CPC2015-198
Attachment 3
Letter 1

Canadian Payday
Loan Association
Association canadienne
des prêteurs sur salaire

September 2015

RE: CPLA Submission to the Calgary Planning Commission

The report issued to the Calgary Planning Commission includes several inaccuracies that we would like to address.

Page 1 of the report states that, as of July, 2015 there were approximately 82 payday lending business in Calgary. This is a material miscalculation. The Canadian Payday Loan Association (CPLA) tracks the number of licensed outlets carefully and as we have indicated before there are 63 payday lending businesses in Calgary which is substantially less than the estimate. The number of 82 payday lending businesses was put forward by Momentum. We provided our information to Momentum and asked them to indicate where the additional 19 outlets were located but they have not provided us with this information.

We feel this is significant because the perceived growth in our industry was a primary motivation to prepare the report to the Calgary Planning Commission to recommend restrictions on the growth of payday loan businesses when the industry has significantly contracted over the past five years.

The contraction is due to the introduction of rigorous regulation by the provincial government. At the same time there has been a growth in the online unlicensed industry. Attached is a study issued by Consumer Council of Canada funded by Industry Canada looking at the growth of the unlicensed industry in particular noting that growth is greatest in jurisdictions where harsh regulation has denied access to credit licensed form to those who need it.

On Page 4 the report indicates that the industry does not operate in Quebec, New Brunswick and Newfoundland which are jurisdictions which do not have payday loan regulations. In fact there are payday loan operations in Quebec and New Brunswick. There were also payday loan operations in Newfoundland as recently as last year but we do not have any current information.

On Page 6, the report refers to a 2005 Ipsos Reid Omnibus Survey as authority for the statement that borrowers were "more likely to have household incomes less than $30,000.00 per year." This is not what the study says at all. It is also disappointing that a 10 year report on financial data was used when there is extensive current information on payday loan borrowers. This study is continually cited by consumer advocates and is selectively misrepresentative.

In fact, the statistics in the Ipsos Reid study refer to respondents who had used a service of cheque cashing, tax refund or a payday loan. 75 percent of that group had <u>not</u> taken out a payday loan. The majority of respondents had used a cheque cashing service.

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A large portion of people who use a cheque cashing service are part time workers such as students who do not want to maintain a bank account in order to deposit their cheques. This group has a much lower annual income. So the statement is incorrect and inaccurate.

Hoyes and Associates, Trustees in Bankruptcy, in a recent submission to the Ontario Government stated:

> "It is a common misconception that the primary users of [*payday loans*] are the lowest income earners in our society. The truth is the heaviest users are employed middle class citizens."

Page 7 of the report puts forth a theory to suggest "payday lending presents immediate opportunities for persons with addictions or lifestyle issues to obtain cash, with no need to wait until payday and therefore greater opportunity for crime exists when there are more persons with cash on the street."

This exhibits a fundamental misunderstanding about who payday loan borrowers are and why they take out payday loans. Our members are in the business of granting credit. They would quickly cease operations if the focus of their business was lending to persons with addiction and lifestyle issues as the loans would be defaulted on. All studies of Canadian borrowers indicate the overwhelming reason for taking out a payday loan is emergency cash to pay for necessities, help out with an unexpected expense, avoid bouncing cheques or avoid late charges on bills.

Like any business they payday loan industry exists and has grown to its current levels as a result of consumer demand. There is a real and continuing need for access to credit that is not provided by banks. While many claim the rates are high it is a costly business to run. That is why the industry contracted after the province introduced maximum rates.

The CPLA does not feel there is a need for bylaw restrictions but also we strongly feel that any decisions made should be made on the basis of good information.

Sincerely,

Stan

Hon. Stan Keyes P.C.
President

Consumer Experiences in Online Payday Loans

CONSUMER PERSPECTIVE

IMPORTANT

RESEARCH

CONSUMERS COUNCIL OF CANADA

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Acknowledgement

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The Consumers Council greatly appreciates a number of participants who responded to our requests for consultation to assist with this research. This includes a number of leading Canadian lenders, the Canadian Payday Loans Association, provincial government representatives and credit counselling officials, all of whom provided insights that were essential to this study.

A Consumer Perspective Research Report

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Abstract

This study seeks to evaluate the environment facing Canadian consumers seeking payday loans online. Specifically, how compliant are the sites consumers are most likely to encounter with relevant provincial legislation? Elements researched include the history and development of legislation, the state of the current market in Canada and elsewhere and current information and enforcement practices. Search methodology identified the sites that Canadian borrowers in each province were most likely to encounter, and these sites were audited for compliance with legislation, industry best practices and many other dimensions.

Keywords: payday loans, online payday loans, Canadian Payday Loan Association, provincial payday loan laws

I

Executive Summary

Canadians are more likely to encounter an unlicensed, non-compliant, payday lender online than a licensed, compliant one.

Background

As with other business, payday lending is moving online. Regulations were built largely around a traditional concept – borrowers and lenders existing in the same community, in the same province, doing business together at a physical premises. Non-compliant lenders could be found, fined or closed.

In the online world, that's impractical, at least, if not impossible. When borrowers look for payday loans online, they may find lenders licensed in their province. But they may also find unlicensed lenders, located anywhere in the world. Or they may encounter "lead generators" – third parties who collect information from potential borrowers and connect them to other unlicensed lenders.

The growing threat posed by unlicensed lenders has been a focus of recent provincial reviews in Manitoba, Ontario and Nova Scotia. Each of those initiatives identified a gap, uncertainty about the current state of online payday lending.

This report is designed to help bridge that gap by providing an "online audit" of the sites Canadian consumers are likely to encounter.

Methodology

This project focused on what consumers see on a computer screen when they seek payday loans online, specifically the extent of compliance with regulations of the lenders consumers are most likely to encounter.

To answer that question, online search engines were used to identify the sites that residents of each province were most likely to encounter. To best duplicate the consumer experience, the application process for each site was engaged up to the point at which there was a requirement to accept the terms and conditions of a loan, submit or verify something that was untrue, or the lender rejected the application.

Sites were evaluated on a number of criteria: most important among them was whether they were licensed or unlicensed lenders. However, the audits included about 50 other observations of these sites, including evaluating the fees posted, rollover rules, cancellation notification, ownership and compliance with specific provincial rules.

Prior to the online audits, each province's legislation and regulations were gathered and reviewed, provincial government representatives were consulted to learn about complaints information, enforcement procedures and legislative quirks, industry leaders were interviewed, and research was conducted about the online payday loan marketplace in other countries.

Summary Conclusions

Broadly speaking, the sites Canadian borrowers are likely to encounter are not very compliant with laws and regulations governing payday lending in Canada. But that summary obscures a more meaningful breakdown of the search for online payday lenders. To the extent that this research could determine:

1. Licensed lenders show a high level of compliance with regulations.
2. Unlicensed lenders show virtually no compliance with regulations.
3. In provinces without regulation, consumers who seek a payday loan online are likely to encounter only the least compliant and least consumer-friendly lenders.

There was no middle ground. The study did not find licensed lenders that do a poor job of compliance, nor did it find unlicensed lenders that were broadly compliant. In many provinces, consumers were as likely to find unlicensed lenders as licensed ones.

To highlight a few of the most troublesome findings, there are numerous unlicensed sites that:

- request borrowers provide personal banking information – account numbers, online passwords and answers to security questions – that would give lenders direct access to the borrower's bank account.
- claim to be compliant with all the requirements of legislation, but clearly are not.
- lack basic information about repayment or how to contact the lender.

Recommendations

The report makes recommendations in a number of areas. To summarize:

- Because the distinction between licensed and unlicensed lenders is so critical to the consumer outcome, it is vital that consumers be able to find this information easily.

Consumers must appreciate that the industry is regulated and regulators/policy makers should require the improvement of the disclosure of licensed – and unlicensed – sites.

- More harmonized regulation among provinces would generally benefit consumers, in part by improving collaborative efforts to police unlicensed lenders, and also to increase the instance of "best practices" being used in all provinces.
- The consumer protection elements of legislation and support need to be re-imagined for a world in which borrowers may far more readily encounter unlicensed lenders, because of the existence of the Internet. There may be greater protection available in these scenarios, but the current legislation and consumer information all starts from the premise that borrowers are only dealing with licensed lenders.

II

Introduction

What do consumers encounter when they look for payday loans online?

2.1 The Importance of This Research to Consumers

Six Canadian provinces have enacted laws that permit and regulate payday loans. Two others are on the cusp of doing the same. Yet the environment in which these laws and related regulations were conceived no longer applies fully to the current reality.

Like so much of modern commerce, the payday loan market is increasingly moving online. Exact figures are elusive, but all participants in the marketplace – regulators and lenders – are convinced that the online share of the market will continue to grow.

This poses a challenge for regulators, because Internet lending is currently much more difficult to police than 'bricks and mortar' stores. Manitoba's 2013 Report of the Public Utilities Board emphasized the risk of consumers dealing with unlicensed and unregulated lenders, and recommended further research into unregulated Internet payday lending. Ontario's current review into the payday loan industry also made monitoring of the impact of online lending a top priority. The growing threat of "illegal offshore lenders" was a key point in submissions by the Canadian Payday Loans Association (CPLA) to Nova Scotia's review in February 2015.

Yet none of those policy updates was informed by much research about the choices offered online. This report will attempt to fill that gap by providing objective information about the marketplace that consumers are likely to encounter when they attempt to secure a payday loan online.

In addition to the provincial initiatives above, in the Governor–General's Speech from the Throne, October 16, 2013, the federal government pledged to "work with the provinces and territories to crack down on predatory payday lenders".

There is evidence that payday loan consumers skew towards lower income persons unable to find less expensive credit through a bank, credit union or other means. In that way, payday loan users comfortably fit the definition of vulnerable consumers, whom regulators are responsible to protect.

It is not a goal of this report to dwell on ethical discussions about payday loans in general and whether these loans alleviate or contribute to the financial distress of their customers. There is considerable public policy debate about this issue. (For example, Buckland 2013a)

The goal of this research is to provide data that will be helpful to consumers and policymakers alike as they consider the implications of the practices of payday lenders on consumers' ability to exercise their rights and responsibilities in the economy.

2.2 Research Questions

The focus of this research has been to answer the question:

What do consumers encounter when they look for payday loans online?

More specifically, the research sought to determine:

How compliant with regulations were the lenders that consumers were likely to encounter online?

To measure compliance, a number of factors were considered:

- Of the lenders Canadian borrowers were likely to encounter, what portion were licensed?
- Where were these lenders located, and who owns them?
- Were the rates and fees posted within legislated limits?
- Did they meet other provincial requirements, including how the costs were calculated and displayed, and other measures (some of which may be unique to certain provinces)?
- Did they comply with limits on amounts and term?
- Did they allow rollovers?
- Was there any evidence of additional charges, hidden fees or tied selling?

Beyond strict 'compliance', the research sought to determine how the lenders that Canadian borrowers encounter might measure against 'best practices' from a consumer perspective. This would include:

- What were the implications of non-payment, including
    - Impact on credit rating?
    - Fees charged on non-payment?
    - Rates at which overdue amounts grow?
    - Collection practices?
- Were consumers informed about the right to cancellation?

- Were consumers provided with information about or links to credit counselling?
- Could consumers review the complete agreement before accepting it?
- Could consumers obtain payday loans based on future social assistance payments, or was employment income an absolute requirement?
- What personal information must consumers disclose?
- What did lenders disclose about credit checks?
- Other unique provincial elements

The research methodology used (section 3.1) limited the ability to answer some questions. The application process was tested, but actual payday loans were not obtained. So, it was not possible to test collection processes, rollover policies, compliance with restrictions on contact with family, employers and references, and whether the rates charged on overdue amounts match posted rates.

To seek answers to the other questions, it was necessary to answer some other preliminary questions, such as:

- How did laws among provinces compare?
- What unique challenges did online lenders present to consumers and regulators?
- How did jurisdictions regulate and enforce laws and regulations?
- What were the implications of Canadian borrowers contracting with foreign payday lenders?

The research did NOT emphasize these questions:

- Which lenders did the best job of compliance, offer the best deals, fastest service or 'coolest' site?
- Which lender should you use?
- Which lenders did Canadians use most often?

The research sought to assess the marketplace in the aggregate, not offer an ordinal ranking or endorsement of individual sites. The research did not attempt to determine which sites Canadians use. The research simply evaluated the sites Canadians encounter when they go shopping for an online payday lender.[1]

III

The Report

Collected findings on Canada's payday lending history, provincial regulations, international experiences and audits of current online lenders

3.1 Research Methodology Overview

The important questions for this research were described in Section 2.2. A proper evaluation of the compliance of online sites requires a thorough understanding of what constitutes compliance. In turn, that requires a thorough evaluation of current provincial legislation, as well as related issues that cover industry practices, how the online environment differs from the 'bricks and mortar' marketplace, and what can be learned from other countries.

This research included a review of every piece of provincial legislation, as well as a series of questions for provincial government representatives to learn more about the legislation, complaints, enforcement and other topics. This interaction included numerous e-mail interviews, questionnaires and phone conversations.

A number of industry participants were interviewed, including CPLA President Stan Keyes, CPLA Secretary Norm Bishop, executives from some of Canada's largest, licensed online firms, and senior executives from Canadian credit counselling organizations. Effort was made to interview unlicensed lenders, but *none* responded to requests.

A comprehensive literature review gathered relevant information from other countries – specifically the United States, United Kingdom, Australia and Finland. This review also produced dozens of interesting Canadian research papers, news articles and submissions to public policy debates in different provinces both before and after provincial laws were established.

This research assisted optimization of the audit form used to evaluate the online lenders, and provided valuable context for the overall report.

Methodology - Online Audit

The objective of the research was to discover and describe what consumers face when they attempt to secure a payday loan online. To do so, it was important to replicate as closely as possible the online consumer experience. In real life, every consumer is unique and the results of any online 'search' for a payday loan provider will vary based on the search terms used, the browser used, the geographic location of the searcher, the browsing history of the user – and the search behaviour of those who previously used a given computer or device.

To best neutralize those variables, this research took a number of steps. Residents were asked in each province to launch the browser and search engine of their choice. (Most commonly Google, but some searches used Bing and Yahoo.) A number of steps were taken to cloak the identity and location of the computer doing the search. These involved emptying cache, deleting cookies and browsing history, using IP 'cloaking' services or downloading previously unused browsers. The participating residents were asked to enter a simple search term, either "payday loan" or "(name of province) payday loan" and collect the top results.

These efforts generated a reasonably representative sample of the most likely payday loan alternatives available to consumers in a given province. The samples collected loosely paralleled Canada's population. More links were examined from Ontario than Quebec, and so on, down to Prince Edward Island and the Yukon Territory. Samples were not obtained for the Northwest Territories or Nunavut. Results from non-licensed provinces (Quebec, Newfoundland) were included.

Most of the search results included links to sites that had paid for specific placement to show up in searches. Those firms were included in the study because paying to reach consumers indicates there is a perceived commercial value in doing so when their site might not be sufficiently prominent to appear in search results.

Each of those links was categorized and evaluated for compliance with the relevant provincial legislation. Specifically, all the sites were evaluated on the most critical measures identified as consumer protection in payday loan legislation:

- Do they indicate that they are registered?
- What are the posted lending costs, and are those costs within provincial limits?
- How are lending fees disclosed?
- Do they inform consumers about cancellation rights?
- What additional fees are charged if consumers fail to repay?
- At what interest rate will unpaid balances grow, if payment is not made?

Each site was evaluated against unique provincial rules, such as:

- British Columbia rules about three loans in 62 days
- Saskatchewan rules requiring information about credit counselling to be

disclosed

- Ontario's required disclosure about educational materials.

The application process for each site was then examined up to the point at which there was a requirement to accept the terms and conditions of a loan, submit or verify[2] something that was untrue or the lender rejected the application.[3]

The audits were completed by Consumers Council of Canada researchers between mid-December 2014 and mid-January 2015.[4]

Part of the review involved auditing the experience of users through mobile devices. This is discussed in Section 3.6.

3.1.1 Limitations

This approach to the research had limitations. The desire not to complete the entire application process prevented an examination of actual cancellation rights, repayment options, collection practices, post-default fees, levels of employer contact and many other elements of provincial protection measures. [5]

In a vast majority of cases, the audits were not able to access the standard terms and conditions of loan agreements. In the instances where the audits engaged lead generators and not lenders, researchers were not connected in any way to the actual lenders, nor their terms and conditions, lending practices, etc. In many of these cases, audit results were based on web site language, not an actual agreement.

All the web sites were evaluated equally. Actual consumer experiences might show preferences for certain sites recognized through storefront operations or advertising. No attempt was made to weight the results based on whether a site showed up as the first search result or the 25th. There is no evidence that consumers actually use online lenders in the proportions assumed for the purpose of the audits. Actual consumers may use other methods to reach lenders such as referrals, and not necessarily rely on search engines. The findings are based on the web sites audited, and do not represent actual consumer purchase behaviour. Or, to put it another way, the research examined the sites that searchers would encounter, not necessarily the sites they would choose.

The site selection sampling did not collect data on every possible lender in every jurisdiction. Actual consumers searching for payday lenders would likely find different results, based on their browsing history, location, etc. Audits of Quebec sites were done exclusively in English. French-language selections would have generated different search results.

3.2 The Current Status of Provincial Legislation

3.2.1 Province-by-Province overview

Since the federal government gave provinces the authority to regulate the payday loan industry in 2007, six provinces have legislation in place, and in force. Two other provinces – Prince Edward Island and New Brunswick – have signalled the intent to do so by passing legislation, though the legislation is not yet in force in both provinces for different reasons.

Two other provinces, Quebec and Newfoundland and Labrador, have taken different approaches, and do not have specific legislation to regulate payday loans.

This section covers the status of legislation in each province, including the important similarities and differences.[6]

Quebec

Quebec limits the annual rate of interest for all lenders under provincial jurisdiction to 35 per cent. As a result, legal payday lenders have never established a foothold in Quebec. Money Mart offers cheque cashing, bill payment and money transfer services through its Insta-Cheques affiliate, but not payday lending.

Quebec residents can easily find payday lenders online, however, as audits show (see section 3.5).

Newfoundland and Labrador

Newfoundland has opted to rely on section 347 protection of the federal Criminal Code for protection, rather than enacting legislation. In June 2010, then-Minister of Government Services Kevin O'Brien announced that his government could not in "in good conscience implement regulations that potentially could result in annual interest rates equating to nearly 550 per cent." (Gov't of Newfoundland and Labrador, 2010)

In December 2013, the Royal Newfoundland Constabulary Criminal Investigation Division and RCMP concluded a three-year investigation into payday loans and forwarded the results to public prosecutors (Royal Newfoundland Constabulary, 2013). This followed numerous published reports (CBC News, 2013b) of Newfoundland lenders charging rates above the 60 per cent limit.

One year later, the Department of Justice and Public Safety told the CBC that prosecutors had concluded that "while there was a reasonable prospect of conviction in regards of some of the potential offences identified by the police, the prosecution of those offences was not in the public interest." (Antle, 2014)

Virtually all of Canada's largest online lenders disallow applications for payday loans from Newfoundland and Labrador residents. Yet many sites – other sites – audited in this study were unique to that province. The reluctance to prosecute leaves enforcement against usury in that province in something like limbo, which further seems likely to trigger some reaction – perhaps some lenders will choose to offer in the province, or perhaps the government will take some other action.

Legislated Provinces – The Similarities

The other eight provinces all introduced legislation either before the federal act allowing it[7] or shortly afterward. Allowing for the discrepancy that two of the provinces have not yet completely enacted legislation, there are many similarities among the provincial approaches, including:

1. The structure – most provinces have both an Act describing the broad parameters as well as regulations that detail more specific requirements. All define the $1,500 and 62-day limits.
2. Licensing lenders – The Acts and regulations use a 'licensing' framework, describing in great detail the requirements of lenders to obtain a licence.
3. Consumer protection – While some provinces folded the legislation into larger Consumer Protection Acts, all provinces enumerated measures licensed lenders must follow to protect consumers. While measures differ between provinces (shown below), there are many similarities. All provinces:
   - Essentially ban 'rollovers', and require one loan to be repaid before another loan is granted by the same lender to the same borrower.
   - Require significant disclosure at point of sale. The exact disclosure can differ, but in principle, there is a requirement for lenders to display their licence at the point of sale with information about the rates being charged and references to provincial legislation. Provinces are very specific about the form of this point-of-sale poster disclosure. The provinces also require this information to be communicated to online borrowers before they begin the application process.
   - Describe certain information that must be included in any agreement or accompany each agreement.
   - Describe limits to lending amounts, duration, fees charged for the service, though these limits differ between provinces.

- Provide protection to borrowers from unfair harassment and collection practices, and limit the ability of lenders to contact employers, family members and references.
- Obligate borrowers to repay only the principal of a loan, if a lender violates the requirements.
- Allow early repayment without penalty.
- Forbid lenders to collect fees before the loan matures.
- Prohibit lenders from garnisheeing wages for repayment.
- Forbid tied selling – making the loan conditional on another contractual commitment.

4. All provinces include language to cover online lenders. Some provinces had this from the outset, while others later included it through amendments. Some provinces refer to "remote" loans, to cover telephone-arranged loans in a similar manner.

This is not a complete list, just a summary of important similarities between provinces.

Notable Differences

While provincial legislation may be broadly similar, there are many differences. Many of these are numerical, as provinces differ on:

- The amounts that can be charged on a payday loan
- The maximum amount of a payday loan
- The costs that can be charged should a loan not be repaid
- The rate of interest at which payday loan debts can grow after maturity

In addition, there are differences in how rates are established. Some provinces use external review boards to make recommendations, while other provinces establish rates through government policy. Some provincial legislation requires periodic review of legislation and rates.

Although every province has a period during which payday loans can be cancelled without cost or consequence, the time limits for this cancellation period differ.

Some provinces specifically allow lenders to contact a borrower's employer to confirm certain employment information.

There are two other differences between provinces that warrant discussion.

1. The use of APR or equivalents. Most provinces require lenders to display the 'cost' of the loan in the form of an Annual Percentage Rate. If a loan of $300 for 14 days incurs a 23 per cent charge, the total fee of $69 is the equivalent of 600 per cent for the year. The principle is that viewing costs in this manner allows consumers to compare payday loans more easily to alternatives such as credit cards and bank loans – and perhaps acts as a deterrent. Lenders fought this for many years, arguing that it is equivalent to making hotel rooms disclose the cost of renting a room for a year, or making taxi cabs show customers how much it costs to take a cab to Chicago.

Ontario and Saskatchewan do not require APR disclosure.

2. The description of loan brokers. Ontario and Prince Edward Island specifically refer to "loan brokers". One of the major concerns in the online industry is the proliferation of intermediaries, vendors who collect information about potential borrowers and then connect those borrowers to lenders, who may or may not be licensed in the jurisdiction.

Each of the other licensed provinces simply define payday lenders using the terms "offers, arranges or provides". Ontario and PEI take extra care to define brokers as "an entity or individual that assists a borrower in obtaining a payday loan or that holds oneself out as available to provide such assistance." For much of the Act and regulations, those two provinces specifically include "loan brokers" in all of the provisions that refer to payday lenders. This language originated in Ontario's desire to regulate Cash Store, which defined itself as a loan broker and did not lend money directly to its customers. Other provinces refer to loan brokers in other sections of their consumer protection acts, but not specifically in the segment relating to payday loans.

3.2.2 Provincial Summaries

In this section, the key distinctions and anomalies among provinces are discussed. As noted earlier, each province has the ability to set its own limits on rates and other features. These province-by-province limits are shown in Table 1. Information for New Brunswick and Prince Edward Island is included, where available.[8]

Table 1 – Provincial Rates and Limits

Province	Maximum fee per $100 borrowed	APR disclosure?	Borrowing Limit	Cancellation Period	Max. NSF Fee	Post default interest rate
British Columbia	$23	Yes	50% of net pay	Next business day	$20	30%
Alberta	$23	Yes	$1500	2 business days	$25	2.5% per month
Saskatchewan	$23	No	50% of net pay	Next business day	$50	30%
Manitoba	$17	Yes	30% of net pay	48 hours, excluding Sundays and holidays	$20	2.5% per month
Ontario	$21	No	$1500	2 business days	"reasonable charges"	Note 1
Nova Scotia	$22 (Note 4)	Yes	$1500	Next business day (48 hours online)	$40	60%
New Brunswick	Note 2	N/A	Note 2	48 hours, excluding Sundays and holidays	$40	Note 2
Prince Edward Island	$25	No	$1500	2 business days	"reasonable charges"	Note 3

Note 1 – The Ontario government representative said Ontario does not place a cap on interest rates charged when a borrower defaults. They were unsure whether the 60 per cent federal limit applied.
Note 2 – New Brunswick's regulations have not been legislatively approved. Most lenders currently charge $24 or $25 for every $100 borrowed, similar to Nova Scotia. Many limits and amounts are not available.
Note 3 – Prince Edward Island's regulations are published, pending completion of the process that involves co-ordination with the federal government. PEI does not place a cap on post-default interest rates.
Note 4 – Nova Scotia reduced the rate to $22 per $100 borrowed from $25, effective May 1, 2015.

Observations

The provincial information gathering[9] included questionnaires and followup interviews with provincial government representatives about online enforcement and consumer complaints. Here is a summary of key findings.

Enforcement of online lending – The ability to police licensed online lenders is clearly seen as part of the responsibility of government. Yet, few of the responses from representatives go beyond the licensed lenders. Alberta sends licensing information to unlicensed vendors. Saskatchewan and Ontario (Deloitte 2014) expect licensed lenders to report on unlicensed lenders they encounter. CPLA President Stan Keyes said that his organization frequently sends information about unlicensed lenders to regulators. In followup discussions, some provincial representatives discussed the difficulties in enforcing online lenders because of difficulties in identifying them, as well as jurisdictional issues. One provincial representative said that the impetus for greater protection from illegal online lenders would be stronger if there were more consumer complaints.

Complaint statistics – Provinces do not collect and report complaints similarly, limiting cross-province comparisons. Some provinces make no disclosure. Others make a distinction between inquiries and investigations. There were some conflicts between information provided to researchers and information gained through other means. And it is also unknown to what extent consumers understand that they can make a complaint, how to do it and to whom.

Consumer awareness – Provincial consumer protection organizations will not receive complaints by telephone or e-mail if there is no public awareness. Despite the efforts of regulators to put notification about licensing on storefront posters, in agreements, and on web sites, there is limited evidence about how much of this information consumers retain and consider. The CPLA conducted research into the customer base of its members in four provinces in 2013. Fewer than half of the surveyed customers expressed awareness that payday lending was a licensed and regulated industry (Ontario – 44 per cent; Alberta – 40 per cent; British Columbia – 52 per cent; Manitoba – 41 per cent) (Environics 2013a-d). This research only contacted people who had completed a payday loan and had presumably encountered the required information disclosure. The responses may have been positively biased by the way the question was framed: Asking "Before today, did you know that payday lending became a licensed and regulated industry in (year)?" may lead people to answer 'yes,' even if they did not know. Also, the response rate to the research was so low – perhaps as little as 5 per cent - that the sample group may be biased towards only those who had a positive payday loan experience and were willing to discuss it afterward. (Williams, 2013, pg 25.)

Finding licensing information – While most of the licensed provinces do provide online reference information of licensed lenders, that information is difficult to find. Subjectively, those online services are difficult to locate and difficult to use. As examples, Alberta's search engine does not link to the licence number. And if a user types "dollars direct" instead of "dollarsdirect" nothing is found, and the user could conclude the lender is not licensed.

3.3 The Online Marketplace

The convenience of the Internet provides advantages to payday loan borrowers and lenders, but also a set of challenges to policymakers.

The benefits to borrowers are obvious. They no longer must visit a storefront, which helps isolated or mobility-impaired consumers. They also have a greater variety of lenders from which to choose, rather than just those located in their community. Lenders see similar advantages – access to a wider swath of customers without the costs of operating a store. The leading U.K. online payday lender Wonga began offering its services in three Canadian provinces in 2012.

Figures show payday lending in other countries moving online, and Canadian lenders and regulators observe the same in Canada. New risks occur when the lender and borrower are no longer connected by geography – or even the same regulatory environment. This section will discuss those concerns – the emergence of lead generators who serve as intermediaries connecting Canadian borrowers to worldwide lenders, as well as the enforcement challenges that occur through these arrangements, or when a Canadian borrows from an online lender not licensed in their province.

Regulators are acutely aware of this. Some of the earliest provinces to license the industry (Manitoba and Nova Scotia) updated legislation to cover online lending. Other provinces included regulation covering these transactions from the start. Both Manitoba and Ontario focused on this risk in recent regulatory reviews. From the September 2013 Report of the Public Utilities Board of Manitoba: "The Board is very concerned with the risk of financial harm to Manitoba consumers from product offerings by unlicensed and unregulated lenders .... The Board also recommends further research be done to consider options to reduce the risks to Manitoba consumers of unregulated Internet payday lending." (Public Utilities Board, 2013)

The Ontario government specifically targeted online lending when it established its 15-member panel to review the industry. The interim report of that group, published December 2014, noted that while 25 per cent of all U.S. payday loans are made online (Pew, 2012), the percentage in Ontario "may be substantially lower. Some panel members estimated that online loans represent only 10 per cent of Ontario's market. However, stakeholders agree that payday loans are increasingly moving online and that this trend is likely to continue." (Deloitte, 2014)

More recent U.S. figures suggest online loans are closer to one-third of all payday loan transactions. (Zibel, 2015). Australia has a similar percentage. (Hobday, 2014) In the United Kingdom, more than 80 per cent of transactions are online. (Financial Conduct Authority, 2014). Canada's consumers are very adept at using Internet technology, but a much lower portion of its overall retail economy takes place online. (Internet Association, 2014) Online payday lending is so recent that it is not mentioned at all in FCAC's 2012 consumer-education publication "*Payday Loans: An Expensive Way to Borrow*."

The ultimate focus of this report is to evaluate the online marketplace from the consumers' perspective. Two of the largest licensed online loan companies in Canada were contacted through the courtesy of CPLA to gain their perspectives of the online marketplace[10] for this study.

Dollars Direct has operated in Canada since 2009. It only offers payday loans online, and only to residents of Ontario, British Columbia, Alberta and Saskatchewan. Daniel Shteyn manages operations in Canada, Australia and Brazil from the parent company's offices in Chicago.

Shteyn said[11] Dollars Direct does not offer service online in Nova Scotia because that province requires online lenders to operate at least one storefront. It does not offer in Manitoba because it does not believe it can operate profitably in that province.

Shteyn said storefront lenders can synthetically replicate rollovers – finding a way to circumvent rules that say borrowers cannot have a new loan without repaying the original loan – in a way that online lenders cannot. He also noted that his firm will not underwrite loans for consumers who receive only government benefits, while storefronts often will accept customers with only non-employment income. "You can go down the credit curve if you're a storefront. Many more storefronts underwrite benefits." [12]

He said his firm emphasizes the speed of its funding, because borrowers often value speed above other values, even price.

Bruce Cumming is Money Mart's Global Retail Chief Information Officer. He works not only with the Canadian online operations but also with those operated in other nations through the parent company Dollar Financial. Money Mart current provides online payday loans in British Columbia, Alberta, Saskatchewan, Ontario and Nova Scotia. It also provides online application interfaces for Manitoba and New Brunswick, but in both cases, customers need to complete those applications in store. It is Canada's largest provider of payday loan services.

He said[13] Money Mart began its online operations in Ontario after regulation was in place and then added other provinces.

One Money Mart concern is online identification. Are customers who they say they are, and are they providing accurate information? He said an important part of Money Mart's security screening focuses on this area. He said there are few significant differences between online and storefront customers. "Online trends younger, to people who are more comfortable with e-commerce as a safe platform. It also trends slightly higher in income. But many of our online customers are also in-store customers." [14]He added that online consumers are service sensitive, not price sensitive. "Ease and speed of service trumps price. That's a general rule of all e-commerce."

Compared to regulation in other jurisdictions. Shteyn said Canadian efforts were more proactive than reactive, and that officials used risk-based measurements. "The riskier they think you are, the more attention they will pay you. Regulators are relatively comfortable in our jurisdictions because of size and scale."[15]

Cumming evaluated Canada as one of the best nations for regulations. While some provinces have rules that "have gone too far", Canada has attacked the right areas. "We haven't had near the issues with businesses that are offside. We haven't seen a huge foothold of lead generators that are rampant in the U.K." [16]

Shteyn said Canadian compliance was more difficult than in the United States, but less complex than in Australia. "Australia's framework is extremely detailed and prescriptive," he said. "Canada is a bit less complex than Australia. Yes, there are different provincial jurisdictions, but the extent of regulation isn't burdensome. Australia regulates to the lowest level of possible detail."[17]

Cumming added "a well-regulated industry is what protects the customer and the merchants. We're a big fan of regulation. We're a multi-national, and we always push for regulation. The whole idea of the 'wild west' enables the bad players more than the firms that do things responsibly." [18]

CPLA President Stan Keyes emphasized one point also made by the Ontario Review Group's initial findings and recommendations. Provinces could assist consumers by making it easier on their web sites to find which vendors were licensed. "Because the majority of provinces lack a comprehensive list of lenders licensed, consumers can't go to the provincial government web site to see if the lender is on the list of names licensed. The biggest threat is that the individual borrower is dealing with an unlicensed lender located in the Cayman Islands or Belize, opening up the possibility of having their bank account emptied."[19]

3.3.1 Lead Generators

How is it that a Canadian borrower can end up connected to a Cayman lender? Regulators and industry groups point to a group called "lead generators" – firms that present themselves to consumers as companies that can arrange payday loans, but, in fact, collect the consumer's information and pass it along (i.e. sell it) to lenders anywhere in the world.

Daniel Shteyn called this the largest threat to Canadian consumers. Bruce Cumming said that his firm's UK operators used lead generators in the past, but avoid using them today. "Lead generators sell leads to the highest bidder. People end up buying the same leads over and over. It's poisonous." [20]

Stan Keyes emphasized the lack of protection for consumers who purchase loans through these methods. "How do we know that someone who picked up the loan is licensed, abiding by the rules of the province in which the borrower resides?"[21]

The Ontario report made three points to address the issue. 1) Improve the ability of Ontario consumers to find whether a specific lender is licensed; 2) License lead generators and do not allow them to sell leads to unlicensed lenders; and 3) Enhance government awareness of unlicensed lenders or loan brokers. As part of these points, the report recommended requiring licensed lenders to notify the government when they are approached by unlicensed lead generators. And it said the government should communicate to the public the risks posed by unlicensed lead generators. Cumming doubts that his firm – a licensed lender – is approached with any regularity by unlicensed lead generators. He said it was more likely that unlicensed lead generators had other preferred lenders to whom they commonly offered their leads.[22]

3.3.2 Legislation and Enforcement

Provincial payday loan laws aim to protect the residents and license the vendors of the province. That makes sense in a bricks and mortar world, where loans were only available at storefronts. But the growth of online payday lending raises jurisdictional and enforcement issues. What if the borrower and lender are not in the same province? What if they are not in the same country? What if the borrower does not know who the lender is, having dealt only with a lead generator?

How effective is consumer protection legislation when the vendor is unknown? What if there is a dispute over payment, and the lender takes extra money from the borrower's bank account? Can provincial consumer protection legislation adequately protect a consumer from overseas lenders' collection practices? Where does the consumer turn? To local law enforcement? Provincial? Federal? Civil courts?

Some of these complications are not unique to payday lending. The growth of e-commerce in general has altered dispute resolution. The Public Interest Advocacy Centre's 2014 Report, *Shopping for Consumer Protection: Current Jurisdictional Issues* notes that although the Ontario Consumer Protection Act claims jurisdiction over "all consumer transactions if the consumer or the person engaging in the transaction with the consumer is located in Ontario when the transaction takes place", only 18 per cent of respondents felt the law in their province applies when they encounter an issue with an online purchase with a retailer located outside of Canada. (PIAC, 2014)

That report concluded: "there remains a great deal of uncertainty how future disputes involving international jurisdictions might be resolved." (PIAC, 2014)

Payday loans go beyond typical e-commerce. In a typical e-commerce transaction, the buyer pays from an account with some protection being offered by the terms of a credit card or Paypal. In payday loans, consumers give vendors direct access to their bank accounts. Consumers may not know the name or location of the vendor. Some of the other features that consumers may consider as 'protections' in e-markets are absent: there are no 'ebay-style' sellers ratings, proprietary dispute resolution systems or credit card chargebacks.

This issue pertains to all provinces, not just ones that license payday lending. A Newfoundland resident with a computer can easily secure a payday loan online, licensing requirements or not. Are there any protections owed to that consumer?

On the other hand, what tools do policymakers have? If a storefront operation is repeatedly non-compliant, there are courts and bailiffs. There are no online bailiffs to shut down non-compliant payday lenders.

How are unlicensed online lenders found and how can they be prevented from reaching Canadian borrowers? The industry participants found the problem easier to identify than solve. "How do you find them (unlicensed offshore lenders) to prosecute them?" said Keyes. "I don't have a clue how that's done."[23]

"We have a stack of them," said Money Mart's government relations director Tony Irwin. "We don't think any of them are licensed. The response from government seems to be, we don't have the resources to follow it." [24]

Even if you can find them, and shut them down ... "the reality is that the online market is a bit like Whack-a-Mole," said Money Mart's Cumming. "You can regulate them out, but they pop up again."[25]

There is one element of an online transaction not present in bricks and mortar transactions: a bank.[26] Online transactions require direct deposit into the borrower's bank account. All online borrowers have some kind of relationship with a bank. And while that relationship may not be strong enough to secure a line of credit or loan instead of a payday loan, banks are another avenue for enforcement. The legislation never contemplates a banking relationship – a customer goes into a store and exits with cash. In the online world, the bank or some other transaction service provider may be central to the money flow, barely mentioned in legislation or in any of the provinces' consumer protection documentation. A bank could play a critical role in stopping borrowers from being victimized by excessive charges or unlawful, unauthorized withdrawals.

The role of banks in payday lending is part of a unique enforcement initiative in the United States. Rather than focusing on the borrowers' bank accounts, instead, the Department of Justice-led Operation Choke Point focused on the banks that did business with payday lending firms, increasing disclosure requirements so that banks were motivated to walk away from doing business with those firms. The U.S. effort was undertaken to cut out a number of "ideologically suspect businesses", including licensed arms dealers and illegal payday loans. But the effects were being felt by legal payday lenders, which led the U.S. trade group Community Financial Services Association of America to sue several federal agencies.

3.4 International Perspectives

Canada is not the only country offering payday loans, and not the only one where a portion of the lending is done through e-commerce. To provide additional perspective, here are summaries of the online market and how it is regulated in the United States, Great Britain and Australia.[27]

3.4.1 United States

Regulation is done mostly at the state level, because states have always controlled state-chartered banks. Lending is legal in 35 states, while in 15 states it is either illegal or unfeasible because of fee limits. The new Consumer Financial Protection Bureau (CFPB) has authority to regulate the industry nationally, and has released a number of reports (CFPB Datapoint 2010, for example) that highlight repeat use - more than 80 per cent of payday loans are followed by another loan within 14 days.

The online portion of the market continues to grow, and now comprises about one-third of the industry (Zibel 2015).

The U.S. Department of Justice's Operation Choke Point, started in 2013, has targeted illegal payday lenders. The principal is to "choke off" access of firms in certain industries (payday lending, gun sellers, online gambling) to conventional banking services by requiring banks to make additional disclosure about these industries. Some reports (Faux 2015) have indicated that payday lenders have had to relocate offshore or to native lands, but the major payday-lending trade group sued U.S. banking regulators, accusing them of applying pressure to drive lenders out of business.

3.4.2 United Kingdom

The Financial Conduct Authority took over responsibility for the High-Cost Short-Term Credit (HCSTC) lending April 1, 2014, and implemented new regulations, effective January 2, 2015.

The key new rules include a price limit of 0.8 per cent a day (lower than what was previously commonplace), a fixed default cost of 15 pounds, and a total cost cap of 100 per cent, so that a 100-pound loan could never cost more than 200 pounds to repay. The lending cost limits would equate to a 12 per cent cost over 15 days and 24 per cent cost over 30 days.

Online transactions dominate the market. FCA figures show that 83 per cent of customers take out HCSTC loans through online channels, while the remaining 17 per cent go to high street (store front). FCA figures estimate that 40 per cent of online borrowers go through loan brokers. The industry association, Consumer Finance Association, estimates that only four firms will eventually remain in the market, post-reform. (Rankin 2014)

3.4.3 Australia

Australia's market has grown rapidly and about 30 per cent of transactions are online. (Ali et al, 2013). A number of these online lenders are corporations established outside Australia that operate under an Australian credit licence. However, about 20 per cent of online lenders are breaking the law (Hobday 2014).

The Australian Securities and Investment Commission (ASIC) governs many elements of the "small amount loans" industry, including licensing, but states can set their own lending limits. However, the monthly fee is only a small portion of overall costs, which can include "establishment fees".

Legislation also requires this warning to be posted in stores and on web sites:

> Do you really need a loan today? It can be expensive to borrow small amounts of money and borrowing may not solve your money problems.

The warning must also include the phone numbers and links to Australia's free financial counselling service, as well as financial literacy and money management web resources.

3.5 The Online Audits

Observations and analysis from 134 audits

3.5.1 Summary Results

In Section 2.2, the key questions for the research are set out. In Section 3.1, the methodology, including the limitations is described. In this section, key findings are summarized.[28]

The core research questions were: What do consumers encounter when they look for payday loans online? How compliant with regulations are the lenders that consumers are likely to encounter?

The extremely short, extremely trite answer to those questions is that compliance is not very good. But there is a slightly longer, and more accurate summary. Based on the indicators the study could assess:

- Licensed lenders show a high level of compliance with lending regulations.
- Unlicensed lenders show virtually no compliance with lending regulations.
- In provinces without regulation, consumers who seek an online payday loan are likely to encounter only the least compliant – and least consumer-friendly – lenders.

This audit began with 336 links identified through online searches. Through the elimination of duplicates, non-lenders, lenders who would not lend online in the specific jurisdiction and others, the sample was reduced to 134 lenders, which were audited. Ontario had the most audited sites, with 25.

In only three of the six licensed provinces (British Columbia, Alberta, Saskatchewan) were the majority of the audited sites licensed:

Table 2 – Provincial Breakdown of Sample

Province	Total	Licensed	Unlicensed
British Columbia	10	7	3
Alberta	19	11	8
Saskatchewan	9	8	1
Manitoba	12	2	10
Ontario	25	9	16
Nova Scotia	11	3	8
Quebec	14	0	14
New Brunswick	9	0	9
Prince Edward Island	9	0	9
Newfoundland	12	0	12
Yukon	4	0	4
Total	**134**	**40**	**94**

'Deeper' searches would have increased the weighting of unlicensed sites. As explained in the methodology overview, the desire was to emphasize the sites that consumers were most likely to encounter, by focusing on the top search results.

One of the most basic areas of consumer protection in the provincial legislation is a requirement that lenders provide certain information to borrowers before they enter the application stage. Generally, these rules require lenders to show:

1. that they're licensed in the province
2. the licence number (or a copy of the actual licence)
3. the fees for that service
4. those fees with an APR (though not every province does this)
5. A numerical example with a theoretical loan of $100 or $300.

Concerning fee disclosure only (unlicensed lenders cannot display licences), here is a breakdown of how the audited lenders complied.

Table 3 – Compliance with Fee Disclosure

Province	Fee Disclosure Met	Licensed Lenders	Unlicensed Lenders
British Columbia	7/10	6/7	1/3
Alberta	12/19	11/11	1/8
Saskatchewan	8/9	8/8	0/1
Manitoba	3/12	2/2	1/10
Ontario	9/25	8/9	1/16
Nova Scotia	5/11	3/3	2/8
Quebec	0/14		0/14
New Brunswick	1/9		1/9
Prince Edward Island	1/9		1/9
Newfoundland	0/12		0/12
Yukon	1 / 4		1 / 4
Total	**47/134**	**38/40**	**9/94**

Only in British Columbia, Alberta and Saskatchewan did the majority of lenders meet the fee disclosure. Nearly all licensed lenders did so, while less than 10 per cent of the unlicensed lenders did so. (Though New Brunswick and Prince Edward Island do not have enacted legislation, one lender in each province essentially complied with what are expected to be the disclosure requirements and fee limits.)

Licensed lenders offer a similar level of compliance to the province-specific rules detailed below. They are also the most transparent about ownership and head office location, are more likely to meet the 'best practices' requirements identified about cancellation rights and credit counselling information. With a few exceptions, licensed lenders meet the basic compliance requirements – almost always through a pre-application 'pop-up box'.

The most potentially harmful findings in the audits all came from unlicensed lenders. Only unlicensed lenders asked borrowers for personal bank account information, including online account numbers, passwords and answers to banking security questions. Only unlicensed lenders asked applicants if they would like their loan to be a rollover loan, or an interest-only loan. Only unlicensed lenders claimed to be compliant with all laws in all jurisdictions, including the Payday Loans Act of 2008 (the name of Ontario's legislation). Only unlicensed lenders provided sites with absolutely no phone numbers, no information about repayment, no fee disclosure.

The majority of unlicensed sites were identified as lead generators by the audits. Many sites made this self-evident by referring to a "wide network of lenders" or more blatantly "we are not a lender". Some sites proclaimed they were not a loan broker, consciously trying to avoid the requirements that accompany that designation. If there was no obvious disclosure, the site was categorized as an unlicensed lender. As a result, in the following table, the number of lead generators may be understated and the number of unlicensed lenders may be overstated.

Table 4 – Licensed, Unlicensed and Lead Generators

Province	Sites	Licensed	Unlicensed Lender	Lead Generator
British Columbia	10	7	2	1
Alberta	19	11	3	5
Saskatchewan	9	8	0	1
Manitoba	12	2	6	4
Ontario	25	9	4	12
Quebec	14	0	6	8
Nova Scotia	11	3	6	2
New Brunswick	9	0	4	5
Prince Edward Island	9	0	3	6
Newfoundland	12	0	5	7
Yukon	4	0	4	0
Total	**134**	**40**	**43**	**51**
Percentage		**30**	**32**	**38**

There is a temptation to use the phrase "offshore" in conjunction with unlicensed lenders. While the majority of unlicensed lenders and lead generators do not provide much information about their ownership or location, this information could sometimes be found in the site's legal notices and privacy policies. Another tool used was a free "web-hosting" locator. This table may be of limited utility, because where a site is hosted may have no relationship with the ultimate residence of the business behind the site. Here are the hosting locations of all the 'non-licensed' sites in the audit.

Table 5 – Where Unlicensed Sites are Hosted

Province	Sites	Canada	United States	Other
British Columbia	3	1	2	0
Alberta	8	2	5	1
Saskatchewan	1	1	0	0
Manitoba	10	2	6	2
Ontario	16	4	8	4
Quebec	14	4	7	3
Nova Scotia	8	5	3	0
New Brunswick	9	6	2	1
Prince Edward Island	9	3	5	1
Newfoundland	12	9	3	0
Yukon	4	0	4	0
Total	**94**	**37**	**45**	**12**
Percentage		**39**	**48**	**13**

* * *

Here is the breakdown of the sites identified as "other":

Location	Quantity
Frankfurt, Germany	5
Brazil	3
Moscow	2
St. Petersburg, Russia	1
Estonia	1

In provinces with no licensed lenders, the audits found many sites that did not appear in the searches in other provinces. Subjectively, the sites found in the unlicensed provinces were among the least consumer-friendly sites audited.

Here are the answers to the other research questions from section 2.2. Note that in the questions that follow, "national" results may be included. These are simply the sum of the provincial results. For example, www.moneymart.ca appeared in five provincial audits. So the multiples of these larger firms have not been removed, because on occasion they had policies that were compliant in one province but non-compliant in another. "National" results should be viewed as an approximation as a result.

Of the lenders Canadian borrowers are likely to encounter, what portion are licensed? Are the rates and fees within legislated limits? Do they meet other requirements about licensing disclosure, how costs are calculated and displayed?

The tables above summarize these provincial results.

Where are these lenders located, and who owns them?

All licensed lenders were identified as Canadian-based, even those such as MoneyMart, DollarsDirect and Wonga that have foreign parent companies.[29]

Do sites comply with the limits on amounts borrowed and loan duration?

No sites that offered payday loans for more than $1,500 or longer than 62 days were encountered. Many sites offered other products that did so, but these were marketed under a different product name.

Do they allow rollovers?

Without going through a complete loan process, this is difficult to evaluate. However, five sites (each appearing in multiple provinces) asked borrowers if they would like their new loans classified as "recurring" or "interest only" or "fee-only renewal" in the application stage. Outside the application interface, those sites all indicated they did not offer refinancing, rollovers or extensions, so perhaps the applications would have been declined.

A common feature of the FAQ section of many sites is an exchange that encourages borrowers to call if they fear they may default.

Is there any evidence of additional charges, hidden fees or tied selling?

Without being able to engage in any actual loans, this is also difficult to evaluate. One example was encountered where a licensed lender very discretely 'hid' an insurance surcharge for the payday loan. There was a tickbox with the default position ticked as "yes" for "loan protection enrolment" among a series of features for www.speedycash.ca in British Columbia. This resulted in an additional insurance cost of $18.15 on an abandoned $500 loan application.

Lead generators may connect borrowers with lenders who do not comply in this area. This was not tested.

In Section 2.2, some research questions were outlined that may not represent "compliance" but did fall into the category of "what borrowers might encounter", beginning with a series of questions about the implications of non-payment.[30]

On a borrower's credit rating:

Approximately 20 per cent of lenders include language similar to "non-payment can damage your credit score".[31]

What fees are charged on non-payment?

More than half the sites (72 of 134) do not disclose this fee prior to the application. Of those that disclose, the majority disclose rates within provincial limits (51/134), while 11 of 134 disclose rates outside limits.[32]

At what rate will overdue amounts grow?

Of the 134 sites audited, 83 do not disclose this amount; 39 disclose amounts within legislated provincial limits and 12 disclose rates outside limits.[33]

Collection practices?

Without defaulting on a loan, it was not possible to audit collection practices and compliance with restrictions on contact with family members, employers and references.

Are consumers informed about the right to cancel?

Each of the six provinces has rules that allow borrowers to cancel an agreement within a certain time period, most commonly two days.

About half of the licensed lenders (19/40) inform borrowers of this right, either on the site or in the agreement. In some provinces, this is a required part of the agreement, but audits could not proceed to the agreement in most cases. About 20 per cent of unlicensed lenders (19/94) inform borrowers of this right, pre-agreement.[34]

Are consumers provided with information about, or links to, credit counselling?

Saskatchewan makes this a requirement for licensing – a link must appear on the pre-application pop-up box. All eight licensed Saskatchewan lenders have this information. Outside Saskatchewan, about a third (10 of 32) of licensed lenders offer this information, while 7 of 94 unlicensed lenders do so.[35]

Do consumers have the ability to see the complete agreement in advance before accepting?

For the few lenders where the application process was completed, this was the case. One lender offered sample agreements outside the application process. Many sites identified as lead generators also offered some transparency, noting that borrowers would receive information from the selected lender and made it clear that borrowers did not have to accept the lender's proposal.

Can consumers obtain payday loans on future social assistance payments, or is employment income an absolute requirement?

This was one of the most interesting areas of study because of the vast differences between what lenders presented in the informational sections of the web site and what they actually would allow through the application process.

Prior to the application process, just 12 of 134 lenders clearly said they would lend on future social assistance benefits (any of employment insurance, pension payments, disability payments, workman's compensation or child tax credits). Another 33 offered no disclosure, while 89 of 134 said they definitively would not, or that loans were granted on "employment income only" or similar language.

Yet, the majority did allow for social assistance payments as an input during the application process (67 allowed, 56 not allowed, 11 unclear). Allowing it as an input does not mean the loan would be granted in the process, but the gulf between what lenders said outside the application and what they allowed on the application was interesting.[36]

What personal information are consumers asked to disclose?

Apart from basic information such as name, address, phone number, e-mail, the majority of lenders ask for Social Insurance Number (often noted as optional), time at residence, time at employer and rent vs. own. About one-third ask for one or more references. Other information occasionally requested included whether you were contemplating filing for bankruptcy, monthly rent/mortgage, the name of the landlord and applicant's marital status.[37]

Some sites ask borrowers to download proprietary software to complete the application process. This was not done.

Most lenders sought some "proof" of banking information, commonly by asking for bank statements to be forwarded (by fax, screen capture and e-mail or the proprietary software).

Alarmingly, the audit found 22 instances of sites that asked for personal banking information, including online account numbers, access codes and answers to personal security questions. There are five sites that make this request, and some sites appeared in multiple provincial audits. The sites are www.cashone.ca, www.paydayking.ca, www.capitalcash.ca (all of which use the same basic information interface, and the first two of which have the same mailing address). www.1500cash.ca and www.ezcashnow.ca share a different template. The first sites appear in many provincial search results because of purchased advertising placement in search engines.

What do lenders disclose about credit checks?

This question is difficult to summarize. Approximately 30 per cent of sites (39 of 134) definitively state that they will NOT do credit checks. Some say nothing at all. Some sites say that they will not do credit checks, but the agreement allows them to. A few sites make it clear that they will, and disclose the firm they use. Apart from the absolute "we will not" responses, the most commonly stated approaches present ambiguously, such as "we do not weight your credit history heavily" or "we use credit information to verify identity and personal information only".[38]

Other unique provincial elements

Compliance against a number of provincial regulations was tested.[39] The key findings were:

Seven of nine Saskatchewan lenders had the required credit counselling information on the pre-application stage. All seven were licensed. An eighth licensed lender had credit counselling information on the site, just not on the pre-engagement location specified.

Six of nine Saskatchewan lenders met the standard to provide notice of borrower cancellation rights and a cancellation form, before accepting the loan.

Three of Manitoba's 12 lenders met the requirement to express APR calculations on a 12-day basis, rather than 14 days as other provinces use. Both licensed lenders met the standard.

Ten of 25 Ontario lenders met the standard to disclose "educational materials" at the pre-application pop up. This includes all nine licensed lenders, and one unlicensed lender. Most did so by making the Ontario "in store poster" available in PDF form.

Four of the 11 Nova Scotia lenders audited had a storefront operation, as required by legislation. One of the four (www.cashmoney.ca) did not have a licence to operate online in the province, but displayed an expired "in store" licence.

3.5.2 Notes and Observations

Here are nine other observations from the audits.

1. There is virtually no price competition. Two British Columbia sites, two Alberta sites and one Manitoba site offer prices that are not the maximum allowable. One lender offers discounts for early repayment. A number of sites offer lower rates for "first-time" borrowers, and a number had fields for "offer codes" in applications.
2. Ontario and Saskatchewan do not require lenders to show the APR as part of the "pre-application" fee disclosure. Free from this requirement, no firm displays the APR information voluntarily.
3. The majority of licensed lenders do NOT operate storefronts. Canada's largest lender, Money Mart, offers online loans in five provinces, and storefronts in all of those and two others. The vast majority of other online lenders encountered do not operate storefronts.
4. Many sites appear to be built from a similar template. There are broad similarities in how the information is presented – a front page (often featuring an image of a pretty young woman or a stack of cash – or both), a page that explains "how it works", a "FAQ" and a skeletal "contact us" page.
5. In addition to structural similarities, many sites use the same application interface.[40] It suggests that many sites share ownership and wrap some slightly different information pages around the same application programming, or that many different firms have contracted the same few firms to provide their information gathering module. Six of the 12 Newfoundland sites and three New Brunswick sites all redirected to the same site.
6. Many, many sites (at least 21 in the sample) have language in their FAQ that says their site complies with "with all applicable laws in all jurisdictions ... as dictated by the Payday Loans Act, 2008". None of those sites are in compliance.
7. A few lenders in New Brunswick and Prince Edward Island appear to be attempting to comply with the laws and regulations not yet in force.
8. Manitoba has the lowest allowable fees, and some other unique restrictions. Manitoba also has higher licensing costs than other provinces. At least one leading online firm does not offer loans online in Manitoba because it cannot

do so profitably. The largest chain, Money Mart, does not offer online in Manitoba. Of the 12 sites in the Manitoba audit, just two were licensed lenders. That may suggest that one of the unintended consequences of Manitoba's more strict measures is that online borrowers are more likely to encounter unlicensed lenders.

9. The audits found some very problematic sites. There were sites that offered no phone numbers whatsoever. Sites that had no "contact us" information at all. Sites that did not mention repayment. The effectiveness of communication was not part of the audits, but there were sites with language that demonstrated low levels of literacy in the content authorship, suggesting they may have been written in another language and turned into English through an online translation service.

The audits did not permit completion of the application process for the vast majority of these sites. Tests for hidden charges or compliance with legislation that covers collection practices, overdue amounts, loan rollover rules are incomplete. Likewise, the potential consumer experience of obtaining a loan provided through a lead generator was not fully probed.

3.6 Mobile Communications and Future Technology

The research included examining for evidence of mobile applications that would allow consumers to access lenders directly.

The audit only encountered four lenders that promoted mobile applications, and the audit lacked the ability to properly test any of them. Money Mart's Bruce Cumming said his firm is testing mobile applications in selected markets, but that most consumers who used "phones" to access payday loans were simply using phones to connect to the Internet, and the functionality offered was the same as consumers using computers and tablets, with just a smaller screen.

He indicated that mobile applications would have more security levels than standard ones used on the Internet. For lenders, they could verify more easily that a borrower is who and where they say they are. "People change their mobile number less frequently than almost anything else," he said. "We can see that it is the phone it says it's coming from."[41]

The contrast between payday loans – designed to be used only occasionally – and mobile phone applications – designed for everyday convenience – is notable.

There are payday lending apps available on Google Play and the Apple App store, but show very few downloads. Payday Loans and Cash Advance offers services in the United States, UK and Canada and have between 10,000 and 50,000 downloads worldwide. (The mobile applications for Canada's largest banks each have more than 500,000 downloads on Google Play.)

Looking at future developments, the industry will need to follow changes to the payments industry and technology. More consumers will use smartphones and other handheld devices instead of computers. 'Mobile wallets' aggregate and manage commerce services – payment cards, loyalty cards, receipts, vouchers – on a single mobile device. Use of mobile wallets will increase the speed with which consumers get funds from payday lenders, which is important to consumers.

3.7 Research Conclusions

3.7.1 Consumer Rights & Responsibilities

The Consumers Council of Canada advocates for eight globally recognized consumer rights and responsibilities, plus an additional one that has become increasingly important in an interconnected world.

1. Basic Needs

- The right to basic goods and services which guarantee survival.
- The responsibility to use these goods and services appropriately. To take action to ensure that basic needs are available.

2. Safety

- The right to be protected against goods or services that are hazardous to health and life.
- The responsibility to read instructions and take precautions. To take action to choose safety equipment, use products as instructed and teach safety to children.

3. Information

- The right to be given the facts needed to make an informed choice, to be protected against misleading advertising or labelling.
- The responsibility to search out and use available information. To take action to read and follow labels and research before purchase.

4. Choice

- The right to choose products and services at competitive prices with an assurance of satisfactory quality.
- The responsibility to make informed and responsible choices. To take action to resist high-pressure sales and to comparison shop.

5. Representation

- The right to express consumer interests in the making of decisions.
- The responsibility to make opinions known. To take action to join an association

such as the Consumers Council to make your voice heard and to encourage others to participate.

6. Redress

- The right to be compensated for misrepresentation, shoddy goods or unsatisfactory services.
- The responsibility to fight for the quality that should be provided. Take action by complaining effectively and refusing to accept shoddy workmanship.

7. Consumer Education

- The right to acquire the knowledge and skills necessary to be an informed consumer.
- The responsibility to take advantage of consumer opportunities. Take action by attending seminars and workshops, work to ensure consumer education takes place in schools.

8. Healthy Environment

- The right to live and work in an environment that is neither threatening nor dangerous and which permits a life of dignity and well-being.
- The responsibility to minimize environmental damage through careful choice and use of consumer goods and services. Take action to reduce waste, to reuse products whenever possible and to recycle whenever possible.

PLUS – Privacy

- The right to privacy particularly as it applies to personal information.
- The responsibility to know how information will be used and to divulge personal information only when appropriate.

The following table/matrix sets out summary attributes of the issue being explored by this research through the lens of consumer rights and responsibilities.

Consumer Rights & Responsibilities Matrix

Consumer Protection Issue	Rights Affected	Responsibilities Affected
The ease with which consumers can contract with unlicensed lenders, and the challenge in determining whether lenders are licensed	Information, consumer education, choice	Information, consumer education, choice
Using future social assistance payments to secure payday loans	Basic needs	Basic needs
Unlicensed lenders that claim to be licensed	Information, choice	Information, choice
Unlicensed lenders who desire direct access to a consumer's bank account and may have unfettered access to a borrowers' funds	Privacy, basic needs, safety	Privacy, basic needs, safety
Risk of providing bank account security information to unauthenticated possibly unscrupulous parties that could be collecting information for criminal purposes and not for purposes of a loan	Privacy, safety	Information, consumer education, privacy
Likely collapse of the ability to meaningfully regulate if supply chain cannot be supervised	Safety	Safety
Difficulty of borrowers and regulators to authenticate online lenders and brokers	Safety	Information, choice, consumer education
Ambiguity of impact on credit scores	Basic needs — future access to credit	Consumer education
Provision of personal information about "references" could expose them to identity theft risks and future harassment by debt collectors	Safety, Privacy, Information	Privacy
Leads vulnerable consumers to provide information that might be used for other forms of "big data" targeting and exploitation	Safety, Privacy	Consumer education
Evidence of incidences of tied-selling of creditor's insurance related to transactions	Choice, information	Information, consumer education

Consumer Rights & Responsibilities Matrix: Table 1

3.7.2 The Effect on Consumer Rights & Responsibilities

Basic Needs – Social assistance payments are designed to help Canadians meet their basic needs, not to be used to pay high fees on payday loans.

A substantial portion of payday loan customers are people of modest income. Repeated use of payday loans could affect credit scores which could affect future credit use.

Safety – There is a risk unscrupulous operators could exploit personal bank accounts and even use them to launder money, exposing a lender to a variety of risks. The difficulty of borrowers and regulators to authenticate online lenders and brokers also affects the borrowers right to safety. Personal information about references may expose them to similar risks.

Information – Consumers have the right to believe that web sites claiming to be compliant are actually compliant. Consumers have the responsibility to seek information from reasonable sources, including government, to learn about the risks of a potential transaction.

Consumers have a right to know their rights when it comes to being required to accept creditor's insurance and that they can exercise alternative options to ensure certain risks that may be more cost effective.

Consumers need no-cost, non-commercial public education options to assist them with personal financial management issues.

Choice – Consumers have a responsibility to comparison shop to find the best choice for their purchase. Doing so increases the likelihood that they will encounter a licensed lender - and possibly learn about the distinction between licensed and unlicensed lenders.

Redress – Consumers have a legislated right to redress if they engage with an unlicensed lender. However, it is very difficult to see how this right is preserved in the current environment.

Consumer Education – Consumers have the right to learn about payday loans from trusted sources, including government services. Determining whether lenders are licensed is a challenge in the current environment. Provincial information can be difficult to find, and difficult to use. Consumers need to learn early in life that the need for high-cost credit is a signal to obtain trusted advice and additional education about managing their financial life.

Consumers need to better understand bankruptcy.

Privacy – Consumers' right to privacy is violated by lenders who seek direct access to their personal bank account information. Consumers have a responsibility to recognize the impropriety of providing this information and access. They need to be made aware of the privacy risk exposure they could create for "references". Consumers should seek the consent of references to provide their personal information.

3.7.3 Overview

This research sought to evaluate the environment consumers encounter when they seek payday loans online, specifically the level of compliance with regulations shown by the lenders that consumers encounter.

Based on the outlined assumptions and methodology, there is a chance they will connect with a lender that is licensed in their province, and broadly compliant with the laws in that province. They will encounter information that precedes the application process detailing how much the loan will cost, verifying that the lender is licensed and perhaps linking them to other useful information.

There is also a chance they will connect with an unlicensed lender and engage in a process which is broadly non-compliant with the laws in that province. The unlicensed lender may (incorrectly) inform borrowers that their site complies with all applicable laws, and may also ask borrowers to provide account information, passwords and the answers to their online bank security questions in order to gain direct access to their bank account.

There is not much middle ground. Although the study could not assess compliance with rollover rules or post-default practices, the study found no licensed lenders that violate multiple regulations and no unlicensed lenders that generally comply with the requirements. Because there are so many more unlicensed lenders than licensed ones, overall compliance is not high. The chance of finding an unlicensed lender is greater than the chance of finding a licensed lender.

Consumers would be better served if that element of chance was removed, if they only encountered licensed lenders. As long as the likelihood of finding unlicensed lenders is so prominent, it is vital that consumers gain awareness that using licensed lenders is critical.

But "raising awareness" is more easily said than done, and in some provinces, online borrowers can only reach unlicensed lenders because there is no provincial legislation in effect and no criminal law enforcement to protect them.

Consumers that access licensed sites learn about licensing quite quickly. They will encounter "pop up" information that informs them about licensing, rates and possibly other information before they type their name. In fact, the pre-application pop up box is probably more effective than posters on storefront walls and language in storefront contracts.[42]

However, if a new borrower only selects unlicensed lenders, there is nothing to trigger the disclosure of this information. Without awareness that there is a meaningful difference between licensed and unlicensed lenders, new borrowers will only encounter this information randomly, based on the sites they select.

Provincial web sites do have lists or databases that show licensed lenders, but 1) these are of literally no value if the consumer isn't aware of licensing at all, 2) many of these web facilities are not easily found or easy to use, and 3) their usefulness is not part of some proactive system of authentication.

The Unique Challenges Online

Compliance and enforcement are straightforward in the 'bricks and mortar' world of retail stores for which the provincial legislation was originally drafted, when the borrower and lender did business together in the same province. When stores exist in 3D, non-compliance or the absence of a licence can result in a bailiff visit and locked doors. Online, there is no e-bailiff to shut down non-compliant sites.

There are some limitations to the legislated approach to consumer protection in the online world. The legislation was imagined in a world where consumers would only encounter licensed lenders in their community within the reach of law enforcement consumers are more likely to know and understand.[43] There is little contemplation of the consequences of dealing with an unlicensed lender outside of the jurisdiction. A few examples:

If an Ontario resident borrows from an unlicensed lender online, the legislation says the borrower only has to repay the principal, not the additional fees. As part of the original agreement, however, the borrower may have provided the lender with a PAD allowing the lender to withdraw the borrowed funds – including fees – from the borrower's bank account. If the lender withdraws the amount, how effective is the legislated protection? And where should a consumer turn for recourse? Criminal justice? Federal? Provincial? Municipal? Civil justice?

Would existing consumer protection legislation prevent an unlicensed lender from violating the legislated collection practices for an overdue amount, and harass the borrower's friends, family and employer? Licensed lenders may be deterred from doing so, but would an unlicensed lender care? Will they care if police forces are prepared to publicly announce lenders are committing crimes they will not enforce against? Many online lenders inform borrowers that overdue accounts are often sold to collection agencies, who are unbound by many of the protections offered against lenders in the legislation.[44] Ironically, this particular scenario – an overdue debt, coupled with threatening collection practices – places consumers in a 'loan-sharky' situation, the exact scenario that payday loan legislation was designed to avoid.

To some extent, these challenges relate to any Internet commerce – and consumer protection issues involved when two parties are in different jurisdictions for any transaction. (The Internet is making this kind of transaction more common.) The study found no evidence of the informal protection measures that appear in other market segments. There are no 'peer-to-peer' ratings that provide an element of protection in markets such as ebay.[45] There are no 'easy reversals' that credit card network transactions can offer. More importantly, the potential damage can exceed a single transaction, particularly when an unlicensed lender gains access to the borrower's bank account.

Banks (plus trust companies and credit unions) are another element overlooked. The original legislation was written for the bricks and mortar world, when there were only two parties in the transaction, the borrower and the lender. Banks are in the middle of (virtually) every online loan and every repayment. If a lender were repeatedly extracting funds from a borrower's bank account, it would seem logical for the borrower to contact their bank to seek redress. (In practice, this may actually happen, but it would likely be at the borrower's initiative.) It would be helpful if consumer protection information made this point to consumers.

Focusing on the licensed portion of the environment, there are differences between provincial regulations. Broadly similar in philosophy, they differ in details. There is a benefit in greater consistency among provinces; they could adopt similar best practices to improve consumer protection. Saskatchewan's requirements to provide notice of cancellation and links to credit counselling at the initial point of contact give consumers important information before they engage in the process. B.C.'s "three loans in 62 days" rules and Manitoba's "7-day renewal exemption" are both designed to curb the "renewal" trap. Which is more effective? Inter-provincial consultation could help in these areas.

The absence of substantial price competition is another concern. Very few lenders choose to charge less than the maximum allowed. Greater price competition would be a sign of a more competitive, mature market.

The different experiences on allowing loans on social assistance income is also interesting. A large portion of the market informs consumers that borrowers must have employment income, or a steady job, or equivalent language, yet when the application process is engaged, appear to allow loans on future employment insurance, disability or child tax credit payments. These programs are designed to help Canadians meet their basic needs – not to pay the fees for high-cost borrowing.

The absence of online complaints is another interesting find. Many provinces reported that they have few complaints about the online environment, and, as a result, have not emphasized online enforcement. This could result from any number of factors – low awareness that regulation is part of the environment, victimized consumers not wanting to admit to their gullibility, or cynical that help would be ineffective, inflated expectations about what portion of the industry is moving online, or even that not many consumers are actually engaging with the unlicensed portion of the market.

The contrasting positions of the Newfoundland and Manitoba governments also make for an interesting comparison. Newfoundland's lack of legislation, coupled with its more recent lack of enforcement, seems a curious choice. Temporarily, at least, it seems there is little consumer protection, online or at storefronts. Subjectively, the lenders who appeared in this study's Newfoundland searches were among the least compliant of all. At the other extreme, Manitoba has the tightest restrictions (apart from Quebec) – the lowest fee limit, the highest licensing costs, the lowest borrowing ceiling, unique requirements for lenders to have employees in the province and unique rollover restrictions. In the bricks and mortar world, these were all done to provide greater protection to consumers. In the online world, the unintended consequences are that only two lenders are licensed online in Manitoba, so residents searching online are much more likely to encounter unlicensed lenders than those in any other licensed province.

Looking forward, technology is not likely to stay static. Today's 'Internet loans' could be transacted through other technology in the near future. Although our research found few mobile apps today, it is hard to predict how prevalent they will be, or what alternatives will develop. There are at least two implications for this.

First, the provincial legislation that uses the specific term "Internet" might be inadequate to cover future technology. Is a mobile "app" that connects a borrower's device to a lender's facility "the Internet"? The provinces that use language like "in a different location" to cover both Internet and telephone lending might be better prepared for future technology.

Second – and more seriously – there is the implication that an "app" adds convenience for repeat customers in an industry designed for occasional use. Regulators are concerned about the number of repeat customers. Ontario's early recommendations suggest that the average payday loan customer has seven loans in a year. Consumer Protection BC figures show it is eight per year in that province. Nova Scotia figures show that more than a quarter of loans are repeat loans. U.S. figures show even more repeat use.

Payday loan companies are businesses, and businesses value repeat customers. From a public policy view, however, repeat customers of payday loan products represent a failure of sorts – what's designed as a temporary short-term solution becoming more permanent. (As an imperfect metaphor, it is easier for policymakers to accept payday loans as "financial bandages" to treat a temporary wound. But when the wounds are repeated, or become infected, you need treatment beyond bandages.) Repeat payday loan customers would probably be better served by an alternative. Adding technology solutions to make it easier for customers to engage in repeated payday loans will heighten this quandary.

IV

Recommendations

Improved licensing, enforcement, harmonization of provincial rules and other findings

Consumer Information

Consumers need to be aware that licensing exists and they must be able to find licensing information more easily. To facilitate this:

- Provincial governments should improve the accessibility of their information – particularly web facilities – where licensed lenders are listed. Consumers should be able to find this information more quickly, and verify whether a potential lender is licensed. The ability to search on licence numbers, and allow for variations of trade names should be required.
- Allow or require lenders to put the basic licensing information, or at least the fact that they are licensed, on the front page of their web site, rather than just "before the application". This would improve awareness of consumers who browse multiple sites that licensing is an important issue, without having to engage in the actual application process.
- FCAC material should be updated to include information about online lending, and improve disclosure about the importance of licensed lenders.
- In addition to providing a database of licensed lenders, a list of "non-licensed" lenders, easily available on web sites and easily found through searches, could be tremendously valuable to consumers. If there are barriers to this approach from provincial regulators, the CPLA should undertake this. (The British trade association does this.)
- Policy makers should ensure that web page metadata includes consumer protection and licensing information, so that it appears in search results.

Enforcement

- Enforcement initiatives against difficult-to-identify out-of-jurisdiction lenders is a challenge. Rather than send these lenders packages on how to become licensed, some efforts to limit their effectiveness must be made. This is related to licensing. If regulators cannot create value in the licence – value that is understood, appreciated and sought by consumers and, thus, also valued by lenders – the value of the licensing process is at risk of being eroded.

- Regulators should explore criminal charges against lenders who behave criminally and have been identified through complaints procedures. Lenders who request personal banking information are of particular concern, as well as those that claim to be compliant with provincial legislation when they are not. They pose a risk not only to a would-be borrower but also to the banking and systems of payments.

Consolidation and Harmonization of Provincial Rules

Some of the differences in provincial rules are important, but others are trivial and could easily confuse consumers. (Based on the audits, they confuse some lenders, as well.)

More importantly, provinces could work together to better share information about unlawful practices, unlicensed lenders and successful enforcement initiatives.

They could share the 'best practices' from each other's legislation. Some of these practices could include:

- Required disclosure of the right to cancel.
- Mandatory information about and/or links to credit counselling.
- Better disclosure of non-payment fees and post-default interest rates.
- Consistent language about "loan brokers" and "lead generators."
- Other possibilities to curb renewals, such as British Columbia's three-loans-in -62-days rule, or Manitoba's mandatory seven-day grace period.

Regulation and Consumer Protection Against Unlicensed Lenders

- Much of the legislation and consumer protection information is constructed around borrowers only encountering licensed lenders. This needs to be re-imagined, because consumers can contract with unlicensed lenders easily online.
- Regulators should examine other online commerce initiatives that might help borrowers who contract with unlicensed lenders. Consumer protection information that directed consumers to an optimal course of action (contact local police? Contact provincial police? Contact RCMP? Contact your bank?) would be very helpful to these consumers.

Other Recommendations

- Research by a competent authority that included contracting for payday loans and then evaluating compliance with rollover rules and post-default and collection practices would add to public policy knowledge.
- The use of the word "Internet" in some of the legislation might become problematic

if technology changes. Mobile apps may not be considered "Internet" connections.

- The Government of Newfoundland and Labrador should clarify its position with respect to payday loans. It is not clear if and how consumers are protected.

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V

Appendices

Appendix 1 - Sites Audited (by province)

List of online payday loan sites audited, by province

British Columbia

www.310loan.com
www.moneymart.ca
www.zippycash.ca
www.mycanadapayday.com
www.creditclubloans.com
www.dollarsdirect.ca
www.speedycash.ca
paydayloansvancouver.bluecoppercapital.com
www.mapleloans.com
www.capitalcash.ca

Alberta

www.1500cash.ca
www.mogo.ca
www.cashmoney.ca
www.wonga.ca
www.mycanadapayday.com
paydayloans-alberta.com
www.moneymart.ca
www.dollarsdirect.ca
www.310loan.com
www.privateloanshop.com
www.mapleloans.com
www.zippycash.ca
goday.ca
www.focuscashloans.ca
www.mrpayday.ca

www.speedycash.ca
www.nationalcash.ca
www.serveucash.ca
www.loanexpress.ca

Saskatchewan

www.310loan.com
www.mycanadapayday.com
www.dollarsdirect.ca
www.loanexpress.ca
redleafloans.ca
paydayloans.goloan.ca
www.instantpaydaycanada.com
www.moneymart.ca
www.speedycash.ca

Manitoba

www.mynextpay.ca
www.310loan.com
goday.ca
paydayloans.goloan.ca
loanexpress.ca
www.canpaydayloans.ca
www.cashone.ca
www.1minutepaydayloan.ca
www.mapleloans.ca
thepaydayloans.ca
www.paydayking.ca
www.capitalcash.ca

Ontario

www.mogo.ca
www.zippycash.ca
www.moneymart.ca
www.mycanadapayday.com

www.instantpaydaycanada.com
paydayloans-on.ca
www.dollarsdirect.ca
apaydayloan.ca
www.clickncash.ca
www.310loan.com
www.cashone.ca
www.paydayking.ca
www.ontariopaydaymaster.ca
www.24loans.ca
www.serveucash.ca
www.ontariopayday.net
goday.ca
www.faxlesspaydayloansontario.ca
www.instantpaydaytoday.ca
canadapaydayloansonline.ca
www.securepaydayloans.ca
www.faxlesspaydayloan.ca
www.mrpayday.ca
www.cashloansnow.ca
www.onlinepayday.ca

Quebec

www.mycanadapayday.com
www.cashone.ca
privateloanshop.com
www.paydayking.ca
www.creditclubloans.com
crediteck.ca
www.canpaydayloans.ca
paydayloans-on.ca
www.mapleloans.ca
www.ezcashnow.ca
www.capitalcash.ca
Paydayloansgatineauquebec.paydayloanscanada-online.com
northnloans.ca
www.canadianfastloans.com

* * *

Nova Scotia

www.310loan.com
www.cashone.ca
www.capitalcash.ca
www.mycanadapayday.com
www.moneymart.ca
www.cashmoney.ca
www.mycashcow.ca
paydayloans.goloan.ca
www.focuscashloans.ca
www.mrpayday.ca
www.mapleloans.com

New Brunswick

www.310loan.com
www.mynextpay.ca
getoncashon.com
www.eloancanada.com
timeforcashnow.com
www.paydayking.ca
www.paydayloansnewbrunswick.ca
www.cashone.ca
cashsafetoday.com

Prince Edward Island

www.310loan.com
www.mynextpay.ca
paydayloans.goloan.ca
www.onlinepaydayloanincanada.com
www.paydayloans-canada.ca
canadapaydayloansonline.ca
paydayloans-on.ca
myfastpaydayloanonline.com
www.paydayking.ca

* * *

Newfoundland

www.310loan.com
paydayloans.goloan.ca
www.focuscashloans.com
checkyourcashinstore.com
timeforcashnow.com
getoncashon.com
www.paydayking.ca
www.cashone.ca
okthecashtoday.com
www.mrpayday.com
moneyloansapproval.com
stillget247loans.com

Yukon

www.310loan.com
www.1500cash.ca
www.paydayking.ca
www.cashone.ca

Appendix 2 - Complete Audit Results

List of Tables

A1 - Breakdown of Links by Province
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The search methodology (detailed in section 3.1) collected 336 links. Seventy-two were excluded as duplicates within a province. Some searches would return two or more pages from the same vendor's site, and some lenders had both a search results and an advertising placement in the same province. Vendors that appeared in more than one province were considered unique for each province.

The remaining 264 links were screened further, with the following eliminations from the sample:

- 12 links were for provincial government or industry sites,
- 30 links were for newspaper articles, or informational sites (wikipedia, etc)
- 16 links were for lenders that only provided storefront services, or lenders that collect some information over the internet but do not complete the transaction without an "in-store" visit
- 15 links were for Canadian lenders that did not lend in that particular province
- 24 links were for online lenders that offered products that were not payday loans
- 18 links were for online lenders who did not offer in Canada at all
- 15 other links were not payday lenders at all.

This resulted in a sample of 134 sites that were audited.

A complete provincial breakdown is shown below. After the exclusions, the samples did not generally follow the population skews desired. In British Columbia the research examined 34 links, but audited just 10 sites. In Alberta, 36 links resulted in 19 audited sites.

Table A1 - Breakdown of Links by Province

Province	Links	Duplicates	Unique Links	Exclusions	Audited Sites
British Columbia	34	8	26	16	10
Alberta	36	10	26	7	19
Saskatchewan	21	1	20	11	9
Manitoba	32	5	27	15	12
Ontario	52	14	38	13	25
Quebec	45	6	39	25	14
Nova Scotia	28	7	21	10	11
New Brunswick	26	8	18	9	9
Prince Edward Island	22	7	15	6	9
Newfoundland	23	6	17	5	12
Yukon	17	0	17	13	4
Total	**336**	**72**	**264**	**130**	**134**

A complete listing of the sites in the audit is available in Appendix 1. Note that some vendors appear in more than one province. In any case, the approach was to identify the lenders most likely to be encountered by a typical online customer in every province.

Note that, in the sections that follow, the national or total figures are simply the sum of the provincial figures. Sites that appear in more than one province were included each time. In part, that is because some lenders have different policies for different provinces. Other lenders that appear on more than one provincial list may have policies that are compliant in one province and non-compliant in another. This may have one desired effect in that it adds an element of market weighting to the national results. Moneymart.ca, for example, is audited in five different provinces, and almost certainly transacts more than five times the online business than, for example, okthecashtoday.com (one of the sites in the Newfoundland group).

On the other hand, this adds a certain imprecision to the national figures. So, if the report shows 37 per cent of lenders disclose something, understand that 37 per cent figure includes five different moneymart.ca audits and just one okthecashtoday.com audit.

The audits involved seven stages and more than 50 evaluations for each site. The stages can be summarized as:

1. Basic identity, location and home page information
2. Provincial licence and fee disclosure
3. Other basic information elsewhere on the site
4. The application process
5. Terms and conditions disclosure
6. Provincial anomalies
7. Evaluation and observations

Stage 1: Basic Identity, Location and Home Page Information

Every site was evaluated for ownership and head office information. In many cases, this was easy to discern from an "About Us" or "Contact Us" page. But for many sites, it was much more difficult, and required searching in "terms and conditions" or "privacy policy" information. In quite a few instances, neither ownership nor head office information was available at all.

Stage 2 of the audits evaluated sites based on licensing – a simple evaluation of whether the sites were registered in the province. That information (detailed below) is very useful in evaluating the types of sites for which ownership or head office location proved impossible to find.

Table A2 - Locations of Head Office

	All Lenders			Unlicensed Lenders		
Province	Canada	U.S.	Undisclosed	Canada	U.S.	Undisclosed
British Columbia	8	2		1	2	0
Alberta	15	2	2	4	2	2
Saskatchewan	8	1	0	0	1	0
Manitoba	5	3	4	3	3	4
Ontario	14	4	7	5	4	7
Nova Scotia	8	3	0	5	3	0
Quebec	3	4	7	3	4	7
New Brunswick	2	0	7	2	0	7
Prince Edward Island	1	1	7	1	1	7
Newfoundland	4	1	7	4	1	7
Yukon	2	1	1	2	1	1
Total	**70**	**22**	**42**	**30**	**22**	**42**

Note that all the undisclosed lenders turn out to be unlicensed. For the purposes of this question, lenders such as Moneymart.ca, Dollarsdirect.com and wonga.ca, were considered Canadian-based because they offered a Canadian head office address, even if the company has a foreign corporate parent.

Promotion of an App

Few lenders promoted applications for use on mobile devices on their web sites. Twelve were encountered in total, from four different vendors, each appearing in multiple provincial audits. Two of the four vendors appear to be owned by the same company.

Apply Now

The final stage of the home page evaluation sought an "Apply Now" or "Apply Here" button. This proved to be nearly unanimous. Only two sites did not have this kind of button, using "Learn more" as a call to action instead.

Stage 2 - Provincial licence and fee disclosure

One of the common areas in the provincial legislation is a requirement that lenders provide certain information to borrowers before they enter the application stage of a payday loan. In general, the provincial rules require lenders to show the same information required on the store "poster" disclosure to appear before the customer is engaged in the process. Such lenders are required to declare

1. that they are licensed in the province
2. the licence number (or a copy of the actual licence)
3. the actual fees for the service

4. express those fees with an APR (not every province does this)
5. show an example with a theoretical loan of $100 or $300.

As a followup part of the audit, each lender's licence was verified against the respective provincial database. All vendors licences were confirmed although a few displayed licenses that had expired. Here's the provincial breakdown

Table A3 – Licensed vs Unlicensed Lenders

Province	Total	Licensed	Unlicensed
British Columbia	10	7	3
Alberta	19	11	8
Saskatchewan	9	8	1
Manitoba	12	2	10
Ontario	25	9	16
Nova Scotia	11	3	8

As for compliance with the basic fee disclosure, there was an extreme gap between the licensed lenders – that almost universally met the requirements – and the unlicensed lenders, that almost universally did not.

Table A4 – Compliance with Fee Disclosure

Province	Fee Disclosure Met	Licensed Lenders	Unlicensed Lenders
British Columbia	7/10	6/7	1/3
Alberta	12/19	11/11	1/8
Saskatchewan	8/9	8/8	0/1
Manitoba	3/12	2/2	1/10
Ontario	9/25	8/9	1/16
Nova Scotia	5/11	3/3	2/8
Quebec	0/14		0/14
New Brunswick	1/9		1/9
Prince Edward Island	1/9		1/9
Newfoundland	0/12		0/12
Yukon	1 /4		1 / 4
Total	**47/134**	**38/40**	**9/94**

Notes: The audits encountered a number of sites that indicated in text that they only provided payday loans to certain provinces. In some instances, however, when the audits engaged the application process, there was no restriction, and it appeared to allow applications from other provinces. In those cases, the sites were considered eligible for the audit in the province, because the allure of the "apply now" was more likely to catch a borrower's eye than text that suggested they only offered loans in certain provinces. Of course, it is possible that the out-of-province applications would have been ultimately rejected.

Also, some lenders display licences from other provinces to fulfill their "must show licence" obligation in a certain province. One firm in the B.C. audit displays an Alberta licence, for example. Two firms in the Nova Scotia audit display Ontario licences. These firms are categorized as "unlicensed" but may still meet the fee display requirements. Similarly, there are some firms in the Quebec and Newfoundland audit that attempt to meet typical payday loan fee display requirements, but fail because of the lower fee limits in those provinces.

Neither Saskatchewan nor Ontario require lenders to show the APR as part of the "pre-engagement" fee disclosure. Licensed firms in those jurisdictions can simply show the actual costs for a 14-day $300 loan to meet the requirements. Free from this obligation, it's interesting to note that no firm displays the APR information voluntarily.

On the other hand, many, many unlicensed lenders only disclose APR rates.

As far as fees charged, the default position seems to be the maximum allowable under legislation. There is very little evidence of any price competition in the marketplace. Two British Columbia sites, two Alberta sites and one Manitoba site appear to offer prices that are not the maximum. A number of sites do appear to offer promotions and discounts that might lower fees for first-time borrowers and others.

Stage 3 – Other Information Elsewhere on the Site

This stage involved abandoning the "application" for the moment to evaluate other parts of the site. Most sites included information pages – often titled "How it Works" or something similar – as well as a page of FAQ (frequently asked questions). This provided information about a number of topics before the application process.

How many storefronts do they have in the province?

British Columbia – 3 vendors have storefronts. All were licensed
Alberta – 4 vendors have storefronts. All were licensed.
Saskatchewan – 2 vendors have storefronts. All were licensed.
Ontario – 4 vendors have storefronts. All were licensed.
Nova Scotia – 3 vendors have storefronts. All were licensed.

The six licensing provinces have a total of 40 licensed lenders in the audit. Sixteen have storefronts – this counts Money Mart in multiple provinces - so 24 sites would appear to operate exclusively online.

What information do lenders say borrowers will need, pre-application:

Virtual all lenders inform borrowers that they need to be of the age of majority, have a bank account (some more specifically identify a checking account that allows direct deposit) and a steady source of income (some specifically say "job" or "regular employment, even if it's part time").

Beyond those three basics, the audits focused on other dimensions, such as whether borrowers were told they would need to provide bank statements, Social Insurance Number, driver's licence, health card or other provincial ID, or some form of income verification, such as a pay slip, or multiple bank statements to verify employment for 60 or 90 days.

Table A5 – What Information Lenders Say They Require

Province	Sites	Bank Statements	SIN	Drivers License or other gov't ID	Pay slip, 60/90 days of income
British Columbia	10	5	1	2	6
Alberta	19	8	1	1	12
Saskatchewan	9	3	1	1	3
Manitoba	12	2	1	1	7
Ontario	25	7	1	0	18
Quebec	14	1	0	1	11
Nova Scotia	11	3	1	1	5
New Brunswick	9	1	1	0	8
Prince Edward Island	9	1	1	0	9
Newfoundland	12	2	1	0	10
Yukon	4	1	1	0	3
Total	**134**	**34**	**10**	**7**	**92**

These are not the only requirements identified by lenders to potential borrowers prior to the application process. Some lenders also ask for:

- A record of bankruptcy. Some lenders say they will not lend to those who have declared, or are contemplating bankruptcy.
- Income above a minimum threshold. Sometimes a minimum income requirement is expressed as an annual figure, or sometimes as a monthly figure. Among the most common thresholds are $1200 a month or $700 a month.
- Utility bill. Some vendors seek this as a proof of address
- Void cheque. Some vendors use this to verify banking information

- Bank statements through a unique method. Some vendors have proprietary software, which they ask borrowers to download, allowing the capture and transmission of banking records with greater security.
- Special requirements for the self-employed. Some lenders say they will lend to the self-employed only if they send along bank statements (fax or e-mail) to verify income flows.
- A few lenders had additional age restrictions, informing potential borrowers that they needed to be 23 (one case) or 25 (one case) years old to be considered.

The main takeaway from this question was the different income evaluation methods used by the different vendors. Roughly 25 per cent told potential customers about the need for bank statements in advance, while roughly two-thirds (92 of 134) notified potential borrowers that they needed to have an income, 30/60/90 days of employment or pay slips (or other similar variations) to qualify.

Do they appear to allow loans on future government benefits? (before the application process)

For the purposes of this question, if a lender indicated that they would consider applications from those currently on employment insurance, pension plans, workman's compensation, disability, or receiving child tax credits, it was coded as "yes". Many sites emphatically said they would not grant loans based solely on those benefits. These were coded as "no". The remaining vendors were coded as "ambiguous/no disclosure".

The chart below shows how vendors represented their position. Later in the audit, (see below), this information was compared to each site's actual application process.

Table A6 – Do Lenders Say They Lend on Social Assistance?

Province	Sites	Yes	No	Ambiguous / No Disclosure
British Columbia	10	3	5	2
Alberta	19	3	8	8
Saskatchewan	9	1	5	3
Manitoba	12	0	8	4
Ontario	25	3	18	4
Quebec	14	1	8	5
Nova Scotia	11	1	8	2
New Brunswick	9	0	8	1
Prince Edward Island	9	0	6	3
Newfoundland	12	0	12	0
Yukon	4	0	3	1
Total	**134**	**12**	**89**	**33**

Do they indicate whether a credit check is required?

The variety of language used by the different vendors to address credit issues makes this very difficult to summarize.

Some sites don't say anything about credit checks at all. In some of these cases, they include language that allows credit checks in the agreement. Some sites say that they will not do credit checks, but the agreement allows them to. A few sites make it clear that they will, and disclose the firm they will use. Some allude to using credit services, as a "quick reference" or for identity verification alone.

Credit check questions are a common part of many sites' FAQ section. The question was typically posed as "I do not have a great credit history. Am I still eligible for a loan?" The two most common responses were:

- "We do not weigh your credit history heavily." (or similar language)
- "Our lenders do not look at credit scores."

Some sites definitively state that they will not conduct credit checks, summarized below.

Table A7 – Credit Checks

Province	Sites	Will NOT check credit
British Columbia	10	3
Alberta	19	4
Saskatchewan	9	3
Manitoba	12	4
Ontario	25	3
Quebec	14	8
Nova Scotia	11	3
New Brunswick	9	2
Prince Edward Island	9	3
Newfoundland	12	3
Yukon	4	3
Total	**134**	**39**

Do they say anything like "non-payment can damage your credit"?

The lenders use a variety of wordings, but the principle was to evaluate whether the lender established a link between non-repayment and damage to a credit history.

Table A8 – Will Non-Payment Damage Your Credit

Province	Sites	"Non payment can damage your credit"
British Columbia	10	2
Alberta	19	5
Saskatchewan	9	0
Manitoba	12	3
Ontario	25	6
Quebec	14	4
Nova Scotia	11	3
New Brunswick	9	0
Prince Edward Island	9	1
Newfoundland	12	3
Yukon	4	1
Total	**134**	**28**

The audits also evaluated whether any site stated or implied that prompt repayment could improve a borrower's credit rating. (Statements to this effect violate some provincial legislation). No sites in the audit used language to this effect.

Do they tell you about repayment options?

The common thread among the sites is that repayment is "easy – you don't have to do a thing". Some sites make specific mention of a Pre-Authorized Debit – a permission to allow the lender to withdraw money from the borrower's bank account on the date the loan is due, all considered part of the agreement. Others clearly refer to a PAD, while not using that specific term. There are firms that offer alternatives, which can include: electronic money transfers, cash brought into storefront locations, cheques and money orders.

The breakdown puts the responses into three categories: 1) those that inform customers about the PAD, using those terms or similar terms that discuss giving the lender the right to automatically withdraw funds. 2) those that offer PAD as well as at least one additional option (cash in stores, cheques, payment through banks. 3) those that simply say "it's easy, it's automatic", or "you will get additional details from your lender."

Table A9 – Repayment Options Cited

Province	Sites	PAD only	PAD plus	"Easy/automatic"
British Columbia	10	3	4	3
Alberta	19	9	5	5
Saskatchewan	9	5	2	2
Manitoba	12	5	2	5
Ontario	25	12	6	7
Quebec	14	3	2	9
Nova Scotia	11	3	2	6
New Brunswick	9	3	1	5
Prince Edward Island	9	4	1	4
Newfoundland	12	2	1	9
Yukon	4	3	1	0
	134	**52**	**27**	**55**

At the outset, approximately 20 per cent of sites inform consumers that they accept alternatives to PAD.

Of particular note, however, are the six sites in the audit (four in Ontario, one each in New Brunswick and PEI) that do not say a single word about repayment. The topic of how the loan was repaid – or even a reminder that it needed to be repaid – was not on the site whatsoever. Sites that said absolutely nothing were coded as "it's easy".

Do they tell you about the right to cancel before you reach the agreement?

Each of the six provinces has rules that allow the borrower to cancel the agreement within a certain time period – most commonly two days.

Table A10 – The Right to Cancel

Province	Sites	Right to Cancel pre-agreement	Licensed	Unlicensed
British Columbia	10	6	5/7	1/3
Alberta	19	5	4/11	1/8
Saskatchewan	9	6	6/8	0/1
Manitoba	12	2	0/2	2/10
Ontario	25	4	3/9	1/16
Quebec	14	5		5/14
Nova Scotia	11	6	1/3	4/8
New Brunswick	9	1		1/9
Prince Edward Island	9	0		0/9
Newfoundland	12	1		1/12
Yukon	4	2		2/4
Total	**134**	**38**	**19/40**	**19/94**

Some vendors informed consumers of this right in the agreement only, not in advance. Some of the notifications were not compliant with provincial rules. Some referred to "48 hours" when the actual provincial rule is a bit more complicated than that. On the other hand, some vendors said "two business days" when the actual provincial standard was just the next day.

The major conclusion, however, is that the vast majority of lenders (more than 70 per cent) do not tell borrowers in advance about this right. Licensed lenders are much more likely to provide this information.

What is the one-time fee for NSF/not repaying on schedule? What is the interest rate at which overdue amounts will continue to grow?

These are two related questions. Each of these amounts is (usually) set out in legislation, but the fees and rates differ from province to province.

For NSF amounts or overdue payments, many vendors noted that there was "a penalty" but did not specify an amount. They were marked as "undisclosed". Otherwise, sites were evaluated as to whether they were within the provincial regulations. Sites that said "up to $50" were considered "within limits", even if the actual provincial limit was lower than $50. (Giving lenders the benefit of the doubt.)

Table A11 – Missed Payment Fees Compliance

Province	Sites	Within limits	Outside limit	Undisclosed
British Columbia	10	5	3	2
Alberta	19	6	2	11
Saskatchewan	9	6	0	3
Manitoba	12	2	4	6
Ontario	25	8	0	17
Quebec	14	7	0	7
Nova Scotia	11	5	2	4
New Brunswick	9	3	0	6
Prince Edward Island	9	2	0	7
Newfoundland	12	3	0	9
Yukon	4	4	0	0
Total	**134**	**51**	**11**	**72**

In provinces where there is no legislation, all amounts were considered "within limits". Here is the summary for the disclosure of post-default interest rate limits:

Table A12 – Overdue Interest Rate Compliance

Province	Sites	Within limits	Outside limit	Undisclosed
British Columbia	10	5	1	4
Alberta	19	5	2	12
Saskatchewan	9	3	0	6
Manitoba	12	1	4	7
Ontario	25	8	0	17
Quebec	14	0	5	9
Nova Scotia	11	5	0	6
New Brunswick	9	3	0	6
Prince Edward Island	9	2	0	7
Newfoundland	12	3	0	9
Yukon	4	4	0	0
Total	**134**	**39**	**12**	**83**

In provinces where there is no legislation, amounts less than 60 per cent per year were considered within limits, as per s347 of the Criminal Code. The exception was Quebec, where 35 per cent APR was considered the limit for the purpose of this question.

Is there any information about, or links to credit management?

A link to a credit counselling facility, names, phone numbers or any mention of credit counselling was considered acceptable.

Saskatchewan makes this a requirement for licensing, and all eight licensed lenders in that province meet the obligation (although one does not disclose it in the manner required by legislation). Apart from those, only 17 of 126 lender sites have any information about credit counselling.

Table A13 – Do Sites Inform Borrowers About Credit Counseling?

Province	Sites	Credit Management	Licensed	Unlicensed
British Columbia	10	2	2	0
Alberta	19	4	3	1
Saskatchewan	9	8	8	0
Manitoba	12	2	1	1
Ontario	25	4	3	1
Quebec	14	0	0	0
Nova Scotia	11	1	1	0
New Brunswick	9	1	0	1
Prince Edward Island	9	1	0	1
Newfoundland	12	1	0	1
Yukon	4	1	0	1
Total	**134**	**25**	**18**	**7**

Are there any special rules for first-time borrowers?

Answering this question properly required Stage 4, completing the application process. The study sought to evaluate the prevalence of restrictions on new borrowers through lower lending limits, as well as enticements to first-time borrowers through lower lending rates or promotions such as "first $200 free".

Table A14 – Discounts for First-Time Borrowers

Province	Sites	Lower Limits	Lower Fees
British Columbia	10	5	1
Alberta	19	9	2
Saskatchewan	9	4	0
Manitoba	12	5	0
Ontario	25	9	1
Quebec	14	4	0
Nova Scotia	11	5	2
New Brunswick	9	2	0
Prince Edward Island	9	2	0
Newfoundland	12	4	0
Yukon	4	3	0
Total	**134**	**52**	**6**

In stage 4, through the application process, the audit sought the presence of fields where borrowers could enter a promotions code or coupon, and found 41 such sites. Only six sites, however, promote lower costs for first-time customers through their web site alone.

Do they disclose an upper limit on borrowing?

Virtually every site refers to a $1,500 limit, the upper boundary defined in provincial legislation. For some sites, this was difficult to test, because the applications were all done as a new customer, and so many of the "first time customer" lending limits identified in the previous question would be enabled.

There were quite a number of sites that had internal contradictions. Sites would promote "up to $1,000" on the front page, but also say "up to $,1500" in the FAQ section.

Three provinces have additional limits on borrowing. Both British Columbia and Saskatchewan limit borrowing to 50 per cent of net pay, and Manitoba's limit is lower, 30 per cent of net pay.

In British Columbia, one of 10 firms mentioned this limit, pre-application

In Saskatchewan, one of nine firms mentioned this limit, pre-application.

In Manitoba, no firm mentioned this limit, pre-application.

However, as a "first-time" customer restrictions may have prevented the other restrictions from being evident.

Stage 4: The Application Process

At this stage, the application process was restarted, and continued as far through the process as possible. The possible end points included:

1. accepting an agreement
2. verifying that the information in the application was truthful (to minimize the risk to personal information, the applications were done with fictional names, addresses and personal information, but the same information was provided to each lender in each province)[46]
3. rejection by the lender
4. some kind of technical difficulty or impasse

Apart from basic information (name, address, phone, e-mail) do lenders ask for Social Insurance Number, time at employer, time at residence, whether you own or rent, references? What else do they request?

Each site in each province was evaluated during the application process. SIN represents Social Insurance Number, TaE is Time at Employer (often asking for start date), TaR is Time at Residence, O/R is Own or Rent, Ref. is references. In the first four columns, the breakdown shown represents Y-N-Unsure. So for British Columbia's Time at Employer, the notation 4-2-4 means 4 sites asked, 2 sites did not, and 4 sites were unclear (i.e., application terminated before that question arose).

The Reference notation of 4 (1-1-2) represents that four of the sites asked borrowers to name references, while the 1-1-2 means one site asked for one reference, one site asked for two, and two sites asked for three references.

Table A15 – What Information is Requested During Applications (yes/no/unclear)

Province	Sites	SIN	TaE	TaR	Own/Rent	Ref.
British Columbia	10	9-1	4-2-4	6-2-2	4-2-4	4 (1-1-2)
Alberta	19	17-1-1	12-2-5	13-5-1	12-5-2	4 (3-1)
Saskatchewan	9	6-0-3	4-1-4	4-2-3	3-2-4	3 (0-2-1)
Manitoba	12	12-0-0	9-0-3	12-0-0	5-4-3	7 (3-4)
Ontario	25	23-2	16-3-6	19-4-2	14-6-5	6 (3-2-1)
Quebec	14	14-0	8-1-5	13-0-1	8-2-4	5 (5-0-0)
Nova Scotia	11	11-0	6-0-5	9-0-2	6-0-5	6 (3-1-2)
New Brunswick	9	8-0-1	7-0-2	8-0-1	4-2-3	4 (2-2)
Prince Edward Island	9	9-0	9-0	9-0	6-2-1	2 (0-2)
Newfoundland	12	12-0	11-1	12-0	9-1-2	4 (2-0-2)
Yukon	4	4-0	3-0-1	4-0	0-2-2	4 (3-1)
Total	**134**	**125-4-5**	**89-10-35**	**109-13-12**	**71-28-35**	**49 (25-16-8)**

Summarizing for clarity, 125 of 134 lenders ask for SIN during the application process. Four do not, and five sites were unclear. Forty-nine of the 134 sites ask for references.

Twenty-five of these sites ask for a single reference, 16 ask for two and eight ask for three.

The reason for some of the "unclear' responses is that there were a few sites that ask customers to download proprietary software fairly early in the application process. This software was supposed to take a borrower through collecting some of the information required to complete the application. The software was not downloaded in these audits.

Many sites make SIN optional, but add that including it will streamline applications.

Proof of employment and banking information were evaluated separately (see below). Most applications followed that general flow, starting with personal information, then employment information, followed by banking information. At the early "personal identification stage" other questions asked (infrequently) included drivers licence number (or other government issued ID), whether you had filed or were contemplating filing for bankruptcy, amount of rent or mortgage payments per month, the name of the landlord (for renters), outstanding loans, and marital status.

What proof of employment is required? Beyond standard bank information (branch, transit, account) what banking information do lenders request?

The variety of approaches that lenders take to this type of information again complicates the results. As noted earlier, some lenders have propriety software they ask borrowers to download to collect banking information. Others ask for banking information to be faxed, or to be screen-captured and emailed. This is generally explained as fulfilling a need to verify income (employment and/or social assistance payments) and expenses. Some lenders require bank statement information to be forwarded (fax, email) only if the account does not allow direct deposit.

Through all these means, here is an estimate of lenders who want to see bank statement information:

* * *

Table A16 – Requesting Bank Statements

Province	Sites	Request bank statements
British Columbia	10	3
Alberta	19	5
Saskatchewan	9	1
Manitoba	12	4
Ontario	25	8
Quebec	14	5
Nova Scotia	11	4
New Brunswick	9	3
Prince Edward Island	9	2
Newfoundland	12	4
Yukon	4	4
Total	**134**	**43**

More disturbingly, a number of sites ask for the borrower's online bank access codes, passwords and answers to personal security questions. This is often couched as a convenience that allows the lenders to verify information without making the borrower email or fax in 90 days of bank statements. Needless to say, providing lenders with direct access to a bank account would pose a significant risk to borrowers.

The audits found 22 instances of sites that ask for this personal banking information. There are five sites that make this request, and some of the sites show up in multiple provinces. The sites are www.cashone.ca, www.paydayking.ca, www.capitalcash.ca (all of which use the same basic information interface, and the first two of which have the same mailing address). www.1500cash.ca and www.ezcashnow.ca share a different template. The first sites show up in many provincial search results because of purchased advertising placement in search engines.

Except for a question specific to Manitoba lenders, rollover rules were not tested. (Every single site in the pre-testing phases indicated they complied with restrictions that prevented them.) Yet the five sites listed appear to allow them in the application process, asking if borrowers would like their new loans classified as "recurring" or "interest only" or "fee-only renewal" options. Outside the application interface, each site's information indicates that they do not "offer refinances, rollovers or extensions to its payday loans in any jurisdiction that prohibit refinances, rollovers or extensions", so perhaps the applications would ultimately be declined. But even in that case, borrowers would have provided sensitive bank account information to unknown Internet lenders.

Does the application appear to allow information about social benefit payments?

In Stage 3, the information the sites presented was evaluated with respect to whether they allowed payday loans based on social assistance payments, including employment insurance, CPP, disability, workman's compensation or child tax credits. (Table A6 above)

The overwhelming majority of sites (89) indicated explicitly or implicitly ("you must be employed") that loans were only available on employment income. But in the application process, the majority of sites do allow the input of social assistance payments. The table below compares the 'pre-application' site disclosure with the actual site application experience.

Table A17 – Social Assistance Payments and the Application Process

		Pre-Application			During Application		
Province	Sites	Yes	No	Ambiguous/ No Disclosure	Yes	No	Ambiguous/ No Disclosure
British Columbia	10	3	5	2	5	4	1
Alberta	19	3	8	8	10	9	0
Saskatchewan	9	1	5	3	2	5	2
Manitoba	12	0	8	4	7	4	1
Ontario	25	3	18	4	12	12	1
Quebec	14	1	8	5	5	7	2
Nova Scotia	11	1	8	2	4	7	0
New Brunswick	9	0	8	1	5	2	2
Prince Edward Island	9	0	6	3	5	3	1
Newfoundland	12	0	12	0	9	3	0
Yukon	4	0	3	1	3	0	1
	134	12	89	33	67	56	11

Of course allowing the input of social assistance payments in the application process does not mean that the lender will automatically grant loans based on those figures. But it is an interesting contrast.

Is there a toll-free number you can call for assistance?

Do sites allow consumers access to toll-free help lines during the application process? Some sites had toll-free numbers on a 'contact us' page, but this requires a consumer to exit the application to find the number – an inconvenience.

* * *

Table A18 – Is Telephone Help a Call Away?

Province	Sites	Visible Toll Free Number during application	No Phone Numbers at all
British Columbia	10	7	
Alberta	19	11	
Saskatchewan	9	5	
Manitoba	12	3	
Ontario	25	8	3
Quebec	14	1	
Nova Scotia	11	4	
New Brunswick	9	0	4
Prince Edward Island	9	0	5
Newfoundland	12	1	6
Yukon	4	1	
Total	**134**	**41**	**18**

Fewer than one-third of the sites have visible toll-free numbers during the application process.

As noted, the audits identified a surprising number of sites (18) that have no telephone numbers anywhere on the site, not even on the contact us page. Note that 15 of those 18 sites are located in unlicensed provinces.

Is there a field for promotional or special offers in the application?

The figures for this may be understated, as many applications could not be completed. But 41 of the 134 sites appeared to have such a field in their application process.

Table A19 – Coupons or Promotional Fields

Province	Sites	Promo or Coupon Field
British Columbia	10	6
Alberta	19	10
Saskatchewan	9	4
Manitoba	12	1
Ontario	25	9
Quebec	14	1
Nova Scotia	11	5
New Brunswick	9	1
Prince Edward Island	9	1
Newfoundland	12	2
Yukon	4	1
Total	**134**	**41**

Are there any alternative destinations for borrowed money other than a bank account? If so, where?

Most sites indicated that a bank account was the default 'landing' point for the borrowed funds. Because applications could not be completed, results for this question are gleaned more from information elsewhere on the site than from the actual application.

Still, many lenders offered alternatives, the two most common of which were "pick up cash in our stores" and "e-mail money transfer". Some sites used a variety of language ("email fund transfer", "electronic money transfer", which are collected in the table below, even though there may be some small intended differences). A very few lenders allow the borrowed moneys to be delivered via a prepaid debit card. Note that some lenders offered multiple alternatives. All listed alternatives were recorded.

Table A20 – Alternatives to Direct Deposit

Province	Sites	Sites with alternatives	EMT/EFT	Store pickup	Debit	ATM/Virtual Wallet
British Columbia	10	5	4	1	1	1
Alberta	19	9	6	3	2	1
Saskatchewan	9	4	4	1		
Manitoba	12	3	3			1
Ontario	25	5	4	1		
Quebec	14	2	1		1	
Nova Scotia	11	5	4	1		
New Brunswick	9	1	1			
Prince Edward Island	9	1	1			
Newfoundland	12	3	3			
Yukon	4	2	2			
Total	**134**	**40**	**33**	**7**	**4**	**3**

Stage 5: Terms and Conditions

In only a few instances were the applications completed to a degree that allowed a view of the terms and conditions of the payday loan agreement. It is difficult to draw any meaningful comparisons based on this limited sample.

There were some sites that allowed customers to view the terms and conditions beforehand, even before beginning the application process.

But for the most part, sites require borrowers to accept the terms and conditions to proceed with the application. However, if you viewed the terms and conditions presented at that time, you would find most often that they were the terms and conditions of the web site used, not those of the payday loan agreement.

Despite those limitations, there were some questions from this section of the audit checklist that could be answered.

Can you see, save and print the agreement before accepting?

For the ones that reached an actual agreement, yes, this was the case.

And for many of the sites identified as "lead generators" and not "lenders", there was some transparency that they would take your information, and search "to find you the best possible lender" (or some such), and that the borrower would receive further communications from the lender. Many made it clear that you did not have to accept the lender's proposal and that there was further acceptance required.

Does the application include a Pre-Authorized Debit for repayment?

Yes, the few agreements reached did include this

Do they allow other types of repayment? If yes, list.

From other segments of the web sites, many vendors appear to allow other forms of repayment. Predictably, these were the same alternatives available to borrowers when the loan was established, primarily EMT/EFT, in cash through stores. Some sites allowed online money orders, and cheques.

The vast majority of sites emphasize the simple "you don't have to do a thing" repayment approach, using a PAD as the default.

Is there any evidence that there are extra charges for things such as prepaid access cards, bank account fees, monthly card fees, money loading fees and loan insurance?

It was suggested in the interview part of the research by one of the licensed lenders that these fees are more common through unlicensed lenders contacted through lead generators, and often don't appear until very late in the process.

One faux application included an unanticipated insurance charge. A $500 application with www.speedycash.ca in British Columbia included an insurance cost of $18.15 along with the repayment amount of $615. This amount appeared to be permitted by a borrower rather subtly at the final stage of the application process.

On the final page, there was a series of check boxes, all of which were pre-ticked. These boxes included:

- Loan Schedule Total Cost of Credit
- Loan Schedule APR
- No Tied Selling
- Loan Cancellation Rights
- General Loan Agreement
- PAD pre-notification waiver
- General PAD agreement
- Loan protection enrolment

The final box allowed the insurance charge. When the application was redone and the "loan protection enrolment" tick box was deselected, the site generated a loan agreement without the insurance component. The same lender has a similar procedure that showed up in the Alberta audits, but the list of check boxes is shorter, and enabling the "loan protection" box results in a $1.00 insurance fee.

That site did allow for the agreement to be printed and viewed before completion (as required), but only some customers would have caught that extra fee.

The audits also identified four vendors (two in Alberta, one in Nova Scotia and one in Ontario) that advised there would be a surcharge for money transfers, which was portrayed as a way of getting money more quickly than through direct deposit.

One Quebec site refers to an access fee, but does not provide details elsewhere.

One Ontario site discusses administration fees, but does not provide details.

Is there any evidence of tied selling? (To get this, you must also get...)

No evidence was found, but again, few applications were completed and none involved lead generators.

Stage 6: Provincial Anomalies

Some provinces have unique rules ranging from vital to frivolous.

British Columbia: Three loans in a 62-day period.

Under British Columbia legislation, if a borrower takes out three loans within a 62-pay period, an "extended payment plan" obligation is triggered in which the (third) loan repayment can be spread over a longer period.

Compliance: One of 10 lenders had information about this. This is not truly a "compliance" issue of course. There must be two previous loans before it becomes a requirement.

British Columbia: Purple border on fee information.

British Columbia's legislation makes some unusual presentation requirements of lenders at the initial fee disclosure step. The legislation requires that the fee disclosure include the information in black type against a white background within a purple border.

Compliance: Six of 10 lenders had the purple border. All six were licensed lenders.

Saskatchewan: Credit counselling information on pre-application disclosure

Saskatchewan requires lenders to post information about credit counselling in the "pre-engagement" disclosure.

Compliance: Seven of nine lenders had this information. All were licensed. An eighth lender had credit counselling information on the site, just not in the pre-engagement location specified.

Saskatchewan also has a requirement that lenders must provide notice about cancellation rights and a form to cancel before the acceptance. This was captured in a question in the earlier stage. Six of nine Saskatchewan lenders met this standard.

Manitoba: 12-day APR calculation standard

While most provinces require disclosure of APR based on a 14-day loan, Manitoba requires its lenders to display the information based on a 12-day loan.

Compliance: Three of Manitoba's 12 lenders met this requirement, including both of its licensed lenders.

Manitoba: Extended rollover rules

Manitoba also has unique rollover rules that require any loans made to borrowers within seven days of the repayment of another loan to have a maximum rate of 5 per cent. This effectively deters lenders from making repeat loans without at least a one-week break.

Compliance: This provision could not be tested without engaging in a payday loan. One of Manitoba's 12 lenders – a licensed lender – noted this provision on its web site.

Ontario: Education materials available

Ontario does not require the disclosure of APR calculations per se, instead requiring lenders to disclose the information contained on the "in store" posters before discussing anything about payday loans.

Compliance: 10 of 25 lenders meet this obligation; most do so by making the "poster" available in PDF form on the fee disclosure pop up. The 10 include all nine licensed lenders in the audit, plus one unlicensed lender.

Nova Scotia: Mandatory storefront

Nova Scotia requires all licensed lenders to operate at least one storefront facility in the province. Other provinces require lenders to have an "office" for legal purposes, but Nova Scotia requires that this facility offer payday loans.

Compliance: Four of 11 lenders in the audit operate storefronts in the province. One of the four, (www.cashmoney.ca) did not have a licence to operate online in the province, according to the Nova Scotia licensing database. The web site also displayed an "expired" licence.

Nova Scotia: Agreements with cancellation forms

Nova Scotia requires that all agreements be accompanied by cancellation forms. This could not be audited as no agreements were reached.

Stage 7: Evaluations, Notes and Observations

Each site audit concluded with a categorization as to whether the site was a licensed lender, an unlicensed lender or a lead generator.

Licensed lenders were the easiest to identify. They displayed a licence, as required, after the application process was triggered. (Licence numbers were verified with each province's online registration.) The distinction between unlicensed lenders and lead generators was less easy.

Identifying a large number of "lead generators" turned out to be rather simple. Many of them made the point obviously on the front page, by using language such as "our firm and our participating lenders" or "we work with a wide network of lenders" or more blatantly "we are not a lender". Many also included disclaimers near the end of the application process that "some participating lenders may be located outside Canada." A few sites even made a point of saying that they are not a loan broker, consciously trying set themselves apart from the requirements that accompany that description in legislation.

If there was no obvious declaration about being a lead generator, the site was categorized as an unlicensed lender. As a result, the number of lead generators may be understated and the number of unlicensed lenders overstated.

Here is a summary:

Table A21 – Licensed, Unlicensed and Lead Generators

Province	Sites	Licensed	Unlicensed Lender	Lead Generator
British Columbia	10	7	2	1
Alberta	19	11	3	5
Saskatchewan	9	8	0	1
Manitoba	12	2	6	4
Ontario	25	9	4	12
Quebec	14	0	6	8
Nova Scotia	11	3	6	2
New Brunswick	9	0	4	5
Prince Edward Island	9	0	3	6
Newfoundland	12	0	5	7
Yukon	4	0	4	0
Total	**134**	**40**	**43**	**51**
Percentage		**30**	**32**	**38**

Where are the unlicensed lenders and lead generators located?

This was not initially part of the research. But there were frequent references in the literature review to unlicensed lenders being "offshore" (Deloitte 2014, page 9 for example).

The majority of the unlicensed lenders and lead generators do not offer much information about their ownership or location. (The audits could sometimes uncover locations or ownership by digging into the site's legal notices and privacy policy.) However, there are sites that will provide information (free) of where any site is hosted. This information may be of limited utility. Where a site is hosted may or may not have any relationship with the ultimate ownership of a site.

Here are the findings, looking at the hosting sites of all the "non-licensed" sites in the audit.

Table A22 – Where Unlicensed Sites are Hosted

Province	Sites	Canada	United States	Other
British Columbia	3	1	2	0
Alberta	8	2	5	1
Saskatchewan	1	1	0	0
Manitoba	10	2	6	2
Ontario	16	4	8	4
Quebec	14	4	7	3
Nova Scotia	8	5	3	0
New Brunswick	9	6	2	1
Prince Edward Island	9	3	5	1
Newfoundland	12	9	3	0
Yukon	4	0	4	0
Total	**94**	**37**	**45**	**12**
Percentage		**39**	**48**	**13**

Here is the breakdown of the sites identified as "other":

Location	**Quantity**
Frankfurt, Germany	5
Brazil	3
Moscow	2
St. Petersburg, Russia	1
Estonia	1

Other Observations

Beyond the specific list of questions, the audits also gathered additional information worth including in the final report summary.

There was an extraordinary amount of duplication in terms of the application interface. The audits included many different sites that had the same basic format for collecting information from potential borrowers. The same questions were asked in the same format, with the same fonts and colour schemes. Sites that looked quite different from the outside looked identical once the application was started. The licensed vendors had their own unique interfaces, but there were just a few "templates" used by the unlicensed vendors. Perhaps many of these sites share common ownership, and wrap different information presentation around the same programming, or perhaps many different firms have contracted the same few firms to provide their information-gathering module.

Related to that point, six of the 12 Newfoundland and three New Brunswick sites in the audit redirected to the same site, so the Newfoundland results should be viewed with that potential distortion in mind. (Individual borrowers may not have noticed that, of course, should they just choose a lender and begin the application process.)

These site "families" shared common information modules:

Families of sites:
www.cashone.ca
www.paydayking.ca
www.capitalcash.ca

www.1500cash.ca
www.ezcashnow.ca

www.mapleloans.com
www.privateloanshop.com
www.nationalcash.ca
www.canpaydayloans.ca
www.apaydayloan.ca
securepaydayloans.ca
cashloansnow.ca
onlinepayday.ca

Cashadvancelenders.ca
Timeforcashnow.ca
Cashsafetoday.com
Checkyourcashinstore.com
Getoncashon.com
Okthecashtoday.com
Moneyloansapproval.com
Stillget247loans.com

Many, many sites (at least 21 in the sample) have language – normally in the FAQ – to say their site complies "with all applicable laws in all jurisdictions ... as dictated by the Payday Loans Act, 2008". This should be taken with an entire mine's worth of salt, as none of those sites were in full compliance. The Payday Loans Act 2008 is the name of the legislation for Ontario only, and cannot apply to all jurisdictions. It would appear to be placed solely to give potential borrowers some assurance that the lender is officially sanctioned somehow. The sites in the "cashone" family listed above all make this claim.

Here's a list of other oddities identified in the audits.

- mrpayday.ca attempts to notify borrowers that all transactions to residents of unlicensed provinces are deemed to take place in their Kitchener, Ontario offices.
- mynextpay.ca goes one step further, telling borrowers that "transactions done on this site are deemed to have taken place at our office, regardless of where the site might have been viewed from." The site offers no information about the location of its office.
- Focuscashloans.ca will lend to people who work in the provinces where they offer payday loans, regardless of where they live.
- A number of sites offer discounts for referring friends, or for being a fan of the firms on Facebook.
- One site (www.ontariopaydaymaster.ca) promotes "100% approval guaranteed" on its front page.
- A few sites show licenses from other provinces after a borrower identifies their province of residence. It's difficult to know whether this is done accidentally or to deceive.

There are some astonishingly bad sites. It was not the intent of this research to identify payday loan web site blunders, but in the interest of full disclosure, the audits found sites that:

- Clearly "borrow" language from other sites – because they leave the references to the other sites in their text, or claim that you must be a resident of the United States
- Use placeholder text "Lorem Ipsum" in graphics (graphic designers often use that text in draft designs, before the correct, final wording is available)
- Use very awkward language, leaving the impression that the text was written in another language and turned into English through an online translation service.

Two other impressions from auditing 134 sites:

- Visually, many, many sites rely on imagery of attractive young women, or stacks of cash, or both. This has implications for the perceived target audience.
- There is a lot of urgency in some of the sites' language. Emphasis is placed on the "five minute application" or "your money in an hour", perhaps appealing to some of the focus on speed (rather than price) which industry participants identified as a priority for borrowers.

Appendix 3 - The Online Audit Form

Search Term:
Search Engine:
Search Filter Terms:
URL:
Date of Search:
Date of Audit:

1. **From the Home Page**
    - Ownership (Check About us or Legal or Terms of Use):
    - Location of Head Office:
    - Do they indicate they are a CPLA member?
    - Is there a promotion or notice of an "app" ?
    - Is there an "apply now" button from the home page?
2. **Click on Apply Now.** Is there a pop up box that contains the following information:
    - Do they indicate they are licensed in the province?
    - Licence Number?
    - Verification (done later)
    - What are the fees?
    - Do they express this with an APR?
    - Do they also express fees as a lump sum per $100 or $300 borrowed?
3. **Abandon the application, and sweep the site for other information (Typically, How it Works, and FAQ)**
    - How many storefronts do they have in the province?
4. **Pre-application, what information do they say they'll need:**
    - Checking account
    - Bank statements
    - SIN
    - Drivers licence, health card, provincial ID
    - Pay Slip

- Other.

5. **Do they appear to allow loans on future government benefits:**
   - EI
   - CPP
   - Workmans Comp
   - LTD
   - Child Tax Credit
6. **Do they indicate whether a credit check is required?**
7. **Do they say anything about credit ratings like:**
   - Non-payment can damage your credit?
   - Prompt repayment can improve your credit?
8. **Do they tell you about repayment options?**
9. **Do they tell you about the right to cancel?**
10. **What is the one-time fee for NSF/not repaying on schedule?**
11. **What is the ongoing rate for overdue amounts?**
12. **Is there any information about or links to credit management?**
13. **Are there any special rules for first-time borrowers?**
    - Lower limits
    - Lower rates
14. **Do they disclose an upper limit on borrowing?**
15. **Now begin the application process.** Apart from name, address, phone, email information, do they ask for:
    - SIN
    - Time at Employer
    - Time at Residence
    - Whether you own or rent
    - References
    - Other
16. **Do they accept social benefit payments as income on the application?**
17. **What proof of employment is required?**
18. **Beyond standard bank information (branch, transit, account) do they ask for:**
    - Blank cheque?
    - Copy of bank statements?
    - Other
19. **Is there a toll-free number you can call for assistance?**
20. **Is there a box for "promo" or "special offers" anywhere?**

21. **Is there anyplace other than a bank account for the money to land?**
    - Where?
22. **At the end of the application, you may get access to Terms and Conditions.**
    - Capture them.
23. **Can you see, save and print the agreement before accepting?**
24. **Does the application include a Pre-Authorized Debit for repayment?**
25. **Do they allow other types of repayment?**
    - If yes, list
26. **Is there any evidence that there are extra charges for:**
    - Prepaid access cards
    - Bank Account fees
    - Monthly Card fee
    - Money Loading fee
    - Loan insurance
27. **Is there any evidence of tied selling? (To get this, you must also get...)**
28. **Provincial Anomalies**
    - BC> Is there any disclosure about the extended payment plans/three loans in 62 days rule?
    - BC> Is there a purple border on the APR info?
    - SK> Do they provide a link to credit counselling on the pre-agreement disclosure?
    - MB> Is there a purple border on the APR info?
    - MB> Is their APR disclosure based on 12 days?
    - ON> Are you informed or shown that educational materials available?
    - NS> Do they have a storefront?
    - NS> Does the agreement come with a cancellation form?
29. **Miscellaneous Summary**
    - Does the URL change at any point?
    - Do they appear to be a loan broker?
    - If yes, how can you tell?
30. **Notes/Oddities/Observations**

Appendix 4 - Provincial Acts and Regulations

Here are links to the Acts and Regulations applicable as of February, 2015.

British Columbia
Act
http://www.bclaws.ca/civix/document/id/complete/statreg/04002_00
Regulations
http://www.bclaws.ca/civix/document/id/complete/statreg/57_2009

Alberta
Act
http://www.qp.alberta.ca/documents/Acts/F02.pdf
Regulations
http://www.qp.alberta.ca/1266.cfm?page=2009_157.cfm&leg_type=Regs&isbncln=9780779747382&display=html.

Saskatchewan
Act
http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/P4-3.pdf
Regulations
http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/P4-3R1.pdf

Manitoba
Act
http://web2.gov.mb.ca/laws/statutes/ccsm/c200e.php.
Regulations
http://web2.gov.mb.ca/laws/regs/index.php?am=1&act=C200&srch=
Acts and Regulations are also displayed here
http://www.gov.mb.ca/cca/cpo/faq_payday_c.html

Ontario
Act
http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_08p09_e.htm
Regulations
http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_090098_e.htm

Nova Scotia
Act
https://www.canlii.org/en/ns/laws/stat/rsns-1989-c-92/latest/rsns-1989-c-92.html
Regulations
http://www.canlii.org/en/ns/laws/regu/ns-reg-248-2009/latest/ns-reg-248-2009.html

Prince Edward Island
Act
http://www.assembly.pe.ca/bills/pdf_chapter/63/2/chapter-83.pdf
Regulations
http://www.gov.pe.ca/royalgazette/pdf/20130202.pdf

New Brunswick
Bill 4
http://www.gnb.ca/legis/bill/pdf/56/2/Bill-4.pdf
Bill 55 Amendments
http://www.gnb.ca/legis/bill/pdf/57/4/Bill-55.pdf

Appendix 5 - A Brief History of Payday Lending in Canada

A proper understanding of provincial rules is required to evaluate the legalities of online loan providers. In turn, that required developing an understanding of how the current rules came into being, how federal and provincial laws – with considerable influence from civil actions – led to the current environment in which six provinces have specific payday loan legislation, two others have legislation in place still to come into force, one has effectively legislated payday loans out of existence, and one has yet to take any specific action.

A thorough discussion of the history of payday loans is available in Olena Kobzar's 2012 PhD thesis submission *Networking in the Margins; The Regulation of Payday Lending in Canada*. (Kobzar 2012) A substantial portion of this appendix is drawn from her work.

The development of payday lending is generally attributed to the southern United States (Tennessee) in the early 90s. The first entry into the Canadian marketplace dates to 1996, by Money Mart in Edmonton, Alberta. Money Mart to that point was primarily a cheque-cashing business.

The business premise – extremely short-term, low-balance loans – proved popular. Money Mart spread the business through its network of stores, and other providers joined in. The number of lenders, number of venues and dollars loaned grew rapidly in Canada, the United States and United Kingdom.

As for legalities, for a number of reasons, authorities may have taken notice, but did not take action. Under Section 347 of the Criminal Code of Canada it is illegal to charge interest at a rate in excess of 60 per cent per year. If you did the math on typical payday lending rates, repaying $250 on $200 borrowed two weeks earlier would be equivalent to an annual interest rate of about 650 per cent.

Kobzar noted that financial regulation at the time was structured around the four pillars – banks, trust companies, securities and insurance, none of which neatly applied to this "sub-species of money lenders." (Kobzar, 129). They didn't take deposits, so didn't meet the traditional federal authority over banking. Although they charged interest for loans, which would have made them subject to federal authority and usury laws from Section 347 of the Criminal Code, there were some nomenclature games. Lenders would sometimes refer to "service fees" and other names to avoid using the word "interest" to describe the incremental amounts owed above what was borrowed. Consumer protection is jointly shared by provincial and federal governments and some reports (Kobzar cites Kitching et al 2006) suggested that any Section 347 action would require co-operation from provincial attorney-generals. There was fear that because payday lenders had customers, removing them from the marketplace would leave customers vulnerable to dealing with loan sharks. [47]

> "In practice these jurisdictional quandaries had combined with political neglect to leave payday lending virtually unregulated for the better part of a decade until public pressures became sufficiently vocal to call forth a policy response." (Kobzar, 153)

The public pressures came from a number of sources: Media reports and academic research[48] profiled the industry, its customers, and highlighted some of the unsavoury lending and collection processes that portrayed payday lending as providing financial quicksand for the poor, trapping customers in a never-ending cycle of borrowing.

Meanwhile in the Civil Courts

And if there was little impetus for regulation coming from the public policy, and the criminal courts, civil courts were another matter. If Section 347 was not being used as a sword against the lenders, it was being used as a shield in civil court. Through 2001 and 2002, lenders seeking to collect on defaulted loans were being stymied in court because their interest calculations violated the usury laws.

When Section 347 began to be used as a sword instead of a shield, again it was in civil court, but with borrowers wielding the weapon. A series of class action suits by borrowers argued that the terms of their agreements involved a criminal interest rate. The largest of these was Ontario's Smith Estate v National Money Mart, which involved 210,000 individuals.

Parallel to these legal cases, the industry's largest lenders Money Mart and Cash Store formed the Canadian Payday Loan Association (CPLA) to represent the industry in public dialogue. It represented about 80 per cent of the industry's providers and initially tried to convince the government that self-regulation was the best way to ensure payday lenders would refrain from bad behaviour.

Cash Store's marketplace conflicts with Money Mart moved inside the CPLA, as it objected to the group's voluntary code of conduct. Cash Store was in favour of allowing loans to rollover, and did not want the CPLA to endorse limits on borrowing costs (Clarke 2008).

Money Mart had issues of its own. The class action suits, many of which included Money Mart as a defendant, threatened to end the firm. The Smith Estate action took many years to finally settle out of court in 2009 (and until 2011 for courts to sign off on the settlement) with an estimated cost in the range of $120 million. Money Mart argued that a larger settlement would have triggered a bankruptcy of its U.S. parent and Canadian operations. Because its debt was owed to secured creditors who would have first claims, a larger settlement would have left plaintiffs with a theoretical victory but no actual reward. The largest portion of Money Mart's monetary obligations took the form of loan forgiveness and credit vouchers.

"Courts in this way inadvertently forced the hand of the Canadian Payday Loan Association, inducing it to pursue a political solution to industry regulation." (Kobzar 175)

If self-regulation was off the table, the CPLA endorsed another position – regulation by provinces through consumer protection law.

The result of years of negotiating between provinces, vendors, the federal government and selected consumer representatives was federal Bill C-26 in 2007. It exempted payday loan companies from criminal code requirements against usury in provinces which had enacted legislation. It established thresholds for payday loans – no more than $1,500 and no longer than 62 days – that remain in place.

For the provinces, the challenge was how to legitimize an industry whose routine practices violated existing law, and how to make the political processes that led to that acceptance also seem legitimate. Prosecution under Section 347 might have eliminated the industry.[49]

But doing nothing also might have eliminated the industry, the way class action suits were going.

The compromise could be viewed as greater consumer protection or legalized usury or both, depending on perspective.

In conjunction with the federal law development, most provinces introduced legislation to regulate the payday lending industry. The two exceptions were Quebec and Newfoundland. Quebec passed legislation that capped lending rates at 35 per cent, less than the Section 347 limit, and effectively prevented the payday loan industry from operating in the province. Newfoundland opted not to introduce any payday legislation and instead rely on the Section 347 protection.

Although they have both passed payday loan legislation, New Brunswick and Prince Edward Island do not yet have it in force. Each province's legislative status is detailed in Appendix 6.

Cash Store Closing

The most notable development of the post-provincial legislative period is the bankruptcy of Cash Store, one of the largest vendors in Canada.

Unlike its major competitor Money Mart, Cash Store used a broker model for its lending business, connecting its customers with third-party lenders. Customers could enter a Cash Store location and secure a payday loan, but Cash Store was not the ultimate lender. As such it charged auxiliary fees for some of its services – such as loading loans on to cash cards. The newly enabled payday loan legislation banned these fees.

Consumer Protection BC ordered the Cash Store to repay customers $1 million for overcharging customers between November 2009 and March 2012. Cash Store also had a dispute with the Ontario government when it began offering "lines of credit" and stopped offering "payday loans", after Ontario's Registrar also discovered it was charging amounts above legislated limits. Cash Store let its Ontario licence expire in July 2013, arguing that it was not needed to sell lines of credit.

The Ontario government disagreed and the dispute went to court. In February 2014, the Ontario Superior Court of Justice ruled that Cash Store's "line of credit" still met the criteria for payday loan legislation. Because Cash Store had no licence, the lender could not sell them. Ontario refused to grant Cash Store a new licence. (Archrya and Yew, 2014)

On April 14, 2014 Cash Store applied for creditor protection. On October 9, Cash Store announced the sale of a portion of its business and assets to Money Mart. In January 2015, lease rights for up to 47 locations were sold to easyhome, a "rent-to-own" company.

The Industry Today

The CPLA estimates that nearly 2 million Canadians a year use payday loans.[50]

A December 2014 report by a working group evaluating Ontario's legislation estimated that 400,000 Ontario residents take out payday loans each year, with an average value of about $460 and an average term of two weeks. It estimated that licensed vendors lend $1.1 billion to $1.5 billion each year. (Deloitte 2014)

The composition of those borrowers is often a sore spot. The Ontario report – and the vast majority of other published resources – refer to the industry's customer base as those who are unable to access traditional sources of credit (banks, credit cards) because of poor or limited credit history. While payday loan borrowers may have similar levels of education attainment as non-borrowers, they are more likely to be in financial distress than non-borrowers, more likely to be behind in mortgage or rent payments.

On the other hand, the CPLA published research (Environics 2005, Pollara 2007a-d, Pollara 2008) that concludes that payday loan borrowers fit the profile of average Canadians.

Kobvar took issue with the CPLA studies, noting "the presentation of the data was itself devised in such a way as to achieve conclusions at odds with what that data seemed to indicate." (p 86). In particular, nearly half of payday loan users had household incomes under $35,000 (in 2005).

Money Mart is the largest lender in Canada. Its U.S. parent, Dollar Financial Group, is publicly traded, and recent filings (DFC Global Corp 2013) note that: "we believe that we are the leading alternative financial services company in Canada serving unbanked and under-banked consumers." It further notes that its storefront businesses in Canada operate at a near 50 per cent margin.

Technology that maps Money Mart store locations against income of neighbourhoods

(Kobvar, p 97 Toronto, and Momentum, 2014 Calgary) also shows a deliberate placing of stores in lower income communities.

Other facts and figures:

In its creditor protection filings, Cash Store said it transacted $2.5 billion in loan volume each year, had 2 million customers and about a 35 per cent market share in Ontario, approximately the same as Money Mart.

Returning to the December 2014 Ontario report estimates, (Deloitte 2014) using a little back of the envelope math would estimate the number of loans to be about 2.8 million ($1.3 billion / $460) and with approximately 400,000 borrowers, one could conclude that the average borrower had seven payday loans over the course of the year. Consumer Protection BC estimates that the average borrower takes out eight loans a year. (Consumer Protection BC, 2014) Figures from Nova Scotia in 2013 (Fillmore Riley 2013) showed that more than a quarter of all loans from that province's licensed lenders were repeat loans, issued within 24 hours of borrowers repaying a prior loan. Average loan size was $434, more than 7 per cent of loans defaulted and the total amount loaned was approximately $75 million.

Appendix 6 - Province-by-province Information

For each of the licensed or near-licensed provinces, here is a summary of key elements of its payday legislation, along with information about its licences, complaints and approach to online enforcement. This information was collected with the assistance of provincial government representatives.

British Columbia

Legislation: Part 6.1 of the Business Practices and Consumer Protection Act, with Regulations

Mandated Review: Not mandated. Consumer Protection British Columbia prepares data each year since 2012.

Number of Licensed Storefronts: 2011 – 319; 2012 – 260; 2013 – 285

Point of Sale (POS) disclosure requirements: Poster requirements 61 x 76 cm, describing maximum charges, the lender's charges, the total cost of borrowing, APR and the lender's licence number

Online disclosure requirements: The licence number must appear at or near the top of the introductory page of the web site. Lenders must also display the "poster" content at or near the licensed location, and before the loan application stage.

Complaint Statistics, including online details: According to the online "fact sheet" they received about 1,800 inquiries, launched 54 investigations, leading to 37 instances of voluntary compliance, 11 administrative penalties and 6 compliance orders. No breakdown of online complaints is available.

Is there an online listing of current licensees? Yes, at http://www.consumerprotectionbc.ca/consumers-payday-lending-home/find-a-licensed-business

How Do You Enforce the Online Environment: In each provincial summary, we will print the response from provincial officials. "We do engage licensed online lenders for inspection and as a result, have taken enforcement action(s) or demanded compliance to be achieved in the future. In two cases, we demanded refunds for consumers and the licensee agreed to do so."

Unique Elements: Both the poster and the online equivalent must have a purple border.[51] More notably, there is a provision that if a borrower receives three loans from the same lender in a 62-day period, the repayment of the third loan can be spread over up to three pay periods.

Alberta:

Legislation: Part of the Fair Trading Act, with regulations

Mandated Review: The regulations will be reviewed prior to June 30, 2016.

Number of Licensed Storefronts: For the 2012-13 year, they issued 35 licences for a total of 155 branches. For 2013-14 they issued 33 licences for 153 branches. Licences can be for one or two years, but most licences are for just one.

POS disclosure requirements: A sign (size unspecified) that includes the maximum allowable charge, the actual charge, the total charges on a $300 loan for 14 days, the APR and the payday lender's licence number.

Online disclosure requirements: The same information must be displayed on a page that precedes the online application

Complaint Statistics: They do not publish complaint statistics and do not differentiate between storefront and online. Since Jan 1, 2013, they have opened 13 investigations, based on department findings or consumer complaints.

Is there an online listing of current licensees? http://www.servicealberta.ca/976.cfm

How Do You Enforce the Online Environment: "Online lenders are required to meet the same licensing and disclosure requirements as storefront lenders. We forward licensing information packages to unlicensed online lenders where we identify them."

Unique Elements: Alberta has some uniquely specific language covering the ability of lenders to contact borrowers at the workplace.

Saskatchewan:

Legislation: The Payday Loans Act and The Payday Loans Regulations

Mandated Review: No. Periodic reviews when circumstances dictate

Number of Licensed Storefronts: 2011 – 56; 2012 – 59; 2013 – 59

POS disclosure requirements: A 61 x 76 cm sign with very specific font requirements that outlines the total cost of borrowing for $100, plus an example based on a $300 loan. There is no requirement to show APR on the sign, nor to display the licence.

Online disclosure requirements: The same information must be displayed on a page that precedes the online application.

Complaint Statistics: They do not publish complaint statistics.

Is there an online listing of current licensees? Yes. http://www.fcaa.gov.sk.ca/List-of-Licensed-Payday-Lenders

How Do You Enforce the Online Environment: "Unlicensed activity is addressed primarily through a "complaints and inquiries" process. As in other provinces and other industries, payday lending is competitive, and established licensees take steps to protect their business by letting us know of new entrants or market activity. Consumer complaints are also a source of information, as are communications with regulators in other provinces."

Unique Elements: Information about a borrower's right to cancel, including a cancellation form, must be provided in a disclosure document before entering into an agreement. Information about credit counselling also must be disclosed in a disclosure document prior to the agreement

Manitoba

Legislation: Part XVIII of the Consumer Protection Act, as well as regulations.

Mandated Review: The legislation came into force in October, 2010. It required a mandatory review of rates and other dimensions by the Public Utilities Board. That review was completed in 2013, with recommendations made to the government. The government will decide whether another review is warranted in another three years.

Number of Licensed Storefronts: October 2010 – 83; October 2011 – 77; October 2012 – 38; October 2013 – 41; October 2014 – 44. There have been two licensed "online" lenders since 2010.

POS disclosure requirements: The licence information must be displayed. The sign (61 x 76 cm) must show the Manitoba cost limit, the actual cost of the loan, sample cost on a $300 12-day loan, total cost of the loan, APR calculations and the total amounts to be repaid.

Online disclosure requirements: The poster information must be displayed at or near the top of the introductory page, or before the payday loan application.

Complaint Statistics: There were 113 complaints in 2012-13 and 336 complaints in 2013-14. (However, according to the 2013 PUB review report, complaint figures were 134 in 2010-11, 135 in 2011-12 and 70 in 2012-13.)

Is there an online listing of current licensees? No. There are only two licensed online lenders for Manitoba.

How Do You Enforce the Online Environment: "Online payday lenders are regulated in Manitoba much the same as storefronts.... The Consumer Protection Organization responds to complaints while also proactively monitoring the Internet and other forms of communications (advertisements, newspaper ads, billboards, flyers, etc) by businesses for compliance with payday lending legislation. When we do initiate action, we normally attempt to gain voluntary compliance with our legislation prior to any 'enforcement' action being commenced."

Unique Elements: Manitoba has a number of unique rules. First, its APR disclosure is based on a 12-day lending period, not 14 days. It also has a unique provision in its rollover rules that call any loan made within seven days of the maturity of a previous loan a "replacement loan" and restricts the fees on these loans to 5 per cent of the principal amount. This eliminates the incentive for lenders to provide "rollover" type loans for seven days.

Each licensed payday lender must also provide the name and contact information of an office or employee who resides in Manitoba. The "mandatory employee" rule and the lower fee limit were cited by lenders as barriers to entry for online-only firms.

Ontario

Legislation: The Payday Loans Act, 2008 and Regulations

Mandated Review: There is no mandated review but the provincial government has formed a working group, which made an initial report in late December 2014.

Number of Licensed Storefronts: There are 796 branches licensed to a total of 249 corporations

POS disclosure requirements: The licence must be displayed, along with a poster (61x76 cm min) that shows the maximum allowable costs, the vendor's cost, an example based on $300 for 14 days, the amount borrowed, the amount charged, the amount to be repaid.

Online disclosure requirements: The "poster" information must be communicated before discussing anything about payday loans. They must also disclose that certain educational information is available. There is no "APR" disclosure.

Complaint Statistics: The government publishes a "top complaints" list each year. For 2013, payday loans rated 7th in Ontario, with 865 inquiries and 55 formal complaints. The 2012 figure showed 1,067 inquiries. Payday loans do not show in the top 10 prior to that.

In the introduction of the group to review the legislation, however, the government said that annual complaints have increased about tenfold since 2008, from 141 to 1,324. Separately, a government representative told researchers that of 64 complaints received in 2013 and 2014, only two were about online borrowing and one requested licensing information.

Is there an online listing of current licensees? Theoretically, here: https://www.consumerbeware.mgs.gov.on.ca/esearch/start.do

How Do You Enforce the Online Environment: "Generally, enforcement efforts are initiated by the receipt of specific complaints. In addition, the Ministry engages in inspections of regulated businesses including payday licensees."

Unique Elements: Section 22 (0.1) of the regulations appears to allow borrowers to request to receive payday loans in cash, which would definitely complicate the operations of online-only lenders. According to government representatives, there have been no complaints under this provision.

Nova Scotia

Legislation: Part of the Consumer Protection Act, plus regulations

Mandated Review: The Nova Scotia Utility and Review Board sets the maximum cost of borrowing at least every three years. It completed its review in February 2011 (reducing the maximum cost of borrowing from $31/$100 to $25/$100). Another review started in February 2015.

Number of Licensed Storefronts: 2011 – 10 licensees for 50 locations; 2012 – 12/50; 2013 – 13/50; 2014 – 13/51.

POS disclosure requirements: Must display the business name, permit number and expiry date, as well as a sign (61x76 cm min) that includes notice that "payday loans are high-cost loans", the calculations on a $300 loan for 14 days that includes the total cost of borrowing, the total to repay and the APR.

Online disclosure requirements: The same "poster" information must be displayed at or near the top of the introductory page and before the payday loan application.

Complaint Statistics: Not currently publicly available. The 2011 NSUARB review notes that 7 complaints have been received, only one of which was related to an online transaction.

Is there an online listing of current licensees? Yes. http://www.novascotia.ca/snsmr/access/individuals/consumer-awareness/consumer-loans-credit/licensed-payday-lenders-in-nova-scotia.asp[52]

How Do You Enforce the Online Environment: "Enforcement of the online environment is done through licensee inspections and complaints.... The number of complaints received by Service Nova Scotia has not increased since then. Any person found to be in violation of the Act (which prohibits the provision of payday loans without a licence) is sent a cease and desist letter by Service Nova Scotia.... Typically if a consumer complained about an unlicensed vendor, we would inform the consumer about their rights (including not being liable to pay more than the principal) and our Business Licensing team would investigate to determine whether there has been a violation under the Act."

Unique Elements: Online lending is permitted only by licensed Nova Scotia payday lenders. All licensed lenders in Nova Scotia are required to have a location in the province from which it offers, arranges or provides payday loans. In other words, a lender cannot operate online without at least one storefront.

New Brunswick:

Legislation: Payday Loan legislation remains unproclaimed. It was introduced in 2007 as Bill 4 and amended in 2014 under Bill 55.

Mandated Review: No legislated periodic review

Number of Licensed Storefronts: Not yet licensing under this legislation. Estimates that there are about 30 payday lenders registered as "credit grantors" under the Cost of Credit Disclosure Act.

POS disclosure requirements: The Bills outlined similar "poster" requirements as other provinces, with details to come from regulations.

Online disclosure requirements: NA

Complaint Statistics: NA

Is there an online listing of current licensees? NA

How Do You Enforce the Online Environment: NA

Unique Elements: New Brunswick's payday lending legislation is not yet in effect. The Act originally establishing the rules was passed, but the regulations that cover many of the important details have never been completed. Until the rules and regulations are finalized, proclaimed and come into effect, the current Cost of Credit Disclosure Act applies. That act includes some elements of the payday loan legislation in other provinces, but that act is based on registration and not licensing. Most fundamentally, there are no rate limits in that legislation, so theoretically only the federal Criminal Code's Section 347 limits apply. Yet many storefront lenders – including some of Canada's largest providers – appear to be following the spirit of the new Act, comfortable that the government is not going to take action against them.

Prince Edward Island:

Legislation: The Payday Loans Act and its Regulations, are not yet in force

Mandated Review: No.

Number of Licensed Storefronts: NA

POS disclosure requirements: The licence must be displayed along with a poster (61x76 cm min) that shows the maximum allowable costs, the vendor's cost, an example based on $300 for 14 days, the amount borrowed, the amount charged, the amount to be repaid.

Online disclosure requirements: The "poster" information must be communicated before discussing anything about payday loans. They must also disclose that certain educational information is available. There is no "APR" disclosure required.

Complaint Statistics: NA

Is there an online listing of current licensees? NA

How Do You Enforce the Online Environment: Unknown

Unique Elements: The Act received royal assent in 2009, but has not yet been proclaimed awaiting designation. For an extended period, this was because, as with New Brunswick, there were no approved regulations. In November 2014, the federal government took another step in the somewhat complicated procedure involving the federal Government removing the Criminal Code constraints now that Prince Edward Island has an act and regulations. It is expected that Prince Edward Island's legislation and regulations will take effect in mid-2015.

Appendix 7 - International Perspectives (Expanded)

Canada is not the only country offering payday loans, and not the only one where a portion of the lending is done through e-commerce. To provide additional perspective, here are overviews of other national payday lending markets, the presence of online lenders, and how that market is being regulated from the United States, Great Britain, Australia and Finland.

United States

The regulation of the payday lending industry in the United States is done mostly at the state level, because states have always had control over state-chartered banks. The new Consumer Financial Protection Bureau (CFPB) has authority to regulate the industry at a national level. The CFPB is concerned with repeat customers. CFPB figures (CFPB Datapoint, 2014) showed that more than 80 per cent of payday loans are rolled over or followed by another loan within 14 days. Of first-time borrowers, 15 per cent repay, 64 per cent renew, and 20 per cent default.

Other dimensions of the U.S. market will sound familiar to Canadians. More than 450 consumer groups wrote CFPB last fall asking to "end the scam and put rules in place that will end abusive practices and slam shut the debt trap." (Zibel 2015) The industry's lenders warn that overly strict rules would "eliminate a viable credit option and drive them to miss bill payments, use overdraft programs, or turn to dangerous illegally operating lenders." (Zibel 2015)

Online lending comprises about one-third of the industry in 2013, according to the Wall Street Journal. (Zibel 2015)

With regulation at the state level, payday lending is legal in 35 states, while in 15 states it is either illegal because of an outright ban, or unfeasible because credit limits are too low for lenders to operate profitably. In states where storefront lending is restricted, a Pew Charitable Trust report concluded 95 per cent of would-be borrowers do not use payday loans at all, while 5 per cent borrow online or elsewhere. (Pew 2012)

The U.S. Department of Justice began Operation Choke Point in 2013, investigating banks and the businesses they do business with – including payday lenders. The principal is to "choke off" some of the illegal payday lenders – among other companies believed to be at higher risk for fraud and money laundering – by removing their connection to the conventional banking networks. Other industries targeted by the operation include gun sellers and online gambling. Some news reports (Faux 2015) have indicated that some firms have decided to move offshore or deal with American native groups who are not subject to state interest-rate caps. The major payday-lending trade group sued U.S. banking regulators, accusing them of applying pressure to drive lenders out of business. The case is pending in U.S. Federal Courts.

United Kingdom

The Financial Conduct Authority took over responsibility for the High-Cost Short-Term Credit (HCSTC) lending April 1, 2014 and implemented new regulations, effective January 2, 2015.

The key new rules include a price limit of 0.8 per cent a day (lower than what was previously commonplace), a fixed default cost of 15 pounds, and a total cost cap of 100 per cent, so that a 100-pound loan could never cost more than 200 pounds to repay. The lending cost limits would equate to a 12 per cent cost over 15 days and 24 per cent cost over 30 days.

Online transactions dominate the market. FCA figures show that 83 per cent of customers take out HCSTC loans through online channels, while the remaining 17 per cent go to high street (store front). The FCA discussion paper introducing the changes outlines material differences between customers who shop online instead of in-person. (FCA 2014, p 69). In-store borrowers are older (38 compared to 33 for the average HCSTC consumer), more likely to rent from local authorities/housing associations (48 per cent compared to 24 per cent for online users, more likely to have state benefits (24 per cent to 15 per cent) and less likely to be employed or have income from employment (53 per cent full-time employed compared to 64 per cent for online borrowers). Incomes are also lower for storefront customers. Online loans are for much larger amounts.

The report also notes the high prevalence of loan brokers, intermediaries who serve as a conduit between borrowers and lenders. The report estimated that 40 per cent of online loans went through a loan broker.

The FCA anticipates that many firms will exit the industry as a result of these measures. The larger firms – the theoretical survivors – are less reliant on loan brokers for customers. The Consumer Finance Association (CFA), which represents some of the best-known lenders, estimated that only four firms would remain in the market, three online and one high street. (Rankin 2014) The FCA study also concluded that an extreme minority of customers would seek "illegal loans" as a result of the changes. The majority (60 per cent) would just do without.

The FCA report (page 51) also notes it has the authority to make agreements unenforceable if they breach the conditions, requiring borrowers having to repay the principal only. It also addresses the possibility of firms avoiding the price cap by setting up outside the U.K. and lending online. The FCA describes a number of avenues it could pursue for enforcement through European agreements.

Australia

There are a number of similarities between Canada's situation and Australia's. There was a period of rapid growth, following the introduction of payday lenders in December 1998. By 2001, there were 82 outlets, and by 2008, the number had grown to 800. (Ali et al, 2013)

In Australia, small amount loans must be $2,000 or less, and repaid between 16 days and 1 year.

There is also a dual nature to the rules. The Australian Securities and Investment Commission (ASIC) governs many elements of the "small amount loans" industry, including licensing of lenders and brokers, but states can set their own lending limits. As a result, New South Wales and Queensland have each capped interest costs on these short-term loans at 48 per cent (or 4 per cent per month).

But borrowers pay more than that, because the monthly fee is only a small portion of the overall costs. Small amount loans may also include an "establishment fee" of up to 20 per cent of the total loan cost, regardless of the duration. A $200 one-month loan will result in a repayment of $40 for establishment, and $8 monthly fee, plus principal, for a total of $248. Total loan costs, including default fees, cannot exceed 200 per cent of the loan amount.

And like Canada, the industry is increasingly moving online. In 2010, approximately 4 per cent of transactions were conducted online. In 2014, it has risen to about 30 per cent, with 70 providers operating. A number of these online lenders are corporations established outside Australia that operate in Australia under an Australian credit licence. (Ali, et al, 2013)

Legislation also includes this warning to be posted in stores and on web sites:

> Do you really need a loan today? It can be expensive to borrow small amounts of money and borrowing may not solve your money problems.

The warning must also include the phone numbers and links to Centrelink, Australia's free financial counselling service, as well as ASIC's financial literacy and money management web resource MoneySmart.

A research team at RMIT University in Melbourne found that about 20 per cent of Australia's online lenders were breaking the law. (Hobday, 2014) Two other quotes related to the difficulties in policing out-of-country unlicensed lenders relate well to the Canadian situation. The first is from ASIC deputy chair Peter Kell:

> "There's no doubt that when it comes to dodgy lenders, or for that matter, any financial

> services provider, if they're operating from a website outside of Australia, that does pose regulatory challenges."

The second quote is from finance researcher Tanya Corrie:

> "I think it's clear in terms of how big the industry is getting, the resources that ASIC has to police the industry probably aren't sufficient to really crack down." (Hobday, 2014)

Finland

Finland's industry is almost entirely online. After years of difficulty and numerous reforms to legislation, Finland opted to cap the APR on its "instant loans" at 50 per cent plus a reference rate, drawn from the European Central Bank. It applies to all loans under 2,000 euros. Prior to the price cap, the average APR was around 920 per cent. Though many firms warned that the lower cap would effectively eliminate the industry, of the 90 firms registered in this sector before the cap, about 50 continue to operate. Firms have evolved into revolving loans. The Finnish Ministry of Justice told the FCA "the country does not have a problem of illegal money lending." (FCA, 116)

Notes

1. The report is supplemented by several English-language appendixes. Appendix 1 lists the audited sites, by province. Appendix 2 is the full results of the online audits. Appendix 3 is the form used to complete the site audits. Appendix 4 lists the provincial acts and regulations. Appendix 5 is a history of the payday loan market in Canada. Appendix 6 is a province-by-province summary of data, Appendix 7 is an expanded summary of international markets.
2. Bogus identities were used on applications, to avoid the personal risks that might be associated by having numerous credit checks done within a short time frame. The same personal profile was used for each lender in each province. Mock customers were all employed at the same location for 2+ years, rented at the same address for 3+ years, were paid monthly, with the next pay period approximately two weeks after the date of the application.
3. The complete audit checklist is Appendix 3.
4. The audited sites are listed (by province) in Appendix 1.
5. It also avoided the difficulties of having to manage 100 or more $200 loans simultaneously, or incurring hundreds of dollars in loan costs.
6. A short history of payday lending in Canada is in Appendix 5.
7. See Appendix 5
8. A province-by-province summary of key elements of payday legislation is contained in Appendix 6. It also includes information about licences, complaints and online enforcement.
9. See Appendix 6
10. Many unlicensed lenders were also contacted - primarily through online contact facilities - but none responded.
11. Telephone interview, August 1, 2014
12. Telephone interview, August 1, 2014
13. Telephone interview, August 19, 2014
14. Telephone interview, August 19, 2014
15. Telephone interview August 1, 2014
16. This interview occurred before the late 2014 FCA changes.
17. Interview August 1, 2014.
18. Interview August 19, 2014
19. Telephone Interview Oct 22, 2014
20. Interview, January 16, 2015
21. Interview October 22, 2014
22. Interview January 16, 2015
23. Telephone interview Oct 22, 2014
24. Telephone interview Jan 22, 2015
25. Telephone interview, Jan 16, 2015

26. Or trust company or credit union
27. Additional detail about international markets is available in Appendix 7.
28. The summary of all of findings is available in Appendix 2. The audit form used is in Appendix 3.
29. Table A2 in Appendix 2 summarizes this information.
30. More details found in tables in Appendix 2.
31. See Table A8.
32. See Table A11.
33. See Table A12.
34. See Table A10.
35. See Table A13
36. See Table A17
37. See Table A15
38. See Table A7
39. Detailed results are listed in Appendix 2.
40. Examples are listed in Appendix 2.
41. Interview Aug 19, 2014
42. CPLA-funded research (Environics 2013a-d) showed that nearly 60 per cent of storefront consumers were not aware of provincial licensing, despite the instore posters and contract language.
43. Although many Canadian consumers may not understand their police forces may pick and choose what sections of the Criminal Code they will enforce based on values and criteria they have themselves developed.
44. Including the ability to garnish wages, according to FCAC's information about payday loans
45. There are peer reviews on www.yelp.ca, but they almost exclusively related to storefront service.
46. Some sites required that borrowers download software to capture bank statements, for example
47. Ironically, a U.S. study (Graves and Peterson, 2008) found that typical payday lending rates were actually *higher* than a loan shark's average rates.
48. Kobzar cites MacDonnell 2007, Babe 2006, Mayer 2004, in addition to Berry 2007 and Pyper 2007. The latter two are listed as references.
49. The only prosecution of a payday lender under Section 347 was a 2006 case by the Winnipeg police department against Paymax Canada, which pled guilty and was fined $100,000. (Owen, 2008)
50. Courtesy www.cpla-acps.ca
51. Manitoba also requires purple borders.
52. This link is no longer working, even though it is provided for consumers to access on the Nova Scotia Government's web page intended to assist payday loans borrowers.

RECEIVED

2015 OCT 23 PM 1:08

THE CITY OF CALGARY
CITY CLERK'S

City Clerk's Office
The City of Calgary
700 MacLeod Trail SE
P.O. Box 2100, Station M
Calgary, AB T2P 2M5

October 22, 2015

RE: Amendments to Land Use Bylaw: Payday Loan Businesses & Payday Loan Separation Distance Policy.

Dear Members of Council,

Momentum is very pleased to see the Amendments to Land Use Bylaw: Payday Loan Businesses & Payday Loan Separation Distance Policy move forward. Over the past two years, Momentum has worked with provincial and municipal officials to bring changes to payday loan rules and regulations. Momentum has also worked with financial institutions to provide alternative products to payday loans for all Calgarians to access. Our organization works with 4,000 Calgarians each year, almost all of whom live on low incomes.

The Municipal Government Act grants authority to the City of Calgary to oversee land use and licensing regulation, among others, within the municipality. While payday loan fees and interest rates are mandated by the provincial government, the City of Calgary still plays a role when it comes to regulating land use. Momentum is very supportive of the City taking action in this area to reduce the impact on lower-income Calgarians who are targeted by payday lenders. Further, the City of Calgary committed to a payday loan bylaw in the unanimously approved *Enough for All* poverty reduction strategy.

Payday loan businesses were never identified in the Land Use Bylaw (LUB) as a specific business type. Instead, they were lumped in as generic 'Information and Service Providers'. None of the other business types included in this generic category functioned in the same way as payday loan businesses. Other businesses do not generally cluster in low income neighbourhoods and do not have the negative community perception that a proliferation of payday lenders brings to a community. Similar businesses, like pawn shops, were given their own business type in the LUB.

Of the 82 payday loan storefronts that exist in Calgary, 69 are in neighbourhoods with above average rates of poverty. This clustering has a negative effect on both community residents and local businesses. Communities with a proliferation of payday lenders often lack an adequate number of mainstream financial institutions. This leads residents to believe that a payday lender is the only or best option to access credit. Seldom is this the case. At the community level, an over-concentration of such businesses leads to a negative perception of the community one that can drive business away and reduce the viability of other business types.

The proposed 400 metre separation will not close down existing payday loan businesses but will ensure that further clustering does not occur. This can support the vibrancy of the local business community and allows for residents to access a variety of business types. This minimum distance is

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not unprecedented in Calgary and is already used to limit the proliferation of liquor stores. Minimum distance regulations also exist in no fewer than a dozen business types identified in the LUB. This includes minimum distances from residentially zoned areas, churches, schools, and other types of uses.

The City of Calgary is also in good company by using land use as a tool to regulate payday loan businesses. The City of Winnipeg mandates a 1,000 foot minimum distance. Over 200 U.S. municipalities have also implemented some type of regulation including minimum distance requirements in large cities such as Phoenix, Chicago, and St. Louis.

Not only does the City of Calgary have the jurisdiction and the local precedent to implement this change, it also happens to be the direction hundreds of North American municipalities have chosen over the last five years.

City Council has made a strong commitment to reduce poverty in Calgary. Payday loan businesses, contrary to industry claims, are counter-productive to poverty reduction. The businesses do currently fill a need but target people living on low incomes and often trap them in a cycle of debt that is difficult to exit. While the municipal government cannot change this on their own, they can take action and advocate to the provincial government for change. If the City of Calgary is serious about cutting poverty in half then implementing and advocating for stricter rules for payday lenders must be a part of the strategy.

Momentum is pleased with the unanimous support shown by the Planning and Urban Development Committee earlier this year and by Calgary Planning Commission this September that has moved this important work forward. We look forward to Council's support of this initiative and business license change for payday lenders in early 2016.

Sincerely,

Mike Brown
Public Policy Coordinator

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CPC2015-198
Attachment 3
Letter 3

vibrant
COMMUNITIES
CALGARY

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700 MacLeod Trail SE
P.O. Box 2100, Station M
Calgary, AB T2P 2M5

October 22, 2015

RE: Amendments to Land Use Bylaw: Payday Loan Businesses & Payday Loan Separation Distance Policy.

Dear Mr. Mayor and City Councillors,

As the organization tasked with guiding the implementation of Enough for All municipal poverty reduction strategy, Vibrant Communities Calgary is excited to see the Amendments to Land Use Bylaw: Payday Loan Businesses & Payday Loan Separation Distance Policy move forward.

Vibrant Communities Calgary has been working closely with the Rise of the Cash Store Committee, a cross-sectoral group comprised of organizations like Momentum, the University of Calgary and First Calgary to address issues related to payday lending.

While payday loan fees and interest rates are mandated by the provincial government, the City of Calgary can regulate land use. Vibrant Communities Calgary supports the City taking action in this area; it will reduce the negative impact of payday loans on low-income Calgarians, typically targeted by the industry. Further, the City of Calgary unanimously committed to a payday loan bylaw when it approved the *Enough for All* poverty reduction strategy.

Payday loan businesses were never identified in the Land Use Bylaw (LUB) as a specific business type. Instead, they were lumped in as generic 'Information and Service Providers'. None of the other business types in this generic category function like payday loan businesses. Similar businesses, like pawn shops, were given their own business type in the LUB.

Of the 82 payday loan storefronts that exist in Calgary, 69 are in neighbourhoods with above average poverty rates. This clustering has a negative effect on both community residents and local businesses. Communities with a proliferation of payday lenders often lack an adequate number of mainstream financial institutions. This leads residents to believe that a payday lender is the only or best option to access credit. Seldom is this the case.

The proposed 400 metre separation will not close down existing payday loan businesses but will further clustering. This can support the vibrancy of the local business community and allows for residents to access a variety of business types. Minimum distances are already used to limit the proliferation of liquor stores and exist in a dozen business types identified in the LUB.

Other cities have already incorporate minimum distances for payday lenders. The City of Winnipeg mandates a 1,000 foot minimum distance and more than 200 U.S. municipalities have implemented some type of regulation on minimum distance requirements

By adopting the *Enough for All* poverty reduction strategy, The City has made a strong commitment to reducing poverty in Calgary. The proliferation of Payday loan businesses work against our community's collective efforts to reduce poverty in Calgary. If the City of Calgary is serious about cutting poverty in half then implementing and advocating for stricter rules for payday lenders must be a part of the strategy.

Vibrant Communities Calgary applauds the support already shown by the Planning and Urban Development Committee earlier this year and by Calgary Planning Commission this September to move this important work forward. We look forward to Council's support of this initiative and on business license changes for payday lenders in early 2016.

Sincerely,

Franco Savoia
Executive Director