



Together Against Poverty Society

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Response to “Stakeholder Consultation Document on a Proposed Consumer Protection Framework for the Alternative Consumer Credit Market”

Together Against Poverty Society (“TAPS”) is the only organization in Victoria, B.C. providing free, face-to-face advocacy for people with income assistance, disability benefits and tenancy issues. Assisting over 3,000 people in Victoria each year, TAPS provides legal education and training through seminars and free one-on-one legal advocacy and representation. TAPS also has a newsletter, TAPROOT, which contains updated legal information and is widely distributed throughout Greater Victoria.

TAPS is adopting the joint submission of the Ottawa-based Public Interest Advocacy Centre (“PIAC”) and ACORN Canada, in its entirety. For ease of reference the responses of PIAC and ACORN Canada are reproduced here.

1. Should there be an alternative maximum charge structure allowed specifically for small short-term loans?

PIAC: This question should not be answered until there is substantial agreement amongst the provinces on a baseline of comprehensive regulation of the industry. Without comprehensive regulation (including a dedicated regulator with specific powers, a licensing regime and several consumer protections) there is a risk in even discussing the possibility of the amendment of s. 347 of the *Criminal Code* to “permit” payday loans. That risk is a regime that “legalizes” payday loans at high interest rates with no definite limits on industry practices.

With this understanding, and turning to the issue of the possibility of amending s. 347 of the *Criminal Code* to allow a new cost regime for small, short-term loans, PIAC in its second report on payday loans gave several reasons why it is not appropriate to use the industry suggestion of the *Tax Rebate Discounting Act* model (\$15 charges on \$100 up to \$300; \$5 per hundred above that).

PIAC believes an interest rate cap of some sort is necessary to avoid burdensome charges on vulnerable borrowers. Ideally, the cap should be high enough to provide some incentive to offer these loans. However, it should also be low enough that it is not completely out of line with regular bank and credit union loans. More research is required into the costing of these loans and in particular, the break-even point for established banks and credit unions for

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offering such loans. The new cap need not be set so high as to encourage continuing development of an alternative financial system with high rates for those with low incomes.

Setting a higher interest rate that is not criminal may cause banks to enter the market – this is an advantage. Indeed, one goal of regulation should be to encourage banks and credit unions to offer these loans.

ACORN Canada: largely shares PIAC’s views on these issues. A great deal more independent data is required before any responsible consideration of s. 347 amendments can be entertained. Specifically, the recently released Ernst & Young report commissioned by the payday lending industry should not be viewed as any kind of baseline. Credible payday lending industry data collected by Industry Canada or by the CMC, with significant input from consumer and advocacy organizations, is a necessary first step in any process that leads to proposed amendments of s. 347.

Further, in the absence of compelling independent data, ACORN Canada shares the view put forward in the CMC consultation document that a 60% annual effective interest rate already represents a very high cost of borrowing. Any upward revision of this ceiling would have to be justified both in terms of strict economic costs and the social costs associated with high interest loans.

Finally, if the payday loan market is expanding as rapidly as many experts believe (\$1 billion+ in annual loan activity), then, intuitively, there should be economies of scale available in meeting this significant market need. If marginal payday lending stores (or even “mainstream” stores, if there is such a thing) are not able to achieve these economies of scale, then this should clearly be seen not as a rationale for raising the ceiling on interest rates but rather as a flawed business model at the heart of the payday lending industry.

TAPS: Agrees with PIAC and ACORN that an amendment to s.347 of the *Criminal Code* cannot be effected without the imposition of a comprehensive system of regulation in every province. Moreover, TAPS agrees that care must be taken in assessing what may be an appropriate interest rate cap for alternative financial services, based on consumers’ ability to pay and the cost of providing short-term loans. An appropriate rate must strike a balance between the interests of consumers in receiving fairly priced loans and the recognition that there is a market for the provision of small short-term loans. However, TAPS agrees that a new interest rate cap need not be so high as to attract *further* development of alternative financial services and it would be ideal if banks and credit unions were to enter the market.

2. (a) Should alternative consumer credit market loans be defined as loans for a maximum principal not exceeding \$1,500?

PIAC: Amount of the loan is a useful “rule of thumb” to avoid catching larger loans. This will give a bright line to banks and credit unions who may wish to avoid offering loans as defined by this new category. However, PIAC is concerned that payday loans may be structured for more than this amount. For example, a lender could write a loan for \$1600 over one year and during that year, the borrower could access the funds in 2 week repayable “slices” of, say, \$200, up to the \$1600. If this type of loan were not “caught” by the regulations then the same problem of enforcement of the *Criminal Code* s. 347 on these loans would continue as is the case presently with payday loans. Therefore, some language in the regulation would have to be added to ensure that any loan intended to act as a small, short-term loan but written for a higher amount would be deemed to be a small, short-term loan. Some other criteria for definition of the loans should be used, such as repayment period (see next question) and repayment method (by personal cheque or bank authorization, or assignment of wages).

Finally, many title loans (especially on cars) may exceed this amount, so unless some additional regulation is written to catch this type of loan, or the \$1500 limit is raised, they will effectively remain unregulated.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point

2. (b) Should alternative consumer credit market loans be defined as loans for a maximum term, regardless of extension or default, not exceeding 62 days?

PIAC: The answer to this question is almost identical to that above. PIAC sees the utility in defining the loans as short-term to distinguish them from more “mainstream” loans of banks and credit unions. However, we are concerned about loans structured for more than 62 days but effectively payable (in part) prior to that time and in essence functioning like a normal payday loan.

Again, title loans repayment periods may exceed this period so these loans may again not be caught by the definition without a further section.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point

3. Should there be a restriction on default and penalty charges that can be charged to a borrower of a small short-term loan? For example, the borrower of a small short-term loan could only be charged the NSF charges assessed by a financial institution.

PIAC: Yes. There should be no charges for default. The payday loan industry’s justification for high annual percentage rates (APRs) on their loans is this very default rate. Therefore allowing fees for default is double-dipping. Taking this logic forward, there is an argument that borrowers should not even suffer an NSF charge from both the lender and the bank. The lender is the one insisting on a cheque as the method of payment and understands a number may not be cashable and builds this into costs recouped through high interest rates. In any case, lender NSF fees should not be permitted to be more than those charged by the borrowers’ financial institution. Given the payday lenders’ cost structures and their considerable experience in dealing with bounced cheques, PIAC feels NSF fees for lenders could be set at considerably lower levels than bank NSF fees. Borrowers should be advised at the time of taking out the loan of the possibility of NSF fees from both the bank and the lender.

Finally, in cases of authorizations to electronically debit accounts, lenders should be limited to one attempt to withdraw funds with attendant NSF charges to the borrower. It is PIAC’s understanding that at present several attempts to withdraw against an electronic account may be permitted, each time triggering an NSF charge from the bank to the client. It is unclear if lenders also multiply NSF fees by the number of attempts to electronically access cash from a borrowers bank account.

ACORN Canada: Agrees with PIAC on these points. And we remain troubled by the range of numbers provided by the industry when the issue of default rates and NSF/other charges to offset such purported rates comes up. Based on careful observation of public statements and documents, our concern is that the industry provides different figures to different audiences in the service of seemingly different objectives. To potential investors, the industry (as “best” represented by Money Mart and its U.S.-based owner, Dollar Financial Group) goes to great lengths to demonstrate profitability and remarkably low loan loss numbers. To prospective regulators and the public, the industry tells a different story; a story of very high costs that justify very high (a.k.a. criminal) interest rates.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

4. Should there be a clear and specific prohibition against misrepresenting the reasons for fees charged with respect to small short-term loans, such as the charge for a credit check where no credit check is performed?

PIAC: Yes. While this represents at the least a misrepresentation voiding the contract, or at most outright fraud, consumers are unlikely to challenge a fee in court on this basis. A specific prohibition would allow the payday loan regulator to cite this as an infraction leading to fines or a loss of the lender’s licence.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

5. Should jurisdictions ensure that cost of credit disclosure rules (commonly called “truth in lending” laws) apply to alternative consumer credit market loans? This would include disclosure of an annualized percentage rate.

PIAC: Yes. PIAC was under the impression that the provinces already had committed to implementing the draft *Cost of Credit Disclosure* regulations which do apply and should be applied to payday loans.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point. Additionally, TAPS is encouraged by implementation of the *Ontario Consumer Protection Act*, which includes mandatory reporting of APR on short-term loans. Also encouraging are comments from Ontario members of the Canadian Association of Community Financial Service Providers [renamed the Canadian Payday Loan Association] committing to compliance with the new disclosure laws and urging other payday lenders to comply. However, disclosure of APR alone cannot ensure consumer protection.

6. Should contract or disclosure documentation related to an alternative consumer credit market loan be required to include:

- (a) **A plain language warning of the high cost of credit?**
- (b) **Contact information for making a complaint to authorities?**

PIAC: Yes and yes. Borrowers may not fully review the terms of the contract and be in a hurry to complete the transaction. A warning would perhaps convince some borrowers to slow down and consider other options. A warning is appropriate given that the funds likely will be loaned at a rate far in excess of what Canadian society has permitted, and presently more than a criminal amount.

As noted in PIAC’s second report, a 1-800 contact number for borrower complaints and questions is an invaluable function for consumers of any complete regulator.

ACORN Canada: Agrees with these points. And we strongly disagree with industry efforts to characterize their new code of business practices as anything that Canadians can rely on for protection from predatory practices. A complaints process is only meaningful if it is designed and run by government with regular public reporting of the results of investigations and sanctions meted out as a result of a robust complaints process.

TAPS: Agrees with the submission of PIAC and ACORN on this point. Additionally, we would add that both warnings and contact information be given prominent placement on contract or disclosure documentation, ensuring a high level of visibility.

7. (a) Should “rollovers” be prohibited in the alternative consumer credit market?

PIAC: Yes. The link between rollovers and “debt-spirals” is well-documented. PIAC has addressed rollovers in both its payday lending reports and concluded they are dangerous for borrowers and irresponsible for lenders. On this we note the Canadian Association of Community Financial Service Providers (the intended industry self-governing body) in its Code of Practice has banned rollovers by members.

ACORN Canada: As discussed elsewhere, ACORN Canada is concerned that the “Code of Practice” is neither monitored nor enforced by anyone without a direct interest in protecting the industry from Canadians rather than the opposite.

We also share PIAC’s concern that a ban on rollovers doesn’t go far enough.

One of the core problems presented by the industry as it is now conducted is that it relies on multiple loans by borrowers for its profitability as stated in the recent Ernst & Young report commissioned by the industry. Given the very high (now criminal) rates charged by payday lenders, a series of loans over the course of any given year leads to precisely the kind of devastating debt trap that any meaningful ban on rollovers is presumably designed to address.

ACORN Canada strongly endorses the view put forward by PIAC and others that a cooling off period is required in any new regulatory structure. Further, payday loans should be limited to a maximum of 25% net pay rather than the 40% now allowed by Money Mart and the larger net percentages allowed by other payday lenders.

PIAC: PIAC would also urge the CMC to consider cooling off periods to avoid back to back loans. A related question is how to avoid kiting between lenders, that is, taking out a loan from one lender to pay another, or taking out of simultaneous loans from different lenders. Would this be solvable with a central database as in Florida? Or would such a database lead to further problems with borrower privacy and lender abuse and add to the cost of loans?

TAPS: Agrees with the submission of PIAC and ACORN on this point with a focus on the importance of a cooling off period between loans and limiting of loans to 25% of net pay. Additionally, we agree that the issue of loan tracking between different companies raises serious privacy concerns and must be the subject of further research.

7. (b) Where the borrower cannot repay an alternative consumer credit market loan on its repayment date, should the lender be required to accept repayment by instalment within the borrower’s ability to pay?

PIAC: Yes. At present, borrowers face a lawsuit to collect or these debts are sent to collection. This often exacerbates a poor financial position of the borrower. PIAC notes that net charge-offs by DFG Inc. (Money Mart’s corporate parent in the U.S.) is under 2% (according to SEC filings for the latest corporate year-end). It appears lenders have some room for flexibility in repayment terms.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point. The availability of this option is particularly important at a time when rates of personal bankruptcy in British Columbia and across Canada are rising at an unacceptable level.

8. Should the practice of “discounting” alternative consumer credit market loans be prohibited?

PIAC: Yes. Pricing discretion may lead to better rates for certain types of clientele, which may in turn lead to higher costs for certain people, further marginalizing and penalizing them.

In terms of “first loan free” and similar offers, this should be banned for the reasons that such discounting entices use by the borrower without a full appreciation of its likely cost over time, if the service becomes regularly used.

ACORN Canada: ACORN Canada agrees with PIAC thus far but would like to study the issue more carefully.

TAPS: Discounting loans can result in inconsistencies between the actual amount of the loan and what is stated on the contract. This leaves the consumer without evidence of the amount actually received and owed to the company.

9. Should the use of wage assignments be prohibited with respect to alternative consumer credit market loans? Note that wage assignments are already prohibited in some Canadian jurisdictions.

PIAC: Yes. This is an abusive practice that is rightly illegal in most provinces. PIAC notes that it is possible to view all of deferred presentment loans with repayment on the date of the borrowers payday as an effective, partial (equitable) assignment of wages, as stated in the second PIAC report. Such a view would, however, erase the cheque-holding model of payday lending. An exception to the wage assignment laws could be made for payday lending, but only if the terms and conditions of payday loans that are structured in this fashion are tightly regulated. For example, it should be illegal for payday lenders to threaten prosecution under the *Criminal Code* for passing a bad cheque and borrowers should not be subject to cheque-passing laws in relation to payday loans.

ACORN Canada: Agreed - with a shared emphasis on properly resourced and enforced regulation by government.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

10. Should title loans, such as auto pawns, be prohibited?

PIAC: Yes. These are potentially the most abusive of all loans. The value of the collateral securing the loan is usually out of proportion to the loan and the collateral is usually crucial to the borrower (often a primary vehicle). Title loans appear to have become a second line of business for smaller payday lenders looking to augment their business lines (especially since these lenders may not offer cheque cashing or money wire transfer services, etc.). However, given the practical difficulties faced by a borrower in attempting to reclaim a repossessed car and the pitfalls in attempting to claim back any balance from a lender of a possibly improvident sale of the vehicle, these problems outweigh any advantage in borrower access to title loans.

ACORN Canada: Agreed, however, ACORN Canada would like to perform more research on the issue.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

11. Should rules respecting prohibited debt collection practices be applied to alternative consumer credit market loans, regardless of whether collection activities are provided by third party debt collectors? Note that some Canadian jurisdictions already apply such rules to both “in house” and third party collection activities.

PIAC: Yes. Ideally, these collection laws should be as uniform across the country as possible. Since many lenders do have an “in-house” collections unit, these rules should most definitely apply also to payday lender’s collection efforts. In particular, payday lenders should be prohibited from contacting employers and family members.

ACORN Canada: We strongly agree. Note the recent Bloomberg Market Report on payday lending, *Preying on the Poor* (January 2005) which outlines egregious debt collection practices, including intimidation of family members/children.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

12. With respect to contact information for independent credit counselling services, should those providing small short-term loans be required to:

- a) **Provide such contact information within contract or disclosure documentation?**

b) Prominently post such contact information within their outlets?

PIAC: Yes and yes. Knowledge of these services will assist many people in financial difficulty. Such a posting would not be onerous for the lender. The contract may not be an appropriate place to print this counselling information, however, it should be included in the disclosure documentation.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

13. Should those providing small short-term loans be required to provide their customers with copies of loan contracts, receipts for payments, and statements of account for instalment payments?

PIAC: Yes. PIAC is of the view that this already is required to a) make a valid contract and b) under most provincial consumer protection legislation. However, PIAC understands that even some larger mainstream payday lenders regularly do not provide contracts or other loan documentation. Without such documentation, borrowers cannot easily challenge lenders in small claims or other courts. Such documentation requirements should be part of a comprehensive regime of regulation of the industry and failure to provide documentation should lead to fines and licence withdrawals.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

14. Should borrowers in the alternative consumer credit market be given the right to rescind a loan without cost (repayment of principal only) by the close of the next business day following the day on which the loan was taken out? Note that a 48 hour rescission right is already in place in Quebec.

PIAC: Yes. Ideally this should be for three days or more. However, at least 48 hours (by the clock, as in Quebec legislation, not “close of following business day”) should be the minimum rescission period. Borrowers should have an opportunity to rescind without penalty upon repayment of the principal advanced only. Borrowers should be permitted to cancel any authorizations to debit accounts and should have all personal cheques returned, and a receipt of rescission. Payday lenders who present cheques or debit accounts after rescission should be fined or have licences revoked.

ACORN Canada: Agreed.

TAPS: Agrees with the submission of PIAC and ACORN on this point.

15. Relating to small short-term loans, should the reporting of all information, including default information, to the mainstream credit reporting system be prohibited?

PIAC: This is a highly problematic question. Reporting to “mainstream” credit bureaus would stop, perhaps, lending from multiple lenders at once. It appears that corporations such as Teletrack that monitor the alternative credit market appear to be of interest now to mainstream credit bureaus. However, this may only be with regard to identifying a person as a user of the alternative credit system in order to deny access to the mainstream credit system. For that reason, a prohibition in the short term may be sensible. However, this is a complex question requiring further study, consultations with the industry and consumer groups and a clear idea of what the information would be used for and how.

ACORN Canada: Agreed that further study is required.

TAPS: Agrees with the submission of PIAC and ACORN that further study must be conducted.

16. Should lenders offering small short-term loans be prohibited from co-locating with or within gaming facilities (i.e., casinos)?

PIAC: Yes. Are studies needed to show the link between problem gambling and access to credit on these terms? Generally speaking, providing credit at high rates to those likely to gamble it away seems shockingly wrong.

ACORN Canada: This is where public policy should be quite simple. Of course the provision of these kinds of loans is entirely inappropriate in such settings.

TAPS: Agrees with the submission of PIAC and ACORN on this point

17. Are there other items not included above that would need to be addressed within a consumer protection framework for the alternative consumer credit market? If so, why?

PIAC: Yes. First and foremost is an acknowledgement from all provinces that payday lending must be dealt with by a comprehensive regulatory regime. This questionnaire unfortunately does not address directly if payday lenders should be regulated and licensed. The answer is yes. Whether this requires a dedicated regulator should be up to each province, however, this is highly desirable.

On the understanding that a comprehensive regime is the only safe method for controlling payday loans (rather than, say, industry self-regulation with one or two regulatory

requirements such as a statement of APR), we make the following comments on specific areas.

Licensing and regular reporting to a regulator are required to ensure legitimacy of businesses and to monitor the industry’s effect upon the public interest.

Misleading advertising can be a problem. Advertising in general should be controlled in conjunction with other regulatory requirements, for example, advertisements should be required to report typical APRs on typical loans.

Internet lending is a problem. Jurisdictions should be encouraged to write laws with aggressive taking of jurisdiction and aggressive attempts at enforcement against those offering loans to residents of that province. This is a special concern for Quebec with its present dearth of storefront payday lenders.

Also related to Internet lending but not confined to it are the problems associated with electronic debiting, and electronic cash cards filled by loans. Such services create unique problems of electronic contracting.

ACORN Canada: ACORN Canada has made a number of strong statements advocating urgent and comprehensive regulation. We repeat that call here and concur with the substantive comments made by PIAC.

TAPS: Agrees with the submission of PIAC and ACORN specifically in regard to the need for a comprehensive regulatory scheme.

18. What would be the cumulative impact of addressing any or all of the items included above on the alternative consumer credit market? Please comment on the impacts to both industry members and consumers.

PIAC: Extensive regulation would make profound changes to industry practice but would not result in the end of the industry. Experience in North Carolina during the period of extensive state regulation showed an increase in loan volume, even under a regime designed to protect borrowers. Lenders did not flee the state leaving borrowers without small, short-term loans. To whatever extent regulation may threaten the shape of the industry at present or change its product, such changes are necessary to protect borrowers. Such regulation may also foster a climate in which competition from banks and credit unions finally may develop.

ACORN Canada: ACORN Canada approaches this issue from the perspective of protecting Canadians from predatory lending practices. Our ultimate goal is to ensure that Canadians have access to small loans administered in a fair and legal fashion. And we believe that such loans can be made by legitimate businesses making a fair return for their

product. If a number of payday lending outlets choose to exit the industry in the face of a comprehensive regulatory system designed to protect Canadians - that is not a great concern to us. With more than \$1 billion in annual loan activity, it is clear that Canadians need access to small loans and it is also clear that there is a significant market opportunity for legitimate businesses to provide a fair product while making a fair return.

TAPS: TAPS also approaches this issue from a consumer interest perspective. We agree that a comprehensive regulatory scheme can lead to increased consumer protection and better business practices. However, in implementing such a scheme we must be careful to ensure a balance between protection against unfair lending practices and the availability of small, short-term loans, both of which are in the best interests of Canadian consumers.

19. Other comments.

PIAC: Please see our other recommendations in our reports to round out the discussion of a complete regulatory system.

Finally, the consideration of the question of payday loans raises the larger issue of a relationship between the withdrawal of branch banking services by mainstream banks and the rise of the AFS. Consumers and their governments need to have more information about the possible link between these two phenomena.

ACORN Canada: ACORN Canada also encourages the ACCM/CMC to consider our report and public statements on this issue.

TAPS: Implementation of the *Ontario Consumer Protection Act* is a step in the right direction as disclosure of APR is a necessary element to ensuring consumer protection against unfair lending. However, this step alone is not sufficient as it fails to address the most serious problem arising from the payday loan industry, escalating consumer debt. Disclosure of the APR is not going to assist a consumer who is unable to repay a payday loan and is forced to continue rolling over the loan in order to stay afloat. Moreover, the prohibition on rollover loans within the Canadian Payday Loan Association’s Code of Best Business Practices is not sufficient to address this issue as there is no external mechanism of regulation and it does not consequently prohibit back to back loans, which have the same effect. A comprehensive system of regulation including the recommendations set out in the independent reports prepared by PIAC and ACORN Canada, would be the most effective means to ensuring consumer protection.

Research conducted on the issue of amending s.347 of the *Criminal Code*, to accommodate small short-term loans, should also include research on the feasibility of banks and credit unions to enter the market. It may be cheaper for banks and credit unions to offer such loans, thereby ensuring a lower interest rate and greater consumer protection.

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A further issue which should be included in any regulation system is the emergence of Internet lending. The *Ontario Consumer Protection Act* addresses this issue through the imposition of disclosure laws and the right of consumers to rescind if certain disclosure obligations are not upheld by the company. Again, this is a step in the right direction but would be more effective if included within a comprehensive regulatory system.