DEBT SETTLEMENT AND FINANCIAL RECOVERY COMPANIES:

Too Risky an Option?

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.

In the context of market globalization, Union des consommateurs works in collaboration with numerous consumer groups in English Canada and abroad.

Introduction

"*One man's joy is another man's sorrow*"
proverb

Many find the 165.3%[1] debt ratio of Canadian households alarming; others see it as a business opportunity. In recent years, consumers' negative experiences with debt settlement and financial recovery companies have frequently been reported by consumer rights associations and news media across Canada.

Canadian consumers often hear or see those companies' advertisements promising substantial debt reduction to consumers who subscribe to one of their plans, or assuring consumers that the company's direct negotiation with creditors will give consumers peace of mind – with the ultimate goal of freeing them of their debts once and for all! In another type of advertisement, more prevalent on the Internet, companies claim to "repair" consumers' credit by various means.

Consumers in a precarious financial situation who deal with these types of companies – debt settlement or financial recovery agencies (hereinafter DSFRAs) – thus find themselves, on the basis of representations promising an end to their financial woes, spending exorbitant amounts with no guarantee of success and with no way to assess the effectiveness of the financial plans offered to them. And most often, those already vulnerable and debt-burdened consumers unfortunately end up even more vulnerable and in debt for having trusted those types of companies.

Debt settlement and financial recovery services are among the many facets of Canada's consumer debt relief industry. While a majority of Canadian provinces have been concerned by "collection agencies"[2] and have adopted legislation for them in the last 40 years,[3] debt settlement and financial recovery companies have long prospered in an environment devoid of specific regulations.

In 1999, Alberta became the first Canadian province to enact a law regulating the activities of debt settlement companies. Since then, four other provinces have followed.[4] But this has

[1] **CANADIAN PRESS**. *Léger recul du ratio de la dette des ménages canadiens*, La Presse, Montreal, June 14, 2016. http://affaires.lapresse.ca/economie/macro-economie/201606/14/01-4991654-leger-recul-du-ratio-de-la-dette-des-menages-canadiens.php (page consulted on October 3, 2016).
[2] A distinction should be drawn between the companies under study here and collection agencies. The latter have the mandate of collecting a debt from a debtor on behalf of a creditor, whereas the clients of financial recovery companies are, in theory, consumers, not the latter's creditors.
[3] **BISHOP Jonathan**. *All Along the Watch Tower: A Review of the Canadian Consumer Debt Collection Industry*, PIAC, March 2015, 96 pages. http://www.piac.ca/wp-content/uploads/2016/03/All-Along-the-Watchtower-A-Review-of-the-Canadian-Consumer-Debt-Collection-Industry-ENGLISH-March-30-2015.pdf, pp. 65 and fol. (document consulted on February 22, 2017).
[4] Other than Alberta, they are Manitoba, Prince Edward Island, Ontario and British Columbia.

resulted in a mosaic of disparate regulations in terms of approach and scope, while the problems experienced by consumers appear far from resolved. Whether in provinces without any specific regulatory framework or in those having adopted legislation for debt settlement or financial recovery contracts, consumers face a variety of issues.

The high fees charged to already debt-burdened consumers constitute one of the problems most often reported, but there is a wide range of other problems: loss of control over the amounts paid with the intention of paying debts (after they are reduced through eventual negotiations), unkept promises, misleading advertising, uncertain rate of success, substantial negative collateral effects, increased debt burden, etc.

This report will focus on Canadian consumer issues raised by debt settlement and financial recovery services. Our research focuses on those two types of services – which have somewhat different purposes and practices – because both target consumers in a precarious financial situation and share certain approaches.

We will attempt to answer the following question: Are Canadian consumers well protected when relying on debt settlement or financial recovery companies?

Our report will thus examine the various business models of debt settlement and financial recovery companies, to understand the issues confronting consumers and formulate measures to better protect them.

To that effect, we will review the literature, notably to identify the various business models found in that industry. We will also analyse the problematic practices observed on the Canadian market and will do a comparative study of legislation applicable to that industry across Canada and elsewhere. A study of contracts used by certain companies in the industry should enable us to better identify some of the issues facing consumers.

We will also report on the findings of a field survey that used the mystery client approach and was conducted among debt settlement and financial recovery companies, to discover the representations and disclosures made to customers inquiring about the companies' services. Lastly, we will present the consultation we conducted of the various stakeholders to compile a set of important data (number and nature of complaints, views of certain industry practices, possible solutions, etc.).

1 Portrait of the Debt Settlement and Financial Recovery Industry

"What harms one benefits another"
Erasmus, in *Adagia*

First a few definitions should be provided. During our research, we encountered problems related primarily to questions of definition, with a variety of actors.

In addition, we must report a matter of concern:

We had planned, in the research methodology, to analyse numerous contracts between consumers and debt settlement or financial recovery companies. To obtain copies of those contracts, we approached consumer associations and also called upon the general public. But we observed a lot of confusion about the various types of debt settlement and financial recovery services offering assistance to consumers experiencing financial difficulties. Absent restrictive definitions, those services are often confused with the types of companies we wanted to study. Thus, the types of services that consumers and certain consumer protection groups brought to our attention had nothing to do with the scope of our research. The comments of some authorities charged with applying consumer protection laws confirmed to us that the question of definitions was crucial, since a service's denomination can have very different meanings for different actors.

Accordingly, for the purposes of our research on debt settlement and financial recovery companies, we define those companies' services as follows:

By "**debt settlement**" services, we mean:

> *Services that offer, in return for payment of charges, a commission or any other form of remuneration payable by the client/debtor, the following activities:*
> - *Acting on behalf of the debtor in agreements or negotiations with his creditors, or pledging to do so;*
> - *Receiving money from the debtor and distributing it to his creditors; or*
> - *Attempting to take those actions.*

By "**financial recovery**" services, we mean:

> *Services that offer, in return for payment of charges, a commission or any other form of remuneration payable by the consumer, and for his benefit, one or more of the following actions:*
> - *Helping him repair his credit;*
> - *Correcting his credit file;*
> - *Granting him a loan in order to improve his credit file;*

- *Referring him to a trustee in view of making a consumer proposal;*

And thus, offering:
- *To analyse or assess the consumer's financial situation;*
- *To help the consumer realize his financial situation;*
- *To help the consumer regain control of his finances;*

Without offering:
- *Debt negotiations with the debtor's creditors on his behalf; or*
- *A debt repayment plan.*

It should be emphasized that our study did not pertain to budget counsellors (also called "budget advisers") working in community or non-profit organizations that offer budget consultations free of charge, including "credit counselling" organizations in English Canada. Most of those organizations are excluded by definition, because they do not receive payment from consumers for their services. Credit counselling organizations are a case apart. While the budget counselling (also called "budget advice") services they offer are free of charge, they also offer "debt pooling" services mainly funded by major creditors, with whom those organizations conclude agreements. But some reportedly also charge fees, as a percentage of instalments paid to creditors. Moreover, the organizations do not negotiate debt amounts, but only credit rates. Canadian lawmakers seem uncertain about the necessity of regulating those organizations or not, so we decided not to focus on the latter in our research. A study conducted by Union des consommateurs in 2006 on the *Practice and Ethics of Budget Counselling*[5] examined this type of organizations, whose practices differ greatly from those pertaining to this study.

This report also does not pertain to bankruptcy trustees, now also called "licensed insolvency trustees,"[6] who are regulated by the government of Canada and must comply with very specific legal provisions for dealing with consumers seeking solutions to their debt problems. We thought this clarification necessary because some of the trustees' professional activities also correspond to some of those that appear in the definitions of the two types of services pertaining to this study.

1.1 Debt Settlement Companies: An Industry That Survives despite the Adoption of Strict Legislation

The debt settlement companies found in Canada appeared in the early 2000s. At the time, they only had a small market intrinsically linked to the gigantic American market, which was targeted by legislative changes that would be felt in Canada. To understand the emergence of Canadian debt settlement companies, it may be useful to review the history of that industry in the United States, where its roots go back almost 100 years. The long history of debt settlement companies is distinct from the relatively recent history of financial recovery companies.

[5] **UNION DES CONSOMMATEURS**. *Practice and Ethics of Budget Counselling*, Montreal, Quebec, Canada, November 2006, 77 pages. http://uniondesconsommateurs.ca/docu/budget/practices_and_ethic_bc.pdf (document consulted on September 6, 2016);
[6] **DUCAS, Isabelle**. *Les syndics larguent le mot 'faillite'*, La Presse, February 27, 2016. http://plus.lapresse.ca/screens/cd0f6486-32ed-4887-a5e1-f3412510d7c5%7C81sYRv2INnAR.html (document consulted on November 15, 2016).

In the early fifties, the American states had to seriously consider the necessity of regulating debt settlement companies; half the states simply prohibited them.[7] As shown in the following paragraphs, the adoption of various regulatory frameworks, one decade after another, led the debt settlement industry to mutate into its current form.

Historically, companies that advised and supported consumers in the payment of their debts were non-profit organizations. Those "credit counselling agencies" were largely funded by financial institutions, which deemed the investment advantageous if it prevented consumers from going bankrupt.[8] Those organizations did not claim to reduce a consumer's debts substantially, but rather worked to obtain interest rate reductions and other concessions from creditors, in order to reduce the debtor's monthly instalments, while helping him produce a budget.[9] In the early 20th century, debt settlement companies as we know them today appeared. Known by several names – "debt adjusters," "debt poolers," "debt consolidators," "debt managers," "debt pro-raters" or "debt consultants" –, those companies promised henceforth to obtain an advantageous overall settlement from creditors in return for debtors' payment of fees.[10] The New York Bar reports troubling similarities between the abusive practices of those companies in the thirties and the practices denounced nowadays:

> *These businesses engaged in startlingly familiar abusive and deceptive practices to those documented during the past decade, including exacting exorbitant fees, making false and deceptive claims, leaving consumers with greater debt, and defrauding some people outright.*[11]

In 1935, Minnesota and Wisconsin imposed the first type or regulations targeting those companies, which some lawmakers called "rackets," by requiring them to hold a permit.[12] However, during the following 15 years, debt settlement companies continued to expand their market share. In the mid-fifties, consumers were suffering more and more from those companies, to the point where the American states started to consider the necessity of simply ending the right to operate such companies. Over half of the American states did just that, by prohibiting for-profit debt settlement companies from operating on their territory, while the majority of the other states opted for requiring permits and imposing strict regulations.[13] The debate opposing regulation and prohibition advocates continued, with the latter refusing any approach tending to legitimize this type of "nefarious" companies:

> *The Nebraska Unauthorized Practice of Law Committee reviewed the entire problem. Review indicated debt adjusting constitutes a nefarious activity as generally conducted. It further appeared, however, impossible to prepare a bill which would adequately*

[7] **NEW YORK CITY BAR**, *Profiteering from Financial Distress: An Examination of the Debt Settlement Industry*, Association of the Bar of the City of New York, New York, United States, May 2012, 188 pages. http://www2.nycbar.org/pdf/report/uploads/DebtSettlementWhitePaperCivilCtConsumerAffairsReportFINAL5.11.12.pdf (document consulted on September 4, 2016). This report of the *Civil Court Committee* and the *Consumer Affairs Committee* of the New York City Bar provides a detailed and eloquent history of debt settlement companies in the United States; we will rely on the report substantially in this section.
[8] Ibid, p. 10.
[9] Ibid. This model is the same as that of "credit counselling" organizations active in Canada.
[10] Ibid, p. 11.
[11] Ibid.
[12] Ibid, p. 12.
[13] Ibid.

> *regulate the firms and protect debtors from their evils. Licensing and regulation of debt management firms merely lends an aura of dignity to an activity which doesn't justify any elevation.*[14]

Between the mid-fifties and the mid-seventies, the majority of American states agreed on the necessity of totally prohibiting the operation of for-profit debt settlement companies.[15] The consensus of the day was that those companies, even strictly regulated (permit, surety bond, prohibition of certain practices, controls over fees, etc.) and correctly operated, remained undesirable:

> *In effect, the licensing statutes, in addition to encountering many problems of enforcement, merely give state approval to an activity that, even when carried out by the most experienced and honest of laymen, cannot be performed with any real efficacy, and is likely to do the debtor more harm than good.*[16]

Those multiple prohibitions resulted in removing some companies from the market. But that respite lasted only a few decades: the early 2000s saw the appearance of the so-called "modern" version of debt settlement companies. The New York Bar states that, according to many observers, three specific factors have contributed to a resurgence of this type of companies in the United States.[17]

First, the field vacated in the United States by for-profit companies was occupied by non-profit organizations in the eighties and nineties. But a Senate investigation revealed in 2004 that some of those organizations engaged in serious abuses: overbilling, excessive executive salaries, unsatisfactory services, etc. Increased monitoring by the *United States Internal Revenue Service* (IRS) also harmed credit counselling NGOs and led to a proliferation of for-profit debt settlement companies.

Meanwhile, the economic situation of American households declined: reduced incomes, cost-of-living increases and rising consumer debt created a fertile terrain for debt settlement businesses.[18]

Lastly, debt settlement companies discovered a loophole in the prohibition: since the American states' laws generally targeted companies that received or distributed funds collected from debtors, the "modern" companies now avoided receiving or managing the amounts charged to consumers, by entrusting that task to a third-party company.[19]

The company practices denounced in a previous era are very similar to those reported today: aggressive marketing, problematic and even illegal stipulations, cash advances to cover various substantial fees (up to 40% of the debt amount stated in repayment plans), misleading

[14] **REDDISH, Albert T.** *Debt Adjustment-Regulation or Prohibition?*, UP News, winter 1963-64, on p. 376. http://heinonline.org/HOL/LandingPage?handle=hein.journals/uaplw29&div=52&id=&page= (document consulted on September 6, 2016).
[15] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering from Financial Distress*, pp. 14, 16-22.
[16] **BENCH, Lawrence T.** *Commercial Debt Adjustment: An Alternative to Consumer Bankruptcies?...*, 9 B.C.L.Rev., 108 (1967), 14 pages, on p. 116. http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1065&context=bclr (document consulted on September 6, 2016).
[17] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering from Financial Distress*, pp. 25-29.
[18] Ibid, p. 26.
[19] Ibid., pp. 27-28.

advertisements, unkept promises of major debt reductions, misleading claims of affiliations with government programs, using third party companies with substantial management fees, arbitration and court agreement clauses, etc.[20]

In reaction to that renaissance, American industry proposed a framework law in 2005, the *Uniform Debt-Management Services Act* (UDMSA).[21] Drafted by the *Uniform Law Commission*, the UDMSA was very strongly supported by the industry and was called the "industry bill."[22] The Act is based on debt settlement companies' obligation to hold a permit and provide a surety bond.[23] There are also precontractual disclosure obligations regarding certain aspects, cautionary requirements, and the imposition of a mandatory contract format.[24]

The Act also proposes to subject fee collection to certain conditions (restrictions to the collection time and amount, notably; the latter may not exceed 30% of a consumer's savings).[25] Lastly, the Act proposes to regulate the management of amounts deposited by the consumer,[26] to prohibit false or misleading advertising, and to impose penalties for noncompliance.[27] Moreover, the framework law recommends the exemption of lawyers.[28]

Since then, 45 American states have adopted measures similar to those proposed by the UDMSA.[29] Despite those regulations, observers reported in the late 2000s that American consumers were again being victimized by the practices of debt settlement companies: credit damage, debt increase, legal proceedings launched by unpaid creditors, calls from collection agencies, impossibility of completing debt settlement companies' repayment plans because of consumers' precarious financial situation, etc.[30]

Confronted by a growing number of complaints, the *Federal Trade Commission* (FTC) decided in 2010 to amend the *Telemarketing Sales Rule* (TSR) to tighten the screws on debt settlement companies. In particular, conditions applicable to fees (including prohibiting companies from collecting fees in advance[31]) and precontractual disclosure requirements[32] were tightened. That tightening may be precisely what pushed debt settlement companies to migrate more massively to the unregulated Canadian market in the mid and late 2000s, where they only had a timid presence until then, and to bring with them those same practices deemed reprehensible by the American authorities.

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[20] Ibid., pp. 30-42.
[21] *Uniform Debt-Management Services Act*, 2005, revised and amended in 2008, National Conference of Commissioners on Uniform State Laws, Chicago, Illinois, United States, 99 pages. https://www.ftc.gov/sites/default/files/documents/public_events/consumer-protection-and-debt-settlement-industry/udmsafinal.pdf (document consulted on October 5, 2016)
[22] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering from Financial Distress*, p. 46.
[23] *Uniform Debt-Management Services Act*, 2005, sections 4 to 7 and 13-14.
[24] Ibid, section 17.
[25] Ibid, section 23.
[26] Ibid, section 22.
[27] Ibid, section 30.
[28] Ibid, section 3.
[29] Ibid, Annex E, p. 171 and fol.
[30] Ibid, pp. 53-71.
[31] **Telemarketing Sales Rules (TSR)**, 16 C.F.R. § 310.4(a)(5). https://www.ecfr.gov/cgi-bin/text-idx?SID=8cbc207d02794ee213487a73e0fa1b71&mc=true&node=se16.1.310_13&rgn=div8
[32] TSR, § 310.3(a)(1)(viii).

Although criticized by some in Canada,[33] *credit counselling* services have not spurred the emergence of private debt settlement companies in this country, as opposed to the United States. Rather, the absence of regulations and the economic conditions, notably growing household debt, as well as pressure from American regulatory authorities, appear to have made the Canadian market attractive to those companies.

Of course, in Canada we don't have the same history, data, analyses and reports as in the United States, given the much more recent establishment of this type of companies here. An equally exhaustive portrait is thus impossible in this country.

It seems difficult to determine the number of such companies operating in Canada, given the absence of a national register and, in most Canadian provinces and territories, of any obligation to hold a permit. However, we know that, for example, in Alberta only, 13 debt settlement companies hold operating permits.[34] But we also know that, according to *Service Alberta,* the number of companies that continue to operate without a permit may be high. In 2013, the *Globe and Mail* reported that 22 debt settlement companies were operating in Ontario.[35] We can't make the same count in the other provinces with similar permit-holding requirements, because that information is not available to the general public (as opposed to the case of Alberta).

In 1999, Alberta was the first Canadian province to regulate debt settlement companies.[36] Those companies were not as prevalent then as today, so the province only aimed at regulating "debt poolers" – companies that distribute to creditors on a monthly basis the amounts paid by the consumer/debtor, and do not attempt to settle debts with creditors on a lump sum basis (Alberta qualified as "debt settlement companies" only those that adopt this latter practice).

The American situation persuaded Alberta lawmakers to act proactively in 1999. The explosion of problems related to the industry also induced Alberta lawmakers to broaden the scope of their legislation to include all debt settlement companies in 2005.

Gradually, Canadian as well as American debt settlement companies started offering their service to Canadians, and some organizations began denouncing such practices and lobbying lawmakers.[37]

In the early 2010s, the media began reporting more and more cases of consumers struggling with contracts concluded with debt settlement companies charging exorbitant fees, leaving consumers in worse financial straits, or using abusive or unfair business practices.[38]

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[33] **BEN-ISHAI, Stéphanie** and **Saul SCHWARTZ.** *Credit Counselling in Canada: An Empirical Examination*, Canadian Journal of Law and Society, Vol. 11/ Issue 01, 2015, Osgoode Legal Studies, Research Paper Series. 78. http://digitalcommons.osgoode.yorku.ca/olsrps/78 (document consulted on October 11, 2016).
[34] **SERVICE ALBERTA**, *Licensed Business Database*, n. d. http://www.servicealberta.gov.ab.ca/find-if-business-is-licenced.cfm (document consulted on June 28, 2017).
[35] **WALTON, Dawn.** *Ontario to Crack Down on Debt-settlement agencies*, Globe and Mail, Toronto, Ontario, April 18, 2013. https://www.theglobeandmail.com/globe-investor/personal-finance/household-finances/ontario-to-crack-down-on-debt-settlement-agencies/article11360352/ (page consulted on May 10, 2017).
[36] *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[37] **CBC NEWS**, *16 x 9 Investigates: Bad Debt: Do credit Settlement agencies really deliver?*, CBC, September 28, 2012. Video segment available on YouTube at https://www.youtube.com/watch?v=J4qU5NHWS90 (document consulted on November 21, 2016).
[38] See for example:

Canadian consumers were suddenly confronted by TV and radio offers promising debt reductions of 40 to 70%.[39] Non-profit organizations and some insolvency professionals sounded the alarm[40] by warning various legislatures of the necessity of regulating the industry to protect consumers, in an attempt to avoid problems as prevalent as those experienced by Americans.[41] Those companies' aggressive advertising campaigns, assuring indebted consumers that liberation was at hand, were indeed tempting more and more people with that mirage.

It appears that since the late 2010s, the number of complaints filed with Canadian regulatory authorities has led some Canadian lawmakers to regulate debt settlement companies.[42] But Canadian consumers are still confronted by the offers of companies promising debt freedom, at a high price. So who are those companies and what do they really offer Canadians? Can consumers who deal with those companies expect to benefit somehow? After a brief history of financial recovery companies, we will examine the offers presented by both debt settlement and financial recovery companies.

1.2 Financial Recovery Companies: An Emerging Industry in Canada

Certain companies offer to rectify consumers' adverse financial situation. The main weapon of this type of company is generally a promise to repair a bad or damaged credit file. The means those companies offer to that end vary, but the strategy often involves additional credit, a consolidation or other loan, a secured credit card, etc. In addition to promises to repair the credit

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SCHLESINGER, Joel. *Drowning in a sea of debt?*, Winnipeg Free Press, January 21, 2012. http://www.winnipegfreepress.com/business/finance/drowning-in-a-sea-of-debt-137812353.html (page consulted on January 31, 2017);
BUNDALE, Brett. *Consumers warned about debt 'relief'*, The Chronicle Herald, Section Business, Halifax, New Brunswick, April 19, 2012. http://thechronicleherald.ca/business/88384-consumers-warned-about-debt-relief (page consulted on February 2, 2017);
DUCAS, Isabelle. *Des redresseurs financiers sous surveillance*, La Presse +, Business Section, screen 2, Montreal, May 5, 2013. http://plus.lapresse.ca/screens/4e1b-fa20-51842ab4-8082-360dac1c606a%7CAX5e_CW-V5kU.html (page consulted on October 18, 2016);
FINANCIAL POST, *Beware of Debt Settlement Scams*, Toronto, Ontario, May 15, 2012. http://business.financialpost.com/personal-finance/debt/beware-of-debt-settlement-scams (page consulted on November 17, 2016).

[39] Op. cit. note 37. **CBC NEWS**, *16 x9 Investigates: Bad Debt: Do credit Settlement agencies really deliver?*

[40] After reading a contract signed by a Quebec consumer with the company Cambridge Life Solutions, Union des consommateurs submitted in 2013, to the Office de la protection du consommateur, observations enjoining it to adopt measures protecting consumers against the type of practices observed.
UNION DES CONSOMMATEURS, *Observations - Loi visant à lutter contre le surendettement des consommateurs et à moderniser les règles relatives au crédit à la consommation*, Montreal, Québec, Canada, March 2013, 24 pages. http://uniondesconsommateurs.ca/docu/protec_conso/111101UCmemoirePL24.pdf

[41] See the remarks of Credit Counselling Society President and CEO Scott Hannah and those of 2009-2016 Manitoba Premier Greg Selinger, in a CBC News interview (Op. cit. note 37. **CBC NEWS**, *16 x9 Investigates: Bad Debt: Do credit Settlement agencies really deliver?*
See also:
HOYES, MICHALOS AND ASSOCIATES, *Debt Settlement Companies and Options in Ontario*, n. d. http://www.hoyes.com/debt-management/debt-settlement-ontario-canada/ (page consulted on January 15, 2017).
CAMPBELL, Laurie. *Controversy heats up over questionable debt settlement practices*, Credit Canada Debt Solutions, Canada, May 3, 2012. https://creditcanada.com/blog/controversy-heats-up-over-questionable-debt-settlement-practices (page consulted on January 14, 2017).

[42] They are Alberta, Manitoba, Prince Edward Island, Nova Scotia (where only one bill has been tabled), Ontario and British Columbia.

file, improve the credit score or erase unfavourable credit notes, this type of offer often comes with budget consultations, sessions to raise a consumer's awareness of his financial situation, and advice for obtaining and maintaining a good credit file.

As opposed to what is found in the debt settlement industry, the financial recovery industry is mainly comprised of small players that offer their services online or in a limited territory, and use television or radio advertising. The number of such offers seems to have grown in Canada in the last ten years. It is probably not a coincidence that those companies have proliferated alongside Canadians' growing indebtedness and credit access difficulty.

The most frequent critiques of those companies pertain to their too-good-to-be-true promises, advance fees, substantial fees for services offered free of charge by more-disinterested actors or for tasks a well-informed consumer could perform himself for free. The critiques also pertain, of course, to the dubious practices of extending credit while claiming it will improve a delicate situation, and of promising something the companies simply cannot deliver, i.e. to improve (or "repair" or "restore") a credit file. A few Canadian governments have indeed issued cautions in that regard, warning consumers that no company is able to erase accurate information from a credit file, however damaging that information is to a consumer's credit rating.[43]

And yet, the situation has not been decried as much in Canada as in the United States, where Bill Clinton's government adopted the *Credit Repair Organization Act* in 1996:[44]

> *(1) to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and*
>
> *(2) to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.*[45]

We will further discuss American legislation in another section. A few Canadian provinces have also adopted legislative measures, unfortunately disparate, to curtail some of those companies' business practices. This is notably the case for Ontario[46] and, to a lesser extent, for Alberta, whose *Fair Trading Act*[47] provides regulatory power that would regulate the industry, but that has never been applied.

Although the financial recovery industry is not monolithic in its business model or practices, we can identify a few practices similar to those of the debt settlement industry and clearly

[43] **SERVICE ALBERTA**, *Dealing with Credit*, n. d. http://www.servicealberta.gov.ab.ca/pdf/reality_choices/Dealing_With_Credit.pdf (document consulted on May 7, 2017).
GOVERNMENT OF ONTARIO, *Credit Reports*, updated September 29, 2014. https://www.ontario.ca/page/credit-reports (page consulted on December 9, 2016) and
OFFICE OF CONSUMER AFFAIRS, *Improving your credit score*, Innovation, Science and Economic Development Canada, updated November 30, 2012. https://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02178.html (page consulted on December 9, 2016).
[44] *Credit Repair Organization Act*, 15 U.S.C. § 1679. Cornell University Law School. https://www.law.cornell.edu/uscode/text/15/1679 (page consulted on May 9, 2017).
[45] *Credit Repair Organization Act*, 15 U.S. Code § 1679 - Findings and purposes.
[46] *Consumer Protection Act*, 2002, S.O. 2002, chap. 30, Sched. A, sec. 48 and fol.
[47] Sec. 51(e) *Fair Trading Act*, R.S.A. 2000, c F-2.

detrimental to consumers: high advance fees, contracts either illegible or containing abusive clauses, unrealistic promises, and the impossibility for a consumer to assess in a timely manner how much or even if the service offered can be successful.

Unfortunately, given the lack of available research and data on the financial recovery industry, whether in Canada or in the United States, it is difficult to draw a portrait of the establishment and growth of that industry in Canada. But our consultation of provinces' government consumer protection agencies (hereinafter GCPAs) has provided us with data that gives us a clearer idea, which we will discuss later in this report.

1.3 A Diversified Service Offer

We have presented in a somewhat compartmentalized way the various services offered by debt settlement and financial recovery companies, which often provide hybrid services in reality. For example, a company may offer budget counselling as well as debt negotiation services[48] or credit file repair services and consolidation loans to settle debts.

As mentioned above, unfortunately we don't have official registers of debt settlement or financial recovery companies. Some provinces require permits and thus keep a database so that we can know how many such companies operate in their territory. But that is the exception to the rule.

Our methodology, which includes an analysis of the websites of debt settlement and financial recovery companies operating in Canada, has enabled us to identify in the field those companies' services and practices.

[48] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering from Financial Distress*, p. 26.

2 Canadian Debt Settlement and Financial Recovery Companies

"One man's loss is another man's gain."
proverb, XVth century

2.1 Methodology

We set ourselves the goal of classifying Canadian companies to organize and facilitate our analysis of them. We mentioned above the absence of data and statistics for classifying practices, types of fees, etc. Accordingly, before classifying Canadian companies, we had to conduct our field survey immediately. We thus analysed the websites of the companies identified and conducted a mystery client survey by phoning the companies. That approach enabled us to identify and classify business models and practices used by debt settlement and financial recovery companies.

In the next section, we will describe both our classification of the companies that were the object of our field survey, and the findings of that survey. The latter aims to draw as complete a portrait as possible of that industry. Our survey took a three-pronged approach.

First we surveyed the websites of debt settlement and financial recovery companies to identify their business models and analyse their business practices.

A simple Web engine search yields hundreds of companies offering debt settlement or financial recovery services in Canada. We identified a variety of Canadian companies. Our choice of companies to analyse more thoroughly was mainly dictated by their notoriety and types of services, because we wanted to analyse as broad a variety as possible of services and practices. We finally studied the websites of 19 companies.[49] A first analysis was conducted in November 2016, and a more thorough one in May 2017 to obtain more-specific information.

Two members of our team conducted the survey. Based on a data compilation grid, the investigators searched and identified the following information on the companies' websites: services offered, promises made, representations about results and debt reduction, any other dubious representation, and any other aspect considered relevant, such as the price of services. We paid special attention to the types of services highlighted by the companies. A first overview had indeed suggested that a classification by types of services would enable us to effectively organize the data collected and present the results of our searches.

Following that survey of the websites of Canadian companies, we decided to classify the services as follows. We identify essentially five main types of (paid) services offered by debt settlement and financial recovery companies:

[49] The list of companies studied is annexed to this report.

(i) Credit file repair and improvement;
(ii) Administration of payment agreements with creditors;
(iii) Budget counselling;
(iv) Debt negotiation and settlement; and
(v) Loans for credit repair and debt consolidation.

The 19 companies we studied were classified according to those five service categories. It should be noted that most of the companies studied offer a variety of services, not just one. We classified the companies according to the main service offered and the representations made to that effect.

In the second phase of our field survey, we approached several companies by means of a mystery client telephone survey, to discover, notably, the precontractual disclosures and representations made by this type of companies to consumers directly approaching them. Having analysed beforehand the representations appearing on the websites of the companies we communicated with, we were able to direct and customize our conversations according to the companies contacted, in an attempt to obtain details on what could seem imprecise or doubtful to us.

Our mystery client survey yielded data from 15 companies. We could not communicate by phone with 4 of the 19 companies, despite several attempts. Our mystery client survey took place in May 2017. It was conducted by two members of our team according to a fictitious client's fact sheet (name, occupation, work income, debt amount and type, goals, etc.). Using a data collection grid, the investigator tried to verify the following aspects as communicated to the client: promises, guarantees, cautions, advice, and any other representation made to the fictitious client. Finally, the investigator was to ask if it was possible to obtain a copy of the contract before signing it, to learn about its various elements.

We had planned to complete our field survey by examining the companies' standard contracts. Based on the more-specific definition of services and fees and on the contract stipulations, we had expected to identify problems that could confront consumers relying on this type of companies' services. In particular, we tried to obtain copies of those contracts from certain actors, community groups or government agencies, which intervene on behalf of consumers who have contracted with the companies under study. The collection of information was not as fruitful as hoped. We only obtained four contracts: two from a government agency, one from one of our member associations, and one provided by a company after our mystery client phone call.

Our appeal to the general public did produce a finding: despite some agitation in the media, which have repeatedly denounced this type of companies in recent years, there appears to be a certain confusion among consumers. In fact, the only contracts we obtained by appealing to the general public were contracts concluded in due form with licensed insolvency trustees.

We observed during our field survey that well-known companies' websites we planned to include in our examination disappeared after negative media coverage in September 2016. We will discuss this below. Cambridge Life Solutions is one of the vanished companies. Groupe Solution2 and Le petit cochon rose, two companies administered by the same persons, also

have apparently ceased operating since two television broadcasts.[50] The two companies no longer have an accessible website. As of this writing, we were able to access only GS2's recruitment page, still active despite the website's shutdown.[51]

Although those companies have disappeared, we will present our findings about them, because we consider those findings representative of the industry's practices.

2.2 Analysis of Business Models by Types of Services Offered

We pointed out above the various types of services offered by the companies under study, whether debt settlement or financial recovery companies. In the next section, we will study the industry's business models, on the basis of those types of services: (i) credit file repair and improvement; (ii) administration of payment agreements with creditors; (iii) budget counselling; (iv) debt negotiation and settlement; and (v) Loans for credit repair and debt consolidation. Those models and practices are so varied that it is difficult to determine key characteristics, billing models, or average fees, whether industry-wide or even common to one category or another.

Moreover, those companies mutate regularly in their identification or types of services. For example, Groupe Conseil Primex now presents itself primarily as a lender rather than a financial recovery company.[52] Total Debt Freedom has presented itself as a law firm rather than a debt settlement company since the adoption of a law regulating debt settlement companies in Ontario.

Lastly, to examine in detail the types of services offered by debt settlement and financial recovery companies, it should be emphasized that our examples are not all taken from the 19 companies of our field survey. Our preliminary research, which aimed notably at understanding the operation of that industry and make a first identification of companies offering this type of services, enabled us to make certain findings we considered of sufficient interest to integrate in subsequent research.

2.2.1 Category M1: Credit File Repair and Improvement

Companies offering this type of service are commonly called financial recovery or financial repair companies. Their primary offer thus pertains to "repairing" the credit file. The target clientele is constituted by persons who, generally due to a damaged credit file (negative notes, defaults, excessively high debt), no longer have access to traditional credit. The representations

[50] Their disappearance was observed after a report broadcast by Radio-Canada's La Facture program on September 27, 2016 and after a report broadcast on the same day by the TVA network's J.E. (Journalisme d'enquête) program. **CRAIG, Pierre and Mélissa PELLETIER**. *Un petit cochon rose qui vous met dans le rouge*, La Facture, Radio-Canada, September 27, 2016. http://ici.radio-canada.ca/tele/la-facture/2016-2017/segments/reportage/9131/petit-cochon-rose-creanciers-dettes-groupesolution2 (page consulted on September 27, 2016) and **ZAPPA, Pierre-Olivier.** *'J.E.' aux trousses d'arnaqueurs professionnels*, TVA Nouvelles, September 27, 2016. http://www.tvanouvelles.ca/2016/09/27/je-aux-trousses-darnaqueurs-professionnels (page consulted on September 27, 2017).

[51] **GROUPE SOLUTION2**. http://www.recrutementgs2.com/agent-devaluation/

[52] **RACHETEZ MES DETTES.** http://rachetezmesdettes.com/index.html

made to that target audience claim that the company is able to improve the credit file or score, and to make its negative aspects disappear.

The companies present the various means they will take to that end. Some companies explain they have only to request a copy of the consumer's credit file from Equifax or TransUnion in order to verify the accuracy of information therein, intervene to correct or repair the credit file, and restore the consumer's access to traditional credit.

Knowing that regular payment to creditors is the best way to improve a credit file, some companies offer loans; repaying the latter scrupulously will have a positive effect on the credit file. Since the target public has difficulty obtaining credit elsewhere, this seems a wonderful opportunity to restore one's credit file. The amounts granted by the company are provided through guaranteed loans or a credit card (with a high interest rate) obtained from a third company, with which the financial recovery company has agreements. (To help consumers "restore their reputation," in the past such companies were observed selling them cars, while helping them find financing for the purchase. There again, scrupulous payment of the instalments was presented as a guarantee of future financial health.)

The distinctive character of certain other companies (*Credit Slab* and *Canada Credit Fix*, for example) consists of offering their client a digital tablet on which a specific application allows him a better view and thus better management and follow-up of his credit file, for example through reminders of payment dates. This is accompanied by a high-interest-rate credit card and a loan, granted by an "exclusive" third party company. Ideally, the monthly instalments will be recorded and will add a positive note to the consumer's credit file.

In the promotion appearing on Credit Slab's website,[53] the tablet itself is said to be designed to improve the credit score. This fantasy needs no comment! Another tab on the website advertises car loans – $45,000 credit offered with no credit check. The cost of such credit is not mentioned.

Illustration 1

Source: http://www.creditslab.com/index.php

[53] **CREDITSLAB**. http://www.creditslab.com/index.php

We classified the following three companies in the "Credit File Repair and Improvement" category. As the table below indicates, each company also offers at least one other service category:

Table 1

Company	Territory Serviced	Hybrid Model
Groupe Conseil Primex[54] **W:** http://rachetezmesdettes.com/index.html	QC	**Yes** M5
Credit Slab[55] **W:** http://www.creditslab.com/index.php Credit score improvement with loan.	CAN	**Yes** M5-Loans
Canada Credit Fix Inc. **W:** canadacreditfix.com	CAN	**Yes** M4-Debt settlement services M6-Identity theft restoration M6-Foreclosure mitigation M2-Consumer proposal

Few companies whose websites we analysed display online the price of their services. But by searching through several Web pages and visiting the websites of what those companies call "affiliated partners" – which are also financial recovery companies – we were able to identify a few fees charged by credit file repair and improvement companies offering similar services. This detour also revealed that many such "affiliated partners" appear to be companies related to the company under study.

On Credit Slab's website, we found only one mention of fees: "The loans will entirely pay for the Credit Slab tablet, our Credit/Debt App, all of our credit monitoring, coaching, analysis and the protection guarantee of your credit. You pay $49/ weekly payments and we do all of the work."[56] It should be noted that nothing indicates how long those monthly fees of $210.70 will have to be paid.

[54] Groupe Conseil Primex was the subject of an article in La Presse in 2012. To that effect, see: **GRAMMOND, Stéphanie.** *Rebâtir son crédit... en payant 313 % d'intérêts*, La Presse, Montreal, March 17, 2012. http://affaires.lapresse.ca/finances-personnelles/bons-comptes/201203/16/01-4506296-rebatir-son-credit-en-payant-313-dinterets.php (page consulted on October 8, 2016).

[55] The home page of Credit Slab's website displays a link to the company's profile with Industry Canada. The link leads to a page on the Canadian government's website that states "The profile you have selected no longer exists." (page consulted on May 4, 2017).

[56] **CREDIT SLAB**. http://creditslab.com

The Canada Credit Fix company, affiliated with Credit Slab, displays on its website a list of impressive prices for more or less similar services.[57]

Illustration 2

Source: http://www.canadacreditfix.com/credit_rating.php

[57] **CANADA CREDIT FIX**. http://www.canadacreditfix.com/credit_rating.php

The results that consumers can expect from companies in this category are highly similar: improved credit scores, whether through loans and credit, as granted by Groupe Conseil Primex; or through a tablet and a secured credit card, as provided by Credit Slab.

Groupe Conseil Primex's website includes a button titled "Freedom from bankruptcy or from *[sic]* a consumer proposal!" leading to the following message to targeted consumers:

> *You are bankrupt, have registered for a consumer proposal [sic] or have had credit problems in the past which have since been fixed, you're out of debt, no longer being pursued by creditors but your credit applications are still being refused.*
>
> ***We have the tools you need!***
>
> *We can obtain for you a personal micro loan along with a new Optimax MasterCard Credit Card and more... All your financial activities will be recorded at your Equifax and TransUnion credit bureau with the goal of rebuilding your credit rating.*
>
> ***Simple and easy, no need to visit our office***
>
> *More tools to improve your credit rating:*
> - *Controlled increase of your credit limit from $500 to $2000*
> - *Personal loan of $500 to $2000*
> - *Automobile loan 1st, 2nd and 3rd chance credit*
> - *Mortgage loan, 1st or 2nd position*
>
> *Each step leads you to achieve the standard credit level required by banks and financial companies. Be like 95% of our customers who rebuild their credit within 8 to 24 months. To take control and secure a better future for yourself, click here*[58]

As to when a consumer can obtain the advertised results, the representations are rare. While Groupe Conseil Primex suggests "Be like 95% of our customers who rebuild their credit within 8 to 24 months," which seems to represent the period for repaying the loan extended to the consumer,[59] the duration of Credit Slab's credit improvement plan is extremely vague: "Boost Your Credit Score Fast!"[60]

Credit Slab promises rapid credit improvement and simultaneously tells consumers that the procedure takes time and there are no quick solutions:

> *It's important to note that getting your bad credit under control is a bit like losing weight: It takes time and there is no quick fix. In fact, quick-fix efforts are the most likely to backfire.*[61]

We can deduce that it's very difficult for a consumer to know either the duration of the plan offered to him or when his credit file will actually be improved.

[58] **RACHETEZ MES DETTES**. http://rachetezmesdettes.com/index.html
[59] Ibid.
[60] **CREDIT SLAB**. http://creditslab.com/improvecreditscore/
[61] **CREDIT SLAB**. http://www.creditslab.com/credit-score-improvment.html

We had an opportunity to examine a contract concluded by Groupe Conseil Primex in August 2014. Already, the letter of acceptance, following a phone conversation, gives an idea of the company's professionalism: "*Comme vous avez choisi de rebâtir votre bureau de crédit beaucoup de chose seront mis de l'avant aussitôt que nous auront reçus vos documents […] nous en feront analyses et produiront au besoin un rapport de correction […] vous saurez que le travaille a été effectué*."

Essentially, Primex's services consist of obtaining a client's credit file, analysing it, seeing whether corrections should be made to it and, if so, mailing the credit bureau to have the corrections made. Primex's "strategic credit director" will also teach the client about the operation of a credit bureau. All those services will cost the client $900, debited monthly from the client's account. But the client will also have the opportunity to obtain a secured Optimax Credit MasterCard and a $500 personal loan from Sofilco Finance Inc., which will serve, surprisingly, to make the $500 "security deposit" for the Optimax credit card AND to pay Primex the fees stipulated in the loan agreement.

It's impossible to congratulate Primex/Sofilco for text clarity and reasonable fees, given the services offered.[62]

2.2.2 Category M2: Administration of Payment Agreements with Creditors

Companies offering to administer payment agreements with creditors promise to negotiate with the latter an extension of the payment term, which would reduce the instalments. While some companies simply call that service an "agreement with the creditor," others such as *Debt Relief Canada* call it a "consumer proposal."

[62] After five payments to Sofilco ($268.50) and Primex ($275, because undisclosed "credit office expenses" were added to the first withdrawal), the client cancelled his credit card – whose security deposit was returned to Sofilco – and asked Primex to terminate the contract. Primex required payment of the standard $250 penalty (not mentioned in the contract), while assuring him that he would receive in six to eight weeks a refund of $96 representing the proportion of the security deposit he had paid (Sofilco would thus keep $172 on the total paid by the client, which exceeds by almost $30 the "total credit charges for the entire term of the loan" indicated in the contract.

Illustration 3

Source: www.reliefcanada.ca/debt-solutions-and-options/

The parallel with a consumer proposal is not baseless. Indeed, rescheduling payments is one of the possible measures of a "consumer proposal,"[63] which the Superintendent of Bankruptcy defines as follows:

> ***Consumer proposal***
>
> *A Consumer Proposal is a formal procedure governed by the Bankruptcy and Insolvency Act whereby debtors, working with a Licensed Insolvency Trustee, put together an offer to pay their creditors a percentage of what is owed to them over a specific period of time, extend the time to pay off the debt or a combination of both. This option is available to individuals whose total debt does not exceed $250,000, not including debts secured by their principal residence.*[64]

Some distinctions should be drawn. First, only a licensed insolvency trustee (LIT) or a person named by the Office of the Superintendent of Bankruptcy can make a consumer proposal. The reason is that the latter, as provided by law, has the effect of releasing the debtor, which binds all the creditors that the law authorizes to include in such a proposal, and not only those who have accepted the proposal. A third party that is not a trustee will of course have no authority to make a proposal entailing such effects.

Although some companies consider it legitimate to mention consumer proposals in their representations, because the companies will refer to a trustee the consumers for whom that solution is applicable, questions remain.

If those companies are actually alluding to the consumer proposal prescribed by law, why not also mention the other option, much more advantageous to the consumer, of paying only a percentage of his debts in a given period in order to obtain a release?

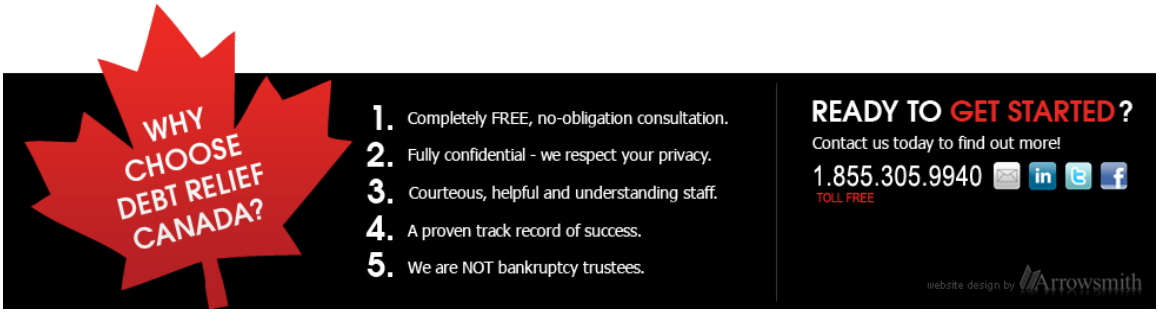
AJB Solutions, which mentions among its solutions the consumer proposal as well as bankruptcy, assures that those proceedings are carried out by trustees and that the company will redirect consumers to the latter. We may ask why a consumer would have to start with such a middleman, when he could approach a trustee directly. We may also ask why the company's website states "Before filing for bankruptcy or going into receivership, call AJB Solutions," whereas some of the proposed solutions require going into receivership (i.e. having a licensed insolvency trustee (LIT) act as a receiver); the website also claims "AJB Solutions is the smartest option," whereas relying on a superfluous middleman only increases the costs uselessly.

Moreover, trustees must themselves meet consumers in financial difficulty, in order to determine the best solution case-by-case. And the trustees' fees are established by law and vary according to a consumer's ability to pay. Many trustees offer an initial consultation free of charge.

[63] That procedure is provided in sections 66.11-66.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
[64] Office of the Superintendent of Bankruptcy, *Definitions*. https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br01467.html (page consulted on October 3, 2016).

Other companies that mention the consumer proposal as a solution for consumers in debt (see Illustration 2) admit at the start, proudly, not to be trustees, and insist that this is precisely the reason why consumers should turn to those companies.

Illustration 4



Source: www.reliefcanada.ca/debt-solutions-and-options/

That curious sales pitch is related to a practice found here as well as in financial recovery or debt settlement: warnings against trustees, and a lot of warnings about bankruptcy potentially causing much more serious side-effects for consumers than other possible solutions. While bankruptcy may be considered the ultimate solution for insolvent consumers, it may also be the best solution. Paying a middleman for a certain time to delay the inevitable, or paying to be finally redirected to a trustee, may well seem preferable only for the party that will receive those consumer payments in the meantime. Debt settlement companies often insist on the difference between themselves, as being solely concerned with the consumer's interest, and trustees or even credit counsellors, as operating on behalf of creditors.[65]

During our survey, we identified a company, particularly well-known in Quebec, that primarily offers consumers the administration of payment agreements with their creditors. In fact, the service is hardly unique to this company, but is often offered with other types of services, notably by companies primarily offering debt settlement services.

[65] See notably a Vancouver Sun article by Tracy Sherlock in which the president of the Canadian Association of Debt Assistance (grouping Cambridge Life Solutions, Canada Debt Settlement and Total Debt Freedom) makes that argument, as does the *About Us* page of the TDF Debt Advisory Law website on its presentation page. See notably:
SHERLOCK, Tracy. *Debt takes victims into a murky world*, Vancouver Sun, Vancouver, British Columbia, March 13, 2013, 6 pages. https://www.sands-trustee.com/wp-content/uploads/2013/07/VancouverSun-March-13.pdf (document consulted on October 18, 2016).
TDF Debt Advisory Law, *About Us* page, Whitby, Ontario. https://debtconsolidationlaw.ca/about-us/ (page consulted on October 2, 2016).

Table 2

Company	Territory Serviced	Hybrid Model
AJB solutions W: ajbsolutions.ca	QC	**Yes** M4-Agreement with creditors M5-Consolidation loan M6-Bankruptcy And voluntary deposit

It was difficult for us to determine the fees charged by companies for the administration of payment agreements with creditors. That information is not available on the companies' websites and we could not obtain it during our phone survey either. However, a 2013 La Presse article mentioned $400 fees charged by AJB Solutions for a consumer proposal…[66]

This is the type of service that seems most useless among all those we identified. When AJB Solutions advertises the consumer proposal as one of its solutions, it is only offering to refer the consumer to a trustee, thus providing absolutely no benefit to him. During our phone survey, the company explained that fees are charged because it will represent the consumer before the trustee so that the latter may produce a consumer proposal. But obviously, the consumer needs no such representation before the trustee, and a uniquely qualified professional has no need to be advised by a business about the best way to proceed with regard to insolvency.

In the preamble of a 2014 Groupe Solution2 contract of which we obtained a copy, the confusion those companies generate among confusion is manifested in two of the preamble's Whereas clauses. The first one confuses two ways to settle debts, i.e. consolidation and the consumer proposal: "*Whereas the Client agrees that debt consolidation must be preceded by a consumer proposal.*" The second one seems to be oblivious of a consumer proposal's effect: "*Whereas the Client does not want to declare bankruptcy and wants to demonstrate by the consumer proposal his commitment to settle his debts and rebuild his financial future.*" (Our translation of the two clauses.)

The company's contract is not signed by a trustee, but by a family budget adviser. In addition to the analysis of the client's financial situation (which a trustee will have to redo), the "*participation in raising the client's awareness*," the design of a "*primary budget*" and training in "*budget philosophy*," the company's sole obligation is to "*Select the adequate trustee in terms of the Client's budget expectations and repayment percentage*" – an assessment the trustee will have to make all over again and include in his own fees. GS2 provides those services for "only" $2,471.96.[67] (Our translation of the above quotes from the GS2 contract.)

[66] Op. cit. note 38, **DUCAS, Isabelle**. *Des redresseurs financiers sous surveillance*.

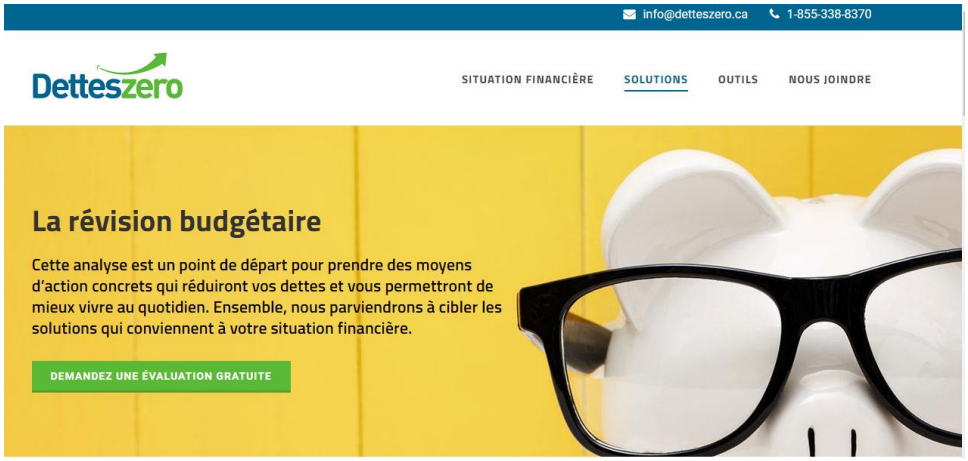
[67] Another contract of that company, signed five months later, indicates the relative percentages generally involved in the services listed: complete analysis of the client's financial situation (20%); participation in making the client's Statement of Awareness (20%); production of a primary budget (25%); etc. In that case, the contract, budget and Statement of Awareness were all signed on the same day. A loan agreement with a third-party lending company was concluded at Solution2's address for an amount equal to Solution2's fees. Dated on May 21, the loan agreement provided for a first repayment on April 6, i.e. the signing date of the agreement concluded with Solution2 by the consumer.

2.2.3 Category M3: Budget Counselling

Numerous debt settlement and financial recovery companies offer budget counselling services to help consumers regain control of their financial situation. Setting a budget usually begins with a compilation of revenues and expenditures. But there is no guide or compilation of best industry practices in that regard. So it's impossible to gauge the level of seriousness and professionalism offered by this type of for-profit company.

Admittedly, we would tend instinctively to distrust the neutrality of budget counselling services offered in relation to other services. Since those companies' profits derive from granting credit, should one not worry that a budget produced with the help of such a company will tend to demonstrate the consumer's excellent repayment capacity?

Illustration 5



Source: www.detteszero.ca/solutions/revision-budgetaire/

We have not identified any company that predominantly offered budget counselling services. However, those services were offered collaterally by many companies offering services in the other categories.

Of course, setting a budget is crucial for a consumer experiencing a difficult financial situation and wanting to regain control of his finances. Fortunately, there exist in Quebec and the other provinces non-profit organizations that have great expertise in that regard. Credit counselling organizations offering budget counselling and debt payment assistance through "debt pooling" are well established almost everywhere in Canada. In Quebec, *Associations coopératives d'économie familiale* (ACEFs - Cooperative associations for family economics) and other community groups of that type specialize in budget counselling.

While those Quebec organizations intervene more broadly in protecting consumer rights, they don't offer debt counselling services. However, they intervene when necessary in helping consumers negotiate with companies, and notably in reaching agreements with Hydro-Québec as part of programs intended for low-income households (the organizations also participate in developing and monitoring those programs). Those non-profit organizations thus impartially offer budget counselling services to strengthen consumers' autonomy in making decisions about their personal finances. The organizations share common values and ensure the adequate training of counsellors who will intervene with persons consulting them.[68]

2.2.4 Category M4: Debt Negotiation and Settlement

Many companies offer debt settlement services. The settlements those companies claim they can obtain through negotiations may be of two types: an agreement for immediate payment to creditors in the form of a lump sum representing a portion of the amounts due; or rescheduling of payments over a more extended period. We will discuss this further below, but the billing model for those services also differs, depending on the type of service offered, the model preferred by the company or the regulations in effect in the territory serviced by the company. The companies promise substantial debt reductions of 30 to 85%, an end to creditors' repayment demands, and restoration of the consumer's financial freedom thanks to the companies' services.

[68] A budget consultants' statement of values has been adopted, and a budget consultant training manual has been produced with Université de Sherbrooke.

Illustration 6

Source: photo taken in the Montreal Area on May 27, 2017.[69]

[69] It should be noted that the company's website advertises instead a debt reduction of 80%. **4 PILLARS**. https://www.4pillars.ca

The usual period for completing the various debt settlement plans of this type varies between 3 and 5 years.

Illustration 7

Source: www.totaldebtfreedom.ca

That is the category for which we identify the most companies: 14 of the 19 companies studied in our report offer this type of service, often combined with one or more others. Among those companies is Total Debt Freedom, formed in Toronto in 2004, one of the first debt settlement companies to concentrate its activities in Canada.[70]

[70] **MCCLEARN, Matthew, and Richard WARNICA.** *Debt-settlement companies Draw Increasing Criticism*, Canadian Business Magazine, Toronto, Ontario, September 20, 2012. http://www.canadianbusiness.com/business-news/industries/financial/debt-settlement-companies-draw-increasing-criticism/ (page consulted on October 13, 2016).

Table 3

Company	Territory Serviced	Hybrid Model
Cambridge Life Solutions W: www.cambridgelifesolutions.ca/	N/A	No
Total Debt Freedom W: www.totaldebtfreedom.ca	ON	No
Canada Debt Settlements W: http://www.canadadebtsettlements.ca	ON	No
Groupe Solution2 W: N/A	QC	Yes M5-Loans and debt consolidation M2-Consumer proposal
Le petit cochon rose W: N/A	QC	Yes M5- Loans and debt consolidation M2- Consumer proposal
PAF redressement W: www.paf.ca/redressement	QC	Yes M2- Consumer proposal M3-Budget counselling M5-Financial management
SOS Dettes[71] W: http://www.sosdettes.ca	ON QC	Yes M3-Budget counselling
1paiementparmois W: http://1paiementparmois.ca/solutions-aux-dettes/	ON QC	Yes M2- Consumer proposal M5-Debt consolidation

[71] SOS Dettes is an NPO. We find little information about services and fees on the company's website. A La Presse article published on February 10, 2010 reveals that SOS Dettes invited consumers to make a voluntary contribution of $50 at the first meeting, that SOS Dettes could charge 10% of the monthly instalment the consumer paid his creditors, and that the latter participated (agreement with the creditors for approx. 22% of the debt repaid). Other peculiarities of SOS Dettes: the plan involves payment of the debt in full. The company negotiates only an interest rate reduction and the elimination of late payment fees: See in that regard: **TISON, Marc.** *À qui confesser ses problèmes d'endettement?*, La Presse, Montreal, February 10, 2010. http://affaires.lapresse.ca/finances-personnelles/planification-financiere/201002/10/01-948078-a-qui-confesser-ses-problemes-dendettement.php (page consulted on October 8, 2016).

Company	Territory Serviced	Hybrid Model
Loans Canada W: loanscanada.ca	BC ALB SK MB ON QC NS NB NFL PEI	Yes In addition to offering various types of loans M1-Credit file improvement by means of a credit card and a "credit rehabilitation savings program" M2-Consumer proposal M3-Budget counselling M5-Debt consolidation M6-Bankruptcy
Credit pro W: credit-pro.ca	Montreal and Laval	Yes M2-Consumer proposal
Soludettes W: soludettes.ca	ON QC	Yes M6-Voluntary deposit M5-Debt consolidation M5-Mortgage refinancing M2-Consumer proposal M6-Bankruptcy
Dettes zéro W: detteszero.ca	ON QC	Yes M2-Consumer proposal M5-Mortgage refinancing M6-Voluntary deposit M6-Bankruptcy M3-Budget review
Full Circle Debt Solutions W: http://debtgone.ca	BC ALB With affiliates in SK ON	Yes M2-Consumer proposal M3-Budget counselling M6-Bankruptcy

The various billing models

The fees charged by this type of companies may seem quite substantial, given that the target audience is comprised of consumers already heavily in debt.

a) "Contingency Fee Model"

The "contingency fee model" is the one most rarely found on the Canadian market. According to this billing model, the company charges as payment an amount equivalent to a percentage of the savings made by the client after the company has negotiated a reduction in the amount of

his debts. The debt settlement company collects its percentage only once the debt is settled with the creditor(s) through payment of the lump sum. Certain American regulations authorize only this billing model for debt settlement companies.

b) The model charging a percentage of the total debt recorded in the plan

The most common billing model is that of fees calculated as a percentage of the total debt recorded in the plan. Cambridge Life Solutions (hereinafter CLS), a company that was very present on the Canadian market, but less so since 2013, was the standard bearer for this model.[72] We had occasion to analyse a contract from that company at the time; the contract charged fees equivalent to 30% of the total debt. In a 2013 interview with La Presse, CLS stated that it was temporarily ceasing its operations in Quebec to comply with a federal regulation, which the company could not identify.[73]

The fees charged to consumers under that business model reportedly vary between 25 and 30% of their initial debt.

The Ontario company Total Debt Freedom uses that same billing model. According to a contract we obtained from the company, the administrative fees, for a debt of $25,000, total $4,465.23, i.e. 17.85% of the consumer's initial debt. Maintenance fees of $1,827 are added. So the total fees make up 25.15% of the initial debt.

Illustration 8

Step 2. Speak with your customer service representative – This will be your coach for the 60 months of your program. Your coach will be available to answer all your questions and concerns they will also be the expert that will negotiate with your creditors once you have saved sufficient funds in your Settlement Savings Fund.

Listed below is the total cost of our program as discussed during your consultation and are incorporated into the attached agreement.

Total Amount of Debt Enrolled	**$25,000**
Total Administration fee (17.85% of the total debt)	**$4,462.53**
Total Maintenance fee	**$1827**
Estimated Savings Required to Settle	**$11,250**

Source: Contract with Total Debt Freedom

[72] A study of that firm's practices gave us a better understanding of the model's operation and to prepare our intervention before the Office de la protection du consommateur in favour of regulating debt settlement companies. See in that regard:
Op. cit. note 40, **UNION DES CONSOMMATEURS**, *Observations - Loi visant à lutter contre le surendettement des consommateurs et à moderniser les règles relatives au crédit à la consommation*.

[73] See in that regard: Op. cit. note 38, **DUCAS, Isabelle**. *Des redresseurs financiers sous surveillance*.
The website of Cambridge Life Solutions was inaccessible for a long time after that date. It returned online in October 2016 as a financial blog. http://www.cambridgelifesolutions.ca/ (page consulted on October 28, 2016).

As shown in the above illustration, negotiations with creditors will take place only once a sufficient amount has been accumulated in the company's account. That amount will take a long time to accumulate, since the company will collect its fees from the amounts deposited in the account during the first 24 months, in our example (see Table 4).

This procedure, called "front-loaded fees," is another feature of this business model. Let's consider the consequences for the consumer.

The above illustration demonstrates that the company expects the company to deposit in the company's account an (estimated) amount of $11,250, which will serve as a lump sum payment to settle a debt of $25,000. Of course, that debt settlement amount must first be agreed to by the creditors. Their agreement cannot be obtained until negotiations are completed, and as we have seen, they will begin only once the debtor has deposited the amount in the company's account.

The company's "plan" schedules monthly instalments of $296.95 made by the consumer. The table below indicates how those instalments will be used.

Table 4

Payment Date	Total Monthly Cost	Administration Fee	Maintenance Fee	Settlement Savings Fund (SSF)
07/20/2017	$296.95	$266.50	$30.45	$0.00
08/20/2017	$296.95	$266.50	$30.45	$0.00
09/20/2017	$296.95	$266.50	$30.45	$0.00
10/20/2017	$296.95	$166.50	$30.45	$100.00
11/20/2017	$296.95	$166.50	$30.45	$100.00
12/20/2017	$296.95	$166.50	$30.45	$100.00
01/20/2018	$296.95	$166.50	$30.45	$100.00
02/20/2018	$296.95	$166.50	$30.45	$100.00
03/20/2018	$296.95	$166.50	$30.45	$100.00
04/20/2018	$296.95	$166.50	$30.45	$100.00
05/20/2018	$296.95	$166.50	$30.45	$100.00
06/20/2018	$296.95	$166.50	$30.45	$100.00
07/20/2018	$296.95	$166.50	$30.45	$100.00
08/20/2018	$296.95	$166.50	$30.45	$100.00
09/20/2018	$296.95	$166.50	$30.45	$100.00
10/20/2018	$296.95	$166.50	$30.45	$100.00
11/20/2018	$296.95	$166.50	$30.45	$100.00
12/20/2018	$296.95	$166.50	$30.45	$100.00
01/20/2019	$296.95	$166.50	$30.45	$100.00
02/20/2019	$296.95	$166.50	$30.45	$100.00
03/20/2019	$296.95	$166.50	$30.45	$100.00
04/20/2019	$296.95	$166.50	$30.45	$100.00
05/20/2019	$296.95	$166.50	$30.45	$100.00
06/20/2019	$296.95	$166.50	$30.45	$100.00
07/20/2019	$296.95	$166.53	$30.45	$99.97
08/20/2019	$289.02	$0.00	$30.45	$258.57
09/20/2019	$289.02	$0.00	$30.45	$258.57
10/20/2019	$289.02	$0.00	$30.45	$258.57

Source: Contract with Total Debt Freedom - 28 first months of a 60-month plan.

We observe that while the creditors must wait to see the colour of their money, the debt settlement company reserves for itself the lion's share for the first 2 years of the plan. Of the first $7,423.75 the consumer deposits, only $2,200 $ accumulate in the settlement account. But the company collects $5,200 – almost the totality of its charges and fees, while the settlement work has still not begun. After the first 2 years, the consumer still has 35 monthly instalments to make before the "estimated" settlement amount has accumulated in the account intended for that purpose. And then the company can, at last, begin negotiating debts that, five years after the start of the plan, were likely prescribed a few years ago (in Quebec, Ontario, Alberta, Saskatchewan, British Columbia, and Newfoundland and Labrador, at least)… unless of course the creditors have taken legal recourse in the meantime or obtained from the debtor an acknowledgment of debt.

To settle a $25,000 debt, the consumer will thus have paid – if he completes the plan and the estimated settlement offer (based on average settlement rates stated as 45% of the amount due[74]) is accepted – $17,539.53 ($11,250 for the settlement, $4,462 in fees [the "administrative fees," calculated at 17.85% of the total debt] and $1,827 in maintenance fees), which represents savings of $7,460.47 (or almost 30%).

We mention the issue of the creditors' prescription and legal recourse mainly because a consumer who pays instalments to a company having promised him that it is handling his debts will likely stop paying his creditor. Many creditors will react, certainly by inserting a note in the consumer's credit file, and possibly by taking legal recourse or turning to a collection agency that will attempt at least to obtain debt recognition. In addition to paying hefty fees, and a lump sum required in advance, with no guarantee of results,[75] the consumer needs to be urgently warned about the consequences of defaulting on one's creditors during such a plan.

We will elaborate later on legislation adopted by certain provinces. It should be noted that the professionals who negotiate debt settlements are in many cases, as we will see, excluded from such legislation. During our mystery client survey, we phoned Total Debt Freedom at the number displayed on its website, and the receptionist answered "*TDF Debt Advisory Law PC, good morning!*" According to the website, *TDF Debt Advisory Law PC* is an Ontario law firm (although the website mentions "*Our team of lawyers [and] paralegals*," the link "*Our Professionals*" lists only one lawyer and one paralegal) specializing in debt negotiation and reduction.[76] Questioned on this subject, the company representative explained that lawyers are best placed to negotiate with creditors, including financial institutions, and that the company's fees are included in the contract between the consumer and Total Debt Freedom. Is this evidence of the presence of the *attorney model* in Ontario, a way for debt settlement companies to elude the regulation of fees and payment terms? We will discuss that below.

Almost all the companies using this model promise that such a debt settlement plan will stop creditors' debt collection attempts:

> *Our Partners can stop the harassing phone calls and help get you back on your feet. Reduce your monthly payments, and make life affordable once again. Our experts will monitor and manage your credit while you are in the process of restructuring your debts. Once you have completed your debt settlement program, we will be there to help you rebuild new, healthy and responsible credit. Call us today and find out your best debt settlement option.*[77]
> *- Canada Credit Fix.*

As we will see, that may not be the case.

[74] However, TDF's contract states: "LIMITED SERVICE GUARANTEE. If TDF is unable to reduce the balance on any enrolled debt by at least fifteen percent (15%) on an enrolled account, TDF will refund Client an amount equal to 17.85% of that particular account balance at initial enrollment. Client must be in good standing with TDF, and have sufficient funds to settle in order to be eligible for service guarantee."
[75] TDF's contract, for example, includes the following clause: "ADDITIONAL AGREEMENTS BY CLIENT - (vii) TDF makes no guarantee regarding the outcome or success with respect to Negotiating and Settlement and TDF does not have or hold any power to guarantee any certain outcome in favour of Client;"
[76] TDF Debt Advisory Law, page *Your Team of Dedicated Debt Negotiation Professionals in Canada*, Whitby, Ontario. https://debtconsolidationlaw.ca (page consulted on October 28, 2016).
[77] **CANADA CREDIT FIX**. http://www.canadacreditfix.com/avoid_bankruptcy.php

We also find representations that interest will stop increasing and that the consumer will have only one payment to make. That's hard to understand: if a debt is unpaid, interest must accumulate – unless negotiations take place to suspend or decrease it, but as we have seen, those companies do not commit to that. And as mentioned above, if the consumer stops making payments to his creditors, he risks being in default and provoking them to react accordingly.

The Total Debt Freedom contract we studied does advise the consumer, indirectly, about the plan's risks:

> ***ADDITIONAL AGREEMENTS BY CLIENT***
>
> *(ix) Client understands contracted credit accounts will continue to accrue interest and/or late fees until accounts are settled,*
>
> *(x) Client understands creditors may impose other penalties as a result of delinquent payments including but not limited to: the reporting of delinquency to credit bureaus, the filing of a lawsuit to collect subject debts if the creditor is unwilling to accept a settlement offer, or Client is unable to propose a settlement offer acceptable to creditor,*
>
> *(xi) Client understands the services of TDF may have a negative impact on some credit reports,*

As for telling the consumer not to communicate with his creditors, the text of the contract seems to carry a double message. It may be deduced that the "additional agreements" refer to the past and the "creditor communication" to the future:

> ***ADDITIONAL AGREEMENTS BY CLIENT***
>
> *(xii) […] TDF has not provided Client with any advice or recommendation regarding the reduction or termination of payments to Client's creditors and any such action by the Client at any time was as a direct result of the Client's sole and absolute discretion and the Client's sole and final decision.*
>
> ***CREDITOR COMMUNICATION.***
>
> *Client hereby agrees and acknowledges that:*
>
> *(i) TDF does not contact and negotiate with creditor until such time as sufficient funds have accumulated to propose a settlement.*
>
> *(ii) Client is not to engage creditors in any discussion regarding the debts enrolled, this includes discussion of alternate arrangements or any communication whatsoever regarding their debts enrolled with TDF.*
>
> *(iii) Client understands creditors may continue to attempt to communicate with client in writing or by mail.*
>
> *(iv) Client will read and adopt the instructions outlined in the Welcome Package regarding the handling of creditor communication.*

So despite the risks that TDF cautions the consumer about, it still invites him not to communicate with his creditors, after advising them it would not do so either. In another section, the contract states that the "Welcome Package" will be sent to the consumer five days after he has made his first payment to the company.

To convince consumers that their services are truly effective, those companies claim their repayment plans achieve impressive success rates. Indeed, it's difficult for a desperate consumer to doubt the plan's effectiveness when the company states that "**97%** of families successfully complete the plans we create and become debt free."[78] Of course, we don't have the necessary information for verifying that claim. The president of the *Canadian Association of Debt Assistance* (which grouped Cambridge Life Solutions, Canada Debt Settlement and Total Debt Freedom) stated in a 2013 interview that 75% of clients succeeded in paying their debts within 36 months.[79]

We're unable to verify the veracity of that claim either. Surveys conducted in the United States reported much lower, and even worrisome, success rates:

> *FTC and state investigations in the U.S. have found that less than 10 per cent of consumers typically complete debt settlement programs there, according to the U.S. Government Accountability Office.*[80]

Among other problematic representations made by debt settlement companies is the following type. In our history of those companies, we mentioned arguments that regulating those companies was equivalent to legitimizing them. The companies seem to have understood that very well. For example, the following one implies it is authorized by the government, which however has not required it to obtain a permit:

> *Proudly licensed by the Ministry of Government and Consumer Services, […]*[81]

During our examination of websites to find detailed terms of the companies' offers, and during our mystery client survey, we observed that the information sought about the services offered or the prices was available only if an online form was completed first. That practice seemed of concern, first in terms of transparency, and then because the forms are often elaborate and require detailed personal information.

Another Groupe Solution2 contract we had occasion to examine, dated January 2, 2016, mentioned, among the services to be provided to clients (in addition to awareness-raising and other explanations of budget management), "*Preparing the file and negotiating payment agreements with creditors*" (our translation) rather than a simple referral to a trustee. The service contract provides that GS2's fees will be paid from the instalments described in subparagraph 4.1.1. It should be pointed out that the contract does provide for instalments to "*normalize his debt situation*" (our translation) but does not contain any subparagraph 4.1.1. We

[78] **4 PILLARS**, https://www.4pillars.ca
[79] Op, cit., note 64, **SHERLOCK, Tracy.** *Debt takes victims into a murky world.*
[80] **WARNICA, Richard.** *Growing (debt) pains*, MacLean's Magazine, Toronto, Ontario, March 22, 2012. http://www.macleans.ca/economy/business/growing-debt-pains/ (page consulted on October 23, 2016).
[81] **CANADA DEBT SETTLEMENTS**, *Frequently Asked Questions (FAQ)* page. http://www.canadadebtsettlements.ca/services/FAQ (page consulted on October 18, 2016).

found in the four-page contract and in the five annexes no mention of the amount or calculation method of GS2's fees. But clause 6 of the contract mentions that "*Si le Client est considéré comme étant en défaut au moment où les versements aux créanciers sont effectués* [soit une fois tous les six mois]*, le montant des paiements mensuels ayant été cumulé depuis la dernière date de versement aux créanciers sera affecté aux honoraires de GS2 en priorité*."

Annex A of the contract is titled "*La négociation avec vos créanciers*"; in fact this is the mandate that the client gives GS2 to negotiate with his creditors in order to obtain a payment agreement. In that "annex" that the client signs as a principal, we find the following clause: "*Le mandant reconnaît que toute intervention verbale ou écrite, dans le dossier à l'intérieur du terme, doit être faite uniquement par le mandataire. Le mandataire ne sera pas aucunement tenu responsable des impacts ou dénouements négatifs d'une telle intervention*." That is not reassuring, but ironically, GS2 included in the contract's Whereas clauses "*que le Client, toutes considérations faites, estime que GS2 est qualifié pour le guider dans sa restructuration budgétaire et que ce service privilégiera ses intérêts propres.*" His own interests?

An almost identical contract signed two months later with GS2 repeats the same reference to the nonexistent subparagraph 4.1.1 and still does not reveal the calculation of fees. The client's budget included in the file indicates a monthly deficit of $15.74. The instalments that the client pledges to pay in order to "*normalize his debt situation*" (our translation) will thus be $300, and those amounts are to be distributed to his creditors every 6 months for 4 years. As we have seen, the client, "*toutes considérations faites, estime que GS2 est qualifié pour le guider dans sa restructuration budgétaire et que ce service privilégiera ses intérêts propres*." "All things considered," we don't arrive at the same conclusions as the client.

2.2.5 Category M5: Loans for Credit Repair and Debt Consolidation

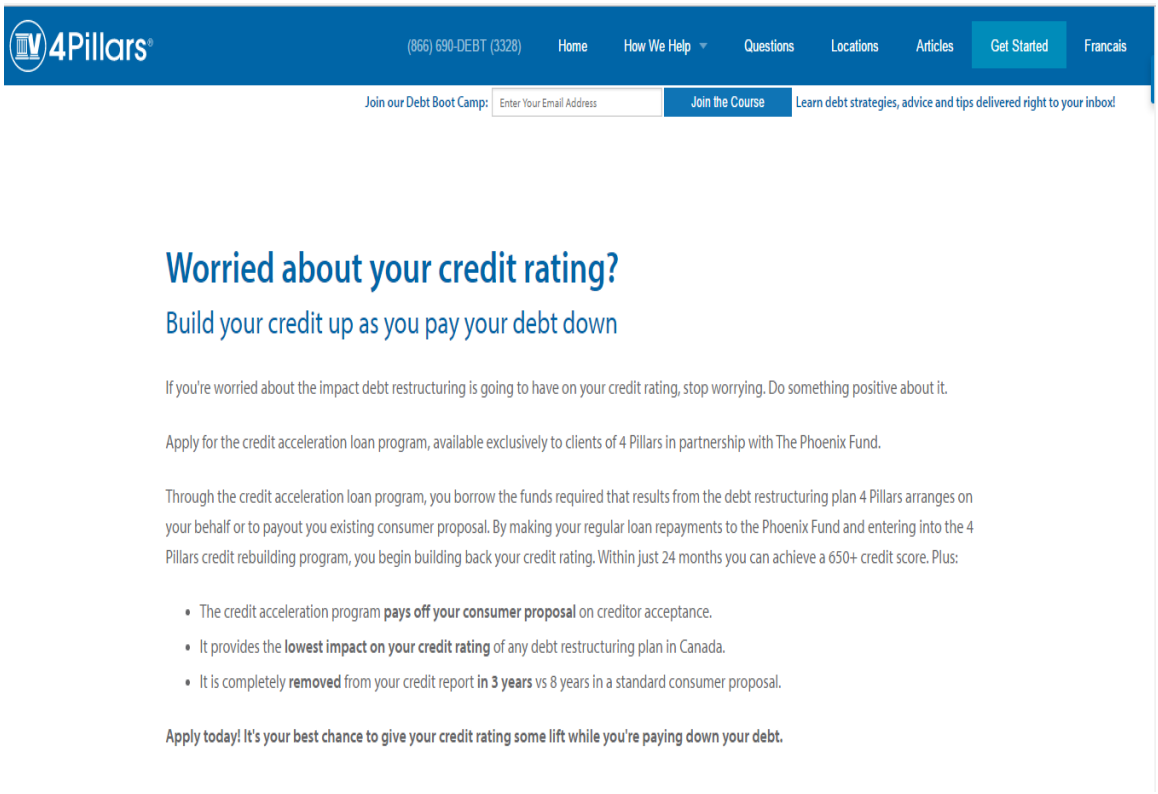
Some companies offer loans to heavily indebted consumers so that the latter may consolidate their debts and improve their credit file by having favourable notes entered in it. The consolidation plan may be in fact a debt settlement plan formulated by the same company, and the loan granted to improve the credit file may serve to pay the "credit rebuilding" plan offered by the company. The loans are generally extended by a third-party company.

The 4 Piliers company even offers to help the consumer obtain credit that will serve to make a one-time payment of the amounts required by a consumer proposal submitted to a trustee. Apparently unaware of the mechanism for entering a consumer proposal in a credit file, the company boasts about the merits of its plan: "By paying off your consumer proposal it will immediately report as fully satisfied."[82]

That loan seems to be offered as a "credit acceleration loan" for participation in the "credit rebuilding program."

[82] **4 PILLARS**, *Worried about your credit rating?* page. https://www.4pillars.ca/howwehelp/consolidation_loan. Curiously, we don't find, in the menu of the website's French version, under "*Comment nous aidons*," any link corresponding to the one offering "Consolidated Loans" under "How We Help" in the English version.

Illustration 9



Source: www.4pillars.ca/howwehelp/consolidation_loan

Of the 19 companies we studied, we identified 2 agencies that offer loans and debt consolidation.

Table 5

Company	Territory Serviced	Hybrid Model
4 Piliers Groupe-Conseil W: https://www.4pillars.ca	Several offices in each province 50 offices in Canada	Yes M1-Credit file/score repair M2-Administration of agreement/consumer proposal M3-Budget counselling
Solution dette point com W: www.solution-dette.com	QC	Yes M2-Administration of agreement/consumer proposal M3-Budget counselling

The results presented to consumers are notably a lower monthly payment than what the consumer was paying his creditors, as well as an improvement of his credit score because of his payments to the third-party company affiliated with the agency. Companies that also offer debt settlement services promise substantial debt reductions of up to 80%. Some even claim they can offer loans at interest rates lower than those charged by the debtor's current creditors.

The repayment plans generally last 3 to 5 years. In that service category, it's extremely difficult to determine the fees to be paid by clients. The representations made to consumers don't help in that determination. Some representations even appear sleazy. For example, this one seems to say one thing and its opposite: "It doesn't cost anything to apply for a loan to consolidate all your debts into one. However, fees may be charged to open your file."[83] (Our translation.)

2.3 Issues observed in Canada - Summary

In recent years, the debt settlement and financial recovery industry has experienced substantial media coverage. The following summary of issues is based on reports from journalists, financial experts and consumer protection organizations, and on the findings of our field survey.

We will classify by theme the problems observed or reported by the various actors.

2.3.1 Themes

a) Misleading representations

Certain representations made by debt settlement and financial recovery companies can easily be considered misleading, given the general impression they convey or even their literal meaning.

We find in those companies' explanations or sales pitches, as displayed notably on their websites, statements of fact that don't seem accurate, omissions of important facts, or promises that don't seem realistic. Some of the company representatives' reported verbal statements seem just as misleading. It's important to remember that the clientele targeted by those companies is largely comprised of persons struggling with heavy debt who are desperately seeking solutions and often have lost access to traditional resources. Such a clientele, if assured that 97% of a company's clients escape their problematic situation by paying only 15% of their debts, risks falling into the trap laid by outlandish promises.

b) Government approval

Some American lawmakers feared that legislation requiring in particular the issuance of permits and the obligation to provide a surety bond would legitimize that industry in the eyes of consumers. Some companies play that card and advertise their plans by claiming participation

[83] **SOLUTION DETTE**. http://solution-dette.com/

in government programs, or official recognition, validation or approval, so as to reassure consumers.

The services presented as consumer proposals also play this card to an extent. A consumer proposal is not a "plan" offered by government, but a proceeding covered by the *Bankruptcy and Insolvency Act* and reserved for licensed insolvency trustees and persons named by the Office of the Superintendent of Bankruptcy. Only within that framework may a consumer benefit from benefits and protections provided by law, i.e. suspension of interest and of creditors' right of recourse, release from consumer debts, etc. The representations of debt settlement companies should therefore never confuse informal debt settlement proposals with consumer proposals.

c) Promises of substantial debt reduction and a high success rate

Debt settlement companies claim to obtain substantial debt reductions for consumers. An over-indebted consumer searching for a solution risks seeing in those claims a way to free himself at last. But of course, consumers cannot verify the veracity of those representations, often too good to be true, or of a few testimonials the companies sometimes present from satisfied clients reporting substantial savings.

Likewise for the amazing success rate reported by some companies. Given the high fees and the generally long period of paying instalments to the company before the creditors, who risk getting impatient, are even contacted by the company, that claim is dubious. All the more so because the American *Federal Trade Commission* and the *U.S. Government Accountability Office,* which have collected data on the subject, report that only 10% of consumers complete the debt settlement plans.[84]

d) Improbable and non-guaranteed credit file results

Some representations about "repairing" a credit file cross the line from improbable to incredible. Claiming that a consumer will improve his credit file on the first day of his participation in a financial recovery and debt settlement plan crosses that line:

> *Our Credit Slab Credit Improvement System comes with a full credit guarantee. You will be able to start making a difference on your credit on Day 1!*[85]

The overall impression given by that representation, related to others (from the same source), of the type "*delete bad credit from your credit report*" and "*Let our Credit Repair system help you delete errors, compliance violations, and other wrongful data off of your credit report*," evidently aims at seducing vulnerable consumers. Most don't know that no financial recovery company, and no dedicated tablet or application, can "delete" negative credit file notes.

In short, self-proclaimed experts make many seductive representations to consumers, with no actual guarantee, no reasonable possibility for the consumer to assess their veracity, and no way for him to measure the chances of success.

[84] Op. cit., note 80, **WARNICA, Richard.** *Growing (debt) pains*.
[85] **CREDIT SLAB**. https://www.creditslab.com/credit-score-improvment.html

e) No more pressure from creditors

Debt settlement companies often make representations that creditor calls and pressure will cease. Some of the companies admit that it takes many monthly instalments made by the agency for those calls to stop; or, in mentions buried in FAQs, that the calls may persist. So the end of pressure from creditors is far from guaranteed! In fact, the pressure risks increasing if the debtor, assured that the debt settlement company is handling his debts, leaves his creditors without any news or payment, in some cases according to the company's recommendations.

Another risk of increased pressure from creditors is that when the company finally makes a settlement or arrangement offer to the creditors, they reject it. Despite the debt settlement companies' claims, that may happen much more often than the debtor is led to believe.

During consultations on the Ontario bill to regulate debt settlement agencies, the Canadian Bankers Association explained as follows:

> *Unfortunately for consumers, only about 10 percent of proposals that banks receive from debt settlement companies are actually accepted. The remainder are declined because the repayment terms are not acceptable to the bank (this includes, for example, proposals seeking concessions that are unreasonable, or because the bank has evidence that the borrower has the capacity to meet his/her debt obligations). These consumers are left with more debt than before, fees paid with no results, and a tarnished credit record.*[86]

f) Substantial advance fees

The industry practice most often denounced consists of compelling consumers to pay substantial fees in advance while the company takes no action or the consumer has seen no results. Considering the likely very low rate of consumers who actually complete the debt settlement plans, and the near uselessness of those advance fees, even more detrimental to a consumer who pays them for absolutely nothing, we can easily understand that this practice is a prime target for lawmakers.

g) Debt settlement plans with harmful consequences

Debt settlement plans often require the consumer to make hefty monthly instalments. In many cases, he has to stop paying his creditors when subscribing to the company plan. Although some companies disclose the possibility that he will be sued for non-payment, that disclosure is rare.

A consumer who no longer pays his creditors because of his participation in a debt settlement plan – at times according to the company's recommendation – may find himself in a

[86] **HOPKINS, Randy**. *Debt Settlement Consultation*, Letter, Canadian Bankers Association, Toronto, Ontario, February 25, 2013, 3 pages. http://www.cba.ca/Assets/CBA/Files/Article%20Category/PDF/sub_20130225_cba_comments_re_ontario_consultation_on_debt_settlement_services.pdf (document consulted on November 2, 2016).

predicament: debt collection transfer, collection calls, lawsuits, seizure of wages and property, credit file notes.[87] A debt-burdened consumer may sustain serious and lasting harm, and be forced to abandon a plan on which he has spent a lot, but that causes him more harm than good.

h) No office on the territory serviced, fly-by-night businesses

Our survey revealed that many companies offering their services on the Web have no offices on the territory they service. This depersonalizes and limits the contacts between company and consumer, and makes it more difficult for a consumer to take legal action after suffering damages or for regulatory authorities to seek criminal remedies.

Quebec's OPC reports having received many complaints about false representations of services. Consumers falsely think they're turning to a serious company that can help them solve their debt problem. Some of those companies don't work alone and are located outside Quebec. Their most frequent means of reaching consumers appear to be the Internet and social media.

In addition, many are fly-by-night companies that easily disappear, only to rise from their graves. We mentioned the disappearance of some companies that ceased offering their services after negative media coverage. Another frequent trick is changing a company's name and structure, for instance turning a company into a law firm.

i) The "attorney model" and other models that risk perpetuating bad practices

This model has been observed in Ontario[88] and the United States[89]. To the extent that some companies associate with professionals exempt from legislation, substantial fees can continue being billed in advance, which numerous legal frameworks prohibit the companies from doing themselves. The survey we conducted in Ontario, where the companies' advance fees are prohibited, revealed that a company now does business with a law firm, which can charge fees as it wants, since lawyers are exempt from such legislation. Mark Silverthorn's article refers to a contract clause whereby the law firm can outsource its services and obligations to the debt settlement company, which can thus escape legislation that would restrict it if it contracted those services directly. Reporting similar practices, American analysts have also pointed out that the

[87] Those concerns were expressly raised in 2013 by the Ministry of Government and Consumer Services during the consultation leading to the 2015 bill. **ONTARIO MINISTRY OF CONSUMER SERVICES**, *Improving Consumer Protection- Debt Settlement Services*, Toronto, Ontario, January 4, 2013, 9 pages. http://www.ontariocanada.com/registry/showAttachment.do?postingId=11742&attachmentId=18018 (document consulted on November 13, 2016).

[88] **SILVERTHORN, Mark.** *OCCA helps Deputy Judge Serafini and Ontario Debt law enter debt settlement marketplace*, Mark Silverthorn Blog, August 16, 2015. http://blog.comprehensivedebtsolutions.ca/2015/08/occa-helps-ontario-debt-law-enter-debt-settlement-marketplace/ (page consulted on January 23, 2017) and **SILVERTHORN, Mark.** *Speaker's corner: Some Lawyers will be Unable to Resist lure of New Debt Settlement Biosphere*, Law Times, Toronto, Ontario, March 9, 2015. http://www.lawtimesnews.com/201503094529/commentary/speaker-s-corner-some-lawyers-will-be-unable-to-resist-lure-of-new-debt-settlement-biosphere (page consulted on January 23, 2017).

[89] **HARNICK, Ellen and Leslie PARRISH.** *A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households*, Center for Responsible Lending, November 2013, 33 pages, p. 7. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2388236, (document consulted on December 10, 2016).

negotiating work provided for in a contract concluded by lawyers was in fact not done by the lawyers, but by third party companies.[90]

In some provinces, legislation concerning debt settlement companies provides long lists of exemptions. Companies finding some of their practices prohibited will presumably collaborate more and more with professionals excluded from legislation, notably with trustees and lawyers, thus stripping consumers from numerous protections intended by law.

2.3.2 Credit Repair and Debt Settlement Pros and Cons for Consumers

Who wouldn't want to have the best possible credit file or to be freed from all his debts by paying only part of them? While some credit repair and debt settlement companies seem at first sight to advertise services of some benefit to consumers, a detailed study of the practices, complaints, promises and other representations, low success rate, etc. raises serious doubts about the actual benefits of those services. The disadvantages appear very real and at times severe, and the advantages appear very hypothetical.

Other services seem totally useless at face value. This is the case for companies offering to administer consumer proposals that can ultimately be produced only by trustees. By making a detour through those companies, an indebted consumer pays twice: first for being told to approach a trustee, and again for the trustee's services. Even if the company's high-priced recommendation follows an objective examination of the consumer's situation and a competent analysis of possible solutions, it's unfortunate that he didn't simply approach an organization offering those services for free. Companies that cannot legally produce a consumer proposal mislead consumers by listing that service among those they can offer, thus negating the presumption of good faith.

Apart from offering a consolidation loan that would reduce a consumer's instalments and credit cost, offering a loan to an indebted consumer so he can escape a difficult situation seems suspect in itself. If part of the loan is used to pay the services of a company acting as a middleman or "managing" the consolidation, it is very difficult to believe the consumer is getting a good deal.

Extending credit for the sole purpose of creating an obligation that, if the consumer can meet it, would have a positive effect on his credit file, seems an extreme measure, but it could still benefit him. However, the advantages pale considerably when the credit extended is of greater benefit to the company having suggested that solution: the consumer will never see the colour of the capital granted, which will serve only to pay the company's consultation and counselling services, while he will still have to pay money to obtain, notably, a secured credit card.

In short, it is difficult to accept that a modern society, concerned with protecting consumers against company abuses, tolerates such predatory practices. Indeed, some of those practices appear to aim solely at stripping debt-burdened consumers of the last financial resources they may have; or to infiltrate just in time a bankruptcy or consumer proposal process, in order to strip the consumer of his few remaining resources before they can be distributed to creditors.

[90] Ibid.

3 Consultation of Key Actors

'Des einen Tod ist des andern Brot'
(The death of one is the other's bread)
German proverb

3.1 Methodology

We had planned to consult several actors in the course of our research. We wanted to obtain a portrait of the situation from organizations that directly assist clients of the type of company under study or receive their complaints, and to collect comments about the organizations' approaches, successes and shortcomings in assisting those people. We also hoped to obtain from those various actors some copies of contracts they had received or collected.

Starting in November 2016, we submitted consultation documents to consumer rights groups (Associations coopératives d'économie familiale [ACEF], the Coalition des associations de consommateur du Québec [CACQ], the Canadian Association of Credit Counselling Services, Credit Counselling Canada, Ontario Credit Counselling Services), to a federal organization responsible for applying federal consumer protection legislation to financial institutions (the Financial Consumer Agency of Canada [FCAC]), and to provincial and territorial organizations responsible for applying consumer protection legislation, or government consumer protection agencies (GCPAs).[91] We also sent our questionnaire to the Council of Better Business Bureaus (CBBB) and the Canadian Council of Better Business Bureaus (CCBBB). The associations were invited to send our questionnaire to their members in turn. Reminders were sent in December 2016 and in January and March 2017 to organizations that had not answered our first invitation. Given that several provinces have regulated various aspects of the services under study, we questioned the Consumer Measures Committee (CMC) to learn if it had held discussions in view of harmonization.

Nine ACEFs (including seven members of our association) completed our questionnaire.[92] Credit Counselling Canada also did. Six provincial authorities (Quebec, Alberta, British Columbia, Ontario, New Brunswick, and Newfoundland and Labrador) also participated in our survey, as well as FCAC[93] and the CMC. Our questionnaire contained two distinct parts.

[91] Quebec: Office de la protection du consommateur (OPC); Alberta: Service Alberta; British Columbia: Consumer Protection BC (CPBC); Ontario: Ministry of Government and Consumer Services (MGCS); New Brunswick: Financial and Consumer Services Commission (FCSC); Newfoundland and Labrador: Consumer Affairs Division, Service NL (CAD-NL).
[92] ACEF Montérégie-Est; ACEF-Amiante-Beauce-Etchemins; ACEF de l'Est de Montréal; ACEF Lanaudière; ACEF Outaouais; ACEF Rive-Sud de Québec; ACEF du Sud-Ouest de Montréal; ACEF Estrie; ACEF Basses-Laurentides; Option Consommateurs.
[93] FCAC did not fill out our form, but rather e-mailed us a few answers to the questions about debt settlement services.

The first part pertained to “debt settlement” services and the second to “financial recovery” services. We included in the questionnaire a definition of those two types of services**:**

a. “Debt settlement” services:
Services that offer, in return for payment of fees, commissions or any other form of remuneration payable by the client/debtor, the following activities:
- Acting on behalf of the debtor in agreements or negotiations with his creditors, or pledging to do so; and/or
- Receiving money from the debtor and distributing it to his creditors.

b. “Financial recovery” services:
Services that offer, in return for payment of fees, commissions or any other form of remuneration payable by the consumer, one or more of the following actions:
- Analysing or assessing the consumer’s financial situation;
- Helping him repair his credit;
- Correcting his credit file;
- Helping him realize his financial situation;
- Helping him regain control of his finances;
- Referring him to a trustee in view of making a consumer proposal;
- Granting him a loan to improve his credit file;

Without offering debt negotiations with the debtor’s creditors on his behalf, or a debt repayment plan.

3.2 Preliminary Comments

The Newfoundland and Labrador GCPA, the *Consumer Affairs Division, Service NL*, told us at the start that the above definitions do not apply to any company operating on that territory.

> *We have one charitable organization – Credit Counselling Services of Newfoundland and Labrador – and one for-profit credit counselling company, Credit Counselling Services of Atlantic Canada, while several trustees in bankruptcy are now offering Consumer Proposals and some debt counselling there. All of these local concerns do your “a.” and all of “b.” except lend money. If they were lending money, or promising to lend money for a fee, I would likely tell the consumer this is probably a scam to be avoided because you should never have to pay a fee upfront to borrow money and because I have had many complaints about upfront fee companies not lending the promised money.*

Service Alberta insisted on distinguishing between two types of debt settlement companies. One type receives money from consumers according to a pre-established schedule, and distributes the funds to creditors – that service is generally called “*debt repayment*” or “*debt pooling.*” The other type offers a service called “*debt settlement*”: the company offers to eventually negotiate large reductions of a consumer’s debts and establish payment methods with creditors; but before that service is provided, he is encouraged to stop paying his creditors and to save money for a certain period (generally two or three years); after that period, the company proceeds with the negotiations.

That distinction is highly appropriate. The problems reported about debt settlement companies are almost exclusively caused by companies that *Service Alberta* classifies in its second category. "*Debt pooling*" is not a common practice in Quebec, which probably explains why that distinction is not raised by Quebec community groups. But the practice is widespread in the rest of Canada, where *Credit Counselling Services,* mentioned by the Consumer Affairs Division, Service NL in its clarification, are ubiquitous.

3.3 Results of the Consultation

By means of our survey of government and non-government actors, we attempted to know whether consumers submitted complaints or information requests from them and, if so, the main concerns of consumers about debt settlement or financial recovery services. We also asked the participants to inform us about the types of advice they gave consumers contacting them. We also asked how the respondents viewed existing legislation, and about possible solutions to problems of which they were aware regarding debt settlement or financial recovery services.

3.3.1 "Debt Settlement" Services

a) Number of complaints

Almost all the community groups (we include with this term the ACEFs and Credit Counselling Canada [CCC]) have received complaints or information requests from consumers about debt settlement companies. The number of those contacts varies enormously: between 3 and 50 in the last five years.

The Office de la protection du consommateur (OPC - Quebec) reported that "*sur la base des renseignements fournis par les consommateurs, il est difficile de distinguer précisément les activités de règlement de dettes de celles de redressement financier. Des plaintes relatives aux activités de règlement de dettes peuvent donc aussi viser des activités de redressement financier.*" In total, 76 complaints or information requests have reportedly been received since April 2016.

The *Financial and Consumer Services Commission* (FCSC - New Brunswick) does not compile this type of complaints, because such companies are not regulated. That GCPA indicated nonetheless the subjects that have been raised in complaints.

The Ministry of Government and Consumer Services (MGCS – Ontario) indicated a total of 813 incidents (reported by consumers), complaints (documented) and information requests in the last five years.

Consumer Protection BC (CPBC – British Columbia) told us that since 2010, it has recorded about 500 requests for information on the subject, including a few complaints.

The *Consumer Affairs Division, Service NL* (CAD-NL – Newfoundland and Labrador) recorded 380 complaints between 2012 and 2015. But CAD-NL specified that includes around 120 calls about collection agencies and around 160 about "debts." CAD-NL explains: "So you can see our

'bad debt' complaints are increasing here as bankruptcies are up, unemployment is up and we are going through poor economic times."

The Financial Consumer Agency of Canada (FCAC) reported no less than 1,790 complaints made to the call centre from April 1, 2011 to February 28, 2017 regarding subjects related to our study.

b) Subjects of complaints

All the subjects of concern we suggested in our list were designated by the participating groups as having been addressed by consumers. Most frequently mentioned were fees (7 mentions), negative effects on consumers (8) and services offered (5). Each of the other subjects was mentioned three or four times.

In response to a request for more-specific examples, the CCC pointed out that consumers are often in a worse situation after relying on those companies, since those consumers often face creditor lawsuits or have judgments rendered against them.

The GCPAs agree in classifying most of the complaints under the headings "fees" and "representations." Issues of contract clauses have also been frequently raised. Three provinces reported issues pertaining to "negative effects on consumers (creditor lawsuits, negative credit file notes, creditor calls, etc.)"; CAD-NL specified that almost all calls about collection agencies are related to those three issues.

Regarding the heading "Legality of this type of company," CAD-NL added the following comment: "There are a few complaints around why there is no enforcement for these 'foreign' based companies promising the moon in online ads and websites. Consumers have been warned repeatedly to beware of scams on the internet."

The OPC provided more detail:

> *Les consommateurs se plaignent principalement de fausses représentations (23 plaintes), de la non-conformité du service reçu par rapport au contrat conclu (17), de la présence de clauses abusives dans le contrat (3) et de pratiques interdites de la part de titulaires de permis de prêteur d'argent de l'Office (3). Les consommateurs se plaignent aussi d'omission de faits importants de la part des entreprises, d'autres pratiques interdites par la Consumer Protection Act, du contenu du contrat, des clauses d'annulation (résolution) lorsque le contrat est conclu à distance et de situations liées à l'exigence imposée au consommateur de payer son solde avant l'échéance si le consommateur a des paiements en retard (clause de déchéance du bénéfice du terme).*
>
> *De façon générale, l'Office a reçu plusieurs plaintes dénonçant des représentations trompeuses quant aux services rendus par l'entreprise. Les consommateurs pensent à tort s'adresser à une entreprise sérieuse qui pourra les aider à régler leur problème d'endettement. Certaines de ces entreprises ne travaillent pas seules et sont situées à l'extérieur du Québec. Les moyens les plus utilisés par les commerçants pour joindre les consommateurs semblent être Internet et les réseaux sociaux.*

The OPC reported more than a dozen cases of flagrant abuses. We gave a few examples of that in the preceding section.

Service Alberta stated: “Major complaint themes typically relate to up-front fees followed by a failure to provide the promised services. As this activity would represent a breach of our fee prohibitions, we have investigated and charged several companies for these activities.”

c) Advice to consumers

Regarding advice to consumers, the community groups often mention budget interventions, which are part of their everyday activities. The respondents also frequently mention their role of providing information on the practices of businesses offering this type of services, on available remedies, and on pitfalls to avoid. When necessary, the community groups refer consumers to the Office de la protection du consommateur (in Quebec) for filing complaints, or to a licensed insolvency trustee.

The OPC invites consumers to go to court so that the latter may clarify consumer rights and ensure a creditor’s good faith, and refers them to legal support resources to assist them in their undertakings.

Service Alberta and CPBC state that since “repayment agencies” are regulated, consumers are advised to file complaints.

FCSC and CAD-NL refer consumers to useful resources.

After informing consumers of their rights and available remedies, MGCS explains the process of making a complaint to the company (in writing), and the option of filing a subsequent complaint with a ministry analyst.

FCAC informed us of the following procedure for consumers to file complaints about debt settlement services.

> *If the complaint pertains to a federally regulated financial institution that FCAC oversees, it is reviewed by our Supervision and Enforcement Division. However, if the complaint concerns an entity that is not overseen by FCAC, the complainant is referred appropriately. Depending on the nature of the complaint, the consumer may be referred to the Office of the Superintendent of Bankruptcy Canada (for consumers to obtain more information and if they mention they have problems with their trustees/syndics); Consumer Affairs (if consumers are complaining about a debt settlement company), Credit Counselling Canada (if the consumer’s complaint is about credit counselling) or elsewhere as appropriate.*

d) Perceived role of debt settlement companies on the Canadian market

When community groups are asked about their perception of the role of debt settlement companies on the Canadian market, many state that those companies should not be tolerated and that debt settlement assistance should be reserved exclusively for community groups and

trustees. Negative comments abound in the groups' response against those companies, qualified as parasites.

While the GCPAs estimate that debt settlement assistance provided by certain organizations to consumers constitutes a niche service that can benefit vulnerable consumers – certain agencies mention *credit counselling* organizations – some of the GCPAs abandon their usual reserve to join in condemning for-profit debt settlement and financial recovery agencies for their "misleading and predatory scams" (CAD-NL) and offers "rife with misrepresentations and outright scams" (Service Alberta).

e) Legislative framework

As mentioned above, Alberta, Ontario and British Columbia regulate this type of company. CAD-NL specifies that "Our Consumer Protection Act helps consumers who can prove they were misled by advertising but a judgment issued here [is] hard to impossible to enforce elsewhere."

The CCC emphasizes that Ontario's legislative framework – which was motivated by the many complaints against this type of company and which caps their fees – has led to the near-disappearance of the province's debt settlement services. But the CCC is concerned that the companies redefine themselves to continue their practices with the same lack of transparency and high fees. The CCC also considers that the inclusion of non-profit companies among the restricted companies is problematic.

MGCS confirms the reasons for legislative intervention:

> *Consumers raised concerns over the practices of some debt settlement providers. Consumers were uncertain as to whether they were receiving value for their debt settlement arrangements based on the fees being paid. There was also evidence that payment of substantial upfront fees to debt settlement services companies impeded the ability of consumers to pay their debts.*

Service Alberta explains that:

> *Debt poolers have been regulated in Alberta since the 1980s. During consultations with industry members in 2005 in relation to amendments to our Collection Practices Regulation, the issue of an explosion of debt settlement scams in the US was raised. Working with industry and consumer groups, we expanded our licensing requirements and fee prohibitions to directly address debt settlement (with the resulting amendments leading to the name change in the Reg: The Collection and Debt Repayment Practices Regulation).*

According to CPBC:

> *An inadvertent gap in BC's legislation meant that only debt poolers were captured previously. We became aware of the emergence of a new model of debt settlement services, which was unregulated and, in some cases, engaging in harmful or deceptive practices (e.g., prohibiting consumers from communicating with their creditors, charging a fee before service). In order to level the playing field for consumers and all debt*

poolers/debt settlers (collectively referred to as "debt repayment agents" in BC), changes to the Business Practices and Consumer Protection Act were made.

f) The approaches taken

The GCPAs of provinces that have adopted regulations explained their overall approaches to us. We described above those regulations in greater detail, so we will only summarize the GCPAs' answers here, along with their comments on the effectiveness of their approaches.

Alberta imposes permits, contract disclosure requirements, and consumer fee limits and timelines depending on the type of service offered ("debt pooling" or "debt settlement").

Service Alberta considers that approach only moderately effective because professionals controlling those practices create confusion. "Recently, several law firms and/or lawyers have looked into the practice and this has resulted in a number of challenges (and charges)." Among the hindrances to the legislation's effectiveness: even when defrauded, consumers neglect to file complaints against services rendered illegally. Service Alberta told us they have taken numerous initiatives to inform consumers likely to be contacted by debt settlement companies; the goal was to inform consumers of their rights and recourses regarding those companies' representations and practices.

Ontario regulates the elements that may or must appear in debt settlement representations and contracts, limits fees, sets a cancellation period, prohibits certain practices regarding contact with creditors, imposes record-keeping, etc. MGCS estimates that this approach is effective in informing and protecting consumers, and is supported by the powers of investigation and inspection regarding permits and obligations imposed on the companies. But this approach depends on consumer complaints – consumer knowledge of the regulations is thus crucial.

British Columbia imposes permits to all types of debt settlement organizations. Regulations limit fees and prohibit certain practices (e.g. requiring advance fees, telling a consumer not to communicate with his creditors).

CPBC is cautious in its analysis of that approach's effectiveness, because the law has not been in effect for very long. The agency estimates the law to be generally effective, since the debt settlement companies have totally deserted the market. But companies of this type may well change their business model to circumvent the regulations.

g) Initiatives to raise consumer awareness

Almost all community groups have taken initiatives to raise consumer awareness of the risks posed by those services, and of available recourses. Several groups mentioned the information provided in consultations or workshops with consumers, and almost all referred to publications of various scales: newsletters, social media posts, blogs, the *Attention aux requins* guide, traditional media. The CCC mentioned a notice given to FCAC, which reacted by publishing a cautionary document.

Except for CAD-NL, all the GCPAs report consumer information measures. The OPC and CPBC mention their websites, traditional media and social media, all of which have been used for interviews, reports, columns, news, advice and warnings on the subject. The OPC points out that its website section *Crédit, recouvrement et finances personnelles* has been among those most frequently consulted. The agency has also funded publication of the brochure *Besoin d'argent? Attention aux requins!* published by the ACEF Rive-Sud de Montréal.

FCSC indicates that the information is based mainly on referral to the appropriate authorities. Service Alberta cites the publication of "Bill Collection and Debt Repayment,"[94] an 8-page fact sheet published by the Government of Alberta.

MGCS mentions the information posted on its website and shared by several organizations, as well as training offered on the subject in public places (shopping centres, public markets) to provide consumers with information and documentation.

FCAC distributes information materials for the public that pertain notably to financial recovery services. For example: "Debt Collection - Your rights and responsibilities, Tips for dealing with a debt collector, Managing debt: Getting help from a credit counselling agency, Debt check-up: Are you at risk if interest rates rise?" and "How to beat that debt." The website is also used for informing consumers.

h) Recommended improvements

Regarding possible measures to improve consumer protection in the debt settlement sector, all the community groups recommend legislating, regulating (strictly), sanctioning and, more specifically, requiring permits, standard contracts, disclosure obligations, etc. The groups often mentioned that information measures should be put in place, particularly about available resources in the event of debt or insolvency problems.

Among improvements suggested by the GCPAs are: contract clarity requirements; accurate description of services and of guarantees offered; advertisement regulations; proactive inspection measures; consumer education efforts.

3.3.2 "Financial Recovery" Services

a) The number and subjects of complaints

As expected from the above, the GCPAs' answers about financial recovery services were much less numerous and elaborate. Like FCSC and MGCS, Service Alberta pointed out that this type of service is not regulated in the province and uses various designations: "financial recovery, credit repair, debt consulting, etc." Only FCSC and Service Alberta indicated the subjects of complaints received: fees, types of recovery offered, and representations.

[94] **SERVICE ALBERTA.** Bill Collection and Debt Repayment, Consumer Contact Centre, Edmonton, Alberta, November 2016. http://www.servicealberta.gov.ab.ca/pdf/tipsheets/Bill_Collection_and_Debt_Repayment.pdf (document consulted on March 5, 2017).

All the community groups have received complaints or information requests from consumers about financial recovery services. The number of those contacts varies enormously: between 3 and 30 in the last five years.

All the subjects of concern we had suggested in our list were again identified by the participating groups as having been raised by consumers. Most frequently mentioned were: fees (10 mentions); type of recovery offered (8); negative effects for the consumer (8); available remedies (7). The other subjects were each mentioned 4 or 5 times.

Under “other,” one organization reported greater distress as a result of that type of contract. At our request for more-specific examples, greater distress was again reported, in addition to requests for advice to terminate a contract and assess the fees’ abusive nature.

b) Advice to consumers

To our question about advice given to consumers, the community groups often cite information on credit files and, unanimously, recommendations to avoid this type of companies, as well as invitations to file complaints to monitoring agencies (Office de la protection du consommateur and Autorité des marchés financiers, in Quebec).

FCSC stated that it refers consumers to resources likely to help them. Service Alberta pointed out that complaint details are examined to verify if general legal provisions (those companies are not specifically regulated, but provisions with regard to contracts and “harmful and deceptive practices,” for example, still apply to them) have reportedly been violated. In the event that those provisions are violated, consumers are recommended to make a formal complaint or take legal proceedings.

c) Perceived role of financial recovery companies on the Canadian market

When the community groups were asked about their perception of those companies’ role on the Canadian market, all agreed they should be prohibited and not exist in Canada.

Service Alberta answered in the same vein:

> *To my knowledge, financial recovery firms appear to offer no unique services that would not be better provided by other suppliers that would not impose the additional costs arising from this particular set of businesses. Credit counsellers, trustees, orderly payment of debt providers, and debt poolers are all in a better place to provide these services directly.*

d) Consumer awareness-raising initiatives

The community groups have undertaken to inform consumers about this type of companies, through newsletters, social media, etc.

e) Recommended improvements

To better protect consumers in the financial recovery sector, the community groups think those companies should be regulated, or even prohibited. Some mentioned that consumers should be better educated about credit, and have access to small loans.

Service Alberta emphasizes the necessity of better consumer information. The agency also points to a lack of information on the actual size of that industry, and to the necessity of specific regulations (we hope our research will help fill that void).

3.4 Consumer Measures Committee

The Consumer Measures Committee informed us that financial recovery as well as debt settlement services are of concern to it. In both categories, the CMC is interested in the complaint subjects reported by GCPAs; in the absence of regulation in some provinces; and in the differences between regulations adopted in provinces.

The issue of debt settlement and financial recovery services have not been discussed in the CMC, which told us it has no position on the regulatory approaches chosen by the provincial authorities that have regulated those services. The CMC has not considered harmonizing provincial laws in this regard; not does it have a position on provisions that should regulate the services.

4 Canadian Legislation

'La morte delle pecore è la fortuna dei cani'
The sheep's death is the dogs' gain
Italian proverb

4.1 Regulation of Debt Settlement Companies

In Canada, four provinces regulate the practices of debt settlement companies: Alberta, Manitoba, Ontario, British Columbia and Prince Edward Island. Although numerous media report that Nova Scotia has also been regulating the sector since 2012, that's not completely accurate: the law is not yet in effect as of this writing.[95]

Regulation of those companies will likely take effect soon in Quebec as well. On May 2, 2017, the Quebec Government introduced Bill 134 to the National Assembly: *An Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty program* .[96]

First we will examine the various approaches taken by the five provinces where regulations are in effect. We will also outline the measures chosen in the bills introduced in Nova Scotia and Quebec.

Some regulations have also been adopted or proposed by a few provinces specifically targeting financial recovery companies. Those few disparate measures will be analysed briefly in this section.

As we will see in the following paragraphs, the laws in effect in Canadian provinces are not harmonized – a patchwork of laws exists across Canada. Even the choice of a legislative vehicle varies by province: while Quebec, British Columbia and Manitoba have included specific provisions for that sector in their Consumer Protection Act, the other provinces (Alberta, Ontario, Prince Edward Island and Nova Scotia) have instead integrated provisions in a legal framework governing debt collection agencies.

[95] Bill 107, *Debt Collection and Management Reform (2012) Act*, after three readings (on October 31, November 8 and November 23, 2012), received Royal Assent on December 6, 2012, but was never proclaimed into force. (That was confirmed to us by Nova Scotia's *Office of Legislative Counsel* during a phone conversation on May 25, 2017.) See in that regard:
NOVA SCOTIA LEGISLATURE, *Status of bills*.
http://nslegislature.ca/index.php/proceedings/bills/debt_collection_and_management_reform_2012_act_-_bill_107 (page consulted on May 5, 2017) and
NOVA SCOTIA LEGISLATURE, *Proclamations of Statutes, Effectives Dates of Proclamations*, February 22, 1990 to April 30, 2017. http://nslegislature.ca/legc/procla/proclad.htm (page consulted on May 5, 2017).

[96] *Bill n°134: An Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs* (hereinafter Bill 134), May 2, 2017.
http://www.assnat.qc.ca/fr/travaux-parlementaires/projets-loi/projet-loi-134-41-1.html (page consulted on May 2, 2017).

4.1.1 Measures Common to Most Jurisdictions

Despite the lack of harmonization, we observe certain important measures, deemed likely to clean up the market, in the majority of provincial laws (including bills[97]). Among those measures are the following obligations: holding a permit and a trust account, providing a surety bond, limiting fees and meeting conditions for their collection, meeting contract form and content conditions, disclosing certain elements at the precontractual stage. We also find common prohibitions against: collecting fees in advance, offering premiums or gifts to induce a consumer to conclude a debt settlement service contract, and extending credit. The laws provide a right of withdrawal within a given period and prohibit certain types of representations.

To correct one of the industry's most flagrant abuses, prohibiting advance fees and setting fee collection conditions will be essential to any regulation of debt settlement companies.

As mentioned above, consumers often withdraw from the industry's debt settlement plans after paying for several months amounts that only served to pay the debt settlement company' fees while no contacts or negotiations took place with creditors. The purpose of prohibiting advance fees and limiting fees is to ensure that consumers will pay only after the service has been rendered or certain results have been obtained. Those measures also aim at removing from the market certain companies whose business model consists of profiting from consumers dropping out of their plan, so that the companies pocket substantial fees without having to do anything to negotiate a consumer's debts.

The surety bond required in the majority of laws is intended to induce companies to meet their obligations and may serve to compensate consumers having experienced problems, such as the company's default on its obligations, its eventual bankruptcy or closure.[98]

4.1.2 Alberta: First Canadian Regulatory Framework for the Industry

During the eighties, Alberta adopted the first Canadian law against "debt poolers."[99] Amendments were adopted in 2005 to the *Collection Practices Regulation,* which became the *Collection and Debt Repayment Practices Regulation,*[100] to also regulate debt settlement

[97] We include here Quebec's Bill 134, but also Nova Scotia's Bill 107, adopted but never entered into force.
[98] **OFFICE DE LA PROTECTION DU CONSOMMATEUR** (Quebec), page *Le cautionnement : une protection additionnelle pour les consommateurs*, OPC, Québec City, Quebec, October 31, 2016. http://www.opc.gouv.qc.ca/actualite/conseil/article/le-cautionnement-une-protection-additionnelle-pour-les-consommateurs (page consulted on March 5, 2017) and
MONTREUIL, Me Micheline. *Les affaires et le droit, chapitre 20, Le cautionnement*, Lexi Nexis, 2015, pp 537-549, 19 pages. http://www.lexisnexis.ca/pdf/draf-chapitre20.pdf (document consulted on March 5, 2017).
[99] In Alberta, "debt poolers" are companies to which a consumer make payments that are redistributed to his creditors, generally on a monthly basis.
[100] *Collection and Debt Repayment Practices Regulation*, Alta 194/99. http://www.canlii.org/en/ab/laws/regu/alta-reg-194-1999/latest/alta-reg-194-1999.html?searchUrlHash=AAAAAQAOZGVidCByZXBheW1lbnQAAAAAAQ&resultIndex=1 (page consulted on September 27, 2017). Enabling legislation: *Fair Trading Act*, R.S.A. 2000, c. F-2.

companies in order to protect Alberta consumers against practices observed in the United States.[101]

Since then, Alberta legislation has also targeted, in addition to companies that redistribute payments to creditors ("debt poolers"), those that offer to negotiate substantial debt reductions with creditors ("debt settlement companies"*).* Alberta legislation considers those two types of companies as collection agencies.

The Alberta framework imposes on debt settlement companies a set of obligations and prohibits certain practices the law defines as follows:

> *A collection agency that carries on the activities of offering or undertaking to act for the debtor in Alberta in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors in consideration of a fee, commission or other remuneration that is payable by the debtor.*[102]

In Alberta, debt settlement companies and their agents must hold a permit. No one may even claim to practice the activities of a debt settlement agent without holding a permit.[103]

Given that debt settlement companies act on behalf of the debtor and that he is the one to remunerate such a company, Alberta has prohibited – which the other provinces will not necessarily do – a company or agent from simultaneously holding a debt settlement permit and a collection permit,[104] thus removing certain patent risks of conflicts of interest. Collection agencies and agents, who must also hold a permit, indeed act on behalf of creditors (or have acquired their receivables) in collecting payments from debtors.[105]

In addition to the permit requirement, lawmakers generally require that merchants operating in sectors specifically regulated by consumer protection laws[106] hold trust accounts and provide a surety bond. Depositing a consumer's payments in an trust account gives him a certain level of protection regarding his payments to the company and their use for the purposes set out.

The Alberta law obliges the holder of a permit issued by the regulatory authority to meet the legal requirements for depositing payments received in the course of the company's activities.[107] The regulation requires amounts received from the debtor to be deposited in a trust account and imposes trustee obligations on the company.[108] The regulation covers authorized withdrawals: paying creditors, paying fees due to the company, reimbursing the debtor if the settlement

[101] Those clarifications of Alberta lawmakers' motivations were made by *Service Alberta*, in the course of our consultation of provincial consumer protection agencies.
[102] Sec. 1(g), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[103] Sec. 3(1)b) and d) and 3(2), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[104] Sec. 3(7) and (8), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[105] Sec. 1(b), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[106] In Quebec, for example, the following are required to hold a permit and provide a surety bond: itinerant merchants, sellers of additional warranties for autos or motorcycles, travel agents, companies operating training or weight loss centres, road vehicle merchants and recyclers, and collection agents. See sec. 321 of the Consumer Protection Act, CQLR c. P-40.1 and sec. 7 of the Act respecting the collection of certain debts, R.S.Q. c. R-2.2.
[107] Sec. 133, *Fair Trading Act*, R.S.A. 2000, c F-2.
[108] Sec. 16(1) and 15(2), *Collection and Debt Repayment Practices Regulation*, Alta 194/99; sec. 143, Fair Trading Act, R.S.A. 2000, c F-2.

proposal is rejected or cancelled by the creditor, and correcting errors[109]. In addition, the regulation requires that a trust account register be kept.[110]

Moreover, Alberta regulations limit the fees that debt settlement companies can charge. As part of debt settlement with a payment schedule, the company can collect: (i) one-time administrative fees equivalent at most to the average monthly payment scheduled and (ii) 15% of the amount received for payment of the client's debts. In the case of a settlement proposal for a lump sum payment, the fees cannot exceed 10% of the initial debt.[111]

The company may not collect the fees before a written contract is concluded and signed by the parties and a copy is given to the consumer. In the case of a lump sum settlement, the fees may be collected only after an acceptable settlement has been negotiated successfully with the creditor.[112]

Alberta regulations impose conditions of form and content. The contract must therefore contain the following elements: date, signature, the parties' identity, their coordinates, a description of the service, fees payable for the service offered, the number of payments and the total to be paid, and the list of the debtor's creditors.[113] Before contracting, a consumer should thus have all necessary information for informed decision-making, and a good knowledge of his obligations.

The requirement to include the agency's contact information and places of business aims at favouring proximity between the parties, because the absence of the company's place of business on the territory can make communicating with the company laborious for the consumer.

We observed in a preceding section that one of the problems identified in Canada is that some debt settlement companies offer consumers advice that, if followed, risks aggravating their situation. For example: the very nature of some debt negotiation plans requires the consumer to deposit monthly a certain amount in an account created for that purpose; the accumulated amounts are intended, ultimately, to pay the overall settlement negotiated by the debt settlement company. Those companies frequently advise the consumer to stop paying his creditors in order to benefit his participation in the plan. That obviously risks resulting in the defaulted debts being transferred to a collection agency, in creditor calls, lawsuits, seizure of property and salary, etc.

To counter this problem and prevent debt settlement companies from making this type of representations, Alberta requires such companies to inform the debtor of the importance of making his payments to creditors and communicating directly with them.

Moreover, Alberta prohibits certain business practices considered serious and reprehensible. In addition to misleading representations, Alberta regulations also prohibit the companies from, notably, extending credit to the consumer, collecting fees directly or indirectly for referring, procuring, arranging for or assisting a debtor in obtaining credit, from offering the debtor any

[109] Sec. 18(1), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[110] Sec. 20, *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[111] Sec. 12.1(4)a), 12.1(4)b), and 12(1) (b), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[112] Sec. 12.1(2) and 12.1(5), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[113] Sec. 12.1(3), *Collection and Debt Repayment Practices Regulation*, Alta 194/99.

type of compensation following conclusion of the contract, failing to inform the debtor of a creditor's rejection of or withdrawal from the plan, collecting fees higher than those allowed by regulation, and even suing the debtor for cancelling the contract.[114]

In the chapter on our survey results, we discussed numerous representations that seemed misleading. The phenomenal results advertised by the companies are among those representations: for example, about the plan's debt reduction and success rates. But as we have seen, consumers will have difficulty discerning the representations' falsehood. Fortunately, government consumer protection agencies have penal remedies[115] at their disposal, and means for requiring from merchants objective data supporting their representations.

The Alberta government's program to monitor the sector has already led to several commitments by merchants at fault.[116] In response to our survey, the Alberta agency reported opening 53 investigation files since January 2012.

Alberta does not grant consumers a right of withdrawal from this type of contract. While the Alberta regulatory framework has chased from the market the most problematic debt settlement companies, it has not prevented new business models from escaping that framework, as Service Alberta told us in the course of our survey. Still, Alberta's framework has been somewhat effective; indeed, other Canadian provinces have used it as a model for some of their own regulations of the industry.

4.1.3 Manitoba Legislation

In February 2012, Manitoba enacted provisions to regulate debt settlement companies. In November 2011, Manitoba's Consumers' Bureau had warned consumers against companies promising large debt reductions, and had insisted on the high advance fees charged to consumers.[117] The new regulations were part of Manitoba's five-year plan to improve consumer protection measures in specific sectors.[118]

Those provisions aimed at ensuring that indebted consumers did not have to pay substantial advance fees with no debt reduction guarantee.[119] With a few differences, Manitoba's framework closely resembles Alberta's.

[114] Sec. 12.1, *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[115] Sec. 24, *Collection and Debt Repayment Practices Regulation*, Alta 194/99.
[116] **SERVICE ALBERTA**, *Undertakings-Category: Debt Repayment Agency*. Edmonton, Alberta, n. d. http://www.servicealberta.gov.ab.ca/Enforcement-undertakings.cfm (page consulted on May 6, 2017).
[117] **MANITOBA CONSUMER PROTECTION OFFICE**, *Manitoba Consumer Protection Office Issues Caution about Debt-reduction Claims*, Winnipeg, Manitoba, November 7, 2011. http://news.gov.mb.ca/news/?item=12545 (document consulted on November 2, 2016);
[118] **MANITOBA CONSUMER PROTECTION OFFICE**, *Let's Make a Better Deal: Manitoba's Plan for Stronger Consumer Protection*, Winnipeg, Manitoba, 2011, 20 pages. https://www.gov.mb.ca/cca/cpo/pubs/lets_make_a_deal.pdf (document consulted on September 7, 2016).
[119] **GOVERNMENT OF MANITOBA**, *Regulations Protect against Unfair Debt Settlement Fees*, news release, Government of Manitoba, Winnipeg, Manitoba, February 2, 2012. http://news.gov.mb.ca/news/index.html?item=13127&posted=2012-02-02 (page consulted on November 9, 2016).

Part XII of Manitoba's *Consumer Protection Act* (hereinafter CPA-MB[120]) pertains to "collection practices." Lawmakers apply the rules set forth in that Part to debt settlement companies, with settlement and "debt pooling" activities included in the definition of "collection agent":

> "*Collection agent means any person who*
>
> *[…]*
>
> *d) offers or undertakes to act for a debtor in arrangements or negotiations with creditors or receives money from a debtor for distribution to creditors,*

The Manitoba Act excludes from the definition of "collection agent" a long list of actors, including banks, credit unions, trustees, duly appointed officers of a court, barristers or solicitors entitled to practice in Manitoba and acting in that capacity, trust companies, real estate brokers acting in that capacity, etc.[121]

In Manitoba, "collection agents," which include what we call "debt settlement companies" in this report, are required to hold a license, as well as a trust account in which must be deposited all amounts received on the debtor's behalf. The agent may make withdrawals from that account only for specific reasons, such as payment of fees payable to the agent.[122]

In Manitoba (as opposed to what we described in Alberta), a collection agent's employees, called "collectors," do not have to hold a license;[123] but the collection agent cannot hire them unless they are registered with the Consumers' Bureau.[124] Because the CPA-MB creates a single licensing category for "collection agents," nothing appears to prohibit an agent from providing debt settlement or debt negotiation services. However, a "collection agent" having charged the debtor fees for such services may not collect from the creditor any fee or amount related to the debt thus recovered.[125]

Collection agents also must provide a surety bond,[126] in an amount that may be adjusted if the Director deems it necessary due to the collection agent's sales figure.

The CPA-MB requires collection agents to "keep proper records and books of account showing moneys received and moneys paid out, including a receipt book, a cash book, a ledger of client's accounts, a ledger of debtor's accounts, and a journal, or equivalent accounting records satisfactory to the director."[127] Rigorous bookkeeping can ensure compliance with measures to offer consumers some economic protection.

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[120] *Consumer Protection Act*, CCSM c. C-200. https://www.canlii.org/en/mb/laws/stat/ccsm-c-c200/latest/ccsm-c-c200.html; *Consumer Protection Regulation 227/2006*. https://www.canlii.org/en/mb/laws/regu/man-reg-227-2006/latest/man-reg-227-2006.html.
[121] Sec. 1(g) to (q), *Consumer Protection Act*, CCSM c. C-200.
[122] Sec. 76(1), 108(1), and 108(2), *Consumer Protection Ac*t, CCSM c. C-200.
[123] Sec. 76(2), *Consumer Protection Act*, CCSM c. C-200.
[124] Sec. 76(2) and 105, *Consumer Protection Act*, CCSM c. C-200; the Act also prohibits (Sec. 105(1)) hiring as debt collectors persons who, notably, have been convicted of a Criminal Code violation.
[125] Sec. 103(2), *Consumer Protection Act*, CCSM c. C-200.
[126] Sec. 89(1), *Consumer Protection Act*, CCSM c. C-200.
[127] Sec. 107, *Consumer Protection Act*, CCSM c. C-200.

The Manitoba Act includes, as a cornerstone of any law regulating debt settlement companies, a prohibition against charging a debtor higher amounts than those established by regulation for representing him in agreements or negotiations with his creditors or for receiving payments from him to redistribute them to his creditors:[128]

> *[…] the amount that may be collected from a debtor must not exceed*
>
> *(a) in the case of a debt repayment agreement that includes a schedule of payments, the greater of*
>
> *(i) 15% of the money actually collected from the debtor for distribution to his or her creditors, and*
>
> *(ii) $20; or*
>
> *(b) in the case of a one-time payment to a credit grantor or grantors, or an agreement to make arrangements or negotiate on the debtor's behalf with the credit grantor or grantors identified in the debt repayment agreement, 10% of the debt owing.[129]*

The regulation also imposes conditions for fees payable by the debtor to the collection agent. Before collecting fees, the agent must have concluded or successfully negotiated with one or more creditors a settlement acceptable in the eyes of the debtor.[130]

Moreover, the CPA-MB prohibits practices specific to debt settlement or negotiations. Although the list of practices prohibited by the CPA-MB is not as exhaustive as Alberta's, it contains, in addition to the prohibitions mentioned in this section, a prohibition against a collection agent's publication or use of any form that, according to the Director, is an avoidance or breach of the Act.[131]

The Manitoba Act also contains a very specific provision. In the event that a collection agent charges the debtor illegal fees, the debtor may:

> *a) if the amount has been paid by the debtor, recover from the creditor an amount equal to three times the amount of the charge as a debt due to the debtor; or*
>
> *b) if the amount has not been paid or partly paid, set-off an amount equal to three times the amount of the charges against the amount rightfully owing to the creditor and, if the amount of the set-off is greater than the amount rightfully owing, recover the excess from the creditor as a debt due to the debtor.[132]*

[128] Sec. 98(o), *Consumer Protection Act*, CCSM c. C-200.
See also the Act's sec. 103(1), which prohibits a collection agent from directly or indirectly obtaining commissions or any additional advantage. In addition to sec 98(o), that provision imposes a clear limit to fees that may be charged by a collection agent conducting a debt negotiation or settlement activity.
[129] Sec. 28(1) a) and b), *Consumer Protection Regulation 227/2006*.
[130] Sec. 28(2), *Consumer Protection Regulation 227/2006*.
[131] Sec. 104, *Consumer Protection Act*, CCSM c. C-200.
[132] Sec. 101.1(1), *Consumer Protection Act*, CCSM c. C-200.

That provision, offering additional recourse to consumers, establishes a sanction that may have a deterring effect on collection agents.

Like Alberta, Manitoba grants no right of withdrawal to consumers having contracted with a debt settlement company.

But as opposed to what we described in Alberta, the Manitoba Act has no provisions for a contract form specific to debt settlement service contracts, or for mandatory disclosure clauses.

4.1.4 Prince Edward Island

As the Manitoba Act was coming into effect, the Government of Prince Edward Island warned consumers against signing contracts with debt settlement agencies and invited consumers to contact it before entering into this type of contract. The news release mentioned that the government was considering regulations for those companies' practices and procedures.[133]

A year later, the province's legislature adopted to that effect sections 17.1 and following of the *Collection Agencies Act*,[134] giving debt settlement companies that same designation, but also imposing on them a set of specific obligations and prohibitions. According to then Environment, Labour and Justice Minister Janice Sherry, who recognized that mediation between persons in financial difficulty and creditors who want to be paid can be an effective way to proceed, "By setting out a framework of unacceptable practices for debt settlement companies, these measures will allow beneficial groups to continue to offer assistance. This will curtail those companies which take advantage of financially vulnerable people."[135]

Under the Act, a debt settlement agency is:

> *A person that carries on the activities of offering or undertaking to act for a debtor in Prince Edward Island in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors in consideration of a fee, commission or other remuneration that is payable by the debtor;*[136]

[133] **DEPARTMENT OF JUSTICE AND PUBLIC SAFETY**, *Consumers advised to contact government before signing with debt settlement companies*, news release, Government of Prince Edward Island, Charlottetown, Prince Edward Island, November 27, 2012. http://www.gov.pe.ca/jps/index.php3?number=news&newsnumber=8709&lang=E (document consulted on November 11, 2016).
[134] *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11. https://www.canlii.org/en/pe/laws/stat/rspei-1988-c-c-11/latest/rspei-1988-c-c-11.html (page consulted on September 7, 2016).
[135] **COURTS OF PRINCE EDWARD ISLAND**, *Newly-approved legislation regulates activities of debt settlement companies*, Government of Prince Edward Island, Charlottetown, Prince Edward Island, May 27, 2013. http://www.gov.pe.ca/courts/index.php?number=news&newsnumber=9013&lang=E (document consulted on November 10, 2016). See also
PRINCE EDWARD ISLAND LEGISLATIVE ASSEMBLY, *Third Session of the Sixty-fourth General Assembly-Tuesday*, Government of Prince Edward Island, Charlottetown, Prince Edward Island, November 27, 2012, 68 pages, on pages 443 and 444. http://www.assembly.pe.ca/sittings/2012fall/hansard/2012-11-27-hansard.pdf (document consulted on November 13, 2016).
[136] Sec. 17.1(1)a), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11. https://www.canlii.org/en/pe/laws/stat/rspei-1988-c-c-11/latest/rspei-1988-c-c-11.html.

Debt pooling as well as actual debt settlement activities are included in the definition, so long as fees are charged to the debtor. Those two activities are thus subject to the specific obligations and prohibitions.

The definition of a "collection agency" also covers those activities if they involve periodic payments made by the debtor for distribution to creditors:

> *(a) "collection agency" means a person other than a collector who carries on the business*
>
> *[…]*
>
> > *(ii) of receiving moneys periodically from persons for distribution to creditors of those persons in consideration of the payment of the commission or other remuneration and includes a person who takes an assignment of debts in consideration of such payment;*[137]

The obligations to hold a permit and maintain a trust account in which the amounts paid by the debtor are deposited and to keep appropriate books of account[138] thus apply not only to collection agencies themselves, but also to debt settlement agencies receiving periodic payments from the debtor.

As for provisions that apply specifically to debt settlement agencies, the most important one aims at eliminating companies whose revenues are generated by advance fees and that pose a higher risk for consumers heavily in debt.

Accordingly, Prince Edward Island's Act establishes a maximum one-time set-up fee of $50 charged to the debtor. The Act also sets a fee limit of 15% of the payment amount paid by the debtor to repay his creditors according to a payment schedule; and a fee limit of 10 % of the debt owing in the case of a one-time payment to creditors under an agreement with them. That section of the Act prohibits the collection of any amount greater that that prescribed in it.[139]

Of course, the Act also prescribes conditions for collecting those fees, which can be charged only if a contract between the parties, with a copy provided to the debtor, or the debtor's authorization to render the services agreed to, has been signed.[140] Under a contract for a one-time payment following negotiations by the debt settlement company, the fees can be collected only after an agreement acceptable to the debtor has been negotiated with one or more of his creditors.[141]

Among prohibited debt settlement agency practices[142] are: extending credit to a debtor or collecting fees for any assistance in obtaining credit; offering a premium or gift for concluding a debt settlement contract; lawsuits against a debtor for breach of contract; failure to inform a

[137] Sec. 1(a), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.
[138] Sec. 3(2), 13 ss., 9 and 10, *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.
[139] Sec. 17.1(5)a) and 17.1(2)b), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.
[140] Sec. 17.1(3), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.
[141] Sec. 17.1(6), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.
[142] Sec. 17.1(2), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.

debtor, within 30 days, of a creditor's withdrawal from or refusal to participate in the plan; false or misleading information.

Prince Edward Island's Act also provides mandatory elements for a debt settlement contract,[143] such as: the date and the parties' signature, a description of all services to be rendered, a detailed list of all fees to be paid by the debtor, and a list of all creditors who must be paid. The contract must also include a mention of the total debt, the payment amount(s), the payment schedule, and the total number of payments agreed to for each creditor.[144]

No withdrawal period is provided.

As opposed to the laws examined above, which imposed several exclusions, notably of lawyers, Prince Edward Island's Act expressly mentions that the section on debt settlement agencies also applies to lawyers and law firms that offer this type of service.[145]

4.1.5 Ontario's New Regulatory Framework

In 2015, the most populous Canadian province regulated debt settlement companies. They had proliferated on its territory and were conducting more and more aggressive advertising campaigns claiming to offer indebted consumers substantial debt reductions, without offering any guarantee of success. The Ontario government held public consultations in 2013 about a possible regulatory framework.[146] In its presentation text, the Ministry of Government and Consumer Services expressed concern about the risks that consumers incurred of aggravating their situation rather than improving it by participating in the plans of this type of companies.

Ontario's regulatory framework resembles those we studied above; provisions for debt settlement agencies are found in the legal text that regulated collection agencies. The Act was renamed accordingly as the *Collection and Debt Settlement Services Act*[147] and includes a section pertaining specifically to debt settlement services agreements.[148] Persons and companies that provide debt settlement services are explicitly included in the definition of "collection agency" and "collection agent," so obligations that apply to collection agencies per se also apply to debt settlement agencies, in addition to specific obligations prescribed for the latter.

"Debt settlement services" means:

> *offering or undertaking to act for a debtor in arrangements or negotiations with the debtor's creditors or receiving money from a debtor for distribution to the debtor's creditors, where the services are provided in consideration of a fee, commission or other remuneration that is payable by the debtor; ("services de règlement de dette")*

[143] Sec. 17.1(4), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.
[144] Ibid.
[145] Sec. 17.1(9), *Collection Agencies Act*, R.S.P.E.I. 1988, c C-11.
[146] Op. cit. note 87, **ONTARIO MINISTRY OF CONSUMER SERVICES**, *Improving Consumer Protection-Debt Settlement Services*.
[147] *Collection and Debt Settlement Services Act*, RSO 1990, c C.14 https://www.canlii.org/en/on/laws/stat/rso-1990-c-c14/latest/rso-1990-c-c14.html.
[148] Sec. 16.3 to 16.10, *Collection and Debt Settlement Services Act*, and sec. 26 to 29 of *Regulation 74*, RRO 1990.

Since 2015, a company wanting to offer debt settlement services in Ontario must be registered by the Registrar,[149] provide a bond,[150] hold a trust account,[151] keep books of accounts[152] and operate from a permanent place of business in Ontario.[153]

The Act provides a series of exemptions resembling those we observed in other provinces:[154] notably exempted are lawyers in the usual exercise of their profession, as well as their employees, insurers, trustees, etc. But there is no exemption for non-profit organizations, such as credit counselling ones. However, according to observers, they will be exempted soon.[155]

To ensure that consumers who want to do business with debt settlement agencies have necessary information before concluding a contract, the Act requires the agencies to disclose first "all terms of a debt settlement services agreement that are necessary for understanding the agreement," as well as a clear and detailed explanation of the effect of such an agreement on the debtor's credit rating, and any other information prescribed by regulation:[156] the parties' identity and contact information, date, detailed list of services and debts, total debt, etc.[157] Before the services are rendered, a contract that meets the prescribed requirements must be signed, a copy of it must be delivered to the debtor, and the sources of the agency's funding must be disclosed to the consumer.[158]

To ensure that the debtor knows essential items of information, the agreement's first page must display the consumer's rights and "What to consider before you sign the contract," i.e. the risks that this type of agreement will lower the debtor's credit rating, increase his interest rates, incite creditors to take him to court, etc.[159]

Again to ensure that the consumer obtains accurate information and is not fooled by false or misleading representations, the Ontario Act includes a set of prohibitions: of course, against providing false, misleading or deceptive information relating to a debt settlement services agreement, but also against communicating prohibited representations:[160]

1. *A claim that the services are provided on a non-profit or charitable basis, if they are not.*
2. *A claim that the collection agency's operations or programs are approved by, or a part of, a program run by the government of Ontario, the government of Canada, or the government of any other jurisdiction outside Ontario, if they are not.*

[149] Sec. 4 (1), *Collection and Debt Settlement Services Act*.
[150] Sec.19 (2), *Collection and Debt Settlement Services Act*.
[151] Sec. 30 (2), *Collection and Debt Settlement Services Act*.
[152] Sec. 13 (12), *Regulation 74*, RRO 1990.
[153] Sec. 13 (10), *Regulation 74*, RRO 1990.
[154] Sec. 2(1), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[155] **BANKRUPTCY CANADA**, *Laws in Ontario will Drive Most Credit Counsellors out of Business*. Toronto, Ontario, n. d. https://bankruptcycanada.com/laws-ontario-will-drive-credit-counsellors-business/ (page consulted on May 5, 2017).
[156] Sec. 16.3(2)a), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[157] Sec. 27 (1), General Provisions, *Regulation 74*, RRO 1990.
[158] Sec. 16.5(1), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[159] **CONSUMER PROTECTION ONTARIO**, *Settling Debt – What You Need to Know*, November 24, 2014, 1 page. https://www.sse.gov.on.ca/mcs/Documents/business/debt_settlement1.pdf (document consulted on September 5, 2016). This obligation is required under section 27(2)ii) of *Regulation 74*, RRO 1990.
[160] Sec. 16.4(2) and 16.3(1), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.

3. Any reference to registration under the Act, other than the collection agency's or collector's registration number under the Act.
4. Any claim of savings or other results for debtors that is not based on typical results.
5. Any claim that misrepresents or exaggerates the services provided under the agreement or the effects or benefits of those services, including but not limited to,
i. a claim that using the services will or may deter the efforts of a creditor or agent of a creditor to collect a debt, and
ii. a claim that using the services will or may prevent legal action or garnishment of the debtor's wages[161]

The major difference between the Ontario Act and other legislation studied above is Ontario's consumer right of withdrawal without giving any reason. The consumer may exercise that right from the day the contract is concluded until ten days after receipt of a copy of it.[162] That right enables him to learn all the contract's provisions and coolly evaluate whether the debt settlement services agreement is the best solution for him. The mandatory cautions clearly displayed on the cover page are intended of course to state the seriousness of his evaluation. Fortunately, details about the right of withdrawal appear among the information presented. Cancellation of the debt settlement service agreement also cancels any related contract concluded on that occasion, including, if applicable, any credit agreement.[163]

As mentioned above, to clean up that industry, the law must prohibit the most reprehensible practices. The Ontario Act does that by regulating such aspects as the fees charged:

> *16.6 (1) No collection agency or collector that provides debt settlement services shall require or accept any payment or any security for the payment, directly or indirectly, in advance of providing the services, except as prescribed, or in excess of the maximum amount prescribed or determined in accordance with the regulations.*[164]

If the agency charges fees in violation of that provision, the debtor may demand a refund by giving notice during the year following payment.[165]

Regarding a debt settlement agreement whereby the agency must present to each creditor a proposed payment schedule for each debt, the maximum amount the agency may charge the debtor corresponds to 15% of each payment made by the debtor.[166] For this type of proposal, the agency may charge a non-recurring fee of at most $50.[167]

Regarding a debt settlement agreement whereby the agency must present to each creditor, at the latest by a date specified in the agreement, an offer to settle the debt with a one-time payment lower than the amount due, the maximum amount the agency may charge the debtor corresponds to 10% of the amount of each debt recorded in the plan when the agreement was signed.[168] Those amounts may not be collected until an agreement is reached with the creditor

[161] Sec. 26(1), *Regulation 74*, RRO 1990.
[162] Sec. 16.7(1), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[163] Sec. 16.7(4), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[164] Sec. 16.6(1), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[165] Sec. 16.6(5), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[166] Sec. 27(1)1)i) and 27(1)2)ii), *Regulation 74*, RRO 1990.
[167] Sec. 28(4), *Regulation 74*, RRO 1990.
[168] Sec. 27(1)1)ii and 27(3)ii), *Regulation 74*, RRO 1990.

regarding the debt settlement amount, and until the debtor has made at least one payment under the terms of that agreement. If the plan concerns more than one creditor, the agency may receive payment, pro rata, only in the amounts for which an agreement with a given creditor has been concluded.[169]

Ontario's regulation exhaustively prohibits debt settlement agencies' services and contracts from doing the following:

1. *Restrict the debtor from having access to his or her consumer report, or make any oral or written representation suggesting that the debtor is restricted from having such access.*
2. *Restrict the debtor from communicating with his or her creditors.*
3. *Provide debt settlement services under a name other than the collection agency's or collector's registered name.*
4. *Fail to give a written report to the debtor on the performance of the agreement within 15 days after requesting it.*
5. *Offer or pay any compensation to a debtor in exchange for the debtor entering into a debt settlement services agreement.*
6. *Directly or indirectly require or accept any money for assisting a debtor to obtain an extension of credit other than an extension of time for the debtor to repay a debt.*
7. *Fail to inform a debtor's creditors that the collection agency or collector is authorized to arrange or negotiate a schedule of payments or a one-time payment on the debtor's behalf, within 15 days of becoming authorized.*
8. *Fail to inform a debtor of a refusal by a creditor to negotiate a schedule of payments or a one-time payment, within 15 days of the refusal.*
9. *Communicate information about a debtor's debts to any person except the debtor, a guarantor of the debt, the debtor's representative or a creditor of the debtor without the debtor's written consent.*
10. *Fail to provide information as to how to contact the collection agency or collector during normal business hours.*
11. *Fail to respond to a debtor's communications within a reasonable time.*
12. *Obtain a debtor's contact information from a third party unless the third party named the collection agency or collector that would receive the information and the debtor explicitly consented to the contact information being shared with the collection agency or collector.*
13. *Misrepresent the time needed to achieve the results promised by the collection agency or collector.*
14. *Enter into a debt settlement services agreement with a debtor if it is apparent that the debtor's creditors would not enter into an agreement to settle the debt.*

[169] Sec. 28, *Regulation 74*, RRO 1990.

15. *Enter into a debt settlement services agreement with a debtor if it is apparent that the debtor is not able to protect his or her interests because of disability, illiteracy or inability to understand the agreement or similar factors.*

16. *Give any person false or misleading information.*[170]

As mentioned above, it's difficult for a Canadian consumer not to have seen or heard advertising by a company claiming to reduce consumer debts by negotiating with his creditors. The Ontario Act provides specific measures for those agencies. First it prohibits false, misleading or deceptive representations in a broadcast advertisement, circular, brochure, or any other document published in any manner.

The Registrar may order the immediate cessation of any advertising he deems in violation.[171] If the prohibition of section 25(1), 16.3, 16,4 or subsection 22e) or f) is violated, he may order cessation.[172]

To minimize the difficulty that a consumer or monitoring organization may have in proving that an advertisement is false, misleading or deceptive, the Act requires merchants to keep a copy of all its advertisements and of documents supporting the latter's representations.[173]

Another provision worthy of mention: the Ontario law allows the contract to be amended, whether or not a clause authorizes it, if the parties agree expressly.[174]

The debtor may, without any reason, cancel the agreement within ten days following receipt of a written copy of it.[175] That right to cancel without any reason is renewed from the date the amendment is agreed until ten days after receiving a written copy of the amended agreement.[176]

In the event of ambiguity, the debt settlement agreement is interpreted to the benefit of the debtor.[177]

The Ontario Act does not prohibit the agencies from simultaneously practicing collection and debt settlement activities. According to Mark Silverthorn, the need for such a prohibition is obvious, given the grave risks involved in wearing both hats:

> *This creation, which will in the same breath act in the best interests of both creditors and debtors, is destined to leave a trail of toxic conflicts of interest and unhappy consumers. We are witnessing the emergence of a new Frankenstein category of debt settlement provider!*[178]

[170] Sec. 29, *Regulation 74*, RRO 1990.
[171] Sec. 25, *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[172] Sec. 25(2), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[173] Sec. 30(2), *Regulation 74*, RRO 1990.
[174] Sec.27(2), *Regulation 74*, RRO 1990.
[175] Sec. 16.7, *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[176] Sec.27(3), *Regulation 74*, RRO 1990.
[177] Sec. 16.5(5), *Collection and Debt Settlement Services Act*, RSO 1990, c. C.14.
[178] **SILVERTON, Mark.** *New Ontario Law Will Create Frankenstein Category of Debt Settlement Service Provider*, BankruptcyCanada.ca, Ontario, 2015. https://www.bankruptcy-canada.ca/topics/2015/02/new-ontario-law-will-create-frankenstein-category-debt-settlement-service-provider.htm (page consulted on September 6, 2016).

We may question why Ontario has not deemed it proper to adopt the same approach as Alberta in prohibiting the same entity from simultaneously practicing both activities.

4.1.6 British Columbia Regulations

In 2013, Consumer Protection BC, British Columbia's consumer protection agency, reported in the media having observed in two years a 2,000% increase in calls made to that organization about debt settlement companies.[179] The calls pertained to the companies' legitimacy, licenses, advance fees, and the possibility of cancelling that type of contract.[180] The new provisions' objective was to prevent the negative effects of certain company practices, protect consumers, and modernize the regulations to adapt them to market realities.[181]

It should be remembered that "debt poolers," i.e. the type of company that "in the course of business arranges or operates a debt pooling system,"[182] were already regulated at the time by the *Business Practice and Consumer Protection Act*.

The "debt pooling system" was defined as follows:

> *an arrangement or procedure under which a debtor pays to a debt pooler money to be distributed or paid, according to a system, by that debt pooler to 3 or more creditors of the debtor.*[183]

Bill 6[184] amended the *Business Practices and Consumer Protection Act* to regulate also the other "debt repayment" companies. The definition of "debt pooler" was thus replaced by a more encompassing definition, that of "debt repayment agent":

> *[A] person who acts for or represents, or offers to act for or represent, a debtor in arrangements or negotiations with the debtor's creditors, which arrangements or negotiations may include receiving money from the debtor for distribution to the debtor's creditors, in consideration for a fee, commission or other remuneration that is payable by the debtor.*[185]

[179] Op. cit. note 65 **SHERLOCK, Tracy.** *Debt takes victims into a murky world*.
[180] **Ministry of Justice**. *New Debt Settlement Laws Will Protect Consumers*, Government of British Columbia, Victoria, March 3, 2015. https://news.gov.bc.ca/stories/new-debt-settlement-laws-will-protect-consumers (page consulted on November 9, 2016).
[181] Ibid.
See also **LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA**, *Official report of Debates of the Legislative Assembly (Hansard)*, March 9, 2015, volume 21, No 5, 69 pages. See page 6519 and fol. https://www.leg.bc.ca/content/hansard/40th4th/20150309pm-Hansard-v21n5.pdf (document consulted on January 15, 2017).
[182] Formerly section 125, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2. https://www.canlii.org/en/bc/laws/stat/sbc-2004-c-2/latest/part-11/sbc-2004-c-2-part-11.html
[183] Ibid.
[184] Bill 6-2015 *Justice Statutes Amendment Act*, 2015. https://www.leg.bc.ca/pages/bclass-legacy.aspx#/content/legacy/web/40th4th/1st_read/gov06-1.htm (document consulted on December 10, 2016).
[185] Sec. 125, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

In effect since December 2015, British Columbia's measures present many similarities with legislation in effect in the other Canadian provinces. First we find permit requirements, for agents and for each establishment where they conduct their business,[186] to provide security (surety bond)[187] and to hold a trust account[188]. As we have seen in other Canadian jurisdictions, the Act generally regulates possible withdrawals from the trust account.[189]

Exempted from the legal framework are lawyers (in the course of the regular practice of their profession), officers of all courts, trust companies and trustees acting in relation to a will, a trust agreement or a marriage contract, banking institutions, insurance agents, licensed real estate brokers, bankruptcy trustees, etc.[190]

To inform the consumer well so that he can make informed decisions about the opportunity to sign a debt settlement service contract on the basis of a good knowledge of each party's rights and obligations, the Act requires the contract to be in writing and contain certain clauses, information and disclosures prescribed by the Act.[191] The contract cannot prohibit the debtor from communicating with his creditors.

A list of elements that debt settlement service contracts must contain is provided by regulation.[192] In addition to the elements already listed in our examination of other Acts (identity of the parties, contact information, identity of the creditors, debt amounts owed them, total amount due), the Act requires that the contract include the following mention, a caution to the consumer:

> *Debt repayment agents operating in British Columbia are required to be licensed under the Business Practices and Consumer Protection Act and are regulated under that Act. The services of a debt repayment agent are not provided on behalf of, or in affiliation with, the Province of British Columbia or the Business Practices and Consumer Protection Authority, commonly known and doing business as Consumer Protection BC. Using the service of a debt repayment agent will not necessarily improve your credit rating, deter the efforts of a creditor to collect a debt or prevent legal action to recover the debt, including garnishment of your wages. For more information on the regulation of debt repayment agents, please contact Consumer Protection BC.*[193]

[186] Sec. 5-8, 8(1), *Debt Collection Industry Regulation*, BC Reg 295/2004 and Sec. 143, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
[187] Sec. 12, *Debt Collection Industry Regulation*, BC Reg 295/2004.
[188] Sec. 148, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 and sec. 9(1)a), *Debt Collection Industry Regulation*, BC Reg 295/2004.
[189] Sec. 127(4), *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 and sec. 9(1)b) and 9(2), *Debt Collection Industry Regulation*, BC Reg 295/2004.
[190] Sec. 3, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
[191] Sec. 127(2), *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
[192] Sec. 14, *Debt Collection Industry Regulation*, BC Reg 295/2004.
[193] Sec. 14(j), *Debt Collection Industry Regulation*, BC Reg 295/2004.

To counter debt settlement companies' unanimously criticized practice of charging advance fees, the British Columbia Act imposes conditions for when a collection agent may charge or accept any amount whatsoever as payment by the debtor. No fees may be charged or received until a written payment agreement has been accepted by the debtor and one or more of his creditors.[194].

The fees themselves are also regulated. The debt settlement agent may not charge more than certain amounts:[195]

> *(a) if, under a debt repayment proposal accepted by a creditor of the debtor, the debtor is to pay the creditor, 10% of the gross amount to be paid;*
>
> *(b) if, under a debt repayment proposal accepted by a creditor of the debtor, the debt repayment agent is to distribute money received from the debtor to the creditor as a one-time payment or in accordance with a schedule of payments over a term lasting less than 90 days, 10% of the gross amount to be received;*
>
> *(c) if, under a debt repayment proposal accepted by a creditor of the debtor, the debt repayment agent is to distribute money received from the debtor to the creditor in accordance with a schedule of payments over a term lasting 90 days or more,*
>
> *(i) 15% of the gross amount to be received, and*
>
> *(ii) a one-time charge of no more than the average monthly distribution to be made to the creditor.[196]*

Of course, no regulation of debt settlement companies that is worthy of the name would be complete without a series of prohibited practices. The *Business Practices and Consumer Protection Act* notably prohibits debt settlement agents from engaging in the following practices:[197]

- *Represent any of the debtor's creditors;*
- *offer, pay or provide any gift, bonus, premium, reward or compensation, in cash or in kind, or any other benefit to a person in order to induce a debtor to enter into a debt settlement contract;*
- *Lend money or provide credit to the debtor;*
- *Assist or offer to assist the debtor to obtain a loan or credit.*

The British Columbia Act does not grant the consumer a right of withdrawal.

[194] Sec. 127(4), *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
[195] Sec. 127(3), *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.
[196] Sec. *Debt Collection Industry Regulation*, BC Reg 295/2004.
[197] Sec. 127, *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

4.1.7 Proposed Regulations in Nova Scotia and Quebec

a) Nova Scotia

As mentioned above, Bill 107 was adopted in Nova Scotia, but has never been proclaimed into force and thus has never come into effect. The bill, entitled the *Debt Collection and Management Reform Act* (2012),[198] was tabled to protect indebted consumers from aggressive advertising campaigns and unrealistic promises of debt reductions.[199]

We will briefly review here the elements contained in the *Debt Collection and Management Reform Act* (2012), while emphasizing a few provisions worthy of mention.

As in the other jurisdictions studied above, the law regulates both debt settlement agencies and collection agencies. Amendments to the *Collection Agencies Act* were aimed notably at forcing those agencies and agents to hold a permit and at prohibiting those activities from being exercised without a permit.[200]

Nova Scotia has not made the same blunder as Ontario. The *Debt Collection and Management Reform Act* (2012) prohibits agents and agencies from simultaneously holding a debt collection and a debt settlement permit.[201] Holding a trust account, bookkeeping and providing a surety bond are required.[202] The bill regulates withdrawals that a debt settlement agency may make.[203] Of course, as in the majority of regulatory frameworks in Canada, lawyers and law firms are exempt from the legislation.[204]

Moreover, an agency is not entitled to conclude a debt settlement service agreement with a debtor without first having disclosed the information required by the regulation, particularly details of fees and the right to cancel, which is granted to the debtor as well as the debt settlement agency.[205]

Bill 107 prohibits the receipt of amounts other than those allowed in the law and the regulation. Fees, commissions and disbursements may be received only if: (i) before rendering services, the agency has concluded and signed an agreement and provided the debtor with a copy of it and (iii) the fees comply with regulations and do not exceed the prescribed amount.[206]

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[198] Op. cit. note 95, **NOVA SCOTIA LEGISLATURE**, *Status of bills*.
[199] **SERVICE NOVA SCOTIA AND MUNICIPAL RELATIONS**, *Nova Scotians to Benefit from Responsible, Respectful Debt Collection*, news release, Nova Scotia, October 31, 2012. https://novascotia.ca/news/release/?id=20121031008 (page consulted on November 12, 2016).
[200] Sec. 4(3) c) and d) and 5(1), Bill 107, *An Act to Amend Chapter 77 of the Revised Statutes, 1989, the Collection Agencies Act, and Chapter 91 of the Revised Statutes, 1989, the Consumer Creditors' Conduct Act, to Ensure the Respectful Collection and Responsible Management of Debt* (hereinafter *Bill 107*). http://nslegislature.ca/index.php/proceedings/bills/debt_collection_and_management_reform_2012_act_-_bill_107 (document consulted on May 10, 2017).
N.B: When we refer to a *Bill 107* provision, it is not to a section of the bill but to the provision introduced by the bill.
[201] Sec. 5(2) and 5(3), *Bill 107*.
[202] Sec.19(3), 19(1) and 6A(1), *Bill 107*.
[203] Sec. 19B(2), *Bill 107*.
[204] Sec. 3(a), *Bill 107*.
[205] Sec. 20A(2)m) and 6(A)2), and 22B(1) and (2), *Bill 107*.
[206] Sec. 20A(2)a) and (3), 20A(4) and (6), *Bill 107*.

Given the urgency of ceasing false and misleading representations in that sector of activity, the law prohibits the production, distribution and publication of any false or misleading representation in any advertisement, whether written, oral or visual, in a circular, plan or other; in the event of an infraction, the Registrar may order immediate cessation.[207]

To protect consumers from the negative effects of certain business practices, the law also prohibits a series of practices,[208] including:

- *concluding an agreement with the debtor for an amount less than what is due to the creditor, without the latter's express consent;*
- *lending money of extending credit to the debtor;*
- *giving the debtor a premium, gift, etc., for concluding the agreement;*
- *receiving fees directly or indirectly for referrals or any assistance in view of obtaining credit or increasing credit already extended;*
- *failing to advise the debtor within 30 days that a creditor refuses to participate or is withdrawing from the plan.*

Although it appears complete in many respects and received Royal Assent on December 6, 2012,[209] this Nova Scotia Act was never proclaimed into force and thus is still not in effect five years later. Is that due to a lack of political will, or has the prospect alone of the Act coming into effect chased away debt settlement agencies with dubious practices, so that the urgency of regulating those agencies has disappeared?

c) Quebec

On May 2, 2017, The Quebec government presented to the National Assembly *Bill 134, An Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs* (hereinafter Bill 134).[210] As of this writing, Bill 134 has only been introduced in the National Assembly; the first public consultations are scheduled for Fall 2017. Justice Minister Stéphanie Vallée has described the objective of this bill as follows:

> *Ce projet de loi constitue le premier pas d'une démarche pour contrer l'endettement des consommateurs en modernisant les règles relatives au crédit à la consommation. Cette démarche tient compte des nouvelles pratiques préjudiciables du marché et de leurs impacts sur les consommateurs les plus démunis. Ainsi, nous prenons les moyens nécessaires pour que ces derniers soient mieux protégés et outillés pour prendre des décisions plus éclairées.*[211]

[207] Sec. 22A(1) and (2), *Bill 107*.
[208] Sec. 20A(2), *Bill 107*.
[209] Op. cit. note 95, **NOVA SCOTIA LEGISLATURE**, *Status of bills* and **NOVA SCOTIA LEGISLATURE**, *Proclamations of Statutes*.
[210] Op. cit., note 95, **VALLÉE, Stéphanie.** Bill 134.
[211] **OFFICE DE LA PROTECTION DU CONSOMMATEUR**, *Un projet de loi sur le crédit pour mieux protéger les consommateurs les plus vulnérables*, news release, OPC, Québec City, Quebec, May 2, 2017. Available on the Newswire website: http://www.newswire.ca/fr/news-releases/un-projet-de-loi-sur-le-credit-pour-mieux-proteger-les-consommateurs-les-plus-vulnerables-621054983.html (document consulted on May 2, 2017).

The first difference we observe between legislation for debt settlement services in other Canadian provinces and Bill 134 is that Quebec lawmakers want to regulate those companies by a legislative framework distinct from that regulating debt collection agencies. The provisions under consideration would thus be included in the *Consumer Protection Act* (hereinafter the CPA-QC) rather than in the *Act respecting the collection of certain debts*.

We think the National Assembly has made the right choice; it is important to clearly distinguish debt settlement services and debt collection. Regulation of collection agencies does not focus on contracts, which are generally concluded between companies; rather, those regulations aim at tempering the practices of a third party with whom the consumer has not contracted. By contrast, the debt settlement contracts under study here are concluded between merchant and consumer; the contract's form and content, the services offered to consumers, and representations, fees, etc. need to be regulated, because of the consumer's vulnerability and the risks of his being abused by this type of contract. Integrating that regulatory framework within the CPA's broader protection thus seems logical to us.

The bill provides a definition of debt settlement agencies that differs considerably from that chosen in the other provinces:

> *A debt settlement service merchant is a person who offers to enter into or enters into a contract with a consumer that has the following object:*
>
> *a) to negotiate the settlement of the consumer's debts with creditors;*
>
> *b) to receive amounts from or for the consumer in order to distribute them to the consumer's creditors;*
>
> *c) to improve the credit reports prepared about the consumer by a personal information agent within the meaning of the Act respecting the protection of personal information in the private sector (chapter P-39.1); or*
>
> d) *to provide the consumer with education or raise the consumer's awareness regarding budget management or debt settlement.*[212]
>
> *(our underlined)*

The first two paragraphs clearly target debt settlement services as such and those the other provinces call "debt pooling," i.e. redistribution. The last two paragraphs target, respectively and just as clearly, services known as "financial recovery" and those that may consist of a simple budget intervention. This curious amalgam entails distinction-making exercises that will complicate the reading and application of this new section of the law.[213]

[212] Sec. 214.12, PL-134 – new provision introduced to the CPA.

[213] See for example section 214.30, which establishes the application of certain sections to certain services: "214.30. Only sections 214.14, 214.15, 214.17 to 214.22 and 214.25 of this subdivision apply in the case of debt settlement service contracts that do not provide for services described in paragraph a or b of section 214.12. Section 195 does not apply in the case of debt settlement service contracts that provide for services described in paragraph d of section 214.12."

This counter-intuitive definition could also make it more difficult for the consumer to understand the obligations of those different actors and his rights in relation to the latter.

That being said, it should be noted that many of the measures proposed in Bill 134 closely resemble those adopted in the other provinces.

Like the other frameworks we have analysed, the bill requires debt settlement agencies to hold a permit and prohibits simultaneously holding a debt settlement and a debt collection permit.[214] Holding and managing a trust account are also regulated.[215]

The list of exemptions drawn in Bill 134 is much longer than all those we have seen up to now.[216] Notably excluded are consumer protection organizations, a set of teaching establishments, lawyers, notaries, accountants, etc. Bill 134 does not limit the exemptions to services rendered in the course of the professional activities of the excluded professionals.

Of course, the bill states that a contract must be in writing and contain certain mandatory elements: identity and contact information of the merchant, permit number, detailed description of each good and service covered by the contract, fees and commissions to be paid by the consumer, etc.[217]

The consumer has a right of cancellation with no reason within ten days following the one on which each of the parties is in possession of a copy of the contract, and the merchant must annex a resolution form to the service contract provided to the consumer.[218]

Like the other regulatory frameworks, Bill 134 provides a list of prohibited practices to better protect consumers from the harmful effects of practices considered reprehensible. The practices targeted are similar to those prohibited in other Canadian provinces. For example, a debt settlement agency may not:

- make the entering into or the performance of a debt settlement service contract dependent upon the entering into of another contract (sec. 214.14);
- offer a consumer a premium, within the meaning of section 232, as an incentive to enter into a debt settlement service contract (sec. 232.1);
- offer to enter into or enter into a credit contract with a consumer with whom the merchant has entered into a debt settlement service contract, or help or encourage the consumer to enter into such a contract (sec. 244.4);
- communicate to a third person any information about a consumer (sec. 244.5).

Bill 134 allows fees and commissions to be received only under certain conditions.

[214] Sec. 321 and 321, 2nd par., *Bill 134*.
[215] Sec. 214.27 and 214.28, *Bill 134*.
[216] Sec. 214.13, Bill 134; (the section provides 17 exclusions).
[217] Sec. 214.16(1)a) to o), *Bill 134*.
[218] Sec. 214.17(1) and 214.16(2), *Bill 134*.

As part of a debt negotiation contract or of a contract to distribute to creditors amounts paid by the consumer, the agency may collect fees or commissions only under the following conditions:

(i) The merchant must negotiate with the consumer's creditors on the basis of the proposal agreed to with the consumer;

(ii) the consumer has received a copy of the agreement in principle within the time prescribed;

(iii) the agreement has been accepted by the consumer;

(iv) a payment has been made for the benefit of the creditor in accordance with the agreement.[219]

As for the service agreement intended to improve the credit file, without negotiation or distribution, the merchant may not receive any payment without having actually improved the consumer's credit reports from the credit bureau.[220]

It should be noted that the bill states nothing about fee receipt restrictions imposed on a debt settlement service merchant who provides a consumer with budget management or debt settlement instructions or awareness-raising. However, a contract linking and merging mechanism should ensure that if the merchant offers any such services, the fee collection conditions mentioned above also apply.[221]

Bill 134 provides a regulatory power whereby the government may set conditions and limit fees that can be collected by debt settlement service merchants.[222]

The bill is still subject to amendments, and some important aspects are not yet revealed (fee ceilings are expected to appear only in the regulation), so we will not examine it further.

4.2 Timid Regulation of Financial Recovery Companies

As mentioned above, the regulation of financial recovery companies, i.e. companies that offer to improve the consumer's credit file or rating, has been very timid in Canada.

Moreover, as we observed in our survey, companies offering this type of service combine it frequently with others: loans, debt consolidation or negotiation, for example.

Despite the increased prevalence of this type of offer on the Canadian market, the adoption of specific regulatory frameworks has been very rare to date. It should also be pointed out that we identified in Canada only a few disparate provisions for financial recovery companies.

[219] Sec. 214.23 and 214.25(1), *Bill 134*.
[220] Sec. 214.24(2), *Bill 134*.
[221] Sec. 214.15, *Bill 134*.
[222] Sec. 63), *Bill 134*, which introduces that regulatory power in paragraph g.7 of section 350.

4.2.1 Ontario: Credit Repairers

In Ontario, the *Consumer Protection Act, 2002*[223] contains measures regulating financial recovery companies. That is the most complete regulatory framework in effect in Canada.

The provisions for "credit repairers" are in Part V of the Act, "*Sectors Where Advance Fee Prohibited*," which announces the tenor of what follows. The merchants targeted, providing "credit repair services," are:

> *services or goods that are intended to improve a consumer report, credit information, file or personal information, including a credit record, credit history or credit rating; ("redressement de crédit").*[224]

The Ontario Act first requires a credit repair agreement be evidenced in writing, delivered to the consumer, and concluded in accordance with the Act and its requirements.[225] The regulation requires a credit repair service agreement to contain the following:

1. *The name of the consumer.*
2. *The name of the credit repairer and, if different, the name under which the credit repairer carries on business.*
3. *The telephone number of the credit repairer, the address of the premises from which the credit repairer conducts business, and information respecting other ways, if any, in which the credit repairer can be contacted by the consumer, such as the fax number and e-mail address of the credit repairer.*
4. *The names of,*
   i. *the person, if any, who solicited the consumer in connection with the agreement,*
   ii. *the person, if any, who negotiated the agreement with the consumer, and*
   iii. *the person who concluded the agreement with the consumer.*
5. *An itemized list of the services and goods that the credit repairer is to supply to the consumer, that fairly and accurately describes each service and good.*
6. *As applicable, the date or dates on which delivery, commencement of performance, ongoing performance and completion of performance are to occur.*
7. *The date by which the credit repairer is to cause a material improvement to the consumer report, credit information, file, personal information, credit record, credit history or credit rating of the consumer.*
8. *The total amount payable by the consumer to the credit repairer and the terms and methods of payment.*
9. *The portion, expressed in dollars and cents, of the total amount payable that is attributable to each service or good to be supplied under the agreement.*
10. *The statement set out in subsection (2),*
    i. *which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and*
    ii. *which shall appear on the first page of the agreement.*
11. *The statement set out in subsection (3),*

[223] *Consumer Protection Act, 2002*, S.O. 2002, chap. 30, Sched. A, sec. 48 and fol.
[224] Sec. 48(3), *Consumer Protection Act, 2002*.
[225] Sec. 49, *Consumer Protection Act, 2002*.

i. which shall be in at least 10 point type, except for the heading which shall be in at least 12 point bold type, and

ii. which shall appear on the first page of the agreement, unless there is a notice on the first page of the agreement in at least 12 point bold type indicating where in the agreement the statement appears.

12 The date on which the agreement is entered into.

13. If the agreement includes a trade-in arrangement, a description of the trade-in arrangement and the amount of the trade-in allowance.

14. The currency in which amounts are expressed, if it is not Canadian currency.

15. Any other restrictions, limitations and conditions that are imposed by the credit repairer. O. Reg. 17/05, s. 46 (1).[226]

The statement referred to in paragraph 10 is the following:

> ***Your Rights under the Consumer Reporting Act***
>
> *If a consumer reporting agency maintains a credit file with respect to you, you have the right to dispute with the agency, at no cost to you, the accuracy or completeness of the information about you in its file. You do not need to hire a credit repairer, or anyone else, to exercise this right. If the file contains inaccurate or incomplete information, the consumer reporting agency must correct it within a reasonable period of time.*
>
> *However, you do not have the right to have negative information that is accurate removed from your credit file. The consumer reporting agency generally removes negative information after seven (7) years.*
>
> *You may also file a complaint with the Ministry of Consumer and Business Services regarding the information about you in a credit file maintained by a consumer reporting agency.*

Again to ensure that consumers doing business with financial repairers are well informed of their rights and the possible results of that choice, the Act also requires the following statement, referred to in paragraph 11 above, to be highlighted:

[226] Sec. 46(1), *Regulation 17/05-General Provisions*. https://www.canlii.org/en/on/laws/regu/o-reg-17-05/latest/o-reg-17-05.html.

Your Rights under the Consumer Protection Act, 2002

You may cancel this agreement at any time during the period that ends ten (10) days after the day you receive a written copy of the agreement. You do not need to give the credit repairer a reason for cancelling during this 10-day period.

In addition, there are grounds that allow you to cancel this agreement. You may also have other rights, duties and remedies at law. For more information, you may contact the Ministry of Consumer and Business Services.

To cancel this agreement, you must give notice of cancellation to the credit repairer, at the address set out in the agreement, by any means that allows you to prove the date on which you gave notice. If no address is set out in the agreement, use any address of the credit repairer that is on record with the Government of Ontario or the Government of Canada or is known by you.

It is an offence for the credit repairer to require or accept payment or security for payment in advance of causing a material improvement to your credit file. If, before causing a material improvement to your credit file, the credit repairer requires or accepts payment, or security for payment, from you, you may, within one (1) year from the date of providing the payment or security, demand that it be returned.

If you cancel this agreement, the credit repairer has fifteen (15) days to refund any payment you have made and return to you all goods delivered under a trade-in arrangement (or refund an amount equal to the trade-in allowance).

As with debt settlement, the Ontario Act prescribes conditions for collecting fees. Financial repairers are thus prohibited from charging or accepting fees and commissions in advance, unless:

(i) in respect of credit repair, the credit repairer causes a material improvement to the consumer report, credit information, file, personal information, credit record, credit history or credit rating of the consumer;[227]

(ii) in respect of the supply of such other goods or services as may be prescribed, the prescribed requirements are met. [228]

As with a debt settlement agreement, the consumer benefits from a right to cancel a credit repair agreement without having to give a reason, at any time from the day on which the agreement has been concluded and up to 10 days after receiving a written copy of the agreement.[229]

Ontario's legal framework also prohibits financial repairers from making certain representations, listed in the regulation:[230]

[227] Sec. 50(1)b), *Consumer Protection Act*, 2002.
[228] Sec. 50(1)c), *Consumer Protection Act*, 2002.
[229] Sec. 51(1), *Consumer Protection Act*, 2002.
[230] Sec. 53, *Consumer Protection Act*, 2002.

1. *An express or implied representation that the credit repairer is approved, licensed or registered by the Government of Canada, the Government of Ontario or the government of any other province or territory of Canada.*

2. *An express or implied representation that the operations of the credit repairer are regulated by the Government of Canada, the Government of Ontario or the government of any other province or territory of Canada.*

3. *Subject to subsection (2), an express or implied representation that the credit repairer will be able to cause a material improvement to the consumer report, credit information, file, personal information, credit record, credit history or credit rating of a consumer.*[231]

However, the law contains a reservation regarding that third type of representation. The latter will not be considered a prohibited representation if the financial repairer made it after "examining the consumer's consumer report, credit information, file, personal information, credit record, credit history or credit rating" and after "reasonably concluding that the consumer's consumer report, credit information, file, personal information, credit record, credit history or credit rating is inaccurate or incomplete and correcting, supplementing or deleting any item of information would cause a material improvement" to them.[232]

It remains that this type of prohibition exists mainly to prevent a financial repairer from making unrealistic promises to the consumer, and thus to save the latter from paying for an impossible task.

Modest as it is, Ontario's regulatory framework offers welcome protection to consumers. The same cannot be said of Alberta's legislation.

4.2.2 Alberta: Simple Regulatory Power

With regard to financial repairers, Alberta provides only a regulatory power defined in the *Fair Trading Act*[233] (hereinafter the FTA), and the government has never adopted any specific regulation in the matter. And yet, the Act's regulatory power would allow the adoption of measures that could help limit or terminate some frequently decried industry practices: for example, regulating and limiting fees, prohibiting advance payments, contract form requirements, cancellation rights, and prohibited representations.

As mentioned above, a caution issued to consumers has pointed out that in reality, no company may change or erase correct information from a consumer's credit file, and that companies claiming they can do so often charge substantial fees.[234] So it's surprising that despite knowing about the problems related to those companies, Alberta has done nothing to regulate that industry.

[231] Sec. 47(1), *Regulation 17/05-General Provisions*.
[232] Sec. 47(2), *Regulation 17/05-General Provisions*.
[233] Sec. 51(e), *Fair Trading Act*, R.S.A. 2000, c F-2.
[234] Op. cit. note 43, **SERVICE ALBERTA**, *Dealing with Credit*.

4.2.3 Quebec: A Bill Modelled after Ontario's Legislation

A few measures to regulate financial repairers are planned in Bill 134, tabled in Quebec's National Assembly in May 2017. As mentioned above, companies offering this type of service are classified among debt settlement companies.[235] Apart from a company being prohibited from receiving payment from a consumer before having improved the credit reports prepared about him by a personal information agent[236] – a measure modelled after Ontario's – the bill contains no specific measures for credit repairers.

However, given that credit repairers are included among debt settlement companies, they are also bound by requirements to hold permits, provide surety and bookkeeping; and the prohibited practices and the other requirements we reviewed in the section on regulation of debt settlement companies also apply to credit repairers. If Bill 134 is enacted, it will constitute the strictest regulatory framework for credit repairers in effect in Canada.

4.3 General Consumer Protection Legislation: Application to Debt Settlement and Financial Recovery Services

Even in the absence of specific regulations for debt settlement and financial recovery companies, this type of company remains subject to provisions of general application, and Canadian consumers benefit from certain protections provided by the consumer protection laws of provinces and territories. In light of our field survey's findings and our consultation of key actors, we identified the following legal provisions as likely to be invoked against some of the dubious practices we observed.

In this report, we will only use as examples certain provisions of Quebec's *Consumer Protection Act* and of Ontario's *Consumer Protection Act, 2002*. This will give us an overview of general measures in effect in a civil law province and a common law province, with their different approaches.

4.3.1 Contract Ambiguity

The contracts of debt settlement and financial recovery companies are far from clear – prohibited clauses, zero legibility and unintelligible elements are among the problems we identified. In its regulatory framework for debt settlement companies, Ontario specifies that in the event of ambiguity, a debt settlement agreement is interpreted in the debtor's favour.[237] Consumer protection laws of general application usually contain a provision to that effect with regard to all consumer agreements covered by those laws.[238]

[235] Sec. 214.12, *Bill 134*.
[236] Sec. 214.25(2), *Bill 134*.
[237] Sec. 16.5(5), *Debt Recovery and Settlement Services Act*.
[238] See for example sec. 17 of the *Consumer Protection Act* (QC) and sec.11 of the *Consumer Protection Act, 2002* (Ont.).

4.3.2 Charging Undisclosed Fees

Our report's section on the results of our field survey emphasizes that the prices displayed for the various services offered by the companies under study are at times only total amounts, with the details not indicated clearly in contracts. For example, some companies charge for bounced cheques without having indicated the amounts of those fees. CPA-QC section 12 states that "No costs may be claimed from a consumer unless the amount thereof is precisely indicated in the contract." Ontario law has no equivalent provision, but has specific disclosure requirements.

4.3.3 Expectation Damages under the Contract

A Groupe Solution2 contract states that "*5.3. GS se réserve le droit de charger des dommage-intérêts au dossier relativement tout chèque non honoré*" [sic]. And yet, CPA-QC section 13(1) prohibits any stipulation imposing on a defaulting client any fees, penalties or damages in an amount or percentage set in advance in the contract, other than accrued interest. Under Quebec law, such a contractual provision would be prohibited and unenforceable against the consumer. But Ontario's CPA 2002 has no similar provision.

4.3.4 Regulation of Distance Contracts

Some credit repair companies conclude their contracts online. After filling out an online application form, the client will be notified of the decision regarding approval: "The first step is to use our secure online application form. Our cutting edge program will adjudicate and let you know if you are approved."[239] The service contract is thus concluded at a distance.

All the provinces and territories regulate distance contracts, although with approaches that may differ.[240] While some provinces only regulate contracts concluded on the Internet, others regulate all contracts not concluded in person between the parties. Transactions covered by the different legislations must comply with requirements for precontractual disclosure and delivery of a copy of the contract, and consumers have specific rights and recourses, such as certain cancellation rights, chargeback rights, etc.[241] So whether or not the type of service itself is regulated, the business must comply with specific regulations applicable to distance contracts if it chooses to conclude its contracts in that way.

4.3.5 Regulation of Credit Agreements

In many cases, the type of companies under study offer credit, directly or indirectly. Financial recovery companies, in particular, often offer consumers consolidation loans or guaranteed credit cards as tools to improve the consumer's credit file. Whatever the context in which it is

[239] This is the case, notably, of Credit Slab. **CREDIT SLAB**. *Frequently Asked Questions* page. Calgary, Alberta, n. d. http://creditslab.com/improve-credit.html (page consulted on March 3, 2017).
[240] We discussed those regulatory frameworks in a 2014 report: **UNION DES CONSOMMATEURS**, *Regulating Distance Contracts: Time to Take Stock*, Montreal, Quebec, Canada, June 2014, 181 pages. See on page 24: http://uniondesconsommateurs.ca/docu/rapports2014/04-Contrats-a-distance-Eng.pdf
[241] See for example sections 54.1 to 54.16, CPA-QC and sections 37 to 40 of the *Consumer Protection Act, 2002*.

offered, the credit agreement must comply with the regulations of consumer protection laws: mandatory disclosure of borrowing costs, mandatory content of contracts, obligation to hold a permit, cancellation right, way of determining and disclosing the cost of credit.[242] Those regulations may vary by province, but debt settlement and financial recovery companies that offer consumers credit as part of a debt repayment or credit file repair plan must comply with the regulations.

4.3.6 Prohibited Practices

A last set of general provisions applicable to debt settlement and financial recovery companies pertains to prohibited practices. As we have seen, the industry's most reprehensible practices largely involve representations that appear false or misleading, or promises that are made to consumers struggling with debt problems and that are unlikely, if not impossible, to be fulfilled.

Quebec's *Consumer Protection Act* prohibits any business, manufacturer or advertising agency from making a false or misleading representation to a consumer, in any manner whatsoever. Telling a consumer that certain services will dramatically reduce his debts, to an extent that the company knows is unattainable, is not simply a benign promotional exaggeration: it is a false representation. Making an unsubstantiated claim that the company obtains high success rates is just as misleading. Instructing a consumer not to pay his creditors and not to communicate with them, without advising him of the risks involved, could well be considered an infraction of the prohibition against omitting an important fact. Examples abound; we described a few in the preceding pages. The general prohibition against false representations, the account being taken of the general impression made by those representations, and the more specific claims made by certain types of prohibited representations cast a wide net with which to catch this type of companies.

Those practices are also prohibited in Ontario;[243] the *Consumer Protection Act, 2002* calls it an unfair practice to make a false, misleading or deceptive representation.[244] Some of the examples given in the Act are:

> 1. *A representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities they do not have.*
>
> *[...]*
>
> 8. *A representation that the goods or services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed.*
>
> *[...]*

[242] See sections 66-150, CPA-QC and sections 66-85, *Consumer Protection Act, 2002*.
[243] Sec. 17(1), *Consumer Protection Act, 2002*.
[244] Sec.14(1) and 15(1), *Consumer Protection Act, 2002*.

14. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.[245]

As we have seen, the specific regulatory frameworks for some of those services generally provide a list of prohibited practices or representations. It should be remembered that any misleading representation, whether or not its content is expressly identified in the law, constitutes an offence under the regulations of general application. A consumer who decides to act against a company that has used such practices may, in the absence of a specific regulatory framework, exercise the general recourses granted to him in consumer protection laws and demand the remedies prescribed therein.[246]

[245] Sec. 14(2), *Consumer Protection Act, 2002*.
[246] See for example in Quebec: sec. 272, CPA-QC and sections 277 and fol. for criminal remedies available to the regulatory authority.

5 Foreign Jurisdictions: Examination of Legislative Provisions and Other Measures

As mentioned above, the regulation of debt settlement companies in the United States dates back to the early 20th century. However, even the strictest legislation has not proved a panacea. From one regulatory approach to another, the business model of those companies has morphed to survive.

Since the early 2000s, the U.S. federal government and various states have regulated the financial recovery and debt settlement industry. And recently, several countries have conducted research and adopted measures to better protect consumers against the wrongdoings of that industry. As described in the following paragraphs, lawmakers have, from one jurisdiction to another, taken different legislative approaches. The following analysis identifies those approaches, as well as the measures that have had the most impact in better protecting consumers in those countries.

5.1 The United States: Federal and State Regulations

5.1.1 Debt Settlement Companies

We will not retell the history of American legislation, which we described above. We simply recall here that debt settlement companies are regulated by both federal and state laws.

Under the supervision of the *Federal Trade Commission* (FTC), the *Telemarketing Sales Rule* (TSR) has regulated since 2010 the activities of those companies, whose services are described as follows:

> *Debt relief service means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.*[247]

We note first that the legislative vehicle for targeting debt settlement companies, i.e. the *Telemarketing Sales Rule*, is completely different from those used in Canada. The FTC reported that “The amendments are necessary to protect consumers from deceptive or abusive practices in the telemarketing of debt relief services.”[248]

[247] *Telemarketing Sales Rule (TSR)*, 16 C.F.R., § 310.2(o).
[248] **FEDERAL TRADE COMMISSION**, *Telemarketing Sales Rule; Final Rule Amendments*, FTC, Federal Register / Vol. 75, No. 153 / Rules and Regulations, Washington, DC, United States, August 10, 2010, 67 pages. https://www.ftc.gov/sites/default/files/documents/federal_register_notices/telemarketing-sales-rule-final-rule-amendments/100810tsr.pdf (document consulted on May 17, 2017).

Nevertheless, because the practices to be countered were similar, the TSR's regulatory framework has traced the broad outlines of subsequent Canadian frameworks. It includes notably a prohibition against those companies receiving advance fees, prior conditions for receiving fees payable, and precontractual disclosure obligations.[249]

The TSR's measures for debt settlement companies apply principles such as the following:

1. **Advance fees are prohibited**[250] **and fees may be received only under certain conditions:**
   A debt settlement company may not receive fees from the consumer before settling his debts, i.e. before reaching a debt settlement with the creditor(s). The law also stipulates that if the agency negotiates only one of the debtor's debts at one time, it may require payment only for the debt settled, and not "front-loaded payments" for all the debts;[251]

2. **Protection of funds set aside**:
   A debt settlement agency may not require the debtor to set funds aside in a particular account in view of paying fees and repaying creditors, unless:

   (A) The funds are held in an account at an insured financial institution;

   (B) The customer owns the funds held in the account and is paid accrued interest on the account, if any;

   (C) The entity administering the account is not owned or controlled by, or in any way affiliated with, the debt relief service;

   (D) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business involving the debt relief service; and

   (E) The customer may withdraw from the debt relief service at any time without penalty, and must receive all funds in the account, other than funds earned by the debt relief service […] within seven (7) business days of the customer's request.[252]

   (our underlined)

3. **Mandatory precontractual disclosure**:
   A debt settlement agency must make certain disclosures before a debt settlement service agreement is concluded and fees are collected. In addition to information on the protection of funds set aside, the company must also disclose the following:

   (A) the amount of time necessary to achieve the represented results, and to the extent that the service may include a settlement offer to any of the customer's

[249] *TSR*, § 310.4(a)(5), § 310.4(a)(5)(i); and § 310.3(a)(1)(viii).
[250] *TSR*, § 310.4(a)(5).
[251] *Ibid.*
[252] *TSR*, § 310.4(5)ii).

creditors or debt collectors, the time by which the debt relief service provider will make a bona fide settlement offer to each of them;

(B) to the extent that the service may include a settlement offer to any of the customer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer must accumulate before the debt relief service provider will make a bona fide settlement offer to each of them;

(C) to the extent that any aspect of the debt relief service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of the debt relief service will likely adversely affect the customer's creditworthiness, may result in the customer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the customer owes due to the accrual of fees and interest.[253]

4. **Prohibition against making deceptive representations about the services offered:**
A debt settlement company may not make deceptive representations about the services it will provide to the consumer. To prohibitions of general application against deceptive representations, the TSR adds mentions specifically targeting debt settlement agencies:

§310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct: [...]

(2) Misrepresenting, directly or by implication, in the sale of goods or services any of the following material information: [...]

Any material aspect of any debt relief service, including, but not limited to, the amount of money or the percentage of the debt amount that a customer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the customer must accumulate before the provider of the debt relief service will initiate attempts with the customer's creditors or debt collectors or make a bona fide offer to negotiate, settle, or modify the terms of the customer's debt; the effect of the service on a customer's creditworthiness; the effect of the service on collection efforts of the customer's creditors or debt collectors; the percentage or number of customers who attain the represented results; and whether a debt relief service is offered or provided by a non-profit entity.[254]

It is surprising, and even worrisome, that the problematic practices targeted in that American law of 2010 are still prevalent in the business models of debt settlement companies in Canada.

The TSR constitutes an important regulatory framework for financial repairers. In fact, it has had the effect of eliminating from the market companies whose business model included the

[253] *TSR*, § 310.3(1)viii) par. A) to D).
[254] *TSR*, § 310.3(2)x).

collection of substantial fees before anything was done to negotiate or settle debts. However, the American legislation has a major limitation: given that it applies only to companies offering debt settlement services through telemarketing, it does not cover all the various actors in that industry. Some companies offering that type of service in person or online are not affected by the TSR's regulations.[255]

A framework law proposed by industry, the *Uniform Debt-Management Services Act* (UDMSA),[256] has served as a template for numerous American states to regulate debt settlement companies. That framework law notably prescribes: the companies' obligation to hold a permit and provide a surety bond; a precontractual disclosure obligation regarding certain elements; obligations to issue warnings; and a mandatory contractual form.[257] The framework law also imposes conditions for the moment when the company may receive the allowed fees, as well as a limit to those fees, which may not exceed 30% of the savings made by the consumer thanks to the debt settlement.[258] Other provisions cover the management of funds set aside by the consumer, prohibit false and misleading advertising, and impose penalties for noncompliance.[259]

Several dozen American states have adopted similar measures to those proposed in the UDMSA; it has served as a basis for other states to adopt complete regulatory frameworks.[260] But a few states have maintained the prohibition against operating a for-profit debt settlement company: Arkansas, Hawaii, Louisiana, New Jersey and Wyoming.[261] The New York City Bar (hereinafter the NYCB) reports that, although a few dozen other states have not adopted any law governing debt settlement companies, a few specific measures have been introduced in consumer protection laws. The NYCB gives the example of North Carolina, where charging fees exceeding 10% for debt settlement services constitutes a misdemeanour.[262] The NYCB's report is very eloquent about measures in effect in various states.[263] We observe that all the states regulating those companies adhere to a set of key principles.

The permit obligations imposed by certain states are generally accompanied by the obligation to provide the regulatory authority with an annual report. Valuable statistics on that industry can thus be established, particularly on the completion rate of debt settlement plans, the debt level of persons relying on those companies, etc.

The majority (30 states) require debt settlement companies to hold a permit and provide a surety bond. In more than twenty states, the law imposes a ceiling on set-up fees; but that ceiling varies from $50 to $500 depending on the state. Some states also limit consultation and monthly file management fees.

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[255] Op. cit., note 89, **HARNICK, Ellen and Leslie PARRISH.** *A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households*.
[256] *Uniform Debt-Management Services Act*, 2005, revised and amended in 2008. https://www.ftc.gov/sites/default/files/documents/public_events/consumer-protection-and-debt-settlement-industry/udmsafinal.pdf (document consulted on October 5, 2016).
[257] *Uniform Debt-Management Services Act*, 2005, sections 4 to 7, 13, 14 and 17.
[258] *Uniform Debt-Management Services Act*, 2005, section 23.
[259] *Uniform Debt-Management Services Act*, 2005, section 22 and 30.
[260] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering From Financial Distress*, Sched. E, p. 171 and fol.
[261] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering From Financial Distress*, p. 48.
[262] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering From Financial Distress*, pp. 48-49.
[263] Op. cit. note 7, **NEW YORK CITY BAR**, *Profiteering From Financial Distress*, APPENDIX E - Current State Regulation of Debt Settlement, p. 171.

Moreover, more than a dozen states prohibit receiving advance fees, and more than 25 states limit the fees charged by the companies for their services. That seems to be the key provision in the majority of states. However, it is difficult to determine an acceptable limit that would adequately protect consumers. The fee limits imposed by states vary greatly, from 7.5% to 35% of the debts registered in the plan. Elsewhere, the regulations are vaguer: fees must correspond to a "reasonable percentage" of the savings made by the consumer. Elsewhere again, fees are limited to either 8.5% of the initial debt or to $30 per month, whichever is greater.

It should also be noted that the consequences and recourses in case the laws are violated also vary greatly. In some states, the offence is a misdemeanour. Other states allow private recourses and civil sanctions, while still others consider it a 3rd or 4th degree crime.

5.1.2 Financial Recovery Companies

With regard to financial repairers, targeted as well by the *Telemarketing Sales Rule*, a federal law, the *Credit Repair Organization Act*[264] (CROA), also supervised by the *Federal Trade Commission* (FTC), applies beyond the telemarketing context. The Act defines a double objective: informing consumers interested in this type of services, and protecting them against unfair or deceptive practices:

> *(1) to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and*
>
> *(2) to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.*[265]

The CROA prohibits financial recovery companies from making false or deceptive representations about their services and possible outcomes, and from charging a consumer any fee before having met their obligations. The Act also requires companies to inform the consumer of his rights, give a detailed description of the services to be rendered, and advise him of the three-day withdrawal period to which he is entitled. Like the TSR, the CROA requires the companies to inform the consumer of how long it will take for him to see changes in his credit file, of the total fees he will have to pay, and of the guarantees provided to him.[266]

5.1.3 Effective Regulations?

Many state attorneys have sued debt settlement companies for defaulting on obligations and for violations of state laws.[267] But despite the federal legal framework and the various state laws, the problem that financial recovery companies pose for consumers seems far from solved. The

[264] *Credit Repair Organization Act*, 15 U.S.C. §§ 1679-1679j. https://www.ftc.gov/enforcement/statutes/credit-repair-organizations-act.
[265] *Credit Repair Organization Act*, § 1679(2).
[266] *Credit Repair Organization Act*, § 1679b- 1679e.
[267] Op. cit., note 89, **HARNICK, Ellen and Leslie PARRISH.** *A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households*, p. 7.

U.S. Consumer Financial Protection Bureau (hereinafter the CFPB) reported in November that debt settlement companies generated more consumer complaints in the "other financial service" category.[268] The CFPB indicates that of 4,500 complaints received in that category in November,

> *Problems with debt settlement services made up half—50 percent—of "other financial service" complaints submitted to the Bureau. Consumers complained that payments they made to debt settlement companies were never forwarded to their creditors and as a result they faced lawsuits for unpaid accounts.*[269]

the *Center for Responsible Lending* attributes that regulatory failure not only to the TSR's restrictive application, but also to certain gaps in the federal framework and in the various state laws, notably the exclusion of attorneys.[270] What is known as "the attorney model" appears to have become more prevalent, perpetuating those debt settlement company practices that the legislation was intended to eliminate. When a debt settlement service agreement is concluded with an attorney, the negotiating work is still outsourced to a debt settlement company, thus thwarting any applicable regulation.[271]

While anarchy still appears to prevail in that industry in the United States despite federal and state legislation, have other countries found a more effective solution?

5.2 Australia: The *National Consumer Credit Act* (2010) and Other Legislation Applicable to Debt Settlement and Financial Recovery Companies

Australia has no specific legal framework for debt settlement and financial recovery companies that applies to the entire Australian territory; consumer protection is handled by the provinces and territories. Depending on the services offered, a variety of regulatory frameworks are still applicable to those activities. However, the problems observed in that industry are the same as those found in the United States and Canada: opaque fee system and inadequate disclosure, substantial advance fees, high-pressure sales tactics, and lack of information about the risks were among the findings of the *Australian Securities and Investments Commission* in 2016.[272]

[268] The "other financial service category" covers consumer complaints that fall outside the broad complaint categories handled by the CFPB. In this category we find the debt settlement service, cheque cashing, credit repair companies, etc.

[269] **THE CONSUMER FINANCIAL PROTECTION BUREAU**, *Monthly Complaint Snapshot Spotlight Debt Settlement, Check Cashing and other Financial Service Complaints*, eNews Park Forest, Park Forest, Illinois, United States, November 29, 2016. https://enewspf.com/2016/11/29/consumer-financial-protection-bureau-monthly-complaint-snapshot-spotlights-debt-settlement-check-cashing-financial-service-complaints/ (document consulted on May 2, 2015);

[270] Op. cit., note 89, **HARNICK, Ellen and Leslie PARRISH.** *A Roll of the Dice: Debt Settlement Still a Risky Strategy for Debt-Burdened Households*, p. 7.

[271] Ibid.

[272] **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**. *Paying to Get out of Debt or Clear Your Record: The Promise of Debt Management Firms*, Report 465, ASIC, Sydney, Australia, January 2016, 57 pages. http://download.asic.gov.au/media/3515432/rep465-published-21-january-2016.pdf (document consulted on September 4, 2016).

The *National Consumer Credit Act*[273] applies to debt settlement and financial recovery agencies only if they provide consumers with credit assistance; the Act then requires those agencies to hold a permit.[274]

The Act defines "credit assistance" as follows:

> *A person provides credit assistance to a consumer if, by dealing directly with the consumer or the consumer's agent in the course of, as part of, or incidentally to, a business carried on in this jurisdiction by the person or another person, the person:*
>
> *a) suggests that the consumer apply for a particular credit contract with a particular credit provider; or*
>
> *b) suggests that the consumer apply for an increase to the credit limit of a particular credit contract with a particular credit provider; or*
>
> *c) suggests that the consumer remain in a particular credit contract with a particular credit provider; or*
>
> *d) assists the consumer to apply for a particular credit contract with a particular credit provider; or*
>
> *e) assists the consumer to apply for an increase to the credit limit of a particular credit contract with a particular credit provider; […]*
>
> *It does not matter whether the person does so on the person's own behalf or on behalf of another person.*[275]

An agency must also meet the obligations involved with holding the permit, such as practicing effective, honest and fair credit activities, being a member of an "approved external dispute resolution scheme," etc.[276] It should also be noted that non-profit "counselling services" are exempted from the Act's application.[277]

Australia's *Bankruptcy Act* can apply when debt settlement agencies make a "debt agreement" proposal to the debtor's creditors.[278] That procedure resembles the consumer proposal made in Canada under the *Bankruptcy and Insolvency Act*. Australia's consumer proposal allows the debtor to submit to his creditors a payment agreement administered by an independent party to reduce his debts. The debtor may offer his creditors a lump sum or propose a property transfer of certain assets. Under the *Bankruptcy Act*, administrators of this type of proposal must register with the *Australian Financial Security Authority* (AFSA).[279]

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[273] *National Consumer Credit Protection Act*, No. 134, 2009. https://www.legislation.gov.au/Details/C2013C00463
[274] Sec. 29, *National Consumer Credit Protection Act*.
[275] Sec. 8, *National Consumer Credit Protection Act*.
[276] Sec. 47(1), *National Consumer Credit Protection Act*.
[277] Sec. 5, Reg 20, *National Consumer Credit Protection Regulations 2010*. http://www.austlii.edu.au/au/legis/cth/consol_reg/nccpr2010486/s20.html
[278] *Bankruptcy Act, 1966*, Part IX- Debt Agreements. http://www.austlii.edu.au/au/legis/cth/consol_act/ba1966142/
[279] Sec. 186B(1) *Bankruptcy Act, 1966*.

In Australia, debt settlement companies must also meet general consumer protection provisions, which mainly apply to "misleading, deceptive and unconscionable conduct."

The *Australian Securities and Investments Commission Act 2001* applies when debt settlement agencies offer services defined by the Act as "financial services,"[280] which include financial products advice. Among measures provided by the Act are prohibitions against abusive contractual clauses, against reckless or misleading conduct, and against false or misleading representations.[281]

The regulation of misleading conduct regarding non-financial products and services is found in the *Competition and Consumer Act 2010.*[282]

5.2.1 The United Kingdom and the *Financial Services and Markets Act 2000*

In 2014, the British Financial Conduct Authority warned, notably, "debt management firms" to adopt behaviours that comply with regulations in effect.

The FCA mentioned certain actions it had taken in reaction to those companies' infractions during that year:

- *we have issued final notices against two firms who have had their applications refused;*
- *seven firms' bank accounts have been frozen to protect client money;*
- *two firms have entered administration;*
- *one firm is closed to all business;*
- *fourteen firms have agreed to stop taking on new business;*
- *seven firms have been directed to appoint a "skilled person" to report on the firm's compliance with FCA rules;*
- *a further firm has cancelled its interim permission and will no longer provide debt management services;*
- *the FCA is also investigating a number of other debt management firms and individuals.*[283]

Great Britain has chosen to regulate "debt management firms" and "credit repair firms" by means of the *Financial Service and Markets Act 2000*. Administered by the *Financial Conduct Authority* (FCA), that law aims at ensuring market confidence and financial stability, educating the public, protecting consumers, and reducing financial crimes.[284] Companies that provide "credit information services" – as do many debt settlement and financial recovery companies – must hold a permit, as that activity is regulated. Included in those credit information services are "debt administration" and "debt counselling" services.[285]

[280] Sec. 12BAB, *Australian Securities and Investments Commission Act 2001*, Psec. 2, Division 2. https://www.legislation.gov.au/Details/C2017C00128
[281] Sec. 12BF to 12BM, 12(B), 12DA and 12BD, *Australian Securities and Investments Commission Act 2001*.
[282] *Competition and Consumer Act 2010*, Act. No. 51 of 1974. https://www.legislation.gov.au/Details/C2011C00003
[283] **FINANCIAL CONDUCT AUTHORITY**, *Debt Management Firms must Raise their Game, says FCA*, news release, London, United Kingdom, updated November 21, 2016. https://www.fca.org.uk/news/press-releases/debt-management-firms-must-raise-their-game-says-fca (document consulted on November 26, 2016).
[284] Sec. 3-6, *Financial Services and Markets Act 2000*, c. 8. http://www.legislation.gov.uk/ukpga/2000/8/contents
[285] Sec. 39E(1) and (2) and 39G(1) and (2) as well as section 89A, *The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001*, 2001 No. 54. http://www.legislation.gov.uk/uksi/2001/544/contents/made

To exercise those regulated activities, the companies must hold a permit and demonstrate transparency regarding fees, which must be reasonable. Moreover, an agency's business model must benefit the consumer. The agencies must also give the consumer adequate counselling related to his personal situation. That advice must be provided by qualified counsellors. And the companies must establish an adequate system for protecting the amounts paid by the consumer, etc.[286] In short, the conduct of debt settlement agencies must meet their obligations to inform consumers well and protect their interests.

This is not a specific regulatory framework customized for that industry, but rather the application of key principles of consumer financial protection.

In conclusion, we observe that the regulatory approaches differ in the various jurisdictions we studied. However, most of the jurisdictions either adopt a regulatory framework specifically targeting the activities of debt settlement and financial recovery companies, or use the second approach of requiring those companies to hold a permit under the authority of an existing regulatory framework, as in Great Britain.

The approach of specific regulation, as in the United States, is similar to that of the Canadian provinces that have adopted (or are preparing to do so) regulatory frameworks specifically targeting that industry. Of course, those frameworks are often incorporated in laws governing an industry considered similar, i.e. debt collection, but the frameworks are still quite precise with regard to practices unanimously deemed reprehensible.

[286] **FINANCIAL CONDUCT AUTHORITY**, *Debt Management Firms must Raise their Game, says FCA*, September 22, 2014. https://www.fca.org.uk/news/press-releases/debt-management-firms-must-raise-their-game-says-fca (document consulted on September 26, 2016).

Conclusion

Indebted consumers are confronted more and more by companies offering to help them recover their financial freedom by making arrangements with creditors and reducing their debts substantially, or to help them improve their credit file. But is that an adequate solution for consumers? Do debt settlement and financial recovery plans offer consumers real benefits or simply excessive risks?

The debt settlement industry has existed for a long time in North America and appears to have undergone various transformations according to economic circumstances or regulatory frameworks. As for the financial recovery industry, it is more recent, but appears to be more and more present.

The operating and billing methods seem as varied as the types of services offered. We identified five distinct types of services offered by debt settlement or financial recovery companies:

(i) Credit file repair and improvement;
(ii) Administration of payment agreements with creditors;
(iii) Budget counselling;
(iv) Debt negotiation and settlement; and
(v) Loans for credit repair and debt consolidation.

In many cases, the same company offers more than one of those services. Despite that diversity of services, it is possible to identify certain practices, representations and promises throughout the industry that clearly disadvantage consumers.

Obviously, the offers presented by the debt settlement and financial recovery industry are enticing for consumers experiencing financial difficulties. Many of the companies make fantastic claims, for example that 95% of customers have reduced their debts by 85%, or that their credit file has improved on the first day of the plan. But apart from such claims to attract vulnerable consumers, the companies offer them very little information on their practices, the risks involved, the real success rates, the costs, etc. An investigation of those companies, a consultation of the various actors and an examination of different jurisdictions' attempts to regulate the industry's problematic practices reveal very serious and widespread problems.

Denunciations of that type of companies abound. Some critics consider them predatory, and their service offers fraudulent. Some services seem designed solely to extract a bit (or a lot) of money from perilously indebted consumers before the latter go bankrupt. Indeed, some services seem totally useless and designed to profit exclusively those who offer them; for example, the service limited to referring, at a high price, an insolvent consumer to a trustee clearly benefits only the middleman, and is often denounced.

Several other services are theoretically useful. While a consumer can on his own have corrections made to his credit file or negotiate with his creditors, it remains plausible that a competent middleman can perform those tasks more effectively and free the consumer from the burden of doing so. Those who offer such services engage in practices – such as false

representations and promises made to the consumer, the very design of the plans proposed to him, ancillary services included in contracts, occasionally exorbitant fees, the way of collecting those fees, generally in advance – leading many to conclude that those service offers should simply be totally prohibited.

Those practices can truly have very harmful consequences on a person's financial situation. It is indeed abnormal that a consumer who pays a company to improve his financial situation finds himself in a more precarious situation after subscribing to that company's plan. But that is what happens in most cases.

Without repeating the details of those plans, here is a summary of what many have deplored before us. Charging high fees when no service has been delivered yet and when the probable success of the expected services is ridiculously low is a practice that cannot be tolerated. Requiring an indebted consumer to pay in advance the company pledging to free him of his debts and advising him not to pay and communicate with his creditors seems a recipe for disaster. Those companies should not be allowed to put vulnerable consumers in danger. Extending credit to a consumer who has a bad credit file, while assuring him that this is the solution to his problem, is one thing; pocketing the credit amounts to pay for those services, including the very extension of that credit, appears to exceed certain boundaries.

Many of the representations enticing consumers in financial difficulty to rely on the services of debt settlement and financial recovery companies seem incredible – at best misleading, and at worst downright false.

So how should Canadian consumers be protected against such false promises, services sold offering no real benefit, abusive and risky practices, etc.?

The absence of a regulatory framework in some provinces seems fertile ground for the expansion of debt settlement and financial recovery companies. But all existing regulations seem to have shortcomings in design or application. And the industry seems to have a formidable capacity to regenerate and mutate that enables it to adapt… without changing the practices that lawmakers attempt to ban.

Five Canadian provinces regulate debt settlement companies. Ontario has adopted a few measures regulating financial repairers. A bill has been tabled in Quebec to regulate both types of services. Those laws generally contain measures that appear essential to regulate the industry well and end reprehensible practices. The measures include a permit obligation, a surety obligation, precontractual disclosure rules, mandatory contract content, prohibiting advance fees, imposing fee ceilings and conditions, etc. To give consumers a chance to withdraw after thinking it over, some legislatures also grant them a right to cancel without having to give a reason. The various regulatory frameworks generally also list many prohibited practices and representations, to clean up the market and better protect consumers.

Although the regulatory initiatives appear to have led the most problematic companies to flee from the jurisdictions concerned (by ceasing their activities or simply moving to a neighbouring jurisdiction), implementation of the regulatory frameworks has shown mixed results.

And the question long asked in the United States, where that industry took root almost a hundred years ago, again haunts the debate: how in the world to regulate an industry whose

business model appears flawed by its very nature? The concern is real: does establishing a regulatory framework legitimize an industry that can prosper while it provides the consumer with no real benefit, and is even clearly harmful to him?

All the jurisdictions that have intervened in the matter appear to agree: no framework seems to exist capable of controlling the industry as a whole and definitively cleaning up the market. Regulation requires strict supervision made difficult by a fluctuating market. It must be ensured that no agent or company operates without a permit. But it must also be ensured that permit holders comply with regulations – a daunting challenge. The agencies know that consumers who are victims of their practices rarely complain to the authorities. The reason may be that consumers lack information on the practices' legality. In that regard, the obligations imposed, as in Ontario, on a business to clearly advise the consumer of his rights and the risks involved in the contract, seem promising. It is still of concern that a desperate consumer will decide despite everything to try his luck, on the basis of claims made to him about possible benefits.

In addition, regulatory frameworks must adapt constantly to practices and new models that appear on the market, and to the companies' mutation. The arrival of the "attorney model" in certain jurisdictions enables some companies to perpetuate their prohibited or regulated business model by associating with professionals excluded from the law's application and likely acting as nothing but figureheads.

What if the only viable path is a pure and simple prohibition against those for-profit service offers, as in the United States in the early 20th century, and as still prevails in some U.S. states? Since non-profit organizations adhering to rigorous standards of practice and ethics already provide services to help rather than exploit consumers, would it not serve the public interest to further develop that type of services, rather than try to limit the damage inflicted by a predatory industry?

Recommendations

Alternatives to Paid Debt Management Services

Before recommendations are made, it is important to keep in mind that the debt settlement and financial recovery industry operates in an ecosystem where free-of-charge solutions and others regulated effectively are available to a consumer seeking to solve his debt problems.

Consultation and Correction of Personal Credit Files

As mentioned above, with regard the financial recovery sector, the consumer himself can access his credit file to detect errors and demand corrections. Under federal and provincial privacy laws, consumers can receive, once every twelve months, a free copy of their credit file held by private rating agencies, i.e. Trans Union and Equifax.[287] A consumer who detects an error in his credit file can demand its correction.[288]

It is true that many consumers are not aware of existing measures giving them access to their credit file, and even less of the operation and content of credit files.[289] And many do not have the time, resources and knowledge to carry out such an undertaking. However, it appears that lack of information and knowledge about existing free options leads consumers to rely on services offered by financial recovery companies, with no guarantee of obtaining that for which they are paying amounts that can be substantial.

Responsible credit requests and usage establish a good credit file in Canada. Only time can repair a bad credit file. Obtaining a secured credit card is one of the means to that end. No need to depend on a middleman who will charge high fees; financial institutions offer that type of product.

Budget Counselling and Support: An Alternative Solution

Many consumers who contract with debt settlement or financial recovery companies have to pay for budget counselling and support services that the companies offer collaterally and that supposedly enable consumers to understand their personal finances better and adopt better practices. The fees can be substantial, and the qualifications and impartiality of the companies offering those services can be questionable.

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[287] See for example, in Quebec, sections 27 and 33 of the *Act respecting the protection of personal information in the private sector*.

[288] In Quebec, for example, section 28 of the *Act respecting the protection of personal information in the private sector*, R.S.Q., c. P-39.1, provides for that correction by the consumer.

[289] **OPTION CONSOMMATEURS**, *Les nouveaux services offerts par les agences de crédit: utilisation légitime des renseignements personnels?*, 2014, 86 pages. See p. 63 and fol. https://www.option-consommateurs.org/documents/principal/fr/File/2013_2014_option_consommateurs_agencescredit_rapport.pdf (document consulted on May 10, 2017).

Community organizations offer free budget counselling and support services to consumers struggling with financial problems. Notably, ACEFs and others in Quebec, and "credit counselling" organizations in the rest of Canada, offer the services of qualified and impartial consultants.

The commitment of consumer associations goes well beyond budget counselling and information; the associations also contribute to the adoption of legislation better protecting consumers, and are involved in matters such as social housing, income security benefits, etc.

Arrangements with Creditors

If a consumer has difficulty meeting his financial obligations, either to make minimum payments on a line of credit or a credit card, he can always try to negotiate directly with his creditors. Although credit issuers in Canada don't reveal it on their own, most of them have "hardship programs"[290] that can grant him a payment holiday or make minimum payments lower than previously agreed to, so that he may continue meeting his obligations. This type of agreement can be for the short or long term. It is obviously important for the consumer to obtain good information on the impact of his participation in such a program.

For a consumer having difficulty paying his mortgage, the Canada Mortgage and Housing Corporation (CMHC) also offers a default management plan.[291]

Obtaining a loan to consolidate a person's debts, i.e. to pay all his creditors and transfer his payment obligations to a single creditor, can be a beneficial option if the interest rates and terms of that consolidation loan are more advantageous than those of the debts it will serve to pay. Debt settlement companies will be unlikely to offer advantageous terms in their consolidation offers, since they generally do business with affiliated third-party lenders.

Licensed Insolvency Trustees

When experiencing financial difficulties, consumers rarely turn spontaneously to bankruptcy and insolvency professionals, i.e. trustees, because they fear the social stigma attached to situations such as bankruptcy.[292] Many consumers are not aware of the other measures a trustee could propose to them, or they neglect to consider such measures. Licensed insolvency trustees, in addition to being able to perform a bankruptcy if it is the right solution for a consumer, can also administer a consumer proposal, if circumstances warrant. Bankruptcy and the consumer proposal are procedures regulated by Canadian law,[293] and only a licensed insolvency trustee

[290] **DRACH, Dana.** *Credit card hardship programs: little-know alternative for debtors*, CreditCard.com, Bankrate Online Network, Canada, October 21, 2010. http://www.creditcards.com/credit-card-news/credit-card-hardship-program-debt-problems-1273.php (page consulted on October 10, 2016).
[291] **CANADA MORTGAGE AND HOUSING CORPORATION**, *Default, Claims and Properties for Sale*. CMHC, Ottawa, Ontario, n. d. https://www.cmhc-schl.gc.ca/en/hoficlincl/moloin/declprsa/index.cfm (page consulted on May 10, 2017).
[292] **HOYES, D.,** *Is There Still A Social Stigma About Filing Bankruptcy?*, March 10, 2014. https://bankruptcy-canada.com/bankruptcy-blog/is-there-still-a-social-stigma-about-filing-bankruptcy/ (page consulted on April 5, 2017).
[293] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

can administer them.[294] The consumer proposal may be an appropriate solution for consumers struggling to pay their debts; without disposal of property, it can enable them to free themselves of their unsecured debts and by the same token of pressure from creditors. Only the consumer proposal in due form, administered by a trustee, can provide the consumer with the benefits provided by law: the trustee negotiates directly with the creditors on behalf of the consumer, proceedings against the consumer are suspended, the fees that trustees can charge are regulated and paid through the procedure itself, the trustee's qualifications are assured by the licence issuance requirements of the Office of the Superintendent of Bankruptcy, etc.

[294] **OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA.** *What is a Licensed Insolvency Trustee?* Government of Canada, June 6, 2016. https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br03459.html (page consulted on May 10, 2017).

Recommendations

- Whereas debt settlement and recovery companies engage in harmful practices for Canadian consumers;
- Whereas some of the services offered by those companies appear to give consumers no real benefit;
- Whereas consumers who rely on those services can experience as a result serious problems that can materially worsen their financial situation;
- Whereas the practices that are part of those companies' business model, such as charging substantial advance fees, are harmful to consumers and open the door to every abuse;
- Whereas the companies' false and misleading representations are ubiquitous;
- Whereas the companies' business model often appears intrinsically flawed;
- Whereas the success rate of some types of debt settlement plans is very low;
- Whereas many of the services that financial recovery companies commit to are offered elsewhere free of charge to consumers;
- Whereas many of the services that financial recovery companies commit to delivering are unrealizable or unrealistic;
- Whereas the companies operating in those sectors include ancillary services that should be rendered by impartial actors and that the companies often do not have the required qualifications to render adequately;
- Whereas the laws adopted to regulate that industry appear only to yield mixed results;
- Whereas the adoption of laws regulating that industry can indirectly legitimize an industry that often resembles a scam;
- Whereas major shortcomings have been identified in the various laws adopted in Canadian provinces;
- Whereas regulatory frameworks for that industry appear to result in constant mutations of those companies, which exploit all the laws' loopholes and exemptions to maintain the practices that the laws attempt to end;
- Whereas for several decades, many American states banned the operation of debt settlement companies;
- Whereas the return to regulating such companies in the United States has led to the reappearance of major problems for consumers;
- Whereas most of the services that could be useful to consumers and that the industry claims to offer are available from more-trustworthy actors;
- Whereas regulation in a given territory pushes those companies to move their service offers to a neighbouring territory;

Union des consommateurs recommends that the federal and provincial authorities:

1. Prohibit the operation of debt settlement and financial recovery companies in all Canadian provinces and territories;
2. Conduct education campaigns informing consumers of that prohibition and encouraging them to file a complaint against any person operating that type of companies;
3. Conduct studies both on the types of services that would be useful to consumers but to which access would be more difficult following the disappearance of that type of companies, and, if applicable, on ways to ensure the availability of those services;

Moreover:

- Whereas various actors offer, with acceptable business models, services also offered by debt settlement or financial recovery companies;
- Whereas many of those actors are professionals whose activities, training and ethical rules are strictly regulated;
- Whereas most of the other actors are non-profit organizations whose personnel acquire relevant training and are subject to appropriate ethics codes;
- Whereas those non-profit organizations have insufficient resources to provide essential services for the financial health of many consumers in a precarious situation;

Union des consommateurs recommends that the federal and provincial authorities:

4. Ensure that non-profit organizations have the necessary resources to intervene adequately with that vulnerable clientele;
5. Ensure that those organizations will be recognized as valid interveners with creditors, notably financial institutions;
6. Provide those organizations with adequate funding for them to offer consumers free of charge the various types of intervention required by their precarious financial situation, so as to avoid any risk of conflicts of interest;

Union des consommateurs recommends that the various professional orders, the Superintendent of Bankruptcy and other appropriate authorities:

7. Ensure that professionals under their supervision do not adopt, whether in their professional or ancillary activities, any of the practices for which debt settlement and financial recovery companies are reproached;
8. Ensure that the professionals under their supervision do not associate with any company adopting that type of practices and do not use their professional status to validate such practices or to act as figureheads or otherwise in an attempt to bypass applicable regulations;

Alternatively:

- Whereas, despite decades of prohibition in the United States, the industry has succeeded in obtaining a framework law allowing it to re-enter the market;
- Whereas that framework law has since served as a basic model for any regulation of the industry;
- Whereas numerous provincial lawmakers appear to lean toward the adoption of a legal framework to protect consumers against the industry's wrongdoings;
- Whereas it is difficult to assess the size of that industry in Canada and obtain data and statistics for adequately assessing the legitimacy and compliance of its practices;

Given the lawmakers' choice to adopt a regulatory framework for debt settlement and financial recovery companies, and in order to limit as much as possible the known negative effects of those types of services on consumers,

Union des consommateurs recommends:

9. That the regulation of any company offering debt settlement or financial recovery services include the following:

- A general prohibition against receiving fees or commissions before services are rendered;
- Strict regulation of undertakings related to the offer of billable services;
- A prohibition against billing any undertaking or activity unlikely to produce concrete results;
- A ceiling on billable fees and commissions – with regard to debt settlement companies, that the ceiling be measured according to the debt reduction obtained for the consumer and not according to the amount of debts recorded in the contract, and that billing any fees and commissions other than those established according to the debt reduction not be permitted;
- With regard to financial recovery companies, that the ceiling on billable fees be prescribed by regulation;
- Strict regulation of the moment when billable amounts may be demanded;
- A prohibition against receiving fees and commissions in advance;
- Identifying as a prohibited practice the receipt of fees in violation of regulations;
- An obligation to hold a permit;
- Regulations for issuing permits while taking into account the necessary qualifications for ensuring that services authorized by a permit will be delivered adequately;
- A rigorous bookkeeping obligation;
- An obligation to provide the regulatory authority with certain data on an annual basis (number of files opened, number of files completed, number of files closed before term, reasons for the closures, etc.);
- A prohibition against simultaneously holding more than one of the following types of permits: debt settlement agency or agent permit, financial recovery permit, lender permit, and debt collection agency or agent permit;
- An obligation to provide a surety bond calculated according to the company's sales figure;
- An obligation to hold a trust account;
- Regulating the use of the trust account, and an obligation to give the consumer the revenues generated by that account;
- Contract form and content obligations;
- Standard clauses for certain key services offered by those companies;
- Regulations imposing limits to ancillary services that may be offered with the main service, and regulations imposing on those ancillary services the same limits and obligations as on the main service;
- A 10-day right of withdrawal without having to give any reason;
- An obligation to append to the contract and bring to the consumer's explicit attention the withdrawal form and the explanations of his right to exercise his right of withdrawal;
- An obligation to disclose beforehand certain key aspects of the company's services and possible measures, and to include in the contract, on the first page, a summary of the company's main commitments, expected results and chances of success, as well as applicable warnings about the risks posed by the practices or interventions planned;
- An obligation to provide the consumer with a regular accounting of initiatives taken and their results;
- The definition of a set of prohibited practices, such as: a prohibition against extending credit directly or indirectly, encouraging or facilitating access to credit,

making certain types of representations, including those claiming that credit can improve the consumer's financial situation, etc.;

10. That the regulation of debt settlement or financial recovery services allow exceptions only for non-profit organizations and members of professional orders, solely to the extent that the services covered by regulation of those companies are rendered by those professionals as part of the professional acts reserved for their profession;
11. That the appropriate authorities establish targeted monitoring programs and that severe measures be taken in case of infraction;
12. That the appropriate authorities compile data and statistics on that industry to assess its usefulness and legitimacy as well as the desirability of banning it totally in the near future;
13. That the appropriate authorities conduct information campaigns to advise consumers of their rights, their recourses and the risks associated with debt settlement and financial recovery services, and to guide them toward impartial resources likely to answer their questions or meet their needs. To raise awareness among the most vulnerable clienteles, i.e. financially disadvantaged consumers and those facing problematic debt, those information campaigns should attempt to reach them particularly.

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ANNEX 1
Classification of Companies Studied according to Services Offered

FIELD SURVEY

Debt Settlement and Financial Recovery Companies by Types of Services Listed

Complete list of our Internet searches
of October 11 and 13 and between March 27 and 30, 2017

Companies charging advance fees in a given territory
are indicated by the mention APR (*advance payment required*).

Business Model	Company and Contact Information	Territory Serviced	Hybrid Model
Credit file and score repair (M1)	**1. Groupe Conseil Primex** Web: http://rachetezmesdettes.com/index.html	QC	**Yes** M5
	2. **Credit Slab** Credit score improvement with loan. Address: 9625 Macleod Trail SW, Calgary, AL, T2J 0P6 Tel: 403 279-3646 Wireless: 1 855 SCORE85 Fax: 403 301-5380 E-mail: info@creditslab.com Web: creditslab.com	CAN	**Yes** M5-Loans
	3. Canada Credit Fix Inc. A: 9625 Macleod Trail SW, Calgary, AL, T2J 0P6 T: 1 866 530-3646 F: 403 301-5380 E-mail: info@canadacreditfix.com W: canadacreditfix.com	CAN	**Yes** M4-Debt settlement services M6-Identity theft restoration M6-Foreclosure mitigation M2-Consumer proposal
Administration of payment arrangements with creditors (consumer proposal type) (M2)	**4. AJB solutions** A1: 4220, Boul. St-Martin O. Laval, QC. A2: 1078, Ste-Hélène, bureau 201, Longueuil, QC. T: 514 313-6033 E-mail: josee@ajbsolutions.ca W:	QC	**Yes** M4-Debt settlement services M5-Loans and debt consolidation M6-Bankruptcy and voluntary deposit

Business Model	Company and Contact Information	Territory Serviced	Hybrid Model
Budget counselling (M3)[295]			
Debt settlement services (M4)	**5. Cambridge Life Solutions (APR)** W: www.cambridgelifesolutions.ca/	N/A	**No**
	6. Total Debt Freedom (APR) A: 1650 Dundas St East, # 205, Whitby, ON. L1N 2K8 T: 416 855-0500 E-MAIL: info@totaldebtfreedom.ca W: www.totaldebtfreedom.ca	ON	**Yes** M3
	7. Canada Debt Settlements A: 61 Alness St., Suite 201A, Toronto, ON. M3J 2H2 T: 905 754-5200 WL: 877 475-3939 W: http://www.canadadebtsettlements.ca	ON	**No**
	8. **Groupe Solution2** A: 1275, rue Gay Lussac, Boucherville, QC J4B 7K1 T: 514 393-2843	QC	**Yes** M5-Loans and debt consolidation M2-Consumer proposal
	9. Le petit cochon rose A1: 7895, rue Notre-Dame E, Montréal, QC, H1L 3K7 A2: 203-1275, rue Gay-Lussac, Boucherville, QC, J4B 7K1	QC	**Yes** M5- Loans and debt consolidation M2- Consumer proposal
	10. PAF redressement A: 9880 Clark, bureau 350, Montréal, QC, H3L 2R3 T: 514 331-2965 F: 514-331-2929 E-mail: info@paf.ca W: www.paf.ca/redressement	QC	**Yes** M2- Consumer proposal M3- Budget counselling M5-Financial management
	11. **SOS Dettes (APR**) A: 1547 Merivale Rd. Unit 240, Nepean ON, K2G 4V3 T: 514 375-0138 TF: 1 866 615-1226 E-mail: info@sosdettes.ca W: www.sosdettes.ca	ON QC	**Yes** M3- Budget counselling

[295] All companies offering “budget counselling” services offered a hybrid service including other services, notably: debt negotiation/settlement or debt consolidation.

Business Model	Company and Contact Information	Territory Serviced	Hybrid Model
	12. 1paiementparmois TF: 1 855 338-8373 E-mail: info@1paiementparmois.ca W: http://1paiementparmois.ca/solutions-aux-dettes/	ON QC	**Yes** M2- Consumer proposal M5- Debt consolidation
	13. Loans Canada A: 1801-1 Yonge Street, Toronto, ON, M5E 1W7 TF: 1 877 995-6269 E-mail: info@loanscanada.ca W: loanscanada.ca	BC ALB SK MB ON QC NS NB NFL PEI	**Yes** Also offers various types of loans M1- Credit file improvement using a credit card and "*credit rehabilitation savings program"* M2- Consumer proposal M3- M5 – Debt consolidation M6- Bankruptcy
Debt settlement services (M4) Loan/ Debt consolidation (M5) Others (M6)[296]	**14. Credit pro** A: 3310, 100e Ave, Suite 225, Laval, QC, H7T 0J7 T: 514 886-0074 E-mail: info@dettes-pro.com W: credit-pro.ca	Montreal and Laval	**Yes** M2- Consumer proposal
	15. Soludettes WL: 1 844 440-1444 E-mail: info@soludettes.ca W: soludettes.ca	ON QC	**Yes** M6- Voluntary deposit M5- Debt Consolidation M5- Mortgage refinancing M2- Consumer proposal
	16. Dettes zéro WL: 1 855 338-8370 W: detteszero.ca	ON QC	**Yes** M2- Consumer proposal M5- Mortgage refinancing M6- Voluntary deposit M6- Bankruptcy M3- Budget review

[296] All companies offering "other" services, including bankruptcy services, offered a hybrid service that included other services, notably debt negotiation/settlement services.

Business Model	Company and Contact Information	Territory Serviced	Hybrid Model
	17. Full Circle Debt Solutions A: 10-524 King George Blvd #210, Surrey, BC V3T 2X2 T: 604 585-DEBT (3328) WL: 1 877 220-DEBT (3328) F: (604) 585-3321 E-mail: ClientServices@DebtGone.ca W: http://debtgone.ca	BC ALB With affiliates in various provinces (SAS, ON)	**Yes** M2- Consumer proposal M3- Budget counselling M6- Bankruptcy
	18. 4 Piliers Groupe-Conseil A1: 81 boul. Hymus, Montréal, QC, H9R 1E2 A2: 203-14439 104th Ave, Surrey, BC, V3R 1M1 T: 514 600-0724 WL: 866 690-DEBT (3328) W: https://www.4pillars.ca	Several offices in each province / 50 offices in Canada	**Yes** M1- Credit file/score repair M2- Settlement administration / Consumer proposal M3- Budget counselling
	19. Solution dette point com A: No address, established in Laval with financial recovery professionals across Quebec WL: 1 877 376-8994 E-mail: service@solutiondette.com W: www.solution-dette.com	QC	**Yes** M2- Settlement administration / Consumer proposal M3- Budget counselling