

Payday Loans Unit

Prêts sur salaires

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Registrar, Payday Loans Act, 2008

Bulletin #1 – January 2010

Item 1 - Due Date of Loan – this is a correction of the statement that appeared in Notice #2 issued November 12, 2009.

Issue – Does a payday loan agreement need to end on a date where the borrower is regularly due to receive income?

In Notice #2 it was indicated that the due date of a loan must be a date upon which a borrower regularly receives income. This is incorrect. What is required is that the date upon which an agreement ends not occur before the next day upon which the borrower is regularly due to receive income following the day upon which the agreement is entered into. This does not prevent a term that ends after the day upon which the borrower was next regularly due to receive income.

Reference sec 34, reg 98/09

Item 2 - Further Advances of Money Prior to Expiry of an Existing Agreement.

Issue – Once a payday loan agreement has been entered into, can the amount of the loan be increased even if the end date of the agreement is not altered?

Answer – Once a payday loan agreement has been entered into and the funds advanced the agreement cannot be amended, changed or otherwise altered so as to provide for the lending of additional funds without contravening the Act.

Discussion – The effect of section 35 of the Act is to prohibit a lender from entering into a new payday loan agreement until an existing agreement is paid in full. Section 29(2) of the Act requires that the amount borrowed be advanced no later than the time at which the agreement is entered into. Since it is required that the funds be advanced at the time the agreement is entered into it is not then possible to advance additional funds at some later time under the same agreement. Necessarily then, any changes to an agreement that result in the advancement of

funds also result in a new agreement, the existence of which is prohibited by section 35 unless the first agreement has been paid in full.

Reference sec 35 of the Act, sec 29(2) reg 98/09

Item 3 – Charges/Interest on Defaulted Loans

Issue – What amounts may be recovered by a lender on a defaulted loan?

Answer – A lender is only entitled to recover reasonable charges in respect of legal costs associated with collecting or attempting to collect the debt and reasonable costs incurred as a consequence of a dishonoured cheque or other instrument.

Discussion - Amounts paid to a court or public officer, costs awarded by a court, assessed costs and amounts agreed to in a settlement will always be seen as reasonable. Charges for services made by a lawyer in addition to any amount flowing from an order of a court will not be seen as reasonable and cannot be imposed on a borrower. Where a lawyer provides services but no action is commenced the amount billed by the lawyer will not necessarily be seen as reasonable. Such amounts must be viewed in the context of the amount of work involved not the value of the result to the client. As the amount that can be recovered is dependent on the costs being incurred, specifying an amount payable on default is prohibited. Similarly, as borrowers cannot contract out of the protection of the Act, any agreement contrary to the provisions of the Act is void.

“Reasonable costs incurred as a consequence of a dishonoured cheque or other instrument” means the actual cost charged to the lender by the financial institution plus some reasonable amount for the lenders administrative time. Presently I view a reasonable cost associated with a dishonoured cheque to be in the vicinity of \$50 which includes both the fee charged by the bank and an allowance for administrative costs. Again, borrowers cannot contract out of this protection and any agreement to the contrary is void. Note that no instrument may be negotiated or an attempt made to negotiate the instrument more than once if it will result in a charge to the borrower. There is an obligation on a lender to know whether a borrower will incur an NSF fee prior to attempting to negotiate an instrument.

Default charges are defined in section 1 of the Act as not including interest. Accordingly, the charging of interest is permitted subject to the requirements of the law.

As charges on default are limited to legal costs and NSF charges any provision in an agreement that requires a borrower to pay a default charge or any similar charge is prohibited.

Reference sections 1 & 33 of the Act, section 31 of reg 98/09

Item 4 – Meaning of a Payday Loan

Issue – Is a loan of more than \$1500 where the period of the loan is longer than 62 days, and the loan advanced based on the receipt of a post-dated cheque, a preauthorized debit or a future payment of a similar nature a payday loan?

Answer – Yes, the Act defines “payday loan” as an advancement of money in exchange for a post-dated cheque, a preauthorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card.

Discussion – Neither the amount of a loan nor the period of time for which a loan is given are determinative of whether a loan is a payday loan. As long as the money is advanced in exchange for one of the forms of security described and is not otherwise excluded, the loan is a payday loan and all of the provisions of the Act apply with one exception. If the loan is for more than \$1500, and the duration of the loan is more than 62 days then the maximum allowable cost of borrowing provision does not apply. However, all of the other provisions of the Act and regulations apply including those relating to the form of the agreement, default charges, collection practices, early repayment, etc.

Reference sections 1 & 32 of the Act

Item 5 – Methods of Collection – Contact

Issue – What constitutes contact when attempting to collect a defaulted loan?

Answer – Contact occurs when the lender speaks with the borrower, leaves a voice mail for the borrower or sends an e-mail to a borrower. Contacting a borrower more than three times in a seven day period is a contravention of the regulations.

Discussion – Section 32(1) of the regulations defines contact as including voice mail and e-mail. Consequently those activities constitute contact and are counted in the calculation of the number of contacts that occur in any 7 day period. A seven day period starts to run on the date of the first contact and concludes on the end of the sixth day following the date of the first contact.

Leaving a message with some other person to pass on to a borrower is not counted as contact with the borrower. It is however seen as contact with the person with whom the message is left. As section 26(2) of the regulations prohibits contact with a borrower’s spouse, family members, neighbours, friends, acquaintances etc. leaving a message with any person who is a member of one of the categories is prohibited and therefore a contravention of the regulation if it occurs.

Reference sections 26 & 32 of reg 98/09


Item 6 – Contacting Borrowers at the their Place of Employment

Issue – Can borrowers be contacted at their place of employment.

Answer – Yes

Discussion – There is no prohibition against contacting a borrower at their place of employment. However there are provisions found in sections 26 and 32 of the regulations that may affect that contact. First and consistent with the discussion in Item 5, actually speaking with the borrower or leaving a voicemail for the borrower constitutes contact. More important however is the consideration of whether the placing of a call to a place of employment can be seen as contact with the employer. If in attempting to contact the borrower any person at the place of employment is spoken with and the conversation involves more than asking to speak with the borrower, then the conversation constitutes contact with the employer and is subject to the provisions relating to contact with the employer. Note that with respect to contact with an employer, after a payday loan is entered into contact is prohibited unless the borrower has given their consent. The simple act of asking that a message be given to the borrower would constitute a contravention of the regulation.

References – section 26 & 32 of reg 98/09




Item 7 – Other Services

Issue – To what extent can other services like insurance, payment guarantees and the like be offered in conjunction with a payday loan.

Answer – No other service can be offered in conjunction with a payday loan and further, no information obtained through the application for a payday loan can be used in the provision of another service.

Discussion - Section 27 of regulation 98/09 specifically prohibits the use of any information obtained in the process of providing a payday loan from being used in connection with any other service. The effect of the prohibition means that a payday loan agreement cannot include the provision of another service nor can a payday loan agreement be referred to in an agreement for a separate service. Similarly a borrower cannot be required to subscribe to any other service as a condition of entering into a payday loan agreement.

Reference – section 27 of reg 98/09



Item 8 – Cost of Devices/Maximum Allowable Cost of Borrowing

Issue – Can a borrower be charged for receiving their loan by way of a device?

Answer – If a lender delivers the amount borrowed only by way of device not giving the option to the borrower to receive the funds either in cash or by cheque, then any charge associated with the device is part of the cost of borrowing the maximum of which cannot exceed \$21 per hundred dollars borrowed. Note that the decision to receive a loan by way of a device where other options for the receipt of the funds exists must be an informed decision on the part of the borrower.

Discussion – Cost of borrowing is defined as the total of the amounts a borrower is required to pay under a payday loan agreement. Accordingly if a borrower is obliged to receive an advance of funds by a device then any charge for the device that is payable by the borrower by definition is part of the cost of borrowing.

Reference – Sec 1 of the Act

Item 9 – Inspector’s Powers

Issue – What are the powers of an inspector?

Answer – An inspector may enter and inspect at any reasonable time the business premises of a licensee, other than any part of the premises used as a dwelling. While carrying out an inspection, an inspector,

- a. is entitled to free access to all money, valuable, pre-authorized debits and authorizations for future payments, documents and records of the licensee that are relevant to the inspection;
- b. may use any data storage, processing or retrieval device or system used in carrying on business in order to produce information that is relevant to the inspection and that is in any form; and
- c. may, upon giving a receipt for them, remove for examination and may copy anything relevant to the inspection, including any data storage disk or other retrieval device in order to produce information, but shall promptly return the thing to the licensee.

Reference – Sec 47 of the Act

Item 10 – Cancellation of Agreements

Issue – How is the period of time in which an agreement can be cancelled calculated?

Answer – A borrower can cancel his/her agreement up until the end of the second day that the lender is open for business following the day upon which the agreement is delivered to the borrower and the funds advanced.

Discussion - Section 30 of the Act provides that a borrower can cancel an agreement up to the end of “the second day after the time that the lender complies with subsections 29 (1) and (2)”. Where the lender is not open for business on the second day then the right to cancel can be exercised on the next day the lender is open for business. Because the period of time is described as a number of days and not a number of hours the time period does not start running until the day following the day upon which subsections 29(1) and (2) are complied with.

Reference – Sec 30 of the Act

