

CRIMINAL INTEREST RATE

Criminal interest rate

347. (1) Despite any other Act of Parliament, every one who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate, is

(a) guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six months or to both.

Definitions

(2) In this section,

"credit advanced"
« *capital prêté* »

"credit advanced" means the aggregate of the money and the monetary value of any goods, services or benefits actually advanced or to be advanced under an agreement or arrangement minus the aggregate of any required deposit balance and any fee, fine, penalty, commission and other similar charge or expense directly or indirectly incurred under the original or any collateral agreement or arrangement;

"criminal rate"
« *taux criminel* »

"criminal rate" means an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement;

"insurance charge"
« *frais d'assurance* »

"insurance charge" means the cost of insuring the risk assumed by the person who advances or is to advance credit under an agreement or arrangement, where the face amount of the insurance does not exceed the credit advanced;

"interest"
« *intérêt* »

"interest" means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes;

"official fee"
« *taxe officielle* »

"official fee" means a fee required by law to be paid to any governmental authority in connection with perfecting any security under an agreement or arrangement for the advancing of credit;

“overdraft charge”

« *frais pour découvert de compte* »

“overdraft charge” means a charge not exceeding five dollars for the creation of or increase in an overdraft, imposed by a credit union or caisse populaire the membership of which is wholly or substantially comprised of natural persons or a deposit taking institution the deposits in which are insured, in whole or in part, by the Canada Deposit Insurance Corporation or guaranteed, in whole or in part, by the Quebec Deposit Insurance Board;

“required deposit balance”

« *dépôt de garantie* »

“required deposit balance” means a fixed or an ascertainable amount of the money actually advanced or to be advanced under an agreement or arrangement that is required, as a condition of the agreement or arrangement, to be deposited or invested by or on behalf of the person to whom the advance is or is to be made and that may be available, in the event of his defaulting in any payment, to or for the benefit of the person who advances or is to advance the money.

Presumption

(3) Where a person receives a payment or partial payment of interest at a criminal rate, he shall, in the absence of evidence to the contrary, be deemed to have knowledge of the nature of the payment and that it was received at a criminal rate.

Proof of effective annual rate

(4) In any proceedings under this section, a certificate of a Fellow of the Canadian Institute of Actuaries stating that he has calculated the effective annual rate of interest on any credit advanced under an agreement or arrangement and setting out the calculations and the information on which they are based is, in the absence of evidence to the contrary, proof of the effective annual rate without proof of the signature or official character of the person appearing to have signed the certificate.

Notice

(5) A certificate referred to in subsection (4) shall not be received in evidence unless the party intending to produce it has given to the accused or defendant reasonable notice of that intention together with a copy of the certificate.

Cross-examination with leave

(6) An accused or a defendant against whom a certificate referred to in subsection (4) is produced may, with leave of the court, require the attendance of the actuary for the purposes of cross-examination.

Consent required for proceedings

(7) No proceedings shall be commenced under this section without the consent of the Attorney General.

Application

(8) This section does not apply to any transaction to which the *Tax Rebate Discounting Act* applies.

R.S., 1985, c. C-46, s. 347; 1992, c. 1, s. 60(F); 2007, c. 9, s. 1.

Definitions

347.1 (1) The following definitions apply in subsection (2).

“interest”

« *intérêts* »

“interest” has the same meaning as in subsection 347(2).

“payday loan”

« *prêt sur salaire* »

“payday loan” means an advancement of money in exchange for a post-dated cheque, a pre-authorized debit or a future payment of a similar nature but not for any guarantee, suretyship, overdraft protection or security on property and not through a margin loan, pawnbroking, a line of credit or a credit card.

Non-application

(2) Section 347 and section 2 of the *Interest Act* do not apply to a person, other than a financial institution within the meaning of paragraphs (a) to (d) of the definition “financial institution” in section 2 of the *Bank Act*, in respect of a payday loan agreement entered into by the person to receive interest, or in respect of interest received by that person under the agreement, if

(a) the amount of money advanced under the agreement is \$1,500 or less and the term of the agreement is 62 days or less;

(b) the person is licensed or otherwise specifically authorized under the laws of a province to enter into the agreement; and

(c) the province is designated under subsection (3).

Designation of province

(3) The Governor in Council shall, by order and at the request of the lieutenant governor in council of a province, designate the province for the purposes of this section if the province has legislative measures that protect recipients of payday loans and that provide for limits on the total cost of borrowing under the agreements.

Revocation

(4) The Governor in Council shall, by order, revoke the designation made under subsection (3) if requested to do so by the lieutenant governor in council of the province or if the legislative measures described in that subsection are no longer in force in that province.

2007, c. 9, s. 2.