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Missing keys to payday loan legislation •

Randy Hatfield commentary

Human Development Council executive director Randy Hatfield says there are some missing pieces in New Brunswick’s payday loan regulatory approach. Photo: Legislature Bureau

As the New Brunswick government inches toward regulating the payday loan industry it needs to address an issue that, so far, it has ignored. It needs to follow the example of Alberta, British Columbia and Nova Scotia and protect consumers from the crippling debt cycle that repeat borrowing creates.

The government has already announced its intention to cap the rate that lenders can charge their customers at $15 per $100. That rate is tied with Alberta's for the lowest rate in the country. But it hasn't yet addressed the harm of unregulated repeat borrowing.

Repeat borrowing (loans granted within 24 hours of the repayment of a prior loan), can be hard to avoid. After all, loans are repaid from the borrower's next payday, which will now be short by the principal amount of the loan along with fees ranging from $15 to $25 per $100 borrowed. They often lead to prolonged periods of indebtedness and a debt cycle that is difficult for many working poor to escape.

In British Columbia a borrower who takes out more than two loans in a 62 day period can repay the third and any subsequent loan over a minimum of three pay periods. That regulatory provision was recommended to the Nova Scotia government by the province's Utility and Review Board last year.

The Alberta government has gone further. Loan agreements must contain a term requiring the borrower to repay the payday loan through an instalment plan over a period of between 42 and 62 days.

It didn't take the payday loan industry long to react to Alberta's progressive and consumer friendly Bill 15 – An Act to End Predatory Lending. The bill was passed in the spring and its regulations are now in force. It had been denounced by the Canadian Payday Loan Association. They urged the Alberta government to reconsider the bill.

By November both the Conference Board of Canada and the Atlantic Provinces Economic Council produced research reports (83 and 85 pages respectively), commissioned by the Canadian Consumer Finance Association, which not surprisingly looked favourably upon the industry and urged governments to use caution when regulating it.

(The Consumer Finance Association's name sounds more agreeable than the Payday Loan Association, although they share the same address and board of directors.)

According to the Conference Board report:

• Policy-makers are urged to exercise caution in lowering provincial maximum fees…

.Imposing inappropriate regulatory requirements on an industry that is already significantly regulated might only serve to reduce access to credit for a financially vulnerable segment of the population.

The Atlantic Provinces Economic Council spiced up their report:

• Limitations on repeat use of payday loans should be approached gingerly…

• Regulations requiring conversion to longer term or installment debt also should be approached gingerly…

In summary, the message for policymakers is one of caution.

New Brunswick should not be swayed by these reports.

The province is regulating the industry without the benefit of a public hearing and a formal advocate for consumers, despite the fact that more Canadians are turning to payday loans. According to the Financial Consumer Agency of Canada, four per cent of Canadian adults in 2014 reported that their household resorted to a payday loan in the previous year, up from two per cent in 2009. It has been projected that Canada's licensed payday lending industry will issue nearly six million loans to households in 2016 at a value of $3 billion.

The independent federal agency that enforces consumer protection legislation reported in October that only 29 per cent of a national survey of 1,500 Canadian payday loan users reported taking out just one payday loan in the previous three years. Nearly as many (23 per cent) reported taking out six or more loans. Some 37 per cent reported two to five payday loans.

This level of repeat borrowing is not insignificant.

Repeat borrowing provisions in Alberta were designed after an extensive public consultation process; British Columbia's regulations have been in place since 2009; the recommendation of Nova Scotia's Utility Review Board followed a full hearing that included briefs, witnesses and argument. New Brunswick should heed the experiences of these provinces.

Unless and until we become a financial literate society and our financial sector provides accessible and affordable credit instruments for the working poor, we will have a payday loan type industry. It needs to be regulated for the benefit of consumers.

Alberta and New Brunswick have agreed to the lowest provincial rate cap. That's a great start.

Alberta has also set the bar for managing the repeat borrowing trap. New Brunswick should reach for it.

Randy Hatfield is the executive director of the human Development Council.