



## **CARP Submission to the Department of Finance: Strengthening Canada's Financial Consumer Protection Framework**

### **Protecting Canadian Financial Consumers**

A well regulated banking and investment industry is crucial for Canadians to be able to effectively manage and plan personal finances and investments. Current consumer protection regulations do not adequately provide consumers with protection needed to confidently bank and invest.

The relationship between the banking industry and their retail clients is often fraught with unclear, complex, and inconsistently applied rules, policies, procedures, and access to services. The investment industry, and in particular the financial advisory profession, puts investors at a distinct disadvantage with regard to investment information and knowledge and provides little recourse when conflicts arise.

Fair treatment by financial institutions and industry professionals, transparency and consistency in policies, regulations, and information are lacking from current regulations. More importantly, there are few accountability and redress measures available to financial consumers.

In inviting input on strengthening Canada's financial consumer protection framework, the government of Canada's stated goals are to:

- Better protect consumers of financial products and ensure that they have the necessary tools to make responsible financial decisions;
- Be adaptable to suit the needs of consumers of today and tomorrow in a rapidly evolving and innovative financial marketplace;
- Respond to the realities of a digital and remote banking environment and the needs of vulnerable Canadians;
- Provide the exclusive and comprehensive consumer protection regime that applies to products and services offered by banks, and be the basis for consumer protection for federally regulated financial institutions that offer similar products and services, replacing a currently dispersed mix of legislation and regulations;
- Be simple and clear in providing expectations for the accountability of financial institutions; and
- Be enforceable and provide criteria by which actions can be assessed.

In response, CARP has identified key principles that should be considered in approaches to strengthening Canada's financial consumer protection framework. CARP also highlights issues of concern for banking and investment consumers and makes recommendations for immediate action.

## Principles Required for Financial Consumer and Investor Protection

The Government of Canada should build its financial consumer protection framework on the following principles in order to ensure better protection of financial consumers and investors:

- 1) **Fairness** – Financial consumers and investors should be treated equitably, honestly, and fairly by all financial service providers, financial advisors and all other front line agents. This also means levelling the playing field between investors and the financial advice industry as well as the playing field between consumers and the banking industry through fair standards, rules, and policies.
- 2) **Transparency & consistency** – Financial consumers and investors should be provided with important information about the benefits, risks, and terms of financial and investment products and decisions. In addition, the standards and rules governing financial service providers, financial advisors, financial products, and front line agents should also be made transparent to financial consumers and investors. Not only should such information be made transparent, it should also be consistent across Canada regardless of geographic location and easily accessible and understandable.
- 3) **Accountability** – Financial service providers, financial advisors, and even front line agents should fully understand the governing standards and rules and be held accountable for their conduct and service to their clients. The standards and rules should also be enforced with consequences when violated.
- 4) **Redress** - Financial consumers and investors should have access to clear, fair, and independent complaints handling and redress mechanisms. Such mechanisms must also be affordable and accessible without placing an unreasonable burden on consumers so that all have an equal opportunity to have their complaints addressed and receive financial redress when due.

CARP's proposed principles can be applied broadly to the financial consumer sectors and to several areas of immediate concern to older Canadians.

### Banking Concerns & Recommendations:

Canadians should be able to effectively manage and plan personal finances without undue hardship. Currently, financial consumers face key concerns regarding banking that should be addressed by the financial consumer protection framework:

## 1. Accessible & Affordable Banking

Many Canadians have difficulty finding accessible and affordable banking options, especially those who are low income and/or cannot, or choose not, to do their banking online. Over 90% of CARP members polled think that no-fee seniors' bank accounts should be offered by all banks. 72% think that the federal government should mandate banks to offer such accounts.<sup>i</sup>

People with low incomes have difficulty opening up or maintaining a bank account due to the fees and/or minimum balance requirements. Free accounts, such as those for seniors, are disappearing. Although eight banks have agreed to maintain low-cost accounts with maximum fees of \$4 per month<sup>ii</sup>, the type and number of transactions are limited.

The FCAC requires, for example, that banks offer only a minimum of two in-branch transactions, which means that banks can stipulate that the remainder of transactions be electronic, via internet, telephone, or automated banking machines. However, many older bank clients are uncomfortable with electronic transactions or do not have the ability to do electronic transactions, often because they cannot afford internet service.

Another concern is the lack of alternatives to online banking. Increasingly, banks are strongly encouraging consumers to do their banking online by limiting in-branch transactions and charging extra fees for paper statements. Canadians who do not feel comfortable dealing with their finances online or do not have access to internet are being unfairly penalized.

### **CARP Recommendations:**

- **Mandate low-cost, no frills accounts for individuals with low income with expanded access to personal and in-branch transactions;**
- **Ensure free alternative options to electronic services for financial consumers who are uncomfortable with online banking or who lack access to online banking.**

## 2. Powers of Attorney

As aging family members face health issues and concerns with their decision-making ability, a power of attorney (POA) is critical to ensuring that their finances are well taken care of and not exposed to financial abuse and fraud. Currently, there is no clear standard or process for creating and using a POA, and often individuals go through the process of drafting and designating a POA that is not recognized consistently by financial institutions.

POA arrangements are common among CARP members who entrust their finances to a spouse, child, or adviser. However, close to 20% of CARP members polled have suffered financial abuse or know someone who has suffered financial abuse through fraudulent or improper use of POAs.

One in ten members had their POA refused at a financial institution. Among CARP members polled, abuse of POA, or denial of service, maybe common to as many as a quarter of all those who have used a POA.<sup>iii</sup>

**CARP Recommendation:**

- **Create a single standard and consistent process and set of regulations for Powers of Attorney that will be recognized and accepted by all federally accredited financial institutions.**

## **Investor Protection Concerns & Recommendations:**

There are also concerns over current investing practices, standards, and rules that they do not provide adequate investor protection.

### **1. Investor-Client Relationship Asymmetry**

Advisors' investment knowledge typically surpasses average investors', most of whom have inadequate financial literacy and have difficulty understanding the numerous and complex financial products available. Studies have shown that investors score poorly when tested on their financial and investment knowledge, including topics such as investment risks and returns, financial planning and goal setting, rules for RRSPs, and applying their knowledge to real life decisions which makes them vulnerable to inappropriate advice and even investment fraud.<sup>iv v</sup>

In addition to an imbalance of knowledge, there are many professional designations for financial advisors, accreditation/regulatory bodies, and associations that add further complexity to retail investment decision making and accountability. The majority of CARP members polled, for example, have difficulty distinguishing between the various professional financial designations.<sup>vi</sup>

Over 30% of CARP members polled have been victims of financial fraud or know someone who has been defrauded.<sup>vii</sup> Not surprisingly, almost all CARP members polled (97%) believe that financial advisers should be regulated like lawyers and accountants so that those who breach their professional standards would no longer be allowed to practice.<sup>viii</sup>

Although the standards, training requirements, and area of expertise differ among designations, investors believe that a designation ensures that advisors are creditable, trustworthy, and accountable. Investors believe that financial advisors will act in their [the clients'] best interest even though there is no absolute legal obligation to do so. In any lawsuit that the investor brings to recover losses, the investor must first prove that the advisor was under a fiduciary duty to act in the client's best interest owing to several factors, including the asymmetry of knowledge and dependency on the advisor. Such lawsuits are often beyond even the capabilities of the average lawyer to pursue. Legislation to impose the fiduciary duty on advisors in defined circumstances would bridge the gap between the average retail investor and the financial advice industry.

CARP is calling for a legislated fiduciary duty that will help give investors an opportunity to save for their retirement adequately and fairly by giving investors more protection from conflicts of interest, misconduct, and fraud.<sup>ix</sup> A legislated fiduciary duty sets a standard that, when enforced, can influence the behaviour of financial advisors so that they are more likely to act in the investor's best interest.

Currently, the investor still has no right to get his/her money back without going to court even when the existing regulatory and self-regulatory bodies have ruled against the adviser. Therefore, a legislated fiduciary duty will also give investors access to restitution by providing them the legal framework and resources to sue an adviser and pursue their case.

#### **CARP Recommendations:**

- **Legislate a fiduciary standard for all financial advisors with consequences for misconduct, including a removal of their designation and ability to practice as a financial professional;**
- **Make the standards and accreditation requirements of financial advisors commensurate with the requirements of offering financial advice to the public.**

## **2. Lack of Complaints Mechanism, Investigation, and Redress**

Currently, there is no dedicated, independent agency with specialist knowledge that receives complaints with the authority and mandate to investigate and prosecute financial crimes and order redress. Instead, professional financial designations are self-regulated and have their own in-house complaints offices and processes, giving financial institutions and professionals an advantage over financial consumers.

The FCAC recently allowed banks to have their own in-house complaints handling and mediation process. This decision adds to the appearance of conflict of interest without guaranteeing better results for consumers. Consumer confidence is already low in the current mediation and redress system. Almost half of CARP members polled would turn to the police in cases of financial crime rather than current mediation bodies. Only 40% of CARP members polled would have no reservations about reporting financial crimes, with the majority citing reluctance to report due the unlikelihood of perpetrators being caught and inadequate investor protection laws.<sup>x</sup>

There is also no clear pathway to redress. Therefore, if money is lost due to misconduct or poor advice, investors must go through the various complaint mechanisms and eventually the courts to recover lost funds. Not only is it an onerous process, investors often no longer have the financial resources to pursue legal action. Outside of a lawsuit, even if compensation might be recommended and possibly enforced, complaints bodies can only recommend a limited amount regardless of the size of the financial loss.

For example, the Ombudsman of Banking Services and Investments (OBSI) can receive complaints and make resolution recommendations to financial institutions, but it has no power to enforce compliance. Even if a compensation recommendation is made, the amount is limited to a maximum of \$350,000.

Investors can pursue their complaints further by taking it to court, but there are limitations and costs deterring many from pursuing this route. For example, small claims courts are less costly and time consuming but one can only claim up to \$25,000, whereas the Superior Court of Justice has no limit on the amount claimed but the litigation costs are prohibitive.<sup>xi</sup>

**CARP Recommendations:**

- **Create a dedicated independent agency with specialist knowledge to receive complaints and with the authority and mandate to investigate and prosecute;**
- **Create a clear pathway to redress supported by a compensation fund.**

## **A New Opportunity to Strengthen Financial Consumer and Investor Protection**

In consulting for input to Canada's *Financial Consumer Protection Framework*, the Government of Canada has an opportunity to implement a principled approach to financial consumer regulations while also taking direct action on a number of immediate banking and investment concerns.

**CARP recommendations:**

**Protecting banking customers:**

- **Mandate low-cost, no frills accounts for individuals with low income with expanded access to personal and in-branch transactions;**
- **Ensure free alternative options to electronic services for financial consumers who are uncomfortable with online banking or who lack access to online banking;**
- **Create a single standard and consistent process and set of regulations for Powers of Attorney that will be recognized and accepted by all federally accredited financial institutions.**

**Protecting investors:**

- **Legislate a fiduciary standard for all financial advisors with consequences for misconduct, including a removal of their designation and ability to practice as a financial professional;**
- **Make the standards and accreditation requirements of financial advisors commensurate with the requirements of offering financial advice to the public;**
- **Create a dedicated independent agency with specialist knowledge to receive complaints and with the authority and mandate to investigate and prosecute;**
- **Create a clear pathway to redress supported by a compensation fund.**

CARP calls on the federal government to implement fairness, transparency, consistency, accountability, and redress as guiding principles for the financial consumer framework and work to put into place the policies and laws needed to help Canadians manage their daily finances and invest for their future.

## Sources

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- <sup>ii</sup> FCAC: <http://www.fcac-acfc.gc.ca/eng/forConsumers/topics/banking/Pages/LowCostA-Comptesa.aspx>
- <sup>iii</sup> CARP Poll November 16, 2012: <http://www.carp.ca/2012/11/16/carp-financial-report/#sthash.dUg25yiS.dpuf>
- <sup>iv</sup> Investor Education Fund: <http://www.getsmarteraboutmoney.ca/en/research/Our-research/Pages/financial-literacy-research.aspx#.UQgcDmeafcs>
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- <sup>xi</sup> Ontario Securities Commission: <http://www.osc.gov.on.ca/en/22411.htm>