

Comments on Canada's Financial Consumer Protection Framework: Consultation Paper

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Introduction

The Neil Squire Society would like to submit the following comments in regards to “Canada’s Financial Consumer Protection Framework: Consultation Paper”¹ The scope of the comments will deal with 1) the gaps in the frameworks that already exist within the financial system within Canada, 2) the areas where those frameworks need to be extended to create greater protection and reduce marginalization of vulnerable Canadians, 3) the challenges created to equitable access by the accelerating pace at which technology is being adopted and 4) the challenges created by the convergence of what were in the past distinctly different sectors, telecommunications and finance. This will be done specifically in the context of the perspective of people with disabilities. Research conducted for the Task Force on the Future of Canadian Financial Services Sector found that a strong majority of Canadians viewed access to basic banking services as essential.² The relevance of these issues for Canadian is because according to the 2006 Statistics Canada Participation and Activity Limitation Survey (PALS) 16.5% of adults or almost 4.2 million Canadians have at least one disability.³ In addition almost half a million (20.5%) working-age adults 15 to 64 years with disabilities live on a low income.⁴ This means that a significant number of people with disabilities are marginalize not only due to the abilities but also because of their socio-economic status. Given that a significant portion of the Canadian population has a disability and the fact that this number will increase as the population ages,⁵ ⁶it is important to develop policies that ensure their inclusion in the financial system.

This submission has adhered to the format laid out in the consultation paper outline and will try to address the issues in the context of the 3 overarching questions proposed in the consultation paper. The submission is therefore divided into the three sections:

- a) Establishing a Comprehensive Set of Principles for Consumer Protection
- b) Possible Enhancements to Existing Regime
- c) Continuing the Conversation: Engagement

Where possible the paper has tried to address the questions proposed under each topic in the order in which they were outlined in the consultation paper. The conclusions will tie together the answers presented in the context of the 4 broad categories presented in the first paragraph of this paper.

The Neil Squire Society is the only national not-for-profit organization in Canada that has for over twenty-nine years empowered Canadians with physical disabilities through the use of computer-based assistive technologies, research and development, and various employment programs. Through

1

“Canada’s Financial Consumer Protection Framework: Consultation Paper. “ <http://www.fin.gc.ca/activty/consult/fcpf-cpcpsf-eng.asp>

2 <http://www.lco-cdo.org/en/cheque-cashing-fees-consultation-paper-sectionIV>

3 <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/gender-disability-low-income>

4 <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/gender-disability-low-income>

5 <http://www.statcan.gc.ca/pub/89-628-x/2007002/4125018-eng.htm#a2>

6 People with disabilities and employment :#If Canada’s aging population is a dark cloud, #is the social economy a silver lining?

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&ved=0CDIQFjAB&url=http%3A%2F%2Fweb.uvic.ca%2Fsp%2Fpeople%2Ffaculty%2Fdocuments%2FIf%2520Canada%27s%2520aging%2520population%2520is%2520a%2520dark%2520cloudPRINCE.pptx&ei=qa8OU_K8HdHyoATl64BI&usg=AFQjCNEf9xRro1yXJ91O1YIEvpmb9w3oNw

our work, we help our clients remove barriers so that they can live independent lives and become active members of the workplace and our society. Specializing in education and workplace empowerment, the Society has served over 29,000 people since 1984.

Terms of Reference

It is worthwhile establishing some terms of reference for this document and looking at the scope of some of the major acts and policies that cover Canadian financial transactions and payments before entering into a discussion of what should be included in the new Financial Consumer Code. As pointed out in the consultation paper:

“The current federal financial consumer protection framework is set out in the Bank Act, regulations, voluntary codes, sector commitments, and Commissioner’s guidance by the Financial Consumer Agency of Canada (FCAC). This framework applies to financial products and services provided by banks, and extend to non-bank federally regulated financial institutions, such as insurance companies and trust and loan companies, where applicable. “⁷

The challenge of this patch work of codes, regulations and policy statements is that there are gaps in these documents and where these gaps exist there is ambiguity in who has domain responsibility to address issues important to vulnerable Canadians.

The Bank Act is the law passed by Parliament to regulate Canada's chartered banks. A chartered bank is an institution whose primary business is financial inter-mediation, meaning the bringing together of borrowers and lenders. Banks receive their charters from the federal government. Chartered banks offer a range of other financial services to their customers including cheque clearing, credit cards and safekeeping as well as investment and insurance services. The Act has 3 main goals: protecting depositors' funds; insuring the maintenance of cash reserves; and promoting the efficiency of the financial system through competition. The Canadian Bank Act has a very narrowly based scope of the way it defines financial transactions.

The banking industry has also developed and is committed to several voluntary codes designed to protect consumers. The Canadian Bankers Association supports the following voluntary codes:

- Commitment on Modification or Replacement of Existing Products or Services (2012) - Banks provide consumers with assurances related to the modification or replacement of existing products and services.
- Code of Conduct for Federally Regulated Financial Institutions -- Mortgage Prepayment Information (2012) If customers choose to break their mortgage or pay it off early, there could be a mortgage prepayment charge. This code of conduct outlines the type of information customers will receive to help them make an informed decision about mortgage prepayment.
- Code of Conduct for the Credit and Debit Card Industry in Canada (2010) - Code of conduct that sets principles for business practices related to the issuance and acceptance of payment

⁷ “Canada’s Financial Consumer Protection Framework: Consultation Paper. <http://www.fin.gc.ca/activty/consult/fcpf-cpcpsf-eng.asp>

cards and operation of payment card networks.

- Online Payments (2005) - Consumer and industry responsibilities related to the use of online payments systems in Canada.
- Canadian Code of Practice for Consumer Debit Card Services (1992, revised 2004) - Industry practices and consumer and industry responsibilities related to debit cards.
- Guidelines for Transfers of Registered Plans (1992) - What to expect and where to get help when transferring a registered savings plan (RSP) between financial institutions.
- CBA Code of Conduct for Authorized Insurance Activities (2003) - Outlines the banks' standards for branch employees offering credit, travel and personal accident insurance with respect to training, disclosure, promotion practices, customer privacy protection and customer redress.
- Principles of Consumer Protection for Electronic Commerce: A Canadian Framework (1999) - A guide to protecting customers in online transactions, developed with input from industry, government and consumer groups.
- Model Code of Conduct for Bank Relations with Small- and Medium-Sized Businesses (1994) - Model code of conduct for bank dealings with small- and medium-sized businesses. The key elements of the model code are incorporated into individual bank codes.
- Plain Language Mortgage Documents — CBA Commitment (2000) - A commitment by Canada's banks to improve readability of residential mortgage documents.

Correspondingly if we look at the Payment Act we see that it too has a very narrowly based scope in its definition of financial transactions:

“The Canadian Payments Association (CPA) operates pursuant to the legal framework set out in the Canadian Payments Act. The legal framework reflects the CPA's mandate to establish and operate a national system for the clearing and settlement of payments within Canada, principally the Automated Clearing Settlement System (ACSS) and the Large Value Transfer System (LVTS), as well as the US Bulk Exchange (USBE). Pursuant to the Act, the CPA develops and implements rules, standards and procedures that apply to the payment exchange of CPA members who use these systems for clearing and settlement.”⁸

The Financial Consumer Agency of Canada Act takes a broader perspective on the definition of financial services. Under this act the FCAC has a mandate to deal with specific aspects of the financial system. These aspects fall into 4 broad areas:

- 1) Consumer
- 2) Merchant
- 3) Industry
- 4) Financial Literacy

Consumer

“The Financial Consumer Agency of Canada (FCAC) is an independent body working to protect and inform consumers of financial products and services.

⁸ http://www.cdnpay.ca/imis15/eng/Act_Rules/eng/Act_Rules.aspx?hkey=87fa6393-9f02-45d5-b8ac-a78bfb2308e1 .
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FCAC is responsible for:

- informing consumers about their rights and responsibilities when dealing with financial entities and about the obligations of payment card network operators to consumers and merchants
- providing timely and objective information and tools to help consumers understand, and shop for, a variety of financial products and services
- monitoring and evaluating trends and emerging issues that may have an impact on consumers of financial products and services.”⁹

Merchant

FCAC over sees the Code of Conduct for the Credit and Debit Card Industry in Canada.

“the Code of Conduct for the Credit and Debit Card Industry in Canada requires transparency of information relating to fees, thereby helping merchants reasonably forecast their costs related to accepting credit and debit card payments. The Code also allows merchants to choose which payment options they will accept.”¹⁰

Industry

- “•ensuring that the market conduct of federally regulated financial entities complies with federal legislation and regulations
- promoting the adoption of policies and procedures designed to implement legislation, regulation, voluntary codes of conduct and public commitments by federally regulated financial entities
- monitoring federally regulated financial entities’ compliance with voluntary codes of conduct and their own public commitments.”¹¹

“In Canada, there are laws, voluntary codes of conduct and public commitments in place to protect consumers of financial products. The Financial Consumer Agency of Canada (FCAC) ensures that federally regulated financial institutions comply with these.”¹²

Federally Regulated Financial Institutions include:

“Banks (82)
Trust Companies (44)
Loan Companies (19)
Cooperative Credit Associations (6)
Cooperative Retail Associations (1)
Life Insurance Companies (76)
Fraternal Benefit Societies (14)

9 <http://www.fcac-acfc.gc.ca/Eng/forConsumers/Pages/home-accueil.aspx> . Downloaded February 25, 2014

10 <http://www.fcac-acfc.gc.ca/Eng/forMerchants/Pages/home-accueil.aspx> . Downloaded February 25, 2014.

11 <http://www.fcac-acfc.gc.ca/Eng/forIndustry/Pages/home-accueil.aspx> . Downloaded February 25, 2014

12 <http://www.fcac-acfc.gc.ca/Eng/forConsumers/topics/yourRights/Pages/home-accueil.aspx> . Downloaded February 25, 2014

Financial Literacy

“Financial Literacy is essential to the prosperity and financial well being of Canadians. Financial literacy is having the knowledge, skills and confidence to make responsible financial decisions.

- Knowledge refers to an understanding of personal and broader financial matters
- Skills refer to the ability to apply that financial knowledge in everyday life
- Confidence means having the self-assurance to make important decisions
- Responsible financial decisions refers to the ability of individuals to use the knowledge, skills and confidence they have gained to make choices appropriate to their own circumstances.”¹⁴

FCAC has a broad definition of the financial system as their mandate deals with both financial and payment issues such as credit cards, pre-paid cards, mortgages and loans. It has also taken on the responsibility of tracking emerging trends such as mobile payments¹⁵ though this is not explicitly spelled out in the Act that created the organization.

The bulk of these acts refer to the security, transparency, timeliness and orderly conduct of the Canadian financial system. What is missing from these documents is an explicit commitment to ensure the fundamental access (accessibility) to the financial system by Canadians regardless of their skills and abilities or socio-economic circumstances. This is especially relevant to vulnerable Canadians of which people with disabilities make up a significant proportion. To draw a simple analogy the current acts take care of defining and regulating the backbone infrastructure of the financial system, essentially the connecting highways of the system, but are silent in defining the on-ramps to the Canadian Financial System in a manner that all Canadians can access. The Human Right Complaint that had to be filed in 1994¹⁶ that started the process of making Automatic Banking Machines accessible to people with disabilities, the on-going challenges of making point-of-sale terminal accessible for all^{17 18 19 20 21}

13 <http://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx> , Downloaded February 25, 2014

14 <http://www.fcac-acfc.gc.ca/Eng/financialLiteracy/Pages/home-accueil.aspx> . Downloaded February 25, 2014

15 “Mobile payments raise consumer protection questions for Canadians”. 18/12/2013 .

<http://www.fcac-acfc.gc.ca/eng/about/news/pages/ConsNews-ConsNouv-0.aspx?itemid=251> . Downloaded February 25, 2014

16 Dion Enterprises, Ltd. “Unequal Access” Canadian Human Rights Commission Report, 1994.

17 Burns, N. (2005, February). California Legislation and Accessibility Issues. Braille Monitor. Retrieved from <http://nfb.org/legacy/bm/bm05/bm0502/bm050206.htm> . Downloaded 2010.

18 http://info.sen.ca.gov/pub/05-06/bill/asm/ab_0751-0800/ab_768_cfa_20060621_122332_sen_comm.html . Downloaded 2010.

19] Law Office of Lainey Feingold. (2009, August 18). Trader Joe’s Point of Sale Agreement and Amendment. Retrieved from <http://llegal.com/2009/08/trader-joes-pos-agreement/> . Downloaded 2010.

20 Law Office of Lainey Feingold. (2009, July 30). CVS Accessible Web Site and Point of Sale Settlement Agreement. Retrieved from <http://llegal.com/2009/07/cvs-agreement/> . Downloaded 2010.

22 23 24 25 26 27 28 and the documented lack of accessible mobile devices²⁹ to facilitate access to mobile device based payments for people with disabilities are just a few of the issues that bring to light the gaps in the Consumer Protection Framework. The lack of consistent and systemic mechanisms to deal with accessibility issues before they become problems is a gap that needs to be addressed. Currently many of these issues have been dealt with through Human Rights Complaints. There is also an undocumented portion of the population that is unbanked or under-banked because they can not afford the service fees, do not have the necessary identification to open a bank accounts or are deemed to not have the capacity to manage their own finances. Ultimately without some mechanisms to ensure fundamental access to the core infrastructure of the Canadian financial system many Canadians will be unable to access critical and necessary services in order to function in their everyday lives.

Background History

Using the terms of reference described above it is worth reviewing in detail some of the conclusions of the report “Contributing to the Dialogue” commissioned by the Council of Canadians with Disabilities in 2006:

“The banking industry has not adequately addressed its obligation to ensure inclusion and accessibility for persons with disabilities. Many of these barriers arise from a lack of attention at the design stage to the principles of universal design.

While there are several agencies that deal with the banking industry, none of them explicitly addresses systemic barriers to persons with disabilities. The Department of Finance Canada is responsible for banking. The Office of the Superintendent of Financial Institutions (OSFI) is responsible for supervising federally regulated financial institutions, including the banks and federally incorporated insurance and trust and loan companies, to ensure that they are in sound financial condition and in compliance with the laws that govern federally regulated financial institutions.

21 Law Office of Lainey Feingold. (2009, May 14). Target Point of Sale Settlement Agreement. Retrieved from <http://lflegal.com/2009/05/target-settlement-agreement/> . Downloaded 2010.

22 Law Office of Lainey Feingold. (2009, April 23). Staples Accessible Web Site and Point of Sale Settlement Agreement . Retrieved from <http://lflegal.com/2009/04/stapl> . Downloaded 2010.

23 Law Office of Lainey Feingold. (2008, December 10). Dollar General Settlement Agreement. Retrieved from <http://lflegal.com/2008/12/dollar-general-settlement-agreement/> . Downloaded 2010.

24 Law Office of Lainey Feingold. (2008, April 30). Rite Aid Tactile POS Agreement. Retrieved from <http://lflegal.com/2008/04/rite-aid-pos-agreement/> . Downloaded 2010.

25 Law Office of Lainey Feingold. (2007, August 31). 7-Eleven Point of Sale Agreement. Retrieved from <http://lflegal.com/2007/10/7-eleven-pos-agreement/> . Downloaded 2010.

26 Law Office of Lainey Feingold. (2007, May 1). RadioShack POS and Web Agreement. Retrieved from <http://lflegal.com/2007/05/radio-shack-agreement/> . Downloaded 2010.

27 Law Office of Lainey Feingold. (2006, September 30). Safeway POS Agreement. Retrieved from <http://lflegal.com/2006/09/safeway-agreement/> . Downloaded 2010.

28 Law Office of Lainey Feingold. (2005, October 15). Wal-Mart POS Agreement. Retrieved from <http://lflegal.com/2005/10/walmart-pos-agreement/> . Downloaded 2010.

29 "Broadcasting and Telecom Regulatory Policy CRTC 2009-430 " <http://www.crtc.gc.ca/eng/archive/2009/2009-430.htm> . Downloaded February 25, 2014

The Financial Consumer Agency of Canada (FCAC) is an independent body working to protect and educate consumers of financial services. Established in 2001 by the federal government, its objective is to strengthen oversight of consumer issues and expand consumer education in the financial sector. Its written mandate does not identify accessibility as an issue.

The Ombudsman for Banking Services and Investments (OBSI) is an independent organization that investigates customer complaints against financial services providers, including banks and other deposit-taking organizations, investment dealers, mutual fund dealers and mutual fund companies. OBSI provides prompt and impartial resolution of complaints that customers have been unable to resolve satisfactorily with their financial services provider. The Ombudsman process is based on the simple principle that every client deserves a fair and prompt resolution of complaints. The process is meant to be readily available and informal. It may be possible to bring accessibility issues to this body, for settlement.

Established in 1891, the Canadian Bankers Association (CBA) is the main representative body for banks in Canada and the country's oldest industry association. All chartered banks are eligible for membership and currently all domestic and virtually all foreign banks doing business in Canada are members. The CBA is funded by its members and works with them to promote the strength and continued success of the industry, while building a greater understanding of the banking sector. The CBA is an important lobby group and undertakes research and policy development on behalf of the industry. Likely, development of systemic solutions to accessibility will require the involvement of the CBA.

There appears to have been little progress in the development of voluntary codes or standards within the Canadian banking industry for people with disabilities and this is an area where a Federal Disability Act can have significant impact.

International examples of progress need to be examined. For example, in Australia, following a HREOC inquiry, the banking industry adopted industry accessibility standards on Internet Banking, Automatic Phone Banking, Electronic Funds Transfer at the Point of Sale and Automatic Teller Machines. “³⁰

NSS notes that not much has changed structurally to the system since that report was written. Most of the changes that have resulted in regards to accessibility with the financial system have been through complaints to the Canadian Human Rights Commission. The Canadian Human Rights Act prohibits discrimination based on a person's race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted.³¹³² The nature of the complaints and the remedies available through the Commission are only binding on a specific company or organization. It is difficult and time consuming to facilitate industry wide change with a national scope through this mechanism. The resolutions to there issues are also retro-active so vulnerable Canadians can be disadvantaged and barred from accessing financial services for an extended period of time.

30 Gordon, Phyllis. “Contributing to the Dialogue: A Paper Commissioned by the Council of Canadians with Disabilities and Canadian Association for Community Living”. October 2006. <http://www.ccdonline.ca/en/socialpolicy/fda/1006>

31 http://www.servicecanada.gc.ca/eng/goc/dispute_chrc.shtml

32 “Canadian Human Rights Act (R.S.C., 1985, c. H-6)”. <http://laws-lois.justice.gc.ca/eng/acts/H-6/index.html>

It is important to acknowledge the need to accommodate people with disabilities has been recognized in other jurisdictions, so the concept of the rights of people with disabilities having equal access to the financial system is not a unique or novel concept. As mentioned in the report commission by the CCD, the Australian banking industry has adopted industry wide accessibility standards on Internet Banking, Automatic Phone Banking, Electronic Funds Transfer at the Point of Sale and Automatic Teller Machines. In addition it has adopted the obligation to consult the disability community in regards to future changes in some of the key standards. This can be more explicitly seen in the Australia Banking Association's Guiding Principles for Accessible Authentication.

“Accessibility issues need to be considered in the deployment of authentication technologies, to ensure that people with disabilities and older people are not disadvantaged.

Adoption of common standards by banks and other financial institutions in Australia will promote the confidence of customers using authentication technologies and improve the accessibility of retail banking and finance.

The Guiding Principles have been developed to:

- Provide guidance to financial institutions adopting stronger authentication technologies as part of their banking services;
- Ensure that all customers of financial institutions operating in Australia, including people with disabilities and older people, are able to access and manage their finances independently, securely and effectively;
- Ensure that the access needs of people with disabilities and older people are considered in the deployment of authentication technologies; and
- Ensure that financial institutions are able to provide the best possible service to all customers. “³³

The discussion is also relevant in regards to the Canadian financial system. The Neil Squire Society had the privilege to be invited to sit on the Consumer Issues Advisory Group of the Principles Subcommittee of the Task Force for the Payments System Review.^{34 35} The Task Force was created to help guide the evolution of the payments system in Canada. The mandate of the taskforce was to review the safety, soundness and efficiency of the payments system; whether there is sufficient innovation in the payments system; the competitive landscape; whether businesses and consumers are being well served by payments system providers; and whether current payments system oversight mechanisms remain appropriate. Part of the review focused on looking at the issues involved in migrating Canada's payment system to a fully electronic based system where credit cards, cheques and physical money would no longer be required. The taskforce consulted representatives from the payment industry, the wireless industry and consumers. The Department of Finance's taskforce consultations regarding the payment system for the financial services sector noted an ongoing convergence between the telecommunications industry and the payment industry as digital forms of payment become increasingly the norm. More specifically the issues around using mobile devices to make payments were examined. The Task Force established a Consumer Issues Advisory Group to investigate the

33 <http://www.bankers.asn.au/Industry-Standards>

34 http://www.fin.gc.ca/n12/data/12-030_1-eng.asp

35 <http://paymentsystemreview.ca/wp-content/uploads/Payments-Landscape-Full-Report-e3.pdf>

impact of the new payment system on stakeholders. The group was made up of representative from consumer groups, disability groups and small and large business enterprises. They are all classified as consumers as they consume payment services. The Consumer Advisory Group recognized that government needs to formally enshrine high-level principles of trust, access and good value that serve the public interest into the system. It also recognized the need to have oversight and enforcement processes. The principles were designed to be broad enough to interpret policies on how new innovations and service should be implemented while ensuring equitable and fair access to the payment system.

It is worthwhile re-visiting the principles document developed by that working group as it put forward specific high level principles that are relevant to the current consultation on the Consumer Code. The exact text presented here was not formally adopted into the final report presented by the Payment Review Taskforce to the Department of Finance. NSS believes it is more relevant to look at the original principles as they were drafted by the Consumer Advisory Group as it represents an unfiltered view of the participants of that group:

“The objectives of a national payments policy proposed by Task Force for the Payments System Review Consumer Issues Advisory Group Principles Subcommittee

It is hereby affirmed that the payments system performs an essential role in the Canadian economy and society and that, in order to optimize the total economic and social welfare of all its participants, ensure its efficiency and guide its evolution and development, the Canadian payments system shall be governed by the following objectives:

- (a) *generate and maintain a high level of trust among participants by being demonstrably:*
 - (i) *financially stable and safe with regard to the level of risk created or incurred by participants;*
 - (ii) *fair, reasonable and proportionate in the assignment of costs, benefits, rights and responsibilities among all participants, taking into account all relevant factors, including the level of risk involved and the ability of participants to prevent and bear risk and costs;*
 - (iii) *operationally robust, and able to process payments in a timely and accurate manner;*
 - (iv) *secure and able to protect the integrity and privacy of information;*
 - (v) *providing easily accessible and understandable rules governing its use, the prices charged to participants and the information provided thereto;*
 - (vi) *held in compliance with appropriate regulatory oversight by public agencies and authorized self-regulatory organizations;*
 - (vii) *supported by **easily understandable, impartial and accessible systems of redress** that are responsive and efficient and that include independent appeal processes; and*
 - (viii) *governed in a way that provides all categories of participants with a reasonable opportunity to provide input into its governance, development and use;*
- (b) *be easily accessible to all participants who use payment mechanisms and supportive of a reasonable expectation that they can choose amongst adequate payment mechanisms by ensuring:*
 - (i) *the provision of effective and efficient services throughout Canada;*
 - (ii) *ensuring the delivery of adequate and affordable services that are available independently of participants' **socio-economic and demographic circumstances** or commercial significance; and*
 - (iii) *the provision of services that are easy to use and that accommodate participants of **all skills and abilities**;*

- (c) *be competitive and innovative by:*
- (i) *operating in a way that delivers the most efficient costs to participants, consistent with the objectives of the national payments policy;*
 - (ii) *establishing an efficient and consistent regulatory framework that applies to all participants and is founded on functional neutrality;*
 - (iii) *facilitating competition among a wide variety of providers and services, including through the elimination of unnecessary barriers; and*
 - (iv) *promoting interoperability, both at the national and international levels.*

These objectives apply as reasonably appropriate to the different participants in the Canadian payments system, with due regard being given to the diversity of their circumstances. “

The Consumer Advisory Group formed by the Task Force believed that for any system to gain the trust of consumers it must be seen to be fair, transparent and secure in its service delivery and offer a **timely dispute resolution mechanism**. Furthermore they contended that the principle of “access” should strive to ensure that consumers are not be restricted in their access to services due to their **socio-economic status, skills, abilities or geographic location**. Though the principles were developed specifically to address the Canadian payment industry, NSS believes many of the principles put forward by the Consumer Advisory Group should apply more broadly and should be adopted for the Consumer Code being discussed during this consultation process. NSS notes that Canada is already seeing the early stages of the convergence of the financial system and the telecommunications system as there are early initiatives to facilitate payments and financial transactions through mobile devices. Rogers, a wireless service provider, for example has applied to provide banking services.^{36 37} and this will be a regulatory challenge in the coming years as there is no framework to resolve the conflicting priorities of the acts governing the Canadian telecommunications sector and the financial system.

Historical Lack of Accommodations of Vulnerable Canadians

Historically over the last 3 decades, people with disabilities and other vulnerable populations have been left behind when new technology has been deployed in the financial system. While organizations have realized the benefits of improved efficiency and a reduced cost structure. Not all stakeholders in the system, especially vulnerable populations like people with disabilities, have benefited from the deployment of new technology. The lack of accessible Automatic Banking Machines (ABM), the lack of fully accessible point-of-sale (POS) terminals and the more recent lack of accessible handsets/mobile devices for mobile based payments and financial transactions are three explicit examples of this.

Automatic Banking Machines

³⁶ “Rogers applies to open bank”. <http://business.financialpost.com/2011/09/06/rogers-applies-to-open-bank/>. Downloaded February 25, 2014.

³⁷ Kiladze, Tim; Trichur, Rita. “Rogers to take on banks in mobile ‘wallet wars’”. <http://www.theglobeandmail.com/report-on-business/rogers-to-take-on-banks-in-wallet-wars/article15303570/>

The first Interac Cash (ABM) transaction took place in 1986.³⁸ There are now over 59,000 bank machines in Canada and more than 17,300 of these are bank-owned ABMs.³⁹ As much as the ABM was a great benefit for able-bodied consumers, it also created great challenges for people with disabilities as their needs were not taken into consideration when they were designed. Most ABMs have not been designed for the special needs of people who are blind, visually impaired, have dexterity problems or use wheelchairs.⁴⁰ Blind users, for example, were not able to interact with the ABM systems as there was no standardized interface to access the financial transactions features and there were no audio prompting to lead blind users through the process. People who had mobility impairments and use wheelchairs in many cases could not access the keypad controls easily as there was not enough room under the ABM to accommodate the wheelchair foot rest and the placement of the screen did not allow them to see the information displayed properly.. Mobility users with limited dexterity could also not always use the keypad as the activation pressures and keyboard shapes did not support their level of physical ability.

A 1994 study sponsored by the Canadian Human Rights Commission in response to a number of human rights complaints showed a low level of accessibility across most ABMs.⁴¹ In late 1995, in response to this study, the Canadian Bankers Association commissioned a report to look at the underlying need to develop accessibility standards, find standards that existed in other countries, and determine the gaps that existed in the knowledge base that would make developing appropriate standards difficult. The resulting report “Guidelines for Development of a Canadian Standard of Accessibility for Persons with Disabilities and Seniors” used focus groups to consult users in the disability community.⁴² The researchers then used that feedback to outline technical specifications on how to create accessibility features to address the issues of each of the major disability groups: vision, hearing, mobility and cognitive impairment. The specifications formed the basis of the Canadian Standards Association standard for accessible banking machines.⁴³ The process to move from initial specification to a ratified standard took 6 years and shed light on the security, physical and technological constraints inherent in modifying ABMs, and revealed consumers varying needs and preferences. Despite the fact that the standard was released in 2001, it is only in recent years that ABMs which meet the standards are being broadly deployed.^{44 45 46 47 48 49 50 51} It is important to note the

38 <http://www.interac.ca/about.php> . Retrieve 2012-01-09

39 <http://www.interac.ca/about.php> . Retrieve 2012-01-09

40 Canadian Human Rights Commission report 2000. http://www.chrc-ccdp.ca/publications/2000_ar/page6-eng.aspx?print=1 . Retrieved 2012-01-10.

41 Betty Dion Enterprises, Ltd. “Unequal Access” Canadian Human Rights Commission Report, 1994.

42 Fernie, Dr. Geoff. Centre for Studies in Aging. “Submission to the Canadian Standards Association (CAS): Guidelines for Development of a Canadian Standard of Accessibility for Automated Banking Machines (ABMs) for Persons with Disabilities and Seniors. Steering Committee on an Accessibility Standard for ABMs. No

43 Canadian Standards Association. B65.1.1-01 (2001) Barrier-free design for Automated Banking Machines.”

44 Betty Dion Enterprises, Ltd. “Unequal Access” Canadian Human Rights Commission Report, 1994.4 <http://www.gdblegal.com/whatwedo.php?menuItem=36>

45 Settlement of litigation documents California Council for the Blind, the American Council of the Blind, and the American Foundation versus Walmart; Point of Sales Terminals; <http://www.gdblegal.com/pdf/wal-mart%20settlement%20agreement.pdf> .

46 Settlement of litigation documents California Council for the Blind, the American Council of the Blind, and the American Foundation versus Safeway; Point of Sales Terminals; <http://www.gdblegal.com/pdf/safeway%20settlement%20agmt.pdf> .

47 California Council for the Blind, the American Council of the Blind versus 7-eleven: Point of Sale Terminals; <http://www.gdblegal.com/whatwedo.php?menuItem=36&case=> .

48 Settlement of litigation documents California Council for the Blind, the American Council of the Blind, and the American Foundation versus Radio Shack: Point of Sale Terminals; <http://www.gdblegal.com/pdf/RadioShack.pdf> .

49 Neil Squire Society; Internal Report on Focus Groups on Retail and Public Services, DIS-IT (Disability and Information Technologies) Research Alliance, 2006. Social Sciences and Humanities Research Council of Canada -Innovations and the New Economy Initiative.

50 "Barrier-Free Design for Automated Banking Machines "; CAN/CSA-B651.1-01 (R2006) ; Canadian Standards Association.

standard is voluntary. It has no legal standing nor is there a formal process to enforce compliance except through a human rights complaint to the Canadian Human Rights Commission. The banks chose to apply the standard to machines installed in new bank premises, new installations in branches the previously did not have any ABMs or where the number of ABMs is being increased or premises that are undergoing significant renovations (eg., moving walls, relocating the main entrance etc, as opposed to giving the bank a new paint job.) . In addition the standard applies only to the ABMs that belong to organizations that are subject to the Finance Act, federally-regulated financial institutions. This is essentially the large chartered Canadian banks. There are a large number of generic machines deployed that do not have to meet these standards. As noted above 70% of ABMs are therefore not subject to any accessibility obligations.⁵² In Canada, the Interac network enables customers of one financial institution to use ABMs owned by another operator. Originally, Interac was owned by the large Canadian banks but in 1996, the Competition Tribunal expanded membership eligibility in Interac to increase competition in the market for electronic payment services.⁵³ This allowed a range of other ABM suppliers to enter the marketplace. Independent cash dispenser operators are now competing aggressively with Canada's major financial institutions for ABM locations. These "white label" ABMs typically do not comply with the accessible specifications developed so finding a conveniently located accessible ABM can be a challenge in some locations. As a result there are still many locations where accessible terminals are not available.

The length of time and the complexity of the process to facilitate change demonstrates the need to develop a knowledge base to start the discussion on potential accessibility standards for new technologies as early as possible. It also demonstrates the lack of pro-active and consistent effort by industry to engage the disability community to identify problems early. When accessibility issues are identified there is no process to ensure changes are made in a systematic and industry wide manner. It took a human rights complaint to get industry to respond and the reach of the resulting standards is limited to only a specific segment of the industry.

Payment Systems

Handling money, bank cards and cheques presents challenges for many people with disabilities. The ability to conduct financial transactions independently has been identified as a top priority need in previous studies and legal rulings here in Canada and in other countries. While on-line shopping has opened up new avenues for purchasing without having to physically handle cash, it does not help the consumer wishing to conduct on-the-spot transactions such as paying for restaurant meals. Debit cards that use Point-of-Sale (POS) Terminals have been around since the early 1990s. New Smart Card and Near Field Communication based systems that allow users to make payments by waving a card or fob (Frequency Operated Button) at a target are gaining momentum recently driven by banks and credit card companies. Unfortunately, many consumers, specifically those with disabilities, are unable to use these systems as they require a person to visually locate a target, physically manipulate a device or card, and react to an auditory cue.

Recently, mobile phone based financial applications are beginning to gain ground. Applications exist that allow users to conduct financial transactions over their mobile phones by calling an

51 Gill, J.M. (ed) Proceedings of the COST 219 Seminar on Smart Cards and Disability; COST 219 ISBN 1 86048 003 9; Nov 1994, 166 p;

52 <http://www.cba.ca/en/media-room/50-backgrounders-on-banking-issues/118-abm-market-in-canada> . Downloaded January 10, 2012.

53 <http://www.cba.ca/en/media-room/50-backgrounders-on-banking-issues/118-abm-market-in-canada> . Downloaded January 10, 2012.

automated customer service representative, text messaging, or accessing a mobile web application. These systems allow users to conduct a range of financial transactions including buying products and services, banking, and transferring money to other people.

Assistive technologies (ATs) aimed at improving the accessibility of payment services technology (PST) have been developed to address the needs of some disability groups. These include: talking screen readers for people with vision impairments, hearing aid compatible devices, and voice activated applications for those with mobility and dexterity impairments. Suitably, AT equipped PST could potentially provide accessible options for people wishing to conduct payment service transactions independently, but the speed at which technology is being deployed, the lack of consideration of the specific needs of people with disabilities at the design stage, and the lack of pro-active initiatives by industry to address accessibility issues have created a “digital divide”. The digital divide describes the unequal access to services, not only in the area of payment services, by people with disabilities as compared with people without disabilities. The result is “unequal” access to services considered fundamental to participation in the community.

Point-of-sale Terminals

Canada still lacks a process to ensure accessibility of Point of Sale (POS) devices. A recent Human Rights complaint in Quebec settled earlier recently highlights the lack of understanding of even basic accessibility issues.^{54 55} In this particular case, a customer in a wheel chair could not reach the POS device because it was bolted to a base on the counter. Though this was done to prevent the theft of the machine, the business did not provide an alternative method of access. It is important to point out that this ruling applies only to one class of disability. Users who are blind or have low vision often have difficulty inserting the card in the card reader and also with reading the information on the display of the device; as well, people with some forms of mobility impairments that involve their fine motor skills in their hands (dexterity impairment) may not be able to activate the keypad or insert their cards at all. Most merchants in Canada do not provide alternative access, as there is currently no regulation in Canada mandating the deployment of accessible POS terminals.

A 2009 study by researchers at the Georgia Tech Research Institute found that:

“POS machines pose a number of accessibility issues. The physical design of these types of devices, which are often large and designed to be used by users in a standing position, can result in difficulties for users with lower mobility impairments. Interacting with the various components of POS machines can be difficult for users with upper mobility impairments, and the lack of standardization in the layout of components among machines can create difficulty for users with visual impairments. POS machines sometimes have complex user interfaces that support a diverse range of functions, and the complexity of the interface can pose problems for users with cognitive impairments. Other aspects of the design of user interfaces for POS machines can cause problems for users with impaired vision or hearing, as well.”⁵⁶

54 <http://accesstechnews.wordpress.com/2010/07/16/pharmaprix-to-make-debit-card-readers-accessible-to-handicapped-customers/>

55 <http://communiqués.gouv.qc.ca/gouvqc/communiqués/ME/Juillet2010/14/c4389.html?slang=en>

56 Fain, B. (Unknown). POS Accessibility Monograph. Retrieved from

Early investigation of the accessibility of POS by the Neil Squire Society (prior to 2004) arrived at similar conclusions (unpublished). This work came to many of the same conclusions outlined in the George Tech report.

We have seen recent initiatives to address these inequities in regional jurisdictions such as California. In California, the disability community, most notably the blind community, has been able to get the state government to enact legislation that addresses some of the issues involving the accessibility of POS terminals. In September of 2005, after strong opposition from the business community, the governor signed into law Bill AB2312.⁵⁷

“California Bill AB2312 requires :

“that on and after January 1, 2009, a manufacturer or distributor of touch-screen devices used for the purpose of self-service check-in to offer for availability devices that enable visually impaired persons to use a self-service check-in device independently and to process a transaction with the same privacy protection afforded to persons who are not visually impaired. “⁵⁸

Keep in mind the fact that the law is still silent on the accessibility issues encountered by people who have mobility/dexterity impairments, who are deaf, and who have cognitive impairments. These other groups, in some cases, lack the coordinated political effort of disability communities such as those who are blind. Despite the new legislation in California to address the accessibility of POS terminals, it is important to remember that this only represents one geographic jurisdiction. Recognizing the inequities of the current POS systems, the disability community has pushed ahead in other jurisdictions via individual lawsuits against specific retailers.^{59 60 61 62 63 64 65 66 67} Canada does not have the same degree of activism or as litigious an environment; but this does not mean that

<http://accessibility.gtri.gatech.edu/library/POS%20Accessibility%20Monog...>

57 Burns, N. (2005, February). California Legislation and Accessibility Issues. Braille Monitor. Retrieved from <http://nfb.org/legacy/bm/bm05/bm0502/bm050206.htm>

58 http://info.sen.ca.gov/pub/05-06/bill/asm/ab_0751-0800/ab_768_cfa_20060621_122332_sen_comm.html

59 Law Office of Lainey Feingold. (2009, August 18). Trader Joe's Point of Sale Agreement and Amendment. Retrieved from <http://lflegal.com/2009/08/trader-joes-pos-agreement/>

60 Law Office of Lainey Feingold. (2009, July 30). CVS Accessible Web Site and Point of Sale Settlement Agreement. Retrieved from <http://lflegal.com/2009/07/cvs-agreement/>

61 Law Office of Lainey Feingold. (2009, May 14). Target Point of Sale Settlement Agreement. Retrieved from <http://lflegal.com/2009/05/target-settlement-agreement/>

62 Law Office of Lainey Feingold. (2009, April 23). Staples Accessible Web Site and Point of Sale Settlement Agreement . Retrieved from <http://lflegal.com/2009/04/stapl>

63 Law Office of Lainey Feingold. (2008, December 10). Dollar General Settlement Agreement. Retrieved from <http://lflegal.com/2008/12/dollar-general-settlement-agreement/>

64 Law Office of Lainey Feingold. (2008, April 30). Rite Aid Tactile POS Agreement. Retrieved from <http://lflegal.com/2008/04/rite-aid-pos-agreement/>

65 Law Office of Lainey Feingold. (2007, August 31). 7-Eleven Point of Sale Agreement. Retrieved from <http://lflegal.com/2007/10/7-eleven-pos-agreement/>

66 Law Office of Lainey Feingold. (2007, May 1). RadioShack POS and Web Agreement. Retrieved from <http://lflegal.com/2007/05/radio-shack-agreement/>

67 Law Office of Lainey Feingold. (2005, October 15). Wal-Mart POS Agreement. Retrieved from <http://lflegal.com/2005/10/walmart-pos-agreement/>

inequities do not exist.

Mobile Device Based Payment Systems

In recent years, alternative forms of payment have been gaining in popularity. On-line purchasing has become ubiquitous. While the introduction of on-line shopping has opened up new avenues for purchasing without physically handling cash, web-based shopping does not help the consumer wishing to conduct an on-the-spot transaction such as paying for a restaurant meal or buying a newspaper.

Near Field Communication (NFC) and Contact-less Smart Card based payment systems are gaining momentum for on-site payment scenarios. NFC-enabled mobile phones, fobs or cards include embedded chips that allow users to make payments by tapping or waving the card or phone at a point-of-sale terminal reader. While these systems provide an alternative method to cash or debit and credit cards, they still require consumers to visually locate a target, physically manipulate the phone or card, and react to audio cues. While a lot of work has gone into developing guidelines to improve the accessibility of NFC and Smart Cards, these limitations make these systems inherently not well suited for many people with disabilities.^{68 69 70 71 72 73 74 75 76 77 78 79 80 81}

During the last 10 years, mobile phone services have been developed that allow consumers to conduct a range of financial transactions that are not tied to a specific location unlike POS and ABMs. The transactions including buying products and tickets, making donations, doing their banking, and transferring money to other people. Unlike NFC equipped phones that simply carry a smart chip and are detected by a nearby reader, these services utilize the interactive capabilities of the mobile phone. Depending on the system, the transactions can be conducted by sending a text message, calling a 1-800 number and using an automated voice menu system, using a mobile phone application, or using a web-

68 Gill, J.M. Smart Cards: The Forgotten Customer. Proceeding of Smart Card '95. February 1995.

69 Gill, J.M. The Importance of Smart Card for People with Disabilities; "Proceedings of Human Factors in Telecommunications Conference; Melbourne, March 1995; pp 383-386.

70 Gill, J.M. and Currie K; "Smart Cards and Terminals"; In Roe P R W (ed) Telecommunications ofr All. COST 219, Commission of the European Communities, October 1995, pp 196-204.

71 Gill, J.M.; "Design of Smart Cards Systems to Meet the Needs of Disabled and Elderly Persons"; Proceedings of the ECART3 conference, Portugal, ISBN 972 9301 18 2; October 1995, pp 314-316.

72 Gill, J.M.; "Smart Cards: Interfaces for People with Disabilities"; Royal National Institute for the Blind; ISBN 1 86048 007 1, February 1996, 16 pp.

73 Gill, J.M. and Carsons G. "Smart Cards: The Coding of User Interface Requirements"; Royal National Institute for the Blind. July 1996, 12 pp.

74 Gill, J.M. "Saturn Case Study"; Saturn Project 1997.

75 Gill, J.M. "The Coding of Interface Requirements on Smart Cards for People With Disabilities"; Smart Card Technology International, ISSN 1361 8283; February 1997; pp 102-106.

76 Gill, J.M.; "Smart Card Technology and the Disabled"; Card Forum International, Vol 1; No. 4 November/December 1997, pp 33-35.

77 Jones D. and Mearns C. "The Smart Card 1998". SJB Services, ISBN 1 900118 03 3; 1997.

78 Comite Europeen de Normalisation Standard prEN 1332 Machine readable cards, related device interfaces and operations: Part 2 Dimension and location of tactile identifier for ID1 cards.

79 International Organization for Standardization ISO/IEC 10536 Identification Cards- contactless integrated circuit cards

80 Gill, J.M. "The use of Electronic Purses by People with Disabilities: What are the Needs". August 1998.

81 Irish National Disability Authority Smart Card Accessibility Guidelines: Dr John Gill, Royal National Institute for the Blind. Dick Clarke, Consult Hyperion.2007.]

based application. Some payment services provide a choice of more than one access method. To make a transaction, users typically pre-register for a particular service via telephone or on-line with a PC. Then they simply log into the system via their mobile phone and enter transaction details. Once the consumer has authenticated the purchase with a personal identification number (PIN), the money is automatically transferred to the intended recipient. Payment history and account balances can be stored on the phone or viewed online.

These services can essentially be divided into four types or methods of access; voice call, web site access, text messaging, and downloaded mobile phone applications. The mobile phone “application” refers to a software program that people must download to their mobile phones in order to access a particular service.

The advent of m-commerce (mobile) and the potential to perform financial transactions using mobile wireless technology, may offer people with disabilities an alternative means to make purchases or possibly present another barrier, depending on how the technologies and services are rolled out. The Neil Squire Society released a study earlier this year that investigated the accessibility issues of several mobile phone based payment systems and services.⁸² While some AT solutions exist that increase the accessibility of mobile phones, the study looked at whether these accommodations were sufficient given the tasks the users must complete to conduct a mobile payment transaction. The study comprised a series of user trials including people with mobility impairments and members of the Blind, Deaf and Hard of Hearing communities. The study included a review of existing mobile phone based payment systems and services, supporting assistive technologies and compatible mobile phones. The Neil Squire Society collaborated with 3 other organizations including the Canadian National Institute for the Blind (CNIB), the Canadian Association of the Deaf (CAD) and the Canadian Hard of Hearing Association (CHHA).

The study highlighted two inter-related issues that define the challenges surrounding the creation of accessible payment services for people with disabilities. The first is basic access to the features of the mobile phones themselves. Each disability group faces unique challenges that need to be addressed by the hardware and appropriate assistive technology. In some cases, those solutions currently do not exist or are no longer available due to the quick pace of change in the mobile device market. The second is the accessibility of the services themselves. In some cases, the technology is relatively new and accessibility standards currently do not exist for the technology. In other cases, the service providers have decided not to follow existing accessibility guidelines. Compliance in many Canadian jurisdictions is not mandatory and many do not apply to service providers that are not based in Canada.

Mobile Phone Accessibility

In order for some people with disabilities to access the payment systems described above, accessible mobile phone platforms must be available. As the needs of people are varied, there is no single global solution for accessibility that will work for all disability groups. However, the importance of communications for people with disabilities is widely recognized and government regulations in

⁸² Lew, Harry; Leland, Dan; Birch, Gary. “Evaluation of Mobile Payment Systems for People with Disabilities”, Neil Squire Society. 2010.

countries such as the United States have been successful in ensuring that assistive technologies (AT) have been developed to meet the needs of some of these consumers. Lack of equal political pressure from all disability groups means that some needs have been addressed while others have not. Mobile phone manufacturers have been slow to respond to government and disability organization pressure. As a result, there are a restricted number of phones that are designed to meet the needs of users with disabilities, most notably for persons with hearing or vision impairments and some users with mild mobility impairments that affect their dexterity. People with moderate to severe mobility impairments and cognitive impairments have few options, or none at all, when it comes to accessing any more than the basic telephone features of a mobile phone. Also, the product development cycles are too fast for third party AT developers to keep up with. The CRTC recognized the challenges faced by people with disabilities in accessing handsets and the role Canadian wireless service providers can play in its report of July 2009. It issued a directive for wireless service providers

“to offer at least one mobile handset for persons who are blind and/or have moderate to severe mobility and/or cognitive disabilities by October 21 2009”

and to

“...provide reasonable technical and life cycle support for the handset to address special needs and assistive technologies”

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The Canadian telecommunications industry has been slow to react to this directive. No Canadian wireless service provider currently complies with these directives. It is important for this to happen in order to ensure fundamental access to new payment services. In 2010 the legislative system in the United States signed into law, H.R. 3101: Twenty-first Century Communications and Video Accessibility Act of 2009 that re-defines and broadens the services that should be accessible to include digital services.⁸⁴ In the past, the telecommunications industry has defined accessibility to apply only to basic telephone services. The Twenty-first Century Communications and Video Accessibility Act of 2009 recognizes the new class of digital services that are available on mobile devices. It should be noted that the CRTC definition of handsets under the directive of 2009 used a broader definition of telecommunication services that included in part the new and future applications and services defined by the American 21st Century Act.

Each handset is only useful if it can access specific services. On the services side, it should be noted that except for direct government services, there is no legislative mandate for commercial organizations to adhere to existing accessibility guidelines such as the Web Content Accessibility Guidelines (WCAG) 2.0.⁸⁵ New regulations written under the mandate of the Accessibility for Ontarians with Disabilities Act of 2005 expands the definition of accessibility services to cover commercial organizations in Ontario.⁸⁶ “The proposed Accessible Information and Communications

83 http://www.crtc.gc.ca/eng/info_sht/t1037.htm

84 <http://www.govtrack.us/congress/bill.xpd?bill=h111-3101> . Downloaded December 20,2012

85 <http://www.w3.org/TR/WCAG20/> . Downloaded December 20, 2012.

86 <http://www.mcass.gov.on.ca/en/mcass/programs/accessibility/OntarioAccessibilityLaws/index.aspx>

Standard outlines how businesses and organizations will have to create, provide and receive information and communications in ways that are accessible for people with disabilities. The proposed Accessible Information and Communications Standard will require obligated organizations to:

- “provide information and communication to people with disabilities in a way that accommodates their disability, and
- make websites accessible”

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People with disabilities have traditionally had to play catch up, having to push for change well after new technologies have become mainstream. Given the pace at which new technologies are introduced and adopted, it is important for the disability community to look ahead, identify emerging trends, and evaluate new technologies before they become mainstream, discover accessibility issues and, where possible, suggest solutions. Many disability organizations lack the funding and the in-house technical expertise to do this, but a few organizations such as the Neil Squire Society are trying. It still requires a commitment from industry to recognize the issues brought forward and make a commitment to solve the issues that are creating the inequalities. Historically, industry has been slow to react due to the perception that any solution would add unacceptable extra cost to the devices or services.

A study released by the Neil Squire Society in 2010 tried to define the accessibility issues in the area of cell phone based payment systems. Not yet mainstream, cell phone based payment systems are an emerging trend that has the potential to change the way Canadians carry out retail transactions. We have already seen similar initiatives in the banking sector. Most of the major banks have a system to allow customers to check their balances and transfer funds through their cell phones. Cell phone payments for products and service have been slower to be adopted but, as noted above, we see systems to pay for parking, buy a movie ticket and even buy a product from a magazine ad or an item on auction via a cell phone.

Migration to A Digitally Based Economy

This discussion on electronic payment methods and the accessibility of the emerging technologies has a pressing relevance as the Government of Canada is currently looking at ways to migrate the Canadian economy to a fully electronic based economy. On June 10, 2010, the Department of Finance announced the formation of a taskforce to review the Canadian payment system⁸⁸ One of the mandates of the taskforce was to look at the transition of the Canadian economy to a fully electronic based system by 2020.⁸⁹ Canada still processes nearly one billion cheques every year.⁹⁰ The cost of processing cheques is estimated to cost individual Canadians, governments and businesses at least \$1.04 billion per year (based on average processing cost of \$1.04 per cheque estimated by the

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<http://www.mcass.gov.on.ca/en/mcass/programs/accessibility/OntarioAccessibilityLaws/DevelopingStandards/infoAndComm.aspx>

88 “Minister of Finance Announces Task Force to Review Payments System”. June 18, 2010. <http://www.fin.gc.ca/n10/10-057-eng.asp> .

89 <http://paymentsystemreview.ca/>

90 “Cheques-What you need to know.”. Canadian Bankers Association. <http://www.cba.ca/en/consumer-information/40-banking-basics/584-cheques-what-you-need-to-know> . Downloaded January 23, 2011.

Treasury Board of Canada Secretariat, actual cost for private sector cheque processing will be higher⁹¹). Governments and businesses are looking to reduce their cost and electronic transfers of funds is one way to reduce those costs. In the case of federal and regional governments, they have the additional cost of handling lost and misplaced cheques which might have to be re-issued. Electronic payment systems allow for easy verification. In some cases, the cost savings provide an advantage only to the issuer of the cheque. In the case of welfare and pension payment, some recipients have no access to banking services or cannot afford to maintain bank accounts. Early trials which used **debit cards** to replace cheques in Alberta and British Columbia in 2007 were unsuccessful.^{92 93 94 95} In the case of Alberta, the cost of implementing the program was considered too expensive at a time when the provincial budget was being constrained and the supplier of debit cards was not able to meet the privacy standards of the Alberta Ministry of Employment and Immigration.⁹⁶ There was an additional ongoing cost to the program as the Alberta government was subsidizing the cost of the bank accounts for recipients as not all recipients had bank accounts. The B.C. government found that a pilot project with 20,000 benefit holders in Victoria cost more than the traditional cheque process.⁹⁷ In 2011 Welfare offices in Toronto and Manitoba started to advocate a plan that would provide debit cards instead of cheques to welfare recipients, this despite unsuccessful pilot projects in both B.C. and Alberta in 2007.⁹⁸

“Proponents say the cards are cheaper than issuing paper cheques and help recipients avoid excessive fees charged at payday advance lenders.”⁹⁹

Other provinces are also considering a switch to debit cards.¹⁰⁰ Accessibility of debit cards is a major concern as people with disabilities are overrepresented among those with low income and must rely on social assistance. It is estimated that 54% of PWD are under employed or not in the workforce and, therefore, potentially on social assistance.¹⁰¹ As noted previously, POS terminals that utilize debit cards are not accessible to all users with disabilities, so this migration would be another barrier to these users, some of which are already among the most marginalized in our society.

91 “Report on Review of the Cost of Various Methods of Payment Financial Management Policy Division Deputy Comptroller General Branch”. January 1998. <http://www.tbs-sct.gc.ca/fm-gf/tools-outils/reports-rapports/rtrcvmp-recsdmp-eng.asp#Toc473516224> . Downloaded January 23, 2012.

92 “B.C. to put welfare payments on government debit cards”. Vancouver Sun. December 6, 2007. <http://www.canada.com/vancouversun/news/story.html?id=4aa290c9-e40e-49bf-97f5-e18800f55a0c> .

93 “Debit cards replace Alberta welfare cheques “. CNC News. February 13, 2007. <http://www.cbc.ca/news/canada/edmonton/story/2007/02/13/debit-welfare.html> .

94 “T.O., Manitoba push debit cards for welfare recipients”. May 30, 2011. <http://money.canoe.ca/money/business/canada/archives/2011/05/20110530-102428.html> .

95 Dale, Daniel. “Debit cards to replace welfare cheques.” Aug 8th, 2011. <http://www.thestar.com/news/article/1036322--debit-cards-to-replace-welfare-cheques> .

96 “T.O., Manitoba push debit cards for welfare recipients”. May 30, 2011. <http://money.canoe.ca/money/business/canada/archives/2011/05/20110530-102428.html> .

97 “T.O., Manitoba push debit cards for welfare recipients”. May 30, 2011. <http://money.canoe.ca/money/business/canada/archives/2011/05/20110530-102428.html> .

98 “T.O., Manitoba push debit cards for welfare recipients”. May 30, 2011. <http://money.canoe.ca/money/business/canada/archives/2011/05/20110530-102428.html> .

99 “T.O., Manitoba push debit cards for welfare recipients”. May 30, 2011. <http://money.canoe.ca/money/business/canada/archives/2011/05/20110530-102428.html> .

100 Department of Finance Taskforce Briefing August 2011.

101 http://www.tdsb.on.ca/_site/viewitem.asp?siteid=15&menuid=8564&pageid=7492

Outmoded Definition of Legal Capacity as a Barrier

The way society accommodates people with intellectual or cognitive disabilities have change over the last two decades. They are now able to integrate more in the community, being able to live in community based independent living centres and hold down jobs. People with intellectual disabilities are no longer routinely sent to live in institutions where they are kept separate from the rest of society, based on an erroneous assumption of incapacity and the need to be cared for. Children with intellectual disabilities now grow up, as they should, within the context of family, attend school with their peers in their local school, and for the most part are exposed to an inclusive education. Their expectations are the same as other young people to become contributing adults to become employed, create a lifestyle and residence outside the family home, to be to the fullest extent possible a contributing citizen.

Adults with intellectual disabilities are also working within the competitive labour market, earning a wage and paying taxes. Many are capable of working independently but many others require some degree of assistance: sometimes from a job coach, natural supports on the job, or some other form of on job accommodation. The fact that they require assistance does not diminish the fact or value of their contribution to the workforce. However, these same individuals often face insurmountable challenges when they encounter the financial institutions in this country. It is indeed ironic, at best, that an adult with intellectual disabilities can be viewed as competent and capable enough to earn a paycheck but not competent to cash that paycheck!

People with intellectual disabilities live in our communities, are our friends, colleagues and co-workers, and in order to be full and equal citizens (as is their right) they must have access to the same services that other citizens use. The same principles that apply in acknowledging that some people require support to live independently (without diminishing their personal autonomy) must be extended to finding the appropriate accommodations to ensure that people with intellectual disabilities can have access to needed financial services.

Not all policies and attitudes have kept up with this change though as people with intellectual or cognitive disabilities have been particularly vulnerable to having their capacity to enter into contracts questioned and are often denied access to everyday transactions such as banking, loans and service agreements,. As a result they are denied their legal capacity and full "person-hood". They often do not receive the same presumption of competence and capacity in these matters as do their non-disabled peers. The bulk of these transactions occur everyday in unregulated settings rather than in courts and formal procedural transactions.

Article 12 of the UN Convention on the Rights of Persons with Disabilities, ratified by Canada, states that "States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law;" that "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;" and that "States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity."

Changes to the code relating to financial affairs and decision making should include an explicit requirement to presume the legal capacity of an adult; and to provide accommodations or supports in the related decision-making processes. This recognizes an equal presumption of competence and capacity of persons with intellectual or cognitive disabilities as with other persons without disabilities.

Further, consistent with the UNCRPD Article 12, people who require support in making or articulating their decisions, should have their competence and decisions respected as their own. A comprehensive review of the issues faced by people with cognitive impairments and intellectual disabilities and framework for addressing these issues is detailed in a paper by Michael Bach and Lana Kerzner, "A New Paradigm for Protecting Autonomy and the Right to Legal Capacity".¹⁰²

The Government of Canada has already recognized the issues surrounding access to financial transactions by persons with disabilities who may have their contractual capacity questioned by others, in its review of the Registered Disability Saving Plan (RDSP) and its direction to provinces/territories to make needed legislative and policy changes to address the need for greater recognition of legal capacity and supports to exercise it. Governments across the country are addressing this issue. As well, the Law Commission of Ontario is undertaking a full review of the issues related to legal capacity and personal and property decisions with a view to enhancing and ensuring full recognition of legal capacity without discrimination on the basis of disability.¹⁰³ In light of this progress there still needs to be a national coordinating initiative that ensures the definition of capacity and the level and nature of the supports provided to people with cognitive impairments and intellectual disabilities is consistently applied across the country.

Lack on a Responsive Complaint and Re-dress system

Due to the fact that accessibility to the financial system by vulnerable Canadians is not explicitly referenced to any in the acts, what level of accessibility that does exist is not well defined, is company specific in nature and sporadic in application. As mentioned in the previous section ABMs were deployed with little regard to the accessibility requirements of people with disabilities initially. It took a specific Human Right complaint to get organizations and subsequently the banking industry to look at the issues more closely. It then took several years to develop voluntary standards around the issues. Adoption of the standards then took many more years as many banks decided to wait for their existing supply contracts to lapse before adopting the standards into actual devices. The breadth of the compliance with those standards remain specific to the charter banks as "white" label ABMs owned by non-chartered banks do not comply to the accessibility standards.

The Human Rights complaint process currently is the only way to seek re-dress in regards to the lack of accessibility to the financial system in regards to technology. The remedies available under the Human Rights process is company specific in nature as the settlements typically are intended to resolve the specific complaint between the complainant and the institution or organization committing the offence. There is no way to introduce systematic change to the system. As a result, consumers with disabilities may experience an inconsistent level of accessibility between institutions and have their choices restricted.

It is important to look at best practices in other jurisdictions and in other sectors to see how the balance between accessibility and innovation can be achieved. The efforts made by the Australian financial system with the cooperation of the Australian Banking Association have already been pointed out. NSS would also like point out the initiatives put in place by the American 21st Century

102 Bach, Michael Bachl Kerzner, Lana. "A New Paradigm for Protecting Autonomy and the Right to Legal Capacity" <http://www.lco-cdo.org/disabilities/bach-kerzner.pdf>

103 <http://www.lco-cdo.org/en/capacity-guardianship>

Communications and Video Accessibility Act (CVAA) ¹⁰⁴. This Act requires advanced communications services and products to be accessible by people with disabilities. Advanced communications services are defined as (1) interconnected voice over Internet protocol (VoIP) service; (2) non-interconnected VoIP service; (3) electronic messaging service; and (4) interoperable video conferencing service. This includes, for example, text messaging, e-mail, instant messaging, and video communications. It also creates an industry wide record keeping obligations that requires service providers and equipment manufacturers annually to provide details on what they have done to comply with the accessibility obligations in the act. It also requires changes to the existing complaint and enforcement procedures and tightens deadlines for the FCC to respond to consumer complaints. The CVAA firstly creates an explicit obligation for service providers and device manufacturers to produce and make available accessible devices and services. Secondly the Act creates a streamline complaint and enforcement process that supplements but does not replace the existing formal complaint process under the American Telecommunications Act of 1996. Under the Telecommunications Act formal complaints take the form of a lawsuit in court with all the accompanying legal costs. As a result the process is costly and lengthy. The FCC also collects informal complaints and if enough complaints are recorded they can initiate an investigation.

The new more streamlined complaint and enforcement system removes the need for a costly lawsuit and provides a timely resolution to a complaint. ¹⁰⁵

“Under the new complaint procedures, a consumer may choose to contact the company directly to try and resolve his or her accessibility problem.

If the accessibility problem is not resolved in 30 days, the consumer has two choices:

- (1) request an additional 30 days of assistance from the Disability Rights Office to continue to try to resolve the accessibility problem (additional requests beyond this time may also be made for 30-day increments); or
- (2) file a Communications Accessibility Informal Complaint about the accessibility problem with the FCC’s Enforcement Bureau. “ ¹⁰⁶

“ Contact the Company - Choose this option if you want to contact the company to try and resolve your accessibility problem. The FCC can help you find contact information for the company’s accessibility customer care representative.

Request Dispute Assistance – Choose this option if you want the FCC Disability Rights Office to assist you to resolve your accessibility problem. You will be directed to information about how to request assistance from the Disability Rights Office.

After you request assistance, the FCC Disability Rights Office will contact you to learn more about your accessibility problem. The Disability Rights Office must work with you and the company for at least 30 days to try to resolve your accessibility problem, before you can file an informal complaint with the FCC Enforcement Bureau.

104 <http://www.fcc.gov/encyclopedia/twenty-first-century-communications-and-video-accessibility-act-0>

105 <https://www.fcc.gov/document/new-procedures-communications-accessibility-informal-complaints>

106 <http://www.fcc.gov/accessibility-complaints-255-716-718-action-options>

If your accessibility problem is not resolved in 30 days, you have two choices: you may request an additional 30 days for assistance to try to resolve your problem; or you may file an informal complaint with the FCC Enforcement Bureau. you must request an additional 30 days for assistance or file an informal complaint within 60 days after the 30-day time period ends. If you take no action within 60 days, your accessibility case will be closed.

Extend the Time for Assistance – Choose this option if you want the Disability Rights Office to work with you and the company for an additional 30 days to resolve your accessibility problem. Only choose this option if you have already requested dispute assistance from the FCC Disability Rights Office and you want assistance for more than 30 days.

At the end of a 30-day extension, you must request an additional 30 days for assistance or file an informal complaint within 60 days. If you take no action within 60 days, your accessibility case will be closed.

File an Informal Complaint – Choose this option **ONLY** when:

you have previously filed a Request for Dispute Assistance with the FCC Disability Rights Office about the accessibility problem that is the subject of your informal complaint; 30 days have passed since you filed the Request for Dispute Assistance; any 30-day extension of time for assistance has expired; and your accessibility problem was not resolved.

You must file an informal complaint within 60 days after the first 30 days of assistance from the Disability Rights Office ends or after any 30-day extension of time ends. If you take no action within 60 days, your accessibility case will be closed.

More information about filing a Communications Accessibility Informal Complaint is available online at www.fcc.gov/accessibility-complaints-Form-2000H-more-information”¹⁰⁷

As part of the enforcement process the FCC can levy fines against a service provider or a device manufacturer or both of \$10,000 per day if it is determined that compliance has not met, There is a maximum fine of \$1 million per incidence.

Major Points of the Background Material

The previous sections of this submission have established a number of key points:

- There is a lack of acknowledgement of a formal and persistent obligation to accommodate the needs of vulnerable Canadians in any of the Acts and voluntary standards that govern the Canadian financial and payment systems.
- The launch of new technology innovations in the Canadian financial system has marginalize and continues to marginalize vulnerable Canadians because the needs of these users are not taken into consideration when the technology was conceived,

107 <http://www.fcc.gov/accessibility-complaints-255-716-718-action-options>

- designed and subsequently deployed.
- That gains that have been made in accessibility for vulnerable Canadians have only been through Human Rights complaints.
- The Human Rights complaint process is after the fact which is costly to industry as it is often difficult and expensive to retrofit solutions.
- The Human Rights complaint system is limiting as the remedies available are company specific and the process can be expensive and lengthy, which is a deterrent to consumers unless they have the most steely resolve.
- An explicit regulatory obligation to accommodate the needs of vulnerable Canadians in conjunction with an informal complaint system as outlined in the American CVAA would be a method to streamline the re-dress process.
- An obligation to consult vulnerable Canadians and accommodate their needs in the early stages of the consideration on innovation as has been adopted by the Australian banking system would help to alleviate future issues. These obligations would also create the needs for a meaningful and relevant dialogue between all stakeholders in the Canadian financial system.

The rest of this submission will address the specific questions put forward by the consultation paper in the order in which they were proposed. Where the answers cover some of the same material as have already been presented in the background material in this document they will not be repeated but simply referred to in order to ensure the brevity of this document.

Question 1. Establishing a Comprehensive Set of Principles for Consumer Protection

To achieve a framework that is more adaptable to changes in the financial marketplace, products and technology, the government is considering the merits of adopting standards or principles to anchor the financial consumer code.

Should the government adopt a set of principles to govern financial consumer protection that would be applicable even where specific regulations have not been enacted?

NSS feels it is critical to have a set of principles to guide financial consumer protection that would be applicable even where no specific regulation may exist because of the rapid change in technologies that are anticipated in the coming years. The convergence of telecommunications and finance through the launch of mobile device based payments and the goal of eliminating cheques in 2020 set out in the Payment Review Taskforce recommendations are just a few of the challenging issues that will emerge in the next few years. Many of these initiatives are already underway and, if history is any indication, in the absence of explicit regulation or guidance these innovations and services will be launched without consideration to the needs of vulnerable Canadians and that vulnerable Canadians will have to force change through a Human Rights complaint process. Due to the

company specific nature, the cost and the lengthy process involved in Human Rights complaints that will mean vulnerable Canadians may be caught in a vacuum where they may not be able to access financial services in a timely and efficient manner. The principles laid out by the Consumer Advisory Group of the Payment Review Taskforce and the Australian Banking Association are important and critical principles to incorporate in any Consumer Code.

Within the Consumer Advisory Group principles, NSS would like to highlight the following 3 key principles of great relevance to vulnerable Canadians and specifically to people with disabilities:

- *ensuring the delivery of adequate and affordable services that are available independently of participants' **socio-economic and demographic circumstances** or commercial significance*
- *the provision of services that are easy to use and that accommodate participants of **all skills and abilities**;*
- *supported by **easily understandable, impartial and accessible systems of redress that are responsive and efficient** and that include independent appeal processes*

These principles were written to provide accommodations for all Canadian consumers. Implicit in these principles are the concepts that services should be accessible regardless of their physical and mental skills and abilities. NSS would recommend an explicit reference to “people with disabilities” in any code that is developed from these principles. History has shown where there have been ambiguities in regards to an explicit obligation to address the need of people with disabilities, their needs are overlooked. The reference to the needs of people with disabilities in the Australian Banking Codes and the very existence of the CVAA in the USA in regards to accessible advance communication services indicates a reluctance by industry stakeholders to move forward on accessibility issues in a voluntary and coordinate way to ensure a consistent level of accessibility.

If so, how should a set of principles be administered?

The American CVAA sets out mechanisms to monitor and enforce the principles of any future Consumer Code. The CVAA requires industry stakeholders to file yearly their plans and activities on how they plan to adhere to the regulations developed as a result of the principles. The yearly plan would provide details on how industry stakeholders have consulted vulnerable Canadians and how they plan to respond to those needs and concerns. It also outlines an “informal” complaint based system that streamlines the reporting and resolution of potential breaches of the regulations or guidelines developed based on the principles. We note that the informal complaint process does not take away any of the consumer's rights to file formal complaints through other mechanisms which in Canada would be a Human Rights Complaint. A streamlined re-dress system should reduce the number of formal complaints and reduce the time and costs involved in resolving the complaints.

What should be included in a set of principles that would form the basis for financial consumer protection?

From the perspective of people with disabilities and other vulnerable Canadians the following set of principles derived from principles developed from the Consumer Advisory Group of the Payment Review Taskforce and the Australian Banking Association *Australian Banking Association document*

“Guiding Principles for Accessible Authentication”¹⁰⁸ are proposed.

These principles have been modified and present here to try reflect the intentions of the Consumer Code consultation. These are not finalized recommendations but have been put forward as a starting point.

NSS believes the set of principles developed by the Consumer Advisory Group can be easily modified to encompass the broader financial system. A modified version of those principles might read like this:

It is hereby affirmed that the financial system performs an essential role in the Canadian economy and society and that, in order to optimize the total economic and social welfare of all its participants, ensure its efficiency and guide its evolution and development, the Canadian financial system shall be governed by the following objectives:

- (a) *generate and maintain a high level of trust among participants by being demonstrably:*
 - (i) *financially stable and safe with regard to the level of risk created or incurred by participants;*
 - (ii) ***fair, reasonable and proportionate in the assignment of costs, benefits, rights and responsibilities among all participants, taking into account all relevant factors, including the level of risk involved and the ability of participants to prevent and bear risk and costs;***
 - (iii) *operationally robust, and able to process payments in a timely and accurate manner;*
 - (iv) *secure and able to protect the integrity and privacy of information;*
 - (v) *providing easily accessible and understandable rules governing its use, the prices charged to participants and the information provided thereto;*
 - (vi) *held in compliance with appropriate regulatory oversight by public agencies and authorized self-regulatory organizations;*
 - (vii) *supported by **easily understandable, impartial and accessible systems of redress** that are responsive and efficient and that include independent appeal processes; and*
 - (viii) *governed in a way that provides all categories of participants with a reasonable opportunity to provide input into its governance, development and use;*
- (b) *be easily accessible to all participants who use payment mechanisms and supportive of a reasonable expectation that they can choose amongst adequate payment mechanisms by ensuring:*
 - (i) *the provision of effective and efficient services throughout Canada;*
 - (ii) *ensuring the delivery of adequate and affordable services that are available independently of participants' **socio-economic and demographic circumstances** or commercial significance; and*
 - (iii) *the provision of services that are easy to use and that accommodate participants of **all skills and abilities**;*
- (c) *be competitive and innovative by:*
 - (i) *operating in a way that delivers the most efficient costs to participants, consistent with the objectives of the national payments policy;*
 - (ii) *establishing an efficient and consistent regulatory framework that applies to all participants and is founded on functional neutrality;*
 - (iii) *facilitating competition among a wide variety of providers and services, including through the elimination of unnecessary*

108 “Guiding Principles for Accessible Authentication”. Published by the Australian Bankers’ Association Inc. ARBN 117 262 978 . Version: December 2007 http://www.bankers.asn.au/Industry-Standards/ABA-s-Guiding-Principles-for-Accessible-Authentication/Guiding-Principles-for-Accessible-Authentication#_Toc183597754

- barriers; and*
- (v) *promoting interoperability, both at the national and international levels.*

These objectives apply as reasonably appropriate to the different participants in the Canadian payments system, with due regard being given to the diversity of their circumstances.

NSS would like to highlight 3 important phrases that have greater relevance to vulnerable Canadians

A) fair, reasonable and proportionate in the assignment of costs, benefits, rights and responsibilities among all participants, taking into account all relevant factors, including the level of risk involved and the ability of participants to prevent and bear risk and costs;

Vulnerable Canadians should be not unjustly penalized if they prefer or are forced to use a legacy or non-mainstream method of accessing the Canadian financial system. Using a cheque instead on an electronic payment method or using a teller instead on an ABM are examples. There is an obvious economic incentive for financial organizations to migrate to new technologies. The migration to ABM from tellers is an example. Though there are no validated and publicly available figures there have been estimates of the related cost:

“because a teller transaction costs a bank 6 to 12 times as much as an A.T.M. transaction, which, in turn, is 2 to 4 times as expensive as a telephone transaction.”¹⁰⁹

Historically in other jurisdictions there have been instance where financial institutions have charged more if consumer use a specific methods to complete a financial transaction. The First Chicago Corporation for instance proposed to charge a \$3 fee to customers who used tellers as opposed to ABMs.

“customers who choose a checking account that does not require a minimum balance will pay the fee if they go to a teller when they could have completed the same transaction using an automated teller machine or telephone banking system. Only those customers who keep either \$2,500 in a checking account or \$15,000 in a combination of checking and interest-bearing accounts would continue to have free, unlimited access to tellers, the bank said.”¹¹⁰

The impact extends beyond vulnerable Canadians. One of the examples in Canada that was brought up at the Consumer Advisory Group was the higher transactional fee merchants had to pay if a customer used a credit card that did not have PIN enabled chip when that PIN technology was first introduced. Merchants were forced to upgrade their POS terminals to maintain reasonable and cost effective access to that method of payment.

109 Meier, Barry. “Need a Teller? A Big Bank Plans \$3 Fee”. New York Times. April 27, 1995 .

110 Meier, Barry. “Need a Teller? A Big Bank Plans \$3 Fee”. New York Times. April 27, 1995

B) ensuring the delivery of adequate and affordable services that are available independently of participants' socio-economic and demographic circumstances or commercial significance; and

Despite the fact that most major banks now offer low cost, basic banking services a portion of the Canadian population is either unbanked or under-banked.¹¹¹ No accurate data exist on the estimates of the number of unbanked and under-banked people in Canada. The data that does exist on unbanked Canadians come from several sources but they range from between 3% to 15%.^{112 113}

“Low-income Canadians are disproportionately likely to be unbanked. Some have estimated that the percentage of low-income individuals who are unbanked may be as high as 15 per cent.¹¹⁴ A 1995 Environics study found that eight per cent of individuals with incomes below \$25,000 did not have access to banking services.¹¹⁵ In 1998, the government of Saskatchewan estimated that between 55 and 60 per cent of its social assistance caseload was unbanked.^{116, 117}

This is relevant to people with disabilities because according to the Statistics Canada Participation and Activity Limitation Survey (PALS) in 2005 almost half a million (20.5%) working-age adults 15 to 64 years with disabilities lived on a low income.¹¹⁸

Studies have shown that reasons for using non-traditional financial services such cheque cashing services are being unbanked due to lack of access to proper identifications, delays in receiving the funds from a cheque due to the hold time banks impose, lack of convenient bank locations and hours in their community and poor customer support.

“Surveys have indicated that some consumers use cheque cashing services because they are unbanked, and therefore have no alternative. A 1996 survey of Toronto street youth found that, while most used cheque cashing services because of the convenient locations and hours and the ability to access the cash without a hold, 29 per cent indicated that they had no other option,

111 Financial Consumer Agency of Canada, What You Should Know About Low-Cost Accounts, available online at www.fcac-acfc.gc.ca.

112 <http://abdc.bc.ca/uploads/file/ABDC%20-%20REPORTS/ABDC%20Fringe%20Financial%20Institutions%20Report.pdf>

113 Fringed Financial Institutions, The Unbanked and the Precariously Banked. Survey Results From Prince George BC.

Dr Paul Bowles, Keely Dempsey, Trevor Shaw University of Northern British Columbia September 2010

<http://abdc.bc.ca/uploads/file/ABDC%20-%20REPORTS/ABDC%20Fringe%20Financial%20Institutions%20Report.pdf>

114 Jerry Buckland, Social and Economic Factors to Consider in Setting Government Cheque Cashing Fees in Manitoba (Winnipeg: Manitoba Public Utilities Board, 2006) at 9.

115 Task Force, *supra* note 11, at 22.

116 Michael Grant, Canada's Social Payment Disbursement System and the Financial Services Sector (Ottawa: Task Force on the Future of the Canadian Financial Services Sector, 1998) at 12.

117 <http://www.lco-cdo.org/en/cheque-cashing-fees-consultation-paper-sectionIV>

118 <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/gender-disability-low-income>

because they had no bank account.¹¹⁹ In the Ipsos-Reid Survey referenced earlier, seven per cent of those using a cheque cashing service indicated that they used cheque cashing services because they did not have a bank account.¹²⁰

Why do these Canadians lack access to basic financial services? A number of potential barriers have been identified. For example, appropriate identification is required to open a bank account, but low-income persons may lack such identification, and thus encounter a significant barrier in opening a bank account.¹²¹ Some types of identification, such as passports and birth certificates, involve significant administration fees, or complex paperwork. Persons who are homeless or transient may lose their identification documents. Some have pointed to Ontario laws prohibiting anyone from requesting health cards as identification as an unintended barrier to bank access.¹²² A number of observers, including the Task Force on the Future of Canadian Financial Institutions, have recommended that governments take steps to ensure that all Canadians have access to low-cost identification, in order to improve access to financial services.¹²³

“Considerable efforts have been made to improve access to basic banking services. All of the major banks now offer low-fee basic bank accounts. A 1997 agreement between the federal government and the major banks set a number of important policies and protocols for improving access, some of which have been formalized in the Access to Basic Banking Services Regulations.¹²⁴ For example, the Regulations clarify and simplify the identification requirements for opening a bank account. If the bank branch refuses to open an account, written reasons must be provided to the individual, along with information about how a complaint may be filed with the FCAC. As well, the bank must display and make available to the public at all of its branches and points of service a written statement disclosing the requirements for opening a bank account and the procedure for initiating a complaint.

The FCAC is tasked with the responsibility of monitoring the banks’ compliance with these requirements, and regularly issues reports. While progress is being made, there are still problems “on the ground” in serving customers that are not likely to be profitable to the bank.”¹²⁵

NSS would recommend that policies of the Access to Basic Banking Services Regulations be adopted into the new Financial Consumer Code or referred explicitly as a fundamental obligation.

119 Ramsay, *supra* note 7 at 5, citing J. Murray Smith, *Street Youth and Banking: A Needs Assessment for Banking Services for Youth*, (City of Toronto, December 1996)

120 Ipsos-Reid, *supra* note 8.

121 Buckland, *supra* note 15 at 13; also see Grant, *supra* note 17, at 28.

122 Canadian Bankers Association, “Taking A Closer Look: Access to Basic Banking Services”, August 2006, available online at www.cba.ca.

123 <http://www.lco-cdo.org/en/cheque-cashing-fees-consultation-paper-sectionIV>

124 S.O.R./2003-184.

125 Task Force Report, *supra* note 11 at 29; see also the “Mystery Shopping” surveys prepared for the FCAC, available at www.fcac-acfc.gov.ca.

“The convenience of the locations, the hours and the service are other frequently cited reasons for use of cheque cashing services. In the FCAC Ipsos-Reid survey, five per cent of those using a cheque cashing/payday loan service cited the convenience of the location, 18 per cent cited the convenient hours, and 10 per cent cited general convenience.”¹²⁶

NSS also notes that there are still under addressed issues in regards to individuals who are unbanked or under-banked despite the in roads that have been made through the Basic Banking Services Regulations. The relevance of these issues goes to the underlying fundamental premise of the digital economy where it is not possible to complete transactions without a bank account.. While credit cards, value cards and electronic transactions do away with the need to use physical cash, the validation and clearing process required to complete financial transactions can only be accomplish by having access to a bank account. Migration to a more digitally based economy may create special challenges for people with disabilities.

“Persons in low-income or remote communities may find that there is no conveniently located mainstream financial institution. Low-income Canadians are generally less mobile as they are less likely to have a car; they also tend to have less access to information technologies such as computer and internet access. There is some evidence that the closure of bank branches in recent years has had a disproportionate impact on low-income urban neighbourhoods, so that low-income people must travel greater distances to maintain their bank accounts.¹²⁷ Concerns have also been raised that these closures have had a significant impact on some rural and remote communities. One study noted that between 1991 and 1996, 122 communities lost their only bank branches.^{128 “ 129}

NSS notes that sensitivity to the needs of vulnerable Canadians is an issue that has already been identified by the Government of Canada.

“Users of cheque cashing businesses also emphasize the friendly, helpful and welcoming service that they receive. Customer surveys for cheque cashing/payday loans businesses report high levels of satisfaction with the service received.¹³⁰ On the other hand, there have been reports of negative and unwelcoming treatment of low-income persons by mainstream financial institutions.¹³¹ For example, one study described how one bank branch would create a separate well-marked queue outside the bank for social assistance recipients on cheque cashing day.¹³² These cultural and attitudinal barriers may be exacerbated by the banking industry trend to focus resources on those customers that are likely to be most profitable.^{133 “ 134}

126 <http://www.lco-cdo.org/en/cheque-cashing-fees-consultation-paper-sectionIV>

127 Buckland, supra note 15, at 12.

128 Task Force, supra note 11, at 37.

129 <http://www.lco-cdo.org/en/cheque-cashing-fees-consultation-paper-sectionIV>

130 Environics Research Group, supra note 9. This survey found that 92 per cent were satisfied with the way they were treated by customer service representatives and 87 per cent were satisfied with the overall customer service experience.

131 Buckland, supra note 15, at 13; and Grant, supra note 17, at 24 and 32.

132 National Council of Welfare, *Banking and Poor People: Talk is Cheap* (National Council of Welfare, 1998) at 1.

133 Task Force, supra note 11, at 29.

“Concerns about the quality of service offered to low-income customers were acknowledged in the February 14, 1997 Agreement Between the Federal Government and the Major Banks on Access, in which the banks committed to remind staff of the need for all customers to be treated with fairness and respect, and to provide more information and training to low-income groups to help them become more knowledgeable about and comfortable using banking services.”¹³⁵

While these specific issues are difficult to codify, it is important that any underlying principles of the new Financial Consumer Code identify the expectations that are explicitly outlined in these agreements so that they can inform future changes to the financial system.

C) the provision of services that are easy to use and that accommodate participants of all skills and abilities;

This principle is intended to accommodate the needs of people with disabilities and vulnerable Canadians. NSS recognizes that more clarification to this principle is required to ensure the explicit requirement to ensure the accessibility of the financial system to people with disabilities is not overlooked.

Other principles from the Australian Banking system that are worth considering are:

Principle 1: Accessibility of technologies

Financial institutions should ensure that technologies are accessible to all customers, or where this is not possible, a human-based alternative system needs to provide equivalent amenity and convenience.

Principle 2: Customer convenience

All customers should be able to undertake their personal and business financial activities conveniently and safely.

Principle 3: Planning

Financial institutions should consider the accessibility needs of customers with disabilities and older customers as part of technology planning.

Principle 4: Testing

Financial institutions should consult customers with disabilities and older customers as part of planning and testing accessibility of technologies.

Principle 5: Registration, login and transaction procedures

Financial institutions should ensure that registration, login and transaction procedures are as accessible as possible to all customers.

Principle 6: Messages and error recovery

134 <http://www.lco-cdo.org/en/cheque-cashing-fees-consultation-paper-sectionIV>

135 <http://www.lco-cdo.org/en/cheque-cashing-fees-consultation-paper-sectionIV>

Financial institutions should ensure that online messages are unambiguous and written in “plain English” and that error recovery processes are efficient and accessible.

Principle 7: Staff and customer training

Financial institutions should provide relevant customer support staff with appropriate disability awareness training so they are aware of the needs of customers with disabilities and older customers. In addition, financial institutions should provide customers with information and training in the use of available technologies.

Principle 8: Raising staff, business and customer awareness

Financial institutions should develop a strategy for enabling relevant management and staff awareness of these Guiding Principles. In addition, financial institutions should promote the availability of alternative accessible technologies with their customers.

Principle 9: Confidentiality of customer information

Financial institutions must ensure the confidentiality of information of customers with disabilities and older customers.

Principle 10: Security of transactions and transaction fees

Financial institutions should ensure customers with disabilities and older customers are not exposed to higher financial risks or costs as a result of the deployment of technologies.

What elements should be set out under each principle to ensure that the principles are meaningful, measurable and fair to consumers and financial institutions?

The American The 21st Century Communications and Video Accessibility Act of 2010 (CVAA) sets out specific reporting and enforcement criteria which NSS believes is a good framework to use when turning the high level principles into explicit regulations or practices. The principles in essence are high level goals. Under each goal are specific initiatives that are designed to address specific issues. The issues may be short term, intermediate term or long term in nature. The CVAA sets forth a reporting mechanism where stakeholders must report their on-going planning to address these issues and the consultation processes they are using to pro-actively identify new issues before they become more substantial problems. Stakeholders must file their plans to address these issues along with a report on their consultations annually. The incentive for compliance by the stakeholders is in the form of monetary fines. Beyond the filing of annual plans there is a complaint based process that is used to uncover lapses on the part of stakeholders. NSS believes a similar mechanism for the new Consumer Code of Conduct should be adopted..

Question 2:

Possible Enhancements to Existing Regime

In the context of developing a comprehensive consumer code, the government is interested in hearing from Canadians with respect to enhancing protection for consumers, including:

a) Addressing the Needs of Seniors and Vulnerable Canadians

Some Canadians may face particular challenges in accessing financial services and in assessing the most appropriate financial products for their needs. Geography, cultural and financial literacy or capacity to process information may pose obstacles to some groups.

- **What are the unique challenges faced by *vulnerable* populations?**
- **How should the consumer code address these challenges?**

Some of the challenges to fundamental access to financial services by vulnerable Canadians and especially people with disabilities has been discussed earlier in this document. Barriers to accessibility created by technology, the presumption of a lack of legal capacity and the lack of a streamlined and affordable re-dress system to create systematic change are the three key areas which should be addressed in the Consumer Code. The code should adopt explicit language to ensure that stakeholders understand without equivocation that they have an obligation to provide access to the financial system regardless of the consumer's skills and abilities or socio-economic circumstances and that there should be an explicit reference to people with disabilities and other vulnerable populations within the code. The history of the accessibility legislation in the United States shows that no progress has been made on these issues with an explicit reference to disability within the regulations. Industry stakeholders in those situations have used a broad interpretation of the definition of consumer obligations to avoid addressing the issues important to people disabilities.

The American CVAA¹³⁶ also use the terminology “*readily achievable*” to determine the depth of commitment industry stakeholders must make to ensure accommodations for people with disabilities. Older accessibility related legislation used terminology that referred to an “undue burden” when it referenced stakeholder obligations to people with disabilities. That terminology was found lacking as industry stakeholders claimed any initiative to address accessibility was an undue burden. “Readily Achievable” is intended to set a higher standard of expectation.

The consumer codes should adopt principles and explicit obligations that require financial service organizations to consult with and take into consideration the needs of people with disabilities when new services and products are being considered to be deployed. These principles is put forward in the Australian Banking Association document “Guiding Principles for Accessible Authentication”¹³⁷ and other voluntary standards.

¹³⁶ <http://www.fcc.gov/encyclopedia/twenty-first-century-communications-and-video-accessibility-act-0>

¹³⁷ “Guiding Principles for Accessible Authentication”. Published by the Australian Bankers’ Association Inc. ARBN 117 262 978 . Version: December 2007 http://www.bankers.asn.au/Industry-Standards/ABA-s-Guiding-Principles-for-Accessible-Authentication/Guiding-Principles-for-Accessible-Authentication#_Toc183597754

b) Responsibility of Financial Institutions to Consumers

The existing consumer protection regime is detailed and prescriptive in nature and does not contain a general expectation for the degree of responsibility financial institutions should have to consumers. This can lead to uncertainty regarding financial institutions' obligations to consumers when new products or services are developed, including an assessment of the risks these products or services may pose to consumers.

- **Would it be useful to have in legislation a broad standard of responsibility for financial institutions to consumers and, if so, what level of care should consumers expect from financial institutions?**

Yes, it would be useful to create a broad standard of responsibilities that is developed from the high level principles of the code. The rate of innovation is expected to accelerate in the coming years as world economies migrate to a more digital economy. It would be impossible to rely totally on a detailed and prescriptive series of regulations and standards as they would not be able to keep up. Historically in many industries it has been demonstrated that where prescriptive regulations and standards exist industry will meet the letter of those standards and regulations and no more. The very existence of the American CVAA 138 is an example where the wireless industry did not respond to the changing definition of communication devices and only met the letter of the law in regards to the previous legislation.

The level of care that can be expected from financial institutions is embodied in the definition of “readily achievable” within the CVAA document.

- **How should this standard be administered or enforced?**

The American CVAA 139 defines an annual reporting and consultation process with people with disabilities that can form the framework for an administration and enforcement process for the new Consumer Code. That combined with a streamlined complaint system and monetary fines can create an effective regulatory process. NSS notes that all four elements are required to create a viable system. The reporting process obligates industry to explicitly document what they have considered and implemented to address specific issues important to consumers. The obligation for consultation means industry is required to keep informed about relevant and important issues from consumers. A clear, concise and streamline complaint process allows individual consumers to point out lapses in the process. Monetary fines ensure timely resolution of lapses and best efforts on the part of industry to identify issues before they become problems.

- **How should financial institutions' business practices be evaluated to ensure that they are meeting their responsibilities to consumers?**

138 <http://www.fcc.gov/encyclopedia/twenty-first-century-communications-and-video-accessibility-act-0>

139 <http://www.fcc.gov/encyclopedia/twenty-first-century-communications-and-video-accessibility-act-0>

As mentioned above the CVAA creates an obligation to report efforts to consult consumers and layout a plan to address the identified issues on an annual basis. A streamlined complaint system allows individuals to report lapses in the services and fundamental access to the services. The system creates a reasonable amount of disclosure on the part of industry, but does not create an undue monitoring effort on the part of a government regulatory agency as individual complaints have great weight in the process given the explicit level of disclosure required by industry stakeholders.

c) Supervisory Powers for Accountability and Enforcement

The FCAC was established to strengthen oversight of consumer issues and expand consumer education in the financial sector. The supervisory agency plays an important role in consumer protection using its administration and enforcement powers. The government is considering whether changes are needed to the legislative framework in order to allow the FCAC to better supervise and enforce consumer protection provisions.

- ***What tools and authorities will the FCAC need in order to effectively supervise and enforce the implementation of a principles-based financial consumer protection framework?***
- ***Should consumers have greater access to recourse, beyond the FCAC, in the federal consumer protection framework?***

As mentioned previously the Financial Consumer Agency of Canada ¹⁴⁰ has a broader mandate than the other institutions created under the various Acts and voluntary standards that govern the various stakeholders in the financial and payment system. The challenge that NSS sees in regards to the current framework is that there is no one agency that has an explicit mandate to ensure fundamental access to financial services and payment service in regards the accessibility for people with disabilities. As evidenced previously in this document the lack of accessibility of ABMs and POS and the lack of a formal method to create systematic, industry wide change in regards to accessibility needs to be addressed.

In that regards the FCAC needs:

- 1) an explicit mandate to oversee issues in regards to vulnerable populations including people with disabilities
- 2) an expanded mandate to govern technology related to the fundamental access to financial services including ABM, POS and mobile devices
- 3) the ability to mandate an annual reporting requirement in regards to the consultation by industry stakeholders with vulnerable populations

140 <http://www.fcac-acfc.gc.ca/Eng/forIndustry/publications/lawsReg/Pages/Voluntar-Codedeco.aspx>

- 4) the ability to mandate an annual reporting requirement in regards to disclosure by industry how they plan to address issues related to the consultation of vulnerable populations
- 5) an office properly staffed with people knowledgeable with the needs of vulnerable population so they can evaluate the validity of complaints and incidence of non-compliance
- 6) the ability to levy monetary fines in regards to incidences of non-compliance

d) Innovation

Banking products and services have evolved significantly over the last few decades as financial systems have grown and the number and variety of financial products in the marketplace has expanded. Digital innovation has also led to an increase in consumer choice for accessing financial products and services.

- ***How should the consumer protection framework accommodate emerging technologies and financial products?***

Much of this submission has explicitly covered this issue so only a summary of the main issues will be presented here.

- ⌘ Entrench in the principles the obligation to provide equal access to Canadian consumers regardless of their skills and abilities or socio-economic circumstances.
- ⌘ More specifically under this principle detail the sub-categories of vulnerable Canadians including people with disabilities
- ⌘ Creating an annual reporting requirement by industry stakeholders in regards to consulting vulnerable populations about innovations to be implemented for existing and new services
- ⌘ Create an annual reporting requirement by industry stakeholders to outline how they plan to deal with the accommodations to be made to support vulnerable populations like people with disabilities
- ⌘ Create a mechanism for industry stakeholders that control the electronic infrastructure to ensure technology that provides access to consumers such as ABM, POS and mobile devices meets a minimum accessibility standard – this an indirect mechanism for encouraging the development and deployment of accessible technologies
- ⌘ Create a transparent and streamline complaint system that resolves complaints in 60 days or less
 - System to also record the number and type of complaints from people with disabilities
 - Provide better information on this new complaint system to vulnerable populations
 - New complaint system should be the first place to resolve complaints
 - New complaints system should not preclude the right to file a human rights complaint

- ▲ Give the FCAC the capability to levy fines when an industry stakeholder is found to not be in compliance with the directive or regulations

e) Disclosure About Financial Products and Services

The government has used disclosure requirements as a key tool to provide Canadians with information to make responsible financial decisions. In an effort to be comprehensive and enable consumers to make responsible financial decisions, the government is seeking views on what key information elements are needed and what are the most effective forms of disclosure to help consumers to understand and compare products.

- What key information do consumers need and how should it most effectively be presented to allow consumers to make informed financial decisions?***
- Are there particular products or circumstances in which disclosure is not sufficient to provide consumers with the information needed to make responsible financial decisions? What enhancements to disclosure would provide Canadians with information to make responsible financial decisions?***

NSS has no comments on this issue at the time of filing of these comments.

f) Access to Financial Services

The government continues to be committed to facilitating affordable access to basic banking services for all Canadians.

- How could the code ensure reasonable access to basic banking services for all Canadians?**
- Are there examples where access to financial services is difficult or constrained? How could these situations be addressed in the consumer code?**

Much of this has been covered in the background materials. The major points about fundamental access to bank service through technology is covered in the answer to the question innovation.

In addition the code should entrench the principles and accompanying regulations and directives to ensure vulnerable populations do not have to pay more for using alternative methods to

access the financial system. Using cheques as opposed to electronic payment for example should not cost more if this is the preferred method of payment due to limitation in a person's skills or abilities.

g) Comprehensiveness

The financial consumer code should comprehensively protect consumers of financial products and services. In addition to addressing the elements described above, the government seeks views on any other elements that could be considered in order to achieve the objective of a comprehensive consumer code.

- *What needs to be included in order to achieve the objective of a comprehensive financial consumer code?*

As referenced previously in this document, the existing scope of coverage in the established Acts and voluntary guidelines do not cover fundamental access to financial services. Barriers to fundamental access take three forms for the purposes of this document. The first class of fundamental access involves the accessibility of technology that provides access to the banking and payment functions of the Canadian financial system. Historically the needs of vulnerable Canadians especially people with disabilities have not been considered when new technology is introduced. Examples of this was previously provided in this document. As a result there are portions of the Canadian consumer population that is marginalized. There is often an ambiguity in the existing acts on whether an obligation exists to provide accommodations for people with disabilities and other vulnerable Canadians and who has the mandate and the responsibility to address these issues. What inroads that have been made to address these inequalities in accessibility have been made through Human Rights Complaints which are time consuming and costly to pursue and only company specific in the nature of the redress. NSS recommends that the new Consumer Code contain explicit references to the obligation of participants of the financial system (banking and payment) to accommodate the needs of people with disabilities and other vulnerable Canadians, that there be a clearly defined delineation of who has the mandate and responsibility to monitor and enforce that obligation and the scope of the definition of financial services covered be extended to cover fundamental access to financial services in regards to technology.

The second class of fundamental access involves the assumption of capacity. People with cognitive disabilities are not always assumed to have the mental capacity to conduct financial transactions on their own. People with intellectual or cognitive disabilities have been particularly vulnerable to having their capacity to enter contracts questioned and are often denied access to everyday transactions such as banking, loans, service agreements,. As a result they are denied their legal capacity and full personhood. They often do not receive the same presumption of competence and capacity in these matters as do their non-disabled peers. The bulk of these transactions occur everyday in unregulated settings rather than in courts and formal procedural transactions. Changes to the code relating to financial affairs and decision making should include an explicit requirement to presume the legal capacity of an adult; and to provide accommodations or supports in the related decision-making

processes. This recognizes an equal presumption of competence and capacity of persons with intellectual or cognitive disabilities as with other persons without disabilities. Further, consistent with the UNCRPD Article 12, people who require support in making or articulating their decisions, should have their competence and decisions respected as their own. A comprehensive review and framework for providing the supports to help people with cognitive impairments and intellectual disabilities exists.¹⁴¹

The third class of fundamental access involves not being disadvantaged due to the cost of accessing the financial system. Innovation has created many new ways of accessing financial and payment services. In some cases vulnerable Canadians may prefer or be forced to use older, established methods for accessing financial and payment services that may not involve technology or involve older technology. In those cases these individual should not be disadvantaged by having to pay higher fees for access. Similarly vulnerable Canadians should not have to pay more to access new technology if it is not as easily accessible due to a physical or cognitive limitation

Question 3:

Continuing the Conversation: Engagement

By working together we can continue to position Canada as a leader in financial services regulation, including financial literacy, financial inclusion and financial consumer protection policy. To do so will require the active engagement of all stakeholders, including individual Canadians, financial institutions and consumer groups.

- *Should the government consider mechanisms for enhancing engagement among stakeholders in regulatory, supervisory and compliance processes related to consumer protection?*
- *How could consumers and consumer groups best contribute to these processes, and what might their role be?*

NSS supports the position the government should consider mechanisms for enhancing engagement among consumer stakeholders in regulatory, supervisory and compliance processes related to consumer protection. In the past changes to the financial system have been slowly phased in over a long period of time. With the quicker pace of innovation that is expected over the next few years, it is imperative that vulnerable Canadians not be left behind or disadvantaged by the new innovations.

NSS knows of no established and tested model for the successful and comprehensive engagement of consumers and consumer group. NSS does feel that it is important to establish an advisory board of representatives from groups representing vulnerable Canadians including the disability community. It is important that this advisory group structure be able to cover release time on a cost recover basis as many non-for-profit groups that represent these vulnerable populations and who

141 Bach, Michael Bach and Kerzner, Lana. "A New Paradigm for Protecting Autonomy and the Right to Legal Capacity" at <http://www.lco-cdo.org/disabilities/bach-kerzner.pdf>.

may have the best sense of the issues that affect the people they serve do not necessarily have advocacy as their primary mission statement.

It is also necessary to provide a mechanism for the advisory group to conduct independent reviews by domain experts, surveys, focus groups and user trials to look at new and emerging trends in the industry and to provide input on the impact on vulnerable Canadians. This could be done by creating a funded research capacity to research specific issues put before the advisory committee. This is important as there is no clear, dedicated source of funds to do relevant and timely research within the groups that serve vulnerable populations and especially the disability community. The activities of the advisory committee could be government funded to maintain maximum neutrality or it could be industry funded using a similar funding model to the *Commissioner for Complaints for Telecommunications Services*. The Canadian Radio-television and Telecommunications Commission of Industry Canada, directed all Canadian wireless service providers with annual revenues greater than \$10 million to participate in the Commissioner for Complaints for Telecommunications Services and to provide its funding.

Conclusions:

To summarize the main points of our submission NSS would recommend the following initiatives and concepts be made part of the Consumer Code:

- that the obligation to accommodate the needs of people with disabilities and other vulnerable Canadians be explicitly entrenched in the code
- that the code cover all aspects of the Canadian financial system and the payment system
- that the scope of the code needs to be extended to cover the technology and devices that people use to access the financial system and payment system (ABMs, POS, mobile devices)
- that there be an obligation to consult people with disabilities and other vulnerable Canadians before any new innovations and classes of services are introduced in order to ensure they are not marginalized by their introduction in the code
- that industry stakeholder report annually the scope of their consultation to FCAC
- that there be an obligation for industry stakeholders to report annually to the FCAC on what initiatives they are undertaking to address the needs of vulnerable populations including people with disabilities
- that there should be no disadvantage (economic or otherwise) if a person requires a previously offered method of accessing the financial system and payment system in order to accommodate their level of ability (paying more for a cheque as opposed to using electronic transfer to pay a bill for example)
- that there needs to be a streamlined complaint process that supplements the Human Rights complaints process as human rights complaints are company specific in remedy and long and expensive to process
- that there needs to be a formal monitoring and enforcement process with monetary penalties as history has shown there is no incentive to comply without these processes
- that the FCAC be given the power to impose monetary penalties in the regards to breeches in the obligation to provide accessible methods of access the financial system through technology