

## Financial Services and Consumer Protection Regulatory Update

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### 2023 Fall Economic Statement

The Canadian federal government delivered the 2023 Fall Economic Statement on November 21, 2023. Measures respecting consumer protection, banking, and financial crime were introduced, including the following:

- **Open banking.** The long-awaited legislative framework for open banking in Canada has been announced. The federal government will introduce legislation through Budget 2024 to establish a consumer-driven banking framework that would regulate access to financial data. Concurrently with the 2023 Fall Economic Statement, the federal government released a policy statement intended to help guide industry as the consumer-driven banking framework is implemented.
- **AML/ATF obligations expanded to title insurers, real estate representatives and acquirers.** Proposed changes to Canada's anti-money laundering (AML) and anti-terrorist financing (ATF) regime will address fraud and money laundering risks in the real estate sector by extending requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) to title insurers and requiring real estate representatives to identify unrepresented parties and third parties in real estate transactions. The PCMLTFA framework will be broadened to apply to intermediary companies, known as "acquirers," offering cash withdrawal services for white-label automated teller machines.
- **Naming of foreign entities that pose AML/ATF risk.** Improving the Financial Transactions and Reports Analysis Centre of Canada's (FINTRAC) strategic intelligence products by allowing it to list names of foreign entities that present AML/ATF risks.
- **New Canadian Mortgage Charter.** A new Canadian Mortgage Charter has been announced to provide mortgage relief measures from federally regulated financial institutions (FRFIs). Measures announced include (a) waiving certain fees and costs, (b) allowing temporary extensions of amortization periods, (c) allowing certain lump sum payments, (d) restrictions on charging interest on interest in certain scenarios, and (e) requiring FRFIs to contact homeowners four to six months in advance of their mortgage renewal to inform them of their renewal options.
- **Payments Canada membership eligibility.** Membership eligibility in Payments Canada will be expanded to include payment service providers supervised by the Bank of Canada, credit union locals that are members of a credit union central, and operators of designated clearing houses.

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- **Competition Act amendments.** Amendments were proposed to the *Competition Act* to, *inter alia*, (a) enhance protections for consumers including by prohibiting misleading "greenwashing" claims, (b) broaden the reach of the *Competition Act* by enabling more private parties to bring cases before the Competition Tribunal, (c) strengthen the tools and powers available to the Competition Bureau to enable it to crack down on abuses of dominance by bigger companies, such as predatory pricing, and (d) amend the *Competition Act* to prevent manufacturers from refusing to provide the means of repair of devices and products in an anti-competitive manner.
- **Air Passenger Protection Regulations.** The federal government will work with the Canadian Transportation Agency to amend the Air Passenger Protection Regulations to ensure that airlines seat all children under the age of 14 next to their accompanying adult at no extra cost.
- **Mobile roaming charges.** The Canadian Radio-television and Telecommunications Commission will investigate international mobile roaming charges and will provide an update and concrete next steps in 2024.
- **Banking measures including NSF fees.** The Financial Consumer Agency of Canada (the FCAC) has been directed to work with FRFIs to improve the features of low- and no-cost accounts, such as requiring the FRFIs to provide additional debit transactions, online bill payments, and e-transfers with no extra fees. The FCAC will also work to expand low- and no-cost accounts to more Canadians, including by making more Canadians eligible for no-cost accounts and making affordable banking options available at more banks. The government will provide an update by Budget 2024 on the steps that it is taking to reduce the non-sufficient funds fees charged by banks.
- **Junk fees.** As reported in our previous article, Budget 2023: Lowering the Criminal Rate of Interest, Targeting "Junk Fees" and other Consumer Protection and Financial Crime Measures, the Office of Consumer Affairs will support ongoing efforts to crack down on junk fees across Canada, including by supporting independent research on the issue. The federal government will announce further measures to crack down on junk fees.
- **Single banking complaints body.** The Ombudsman for Banking Services and Investments (OBSI) was recently designated as the single external complaints body for Canada's banking sector. The OBSI will have jurisdiction to resolve complaints at all Canadian banks starting November 1, 2024.

## AML/ATF Obligations Expanded to Include Mortgage Lenders and Armored Cars

As reported in our previous article, Mortgage Lending Entities to be Regulated under PCMLTFA and other Proposed AML/ATF Changes, the federal government published final regulations amending the PCMLTFA to, *inter alia*, expand the PCMLTFA's identity verification, reporting, record-keeping, and other compliance obligations to mortgage lenders, mortgage brokers, and mortgage administrators. These requirements will apply as of October 11, 2024. FINTRAC has also issued guidance for mortgage lenders, mortgage brokers, and mortgage administrators to understand their AML/ATF obligations.

Additionally, the final regulations address the AML/ATF obligations of armoured cars businesses that transport currency, money orders, traveller's cheques, or other negotiable instruments, requiring such businesses to comply with the money services business requirements under the PCMLTFA. FINTRAC issued guidance for armoured cars to understand these obligations.

## Final Regulations to the Retail Payment Activities Act

Further to our previous article, *Regulating Retail Payment Services Providers: Draft Retail Payment Activities Regulations*, the final regulations to the *Retail Payment Activities Act* (RPPA) were published in the Canada Gazette on November 22, 2023. The RPPA is a legislative framework to regulate retail payment activities in Canada and imposes comprehensive obligations on payment services providers. The regulations will come into force on November 1, 2024, and payment services providers will be required to register with the Bank of Canada by November 16, 2024. Requirements to establish risk management and funds safeguarding frameworks will come into force on September 8, 2025.

## New Consumer Protection Law in New Brunswick

On November 22, 2023, the New Brunswick government introduced a new *Consumer Protection Act*, consolidating and updating existing regulatory areas and introducing the following new consumer protection measures (similar to measures under other provincial consumer protection legislation) under the proposed Act:

- **Unfair Practices.** Protecting consumers from unfair practices such as sellers making false statements about the quality of a product, and sellers taking advantage of vulnerable persons.
- **Unsolicited Goods and Services.** Prohibiting businesses from sending or giving consumers goods or services not requested and requiring payment.
- **Internet Sales Contracts.** Protecting consumers making online purchases by requiring the suppliers to provide certain information and giving consumers rights for cancellations and refunds.
- **Future Performance Contract.** Regulating consumer contracts for services when either the consumer does not pay in full upfront, or the consumer pays for services to be completed later. Consumers will have cancellation rights and funds recovery options.
- **Personal Development Services Contracts.** Regulating contracts relating to health and fitness, exercise, dieting, modelling, and other similar activities and services.
- **High-Cost Credit Products.** Licensing and oversight of high-cost credit lenders.

The government will launch public consultations to seek feedback on rules and regulations currently under development.

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*This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.*