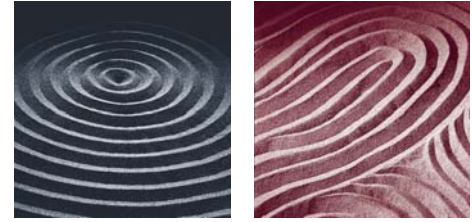


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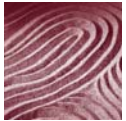
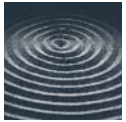
MONTREAL

Disclosing the Cost of Credit Consumer Leasing and Financing

Presented by:

Jennifer E. Babe, Partner,
Miller Thomson LLP and
Wende Rapson
General Motors Acceptance
Corporation of Canada LTD.

December 05, 2005



Disclosing the Cost of Credit

Consumer Leasing and Financing

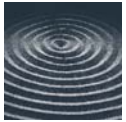
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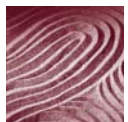
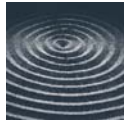
Wende Rapson
General Motors Acceptance
Corporation of Canada Ltd.



- With thanks to Michael Burke of Blake Cassels & Graydon LLP
- Some of these slides were prepared by Jennifer Babe and Michael Burke for a May 2005 presentation to the Canadian Finance & Leasing Association



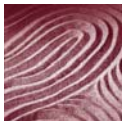
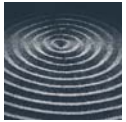
Overview



1. Which laws are in effect or coming?
2. To whom does the Ontario Act apply?
3. Disclosures for leases and conditional sales :
 - A. Generally
 - B. Overlap with other statutes
 - C. Timing and Form of Initial Disclosure
 - D. Impact of non-disclosure



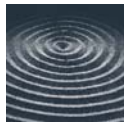
Overview, cont'd



4. Disclosures for Leases:
 - A. Part VIII vs. Part IV leases
 - B. IFC: Ontario vs. Alberta & British Columbia
 - C. Residual obligation leases
5. Disclosure for conditional sales agreements
 - A. Generally
 - B. "Cost of Borrowing"
 - C. New Rights to Buyer
6. Issues
 - A. Amendments/Additional Disclosures
 - B. Administration Charges
 - C. Rebates to Cash Customers
 - D. PPSA charges



1. Which laws are in effect or coming?

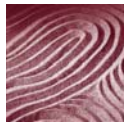


A. Statutes in Force



– Alberta

- *Fair Trading Act* enacted Apr./98 and in force Sept./99, as since amended

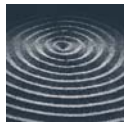


– Ontario

- Consumer Protection Act, 2002 and in force July 30, 2005

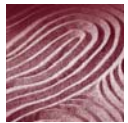


1. Which laws are in effect or coming?



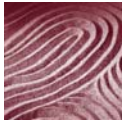
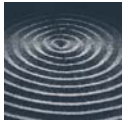
B. Statutes not yet in force

– British Columbia



- *Business Practices and Consumer Protection Act* enacted Mar./04

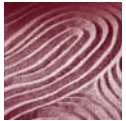
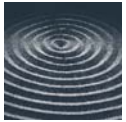
- cost of credit provisions schedule to come into force on Jan.1/06, but may be delayed to allow time to amend the BC Motor Vehicle Dealer Act leasing regulations and to address “level playing field concerns” between bank and non-bank financiers



Statutes not yet in force, cont'd

– Saskatchewan

- *Cost of Credit Disclosure Act, 2002* (“CCDA 2002”) enacted Spring 2002
- Draft Regs released for comment in Fall 2002
- Revised draft Regs released for comment on Mar. 3/05
- May come into effect in summer 2006



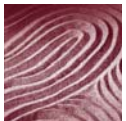
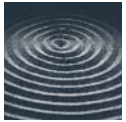
Statutes not yet in force, cont'd

– New Brunswick

- *Cost of Credit Disclosure Act* enacted in Jun./02
 - Not in force
- No Regs have been released

– Nova Scotia

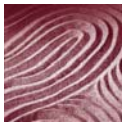
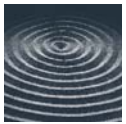
- Amendments to *Consumer Protection Act* enacted in Nov./00
 - Not in force
- No Regs have been released



Statutes not yet in force, cont'd

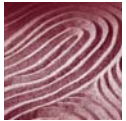
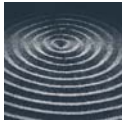
– Manitoba

- First reading by Manitoba Legislature on Mar. 23/05, called *The Consumer Protection Amendment Act (Cost of Credit Disclosure and Miscellaneous Amendments)*
- May be in force in summer, 2006



2. To whom does the Ontario Act apply?

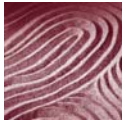
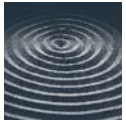
- B.C./Man. = an individual who enters into lease *primarily* for personal, family or household purposes
- Alberta = same as B.C./Man. + “farming” purpose
- Saskatchewan = same as B.C./Man. + “farm, ranch and feedlot” operators
- Ontario = an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes
- B.C./Alta./Sask./Man. = lender able to rely on *signed* statement by lessee as to purpose of entering into lease, if lessor believes in good faith that statement is true



3. Disclosures for Leases/Conditional Sales

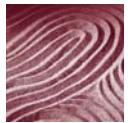
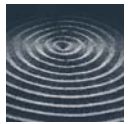
A. Generally:

- Disclosures required for a lease/conditional sale are not easily stated or found in one Part of CPA 2002
- Assume that all requirements in CPA 2002 and Regs apply and then by checking the exceptions in CPA 2002 and Regs, carve out certain disclosure elements for your unique situation
- Section 4 of CPA 2002 states that if a consumer agreement meets the criteria for more than one type of agreement set out in the Act, then it must meet all of the applicable criteria, except as excluded by the Regs
- Part IV of CPA 2002 mandates specific disclosures, cooling off periods, content and cancellation rights for 6 types of consumer agreements:



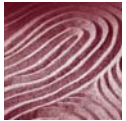
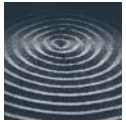
3. Disclosures for Leases/Conditional Sales, cont'd.

- i. future performance agreements [e.g.. goods ordered and to be delivered and/or paid later]
- ii. direct agreements [e.g.. consumer agreements negotiated or concluded in person at a place other than the supplier's place of business, trade show or auction]
- iii. internet agreements [e.g.. goods or services ordered over the internet]
- iv. remote agreements [e.g.. the parties are in different locations, such as goods ordered over the phone]
- v. time share agreements [e.g.. for real estate]
- vi. personal development services [e.g.. fitness, diet, modeling]



3. Disclosures for Leases/Conditional Sales, cont'd.

- For lenders who are in the business of entering into leases and conditional sales of goods, rules for the first 4 types of consumer agreements will be particularly relevant



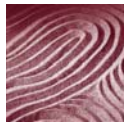
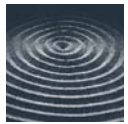
3. Disclosures for Leases/Conditional Sales, cont'd.

B. Overlap with other Statutes:

- S. 9 of Regs provides that where goods/services are supplied pursuant to an agreement governed by:
 1. the existing *Motor Vehicle Dealers Act* or pending *Motor Vehicle Dealers Act, 2002*,
 2. Real Estate & Business Brokers Act [2002]
 3. Travel Industry Act [2002]
 4. certain bereavement industry statutes

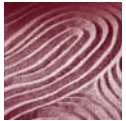
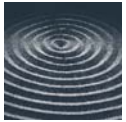
then there are exceptions to certain of the rules applicable to:

- future performance agreements (ss. 22, 23 and 26)
- internet agreements (whole part, ss. 37 to 40)
- direct agreements (whole part, ss. 41 to 43)
- remote agreements (whole part, ss. 44 to 47)



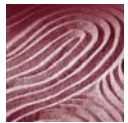
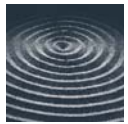
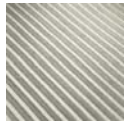
3. Disclosures for Leases/Conditional Sales

- For example, there is no cooling off period for a lease/conditional sale of a motor vehicle supplied by a licensed motor vehicle dealer



3C Timing/Form of Initial Disclosure

- s. 89(1) of CPA 2002 requires that disclosure statement for a Part VIII lease be delivered before earlier of:
 - the time lessee enters into lease
 - the time lessee makes any payment in connection with lease
- s. 74(1) of Regs provides that disclosure statement may be a separate document or part of the lease
- s. 79(1) of CPA 2002 requires an initial disclosure for a credit agreement to be delivered at or before the time that borrower enters into the credit agreement
- s. 70(1) of Regs provides that disclosure statement may be a separate document or part of credit agreement



Consequences of Non-Compliance with Disclosure Requirements

D. Impact of Non-disclosure:

- s. 98 of CPA 2002 allows a consumer to claim a refund for 1 year from the payment date, for any amount paid in contravention of CPA 2002
- s. 93 of CPA 2002 provides that consumer agreement is not binding on consumer, unless a court determines that it would be inequitable in the circumstances for consumer not to be bound



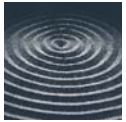
Consequences of Non-Compliance with Disclosure Requirements, cont'd.

- s. 75 of Regs provides that a lessee need not pay:
- the implicit finance charge if no disclosure statement is provided or
 - any amount in excess of the specified implicit finance charge in the disclosure statement provided
- s. 70 of CPA 2002 provides that a borrower need not pay:
- the cost of borrowing if no disclosure statement is provided or
 - any amount in excess of the specified cost of borrowing in the disclosure statements provided

Biggest Fear: Class Actions!



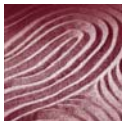
4. Disclosure for Leases

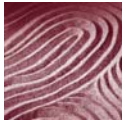
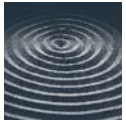


A. Part VIII vs. Part IV leases:



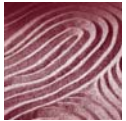
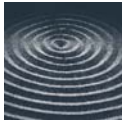
- Part VIII of CPA 2002 applies to following leases (s. 87):
 - leases for an original or cumulative term \geq 4 months
 - leases for an indefinite term or renewed automatically
 - residual obligation leases (e.g.. open-end leases or guaranteed residual leases)





4. Disclosure for Leases, cont'd.

- S. 12 of Regs provides that where a lease is governed by Part VIII, then the lease is exempted from the rules for:
 - future agreements (ss. 22 to 26)
 - personal development services (ss. 29 to 36),
 - internet agreements (ss. 37 to 40)
 - direct agreements (ss. 41 to 43)
 - remote agreements (ss. 44 to 47)



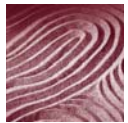
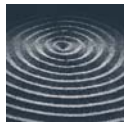
Disclosure Statement Elements for a Part VIII Lease

Information required to be disclosed by s. 89(2) of CPA 2002 and s. 74(2) of Regs (underlined words are defined terms in CPA 2002 or Regs):

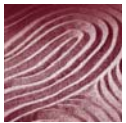
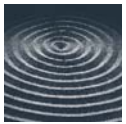
1. the consumer agreement is a lease
2. length of the lease term or that the lease term is indefinite
3. fair and accurate description of the leased goods
4. lease value of the leased goods [Note rebates to cash customers]
5. nature and the amount of each advance to be made to the lessee in connection with the lease before or at the beginning of the lease term, including, without limitation, an advance for an expense to be incurred by the lessee in connection with the lease before or at the beginning of the lease term, even if the expense is not payable until after the beginning of the lease term



Disclosure Statement Elements for a Part VIII Lease cont'd



6. nature and amount of each payment to be made by the lessee in connection with the lease before or at the beginning of the lease term, other than a periodic payment
7. timing and number of the periodic payments to be made by lessee under the lease and the amount of each payment
8. capitalized amount
9. estimated residual value of the leased goods
10. for an option lease,
 - i. when and how the option may be exercised,
 - ii. amount of the additional payment that the lessee is required to make in order to exercise the option at the end of the lease term, and

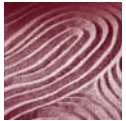
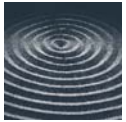


Disclosure Statement Elements for a Part VIII Lease, cont'd.

- iii. manner of determining the amount of the additional payment that the lessee is required to make in order to exercise the option before the end of the lease term.

11. for a residual obligation lease,

- i. amount that the lessee is required to pay to the lessor under the lease at the end of the lease term if the realizable value of the leased goods at the end of the lease term equals the estimated residual value of the lease goods, and
- ii. a statement that the lessee's maximum liability at the end of the lease term is the sum of,

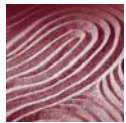
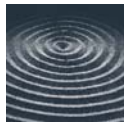


Disclosure Statement Elements for a Part VIII Lease, cont'd.

- A. the amount that the lessee is required to pay to the lessor under the lease at the end of the lease term if the realizable value of the leased goods at the end of the lease term equals the estimated residual value of the leased goods, and
 - B. the difference, if any, between the estimated residual value of the leased goods and the realizable value of the leased goods at the end of the lease term.
- 12. the circumstances, if any, in which the lessor may terminate the lease before the end of the lease term
 - 13. the circumstances, if any, in which the lessee may terminate the lease before the end of the lease term



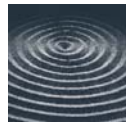
Disclosure Statement Elements for a Part VIII Lease, cont'd.



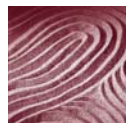
14. the amount or, if the amount cannot be determined at the time of the disclosure, the manner of determining the amount, of the payments, if any, that the lessee is required to make on early termination of the lease
15. the circumstances, if any, in which the lessee is required to make a payment in connection with the lease that is not disclosed under the preceding paragraphs and the amount or, if the amount cannot be determined at the time of the disclosure, the manner of determining the amount, of the payment (e.g.. unreasonable or excessive wear or use)
16. implicit finance charge for the lease



Disclosure Statement Elements for a Part VIII Lease, cont'd.

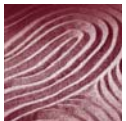
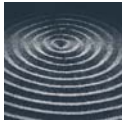


17. annual percentage rate for the lease



18. total lease cost

19. the currency in which amounts are
expressed, if it is not Canadian currency

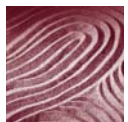
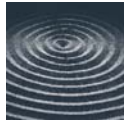


4. Disclosure for Leases, cont'd

- Part IV of CPA 2002 applies to following leases that are not covered by Part VIII of CPA 2002:
 - leases for a term of less than 4 months
 - leased goods are provided so that supplier can provide a service to lessee (s. 77 of Regs) [e.g.. home hot water tank]
 - periodic payments under lease may vary during lease term and, therefore, cannot determine amount of every periodic payment at start of lease (s. 77 of Regs)
- key requirement for Part IV Leases: on early termination lessee only liable for arrears of rentals + lessor's removal expenses + penalties for unreasonable or excessive wear or use of leased goods



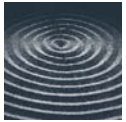
Disclosure for Part IV Leases



- If the lease is not governed by Part VIII, then s. 40 of Regs mandates the disclosures set out in Part IV [the 6 types of consumer agreements] and in s. 40 of Regs



4B. Implicit Finance Charge



Cost of borrowing for leases



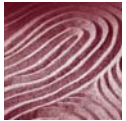
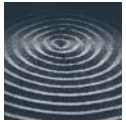
Alberta/B.C./Sask.



- = all non-refundable payments required to be made by lessee at or before the beginning of or during the lease term plus “assumed residual payment” minus total amount advanced to lessee

Ontario

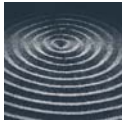
- = all non-refundable payments (subject to certain exceptions) plus “assumed residual payment” minus “capitalized amount”



- Ontario's IFC = $(A - B) + C - D$, where:
 - A = all payments made
 - B = payments made by lessee at start of lease (part of Ontario definition of "capitalized amount")
 - C = assumed residual payment
 - D = capitalized amount; D can be restated as being equal to $(E - B)$, where E=all advances
- BC's and Alberta's IFC = $A + C - E$
- You get the same amount



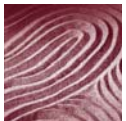
Assumed Residual Payment



- used to calculate “Lease APR” and “implicit finance charge”

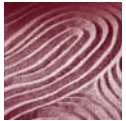
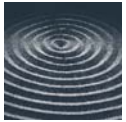


- the payment required to be made by lessee at end of lease term



Alberta/B.C./Sask.

- Option lease where end of term “option price” < “estimated residual value”: assumed residual payment = option price
- Any other lease: assumed residual payment = “estimated residual value” plus any amount that lessee required to pay in the ordinary course of events at end of lease term
 - Examples: “estimated residual cash payment” for a residual obligation lease, disposition fee, restocking fee and drop-off fee, but excludes contingent payments, such as excess kilometre charges or excess wear and tear costs



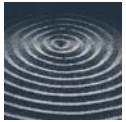
Assumed Residual Payment, cont'd

Ontario

- Option lease: assumed residual payment = lesser of:
 - (i) “estimated residual value” plus any amount that lessee is required to make in the ordinary course of events at the end of lease term; and
 - (ii) end of term “option price”
- Residual obligation lease: assumed residual payment = “estimated residual value” plus “estimated residual cash payment”



Assumed Residual Payment cont'd



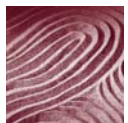
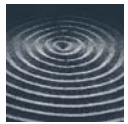
Ontario cont'd



- Any other lease: assumed residual payment = “estimated residual value” plus any amount that lessee is required to make in the ordinary course of events at the end of lease term
- Amount of assumed residual payment will be different in Ontario than in Alberta/B.C./Sask. if option price < estimated residual value but not < the total amount in (i) on preceding slide.



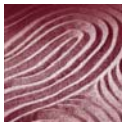
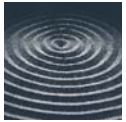
Residual Obligation Lease



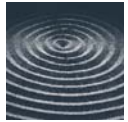
- “residual obligation lease” defined in s. 86 of CPA [i.e. open ended lease]
- s. 90 caps the lessees liability as prescribed in the regulations
- s. 76 of the regs sets the formula for the cap
- Generally speaking the maximum is:
 - i) (amount lessee has to pay at lease end if realizable value of goods = estimated residual value) plus
 - ii) Estimated residual minus “realizable value” subject to certain rules



Residual Obligation Lease cont'd



- B.C., Alberta, Sask.: use “net” proceeds of disposition
- Ontario: uses “price”, exclusive of taxes, at which leased goods disposed; sale costs are not deducted
- Result: why would lessors use open leases for Ontario “consumers”? Watch for sole proprietors



Residual Obligation Lease, cont'd

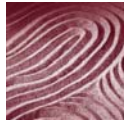
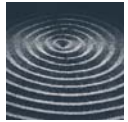
- Ontario: same as Alberta/B.C./Sask., except that “price, exclusive of taxes, at which leased goods disposed” used vs. “net proceeds of disposition”
- Ontario does not allow for the costs of the sale



5. Disclosure for Conditional Sales Agreements

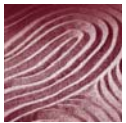
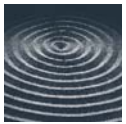
A. Generally:

- For supplier credit agreements, s. 11(2) of Regs provides that both Parts IV and VII apply as follows:
 - rules in Part IV of CPA 2002 apply to that part of the agreement under which supplier supplies the goods or services (excluding credit or loan of money) to the consumer
 - rules in Part VII of CPA 2002 apply to the extension of fixed credit to the consumer
 - But recall application of s. 9 of Regs to licensed motor vehicle dealers
 - If Part IV applies, amendment, renewal and extension rules in ss. 41-42 of Regs also apply



Disclosure Statement Elements for Conditional Sales

- Part VII applies to the extension of fixed credit to the consumer
- Part IV applies to that part of the agreement under which supplier supplies goods/services
 - what type of Part IV consumer agreement is the supplier credit agreement?
 - a supplier credit agreement is always a future performance agreement
 - but some future performance agreement rules will not apply if agreement is also another type of Part IV consumer agreement (ss. 15 – 19 of Regs)

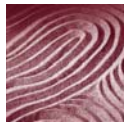
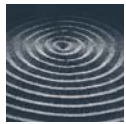


Disclosure Statement Elements for Conditional Sales cont'd

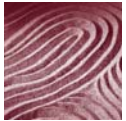
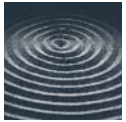
- Information required to be disclosed by s. 79(2) of CPA 2002 and s. 63 of Regs (underlined words are defined terms in CPA 2002 or Regs):
 1. total of the advances to be made to the borrower
 2. if more than one advance is to be made to the borrower, the nature, timing and amount of each advance
 3. length of the term of the credit agreement
 4. cost of borrowing
 5. length of the term of the amortization period, if different from the length of the term of the credit agreement



Disclosure Statement Elements for Conditional Sales cont'd



6. interest rate payable by the borrower under the credit agreement, if the rate will not change during the term of the credit agreement
7. if the interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement
 - i. the initial interest rate payable by the borrower under the credit agreement,
 - ii. the manner of determining the annual interest rate at any time during the term of the credit agreement, and

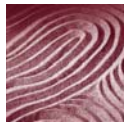
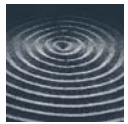


Disclosure Statement Elements for Conditional Sales cont'd

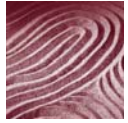
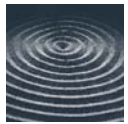
- iii. unless the amount of the scheduled payments is adjusted to account for changes in the interest rate, the lowest interest rate at which the scheduled payments would not cover the interest that would accrue between consecutive scheduled payments based on the initial outstanding balance
8. date on which interest begins to accrue under the credit agreement
 9. the circumstances under which interest is compounded under the credit agreement



Disclosure Statement Elements for Conditional Sales cont'd



10. for each element of the cost of borrowing, other than interest, the nature of the element and amount payable by the borrower
11. details with respect to grace periods under the credit agreement
12. annual percentage rate for the credit agreement

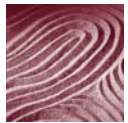
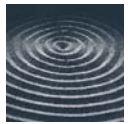


Disclosure Statement Elements for Conditional Sales cont'd

13. optional services accepted by the borrower, the charge for each optional service, the borrower's right to terminate any optional service of a continuing nature and the manner of exercising that right, unless such information is disclosed in a separate statement delivered to the borrower before the optional services are provided to the borrower
14. total of all payments the borrower is required to make in connection with the credit agreement and the timing and amount of each payment, including, without limitation, any down payment, trade-in allowance, balloon payment and final payment



Disclosure Statement Elements for Conditional Sales cont'd

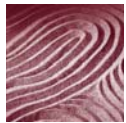
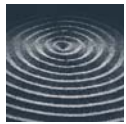


15. if the credit agreement does not require the borrower to make scheduled payments
 - i. the circumstances under which the outstanding balance or a portion of it is required to be paid by the borrower, or
 - ii. the provisions of the credit agreement that set out those circumstances

16. method used to apply each payment by the borrower against the accumulated cost of borrowing and against the outstanding principal balance



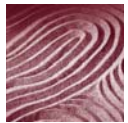
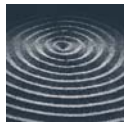
Disclosure Statement Elements for Conditional Sales cont'd



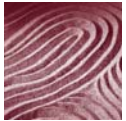
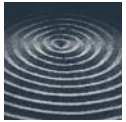
17. prepayment rights, charges and penalties that apply to the credit agreement
18. method of calculating the amount that the lender is required to refund or credit to the borrower under s. 76(2) of CPA 2002 and s. 60 of Regs, if the borrower prepays the full outstanding balance under the credit agreement
19. default charges under the credit agreement



Disclosure Statement Elements for Conditional Sales cont'd



20. if the borrower is giving a security interest in personal property to secure the borrower's indebtedness under the credit agreement, a description of the property that will be subject to the security interest
21. if the credit agreement requires the borrower to purchase insurance,
 - i. that the borrower may purchase the insurance from any insurer who may lawfully provide that type of insurance and may purchase the insurance directly from the insurer or through an agent of the borrower's choice, and



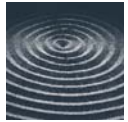
Disclosure Statement Elements for Conditional Sales cont'd

- ii. if the credit agreement gives the lender the following right, that despite subparagraph i, the lender has the right to disapprove, on reasonable grounds, an insurer selected by the borrower

- 22. if the interest rate payable by the borrower under the credit agreement may change during the term of the credit agreement, the information required under items 4 and 14 shall be based on the initial interest rate disclosed under item 7i
- Additional Information as required by the applicable sections in Part IV of CPA 2002 and Regs



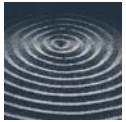
5B. Cost of Borrowing



- More disclosures under CPA 2002 than under existing CPA
 - includes new concept of “advance” = value received by borrower (s. 54(1) of Regs)
 - more detailed rules for calculation of annual percentage rate and cost of borrowing (ss. 55 and 56 of Regs)



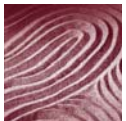
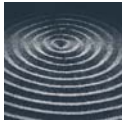
5C. New Rights to Buyer



- prepayment rights without any prepayment charge (s. 76(1) of CPA 2002)
- rebate of non-interest cost of borrowing if prepayment in full (s. 76(2) of CPA 2002; s. 60 of Regs) [e.g.. optional service charges]
- termination of optional services of “continuing nature” provided by lender/seller or its associate (s. 73 of CPA 2002)
- not tied to prepayment of credit and entitled to refund of amounts relating to services not provided at time of termination



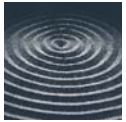
5C. New Rights to Buyer, cont'd.



- New Substantive Rights (cont'd)
 - limits on “default charges” (ss. 66 and 75 of Act)
 - does not include interest on overdue payments
 - can charge compound interest at a higher rate
- Applying special “overlap” rule for supplier credit agreement (s. 11(2) of Regs) and any other applicable overlap rules (ss. 15-19 of Regs)



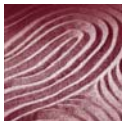
6. Issues



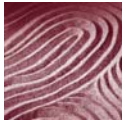
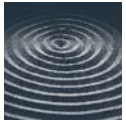
- Subsequent Disclosure Requirements for Credit Agreements for Fixed Credit



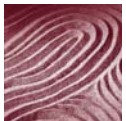
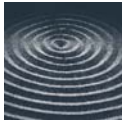
- A. Amendments and Additional Disclosures



- None for leases
- Lots for conditional sales:
 - if floating interest rate used (s. 80(1) of CPA 2002; s. 65 of Regs)
 - if interest rate not floating but changeable and has changed by at least 1% (s. 80(2) of CPA 2002; s. 66 of Regs)
 - if scheduled principal payments are insufficient to cover accrued interest b/c of default charges or borrower's payment defaults (s. 80(3) and (4) of CPA 2002)
 - if credit agreement amended and initial disclosure changes (s. 80(5) of CPA 2002)



- Subsequent Disclosure Requirements for Credit Agreements for Fixed Credit cont'd
 - these supplemental disclosure requirements could apply to a pre-July 30/05 credit agreement if agreement is amended, extended or renewed on or after July 30/05 (in the case of the first 3 items) or if amendment is made on or after July 30/05 (in the case of the 4th item)
 - s. 71(7), (8), (9) and (10) of Regs



- B. Administration Charges
 - Do you allow them? Who sets the amount?
 - Impact on “cost of borrowing” and “IFC”
 - Impact on national advertising
- C. Rebates to Cash Customers
 - “Lease value of leased goods” = price to cash paying customer, after rebates
 - Impact on IFC and national advertising