

Financial Consumer Protection Framework Submission

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Ms. Pearse,

As you may know, in my role of as the New Democratic Party of Canada's Critic for Consumer Affairs, I have worked for years to promote the reasonable regulation of the credit and debit card fees charged to consumers as well as the fees charged to the businesses, charities and government agencies that accept these cards. In addition, I have consistently lobbied for strong oversight of Canada's financial institutions and the continued existence of a fair and independent dispute resolution mechanism for consumers grieving the actions of financial institutions.

Given my extensive work in promoting the need for a comprehensive, binding consumer oriented regulatory framework for Canada's Financial Institutions, I was extremely pleased to see the Department of Finance undertaking such a process and remain optimistic that the completed framework will foster heightened consumer confidence in the financial products available to them while also cracking down on the more unscrupulous practices which Canada's financial institutions are engaged in.

Helping to rebalance the asymmetrical relationship between financial institutions and their customers is a necessary function of the government, particularly as financial products continue to become more complicated and move towards online and digital formats. Further, this process becomes even more necessary given the limited financial literacy of many Canadians.

Throughout the attached submission, it will become clear that New Democrats continue to believe that competitive markets overseen by reasonable regulation are the best way to achieve the desired goals of enhancing consumer confidence in financial products while preventing monopoly pricing and anti-competitive market practices. We welcome this important process and look forward to seeing the contents of other submissions throughout this ongoing consultation.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn Thibeault", with a stylized flourish at the end.

Glenn Thibeault,
NDP Critic for Consumer Affairs, Small Business, and Tourism

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Jurisdictional Issues:

Recognizing that for the most part, issues pertaining to financial institutions remain an exclusive jurisdiction of the Federal Government, certain aspects of creating a comprehensive financial consumer protection framework, such as contractual obligations, can be seen as a Provincial responsibility.

Therefore, in instances where there is jurisdictional overlap between Federal and Provincial heads of power and in jurisdictions where substantially similar provincial legislation is already in place, it may be useful to include language in the framework's guiding documents which would allow the Governor in Council to exempt these provinces should there be a desire on the part of said province to opt out of the national regulations in favour the previously established provincial framework.

Improving Financial Literacy

It is estimated that 26% of Canadians struggle with even the most basic numeracy, while 56% do not have high enough levels of numeracy to demonstrate skills and knowledge associated with the ability to function well in Canadian society. The inadequate financial literacy skills of many Canadians is an issue which was echoed in meetings with consumer advocacy groups who indicate that financial literacy in Canada needs to be improved.

Given these facts, combined with the increasingly complex array of financial products on offer from financial institutions and other operators, the NDP believes that improving the financial literacy of Canadians should be a core pillar in an overall financial consumer protection framework.

First and foremost, the Financial Consumer Protection Framework should seek to codify a definition of financial literacy. By adding a definition, we can ensure that the recently created position of Financial Literacy Leader has a specific goal to be working towards.

New Democrats support the following definition of financial literacy: ``The state of having the knowledge, skills and confidence to make responsible financial decisions and become more aware of financial risks and opportunities.``

Further, while the creation of the Financial Literacy Leader is a good start in improving the financial literacy skills of Canadians, the Financial Literacy Taskforce made a number of other recommendations which as yet have not been acted on by the government.

Chiefly, the creation of a Financial Literacy advisory council composed of a diverse group of stakeholders with an interest in financial literacy, to provide advice to the Financial Literacy Leader on the implementation and evolution of the National Strategy. Here, the Taskforce lists educators, the voluntary sector and labour organizations as groups who should be included in the advisory council

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alongside government and financial providers. New Democrats believe that the creation of such as advisory council is an important next step towards improving the financial literacy of Canadians and should be acted on in the most expedient manner possible.

New Democrats also remain concerned that there is no explicit requirement for the position of Financial Literacy Leader to be held by someone who is fluent in both official languages. We believe that if someone is to be tasked with increasing financial literacy across Canada, that person must be able to communicate in both French and English. The Minister of State for Finance assured the Standing Committee on Finance that this position will be held by a bilingual individual, but the Government failed to make this explicit in the legislation which created the position. Ensuring that the appointee is sufficiently capable of communicating with Canadians in both official languages is paramount to the success of the position.

In terms of measuring the success of the Financial Literacy leader, we also believe that the establishment of metrics to define the success of the position should be strongly considered. As it stands, in its reporting mechanisms the Financial Literacy Leader would simply have to list the actions that they have taken, without any reference to their success. Here, this reporting provision can certainly be strengthened by including provisions which mandate reports on the degree to which the financial literacy of Canadians has been strengthened by the actions of Financial Literacy Leader.

Finally, considering the explosion of online offerings for financial products it is vital that financial literacy is also considered within the context of digital literacy skills. New Democrats believe that financial literacy and digital literacy are increasing becoming synonymous due to the anticipated widespread adoption of e-commerce platforms and mobile payment systems. Bridging this divide will certainly be at the crux of creating modern, 21st century financial consumer protection measures which will not need to be overhauled in the near future.

Standardized Disclosure and Billing Practices:

For too long the contracts and practices employed by financial institutions and other operators have been unfairly and deceptively complicated, often leading consumers to pay more than they reasonably expect. Given the apparent lack of financial literacy skills amongst a large proportion of Canadians, ensuring that disclosure and billing practices are clear, concise, and where possible, standardized should be an important consideration in the creation of a comprehensive financial consumer protection framework.

In order to assist consumers in making informed decisions about using the right financial products and managing their own financial needs, New Democrats support the adoption of mandated standardized pre and post -contractual disclosure practices, including registration forms and billing statements, where applicable and possible, to allow comparisons between products and services of the same nature.

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Such standardized practices should meet pre-established criteria requiring the information to be clear, concise, accurate, reliable, comparable, easily accessible, timely, and where possible, in plain language. Further, such standardized practices should include both fixed and fluctuating costs, as well as potential financial penalties, surrender charges, and termination fees.

In looking at international examples upon which to model such a system of standardized pre and post - contractual disclosure practices, the Australian Government has mandated the introduction of standardized fact sheets for major financial products. Whether home loans or credit cards, Australia's move to one-page standardized information sheets has been noted to have assisted consumers compare terms, prices, and ultimately given them an enhanced ability to make informed, responsible financial decisions.

Protecting Consumers in an Online, E-commerce, Environment

A general theme throughout this submission relates to the necessity of increasing online security, digital literacy, and overall consumer confidence in the online marketplace amongst Canadian consumers to assure consumers about the efficacy of the online world and encourage widespread adoption of e-commerce activities in Canada.

The European Union has already put in place several mechanisms to create an environment which fosters e-commerce activities while also ensuring Canadians are protected from confusing, or outright unscrupulous, practices. These mechanisms should form the basis of the framework's attempts to properly govern the online marketplace.

Ending Cost Traps

Consumers should be protected against "cost traps" on the Internet. This happens when fraudsters try to trick people into paying for 'free' services, such as horoscopes or recipes. We feel that consumers should be required to explicitly confirm they understand that there is a cost associated with such services prior to being charged for their use.

Total Cost Disclosure

Businesses engaged in e-commerce activities should be required to disclose the total cost of the product or service, as well as any extra fees. Online shoppers should not have to pay charges or other costs if they were not properly informed before they place an order.

Banning pre-ticked boxes on websites

When shopping online – for instance buying a plane ticket – consumers may be offered additional options during the purchase process, such as travel insurance or car rental. These additional services may be offered through so-called 'pre-ticked' boxes. Consumers are currently often forced to untick

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those boxes if they do not want these extra services. It is our view that pre-ticked boxes for online or e-commerce transactions should be banned in order to ensure greater clarity and transparency for consumers making these forms of purchases.

Fair Access to Banking Services:

The G20 High Principles for Financial Consumer Protection, of which Canada is a signatory, states that “all financial consumers should be treated equitably, honestly, and fairly”, and that “special attention should be dedicated to the needs of vulnerable groups”. In order to meet the objectives of said principle, New Democrats support a three pronged approach as part of the framework.

First, in order to determine the scope of the issue, the Department of Finance and/or the Financial Consumer Agency of Canada should immediately undertake a survey to investigate the extent and nature of the problem of access to banking services for low income Canadians to ensure financial institutions are accountable.

Second, the government should work with community groups and financial institutions to change the culture and attitudes of financial institutions towards low-income people, and make it unlawful for someone to be denied access to basic banking services as a result of their income.

Finally, the government should act to ensure financial institutions offer “no-frills” bank accounts that provide a basic minimum of services for a nominal fee with no minimum monthly balance.

Ensuring Consumers Have a Fair, Independent, & Impartial Dispute Resolution Service

Canada’s Ombudsmen for Banking Services and Investment has offered consumers a fair and independent dispute resolution when they have a complaint against their bank for nearly two decades. In fact, Canada’s Finance Minister signed on to the G20’s principles of consumer protection for the financial sector, committing to guarantee access to a fair and independent complaints system for Canadian consumers.

However, the government’s new regulatory regime contradicts this commitment and has allowed two of the big banks to walk away from accountability. By allowing the banks to hire their own dispute resolution agency over the banking ombudsman, the government has tilted the playing field in favour of the big banks. This move to a multiple provider system will have grave consequences for consumers and small businesses in Canada.

In order to ensure compliance with the rules governing financial institutions, small business and consumers must have access to a single, independent dispute resolution service like OBSI. Expanding the

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role of OBSI to include credit card issuers and payment processors makes sense given the ongoing issues which consumers have in regard to the compliance of new and pre-existing codes of conduct.

Ensuring Fair Pricing in the Financial Services Sector:

While any financial consumer protection framework should seek to empower consumers through heightened financial literacy, stronger transparency, a fair, independent, and impartial dispute resolution service, and finally, the standardization of disclosure practices and billing statements, the creation of such a framework presents an excellent opportunity for the government to also rein in some of the most egregious practices employed by financial institutions and other operators offering consumer financial products.

While the government has already announced its intention to end some of these consumer rip-offs, New Democrats maintain that more action is necessary to ensure that consumers are not being financially disadvantaged by practices that heap burdensome costs onto them in what is often a necessary, but nonetheless, asymmetrical relationship with financial institutions and other operators.

Pay to Pay Fees:

“Pay-to-Pay” fees can be defined as an additional charge for consumers who wish to continue receiving a statement of their monthly bill in the mail.

These so called “Pay-to-Pay” Fees unfairly target seniors, those who do not have regular access to the internet or do not feel comfortable performing such transactions online, and represents yet another unnecessary expense for Canadian families already struggling to pay their bills.

While the introduction of “Pay-to-Pay” Fees has been veiled under the guise of environmental responsibility, if these companies were serious about reducing the amount of paper in circulation they would have offered a discount for those who use online billing rather than penalize those who cannot easily make the transition.

New Democrats recognize that this practice is a pure cash-grab worth millions of dollars, merely designed to pad the profits of some of Canada’s already most profitable corporations and are committed to terminating this once and for all.

While New Democrats were encouraged by the Government’s recently announced commitment to ban “Pay-to-Pay” Fees, the Government’s announcement lacked clarity regarding an expected timeline for the mandated termination of these fees. We remain optimistic that the Government will move to permanently ban these fees at the earliest possible opportunity.

Cap ATM Fees:

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Each year, Canadians pay approximately \$420 million for the dubious privilege of withdrawing their own money from ATMs. This figure represents about five per cent of the biggest banks' revenue.

In contrast to parts of the U.S. and the U.K. where the introduction of regulations has either reduced or capped the cost of withdrawing money from an ATM, most Canadians who want to access their own funds are required to pay unreasonable fees unless they maintain a certain balance.

According to research made available to the US Senate Committee on Banking, Housing, and Urban Affairs, on average each withdrawal from an ATM only costs banks approximately 36 cents. Most banks however, charge customers \$1.75 to \$3 to withdraw cash. The "free" ATM usage that some banks offer is actually covered by a monthly service fee that customers pay, which ranges from \$10-\$30 depending on the package.

Given that approximately 97 per cent of ATM withdrawals in the U.K. remain free of charge, with a similar trend towards lower ATM fees emerging in the U.S., a 50 cent cap on banking transaction fees for Canadian consumers would be a reasonable balance between protecting consumers without compromising banks' ability to collect a healthy profit.

Pay Day Lending:

According to data from Statistics Canada, approximately 1 in 20 Canadian families have obtained a payday loan in order to make ends meet, a figure which has been on the rise in recent years. Typically, individuals using these services are already struggling in the current economic environment and tend to have a cumulative household income of less than \$30,000.

While the average size of a pay day loan in Canada is only around \$300, the predatory interest rates being charged by pay day lenders can effectively place Canadians using these services in a never ending cycle of debt which can be insurmountable for many families.

Although the industry is regulated through a patchwork of provincial frameworks, the Federal government maintains the ability to crack down on the predatory practices employed by pay day lenders through a long standing Criminal Code provision. Here, section 347 of the Criminal Code makes it a criminal offence to charge more than 60% interest per annum.

To illustrate the usurious nature of the rates being charged, take the hypothetical example of a \$400 pay day loan taken out for a period of 17 days. Here, a borrower would be required to repay approximately \$450, including interest and the arbitrary fees charged by the pay day lenders. On a 17 day term, that amounts to an effective annual interest rate of over 1200 percent!

While the Government signalled its intention to work with the provinces and territories to crack down on predatory payday lenders in the most recent Throne Speech, the Government's announcement once

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again lacked clarity regarding an expected timeline for such an undertaking as well as any details stating how the Government intends to rein in payday lenders.

In the interim, one immediate action which the Government can take to begin cracking down on predatory payday lenders is by instructing Canada's policing organizations to begin using Section 347 of the Criminal Code to lay charges against operators breaching the 60% per annum interest rate limit set out by the code.

Further, because the majority of payday lenders use additional services fees and charges as a means of extracting further revenue from consumers, New Democrats assert that the Government should move to ban extra fees and charges that push effective lending rates beyond the 60% benchmark set out under the Criminal Code.

Credit Cards:

Almost 60 per cent of Canadians live paycheck to paycheck and say they would be in financial difficulty if their pay cheque was one week late. Canadian banks, the CGA, the Canadian Payroll Association, the OECD, and the IMF have raised flags over Canada's mounting household and personal debt burden. In fact, Canadians are now carrying on average \$13,141 in personal debt, up \$84 from a year ago.

This impacts Canadians' ability to maintain a home and mortgage payments, as well as their ability to save for an emergency or other future events (retirement, education, down-payment for a home etc.).

The most problematic form of consumer debt continues to be credit card debt. And of course, while the banks and credit card companies benefit from record-low interest rates, middle and working class Canadians continue to pay some of the highest fees and interest rates in the world.

While the banks continue to engage in extending exorbitant interest rates to consumers, having access to credit cards as a means of payment has taken on heightened importance in the age of the internet and e-commerce expansion.

To illustrate this point, there is the example of the consumer who likes to make online arrangements for travel or make purchases online, two important areas of e-commerce. While some online merchants do accept debit payments by entering a bank account details, this mode of payment remains widely unavailable to consumers and generally only national merchants accept it.

Therefore, striking an appropriate balance to ensure consumers have access to the payment method of their choice, while also ensuring that the card issuers act in a transparent and ethical manner, is vital for creating a stable credit card market which is fair and accessible for Canada's consumers.

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Modeled on the US Credit CARD Protection Act, the creation of a balanced set of regulations to improve Canadian consumers' understanding of their relationship with credit card issuers, financial institutions, and the financial products on offer, while ensuring that these institutions adopt fair and ethical billing and lending practices is necessary to ensure continued access to credit for Canadians and the protection of consumers for a downward cycle of unnecessary credit card debt.

Predatory Solicitation Practices

Concerns have been raised that marketing guidelines on the promotion of credit cards to young adults are not strong enough. In the United States, The Credit Card Act prohibits issuers from giving out freebies to students on or near a campus, a strategy which discouraged inadvertent or incautious consumers from entering into financial obligations which can result in unsustainable levels of indebtedness among young Canadians, a demographic particularly hard hit by the turbulent global economy and ongoing jobs crisis.

Opting in to Over-Limit Fees

Consumers remain frustrated by excessive fees charged by financial institutions. A prime example of these fees is that which is charged to consumers when they mistakenly go over their credit limit. These types of fees typically average \$50, and in era of real time communication and tracking, are unnecessary and unreasonable. Requiring consumers to explicitly opt-in to over-limit fees would reduce these costs for consumers.

Whether a customer opts in to the over credit limit fee or not, banks could retain the discretion over whether to authorize above limit transactions. Under this scenario, any approved credit card transaction would only have an over limit fee for customers who have explicitly opted in to the fee.

Low-Interest, No Frills Card

While Canada's financial institutions and major corporations have been able to take advantage of historically low interest rates, these rates have not always been extended to Canada's consumers, regardless of their credit history. With the annual interest rates often exceeding 25%, some consumers who are unable to meet their initial obligations, often due to job loss or job insecurity can fall into a never ending cycle of debt.

While the annual interest rates charged to Canadians continue to be as much as 25% above the overnight prime lending rate, the most alarming aspect of the interest rates being charged to consumers is the fact these rates are often 5-10% above similarly branded cards on offer in the United States. For

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instance, a Staples branded credit card in the US carries an annual interest rate of 19.90%, while the same card in Canada carries an annual interest rate of 27.99%.

Assuming that the risks assumed by financial institutions for extending consumer credit is roughly equivalent between Canada and the US, the large disparity between interest rates is demonstrative of an anti-competitive market which sets arbitrarily high rates of interest and imposes them on Canadian consumers regardless of their credit history or ability to repay their financial obligations.

Because of these factors, New Democrats believe Canadians should have reasonable access to a no-frills credit card with a fair interest rate of no more than 5 percent over the prime lending rate.

Calculating Interest More Fairly

In the United States, credit card companies are now required to apply excess payments to the highest interest balance first, as consumers expect them to do. In addition, the confusing and unfair practice by which issuers use the balance in a previous month to calculate interest charges on the current month, so called "double-cycle" billing, has also been prohibited. Canadian Consumers deserve the same protections.

Moreover, consumers who have not carried over a monthly balance on their credit card, but who inadvertently miss their payment due date by a matter of hours are penalized by being forced to pay a full month's worth of interest even when they pay off the balance owing a mere hours after the due date. In an age of real time communication and tracking, this is not only unreasonable, but also unnecessary. For this reason, exploring the notion of calculated pro-rated daily interest rates entirely sensible. This would give persons who have not carried over a balance from the previous month and who make lump sum payments after the due date are not charged the equivalent of 30 days interest, but instead only the portion of interest for each calendar day past the due date.

Data Security and Online Privacy:

The issue of consumer safety with respect to personal information and secure transactions is a fundamental issue as more financial transactions and financial products are conducted and offered in an online setting. Both consumers and business owners holding sensitive customer information want some assurance that their information is going to be protected. Businesses also require rules governing when they should be required to report data breaches to Canada's Privacy Commissioner and the affected individuals.

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Reliable data on data breaches is hard to come by, but we do know that identity fraud cost Canadians \$76 million dollars in 2012. We also know that, to date, one million Canadians have been victims of phishing emails involving their banking information.

Despite their frequency and scale, there is no statutory obligation requiring organizations to report data breaches. Therefore there is a real need to implement a mandatory data breach reporting mechanism for financial institutions and their counterparts. Both internationally and domestically there is a growing consensus on the need for breach reporting. Laws in Germany, the UK and France already require reporting to privacy or information commissioners and citizens in cases where personal data is jeopardized or compromised.

Further, consumers should be entitled to be informed about data sharing, to access data and to require inaccurate or unlawfully collected or processed data to be deleted or corrected.

The benefits of such a regime are clear with Canadian consumers being quickly alerted to potential risks when their personal information is involved in a security breach. Consumers would then be able to take immediate action to protect your sensitive data and prevent identity fraud.

Enforcement/Administrative Monetary Penalties

In order to achieve the desired outcomes of the framework, it is necessary to ensure that there are binding enforcement mechanisms which would trigger in the event of a breach of the code. One such enforcement mechanism which should be strongly considered is the use of an administrative monetary penalty system.

Under such an enforcement regime, the body overseeing the framework would be entitled to assess monetary penalties for non-compliance with the Framework and any resulting regulations. Further, under this scenario the said body would be able to impose monetary penalties based on differing types, frequency, and severity of a breach, with most penalties being applied in an escalating manner and with the compliance history of the wireless provider taken into consideration when said provider is found to be in breach and assessed a monetary penalty.

Finally, if said body determines that the use of an administrative monetary penalty system is warranted it must ensure that the implementation of the system is met with consistently and predictably applied rules to ensure the long-term stability of the framework. A failure to apply the system consistently and predictably will ultimately result in a loss of consumer confidence in the framework itself and a reticence to meaningfully participate on the part of the financial institutions themselves.