Democracy Watch
Démocratie en surveillance
P.O. Box 821, Stn. B, Ottawa K1P 5P9
Tel: 613-241-5179 Fax: 613-241-4758
Email: info@democracywatch.ca Internet: http://democracywatch.ca

Submission to the House of Commons Standing Committee on Industry and Technology for its Study of Financial Fraud and Scams in Canada

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Democracy Watch makes this submission to the House of Commons Standing Committee on Industry and Technology for its study of financial fraud and scams in Canada.

Democracy Watch called on Finance Canada in this submission, and the House of Commons Standing Committee on Finance, to make the following changes to budget Bill C-15 to protect bank customers effectively from account fraud. NDP MP Don Davies introduced amendments to Bill C-15 containing the following changes, but Liberal and Conservative MPs on the Finance Committee voted down the amendments.

1. **Bill C-15 should have been amended by strengthening sections 333 to 336, which address bank account fraud, as the measures in the Bill were weak and ineffective** and will do little to ensure that bank customers are actually protected from account fraud, nor to ensure that customers who lose money due to bank account fraud receive their money back from the bank when the bank (or an Internet or telecommunications company) facilitates the fraud.

   The bank account fraud measures proposed in Bill C-15 are similar to the so-called "airline passenger rights" measures enacted by the federal government a few years ago, which have only resulted in airline passengers wasting their time and money for months or years chasing after airlines that refuse to compensate them for failing to provide the scheduled flight that the passenger paid for when they bought their ticket.

   The creation by Bill C-15 of a similar system for bank customers who lose money due to bank account fraud is only going to result in customers wasting their time and money for months or years chasing after banks that refuse to compensate them for failing to protect them from account fraud.

   The government's proposed measures in Bill C-15 are also much weaker than the protections Australia and the UK have enacted.

   Sections 333 to 336 should have been amended as follows to prevent, prohibit and penalize the role of the banks, telecommunication

companies (including Internet companies) in facilitating account fraud, and to create rules and an enforcement system that actually and effectively protect bank customers from account fraud:

(a) **Add a new provision that requires all financial institutions established and/or operated under the *Bank Act* to at least partially compensate a customer who has lost money due to bank account fraud**, and that sets out that the customer is only required to return part or all of the money to the financial institution if the institution can prove to the Ombudsman for Banking Services and Investments (OBSI) that the institution did its due diligence to prevent the fraud and complied with all of the requirements of sections 627.06, 627.02 and 627.131 to 627.134(1) to (3) inclusive of the *Bank Act* and/or that the customer was partially or fully responsible for the losses they suffered due to the fraud. Australia has enacted similar measures – click here to see details).

(b) **Add a new provision to the *Bank Act* that makes all rulings of OBSI binding** on every financial institution established and/or operating under the *Bank Act* (as the Liberal Party promised in its 2021 federal election platform).

(c) **Amend the new subsection 627.134(4) of the *Bank Act* to require banks to report publicly in their quarterly statement** to shareholders the details of each fraudulent transaction (again, without identifying the customer), and to compile the quarterly data into an annual statistical report published in their annual report to shareholders.

The new sections 627.134 and 627.135 of the *Bank Act* that Bill C-15 enacted will keep each bank's account fraud record secret. That denies customers key information they need to know, and have a right to know, when choosing which bank they want to use for their accounts.

(d) **Amend new subsection 627.135(1) of the *Bank Act* that was enacted by Bill C-15** by requiring the Financial Consumer Agency of Canada (FCAC) Commissioner to make the annual fraud report public at the same time it is provided to the Minister.

(e) **Amend the new subsection 627.135(2) of the *Bank Act* that was enacted by Bill C-15** by requiring the FCAC Commissioner to include in the annual fraud report: detailed statistics concerning each bank's record of account fraud; what the FCAC has done in response to fraud that was allowed by each bank (and/or telecom and Internet company) to hold the bank and/or company accountable, and; what the FCAC has done to require each bank to strengthen their anti-fraud measures.

(f) **Add a new section to the *Bank Act* requiring the FCAC to conduct regular, unannounced audits** of bank policies and procedures for preventing and stopping account fraud, and to require the FCAC to prosecute and penalize a bank for violating the

Bank Act if the audit shows that the banks policies or procedures are ineffective.

It is not enough to just require the banks to have policies and procedures in place. The *Bank Act* was changed in 2018 to add the following two provisions requiring banks to have policies, procedures and training to ensure the financial interests of their customers are protected:

> **Policies and procedures — appropriate products or services**
> 627.06 An institution shall establish and implement policies and procedures to ensure that the products or services in Canada that it offers or sells to a natural person other than for business purposes are appropriate for the person having regard to their circumstances, including their financial needs.
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> **Training**
> 627.02 An institution shall ensure that its officers and employees in Canada, and any person who offers or sells the institution's products or services in Canada, are trained with respect to the policies and procedures that it has established for complying with the consumer provisions.

but the FCAC was not required in those provisions to audit the banks to ensure they comply with those provisions and, as a result, the FCAC has done nothing to ensure they actually comply. The banks are clearly not complying with these provisions because these provisions alone should have been enough to ensure that banks had policies and procedures in place to protect their customers from account fraud (which is clearly a financial need that every customer has).

The new anti-bank account fraud measures will also have little effect unless the FCAC is required to conduct regular, unannounced audits and to prosecute and penalize violations (and the OBSI's rulings are made binding, as proposed above in (b)). As currently proposed, the measures are mostly voluntary.

(g) Change section 336 of Bill C-15 to make the provisions come into effect on the date that Bill C-15 receive Royal Assent.
Bill C-15 only proposed measures that will possibly be enacted sometime in the future, which is just a rehash of the Liberal Party's 2021 election promise to take action on the problem of bank account fraud. Section 336 was not changed and, as a result, the Liberal Cabinet has the discretion to delay the implementation of the new anti-fraud measures for another 5 years.

In other words, sections 333-336 of Bill C-15 amounted only to more hot air from the Liberal government instead of effective action. Hopefully, the Industry Committee will strongly recommend the above changes to the *Bank Act*, and the same measures to be enacted to apply to telecom and Internet companies, that will result in effective actions that will actually protect Canadians from financial fraud and scams.