

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF a Claim under the
Class Proceedings Act, 1992, S.O. 1992, c. 6

B E T W E E N:

THOMPSON McCUTCHEON

Plaintiff

and

THE CASH STORE INC. and RENTCASH INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.

The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date April 13, 2004

Issued by "EDITH PIERRE"
Local registrar

Address of court office:
45 Main Street East, Suite 110
Hamilton, Ontario
L8N 2B7

TO: THE CASH STORE INC.
17703-103 Avenue
Edmonton, Alberta
T5S 1N8

AND 10243-178 Street
Edmonton, Alberta
T5S 1M3

TO: RENTCASH INC.
17703-103 Avenue
Edmonton, Alberta
T5S 1N8

AND 10243-178 Street
Edmonton, Alberta
T5S 1M3

CLAIM

1. The Plaintiff claims on his own behalf and on behalf of all Class Members:
 - a. A declaration that the Defendants are in breach of the provisions of the *Criminal Code of Canada*, R.S.C. 1985, c. C46 in entering into agreements or arrangements to receive interest at a criminal rate, and in receiving payment or partial payment of interest at a criminal rate, in respect of the Defendants' payday loans described below;
 - b. A declaration that any such agreements or arrangements to receive interest at a criminal rate are illegal and unenforceable completely, or alternatively to the extent of the illegality;
 - c. Reimbursement from the Defendants of all illegal amounts charged and received by them in respect of the Defendants' payday loans described below;
 - d. An Order declaring that the cost of the Defendants' payday loans described below is excessive and that the said payday loan transactions are harsh and unconscionable;

- e. An Order re-opening all such payday loan transactions as between the Defendants and customers/borrowers, the taking of accounts and an Order relieving customers/borrowers from payment of any sum in excess of the sum adjudged by this Honourable Court to be fairly due in respect of the principal and cost of the loan, an Order requiring the Defendants to repay any such excess if same has been paid or allowed on account by customers/borrowers, and an Order setting aside either wholly or in part or revision of alteration of any security given or agreement made in respect of payday loan advances, and, if the Defendants have parted with any such security, an Order requiring them to indemnify customers/borrowers to that extent;
- f. Punitive, aggravated and exemplary damages;
- g. Pre and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C43 as amended;
- h. Costs on a substantial indemnity basis, plus applicable G.S.T.;
- i. Such further and other relief as this Honorable Court may deem just and appropriate in the circumstances.

THE PARTIES

2. The Plaintiff, Thompson McCutcheon (“McCutcheon”) is an individual residing in the City of Hamilton, Ontario.
3. The Defendant, Rentcash Inc., is a corporation incorporated pursuant to the laws of the Province of Ontario and is publicly traded on the TSX Venture Exchange under the trading symbol “RCS”.
4. The Defendant, The Cash Store Inc., is a corporation incorporated pursuant to the laws of the Province of Alberta, which corporation is registered extra-provincially to carry on business in the Provinces of British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador.
5. The Cash Store Inc. is a wholly owned subsidiary of Rentcash Inc. with Rentcash Inc. being the directing mind and will of The Cash Store Inc.
6. The Defendants own and operate 101 The Cash Store Inc. locations, in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick, Prince Edward Island, and Newfoundland and Labrador.

7. According to the Defendants, The Cash Store Inc. locations “act as neighborhood financialsupermarkets; brokers to facilitate payday cash advance services to income-earning consumers”.
8. According to the Defendant it is the vision of Rentcash Inc. “...to establish The Cash Store as a neighborhood financial supermarket that will provide the hours of service, dedicated staff and devotion to the middle to lower-income earner that is unmistakably missing in conventional financial institutions today”.

PAYDAY LOANS

9. The Defendants offer short-term loans to customers/borrowers (“customers”), known as payday loans.
10. These short-term loans are generally for a period of no more than 14 days and are usually due and payable on the next scheduled payday of the customer.
11. To qualify for a payday loan, customers must be able to provide copies of their last two most recent bank statements and pay stubs, current proof of residence, current telephone and utility bills, etc.
12. The Defendants advance the customer up to 33% of his/her net take home pay.

13. When a customer applies for and obtains a payday loan, he/she is required to provide a cheque in the amount of the loan advance, plus precalculated interest and fees. The Defendants agree to defer deposit of the repayment cheque until the next payday of the customer, a normal period of 7 to 14 days.
14. Provision of a personal cheque representing the amount of the loan advance, interest and applicable fees is required as a pre-condition of obtaining a loan/advance.
15. The customer can either allow the cheque to be deposited on the due date to re-pay the loan/advance, or redeem the cheque by paying cash in the amount of the cheque, or roll-over the loan for a further payday term ("roll-over").
16. Interest is charged on all payday loans at a stated effective annual rate of interest equal to 59%, exclusive of all other charges.
17. In addition to payment of interest, customers are also charged a broker's fee of approximately 22.5% of the amount of the loan advance. This is a lump sum charge levied at the time of the loan transaction and any roll-over thereof. This results in an effective annual rate of interest, exclusive of stated interest charges of 59%, of 1,170%, 585% and 270% on loans of 7 days, 14 days and 30 days respectively, without compounding.

18. The broker's fee charged by the Defendants is not a true broker's fee paid by the customer for professional assistance in finding someone who would loan money.
19. The broker's fee charged by the Defendants is a standard, uniform percentage charge in all payday loan transactions.
20. The interest charged on all payday loan transactions is a stated effective annual rate equal to 59%, exclusive of all other charges, regardless of the lender who is said to advance funds.
21. In addition, customers are also charged a cash card fee. A Cash Store Cash Card™ is required to be obtained as a pre-condition of obtaining a loan/advance ("Cash Card").
22. All payday loan advances are credited to Cash Store Cash Cards™ which work at debit and ATM terminals.
23. Customer Service Representatives of the Defendants are directed to encourage customers to roll-over their payday loans on a regular basis with the result that the Plaintiff and Class Members incur significant additional charges.

24. After four (4) such roll-overs, Customer Service Representatives of the Defendants are then directed to pay-out the existing loans plus all accrued interest and any and all other charges owing and to establish new loans in exchange for additional fees and charges levied by the Defendants.
25. The Defendants hold themselves out as brokers only and maintain that lenders are independent third parties. The Defendants represent themselves as agents for customers when in fact they are truly agents for the lenders.
26. In fact, customers deal only with the Defendants and have no contact whatsoever with any alleged independent third party lender(s). All dealings are between customers and the Defendants directly.
27. The Plaintiff and Class Members state that the Defendants guarantee to lenders repayment of all loans made to customers as well as an annual return on investment of 15% to 18%.
28. The Plaintiff and Class Members state that the Defendants are not truly independent and arm's length from lenders.
29. The Plaintiff and Class Members state that the Defendants agree to undertake all steps and expenses in connection with any collection or enforcement of loan

agreements as against customers and furthermore agree to indemnify lenders with respect to any losses in that regard.

30. The Plaintiff and Class Members seek full production and disclosure of all agreements between the Defendants and all third parties in respect of lending money and any brokering services, etc.

SITUATION OF THE REPRESENTATIVE PLAINTIFF

31. In early 2003, the Plaintiff obtained a payday loan from The Cash Store Inc.'s Hamilton, Ontario location for the sum of \$300.00. The Cash Store Inc. applied its usual broker's fee of 22.54% of the principal sum, together with interest charged at 59% per annum of the principal sum and the \$10.00 Cash Card fee to initiate the payday loan transaction.
32. The effective annual rate of interest charged by the Defendants for the initial payday loan term of two weeks was 645%.
33. Following the Plaintiff's initial payday loan transaction, the Plaintiff made nominal payments and increased the principal sum of his payday loan to \$500.00 through two successive roll-overs. At the time of each roll-over, The Cash Store Inc. again applied its broker's fee of 22.54% and interest on the new principal sum at 59% per annum.

34. The Plaintiff made periodic minimum payments every two weeks thereafter. However, due to his financial circumstances he was unable to retire the full amount outstanding. Accordingly, the Plaintiff and The Cash Store Inc. rolled-over the Plaintiff's payday loan every two weeks thereafter until January, 2004.
35. The Plaintiff estimates that his initial payday loan was rolled-over at least 20 times following the initial transaction. Each time the Plaintiff's loan was rolled-over, the Plaintiff would make payment toward the payday loan. The Plaintiff's payment would largely be applied to accrued fees and interest charges and only a nominal amount, if any, would be applied toward the principal.
36. On each successive roll-over of the Plaintiff's payday loan, The Cash Store Inc. applied its broker's fee of 22.54% on the principal sum, and interest at 59% per annum. Accordingly, the Plaintiff estimates that in addition to interest of 59% per annum he paid broker's fees in excess of \$2,000.00 during the course of the 20 or so consecutive roll-overs of his payday loan with The Cash Store Inc.
37. The principal sum owing under the Plaintiff's payday loan together with further accrued broker's fees and interest remains outstanding.

38. The Plaintiff states the he has paid at least four times the principal amount of his payday loan with The Cash Store Inc. through broker's fees and interest charges.
39. The Plaintiff did not maintain all of his payday loan and related documentation regarding the payday loan transactions with The Cash Store Inc. and, accordingly, requests full production of all such documentation from the Defendants.

RELEVANT CRIMINAL CODE PROVISIONS

40. Section 347 of the *Criminal Code of Canada*, R.S.C. 1985, c. C46, provides as follows:

Criminal interest rate

347. (1) *Notwithstanding any Act of Parliament, everyone who:*

- (a) *enters into an agreement or arrangement to receive interest at a criminal rate,*
or
- (b) *receives a payment or partial payment of interest at a criminal rate is guilty*
of
- (c) *an indictable offence and is liable to imprisonment for a term not exceeding*
5 years, or

(d) *an offence punishable on summary conviction and is liable to a fine not exceeding \$25,000.00 or to imprisonment for a term not exceeding 6 months or to both.*

(2) *In this section, "credit advanced" means the aggregate of the money and the monetary value of any goods, services or benefits actually advanced or to be advanced under an agreement or arrangement minus the aggregate of any required deposit balance and any fee, fine, penalty, commission and other similar charge or expense directly or indirectly incurred under the original or any collateral agreement or arrangement;*

"Criminal rate" means an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds 60% on the credit advanced under an agreement or arrangement;

"Interest" means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes.

UNCONSCIONABLE TRANSACTIONS RELIEF ACT

41. Section 2 of the *Unconscionable Transactions Relief Act*, R.S.O. 1990, c. U.2 provides that:

2. *Where, in respect of money lent, the Court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive and that the transaction is harsh and unconscionable, the Court may:*
 - (a) *reopen the transaction and take an account between the creditor and the debtor;*
 - (b) *despite any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, reopen any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of the principal and the cost of the loan;*
 - (c) *order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;*
 - (d) *set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order the creditor to indemnify the debtor.*

CONSUMER PROTECTION ACT

42. The *Consumer Protection Act*, R.S.O. 1990, c. C31 provides that:

1. *In this Act,*

“Borrower” means a person who receives credit.

“Cost of Borrowing” means,

- (a) *in the case of credit other than variable credit, the amount by which,*
 - (i) *the total sum that the borrower is required to pay if the payments required are made as they become due, including all such sums regardless of the purpose or reason for the payment or the time of the payment, exceeds,*
 - (ii) *the sum actually received in cash by the borrower or, where the lender is a seller, the amount of the cash price of the goods or services less the sums, if any, actually paid as a down payment or credited in respect of a trade-in or paid or credited for any other reason plus, in each case, insurance or official fees, if any, actually paid by the lender.*

“Credit” means credit for which the borrower incurs a cost of borrowing and,

- (a) *given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or*
- (b) *given by the advancement of money.*

“Lender” means a person who extends credit.

24. *Except as provided in Section 25, every lender shall furnish to the borrower, before giving the credit, a clear statement in writing showing,*

- (a) *the sum,*
 - (i) *expressed as one sum in dollars and cents, actually received in cash by the borrower, plus insurance or official fees, if any, actually paid by the lender, or*
 - (ii) *where the lender is a seller, being the amount of the cash price of the goods or services, including any insurance or official fees;*
- (d) *the cost of borrowing expressed as one sum in dollars and cents;*
- (e) *the percentage that the cost of borrowing bears to the sum stated,*
 - (i) *under subclause (a) (i), where the lender is not a seller.*

27. *A borrower is not liable to pay a lender as the cost of borrowing any sum in excess of the sum shown in the statement required by Section 24 or 25 in respect of the transaction.*

SIMILAR/EQUIVALENT LEGISLATION

43. The Plaintiff and Class Members state that similar/equivalent legislation to the *Unconscionable Transactions Relief Act* and the *Consumer Protection Act* exists and is applicable in other jurisdictions where the Defendants operate and carry on business. The Plaintiff and Class Members plead and rely upon that similar/equivalent legislation as set-out in Appendix “A” to this Statement of Claim.

CONTRAVENTION OF THE CRIMINAL CODE OF CANADA

44. The Plaintiff and Class Members state that payday loan interest, broker’s and Cash Card fees charged, collected and received by the Defendants constitute interest for the purpose of Section 347(1) of the *Criminal Code of Canada*.

45. The Plaintiff and Class Members state that the effective annual rate of interest charged and received by the Defendants from the re-payment of payday loans exceeds 60% on the principal amount of each payday loan made, calculated in accordance with generally accepted actuarial practices and principles, and constitutes a criminal rate of interest as defined in Section 347(1) of the *Criminal Code of Canada*.
46. The Plaintiff and Class Members state that the agreements or arrangements entered into between the Defendants and its customers in respect of payday loans, result in an effective annual rate of interest on the payday loans in excess of 60% and constitute agreements or arrangements to receive interest at a criminal rate, contrary to Section 347(1) of the *Criminal Code of Canada*.
47. The Plaintiff and Class Members state that the collection and receipt by the Defendants of payday loan interest, broker's and Cash Card fees from the Plaintiff and Class Members, constitutes receipt of interest at a criminal rate, contrary to Section 347(1) of the *Criminal Code of Canada*.
48. The Plaintiff and Class Members state that all agreements or arrangements entered into between the Defendants and its customers/borrowers are illegal, and therefore unenforceable, to the extent that they provide and allow for the Defendants to receive

interest at a criminal rate, and to the extent that the Defendants actually received payment or partial payment of interest at a criminal rate.

49. The Plaintiff and Class Members state that any and all amounts charged, collected or received by the Defendants at a criminal rate of interest ought to be reimbursed to the customers from whom those amounts were received.

UNCONSCIONABLE TRANSACTIONS

50. The Plaintiff and Class Members state in addition and in the alternative, that the cost of the payday loans made by the Defendants to customers are excessive and that the said payday loan transactions are harsh and unconscionable.
51. The Plaintiff and Class Members request a re-opening of all payday loan transactions as between the Defendants and customers and that the Court order that the Plaintiff and Class Members be relieved from payment of any sum in excess of the sums adjudged by this Honourable Court to be fairly due in respect of the principal and the cost of the loans.

52. The Plaintiff and Class Members furthermore seek an Order requiring the Defendants to repay any such excess to the extent same has been paid or allowed on account by customers.
53. The Plaintiff and Class Members furthermore seek an Order setting aside wholly or in part, or revision of any security given or agreement made in respect of any payday loans advanced to customers and, if the Defendants have parted with any such security, an Order requiring the Defendants to indemnify customers in that regard.
54. The Plaintiff and Class Members plead and rely upon the provisions of the *Unconscionable Transactions Relief Act*, and equivalent/similar legislation in other jurisdictions where the Defendants operate The Cash Store Inc. locations.

CONTRAVENTION OF CONSUMER PROTECTION ACT

55. The Plaintiff and Class Members state that payday loan interest, broker's and Cash Card fees charged, collected and received by the Defendants are all a "cost of borrowing" as defined under the *Consumer Protection Act* referenced above and that the Defendants are in breach of the disclosure requirements in that regard.
56. Specifically, the Plaintiff and Class Members state that the Defendants have failed to disclose the cost of borrowing expressed as one sum in dollars and cents and have

furthermore failed to disclose the percentage that the cost of borrowing bears to the sums actually received in cash by the borrowers.

57. The Plaintiff and Class Members state that the collection and receipt by the Defendants of payday loan interest, broker's and Cash Card fees from the Plaintiff and Class Members, constitutes receipt of amounts contrary to the *Consumer Protection Act* and that customers are not liable to pay those amounts as the cost of borrowing as they are in excess of any sums disclosed.
58. The Plaintiff and Class Members state that any and all amounts charged, collected, or received by the Defendants contrary to the provisions of the *Consumer Protection Act* ought to be reimbursed to the customers from whom those amounts were received.
59. The Plaintiff and Class Members plead and rely upon the provisions of the *Consumer Protection Act*, and equivalent/similar legislation in other jurisdictions where the Defendants operate The Cash Store Inc. locations.

UNJUST ENRICHMENT

60. The Plaintiff and Class Members state that the Defendants have been unjustly enriched to the extent that they have received interest at a criminal rate and/or at a rate that is excessive pursuant to a transaction which is harsh and unconscionable.

61. The Plaintiff and Class Members state that there is no juristic reason for the said enrichment of the Defendants.
62. The Plaintiff and Class Members state that they have been correspondingly deprived at the hands of the Defendants to the extent that interest has been charged and received at a criminal rate or to the extent that the cost of payday loans are excessive and that the said payday loan transactions are harsh and unconscionable.
63. The Plaintiff and Class Members state that any and all amounts charged, collected or received by the Defendants at a criminal rate of interest, and/or at a excessive rate pursuant to payday loan transactions that are harsh and unconscionable, ought to be reimbursed to the customers from whom those amounts were received.

RELIEF AGAINST FORFEITURE

64. The Plaintiff and Class Members seek an Order of this Honourable Court granting relief against any penalty and forfeiture in respect of charges applied by the Defendants, on such terms as to compensation or otherwise as are considered just and appropriate in the circumstances.

65. The Plaintiff and Class Members plead and rely upon the common law and the provisions of the *Courts of Justice Act*, and equivalent/similar legislation in other jurisdictions where the Defendants operate The Cash Store Inc. locations.

PUNITIVE AND EXEMPLARY DAMAGES

66. The Plaintiff and Class Members state that the Defendants knew or ought to have known that the charging, collection and receipt of interest, broker fees and Cash Card fees resulted in an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds 60% on the credit advanced, and/or knew or ought to have known that the cost of said loans were excessive and that the transactions were harsh and unconscionable.
67. The Plaintiff and Class Members state that the Defendants knew or ought to have known that their conduct was in breach of the provisions of the *Criminal Code of Canada* as alleged above, and/or knew or ought to have known that their conduct was in breach of the provisions of the *Unconscionable Transactions Relief Act* and the *Consumer Protection Act* and equivalent/similar legislation in other jurisdictions where the Defendants operate the Cash Store Inc. locations, as alleged above.
68. The Plaintiff and Class Members state that the conduct of the Defendants was intentional and deliberate, or alternatively, wilfully blind.

69. The Plaintiff and Class Members state that the conduct of the Defendants is high-handed and demonstrates a wanton indifference to its unlawfulness.
70. The Plaintiff and Class Members state that such conduct offends the moral standards of the community and warrants the condemnation of this Court via an award of punitive, aggravated and exemplary damages.

THE CLASS

71. The Plaintiff proposes that the Class herein be defined as follows:

Any person in Canada who obtained a payday loan advance from the Defendants and who was charged payday loan interest, broker's fees and Cash Card fees, applied, demanded, collected and/or received by the Defendants.

LEGISLATION

72. The Plaintiff and Class Members plead and rely upon the provisions of the *Class Proceedings Act*, 1992, S.O. c.6, the provisions of the *Criminal Code of Canada*,

R.S.C. 1985 c. C46, the *Consumer Protection Act*, R.S.O. 1990, c. C31, the *Courts of Justice Act*, R.S.O. 1990, c. C43, as amended, and the *Unconscionable Transactions Relief Act*, R.S.O. 1990, c. U2 and equivalent/similar legislation in other jurisdictions, where applicable.

SERVICE OUTSIDE ONTARIO

73. The Plaintiff anticipates that it might be necessary to serve this Statement of Claim on the Defendants outside the Province of Ontario and in that regard pleads and relies upon the provisions of Rule 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 as amended, and in particular:
- a. Rule 17.02 (f) - contracts made in Ontario and/or breached in Ontario; and
 - b. Rule 17.02 (h) - damages sustained in Ontario.
74. The Plaintiff proposes that this action be tried at the City of Hamilton, Province of Ontario.

SCARFONE HAWKINS LLP
Barristers & Solicitors
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Solicitors for the Plaintiff

APPENDIX "A"

British Columbia

Consumer Protection Act, R.S.B.C. 1996, c. 69.

Section 1:

“Borrower” means an individual who receives credit;

“Cost of Borrowing” means

(a) in relation to variable credit, the charges that a borrower or buyer is required to pay on the unpaid balance from time to time, or

(b) in relation to a form of credit other than a variable credit, the amount by which the total sum that a borrower is required to pay, if the payments required are made as they become due, exceeds the principal sum;

“Credit” means credit

(a) for which a borrower incurs a cost of borrowing, and

(b) given under an executory contract or by the advancement of money;

“Lender” means a person, including a seller, who in the course of business extends credit, and includes his or her personal representative, successors or assignees;

Section 41(1):

Except as provided in section 42, every lender must furnish to the debtor before extending credit a statement, in the prescribed manner and form, disclosing information pertaining to the following:

(a) the principal sum;

(b) the charges;

(c) the cost of borrowing;

(d) the calculation;

(e) any other particulars required by the regulations with respect to the credit transaction.

Section 41(2):

This section does not apply to an arrangement between a savings institution and a borrower respecting the overdrawing of the borrower's account.

Section 41(3):

If a lender extends credit, other than variable credit, at a rate of interest that is subject to variation during the extension of credit, the lender must, in the prescribed manner and form and at prescribed times, furnish to the debtor particulars required by the regulations of any variation in the rate of interest or of another matter related to the credit transaction.

Section 50(1):

A lender who

(a) fails to provide the debtor with a disclosure statement in accordance with sections 41 and 42 and the regulations, or

(b) fails to give the debtor a completed copy of the prescribed lending transaction documents on or before the date on which a cost of borrowing starts to accrue

is not entitled to collect any cost of borrowing.

Section 50(2):

A lender is deemed to have complied with the regulations on disclosure described in subsection (1), despite any error, omission, or incorrect or insufficient description in the disclosure, if a court is satisfied that the error, omission, or incorrect or insufficient description is not of a nature to mislead or deceive the debtor to the debtor's prejudice or disadvantage.

Section 50(3):

The burden of proof that the error, omission, or incorrect or insufficient description is not of a nature to mislead or deceive the debtor to the debtor's prejudice or disadvantage is on the lender.

Manitoba

Consumer Protection Act, C.C.S.M. c. C200.

Section 1(1):

“Borrower” means a person borrowing money or obtaining credit and includes a buyer of goods or services on credit and a hirer of goods on hire-purchase, but does not include a buyer of goods or services on credit or a hirer of goods on hire-purchase where those goods or services or both are to be used for the primary purpose of carrying on a business;

“Cost of Borrowing” means

(a) where used in connection with a retail sale or hire-purchase of goods or services or both otherwise than on variable credit, the difference between

(i) the total amount which the buyer is required to pay in the transaction (including any down payment and the value ascribed in the contract to any trade-in or other allowance to him), if all payments are made as they fall due, and

(ii) the total cash price as described in subsection 4(2) or 5(2);

(b) where used in relation to a loan agreement, the difference between

(i) the total amount that the borrower has to pay in the transaction, if all payments are made as they fall due, and

(ii) the aggregate of the amounts described in clauses 13(2)(a), (b), (c), and (d) (other than any amount which is declared by section 20 to be part of the cost of borrowing) subject to such adjustment thereof as may be required by subsection 14(1) or (2), if applicable;

(c) where used in relation to a transaction to which subsection 14(3), the difference between

(i) the total amount which the borrower is required to pay in the transaction (including any down payment and the value ascribed in the agreement to any trade-in or other allowance to him), if all payments are made as they fall due; and

(ii) the aggregate of the total cash price of the goods or services, or both, being purchased and the amounts described in clauses 14(3)(b) and (c);

(d) where used in relation to variable credit, the charges that the buyer or borrower is required to pay periodically on the unpaid balance from time to time for the privilege of purchasing or borrowing on variable credit;

“Money Lender” means a person who carries on the business of money lending or advertises himself, or holds himself out in any way, as carrying on that business, but does not include a registered pawn broker as such;

Section 13(2):

Every loan to which this section applies shall be evidenced by a document or memorandum in writing, signed by the borrower, at or before the time the loan is made which shall set out

(a) the amount advanced or to be advanced to the borrower himself;

(b) any insurance charges actually paid or to be paid by the money lender to an insurer on behalf of the borrower on his request;

(c) any registration fee payable on any security taken for the loan;

(d) any other amount, not being a part of the cost of borrowing, advanced or to be advanced to other persons for the borrower's account, showing the name of each of those persons and the amount advanced or to be advanced to each;

(e) the total of all amounts stated in clauses (a), (b), (c) and (d);

(f) the cost of borrowing expressed as one amount in dollars and cents;

(g) the total amount to be repaid by the borrower, being the aggregate of the amounts mentioned in clauses (e) and (f);

(h) the details of the manner in which the total amount is to be repaid showing the number of payments, and the amount and date of each payment;

(i) the true annual rate of the cost of borrowing calculated in accordance with the regulations expressed as a percentage; and

(j) the total additional charge, if any, other than court costs, to be paid in the event of default expressed as a rate percentage per annum.

Section 25(1):

Except as otherwise provided in the *Interest Act (Canada)*, where a loan to which section 13 applies

(a) is not evidenced by a loan agreement or variable rate agreement containing the information required by clauses 13(2)(a) to (i); or

(b) is evidenced by a loan agreement or variable rate agreement that understates the true annual rate of the cost of borrowing by more than the margin permitted by the regulations;

the credit grantor may recover no more than the aggregate of the amount advanced to the borrower himself and any amount properly advanced to any other person for the borrower's benefit, with interest thereon at the legal rate.

Unconscionable Transactions Relief Act, C.C.S.M. c. U20.

Section 2:

Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances at the time the loan was made, the cost of the loan is excessive or that the transaction is harsh or unconscionable the court may,

(a) re-open the transaction and take an account between the creditor and the debtor;

(b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

(c) order the creditor to repay any such excess if it has been paid or allowed on account by the debtor;

(d) set aside either wholly or in part, or revise or alter, any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor.

New Brunswick

Cost of Credit Disclosure Act, S.N.B. 1973, c. C-28.3.

Section 1(1):

“Borrower” means an individual who has entered into, or who is negotiating to enter into, a credit agreement under which the individual receives or is to receive credit from a credit grantor, and includes

(a) a credit card holder, and

(b) for the purposes of subsections (3), (4) and (5), except paragraphs (3)(b) and (h), a lessee, but does not include a guarantor;

“Brokerage fee” means an amount that a borrower pays or agrees to pay to a credit broker for the credit broker’s services in arranging, negotiating or facilitating or attempting to arrange, negotiate or facilitate an extension of credit to the borrower, and includes an amount that is

(a) deducted from the value received or to be received by a borrower in connection with a credit agreement, and

(b) paid to the credit broker by the credit grantor;

“Credit Grantor” means

(a) a person who has entered into, or who is negotiating to enter into, a credit agreement under which the person extends or is to extend credit to a borrower if

(i) the borrower has entered into or is to enter into the credit agreement primarily for the personal, family or household purposes of the borrower,

(ii) the credit is not in respect of the sale of goods intended for resale, and

(iii) the credit is for \$100 or more, or

(b) an assignee of the original credit grantor's rights under a credit agreement, if the borrower has been given notice of the assignment, and

includes

(c) a credit card issuer, and

(d) for the purposes of subsections (3), (4) and (5), except paragraphs (3)(b) and (g), a lessor;

“Fixed credit” means credit extended under a credit agreement that is not for open credit;

“Open credit” means credit extended under a credit agreement if the credit agreement

(a) anticipates multiple advances that are to be made when requested by the borrower in accordance with the credit agreement, and

(b) does not establish the total amount to be advanced to the borrower under the credit agreement, although it may impose a credit limit;

Section 16(1):

Subject to subsection (3), a credit grantor shall deliver the initial disclosure statement for a credit agreement to the borrower before the earlier of

(a) the date on which the borrower enters into the credit agreement, and

(b) the date on which the borrower makes any payment in connection with the credit agreement.

Section 18(1):

A credit grantor or lessor who is required to provide a disclosure statement or a statement of account under this Act shall ensure that the statement

- (a) is in writing, or, with the consent of the borrower or lessee, in any other form that allows the borrower or lessee to retain the statement for future reference,
- (b) contains the information required under this Act, and
- (c) expresses the information referred to in paragraph (b) clearly, concisely, in a logical order and in a manner that is likely to bring the information to the attention of the borrower or lessee.

Section 32(1):

A credit grantor shall ensure that the initial disclosure statement for a scheduled-payments credit agreement contains the following information:

- (a) the effective date of the statement;
- (b) for a credit sale, a description of the product;
- (c) the outstanding balance as of the effective date of the statement, taking into account every payment made by the borrower on or before the effective date of the statement;
- (d) the nature and amount of each advance, charge or payment taken into account in the outstanding balance disclosed under paragraph (c);
- (e) the term;
- (f) the amortization period if it is longer than the term;
- (g) the date on which interest begins to accrue and the details of any grace period;
- (h) the annual interest rate and the circumstances under which interest will be compounded;
- (i) if the annual interest rate may change during the term,
 - (i) the initial annual interest rate and the compounding period,
 - (ii) the method of determining the annual interest rate at any time, and
 - (iii) unless the amount of scheduled payments is adjusted automatically to account for changes in the annual interest rate, the lowest annual

interest rate, based on the initial outstanding balance, at which the payments would not cover the interest that would accrue between payments;

(j) the nature and amount of any charges, other than interest, that are not disclosed under paragraph (d) but that will become payable by the borrower in connection with the credit agreement;

(k) the amount and timing of any advances to be made after the effective date of the disclosure statement;

(l) the amount and timing of any payments to be made after the effective date of the disclosure statement;

(m) the total of all advances made or to be made in connection with the credit agreement;

(n) the total of all payments to be made in connection with the credit agreement;

(o) the total cost of credit;

(p) the APR;

(q) the nature of any default charges provided for by the credit agreement;

(r) a description of the subject matter of any security interest;

(s) for a credit agreement in relation to a mortgage loan, a statement of the conditions, if any, under which the borrower may make prepayments, and any charge for prepayment;

(t) for a credit agreement other than a credit agreement in relation to a mortgage loan, a statement that

(i) the borrower is entitled to prepay the outstanding balance at any time without any prepayment charge or penalty, and

(ii) the borrower is entitled to prepay a portion of the outstanding balance on any scheduled payment date, or at least monthly, without any prepayment charge or penalty;

(u) the nature, amount and timing of charges for any optional services purchased by the borrower that are payable to or through the credit grantor, and

(v) the conditions under which the borrower may terminate services referred to in paragraph (u).

Section 32(2):

A credit grantor shall ensure that the initial disclosure statement for a credit agreement that is not a scheduled payments credit agreement

(a) contains the information referred to in paragraphs (l)(a) to (d), (g) to (j), (m) and (p) to (v), and

(b) either states the circumstances under which the outstanding balance, or any portion of it, must be paid or specifies the provisions of the credit agreement that describe those circumstances.

Section 33(1):

Where the interest rate under a credit agreement is a floating rate, the credit grantor shall, at least once every 12 months, deliver to the borrower a disclosure statement for the credit agreement containing the following information:

(a) the period covered by the statement, which period shall run from the date of the disclosure statement most recently delivered to the borrower under this section or section 32;

(b) the annual interest rate at the beginning and end of the period covered by the statement;

(c) the outstanding balance at the beginning and end of the period covered by the statement; and

(d) for a scheduled-payments credit agreement, the amount and timing of all remaining payments based on the annual interest rate that applies at the end of the period covered by the statement

Section 33(2):

Where the interest rate under a credit agreement is not a floating rate but is nevertheless subject to change, the credit grantor shall, within 30 days after the date on which the annual interest rate is increased by 1% or more over the rate most recently disclosed to the borrower, deliver to the borrower a disclosure statement for the credit agreement containing the following information:

- (a) the date of the statement;
- (b) the new annual interest rate and the date on which the new rate took effect;
and
- (c) the timing and new amount of any payments to be made after the date referred to in paragraph (b).

Section 34(1):

Within 30 days after an increase in the outstanding principal under a scheduled-payments credit agreement, the credit grantor shall deliver to the borrower a notice in writing where

- (a) the outstanding principal increases because of
 - (i) the compounding of interest on a missed or late payment, or
 - (ii) the imposition of a default charge, and
- (b) as a result of the increase in the outstanding principal, the total amount of the payments that the borrower is scheduled to make over a payment period will not cover the interest that accrues during the payment period.

Section 34(2):

A notice referred to in subsection (1) shall specify

- (a) that the outstanding principal has increased and why the outstanding principal has increased,

(b) that, because of the increase in the outstanding principal, the subsequent scheduled payments will not cover the interest that will accrue in each payment period, and

(c) what the outstanding balance will be at the end of the term if the amount of subsequent scheduled payments is not adjusted.

Unconscionable Transactions Relief Act, R.S.N.B. 1973, c. U-1.

Section 2:

Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive and that the transaction is harsh and unconscionable the court may,

(a) re-open the transaction and take an account between the creditor and the debtor;

(b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

(c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;

(d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor.

Newfoundland and Labrador

Consumer Protection Act, R.S.N.L. 1990, c. C-31.

Section 2:

“Borrower” means an individual who receives credit;

“Cost of Borrowing” means

(a) when used in relation to variable credit, the charges that the borrower is required to pay monthly or periodically on the unpaid balance, and

(b) when used in relation to a form of credit other than a variable credit, the amount by which the total sum that a borrower is required to pay where the payments required are made as they become due exceeds

(A) in the case of credit given by the advancement of money, the sum actually received in cash by the borrower and by a person on the borrower's behalf, including official fees and premiums for insurance paid or payable by the lender at the request of the borrower, or

(B) in the case of a sale of goods or services, the cash price of the goods or services, official fees and premiums for insurance paid or payable by the seller at the request of the buyer and the sum remaining under a previous extension of credit in an amount determined under section 18 where the buyer and seller agree that the sum is to be consolidated with it, less the sums credited as a down-payment or in respect of a trade-in or in respect of another matter;

“Credit” means credit for which a borrower is required to pay and that is

(i) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or

(ii) given by the advancement of money,

but does not include credit extended

(iii) on the security of a mortgage of real property,

(iv) in respect of the sale of goods intended for resale, or

(v) for industrial purposes or business purposes of the borrower, as those purposes are defined by the regulations;

“Lender” means a person who extends credit;

Section 16(1):

Except as provided in subsection (2), a lender shall provide to the borrower, or to the borrower 1st executing the agreement extending the credit where that agreement is being executed by 2 or more borrowers jointly or jointly and individually, before extending credit a clear statement in writing showing

(a) the sum expressed as one sum in dollars and cents, of

(i) in the case of credit given by the advancement of money, the sum actually received in cash by the borrower and by a person on his or her behalf plus official fees and premiums for insurance paid or payable by the lender at the request of the borrower, or

(ii) in the case of a sale of goods or services, the cash price of the goods or services;

(b) where the lender is a seller, the sums to be credited as a down-payment or in respect of a trade-in or in respect of another matter;

(c) where the lender is a seller, the sum that is the difference between the sum stated under subparagraph (a) (ii) and the sum that is the total of the sums referred to in paragraph (b);

(d) the sum remaining under a previous extension of credit in an amount determined under section 18 that the buyer and seller agree is to be consolidated with the extension of credit in respect of which the statement is given;

(e) the amount of official fees paid or payable at the request of the borrower;

(f) the amount of premiums for insurance paid or payable by the lender at the request of the borrower;

(g) the total, where the lender is a seller, of the sums stated under paragraphs (c), (d), (e), and (f);

(h) the cost of borrowing expressed as one sum in dollars and cents;

(i) where the cost of borrowing exceeds \$10, the percentage that the cost of borrowing bears to the sum stated

(i) under subparagraph (a)(i) where the lender is not a seller, and

(ii) under paragraph (g) where the lender is a seller

expressed as an annual rate of the unpaid balance of the obligation which the percentage shall be calculated and expressed in the manner prescribed in the regulations; and

(j) the basis upon which additional charges are to be made in the event of default.

Section 17(1):

A borrower is not liable to pay a lender as the cost of borrowing a sum or at a rate that exceeds the sum or rate disclosed in a statement given under section 16 by more than the tolerances permitted by the regulations.

Section 17(2):

Nothing in this Act shall have the effect of depriving a lender of, or interfering with, the right of a lender to collect from the borrower

(a) the principal of the debt, loan, or credit; or

(b) the cost of borrowing at the lesser of the sum or rate shown in a statement required by section 16.

Unconscionable Transactions Relief Act, R.S.N.L. 1990, c. U-1.

Section 3:

Where, in respect of money lent, the court finds that, having regard to the risk and to the circumstances, the cost of the loan is excessive or that the transaction is harsh and unconscionable the court may

(a) re-open the transaction and take an account between the creditor and the debtor;

(b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the

sum determined by the court to be fairly due in respect of the principal and the cost of the loan;

(c) order the creditor to repay the excess where it has been paid or allowed on account by the debtor; and

(d) set aside either wholly or in part or revise or alter a security given or agreement made in respect of the money lent, and, where the creditor has parted with the security, order him to indemnify the debtor.

Nova Scotia

Consumer Protection Act, R.S.N.S. 1989, c. 92.

Section 2:

“Borrower” means a person who receives credit;

“Cost of Borrowing” means

(a) when used in relation to variable credit, the charges that the borrower is required to pay monthly or periodically on the unpaid balance from time to time, and

(b) when used in relation to a form of credit other than a variable credit, the amount by which the total sum that a borrower is required to pay if the payments required are made as they become due exceeds

(A) in the case of credit given by the advancement of money, the aggregate of the sum actually received in cash by the borrower and by any person on his behalf, the sum remaining unpaid under a previous extension of credit, in an amount to be determined under section 19, that the borrower and lender agree is to be consolidated with the credit then being extended, official fees and premiums for insurance paid or payable

by the lender at the request of the borrower, or

(B) in the case of a sale of goods or services, the aggregate of the cash price of the goods or services, the sum remaining unpaid under a previous extension of credit, in an amount to be determined under

section 19, that the borrower and lender agree is to be consolidated with the credit then being extended, official fees and premiums for insurance paid or payable by the seller at the request of the buyer, less the sums, if any, credited as a down-payment or in respect of a trade-in or in respect of another matter;

“Credit” means credit for which a borrower is required to pay and that is

(i) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or

(ii) given by the advancement of money,

but does not include credit extended

(iii) on the security of a mortgage of real property,

(iv) in respect of the sale of goods intended for resale, or

(v) for industrial purposes or business purposes of the borrower;

“Lender” means a person who extends credit;

Section 17(1):

Except as provided in subsection (3), every lender shall furnish to the borrower before extending the credit a clear statement in writing showing

(a) the sum expressed as one sum in dollars and cents, of

(i) in the case of credit given by the advancement of money, the sum actually received in cash by the borrower and by a person on his or her behalf, or

(ii) in the case of a sale of goods or services, the cash price of the goods or services;

(b) where the lender is a seller, the sums, if any, to be credited as a down-payment or in respect of a trade-in or in respect of another matter;

(c) where the lender is a seller, the sum that is the difference between the sum stated under subclause (ii) of clause (a) and the sums stated under clause (b);

(d) the sum remaining unpaid under a previous extension of credit, in an amount determined under section 19 that the buyer and seller agree is to be consolidated with the extension of credit which the statement is given;

(e) the sum of official fees and premiums for insurance paid or payable by the lender at the request of the borrower;

(f) the aggregate

(i) where the lender is a seller, of the sums stated under paragraphs (c), (d), (e), or

(ii) where the lender is not a seller, of the sums stated under subclause (i) of clause (a) and under clauses (d) and (e);

(g) the cost of borrowing expressed as one sum in dollars and cents;

(h) the percentage that the cost of borrowing bears to the sum stated

(i) under subclause (ii) of (f) where the lender is not a seller, and

(ii) under subclause (i) of (f) where the lender is a seller,

expressed as an annual rate of the unpaid balance of the obligation from time to time, which the percentage shall be calculated and expressed in the manner prescribed in the regulations; and

(i) the basis upon which additional charges are to be made in the event of default.

Section 18(1):

A borrower is not liable to pay a lender as the cost of borrowing any sum or at a rate that exceeds the sum or rate disclosed in a statement given pursuant to section 17 by more than the tolerances, if any, permitted by the regulations.

Section 18(2):

Nothing in this Act shall have the effect of depriving a lender of, or interfering with, the right of a lender to collect from the borrower

- (a) the principal of the debt, loan, or credit; or
- (b) the cost of borrowing at the lesser of the sum or rate shown in a statement required by section 17.

Unconscionable Transactions Relief Act, R.R.N.S. 1989, c. 481.

Section 3:

Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive or that the transaction is harsh and unconscionable the court may

- (a) re-open the transaction and take an account between the creditor and the debtor;
- (b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;
- (c) order the creditor to repay any such excess if the same has been paid or allowed on account by the debtor;
- (d) set aside either wholly or in part, or revise or alter any security given or agreement made in respect of the money lent and, if the creditor has parted with the security, order him to indemnify the debtor.

Prince Edward Island

Consumer Protection Act, R.S.B.C. 1988, c. C-19.

Section 1:

“Borrower” means a person who received credit;

“Cost of Borrowing” means

(i) when used in relation to variable credit, the charges that the borrower is required to pay monthly or periodically on the unpaid balance from time to time, and

(ii) when used in relation to a form of credit other than a variable credit, the amount by which

(A) the total sum that a borrower is required to pay if the payments required are made as they become due

exceeds

(B) in the case of credit given by the advancement of money, the sum actually received in cash by the borrower and by any person on the borrower’s behalf, including official fees and premiums for insurance paid or payable by the lender at the request of the borrower, or

(C) in the case of a sale of goods or services, the cash price of the goods or services, official fees and premiums for insurance paid or payable by the seller at the request of the buyer and the sum remaining unpaid under a previous extension of credit, where the buyer and seller agree that such amount is to be consolidated therewith less the sums, if any, credited as a down-payment or in respect of a trade-in or in respect of any other matter;

“Credit” means credit for which a borrower is required to pay and that is

(i) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or

(ii) given by the advancement of money,

(iii) given on the security of a mortgage of real property,

but does not include credit extended

(iv) in respect of the sale of goods intended for resale, or

(v) for industrial purposes or business purposes of the borrower or buyer, except credit extended for principal use in fishing or farming operations;

“Lender” means a person who extends credit;

Section 16(1):

Where a lender makes to a borrower a loan, the cost of borrowing Disclosure of cost in relation to the loan, expressed as an annual percentage rate, shall be of borrowing disclosed by the lender to the borrower in a separate statement in the form prescribed in the regulations.

Section 16(2):

Where a loan referred to in subsection (1) is subject to variations in the annual percentage rate, the lender shall

(a) at the time of the loan, disclose

(i) the cost of borrowing, expressed as an annual percentage rate or the manner of determining the annual percentage rate,

(ii) that the rate is liable to change and the basis on which the change will occur,

(iii) the manner of calculating the cost of borrowing;

(b) upon a change in the rate, within five weeks of the change, notify the borrower in writing of

(i) the revised rate,

(ii) the effective date of the change,

(iii) any other modifications to the loan consequent on the change in rate;

(c) annually issue to the borrower a written statement showing

(i) the number and total amount of payments made during the year,

(ii) the amount applied to the cost of borrowing,

(iii) the amount of principal repaid,

(iv) the amount of principal outstanding.

(3) Where a loan referred to in subsection (1) is not subject to variations in the annual percentage rate, the lender shall

(a) at the time of the loan, disclose to the borrower

(i) the cost of borrowing, expressed as an annual percentage rate or the manner of determining the annual percentage rate, and

(ii) the manner of calculating the cost of borrowing; and

(b) annually issue to the borrower a written statement containing the information set out in subclauses (2)(c)(i) to (iv).

(4) Where a lender extends variable credit by use of a payment, credit or charge card, the lender shall disclose to the borrower

(a) the maximum aggregate amount of credit available through use of the card;

(b) the term of each period for which a statement of account is furnished;

(c) the amount in dollars and cents of any service, transaction or activity charge and the manner in which it is calculated;

(d) the manner, if any, in which the borrower may discharge his obligations without incurring any cost of borrowing;

(e) the cost of borrowing expressed as an annual percentage rate;

(f) the maximum liability of the borrower in the event the card is lost or stolen;

(g) the manner in which the cost of borrowing is calculated, and shall

(h) not less frequently than every five weeks, furnish the borrower with a clear statement in writing showing, in respect of the period covered by the statement, the opening and closing balances, the amount of each extension of credit, sums credited to the account and the cost of borrowing expressed in dollars and cents;

(i) give advance notice to the borrower of any variation in the terms referred to in clauses (b) to (g) at least thirty days before the variation becomes effective.

Section 20(3):

No lender shall represent his charge for credit or cause such charge to be represented unless the representation includes the full cost of costs of borrowing and is expressed in the manner required by section 16.

Unconscionable Transactions Relief Act, R.S.P.E.I. 1988, c. U-2.

Section 2:

Where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances, the cost of the loan is excessive or that the transaction is harsh and unconscionable the court may

(a) re-open the transaction and take an account between the creditor and the debtor;

(b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

(c) order the creditor to repay any such excess if it has been paid or allowed on account by the debtor;

(d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor.

Saskatchewan

The Cost of Credit Disclosure Act, R.S.S. 1978, c. C-41.

Section 2(1):

“Borrower” means a person who receives credit;

“Cost of borrowing” means:

(i) when used in relation to variable credit, the charges that the borrower is required to pay monthly or periodically on the unpaid balance from time to time; and

(ii) when used in relation to a form of credit other than variable credit, the amount by which:

(A) the total sum that the borrower is required to pay if the payments required are made as they become due;

exceeds:

(B) the sum actually received in cash by the borrower and by any other person on his behalf, or, in the case of a sale of goods or services, the cash price of the goods or services less the sums, if any, credited as a down payment, or in respect of a trade-in, or in respect of any other matter plus, in each case, insurance or official fees, if any, actually paid by the lender or seller;

“Credit” means, subject to subsection (2), credit for which a borrower is required to pay and that is:

(i) given under an agreement between a seller and a buyer to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into; or

(ii) given by the advancement of money;

“Lender” means a person who extends credit;

Section 2(2):

Credit as defined by clause (d) of subsection (1) does not include any sum of money payable by a borrower in either of both of the following cases:

(a) on the security of a mortgage of real property;

(b) in respect of the sale of goods intended for resale.

Section 3:

Except as provided in section 4, every lender shall, before extending credit to a borrower, provide him with a clear statement in writing showing:

- (a) the sum in dollars and cents of the aggregate of:
 - (i) in the case of credit given by the advancement of money, the sum actually received in cash by the borrower and by any other person on his or her behalf including official fees and insurance fees, or
 - (ii) in the case of a sale of goods or services, the cash price of the goods or services plus official fees and insurance fees, if any;
- (b) where the lender is a seller, the sums, if any, to be credited to the borrower as a down-payment or as a trade-in or in respect of any other matter;
- (c) where the lender is a seller, the sum that is the difference between the cash price stated under subclause (ii) of clause (a) and the sums stated under clause (b);
- (d) the cost of borrowing expressed as one sum in dollars and cents;
- (e) the percentage that the cost of borrowing bears to the sum stated:
 - (i) under clause (a) where the lender is not a seller, and
 - (ii) under clause (b) where the lender is a seller,expressed as an annual rate of the unpaid balance of the obligation from time to time, which the percentage shall be calculated and expressed in the manner prescribed in the regulations;
- (f) the basis upon which additional charges, if any, are to be made in the event of default;
- (g) the amounts, if any, included for insurance or official fees.

Section 10(1):

Subject to subsection (2), an agreement extending credit is not rendered void or unenforceable by reason only of a failure to comply with this Act, but in such a case:

- (a) the buyer or borrower is not obligated to pay; and
- (b) the seller or lender, or the assignee of the seller or lender, has no right to recover;

any amount in excess of:

- (c) the regular cash selling price of the goods or services sold on credit less the sums, if any, credited as a down payment, or in respect of a trade-in or in respect of any other matter; or
- (d) the sum actually received in cash by the borrower or by any other person on his behalf;

except where the failure in compliance results from:

(e) a bona fide error in the quotation of the cost of credit either in the dollar and cent expression or in the annual percentage or scale of annual percentages expression referred to in clause (a) of section 4 in which case the seller or lender or the assignee of the seller or lender shall have the right to recover the lesser of the dollar and cent cost expression or the annual percentage or scale or annual percentages expression; or

(f) a bona fide error other than in the quotation of the cost of credit and such error did not prevent the buyer or borrower from having knowledge of the essential elements of the agreement in which case the rights of the seller or lender to recover the cost of borrowing shall not be affected.

Unconscionable Transactions Relief Act, R.S.S. 1978, c. U-1.

Section 3:

Notwithstanding the provisions of any other Act, where, in respect of money lent, the court finds that, having regard to the risk and to all the circumstances at the time the loan was made, the cost of the loan is excessive or that the transaction is harsh or unconscionable the court may,

(a) re-open the transaction and take an account between the creditor and the debtor and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

(b) notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan;

(c) order the creditor to repay any such excess if it has been paid or allowed on account by the debtor;

(d) set aside either wholly or in part or revise or alter any security given or agreement made in respect of the money lent, and, if the creditor has parted with the security, order him to indemnify the debtor.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT HAMILTON

STATEMENT OF CLAIM

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