

Federal Financial Consumer Protection Framework in-force date announced, new regulations published

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Author: [Elizabeth Sale](#)

After much anticipation, an Order in Council was recently issued fixing June 30, 2022 as the day the remainder of the *Bank Act* amendments comprising the new Financial Consumer Protection Framework for banks and authorized foreign banks (the Framework) will finally come into force. This Framework was first introduced in Bill C-86, *Budget Implementation Act, 2018, No. 2*, and, when it takes effect, will add two wholly new parts to the *Bank Act*: Part XII.2, which sets out the backbone of the new comprehensive consumer protection provisions, and Part XVI.1, which establishes a new whistleblower regime.

On the heels of this announcement, *Financial Consumer Protection Framework Regulations* (the Regulations) were published today in the Canada Gazette, which are due to come into force alongside the Framework on June 30, 2022.

Taken together, the Framework and the Regulations establish new and updated consumer protection rules and effect a major consolidation of the federal consumer protection landscape. Under the new regime, Part XII.2 of the *Bank Act* and its associated Regulations will form a single, comprehensive consumer protection code, replacing the constellation of requirements that currently sprinkle the *Bank Act* and a wide variety of different regulations.

New provisions

While the *Bank Act* — and the many consumer protection regulations set to be repealed and replaced by the Regulations — will look dramatically different come June 30, 2022, recent developments will come as no great surprise for the banks that have been preparing to implement the Framework ever since Bill C-86 received Royal Assent on December 13, 2018. This is because the most dramatic changes to the overall consumer protection landscape were in the Framework included in Bill C-86 itself, including new provisions that

- require stronger internal oversight of compliance with the consumer provisions and consumer protection matters
- address sales practices, including
 - broadening the definition of “complaint”
 - prohibiting conduct constituting undue pressure, beyond tied selling
 - prescribing policies and procedures to ensure the appropriateness of products for the consumer those products are offered or sold to, including policies to ensure employees and third parties are not conflicted in offering such advice
- provide a cooling-off period for ongoing products and services, with some exceptions

- require institutions to send electronic alerts when certain deposit account or credit limit thresholds are reached
- prohibit increasing the credit limit on non-business lines of credit with individuals without express consent
- expand the complaints regime
- require separate agreements for certain optional products and services
- expand the requirements for public accountability statements to be filed each year with the Commissioner
- expand certain consumer protection requirements to business accounts and accounts with entities
- protect whistleblowers who report wrongdoing

The Regulations, as expected, largely prescribe details to fill the gaps left open by the Framework, including precise dollar thresholds, reporting timelines and specific contents of certain mandatory consumer disclosures. Further to this, many of the pre-existing consumer protection regulations are incorporated in whole or in part into the new Regulations, albeit in a format that may be unfamiliar at first glance.

There are, however, a few changes introduced under the Regulations, which banks and authorized foreign banks should take note of:

- **Public Accountability Statement Exemptions:** The Regulations provide certain exemptions from the public accountability statement requirements as broadened by the Framework.
- **Information Box Font and Formatting Requirements:** The Regulations do away with the specific font and formatting requirements for information boxes for consumer loans as mandated by the *Cost of Borrowing Regulations*. This is a welcome change given that specific font sizes and format requirements are anachronistic in the digital age.
- **Maximum Liability for Lost or Stolen Cards:** The Regulations alter the maximum liability for lost or stolen credit cards. Under the current version of the *Cost of Borrowing Regulations*, the maximum liability of the borrower is the lesser of \$50 or the maximum set by the credit agreement, unless the fraudulent transaction was entered into at an automated teller machine using the borrower's personal identification number. In that circumstance, the maximum liability is the amount the liability incurred in the transaction. In any case, if the borrower alerts the institution to the lost or stolen card, the borrower has no liability. Under the new Regulations, the maximum liability is \$50 — unless the person has demonstrated "gross negligence" ("gross fault" in Quebec) in safeguarding the credit card, the account information or personal authentication information. If the borrower was grossly negligent, there is no maximum liability threshold provided. If the borrower alerts the institution to the stolen card, however, there is still no liability under the new Regulations. This new provision aligns neatly with a similar provision in Quebec's *Consumer Protection Act*, which provides that the consumer is liable for losses incurred by the card issuer if the consumer committed a gross fault in the protection of their personal identification number.

Overall, the announcement of an in-force date for the Framework and the publication of relatively straightforward implementing Regulations should come as a welcome

development as Canadian banks finalize their implementation strategies for the new consumer protection framework in anticipation of the June 30, 2022 in-force date.