

# Consumer Credit Division

Screen Scraping

The Trust and Loan Corporations Act, 1997

The Payday Loans Act

## SCREEN SCRAPING

**Date:** October 4, 2021

### ISSUE

Staff of the Financial and Consumer Affairs Authority of Saskatchewan (FCAA) (Staff) are aware of business activities whereby Saskatchewan consumers are requested to provide their bank account login information, including passwords and other identifying information, in order for an entity to provide various products and services (screen scraping). These activities are carried out by entities subject to licensing under *The Trust and Loan Corporations Act, 1997* (T&L Act) and *The Payday Loans Act* (PDLA), and include scenarios where the entity carries out screen scraping directly and where the entity carries out screen scraping indirectly by linking consumers to a third-party.

### BACKGROUND

Screen scraping is a method whereby a consumer provides login information to their bank account thereby allowing the third party to access their financial data. As set out in the *Final Report – Advisory Committee on Open Banking* dated April, 2021 (Report), this allows consumers “...to share their financial data to access a broad range of financial management tools.”<sup>1</sup> For purposes of this advisory, a bank account is any deposit account at an authorized deposit-taking institution, and includes accounts held at banks, trust corporations and credit unions.

As noted in the Report, “*Screen scraping creates security and liability risks to Canadians and their financial institutions...*”<sup>2</sup>. The FCAA carried out a review of some bank account agreements, and noted a general prohibition of consumers sharing their login information. As set out in the agreements, consequences of sharing this information include a consumer being liable for any losses that occur.

### LEGISLATIVE REQUIREMENTS

#### The Payday Loans Act (PDLA)

*The Payday Loans Regulations* (PDL Regulations) prohibit a payday lender from obtaining information that would allow access to a borrower’s bank account except for a pre-authorized debit (PAD) arrangement:

16(2) No payday lender shall do any of the following:

---

<sup>1</sup> [https://www.canada.ca/content/dam/fin/consultations/2021/acob-ccsbo-eng.pdf\\_page\\_7](https://www.canada.ca/content/dam/fin/consultations/2021/acob-ccsbo-eng.pdf_page_7), accessed October 4, 2021

<sup>2</sup> Ibid.

...  
(c) require, request or accept information that would give the payday lender direct access to a borrower's bank account, except for the purposes of pre-authorized payments with respect to a specific payday loan agreement;

#### The Trust and Loan Corporations Act, 1997 (T&L Act)

The T&L Act and *The Trust and Loan Corporation Regulations, 1999* (T&L Regulations) do not have provisions addressing access to a consumer's bank account. However, Part III and Part VI of the T&L Act set out broad requirements that persons need to meet in order to obtain and maintain an authorization under the T&L Act, including a suitability assessment and provisions allowing for regulatory action if an entity is carrying on business in a manner that is prejudicial to the public interest.

### **APPLICATION OF THE LEGISLATION – PERMITTED ACTIVITIES AND NECESSARY DISCLOSURES**

#### PDLA

Section 16(2)(d) of the PDL Regulations prohibits a payday lender from requiring, requesting or accepting information that would give a payday lender direct access to a borrower's bank account, except for the purposes of pre-authorized payments.

As login information is not required to establish a pre-authorized payment, a payday lender cannot obtain the login information required to carry out screen scraping.

The PDLA is administered by the Director, Payday Loans (Director). An established principle of legislative interpretation is that Acts need to be interpreted in light of their purpose, intent and context. As described above, the PDLA expressly prohibits a payday lender from obtaining information that would allow access to a borrower's bank account. Allowing a payday lender to use a third party to carry out this activity would ignore the protections established in that provision.

Accordingly, it is the Director's position that the prohibition of receiving, requesting or accepting login information by a payday lender is contravened when a payday lender engages a third party for that purpose. Consequently, whether done directly by a payday lender or indirectly by a third party, screen scraping is a prohibited activity for payday lenders issuing payday loans.

This position is consistent with that previously communicated to payday lenders.

## T&L Act

The T&L Act is administered by the Superintendent of Financial Institutions (Superintendent). The Superintendent is aware of the risks and potential liability to consumers arising from screen scraping, as set out in the Report.

The Superintendent is aware of wide-spread screen scraping activity carried on by entities authorized under the T&L Act. Accordingly, applying a different standard to applicants would result in an uneven and unfair environment. For purposes of this advisory, all persons licensed or registered pursuant to the T&L Act, including loan brokers, are referred to as licensees.

In order to address the risks to consumers arising from screen scraping, the Superintendent expects applicants and licensees to provide Saskatchewan consumers clear and understandable disclosure of the consumer's responsibility to review their agreements with the other financial institutions to determine:

- if the consumer is permitted to provide their login information;
- what the consequences of disclosure of login information may be; and,
- liability that may result from the disclosure of login information.

These consumer disclosures should: be in writing; be set out in a manner at least as prominent as other provisions in the relevant agreements entered into by the consumer; and be made available to the Saskatchewan consumer prior to the consumer being requested to provide their login information.

In addition to setting out the above information in the appropriate agreement(s), applicants and licensees are encouraged to update websites and electronic applications to provide similar information, particularly at the time the consumer is provided the opportunity to submit their login information.

Persons authorized under the T&L Act using third party service providers that request login information, such as aggregators, also need to provide the above information prior to the consumer being directed to the third party.

This position is revised from information previously communicated to some persons seeking a licence under that T&L Act, who were informed that screen scraping activities were not permitted when dealing with Saskatchewan consumers.

## **ADMINISTRATION**

Going forward, staff will make inquiries of applicants seeking an authorization under the T&L Act to determine whether the applicant uses screen scraping directly, or indirectly through the use of a third party. Applicants and licensees that set out that they use screen scraping will be asked to confirm that they are providing the necessary disclosures to Saskatchewan consumers. Staff may request documentation to verify this information.

Licensees under the T&L Act are required to make an annual filing through the FCAA Registration and Licensing System (RLS) (<https://fcaa.saskatchewan.ca>). Changes to RLS are underway and are expected to be in effect commencing with the December 2021 annual submission whereby licensees will self-identify if they, directly or indirectly, use screen scraping and, if so, whether they provide the disclosures set out above.