

CREDIT CONTRACTS: Signatory Solidarity

Final Report
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Union des consommateurs, *Strength through Networking*

Union des consommateurs (UC) is a non-profit organization comprised of several ACEFs (*Associations coopératives d'économie familiale*), the *Association des consommateurs pour la qualité dans la construction* (ACQC), and individual members.

UC's mission is to represent and defend the rights of consumers, with special emphasis on the interests of low-income households. Its activities are based on values cherished by its members: solidarity, equity and social justice, and improving consumers' economic, social, political and environmental living conditions.

UC's structure enables it to maintain a broad vision of consumer issues while developing in-depth expertise in certain programming sectors, particularly via its research efforts on the emerging issues confronting consumers. Its activities, which are nation-wide in scope, are enriched and legitimated by its field work and the deep roots of its member associations in the community.

UC acts mainly at the national level, by representing the interests of consumers before political, regulatory or legal authorities or in public forums. Its priority issues, in terms of research, action and advocacy, include the following: household finances and money management, energy, issues related to telephone services, radio broadcasting, cable television and the Internet, public health, food and biotechnologies, financial products and services, business practices, and social and fiscal policies.

Introduction

Money is one of the main sources of conflicts among couples. So to avoid misunderstandings, preserve personal independence or for any other reason, some couples choose to manage their money separately. Others, to simplify matters, opt for joint management of their assets: they open a joint account in a financial institution, jointly take out loans for various purchases, even for a residence. This is the most common way that couples share responsibility for financial products. In other cases, to be helpful, some people also make a joint commitment with a third party regarding a credit product, by standing surety (guarantor, endorser) for a credit application made by a relative or friend.

Many financial products exist for which it is possible to share liability, and there are many ways to do so. Various credit products can easily be contracted jointly: credit cards and limits, personal loans, Accord D hybrid products... Different joint commitment options can also be adopted, from co-signing to suretyship (guarantee, endorsement). Jointly holding a credit product can present advantages; but are the signatories (signers) fully aware of the various liabilities involved?

Budget advisors (budget advisers) regularly deal with persons struggling with financial problems related to personal credit products contracted jointly, thus raising issues worthy of study. Are the liabilities incurred by a joint commitment regarding a credit product adequately explained and understood? Does the regulatory framework for such agreements adequately protect consumers? Do credit issuers comply in full with those regulations? Are co-contractors (cocontractors) always informed about operations made on the account by a co-signer (cosigner), or about line of credit increases requested or granted? Do co-signers know they can withdraw from joint liability, and if so, how they can? If a co-signer defaults in some way on a joint credit agreement, what is the impact on all the co-signers' credit history? Can consumers easily find answers to their questions on the subject?

Those issues are of course all the more confusing to consumers because the co-signers' relations when a joint commitment is made are generally harmonious. Understandably, while concluding a contract or adding a jointly liable party, many co-signers don't spontaneously address problems that may arise eventually.

Our research aimed at identifying the information generally held by those who sign joint credit commitments.

The first part of our report presents an overview of the concepts and issues involved, mainly on the basis of our review of the literature. We will distinguish the various aspects of joint credit and their different applications in civil law and common law systems.

The second part attempts to identify the specific legislation for joint credit commitments and endorsements. We took several initiatives to obtain a more complete portrait of any information held by those who sign this type of commitment.

We surveyed numerous financial institutions — in person, by telephone and on their websites — to collect standard credit agreements, examine their solidary (joint and several) liability provisions, and verify how joint or solidary liability information is provided to consumers.

We also visited the websites of government organizations that consumers may consult to learn about their rights and remedies. We sent questionnaires to the government organizations and to consumer protection organizations to verify whether they received consumer complaints and to learn their position on the subject.

In addition, we held discussion groups to verify consumers' knowledge and understanding of their obligations, and whether the information provided meets the actual needs of consumers considering a joint commitment.

The third part reports on the results of those surveys, and the fourth presents the results of our analysis of the contracts. It should be noted that our research did not address co-signed mortgage products and prepaid card payment options.

This Union des consommateurs study addresses solidary debtors in a general manner. An important part of the literature pertains to the specific effects on more-vulnerable segments of the population, such as female spouses and the elderly. That is one of the aspects not addressed in our study¹.

¹ Marc Lacoursière, Professor at the Faculty of Law of Université Laval, who evaluated our report, pointed out this omission and mentioned authors to whom the reader can refer on the subject. "First, an important part of the literature pertains to the effect of debts on female spouses – also called 'sexually transmitted debts'" (our translation), an expression coined by some anglophone feminist authors and subsequently by Quebec researchers, including Law Professor Louise Langevin (Université Laval) and Sociology Professor Hélène Belleau (Centre Urbanisation Culture Société de l'INRS). Female spouses, usually disadvantaged financially, can become more so in those circumstances, particularly due to a separation or divorce. The problem experienced by other vulnerable persons, such as the elderly, should also be mentioned. Financial abuse of the elderly is unfortunately a reality that lawmakers have difficulty addressing (see the work of my colleagues Raymonde Crête and Christine Morin; the latter is director of the Antoine-Turmel Research Chair on legal protection of the elderly).

1 Joint and Several Credit Commitments: Context and Definitions

1.1 General Presentation

Although Canada fared better than many other countries in the wake of the 2008 recession, the increasing debt burden of Canadian households continues to be worrisome. That debt burden constitutes an ever-growing financial concern for many Canadian households.

Solidary financial liability first appeared formally around 1850, with Frédéric Guillaume Raffeisen's creation of "aid societies," which were to serve as a model for credit unions granting credit to members of a community (mainly farmers and artisans), who then became "*solidarily liable from their assets for the credit union commitments*"²:

*La finance solidaire n'est rien d'autre qu'un échange équitable entre un citoyen épargnant qui dispose de ressources monétaires et un autre citoyen qui a besoin d'emprunter pour réaliser un projet personnel ou professionnel. Mais plutôt que de rester dans l'acte de charité par le don, la finance solidaire instaure une relation créancier/débiteur qui ne transforme pas le débiteur en assisté et le créancier en despote*³.

Over time, access to credit has continued to broaden, and joint credit agreements have followed the same trend. Various surveys reveal that joint and several commitments regarding credit products are extremely widespread and have become a financial tool used more and more widely by couples and families.

That is explained by many couples' willingness to pool and jointly manage their resources⁴.

It is also explained by the fact that the addition of signatures facilitates access to credit. Indeed, before granting credit, creditors generally check a would-be borrower's credit file and summarily evaluate his financial capacity to repay the loan. Given that one of the main criteria is the applicant's income, a joint credit application raises his chances — as well as the loan amount — due to the addition of two or more incomes and thus the borrowing capacity.

² DUGHERA, Jacques. *La finance solidaire: histoire et pertinence*. Les éditions des Récollets - L'encyclopédie du développement durable, No. 103, November 2009. Our translation.

³ *Ibid.*

⁴ A 2014 study by the Financial Planning Standards Council reports that 61% of Canadian couples (excluding Quebec) pool their finances.

Financial Planning Standards Council, *How Is Financial Stress Affecting Canadians?* 2014 http://www.fpsc.ca/docs/default-source/default-document-library/fp_infographic_leger.pdf?sfvrsn=2 (page consulted on May 15, 2017).

1.2 Review of Credit Products (Personal Loan, Credit Card, Line of credit, Credit Card Loan)

According to a 2013 survey by TD Bank, the three financial products that stable Quebec couples share most often are a joint account (55%), a mortgage (53%) and a credit card (40%)⁵. An article published by Les Affaires in 2016 commented on the risks of such joint commitments:

Ce qui complexifie les séparations aujourd'hui, c'est que les couples sont plus que jamais financièrement interdépendants. [...] Quand ça tourne au vinaigre, bonjour l'embrouille ! [...] Un sondage effectué en 2004 par le Groupe Investors indiquait que 46 % des personnes divorcées avaient plus de problèmes financiers ou que leur situation financière était pire depuis leur séparation⁶.

In Canada, the majority of consumers use credit cards as a payment tool rather than as access to credit. The Canadian Bankers Association promotes the advantages of that payment instrument and method:

A credit card is a convenient and flexible payment tool that can be used at millions of locations in more than 200 countries around the world. Credit cards are:

Accessible – as unsecured credit, you don't need to have a collateral to back up the loan. And the loan is interest free from the time of purchase until the end of the billing period.

Convenient – credit cards can be used 24 hours a day, seven days a week, every day of the year and allow you to instantly pay for what you need.

Safe – credit cards offer fraud protection with zero liability to the consumer and coverage for purchases if the item is damaged, stolen or not delivered within 90 days.⁷

The credit card agreement is a variable credit contract, i.e. for a credit amount granted in advance, which when repaid becomes available again for any new use, up to the pre-established limit.

⁵ TD Bank Group. *How to take finances from mine and yours to ours, at any age*. Newsroom, October 28, 2013. <http://td.mediaroom.com/2013-10-28-How-to-take-finances-from-mine-and-yours-to-ours-at-any-age>.

⁶ DIOTTE, Simon. *Vous séparer sans vous déplumer*, Les Affaires, May 14, 2014. <http://www.lesaffaires.com/mes-finances/planification/se-separer-sans-vous-deplumer/568876> (page consulted on October 20, 2016).

⁷ Canadian Bankers Association. *Issue Brief — Credit Cards: Statistics and Facts*, May 16, 2017 <http://www.cba.ca/banks-and-consumers?l=en-us> (page consulted on April 15, 2017).

More specifically: “A credit card is a card that lends you a limited amount of money to pay for goods and services. You must pay the money back by a certain date⁸.” Beyond that date, the unpaid balance will carry interest, but the minimum payment required by the issuer at the end of the (monthly) billing period will generally be minimal. This tool is phenomenally popular nowadays. In fact, 95% of Canadian adults hold a credit card⁹. This payment method is by far the most commonly used in online commercial transactions. A 2016 survey conducted by Abacus Data indicates that over 58% of Canadians repay their credit card balance in full each month. Among those who don't repay their balance in full, 15% say they repay it in full most of the time and 47% say they pay an amount much greater than the required minimum¹⁰.

The Office de la protection du consommateur defines a contract for the loan of money as follows:

Un contrat de prêt d'argent vous permet d'emprunter une somme d'argent, moyennant des frais que l'on appelle “frais de crédit”.

Le prêt est généralement consenti par une institution financière, soit une banque ou une caisse populaire. Il peut aussi être consenti par une compagnie de financement ou un prêteur sur gages.

Vous êtes libre d'utiliser la somme empruntée comme vous le voulez. Certains contrats de crédit sont liés à un bien déterminé, mais ce n'est généralement pas le cas du contrat de prêt d'argent.

Si vous utilisez la somme d'argent empruntée pour acheter un bien, vous êtes le propriétaire de ce bien. Le contrat [de prêt] ne rend pas le prêteur propriétaire du bien que vous vous procurez. Le prêteur pourrait par contre prendre un bien en garantie du prêt¹¹.

As opposed to variable credit agreements, a contract for the loan of money applies to a predetermined amount, not to a reusable credit amount. A contract for the loan of money sets a term as well as conditions for progressive repayment of the principal (capital). The use of the amount loaned is generally agreed to in advance with the lender, which may require guarantees.

⁸ Government of Canada, *Choosing a credit card*, March 12, 2017. <https://www.canada.ca/en/financial-consumer-agency/services/credit-cards/choose-credit-card.html> (page consulted on May 15, 2017).

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Office de la protection du consommateur (OPC). *Prêt d'argent*, latest update June 29, 2016. <http://www.opc.gouv.qc.ca/consommateur/bien-service/credit-recouvrement-finance/prest-dargent/contrat-de-prest-dargent/definition-prest-argent/> (page consulted on April 10, 2017).

There is a type of credit that may be considered a hybrid of personal loan and credit card: a money loan granted from a credit card. Those loans, with the same main features as those of personal loans (term, conditions of progressive repayment by instalments) are granted in the form of a second line of credit on a credit card. This “*Buy now, pay later*”¹² method of financing goods or services is frequently offered by merchants. The loan extended, without reproducing the essential features of credit extended under a variable credit agreement, may be considered a preapproved line of credit, with credit access being available, subject to validation by the issuer, as the principal is being repaid.

This type of loan is subject to a second limit on a credit card, so the amount granted and available on the credit card is not affected¹³.

A line of credit is also a variable credit agreement. As with the credit card (but at a much lower interest rate), the credit amount extended may be used in whole or in part at the debtor’s discretion. The minimum amount of the monthly instalment required on a line of credit generally corresponds only to payment of the monthly interest.

All those types of credit can be contracted jointly by two or more signatories.

Contracting jointly for a credit product may present various advantages, but also entails specific responsibilities for the co-signers. Are consumers fully aware of this? Do they adequately receive and understand the information about the responsibilities entailed by a joint commitment regarding a personal credit product?

The Office of Consumer Affairs’ website mentions that questions about co-signing loans or credit cards, for example, are among those frequently asked by consumers, but it does not specify the problems raised by consumers¹⁴.

The budget advisors who work in our member groups have told us that too often, people who jointly or solidarily conclude a credit agreement are unaware of their commitment’s scope and their rights. The advisors receive many requests for assistance or information on the subject – notably from ex-spouses who show up at their offices with questions, debts, various difficulties related to a credit agreement (particularly regarding credit cards or limits) jointly signed without knowledge or understanding of all the implications.

The co-signers’ liabilities thus seem poorly known, understood and explained. The co-signers lack the resources to settle possible eventual problems, and don’t generally know the remedies available.

¹² OPC. *Prêt d’argent – Exemples de prêts d’argent*, latest update June 29, 2016.

<http://www.opc.gouv.qc.ca/consommateur/bien-service/credit-recouvrement-finance/pre-dargent/contrat-de-pre-dargent/exemple-pre-argent/> (page consulted on April 10, 2017). Our translation.

¹³ Desjardins. *Accord D Financing*. <https://www.desjardins.com/ca/personal/loans-credit/credit-cards/accord-d-financing/index.jsp> (page consulted on April 10, 2017).

¹⁴ Innovation, Science and Economic Development Canada, *Common consumer questions*. November 2, 2012. <https://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02478.html> (page consulted on May 15, 2017).

1.3 Problems with Joint and Several Credit Agreements

Often, the advantages of jointly signing a credit product, as perceived by consumers, appear more evident than the drawbacks, which become known only when a problem arises.

This way of contracting for credit with a co-signer's assistance seems very attractive at first to people who don't have a good credit history and could not on their own have access to a personal loan or a credit card or limit. But as mentioned above, co-signing is often also preferred by couples who want to share the management of their finances.

To co-sign a loan is to make a commitment to the lender that one will repay the loan if the other signatory does not do so, whatever the agreement between the co-signers. Indeed, as a general rule, the co-signers make themselves equally liable for all the responsibilities and obligations under the credit agreement, so each co-signer guarantees repayment of the amount in full.

As opposed to jointly signing for credit to be used by or to the advantage of two or more co-signers, an endorser's signature does not give the endorser that type of direct advantage. He has the satisfaction of helping a loved one, a friend or a relative, but generally will not benefit from the amounts granted. He will be no less liable for repaying those amounts if a borrower fails to do so.

Credit agreements (and contracts that include credit) generally have a provision known as *termination of the term benefit*, which stipulates that a payment default, notably, causes the debtor to lose the right to the repayment periods granted to him under the contract. If the contract has more than one signatory, all the co-signers will of course lose the right to the term benefit:

La déchéance du terme signifie que si l'emprunteur n'honore pas les versements envers le créancier, celui-ci peut promptement demander à l'emprunteur d'acquitter entièrement le prêt, même si la date d'échéance du terme n'est pas encore échue.

Advenant le cas d'un défaut de paiement, d'une faillite ou une proposition de consommateur de l'emprunteur principal, la déchéance du terme s'applique également au cautionnaire. Par conséquent, le prêteur peut également se retourner vers le cautionnaire et exiger le plein paiement du solde de la dette. Il est à noter qu'une ordonnance de libération de la faillite du débiteur principal ne libère pas une personne qui, au moment de la faillite, était co-emprunteur ou endosseur. En outre, à titre d'endosseur ou co-emprunteur, vous serez entièrement responsable d'acquitter ladite dette envers le prêteur auquel vous avez garanti le prêt. À défaut d'entente, ce créancier pourra entamer des recours juridiques allant jusqu'à la saisie de salaire ou saisie de biens¹⁵.

¹⁵ LEBLANC, Pierre et al. Être endosseur, mais à quel prix? Groupe Leblanc, Syndic Inc., June 24, 2012, <http://www.dettes.ca/eviter-endettement/etre-endosseur-mais-a-quel-prix> (page consulted on May 15, 2017).

A co-signer or endorser of a credit application may in turn encounter problems with a future credit application, may even be refused credit or be charged a higher interest rate, if payments have been made irregularly; this type of default affects both the credit file (credit history) and the credit rating¹⁶. Even if the payments have been made rigorously, the joint signature will affect the co-signers' credit file, particularly in terms of their borrowing capacity, since all the loans for which a signatory is liable are recorded in his credit file, thus increasing his debt ratio.

There is another way of jointly having credit, whereby the respective liabilities might seem vaguer. A credit card holder may simply add to his account the name of a new authorized user. Since this is simply the addition of a user to an existing account, financial institutions generally don't check the new user's income or credit¹⁷.

Against all expectations, adding a new user may entail joint liability, even if that user did not sign the credit application:

While many Canadian credit card companies hold the primary cardholders solely responsible for card debt, the Financial Consumer Agency of Canada cautions some credit card agreements state even authorized users are liable for the card balance, even if they didn't sign the application. Read your agreement carefully¹⁸!

As we have seen, there can be a wide variety of problems related to co-signing personal credit products.

Before reporting the results of our field surveys, we will review and analyse the legal terms and concepts applicable to our research subject and will examine the regulations under consumer protection legislation in Quebec and Ontario.

¹⁶ *Ibid.*

¹⁷ Tangerine. Forward Thinking. <https://www.tangerine.ca/forwardthinking/spending/should-new-couples-get-joint-credit-cards> (page consulted on May 15, 2017).

¹⁸ *Ibid.*

2 Overview of Legislative Frameworks

2.1 Civil Law and Common Law Regulations

First it should be noted that we conducted our fieldwork in two provinces, i.e. Quebec and Ontario, so that our field surveys took place in various branches of the financial institutions located in those two provinces, and discussion groups were organized with consumers in Toronto and Montreal. Accordingly, it is important to point out that the terminologies regarding joint commitments and their regulatory frameworks differ under civil law and common law.

To that effect, we will try to distinguish between the concepts of joint obligations and solidary obligations in civil law from “corresponding” concepts in common law – “joint,” “several” and “joint and several.”

2.1.1 In Civil Law (Quebec)

In the French tradition, Quebec civil law has developed concepts and categories of obligations, each obligation having its own regulatory framework and application. It is useful to identify the distinctions between those categories in order to detect and interpret correctly the contractual provisions that we studied during our survey of financial institutions, and that we will discuss later in our report.

a) Concept of co-borrower

Serge Braudo’s online *Dictionnaire juridique de droit privé* defines a co-borrower as “a person who has committed with one or more other persons to pay a debt or provide a service for the benefit of one or more creditors common to those persons¹⁹.”

¹⁹ BRAUDO, Serge. *Codébiteur - Définition*, in *Dictionnaire du droit privé*, Paris, France, 2016. <http://www.dictionnaire-juridique.com/definition/codebiteur.php> (page consulted on September 6, 2016). Our translation.

b) “Joint” and “solidary” obligations

The *Civil Code of Québec* qualifies as “complex” the different categories of obligations, while taking into account the number of persons bound by a contractual obligation.

A contractual obligation may have a number of creditors, and Quebec legislation divides such obligations into two categories: “joint” and “solidary”²⁰.

c) Joint debtors

Joint debtors join in a legal act or situation²¹ toward a common creditor.

For example, if A and B together borrow money from C in the same contract, A and B are necessarily joint debtors because they are obligated in concert to the same creditor.

The *Civil Code of Québec* gives the following definition:

*1518. An obligation is joint between two or more debtors where they are obligated to the creditor for the same thing but in such a way that each debtor may only be compelled to perform the obligation separately and only up to his share of the debt*²².

Each joint debtor is thus bound only by his own portion of the debt, so that the creditor – C in our example – may require from either debtor – A or B – only the latter’s portion (article 1518, par. 1 C.C.Q.). Therefore, a creditor who claims the total amount due from a co-borrower whose obligation is only joint may be opposed the benefit of division (article 1528 C.C.Q. a contrario).

d) Solidary debtors

As opposed to debts only contracted jointly, solidarity gives a creditor the right to require of a single co-borrower the performance of the whole obligation²³, as provided by article 1523 C.C.Q.:

1523. An obligation is solidary between the debtors where they are obligated to the creditor for the same thing in such a way that each of them may be compelled separately to perform the whole obligation and where performance by a single debtor releases the others towards the creditor.

²⁰ Case law and legal literature address another type of solidarity, that of *in solidum* obligations – a concept of imperfect solidarity originating from French tort law (see the Supreme Court of Canada ruling, *Prévost-Masson v. General Trust of Canada*, [2001] 3 SCR 882, which discusses the subject) <https://scc-csc.lexum.com/scc-csc/scc-csc/fr/item/1929/index.do> (page consulted on May 15, 2017); we will not dwell on that category, which is not relevant to our research.

²¹ LLUELLES, Didier and Benoît MOORE. *Droit des obligations*, Montreal, Éd. Thémis, 2006, p. 1451 and fol.

²² *Civil Code of Québec* (hereinafter C.C.Q.) <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/CCQ-1991> (page consulted on May 15, 2017).

²³ LLUELLES and MOORE, p. 1455.

Lender C may thus, if the obligation is solidary, require from A or B the total amount due, and not only their respective portion.

Solidarity gives the creditor the advantage of reducing the risks of insolvency (or of refusal to repay) by one or more debtors, by making the solvent co-borrowers incur the risks (article 1538, par. 1 C.C.Q.)²⁴.

Under the general rule provided in article 1525 C.C.Q., solidarity is not assumed; it must result from a legal provision or stipulation in the contract²⁵.

Debtor solidarity has been considered the exception by case law and the literature²⁶ because that ideal guarantee for the creditor to be reimbursed the total amount due entails conversely a greater burden for the debtors who commit themselves in this manner, since each can be obliged individually to repay the total amount due to the creditor. Therefore, a creditor who alleges solidarity must provide proof of an express stipulation of solidarity²⁷.

e) Joint indivisible obligation

Without being solidary, an obligation may still be indivisible. Article 1519 C.C.Q. provides that:

1519. An obligation is divisible by operation of law, unless it is expressly stipulated that it is indivisible or unless the object of the obligation, owing to its nature, is not susceptible of division either materially or intellectually.

If an obligation is indivisible, each debtor may, as though it is solidary, be bound to perform the whole obligation (1520 C.C.Q.).

²⁴ BAUDOUIN, Jean-Louis and Pierre-Gabriel JOBIN. *Les obligations*, 6th ed., by Pierre-Gabriel Jobin with the collaboration of Nathalie Vézina, éditions Yvon Blais, Cowansville, 2005, p. 631 and fol.

²⁵ "Solidarity between debtors is presumed, however, where an obligation is contracted for the service or operation of an enterprise," according to the second paragraph of article 1525 C.C.Q.

²⁶ LLUELLES and MOORE, p. 1465 and fol.

²⁷ Vallière c. St-Pierre, REJB 2003-50700, par. 4 (C.A.).

f) Suretyship

Often, a lender refuses to grant credit unless he obtains sufficient guarantee of repayment. A pledge and a mortgage are the usual guarantees. A lender may also accept as a guarantee the commitment of a third party obligating itself to repay the debt should the borrower default. This type of guarantee is known as “suretyship” and the party thus obligating himself is usually called a “surety.”

Le « cautionnement » est une sûreté personnelle par laquelle une personne nommée « la caution » s'engage à l'égard d'une troisième dite « le bénéficiaire du cautionnement » à payer la dette du débiteur principal, « la personne cautionnée », dans le cas où cette dernière faillirait à ses engagements²⁸.

Suretyship is defined in C.C.Q. article 2333 as a contract whereby a person, the surety, binds himself toward the creditor to perform the obligation of the debtor if the latter fails to do so.

Because the surety guarantees repayment of the debt, legislation protects him by various mechanisms such as the benefit of discussion (the surety's right to require that the creditor address himself first to the primary debtor to recover his loan) and the benefit of division (the surety's right to require that the creditor demand from him only his portion if there is a plurality of sureties)²⁹.

Like solidarity, “Suretyship is not presumed; it is effected only if it is express,” under C.C.Q. article 2335.

It should be noted that “Suretyship may not be extended beyond the limits for which it was contracted” (2343 C.C.Q.). Moreover, the C.C.Q. states the following in article 2362:

Where suretyship is contracted with a view to covering future or indeterminate debts, or for an indeterminate period, the surety may terminate it after three years, so long as the debt has not become due, by giving prior and sufficient notice to the debtor, the creditor and the other sureties.

²⁸ BRAUDO, Serge. *Caution / Cautionnement - Définition*, Dictionnaire du droit privé, Paris, France, 2016, <https://www.dictionnaire-juridique.com/definition/caution-cautionnement.php> (page consulted on May 15, 2017).

²⁹ BOUSQUET, Jean-Pierre. “Le contrat de cautionnement” in *Collection de droit 2009-2005*, volume 5 *Obligations et contrats*, éditions Yvon Blais, Cowansville, p. 323 and fol.

2.1.2 In common law

The *Bulletin d'information sur les notions d'obligation conjointe et d'obligation solidaire* of the Canadian Association of Legal Translators draws a parallel between civil law and common law terms to describe the various types of obligations that can bind co-borrowers.

Summary table of the terminology³⁰

Français	Anglais
Obligation conjointe (divisible)	Several obligation (common law)* Joint obligation (C.c.Q.)
Obligation solidaire	Joint and several (common law) Solidary obligation (C.c.Q.)
Obligation <i>in solidum</i>	--
Obligation (conjointe) indivisible	Joint obligation (common law) Indivisible obligation (C.c.Q.)

a) Joint liability

The parallel between the civil law and the common law terms can be misleading: a joint obligation in common law is not “*conjointe*” but “*solidaire*,” through “*indivisibilité*” in the case of a joint obligation and through “*solidarité*” in the case of a joint and several obligation.

b) Joint and several liability

The *Oxford Dictionary of Law* defines “joint and several” as follows:

Together and in separation. If two or more people enter into an obligation that is said to be joint and several, their liability for its breach can be enforced against them all by a joint action or against any of them by individual action³¹.

Canadian legislation appears to translate the concept of “*responsabilité solidaire*” by the terms “*joint and several liability*” and “*solidary liability*”. Ontario legislation uses the same terms.

³⁰ Canadian Association of Legal Translators. *Bulletin d'information sur les notions d'obligation conjointe et d'obligation solidaire*. The document, in PDF format, is available online at <http://www.acjt.ca/medias/63/bulletin-info-no-3-obligation-conjointe.pdf> (document consulted on February 2, 2017).

³¹ Oxford Dictionary of Law (5th ed.) 2002.

For example, the Canada Cooperatives Act³² states in section 337.5 (1):

337.5 (1) Defendants and third parties referred to in subsection 337.2(1) are jointly and severally, or solidary, liable for the damages awarded to a plaintiff who is an individual or a personal body corporate and who (our underlining)

337.5 (1) Les défendeurs et mis en cause visés au paragraphe 337.2(1) sont solidairement responsables de l'indemnité accordée au demandeur dans les cas où ce dernier est un particulier ou une personne morale privée qui : (our underlining)

In Ontario, the Negligence Act³³ states the following:

1. Where damages have been caused or contributed to by the fault or neglect of two or more persons, the court shall determine the degree in which each of such persons is at fault or negligent, and, where two or more persons are found at fault or negligent, they are jointly and severally liable to the person suffering loss or damage for such fault or negligence, but as between themselves, in the absence of any contract express or implied, each is liable to make contribution and indemnify each other in the degree in which they are respectively found to be at fault or negligent. (Our underlining)

1. Si deux ou plusieurs personnes ont, par leur faute ou par leur négligence, causé des dommages ou contribué à en causer, le tribunal détermine leurs parts respectives de responsabilité. Les personnes dont le tribunal a constaté la faute ou la négligence sont solidairement responsables envers la personne qui a subi la perte ou le dommage; en ce qui concerne leur responsabilité mutuelle, à défaut de contrat entre elles, même implicite, chaque personne est tenue de verser une contribution aux autres et de les indemniser selon la part de responsabilité que le tribunal lui a attribuée. (Our underlining)

As mentioned above, solidarity is the exception under Quebec civil law, which specifies that solidarity is not generally assumed. There does not seem to be a similar rule in common law, whereby the most common “joint” commitments are solidary.

Despite the theoretical interest of those rules, the field research, as we will see, demonstrates that credit agreements appear to provide solidarity stipulations by default and call co-borrowers’ obligations “joint and several” in English.

³² C.C.A. 1998, ch.1.

³³ R.S.O. 1990, chap. N.1 sec.1 (Negligence Act).

2.1.3 In Canada

The Financial Consumer Agency of Canada (FCAC), which seeks to ensure that federally regulated financial institutions comply with consumer protection measures and works to raise consumers' awareness of their rights and responsibilities, defines as follows the various types of consumer commitments regarding credit cards:

Primary cardholders

You're the primary cardholder if you apply for a credit card and your name is on the credit card agreement. [...]

As a primary cardholder, you:

- *may add and remove additional cardholders and authorized users to your card at any time*
- *are responsible for paying your credit card balance, that is, the money you owe on your credit card*

Any purchases made by an additional cardholder or authorized user will appear on your monthly statement. If you're the primary cardholder, you're ultimately responsible for paying for these purchases.

Additional cardholders and other users

If you're an additional cardholder or authorized user on a credit card, you get a credit card that is linked to the primary cardholder's account. This card allows you to make purchases and use the account like the primary cardholder. [...]

If you're an additional cardholder, keep in mind:

- *the credit card account belongs to the primary cardholder*
- *you may not be responsible for paying back any money owing on the credit card account*
- *any purchases you make using the card won't help you build your credit history*

Co-borrowers and co-applicants

Some credit card issuers will allow you and another person to apply for a credit card together. Co-applicants are called co-borrowers in credit card agreements. Co-borrowers will have access to the credit card account and are equally responsible for any money owing on the account.

If you're a co-borrower and you're dealing with a federally regulated financial institution such as a bank, you must receive certain disclosure information about the account.

Guarantors

Someone who normally would not qualify for a credit card may be able to get one with the help of a guarantor.

A guarantor does not have access to the credit card account but is ultimately responsible for any unpaid debts on the account³⁴.

It should be noted that the FCAC does not address concepts of solidarity. The definitions state that all the borrowers are responsible for payment of the whole balance, except for the “Additional cardholders and other users,” who may or may not be. We will see in fact that some issuers also stipulate solidarity for this type of users.

The information sheet published by the FCAC in 2010 is more complete on this point:

Who is liable?

Anyone who signs the application form can be liable for any outstanding balance. This applies whether or not you incurred the total debt.

For some credit cards, the terms may state that authorized users (secondary cardholders) can also be held responsible for any outstanding balances, even if they don't sign the credit card application. Read the credit agreement carefully and make sure that you fully understand who is responsible. If you aren't sure, ask the lender. If the credit card issuer considers...

All card users responsible as joint borrowers (sometimes called authorized users or secondary cardholders)

That means...

- each user can be held fully responsible for any outstanding balances;*
- each user has the right to receive the credit card agreement and monthly statements³⁵.*

We will discuss later this right of each joint borrower to receive the agreement and monthly statements.

³⁴ Financial Consumer Agency of Canada (FCAC). *Joint credit cards*, March 6, 2017. <https://www.canada.ca/en/financial-consumer-agency/services/credit-cards/joint-credit-card.html> (page consulted on May 15, 2017).

³⁵ FCAC. *Credit cards: understanding your rights and your responsibilities*, 16 pages, June 2010, p. 13. The document, in PDF format, is available online at http://publications.gc.ca/collections/collection_2010/FCAC-fcac/FC5-23-2-2010-eng.pdf (document consulted on June 10, 2017).

2.2 Consumer Protection Legislation

2.2.1 In Quebec

Quebec's first consumer protection law dates back to 1971³⁶; it "*addressed the most urgent situations, such as the social ill of over-indebtedness generated by credit contracts*"³⁷. In 1978, Quebec lawmakers undertook a vast reform of that law to cover broader areas, i.e. consumer contracts and company practices. The objectives of consumer protection and of rebalancing contractual relations have influenced the development of common right with respect to obligations and contracts as it now appears in the Civil Code of Québec.

Accordingly, the Civil Code now contains provisions expressly pertaining to consumer contracts (defined in article 1384 C.C.Q.), general principles for references to external clauses, and for illegible, incomprehensible or abusive clauses inserted in consumer contracts (art. 1435 to 1437 C.C.Q.).

The *Consumer Protection Act* (CPA)³⁸ now also contains specific rules for credit agreements, with credit being defined as "the right granted by a merchant to a consumer to perform an obligation within a term in consideration of certain charges" (sec. 1 f)).

All credit agreements (including for the loan of money, for variable credit and involving credit [sec. 66 CPA³⁹]), if concluded between a merchant and a consumer, will thus in principle be subject to application of the CPA, according to its section 2.

The CPA requires that this type of contract be recognized in writing and imposes a precise disclosure of all of the consumer's obligations. The Act requires a certain formalism in the production of a credit agreement (sec. 23 to 33 CPA): notably, the agreement must be written clearly and legibly.

Section 122 CPA prohibits issuance of a new credit card with the same number except at the consumer's written request as part of the variable credit agreement.

In addition to mandatory mentions in annexes, the *Regulation respecting the application of the Consumer Protection Act* specifies some information that must be included in credit card agreements (for example, about liability limits, the right to statements, a grace period before interest is applied); in line of credit agreements (for example, the right to statements, a grace period); and in variable credit agreements containing a clause of forfeiture of benefit of the term (the debtor's rights following receipt of a notice of forfeiture)⁴⁰.

³⁶ Consumer Protection Act, S.Q. 1971, c. 74.

³⁷ L'HEUREUX, Nicole. *Droit de la consommation*, 5th ed., éditions Yvon Blais, Cowansville, 2000, 566 pages, p. 8.

³⁸ Consumer Protection Act, CQLR c P-40.1. <https://www.canlii.org/en/qc/laws/stat/cqlr-c-p-40.1/latest/cqlr-c-p-40.1.html> (page consulted on May 15, 2017).

³⁹ The website Services Québec, on the page *Contrats de crédit*, takes care to add, to the list of types of credit agreements regulated by the Consumer Protection Act, money loan agreements concluded from a credit card. <http://www4.gouv.qc.ca/FR/Portail/Citoyens/Evenements/consommateur-renseignement-plainte/Pages/contrats-credit.aspx> (page consulted on May 15, 2017).

⁴⁰ Regulation respecting the application of the Consumer Protection Act, P-40.1, r-3, sections 35 and 36.

Issuance of a credit card to the consumer constitutes the financial institution's signature, and use of the card constitutes the consumer's signature.

The *Consumer Protection Act* contains no specific provision for joint credit agreements. But its section 7 provides that a consumer's surety, if he is a consumer himself, benefits from some of the rights conferred to the primary debtor. Notably:

- The creditor must give a duplicate of the signed contract to the surety, who is bound to perform his obligations only from the moment he is in possession of a duplicate of the contract;
- The surety benefits from the contract's protections when the creditor invokes forfeiture of benefit of the term;
- If the money lender and the merchant paid with the loan principal regularly work together, the surety may plead against the money lender any ground of defence against the merchant.

.2.2 In Ontario

Part VII of the *Consumer Protection Act, 2002*⁴¹ contains several provisions for credit agreements:

- Section 66 defines the credit agreement as "*A consumer agreement under which a lender extends credit or lends money to a borrower. (...).*" Under the Act, the borrower is "*a consumer who, as a party to a credit agreement, receives or may receive credit or a loan of money from the other party or who indicates an interest in becoming such a party, but does not include a guarantor; ('borrower')*";
- Section 68 provides that a consumer who receives a credit card from an issuer is considered to have concluded a credit agreement from the moment he has used the card for the first time;

⁴¹ *Consumer Protection Act, 2002*, SO 2002, c 30. <https://www.canlii.org/en/on/laws/stat/so-2002-c-30-sch-a/129440/so-2002-c-30-sch-a.html> (page consulted on May 15, 2017).

- Section 70 provides the “Consequence of non-disclosure”:

A borrower under a credit agreement is not liable to pay the lender

- a. the cost of borrowing under a credit agreement if the borrower receives no statements required by this Part; or*
- b. as part of the cost of borrowing, any amount in excess of the amounts specified in the statements that this Part requires to be delivered to the borrower in respect of the agreement.*

- Section 62 of the *Regulation*⁴² lists certain information that must be disclosed in credit agreement application forms (interest rate, cost of borrowing, other rights, charges and penalties, etc.).

The Ontario Act excludes guarantors from the definition of “borrower.”

An overview of the consumer protection provisions applicable in Quebec and Ontario reveals that, despite specific rules for document formalism and despite the obligation to disclose certain information to consumers, nothing clearly covers the situation of co-borrowers or co-signers of a credit agreement.

⁴² *Ontario Regulation 17/05*, Consumer Protection Act 2002, Chapter 30, Schedule A1. <http://canlii.ca/t/69wkm>, (page consulted on May 15, 2017).

2.3 Federal Legislation

The Financial Consumer Agency of Canada (FCAC) reminds consumers, on a page titled *Credit cards: right to information*, that federally regulated financial institutions must include “Key features of the card agreement, such as the card’s interest rates, fees and other charges, (...) clearly set out in an information box at either the beginning of the application or a related document that you receive at the same time⁴³.”

That information box does not contain information on joint liability.

Under the *Cost of Borrowing (Banks) Regulations*, a creditor must also give all the co-borrowers the written statement that is required by those regulations, that is included in or accompanies the credit agreement, and that contains the key information and information box⁴⁴, unless each borrower has agreed verbally or in writing that the statement be provided to either of the co-borrowers.

Section 6 (1) of the *Cost of Borrowing (Banks) Regulations* reads as follows:

6 (1) For the purpose of subsection 450(1) of the Act, a bank that grants credit must, in writing, provide the borrower with a disclosure statement that provides the information required by these Regulations to be disclosed.

It is important to understand that the above section covers all the information required by the regulations. Therefore, the monthly statements required under sections 10(3) (for lines of credit) and 12(5) (for credit cards) in the *Cost of Borrowing (Banks) Regulations* are also included in the documents required under section 6.1 of those regulations; as with the written statement and the information box, monthly statements must be provided both to co-borrowers and the primary borrower. Each borrower will thus be able to waive his receipt of monthly statements.

⁴³ FCAC. *Credit cards: right to information* <https://www.canada.ca/en/financial-consumer-agency/services/rights-responsibilities/rights-credit-cards/right-to-information.html> (page consulted on May 15, 2017). Those obligations derive from sections 11 and 12 of the *Cost of Borrowing (Banks) Regulations*, SOR/2001-101 adopted under the *Bank Act*.

⁴⁴ *Cost of Borrowing (Banks) Regulations*, SOR/2001-101 adopted under the *Bank Act*, sec. 6.1. <http://www.laws.justice.gc.ca/eng/regulations/SOR-2001-101/page-2.html> (page consulted on June 15, 2017).

3. Surveys

3.1 Surveys of Government and Consumer Protection Organizations

3.1.1 Methodology

To complete the portrait of the main problems that consumers have experienced with joint credit products and with the information available to them, we first examined the websites of government and consumer protection organizations that consumers are likely to consult for knowledge of their rights and remedies.

Then, to determine the number and nature of complaints received about joint credit products, we sent those organizations questionnaires asking them for information and comments.

3.1.2 Study of Government and Consumer Protection Organization Websites

The Financial Consumer Agency of Canada (FCAC)⁴⁵ offers, under the heading “Foire aux questions,” information about the rights and responsibilities of credit co-signers:

Si vous êtes coemprunteur ou garant d'un prêt, vous assumez la responsabilité de rembourser le prêt, quel que soit l'état de votre relation avec l'emprunteur. Par conséquent, si l'emprunteur principal n'est pas en mesure de rembourser le prêt, l'institution financière a le droit de vous demander de le faire conformément aux conditions de l'accord de prêt initial⁴⁶.

On its webpage titled “Know Your Responsibilities as a Joint Borrower,” the FCAC advises the consumer to be clearly aware of the terms of the contract he is signing and to request clarifications and explanations from the lender in case of doubt, in order to clearly understand who is responsible for reimbursing the balance.

⁴⁵ The Financial Consumer Agency of Canada (FCAC) seeks to protect and inform consumers regarding financial services. Under the heading on credit cards, the FCAC website provides consumers with information, tools and resources regarding credit cards.

⁴⁶ FCAC. *Services and information*, August 14, 2013. <https://www.canada.ca/en/services/finance.html> (page consulted on March 20, 2017). The French passage quoted is no longer available online.

The section reminds co-signers that they have a right to receive the same information as the lender.

For example, if you co-signed for a credit card with another person (or a group of people), the lender must give each of you copies of the credit agreement and the monthly statements, unless you consent either verbally or in writing (on paper or electronically) to waive this right. This way, you can keep track of the status of the loan – whether the other borrower is making payments or if the terms and conditions have changed⁴⁷.

Regarding co-borrowers, the FCAC offers useful information on the right to disclosure:

If you borrow money or take out a credit card jointly with another person and you are dealing with a federally regulated financial institution (FRFI), you are entitled to receive disclosure information.

What you have a right to receive:

When a FRFI agrees to provide a loan or credit card to you and one or more other people, known as joint borrowers, all of you have a right to receive:

- information that outlines the interest and other costs you will have to pay*
- the same statements that the other borrowers receive on an ongoing basis*
- If you borrow money or take out a credit card jointly with another person and you are dealing with a federally regulated financial institution (FRFI), you are entitled to receive disclosure information.*

Waiving your right to receive disclosure

You can waive your right to separate disclosure in two ways:

- all joint borrowers consent verbally or in writing to allow only one borrower to receive disclosure documents*
- two or more joint borrowers consent verbally or in writing to allow another borrower to receive disclosure documents instead of them. Those who did not agree continue to get disclosure documents. When one or more joint borrowers give verbal consent to the FRFI to waive their right to receive the information, the financial institution must give confirmation in writing to those who provided their consent verbally. The financial institution may provide this information to you electronically if you consent to receive required information in electronic format rather than as paper documents⁴⁸.*

⁴⁷ FCAC. *Know Your Responsibilities as a Joint Borrower*, March 2012. The document, in pdf format, is available online at http://publications.gc.ca/collections/collection_2013/FCAC-fcac/FC5-8-21-2012-eng.pdf (document consulted on March 20, 2017).

⁴⁸ FCAC. *Joint borrower disclosure: rights and responsibilities*, February 3, 2017. <https://www.canada.ca/en/financial-consumer-agency/services/rights-responsibilities/rights-credit-loans/rights-joint-borrower-disclosure.html> (page consulted on May 24, 2017)

The Office de la protection du consommateur website⁴⁹, under the heading *Connaître les obligations de l'établissement financier*, provides the following information:

Un établissement financier ne peut pas, si vous ne lui avez pas demandé clairement :

- vous émettre une carte de crédit;*
- augmenter la limite de votre crédit;*
- émettre une carte de crédit portant le même numéro que la vôtre, par exemple à votre conjoint.*

Vous avez avisé l'établissement financier par écrit que vous vouliez annuler votre carte de crédit? Il ne peut pas la renouveler ou la remplacer⁵⁰.

Également, l'établissement financier ne peut pas augmenter la limite de crédit sans que le demandeur ne fasse pas une demande claire à ce sujet⁵¹.

On the website of the Ombudsman of Banking Services and Investments, the *Case Studies* section⁵² summarizes a case that illustrates well the weight of joint and several liability. The dispute concerned a co-signer's withdrawal of funds after the plaintiff had applied for a reduction of the joint line of credit. The plaintiff had been advised by the financial institution "that it may take up to five business days for the paperwork to go through but that the changes had been made." To his great surprise, "One week later the branch called the client and stated that over \$4,000 had been withdrawn from the personal line of credit by a co-signer one day after the customer's visit to the branch."

The OBSI concludes as follows:

Our investigation confirmed that, under the personal line of credit agreement used by the bank, if more than one person has signed the agreement the obligations of those people are joint and several. Each person is therefore fully responsible for the account balance and the bank does not owe compensation for any withdrawals⁵³.

⁴⁹ The Office de la protection du consommateur (OPC) is a Québec government organization. It mainly aims at helping consumers make informed choices and informing them of their rights, obligations and remedies in case of problems with a merchant.

⁵⁰ OPC. *Cartes et marges de crédit — Connaître les obligations de l'établissement financier*, July 23, 2014.

<http://www.opc.gouv.qc.ca/consommateur/bien-service/credit-recouvrement-finance/carte-marge-credit/conseils/obligation-etablissement-financier/> (page consulted on May 15, 2017).

⁵¹ OPC. *Cartes et marges de crédit — Déterminer une limite de crédit raisonnable*, July 23, 2014.

<http://www.opc.gouv.qc.ca/consommateur/bien-service/credit-recouvrement-finance/carte-marge-credit/conseils/limite-credit/> (page consulted on June 13, 2017).

⁵² The Ombudsman of Banking Services and Investments (OBSI) handles unresolved disputes between consumers and participating banking and investment services firms.

⁵³ OBSI. *Good to Know: Case Studies — Funds Withdrawn by Divorced Individual's Partner*, 2009.

<https://www.obsi.ca/en/case-studies/banking-services/view/loan-divorced-couple-ii> (page consulted on May 15, 2017).

In the section *Consumer Protection Ontario*, the website of the Ministry of Government and Consumer Services (MGCS)⁵⁴ provides information on consumer rights. Despite the existence of a section titled *Credit and debt collection*, we found no information on joint (in effect, joint and several or solidary, here and elsewhere in this report) commitments regarding credit.

Nor did we find information relevant to our research on the website of the Public Interest Advocacy Centre⁵⁵, despite the existence of a section on financial services.

The Coalition des associations de consommateurs du Québec has published on its website an article titled *Endosseur de prêts : Attention !*, under the heading *Info-consommation-Crédit*, and advising caution to consumers thinking about becoming third party sureties:

Si l'emprunteur ne rembourse pas, l'institution financière exigera de l'endosseur qu'il respecte les termes mensuels du prêt pour lequel il a signé. De quoi mettre à l'épreuve une solide amitié ! Alors réfléchissez-y deux fois avant d'accepter de dépanner un ami ou de demander à quelqu'un de signer et endosser votre emprunt⁵⁶.

Option consommateurs⁵⁷, in a study published in August 2006⁵⁸, expressed concerns about the absence of an obligation of disclosure to co-borrowers. We found nothing about this issue on the organization's website after the *Cost of Borrowing (Banks) Regulations* enacted changes in 2009 to the disclosure obligations, mentioned above, of federally regulated financial institutions.

Our overview of the main websites of government and consumer protection organizations reveals that a diligent consumer who seeks information on joint commitments regarding a credit product may find useful information and cautions about certain important issues surrounding the parties' liability.

To complete the portrait of major problems that consumers have experienced with joint commitments related to a personal credit product and that government and consumer protection organizations have reported, we conducted a survey of those organizations.

Accordingly, we prepared a set of questionnaires we sent those organizations to ask them if they are aware of problems that consumers may encounter in signing a joint credit agreement, and if so, what solutions they offer consumers who contact them about those problems. Details of our survey undertakings will be presented in the next sections.

⁵⁴ The Ministry offers essential programs, services and products, including consumer protection.

⁵⁵ Better known by its English name, the Public Interest Advocacy Centre (PIAC) is a non-profit organization that provides legal and research services on behalf of consumer interests. <https://www.piac.ca/> (page consulted on June 20, 2017).

⁵⁶ Coalition des associations de consommateurs du Québec (CACQ), *Endosseurs de prêts : attention !*, February 4, 2015. <https://defensedesconsommateurs.org/category/articles/credit/> (page consulted on May 16, 2017).

⁵⁷ Option consommateurs (OC) is the ACEF Centre de Montréal. In addition to the usual ACEF work, OC acts province-wide.

⁵⁸ OC, *Rendre la législation bancaire canadienne plus efficace*, August 2006, 41 pages. The document, in PDF format, is available online at http://www.option-consommateurs.org/documents/principal/fr/File/rapports/services_financiers/oc_legislation_bancaire_canadienne_200608.pdf (document consulted on May 17, 2017).

3.1.3 Sending of Questionnaires

To better know the number and nature of complaints received about joint credit products, we prepared a set of questionnaires⁵⁹ we sent to government and consumer protection organizations. We sent those questionnaires first in November 2016 and, given the low response rate, we resent them in May 2017, with much better results. But not all the organizations responded.

It should be pointed out that despite their similarity, the questionnaires were customized. For example, the questionnaire addressed to the Ombudsman of Banking Services and Investments (hereinafter OBSI) aimed mainly at obtaining answers regarding solutions offered by that organization to consumers who had experienced problems with a joint personal credit product or a suretyship. Another questionnaire was designed specifically for government consumer protection agencies such as the Financial Consumer Agency of Canada (FCAC), the Ministry of Government and Consumer Services (MGCS) and the Office de la protection du consommateur (OPC). We also wanted to learn the positions of those government bodies on current or desirable legislation.

As for the non-government consumer protection organizations (Public Interest Advocacy Centre [PIAC], Coalition des associations de consommateurs du Québec [CACQ], Option consommateurs [OC]), our member organizations, and counselling associations (Canadian Association of Credit Counselling Services, Credit Counselling Society, Credit Counselling Canada and Ontario Association of Credit Counselling Services), an identical questionnaire was sent to all of them, mainly to learn the findings of their field experience.

The questionnaire invited participants to respond in writing or be interviewed by phone. All the responses we received were in writing.

⁵⁹ The questionnaires are available in annexes 1 to 4:

Annex 1 = Questionnaire addressed to the Financial Consumer Agency of Canada

Annex 2 = Questionnaire addressed to government consumer protection agencies

Annex 3 = Questionnaire addressed to consumer protection organizations

Annex 4 = Questionnaire addressed to the Ombudsman for Banking Services and Investments

3.1.4 Questionnaire Responses

a) **The Ombudsman of Banking Services and Investments (OBSI)**

The OBSI e-mailed us its response, informing us that its database revealed only a few examples, none very relevant to our research.

We sent a summary of our research's findings, while inviting comments from the OBSI. In a subsequent phone conversation, the OBSI assured us that its comments about our findings would follow by e-mail. As of this writing, we still have not received those comments.

b) **Government consumer protection agencies (Ministry of Government and Consumer Services [MGCS], Financial Consumer Agency of Canada [FCAC] and Office de la protection du consommateur [OPC])**

The questionnaire aimed at learning how government consumer protection agencies apply the laws to better inform or protect consumers concluding a joint credit agreement. We wanted information on aspects such as: the number and types of complaints or information requests received, the existence of awareness-raising, educational or other programs pertaining to joint commitments, etc.⁶⁰

Office de la protection du consommateur (OPC)

The OPC told us that last year (April 2015 – March 2016), the organization received 312 complaints about credit issues – 1.1% of total complaints received. But the OPC received 1,363 credit information requests. Unfortunately, *“The Office does not compile statistics specifically on joint commitments”*⁶¹.

“Concernant les types de conseils/d’information que l’OPC offre aux consommateurs qui signalent un manque d’information dans le cadre de la conclusion d’un contrat de ce type ou qui demandent de l’information quant à l’application de la loi (démarches possibles, droit applicable, recours, etc.) :

L’Office invite les consommateurs à s’adresser aux tribunaux pour que ces derniers clarifient les droits du consommateur et s’assurent de la bonne foi du créancier. Afin de ne pas laisser les consommateurs à eux-mêmes dans cette démarche, l’Office dirige les consommateurs vers des ressources de soutien juridique, notamment les centres de justice de proximité, ainsi que vers des associations vouées à la défense des droits des consommateurs. L’Office suggère aussi aux consommateurs de consulter un avocat.”

⁶⁰ See the questionnaire in Annex 2.

⁶¹ Our translation. The two paragraphs in italics quote the answers received.

While the OPC reports having taken numerous steps to inform consumers about credit (the section “*Credit, collection and personal finances*” of the OPC website was among the most visited, with 350,000 consultations last year), no specific undertaking was made regarding joint commitments. The OPC also indicates a number of radio news bulletins and shows about credit, and an online activity titled “*What influences my credit rating?*” addressed to Secondary 2 students and to “*teachers, who can use it for speaking about credit in the classroom.*” The OPC estimates that consumers have adequate knowledge of co-signing and suretyship regulations.

To our question about awareness-raising undertakings addressed to merchants, the OPC again refers to its website, whose section “*Rights and obligations of moneylenders*” informs merchants about advertising regulations and prohibited practices. But here again, “*no undertaking or action pertaining specifically to joint commitments.*” (Our translation of passages in italics in this and the preceding paragraph.)

Financial Consumer Agency of Canada (FCAC)

Given that the FCAC does not follow up on complaints about the subjects mentioned in our questionnaire, it could not answer our questions, unfortunately. Generally, complaints about credit agreements offered by a financial institution monitored by the FCAC are examined by the Supervision and Enforcement divisions. If the complaint concerns an issue not under the FCAC’s purview, the complainant is redirected to the appropriate regulatory body. With regard to the awareness-raising and education of financial institutions, the FCAC told us this was part of its mandate as a regulatory body. The FCAC added “*The work that is done is on an institution-by-[institution] basis, and is driven by complaints and other information that we receive.*”

Regarding undertakings to educate the public, the FCAC provided us with educational material on a variety of subjects, including joint commitments, for example “*Credit cards – rights and responsibilities*” and “*Credit and loans – rights and responsibilities.*”

We also sent the FCAC a summary of our research findings to obtain comments from the organization. Despite the interest it expressed, our request for a phone interview was not followed up.

Ministry of Government and Consumer Services (MGCS)

The MSGSC informed us that it does not handle the issues pertaining to our research, so that it could not give us “*reliable input.*”

c) Non-government Consumer Protection Organizations (Public Interest Advocacy Centre [PIAC], Coalition des associations de consommateurs du Québec [CACQ], Option consommateurs [OC]), member ACEFs of Union des consommateurs

Our request to the CACQ was sent to its members. The Service budgétaire et communautaire (SBC) of Chicoutimi and the Centre de recherche et d'information en consommation (CRIC) of Port-Cartier responded. Option consommateurs also agreed to answer the questionnaire.

Service budgétaire et communautaire (SBC) of Chicoutimi

The SBC reports no complaints about joint obligations, nor information or awareness-raising undertakings regarding consumer obligations related to the various types of joint commitments. Accordingly, the SBC did not answer the other questions.

Option consommateurs

Without being able to quantify them, Option consommateurs (OC) mentions almost all our suggestions among joint commitment concerns most often raised by consumers: differences between the various types of commitments (co-signing, endorsement, surety, etc.); application and/or scope of the law; right to terminate the commitment; registrations with the credit bureau; obligations of the co-signer/endorser/surety/etc.; right of the co-signer/endorser/surety/etc. to receive notices in case of payment default by the primary holder.

To that list, OC adds: *“Difficulté de mettre fin à une obligation conjointe, notamment lors de séparation. Des consommateurs nous ont indiqué que des institutions financières refusaient de mettre fin à la responsabilité d'un des signataires, pour le futur, dans le cadre de contrat de crédit variable.”*

OC recommends that consumers who consult them on the subject verify the type of obligation that binds them under their contract with a financial institution. The organization also provides *“de l'information générale sur les lois applicables, de même que sur les processus de plainte interne des institutions financières, lorsque la situation le justifie. Le cas échéant, nous les informons également des impacts que peuvent avoir les défauts de paiement sur le dossier de crédit.”*

OC estimates that consumers have inadequate knowledge of their obligations, rights and remedies with regard to this type of commitments.

OC elaborated most on the pros and cons of Quebec legislation. Here are those comments in their entirety:

“Dans le cas des cautions, il n’y a pas de règle particulière obligeant le créancier à informer la caution en cas de défaut de paiement du débiteur principal. Il n’y a pas non plus d’encadrement clair en ce qui a trait à la nature des informations qui peuvent être transmises aux agences d’évaluation de crédit. Par exemple, peut-on affecter négativement le dossier de crédit de la caution en cas de défaut de paiement du débiteur principal avant même d’avoir informé la caution et lui donner l’opportunité de s’acquitter de l’obligation?”

De la même façon, il est difficile pour un des cosignataires de se retirer d’un contrat de crédit variable pour le futur, particulièrement lorsqu’il y a un solde dû. Il serait approprié que la loi puisse le permettre. Ainsi, un cosignataire devrait pouvoir mettre fin unilatéralement à sa responsabilité pour le futur des sommes empruntées par l’autre signataire. (Il va sans dire que la responsabilité concernant les sommes déjà dues demeurerait, que des préavis raisonnables peuvent être envisagés, de même que la possibilité pour le créancier de réévaluer le niveau de risque du contrat en raison du retrait d’un des débiteurs)”

Centre de recherche et d’information en consommation (CRIC) of Port-Cartier

To the question about the subjects of complaints or information requests it receives regarding joint commitments, the CRIC also mentions first the cases of spousal separation, which confront consumers with a lot of issues regarding the continuance of obligations. Questions about suretyship obligations are also frequent. And consumers wonder about the consequences of bankruptcy on a co-contractor of a loan, credit card or line of credit.

The CRIC refers consumers to its own documentation and informs them to the best of its knowledge, and redirects them to the websites of the Office de la protection du consommateur, Éducaloi, the FCAC or any other organization likely to have relevant answers.

To inform consumers, the CRIC uses its website, Facebook and Twitter, as well as the traditional media. The organization also publishes an information bulletin.

To improve existing legislation for joint commitments, the CRIC recommends the adoption of a universal regulatory framework that would apply to all institutions offering joint commitments. The organization also insists on supervision and sanctions: *“De plus, instaurer un mécanisme de vérification permettant le respect de la réglementation incluant une conséquence financière et/ou organisationnelle à l’établissement faisant fi de cette loi.”*

ACEF members of Union des consommateurs

All our member Associations coopératives d'économie familiale (ACEFs) answered our questionnaire⁶². Given that those associations meet many consumers, in budget consultations, debt workshops or personal finance management, they have encountered many consumers who had questions or problems following a joint signature or who wanted adequate information before jointly entering into a credit agreement.

All those associations report complaints or information requests from consumers, from a few to several hundred in the last five years. Consumers' questions pertained most often to: the co-signer's obligations (mentioned by all respondents); the right to terminate the joint commitment (seven mentions); registrations with the credit bureau (six mentions); and the law's application and/or scope (six mentions). Almost all the other concerns we suggested as answers were raised: the merchant's disclosure obligations and the co-signer's right to receive notices in case the credit limit is increased (4 times each); the difference between the various types of commitments and the co-signer's rights and remedies (three times each).

In response to a request for more-specific examples, almost all the associations mentioned cases of spousal separations, when several problems seem to arise from joint signatures. One ACEF mentioned that couples generally don't know that agreements or judgments in the event of separation or divorce (which determine who will be liable for repaying joint debts) are ineffective against the creditor toward whom the parties had contracted a joint obligation. Some ACEFs mentioned the concerns of consumers about their credit file being affected by unforeseen consequences. The fact that credit limits can be increased at the request of a single co-signer, and the fact that payment delays can accumulate without a signatory being notified, will both affect all the co-signers' credit history without the one who was not informed being able to react in time.

Questions were also raised about the fate of a joint commitment in the event of a bankruptcy.

Our members are concerned about the difficulty some consumers have experienced, because of an outstanding balance, to terminate solidarity for future debts. Others mentioned a perverse aspect of co-signing: if a consumer must rely on a surety, the eligible credit amount (calculated by adding incomes) risks being too great for the capacity of at least one signatory, for example the surety, if the endorsement requirement is not due to a lack of income, but to a poor credit history.

The ACEFs intervene in multiple ways, such as information on existing rights, coaching and references, for those who already face a problem; and preventive information for those who obtain information prior to a commitment. The ACEFs raise the issue of joint commitments during workshops with consumers, but it has also been addressed in brochures, bulletins, etc.

⁶² I.e., the following ACEFs: Est de Montréal, l'Île-Jésus, Grand-Portage, Nord de Montréal, Appalaches-Beauce-Etchemins, Estrie, Lanaudière, Montérégie-est, Rive-Sud de Québec and Sud-Ouest de Montréal.

Most of the ACEFs estimate that consumers' level of knowledge of their obligations, rights and remedies related to this type of commitments is unsatisfactory. Only two ACEFs find that knowledge adequate.

Given the problems reported, the recommendations for legislative improvements are not surprising. The ACEFs estimate that the following aspects should be better regulated:

- Information – ideally, a specific information document – at the moment of signing the contract, about the implications of a joint commitment and the risks that could be entailed by any co-signer's payment default or by a separation;
- The obligation to obtain the consent of all co-signers before any change in the credit amount or terms;
- The right to terminate joint liability for any future credit (even if there is a balance);
- The obligation to send account statements to each co-signer;
- The obligation to notify the co-signers of any default;
- Disclosure of the various impacts of a joint commitment or a default on the credit file of all the co-signers;
- The right to declare that a simple credit card holder is jointly liable for the entire balance.

d) Counselling associations (Canadian Association of Credit Counselling Services, Credit Counselling Society, Credit Counselling Canada and Ontario Association of Credit Counselling Services).

Credit Counselling Canada

Only Credit Counselling Canada agreed to complete our questionnaire.

The organization pointed out that it does not keep statistics, but indicated that solidarity entails specific problems when its members try to negotiate payment of consumer debts: *"Most often consumers face issues with joint commitments when it comes to repayment of debt. A voluntary repayment through our members becomes more complex with a co-signer on a debt such as a loan or a line of credit. Financial institutions are insisting that the co-borrower be involved in repayment of the debt."*

As for the issues most often raised by consumers, we find: differences between various types of commitments (co-signing, endorsement, surety, etc.); application and/or scope of legislation; obligations of the co-signer/endorser/surety/etc.; right of the co-signer/endorser/surety/etc. to receive notices if the primary holder defaults on payment.

With regard to its advisory and information work, Credit Counselling Canada assures us that its members inform their clientele about their rights and obligations, and estimates that consumers' level of knowledge of their obligations, rights and remedies related to this type of commitments is quite good.

Credit Counselling Canada also commented on the issue of regulations:

"I have searched the Ontario legislation regarding co-signed or joint commitment loans and there is nothing in the Consumer Protection Act. The only things that are included in the Ontario legislation are cooling off periods (for various products such as payday loans and door to door sales), misrepresentation by a business and delivery of goods. The majority of the financial institutions we deal with are banks which are federally governed. As with many consumer protection concerns there is a huge divide between federal and provincial responsibilities."

3.1.5 Comments

Generally, our survey of government agencies and consumer protection organizations did not yield sufficiently precise information on the number of consumer complaints received. The subject appears too specific to be recorded by name in the various databanks on existing complaints and information requests.

Despite good collaboration by the agencies and organizations consulted, the answers were not as revealing as expected. It is impossible for us to draw any definitive conclusion from those data. We still take into account the issues that consumers raised about spousal separations, which seem to make co-signers realize the actual scope of joint obligations.

Perhaps also because the subject is too specific, there is a lack of information and awareness-raising initiatives regarding this particular issue. The organizations we consulted are approached by consumers only when they encounter a problem. So the information initiatives required of those organizations seem more targeted, more personalized. As mentioned above, in our search for information on the issues of interest to us, we did find a substantial quantity of information online. Fortunately, the organizations offering workshops on credit and debt address the issue and provide consumers with essential information and cautions before they enter into a joint credit agreement.

We also take into account the general comments appearing to indicate that tighter regulations may be desirable, as well as the more specific comments of some organizations about the various aspects on which better information should be offered.

3.2 Survey of Financial Institutions (FIs) and Consumers

3.2.1 Methodology

Because one of our study's main objectives was to verify the extent and manner of necessary information received by consumers on liability involved in co-signing personal credit products or making an endorsement, we conducted a survey of several financial institutions (Fis). Our hypothesis was that financial institutions constitute a primary source of information, since they are the ones offering credit agreements that entail (or require) a joint commitment; we thought the offers and promotions of credit products, and the contracts themselves, should contain a lot of relevant information.

This part of our research was conducted on several fronts.

First, we collected data to obtain copies of contracts for joint loans, credit cards and lines of credit from financial institutions, as well as endorsement or suretyship contracts and terms for those products, in order to study them and analyse the specific clauses related to co-signing and solidarity. We thus intended to verify whether the essential elements of the parties' respective rights and obligations were clearly disclosed, and to appreciate how easily understandable those clauses are to a consumer who is a novice in understanding legal terms.

We initially planned to collect those contracts from the FIs of two provinces. More specifically, we wanted to collect eleven (11) contracts in Quebec and nine (9) in Ontario, i.e. three (3) contracts for each type of financial product targeted (line of credit, personal loan and credit card) in each province, and two (2) credit card loan contracts in Quebec. As planned, we first took steps to collect those contracts in person, at branches. That first collection did not yield the expected results, so we attempted to make contact by phone, and subsequently, given the poor results obtained in those first two ways, we relied on the FIs' websites.

On the FIs' websites, we also researched and analysed, when applicable, the information provided to consumers about joint commitments. We thus searched for the various general and specific communications on the subject, from simple notices on the existence of that option to more-precise information on the scope of commitments, authorizations required for certain operations, types of notices, dispute resolution, etc. Our objective was to verify the aspects on which information is provided, and to see whether the information is clear enough for consumers to really understand the implications of joint commitments.

We will see below that our efforts in person and by phone yielded only a few of the documents we were seeking, and that only a thorough search of the FIs' websites obtained a few of the standard credit agreements sought.

Lastly, we hired a specialized firm to organize discussion groups and directly consult consumers who, in the context of a personal credit agreement, contracted a joint commitment or acted as surety. We thus tried to discern what types of information or cautions consumers had access to and how much they knew about the rights and obligations involved in a joint credit commitment.

3.2.2 Survey of Financial Institutions

a) **Survey conducted in person**

A contractual employee visited branches on our behalf in November 2016; we had prepared instructions and a list of questions for him. The visits were made in eight branches: in Montreal (two credit unions, Bank of Montreal, National Bank of Canada (NBC) and Royal Bank [RBC]) and in Ottawa (Royal Bank [RBC], National Bank of Canada [NBC] and TD Canada Trust)⁶³. Our goal was to meet a manager to ask him for copies of credit agreements likely to be jointly concluded, and copies of suretyship agreements. We also wanted to know about existing information policies and practices in the visited branches, with regard to the issue of joint or several commitments. We opted for a transparent approach: our investigator identified himself as such and briefly presented our research subject as the purpose of his visit.

Our investigator met branch managers, executive assistants, a manager – Operational and Risk Management, and two advisers. Only one branch neglected to follow up on our request for a meeting.

Our investigator reported that the persons met had a certain reticence to provide copies of their institution's contracts. Several preferred to hand him information leaflets that proved somewhat irrelevant to our research. The fact that the person requesting information or document copies was not a branch customer was invoked on a few occasions to justify a refusal to answer the few questions asked by our investigator or to hand him documents other than those offered to the general public. For example, representatives of the financial institutions gave our investigator leaflets about financial transaction fees, applicable interest, bank services, etc.

We found those refusals all the more surprising because some of the documents we had sought through those personal contacts are also available online.

Here are the results both of our examination of the somewhat relevant documentation and of the short interviews granted by FI managers. A summary of our visits to websites will follow. Afterward, we will discuss the contents of all the contracts collected in person and on the Web.

⁶³ To the list of financial institutions we visited (Desjardins, Bank of Montreal, National Bank of Canada [NBC], Royal Bank [RBC], National Bank [NBC] and TD Canada Trust), we added three other institutions – Laurentian Bank, CIBC and Scotiabank – for our telephone and Internet surveys, to increase our chances of collecting standard contracts.

Interviews

The interview questions we had prepared for financial institutions aimed essentially at knowing whether, for each product and type of commitment of interest to our research, the financial institutions voluntarily provided to consumers, before and during the conclusion of contracts, some information on the consumers' obligations and remedies.

Most of the managers who answered our investigator's questions (some managers having refused to do so because he wasn't a customer of the FI) answered almost all the questions in the affirmative. This suggests that a consumer who makes a joint (in effect, joint and several or solidary, here and elsewhere in this report) commitment by co-signing a credit product, whether as a co-signer or a surety, is systematically informed of the implications, inherent risks, and ways of terminating the joint obligations.

For each type of contract and commitment, the investigator asked the managers whether the signatories received explanations about the various types of possible commitments (for example, for credit cards: co-signers; co-holders; additional authorized user) and the pros and cons of the different options.

In an attempt to obtain more-precise answers, the investigator then asked the representatives, for each type of credit agreement, and with the necessary adaptations, whether explanations were given to signatories about:

- Liabilities involved in a joint commitment (in such cases as a co-signer's payment default or bankruptcy, or a line of credit increase, related to variable credit agreements);
- Statements of account and notices (notably: limit increase requests and offers) received by the co-signers;
- Registrations with the credit bureau;
- The signatories' respective rights to withdraw from joint liability.

A few FI representatives stated that some of the above information was provided systematically, since it was included in the contract, and that additional verbal explanations are thus not among the FI's practices, unless a signatory himself asks questions.

Others stated there was no reason to present explanations about unavailable options: the type of commitment often depended on the applicants' situation; the options were thus often limited, either for the choice of product or the type of commitment; and the FI rather than the customer was responsible for choosing those options.

The question regarding information on statements of account and notices received more-precise answers: some representatives explained that signatories were advised that only the primary signatory would receive statements of account and notices. Others pointed out that the choice of recipient was explicitly offered to the signatories.

As for the question regarding information on the right to withdraw from joint liability, some representatives said the answer could only be on a case-by-case basis, depending on the signatories' situation.

Leaflets

Some leaflets received by our investigator did reveal useful information.

One leaflet, from RBC, titled “Tout un monde de choix s’offre à vous⁶⁴,” explains the different types of credit cards and details their terms. The option to add a co-holder or authorized user is notably mentioned, thus presenting some of the benefits of co-signing:

(...) accumulez des récompenses plus vite en regroupant toutes vos dépenses dans un seul compte, tous les titulaires sont protégés par les mêmes couvertures d’assurance et toutes les opérations sont indiquées sur un seul relevé mensuel, classées par numéro de carte.

Adding cardholders would also constitute:

(...) une manière pratique de permettre aux enfants plus âgés ou aux personnes responsables d’avoir un accès limité à des fonds en cas d’urgence.

Those enticements are accompanied by no information about shared liability or joint obligations. Only on the back of the leaflet can an attentive reader of fine print read the following caution:

Le cotitulaire est entièrement responsable, comme vous de tout débit porté au compte, y compris des opérations effectuées par les utilisateurs autorisés, advenant le cas.

A leaflet issued by Desjardins also describes several credit cards and indicates that its members benefit from an exclusive advantage, i.e. the option to receive free of charge an additional credit card for the spouse or other family member. But the leaflet doesn’t explain the liability implications for the holder of such an additional card.

The National Bank also gave us a leaflet presenting the various credit cards it offered. The leaflet indicates that the cardholder may obtain three additional cards, but provides no information on the liability of additional cardholders.

⁶⁴ RBC. *Tout un monde de choix s’offre à vous*, June 2012. The document, in PDF format, is available online at <http://www.rbcbanqueroyle.com/brochures/assets-custom/pdf/personal/66153-06-2012-olb.pdf> (document consulted on June 20, 2017). The document does not appear to be currently available online in English.

Another leaflet, “General Information and Agreement⁶⁵,” referring to investment accounts, transaction accounts and margin accounts, mentions the following:

(...) If you hold a margin account jointly with one or more people, all regulatory information regarding this account, including any statement or notice, will be sent to the main accountholder (...) except if you have chosen the “separate disclosure” option, in which case each person will receive the regulatory information.

Although our research did not plan to study joint account liabilities, we analysed an information leaflet our investigator had received from National Bank about the subject.

In that document, titled “Power of Attorney and Joint Account⁶⁶,” which presents the pros and cons of joint accounts, the financial institution informs the reader about the broad discretion granted to a joint account co-holder, with possible repercussions on another co-holder. Because those mentions reflect certain solidarity principles, which also apply to co-signatures of personal credit products and endorsements, we thought it appropriate to present this excerpt:

- *Since both accountholders own the joint account, each person can manage the account at his or her discretion without the consent of the other accountholder (...). National Bank will accept the instructions of either accountholder because both of these individuals is authorised to act alone, even though the account is jointly held (unless otherwise indicated).*
- *The accountholders are jointly responsible for all of the instructions received by the Bank relating to the joint account and for the commitments made by each accountholder relative to the joint account.*

In our branch visits, the only contractual documents we received were standard agreements for variable credit and revolving credit, a standard fixed-rate loan agreement (Desjardins) and a standard line of credit agreement (Bank of Montreal). The next chapter presents our analysis of those documents.

⁶⁵ NBC. General Information and Agreement, Effective June 1, 2016. The document, in PDF format, is available online at <https://www.nbc.ca/content/dam/bnc/en/personal/banking/accounts-and-packages/brochure-general-information-agreement.pdf> (document consulted on June 20, 2017).

⁶⁶ NBC. Power of Attorney and Joint Account, 2014, 16 pages. The document, in PDF format, is available online at <https://www.nbc.ca/content/dam/bnc/en/personal/banking/accounts-and-packages/brochure-power-attorney-joint%20account.pdf> (document consulted on June 20, 2017).

b) Phone survey

In an attempt to complete our collection of standard contracts, we phoned the financial institutions to make our requests. The calls were made in December 2016 by the person responsible for this study. In the FI branches, we tried to communicate with major representatives or their assistants. To the list of FI branches we had visited (credit unions, Bank of Montreal, Royal Bank [RBC], National Bank of Canada [NBC] and TD Canada Trust), we added, for our phone and Internet surveys, three other institutions – Laurentian Bank, CIBC and Scotiabank, to raise our chances of success in the collection of standard contracts.

That telephone approach, aimed at obtaining standard joint agreements for lines of credit, loans and credit cards, was unfortunately not much more productive than the first.

Phone calls to various Desjardins branches obtained different answers. We received suggestions to: go to the branch in person; contact the Legal Department, which should be able to answer legal questions (but we were refused its contact information); send an e-mail to Mouvement Desjardins to communicate with the management (which we did; our e-mail was left unanswered).

Regarding questions about credit cards, we were told to contact the Credit Card Department. That contact had to be made by phone, but we still had to make an appointment in a branch to complete a credit card application or form.

A few days after we made our phone request to another branch's representative, we received two standard contracts by e-mail: a credit card contract and a money loan contract. Our subsequent search on Desjardins' website revealed that the standard credit card agreement is also available there.

Our repeated phone calls to the Bank of Montreal obtained no positive result. We were repeatedly put on hold or transferred to different departments, where our calls were left unanswered.

We had a similar experience with National Bank. Our phone calls to various branches were transferred from one department to another. When we finally succeeded in speaking with someone, we realized that we had been transferred to a call centre where no one could answer our request, and where it was abruptly suggested that we search the FI's website.

We contacted the executive secretary of an RBC branch. After a call to the procedure office and the management, she told us she couldn't give us any information because we weren't customers of the bank.

Even before we could finish explaining our research issues, the representative of a Laurentian Bank branch transferred us directly to the Visa Department. That department's clerk informed us of the general practice of banks, which is followed by that FI: impossible to obtain a copy of Visa/MasterCard/personal loan agreements before filling out an application form and having our application accepted.

Our prior verifications had revealed that access to the telephone directory of CIBC Bank services, during a call to the phone number for general information, required having at hand a credit card number. A call to the Credit Card Department had the same requirement. We then called a CIBC branch. The representative, clearly uneasy with the reason for our call, referred us to the institution's Visa Department, but specified that since we weren't customers, we could not obtain copies of the contracts. When we explained to her that we couldn't access the bank's service telephone directory, and that we'd like to have the number of the bank's Legal Department or another key number where we might try to obtain answers, she answered that she didn't know that number and hung up without further explanation.

The representative of Scotiabank's Bank Services Department with whom we spoke confirmed that we could obtain at a branch the standard contracts we were seeking, and graciously directed us to the institution's website, where we could find copies of credit contracts, but not personal loan contracts. Following her instructions, we did find two standard contracts, i.e. *Personal Credit Agreement* and *Revolving Credit Agreement*.

c) Internet survey

In addition to a search for copies of contracts, our online survey aimed at verifying whether a consumer could easily find, on the FI websites, necessary information to make an informed decision regarding a joint commitment to obtain a credit product (limit, credit or loan), to add his name as an additional cardholder, or to endorse someone. We made an intuitive overview of apparently relevant sections to find the type of information we were seeking, as a consumer would likely proceed.

We completed that overview of the websites with a keyword search - "endorser," "co-signer" and "solidarity" – to see how the banks have chosen to define those concepts, and ideally to find information on those subjects, as well as explanations provided to consumers about their joint liabilities. When the keywords yielded no result, we used synonyms such as "co-applicant," "co-borrower" and "surety."

We will outline below the types of contracts we found. The next chapter will present our analysis of the contracts. First, here is our assessment of what we found on the FI's websites.

Desjardins⁶⁷

On Desjardins' website, we found (after choosing a credit card from the various card offers and consulting in the column on the right, under *Useful links*, the heading *Suggested links*) links to PDF documents titled "See all credit terms and conditions of the card." Some documents were identified as *Quebec* and others *Outside Quebec*. For some cards, the links refer to either a "personalized card" or a "non personalized card," where additional documents contain rules for participating in reward programs.

In the other sections under *Useful Links*, i.e. *Tools* and *Tips*, we found no direct reference to co-signing. We found on the website no general information on this subject. But we did find invitations to obtain free of charge additional credit cards for spouses or other family members.

Desjardins' website reveals that the FI offers several financing arrangements for personal loans: in addition to the Desjardins personal loan, the FI offers Accord D credit card financing at Desjardins or the merchant. However, we found, on the relevant pages and through a search with the keywords "personal loan," no standard agreement for those loans. The online information thus leads us to the obligation to contact a financial adviser for more details.

The keyword search yielded varied results. The word "endorser" gives seven answers: the word is indeed mentioned in texts about the importance of building one's financial reputation ("*You should be aware that a few missed payments now could have serious consequences on future loan applications: your financial institution may charge a higher interest rate, require a guarantor or even a refuse to grant a loan*⁶⁸," but provides no reference to a text that would explain the surety's obligations or risks.

⁶⁷ Desjardins. <https://www.desjardins.com> (page consulted on May 28, 2017).

⁶⁸ Desjardins, *Building up a Credit Rating*. <https://www.desjardins.com/ca/co-opme/action-plans-tips/financial-guide-students/personal-finance-advice/building-up-credit-rating/index.jsp> See also *C is for credit*, under "Credit rating." <https://www.desjardins.com/ca/co-opme/action-plans-tips/preparing-for-future/finance-basics/credit/index.jsp> (pages consulted on May 28, 2017) and Cyr, Jessica. *Se bâtir un bon dossier de crédit, ça compte*, Caisses Desjardins des Îles-de-la-Madeleine, Les Îles magazine, spring 2014, pp. 12 and 16. The document, in PDF format, is available online at http://www.ilesdelamadeleine.com/magazine/PDF/magazine_13_03_14.pdf (document consulted on June 20, 2017).

The only relevant occurrence of the keyword “cosigner” is found on a page on credit, in a section that defines the types of lenders. The text summarily mentions the co-signatory’s liability, apparently in his acceptance of surety. The risks related to the FIs as lenders read as follows:

Financial institutions are the traditional sources of credit, which can be in the form of personal loans, mortgages, lines of credit or credit cards.

- *Interest rates vary based on borrower’s credit history.*
- *The financial institution may require a cosigner.*
- *A cosigner is required to pay back the loan if the borrower is unable to do so.*
- *Failure to repay a loan will tarnish your credit rating⁶⁹.*

The keyword “solidarity” provided only one result: a text on Desjardins values.

Scotiabank⁷⁰

During our exploration of Scotiabank’s website to find information about joint commitments, the invitation “Add Supplementary Cardholders to Your Credit Card Account – It’s Easy⁷¹,” under the section *Credit Cards*, quickly caught our attention, and gave us hope that we would find the information sought.

The only information we found there about solidarity mentioned that of the cardholder and co-borrowers in relation to additional cardholders, and was relegated to a footnote. Our keyword search led us again to that same page.

Our keyword search obtained no result with the word “endorser.” A search with “co-applicant” obtained only one result: Scotiabank’s Confidentiality Agreement. (The result was the same with “co-signer.”) The keyword “solidarity” did not produce relevant results either. The keyword “co-borrower” resulted in 32 suggested documents. The first suggested text⁷² contains important information:

Only the Primary Cardholder or the Co-Borrower Cardholder on a Credit Card Account can add supplementary cardholders to their Scotiabank Credit Card Account.

And, when you do, enjoy¹: [...]

⁶⁹ Desjardins, *C is for credit*, under “Types of lenders.” <https://www.desjardins.com/ca/co-opme/action-plans-tips/preparing-for-future/finance-basics/credit/index.jsp> (page consulted on January 21, 2017).

⁷⁰ Scotiabank. <http://www.scotiabank.com/ca/en/0,,2,00.html> (page consulted on January 14, 2017).

⁷¹ Scotiabank. <http://www.scotiabank.com/ca/en/0,,44,00.html> (page consulted on January 14, 2017).

⁷² Scotiabank. *Order Supplementary Cards*. <http://www.scotiabank.com/ca/en/0,,44,00.html> (page consulted on May 28, 2017).

The reference mark leads to a footnote in tiny characters:

The Primary Cardholder and any Co-Borrower on the Scotiabank Credit Card Account will be responsible for all charges made to the Account, including those made by the supplementary cardholder.

Several other links lead to credit card promotions containing the sentence “The affordable cost includes benefits for a Co-Borrower at no additional charge.”

To the keyword “guarantor,” the search engine responded with the page *Banking Glossary*⁷³, which contains the following definition:

Guarantor – *A person who guarantees to repay a loan in the event that the borrower defaults.*

Bank of Montreal⁷⁴

We searched in the credit card section on the Bank of Montreal website to find out if standard agreements were available. When a card is selected, a link (not particularly visible) titled *Terms, agreements, rates and fees* gives access to a PDF version of the MasterCard credit card agreement.

A search in the section *Personal loans*, accessible from the *Loans* menu, found no document of the same type, no information on provisions applicable to this type of financing, and no mention of joint commitments. Nor did we find any document providing more details about liability, endorsement, suretyship or solidarity. The website invites consumers to make an online application and provides tools for finding a branch and even making an appointment online.

The online application form gives *Instructions for Joint and Co-Signing applicants*. Depending on whether the signatories are joint or not, those instructions define two types of applications, but provide no information on the co-signers’ liability.

A similar online application, with the same *Instructions for Joint and Co-Signing applicants*, is also offered for the application to open a line of credit.

A search with the keyword “co-signer” yields five results, all of which indicate that “Co-signer may be required,” i.e. four excerpts about lines of credit to students (where the keyword is found in small-character footnotes) and one excerpt about offers reserved for the Canadian Defence community. There was no mention of standard agreements. But co-signer liabilities were outlined.

The keywords “endorser,” “co-applicant” and “surety” obtained no result, and the keywords “solidarity” and “co-borrower” obtained no relevant result.

⁷³ Scotiabank. <http://www.scotiabank.com/ca/en/0,,3116,00.html> (page consulted on May 28, 2017).

⁷⁴ BMO. <https://www.bmo.com/main/personal> (page consulted on May 28, 2017).

National Bank⁷⁵

On the National Bank website with regard to credit cards, we found only one MasterCard agreement for companies.

Under the heading *Personal Loans/Lines of Credit* that appears in the *Financing* menu, a page concerns mortgages and personal loans. At the bottom of that page, a mention *Important change for co-borrowers* leads to a page⁷⁶ summarizing the guidelines of the Financial Consumer Agency of Canada regarding the right of co-borrowers individually to receive regulatory information. We did not find elsewhere on the website any other information or definition regarding co-borrowers.

Under *Financing*, in the upper menu, is a link to a page about lines of credit. The link *Details*, under the description of each line of credit offered, presents a page where a button invites consumers to apply for financing. Among a few questions that must be answered before the financing application begins, one asks if the application is being made jointly, but no detail is provided about co-signers' liabilities.

Our search with the keyword "endosseur" gives 22 results, but none seems relevant (pages about insurance and PDF brochures intended for various types of professionals). The word "caution" yields no less than 685 documents. One (the fifth) is a guarantor agreement⁷⁷, detailing of course the guarantor's obligations, which we will examine in the next chapter.

The word "cosignataire" produces only two links to mortgage forms. The word "solidarité" produces 26 documents, none of which seems relevant. The word "codemandeur" produces 26 documents; it is in fact found in the registration forms generally provided by the search.

The keyword "coborrower" leads, apart from links to distribution guides, to a page titled *Coborrowers* answering a series of questions about, notably, the right to disclosure⁷⁸.

⁷⁵ NBC. <https://www.nbc.ca/en/personal.html> (page consulted on May 28, 2017).

⁷⁶ NBC. <https://www.nbc.ca/en/personal/financing/personal-loans-lines-of-credit/co-borrowers.html> (page consulted on January 5, 2017).

⁷⁷ NBC. This is a txt document (.doc) for downloading, located at:

<https://www.bnc.ca/content/dam/bnc/fr/particuliers/financement/solutions-prets-hypothecaires/documentation-juridique/cautionnement-f18219.doc> (document consulted on May 28, 2017).

⁷⁸ NBC. <https://www.nbc.ca/en/faq/general/co-borrowers.html> (page consulted on June 15, 2017).

Royal Bank of Canada⁷⁹ (RBC)

We found on the Royal Bank of Canada website none of the contractual documents we were seeking.

The page *Credit Cards* only presents the various credit cards offered by the institution, and essentially mentions, in addition to premiums and other rewards, only the applicable interest rates and fees, detailed in an information box presented during an online application for a credit card.

The section Loans and Lines of Credit invites consumers to apply by phone or at a branch. We find on those pages no apparent mention of joint applications.

A search with the keyword “co-signer” obtains the following answer:

What is a loan co-signer?

A co-signer is necessary when an applicant does not have sufficient credit history to secure a loan. When you co-sign for a family member or friend, you act as guarantor, promising to pay the debt if they do not. In other words, if they stop paying for any reason, we may ask you to pay as much as the full amount owing. As long as the borrower still owes money on the loan, some lenders may include this payment in your total debt service ratio which can reduce the amount you may be able to borrow for your own use⁸⁰.

A link to a related question is also offered on the same page: “What are my obligations is I co-sign a loan?” displaying the same answer, while excluding the first sentence.

The keyword “co-applicant” offers notably a link to the page “Adding an Authorized User” mentioning among other things that “*An Authorized User is not responsible for payment of any balances owing on the account⁸¹.*”

The keyword “endorser” leads essentially to pages about insurance. The word “solidarity” does not give any relevant result either; nor does “surety.”

⁷⁹ RBC. <http://www.rbcroyalbank.com/personal.html> (page consulted on November 30, 2016).

⁸⁰ RBC. <https://www.rbcroyalbank.com/search-public/index.html?question=cosigner> (page consulted on December 29, 2016).

⁸¹ RBC. Add a User to Your Credit Card. <http://www.rbcroyalbank.com/credit-cards/add-user.html#authusr> (page consulted on January 15, 2017).

TD Canada Trust⁸²

We found on the TD Canada Trust website no standard credit document or agreement containing specific provisions about co-signers' solidarity.

The only reference to co-signers was found as follows. In the lower menu of the page *Credit Cards*, under the heading *Manage Your Card* appearing in the lower menu, at the bottom of the page, the link *Add a User to Your Credit Card* leads to a page titled *Learn how to make the most of your TD credit card*, where we find the following indication, which mentions the benefits obtained by an authorized user, but does not explain the cardholders' obligations:

*When you add an Authorized User to your TD Credit Card Account, they share in the same purchasing convenience you do. Authorized Users get their own credit card — with no credit approval required. **Please note:** There may be additional costs associated with adding an Authorized User, depending on your TD Credit Card⁸³.*

(Reference notes omitted)

Our search with the keyword “co-signor” yields a link to a “Frequently Asked Questions” section on personal credit, with the following vague definition:

4. What is a co-signor? Who can co-sign a line of credit or personal loan?

A co-signor is a person who becomes equally responsible for repaying a credit balance with you. Anyone of the age of majority in their province of residence can co-sign with you⁸⁴.

A search with the word “guarantor” produces a single relevant link, to a guarantor form, but we find on opening the page that it aims at guaranteeing payment of obligations on TD Direct Investing accounts.

The other keywords did not produce relevant results.

⁸² TD Bank. <https://www.tdcanadatrust.com/products-services/banking/index-banking.jsp> (page consulted on November 30, 2016).

⁸³ TD Bank. <https://www.tdcanadatrust.com/products-services/banking/credit-cards/getting-started.jsp?click=cc-footer-Add%20Cardholders#add-cardholders> (page consulted on November 30, 2016).

⁸⁴ TD Bank. Frequently Asked Questions. <https://www.tdcanadatrust.com/products-services/borrowing/loans-lines-of-credit/faq-credit.jsp> (page consulted on January 8, 2017).

Laurentian Bank⁸⁵

The *Personal Banking* tab of the Laurentian Bank website displays the heading *My Ideas*, where, under the title *Financing Products*, is a link to *Visa credit cards* (a link in the page strip also leads to that page). It is possible to make an online application (the website invites consumers to “Take action now!”), one of the conditions being that the application is made without a co-applicant.

The *Personal loan* section provides no information about co-borrowers or co-signers, or to solidarity or endorsement.

We found on the website no standard credit document or agreement.

A general search with the keyword “*guarantor*” led, apart from pages about insurance, to a page titled *My Credit*, which explains the difficulties entailed by a blank credit file (“*though better than a bad score*”):

This would mean that you might need a co-signer with good credit to secure a loan. Your co-signer would have to pay back your loan if ever you were unable to do so⁸⁶.

A search with the keyword “*solidarity*” produces no relevant result. Nor does the keyword “*co-signer*,” but “*co-borrower*” offers again several pages about insurance, and others mentioning that a student line of credit requires a co-borrower.

CIBC⁸⁷

While the CIBC website allows online personal loan and line of credit applications, we observed that those applications must be made in a branch if a co-borrower is involved.

A general search with the keyword “*guarantor*” obtained no relevant result. Nor did the keyword “*coborrower*,” but different spelling – “*co-borrower*” – yielded 261 suggestions, the first one seeming particularly relevant: *What Does It Mean to Co-Sign a Loan?*

⁸⁵ Laurentian Bank. https://www.banquelaurentienne.ca/en/personal_banking_services/ (page consulted on January 6, 2017).

⁸⁶ Laurentian Bank. https://www.banquelaurentienne.ca/en/personal_banking_services/my_money/my-credit/index.html (page consulted on January 20, 2017).

⁸⁷ CIBC. <https://www.cibc.com/en/personal-banking.html> (page consulted on May 25, 2017).

The text of that page begins with the following information, which seems to indicate that the text refers mainly to the guarantor:

*When you co-sign a loan, you promise to pay off the loan in the event the primary borrower is unable to pay off the loan*⁸⁸.

Under the headings *Should I co-sign a loan?* and *Should I ask someone to co-sign my loan?* is cautionary advice.

The French keyword “*caution*” obtained seven results, including two references to the glossary. But the definitions found there are not relevant.

The French keyword “*endosseur*” provides no relevant information, suggesting links for life insurance, credit rating and mortgage. The keyword “*solidarité*” obtained no result.

No standard document or standard agreement was identified on the FI’s website.

d) Conclusions of the survey of FIs

The in-person survey

Despite the approach’s limitations, our choice to conduct surveys in person while presenting the object of our research, rather than take the mystery customer approach, produced some results. We obtained very few relevant documents and were unable to verify the quantity or type of information actually provided to a consumer who would be a customer or conclude a contract, but we did observe that the institutions’ representatives appear to estimate that consumers are adequately guided to some of the information we thought essential for making an informed decision when entering into a joint credit agreement.

The FIs’ assessment contradicts that of the majority of community groups who meet consumers with problems or questions about joint commitments. Our discussion groups aimed at confirming directly with consumers that level of knowledge and understanding. We report the results in a later section.

Our study of information documents provided to us by FI representatives during our branch visits revealed that the banks present the addition of additional cardholders as an advantage for managing expenses with other persons. While cautions are included in the documentation, they are relegated to footnotes or to the back of the documents, in small characters.

⁸⁸ CIBC. <https://www.cibc.com/en/personal-banking/loans-and-lines-of-credit/articles-resources/co-sign-a-loan.html> (page consulted on May 25, 2017).

The documentation demonstrates that FIs tend to encourage consumers to make joint commitments regarding various credit products, but don't actually explain the liabilities and pitfalls inherent in such commitments.

The low success rate of our in-person requests for standard agreements leads us to conclude that prior access to credit agreements, and thus to their provisions on consumer solidarity, is very limited for a consumer who takes the initiative of going to a financial institution to obtain information before applying for joint credit.

The telephone survey

We were surprised at the reticence of FI personnel solicited by phone when we requested copies of standard credit agreements. We were confronted at times by an evident lack of cooperation, and even by incivility. It should be noted again that our investigator always quickly specified, from the beginning of every phone conversation, the reason for his call and our intention to obtain copies of standard agreements for the purposes of our research.

We were repeatedly transferred from one department to another or invited to contact other departments, and many of our calls or voice messages were simply left unanswered.

Again, that lack of cooperation and transparency perplexes us regarding the actual possibilities for consumers to obtain easily, before signing a credit agreement, the information that in their estimation or in reality is necessary for informed decision-making.

It seems telling that the cooperation of a representative who courteously guided us to find on her FI's website the documents we were seeking stands out, whereas it should obviously be the norm rather than the exception.

One of the financial institutions did send us, following our call, a standard credit card agreement and a standard money loan agreement.

The online survey

The online survey on the FIs' websites revealed several standard credit card agreements, notably those of Desjardins, the Bank of Montreal, Scotiabank and National Bank.

We found on the Desjardins website no standard agreement regarding Accord D credit.

As for standard line of credit and personal loan agreements, our research was in vain: we found that none of the FIs visited makes available online any standard agreements regarding those financial products.

During our keyword searches, we found only one suretyship (guarantee, endorsement) agreement: on the TD Bank website.

Generally, the financial institution websites we visited present only very succinctly, when they do at all, information about the liability of joint credit co-signers, and generally provide no information about endorsements. The option to add a cardholder to a credit card account is presented as an advantage for managing common expenses, and is even encouraged, often with various offers or promotions. The degree of additional cardholders' liabilities is subject to wide variations depending on the financial institutions' contracts, so we find it problematic that the degree of liability is not expressly stated in every case.

Our keyword search did not generally produce convincing results. A consumer who makes such a search for sufficient information to make an informed decision will not likely meet his needs.

3.2.3 Survey of Consumers

a) Discussion Groups: consumers' understanding

Methodology

To better identify consumers' knowledge and understanding of their rights and obligations regarding joint credit, and to measure whether the information provided actually meets the needs of consumers considering a joint commitment, we chose to conduct discussion groups. We mandated an external firm, Substance stratégies, to prepare and hold those discussion groups.

To verify whether Quebec and Ontario consumers had different perceptions, we held discussion groups in both provinces. Two groups met in Montreal on January 31, 2017 and two others in Toronto on January 26, 2017. The discussions were in French in Montreal and in English in Toronto.

To form the groups, we targeted consumers 25 to 29 years of age who had current or past experience with joint credit as co-signers or guarantors. Each group comprised 9 or 10 persons and each session lasted around 120 minutes. The participants each received a certain amount (\$75 in Montreal and \$85 in Toronto) in thanks for their participation, in accordance with the research firm's practices.

The discussion group report produced by Substance stratégies is reproduced in annex⁸⁹.

⁸⁹ The Discussion Group Report is in Annex 5.

b) Consumer issues

From the start, all the groups' participants said they perfectly understood that co-signing a credit agreement entailed, without their calling it so, the signatories' solidary ("joint and several" in common law) liability, and that each co-signer was liable for the entire debt contracted. The very terms that can be used for describing the type of liability (joint, several, solidary, *conjoint*, *solidaire*) sow confusion.

The participants also stated that they knew that endorsement (suretyship, guarantee) implied that the creditor could, as a last resort, require from the endorser a full repayment of the credit granted to the borrower(s).

That being said, opinions were very divided on the implementation details of the parties' respective liabilities regarding a credit agreement signed jointly or as endorsement.

As pointed out in Substance strategies' report: "*Consumers have very poor knowledge of the issues surrounding joint credit and endorsement. So their answers more often take the form of assumptions or hypotheses than actual statements of fact.*" (Our translation).

It seemed evident to the participants that the financial institution will accept instructions regarding joint credit only if all co-signers have formulated (or signed) the request or expressed their agreement. Thus, according to the participants, a request for a credit limit increase or additional card request could not reasonably be made unless all the co-signers are notified and agree. They thought the contrary would risk stimulating the irresponsibility or dishonesty of some consumers to the detriment of their co-signers.

Each participant's experiences coloured the discussions about notice recipients: do all those liable for the entire debt receive (or have to receive) notices, statements of account, etc.? No consensus emerged as to the FIs' presumed obligations in that regard.

The issue of the level of rights and liabilities depending on the type of commitment left most participants perplexed. But all agreed that a third party for whom a simple additional credit card is applied will have no liability regarding the balance. The participants also agreed that the surety (guarantor, endorser) has less rights, since only the primary borrower(s) can access the credit granted, but that the guarantor will be liable for the debt as a last resort, if the creditor cannot be repaid otherwise.

Questioned about the benefits and risks of joint commitments, the spontaneous reaction of several participants was to mention the benefit of adding the available incomes to evaluate borrowing capacity; having two or more co-signers makes it possible to obtain larger credit amounts. Some participants did point out that FIs also benefited, since their risks were reduced by the addition of debtors for each credit amount granted.

Spontaneous reactions were rarer on the issue of risks. Only when participants spoke of their own or others' experiences – cases of separation or divorce that led to conflicts regarding joint credit – did they start realizing their ignorance about possible remedies in the event of problems, including among co-signers, or about procedures to terminate solidarity.

One participant, on the basis of a personal experience, even stated that a surety called upon to repay the loan has no recourse against the person for whom he has stood surety.

Questioned about their sources of information on the subject, almost all participants mentioned the financial institution with which they had concluded a contract. However, the details of the information they were able to obtain when concluding a contract seemed much vaguer, except among those who had at the FI a financial advisor dedicated to all their financial matters. For the others, the process was so quick they hardly remember it, and thus have difficulty recalling what was disclosed to them or not.

The participants admitted they felt a certain distrust toward financial institutions, and were concerned about the latter's lack of objectivity when informing consumers. Moreover, the participants generally admitted they had not tried to inform themselves beforehand, before conclusion of their contract, and thus relied on what their FI told them.

Questioned about the sources of information to which they referred spontaneously to obtain information, the majority of participants said they preferred Internet research, and agreed that their financial institution's website would likely be their first choice. But several Ontario participants mentioned an independent website, whose information would certainly be more objective in their estimation.

Almost all participants reported that the choice of jointly contracting for a credit product was not imposed by the financial institution, but was rather made before even applying to the FI. Several participants mentioned that jointly signing for a mortgage tends to reduce in comparison, even to a great extent, the perceived risks of any other joint credit agreement with the same co-signer, because of the large amounts and collateral obligations involved in home ownership, so that jointly signing for any other credit product then becomes almost automatic, done with eyes closed.

c) Reading contractual terms

We agreed to complete the exercise by submitting to the participants a few excerpts of credit agreements⁹⁰.

Other than a general recognition of the difficulty in understanding the type of language used, the participants said they were surprised by the implications of several of the terms they were reading. Since even reading those terms is problematic, some participants suggested that the financial institution has an ethical requirement to explain certain obligations.

For example, the participants were surprised by terms mentioning that beneficiaries must abide by the terms of contracts and that a debt can be claimed from heirs, legatees and assignees.

The participants were very surprised that a simple credit card holder could have joint and several liability regarding the total debt of the account.

As for the excerpt that concerned suretyship, the participants, convinced that a creditor had to exhaust his recourses against the primary debtor before calling upon the surety to repay the debt, were very surprised to read a text that stated exactly the opposite.

⁹⁰ The excerpts submitted to the participants, from BMO, Scotia and Desjardins agreements, are attached to the Substances stratégies report in Annex 5.

4 Analysis of Credit Agreements

4.1 Analysis of Credit Agreements

We examined a few credit agreements to see how joint liabilities were determined and how they were presented to co-signers. We also searched in those contracts for mentions about creditors' obligations of disclosure and notices. In variable credit agreements, we also searched for terms regarding co-signers' approval of credit limit increases, additional coholders, etc.

As mentioned above, our collection of information in branches and our phone call attempts did not reveal many contracts. Only Desjardins and the Bank of Montreal provided us with a few contracts: for variable credit, revolving credit, money loans and credit cards, in Desjardins' case; and for lines of credit in the Bank of Montreal's case.

Our Internet research yielded additional documents from those two FIs: a variety of credit card models, and standard variable credit agreements at Scotiabank.

4.1.1 Desjardins

We were able to consult on Desjardins' website what was presented as *Terms and Conditions* (identical to what Desjardins had already given us) for various credit cards. We also analysed a *Loan Agreement* provided by a financial adviser in response to our phone survey.

Credit cards

Given that consulting credit card agreements is possible online only after choosing a credit card among the ten offered on the page *Compare cards*, we first selected the card *Visa Desjardins for Students Only*, and chose to analyse the terms for the personalized card *Visa Desjardins for Students Only*.

Subsequent verifications revealed nearly identical provisions for the other credit cards, and a mention that contracts are identical for all the cards:

VARIABLE CREDIT AGREEMENT FOR THE FOLLOWING CARDS: VISA DESJARDINS CLASSIC, VISA DESJARDINS FOR STUDENTS ONLY, DESJARDINS CASH BACK VISA, DESJARDINS CASH BACK MASTERCARD, VISA DESJARDINS ELEGANCE GOLD, VISA DESJARDINS CLASSE OR (GOLD), DESJARDINS CASH BACK WORLD MASTERCARD, VISA DESJARDINS ODYSSEY GOLD, VISA DESJARDINS PRESTIGE PLATINUM AND DESJARDINS ODYSSEY WORLD ELITE MASTERCARD⁹¹

That *Credit Agreement* contains 23 pages. On page 20, a clause directly refers to *Solidarity*:

26. SOLIDARITY — (...) If the card is issued in the name of more than one cardholder on the same account, their obligations are solidary. The Federation's claim is indivisible and may be claimed in full from their respective heirs, legatees and assignees.

But at the beginning of the document, we read in a box that:

For the purposes of this Agreement, the cardholder and additional cardholder(s) are collectively designated by the term "the cardholder".

And that the cardholder is:

solidarily liable for any indebtedness incurred through the use of the card, any indebtedness being recoverable in full from his heirs, legatees and assigns.

The issue of the cardholders' solidarity is thus expressly addressed. The fact that the term *cardholder* designates the primary signatory as well as any other cardholder, while having a certain inclusive effect on liability (for example, clause 6 states that *the cardholder* pledges to repay the amounts due), raises doubts about other aspects, such as notices. Does the fact that the term *cardholder* collectively designates all cardholders imply that a notice to a single cardholder is considered a notice to all?

Clause 5, for example, states that:

One or more account statements in paper or electronic format will be sent to the cardholder every month.

Clause 13 addresses notices regarding a unilateral modification by the Federation:

The Federation also reserves the right to modify any other condition of this contract, subject to giving the cardholder prior written notice of at least 30 days.

⁹¹ Desjardins. *Variable Credit Agreement*, April 2017, 8 pages. The document, in PDF format, is available online at. <https://www.desjardins.com/ressources/pdf/b10-ccv-contrat-regulier-e.pdf> (document consulted on May 28, 2017). Notably, the PDF filename includes "contrat-regulier."

And clause 12 provides the following:

12. COMMUNICATIONS WITH CARDHOLDER — Should the Federation have any questions regarding the cardholder's account/card, the cardholder specifically authorizes the Federation to contact him at his place of business or at any other coordinates, at the Federation's discretion.

Since the term *cardholder* collectively designates all the cardholders, who exactly receives the statement of account? With whom does the federation communicate? And whose instructions are followed?

No clause provides a way for a cardholder to terminate solidarity.

For each of its cards, Desjardins also gives access to a Terms and Conditions template identified as "Outside Quebec"⁹². Those contracts carry the following mention:

CARDHOLDER AGREEMENT FOR THE FOLLOWING CARDS: VISA DESJARDINS FOR STUDENTS ONLY, VISA CLASSIC DESJARDINS, DESJARDINS CASH BACK VISA, DESJARDINS CASH BACK MASTERCARD*, VISA DESJARDINS CLASSE OR (GOLD), VISA DESJARDINS ELEGANCE GOLD, DESJARDINS CASH BACK WORLD MASTERCARD, VISA DESJARDINS ODYSSEY GOLD, VISA DESJARDINS PRESTIGE PLATINUM AND DESJARDINS ODYSSEY WORLD ELITE MASTERCARD*

That outside-Quebec agreement begins with an identical box, collectively designating all cardholders by the term "cardholder," and establishes joint and several liability for the entire amount due. The other clauses mentioned above are also found in this agreement, with the same wording.

Loan agreement

We could not find on Desjardins' website any standard loan agreements. Fortunately, we had a loan agreement provided by a financial advisor in response to our phone survey.

Section 9 of the agreement states that "[...] *If the term "borrower" designates more than one person, their obligations are solidary.*" (Our translation.)

We found no definition or explanation of the solidarity's consequences.

Reading that loan agreement revealed only one relevant provision, i.e. the suretyship clause, located at the end of the contract. That clause simply states that the surety, if there is one, makes a joint commitment with the primary borrower, and that any other sureties are also solidary.

⁹² *Ibid.* <https://www.desjardins.com/ressources/pdf/b10-ccv-contrat-regulier-hq-e.pdf?navigMW=luac&>.

4.1.2 Scotiabank

The two documents we gathered on the Scotiabank website are presented under the links *Personal Credit Agreement* and *Revolving Credit Agreement*. The first document (62 pages) is subtitled *Companion Booklet*⁹³. Page 1 indicates, under the heading *So, what's in this booklet*: “*This booklet is a companion document to the Personal Credit Agreement and contains important terms which form part of that agreement.*” The next paragraph states that the parties’ rights and obligations are established therein. The second document contains only 4 pages and is actually titled *Revolving Credit Agreement*⁹⁴.

The *Personal Credit Agreement – Companion Booklet* (the Companion Booklet) defines the term “you” used therein: “*You (all borrowers) means each person to whom the loan is granted, and includes the cosignors and guarantors.*”

The *Revolving Credit Agreement* (the Agreement) specifies that the terms “you and your” “*refer to the borrower and any co-borrowers, cosignors and/or guarantors*” and that the term “primary borrower” “*refers to the person listed first on any statement/agreement.*” (We also find that definition in the *Credit Accounts* section of the Companion Booklet.)

In the General Terms and Conditions section, on page 4 of the Companion Booklet, we find, under the mention “*Who is bound by the agreement?*”:

The agreement and any security agreement you sign is binding on you, your estate, your representatives and any person to whom it is assigned. This includes legal or personal representatives, or anyone else to whom this agreement (and the property covered by the security interest) is transferred.

If more than one person signs this agreement, the obligations set out in it are joint and separate (joint and several). That means each person is fully responsible for the entire debt. Each person may give us instructions regarding the account without the agreement of any other person.

(Our underlined)

⁹³ Scotiabank, *Personal Credit Agreement, Companion Booklet*, January 2017, 62 pages. The document, in PDF format, is available online at http://www.scotiabank.com/ca/common/pdf/personal_banking/personal_credit_agreement_companion_booklet_lc.pdf (document consulted on May 28, 2017).

⁹⁴ Scotiabank, *Revolving Credit Agreement*, August 2016, 4 pages. The document, in PDF format, is available online at http://www.scotiabank.com/ca/common/pdf/borrowing/en_revolving_credit_agreement.pdf (document consulted on May 28, 2017).

Both documents (page 40 of the Companion Booklet, page 2 of the Agreement) contain the same clause regarding solidarity, applicable, according to the Companion Booklet, to *Credit Accounts*, i.e. credit cards and other lines of credit:

Being jointly and severally liable

Each person who is bound by this agreement is jointly and severally liable for performing all of the obligations under this agreement. In addition, this agreement will be binding on your personal and legal representatives.

The limitation period for this agreement is extended to the greater of six years (3 years in Quebec) or any longer period permitted by provincial or territorial law. (Our underlined)

However, for that section, the term “you” is defined differently:

You and your refer to the borrower and any co-borrowers, cosignors and/or guarantors under this agreement. [...] “Primary borrower” refers to the person listed first on any statement/agreement.

The Companion Booklet also expressly states that an additional credit card may be issued at the request of the primary borrower or any co-borrowers.

As for notices, the Companion Booklet clearly states the following:

Communicating with you

If there is more than one of you, you are each entitled to receive the cost of borrowing disclosure and notices that we are required to give you either separately or you may designate the primary borrower to receive the disclosure documents for both of you.

The Agreement formulates those obligations as follows:

Co-Borrower Disclosure Options

If there is more than one of you, you are each entitled to receive the monthly statement, and other cost of borrowing disclosure or notices that we are required to give you, either separately or you may designate the primary borrower to receive the disclosure documents for all of you. You may contact us through any of the methods we offer to change your preference to receive separate or joint monthly statements and other disclosure documents. If our records indicate that you are to receive separate disclosure, we will send you a monthly statement and the other required disclosure documents to your address that appears in our records. If our records indicate that you are to receive joint disclosure, we will send the monthly statement and other disclosure documents to the address of the primary borrower.

Given the above, the Offset clause implies that debiting may be done from the account of any co-borrower, which likely would create problematic situations if all the co-borrowers don't receive statements of account. The Agreement's formulation is essentially the same as the Companion Booklet's, which states as follows:

Offset

We may debit any other account you have with us with the amount of any payment you are required to make to us under this agreement and credit the amount to the outstanding debt under this agreement.

A section of the Companion Booklet covers the various guarantees, including personal guarantees (pages 61 and 62); it provides that a copy of the guarantee will be given to the personal guarantor.

The Companion Booklet explains that the guarantor's obligations will not be affected or terminated by the following:

- *by any variation, renewal, extension or replacement of the loans, agreements or any security (including any other guarantees) held by the bank for the loans;*
- *by any extension of time or other indulgence given by the bank to the borrowers or others under the agreement or any security;*
- *by any delay or refusal by the bank to require or enforce payment of the agreement or any security;*
- *by the taking, non-perfecting, or giving up of any security or by any dealings with the borrowers or others respecting the agreement or any security;*
- *by your death or legal incapacity or the death or legal incapacity of the borrowers;*
- *by any event which results in the borrowers not being under a legal obligation to pay the loans covered by the agreement.*

The Companion Booklet also specifies the following:

Personal Guarantee

The bank need not exhaust its recourse against the borrowers or others under the agreement or any security before being entitled to payment by you under this guarantee.

4.1.3 Bank of Montreal

The *BMO MasterCard Cardholder Agreement*⁹⁵, a 10-page document, first provides the following definitions:

Your BMO MasterCard cardholder agreement

In this agreement, “you” and “your” mean the primary cardholder and any additional cardholders.

*About some of the words in this agreement
[...]*

additional cardholder means each person to whom we have issued a card on the primary cardholder’s account, at the primary cardholder’s request

additional card means a card we have issued to an additional cardholder

primary cardholder means the person who applied for a card and in whose name we opened an account

Section 6 of the agreement addresses the issue of solidarity (section 7 pertains to liability limits in the event of loss, theft or misuse of a card):

6. Your responsibility for the total debt

Subject to this section and section 7, you are responsible for and must pay the total debt. This applies whether or not you incurred the total debt, whether or not the total debt exceeds your credit limit, and regardless of how the total debt was incurred.

Given the definition of the terms “you” and “yours” at the beginning of the agreement, we might believe that the additional cardholders are as liable as the primary cardholder for the entire amounts due.

⁹⁵ BMO, *BMO MasterCard Cardholder Agreement*, August 2016, 10 pages. The document, in PDF format, is available online at https://www.bmo.com/pdf/Cardholder_Agreement.pdf (page consulted on December 27, 2016).

But section 6 specifies:

However, if you are an additional cardholder then, despite anything else in this Agreement, you are not responsible for paying the total debt if either

- a) we opened the account on or after October 1, 2012, or*
- b) we opened the account before October 1, 2012, but we have told the primary cardholder in writing that the additional cardholders on the account are not responsible for paying the total debt.*

Note that it does not matter when you received your card. We use the term “authorized users” to refer to additional cardholders who are not responsible for paying the total debt

Authorized users cannot give us instructions about the account, such as issuing new cards or changing the credit limit.

If you are an additional cardholder and neither (a) nor (b) applies to you, you are responsible for paying the total debt individually and together (solidarily responsible in Quebec) with the primary cardholder and other additional cardholders. We use the term “co-borrowers” to refer to additional cardholders who are responsible for paying the total debt.

We note that this provision answers several questions about the rights and obligations of the various types of cardholders. But that is not all. The same provision also explains how a cardholder can terminate solidarity in future, as well as notices the FI may send the other cardholders:

As a co-borrower you are not responsible for paying any part of the total debt that accumulates after you tell us in writing that you are cancelling your card.

You expressly consent to us communicating information about you and your account to additional cardholders, whether or not they are responsible for the debt, and to contact additional cardholders for the purposes of communicating such information.

Regarding the recipients of notices and statements of account, the agreement states the following:

24. Providing you with account statements and other notices — *We will provide account statements and other notices to the primary cardholder and any co-borrowers who ask for copies. We will provide the information by mail to the addresses in our MasterCard records unless you and we agree on another method. You must tell us immediately of any changes to these addresses.*

4.1.4 National Bank

Our search for contractual documents pertaining to personal credit agreements on the National Bank website produced no result. The only document similar to what we were looking for was found on the FI's website and is a MasterCard agreement only intended for companies⁹⁶. We will therefore not discuss its provisions.

4.1.5 TD Bank

In our searches with the TD Bank website's search tool, we found a Guarantee Form⁹⁷.

The 5-page form first indicates a length the guarantor's obligations:

4. Obligations Guaranteed

In consideration of TD Waterhouse Canada Inc. ("TD Waterhouse") dealing with or continuing to deal with the Customer as it deems appropriate, you guarantee payment on demand of all present and future debts and liabilities of the Customer to TD Waterhouse ("Obligations"). Obligations include any and all debts and liabilities, however incurred, both direct and indirect, whether incurred alone or jointly with others, whether absolute or contingent, whether matured or not matured, whether as principal or surety and whether for commission, interest, fees, charges or expenses (including legal fees and expenses) incurred by the Customer or by TD Waterhouse in its dealings with the Customer. Obligations further include, without limitation, margin provided, monies advanced to the Customer or to another person which the Customer is obligated to repay, monies owing pursuant to an Indemnification or Guarantee given by the Customer with respect to any of the accounts of the Customer or those of any other person and any debit balance or other obligation owing with respect to any of the Customer's accounts, before and after liquidation.

You agree to be bound by the terms and conditions of this Guarantee.

To ensure the scope of the guarantee liability, the form adds:

6. Your liability to TD Waterhouse is unconditional, continuing and absolute.

⁹⁶ NBC. *Agreement Governing the Use of the MasterCard® Business Card Issued by National Bank of Canada*, n.d., 20 pages. The document, in PDF format, is available online at <https://www.nbc.ca/content/dam/bnc/entreprise/pdf/tarification/agreement-mastercard-business.pdf> (page consulted on December 29, 2016).

⁹⁷ TD Bank. *Guarantee Form*, n.d., 5 pages. The document, in PDF format, is available online at <https://www.td.com/ca/document/PDF/forms/595992.pdf> (document consulted on May 28, 2017).

As for the moment when TD may begin to require the guarantor to perform his obligations:

11. Exhausting Recourse

TD Waterhouse does not need to exhaust its recourse against the Customer or any other person or under any guarantee TD Waterhouse may from time to time hold before being entitled to full payment from you under this Guarantee. You waive all benefits of discussion and division.

Nothing indicates to what type of TD customer this type of guarantee applies. Nor does the link to the document give us any indication. It remains that the description itself of the obligations should make anyone shudder who takes the time to read it before signing such a commitment to help someone.

4.2 Conclusions Regarding the Analysis of Credit Agreements

Our overview of the provisions of the few contracts available to us enables us to draw several conclusions.

At the beginning of this report (see chapter 2.1), we mentioned the precise terminologies used for describing the scope of certain obligations. Later we pointed out consumers' limited understanding of the legal jargon. The use side-by-side, in the same sentence, of the words "joint" and "several" is thus highly likely to confuse a reader untrained in that legal jargon. Consumer expectations of the meaning of those clauses may not be satisfied, particularly when consumers think the bank should explain that meaning and the scope of their commitment.

With one exception (the BMO contract), we don't find in those texts any mention of how consumers can terminate solidarity in future. So it's no surprise that consumers confronted with a problem don't know about possible solutions – especially since they are often urged to read their contracts carefully to find details of their rights and obligations. That omission about terminating solidarity enables FIs, as reported by one of the respondents to our survey, to explain to consumers that it's impossible to terminate solidarity, including for future debts, so long as an unpaid balance remains.

Regarding communications and notices, such as statements of account, which must be sent to co-borrowers, we observe that the contracts mention they will be sent to anyone requesting them. A co-borrower who, at the moment of signing the contract, waives receipt of notices may thus reverse that decision in future. Given the importance, for a co-signer, to be held liable for all future transactions and have his credit file affected by his co-signer's failure to be informed of transactions and credit limit increases, for example, that simple possibility of requesting notices may be insufficient. Indeed, consumers risk not realizing the importance of such monitoring until it's too late, when a problem arises.

The *Offset* clause we examined implies that it may be applied to the account of any co-borrower. Such a practice would likely create problematic situations if all co-borrowers do not receive statements of account.

The fact that modifications may be made to joint credit (a credit increase request, for example, or an additional cardholder) at the request of a single co-signer, as indicated in several contracts, may cause some of the problems that co-signers may face. The simple fact that co-signers are informed of this FI policy may well not suffice to protect them adequately – particularly if relations between co-signers become conflictual.

Conclusion

The main question our research addressed was:

Do consumers adequately receive and understand information on the liability entailed by a joint commitment regarding a personal credit product?

Our general conclusion is that consumers, including credit agreement co-signers, have insufficient knowledge of the implications of co-signing.

Solidarity is clear enough regarding liability for payment – the co-signers know they are individually liable for the entirety of the debt contracted jointly or endorsed. But many would be surprised to learn that solidarity extends, for example, to instructions that a single co-signer may give the financial institution. Consumers' knowledge of ways to terminate solidarity or of rules for financial institutions to issue notices and account statements appears quite poor. And financial institutions, among the main sources consumers spontaneously turn to for information, rarely disclose such information in an accessible, clear and complete manner, whether in branches, on their websites or in contracts.

Some websites from more-objective sources contain fuller information and useful cautions, but financial institutions' websites remain the basic reference spontaneously relied on by consumers... until a problem arises.

Our overview of legislation revealed definitions of certain terms and obligations, as well as consumer protection provisions. But we found nothing that could limit the problems we observed.

Our survey of government organizations and consumer protection organizations did not yield precise information on the number of consumer complaints received. The subject appears too specific to be recorded by name in the various databanks on existing complaints and information requests. But the survey did reveal that consumers often ask many and varied questions about this issue. Our survey also identified potential solutions that consumer groups are considering, and on which we will draw in making our recommendations.

Our survey of financial institutions demonstrated that a consumer who would like to consult a contractual document before signing it is often refused access to a standard contract – unless he is a customer, some FIs told us. Given the reticences we observed, nothing indicates that access to a simple consultation would be very easy even for a customer. We also observed that at the moment of concluding a contract, the verbal information and explanations given to consumers about the scope of joint obligations and the remedies in case of problems are generally very limited.

For instance, while FIs give co-signers the choice to receive notices and account statements individually or not, are consumers able to evaluate the importance of that choice? Given what we observed of the contracts' content and legal jargon, can the FIs reasonably claim that verbal explanations of those contracts would be useless?

Our online survey of the FIs' websites revealed several standard credit card agreements, notably those of Desjardins, the Bank of Montreal, Scotiabank and National Bank. But those are the only types of documents of which the financial institutions appear to allow easy access to consultation.

Our survey of consumers demonstrated several contradictions between the expectations of consumers, who nevertheless thought they were sufficiently well informed about the subject, and about FI practices. Notably, it seems obvious to the participants that a financial institution would not accept a co-signer's instructions regarding joint credit unless all the co-signers have formulated (or signed) the request or expressed their agreement. Or that an endorser will be called upon to meet his obligations only after the FI's failed efforts to obtain performance by the primary signatory. Or that a simple additional cardholder can in no case be joint and severally liable for payment of the total amount due. The discussion group participants' reading of contractual clauses demonstrated their difficulty in understanding the language used, and we witnessed their surprise in realizing that some of their certainties were unfounded.

The FIs have a real interest in encouraging joint signing: it allows larger credit amounts to be granted and increases payment guarantees by adding liable persons. This is why we find on FI websites, notably, enthusiastic invitations, promotions, premiums and guarantees of "ease" for adding cardholders or co-signers.

Accordingly, we think it important to ensure that co-signing a credit product does not risk entailing unforeseeable problems for consumers, and that they be informed, in as open, clear and timely a way as possible, of ways to avoid those problems and of possible solutions.

The implications of solidarity and the liabilities entailed must be clear and equitable, and must be well understood by consumers who choose to make such a commitment. Currently that does not seem to be the case. It may well be time to introduce certain corrective measures.

Recommendations

Union des consommateurs recommends that regarding personal credit agreements that consumers enter into, federal and provincial lawmakers:

1. Prohibit solidarity stipulations aimed at engaging the liability of any credit product user other than the primary co-signer(s);
2. Require financial institutions to obtain prior agreement from each of the primary co-signers before making any contract modification likely to increase their risk or liabilities – particularly credit limit offers or requests, and the addition of new card holders or users. The law should make ineffective against the co-signers any modification violating that requirement;
3. Require FIs to send all notices and account statements to each primary signatory, and make ineffective any waiver of that right by the signatories;
4. Limit the amount of the endorser's liability to the amount agreed to in the initial endorsement agreement and prohibit any stipulation to the contrary;
5. Require FIs to notify the endorser of any default by an endorsed debtor; terminate the endorser's obligations should the FI fail to do so;
6. Require FIs to ensure, before granting credit guaranteed by an endorser, that each signatory, whether debtor or endorser, has the ability to pay;
7. Require FIs to terminate solidarity for the future upon receipt of a notice to that effect from one of the co-debtors;
8. Require FIs to provide the signatories, prior to the signature, with credit agreements involving joint liability, and with a document containing relevant information on the nature and scope of the co-signers' liabilities, useful cautions about the risks and the effects on credit files, and ways to release oneself in future from a joint commitment;

Union des consommateurs recommends that the appropriate federal and provincial authorities:

9. Study possible ways to terminate the co-signers' solidarity obligations under a credit agreement after a judgment rendered in a matrimonial case imposes on either of the parties the entire liability for repaying a debt contracted solidarily;

Union des consommateurs recommends that financial institutions:

10. Ensure that consumers preparing to sign a joint commitment as part of a credit agreement be notified systematically, verbally, before the signature, about the nature and scope of the co-signers' liabilities; and that useful cautions be provided about the risks in the event of eventual default or dispute between the parties, about the effects of joint commitment on the co-signers' credit files, and about ways to release oneself in future from a joint commitment;
11. Make that information available online to facilitate access for consumers considering or invited to make a joint credit commitment;
12. Make available online and in branches, without limiting access to existing customers, all types of standard credit agreements for consultation and comparison;

Union des consommateurs recommends that provincial consumer protection organizations and consumer rights groups:

13. Increase efforts to raise consumer awareness of joint credit liability issues.

Mediagraphy

BANK OF MONTREAL (BMO)

BMO MasterCard Cardholder Agreement, August 2016, 10 pages.

https://www.bmo.com/pdf/Cardholder_Agreement.pdf

Main/Personal

<https://www.bmo.com/main/personal>

BAUDOUIN, Jean-Louis and Pierre-Gabriel JOBIN. *Les obligations*, 6th ed., by Pierre-Gabriel Jobin with the collaboration of Nathalie Vézina, éditions Yvon Blais, Cowansville, 2005, 1,980 pages.

BOUSQUET, Jean-Pierre. “*Le contrat de cautionnement*” in *Collection de droit 2009-2005*, volume 5 *Obligations et contrats*, éditions Yvon Blais, Cowansville, nb pages unknown.

BRAUDO, Serge, Dictionnaire du droit privé, Paris, France, 2016.

Codébiteur — Définition

<http://www.dictionnaire-juridique.com/definition/codebiteur.php>

Caution / Cautionnement — Définition

<https://www.dictionnaire-juridique.com/definition/caution-cautionnement.php>

CANADIAN ASSOCIATION OF LEGAL TRANSLATORS. *Bulletin d'information sur les notions d'obligation conjointe et d'obligation solidaire*, No. 3, April 2008, Montreal, 2 pages.

<http://www.acjt.ca/medias/63/bulletin-info-no-3-obligation-conjointe.pdf>

CANADIAN BANKERS ASSOCIATION. *Issue Brief — Credit Cards: Statistics and Facts*, Montreal, May 16, 2017.

<http://www.cba.ca/credit-cards>

CANADIAN IMPERIAL BANK OF COMMERCE CIBC, Toronto.

What Does It Mean to Co-Sign a Loan?

<https://www.cibc.com/en/personal-banking/loans-and-lines-of-credit/articles-resources/co-sign-a-loan.html>

Personal Banking page

<https://www.cibc.com/en/personal-banking.html>

COALITION DES ASSOCIATIONS DE CONSOMMATEURS DU QUÉBEC (CACQ),

Endosseurs de prêts : attention !, February 4, 2015.

<https://defensesdesconsommateurs.org/category/articles/credit/>

CYR, Jessica. *Se bâtir un bon dossier de crédit, ça compte*, Caisses Desjardins des Îles-de-la-Madeleine, Les Îles magazine, spring 2014, 16 pages.

http://www.ilesdelamadeleine.com/magazine/PDF/magazine_13_03_14.pdf

DESJARDINS, Lévis.

Accord D Financing

<https://www.desjardins.com/ca/personal/loans-credit/credit-cards/accord-d-financing/index.jsp>

Building up a credit rating

<https://www.desjardins.com/ca/co-opme/action-plans-tips/financial-guide-students/personal-finance-advice/building-up-credit-rating/index.jsp>

C is for credit, under “Credit rating.”

<https://www.desjardins.com/coopmoi/plans-action-conseils/preparer-avenir/notions-financieres/credit/index.jsp>

C is for credit, under “Types of lenders.”

<https://www.desjardins.com/ca/co-opme/action-plans-tips/preparing-for-future/finance-basics/credit/index.jsp>

Home page.

<https://www.desjardins.com/ca/>

Variable Credit Agreement, April 2017, 8 pages.

<https://www.desjardins.com/ressources/pdf/b10-ccv-contrat-regulier-e.pdf>

DIOTTE, Simon. *Vous séparer sans vous déplumer*, Les Affaires, Montreal, May 14, 2014.

<http://www.lesaffaires.com/mes-finances/planification/se-separer-sans-vous-deplumer/568876>

DUGHERA, Jacques. *La finance solidaire: histoire et pertinence*. Les éditions des Récollets - L'encyclopédie du développement durable, No. 103, November 2009.

FINANCIAL CONSUMER AGENCY OF CANADA (FCAC), Ottawa.

Credit cards: right to information

<https://www.canada.ca/en/financial-consumer-agency/services/rights-responsibilities/rights-credit-cards/right-to-information.html#toc0>

Credit cards: understanding your rights and your responsibilities, 16 pages, June 2010, 18 pages.

http://publications.gc.ca/collections/collection_2010/FCAC-fcac/FC5-23-2-2010-eng.pdf

Joint borrower disclosure: rights and responsibilities, February 3, 2017.

<https://www.canada.ca/en/financial-consumer-agency/services/rights-responsibilities/rights-credit-loans/rights-joint-borrower-disclosure.html>

Joint credit cards, March 6, 2017.

<https://www.canada.ca/en/financial-consumer-agency/services/credit-cards/joint-credit-card.html>

Know Your Responsibilities as a Joint Borrower, March 2012, 4 pages.

http://publications.gc.ca/collections/collection_2013/FCAC-fcac/FC5-8-21-2012-eng.pdf

Page Main/Personal.

<https://www.cibc.com/en/personal-banking.html>

Services and information, August 14, 2013.

<https://www.canada.ca/en/services/finance.html>

FINANCIAL PLANNING STANDARDS COUNCIL. *How Is Financial Stress Affecting Canadians?* 2014.

http://www.fpsc.ca/docs/default-source/default-document-library/fp_infographic_leger.pdf?sfvrsn=2

GOVERNMENT OF CANADA. *Choosing a credit card*, March 12, 2017.

<https://www.canada.ca/en/financial-consumer-agency/services/credit-cards/choose-credit-card.html>

INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA. *Common consumer questions*. November 2, 2012. <https://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02478.html>

L'HEUREUX, Nicole. *Droit de la consommation*, 5th ed., éditions Yvon Blais, Cowansville, 2000, 566 pages.

LAURENTIAN BANK, Montreal.

Home page

https://www.banquelaurentienne.ca/en/personal_banking_services/

Page My Credit

https://www.banquelaurentienne.ca/en/personal_banking_services/my_money/my-credit/index.html

LEBLANC, Pierre et al. *Être endosseur, mais à quel prix?* Groupe Leblanc, Syndic Inc., June 24, 2012.

<http://www.dettes.ca/eviter-endettement/etre-endosseur-mais-a-quel-prix/>

LLUELLES, Didier and Benoît MOORE. *Droit des obligations*, éditions Thémis, Montreal, 2006, 2,456 pages.

NATIONAL BANK OF CANADA (NBC), Montreal.

Agreement Governing the Use of the MasterCard® Business Card Issued by National Bank of Canada, n.d., 20 pages.

<https://www.nbc.ca/content/dam/bnc/entreprise/pdf/tarification/agreement-mastercard-business.pdf>

Co-borrowers

<https://www.nbc.ca/en/faq/general/co-borrowers.html>

Co-borrowers — Important change for co-borrowers!

<https://www.nbc.ca/en/personal/financing/personal-loans-lines-of-credit/co-borrowers.html>

General Information and Agreement, Effective June 1, 2016.

<https://www.nbc.ca/content/dam/bnc/en/personal/banking/accounts-and-packages/brochure-general-information-agreement.pdf>

Guarantors

www.nbc.ca/content/dam/bnc/en/personal/financing/mortgage-solutions/legal-documentation/general-instructions-for-lawyers-f17919.doc

Main/Personal

<https://www.nbc.ca/en/personal.html>

Power of Attorney and Joint Account, 2014, 16 pages.

<https://www.nbc.ca/content/dam/bnc/en/personal/banking/accounts-and-packages/brochure-power-attorney-joint%20account.pdf>

OFFICE DE LA PROTECTION DU CONSOMMATEUR (OPC), Montreal.

Cartes et marges de crédit — Connaître les obligations de l'établissement financier, July 23, 2014.

<http://www.opc.gouv.qc.ca/consommateur/bien-service/credit-recouvrement-finance/carte-marge-credit/conseils/obligation-etablissement-financier/>

Cartes et marges de crédit – Déterminer une limite de crédit raisonnable, July 23, 2014.

<http://www.opc.gouv.qc.ca/consommateur/bien-service/credit-recouvrement-finance/carte-marge-credit/conseils/limite-credit/>

Prêt d'argent – Exemples de prêts d'argent, latest update June 29, 2016.

<http://www.opc.gouv.qc.ca/consommateur/bien-service/credit-recouvrement-finance/pretdargent/contrat-de-pretdargent/exemple-pretdargent/>

OMBUDSMAN DES SERVICES BANCAIRES ET D'INVESTISSEMENT (OBSI), *Good to Know: Case Studies — Funds Withdrawn by Divorced Individual's Partner*, 2009.
<https://www.obsi.ca/en/case-studies/banking-services/view/loan-divorced-couple-ii>

OPTION CONSOMMATEURS (OC), *Rendre la législation bancaire canadienne plus efficace*, Montreal, August 2006, 41 pages.
http://www.option-consommateurs.org/documents/principal/fr/File/rapports/services_financiers/oc_legislation_bancaire_canadienne_200608.pdf

OXFORD DICTIONARY OF LAW (5th ed.), 2002.

PUBLIC INTEREST ADVOCACY CENTRE (PIAC), home page.
<https://www.piac.ca/>

ROYAL BANK OF CANADA (RBC), Montreal
Add a User to Your Credit Card.
<http://www.rbcroyalbank.com/credit-cards/add-user.html#authusr>

Personal financial services.
<http://www.rbcroyalbank.com/personal.html>

Tout un monde de choix s'offre à vous, June 2012, 4 pages.
http://www.rbcbanqueroyale.com/brochures/_assets-custom/pdf/personal/66153-06-2012-olb.pdf

What is a loan co-signer?
<https://www.rbcroyalbank.com/search-public/index.html?question=cosigner>

SCOTIABANK, Toronto.
Banking Glossary.
<http://www.scotiabank.com/ca/en/0,,3116,00.html>

Order Supplementary Cards.
<http://www.scotiabank.com/ca/en/0,,44,00.html>

Personal Credit Agreement, Companion Booklet, January 2017, 62 pages.
http://www.scotiabank.com/ca/common/pdf/personal_banking/personal_credit_agreement_companion_booklet_lc.pdf

Revolving Credit Agreement, August 2016, 4 pages.
http://www.scotiabank.com/ca/common/pdf/borrowing/en_revolving_credit_agreement.pdf

SERVICES QUÉBEC, *Contrats de crédit*
<http://www4.gouv.qc.ca/FR/Portail/Citoyens/Evenements/consommateur-renseignement-plainte/Pages/contrats-credit.aspx>

TANGERINE, *Forward Thinking*

<https://www.tangerine.ca/forwardthinking/spending/should-new-couples-get-joint-credit-cards>

TORONTO DOMINION BANK (TD), Toronto.

Frequently Asked Questions page.

<https://www.tdcanadatrust.com/products-services/borrowing/loans-lines-of-credit/faq-credit.jsp>

How to take finances from mine and yours to ours, at any age, newsroom, Media Releases section, October 28, 2013.

<http://td.mediaroom.com/2013-10-28-How-to-take-finances-from-mine-and-yours-to-ours-at-any-age>

Personalize your experience.

<https://www.tdcanadatrust.com/products-services/banking/index-banking.jsp>

Power of Attorney Form, n.d., 5 pages.

<https://www.td.com/ca/document/PDF/forms/596056.pdf>

Share the purchasing convenience of your TD Credit Card.

<https://www.tdcanadatrust.com/products-services/banking/credit-cards/getting-started.jsp#add-cardholders>

Laws and Regulations

Canada Cooperatives Act, SC 1998, c.1.

Civil Code of Québec, <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/CCQ-1991>

Consumer Protection Act, CQLR c P-40.1.

<https://www.canlii.org/en/qc/laws/stat/cqlr-c-p-40.1/latest/cqlr-c-p-40.1.html>

Consumer Protection Act, 1971, SQ 1971, c. 74.

Consumer Protection Act, 2002, SO 2002, c. 30.

<https://www.canlii.org/en/on/laws/stat/so-2002-c-30-sch-a/129440/so-2002-c-30-sch-a.html>

Cost of Borrowing (Banks) Regulations, SOR/2001-101 adopted under the *Bank Act*, sec. 6.1.

<http://www.laws.justice.gc.ca/eng/regulations/SOR-2001-101/page-2.html>

Negligence Act, R.S.O. 1990, chap. N.1 sec.1.

Ontario Regulation 17/05, Consumer Protection Act 2002, Chapter 30, Schedule A1

<https://www.canlii.org/en/on/laws/regu/o-reg-17-05/127829/o-reg-17-05.html>

Regulation respecting the application of the Consumer Protection Act, P-40.1, r-3, sections 35 and 36.

Supreme Court of Canada, *Prévost-Masson v. General Trust of Canada*, [2001] 3 SCR 882.

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1929/index.do>

ANNEX 1

Questionnaire addressed to the Financial Consumer Agency of Canada



Credit Contracts: Signatory Solidarity

Questionnaire addressed to the Financial Consumer Agency of Canada

Project funded by the Office of Consumer Affairs
(Innovation, Science and Economic Development)

November 2016

PRESENTATION OF THE ORGANIZATION

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PRESENTATION OF THE PROJECT

The research project titled *Credit Contracts: Signatory Solidarity* will inquire into the information available to those who co-sign credit products such as: credit cards and limits, personal loans, Accord D products, and other types of commitments involving joint responsibility: endorsement or guarantee, request for an additional credit card.

Discussion groups will serve to verify consumers' understanding of their obligations and how the information provided matches what consumers actually need when considering to make such a commitment.

As part of our research, we will also investigate how government consumer protection organizations apply the laws under their purview to better inform or protect consumers entering into such a contract.

To that end, we are soliciting government consumer protection organizations for information on aspects such as: the types of complaints received, the number of information requests from consumers, the existence of awareness-raising, education or other programs regarding joint commitments, etc.

N.B.: We will use the term "**joint commitments**" throughout the questionnaire to include ALL the types of commitments mentioned above (joint signature of credit card and limit, personal loan, Accord D product; endorsement or guarantee, request of additional card, etc.).

N.B.: Our research excludes mortgages.

La force d'un réseau

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info@uniondesconsommateurs.ca | www.uniondesconsommateurs.ca

The Questionnaire

1. Identification of your organization:

Name: Financial Consumer Agency of Canada

Address:

Resource person:

Position:

Telephone No.:

E-mail:

2. A) In the last five (5) years, have you received complaints or information requests from consumers about joint commitments?

☐ Yes

☐ No

B) If so, indicate number of complaints and/or information requests received:

Number of complaints

Number of information requests

3. Check the types of concerns about joint commitments that consumers raise most often. And if you have statistics on the different types of complaints, mention the numbers or proportions (in relation to the total amount of concerns about joint commitments):

☐ Difference between the various types of commitments (joint signature, endorsement, guarantee, etc.)

☐ Application and/or scope of the law

☐ Protections offered

☐ The merchant's disclosure obligations

☐ Other obligations of the seller/merchant

☐ Right to cancel the commitment

☐ Registrations with the credit office

☐ Obligations of the co-signer/endorser/guarantor, etc.

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices when the credit limit is increased

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices if the primary account holder defaults on payment

☐ Remedies

☐ Other, specify:

4. If you have more-specific/detailed examples of information requests or complaints from consumers, indicate them here:

5. Can you indicate the nature and number of disputes raised by consumer complaints on this subject, as well as the outcomes (e.g. success rate, etc.)?

6. A) Have you taken steps and actions to raise consumers' awareness of their obligations, rights and remedies regarding this type of commitments (e.g. advertising campaign, brochure, leaflet, website, information kit, etc.)?

- ☐ Yes
☐ No

B) If yes, which ones and when?

7. In your view, what level of knowledge do consumers have about their obligations regarding this type of commitments?

- ☐ Excellent
☐ Good
☐ Somewhat good
☐ Unsatisfactory

8. A) Have you taken steps to raise financial institutions' awareness of their obligations under existing rules regarding joint commitments and consumer rights?

- ☐ Yes
☐ No

B) If yes, indicate a few examples:

9. In your view, what level of knowledge do financial institutions have about their obligations regarding this type of commitments?

- ☐ Excellent
☐ Good
☐ Somewhat good
☐ Unsatisfactory

10. If applicable, what improvements could be brought to the regulatory framework of this type of joint commitments?

11. Do you have other comments to make?

Please e-mail your comments
by Friday, December 2nd, 2016 at the latest,
to: idelapeta@uniondesconsommateurs.ca
THANK YOU for your collaboration!

For any information, don't hesitate to contact us.

UNION DES CONSOMMATEURS

Me Ioana Delapeta, Project manager

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ANNEX 2

Questionnaire addressed to government consumer protection agencies



Credit Contracts: Signatory Solidarity

Questionnaire addressed to government consumer protection organizations

Project funded by the Office of Consumer Affairs
(Innovation, Science and Economic Development)
November 2016

PRESENTATION OF THE ORGANIZATION

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PRESENTATION OF THE PROJECT

The research project titled *Credit Contracts: Signatory Solidarity* will inquire into the information available to those who co-sign credit products such as: credit cards and limits, personal loans, Accord D products, and other types of commitments involving joint responsibility: endorsement or guarantee, request for an additional credit card.

Discussion groups will serve to verify consumers' understanding of their obligations and how the information provided matches what consumers actually need when considering to make such a commitment.

As part of our research, we will also investigate how government consumer protection organizations apply the laws under their purview to better inform or protect consumers entering into such a contract.

To that end, we are soliciting government consumer protection organizations for information on aspects such as: the types of complaints received, the number of information requests from consumers, the existence of awareness-raising, education or other programs regarding joint commitments, etc.

N.B.: We will use the term "**joint commitments**" throughout the questionnaire to include ALL the types of commitments mentioned above (joint signature of credit card and limit, personal loan, Accord D product; endorsement or guarantee, request of additional card, etc.).

N.B.: Our research excludes mortgages.

La force d'un réseau

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info@uniondesconsommateurs.ca | www.uniondesconsommateurs.ca

The Questionnaire

1. Identification of your organization:

Name:

Address:

Resource person:

Position:

Telephone No.:

E-mail:

2. A) In the last five (5) years, have you received complaints or information requests from consumers about joint commitments?

☐ Yes

☐ No

B) If so, indicate number of complaints and/or information requests received:

Number of complaints

Number of information requests

3. Check the types of concerns about joint commitments that consumers raise most often. And if you have statistics on the different types of complaints, mention the numbers or proportions (in relation to the total amount of concerns about joint commitments):

☐ Difference between the various types of commitments (joint signature, endorsement, guarantee, etc.)

☐ Application and/or scope of the law

☐ Protections offered

☐ The merchant's disclosure obligations

☐ Other obligations of the seller/merchant

☐ Right to cancel the commitment

☐ Registrations with the credit office

☐ Obligations of the co-signer/endorser/guarantor, etc.

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices when the credit limit is increased

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices if the primary account holder defaults on payment

☐ Remedies

☐ Other, specify:

4. If you have more-specific/detailed examples of information requests or complaints from consumers, indicate them here:

5. What types of advice/information to you offer consumers who report a lack of information regarding the conclusion of this type of contract or who request information on the application of the law (possible approaches, applicable law, remedies, etc.)?

6. A) Does a specific legal framework protect those who sign such contracts in your province?

☐

Yes

☐

No

B) If yes, what is it?

7. A) Do specific rules apply to such contracts, specifically to consumer protection?

B) If yes, what are they?

8. If applicable, what approaches and actions has your organization undertaken to facilitate the implementation of that regulatory framework?

9. A) Have you taken steps and actions to raise consumers' awareness of their obligations, rights and remedies regarding this type of commitments (e.g. advertising campaign, brochure, leaflet, website, information kit, etc.)?

☐

Yes

☐

No

B) If yes, which ones and when?

10. If applicable, what do you think is consumers' level of knowledge of that regulatory framework?

☐

Excellent

☐

Good

☐

Somewhat good

☐

Unsatisfactory

11. A) Have you taken steps to raise the awareness of merchants offering this type of products, regarding the merchants' obligations under your province's laws?

☐

Yes

☐ No

B) If yes, which ones and when?

12. If applicable, what do you think is merchants' level of knowledge of that regulatory framework?

- ☐ Excellent
- ☐ Good
- ☐ Somewhat good
- ☐ Unsatisfactory

13. A) In the last five years, has your organization initiated legal proceedings against merchants who do not comply with the laws governing this type of products?

- ☐ Yes
- ☐ No

B) If yes, can you indicate the nature and number of legal proceedings, as well as the lawsuits' outcomes (e.g. success rate, better compliance, etc.)?

14. If applicable, what are the pros and cons of the regulatory framework as designed and applied in your province?

15. If applicable, what improvements could be brought to the regulatory framework of this type of joint commitments?

16. Do you have other comments to make?

Please e-mail your comments
by Friday, December 2nd, 2016 at the latest,
to: idelapeta@uniondesconsommateurs.ca
THANK YOU for your collaboration!

For any information, don't hesitate to contact us.

UNION DES CONSOMMATEURS
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ANNEX 3

Questionnaire addressed to consumer protection organizations



Credit Contracts: Signatory Solidarity

Questionnaire addressed to consumer protection organizations

Project funded by the Office of Consumer Affairs
(Innovation, Science and Economic Development)
November 2016

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PRESENTATION OF THE PROJECT

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As part of our research, we will also investigate how government consumer protection organizations apply the laws under their purview to better inform or protect consumers entering into such a contract.

To that end, we are soliciting government consumer protection organizations for information on aspects such as: the types of complaints received, the number of information requests from consumers, the existence of awareness-raising, education or other programs regarding joint commitments, etc.

N.B.: We will use the term "**joint commitments**" throughout the questionnaire to include ALL the types of commitments mentioned above (joint signature of credit card and limit, personal loan, Accord D product; endorsement or guarantee, request of additional card, etc.).

N.B.: Our research excludes mortgages.

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The Questionnaire

1. Identification of your organization:

Name:

Address:

Resource person:

Position:

Telephone No.:

E-mail:

2. A) In the last five (5) years, have you received complaints or information requests from consumers about joint commitments?

☐ Yes

☐ No

B) If so, indicate number of complaints and/or information requests received:

Number of complaints

Number of information requests

3. Check the types of concerns about joint commitments that consumers raise most often. And if you have statistics on the different types of complaints, mention the numbers or proportions (in relation to the total amount of concerns about joint commitments):

☐ Difference between the various types of commitments (joint signature, endorsement, guarantee, etc.)

☐ Application and/or scope of the law

☐ Protections offered

☐ The merchant's disclosure obligations

☐ Other obligations of the seller/merchant

☐ Right to cancel the commitment

☐ Registrations with the credit office

☐ Obligations of the co-signer/endorser/guarantor, etc.

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices when the credit limit is increased

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices if the primary account holder defaults on payment

☐ Remedies

☐ Other, specify:

4. If you have more-specific/detailed examples of information requests or complaints from consumers, indicate them here:
5. What types of advice/information to you offer consumers who report a lack of information regarding the conclusion of this type of contract or who request information on the application of the law (possible approaches, applicable law, remedies, etc.)?
6. A) Have you taken steps and actions to raise consumers' awareness of their obligations, rights and remedies regarding this type of commitments (e.g. advertising campaign, brochure, leaflet, website, information kit, etc.)?
- ☐ Yes
- ☐ No
- B) If yes, which ones and when?
7. If applicable, what do you think is consumers' level of knowledge of their obligations, rights and remedies regarding this type of commitments?
- ☐ Excellent
- ☐ Good
- ☐ Somewhat good
- ☐ Unsatisfactory
8. A) In the last five years, do you know of legal proceedings that have been initiated against merchants who did not comply with the laws for this type of products?
- ☐ Yes
- ☐ No
- B) If yes, can you indicate the nature and number of legal proceedings, as well as the lawsuits' outcomes?
9. If applicable, what are the pros and cons of the regulatory framework as designed and applied in your province?
10. If applicable, what improvements could be brought to your province's legal framework in order to better protect consumers entering into those types of joint commitments?

11. Do you have other comments to make?

Please e-mail your comments
by Friday, December 2nd, 2016 at the latest,
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THANK YOU for your collaboration!

For any information, don't hesitate to contact us.

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ANNEX 4

Questionnaire addressed to the Ombudsman for Banking Services and Investments

Credit Contracts: Signatory Solidarity

Questionnaire addressed to the Ombudsman for Banking Services and Investments

Project funded by the Office of Consumer Affairs
(Innovation, Science and Economic Development)
November 2016

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As part of our research, we will also investigate how governmental consumer protection organizations apply the laws under their purview to better inform or protect consumers entering into such a contract.

To that end, we are soliciting government consumer protection organizations for information on aspects such as: the types of complaints received, the number of information requests from consumers, the existence of awareness-raising, education or other programs regarding joint commitments, etc.

N.B.: We will use the term "**joint commitments**" throughout the questionnaire to include ALL the types of commitments mentioned above (joint signature of credit card and limit, personal loan, Accord D product; endorsement or guarantee, request of additional card, etc.).

N.B.: Our research excludes mortgages.

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info@uniondesconsommateurs.ca | www.uniondesconsommateurs.ca

The Questionnaire

1. Identification of your organization:

Name: Ombudsman for Banking Services and Investments

Address:

Resource person:

Position:

Telephone No.:

E-mail:

2. A) In the last five (5) years, have you received complaints or information requests from consumers about joint commitments?

☐ Yes

☐ No

B) If so, indicate number of complaints and/or information requests received:

Number of complaints

Number of information requests

3. Check the types of concerns about joint commitments that consumers raise most often. And if you have statistics on the different types of complaints, mention the numbers or proportions (in relation to the total amount of concerns about joint commitments):

☐ Difference between the various types of commitments (joint signature, endorsement, guarantee, etc.)

☐ Application and/or scope of the law

☐ Protections offered

☐ The merchant's disclosure obligations

☐ Other obligations of the seller/merchant

☐ Right to cancel the commitment

☐ Registrations with the credit office

☐ Obligations of the co-signer/endorser/guarantor, etc.

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices when the credit limit is increased

☐ Right of the co-signer/endorser/guarantor, etc. to receive notices if the primary account holder defaults on payment

☐ Remedies

☐ Other, specify:

4. If you have more-specific/detailed examples of information requests or complaints from consumers, indicate them here

5. Can you indicate the nature and number of disputes raised by consumer complaints on this topic, as well as the outcomes (e.g. success rate, etc.)?
6. In your view, what level of knowledge do consumers have about their rights and responsibilities regarding this type of commitments?
- ☐ Excellent
- ☐ Good
- ☐ Somewhat good
- ☐ Unsatisfactory
7. In your view, what level of knowledge do financial institutions have about their obligations regarding this type of commitments?
- ☐ Excellent
- ☐ Good
- ☐ Somewhat good
- ☐ Unsatisfactory
8. If applicable, what improvements could be brought to the regulatory framework of this type of joint commitments?
9. Do you have any other comments to make?

Please e-mail your comments
by Friday, December 2nd, 2016 at the latest,
to: idelapeta@uniondesconsommateurs.ca
THANK YOU for your collaboration!

For any information, please don't hesitate to contact us.

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ANNEX 5

Substance Stratégies Report



Crédit conjoint

Rapport de recherche

Présenté le
12 février 2017

union
des consommateurs

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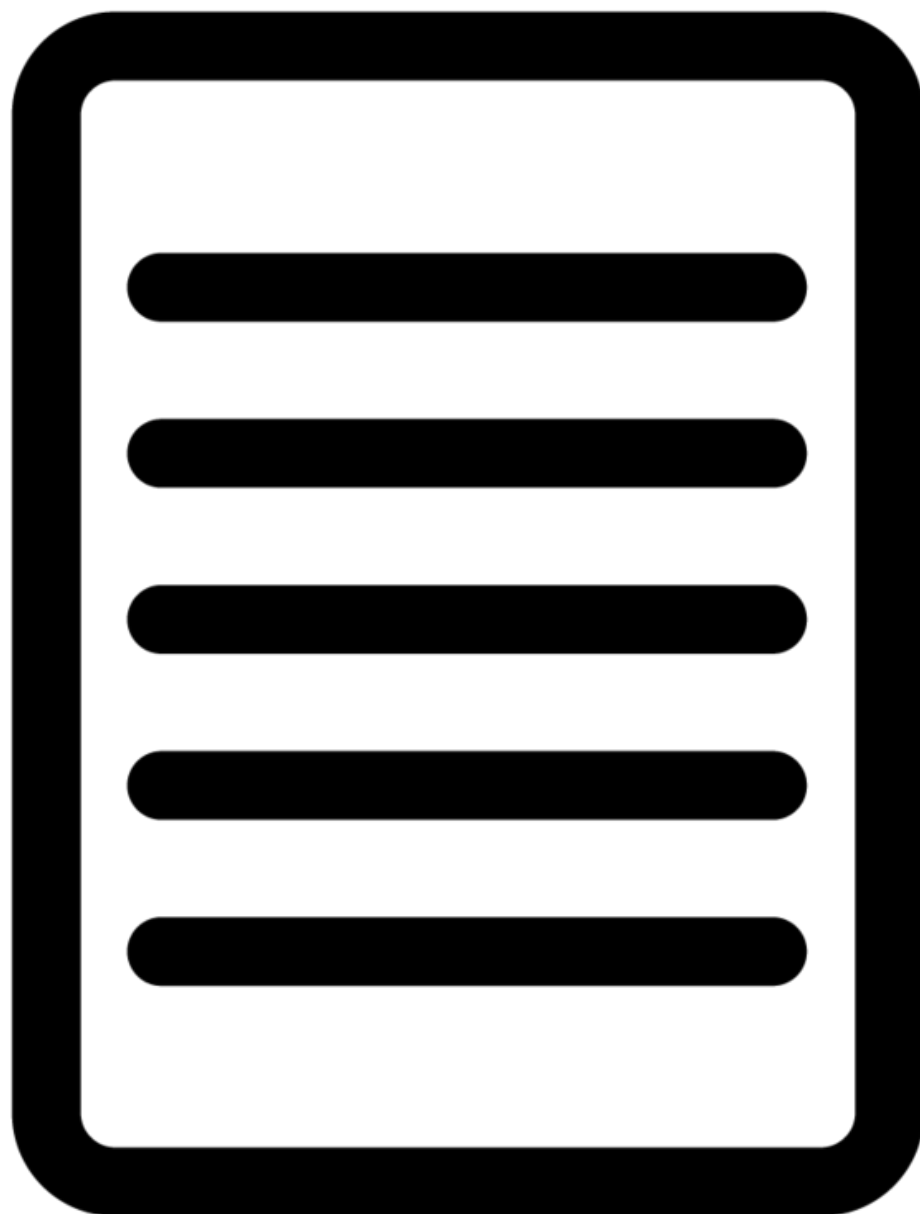
Annexes

CONTEXTE ET & OBJECTIFS



Mieux comprendre les consommateurs

- De plus en plus de Canadiens optent pour du crédit conjoint, que ce soit via les cartes de crédit, les marges, les hypothèques, le financement en magasin ou les prêts personnels. Les produits de crédit sont complexes et comportent beaucoup de composantes. Le fait de pouvoir avoir accès à ce financement de manière conjointe ne fait qu'accentuer cette complexité.
- Afin de mieux comprendre le phénomène et de mieux renseigner les consommateurs lors de litiges, Union des consommateurs était désireuse d'interroger des consommateurs canadiens ayant vécu l'expérience du crédit conjoint.
- C'est dans ce contexte que Substance stratégies a été mandatée afin de réaliser une série de groupes de discussion à Toronto et Montréal. Le présent rapport recense les principaux constats de cette phase qualitative.



SOMMAIRE EXÉCUTIF

En 10 temps

- 1** **Intérêt:** L'intérêt généré par le sujet dépasse ce à quoi nous nous attendions au départ.
- 2** **Méconnaissance:** Les consommateurs connaissent bien mal la question du crédit conjoint et de l'endossement. Ce faisant, leurs réponses prennent plus souvent la forme de présomptions ou d'hypothèses que d'affirmations à proprement parler.
- 3** **Différence:** Les consommateurs torontois (par opposition aux consommateurs montréalais) et les 40-59 ans (par opposition aux 25-39 ans) démontrent plus d'assurance dans leurs réponses.
- 4** **Acheté d'avance:** De façon générale, les consommateurs avaient déjà pris la décision de prendre du crédit conjointement avant de rencontrer le conseiller en succursale. Autrement dit, il s'agit d'un produit qui s'achète davantage qu'il ne se fait vendre.

En 10 temps

5

Silence: Très peu de mises en garde, d'avertissements et d'explications tous azimuts sont fournis par les compagnies prêteuses. En fait, prendre du crédit conjoint constitue une simple formalité pour une majorité de participants et le processus d'obtention de celui-ci a été si simple et rapide que plusieurs en conservent un souvenir très partiel.

6

Acte de foi: L'endossement d'un prêt pour autrui est perçu comme étant très différent de l'engagement conjoint, dans la mesure où l'endosseur assume une grande part de risque sans profiter du crédit. En fait, le seul réel avantage perçu est le sentiment d'aider quelqu'un.

7

Solidarité: Les gens savent pour la plupart qu'un contrat de carte de crédit est un engagement solidaire. Or, ils ignorent l'appellation «engagement solidaire» et emploient plutôt «engagement conjoint».

En 10 temps

8

Rébarbatif: Les textes liés aux contrats de crédit sont jugés comme étant très rébarbatifs et créent presque une réaction épidermique chez certains participants. Cette aversion pour les contrats pourrait suggérer que le conseiller en succursale a l'obligation morale de fournir davantage d'information.

9

Acceptation: Les gens semblent accepter de devoir faire face à plusieurs restrictions ou obligations lorsqu'ils prennent un engagement de crédit (que ce soit sur une base personnelle ou conjointe). Dans cette optique, l'agacement provoqué par les textes renvoie davantage à l'aspect trop technique ou légal de ceux-ci qu'à une inquiétude ou un stress de ne pas pouvoir honorer l'une des clauses.

10

Devoir: Les conversations semblent avoir initié une certaine volonté de mieux comprendre les contrats de crédit conjoint encore en vigueur. Autrement dit, le simple fait d'en discuter semble les investir d'une certaine conscientisation / responsabilité plus concrète. Cela laisse croire que les consommateurs pourraient prêter l'oreille à une éventuelle campagne de sensibilisation.

MÉTHODOLOGIE



Méthodologie



Méthode de collecte

4 groupes de discussion dans les marchés de Montréal et de Toronto



Groupe cible

Consommateurs vivant présentement une expérience de crédit conjoint, ayant vécu cette expérience il y a moins de 5 ans ou étant endosseur pour un proche pour un produit de crédit

25 à 59 ans



Nombre de participants par groupe

Entre 9 et 10



Durée des groupes

Environ 120 minutes



Dates des groupes

26 janvier 2017 à Toronto (2 groupes)

31 janvier 2017 à Montréal (2 groupes)



Les commentaires recueillis dans le cadre de groupes de discussion contribuent à mieux cerner un phénomène et permettent de mieux comprendre certaines réalités plus subtiles. De plus, on ne peut prétendre à la généralisation ou à la représentativité statistique de ceux-ci.

RÉSULTATS

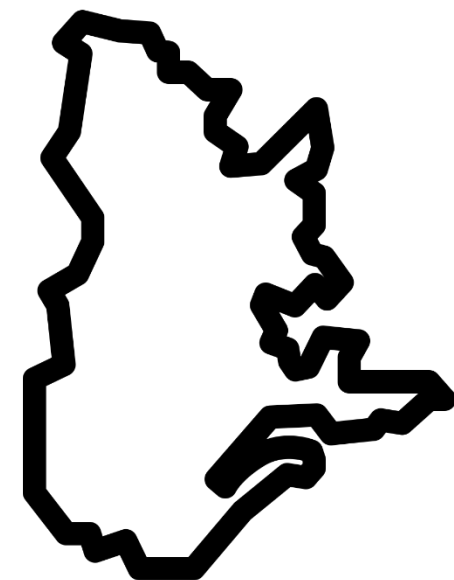


Des différences en termes de littéracie financière

De manière générale, les participants de Toronto démontrent un niveau de littéracie financière légèrement supérieur à ceux de Montréal. Nous observons d'ailleurs couramment ce phénomène lors des études à caractère financier. En fait, par expérience, nous savons que les Canadiens hors Québec suivent leur situation financière de manière plus assidue.

Cela dit, les participants québécois, malgré une profondeur de connaissance moins manifeste en ce qui a trait au crédit en général et au crédit conjoint en particulier, discutent d'argent avec plus d'aisance que les participants ontariens. Autrement dit, ils hésitent moins à se dévoiler et sont moins préoccupés à projeter une image idéalisée d'eux-mêmes.

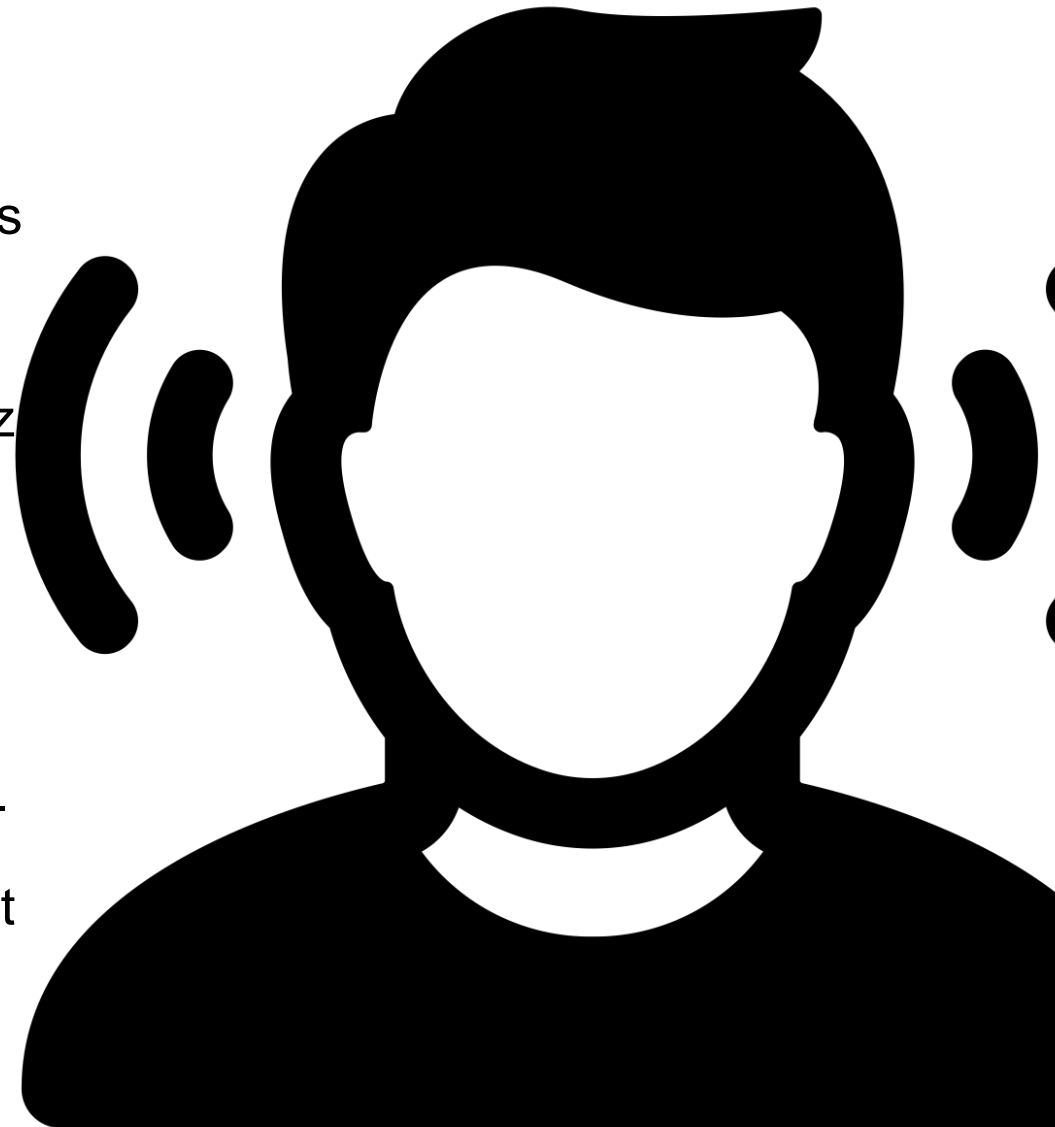
Par ailleurs, les participants plus âgés (et, par ricochet, souvent plus expérimentés sur le plan du crédit) affichent un niveau de connaissance sensiblement plus élevé que les plus jeunes.



Un intérêt surprenant

Au départ, nous posions l'hypothèse que les discussions allaient démontrer certaines lacunes en termes d'information chez les participants et craignons un certain essoufflement des séances en raison du peu d'information et du peu d'intérêt généré par le sujet chez certaines personnes.

Si la première hypothèse est, somme toute, validée, nous avons été surpris par l'énergie émanant des groupes. La question du crédit conjoint ne semble pas faire partie des préoccupations immédiates des participants, mais il n'en demeure pas moins qu'ils démontrent une volonté manifeste de comprendre celle-ci. En fait, plusieurs consommateurs réalisent lors des séances qu'ils ont eux-mêmes signé un contrat de crédit conjoint «les yeux fermés».

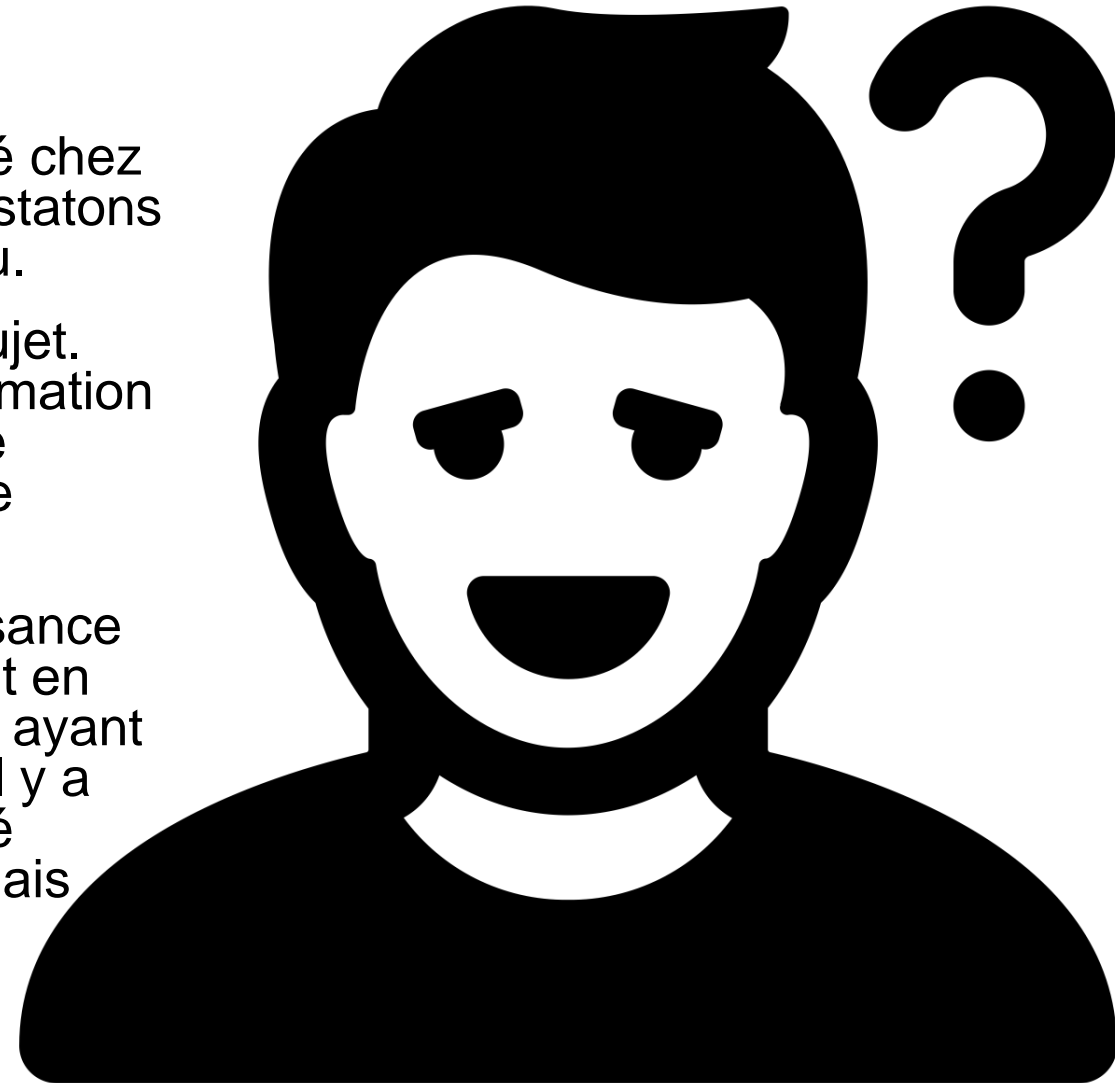


Je pense que...

Malgré un niveau de connaissance un peu plus élevé chez les Ontariens et les participants plus âgés, nous constatons que le sujet est relativement peu connu dans l'absolu.

En fait, les gens semblent très peu informés sur le sujet. Cela dit, ils n'ont pas le réflexe de chercher de l'information sur la question. Ainsi, leurs réponses sont truffées de présomptions et commencent très souvent par «Il me semble que...», «J'ai l'impression que...», etc.

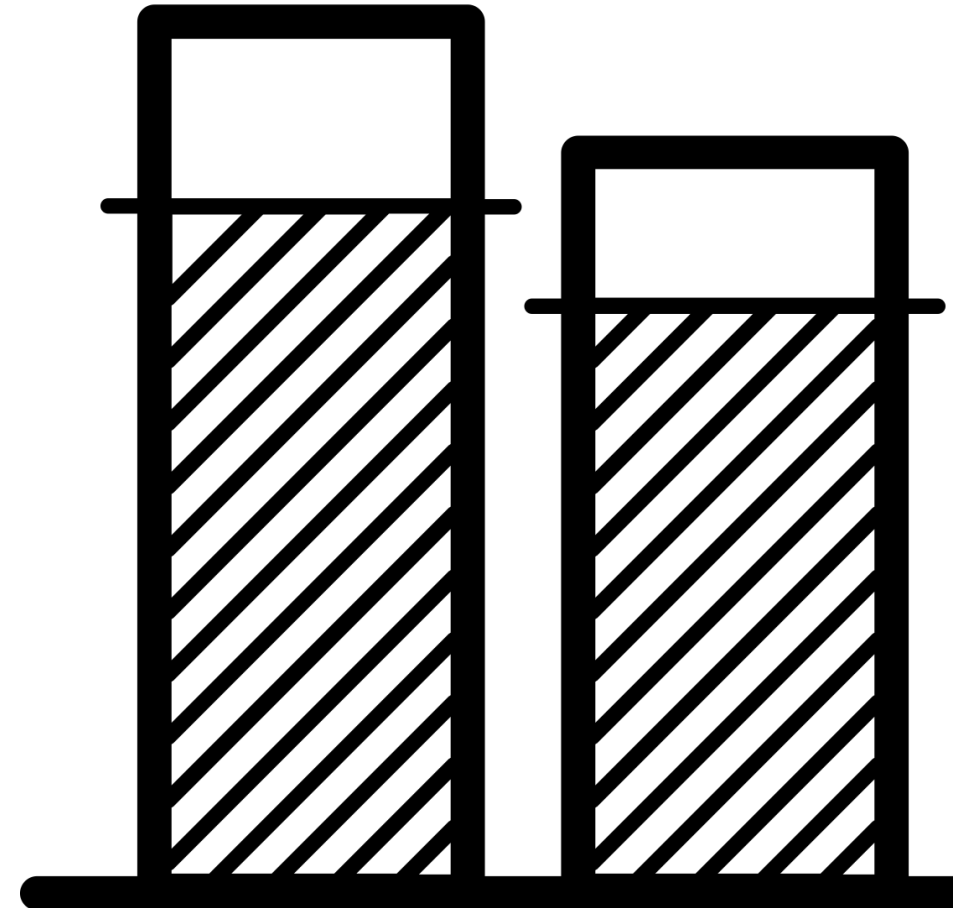
Cela est assez évocateur de leur niveau de connaissance ou de l'attention qu'ils ont prêtée au processus. Il faut en effet rappeler que les groupes réunissaient des gens ayant récemment vécu une expérience de crédit conjoint. Il y a fort à parier que le niveau de connaissance aurait été encore plus faible auprès de participants n'ayant jamais vécu le processus.



Quand on se compare, on se console

Plusieurs participants verbalisent le fait qu'ils sont, d'une certaine façon, soulagés de constater qu'ils ne sont pas les seuls à mal connaître le crédit conjoint.

Cela dit, ils ne sont pas surpris que le niveau de connaissance soit relativement faible. De leur propre aveu, ils ne connaissent personne qui prend réellement le temps de lire l'ensemble de ses contrats financiers. D'ailleurs, même les participants dont la profession touche de près ou de loin à la finance avouent une certaine lassitude liée à la consultation des contrats.



Le crédit s'achète davantage qu'il ne se vend

La très grande majorité des participants rencontrés affirment qu'ils avaient déjà pris la décision de prendre du crédit conjoint avant de rencontrer leur conseiller en institution financière. Dit autrement, leur idée «était faite» au moment de la prise de rendez-vous, si bien que l'institution financière s'est simplement pliée à leur demande.

Ce faisant, dans l'esprit de plusieurs, le fait que le crédit conjoint émane davantage du consommateur que du prêteur diminue la responsabilité des institutions de bien expliquer les tenants et aboutissants des engagements. A contrario, le fait que le besoin émane des consommateurs bonifie leur responsabilité d'arriver préparé. Cela dit, il ne faut pas conclure pour autant que cette préparation est toujours effectuée, bien au contraire.



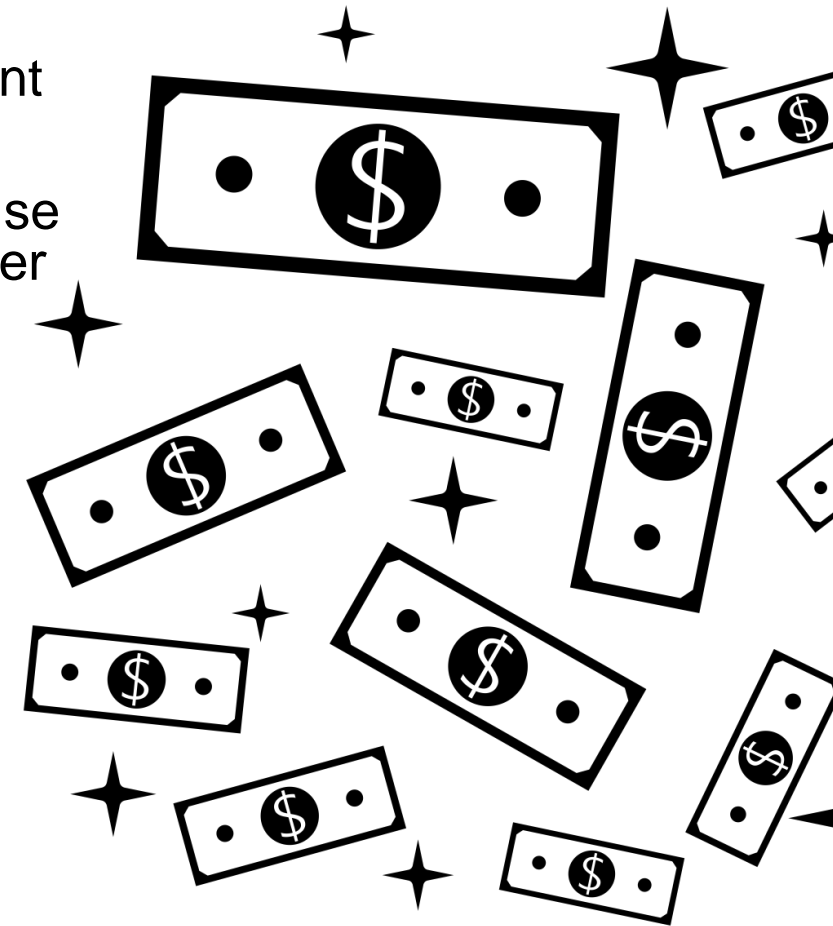
L'accès au crédit conjoint est (très) facile

Plusieurs participants perçoivent le fait de prendre du crédit conjoint comme étant routinier et d'une simplicité désarmante.

D'ailleurs, à ce sujet, certains participants nous ont avoué ne plus se souvenir du processus d'obtention et de magasinage tant ce dernier avant été simple et court.

De leur propre aveu, les institutions financières font beaucoup d'efforts afin de faciliter le processus, si bien qu'elles n'effectuent que très peu de mises en garde (exception faite des cas d'endossement) et que les conseillers financiers en succursale ne prennent pas le temps d'expliquer les droits et responsabilités de chaque partie et les recours potentiels.

Autrement dit, le crédit conjoint est présenté comme le crédit personnel et les institutions financières ne semblent pas faire beaucoup de nuances entre les deux outils.

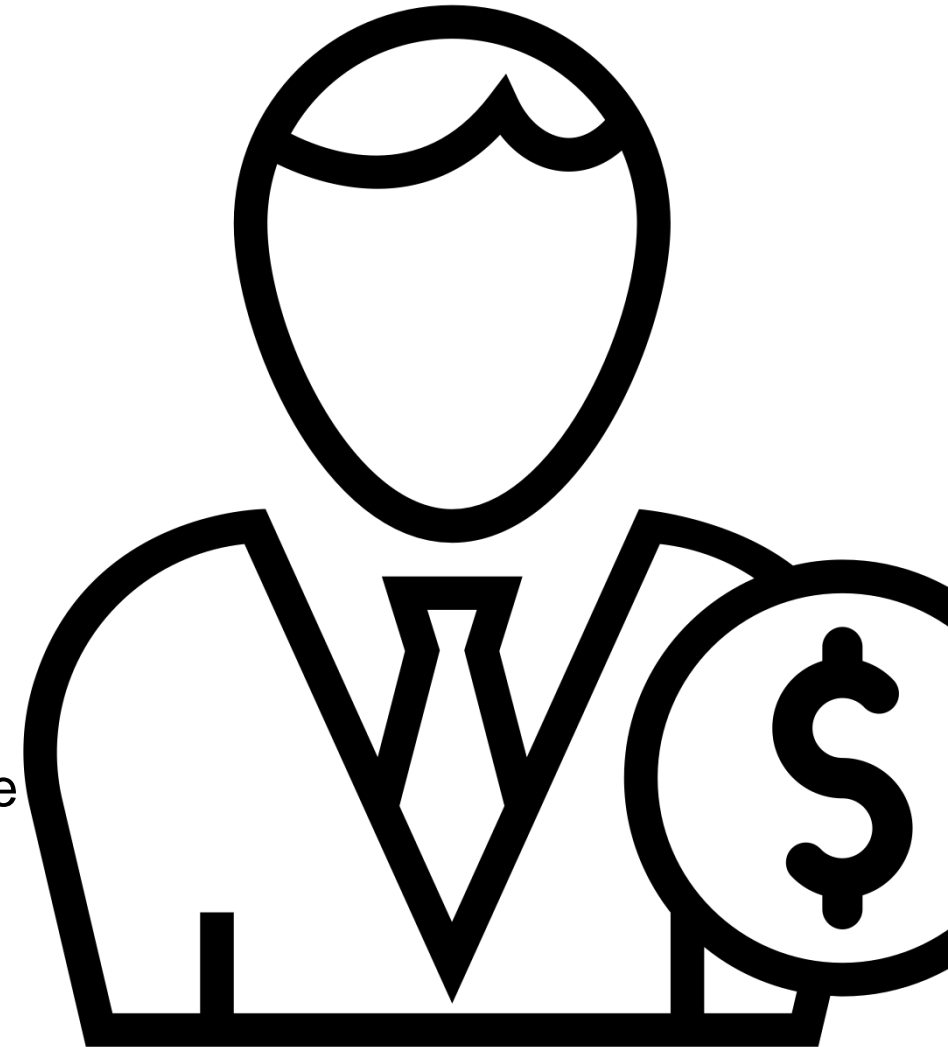


Les banques et les individus

De manière générale, les gens ne s'attendent pas à ce que les banques les informent sur les produits financiers. Ils affirment qu'ils recherchent eux-mêmes l'information avant de se rendre à l'institution financière. Cela dit, il existe un décalage marqué entre la connaissance déclarée et la connaissance réelle.

Ainsi, les participants épargnent les institutions financières dans leurs commentaires. En fait, leurs attentes sont relativement basses et, dans ce contexte, ils ne comptent pas sur elles pour faire «leur éducation». Ironiquement, certains d'entre eux iront chercher l'information sur les sites Internet de ces institutions.

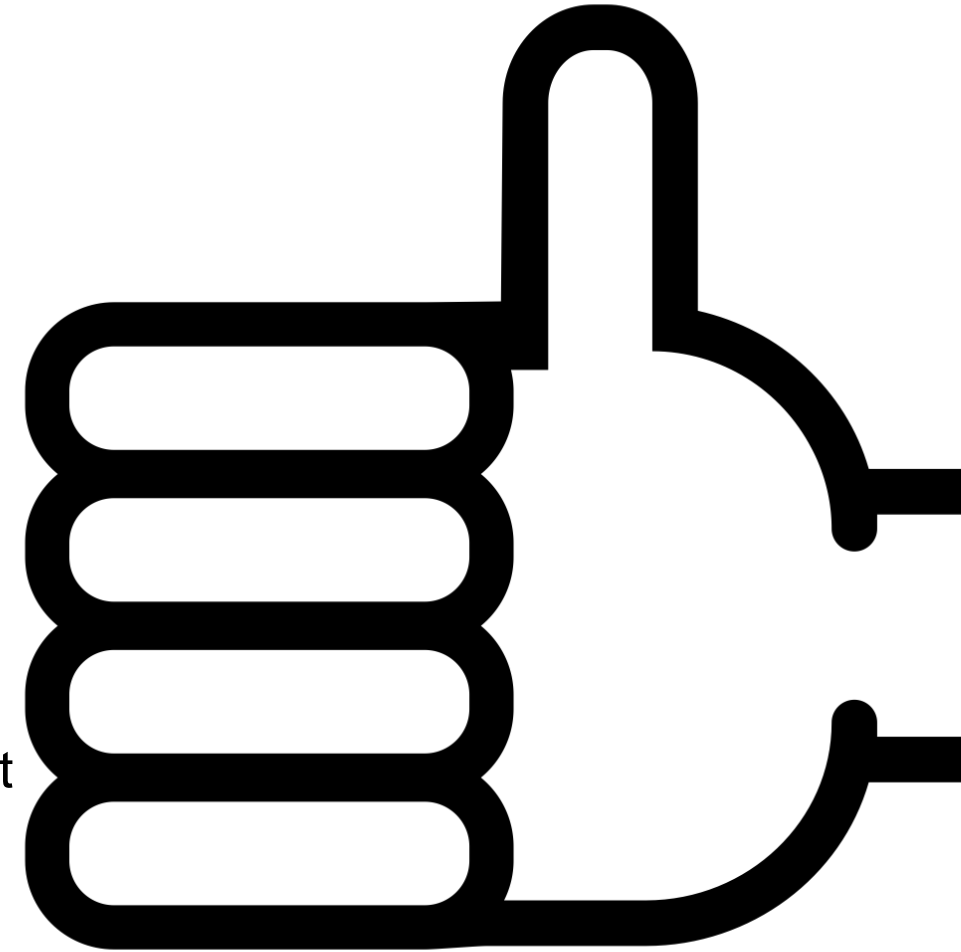
Cela dit, plusieurs participants font une nette distinction entre les institutions financières et les individus qui la composent. Certains avouent d'ailleurs avoir bâti une relation de confiance avec leur conseiller financier au fil des ans. Dans ce contexte, ce conseiller devient une source d'information jugée crédible (et même parfois objective).



On prend du crédit quand ça va bien

Une majorité de participants avouent candidement qu'ils n'ont pas réellement pensé aux conséquences négatives potentielles lorsqu'ils ont pris un contrat de crédit avec un proche.

À ce titre, il faut préciser que ce proche en fait souvent le conjoint / la conjointe. Dans ce contexte, le crédit sert souvent à réaliser un projet commun (l'achat d'une voiture, des rénovations, etc.) ou constitue la mise en commun des vies financières au sein d'un couple. Ainsi, le crédit est souvent contracté dans un contexte positif et dans un climat de confiance mutuelle, si bien que les consommateurs le font souvent avec une certaine légèreté, voire une certaine insouciance.

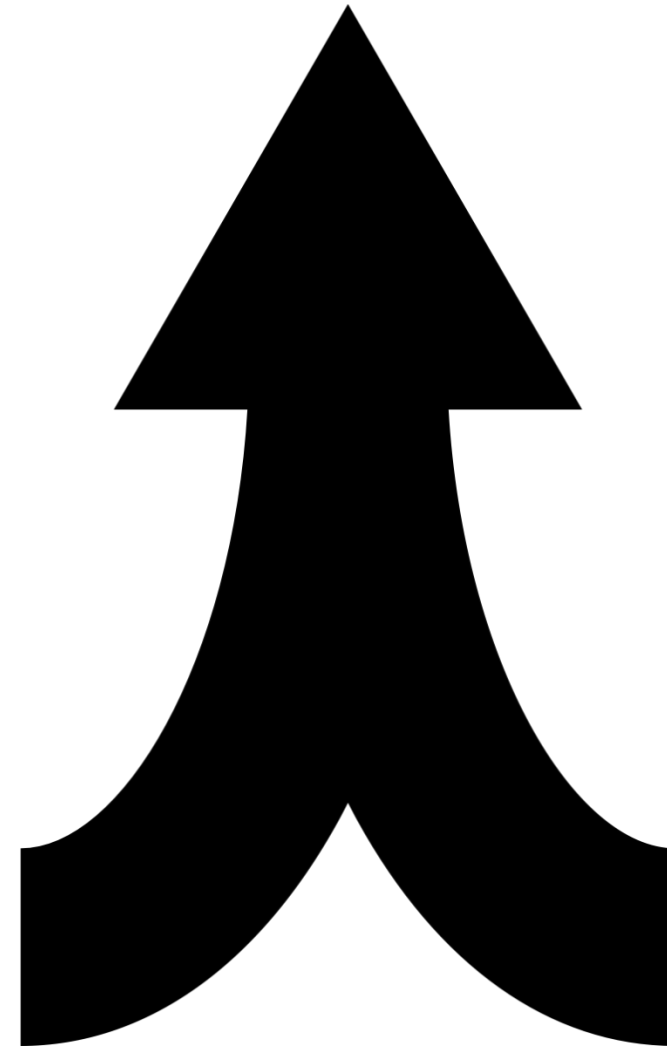


Les avoirs communs stimulent le crédit conjoint

Lorsque nous réalisons des groupes portant sur les finances personnelles, nous sommes toujours surpris de constater à quel point certains couples hésitent à fusionner leurs vies financières, et ce, malgré la longévité de la relation et la présence d'enfants. Les différences de revenus à l'intérieur d'un couple ont également une incidence sur la fusion des avoirs (ou, pour paraphraser certains participants, sur la création d'un «pot commun»).

Ainsi, le fait de mettre les avoirs en commun ou non a une grande influence sur la prédisposition à acquérir du crédit conjoint. Le fait d'acheter une propriété, de rénover celle-ci ou des besoins matériels importants servent souvent d'éléments déclencheurs.

Finalement, quelques participants soulignent que le double revenu de leur couple augmente leur capacité d'emprunt. À ce titre, un participant rétorque que la protection pour l'institution financière est ainsi doublée.



L'hypothèque est le point tournant

Plusieurs participants détenant une hypothèque avec leur conjoint(e) abordent la question du crédit conjoint comme étant un automatisme.

Pour eux, le montant du prêt pour lequel ils se sont engagés conjointement pour l'achat d'une propriété est tel qu'il diminue grandement l'importance ou la gravité perçue d'un engagement conjoint pour une carte de crédit ou un prêt-auto, par exemple.

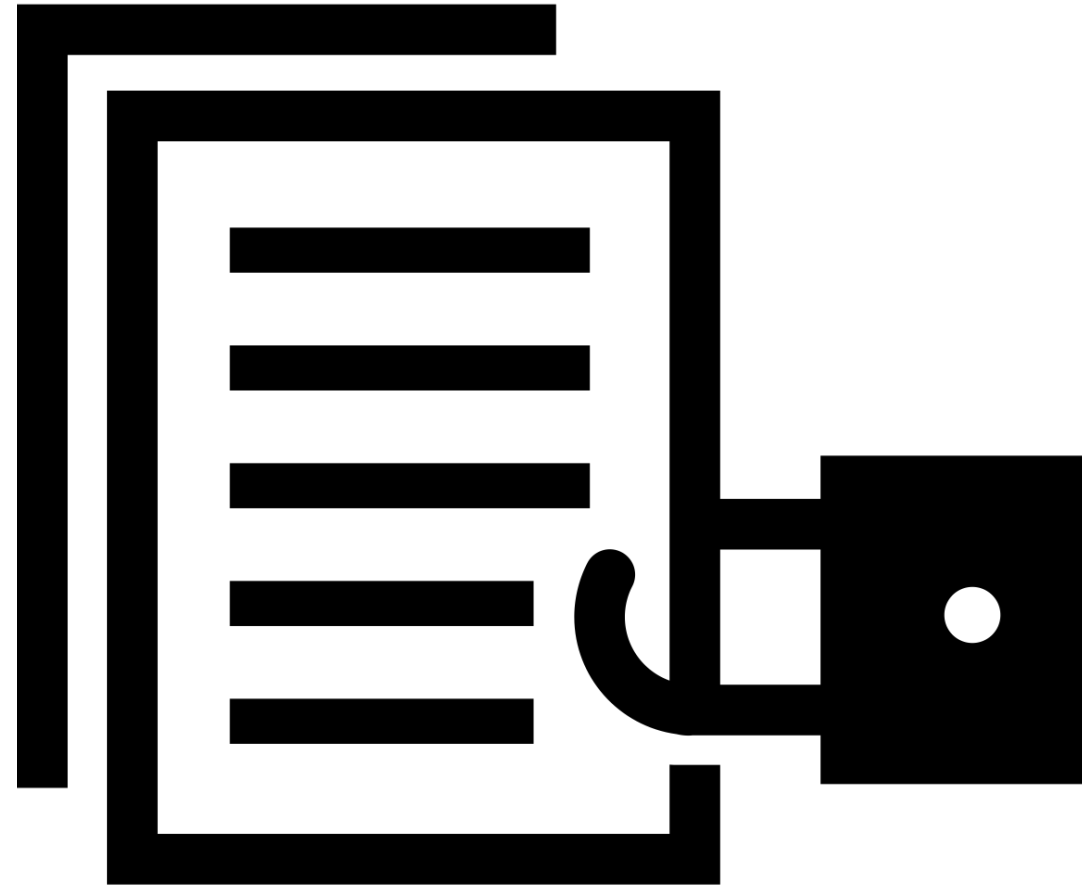
De plus, le fait de prendre une hypothèque de manière conjointe officialise pour plusieurs la mise en commun des vies financières au sein d'un couple. Dans ce contexte, le crédit conjoint constitue une suite logique découlant de cet investissement important et devient simplement une preuve supplémentaire de ce mariage financier.



L'hypothèque = compte conjoint

Les participants de Montréal mentionnent que l'obligation présumée d'ouvrir un compte conjoint lors de l'obtention d'un prêt hypothécaire constitue le «cheval de Troie», à travers lequel il serait très facile pour les institutions financières d'offrir des produits de crédit conjoint (que ce soit des marges ou des cartes de crédit).

À ce sujet, quelques participants ont l'impression que l'institution financière auprès de laquelle ils ont pris leur hypothèque a, en quelque sorte, profité de leur captivité afin de leur proposer du crédit conjoint. Certains y décèlent une certaine voracité, tandis que d'autres expliquent cette façon de faire par la faiblesse des taux hypothécaires.

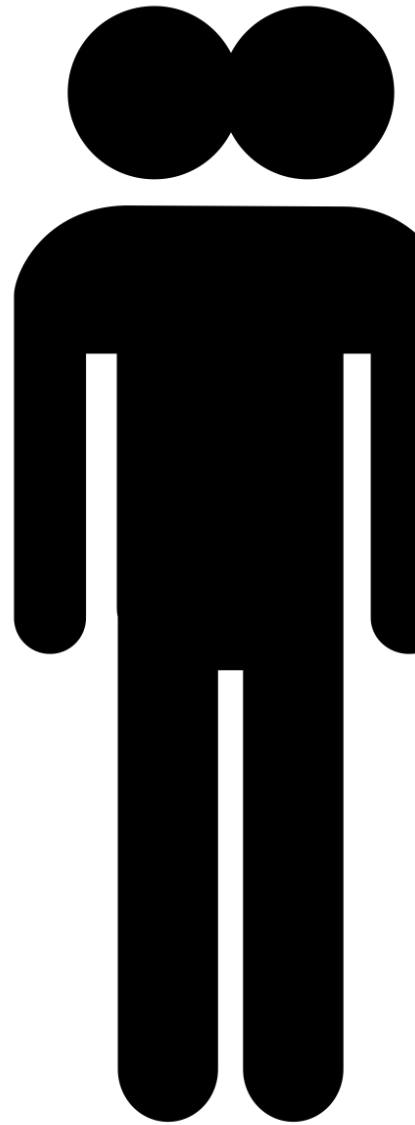


Engagement solidaire?

Les expressions «engagement solidaire» et «concept de solidarité» sont méconnues de l'ensemble des participants des deux marchés. Elles créent une réelle confusion, surtout lorsqu'on demande aux gens d'effectuer des nuances avec l'expression «engagement conjoint».

Fait intéressant toutefois, une majorité de participants prêtent la définition « d'engagement solidaire » à « l'engagement conjoint ». Autrement dit, il est clair pour eux qu'ils sont responsables de la totalité du montant inscrit au contrat et non simplement de la moitié. Autrement dit, « l'engagement solidaire » est virtuellement inconnu sur le plan de la sémantique, mais les gens comprennent plutôt bien sa mécanique et ses tenants et aboutissants. La lecture des textes 1 et 2 lors de l'exercice tend d'ailleurs à confirmer cette compréhension.

La confusion liée à l'emploi de ces deux appellations découle probablement du fait que le mot «conjoint» est fréquemment employé sur le plan financier (compte conjoint, carte de crédit conjointe, etc.).

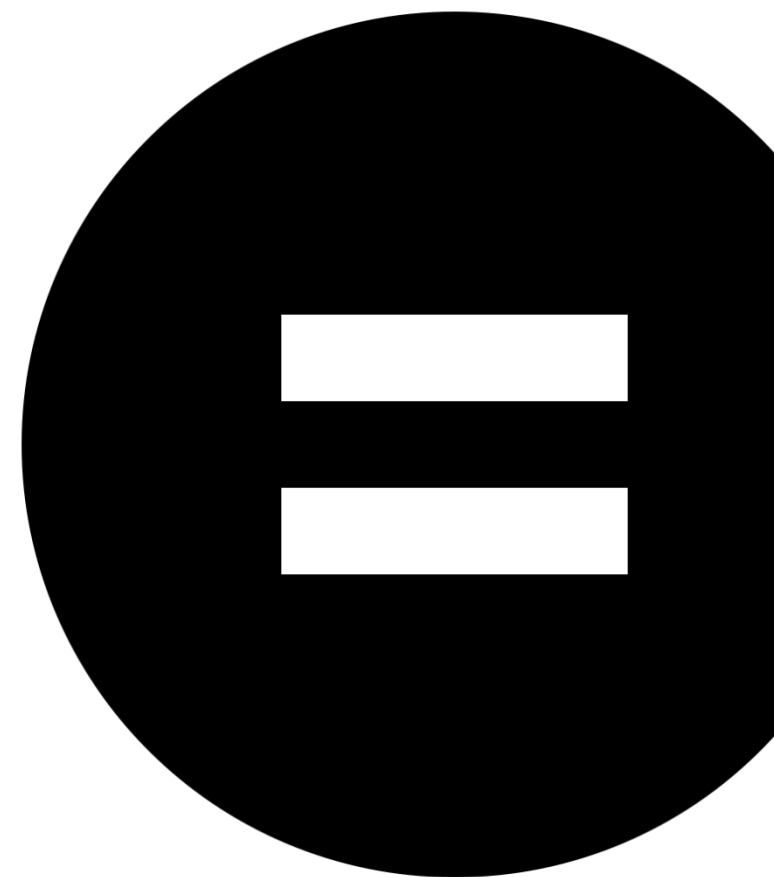


Plusieurs synonymes présumés

Les consommateurs se montrent très hésitants lorsqu'on les questionne sur les nuances qu'ils perçoivent entre les termes «cosignataires», «cotitulaires», «codétenteurs» et «utilisateur autorisé supplémentaire».

En fait, ils n'utilisent que très rarement ces termes dans la vie courante et ils présumant que les trois premiers sont des synonymes. À leurs yeux, ils renvoient à une responsabilité directe afférente au contrat de crédit. Quant à «utilisateur autorisé supplémentaire», cette terminologie renvoie davantage à un utilisateur dont le nom ne figure pas sur le contrat, mais pour qui une carte est émise. Dans ce contexte, cet utilisateur n'aurait pas de responsabilité (autre que morale vis-à-vis des autres détenteurs).

Cela dit, cette conversation est en fait une série de déductions et les participants avouent n'avoir aucune certitude.



Des participants incrédules

La question de la possibilité pour un cotitulaire de carte de crédit de faire émettre de nouvelles cartes ou d'augmenter la limite de crédit sans forcément que l'autre cotitulaire en soit informé crée beaucoup d'incrédulité chez les participants.

La plupart d'entre eux tiennent en effet pour acquis que le caractère conjoint des engagements implique un consentement conjoint pour les décisions qui les concernent. Ainsi, une très vaste majorité d'entre eux sont convaincus que les deux signataires doivent donner explicitement leur aval pour une hausse de limite de crédit ou pour l'émission de nouvelles cartes. À leurs yeux, le fait de permettre à une seule personne de prendre les décisions pourrait stimuler l'irresponsabilité, voire la malhonnêteté, de certains consommateurs.



L'endossement: un acte de foi

Le fait de se porter garant d'un prêt ou d'agir comme endosseur est perçu comme un acte de foi. Il est basé sur la confiance envers un individu. Autrement dit, un endosseur met, en quelque sorte, sa cote de crédit en jeu par altruisme. C'est d'ailleurs pour cette raison que le fait de se porter endosseur nécessite généralement davantage de réflexion que le fait de signer un engagement de crédit solidaire avec un conjoint pour une carte de crédit ou une marge de crédit, par exemple.

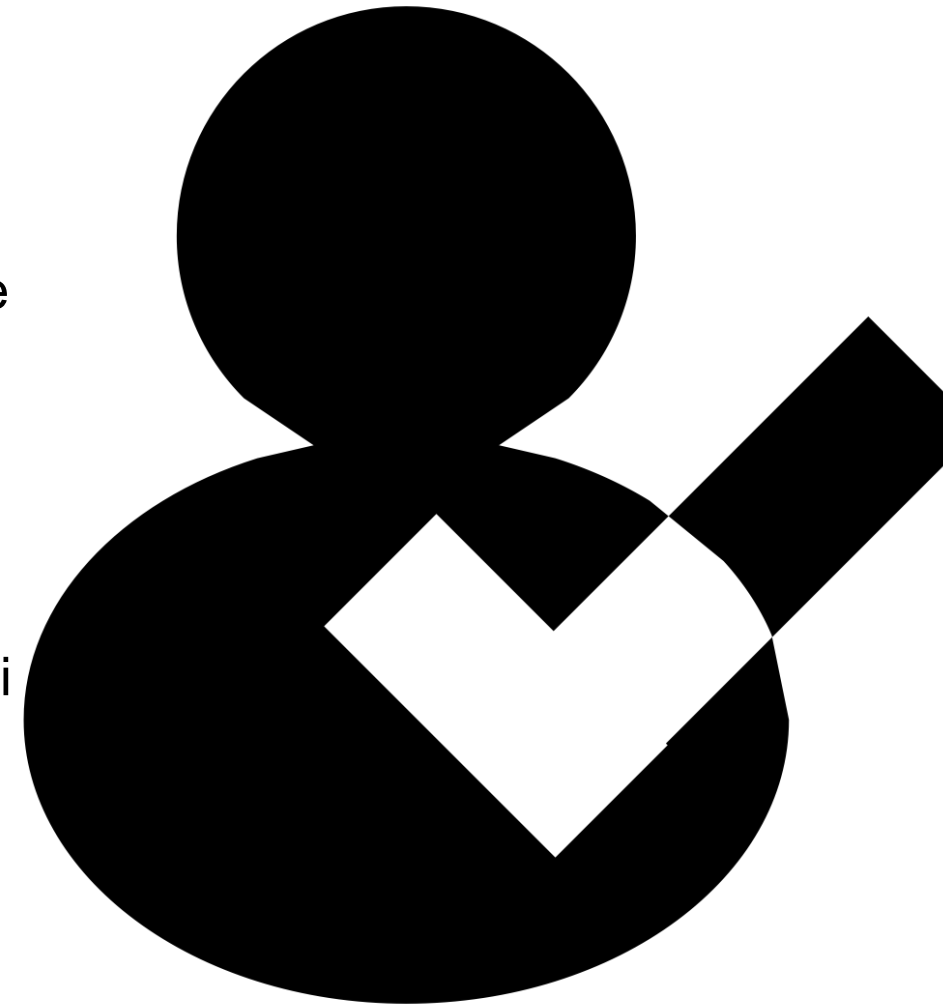
Les participants se posent toutefois beaucoup moins de questions lorsqu'il est question d'agir à titre d'endosseur pour un enfant. En fait, il existe à cet effet une volonté des parents de «donner une chance dans la vie» à leur enfant. D'ailleurs, les parents étant endosseurs ont souvent eux-mêmes obtenu l'endossement de leurs propres parents lorsqu'ils étaient plus jeunes.



Très peu d'avantages à endosser

Lorsqu'on demande aux gens d'identifier les avantages et inconvénients liés au fait d'agir à titre d'endosseur et de cosignataires, les participants sont presque unanimes sur le fait que la principale différence est que l'endosseur ne profite pas du crédit octroyé. Aussi, le fait de prendre du crédit de manière conjointe suggère que le montant du prêt / du crédit octroyé sera plus élevé.

Ainsi, il n'existe pas vraiment d'avantage au fait de se porter garant d'un prêt (ou le fait de poser une bonne action), dans la mesure où les défauts de paiement potentiels sont perçus comme une source de stress relativement omniprésente. Qui plus est, les participants comprennent bien que le fait d'être endosseur peut affecter leur propre cote de crédit.

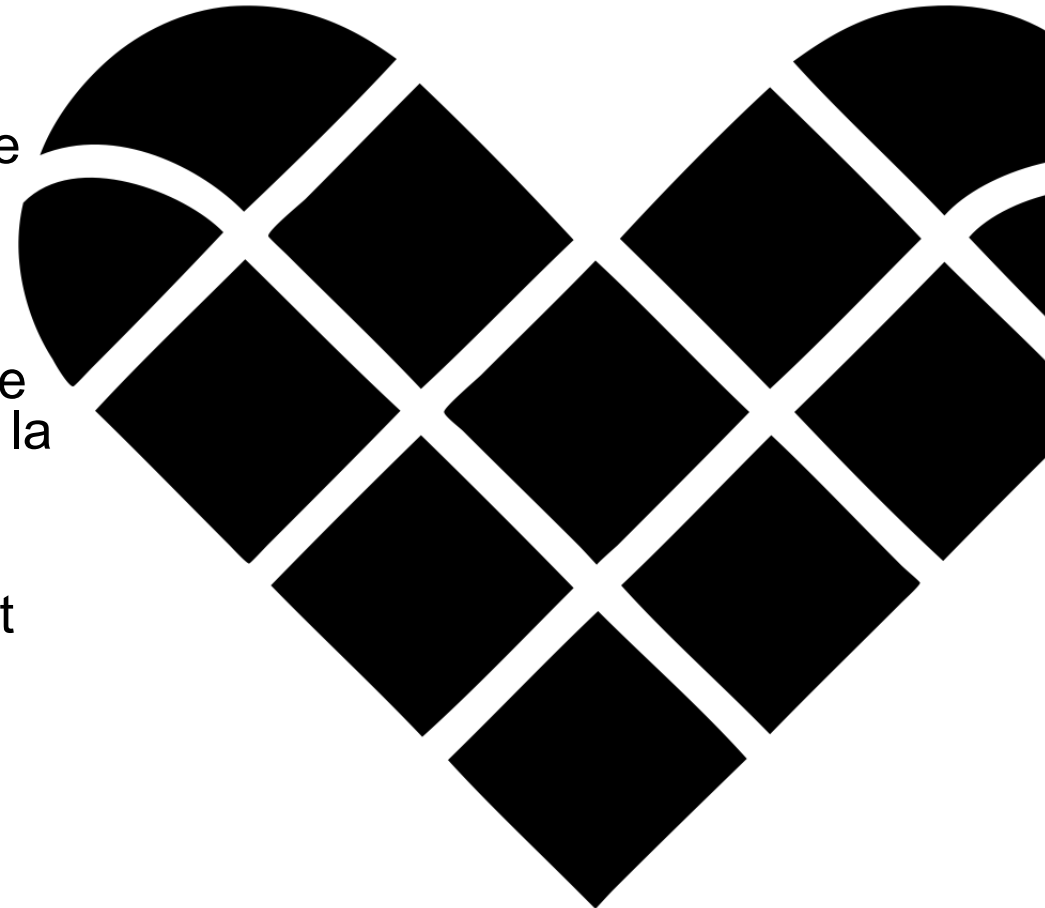


La charge émotionnelle de l'endossement

En dépit du fait que les gens sont parfois incapables d'identifier un seul avantage au fait d'être endosseur, il n'en demeure pas moins qu'ils perçoivent ce rôle comme étant relativement émotif et lourd en symbolique.

La charge émotionnelle est en effet beaucoup plus palpable que dans le cas des contrats dits «solidaires». Ainsi, les participants emploient des expressions du type «remettre ce que j'ai eu dans la vie», «bien partir mon enfant dans la vie» ou même «tout le monde a droit à une deuxième chance».

En fait, le seul réel avantage perçu de l'endossement est l'impression bien réelle d'aider un de ses proches.

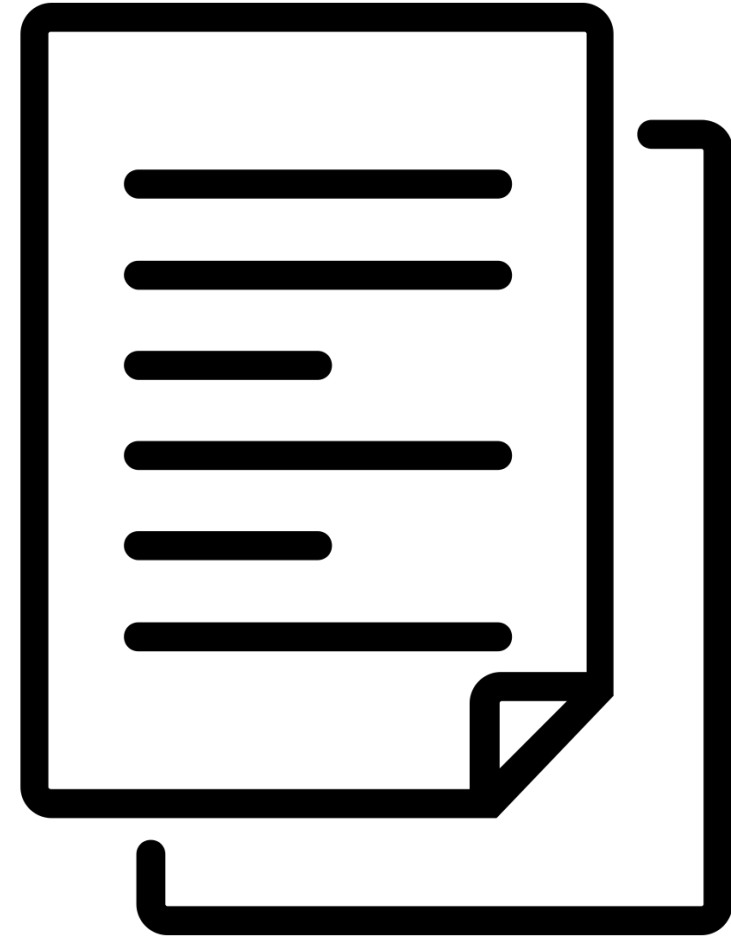


Petits caractères, grand cynisme

Tel que mentionné au préalable, les participants des deux marchés se montrent plutôt dubitatifs par rapport aux «petits caractères» (*fine print* en anglais) afférents aux contrats de crédit. Cela dit, ils avouent ne pas lire ce genre de texte, qui leur apparaît comme étant trop complexe.

Cette discussion intervient de manière spontanée relativement rapidement dans le cadre des discussions. Le fait de leur fournir un exercice dans le cadre duquel ils doivent lire des extraits de contrats de crédit nourrit d'ailleurs ce cynisme.

À ce sujet, la principale critique formulée concerne la volonté présumée des compagnies prêteuse de profiter du manque de connaissance des gens en rendant le contrat plus restrictif qu'ils ne le croient.



À propos de l'exercice lors des séances

Dans la dernière demi-heure des séances, les participants étaient appelés à lire attentivement différents extraits de contrats de crédit trouvés sur le web. Il y avait notamment un extrait d'un contrat portant sur le cautionnement personnel et un texte lié à un engagement conjoint pour une carte de crédit.

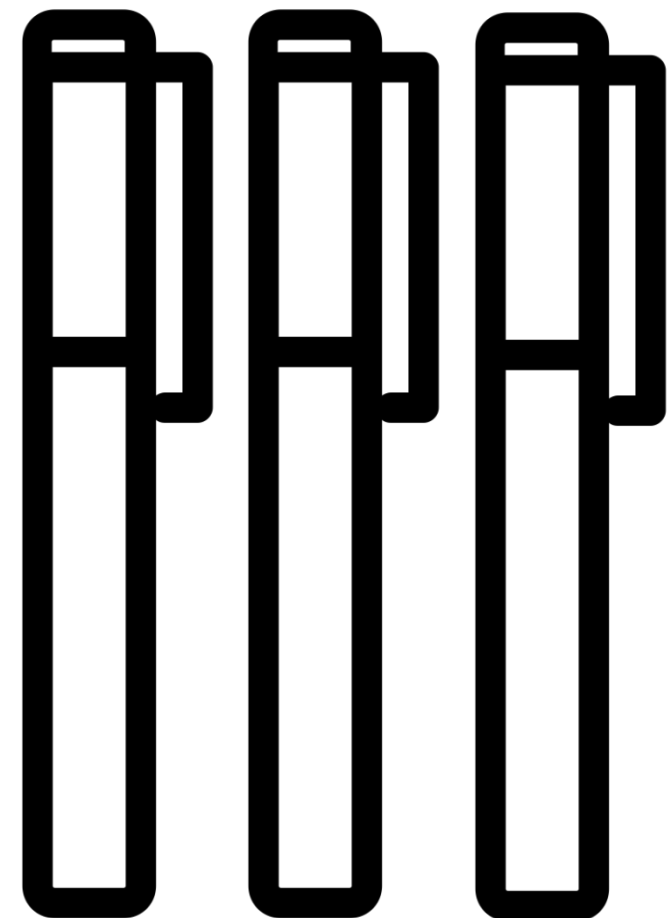
Les participants devaient souligner en...

Bleu : les éléments qu'ils trouvent les plus avantageux pour les consommateurs ;

Rouge : les éléments qu'ils trouvent les plus désavantageux pour les consommateurs ;

Noir : les éléments qu'ils ne comprennent pas ou qui ne leur apparaissent pas clairs.

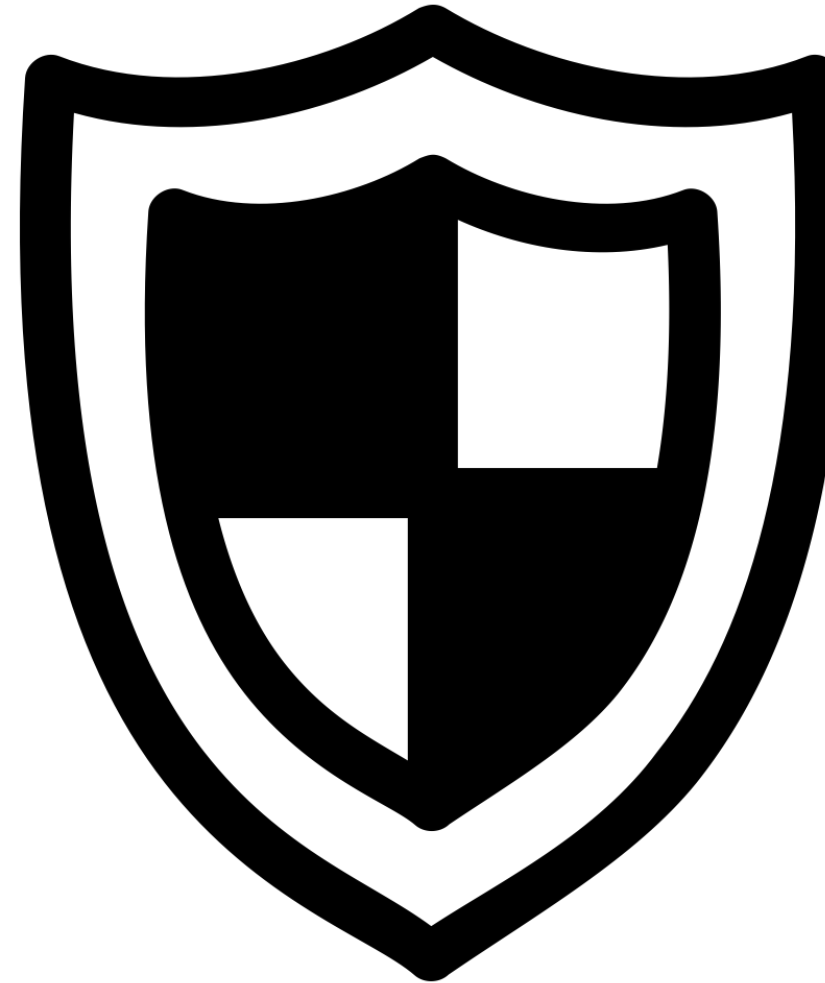
Les textes auxquels les participants étaient exposés se trouvent en annexes.



Les prêteurs se protègent

La lecture des textes génère un certain cynisme chez plusieurs participants. Ces derniers réalisent que les compagnies prêteuses sont obsédées par leur volonté de se protéger, quitte à pouvoir «changer les règles du jeu» si cela leur est favorable. D'ailleurs, quelques participants croient que ce type de texte est souvent présenté sous forme de «petits caractères» et qu'ils ne les liraient pas de toute façon.

Cette impression est particulièrement prégnante lors de la lecture du texte portant sur le cautionnement personnel et la clause «solidarité». Cela dit, il convient à ce sujet de préciser que moins de la moitié des participants avait vécu une telle expérience, ce qui peut forcément justifier leur étonnement.



Le noir prédomine

Lorsque l'on questionne les participants sur leur lecture, nous constatons que cette dernière génère une grande confusion. Le vocabulaire employé leur est très rébarbatif, si bien que plusieurs ont dû s'y prendre à quelques reprises afin de lire les textes dans leur intégralité.

Or, dans l'esprit de la presque totalité des consommateurs, un texte faisant appel à du vocabulaire ambigu ou très légal ne peut être avantageux pour le consommateur. Ce faisant, les participants ont souligné plusieurs passages en noir et rouge, tandis que le bleu s'est fait très discret.

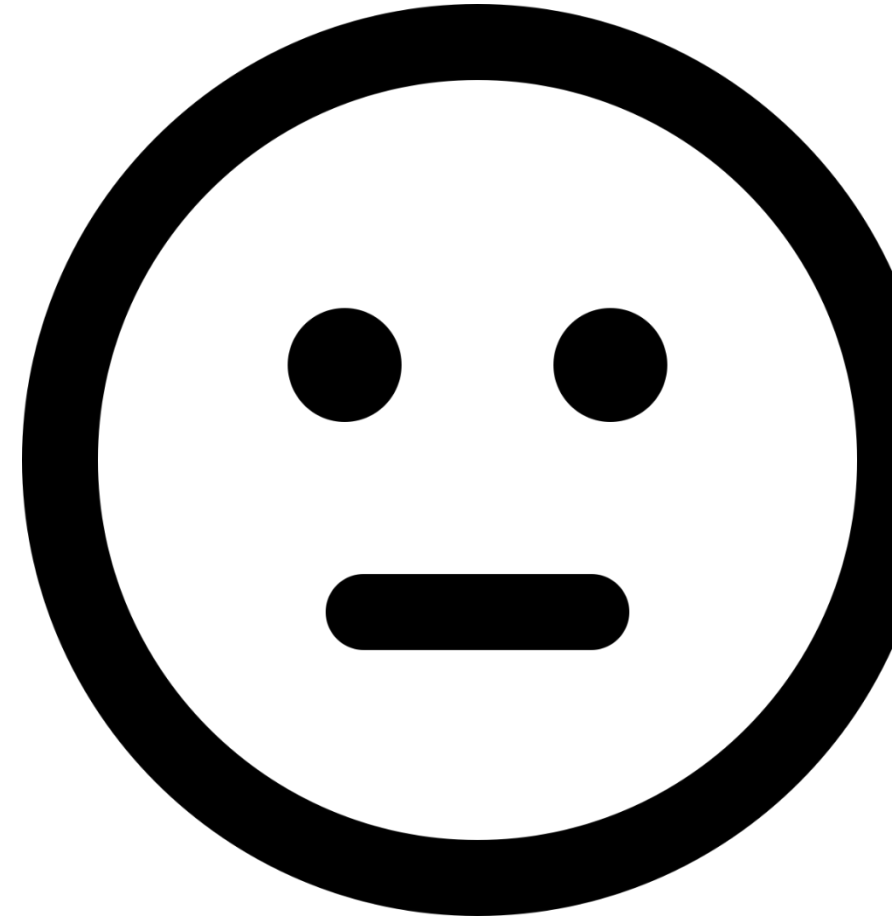


Comment le consommateur pourrait-il être avantageé?

Les consommateurs parviennent assez peu à identifier des passages dans les textes lus qu'ils perçoivent comme étant avantageux pour le consommateur.

En fait, ils sont conscients que les clauses du contrat fourni par le prêteur seront forcément à l'avantage de ce dernier. Autrement dit, à leurs yeux, le seul avantage est de pouvoir bénéficier du crédit consenti.

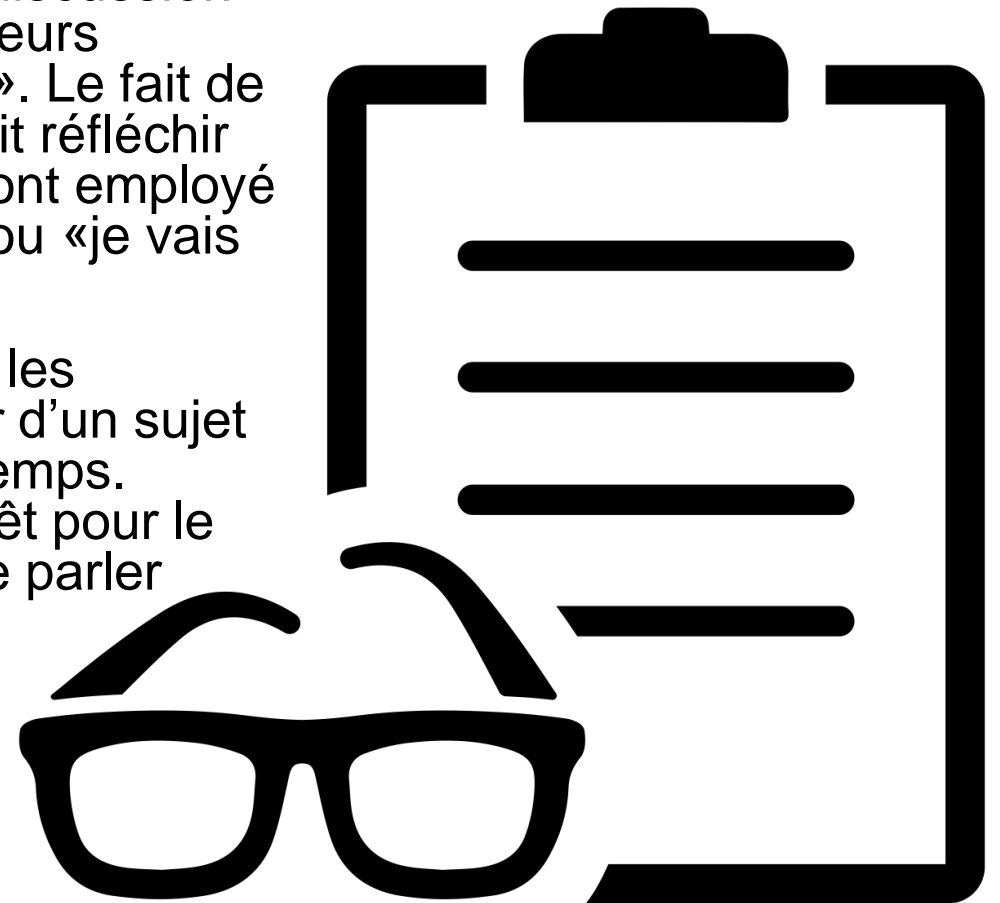
Cela dit, il semble exister une certaine acceptation tacite auprès des consommateurs rencontrés. Dans leur esprit, ils ne sont pas ceux qui fixent les règles du jeu et il est presque devenu normal dans leur esprit de devoir faire face à plusieurs restrictions ou clauses désavantageuses afin de pouvoir bénéficier d'un prêt ou d'une quelconque forme de crédit.



Le sujet initie des devoirs

Comme c'est fréquemment le cas lors des groupes de discussion de nature financière, nous avons le sentiment que plusieurs participants ont quitté la salle «avec des devoirs à faire». Le fait de discuter de crédit conjoint pendant deux heures les a fait réfléchir sur leur propre situation et bon nombre de participants ont employé des formules du type «je vais vérifier cela en rentrant» ou «je vais relire mon contrat».

Bien entendu, le groupe de discussion fait en sorte que les consommateurs étaient amenés à réfléchir et à discuter d'un sujet auquel ils n'ont pas l'habitude de consacrer autant de temps. Toutefois, cela démontre également qu'il existe un intérêt pour le sujet et que le simple fait d'en discuter ou d'en entendre parler stimule des actions concrètes.



ANNEXES



Méthodologie détaillée

- Cette étude a été réalisée par l'entremise de 4 groupes de discussion menés dans les marchés de Toronto (2 groupes, le 26 janvier 2017) et de Montréal (2 groupes, le 31 janvier 2017).
- Chaque groupe a réuni 9 ou 10 personnes. Pour être admissibles, les participants devaient être âgés entre 25 et 59 ans, détenir du crédit conjoint avec un proche ou en avoir détenu au cours des cinq dernières années ou encore avoir agi à titre d'endosseur au cours des cinq dernières années.
- Les participants ont chacun reçu 75\$ (Montréal) ou 85\$ (Toronto) en guise de remerciement pour leur participation.
- Chaque session a duré environ 120 minutes et a été enregistrée sur bandes audio et vidéo.
- Benoit Cyrenne, associé chez Substance stratégies, a animé les groupes de Montréal, tandis que Gary Gillan a assuré l'animation de ceux de Toronto.

Textes 1 et 2 - Français

Texte 1

Votre contrat du titulaire de carte XYZ

Dans le présent contrat, les termes « vous », « votre » et « vos » se rapportent au titulaire principal et à tout titulaire additionnel.

6. Votre responsabilité à l'égard de la dette totale

Sous réserve de l'article 7, vous êtes tenu de rembourser la dette totale. Cette disposition s'applique, que vous ayez contracté la dette totale ou non, que la dette totale excède votre limite de crédit ou non et quelle que soit la façon dont la dette totale a été engagée.

Dans les présentes, le terme « coemprunteurs » désigne les titulaires additionnels qui sont tenus de rembourser la dette totale du compte. À titre de coemprunteur, vous n'êtes pas responsable des sommes qui s'ajoutent à la dette totale une fois que vous nous avez avisés par écrit que vous annulez votre carte.

Solidarité

Chaque personne qui est liée par le présent contrat est tenue solidairement d'exécuter toutes les obligations qui en découlent et peut nous communiquer des directives concernant le présent contrat sans l'autorisation d'une autre personne. De plus, vos ayants droit doivent respecter les dispositions du présent contrat.

Texte 2

Aux fins des présentes, le détenteur et le(s) codétenteur(s) sont collectivement désignés par l'expression «le détenteur». Lorsque le détenteur d'une carte de crédit [...] signe la carte portant son nom ou lorsqu'il s'en sert pour la première fois ou autorise un tiers à s'en servir, il accepte les conditions d'utilisation suivantes et se porte solidairement responsable de toute dette contractée relativement à l'utilisation de la carte, toute dette pouvant être réclamée en totalité auprès de ses héritiers, légataires et ayants droit. Cette acceptation tient également lieu de reconnaissance par le détenteur de la demande d'émission de sa carte, quelle que soit la forme de signature utilisée.

26. SOLIDARITÉ

Si une carte est émise au nom de plus d'un détenteur d'un même compte, leurs obligations sont solidaires.

La créance de la compagnie est indivisible et peut être réclamée en totalité de chacun à leurs héritiers, légataires et ayants droit respectifs.

Textes 1 et 2 - Anglais

Text 1

Your cardholder agreement

In this agreement, “you” and “your” mean the primary cardholder and any additional cardholders.

6. Your responsibility for the total debt

Subject to this section and section 7, you are responsible for and must pay the total debt. This applies whether or not you incurred the total debt, whether or not the total debt exceeds your credit limit, and regardless of how the total debt was incurred.

We use the term “co-borrowers” to refer to additional cardholders who are responsible for paying the total debt. As a co-borrower you are not responsible for paying any part of the total debt that accumulates after you tell us in writing that you are cancelling your card.

Being jointly and severally liable

Each person who is bound by this agreement is jointly and severally liable for performing all of the obligations under this agreement. In addition, this agreement will be binding on your personal and legal representatives.

Texte 2

For the purposes of this Agreement, the cardholder and additional cardholder(s) are collectively designated by the term “the cardholder”. When the cardholder is issued a credit card [...] uses it for the first time or authorizes its use by a third party, he accepts the following terms of use and is solidarily liable for any indebtedness incurred through the use of the card, any indebtedness being recoverable in full from his heirs, legatees and assigns. This acceptance also signifies the cardholder’s acknowledgment of the request for the issuance of a card, regardless the form of signature used.

26. SOLIDARITY

If the card is issued in the name of more than one cardholder on the same account, their obligations are solidary.

The company’s claim is indivisible and may be claimed in full from their respective heirs, legatees and assignees.

Texte 3 – Français et anglais

Cautionnement personnel

En apposant sa signature au contrat, la caution accepte de garantir personnellement le prêt conformément aux conditions du présent document. Une copie du cautionnement est remise à la caution.

En considération du prêt consenti à chacun des emprunteurs par la Banque, vous vous engagez envers la Banque à cautionner le paiement sur demande du prêt indiqué au Contrat de crédit à un particulier conformément aux conditions qui y sont énoncées et acceptez que votre obligation à cet égard ne puisse être affectée ni annulée en raison :

- de toute modification ou prorogation, ou de tout renouvellement ou remplacement des prêts, des contrats ou de toute garantie (y compris d'autres cautionnements) détenue par la Banque à l'égard des prêts;
- de tout délai ou refus de la Banque d'exiger le paiement aux termes du contrat ou d'exécuter toute garantie;
- de votre décès ou de votre incapacité légale, ou du décès ou de l'incapacité légale des emprunteurs;
- de tout événement faisant en sorte que les emprunteurs ne sont plus tenus légalement de rembourser le prêt consenti aux termes du contrat.

Il n'est pas nécessaire que la Banque épuise ses recours contre les emprunteurs ou d'autres personnes aux termes du contrat ou de toute garantie avant qu'elle n'ait le droit d'exiger de vous le paiement aux termes du présent cautionnement.

Personal Guarantee

By signing the agreement, the guarantor accepts responsibility for the loan according to the terms set out in this document. The guarantor receives a copy of the agreement.

In consideration of the bank granting a loan to the borrower(s), you guarantee payment to the bank on demand of the loans indicated on the Personal Credit Agreement in accordance with its terms and agree that your liability to do so will not be affected or released:

- by any variation, renewal, extension or replacement of the loans, agreements or any security (including any other guarantees) held by the bank for the loans;
- by any delay or refusal by the bank to require or enforce payment of the agreement or any security;
- by your death or legal incapacity or the death or legal incapacity of the borrowers;
- by any event which results in the borrowers not being under a legal obligation to pay the loans covered by the agreement.

The bank need not exhaust its recourse against the borrowers or others under the agreement or any security before being entitled to payment by you under this guarantee.

STIMULER

LA CONNAISSANCE

LES INTERACTIONS

LES RÉSULTATS