

Financial Services Flash

AIRD & BERLIS LLP
Barristers and Solicitors

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Lenders May Soon Need a License to Issue Loans Under \$5000

The Ministry of Consumer Services (the “Ministry”) has issued proposed regulatory amendments to the *Payday Loans Act, 2008* (the “Act”), which are scheduled to come into force on October 31, 2013. The effect of the amendments, as currently drafted, will be to dramatically increase the scope of the Act’s application, including to all loans under \$5,000.

Specifically, the amendment stipulates that the Act will apply to a loan under which a lender extends credit to a borrower so that the borrower may make one or more draws for up to an aggregate amount of principal and to which one of the following criteria applies, except where such loan is secured against real property:

1. The aggregate amount is \$5,000 or less.
2. The borrower is not entitled to make a draw without first obtaining authorization, approval or permission of any kind from the lender or any other person, whether or not there is a charge for obtaining the authorization, approval or permission.
3. The borrower is required to make repayments of the principal amount of the loan or payments of any other amounts under the loan on a schedule that corresponds to the days on which the borrower is regularly due to receive income.
4. The amount that the borrower is required to pay in any 30-day period under the loan,

except for the last such period, includes one or more repayments totalling at least 10 per cent of the principal amount of the loan.

It would appear that the intention behind the proposed amendments was to expand the scope of the Act to capture those lenders who are, in effect, payday lenders but who have avoided the Act’s application by creatively structuring loans to fall outside the Act’s definition of “payday loan”. However, the proposed amendments, as currently drafted, are incredibly far-reaching and would seem to apply to any loan that meets the above criteria, regardless of the type of lender, the interest rates charged, the scheduled dates of repayment, or the whether the loan is already governed by, and compliant with the terms of, the *Consumer Protection Act, 2002*.

The consequences of being governed by the Act are significant for lenders of such loans as follows:

- Lenders must be licensed by the Ministry.
- Advances must be delivered to the borrower upon entering into the agreement, or at an earlier date.
- Lenders cannot receive or demand payment of any portion of the cost of borrowing until the end of the term of the agreement.
- Lenders cannot impose default charges against a borrower, other than reasonable charges for legal costs in attempting to

collect a required payment or reasonable charges reflecting the costs that the lender incurs because a cheque or other instrument of payment provided by the borrower has been dishonoured.

- Lenders cannot impose prepayment charges or penalties upon borrowers for the prepayment of an outstanding balance.
- Lenders cannot enter into concurrent or replacement loan agreements unless at least 7 days have passed since the borrower paid the full outstanding balance of the first agreement or the lender has received proof from the borrower that the full outstanding balance of the first agreement has been paid.

Failure to comply with any of the above requirements will result in the borrower being liable for the principal amount of the loan only and not for the cost of borrowing.

The Ministry will be receiving comments regarding the proposed amendments until September 30, 2013.

Comments can be submitted online at <https://www.ontariocanada.com/registry/email.jsp;jsessionid=wHXWXgzghM4oPGHyCELgMEx?action=display>

Comment or by mail to:

Ministry of Consumer Services
Consumer Policy and Liaison Branch
Consumer and Business Policy Unit
777 Bay Street, 5th Floor
Toronto, ON M7A 2J3
Attention: Luisa Tmej, Team Lead

The members of the Financial Services group at Aird & Berlis LLP have a wide array of knowledge and expertise to advise clients on their submissions to the Ministry with respect to the proposed amendments and related matters. For more information, please contact any member of the Financial Services group. Details can be found on our [Financial Services, Insolvency and Restructuring web page](#), by clicking on [members](#).

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