

What's open banking? 🤔

Did you read the fine print? Man, we really need open banking.

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What's open banking? 🤔

# OPEN BANKING: WHAT IT MEANS FOR YOU



SENATE | SÉNAT  
CANADA

For more information please contact us:

by email: [BANC@sen.parl.gc.ca](mailto:BANC@sen.parl.gc.ca)

by mail: The Standing Senate Committee on Banking, Trade and Commerce  
Senate, Ottawa, Ontario, Canada, K1A 0A4

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## COMMITTEE MEMBERSHIP

The Honourable Senator Doug Black, Q.C., *Chair*  
The Honourable Senator Carolyn Stewart Olsen, *Deputy Chair*

### *The Honourable Senators*

Jean-Guy Dagenais  
Joseph A. Day  
Colin Deacon  
Linda Frum  
Marty Klyne  
Sandra M. Lovelace Nicholas  
Elizabeth Marshall  
Pierrette Ringuette  
David Tkachuk  
Josée Verner, P.C.  
Pamela Wallin  
Howard Wetston

### *Ex-officio members of the committee:*

The Honourable Senators Peter Harder, P.C., Diane Bellemare, Grant Mitchell, Larry W. Smith, Yonah Martin, Joseph A. Day, Terry M. Mercer, Yuen Pau Woo and Raymonde Saint-Germain.

### *Other senators who have participated in the study:*

The Honourable Senators Bev Busson, Larry W. Campbell, Michael Duffy, Pat Duncan, Diane F. Griffin and Lucie Moncion.

### *Parliamentary Information and Research Services, Library of Parliament:*

Brett Stuckey, Analyst  
Adriane Yong, Analyst

### *Senate Committees Directorate:*

Lynn Gordon, Clerk of the Committee  
Kalina Waltos, Administrative Assistant  
Ariane Calvert, Administrative Assistant

### *Senate Communications Directorate:*

Stav Nitka, Communications Officer

## ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Thursday, September 27, 2018:

The Honourable Senator Stewart Olsen moved, for the Honourable Senator Black (*Alberta*), seconded by the Honourable Senator Andreychuk:

That the Standing Senate Committee on Banking, Trade and Commerce be authorized to examine and report on the potential benefits and challenges of open banking for Canadian financial services consumers, with specific focus on the federal government's regulatory role.

That the committee submit its final report no later than February 22, 2019, and that the committee retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

The question being put on the motion, it was adopted.

Extract from the *Journals of the Senate*, Thursday, December 6, 2018:

The Honourable Senator Stewart Olsen moved, seconded by the Honourable Senator Seidman:

That, notwithstanding the order of the Senate adopted on September 27, 2018, the date for the final report of the Standing Senate Committee on Banking, Trade and Commerce in relation to its study on the potential benefits and challenges of open banking for Canadian financial services consumers, with specific focus on the federal government's regulatory role, be extended from February 22, 2019 to September 30, 2019.

The question being put on the motion, it was adopted.

*Clerk of the Senate*

Richard Denis

## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to rule 12-24(1), the Senate requests a complete and detailed response from the government to this report, with the Minister of Finance Canada being identified as minister responsible, in consultation with the Minister of Innovation, Science and Economic Development Canada, for responding to the report.

## EXECUTIVE SUMMARY

The Standing Senate Committee on Banking, Trade and Commerce is calling for decisive action from the federal government to move forward with an open banking framework that will keep Canadians' personal financial information safe, provide more choice and improved financial products and services to Canadian consumers and keep the Canadian financial sector strong and internationally competitive.

Canadian consumers have little control over their personal financial data and can find accessing and sharing their data cumbersome and difficult to do, as most of the control resides with the financial institutions that collect and store it.

The rapid adoption by Canadian consumers of new banking technologies, such as data aggregation and robo-advisors, has created the need for fintech companies to be able to access this data easily and seamlessly. Currently, these companies use "screen scraping" whereby banking login credentials are used to extract customer financial and transactional data. While this is convenient, customers have no control over the scope or duration of the app's access to their data and they have no control over how that data is used.

Open banking generally refers to a framework to give customers access to and control over their financial data. As the experiences of the United Kingdom and Australia have shown, an open banking framework allows consumers to direct banks to securely share only the financial data that they choose, for the duration that they choose, through the use of application programming interfaces, or APIs.

Canadian consumers and small businesses would also benefit from increased competition and innovation in the financial sector. Fintech companies may use the data provided through open banking to develop apps with which to better manage their personal finances or apps that assist with searching for lower fees and interest rates.

Lastly, the increased growth and innovation in the fintech sector would be an economic benefit for Canada. If Canada misses the opportunity to create a regulatory environment conducive to open banking, Canada risks falling behind other countries.

To have a robust and successful open banking framework, legislative changes will be required. However, given the urgency with which Canada needs to move forward, the committee has also made some short-term recommendations that should be implemented immediately.

### Key Recommendations

Actions that the federal government can and should take **now** are to:

- Designate the Financial Consumer Agency of Canada as the interim oversight body for screen scraping and open banking activities with a mandate to conduct research and public education, and to respond to complaints.
- Provide immediate funding to consumer protection groups to help them conduct and publicize research on the benefits and risks of screen scraping and open banking activities.
- Facilitate the development of a principles-based, industry-led open banking framework.

Actions that the federal government should pursue over the **longer term** include:

- Modernize the *Personal Information Protection and Electronic Documents Act* to align it with global privacy standards. The changes must include a consumer right to direct that their personal financial information be shared with another organization.
- Designate the Privacy Commissioner of Canada and the Canadian Commissioner of Competition as the co-regulatory and enforcement authorities for open data frameworks.

### Next Steps

It is up to the federal government to encourage innovation and the adoption of new technologies while protecting the privacy of Canadians. If implemented correctly, open banking offers the federal government the opportunity to accomplish both of these objectives.

## LIST OF RECOMMENDATIONS

- I. That the Minister of Finance, through a written direction as set out in section 5.1 of the *Financial Consumer Agency of Canada Act*, immediately designate the Financial Consumer Agency of Canada the interim oversight body for screen scraping and open banking activities within the federal jurisdiction. As the interim oversight body, the FCAC would be responsible for:
1. conducting ongoing research on the benefits and risks for consumers of screen scraping and open banking activities and informing the public of that research on a periodic basis;
  2. organizing the federal government's public advertising campaign, in cooperation with fintech companies and banks, to educate consumers about screen scraping, which would include advertisements on government websites, social media, television, print media and public advertising spaces;
  3. responding to complaints and questions from the public with respect to screen scraping and open banking activities; and
  4. coordinating its efforts with respect to the oversight of screen scraping and open banking activities with the relevant provincial and territorial consumer protection regulatory authorities.

The FCAC's role as interim oversight body should be reviewed by the federal government by the end of 2019 and every six months thereafter until a final regulator has been identified.

- II. That the federal government provide immediate funding to consumer protection advocacy groups to assist them in conducting and publicizing research on the benefits and risks of screen scraping and open banking activities for consumers.
- III. That the federal government, in order to urgently advance an open banking framework in Canada, facilitate the development by industry stakeholders of a principles-based, industry-led open banking framework that would be integrated with existing financial sector and privacy legislation. It should also assist with the development of industry-led codes of practice. The framework would identify:
1. the scope of data that would be accessible by financial services providers;
  2. how the payments sector will be included within the framework;
  3. timelines for implementation; and
  4. the financial services providers that would be participants. Industry stakeholders include representatives from federally and provincially regulated financial institutions, financial services providers, consumer advocacy groups, Payments Canada and any other relevant groups.

It should also ensure that the Canadian Data Governance Standardization Collaborative prioritizes the development of open banking application programming interface standards that are technology-agnostic.



- IV.** That the federal government swiftly enact changes to modernize the *Personal Information Protection and Electronic Documents Act* and align it with global privacy standards. These amendments must prioritize consumer protection and be implemented for the benefit of consumers and small businesses. These changes must include a consumer data portability right.
- V.** That the federal government, in consultation with provincial and territorial securities regulators, create a registry of accredited third-party providers for the open banking framework and establish an innovation sandbox to allow new third-party providers to safely test and develop open banking technology that meet any relevant open banking standards.
- VI.** That the federal government introduce any relevant legislative changes to financial sector legislation when implementing an open banking framework to confirm the prohibition of the use of consumer banking data for insurance underwriting purposes, ensure continued stability of the financial sector and provide any necessary bank-specific consumer protection measures.
- VII.** That the federal government, in developing an open banking framework, ensure that it is coordinated with the priorities and timelines of the payments industry modernization efforts.
- VIII.** That the federal government, provinces and territories work together to modernize and harmonize their respective laws and standards in order that an open banking framework be inclusive and enable the participation of credit unions, *caisses populaires* and other provincially and territorially regulated financial institutions.
- IX.** That the federal government, in order to obtain the benefits of open banking, immediately expediate its efforts to expand robust internet broadband accessibility and capacity to remote, rural and northern communities.
- X.** That the federal government make the necessary legislative changes, after consultation with the provinces and territories, to designate the Privacy Commissioner of Canada and the Canadian Commissioner of Competition as the co-regulatory and enforcement authorities for open data frameworks. The Privacy Commissioner would be responsible for responding to privacy complaints and noncompliance with PIPEDA in relation to the open data-related activities, while the Commissioner of Competition would ensure that any open data framework meets the objectives of having increasing competition in a particular industry and that established businesses are not dominating a market that has open-data related activities.

## GLOSSARY OF TERMS

**Application programming interface (API):** An application programming interface (API) is a software intermediary that allows two applications to talk to each other. It acts as a universal access point by which information is retrieved from a database. APIs are the main technological mechanism by which data would be securely shared between a bank and a third-party provider in an open banking framework.

**Consumer Data Right:** The right of Australian consumers to have control over their data. The right will be implemented sector-by-sector, beginning in the banking, energy and telecommunications sectors.

**Financial Data Portability:** Financial data portability is the ability of consumers to direct that their personal financial information be shared with another organization.

**Fintech:** Fintech refers to both the innovative ideas being developed into financial services technologies and applications, as well as the businesses that are offering these services. While fintech usually refers to independent financial services businesses, banks also offer fintech applications.

**General Data Protection Regulation (GDPR):** The GDPR is the European Union (EU)'s privacy and data protection legislation which came into effect in 2018. It sets out several privacy rights for individuals, including the right to obtain one's personal data from a company and send it to a third party and the right to have personal information erased and no longer shared with third parties.

**Open Banking:** Open banking generally refers to a framework to give customers access to and control over their financial data. In most countries, open banking has two elements: financial data portability and payments initiation.

**Open Data:** Open Data is structured data that is machine-readable, freely shared, used and built on without restrictions. One of the goals of an open data initiative is to enable computer-to-computer transfer of information using a universal access point, called an API, to retrieve information from a database.

**Payments Initiation:** Payments initiation is the enabling of payments directly from a bank account using a smartphone app, as an alternative to credit and debit card payments.

**Screen Scraping:** Screen scraping is the process by which certain smartphone apps access banking data. Some fintech companies will use a customer's online banking login credentials to access the customer's bank account in order to collect and store the customer's account information and transaction history.

**Third-party providers:** Third-party providers are those businesses that would be requesting customer banking information from banks in a Canadian open banking system. Initially, these businesses would likely be financial technology or "fintech" companies and other banks.

## INTRODUCTION

Canadians are becoming increasingly aware and concerned that all of their personal information – where they live, how much money they earn, what they owe, etc. – has value and companies are willing to provide products and services in exchange for that data. However, according to the law, Canadians do not own their personal financial information; sometimes they feel that they do not even have control over it.

Financial institutions are in the advantaged position of being able to gather and store the personal financial information of their customers. As such, they possess a great degree of control over this data and how it is shared. Policy makers in countries such as the United Kingdom and Australia have argued that consumers should have more control of their personal data and are implementing what is called “open banking.”

Open banking generally refers to a framework to give customers more control over their financial data. In most countries, open banking has two elements: the first is to provide consumers with the ability to direct banks when to share selected financial data with other businesses; the second is to provide customers with additional ways in which to make payments from their bank accounts.



*“Open banking, at its core, is the beginning of a more general movement towards greater customer rights over their data and to empower customers to obtain stronger and more meaningful control over their data.”*

**Deloitte**

In undertaking a study on open banking, the Standing Senate Committee on Banking, Trade and Commerce (the committee), initially had concerns about providing individuals with the ability to easily share their personal financial data with parties that are not subject to the same scrutiny as regulated financial intuitions.

**Table 1: Examples of Open Banking Applications**

<b>CONSUMERS</b>	<b>SMALL BUSINESSES</b>	<b>RURAL AND REMOTE COMMUNITIES</b>
<p>A consumer or his financial advisor could use an open banking smartphone app to oversee all of the consumer’s other financial accounts that are held at multiple financial institutions, allowing the consumer to make better financial decisions.</p> <p>An open banking app is used by a landlord to access potential renters’ financial transaction history if the renter does not have an established credit history in Canada.</p> <p>An open banking app is used by a consumer to make bill payments from a bank account at a relatively lower cost.</p>	<p>A small business owner could use an open banking app to regularly collect financial information from its bank accounts in order to track and forecast cash flows.</p> <p>A potential lender could use an open banking app to access the banking and transactional history of a small business to more easily process a loan application from that business.</p> <p>A business owner could use an open banking app to easily compare fees and interest rates of various financial products and services.</p>	<p>A farmer could use an open banking app to find banking products and services that are specifically tailored for the needs of that sector.</p> <p>A consumer in a remote community with access to a limited number of bank branches could use an open banking app to access a wider range of financial services.</p>

Over the course of 10 meetings, the committee heard testimony from representatives from government departments and agencies, the Office of the Privacy Commissioner of Canada, Competition Bureau Canada, the legal community, academia, the financial sector and other business groups and consumer advocates, to learn about the potential benefits of open banking for Canadian financial services consumers, with a specific focus on the federal government’s regulatory role.

In hearing from these witnesses and examining the issues, the committee is convinced that, not only is open banking necessary for Canadian consumers, it needs to be implemented decisively and with urgency.

**Canadian consumers need open banking regulations as soon as possible for three main reasons: to keep their personal financial information safe; to be provided more choice and improved financial products and services; and to help keep the Canadian financial sector strong and internationally competitive.**

Firstly, with respect to keeping consumer's information safe, the committee learned that it is too late to question whether Canadians are willing to share their personal financial data with third parties, as this sharing is already occurring on a wide scale. The problem is that the data sharing is unregulated and potentially risky for the individual customer, financial intuitions and, indeed, the financial system as a whole.

The Department of Finance Canada estimates that almost 4 million Canadians currently use smartphone applications that use "screen scraping" to access their personal financial data and that number is growing rapidly. Screen scraping is typically used by financial apps such as data aggregators that collect information to provide a single snapshot of a customer's financial picture.

In screen scraping, the customer provides a third party, usually a fintech company, with his or her login credentials for their online banking platform. The third party then uses these details to log in and "impersonate" the customer to extract data. Having login credentials allows that third party to access the customer's entire account and, according to the Ontario Securities Commission, may violate the terms and conditions of the customer's accounts with their financial institutions. Concerns noted by witnesses

*"There is a very significant number of Canadians who are effectively creating their own open banking system by going to third-party providers, handing over passwords and login credentials, and using these aggregators. The demand for this type of service is growing."*

[Bank of Canada](#)

with respect to the use of screen scraping include: an increased risk of identity theft and fraud, cybersecurity risks, the resource intensiveness of the process, and the inability for the customer to control the scope or duration of access to the data by the app.

Given the large and growing number of Canadians that are using screen scraping services, it is clear that customers are either willingly or unknowingly taking on these risks in order to meet their needs for a more personalized, digital banking experience that allows them to better control their financial lives.

*"... despite serious data breaches and increasing consumer unease about being "the product" rather than "the customer," individuals are and will likely in the future persist in volunteering their data in exchange for new services and in ever-larger volumes. They will do so because the products are popular and often apparently free of charge."*

[Peter Harris, Former Chairman, Australian Productivity Commission](#)

As an alternative to screen scraping, witnesses preferred data access methods such as application programming interfaces (APIs). An API is a software intermediary that allows two apps to talk to each other. It acts as a universal access point by which information is retrieved from a database. APIs are the main technological mechanism by which data would be securely shared between a bank and a third-party provider in an open banking framework. As an example of APIs in use, the Financial Data and Technology Association said that Uber uses an API from PayPal to process payments and from Google to provide map functionality.

Secondly, witnesses argued that open banking would provide direct benefits for Canadian consumers by increasing competition in the financial sector and providing them with additional tools with which to better manage their personal finances.

According to the Competition Bureau, 71% of Canadians have been with the same financial institution for the past 10 years. It suggested that open banking could increase competition in the financial sector and deliver important benefits for consumers, such as increased service levels, greater customer choice, lower fees and more attractive pricing.

Several witnesses noted ways in which open banking might enable individuals and small businesses to better manage their finances. For example, data aggregator services, which are already present in the market using screen scraping technologies, could provide a more complete financial picture and provide advice for saving and earning opportunities. The Bank of Canada also said that open banking could allow for the creation of savings plans and wealth management strategies for consumers who may not have otherwise had access to these services. Other examples are set out in Table 1.

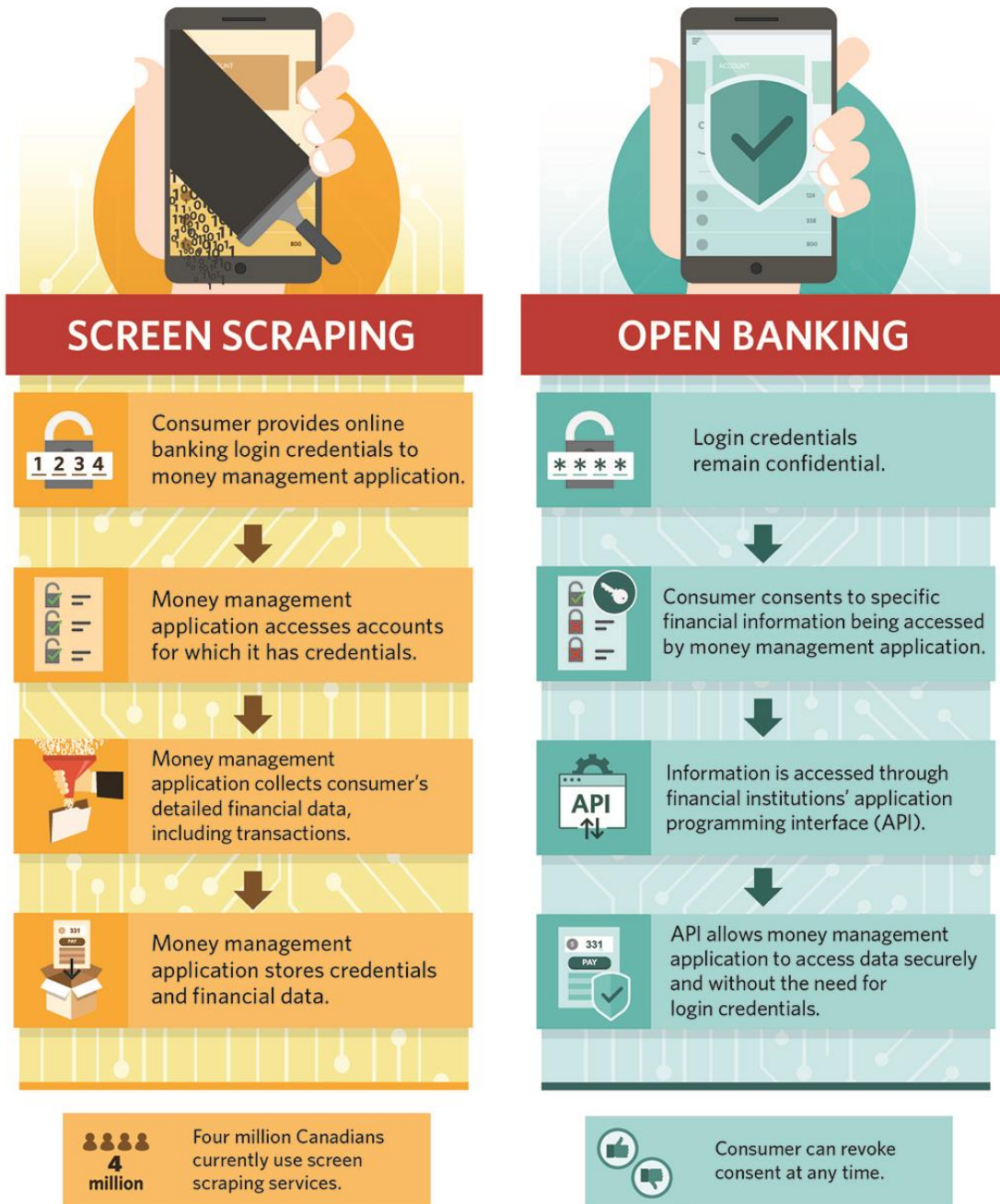
*“Data sharing in Australia means that a lot of Australians are really swimming in dangerous surf at the beach. Half of those Australians don’t even know they’re at the beach, because they’re not really aware they’re sharing information. This system is designed to put some lifeguards there and indicate to Australians where a safer place to swim is.”*

*[King & Woods Mallesons,  
Australia](#)*

*“Any customer who has ever stepped out of an Uber or used Amazon 1-Click or has aggregated accounts from different bank providers is already using a form of open banking. But the form of open banking that we are creating here will be much more secure and much more designed around the customer’s interests.”*

*[UK Open Banking Implementation Entity](#)*

## Money Management Under Screen Scraping Versus Open Banking



*“... only 14 per cent of Canadians switched banks over the last five years and that 71 per cent had been with the same bank for the past 10 years. These are important statistics because they indicate that consumers may be finding it difficult to shop around and take advantage of the range of products available in our modern financial sector.”*

[Competition Bureau Canada](#)

The Department of Finance Canada stated that international experience has demonstrated that open banking increases financial inclusion and access for underbanked and financially vulnerable consumers. As an example, the Open Banking Implementation Entity noted that, in the United Kingdom, some credit counselling agencies, known as debt charities there, have used open banking to improve services for vulnerable members of society, who may not even have access to the internet, by providing the charity with a more complete picture of an individual's finances without having to spend large amounts of time gathering information. This allows the debt charity to provide better service to their clients as the information is more accurate and to serve more clients as the process is much quicker.

Thirdly, in terms of economic benefits for Canada more generally, several witnesses noted the economic benefit that would be possible under open banking in Canada, through increased growth and innovation in the fintech sector. If Canada misses this opportunity by failing to create a regulatory environment conducive to open banking, Canada risks falling behind. Payments Canada noted that Canada has an opportunity for a leadership role with respect to open banking in North America as the modernization of payments infrastructure – half of the open banking equation – is already underway and Canada's financial services sector has been proven to be among the safest in the world.

The Department of Finance noted that the ability for fintechs to scale and continue to grow in Canada without partnering with larger financial institutions or gaining access to the data envisioned by open banking is questionable. For example, Wealthsimple Financial Corp. said that one of the most significant hindrances to the growth of its business is the difficulties that it faces to enable clients to share their financial data in an efficient, frictionless manner. These difficulties, according to it, limit the types of products that can be developed. Also, Portag3 Ventures highlighted that the Canadian financial market is relatively small, which means that Canada must build fintechs that can compete globally.

*“Open banking will allow our financial institutions to develop competitive negotiations that position them for global opportunities. If we delay, we put Canadians at further risk and create the prospect of foreign companies gaining competitive advantage. To be safe and competitive, we need to bring open banking to Canada.”*

[Payments Canada](#)



Professor Christopher Nicholls from the University of Western Ontario noted that Canada was recently ranked last out of ten countries in an Ernst and Young international comparison of how conducive its regulatory environment is for open banking and the potential for consumers to adopt open banking. According to Portag3 Ventures, dozens of countries are ahead of Canada and, without swift action, Canada may become an importer of financial technology rather than an exporter.

Two countries that have already introduced open banking are the United Kingdom and Australia. The United Kingdom has established the Open Banking Implementation Entity, which is funded by the United Kingdom's nine largest banks to develop a standard for sharing personal financial data and to implement open banking in the United Kingdom. According to the representative from the Open Banking Implementation Entity, the requirement for the banks to create the API was fundamental to the development of open banking, as banks would not have done so voluntarily.

**In its 2018 [Open Banking Opportunity Index](#), Ernst & Young assessed “the readiness of 10 different markets around the globe to thrive in an open banking environment” and ranked Canada 8th overall: 10th for regulatory environment, 10th for consumer adoption, 8th for consumer sentiment and 5th for innovation. (Ernst & Young, [How new open banking opportunities can thrive in Canada](#))**

Australia, on the other hand, has introduced a Consumer Data Right. Peter Harris, former Chairman of the Australian Productivity Commission, explained that the legislation is more comprehensive than the open banking regime in the United Kingdom, as it covers all of a customer's data, rather than just its financial data, and includes criminal sanctions for non-compliance with the consent provisions. He stated that, in principle, the data right and its related standards would cover the entire spectrum of data collection in the corporate world but that it will be applied gradually, on an industry-by-industry basis. The current legislation covers banking, energy and telecommunications data. The standards are set by a data standards body made up of industry participants.

*“There are dozens of countries that are ahead of Canada in their deliberations and even implementations of open banking. Without moving swiftly to this new competitive norm, we fear Canada will inevitably become a future importer of innovative financial technology that has already scaled and created jobs in other jurisdictions rather than having the creator and the exporter of them here at home.”*

[Portag3 Ventures](#)

According to the Ontario Securities Commission, if Canada does not implement an open banking framework, then fintech companies will go to other jurisdictions that have a more supportive regulatory environment.

The committee commends the federal government on the actions that it has already undertaken with respect to open banking, including the Department of Finance Canada appointing an Advisory Committee on Open Banking to facilitate a review of open banking, as well as Innovation, Science and Economic Development Canada recently releasing ten principles that would guide the federal government in developing policies for the data and the digital economy, referred to as Canada's Digital Charter. Included as part of the Digital Charter is a proposal to amend the *Personal Information Protection and Electronic Documents Act* (PIPEDA) to include a right for individuals to direct that their personal information be moved from one organization to another in a standardized format, often referred to as a data portability right.

In her appearance before the committee, Kirsten Thompson, a member of the Advisory Committee on Open Banking, acknowledged that the term "open banking" is confusing for consumers, as it creates the impression that banks will be allowing anyone to access customer data, with no respect for privacy. A better term, in her view, is "consumer-directed banking." Therefore, given Canadian consumer's demonstrated desire for control over their personal financial data, the fact that they are sharing this data, and the many potential benefits of open banking for Canadian consumers and the Canadian economy generally, the committee feels that there is a great risk in not decisively moving forward with regulations for open banking.

*"The willingness to use these third-party services even in the face of the friction that exists without easy data portability, points to the real risk for government policy. In my view, the real risk lies in doing nothing, not doing something."*

*Professor Michael Geist,*  
*University of Ottawa*

## SHORT TERM: IMMEDIATE MEASURES FOR CONSUMERS

*“There will be a tendency among some industry stakeholders to want to take this very slowly, to say, “Yes, we support open banking, but let’s be cautious and do this the right way and really be careful.” We understand that, but certainly, as a fintech company that is still pre-profit and scaling at a rapid pace, we do not have the time to wait for years to unfold for this to happen. We really need to move quickly.”*

*[Wealthsimple Financial Corp.](#)*

Although witnesses had differing opinions about how open banking should eventually be implemented in Canada, one thing that was clear from their testimony was that decisive action is required to manage screen scraping activities as well as to demonstrate to Canadian fintechs that they can grow and prosper in Canada. However, given the upcoming election, it is unlikely that any legislation can be proposed and passed before 2020.

The committee recognizes that legislative changes are needed in order to protect the privacy of Canadians’ personal financial data and the security of the financial system in general. However, the committee is interested in measures that could be implemented immediately and without the need for amending legislation. To achieve this, the committee proposes the following three interim measures and urges the federal government to implement these measures before the end of 2019

### 1. Designating an Interim Oversight Body

The committee is of the view that the most qualified agency to be the interim oversight body for screen scraping activities and any newly developing open banking activities in the financial sector is the Financial Consumer Agency of Canada (FCAC). The FCAC’s mandate is to supervise federally regulated financial institutions to ensure compliance with federal financial consumer protection provisions and to promote financial literacy among Canadians. The second budget bill of 2018 also provided the FCAC with an expanded mandate and the ability to impose larger penalties for noncompliance.

As part of its financial literacy responsibilities, the FCAC issues news releases to alert the public about emerging trends and issues that may have an impact on consumers of financial products and services. In March 2018, the FCAC issued a warning to consumers about the risks of sharing online banking login credentials with third parties. It stressed that consumers risk losing the protection offered by banks against unauthorized transactions and instead may be held liable for these transactions in their accounts. The FCAC appears to be knowledgeable about screen scraping, already has the responsibility of alerting consumers of any related risks and may have the tools and resources available to supervise the trends in the use of screen scraping activities in Canada, thus making it a strong candidate to be the interim oversight body.

*“The Canadian desire for this screen-scraping technology is understandable. Canadians wish to actually see their complete financial picture in one place and better understand their own finances. We believe that this need can be better and more securely achieved through a well-managed open banking regime.”*

*[Equitable Bank](#)*

The committee strongly recommends that one of the FCAC’s primary responsibilities as the interim oversight body be to conduct research on the benefits and risks for consumers of screen scraping and open banking activities and to regularly inform and educate the public of its findings. Upon receiving its designation as interim oversight body, the FCAC should immediately organize a comprehensive public advertising campaign that would assist the public in learning about the benefits and risks of using smartphone apps that employ screen scraping and launch this campaign before the fall of 2019. The campaign should go beyond issuing a news release on its website and should use other means, such as social media, print media, television and public advertising spaces, to inform the public of these risks.

Lastly, the FCAC currently responds to questions or complaints from the public about various financial sector issues and institutions submitted by phone or on its website. The committee suggests that the FCAC play a role in fielding questions and complaints from consumers about screen scraping and open banking through this same process.

The designation of the FCAC as interim oversight body should happen immediately so that consumers that are using or are considering using these smartphone apps know which federal organization can respond to their questions and concerns. The committee asks that the Minister of Finance issue a written direction, as set out in section 5.1 of the *Financial Consumer Agency of Canada Act*, to make this designation and provide the FCAC with any necessary funding.

As the FCAC only supervises federal financial institutions and with screen scraping likely being a transitory technology, it may not be a suitable choice as a long-term regulator of the proposed open banking framework.

The committee suggests that the FCAC’s role be reviewed by the Minister of Finance before the end of 2019 and every six months until a final regulator has been identified.

*“For Canadians, there is a need to provide education to help them navigate open banking so they are in a position to make informed financial choices, based on their rights and risk appetite.”*

*[Interac Corp.](#)*

For these reasons, the committee recommends:

**That the Minister of Finance, through a written direction as set out in section 5.1 of the *Financial Consumer Agency of Canada Act*, immediately designate the Financial Consumer Agency of Canada the interim oversight body for screen scraping and open banking activities within the federal jurisdiction. As the interim oversight body, the FCAC would be responsible for:**

1. **conducting ongoing research on the benefits and risks for consumers of screen scraping and open banking activities and informing the public of that research on a periodic basis;**
2. **organizing the federal government’s public advertising campaign, in cooperation with fintech companies and banks, to educate consumers about screen scraping, which would include advertisements on government websites, social media, television, print media and public advertising spaces;**
3. **responding to complaints and questions from the public with respect to screen scraping and open banking activities; and**
4. **coordinating its efforts with respect to the oversight of screen scraping and open banking activities with the relevant provincial and territorial consumer protection regulatory authorities.**

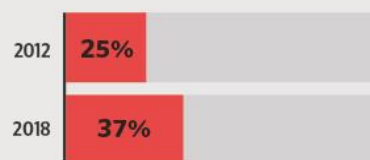
**The FCAC’s role as interim oversight body should be reviewed by the federal government by the end of 2019 and every six months thereafter until a final regulator has been identified.**

## 2. Promoting Consumer Advocacy

Building a framework that consumers can trust is a key objective of any open banking framework. Mastercard indicated that open banking must provide real benefits to consumers and that consumers must be able to trust that disputes and liability will be handled efficiently and in the consumer’s interest. Professor Nicholls said that consumer protection measures – such as privacy, cybersecurity, data protection and right to consent – must be a priority, and that if these measures are not addressed to the satisfaction of Canadian consumers, open banking will not work in Canada. According to Interac Corp., the federal government must put the interest of Canadian consumers at the centre of its framework design and think through implications from an end-user perspective.

Some witnesses claimed that the almost 4 million Canadians using screen scraping apps was sufficient evidence of consumers wanting open banking in Canada; however, others felt that there has not been enough research and there is not enough evidence

**The percentage of Canadians who are extremely concerned about the protection of their personal privacy increased from 25% to 37% between 2012 and 2018.**



Source: Office of the Privacy Commissioner, 2018-19 Survey of Canadians on Privacy.

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directly from consumers or consumer advocacy groups to confirm that consumers want open banking in Canada.

The Public Interest Advocacy Centre (PIAC) indicated that it does not believe that the majority of banking customers want open banking and that there are a few reasons why consumers should be wary of open banking, including:

1. in general, more work needs to be done to legislate consumer protection measures in the banking sector. Currently, Canadians have no right to banking services and consequently, banks can cancel or close a consumer's bank account at any time; and
2. there are significant privacy and cybersecurity concerns associated with these smartphone apps. According to PIAC, third-party providers use and will use open banking-related activities as a means to engage in behavioural tracking, targeted advertising and perhaps behavioural manipulation of consumers, especially once big data companies such as Google, Microsoft, Amazon and Facebook enter into the financial services market.

*“I struggle to understand how the government can maintain or the department can suggest that the concern of putting the consumer first or at the centre of their data and banking services, and then establish a committee in which there are no consumer representatives.”*

*[Professor Michael Geist](#)  
[University of Ottawa](#)*

PIAC notes that there is no notable research from the consumer perspective on open banking and that it, like most consumer advocacy groups in Canada, does not have enough funding to examine these issues. It suggests that the federal government provide some minimal funding to consumer advocacy groups so that focused, well-argued consumer thoughts can be provided to the government to counterbalance the views of the industry.

Both PIAC and Professor Michael Geist from the University of Ottawa pointed out that the lack of a consumer advocate on the federal government's Advisory Committee on Open Banking suggests that the government may not prioritize consumer protection when developing the framework. In response, the Department of Finance Canada said that it consulted with a number of civil society groups and conducted public opinion research across the country, both online and in person, to obtain the specific views of consumers on open banking and the potential risks to their privacy.

*“Our organization is on the edge of bankruptcy. A number of other groups have reduced staff. We are all sticking to activities that are the ones we can scrape a little money out of. There is no core funding, as you point out, and there hasn't been since 1989 at the federal level. Some provinces have a little, notably Quebec”*

*[Public Interest Advocacy Centre](#)*

There were also concerns about how the privacy of vulnerable Canadians, such as those that are not technologically savvy or have poor financial literacy, would be safeguarded under open banking.

As noted previously, the UK Open Banking Implementation Entity indicated that in the United Kingdom, debt charities were taking advantage of open banking to assist them in providing credit counselling services for low-income individuals. The Department of Finance Canada highlighted that international experience has demonstrated that open banking can result in greater financial inclusion and access for underbanked and financially vulnerable consumers.

*“Many Canadians live paycheque to paycheque. A significant portion is new to Canada and do not have established credit here. A large number of Canadians are recent graduates, starting their career, beginning families, looking for housing and trying to juggle a student loan debt, often at the same time. Other Canadians are small-business owners who find it difficult to access credit, manage payroll and pay suppliers. It is these people who have the most to gain from a consumer-directed banking regime.”*

[Kirsten Thompson,](#)  
[Advisory Committee](#)

Other witnesses were less certain of the benefits of open banking for vulnerable Canadians. PIAC indicated that it is unclear how open banking would help disadvantaged Canadians and that instead, more research should be done by the FCAC to understand what Canadians need with respect to their finances. In a written submission, Desjardins Group said it was debatable whether the most vulnerable consumers would benefit from open banking at all and that to date, not a single study has shown that an open banking system would directly improve financial literacy or boost access to financial services. The Canadian Credit Union Association underscored that there are a lot of Canadians who are underbanked and that the credit unions continue to face challenges when trying to raise the level of financial literacy in their communities.

Given the conflicting opinions on the possible effects of open banking on the lives of consumers, more research needs to be done as soon as possible from the consumer

perspective. The lack of a consumer advocate on the Advisory Committee on Open Banking also gives the committee pause about whether the federal government is prioritizing the needs of consumers in its consideration of open banking. The committee asks that the federal government provide funding on an urgent basis to consumer advocacy groups to conduct further research on this issue.

Therefore, the committee recommends:

**That the federal government provide immediate funding to consumer protection advocacy groups to assist them in conducting and publicizing research on the benefits and risks of screen scraping and open banking activities for consumers.**

### 3. Beginning the Development of the Framework

In considering how to implement an open banking framework, countries have either decided to allow the industry to develop the relevant criteria themselves or have the government establish the framework. In Canada, the federal government would be responsible for developing any relevant standards.

Most witnesses suggested that a collaborative approach between the federal government and private sector would be the best approach to developing an open banking framework. However, Mastercard also supported the creation of guidelines overseen by a central regulatory authority but without a central market entity governing system such as the Open Banking Implementation Authority. It noted the voluntary *Code of Conduct in the Credit and Debit Card Industry in Canada* was developed through a successful industry-led approach.

While Equitable Bank noted the need for industry participation in creating an open banking framework, it recommended that privacy issues be addressed by the federal government before a market-driven approach is taken in order to create more certainty in the market.

The committee was concerned with the costs involved in implementing open banking and the ongoing costs of oversight. Peter Harris noted that mid-tier Australian banks have estimated the annual costs of ongoing management of open banking to be between \$250,000 and \$500,000, which he characterized as relevant but not material for banks of that size. According to Portag3 Ventures, forcing financial institutions to pay for the implementation and oversight of open banking may cause conflicts of interest. Deloitte said that while banks in the United Kingdom may fund the Open Banking Implementation Entity, other countries have chosen a different approach to implementation whereby public and private resources are combined to develop a framework and then the private sector bears the costs of implementation for themselves.

**Scope of data and participants.** Witnesses indicated that one of the first steps to creating an open banking regime would be to identify what types of data would be required to be included in the regime. While some witnesses advocated for broad deployment at the outset, with as much data to be included as possible, others thought that a more gradual approach would be more appropriate, with small subsets of data to be included at a time.

With respect to scope of open banking, witnesses asked the committee to ponder which financial sector participants should be included in the regime. While some witnesses identified that jurisdictional issues would make federally regulated financial institutions the most obvious place to start, others noted that this would leave out a large portion of the Canadian financial sector.

Competition Bureau Canada highlighted the importance of having a level playing field so that all competitors in a market are subject to the same rules and all participants can compete for the business of customers in the same way.

Lastly, several witnesses also noted the need for the federal government to set deadlines for implementation of open banking.



**Technical standards.** In response to the growing need for data governance and standardization, as part of the May 2019 announcement of Canada’s Digital Charter, the federal government stated that the Standards Council of Canada will launch a new Data Governance Standardization Collaborative to coordinate data governance standards in Canada. The Collaborative will consult with businesses, standards-developing organizations, governments and regulators.

The Department of Finance Canada indicated that, in its view, setting standards is a competition consideration, since new fintech companies that wish to have access to privately developed APIs, such as those developed by banks, would bear the burden of trying to access these different API platforms. The department also pointed out that setting standards is an opportunity to set benchmarks for APIs, security, privacy and cyber resiliency.

*“We believe that permitting data in an open format that is machine-readable, vendor-neutral and standardized will be of great benefit to Ontario and to Canadian businesses and consumers. It’s a move that will help to encourage businesses to establish themselves, grow and prosper here. We need to make that happen.”*

[Ontario Securities Commission](#)

The Ontario Securities Commission explained that the third parties that would be using this data would be collecting it from various domestic and international sources and stressed the importance of consistent and perhaps global application of standards. Wealthsimple Financial Corp. agreed that Canadian standards should be consistent with global initiatives in order to provide Canadian fintech companies with the opportunity to expand internationally.

*“We also see the Canadian government is in a prime position to play a vital role in the safe adoption of open banking across our ecosystem by developing an all-encompassing set of technical standards that cover the topics of APIs, data access and transmission, security, consent and ownership.”*

[Accenture Inc.](#)

In the committee’s view, the federal government would be most effective as a facilitator who would assist the industry stakeholders in the development of the open banking framework. As facilitator, it should help the stakeholders focus on identifying the scope of data that will be included in the open banking framework and which entities would be participating. It would also set the timelines for implementation and ensure equal participation by all industry stakeholders, including those involved in payments modernization. Lastly, the committee hopes that the Data Governance

Standardization Collaborative recognizes the urgent need for open banking standards and asks that the federal government prioritize the development of open banking API standards in its work.

As such, the committee recommends:

**That the federal government, in order to urgently advance an open banking framework in Canada, facilitate the development by industry stakeholders of a principles-based, industry-led open banking framework that would be integrated with existing financial sector and privacy legislation. It should also assist with the development of industry-led codes of practice. The framework would identify:**

- 1. the scope of data that would be accessible by financial services providers;**
- 2. how the payments sector will be included within the framework;**
- 3. timelines for implementation; and**
- 4. the financial services providers that would be participants. Industry stakeholders include representatives from federally and provincially regulated financial institutions, financial services providers, consumer advocacy groups, Payments Canada and any other relevant groups.**

**It should also ensure that the Canadian Data Governance Standardization Collaborative prioritizes the development of open banking application programming interface standards that are technology- agnostic.**

## LONG TERM: AN OPEN BANKING FRAMEWORK FOR CANADA

While the interim measures recommended by the committee should help consumers safeguard their personal financial data in the short term, legislative changes need to be made in the near future to implement a secure and effective open banking framework that benefits both consumers and the providers of financial services. Witnesses pointed out that there are numerous factors that need to be taken into consideration, including privacy rights, data protection, cyber security, anti-money laundering legislation, digital identification, securities regulation, payments, and financial stability.

*“Open banking is moving at speed around the world, and in some ways, it’s already present in Canada. You could say the horse has already left the barn on open banking.”*

*Accenture Inc.*

### 1. Reform of the *Personal Information Protection and Electronic Documents Act*

This committee, other parliamentary committees, the Office of the Privacy Commissioner of Canada, and various stakeholder groups have asked the federal government numerous times over the past several years to update PIPEDA and align it with global privacy standards. Many witnesses appearing for this study have also strongly urged the federal government to swiftly make significant legislative reforms to PIPEDA before considering developing a framework for open banking.



The Office of the Privacy Commissioner stated that modern privacy laws would be a necessary pre-condition to open banking and that amendments to PIPEDA are required to ensure the privacy of Canadians is protected as technologies and the economy changes. In particular, the Office asked again that it be granted stronger enforcement powers, including the power to make orders and impose fines for non-compliance to ensure that organizations are protecting personal information.

Professor Geist noted that PIPEDA was drafted more than two decades ago and is “no longer fit for purpose.” He pointed out that PIPEDA does not provide adequate safeguards, especially when compared to the General Data Protection Regulation (GDPR), the European Union’s privacy and data protection legislation. In his view, there is significant disconnect between the speed at which innovation in the financial sector is developing and the pace at which adequate privacy safeguards are being implemented. He noted that some changes to PIPEDA that were discussed at its first statutory review took over a decade to come into effect.

On May 22<sup>nd</sup> 2019, after the committee had concluded its hearings on open banking, Innovation, Science and Economic Development Canada released ten principles that would guide the federal government in developing policies for the data and the digital economy, referred to as Canada's Digital Charter. Included as part of the Digital Charter are the federal government's proposals to modernize PIPEDA.

The proposals address some of the privacy concerns that were raised by witnesses with respect to open banking, including:

- **Data Portability Right.** Providing a right for individuals to direct that their personal information be moved from one organization to another in a standardized format, often referred to as a data portability right;
- **Consent.** Requiring explicit, meaningful plain-language consent, which would be separate from any service contract, that describes the intended use of the information and which third parties will have access to the information;
- **Standards.** Using codes of practice, accreditation schemes and technical standards as the means by which businesses can demonstrate compliance with privacy and cybersecurity obligations;
- **PIPEDA enforcement.** Enhancing the Privacy Commissioner's enforcement and oversight powers, including order-making powers in the form of cessation and records preservation orders as well as increasing the scope and range of fines; and
- **PIPEDA reform.** Redrafting PIPEDA to clearly set out consumers' rights with respect to their personal information and businesses' obligations to protect that information.

*“Changes in financial policy and legislation require concurrent updating of Canada’s privacy legislation to ensure that consumers and their data are not just viewed as a commodity or as raw material from which data can be extracted.”*

Office of the Privacy  
Commissioner

*“Customer information should only be shared with informed customer consent obtained in a transparent manner that allows the customer to understand how their financial transaction data will be used and secured.”*

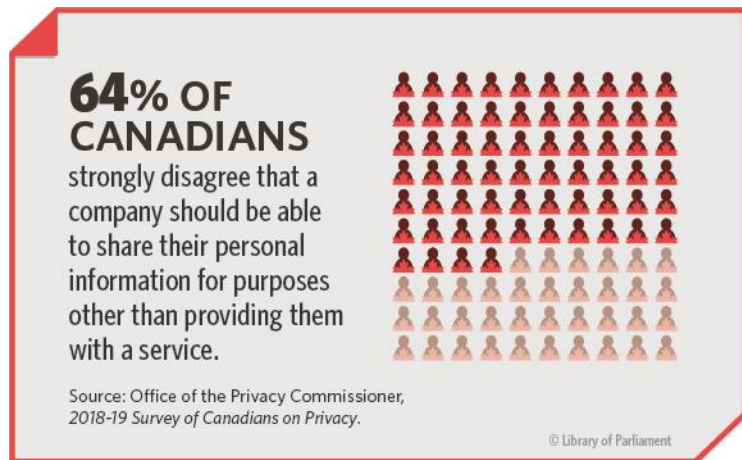
Canadian Bankers Association

Some witnesses spoke of additional privacy issues that were not included in the federal government's proposals for reform. These issues included:

- **Permitted uses for personal data:**

Professor Teresa Scassa of the University of Ottawa wanted to ensure that open banking is used solely for the benefit of consumers and small businesses, and not by law enforcement and other government entities for surveillance purposes. PIAC warned that once the third-party providers start tracking consumers' transactions, they will eventually try to influence consumers' spending and other behaviours, and then sell that

information to Google or a similar company so they can make behavioural predictions. The Office of the Privacy Commissioner also wondered if third-party providers would be aggregating data and personal information in order to sell it, or perhaps they would separate what they consider surplus behavioural data and then trade it as a futures commodity.



*“In the context of open banking, enhancing consent provisions would be consistent with broader objectives to improve consumer choice, control and the ability for individuals to take advantage of innovative new services, while also ensuring the protection of sensitive financial data.”*

*[Innovation, Science and Economic Development Canada](#)*

- **Digital identity:** Equitable Bank stated that open banking would operate more effectively if it was based on digital identity but felt that this issue has not yet been properly addressed in Canada. Accenture Inc. noted that in its latest consumer survey, Canadians indicated that they would be more welcoming to the idea of open banking if there were better authentication, password and security controls, if it used biometric technology such as facial and fingerprint recognition and if there were real-time payments that could be easily verified. The Department of Finance Canada agreed that digital identity will be necessary to ensure that consumers are properly identified, particularly when providing consent to share personal information. In the view of the Canadian Credit Union Association, digital identity is critical to making digital services safe, secure and accessible, and the development of a robust digital identity system is a necessary precursor for open banking.

- **Opting-in and opting-out of open banking:** The Electronic Transactions Association said that Canada’s open banking system should operate in a similar manner as the United Kingdom’s systems, in that it must be an opt-in system, where a consumer has to choose to use the services of a third-party provider and then provide express consent for personal data to be shared with that provider. Similarly, the Financial Data and Technology Association and Deloitte advocated that consumers must be able to opt out of using the services of a third-party provider by revoking consent.
- **Removal or destruction of personal data:** Concerns were also raised about whether the information that was collected by third-party providers would be removed or destroyed once consent was revoked by a consumer. Professor Scassa noted that, currently, data retention limits are tied to the purpose for which the data was collected, and the data has to be disposed of when no longer being used. However, she cautioned that in a big data economy, businesses try to hang on to data for as long as possible, which can make individuals vulnerable to having their information stolen in a cyber attack or having out-of-date data used to a consumer’s detriment. She pointed out that there are strict regulations about the retention of certain types of financial information and banks have to keep certain types of records for prescribed periods of time.

King & Wood Mallesons, Australia explained that in Australia’s system, once the reason for collecting the data has expired, the business cannot use it for another purpose and it has to be destroyed or anonymized. In a written submission, the National Association for Information Destruction recommended amending PIPEDA to require a business to destroy information when it is no longer needed and to introduce a definition for “destruction” in the Act that would involve rendering the records useless or ineffective.

- **Liability and dispute resolution:** The UK Open Banking Implementation Entity noted that a dispute resolution mechanism needs to be in place from the outset, to address events such as a missing payment, wrong data being sent, or the wrong advice being given based on erroneous data. The Department of Finance Canada also mentioned that a cyber insurance market has emerged in the United Kingdom for the benefit of fintech companies that are held liable for the loss of personal information in a cyber attack.
- **Privacy compliance in other jurisdictions:** In a written submission, Luge Capital suggested the open banking framework should adopt a passport system that allows a third-party provider to be considered in compliance with PIPEDA if it is in compliance with the open banking consumer protection laws of another country.

*“With respect to consumer choice, access to consumer data is the heart of open banking. The critical point is that consumers must have choice and control over how their data is used and shared.”*

[Electronic Transactions Association](#)

The number of privacy issues identified by witnesses demonstrates that significant reform is required to modernize PIPEDA and make it equipped for open banking. The committee wants to highlight that making sure personal information is used for the benefit of consumers and small business and not law enforcement, ensuring that consumers can opt in and opt out of the open banking system and examining how best to remove or destroy personal information once consent has been revoked should be further studied by the federal government. It is also important to note that Facebook's recent refusal to implement recommendations made by the Privacy Commissioner about its deficiencies in protecting personal information is a concrete example of why the Privacy Commissioner requires additional enforcement powers.

The committee welcomes the federal government's proposals for amending PIPEDA, particularly the introduction of a data portability right, but believes that the federal government has not acted with any urgency in proposing changes to make Canada's privacy laws effective in today's digital economy. We strongly suggest that the government introduce legislative changes to PIPEDA as soon as possible and have these changes and any associated regulations come into effect with royal assent.

Therefore, the committee recommends:

**That the federal government swiftly enact changes to modernize the *Personal Information Protection and Electronic Documents Act* and align it with global privacy standards. These amendments must prioritize consumer protection and be implemented for the benefit of consumers and small businesses. These changes must include a consumer data portability right.**

## 2. Accredited Third-party Providers

Open banking can only succeed if consumers can trust that the third parties that are asking for financial information are bona fide businesses that can safely secure their personal information. Mastercard pointed out that trust needs to be built among all the participants in open banking, and that the banks also need to have confidence that third parties that are requesting access to a customer's account are legitimate.

In order to assist participants in developing trust in an open banking framework, many witnesses have suggested that Canada follow a similar approach as the one taken in the United Kingdom, where only accredited third parties are allowed to access the open banking system.

The UK Open Banking Implementation Entity explained that to become accredited, a third party must go through a rigorous process. It must register with the UK Financial Conduct Authority, have its identity validated, test its product in the open banking directory sandbox, and then once it has received approval by the Financial Conduct Authority, it can be added to the open banking directory for third parties. The Financial Data and Technology Association noted that there are currently over 200 accredited third-party providers in the United Kingdom, and another 130 firms are in the process of becoming accredited. With respect to the Australian system, King & Wood Mallesons, Australia indicated that third parties also have to be accredited to receive information, but these parties must also share their information with other accredited third-party providers if a consumer requests it.

*“We need to think about putting in place a registry system for third-party providers, with some accreditation and diligence to ensure our consumers and small businesses have confidence in who they are dealing with.”*

*[Accenture Inc.](#)*

Professor Nicholls noted that having a registration system for third parties will also assist fintech companies wanting to enter the financial services market, as it will help them compete with established institutions that already have the consumers’ trust.

The Financial Data and Technology Association said that one of the challenges the United Kingdom faced in implementing open banking was not communicating to unregulated third-party providers about impending regulatory oversight. Deloitte said that new fintech companies do have to become comfortable with Canada’s regulatory framework,

such as PIPEDA obligations, and that an innovation sandbox is an efficient way to prove at a small scale that a product is safe to deploy at a large scale. It pointed out that the Ontario Securities Commission offers an innovation sandbox for fintech companies through its OSC LaunchPad team.

However, TransUnion of Canada Inc., in a written submission, cautioned that building trust among all the participants in the open banking framework will take time. It highlighted that six months after implementing open banking in the United Kingdom, consumers still had concerns with the open banking framework, with 88% of consumers willing to share their information with banks, but only 46% willing to share with fintech companies.

The committee believes that a registry of accredited third-party providers is a necessity for any open banking framework, and that having an innovation sandbox as part of the accreditation process will be beneficial for both the fintech companies and the eventual regulator of the open banking framework. As seen with United Kingdom’s open banking experience, communicating with consumers and unregulated fintech companies about the impending registry will be an important part in building trust in the framework.

Therefore, the committee recommends:

**That the federal government, in consultation with provincial and territorial securities regulators, create a registry of accredited third-party providers for the open banking framework and establish an innovation sandbox to allow new third-party providers to safely test and develop open banking technology that meet any relevant open banking standards.**

### 3. Financial Sector-Specific Amendments

The Department of Finance Canada indicated that its open banking review, at this point in time, is focusing primarily on financial transaction data that is held by banks. While the issues identified with respect to privacy and cybersecurity would be applicable to all sectors considering data portability, some witnesses spoke about issues that were specific to financial data portability.

**Duty to customers.** PIAC mentioned that banks have a duty of confidentiality with their customers which is set out in their customer agreements, and so there would be a disconnect between this duty and the requests by consumers to share their personal data with third parties.



**Insurance prohibition.** The Canadian Association of Mutual Insurance Companies expressed concern that an open banking initiative could undermine the *Bank Act's* long-standing prohibition barring banks from engaging in the insurance sector. As described in the *Insurance Business (Banks and Bank Holding Companies) Regulations*, a bank cannot provide information on a banking customer directly or indirectly to an insurance company, agent or broker. This prohibition prevents a banking customer from being pressured into buying an insurance product from its bank. The Canadian Association of Mutual Insurance Companies is worried that a bank could work around this prohibition by using open banking to send customer data to a fintech company that provides insurance products, and that the fintech company could be a subsidiary or controlled by the bank.

*“Any open banking framework should continue the legislative and regulatory prohibition of the use of consumer banking data for insurance underwriting purposes.”*

[Canadian Association of Mutual Insurance Companies](#)

**Financial stability.** Some witnesses spoke about the potentially negative effect open banking could have on financial stability in Canada. The Canadian Bankers Association said that the risk open banking could pose to financial stability should be closely monitored by the federal government. The Bank of Canada indicated that it is considering how open banking and any shift in the market structure for financial services could affect financial stability. It noted that protecting financial stability would involve maintaining the safety and security of the data being shared, adherence by existing financial institutions and any new third-party providers to strict risk management standards and ensuring these third-party providers have resilient funding models. However, it did concede that the impact of open banking on financial stability remains an open question.

Professor Nicholls noted that the Financial Stability Board released a report that suggested that the growth of fintech companies would not have a significant impact on established financial institutions because they are often working cooperatively with financial institutions and, in general, are not operating on a scale that would be competitive. Rather, the report indicated that in the future, big technology companies, such as Alibaba and Google, could enter the financial services sector and that they would be more disruptive to the financial system than smaller fintech companies.

In a written submission, Desjardins Group warned that an open banking system would attract a greater number of stakeholders and increase transaction volumes, which would put greater pressure on the financial system. It asked that the federal government ensure that the country's financial stability not be compromised because of an increase of rapid but poorly regulated transactions.

*“Overall, the impact of open banking on financial stability and our payments and settlement systems remains an open question.”*

[Bank of Canada](#)

**Consumer protection.** Because of the slow pace at which PIPEDA amendments are typically implemented, PIAC asked that bank-specific rules in relation to consumer protection be introduced in the *Bank Act*. In particular, it suggested that: fintech companies' algorithms be made transparent so that consumers can see how their finances are being analyzed; data tracking be a feature of open banking so that consumers can see in real-time where their financial data is being sent; and deletion rights for financial data when consent is withdrawn by the consumer or when the data is out-of-date be incorporated into the regime.

The committee agrees that, despite the likelihood that open banking is only the first step towards introducing data portability in other sectors, the federal government needs to take into consideration these significant financial sector-specific concerns when developing and implementing its open banking framework. As these issues would most likely not be addressed through amendments to PIPEDA, introducing any necessary changes to financial sector legislation should clarify these issues for stakeholders.

As such, the committee recommends:

**That the federal government introduce any relevant legislative changes to financial sector legislation when implementing an open banking framework to confirm the prohibition of the use of consumer banking data for insurance underwriting purposes, ensure continued stability of the financial sector and provide any necessary bank-specific consumer protection measures.**

#### 4. Coordination with Payments Modernization

While this study has focused primarily on financial data portability and the ability of third parties to access data held by regulated financial institutions, payments initiation is a second important aspect of open banking that has developed in some countries, such as the United Kingdom. Payments Canada describes payments initiation as a framework that allows third parties to enable payments directly from a bank account using an app, as an alternative method of payment to credit and debit cards.

In 2015, the Department of Finance Canada and Payments Canada began their efforts to modernize the payments system in Canada. The Canadian Bankers Association explained that the purpose of the payments modernization is to ensure that, as Canadians move towards using new digital payment methods, these potentially underregulated third-party payment providers are subject to oversight. The modernization will also aim to make low-value payments deliverable in seconds, an initiative referred to as Real-Time Rail. The federal government hopes to implement these changes by early 2020s.

*“Combining the ability to reliably access financial data with the ability to initiate payments or transfer funds between institutions will increase the range and competitiveness of new financial services.”*

[Payments  
Canada](#)

Several witnesses, including the Bank of Canada, Desjardins, the Canadian Bankers Association and the Electronic Transactions Association, suggested that any open banking initiatives be aligned with the payments modernization efforts. As Deloitte noted, the work being done on payments modernization in Canada will address many of the issues that other countries addressed in their examination of open banking.

The committee recognizes that payments modernization goes hand-in-hand with financial data portability and would thus be essential for a successful open banking regime.

Therefore, the committee recommends:

**That the federal government, in developing an open banking framework, ensure that it is coordinated with the priorities and timelines of the payments industry modernization efforts.**

### 5. Federal – Provincial/Territorial Coordination

Regulation of Canada’s financial sector is split among the federal, provincial and territorial levels of government. Federally regulated institutions include banks, federal credit unions, life and property and casualty insurance companies, and trust and loan companies. Provincially/territorially regulated financial institutions include credit unions, caisses populaires, securities dealers, insurance companies, credit reporting agencies and other financial institutions incorporated at the provincial level. This regulatory complexity raises questions about whether a federal open banking framework would include provincially/territorially regulated financial institutions.

The Department of Finance Canada acknowledged that its review is focused primarily on financial transaction data that is held by banks, but the scope of the framework could be expanded federally, such as to insurance, and provincially/territorially as well.

*“...the regulatory framework must be inclusive, and the government must involve every regulated institution at the provincial and federal level. This will send a positive message to the public, whose confidence is crucial for this project’s success.”*

[Desjardins Group](#)

The Canadian Credit Union Association spoke about how credit unions want to be included in an open banking framework and that a well-designed framework should be able to ensure that there is a level playing field among all financial institutions. In a written submission, the Desjardins Group asserted that the federal government must include every federally and provincially/territorially regulated financial institution so that there is no uncertainty among consumers over open banking regulations. Furthermore, it cautioned that not including all institutions would encourage the emergence of “shadow” open banking entities that would take advantage of regulatory disparities between the provinces and territories’ prudential rules.

Many witnesses pointed out that it would be challenging for the federal government to try to harmonize financial sector regulation across the country. In the view of the Canadian Credit Union Association, some provinces have outdated financial sector legislation, and thus an open banking framework would likely

require modernization of these statutes. Portag3 Ventures suggested that some provincial/territorial regulators may need to be convinced that a federal framework should apply to provincially/territorially regulated financial institutions. According to Professor Scassa, federalism is proving to be problematic when addressing digital concerns. She urged the federal government to show leadership in its conversations with the provinces about open banking. In particular, she highlighted how federal leadership resulted in the enactment of PIPEDA as a national private sector data protection legislation despite some constitutional concerns raised by the provinces.

*“Considering credit unions provide banking services for 5.7 million Canadians, we believe that provincially regulated credit unions should be able to participate in an open banking environment. Coherent regulation must allow for provincial and federal jurisdictions to work together, particularly to ensure that provincially regulated credit unions are not disadvantaged.”*

[Canadian Credit Union Association](#)

The committee recognizes that developing an open banking framework that includes all of Canada’s regulated financial institutions will likely take considerable effort by the federal government and, given the changes to provincial/territorial legislation that would probably be required, it will not be achievable in a short time frame. In spite of this, to have an open banking framework that is clear and transparent for consumers, increases competition in Canada’s financial sector, and does not disadvantage those consumers that do not use banks for their financial services, the framework should apply to the entire financial sector. In its role as the leader for this initiative, the federal government must prioritize engaging in regular, productive consultations with the provinces and territories and provincially and territorially regulated financial institutions about open banking, with clear implementation deadlines for the proposed open banking framework.

Consequently, the committee recommends:

**That the federal government, provinces and territories work together to modernize and harmonize their respective laws and standards in order that an open banking framework be inclusive and enable the participation of credit unions, *caisses populaires* and other provincially and territorially regulated financial institutions.**

## 6. Opportunities for Rural, Remote and Northern Communities

While open banking has the possibility of offering benefits to Canadians living in remote and rural communities that do not have regular access to brick-and-mortar financial institutions, those that do not have access to broadband internet service cannot take advantage of these opportunities.

The committee questioned how those with no or slow internet connectivity could take advantage of open banking activities. Some witnesses emphasized the ongoing importance of brick-and-mortar institutions in the delivery of banking services. Wealthsimple Financial Corp. noted that digital products and services and traditional

bank branches need to work together to offer greater and more efficient services. The Financial Data and Technology Association suggested that the banks themselves could offer in-branch internet services to assist consumers. The Canadian Credit Union Association spoke of credit unions' ongoing presence as brick-and-mortar institutions in small communities where some banks have closed branches, and that have always been innovators in offering services to their members.

By contrast, Desjardins Group, in its written submission, expressed some doubt whether open banking would benefit those who lack access to the internet or are not comfortable with technology. In its view, these individuals could end up shouldering the costs of an open banking system without reaping the full benefits.

The Canadian Radio-television and Telecommunications Commission (CRTC) expressed its concerns with the growing effects of a “digital divide.” It noted that those Canadians that do not have access to broadband internet cannot easily access information, making them less able to participate in society. It acknowledged that it may not be economical for telecommunications companies to build networks in certain regions of Canada and so the federal government has to provide them with the support they need to provide services in those regions. In the 2019 federal budget, the government announced a national target for broadband connectivity, where 95 per cent of Canadian homes and businesses will have access to internet speeds of at least 50/10 Mbps by 2026 and 100 per cent by 2030, no matter where they are located in Canada. To achieve this target, the government plans to make up to \$6 billion in investments in rural broadband over the next 10 years to connect rural, remote and northern communities.

In the committee's view, ten years is too long for Canadians not living in the big cities to wait for adequate broadband internet connectivity. Open banking and other similar technology-based innovations are advancing at a rapid pace. As the private sector and governments begin to offer services solely on digital platforms, those Canadians without broadband internet will not only not be unable to access these digital services, they will be unable to fully participate in Canadian society.

*“As a broader concern that ties into the broadband funding, we are extremely concerned with the growing effects of a digital divide. Canadians don't necessarily have the same access to the same digital tools. That affects their ability to participate in democratic life.”*

Canadian Radio-television  
and Telecommunications  
Commission

Therefore, the committee recommends:

**That the federal government, in order to obtain the benefits of open banking, immediately expediate its efforts to expand robust internet broadband accessibility and capacity to remote, rural and northern communities.**

## 7. Designation of a Regulatory Authority

While the committee believes the FCAC is the best agency to be the interim oversight body, its mandate may limit its ability to be a long-term regulatory authority for the open banking framework. FCAC's supervisory role is limited to federally regulated financial institutions. Extending the FCAC's mandate to supervise all participants in an open banking framework would likely have constitutional barriers.

Witnesses also speculated on which entity would be best to supervise, regulate and enforce open banking activities. With respect to financial sector regulation, Professor Nicholls noted that open banking would involve prudential regulation, provincial securities regulation, payments regulation and eventually systemic risk for national markets regulation as set out under the proposed Capital Market Stability Act. Equitable Bank also mentioned that compliance with anti-money laundering and anti-terrorist financing regulations would have to be considered. Portag3 Ventures said that the Department of Finance and the Bank of Canada are responsible for the payments modernization initiative and that this initiative is related to open banking. Professor Nicholls suggested that determining who should be the regulatory authority would involve looking at what the third-party providers are doing, identifying how Canada regulates that function now and regulating that function in the same way.

With respect to framework legislation that applies to all industries, Innovation, Science and Economic Development Canada pointed out that open banking activities will have to be compliant with PIPEDA, the *Competition Act*, and intellectual property laws. It proposed that the Department of Finance would be the best sector-specific regulator as it would be most familiar with the specifics of open banking.

Portag3 Ventures suggested that the Competition Bureau should be given enforcement powers if it were chosen to be the regulator. Both Mastercard and Deloitte mentioned that a single regulator would provide certainty and clarity to open banking regulation, with Deloitte stating that PIPEDA would play an important role in regulating this framework.

The Office of the Privacy Commissioner spoke about how the Australian open banking model has incorporated complementary roles for its competition and privacy regulators. In its view, shared oversight could be possible in a Canadian framework. In terms of how the oversight could be shared, it speculated that if a complaint is about the handling of personal information and a potential violation of privacy rights, the complaint should be handled by the Office of the Privacy Commissioner; if there was a question of competitiveness or market behaviour, then would likely go to the Competition Bureau.

*“We do see the potential for shared oversight between different regulatory agencies. It's conceivable to have oversight shared between the Competition Bureau, for instance, and our office.”*

Office of the Privacy  
Commissioner

It did note that legislative changes would be required so that the Privacy Commissioner could share information with other regulators and co-operate on common investigations and that these changes should be made along with reforms to PIPEDA required to address open banking and open data. Open data refers to structured data that is machine-readable, freely shared, used and built on without restrictions. One of the goals of an open data initiative is to enable computer-to-computer transfer of information using an API to retrieve information from a database.

The committee believes that determining the regulatory entity for open banking will be a difficult challenge for the federal government, as a number of existing federal regulators could be designated as the regulatory authority if given the proper statutory powers. In the committee's view, the best approach would have the Privacy Commissioner and the Commissioner of Competition share the open banking regulatory responsibilities, with the Privacy Commissioner ensuring consumer privacy rights and the Commissioner of Competition regulating market behaviour. One advantage in having these two regulators is that the scope of the mandates of these two commissioners would not limit them to the financial sector but allow them to supervise any sector in which data portability is being considered. As well, both of these commissioners have enabling statutes that set out mandates that are in general applied nationally, not just at the federal level.

*“From what I have heard as part of [Ontario Securities Commission’s] LaunchPad is that it is not just about banking data but about open data. It could be your government data, your driver’s licence or whether you are registered with the Ontario Securities Commission. It needs to be broader than just banking.”*

[Ontario Securities Commission](#)

While provincial privacy legislation and commissioners exist, the Office of the Privacy Commissioner works well with these provincial counterparts to ensure consistent privacy legislation is applied in Canada.

In the committee's view, there are many benefits to having these commissioners share regulatory responsibilities in the initial stages of the development of an open banking framework. However, it recognizes that there may be a point of time in the future where having a single regulator might be more appropriate. The committee encourages the federal government to regularly review these shared regulatory responsibilities and consider transitioning to a single regulator if it is deemed necessary.

For these reasons, the committee recommends:

**That the federal government make the necessary legislative changes, after consultation with the provinces and territories, to designate the Privacy Commissioner of Canada and the Canadian Commissioner of Competition as the co-regulatory and enforcement authorities for open data frameworks. The Privacy Commissioner would be responsible for responding to privacy complaints and noncompliance with PIPEDA in relation to the open data-related activities, while the Commissioner of Competition would ensure that any open data framework meets the objectives of having increasing competition in a particular industry and that established businesses are not dominating a market that has open-data related activities.**

## CONCLUSION

The committee feels that control over personal financial data should lie with the consumer, and not with the businesses that collect it. Four million Canadian consumers are already taking control by using screen scraping apps offered by fintech companies in order to meet their needs for a more personalized, convenient digital banking experience.

Open banking is necessary for Canadian consumers and businesses and needs to be implemented decisively. Canadian consumers need an open banking framework to keep their personal financial information safe, to be provided more choice and improved financial products and services, and to help keep the Canadian financial sector strong and internationally competitive.

This report is a call to action.

The committee's short-term recommendations are to protect Canadian consumers through oversight over screen scraping and open banking activities while our long-term recommendations are to assist in the development of an open banking framework in Canada to take advantage of the domestic and global benefits and opportunities that open banking and open data may present.

We urge the federal government to implement these recommendations and the proposals set out in Canada's Digital Charter at the earliest opportunity. We also hope the federal government's Advisory Committee on Open Banking takes these recommendations into consideration when writing its reports.

*“It's important to think about open banking as the tip of a data iceberg. In other words, if Canada moves forward with open banking, this will become a test case for rendering standardized data portable in the hands of consumers with the goal of providing them with more opportunities and choices while at the same time stimulating innovation in a variety of other sectors and areas”*

*Professor Teresa Scassa,  
University of Ottawa*



## APPENDIX A: WITNESSES WHO APPEARED BEFORE THE COMMITTEE

February 20, 2019

***As an individual***

Christopher C. Nicholls, Professor and W. Geoff Beattie Chair in Corporate Law, Faculty of Law, The University of Western Ontario

***Bank of Canada***

Grahame Johnson, Managing Director, Financial Stability Department

***Department of Finance Canada***

Annette Ryan, Associate Deputy Minister, Financial Sector Policy Branch

Julien Brazeau, Senior Director, Strategy and Coordination, Financial Sector Policy Branch

***Equitable Bank***

Dan Dickinson, Senior Vice President and Chief Digital Officer

February 21, 2019

***Competition Bureau of Canada***

Leila Wright, Associate Deputy Commissioner, Policy, Planning and Advocacy Directorate

Greg Lang, Major Case Director and Strategic Policy Advisor, Competition Advocacy Unit

***Office of the Privacy Commissioner of Canada***

Gregory Smolynech, Deputy Commissioner, Policy and Promotion Sector

Arun Bauri, Strategic Policy and Research Analyst, Policy, Research and Parliamentary Affairs Directorate

***Payments Canada***

Justin Ferrabee, Chief Operating Officer

February 27, 2019

***Accenture Inc.***

Robert Vokes, Senior Managing Director and Financial Services Lead, Canada

***Canadian Bankers Association***

Marina Mandal, Vice President, Banking Transformation and Strategy

Angelina Mason, General Counsel and Vice President

***Ontario Securities Commission***

Pat Chaukos, Deputy Director, OSC LaunchPad

February 28, 2019

**Deloitte**

Todd Roberts, Payment Expert

**Mastercard**

Iain McLean, Senior Vice President, Market Development

Jennifer Sloan, Vice President, Public Policy

**Open Banking Implementation Entity (OBIE) (United Kingdom)**

Imran Gulamhuseinwala, Implementation Trustee

**Portag3 Venutres**

Adam Felesky, Chief Executive Officer

March 20, 2019

**As an individual**

Peter Harris, former Chairman of the Australian Productivity Commission

**King & Wood Mallesons, Australia**

Scott Farrell, Partner

March 21, 2019

**As an individual**

Kirsten Thompson, Member, Advisory Committee on Open Banking, and Partner, Dentons Canada

**Canadian Association of Mutual Insurances Companies**

Normand Lafrenière, President

**Canadian Credit Union Association**

Athana Mentzelopoulos, Vice President, Government Relations and Member Relations

**Electronic Transactions Association**

Scott Talbott, Senior Vice-President, Government Affairs

**Financial Data and Technology Association (FDATA)**

Steven Boms, Executive Director

**Interac Corp.**

Debbie Gamble, Chief Officer, Innovation Labs and New Ventures

**Wealthsimple Financial Corp.**

Blair Wiley, General Counsel and Head of Regulatory Affairs

April 4, 2019

***As an individual***

Teresa Scassa, Canada Research Chair in Information Law and Policy, University of Ottawa

***Canadian Radio-television and Telecommunications Commission***

Scott Shortliffe, Chief Consumer Officer

Renée Doiron, Director, Broadband and Network Engineering, Telecommunications

Chris Seidl, Executive Director, Telecommunications

***Innovation, Science and Economic Development Canada***

Mark Schaan, Director General, Marketplace Framework Policy Branch

April 11, 2019

***As an individual***

Michael A. Geist, Canada Research Chair in Internet and E-commerce Law, Faculty of Law, University of Ottawa

***Public Interest Advocacy Centre***

John Lawford, Executive Director and General Counsel

May 9, 2019

***Department of Finance Canada***

Annette Ryan, Associate Assistant Deputy Minister, Financial Sector Policy Branch

Julien Brazeau, Senior Director, Strategy and Coordination, Financial Sector Policy Branch

***Office of the Privacy Commissioner of Canada***

Gregory Smolynec, Deputy Commissioner, Policy and Promotion Sector

Arun Bauri, Strategic Policy and Research Analyst, Policy, Research and Parliamentary Affairs Directorate

## APPENDIX B: WRITTEN SUBMISSIONS

***Deloitte***

Todd Roberts, Payment Expert

***Desjardins Group***

Bernard Brun, Director, Government Relations

***Electronic Transactions Association***

Scott Talbott, Senior Vice-President, Government Affairs

***Financial Data and Technology Association (FDATA)***

Steven Boms, Executive Director

***Luge Capital***

Karim Gillani, General Partner, Toronto

Laviva Mazhar, Investment Analyst, Montreal

Ramin Wright, Investment Analyst, Toronto

***National Association for Information Destruction – Canada (NAID-Canada)***

Tino Fluckiger, Chair

***Portag3 Venutres***

Adam Felesky, Chief Executive Officer

***Skybridge Strategies***

Steve Masnyk, Principal

***TransUnion of Canada Inc.***

Johanna FitzPatrick, Legal Counsel and Privacy Officer