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## **Better Banks For All**

*The changes more than 100 citizen groups with 3.5 million members want*

### **Submission to Finance Canada's Second Stage of Consultations on Federal Sector Framework (September 2017)**

#### **I. Background**

Democracy Watch has been a leading advocacy organization in Canada for bank accountability measures since 1994. It organized and led the Canadian Community Reinvestment Coalition (CCRC) from 1997 to 2012 – the CCRC was made up of 140 citizen organizations with a total membership of 3.5 million Canadians. Several of the changes to the *Bank Act*, *Insurance Companies Act* and *Trust Companies Act* that the CCRC recommended were supported by the MacKay Task Force's 1998 report (the Task Force was established by then-Finance Minister Paul Martin), and the House of Commons Finance Committee, the special Liberal Caucus Committee, and the Senate Trade and Banking Committee, all of which reviewed the MacKay Task Force report.

From 2000 to 2002, the Liberal government implemented many of the changes the committees recommended but failed to enact some of the key changes, especially the creation of a national [Financial Consumer Organization \(FCO\) or Financial Consumer Protection Fund](#) with financial consumers as members and donors, which would represent and assist financial consumers with problems with their financial institutions, and with consumer education and advocacy.

As noted below in section IV, in 1998 the government-created the Task Force on the Future of the Canadian Financial Services Sector recommended that the government create an FCO and require federally regulated financial institutions to enclose a pamphlet in mailings to their customers inviting them to join the FCO. The House of Commons Finance Committee, and the Senate Banking Committee, both endorsed the Task Force's recommendation.

Instead of implementing the broadly supported recommendation to create an FCO, Finance Minister Paul Martin instead created the Financial Consumer Agency of Canada (FCAC). As detailed in section III, the FCAC has a proven track record as a negligently weak lapdog. The Ombudsman for Banking Services and Investment (OBSI) has not been much better – mainly because (like the FCAC) the federal government has failed to give both the powers, mandate and requirements to ensure they can, and actually do, work to protect consumers and businesses and penalize financial institutions that violate fundamental consumer rights and legal protections.

Many of the groups in the CCRC continue to support Democracy Watch's efforts to have key changes made by the federal government, especially the creation of the FCO and/or Fund. As well, the [more than 25,000 Canadians who have signed the Stop Bank Gouging and Abuse petition](#) support the creation of an FCO, and the other much-needed key changes listed in section IV below.

The "Improving the Protection of Bank Consumers" [section](#) of Finance Canada's document [\*Potential Policy Measures to Support a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future\*](#), sets out only vague platitudes and promises that, like the "Enhancing Consumer Protection" [subsection](#) in chapter 8 of the federal government's Budget 2016, contains no specific measures. In fact, the only thing that has been implemented in Budget 2016 concerning financial consumers is to delay the review of federal financial sector legislation until 2019, when well-studied and broadly supported key protection measures could have been implemented this year.

Finance Canada could do nothing better than establish the FCO now so that financial consumers have a place to join and contact that will actually help them and protect them in the financial services marketplace (including when dealing with the FCAC and OBSI).

Finance Canada can establish the FCO and/or Fund at no cost to the government, and at no cost to financial institutions. The CCRC and Democracy Watch's other recommended changes also cost the government and financial institutions nothing (unless financial institutions violate fundamental consumer and business legal protections). In other words, there is no justifiable reason for Finance Canada to fail to establish the FCO and/or Fund or to fail to make the other changes listed in section IV below.

So the key question of this consultation and legislative review process is:

**Will the Liberal government finally make key changes to stop gouging and abuse of 30 million bank customers, or will it continue protecting overpaid big bank executives as past federal governments have?**

## **II. Canada's big banks – gouging out profits, withdrawing services**

While businesses in most sectors across Canada were suffering, Canada's big 6 banks gouged out record annual profits of almost \$35 billion in 2015 (which works out to almost \$4 million in profit every hour, 5% higher than in 2014, and double their profits in 2010). The big banks also continued in 2015 paying their CEOs about \$10 million each, and also giving them bonuses that totalled more than \$10 million (51% higher than in 2008).

In 2016, Canada's Big Six banks continued to gouge out excessively high profits of more than \$37 billion (6% higher than in 2015) – in part by firing thousands of people, cutting services, and hiking fees and credit card interest rates.

And [their profits in 2017 are headed even higher](#) — the Big Six banks (including [National Bank](#)) made \$30.5 billion in the first nine months of the 2016-2017 fiscal year (a double-digit percentage increase compared to 2016).

[According to Finance Canada's Supporting a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future](#) document, Canada's big banks control 93 per cent of all banking assets, and are more profitable than comparable banks in other countries, small banks in Canada, and Canada's corporate sector overall. Their control of the market essentially [allows them to gouge](#) and abuse customers with excessive fees, high interest rates (especially on credit cards), and government action is the only thing that will stop them.

### **III. Federal government inaction continues – FCAC, OBSI too weak lapdogs**

Despite the Big Six Banks' oligopoly control of the market, and the ample evidence of gouging credit card interest rates and fee hikes, and many other abuses of customers, still the federal government continues to fail to require the banks serve everyone well at fair prices, or to require responsible lending and investing.

The federal government continues to fail to increase bank accountability even though the government [gave the banks a record \\$114 billion bailout in 2008-2009](#) (most of it by having CMHC purchase mortgages from the banks), and even though the federal government will likely bail out the banks again if they have any financial difficulties.

Sixteen years ago, the federal Liberal government created the Financial Consumer Agency of Canada (FCAC) as a supposed watchdog over customer service by the big banks and federally regulated insurance companies. The FCAC has proven to be a lapdog again and again. Despite Canada having 30 million bank customers, in 16 years the FCAC has made [only 125 compliance rulings](#) – an unbelievably low rate of rulings. FCAC is also a lapdog because it is prohibited from naming a financial institution that

has violated the law unless it prosecutes the institution – it [has only prosecuted two banks](#) in the past 16 years (neither of them a Big Six Bank).

The FCAC's weak enforcement record started soon after it was created. In 2003, it conducted a "mystery-shopper" survey that found violations of some basic consumer rights set out in the *Bank Act* at more than 70% of the branches that were surveyed. The FCAC did not prosecute any of the banks whose branch staff violated the law. Instead, then-Commissioner Bill Knight told consumer group representatives at a private meeting that he had told the banks that this first survey was a baseline, and that he would prosecute violations found by the next survey. When the FCAC did the next "mystery-shopper" survey in 2005, it didn't include the questions from the 2003 survey where the highest violation rates had occurred.

According to [a recent article by Reuters](#), the FCAC has not conducted any mystery-shopper surveys since the 2005 survey, even though it is the most effective consumer rights inspection method.

Also according to that article, the FCAC has a budget of \$18 million for the 2016-2017 fiscal year and employs 89 staff. In contrast, Britain's Financial Conduct Authority (FCA) had an annual budget of 519 million pounds (US\$645 million) and 3,337 staff at the end of its last fiscal year, and the U.S. Consumer Financial Protection Bureau (CFPB) had a budget of \$606 million last year and 1,623 employees. On a per-capita population comparison basis, the FCAC should have at least twice as large a budget, and at least twice as many staff as it has now.

The FCAC not only lacks resources by comparison to the similar watchdog agencies in Britain and the U.S., it is also clearly a lapdog compared to these two other agencies. Also according to the recent Reuters article, the FCAC has issued fines totaling just \$1.7 million since 2001 (the maximum fine allowed under the *Bank Act* is \$500,000, which is meaningless to the big banks who each make more than \$10 billion in revenue annually). Since 2013 when it was created, Britain's FCA has already issued penalties totalling more

than US\$3 billion, and since 2011 when it was created, the U.S. CFPB has already imposed fines of more than US\$5 billion.

Twenty-one years ago, the federal Liberal government allowed the banks to set up their own optional Ombudsman for Banking Services and Investments (OBSI), instead of establishing an independent, strong regulatory agency that covered all the banks. The majority of OBSI's initial board of directors were bank representatives, and in its early years it was clearly a lapdog that protected the banks from accountability. While the Liberal government eventually required OBSI to have a majority of independent directors, and while OBSI has made some good rulings, it can only recommend penalties for abuse of customers or investors (penalties that some companies [have refused to pay](#)). Several years ago, the Conservative government did nothing to stop Royal Bank and TD Canada Trust from leaving OBSI and hiring their own customer dispute resolution company, and then [in 2012 it allowed any financial institution to leave OBSI](#) and hire its own company.

Fifteen years ago, then Liberal Secretary of State for the Finance Minister John McCallum called credit card interest rates “grotesquely high” – but since then the federal government has done nothing to stop gouging credit card interest rates.

According to the Bank of Canada, the banks currently have about [\\$1.3 trillion in business loans](#). That makes the recently announced, so-called [Canadian Business Growth Fund](#) of (eventually) \$1 billion a sad joke as it will amount to only 0.1% of total bank lending. Given that the fund is a joint initiative of Finance Minister Morneau and the big banks, it is clear that the Finance Minister is trying to fool Canadians into applauding the banks for this largely meaningless initiative.

#### **IV. The changes needed to actually ensure fair and good service and lending at fair prices and interest rates**

The failures of the Financial Consumer Agency of Canada (FCAC) and the Ombudsman for Banking Services and Investments (OBSI) over past 15 years described above, and

the failure of the changes made to federal financial institution laws 15 years ago to stop gouging and abuse of financial consumers across Canada, have proven beyond any doubt that further changes are needed to ensure Canada's big banks and other financial institutions serve everyone fairly and well at fair prices and interest rates.

Democracy Watch, the member groups of the Canadian Community Reinvestment Coalition (CCRC), and the [more than 25,000 Canadians who have signed the Stop Bank Gouging and Abuse petition](#), call on Finance Canada to implement the following changes needed to ensure that our big banks serve everyone fairly and well at fair prices, lend and invest our money responsibly to support sustainable, responsible job-creating businesses and community development, and remain Canadian-owned and controlled:

1. Establish a Financial Consumer Organization (FCO) to help consumers (as recommended by the Task Force on the Future of the Canadian Financial Services Sector and a House and Senate committee in 1998), and an Individual Investor Organization (IIO), using a method that has been successfully used in the U.S., by requiring banks and other financial institutions to send email and mailed notices inviting their customers and shareholders to join the FCO and the IIO for a nominal annual membership fee (See details at: <http://democracywatch.ca/question-and-answers-about-the-proposed-financial-consumer-organization/> and <http://democracywatch.ca/question-and-answers-about-individual-investor-organization-iio/>);
2. Require banks and trust companies to provide detailed information on loans, investments and services to customers, as required in the U.S (to track whether banks are fairly meeting the needs of individuals and businesses on a community-by-community level and, as in the U.S., to require corrective action if banks are not fairly meeting customer needs);
3. Empower and require the Competition Bureau and Financial Consumer Agency of Canada (FCAC) to conduct an audit of profits from service charges and credit card interest rates, and reduction in competition community-by-community across Canada, and savings from closing branches and firing tellers, over the past 15 years, and require banks to cut charges and open branches if past profits were excessive;
4. Prohibit any future service charge or credit card interest rate increases if the bank can't prove the increase is justified;
5. Fire the Canada Post board because, among other negligent actions, they have failed to pursue postal banking even though their internal report showed it would

- be feasible and profitable, and appoint a new board and give Canada Post a banking license to provide basic banking services and small personal lines of credit and small business loans at its branches across Canada;
6. Require banks and trust companies to disclose the profit/loss record for any branch proposed to be closed, to allow for a full review of reasons for the closure;
  7. Require banks and trust companies to prove that they have a fair, responsible and very good service, lending and investment record every year for the past 10 years as a mandatory condition for any financial institution bidding on federal government contracts;
  8. Require the Financial Consumer Agency of Canada Commissioner to conduct "mystery shopper" audits of financial institution compliance with laws at least every three years, and to disclose the name of the financial institution and the terms of settlement whenever the Commissioner finds that an institution has violated the law (currently, the FCAC can only disclose the name of the institution if the FCAC prosecutes the institution), and change the complaint process to require all financial institution to be covered by the Ombudsman for Banking and Investments (OBSI) and allow consumers to complain to the OBSI directly at any time without having to go first to their bank's ombudsman;
  9. Give customers access to the money they deposit by cheque as soon as the cheque clears, and;
  10. Given that each of the big banks makes billions of dollars each year, increase the maximum penalty for violating the *Bank Act* from the too-low amount of \$500,000 to the more effective penalty of \$50 million.

Canadians have made it clear in every poll conducted over the past 15 years that they need, and want, better banks. Please close these gaps by changing federal financial institution laws in the above 10 key ways to ensure that all financial institutions in Canada serve all Canadians fairly and well, use our money responsibly, and can be held accountable for poor lending, investment or service records.

And please also ensure that the federal government will not let Canada's banks take over any other financial institution in Canada or the U.S., or merge together, before you have set up the Financial Consumer Organization (FCO) and Individual Investor Organization (IIO), and enacted a law that includes the strict bank lending, investment and service disclosure and evaluation measures listed above.