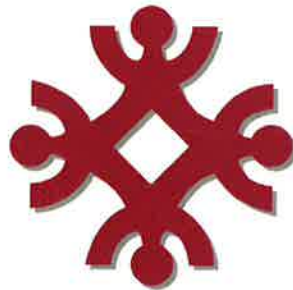


**New Brunswick Financial and  
Consumer Services Commission**

In the Matter of a Request for Comments Concerning:  
Payday Loan Proposed Rules and Maximum Rates and Fees

Submitted By  
**The Saint John Human Development Council**



March 30, 2015

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## **Executive Summary**

The Saint John Human Development Council (HDC) welcomes the opportunity to offer comments on the regulation of the payday loan industry in New Brunswick. We believe that there are two features, in particular, that need to be addressed: the high cost of borrowing, and the debt cycle created by repeat and concurrent borrowing. There is a dearth of data on payday lenders and payday loans in the province, and we have relied on social science research and recent proceedings in other jurisdictions to guide our recommendations.

### **Comments regarding maximum rates and fees that will be set in regulations:**

For the reasons set out in this submission we recommend the following:

- Maximum total cost of credit: \$17 per \$100 loan;
- Maximum percentage of the borrower's net pay: 30%
- Maximum penalty payable upon default: \$25
- Maximum cheque cashing fee: \$3

### **Comments regarding Rule PDL-001: *Payday Loans Licensing and Ongoing Obligations*:**

- In recognition of the debt cycle that can be created with repeat borrowing, we recommend that a regulation be added that would require lenders to offer an extended payment plan to borrowers. The requirement should be triggered by a period of repeat borrowing and modeled after section 23 of British Columbia's Payday Loan Regulation;
- In recognition of the debt cycle that can be created with repeat borrowing, and in keeping with other provincial efforts to address the increasing incidence of concurrent borrowing, we recommend a more robust data collection regime. The annual filing requirements proposed in s.23 will not provide sufficient data to conduct a proper analysis of repeat loans. Payday Regulations under Nova Scotia's Consumer Protection Act set a worthy standard;
- We recommend that licensed internet payday lenders be required to maintain a physical location in the province in order to make loans. A "bricks and mortar" condition would provide a safeguard to consumers. There would be a place for borrowers to ask questions and obtain a copy of their loan agreement. It is found in Nova Scotia's Consumer Protection Act. No such provision is found in PDL-001.

### **Comments Regarding Rule PDL-002 Fees:**

- The fees proposed in Part 2 seem reasonable given the range of fees charged by other provinces.
- We recommend that a portion of the annual licensing fees of payday lenders be set aside and invested in the delivery of community based awareness and financial literacy programs.

Finally, we are concerned about the lack of opportunities for public input in the setting of future rules and regulations for payday loans. We recommend legislative amendments that would mandate a triennial review of payday lending in New Brunswick and, further, that specific provision be made for the representation of the interests of consumers.

## Payday Loans

A payday loan is a small unsecured loan made to a borrower who guarantees repayment in a short period of time—usually within 14 days—with a post-dated cheque or pre-authorized debit.

Payday loans tend to cater to low to moderate-income individuals who are unable to access traditional sources of credit. No credit check is performed

Payday loans are not for the unemployed or those in receipt of social assistance. Borrowers usually have to prove three months of continuous employment, produce a recent utility bill, and have an active chequing account.

**Payday loans are very expensive compared to other ways of borrowing money.**

They have become the most expensive short-term consumer loans on the market.

### Payday Loan Cost vs. Other Ways of Borrowing



The cost of a payday loan in Canada – where they are regulated – ranges from \$17 - \$25 per \$100. In the event of default there are further, substantial fees and charges.

Calculations of costs are based on the following assumptions:

- a payday loan costs \$21 per \$100
- a line of credit includes a \$5 administration fee, plus 7% annual interest on the borrowed amount
- overdraft protection includes a \$5 fee, plus 19% annual interest on the borrowed amount
- a cash advance on a credit card includes a \$5 fee plus 21% annual interest on the borrowed amount.

This comparison is an academic exercise: borrowers who could obtain lower cost loans *would do so*. Payday lenders arose to fill a niche market – cash-strapped working or retired Canadians who are not able to meet their financial obligations.

The short-term nature of a payday loan belies the annual cost of borrowing. The Annual Percentage Rate (APR) of the 14 day loan ranges from 443% in the province with the lowest legislated rate (Manitoba) to 651% in the highest (Nova Scotia.)

Borrowers pay an exorbitant APR because provinces that regulate payday lenders can exempt them from Section 347 of the Criminal Code, which prevents lenders from entering into agreements at a Criminal Interest Rate that exceeds 60%.

Parliament enacted s. 347 to control loan-sharking. It has not been enforced against payday lenders and it is unlikely that it ever will. In Dec 2014, the province of Newfoundland and Labrador, after a three year investigation, opted not to proceed with criminal charges against their unregulated payday loan industry, claiming it was not in the public interest to do so.

According to the Canadian Payday Lenders Association (CPLA), “A payday loan is an unsecured short-term loan to meet unexpected cash needs. When used for short-term cash needs, a payday loan is convenient and economical, but *it is inappropriate to use for long-term or continuing cash needs.*”

Despite this admonition, it is clear that the number of payday customers who are repeat users is increasing. People are using payday loans to make ends meet. It has been noted at regulatory hearings that the accounting firm charged with justifying the typical cost structure of payday loans allows that, given the average size of these loans and their marginal returns, the “survival

of this industry depends on establishing and maintaining a substantial repeat customer base.”

This has been the business model in the United States.

In 2014, the U.S. Consumer Financial Protection Bureau (CFPB) reported that over 80% of payday loans were rolled over or followed by another loan within 14 days. Also in 2014, a Center for Responsible Lending analysis of two new reports on the payday lending industry in California showed that payday lenders, who advertise their products as a one-time quick fix for consumers facing a cash crunch, generate 76% of their revenue from borrowers who take out 7 or more loans per year.

The US federal government is poised to act. In March 2015 the CFPB issued a preliminary proposal that offered two options to ease the burden on repeat

### How It Works:

*“You walk into a payday lender and borrow some money.*

*You just essentially took an advance on your next paycheck by way of a payday loan. What happens when you get paid? Well, you have to pay the loan back plus twenty-five dollars (\$25) per hundred borrowed. Let's say you borrowed four hundred dollars (\$400). You will repay five hundred dollars (\$500). Now your next paycheck is short five hundred dollars (\$500). What do you do?*

*Can you live on that much less? What about rent? What about transportation? What about groceries, medications? Your solution? Get a repeat loan to replace the payment you made to the payday loan company, but this time you may have to borrow five hundred dollars (\$500) to cover the costs. This continues until you reach the maximum amount you are permitted to borrow from that payday loan company. What's next? You go to another payday lender, and now you are running current and repeat loans, a recipe for financial disaster.”*

(Quote by Linda Wilke, Atlantic Credit Counseling Services, February 10, 2015 hearing before the Nova Scotia Utility and Review Board)

borrowers. One option would require lenders to confirm a borrower's ability to pay. Under the second option, for loans of \$500 or less, the lender would be required to provide an affordable repayment schedule and limit the number of loans a borrower could take out consecutively and over the course of a year.

More than half of the payday loans issued in Nova Scotia in 2013-2014 were repeat loans.

Another issue is the number of concurrent loans - when a borrower has two or more payday loans from different lenders. At this point there is no effective way of tracking the extent of the practice. A federal/provincial/territorial committee is examining the matter.

## **Who Uses Payday Lenders?**

The Canadian Payday Loan Association (CPLA) commissioned Thinkwell Research in 2014 to conduct a survey of current payday loan customers in Prince Edward Island, New Brunswick and Nova Scotia.

Their findings include:

- The majority of those surveyed were currently working, with 54% reporting full-time employment, 7% working part-time, and 1% self-employed. More than a quarter of those surveyed are retired (26%);
- Two-thirds (67%) of those surveyed have household incomes of \$25,000 or more, with most of this group reporting that their income falls between \$25,000 and less than \$50,000 (40%) or \$50,000 and less than \$75,000 (18%);
- Nearly one third (31%) of those surveyed said they needed the funds for 'emergency' cash to pay for necessities, followed by approximately one in five (21%) who say they needed help with an unexpected expense;
- The mean loan amount reported was \$360.

According to Nova Scotia's Consumer Advocate, there are serious methodological concerns with the report which call into question the reliability of the consultant's findings/assertions. "The Thinkwell study should be given no weight, and no inference should be drawn from it about payday loan customers in Nova Scotia" (Closing Submission of the Consumer Advocate).

Other than this disputed report (and an equally questionable 2007 survey), there is no publicly available data to determine the profile of payday customers in New Brunswick. The absence of provincial regulation has limited our understanding of the industry – from the number of lenders to the size and number of loans. We are left to extrapolate the data that is available in other jurisdictions.

We do know, however, that payday lenders tend to locate strategically within their target market – the working poor. In a 2007 location analysis submitted as part of a report to the Manitoba Public Utilities Board Hearing to cap payday loan fees, the evidence was unmistakable: that payday lenders disproportionately located in Winnipeg neighborhoods with poorer income

levels. Similar patterns have been noted in location analysis of payday lenders in other Canadian cities.

These location characteristics are borne out as well in New Brunswick's major cities. Payday lenders in Saint John, Fredericton and Moncton cluster around low-income neighborhoods. Schedules A, B and C are maps showing the location of payday lending outlets identified by New Brunswick's Common Front for Social Justice in relation to median family incomes.

This clustering is particularly evident in Saint John. The majority of payday lenders are located in Ward 3, where the overall poverty rate, according to 2012 taxfiler data, was 31.1%. Nearly one in two children (47.9%) in Ward 3 lives in poverty. The ward also contains the highest percentage of renters of any of the City's four wards at 66.5% (see Schedule D).

The economic impact of payday lenders on neighborhoods was examined recently in four U.S. states. In a 2014 study by Howard University's Center on Race and Wealth, researchers found that while the economic benefits from the payday loan industry – payday lenders hire workers, buy goods and services from other industries and generate tax revenues – were reflected in state-wide data, the economic burden fell disproportionately on lower income neighborhoods. When consumers pay payday loan interest and fees, they have less disposable income and, consequently, reduce their spending on local goods and services. The study also found that the short-term structure of payday loans caused borrowers to opt to pay back payday lenders before paying rent, utilities and other expenses.

At least two Canadian cities are using their authority to regulate land use to control the spread of payday lenders. In Winnipeg, payday lenders cannot locate within 1,000 feet of any other cheque-cashing facility or pawnshop, and in April 2014, Surrey passed a zoning by-law to regulate the location of cheque-cashing centres and payday loan stores, stipulating a 400-metre separation. In March 2015, Calgary's Committee on Planning and Urban Development approved a recommendation to develop provisions in the city's Business License Bylaw to regulate payday lending businesses and other so-called "fringe financial institutions," with the focus of limiting their proliferation and regulating their geographic distribution.

## **New Brunswick Legislation**

In 2008, the government passed Bill 4 - An Act Respecting Payday Loans, setting out definitions, licensing requirements, and regulatory provisions for the "fringe banking" industry that was getting established in the province. It defined a payday loan as a "loan with a principal of no more than \$1500 with a term that was no longer than 62 days." The loan was to be made in exchange for a future payment by post-dated cheque or pre-authorized debit. The Act was to come into force on a "day or days to be fixed by proclamation". It was never proclaimed.

Similarly, last spring the government passed Bill 55 - An Act to Amend An Act Respecting Payday Loans – which establishes rules for internet payday loans. It, too, remains unproclaimed.

Once regulations are drafted and promulgated, these pieces of legislation can be put into effect and New Brunswick can join the list of provinces that regulates the industry.

## **Regulatory Scan: Relevant Findings from Two Hearings and a Consensus Report**

We are fortunate to have the benefit of the submissions and final reports of several recent and comprehensive provincial reviews of payday lenders:

- In 2013, the Manitoba Public Utilities Board conducted a public review and consultation of that province's payday loan regulations and the payday loan industry. Manitoba's payday loans regulation came into force October 18, 2010.
- In January 2014, the Ontario Ministry of Consumer Services asked a volunteer panel of stakeholders with expertise in the payday lending industry to discuss how to improve financial protection for payday loan borrowers. In particular, they were asked to recommend changes to the Payday Loans Act (2008) and the regulations made under the Act.
- In 2014 the Nova Scotia Utility and Review Board conducted a hearing respecting payday loans pursuant to the province's *Consumer Protection Act* and its triennial review provisions. Final evidence was received on March 10, 2015 and a decision is pending.

### **Report of the Public Utilities board of Manitoba in respect of the 2013 Payday Loans Review September 23, 2013**

Manitoba implemented some of the country's most stringent regulations over payday loans in 2010. Three years later, pursuant to *The Consumer Protection Act* of Manitoba, the Public Utilities Board conducted a public review of specific aspects of amounts charged to consumers for payday loan transactions.

The Board was mandated to specifically examine and report on the maximum cost of credit. It heard from four interveners and also sourced certain statistical information, consumer and industry information.

The findings of the PUB included the following:

- The Board recognizes that licensed payday lenders are offering a loan product that is desired by its customer group and fills a need not met by mainstream banking institutions; however, payday loans are offered and chosen by a segment of our population some of whom are credit stressed and financially vulnerable.
- Payday loan customers tend to be younger, less educated, and carry financial responsibility for children. These results suggest that payday loan customers are likely to be disadvantaged in a number of important respects and are likely to face significant financial challenges.
- A further significant and compelling policy issue arises from frequency of use of payday loans. Virtually all payday loan customers are frequent users of payday loans. Most of the current literature produced by CAC and previously available in the 2007-08 PUB payday loan hearing supports the statistic that about 75% of loans are being made to repeat borrowers. Frequent payday loan users tend to have lower family incomes than less frequent users.



- The Board concludes that the common denominator of the majority of payday loan customers is their financial vulnerability. They have insufficient savings, insufficient cash flow and have, more than likely, exhausted regular low cost consumer credit options (assuming they qualify for consumer credit options through main line institutions). Therefore, they go to payday lenders to get cash. All of the data of lenders show that only a small percentage fail to pay. Customers are reported to be honorable and intend to repay their loans.

In September of 2013, the Public Utilities Board of Manitoba issued its report reaffirming the basic elements of its regulatory regime. The Board recommended the maximum cost of a loan remain at \$17 for every \$100 borrowed and that the cost of extension and replacement loans should be kept at 5%. The Board also recommended that a limit on loans of 30% of the borrower's net pay should remain in place.

The Board found that the payday loan industry in Manitoba remained financially viable with these rates and that small and large firms continued to operate successfully in the Province. The recommendations of the Board were accepted by the Government.

### **Strengthening Ontario's Payday Loans Act: Payday Lending Panel Findings and Recommendations Report May, 2014**

In January 2014, the Ontario Ministry of Consumer Services asked a volunteer panel of stakeholders with expertise in the payday lending industry to discuss how to improve financial protection for borrowers. The 14 members of the Payday Lending Panel included payday lending businesses, community agencies, consumer advocates and credit counseling experts. It met on six occasions from mid-February to early May 2014.

The panel's discussions focused on seven topics: 1) online and mobile payday loans, 2) new/alternative loan products, 3) concurrent loans and rollovers (high-frequency repeat borrowing), 4) data requirements, monitoring and enforcement, 5) maximum total cost of borrowing, 6) financial education and awareness, and 7) future reviews of legislation and regulation.

The panel was able to arrive at consensus positions on a number of issues and recommended the following:

- Online and mobile payday loans:
  - The Payday Loans Act should include protections for consumers against lead generators.<sup>1</sup>
- New/alternative loan products:

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<sup>1</sup> Lead generators do not typically make payday loans directly, but instead set up websites marketing loans. Through offers of access to quick cash, the lead generation companies entice consumers to provide them with sensitive personal information and then may sell that information to payday lenders and other companies. (In March 2015 New York State announced the first successful enforcement action against a payday loan "lead generation" company penalizing it for its unlawful conduct and fining it \$2.1 million).

- A review of the existing spectrum of enforcement tools and a consideration of new tools to address the development of new loan products that may have been designed to avoid the Payday Loans Act.
- Concurrent loans and rollovers (high-frequency repeat borrowing):
  - A requirement for lenders to offer a voluntary extended payment plan to borrowers; the requirement should be triggered by a period of repeat borrowing.
  - Panel members believed that introducing an extended payment plan option for repeat payday loan borrowers could help create a “soft landing” for borrowers by stretching out the period in which they repay their loan. The group agreed that when implementing a voluntary extended payment plan, consideration should be given to BC’s model, where the trigger is three loans within a 62-day period.
- Data requirements, monitoring and enforcement:
  - An obligation for lenders to provide the Registrar with data (at least at the aggregate level) on their lending activities. The data request should be developed and issued in a timely manner.
  - A payday loan data working group should be formed to provide advice on data requirements and analysis.
  - Throughout the panel meetings, participants identified the need for better data regarding Ontario’s payday lending industry. The panel believed that more accurate and complete data would support a wide range of goals.
- Maximum total cost of borrowing:
  - The maximum total cost of borrowing (price cap) should reflect the cost of lending and a balanced approach to maintaining industry viability and affordability for consumers.
  - A requirement that the price cap be reviewed every five years or less, concurrent with the full review of the Payday Loans Act (no consensus was reached on the maximum loan size.)
- Financial education and awareness:
  - Strike a working group to study opportunities for enhancing the provision of financial literacy and education to payday loan borrowers, including the future of the Payday Lending Education Fund
- Future reviews of legislation and regulation:
  - Introduce a requirement that the price cap be reviewed every five years or less, concurrent with the full review of the Payday Loans Act.

### **Nova Scotia Utility and Review Board: A hearing respecting certain aspects of the *Consumer Protection Act* relating to Payday Loans, March, 2014**

Evidence before the Board included submissions and/or testimony from the Canadian Association of Payday Lenders, Service Nova Scotia (SNS), the province’s Consumer Advocate (NSCA) and Credit Counseling Services of Atlantic Canada. The following are some observations that could have some bearing on the regulation of payday lenders in New Brunswick.

According to data provided by Service Nova Scotia, 206,165 payday loans were issued in Nova Scotia between July 1, 2013 and June 30, 2014. The average loan in Nova Scotia was \$433.

The data provided by Service Nova Scotia showed that overall, the payday loan business grew substantially in the three years ending on June 20, 2014. The estimated total value of loans granted grew from \$77,063,652 in 2011- 2012 to \$89,276,435 in 2013- 2014, an increase of approximately 20%.

Payday lenders in Nova Scotia have, for the most part, avoided price competition and have charged borrowers the maximum allowable cost for loans. Since the Board set the maximum cost of borrowing at \$25 per \$100 borrowed, price competition has virtually disappeared from the payday loan market in Nova Scotia. All major lenders have defaulted to the \$25 maximum, including companies licensed to provide loans through the internet. For example, Money Mart, which had led price competition among major lenders in 2010 by charging \$19.50 per \$100 loan, began charging the maximum after the \$25 limit was set. This represented an increase of 28% in the fee charged by Money Mart, which is now by far the largest payday lender operating in Nova Scotia. Data provided by Service Nova Scotia suggested not only that more borrowers are taking out repeat loans, but that repeat loans are a substantial component of the business that payday lenders are doing (NSCA paragraphs 5, 8, & 10).

"Repeat loans" are currently defined in the Payday Lenders Regulations as a payday loan granted to a borrower within 24 hours of the repayment of a prior payday loan (Regulations, s.2(1)(t)). Repeat loans are defined in the Regulations only for the purpose of data collection, and are not otherwise regulated.

Data gathered since 2010 shows that most payday loans issued in Nova Scotia have been repeat loans: that is, loans issued less than 24 hours after the borrower paid off an earlier loan. The same data shows that among repeat borrowers, the largest proportion took out eight or more loans a year.

Overall, repeat loans accounted for 46% of all loans issued in Nova Scotia in the 2012-2013 reference year and 52% of the loans issued in 2013 – 2014 (NSCA paragraph 28).

Section 23 of the British Columbia Payday Regulation is a response to repeat borrowers that should be adopted in Nova Scotia. That provision allows a borrower who takes out more than two loans in a 62 day period, to repay the third and any subsequent loans over a minimum of three pay periods (NSCA paragraph 107).

Service Nova Scotia agreed that the prospect of borrowers being caught in a cycle of payday debt is concerning, and acknowledged that the most significant risk of harm to consumers posed by payday lending is repeat borrowing and concurrent loans. The concern here is that repeat and multiple payday loan borrowing may result in prolonged periods of indebtedness for borrowers, and borrowing patterns which compound the already high cost of payday loans (SNS p.12).

In addressing problems relating to the incidents of concurrent and repeat loans and the danger that multiple loans may be used to pay off previous loans, Service Nova Scotia saw merit in the proposal that borrowers be permitted to repay their loans in installments, over a number of paycheques once the borrower has reached a certain threshold, (for example a certain number of loans taken in succession) (SNS p.13).

Allowing repeat loan borrowers to pay off loans and cost of borrowing in installments may to provide an off ramp for borrowers who get stuck in the spiral of debt because of sequential or repeat borrowing.

According to the Nova Scotia Consumer Advocate, the Board should recommend measures to limit repeat borrowing. These measures should include extended periods to pay back repeat loans and real time data sharing by lenders to support a better assessment of the affordability of payday loans.

Service Nova Scotia does not support any amendment that would allow the licensing of internet payday lending without the requirement that the lender to have a physical location in the province. Service Nova Scotia submitted that the "bricks and mortar" requirement for internet payday lenders provides a safeguard to consumers and facilitates enforcement of the Act's provisions relating to the regulation of internet payday lenders.

## **Comments and Recommendations**

In preparing the following comments and recommendations we have relied on the submissions and findings of regulatory hearings in Manitoba and Nova Scotia along with the consensus report in Ontario. All three reviews of payday lending reflected a thorough examination of the industry. The hearings in Manitoba and Nova Scotia, in particular, are instructive based on the provinces' comparable size to New Brunswick and, in the case of Nova Scotia, proximity.

### **Regarding maximum rates and fees that will be set in regulations:**

For the reasons set out in this submission we recommend the following:

- Maximum total cost of credit: \$17 per \$100 loan;
  - Evidence before recent regulatory hearings suggests that payday lenders avoid price competition and charge the maximum allowable fees. Payday lenders are able to operate in Manitoba with a maximum total cost of credit of \$17 and unless credible evidence is offered to prove that the industry could not survive in New Brunswick at this rate, the \$17 rate should prevail.
- Maximum percentage of the borrower's net pay: 30%
  - This amount has been deemed appropriate in British Columbia and Manitoba.
- Maximum penalty payable upon default: \$25
  - The penalty should be fair to both borrowers and lenders. Penalties in other provinces range from a low of \$20 in Manitoba to a high of \$50 in Saskatchewan. We note that the default penalty for payday lenders set out in section 7(2) of PDL-002 is \$25.
- Maximum cheque cashing fee: \$3

**Regarding Rule PDL-001 *Payday Loans Licensing and Ongoing Obligations*:**

- In recognition of the debt cycle that can be created with repeat borrowing, we recommend that a regulation be added that would require lenders to offer an extended payment plan to borrowers. The requirement should be triggered by a period of repeat borrowing and modeled after section 23 of British Columbia's Payday Loan Regulation. A similar recommendation was advanced by the Nova Scotia Consumer Advocate and a voluntary version was recommended by the consensus committee reviewing Ontario's Payday regulations. The applicable portion of British Columbia's regulation is as follows:

(2) A payday lender who enters into a third or subsequent payday loan agreement with a borrower in a 62-day period must,

*(a) if the borrower is paid or otherwise receives income on a bi-weekly, semi-monthly or more frequent basis, provide in the loan agreement that repayment is to be spread over at least 3 pay periods, or*

*(b) if the borrower is paid or otherwise receives income on a less frequent basis than that referred to in paragraph (a), provide in the loan agreement that repayment is to be spread over at least 2 pay periods.*

- In recognition of the debt cycle that can be created with repeat borrowing, and in keeping with other provincial efforts to address the increasing incidence of repeat borrowing, we recommend a more robust data collection regime. The annual filing requirements set out in s.23 will not provide the data that is necessary to conduct a proper analysis of repeat loans. Payday Regulations under Nova Scotia's Consumer Protection Act set a worthy standard. New Brunswick's proposed regulation and that currently in place in Nova Scotia is reproduced below:

***NB PDL-001***

**Annual filing requirements**

**23.** A payday lender must, in accordance with section 37.391 of the Act, provide to the Director the following information on loans granted during the 12-month period immediately before the date of the license renewal:

- (a) the total number of loans granted;
- (b) the total value of the loans granted;
- (c) the number of repeat borrowers to whom loans were granted;
- (d) the duration of the loans, categorized by different periods; and
- (e) the number of defaults on loans granted, categorized by different periods.

***Payday Lenders Regulations under NS Consumer Protection Act***

**Information to accompany application for permit**

- 5 (1)** An applicant for a permit as a payday lender must submit all of the following with their application for a permit:

- d) except as provided in subsection (2), all of the following information, in Form A, on loans granted by the payday lender from the location specified in their permit for the 12-month period from July 1 to June 30 immediately before the date of the permit renewal:
- (i) the number of loans granted,
  - (ii) the average size of loans granted,
  - (iii) the number of defaults on loans granted,
  - (iv) the average size of loans defaulted,
  - (v) the number of borrowers who have been granted more than 1 loan,
  - (vi) the number of repeat loans granted,
  - (vii) the total number of borrowers who have been granted repeat loans,
  - (viii) the number of borrowers who have been granted repeat loans, for the following number of times:
    - (A) 1 time,
    - (B) 2 times,
    - (C) 3 times,
    - (D) 4 times,
    - (E) 5 times,
    - (F) 6 times,
    - (G) 7 times,
    - (H) 8 or more times.

Aligning New Brunswick's regulations with those in Nova Scotia is consistent with the NB-NS Partnership Agreement on Regulation and the Economy (PARE) and the recently established Joint Office of Regulatory and Service Effectiveness.

- We recommend that licensed internet payday lenders be required to maintain a physical location in the province in order to make loans. A “bricks and mortar” condition would provide a safeguard to consumers. It is found in Nova Scotia's *Consumer Protection Act*. PDL-001 merely calls for the payday lender to provide an address for service of documents.

The Canadian Payday Lenders Association (CPLA) argued in favour of the abolition of the requirement during the recent hearing before the Nova Scotia Utility and Review Board. In their closing submission they acknowledged that online lending is the fastest growing sector of payday lending and claimed that “the current regulations in Nova Scotia have prevented the emergence of a competitive marketplace.”(Final argument of the CPLA, p. 7)

On the other hand, Service Nova Scotia asserted the following in their final submission:

“...SNS does not support any amendment that would allow the licensing of internet payday lending without the requirement for the lender to have a physical location in the province. SNS submits that the "bricks and mortar" requirement for internet payday lenders provides a safeguard to consumers and facilitates enforcement of the Act's provisions relating to the regulation of internet payday lenders.

The CPLA has not shown how not having a physical location requirement for internet payday lenders provides greater protection to borrowers. Furthermore, the requirement for a physical location is essential for payday lenders to be able to comply with the requirement under Section 22(4) of the Regulations, that payday lenders must maintain payday loan records "at the location specified in the permit". Having these records, within the province, at a site where they can be inspected, ensures more effective provincial enforcement of payday regulations, and greater consumer protection.” (Final Submission of Service Nova Scotia, p.13)

Nova Scotia’s Consumer Advocate held a similar opinion: “the Board should not recommend any change to the “bricks and mortar” condition that applies to licensed internet payday lenders” (Closing Submissions of the Consumer Advocate, para. 111).

#### Regarding Rule PDL-002 Fees:

- The fees proposed in Part 2 seem reasonable given the scan presented below:

Province	Licensing Fee	
	Main Office	Branch Office
Manitoba	\$5,500 per location	
Ontario	\$750	\$990
British Columbia	\$2,550	\$1,275
Alberta	\$1,000	\$500
Saskatchewan	\$2,000 per location	
Nova Scotia	\$3,237.50 per location*	
Prince Edward Island	\$750	\$750

Manitoba, Healthy Living, Seniors and Consumer Affairs (2013)

\*NS Reg. 86/2013

- We recommend that a portion of the fees collected under the Act be devoted to community based financial literacy initiatives.

The submissions on payday loans stress the importance of financial literacy. It is argued that borrowers should be making informed decisions based on a clear understanding of their rights and the cost of borrowing. Community based

organizations like the Saint John Community Loan Fund should be supported in their efforts to offer financial literacy programs.

Ontario's Payday Lending Panel recently recommended that a working group study opportunities for enhancing the provision of financial literacy and education to payday loan borrowers, including the future of the dormant Payday Lending Education Fund. In 2011 Manitoba established the Payday Borrower's Financial Literacy Fund and this model should be investigated.

### **Legislative Amendments to Ensure Public Input:**

We are concerned with the lack of opportunities for public input in the setting of future rules and regulations for payday loans.

Bill 55 amended Bill 4 by striking out Division F (Energy and Utilities Board; Orders of the Board respecting payday lending) which required the Board to review its existing orders every year. Accordingly, at this point, there is no opportunity for a public review of payday rules and recommendations. We recommend legislative amendments to allow for a triennial review of rules and regulations with specific provision for public and consumer representation.

Similar provisions exist in Manitoba (The Consumer Protection Act C.C.S.M. c. C200 s. 164(2) and Nova Scotia (Consumer Protection Act, RSNS 1989, c 92 s. 18T(6)).

## **Conclusion**

New Brunswick is about to adopt a series of regulations setting out the rules for payday lenders in the province. It will also set the rates that consumers will face when borrowing from licensed lenders.

The Province is drafting these terms without the benefit of public hearings. Instead, a Request for Comments has been issued and the submissions, presumably, will inform the first set of regulations.

Unless and until there are credit products for the working poor that reflect the low interest rates currently available to middle and high income earners (taking into account the increased risk, if any, to lenders), there will be payday type lenders that offer high rate, short term loans.

New Brunswick has an obligation to regulate the industry on behalf of consumers. It also has an opportunity to take advantage of the experiences of other provinces.

Nova Scotia was the first province to regulate the industry in 2009. Like Manitoba, it has completed two comprehensive hearings. Ontario has been regulating the industry since 2010. We can learn from them.



We would expect, for instance, that repeat and concurrent borrowing is a prevalent practice among payday borrowers in New Brunswick. This traps many low income workers in a cycle of debt. We do know that payday lenders cluster around low income neighbourhoods. We know that we need better data.

The HDC recommends that Payday Loan Proposed Rules and Rates include:

- A reasonable price cap on the maximum total cost of borrowing - \$17 per \$100;
- An opportunity for borrowers to repay loans in installments, once a repeat loan threshold has been reached;
- A robust data collection regime which would assist in developing a response to the issue of concurrent loans;
- A requirement that online payday lenders maintain a “bricks and mortar” office in the province;
- Public awareness and financial literacy programs to advise borrowers of their rights and available choices.

The Province should also mandate a regular review of the industry through a public hearing process that expressly includes consumers.

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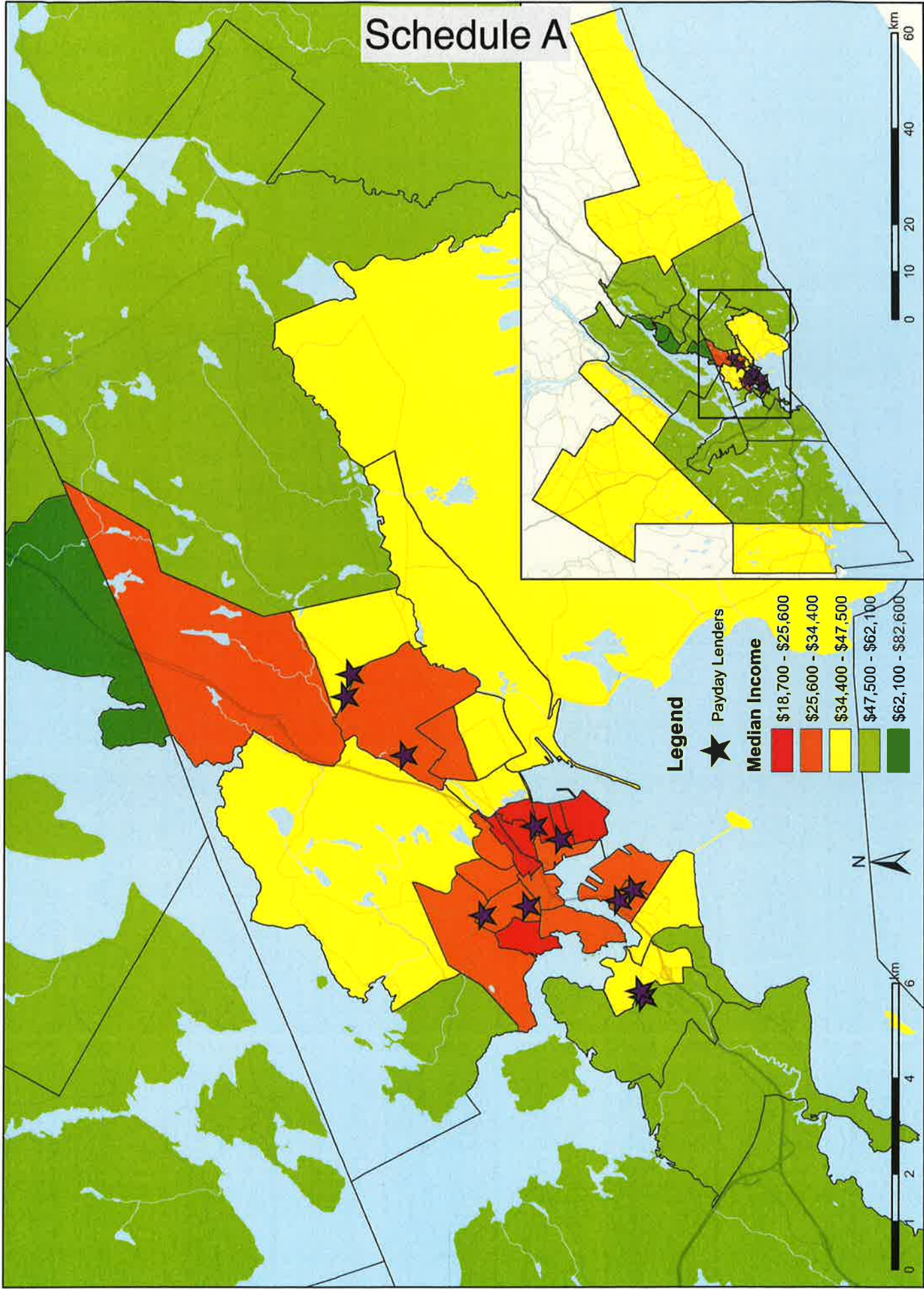
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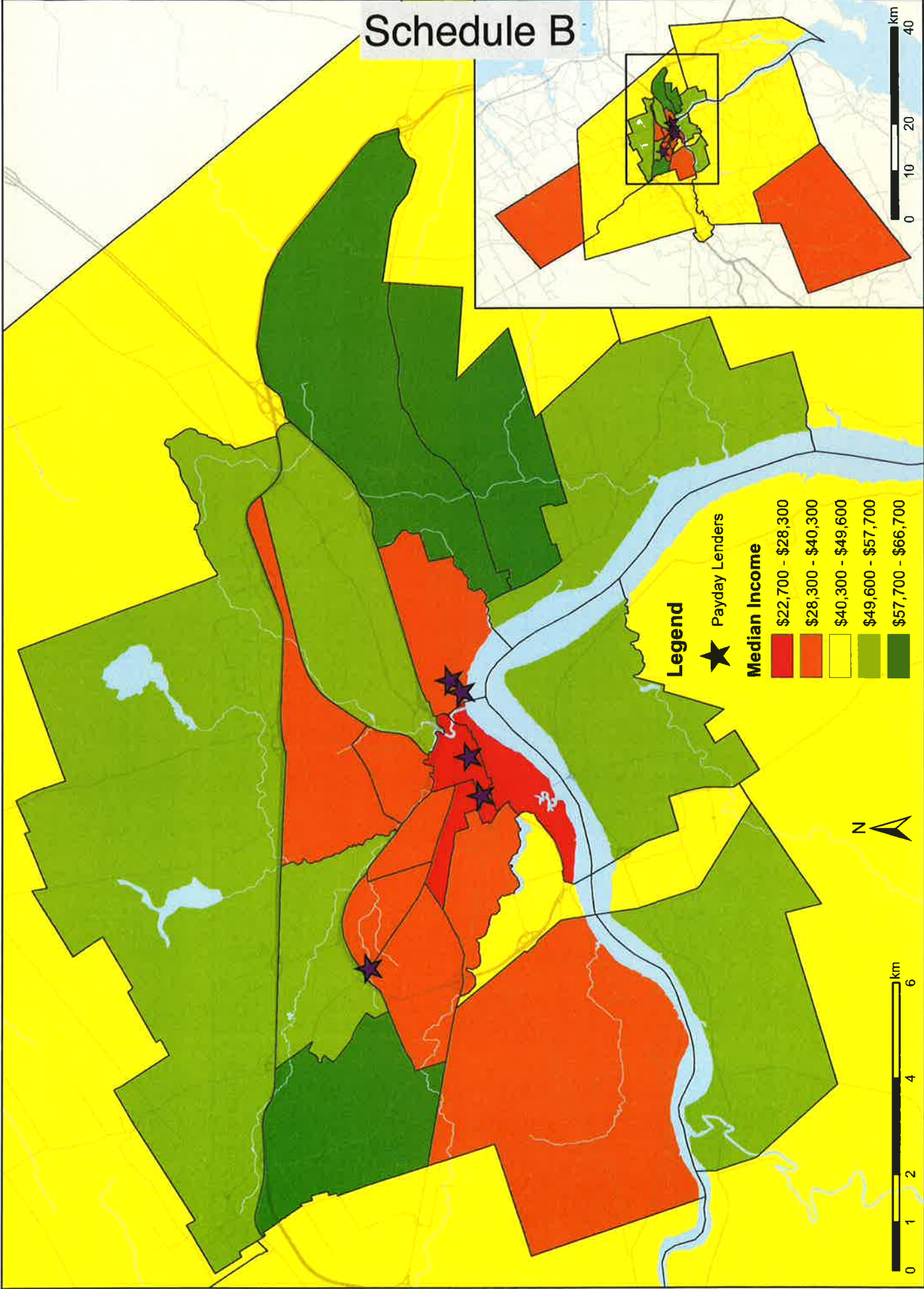
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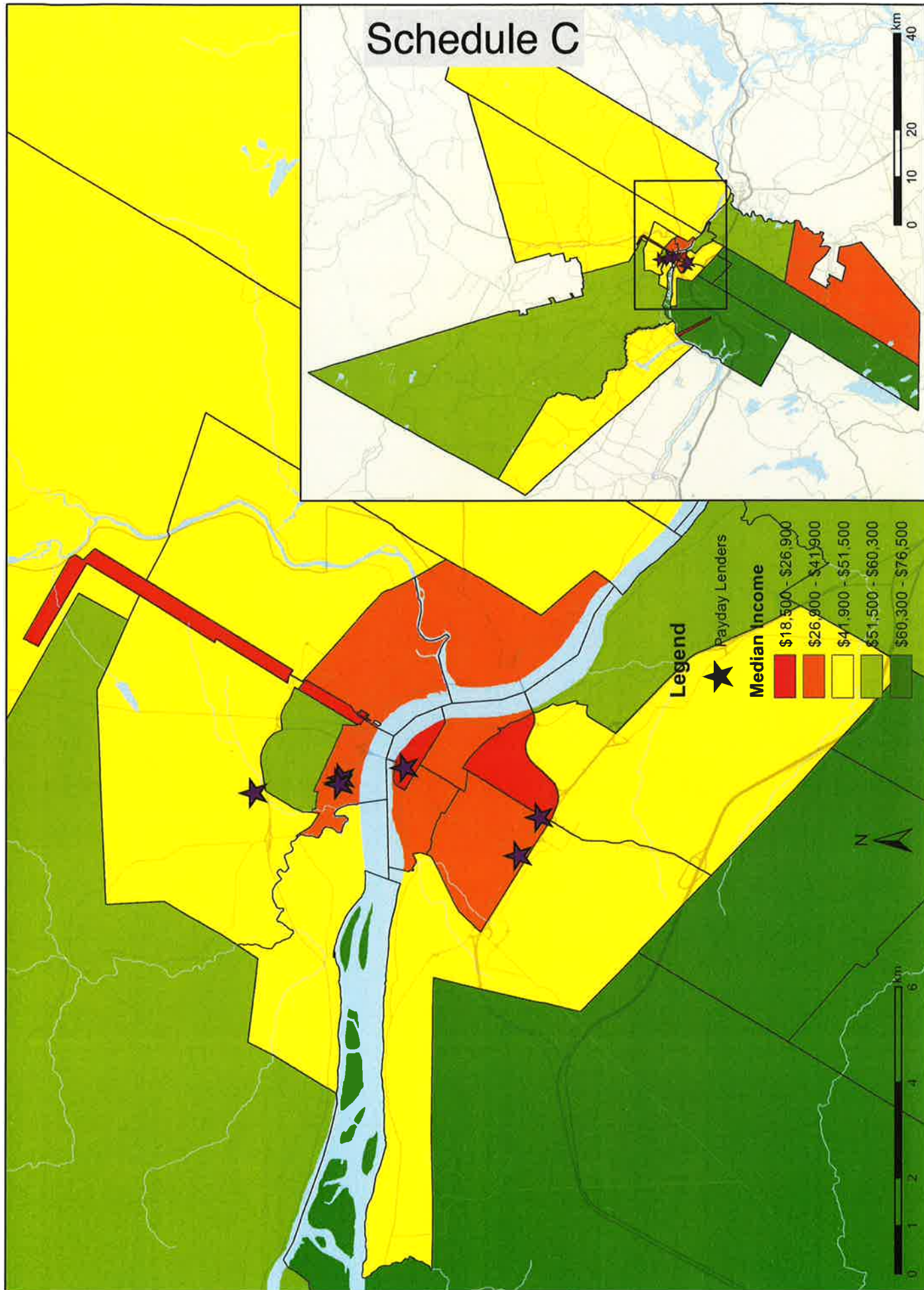
# Schedule B



Payday Lender Locations with 2012 Median Income for Families  
& Non-Family Persons by Census Tract, Moncton CMA

Human Development Council  
Saint John's Social Planning Council

Author: Andrew Pollock  
Date: March 2015  
Coordinate System: NAD83 New Brunswick Stereographic Double  
Data Source: Statistics Canada T1FF Taxfiler Data (2012)  
Natural Breaks (Jenks) Classification



Author: Andrew Pollock

Date: March 2015

Coordinate System: NAD83 New Brunswick Stereographic Double

Data Source: Statistics Canada T1FF Taxfiler Data (2012)

Natural Breaks (Jenks) Classification

**Payday Lender Locations with 2012 Median Income for Families  
& Non-Family Persons by Census Tract, Fredericton CA**



Human Development Council  
Saint John's Social Planning Council



# Schedule D

## SAINT JOHN WARD 3

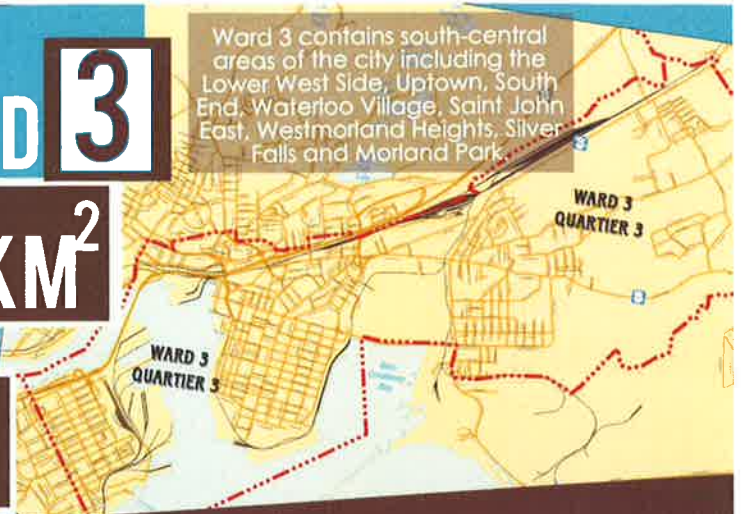
POPULATION:  
**17,865**

AREA:  
**13.3KM<sup>2</sup>**

(2011 CENSUS DATA)

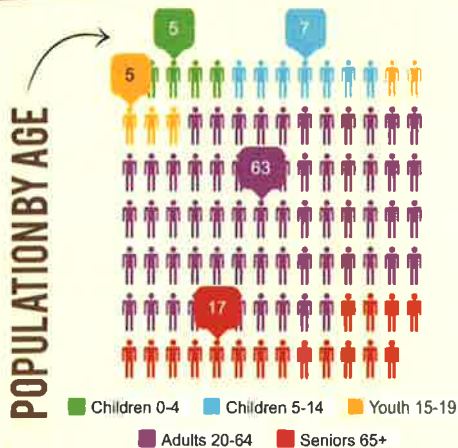
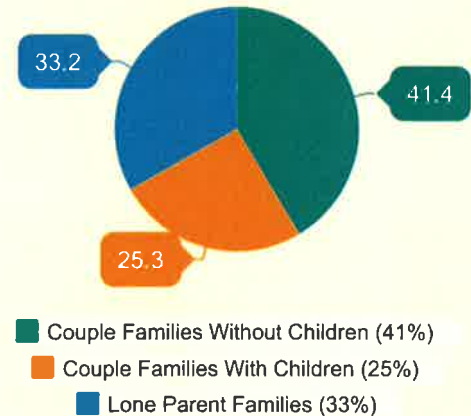
POPULATION DENSITY:  
**1,347.5** PEOPLE PER KM<sup>2</sup>

Ward 3 contains south-central areas of the city including the Lower West Side, Uptown, South End, Waterloo Village, Saint John East, Westmorland Heights, Silver Falls and Morland Park.



WARD 3 REPRESENTS 25.5% OF SAINT JOHN'S TOTAL POPULATION.

### FAMILY COMPOSITION



**19.3%** of households have moved in the past year

**49.6%** of households have moved in the past 5 years



**59.8%** of housing stock was built before 1960

**5.7%** of housing stock was built in the past 10 years



**15.1%** of housing stock is in need of major repairs

**OVERALL POVERTY RATE 31.1%**



**CHILD POVERTY RATE 47.9%**

**66.5%** are renters rather than homeowners



Disclaimer: In 2011 Statistics Canada changed the way it collected information on a number of areas and distributed a new voluntary household survey. The "Global Non Response Rate" (GNRR) was much higher than previous mandatory surveys, making the findings less reliable, particularly for small areas. Data from the National Household Survey should be treated with caution.

Prepared by the Saint John Human Development Council



# WARD 3

	Canada	NB	SJ	Ward 1	Ward 2	Ward 3	Ward 4
<b>2011 Census Data</b>							
Children 0-4	5.6%	4.9%	5.2%	4.7%	5.5%	5.5%	5.1%
Children 5-14	11.1%	10.3%	9.6%	9.9%	10.1%	7.8%	10.6%
Youth 15-19	6.5%	6.1%	6.1%	6.3%	6.1%	5.7%	6.5%
Adults 20-64	62.0%	62.3%	62.2%	61.4%	60.9%	63.6%	62.8%
Seniors 65+	14.8%	16.5%	16.9%	17.6%	17.4%	17.5%	15.1%
Couple Families Without Children	40.0%	45.5%	40.9%	42.6%	38.4%	41.4%	41.3%
Couple Families With Children	43.8%	38.4%	34.7%	38.7%	34.5%	25.3%	38.7%
Lone Parent Families	16.3%	16.1%	24.4%	18.7%	27.2%	33.2%	20.2%
<b>Taxfiler 2012</b>							
Overall LIM-AT	14.5%	14.2%	19.4%	10.8%	25.2%	31.1%	12.0%
Child LIM-AT	19.1%	21.0%	30.4%	17.2%	40.1%	47.9%	18.8%
Senior LIM-AT	5.8%	6.6%	6.1%				
<b>National Household Survey</b>							
Global Non-Response Rate (GNR)	26.1%	28.6%	30.1%	21.6%	31.1%	37.1%	30.3%
Immigrants	20.6%	3.9%	4.5%	2.1%	7.1%	5.1%	3.7%
Recent Immigrants (2001-2011)	6.6%	1.4%	1.9%	0.3%	3.5%	2.6%	1.1%
Movers (past year)	12.4%	10.8%	13.2%	8.1%	17.7%	19.3%	8.2%
Movers (past 5 years)	38.6%	32.8%	41.3%	29.4%	50.5%	49.6%	36.2%
Housing Stock built before 1960	24.6%	26.7%	43.4%	41.8%	46.3%	59.8%	22.4%
Housing Stock built in last 10 years	15.6%	13.8%	8.5%	6.1%	11.4%	5.7%	11.0%
Housing Stock requiring major repairs	7.4%	9.8%	9.9%	6.6%	8.3%	15.1%	8.7%
Owners	69.0%	75.7%	57.4%	77.6%	46.3%	33.5%	78.1%
Renters	30.6%	23.8%	42.6%	22.4%	53.7%	66.5%	21.9%

## Highlights:

- Highest rate of Lone Parent Families as percentages of all families
- Highest Overall Poverty rate (LIM-AT)
- Highest Child Poverty rate (LIM-AT)
- Highest Global Non-Response Rate (GNR) for the 2011 National Household Survey
- Highest percentage of Movers in the past year
- Highest percentage of Housing Stock built before 1960
- Lowest percentage of Housing Stock built in the last 10 years
- Highest percentage of Housing Stock requiring major repairs
- Lowest percentage of Home Owners
- Highest percentage of Renters