New high-cost credit legislation in British Columbia: perspectives from Québec

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On May 1, 2022, new rules governing high-cost lenders and brokers will come into force in British Columbia (B.C.), as part of the 2019 amendments to the *Business Practices and Consumer Protection Act*. This means B.C. will join Alberta, Manitoba and Québec in regulating high-cost credit consumer contracts.

In this latest article in our series on Québec consumer law, we outline some of the requirements that will soon apply to B.C. high-cost credit contracts and products, and compare them with the Québec rules that have been in force since August 1, 2019. Businesses who extend or facilitate the extension of credit to consumers in B.C. that meet a high-cost threshold of 32% interest rate will need to ensure their contracts and products are in-line with the new legislative framework.

British Columbia	Québec
To provide or facilitate a high-cost credit product to a borrower, the lender or loan broker must have a licence. The licence is issued by the Business Practices and Consumer Protection Authority, better known as Consumer Protection BC. Consumer Protection BC has announced that licences will be initially valid for 6 months and will expire each October 31.	To enter into high-cost credit contracts, the lender must have a licence. In Québec, the licence is issued by the Office de la protection du consommateur. Licences can be valid for 2 years.
The lender must obtain a licence for each branch. Some entities are exempted from the rules governing high-cost credit contracts, including the licence requirement; for example, banks and credit unions.	The lender must obtain a licence for each branch. The lender does not need to obtain a licence for each branch. Some entities are exempted from the licence requirement; for example, banks and credit unions.

	However, unlike in B.C., these entities are still governed by the rules applicable to high-cost credit contracts.
A credit contract is considered “high cost” if its annual cost of borrowing or annual interest rate exceeds 32%. The rule is almost the same in Manitoba and Alberta, where a credit contract is considered high-cost if the annual interest rate is 32% or more.	A high-cost credit contract is defined as a contract with the following interest rate: Bank of Canada Bank Rate[1] + 22%. This means that, at the time of publication of this article, a contract with annual interest of over 23.25% is a high-cost credit contract. It should be pointed out that, in the case of a variable-rate credit contract where the rate increases if a payment is missed (e.g., credit card or line of credit), this is not a factor that determines whether the contract is high-cost. In other words, only the rate applicable to borrowers who meet their obligations can be used to determine whether the interest rate meets the threshold to be defined as a high-cost credit contract. In some circumstances, several different rates can be applicable.
Some contracts are not governed by any high-cost credit rules, even if they charge more than 32% annual interest: for example, a contract with a principal amount of less than $1,500 and a term of less than 62 days. The rules governing payday loans apply in such cases. Mortgage-backed loans are also excluded	In Québec, certain exclusions also apply. For example, there is a limited exception that could apply to pledges with a principal of $500 or less. A pledge is a moveable hypothec with delivery. Mortgage-backed loans are also excluded from high-cost credit rules if they benefit from the exclusions in articles 21 and 22 of the implementing regulations.
The contract must include several mandatory clauses, such as a clause allowing the borrower a cooling-off period and an obligatory clause informing the borrower that complaints about the lender can be sent to Consumer Protection BC. Apart from these clauses, no other standard wording or template is required.	The contract must also have mandatory content including certain items. In particular, it must mention the cooling-off period and several other mandatory provisions. The contract must also be in line with the templates provided in the implementing regulations.
There is no declared administrative practice that a licence is denied if the lender enters into high-cost credit contracts where the rate exceeds a set level. However, the law provides for the possibility that a maximum interest rate could be set by regulation. An annual credit rate that violates the *Criminal Code* (currently over 60% – s. 347) is of course	The Office de la protection du consommateur reserves the right to deny a licence to a lender charging more than 35% annual interest. This policy is based on the organization’s position that such a rate could be usurious.

unacceptable.	
The borrower has a cooling-off period of one (1) day after signing the contract, during which time they may cancel the contract and entirely terminate their responsibilities thereunder. The lender must prepare a cancellation notice for the borrower to use, and must deliver it to the borrower when the contract is signed. If the borrower wishes to cancel during the cooling-off period, this notice must be sent to the lender. In that case, no costs may be charged to the borrower; however, the borrower must simultaneously repay any principal received.	The borrower has a cooling-off period of ten (10) days after the date on which the parties have received a copy of the contract, duly signed and filled out. The borrower is not required to use any particular form to validly exercise the cooling-off right. In fact, exercise of this right is automatic in certain cases, in particular if the borrower fully reimburses the principal of a high-cost term loan within ten (10) days.
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The borrower must receive a copy of the contract when it is signed. Moreover, the borrower may at any time request an additional copy, which must be delivered to the borrower within one (1) business day	The borrower must receive a copy of the contract when it is signed.

The high-cost lender must review several clauses of the contract with the borrower. The borrower must initial certain specific clauses of the contract. These include the amount of principal, the interest rate, the total cost of credit, and an explanation of the borrower's right to cancel during the cooling-off period.	The lender has no obligation to require the borrower to initial specific parts of the contract. The lender is under no statutory obligation to review certain specific clauses such as the credit rate.
The borrower may request cancellation of the contract at any time if: • it does not contain the clauses that are mandatory for high-cost credit contracts; • the borrower has not been informed of their right to cancel within the cooling-off period or has not received the template to use for that purpose; or • the lender has not reviewed the contract with the consumer as required by law.	The borrower's rights vary depending on the nature of the obligations that the lender has failed to meet. In some cases, for example if the lender did not hold the necessary licence, the borrower may obtain cancellation of the contract and the credit charges. The law also allows for punitive damages under certain circumstances.
With certain exceptions, a lender is not allowed to resubmit a payment instrument, such as a cheque, that has already been declined. The obvious purpose of this rule is to avoid the NSF fees that the borrower's financial institution would charge to the borrower.	Québec has no rule equivalent to the one in the left-hand column.
B.C. regulates the practices of certain lenders who issue cash cards giving borrowers access to funds. This includes regulating the borrower's right to use the card balance to reimburse themselves.	Québec has no specific rules regarding the type of practice described in the left-hand column.
There is no requirement to submit a document similar to that described in the right-hand column.	The lender must provide the borrower with a separate document showing, in particular, an evaluation of the borrower's debt ratio and ability to repay the credit requested. This document must be remitted before the contract is signed or the credit limit on an existing high-cost credit contract is increased. Failure by the lender to remit this document could result in the loss of the lender's right to interest charges, including those already incurred.
It is strictly prohibited to use prizes or rewards to entice a person to enter into high-cost credit contracts, or to thank them for doing so.	Québec has no prohibition fully equivalent to that described in the left-hand column, although the law has several provisions regarding business and advertising practices related to credit.

There is no statutory rule equivalent to the one in the right-hand column.	If the debt ratio is greater than 45% (as calculated according to regulatory requirements), the borrower's obligation is presumed excessive, which would increase the borrower's chances of having the contract cancelled or the interest charges reduced or cancelled.
The lender is prohibited from stating or implying that the high-cost credit contract will improve the borrower's credit rating, if this is not true. There is no statutory rule equivalent to the one in the right-hand column.	The *Consumer Protection Act* has an equivalent prohibition (section 244.2). The lender has a formal obligation to evaluate the borrower's ability to pay. Otherwise the borrower can request reimbursement of interest charges already paid and cancellation of future interest charges.
B.C. has set up a financial education fund to which all high-cost or payday lender licence holders must contribute.	Québec has no obligation equivalent to the one in the left-hand column.

For more information on this topic, don't hesitate to contact our Financial Services group or any of the key people listed below

[1]The discount rate is the rate that applies two days after it is announced by the Bank of Canada. The bank rate of the Bank of Canada must not be confused with the overnight rate or the deposit rate of the Bank of Canada.

[2]There could be more than one interest rate in the case of a variable-rate credit contract.

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