COVID-19 and the Regulation of Alternative Financial Services

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This article explores how the COVID-19 pandemic has exposed and exacerbated existing inequalities with respect to access to basic financial services in Canada. The authors examine changes made to the regulation of financial products in the wake of the pandemic in order to expose the need to ensure that these regulations protect the ability of all Canadians to meet their needs and financial obligations. Part IA compares the regulation of government cheques cashed at banks and alternative service providers. Part IB analyzes Ontario's changes to the regulation of institutions providing payday loans and warns that the current regulatory scheme leaves a gap in the regulation of installment loans. Part II provides an overview of voluntary credit relief programs offered in response to the pandemic and discusses how taking advantage of these programs may impact a borrower's credit score. Part III cautions that financial stress as a result of the pandemic may lead to those with poor or no credit history to turn to so called "credit repair loans". The authors conclude by expressing their hope that the pandemic will generate the political will to work towards a regulatory system for financial produces that meets the needs of all Canadians.

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Introduction

In March 2020, emergency orders enacted in response to the COVID-19 pandemic started shutting down businesses and other workplaces, negatively affecting the incomes of millions of Canadians.[1] Given that even before the COVID-19 pandemic we owed an average of $1.76 for every dollar of income,[2] this immediately raised concerns about how those affected would meet their debt obligations. Media attention focused on actions by the chartered banks to relieve borrowers from mortgage and credit card payments. These were important measures to alleviate the financial stress placed mostly on middle- and upper-middle-class Canadians.[3] Less attention was paid to actions by the types of financial services providers relied on by Canadians living on low incomes, such as provincially regulated cheque cashers and payday lenders. These service providers are often collectively referred to as "alternative financial services" (AFS) providers. Before the pandemic, several types of AFS were not subject to any meaningful regulation, raising the question whether, as a potential result of the pandemic, increased use and reliance on AFS would prompt government action.

1. As of October 4, 2020, the federal government had received 8.9 million unique applications for the Canada Emergency Response Benefit (CERB). See "Canada Emergency Response Benefit Statistics" (last modified 16 February 2021), online: *Government of Canada* <canada.ca/en/services/benefits/ei/claims-report.html>.

2. See Statistics Canada, *National Balance Sheet and Financial Flow Accounts, Fourth Quarter 2019*, in *The Daily*, Catalogue No 11-001-X (Ottawa: Statistics Canada, 13 March 2020), online: <www150.statcan.gc.ca/n1/daily-quotidien/200313/dq200313a-eng.htm>.

3. Forms of debt change with income. For example, low-income households are the least likely to carry mortgage debt or secured debt, and more likely to carry consumer debt. See Elizabeth Mulholland, Alex Bucik & Vivian Odu, "Roadblock to Recovery: Consumer Debt of Low- and Moderate-Income Canadian Households in the Time of COVID-19" (10 November 2020) at 8–9, online (pdf): *Prosper Canada* <learninghub.prospercanada.org/wp-content/uploads/2020/11/Roadblock-to-recovery_Consumer-debt-report-AODA.pdf>.

The implementation of debt relief programs by both banks and AFS providers raised another question: how did deferring debt payments affect Canadians' credit scores? And what other types of products were individuals, especially those with "bad credit" pre-pandemic, turning to for emergency credit in the wake of COVID-19 economic shutdowns?

This essay proceeds in three parts. In Part I, we discuss the regulation of cheque-cashing and payday loans, and changes to these regulations in response to COVID-19. In Part II, we review voluntary credit relief programs offered by both banks and AFS providers, and examine how taking advantage of these programs may affect a borrower's credit score. This issue likely has broader relevance to Canadians of all income levels, but poor credit history can force consumers to turn to high cost AFS providers. In Part III, we briefly discuss an AFS which preys on Canadians with poor credit history who need access to credit, misleadingly titled "credit repair loans". Our review of the response from government and private actors to the regulation of financial products in the wake of the COVID-19 pandemic aims to help expose the need to ensure that the regulation of financial products protects the ability of Canadians at all income levels to meet their needs and financial obligations.

I. Regulation of Cheque-Cashing and Payday Loans

A. Cheque-Cashing

To help counter the negative effects of COVID-19 on incomes, in March and April 2020 the federal government introduced the Canada Emergency Response Benefit (CERB) and the Canada Emergency Student Benefit (CESB).[4] These benefits were in place until September 2020. The CERB provided up to $2,000 per four-week period for Canadians facing financial challenges. Similarly, the CESB provided up to $2,000 per four-week period to certain graduating secondary students, post-secondary students and recent post-secondary graduates.[5]

4. See Canada, Department of Finance, News Release, "Government Introduces Canada Emergency Response Benefit to Help Workers and Businesses" (25 March 2020), online: *Government of Canada* <canada.ca/en/department-finance/news/2020/03/introduces-canada-emergency-response-benefit-to-help-workers-and-businesses.html>; Canada, Department of Finance, News Release, "Support for Students and Recent Graduates Impacted by COVID-19" (22 April 2020), online: *Government of Canada* <canada.ca/en/department-finance/news/2020/04/support-for-students-and-recent-graduates-impacted-by-covid-19.html>.

5. The CESB was $1,250 per 4-week period and $2,000 for students with a disability or dependents. See "Canada Emergency Student Benefit" (last modified 27 January 2021), online: *Government of Canada* <canada.ca/en/revenue-agency/services/benefits/emergency-student-benefit.html>.

In recent years, federal and provincial governments have been encouraging benefits recipients to register for direct deposit, efforts which have increased in response to COVID-19.[6] But some recipients continue to receive benefits by cheque. Banks, which are federally regulated, are required to cash government cheques up to a prescribed maximum amount at no charge for any person, including non-customers, provided they meet certain identification guidelines.[7]

Prior to the introduction of CERB, the prescribed maximum amount was $1,500. This was raised to $2,000 to match the CERB and CESB payments.[8] Although this increase to the federal government cheque cashing limits is a temporary measure, the federal government has not indicated an end date.

This relief measure applies only to cheques cashed in-person. Canadians with a bank account[9] may choose to deposit their cheque through a mobile app or automated teller machine (ATM), but then the cheque may be subject to a "hold period" to ensure that the cheque clears before funds are paid out. Banks often advance funds in the full amount of the cheque immediately, but this will depend on the relationship between the bank and the customer, since the bank is effectively loaning the money on the presumption that the cheque will clear. Customers with a limited relationship with the bank, a previous history of returned cheques, or with few assets available to cover a returned cheque may be subject to a hold period. Hold periods have been identified as a major issue for financial consumers living on low incomes.[10]

Federal regulations set the maximum hold period banks may apply to cheques deposited through a mobile app or ATM: up to five business days if the cheque

6. See Government of Canada, "Direct Deposit" (last modified 26 January 2021), online: *Public Services and Procurement Canada* <tpsgc-pwgsc.gc.ca/recgen/txt/depot-deposit-eng.html>.

7. See *Access to Basic Banking Regulations*, SOR/2003-184, s 7. For a broader discussion of the *Access to Basic Banking Regulations*, see Gail E Henderson, Kevin Akrong & Diane Wu, "Financial Rules and Regulations Relevant to Low Income Households" (2019) at 9–10, online (pdf): *Canadian Financial Diaries* <financialdiariesca.files.wordpress.com/2019/06/regulatory-scan-working-draft.pdf>.

8. See Financial Consumer Agency of Canada, "Cashing a Government of Canada Cheque" (last modified 28 October 2020), online: *Government of Canada* <www.canada.ca/en/financial-consumer-agency/services/banking/cashing-government-cheque.html>.

9. Between one per cent and three per cent of Canadians are "unbanked", meaning they do not have a bank account. See "Focus: Banks and Consumers" (19 March 2021), online: *Canadian Bankers Association* <cba.ca/banks-and-consumers>; "It's Expensive to Be Poor: How Canadian Banks Are Failing Low Income Communities" (May 2016), online: *ACORN Canada* <acorncanada.org/resource/its-expensive-be-poor-how-canadian-banks-are-failing-low-income-communities>.

10. See Jerry Buckland, *Hard Choices: Financial Exclusion, Fringe Banks and Poverty in Urban Canada* (Toronto: University of Toronto Press, 2012) at 108–09.

is $1,500 or less, or up to eight business days if the cheque exceeds $1,500.[11] Generally, the "big five" banks—Bank of Montreal, Canadian Imperial Bank of Commerce, Royal Bank of Canada, Scotiabank, and Toronto-Dominion—apply a hold period of four days to cheques less than $1,500 and five days to cheques greater than $1,500. There are exceptions, for example, for bank accounts open for less than ninety days, which allow banks to apply a longer hold period.[12] These rules were not amended in response to the introduction of the CERB and CESB.

While the relief measure ensures that federal government cheques could be cashed for free in-person at a bank, it does not account for the realities of the pandemic. Even prior to the pandemic, concerns had been raised about the lack of bank branches in low-income neighbourhoods.[13] In the pandemic, accessing a bank branch in person became potentially more difficult and dangerous. Banks closed some branches completely and reduced the hours of others.[14] Concerns about COVID-19 have reduced ridership on public transit,[15] leaving residents to rely on financial services within walking distance from work or from home. For many Canadians living in low-income neighbourhoods, these will be AFS providers which offer cheque-cashing services, such as Cash4You, Cash Money, and Money Mart.[16] Although ATM and mobile app cheque deposits may eliminate the need to cash a government cheque in-person, these are discretionary account features which banks may remove or suspend. Customers with a history of returned cheques, outstanding service charges, or other negative banking history may have such a limited account or no bank account at all, leaving them with no option other than to cash government cheques in-person.

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11. See *Access to Funds Regulations*, SOR/2012-24, ss 2, 3. For non-Government of Canada cheques cashed in person, these hold periods are four and seven days, respectively (*ibid*).

12. See *ibid*, ss 6(1)(a)–(d).

13. See ACORN Canada, *supra* note 9.

14. In response to the emergency orders, banks such as BMO, CIBC, RBC, and TD temporarily closed a number of branches. Although some of these branches have since been reopened, a review of the banks' websites indicates several branches remain closed and reopened branches are operating under reduced hours. See "Canada's 'Big Six' Banks to Limit Hours, Close Branches in Coronavirus Fight", *Reuters* (17 March 2020), online: <reuters.com/article/us-health-coronavirus-banks-canada/canadas-big-six-banks-to-limit-hours-close-branches-in-coronavirus-fight-idUSKBN2142BJ>.

15. See "Chief Executive Officer's Report – December 2020 Update" (15 December 2020) at 13, online (pdf): *Toronto Transit Commission* <www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2020/December_15/Reports/1_Chief_Executive_Officer_Report_December_2020_Update.pdf>.

16. See Buckland, *supra* note 10 at 103–05.

Cheque cashers advertise their services as quick and convenient, only requiring personal identification to cash a cheque, making them a logical choice for the unbanked to cash any cheque. The other primary benefit to consumers is that cheques cashed at these AFS providers are not subject to a hold period. Instead, customers endorse or "sign over" their cheques, and then the AFS provider deals with their own financial institution to clear the cheques. But customers pay a high price for quick and convenient access to their money: cheque cashers charge either a flat fee or a fee based on a percentage of the amount of the cheque, or both.[17] These fees apply to all cheques, including cheques for Government of Canada benefits, although fees may vary depending on the type of cheque. According to the Financial Consumer Agency of Canada, it could cost $63 to cash a $2,000 Government of Canada cheque at an AFS provider.[18] These fees greatly exceed the cost of maintaining the federally mandated low-cost account at a bank at $4 per month.[19] In some cases, these fees exceed the cost of the most expensive chequing account packages offered at banks.[20] Money Mart, an AFS provider, advertises CERB cheque cashing services on its COVID-19 support page, however, it makes no mention that anyone can cash a CERB cheque for free at a chartered bank.[21] The high cost of cashing cheques with AFS providers has the potential to erode the effectiveness of government benefits in alleviating financial hardship for recipients.

Cheque cashers fall under provincial jurisdiction and therefore are not subject to the same regulations as banks and other federally regulated financial institutions. Some provinces and territories have prohibited[22] or capped the fees cheque cashers may charge to cash federal and provincial government cheques. For example, in British Columbia, the maximum permitted fee to cash a provincial government benefits cheque is a $2 flat fee plus one per cent of the cheque's

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17. Cash Money charges a 2.99% fee *and* a $2.99 flat fee per cheque. See "Canada Cheque Cashing" (last visited 23 January 2021), online: *Cash Money* <cashmoney.ca/financial-services/cheque-cashing>.

18. See Financial Consumer Agency of Canada, "COVID 19: Receiving the CERB or Other Benefits – What You Need to Know About Cashing Your Cheque" (12 May 2020), online: *Government of Canada* <canada.ca/en/financial-consumer-agency/corporate/covid-19/cashing-a-cheque.html>.

19. See Henderson, Akrong & Wu, *supra* note 7 at 12.

20. The big five banks offer a premier chequing account for $30 per month or $360 per year. However, these accounts do not offer any enhanced cheque deposit privileges.

21. See "How Money Mart is Responding to Coronavirus (COVID-19)" (last visited 23 January 2021), online: *Money Mart* <moneymart.ca/covid19>.

22. Nunavut and Quebec prohibit fees to cash federal, provincial, and territorial government cheques. See *Consumer Protection Act*, CQLR P-40.1, s 251; *Consumer Protection Regulations*, Nu Reg 004-2018, s 13(2).

face value *or* a total of $10, whichever is lower.[23] Ontario applies the same fee cap to both federal and provincial government cheques, and stipulates that this fee must include the cost of any "tied" products or services that the customer is also required to purchase in order to cash the cheque.[24] There have been no changes to these provincial regulations in response to the pandemic. Fee caps are effective only if they are known to customers. There is no obligation to inform customers of the caps, nor that they can cash their cheque for free at a bank.

B. Payday (and Installment) Loans

Payday loans are short-term loans for small amounts—normally $1,500 or less[25]—and "usually repaid by the borrower's next paycheque".[26] Payday loans are exempted from the criminal rate of interest provisions in the *Criminal Code*, which prohibits annual interest rates above sixty per cent, so long as there is provincial legislation in place which sets a cap on the cost of borrowing.[27] In Ontario, this cap is $15 per $100 borrowed,[28] which represents an annual interest rate of 390%.[29] But, as discussed below, borrowers who default on a payday loan incur additional costs as well.

The changes to daily living in a pandemic have increased daily expenses: buying masks, shopping at the local corner store or ordering online, taking taxis instead of public transit, and greater usage of utilities from being at home more of the time and perhaps having more family members in the home.[30] For Canadians on fixed incomes, such as social assistance, who did not qualify for emergency benefits, meeting these new additional expenses will require cutting spending in other areas or borrowing. For those with limited banking and credit options, this could mean accessing high-cost credit products. To date, only

23. See *Business Practices and Consumer Protection Act*, SBC 2004, c 2, s 112.13; *Government Cheque Cashing Fees Regulation*, BC Reg 127/2018, s 3.

24. See *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A, s 85.4(1); O Reg 17/05, s 71.1.

25. Nearly all payday loan lenders in Ontario provide loans up to a maximum of $1,500 to ensure compliance with provincial payday regulations, thereby avoiding the application of the criminal interest rate provisions. See *Criminal Code*, RSC 1985, c C-46, s 347.1(2).

26. Henderson, Akrong & Wu, *supra* note 7 at 27.

27. *Supra* note 25, s 347(3).

28. See O Reg 98/09, s 23(c).

29. See Henderson, Akrong & Wu, *supra* note 7 at 27.

30. See Jodi Dueck-Reid, "The Differential Impact of the Pandemic and Recession on Family Finances: Report on COVID-19 Follow Survey with Phase One Participants" (20 January 2021) at 4, online (pdf): *Canadian Financial Diaries* <financialdiariesca.files.wordpress.com/2021/01/cfd-covid-19-survey-final.pdf>.

Ontario has amended its payday loan legislation in response to COVID-19. Four provinces, Alberta, British Columbia, Manitoba, and Quebec, have legislation regulating other high-cost credit products.[31] These provinces have not amended this legislation in response to COVID-19.

On July 21, 2020, Ontario passed legislation providing relief to borrowers having trouble repaying payday loans.[32] The legislation amends the *Payday Loans Act, 2008*[33] to restrict the interest rates and fees payday lenders may charge on loans in default and for dishonoured—"bounced"—cheques. These relief measures came into effect on August 20, 2020; they do not apply to payday loans made in the previous five months of the pandemic's presence in Canada.[34] These restrictions apply only to payday loans, and not to other credit products offered by payday lenders, including installment loans. Installment loans are discussed briefly below.

Prior to these relief measures, Ontario's payday loan legislation did not include restrictions on the interest rate lenders may charge on defaulted loans. As of August 20, 2020, payday lenders may charge a maximum interest rate of 2.5% per month on payday loans in default.[35] This interest cannot be compounded, which means that lenders may only charge interest on the principal balance in default. Lenders may not charge any additional interest on any outstanding interest balance. If a lender contravenes this amendment (by charging more than 2.5% interest per month or compounding interest), the borrower is only required to pay the amount of the initial advance and does not have to pay the cost of borrowing (fees charged for the loan) or any interest.[36] If a borrower has made a payment to a lender that contravenes this amendment, the borrower may demand a refund.[37]

The amendments also set a maximum fee of $25 (a non-sufficient funds/"NSF" fee) for a dishonoured cheque, pre-authorized debit, or for any other form of dishonoured payment.[38] Lenders may only charge this fee once, regardless of how many times a payment has been dishonored under a particular payday loan agreement.[39] Prior to the amendments, the legislation allowed

31. See Henderson, Akrong & Wu, *supra* note 7 at 45.

32. See *COVID-19 Economic Recovery Act, 2020*, SO 2020, c 18. See also "COVID-19: Support for People" (last visited 13 March 2021), online: *Government of Ontario* <www.ontario.ca/page/covid-19-support-people>.

33. SO 2008, c 9.

34. See *COVID-19 Economic Recovery Act, 2020*, *supra* note 32, s 5.

35. See *Payday Loans Act, 2008*, *supra* note 33, ss 32.1(2)–(3).

36. See *ibid*, s 32.1(5).

37. See *ibid*, ss 44(1.1)–(2).

38. See *ibid*, s 33(1)(b).

39. See *ibid*, s 33(1.1).

“reasonable charges” that were supposed to reflect the actual costs incurred by the lender for a dishonoured payment.[40] This rule continues for loans made prior to August 20, 2020.[41]

Similar to the amendments for maximum interest rates, borrowers may also request a refund from a lender who contravenes the maximum fee for dishonored payments (by charging more than $25 or charging the fee more than once).[42] Where the lender contravenes the maximum fee for dishonored payments, the borrower is only liable for the initial amount advanced and is not liable for any cost of borrowing or default charges.

Although the changes were introduced as a relief measure due to COVID-19, the amendments do not specify an end date. A press release from the Ministry of Government and Consumer Services states that the amendment was focused on helping Ontarians “now and in the future”.[43] If permanent, these changes significantly improve protections for payday loan borrowers, but they leave a gap with respect to “installment loans”, which payday lenders have been pushing more as regulation of payday loans has tightened.[44]

Unlike payday loans, installment loans are normally for larger amounts and repaid over a longer period of time. As noted above, Alberta, British Columbia, Manitoba, and Quebec have all enacted high-cost credit product legislation covering installment loans.[45] In Ontario, installment loans have largely evaded regulation; the federal criminal rate of interest is likely the most serious regulation installment loan lenders face. This means that Ontarians who default on an installment loan may be subject to the very same lending practices that legislators prohibited under payday loan legislation.

40. See Henderson, Akrong & Wu, *supra* note 7 at 32.

41. See *Payday Loans Act*, *2008*, *supra* note 33, s 33(5).

42. See *ibid*, s 33(4).

43. Ontario, Government and Consumer Services, News Release, “Ontario Introduces Measures to Cap Interest and Fees on Payday Loans” (17 July 2020), online: <news.ontario.ca/mgs/en/2020/07/ontario-introduces-measures-to-cap-interest-and-fees-on-payday-loans.html>.

44. See Henderson, Akrong & Wu, *supra* note 7 at 45.

45. See *ibid*.

II. Voluntary Credit Relief Programs and Impact on Credit Scores

A. Voluntary Credit Relief: Banks and AFS Providers

The banks introduced financial relief programs in response to the COVID-19 pandemic.[46] The exact details of each relief program varied between the banks. At the height of the pandemic, some of the relief offered by banks included payment deferrals, refunds of interest charges and lower interest rates. At that time, some banks required proof of hardship resulting from the pandemic, which customers could satisfy by showing receipt of CERB or Employment Insurance. If the customer chose to defer payments, interest continued to accrue during the deferral period and became payable when regular payments resumed. Although much of the banks' financial relief programs focused on customers with mortgages, similar relief was available for customers with credit cards, installment loans and lines of credit. The interest rates on installment loans offered by banks are much lower than those offered by AFS providers, but they are not a popular bank product.

Most of these programs ended along with CERB and CESB on September 30, 2020 or were significantly modified to remove deferrals, interest rate adjustments, and interest refunds as available forms of relief. As of publication, the websites of most banks do not offer specific information on available COVID-19 relief programs and instruct customers to contact the bank directly if they are still in need of financial assistance.

Some payday and installment loan lenders introduced financial relief programs similar to those of the banks. The websites of these AFS providers contain few details about the financial relief programs and often require borrowers to contact the lenders directly for more information. Based on information available from their websites, Cash Money and Easyfinancial mention specific relief for customers, in the form of extensions on repayment due dates of a few days (Cash Money)[47] or payment deferrals (Easyfinancial).[48] Money Mart's website states that it is "working to support our customers with

46. See Kevin Akrong, "Covid-19, Access to Basic Banking and Alternative Financial Services" (24 September 2020), online: *Canadian Financial Diaries* <financialdiariesca.wordpress.com/2020/09/24/covid-19-access-to-basic-banking-and-alternative-financial-services>.

47. See "General FAQs: Coronavirus Questions" (last visited 23 January 2021), online: *Cash Money* <cashmoney.ca/faqs/general-questions>.

48. See "COVID-19 Updates" (last visited 23 January 2021), online: *Easyfinancial* <www.easyfinancial.com/goeasy-updates/covid-updates>.

their financial needs" in response to COVID-19.[49] No further information about its relief programs is available and customers are asked to contact Money Mart directly to discuss their options.

Payday and installment loan lenders also have urged customers that have loan protection insurance to file a claim if they have lost their job as a result of the COVID-19 crisis. Loan protection insurance, which is also offered by banks, has long come under criticism as a bad deal for financial consumers.[50] Loan protection insurance is usually offered at the time the loan is approved. What is often unexplained or poorly explained is exactly what the insurance covers and how any benefits will be applied to the customer's outstanding balance. In the case of job loss, loan protection insurance does not usually cover the customer's entire balance, but rather a percentage of the customer's balance for a specified period up to a specified maximum policy amount.[51] Unfortunately, the experience of the pandemic may help banks and AFS providers convince more consumers to purchase this product, incurring higher fees for very little added value.

Conditioning approval of a loan on the borrower's acceptance of loan insurance is known as coercive tied selling. Banks are prohibited by the *Bank Act* from engaging in this practice.[52] Some provinces, such as Manitoba, subject AFS providers to a similar rule.[53] Although Ontario passed legislation allowing for the enactment of regulations prohibiting tied selling, it is not yet in force.[54]

B. Credit Scores and Deferred Payments

As discussed above, both banks and AFS providers offered consumers payment deferral arrangements to help alleviate the financial hardship caused by COVID-19 lockdowns. Although such deferrals may help consumers in the

49. "How Money Mart is Responding to Coronavirus (COVID-19)" (last visited 23 Jan 2021), online: *Money Mart* <moneymart.ca/covid19>.

50. See Erica Alini, "Banks Sell Mortgage Insurance, But Independent Experts Say You Shouldn't Buy It", *Global News* (last modified 1 June 2017), online: <globalnews.ca/news/3488311/mortgage-life-insurance-canada>.

51. See Financial Consumer Agency of Canada, "Credit Card Balance Insurance" (last visited 23 January 2021), online: *Government of Canada* <canada.ca/en/financial-consumer-agency/services/credit-cards/balance-insurance.html>. For more information and an example on how balance protection insurance may be applied in case of job loss, see the sections "Benefits" and "Example 1: Credit Card Balance Insurance Benefits If You Lose Your Bob" (*ibid*).

52. SC 1991, c 46, s 459.1(1).

53. See *The Consumer Protection Act*, CCSM c C200, s 154.2.

54. See *Putting Consumers First Act (Consumer Protection Statute Law Amendment), 2017*, SO 2017, c 5, s 25(6).

short run, the long-term effects are more difficult to assess. Deferrals do not reduce the amount of debt owing and, in some cases, may increase it, if lenders charge "interest on the interest" during the deferral period. They also may have a negative impact on a consumer's credit score. There have been no changes to the way that credit bureaus and credit scores are regulated in response to COVID-19.

Credit scores play a large role in lending decisions. Credit reports and credit scores are the tools lenders use to assess creditworthiness, or the likelihood a borrower will repay debts. The borrower's credit history determines not only whether a lender will extend credit but often determines interest rates and credit limits. Credit reports and credit scores are regulated by the provinces.[55]

Equifax Canada and TransUnion Canada are the two credit reporting agencies, also known as "credit bureaus", responsible for maintaining credit reports in Canada. In response to voluntary COVID-19 relief programs offered by banks and other financial institutions, both agencies released statements that indicate payment deferrals should not have negative impacts on credit reports and scores. TransUnion characterized these payment deferrals as having a "neutral" effect on credit history.[56] Equifax Canada claims that collaborations with industry participants, including lenders and the government, should "neutralize any negative impact that deferred payments might have on borrowers' credit standings".[57] In addition to deferred payment programs, lenders may have offered other reductions in or relief from interest charges. Generally, a lender would not report interest terms to the reporting agencies, thus interest reduction and relief programs will not appear on or affect credit reports.

The onus is likely on consumers to verify that any payment deferrals are accurately recorded on their credit report at both reporting agencies and not marked as missed or delinquent payments. Both Equifax[58] and TransUnion[59] published information on the notations consumers should see on their reports if deferrals are accurately being reported as deferrals, and not as missed payments. As lenders report information to the consumer reporting agencies periodically

55. See e.g. *Consumer Reporting Act*, RSO 1990, c C.33.

56. See "COVID-19 Support Center" (last visited 23 January 2021), online: *TransUnion* <transunion.ca/covid-19> ("11. I signed up for my lender's deferral program and noticed my TransUnion score has dropped. Why?").

57. "COVID + Credit: How to Spot a Deferred Payment on Your Credit Report" (last visited 23 January 2021), online: *Equifax Inc* <www.consumer.equifax.ca/personal/education/credit-report/identity-deferred-payment-credit-report/> [Equifax Inc, "COVID + Credit"].

58. See *ibid*.

59. See TransUnion, s*upra* note 56 ("7. How are payment arrangement or hardship accounts reported to the credit reporting agencies? How will this show up on my credit report?").

(usually in a cycle that corresponds with payment due dates), consumers may need to wait up to thirty days before their credit reports reflect any payment deferrals.[60] Consumers with accounts incorrectly noted as missed payment or delinquent should follow up with the lender, provided that the consumer met and followed eligibility requirements and procedural guidelines. If the lender cannot resolve the issue, consumers should follow the dispute process with the respective reporting agency or both, if the information is incorrect at both agencies.

Although both credit reporting agencies claim deferred payments should not have an effect on consumer credit scores, the fact a customer requested a deferral is still noted on their credit report. Requested deferrals may be a soft factor that lenders use internally to further assess creditworthiness. For consumers with less than stellar credit history, multiple deferral requests may signal financial distress and detract potential lenders. Deferred payments are another data point for lenders: while there may be no effect on consumer credit scores, the same cannot be said of how lenders may use this additional information in assessing credit applications.

III. Credit Repair Loans

Lenders offering credit repair loans, a type of installment loan offered by AFS providers, market to borrowers with poor or no credit history and claim these loans will help the borrower build or repair credit history and savings, or both. In most cases, the loan will do neither. The name "loan" is misleading because borrowers do not receive any loan funds upfront; rather, the lender withholds the principal amount of the loan which is sometimes used to purchase an investment product. After the borrower repays the principal, interest and fees the lender generally provides the borrower with the principal amount of the loan, normally after deducting setup or administrative fees, along with interest earned from the investment product. Canadians experiencing financial strain from the pandemic may be tempted by these loans, but the way they operate often confuses borrowers and does not address immediate financial needs.

With respect to building or repairing credit history, this type of loan may report positive credit history to the credit reporting agencies, provided the borrower makes timely payment on each periodic payment. Despite on-time payments, it is not clear that the borrower's credit history will be "repaired" or that their credit score will increase. First, a credit repair loan does not alter any existing derogatory information on the borrower's credit report, nor does it alter the cumulative effect of such information; lenders will continue to see past derogatory information for as long as the credit reporting agencies

60. See Equifax Inc, "COVID + Credit", *supra* note 57.

maintain such information.[61] Second, credit reporting agencies calculate credit scores by weighing several aspects of the borrowers' report. For instance, Equifax Canada states that payment history is one of the most heavily weighted factors in assessing a credit score[62] which means that even though a borrower is developing positive credit history on one account, negative history on other accounts may still result in a lower credit score. Along with developing positive credit practices (i.e., on-time payments, low utilization of total credit available, avoiding a high number of credit report inquiries, etc.), the passage of time is often instrumental in improving credit history and increasing credit scores.

With respect to building savings, it is likely the borrower will effectively end up saving little to nothing after paying fees and interest, and would be better off developing their own savings plan. Credit repair loan lenders lead borrowers to believe that each periodic payment somehow contributes to their "savings"; in actuality, the borrower is simply repaying the principal of the loan. The Financial Consumer Agency of Canada (FCAC) has warned borrowers against these types of loans, noting that they often carry high interest rates.[63] Several news reports attest to the high fees borrowers may incur: in one instance, a borrower reported more than $2,500 in fees and interest for a $2,300 credit repair loan.[64] Although this product may be attractive to borrowers, especially those facing difficulty accessing credit during the pandemic, it is likely inappropriate to meet their immediate financial needs.

Conclusion

The ongoing COVID-19 pandemic has exposed and exacerbated existing socio-economic inequalities. In this essay, we have tried to highlight a few issues, such as regulation of cheque cashers, payday lenders, and credit bureaus, which otherwise may not attract much attention, academic or otherwise, but for Canadians living on low incomes can mean the difference between meeting

61. Reporting periods vary between the credit reporting agencies and derogatory information may be reported for up to seven years. See *Consumer Reporting Act*, *supra* note 55, s 9(3).

62. See "How Are Credit Scores Calculated?"(last visited 23 January 2021), online: *Equifax Inc* <consumer.equifax.ca/personal/education/credit-score/how-are-credit-scores-calculated>.

63. See Financial Consumer Agency of Canada, "Consumer Alert: What You Need to Know When Getting Help to Pay off Debt or Repair Your Credit" (last modified 16 August 2017), online: *Government of Canada* <canada.ca/en/financial-consumer-agency/services/debt/debt-help/alert-debt-credit-repair.html>.

64. See Erica Alini, "Pay $4,300, Get $1,750 Back After 3 Years. One Man's Cautionary Tale About 'Savings Loans'", *Global News* (last modified 12 February 2020), online: <globalnews.ca/news/6228663/savings-loans-credit-repair-loans-canada>.

daily expenses or falling short. Our hope is that the pandemic can help to generate political will to work towards creating a regulatory system for financial products that works for all Canadians.