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Via Email: code.consult@fin.gc.ca

February 28, 2014

Jane Pearce
Director, Financial Institutions Division
Financial Sector Policy Branch
Department of Finance Canada
140 O'Connor Street
Ottawa, ON K1A 0G5

Dear Madam:

Re: Consultation on Canada's Financial Consumer Protection Framework

The Department of Finance Canada has invited comments from Canadians on elements that could strengthen Canada's financial consumer protection framework.

I am the Public Guardian and Trustee of British Columbia. My office operates under provincial laws to serve vulnerable British Columbians by providing and/or monitoring substitute financial, legal and personal decision making on their behalf. The Public Guardian and Trustee (PGT) serves over 30,000 clients including children who have trusts and those who are in continuing care of the province and adults whose mental incapacity makes them vulnerable to abuse, neglect and self neglect. The PGT also administers estates of deceased and missing persons and provides personal trust services. The PGT administers approximately \$893 million of client assets and the PGT delivers service from offices in Vancouver, Victoria and Kelowna.

During the fiscal year ending March 31, 2013, the PGT served 5,924 children in the continuing care of the province as their property guardian and 4,398 adults as committee of their estate. In addition, during the same time period the PGT responded to 2,377 reports of possible abuse, neglect or self neglect of adults. It is our experience with this community of vulnerable Canadians that forms the basis of our submission.

Our submission has two parts. The first part describes the circumstance of the vulnerable Canadians who are PGT clients and sets out the more common challenges they face when interacting with the financial sector. The second part provides recommendations in response to three of the consultation themes including principles for consumer protection, disclosure requirements, and stakeholder engagement.

What are the unique challenges faced by vulnerable populations served by the PGT?

As noted in the consultation, some Canadians face particular challenges in accessing financial services and in assessing the most appropriate financial products for their needs due to their capacity to process information. These challenges are amplified when the person is a minor or incapable and does not have a strong network of supportive and trustworthy family and friends to assist through informal support or as a legal representative with authority over financial decision making.

Seven of the more common challenges facing our clients when interacting with the financial service sector are identified below. Brief descriptions are offered to provide some context for each challenge.

1. Identification requirements to open and operate bank accounts***Opening accounts:***

In order to open a bank account a prospective client must provide one piece of photo ID and a second piece of ID. PGT clients often have limited opportunity to acquire the required secondary identification. Meeting the requirements can be expected to become even more difficult as technologies evolve. For example the BC Identification card (photo ID) and the BC Care Card (a second document) will soon be merged into one card.

Operating Accounts:

Due to personal circumstances it is not uncommon for vulnerable persons to lose the identification documents required to cash a cheque or withdraw funds.

2. Holds on cheque deposits

Many PGT clients who live in the community and have bank accounts, live on limited incomes. From time to time they receive cheques from employers, government agencies, including the PGT, and others. However, if they deposit the cheque it will often be subject to a hold for up to 10 days depending on the amount. This delay may cause the client to turn to local pay day loan businesses which charge a significant commissions.

3. Challenges understanding banking terminology and navigating banking systems

Financial literacy is a significant issue for some of our younger clients. Many have grown up in the care of the government. Their financial needs are looked after by others and they have never learned to operate a bank account. As adults, their financial literacy may remain limited. Terminology is difficult to follow and their ability to understand and/or they may require assistance to carry out the steps to deposit and withdraw funds.

4. Easy access to credit cards

A number of our clients have obtained free credit cards without credit checks. If a credit check was carried out, the issuer would have learned that the individual's name had been flagged and our office should have been contacted. We first learn about the credit card

when it goes to collection. In most situations we must advise the issuer that the client does not have the resources to pay the debt. However, the debt is referred to a collection agency and that agency continues to pursue both our office and the client for repayment of the debt.

5. Vulnerability to financial abuse and undue influence by those trusted to help with banking activities

In order to compensate for a person's difficulties with banking transactions, family members and caregivers often become involved and gain some legal status over the client's financial affairs. This may be through the opening of a joint account or signing an enduring power of attorney. While these may be appropriate solutions for many Canadians, they are not always appropriate solutions for others and become tools for financial abuse.

6. Laws and/or financial institution policies

There are a number of laws that influence the policies and procedures of financial institutions. Two that stand out are privacy and anti-money laundering laws. The PGT acknowledges the importance of these laws. The PGT also notes that laws and social attitudes are shifting and there is a general expectation that all adults will be supported to participate in the decisions that affect their lives. In BC those with legal authority to make decisions for others are required, "to the extent reasonable, to foster the independence of the adult and encourage the adult's involvement in any decision-making that affects the adult"¹.

For many of the PGT's clients, an important way to foster this independence is to facilitate the opening and operation of a bank account. For a number of adults in BC, the formal appointment of a legal representative to manage financial affairs can be avoided if a basic bank account is established in the adult's name. However, operating the account, whether or not the PGT or another person is committee, often requires the support or assistance of family, friends or caregivers who do not have formal legal authority to represent the client. Privacy laws and the identification requirements of anti-money laundering laws make it difficult to for these individuals to be recognized.

7. Front line staff knowledge and/or skills

The PGT encounters many financial sector employees who are concerned about their vulnerable clients and who seek solutions with one off situations. However, front line employees in the financial sector are expected to deal with a wide range of situations and products. We have observed that, as a result, many front line employees in the financial sector lack the knowledge and/or skills to be able to recognize and/or respond appropriately to clients with both visible and less visible intellectual disabilities. A consequence of this is that our clients are not provided the advice or solutions they need.

¹ See s. 19(3) *Power of Attorney Act* RSBC 1996 c. 370; s. 19 of the *Adult Guardianship Act* RSBC 1996 c.6 which is expected to come into force in 2014 will require all committees to also foster the independence of the adult.

How should the consumer code address these challenges?

While some challenges noted above may not be resolved through a consumer protection code and may require legislative or regulatory changes, we believe that a well designed set of guiding principles would be a positive first step in strengthening the existing consumer protection framework and has the potential to move towards addressing these challenges.

1. Guiding Principles

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?

The PGT strongly supports the development of a set of guiding principles that would apply even where a specific regulation has not been enacted. Well designed principles, supported by more concrete elements that are meaningful, measurable and fair, are useful tools for promoting meaningful discussion about the issues and client realities that need to be addressed. They can be useful for encouraging new and creative solutions.

The challenges facing these vulnerable populations are often complex and multi-faceted. Flexibility and creativity in design and delivery of financial services will be an important consideration going forward, particularly as new technologies and service delivery options evolve. The principles and underlying elements will need to recognize this.

Recommendations:

1. In addition to the five principles listed in the consultation, we recommend considering a principle that recognizes the importance of product design. The five design principles articulated in AGE Concern UK's report on financial inclusion² encourage an approach to the development of financial services that offers opportunities to address a number of the challenges described above. The principles are:
 - a) **Adaptability:** Product development should consider the changing needs of customers over the lifetime of the product/relationship
 - b) **Accessibility:** Products and services should be available through channels which can be accessed by as many people as possible
 - c) **Fairness:** Treat all customers fairly irrespective of age, income, or ability
 - d) **Useable Information:** Information should be designed to be understood by customers with a range of abilities
 - e) **Minimizing Hazards:** Safety of the customer and their money must be built into the design of products, systems, and facilities

² J Wells (2008) *An Inclusive Approach to Financial Products, Annex 1*, London: Age Concern.
[http://www.ageuk.org.uk/documents/en-gb/for-professionals/research/beyond%20financial%20inclusion%20\(2008\)_pro.pdf?dtrk=true](http://www.ageuk.org.uk/documents/en-gb/for-professionals/research/beyond%20financial%20inclusion%20(2008)_pro.pdf?dtrk=true)

2. We recommend that a principle be included that acknowledges the rights of vulnerable adults to participate in their own financial decision making with or without support of informal support persons and legal representatives. A corollary of this principle is that informal support persons who assist the client, but do not make decisions, need to be recognized with appropriate safeguards to prevent financial abuse and undue influence.
3. Although not an exhaustive list, the PGT also recommends that the following elements be incorporated to support the principles where applicable:
 - a) Transparency in all disclosure statements
 - b) Plain language summaries of all agreements
 - c) Flexibility in how laws are applied, particularly as they relate to identification of clients
 - d) Recognition that financial literacy includes consumer education on both the consumer's rights and responsibilities.

2. Disclosure about financial products and services

What key information do consumers need and how should it most effectively be presented to allow consumers to make informed financial decisions?

As noted above, the PGT strongly supports ensuring that information about financial products and account agreements is clear, transparent and in plain language. Education and financial literacy is also critical to ensure better understanding of the disclosure information and to help ensure better financial decisions. We acknowledge recent consumer education materials produced by the government and the Canadian Bankers Association dealing with enduring powers of attorney and joint accounts. However, financial literacy about these legal and financial arrangements will require ongoing attention.

Recommendation:

We recommend that research be carried out to determine how to best ensure that disclosure statements can be designed to ensure clients receive enough information to be able to understand the key features, costs, and operational activities for any service. This disclosure should extend to ensuring that all aspects relating to the operation of joint accounts, as well as the limits and powers of a bank power of attorney.

3. Consumer and Stakeholder Engagement

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?

As noted above, the challenges facing PGT clients are complex. A consumer code and laws cannot solve all of their problems. However, we are aware that various business models have

been implemented or are being piloted. These initiatives demonstrate that solutions can be identified once unique needs of different consumer groups are understood.

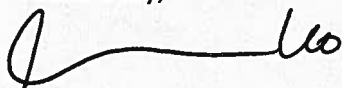
Recommendations:

1. In order to better understand the specific challenges and the lived experience of these clients we recommend that the government encourage ongoing dialogues with individuals from these vulnerable populations, those in their support systems and their advocacy organizations.
2. We recommend consultation with the agencies that serve these populations, including provincial ministries responsible for financial assistance; and those individuals and organizations that act as legal representatives for these vulnerable Canadians, including the provincial Public Guardians and Trustees.
3. The PGT encourages government to consider mechanisms for enhancing engagement among all stakeholders to ensure that regulatory, supervisory and compliance processes will be conducive to ensuring that the needs of the vulnerable populations are taken into account.
4. When seeking contribution from the consumers and their support networks we strongly encourage steps be taken to ensure opportunities for non-threatening in person dialogues are available.

Engagement by all of these parties ensures that a clearer understanding of the lived experiences will be acquired, allows for creative ideas to be generated to address consumer needs and regulatory concerns, and offers a forum for comment on the potential implications of proposed regulations and compliance processes.

Thank you for the opportunity to provide comments with respect to your consultation on strengthening Canada's financial consumer protection framework.

Yours truly,



Catherine M. Romanko
Public Guardian and Trustee

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