny Cowley, Eric Szeto, Makda Ghebresslassie, "Credit freezes are one easy way to protect against identity fraud — but they're not available in Canada," *CBC Marketplace* (22 February 2019), online: <<https://www.cbc.ca/news/canada/marketplace-identity-theft-credit-monitoring-freeze-1.4937903>>.

⁵⁴ Federal Trade Commission, consumer information, "Credit Freeze FAQs," online: <<https://www.consumer.ftc.gov/articles/0497-credit-freeze-faqs#can>>.

with anyone having access to their credit information, with elevated concerns regarding how and when their personal and financial information might be accessed and/or used.

38. Moreover, a security freeze does not protect consumers from the misuse of their existing credit cards and other financial services as identity thieves could still use these existing accounts⁵⁵ and that could affect their credit rating. Thus, it is likely that consumers would want to temporarily restrict even prospective employers and other entities from accessing their credit file. This could be for a short while, *i.e.*, till the time they have closed all or affected credit accounts, changed passwords of other compromised accounts and taken other measures, or it could be for much longer.
39. We submit that a better approach would be to leave the scope of a credit freeze broad and open-ended while explicitly providing limited exceptions, indicating who could access such information despite a credit freeze. This will empower consumers to limit access to more entities, and give them the right to lift the freeze as and when they are ready to do so. This will also cover any circumstances in the future that could trigger the need to protect consumers' credit information, which are not covered by the proposed scope.
40. If a security freeze is only applicable for limiting access for new credit applications, increasing credit limit and for long-term leasing of goods then nothing is stopping the prospective employers and other entities from accessing affected consumers' files. As noted earlier, the credit rating could still be affected in case of an identity theft due to the misuse of existing accounts,⁵⁶ and a fraud alert or warning has no impact on the contents of credit report or the credit score, which suggests that this by itself cannot prevent the score from dropping due to fraudulent activities. Such an alert just encourages third parties and other creditors who are accessing consumers' file to take extra steps to verify the identity of the person before extending credit.⁵⁷
41. We note that Quebec's Bill 53 (2020, chapter 21) *Credit Assessment Agents Act*, follows a similar approach as proposed by the ministry in this consultation paper, whilst also covering contracts for sequential performance of services provided at a distance.⁵⁸

⁵⁵ Federal Trade Commission, consumer information, "Credit Freeze FAQs."

⁵⁶ Nick Clements, "How To Protect Your Credit Score When You Are An Identity Theft Victim," *Forbes* (24 August 2015), online: <<https://www.forbes.com/sites/nickclements/2015/08/24/how-to-protect-your-credit-score-when-you-are-an-identity-theft-victim/?sh=441314987a68>>.

⁵⁷ Equifax (web page), "7 Things to Know About Fraud Alerts," online: <<https://www.equifax.com/personal/education/identity-theft/7-things-to-know-about-fraud-alerts/>>. Also, see: Equifax (Canadian web page), "How Can I Place a Fraud Alert on My Equifax Credit Report?" online: <<https://www.consumer.equifax.ca/personal/education/identity/how-can-i-place-a-fraud-alert-on-my-equifax-credit-report/>>.

⁵⁸ Bill 53 (2020, chapter 21) *Credit Assessment Agents Act*, s.9. It states: "A security freeze prohibits the credit assessment agent holding the record concerned from communicating personal information and the information produced on the basis of that information, where the communication is for the purpose of entering into a credit contract, increasing credit extended under such a contract or entering into a long-term contract of lease of goods or a contract involving sequential performance for a service provided at a distance." See online: <<https://www.canlii.org/en/qc/laws/astat/sq-2020-c-21/latest/sq-2020-c-21.html>>.

However, considering the issues identified above, we support the adoption of a more broader approach as suggested.

42. The *Fair Credit Reporting Act* (FCRA) in the U.S. appears to follow a flexible approach, as it defines a ‘security freeze’ as follows:⁵⁹

“The term ‘security freeze’ means a restriction that prohibits a consumer reporting agency from disclosing the contents of a consumer report that is subject to such security freeze to any person requesting the consumer report.”⁶⁰

43. Notably, the FCRA does list exceptions, indicating parties who could still access the consumer information, despite the security freeze (more on this discussed below).⁶¹ We submit that in case, the ministry adopts a broad approach as recommended, the ministry should provide narrow exceptions to only allow certain specific entities’ access to consumers’ information during a credit freeze. The ministry should also provide consumer advisories in different formats on who can and cannot access such information despite a credit freeze. It is also important to issue consumer-facing information in simple and plain language on credit freezes in general *i.e.*, what they are and how they work.

Question 14: Under what circumstances, if any, would a consumer’s information need to be accessed despite a freeze?

Explanation and additional details:

You may enter any explanation and additional details here

44. In some circumstances, a consumers’ information might need to be accessed even during a freeze, this could be when the consumer meets an unexpected event and needs to either apply for a loan, get a car or another type of financing, which generally requires a credit check before approval. At other times, it could be that the government, court officials, and/or existing creditors need to access consumer’s information. For instance, the FTC lists the entities who can access such information despite a freeze, as it notes:⁶²

Certain entities still will have access to it.

⁵⁹ *Fair Credit Reporting Act*, 15 U.S.C § 1681, § 605A. Identity theft prevention; fraud alerts and active duty alerts], see (i) National security freeze, part (1)(C) which provides the above noted definition. Also see (j) National protection for files and credit records of protected consumers, part (E) that provides as follows: “The term ‘security freeze’ means a restriction that prohibits a consumer reporting agency from disclosing the contents of a consumer report that is the subject of such security freeze or, in the case of a protected consumer for whom the consumer reporting agency does not have a file, a record that is subject to such security freeze to any person requesting the consumer report for the purpose of opening a new account involving the extension of credit.”

⁶⁰ *Fair Credit Reporting Act*, 15 U.S.C § 1681, § 605A. Identity theft prevention; fraud alerts and active duty alerts], see (i) National security freeze, part (1)(C).

⁶¹ *Fair Credit Reporting Act*, 15 U.S.C § 1681, § 605A. Identity theft prevention; fraud alerts and active duty alerts], see (i) National security freeze, part (4) for exceptions.

⁶² Federal Trade Commission, consumer information, “Credit Freeze FAQs.”

- your report can be released to your existing creditors or to debt collectors acting on their behalf.
- government agencies may have access in response to a court or administrative order, a subpoena, or a search warrant.⁶³

45. As stated above, the FCRA provides a list of exceptions, indicating parties who can access consumers' information despite a freeze, some of these include broadly, persons or entities owed by the consumer; federal, state, and local government agencies or private collection agency in certain circumstances; any person or entity administering a credit file monitoring service; any person or entity for the purpose of providing a copy of consumer's report or credit score upon the consumer's request; any person using the information in connection with the underwriting of insurance; for employment, tenant or background screening purposes; and any person using the information for authenticating a consumer's identity for purposes other than granting credit, or for investigating or preventing actual or potential fraud.⁶⁴

46. Ontario could similarly identify exceptions within the law. That said, we do not suggest that this broad list of exceptions of the FCRA should be followed as is, it is noted here for illustrative purposes only. We would urge the ministry to consider adopting a limited and explicitly defined list of exceptions to ensure strong protections for consumers. We are particularly wary of allowing access to collection agencies in case of identity theft. As we noted in one of our reports that under Californian law no creditor can sell a consumer's debt to a collections agency and Ontario also generally prohibits further collection activities in case of fraud.⁶⁵

Under Californian law, no creditor can sell a consumer's debt to a collection agency once the consumer has reported the fraud to a credit bureau. Also, ID theft victims have a statutory right to request an injunction against debt collectors who pursue collection after being notified of the fraud.

In Ontario, debt collectors are prohibited from further collection activities once the alleged debtor has informed the agency or collector that they are not in fact the debtor, "unless the collection agency or the collector first takes all reasonable precautions to ensure that the person is in fact the debtor". It is not clear to what extent this requirement to take reasonable precautions has helped ID theft victims stop misdirected collection activities. As long as the consumer has evidence of the fraud (e.g., via an affidavit as described above, or a police report), such evidence should be sufficient to invoke this prohibition.⁶⁶ [footnotes within the quote omitted].

⁶³ *Ibid*

⁶⁴ *Fair Credit Reporting Act*, 15 U.S.C § 1681, § 605A. Identity theft prevention; fraud alerts and active duty alerts], see (i) National security freeze, part (4) for exceptions.

⁶⁵ Philippa Lawson & John Lawford, "Identity Theft: The Need for Better Consumer Protection," Public Interest Advocacy Centre (2003), online: <<https://www.piac.ca/wp-content/uploads/2014/11/idtheft.pdf>> at p.47.

⁶⁶ *Ibid*

Question 15: Are there any barriers or concerns about a potential requirement to place, suspend or terminate a security freeze immediately?

Explanation and Additional Comments:

You may enter any explanation and additional comments here

47. Notably, credit freezes can create delays and issues when consumers need to access their credit information quickly but cannot do so because their credit is frozen and they might have to undergo an inconsistent and/or a cumbersome process to suspend or terminate this freeze, with different credit reporting agencies having their own processes and timelines. These concerns could be addressed and/or minimized by setting certain standards and timelines.
48. We strongly encourage the ministry to identify the specific processes and at least the timelines in the law, not in the regulation to provide for strong and consistent rights to consumers. These should cover details on how to apply for credit freezes, how to lift them, and the timelines to be met by the credit reporting agencies for placing and lifting these freezes.
49. Some guidance regarding these processes and timelines can be sought from the FCRA. The FCRA provides that upon receiving a direct request from a consumer to place a security freeze and upon receiving proper identification from the consumer, the consumer reporting agency shall free of charge, place the freeze not later than 1 business day after receiving a request from telephone or through secure electronic means or by 3 business days in case of a request by mail.⁶⁷ A confirmation of the freeze should be sent by the consumer reporting agency not later than 5 business days after placing the security freeze.⁶⁸ As for the removal of security freeze, it generally provides that a security freeze shall remain in place until the consumer directly requests that it be removed except as provided otherwise.⁶⁹ This freeze should also be removed free of charge, after receiving proper identification from the consumer and no later than 1 hour after receiving the request by telephone or secure electronic means, and in 3 business days after receiving the request for removal by mail.⁷⁰ A clear identification of the timeframes in the law for the placing and lifting of credit freezes is important and we suggest that Ontario should certainly consider including such clear timelines in the law.
50. Other issues relating to the process and/or other steps involved in lifting these credit freezes should be considered, particularly the use of PIN and/or special code by some credit reporting agencies in this regard. Some concerns regarding losing or misplacing

⁶⁷ *Fair Credit Reporting Act*, 15 U.S.C § 1681, § 605A. [Identity theft prevention; fraud alerts and active duty alerts], see (i) National security freeze, part (2) to (3).

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

these PINs have been raised.⁷¹ TransUnion requires consumer's personal information and a (six-digit) freeze PIN to unfreeze an account if this is being done over the phone system, but not when the consumer is making changes to his or her security freeze, online.⁷² Notably, Equifax no longer requires the use of 10-digit PINs to manage a security freeze, which can be managed online through an Equifax account, by phone and mail.⁷³

51. We would encourage the ministry to consider introducing the least cumbersome but secure process for unfreezing such accounts and discourage the use of PINs if they would create unnecessary complexities for consumers.

Question 16: Should a security freeze stay in place until it is suspended or removed by the consumer or should it have a set expiry date (e.g., six years)?

Explanation and Additional Comments:

You may enter any explanation and additional comments here

52. A security freeze should stay in place until it is suspended or removed by the consumer. In case the security freeze is still in place after a lapse of six years then the credit reporting agency should contact the consumer to make them aware of the credit freeze that is still in effect. However, the credit reporting agency shall not by itself remove the freeze, which should only be done when expressly requested so by the consumer.

Question 17: Should consumer reporting agencies be able to charge consumers a fee to place, suspend or terminate a security freeze? If so, what should this fee be?

Explanation and Additional Comments:

You may enter any explanation and additional comments here

53. Consumer reporting agencies should not charge a fee to place, suspend or terminate a security freeze, which are long overdue in Canada. We would urge the ministry to simplify the process for consumers to apply for such freezes and not place any fees for applying and lifting these freezes. The sections in the FCRA that require security freezes to be placed and removed free of charge, could be considered for specifics (see above).

⁷¹ Nicole Dieker, "How to unfreeze credit if you lose your PIN," *Bankrate* (27 February 2020), online: <<https://www.bankrate.com/finance/credit-cards/froze-credit-lost-pin/>>.

⁷² TransUnion, "What Should I Do After I Freeze My Credit Report?" Blog post, (09/05/2018) online: <<https://www.transunion.com/blog/credit-advice/what-should-i-do-after-i-freeze-my-credit>>.

⁷³ Equifax, "What should I do if I was previously issued a 10-digit security freeze PIN?" online: <<https://www.equifax.com/personal/help/replace-lost-security-freeze-pin/>>.

Question 18: Do you have any additional comments or suggestions related to security freezes?

Explanation and Additional Comments:

You may enter any explanation and additional comments here

54. One of our main concern pertains to how placing a security freeze with one credit reporting agency might just place a freeze with that agency and not the rest. The ministry should consider either facilitating a process that allows all the credit reporting agencies within a province to coordinate with one another regarding the placing and lifting of such security freezes. Alternatively, if this cannot be done then at least the law should require each credit reporting agency to inform consumers at the time of placing and removing a security freeze that they would need to do the same with other credit reporting agencies, as many consumers might not know about this. The ministry should also provide this information along with other details on credit freezes in the form of simple guidelines on its website and in other formats so that consumers can understand these processes better.

Question 19: Do you have any concerns or suggestions about the enforcement powers of the Consumer Reporting Act?

Explanation and Additional Comments:

You may enter any explanation and additional comments here

55. We support broad enforcement powers under the Act, and view section 16.1 of the Act regarding the Registrar's enhanced powers to be important for adequately protecting the consumer interest. Pursuant to this section, the Registrar or a person designated by the Registrar in writing may inquire and direct a consumer reporting agency to provide information about the agency's practices in connection with any requirements in this Act and the regulations, and also allows the Registrar to order the agency to amend or discontinue a practice that is determined to be contravening the Act or the regulations, amidst some other provisions.⁷⁴

⁷⁴ *Consumer Reporting Act*, R.S.O. 1990, c. C.33, unproclaimed section, s.16.1.

Other Suggestions

The ministry welcomes any further suggestions you wish to make concerning the Consumer Reporting Act. Please feel free to comment on any additional issues that you feel the ministry should consider.

Explanation and Additional Comments:

You may enter any explanation and additional comments here

56. Similar to the concern noted earlier regarding how a consumer likely needs to request a security freeze with each consumer reporting agency separately, we have concerns as to how fraud alerts issued by a consumer reporting agency are only limited to that one agency. We urge the ministry to consider including a provision in the Act regarding fraud alerts to set common and clear standards and practices to be followed by all the credit reporting agencies in Ontario.
57. For instance, Equifax's website notes that there are two types of fraud/identity theft alerts that consumers can place on their credit report, an Identity Alert and a Fraud Warning.⁷⁵ It notes that when a consumer places an alert with Equifax, it is only applied to the Equifax credit report and a consumer needs to contact TransUnion to place an alert on the TransUnion credit report.⁷⁶ Meanwhile, we note that in U.S., a consumer does not need to apply for three separate fraud alerts to be placed on each credit report with different agencies, as these are placed on all such reports after placing a fraud alert with just one agency.⁷⁷
58. Besides this, we also have concerns regarding the use of consumers' personal information by the credit reporting agencies⁷⁸ and the heightened data protection issues in these times, and would like the ministry to engage in discussing these issues in detail.

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⁷⁵ Equifax, "How Can I Place a Fraud Alert on My Equifax Credit Report?" online: <<https://www.consumer.equifax.ca/personal/education/identity/how-can-i-place-a-fraud-alert-on-my-equifax-credit-report/>>.

⁷⁶ *Ibid.*

⁷⁷ TransUnion, "Fraud Alert," (see FAQs on Adding a Fraud Alert), online: <https://www.transunion.com/fraud-alerts>

See: "Do I need to place a fraud alert with each credit bureau?"

No — we've got it covered. Once you place a fraud alert with TransUnion, we will notify the other credit bureaus — Equifax and Experian — so they place a fraud alert on your credit reports with them."

⁷⁸ See our earlier report, Susan Lott, "Credit Reporting: How Are Consumers Faring?" Public Interest Advocacy Centre (2005) that also raised several privacy concerns in this space.