



Financial Consumer
Agency of Canada

Agence de la consommation
en matière financière du Canada



Financial Consumer Agency of Canada

Compliance Framework

February 2005

Protecting Consumers
Informing Canadians



Protéger les consommateurs
Informer les Canadiens

Canada 



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I. Introduction

A. Overview

Following an extensive study¹ commissioned by the Department of Finance, Parliament created the Financial Consumer Agency of Canada (FCAC) in October 2001 under the *Financial Consumer Agency of Canada Act* as one of a series of initiatives in its financial sector reform. FCAC consolidates and strengthens the oversight of consumer protection measures in federally regulated financial institutions², and expands consumer education activities in the area of financial services.

FCAC supervises and monitors federally regulated financial institutions—domestic banks; foreign banks; foreign bank branches; federally incorporated or registered trust and loan companies; federally incorporated or registered life, property and casualty insurance companies; and retail associations. FCAC has broader oversight authority for the banking sector than for other industry sectors.

FCAC keeps abreast of current issues relating to the financial sector, liaises with other government bodies and actively participates in several committees such as the Senior Advisory Committee (SAC), whose mandate is to provide high-level policy advice to the Minister of Finance, and the Financial Institutions Supervisory Committee (FISC), whose legislated mandate is to facilitate the exchange of information on supervisory issues concerning individual financial institutions. By maintaining an active role within the regulatory network, FCAC provides high-level policy advice and facilitates the exchange of information on supervisory issues concerning financial institutions.

¹ Reference documents: *Task Force on the Future of the Canadian Financial Services Sector, Change, Challenge, Opportunity* (the MacKay Report), Department of Finance, 1998; *Reforming Canada's Financial Services Sector: A Framework for the Future*, Department of Finance, 1999.

² Federally regulated financial institutions will be referred to as “FRFIs” or “financial institutions” in this document.



Before establishing its current supervisory model, FCAC considered several types of regulatory regimes with respect to compliance. One possible approach was a regulatory approach based on conclusions from FCAC's annual on-site examinations, at both the retail and head-office locations. However, this approach was deemed costly, time-consuming and intrusive, and did not reflect FCAC's objectives of rapidly addressing consumer issues and working swiftly on corrective measures with the financial institutions.

Instead, FCAC opted for a comprehensive supervisory model that is both reactive and proactive. While FCAC responds to complaints that are brought to its attention, it also is proactive in assessing compliance concerns in the marketplace and identifying and promoting industry best practices.

It is FCAC's view that a comprehensive supervisory model will enhance consumers' confidence in the marketplace.

B. FCAC's mandate

FCAC's mandate is set out in Subsection 3(2) of the *Financial Consumer Agency of Canada Act*. FCAC's objectives are stated as follows:

- a) *supervise financial institutions to determine whether they are in compliance with the consumer provisions applicable to them;*
- b) *promote the adoption by financial institutions of policies and procedures designed to implement consumer provisions applicable to them;*
- c) *monitor the implementation of voluntary codes of conduct that are designed to protect the interests of customers of financial institutions, that have been adopted by financial institutions and that are publicly available and to monitor any public commitments made by financial institutions that are designed to protect the interests of their customers;*
- d) *promote consumer awareness about the obligations of financial institutions under consumer provisions applicable to them; and*





- e) *foster, in cooperation with any department, agency or agent corporation of the Government of Canada or of a province, financial institutions and consumer and other organizations, an understanding of financial services and issues relating to financial services.*

C. Supervisory model

With the objective of having a comprehensive supervisory model that is both efficient and effective, FCAC developed a model that uses a hybrid of oversight tools and that incorporates some elements of risk-based supervision for the oversight of consumer regulations. For example, this model does not systematically include regular on-site examinations either at the head office or the retail branch levels of financial institutions; instead FCAC's model includes the following key compliance-monitoring activities.

- **Case-by-case review of consumer complaints received directly**

FCAC reviews complaints involving consumer provisions, codes of conduct and public commitments, and determines a financial institution's compliance with the consumer obligation(s) under review.

- **Review of consumer complaints reported by financial institutions**

FCAC reviews complaints reported by financial institutions involving the consumer provisions and targeted codes of conduct and public commitments. It determines the financial institutions' compliance with the consumer obligation(s) under review.

- **Examination of compliance issues**

FCAC may examine a particular financial institution's or industry sector's practices, policies, procedures or systems relating to the consumer provisions, codes of conduct and public commitments.





- **Reliance on existing reporting mechanisms**

If deemed necessary, FCAC will review the reporting mechanism required by the Office of the Superintendent of Financial Institutions, called Guideline E-13. Use of this existing mechanism will strengthen FCAC's assurance of the quality of a financial institution's internal compliance program with respect to the consumer provisions.

- **Consultations**

From time to time, the Commissioner may seek the views of interested parties on matters involving compliance issues, including changes to the Compliance Framework. The Consumer Education and Public Affairs Branch coordinates the consultation process by advising stakeholders of the subject of any consultations and of any set timeframes for responding. Responses are normally posted on FCAC's Web site.

Cooperation and openness by financial institutions are essential to the success of this supervisory model, with effective communication between FCAC and the financial institutions being critical.

This document details how FCAC will execute its mandate³ for supervising a financial institution's compliance with the consumer provisions⁴ set out in legislation,⁵ codes of conduct and public commitments⁶.

³ For a summary of the FCAC supervisory model, see, Appendix A.

⁴ *Financial Consumer Agency of Canada Act*, paragraph 3(2)(a).

⁵ *Financial Consumer Agency of Canada Act*, section 2.

⁶ *Financial Consumer Agency of Canada Act*, paragraph 3(2)(c).





D. FCAC contacts

Below is the contact information for FCAC staff/departments⁷, and their telephone numbers or addresses:

| | |
|---|---|
| Consumer Contact Centre | (866) 461-3222 (toll-free, English) (866) 461-2232 (toll-free, French) |
| Director, Compliance and Industry Relations | (613) 941-3929 |
| Senior Compliance Officer | (613) 941-1526 |
| Compliance Officers | (613) 941-1453 (613) 941-3964 (613) 941-3989 (613) 941-2708 |
| Compliance Analyst | (613) 941-3971 |
| Director, Consumer Education and Public Affairs | (613) 941-4220 |
| Fax | (613) 941-1436 (866) 814-2224 (toll-free) |
| E-mail (English) | compliance@fcac.gc.ca |
| Web site (English) | www.fcac.gc.ca |
| Mailing address | Enterprise Building 427 Laurier Ave. West, 6th Floor Ottawa, ON K1R 1B9 |

⁷ For FCAC organization chart, see Appendix D.



E. Responsibilities of financial institutions

There are certain employees of financial institutions who should be acutely aware of the institutions' obligations to consumers. These employees include, but are not limited to, retail branch employees, call centre personnel and loan officers, as well as marketing and product development personnel. Deficiencies in meeting financial institutions' obligations to consumers can be minimized by the implementation of thorough and continuous training programs. Moreover, financial institutions should measure the impact of these training programs to assess their effectiveness⁸.

To minimize any confusion on the part of their front-line staff and consumers about FCAC's role, financial institutions must provide clear information to customers and the public on their complaint-handling procedures. These procedures may include information on the role of FCAC.

In situations where a complaint involves a consumer provision, the financial institution must provide the complainant with written information on how to contact FCAC⁹.

To effectively act in accordance with the Compliance Framework, financial institutions should designate a liaison person as well as a backup person, where warranted, to work with FCAC officers. These liaison persons should be senior-level employees responsible for the following activities within their financial institution:

- **Compliance liaison:** implementation and monitoring of the compliance activities within the financial institution
- **Complaint liaison:** reviewing compliance issues referred to the institution by FCAC and liaison with FCAC on the financial institution's reportable complaints (see subsection III B).

⁸ *Financial Consumer Agency of Canada Act*, paragraph 3(2)(b).

⁹ *Bank Act*, subsections 456(1) and 574(1); *Trust and Loan Companies Act*, subsection 442(1); *Cooperative Credit Associations Act*, subsection 385.24(1); *Insurance Companies Act*, subsections 487(1) and 605(1).





A financial institution may assign the same senior-level employee as both the Compliance and the Complaint Liaison person. Financial institutions are responsible for updating the contact information for the designated liaison persons and their backups, by sending an e-mail to FCAC Compliance at: compliance@fcac.gc.ca.

When reviewing a complaint, it is the financial institution's responsibility to determine whether the customer was treated in accordance with its policies and whether the customer is entitled to some type of redress. The business relationship with the customer remains the financial institution's responsibility.

F. Confidentiality and disclosure of information

FCAC receives information on complainants, such as their name, social insurance number, personal account number, details on loans and credit cards, and business practices. The confidentiality of such information is of major concern to FCAC.

FCAC may disclose a consumer's personal information to financial institutions. The *Privacy Act*¹⁰ allows personal information under the control of a government institution to be disclosed for the purpose for which the information was obtained. For example, if a consumer calls FCAC's Consumer Contact Centre with a consumer provision complaint, FCAC has the authority to disclose all pertinent information to the financial institution for its review.

The Commissioner may collect any personal information considered necessary to determine whether financial institutions are in compliance with the consumer provisions¹¹. Financial institutions must provide the Commissioner with this information at the time and in the form that the Commissioner may require for the purposes of administering the *Financial Consumer Agency of Canada Act* and the consumer provisions¹².

¹⁰ *Privacy Act*, paragraph 8(2)(a).

¹¹ *Financial Consumer Agency of Canada Act*, paragraph 3(2)(a) and subsection 5(2).

¹² *Bank Act*, section 657; *Trust and Loan Companies Act*, section 520.1; *Cooperative Credit Associations Act*, section 452.1; *Insurance Companies Act*, section 694.



To the extent that the *Personal Information Protection and Electronic Documents Act* applies to a financial institution, paragraph 7(3)(c.1) provides that the institution may disclose personal information to a government institution without the knowledge or consent of the individual concerned where the government institution has made a request for that information, has identified its lawful authority to obtain the information, and has indicated that the disclosure is requested for the purpose of administering any law of Canada.

Both FCAC and the financial institutions are expected to take every precaution to ensure the confidentiality of personal information that they receive from each other.





II. *Processing of General Consumer Inquiries and Complaints*

FCAC maintains a database on the number and nature of all consumer complaints and general inquiries. FCAC identifies and analyzes any patterns, to determine the appropriate course of action and to support its consumer education activities. In addition, the Commissioner must report to Parliament, on an annual basis, on the number and type of complaints that have been brought to the attention of the Agency¹³.

FCAC's Consumer Contact Centre and its Web site are the key tools used to assist consumers who have general inquiries or who wish to know how to resolve a complaint with a financial institution. FCAC staff respond to all inquiries efficiently. Where necessary, they refer consumers to the proper organization such as a financial institution, industry association, provincial regulator, or other government department or agency.

FCAC also receives a broad range of general consumer complaints. After receiving this type of complaint, FCAC explains the complaint-resolution system of the relevant financial institution and provides information about the institution's third-party dispute resolution process, if applicable. If a complainant has not followed the financial institution's complaint procedures, FCAC directs the complainant to the right point of entry in the financial institution's complaint process. Although FCAC has no mandate to resolve or provide redress on individual consumer complaints, it works to promote consumer awareness of complaint-resolution systems. Appendix E illustrates how FCAC responds to these general consumer inquiries/complaints.

When FCAC receives a complaint involving a privacy issue, it explains that the complaint does not fall under FCAC's jurisdiction and provides the complainant with the contact information for the financial institution's complaint process, as well as for the Office of the Privacy Commissioner of Canada.

¹³ *Bank Act*, sections 456(2) and 574(2); *Trust and Loan Companies Act*, section 442(2); *Cooperative Credit Associations Act*, section 385.24(2); *Insurance Companies Act*, sections 487(2) and 605(2).





III. Compliance Monitoring

Financial institutions must provide the Commissioner with information at the time and in the form that the Commissioner may require for the purposes of administering the *Financial Consumer Agency of Canada Act* and the consumer provisions¹⁴. FCAC can examine and inquire into matters involving the consumer provisions, voluntary codes of conduct and public commitments¹⁵.

FCAC relies on several sources of information to review the compliance of a financial institution. It reviews reports, literature and surveys (from third parties or commissioned by FCAC) that relate to the consumer provisions, codes of conduct and public commitments. Compliance concerns identified through any of these sources may lead to an investigation or an examination and, eventually, the consideration of compliance measures.

FCAC may pursue a compliance matter even when a consumer is satisfied with the redress provided by the financial institution.

FCAC undertakes the following oversight activities through its Compliance Framework.

A. Complaints received directly by FCAC

An important source of information for assessing a financial institution's compliance with the consumer provisions, codes of conduct and public commitments is the case-by-case review of consumer complaints received directly by FCAC. Experience shows that a single consumer complaint can reveal a systemic compliance problem in a financial institution.

¹⁴ *Bank Act*, section 657; *Trust and Loan Companies Act*, section 520.1; *Cooperative Credit Associations Act*, section 452.1; *Insurance Companies Act*, section 694.

¹⁵ *Financial Consumer Agency of Canada Act*, subsection 5(3).





i. Consumer provision complaints

Once FCAC has identified a consumer provision concern, as a result of a complaint¹⁶, it forwards the relevant complaint information to an FCAC Compliance Officer for further review.

The FCAC Compliance Officer contacts the financial institution's Complaint Liaison person and provides the information necessary for the institution to review the complaint. FCAC endeavours to obtain all pertinent details from the consumer to investigate the compliance matter effectively. Unless otherwise indicated, financial institutions have 30 calendar days to respond to any compliance investigation.

Following a review of all of the case information, if the FCAC Compliance Officer concludes that there does not appear to be a compliance issue involving a consumer provision, FCAC informs the institution's Complaint Liaison person to this effect, in writing, and the case is closed.

If, after completing the fact-finding process, the FCAC Compliance Officer considers that the financial institution may have violated a consumer provision, FCAC informs both the Complaint Liaison person and the Compliance Liaison person, accordingly.

The FCAC Compliance Officer subsequently prepares a Compliance Report. This report documents information and facts related to the compliance issue. The Compliance Report also recommends the compliance measures that should be applied.

Once FCAC has completed its Compliance Report, it sends the report to the financial institution for comment. Financial institutions have 30 calendar days from the date they receive the Compliance Report to forward their comments to FCAC.

¹⁶ The process triggered by a compliance complaint is illustrated in Appendix G – FCAC Compliance Case Management Process.



Once FCAC has reviewed their comments, or once the financial institution's deadline to provide comments has expired, the FCAC officer forwards all of the relevant case documents, including the Compliance Report, to the Commissioner.

Based on these documents, the Commissioner decides whether there are reasonable grounds to determine that the financial institution did not comply with the consumer provision in question.

If the Commissioner concludes that the financial institution has not violated a consumer provision, FCAC informs the institution's Compliance Liaison person, in writing, to this effect, and the case is closed.

If the Commissioner has reasonable grounds to believe that the financial institution has not complied with the consumer provision(s) under review, FCAC notifies the Compliance Liaison person of the Commissioner's views. (For the compliance measures available to the Commissioner, see section VII.)

ii. Voluntary codes of conduct and public commitment complaints

FCAC monitors¹⁷ compliance with codes of conduct and public commitments by investigating consumer complaints that relate to a code or commitment.

Once FCAC has identified the concern regarding a voluntary code of conduct or public commitment¹⁸, it gathers any relevant complaint information and forwards the complaint to an FCAC Compliance Officer for further review.

The FCAC Compliance Officer contacts the institution's Complaint Liaison person and provides the information necessary for the financial institution to review the complaint. FCAC endeavours to obtain all pertinent details from the consumer to investigate the compliance matter effectively. Unless otherwise indicated, financial institutions have 30

¹⁷ *Financial Consumer Agency of Canada Act*, paragraph 3(2)(c), subsections 5(1) and 5(3).

¹⁸ The process triggered by a compliance complaint is illustrated in Appendix I – Monitoring Codes of Conduct and Public Commitments.





calendar days to respond to compliance investigations.

Further to FCAC's review of all of the case information, if the FCAC Compliance Officer concludes that there does not appear to be a compliance issue related to the code of conduct or public commitment, he/she informs the institution's Complaint Liaison person, to this effect, and the case is closed.

If after completing the fact-finding process, the FCAC Compliance Officer considers that the financial institution has not complied with its obligation to consumers, FCAC notifies the financial institution accordingly.

In such instances, the Director, Compliance and Industry Relations, sends a "non-compliance letter" to the financial institution, setting out the circumstances of the case.

Financial institutions are asked to respond to the above-mentioned letter within 30 calendar days from the date on which they receive it.

If the financial institution does not make any representations by the deadline, or if the institution does not dispute the findings presented in FCAC's letter, the Director closes the case, and the FCAC database is updated to note the incidence of non-compliance. Such incidents of non-compliance do not form part of the financial institution's compliance history, as set out in section 20 of the *FCAC Act*.

If the financial institution contests the findings, FCAC forwards the case to the Commissioner for a decision. The Commissioner or Deputy Commissioner reviews the "non-compliance letter" and the representations made by the financial institution. Based on both documents, the Commissioner concludes whether or not the financial institution has complied with the code of conduct or public commitment under review. FCAC informs the institution's Compliance Liaison person, in writing, of the final decision¹⁹.

¹⁹ As this does not involve the contravention of a consumer provision and does not give rise to any proceedings or penalties, there is no statutory appeal.



B. Complaints reported by financial institutions: “Reportable complaints”

As an alternative to regular on-site examinations, FCAC reviews complaints reported by financial institutions²⁰. These complaints, known as “reportable complaints”, help FCAC assess the level of overall compliance by a particular financial institution. Reportable complaints apply to consumer provisions and targeted codes of conduct and public commitments. Financial institutions may consolidate their reporting, as opposed to each business entity doing its reporting individually.

Definition of a *reportable complaint*

A reportable complaint is a complaint involving a consumer provision or a targeted code of conduct or public commitment that has been received by or forwarded to the designated reportable level²¹, or higher, of the financial institution’s complaint-handling procedure.

A reportable complaint must be forwarded to FCAC even though:

- **the consumer has also contacted FCAC²²;**
- **the consumer is satisfied with the outcome of the complaint;**
- **the complaint was received at the reportable level or higher but then sent to a lower level of the complaint-handling process for response/resolution;**
- **the complaint was received at a reportable level of the complaint-handling process and was resolved directly; and**
- **the financial institution concluded that it had complied with its obligations to consumers.**

²⁰ *Financial Consumer Agency of Canada Act*, subsections 5(2) and 5(3); *Bank Act*, section 657; *Trust and Loan Companies Act*, section 520.1; *Cooperative Credit Associations Act*, section 452.1; *Insurance Companies Act*, section 694.

²¹ A financial institution’s reportable level is one level higher than the one that routinely handles and makes operational decisions about the subject matter. The reportable level may vary, based on the operational profile of the financial institution.

²² When a complaint is received directly by the FCAC and reported by a financial institution, the complaint is entered once in FCAC’s tracking system.



Financial institutions are required to provide FCAC with information on their reportable level. FCAC may request additional information in circumstances where the reportable level is not considered appropriate for the purpose of effectively reporting complaints.

Financial institutions must forward each reportable complaint to FCAC within 60 days of the receipt of the complaint at a reportable level. FCAC catalogues each reportable complaint in its tracking system.

Appendix F illustrates a financial institution's complaint-handling process and demonstrates the parallel activities triggered by a reportable complaint. Despite the fact that a compliance issue may be involved, the financial institution may continue its efforts to resolve the customer's complaint through its complaint-handling process.

- **Reporting of complaints involving consumer provisions**

Financial institutions must forward all reportable complaints pertaining to the consumer provisions.

When a financial institution receives a consumer provision complaint, it must:

- provide the complainant with information on how to contact FCAC²³, and
- forward a Complaint Summary Report to FCAC.

²³ *Bank Act*, subsections 456(1) and 574(1); *Trust and Loan Companies Act*, section 442(1); *Cooperative Credit Associations Act*, section 385.24(1); *Insurance Companies Act*, sections 487(1) and 605(1).





Financial institutions must document, and forward to FCAC, any reportable complaints involving consumer provision matters in a Complaint Summary Report that provides the following information.

| Complaint Summary Report – Consumer Provision | |
|---|---|
| 1. Parties involved in the complaint | <ul style="list-style-type: none"> ▪ Financial institution: name and address of Head Office, as well as branch address (where appropriate) ▪ Complaint or Compliance Liaison person: name, address, telephone number and e-mail address ▪ Complainant: name, address, telephone number and e-mail address |
| 2. Reportable complaint | <ul style="list-style-type: none"> ▪ Consumer provision involved in the complaint ▪ Summary of the complaint, including the date the complaint was received ▪ Description of the current status of the complaint (resolved or under review) |
| 3. Compliance conclusion | <ul style="list-style-type: none"> ▪ Description of how the financial institution met the requirement under review, if it determines that it has complied with its consumer obligations. FCAC may request supporting documents. ▪ Measures the financial institution is proposing, to rectify the situation, if a compliance issue is identified. |

Once the FCAC Compliance Officer has received the Complaint Summary Report, the same process applies as for dealing with complaints received directly. (See subsection III A.)

FCAC reviews all of the circumstances surrounding a complaint to determine whether a financial institution is meeting its obligations to consumers.

If an FCAC Compliance Officer needs to communicate with the consumer, FCAC normally advises the financial institution to this effect, in advance.



- **Reporting of complaints involving codes of conduct and public commitments**

FCAC may target a specific code or commitment by requiring institutions to self-monitor and report on related complaints. The Commissioner uses his discretion in selecting the codes of conduct and/or public commitments for which reporting is required. Factors such as the impact on the consumer and the industry, the potential harm, the number of complaints or the amount of public attention are considered, before focusing on a specific code or commitment.

FCAC notifies financial institutions of the specific codes of conduct and public commitments on which it expects the institutions to report complaints.

FCAC normally provides six months' advance notice of the targeted codes of conduct and public commitments, so that financial institutions can implement the measures necessary to ensure effective reporting of such complaints.





Financial institutions must document, and forward to FCAC, reportable complaints involving a code of conduct or public commitment, in a Complaint Summary Report that provides the following information.

| Complaint Summary Report – Code of Conduct and Public Commitment | |
|--|--|
| 1. Parties involved in the complaint ²⁴ | <ul style="list-style-type: none"> ▪ Financial institution: name and address of Head Office, as well as branch address (where appropriate) ▪ Complaint or Compliance Liaison person: name, address, telephone number and e-mail address |
| 2. Reportable complaint | <ul style="list-style-type: none"> ▪ Voluntary code of conduct or public commitment involved in the complaint ▪ Summary of the complaint, including the date the complaint was received ▪ Description of the current status of the complaint (resolved or under review) |
| 3. Compliance conclusion | <ul style="list-style-type: none"> ▪ Description of how the financial institution met the requirement under review, if it determines that it has complied with its consumer obligations. FCAC may request supporting documents. ▪ Measures the financial institution is proposing, to rectify the situation, if a compliance issue is identified |

Once the FCAC Compliance Officer receives the Complaint Summary Report, the same process applies as for dealing with complaints received directly. (See subsection III A.)

FCAC reviews all of the circumstances surrounding a complaint to determine whether or not a financial institution is meeting its obligations to consumers.

²⁴ The complainant’s personal information is not required when reporting a complaint involving a code of conduct or public commitment.



C. Examinations

In keeping with its objective of thoroughness and continuity in its supervisory functions, FCAC may initiate an examination²⁵ if the Commissioner has concerns about whether or not the financial institution, or the industry, is meeting its obligations to consumers or to FCAC.

If FCAC's examination reveals that the financial institution has failed to meet its obligations, FCAC opens a compliance case and the Compliance Officer follows the same procedures as if the complaint were received directly by FCAC. (See subsection III A.)

FCAC reports the findings of each of its examinations to the Minister of Finance²⁶. The Commissioner may also provide the financial institution's Board of Directors with the findings of each examination.

D. Mystery shopping

Mystery shopping is an effective means of testing the marketplace, by gathering information relating to the financial institutions' ability to meet their obligations to consumers. The mystery-shopping exercise provides an unbiased indication of potential compliance concerns. It also helps identify "best practices" in the marketplace.


When planning a mystery-shopping project, FCAC tries to develop a methodology that reflects normal consumer behaviour and that will provide the financial institution with useful results, to help it target and correct problem areas.

For example, mystery-shopping results can be provided by province, by geographic sector and/or by urban and rural area. Mystery-shopping results may lead FCAC to consider other monitoring activities when indicators demonstrate a problem area in a

²⁵ *Bank Act*, subsection 659(1); *Trust and Loan Companies Act*, subsection 520.3(1); *Cooperative Credit Associations Act*, subsection 452.3(1); *Insurance Companies Act*, subsection 696(1).

²⁶ *Financial Consumer Agency of Canada Act*, subsection 5(1).





financial institution or in a specific sector. For example, if a mystery shopping exercise revealed weaknesses in the account-opening process used by front-line employees of a particular institution, FCAC might proceed to examine the financial institution's policies, procedures and training programs on the *Access to Basic Banking Services Regulations*.

In its review of the results of a mystery-shopping exercise, if FCAC notes a compliance concern, it opens a compliance case and assigns an FCAC Compliance Officer to verify if, in fact, there is a compliance problem. The FCAC Compliance Officer would follow the normal case-processing cycle. (See subsection III A.)

E. Consumer surveys

FCAC may commission surveys, or conduct such surveys on its FCAC Web site, or develop them in partnership with its stakeholders or other organizations. They may focus on particular problems or issues related to the consumer provisions, the codes of conduct or public commitments.

Consumer surveys may also lead FCAC to consider other monitoring activities when indicators demonstrate a problem with a financial institution, or within a particular industry sector.





F. Verification of the implementation of the Compliance Framework

FCAC conducts periodic on-site examinations²⁷ of financial institutions to assess their compliance with, and verify whether or not a financial institution's operations are in accordance with, the Compliance Framework. For instance, if FCAC has any concerns about the nature and number of complaints being reported by a financial institution, it may want to verify the institution's complaint-handling process.

FCAC notifies financial institutions, in writing, if it intends to conduct such an examination. FCAC also sends a report to the Minister following such examinations.

²⁷ *Bank Act*, section 659; *Trust and Loan Companies Act*, section 520.3; *Cooperative Credit Associations Act*, section 452.3; *Insurance Companies Act*, section 696.





IV. OSFI Guideline E-13: Legislative Compliance Management

FCAC's supervisory model incorporates an element of risk-based supervision that OSFI's model does not have. FCAC, does not, on a routine basis:

- undertake regular and extensive on-site examinations either at the branch level or the head office unless there are indications of a significant compliance problem;
- require institutions to track or report complaints at the first level;
- undertake regular and extensive on-site audits to verify adherence with the Compliance Framework unless there are indications of a significant compliance problem.

Instead, an important aspect of FCAC's supervisory model relates to the self-monitoring by financial institutions of matters connected with their obligations to consumers.

Guideline E-13²⁸ of the Office of the Superintendent of Financial Institutions (OSFI) currently requires financial institutions to have legislative compliance management (LCM) systems in place to monitor, among other matters, compliance with their governing statutes, regulations and OSFI guidelines. This system already incorporates the consumer provisions.

For supervisory purposes, FCAC refers to the LCM system as a source of information about the quality of an institution's self-monitoring and may ask to review the portion of the report on regulatory compliance that deals with the consumer provisions.

²⁸ Office of the Superintendent of Financial Institutions (OSFI), Guideline E-13, March 2003. For a copy of this document, click on the link to OSFI's Web site, provided in Appendix K.





Financial institutions may wish to deal with the consumer provisions in a separate section of the report. If closer supervision is required to ensure compliance with the consumer provisions, FCAC may examine the LCM systems pertaining to the consumer provisions on an annual basis, until such time as the compliance levels are satisfactory.





V. *Statutory Filing Requirements*

Financial institutions are required²⁹ to file the following documents with the Commissioner.

- ***Complaint procedures***

Financial institutions must file their complaint procedures³⁰ with FCAC.

- ***Public accountability statements***

This requirement³¹ applies to financial institutions with more than \$1 billion in equity. FCAC ensures that all statements are filed within the legislated timeframe and confirms that they are available to the public. FCAC also reviews the statements to ensure that the contents satisfy regulatory requirements.

- ***Notice of branch closures***

FCAC ensures that the required³² notices meet the content and timing requirements, in accordance with the applicable regulation.

If the institution has met the statutory filing requirements, FCAC acknowledges receipt of this information.

If FCAC has identified any compliance deficiencies, it opens a compliance case and refers the matter to an FCAC Compliance Officer for further review, and follows the process outlined in paragraph III A (i).

²⁹ Financial institutions that do not have a retail presence in Canada are not exempt from these provisions.

³⁰ *Bank Act*, subsections 455(2) and 573(2); *Trust and Loan Companies Act*, subsection 441(2); *Cooperative Credit Associations Act*, subsection 385.22(2); *Insurance Companies Act*, subsections 486(2) and 604(2).

³¹ *Bank Act*, subsection 459.3; *Trust and Loan Companies Act*, subsection 444.2; *Insurance Companies Act*, subsection 489.1.

³² *Bank Act*, subsection 459.2(1); *Trust and Loan Companies Act*, subsection 444.1(1); *Cooperative Credit Associations Act*, subsection 385.27(1).



VI. *Examinations of Financial Institutions*

A. Process

Annual examination regarding consumer provisions

The Commissioner, from time to time but at least once in each calendar year, shall make or cause to be made any examination and inquiry that the Commissioner considers necessary for the purposes of satisfying the Commissioner that the applicable consumer provisions are being complied with and, after the conclusion of each examination and inquiry, shall report on it to the Minister.³³

Each year, FCAC's Compliance and Industry Relations Branch conducts examinations of financial institutions. FCAC informs the financial institutions about the period to be covered in the examinations, in advance of the examinations taking place.

The number of consumer provisions that apply to banks versus other types of financial institutions is significantly broader. Consequently, a distinctive examination process based on regulatory risk is applied to each sector. Moreover, criteria such as the financial institution's compliance history or FCAC's concerns related to the institution will also determine the type of examination that is carried out.

FCAC's process for yearly examinations is as follows:

- FCAC sends a letter informing the institution's Compliance Liaison person of the upcoming examination. The letter is accompanied by a questionnaire on the topics to be covered in the examination.

³³ *Bank Act*, subsection 659(1); *Trust and Loan Companies Act*, subsection 520.3(1); *Cooperative Credit Associations Act*, subsection 452.3(1); *Insurance Companies Act*, subsection 696(1).



- FCAC supplies the financial institution with a statistical report covering the examination period, which outlines the institution's complaint history with regard to its obligations to consumers. FCAC also provides aggregate statistical information for the industry sector.
- In general, FCAC conducts the annual examination by means of a questionnaire sent to the financial institution. The institution must complete and return the questionnaire to FCAC within a specific timeframe. In some cases, FCAC conducts a telephone or in-person interview with the Compliance Liaison person, to gather and discuss answers to the questionnaire.

The depth and format of the interview varies from one financial institution to the other and depends on such factors as the size of the institution, the number of complaints, the institution's business lines, and the degree of compliance with FCAC's monitoring activities and Compliance Agreements.

Examinations regarding codes of conduct and public commitments

FCAC may examine a financial institution's or an industry sector's particular practices, policies, procedures and systems relating to codes of conduct and public commitments³⁴. Where deemed more efficient, FCAC combines such examinations with the annual examination on the consumer provisions.

³⁴ *Financial Consumer Agency of Canada Act*, subsection 5(3).





B. Possible topics covered during the examination

iii. Consumer provisions

- the institution's complaint-handling procedures, to ensure that FCAC has received updates;
- its policies, procedures and/or practices to ensure compliance with the consumer provisions;
- the financial institution's third-party dispute resolution body;
- its policies, procedures and/or practices to ensure implementation of the Compliance Framework;
- the nature and number of consumer provision complaints that FCAC has received directly from consumers, or that were reported by the financial institution;
- the compliance matters addressed during the examination period, to ensure that adequate corrective measures have been implemented;
- the financial institution's compliance history;
- the LCM, to inform FCAC of any deficiencies detected in the regulatory requirements; and
- various types of training offered to the institution's personnel on its consumer provision obligations and the role of FCAC.

iv. Voluntary codes of conduct and public commitments

- the institution's policies, procedures and/or practices to ensure compliance with the voluntary codes of conduct and public commitments;
- the nature and number of voluntary code of conduct and public commitment complaints that FCAC has received directly from consumers or that were reported by the financial institution;
- the compliance matters addressed during the examination period, to ensure that adequate corrective measures have been implemented;





- any concerns identified during monitoring of the financial institution's activities; and
- various types of training offered to personnel on code of conduct and public commitment obligations.

If the FCAC Compliance Officer detects any compliance concerns, FCAC opens a compliance case. FCAC follows the same process as when it receives a complaint directly³⁵.

C. Reporting the conclusions of the annual examination

The Commissioner reports the conclusions of the annual examination of financial institutions to the Minister of Finance.

The report provides aggregate conclusions by industry sector or offers an opinion about a specific financial institution's level of compliance with the consumer provisions, codes of conduct and public commitments. The Commissioner may also report on particular concerns in the marketplace involving matters related to FCAC's mandate.

Once the examination has been completed and the Commissioner's conclusions have been sent to the Minister, the Commissioner may provide the public with aggregate conclusions on each industry sector's level of compliance with the consumer provisions, codes of conduct and public commitments.

The Commissioner may also comment on specific concerns relating to an industry sector.

³⁵ See subsection III A.



D. Commissioner's report to the Board of Directors of an institution

Once the examination has been completed, the Commissioner may provide the financial institution's Board of Directors with his findings on the institution's level of compliance with the consumer provisions, codes of conduct and public commitments.

FCAC will endeavour to provide a copy of this report to both the Chief Executive Officer and the Compliance Liaison person, before submitting it to the Board of Directors.

The Commissioner may provide the following information in his report:

- aggregate industry-sector statistics on all contacts received by FCAC;
- financial institution-specific statistics on all contacts received by FCAC;
- statistics on the complaints reported by the financial institution;
- monitoring activities undertaken to ascertain compliance;
- concerns relating to the financial institution, or general concerns about the financial sector;
- other information deemed relevant by the Commissioner;
- a conclusion on the financial institution's overall compliance level with the consumer provisions, codes of conduct and public commitments.





VII. Compliance Measures

Under the *Financial Consumer Agency of Canada Act*, every contravention of a consumer provision constitutes a violation³⁶. A Compliance Officer investigates all alleged violations. The Commissioner may consider implementing compliance measures even if the incident leading to the violation is isolated.

Appendix H provides a summary of FCAC's monitoring activities and enforcement options. Each case is considered on its own merits.

In situations where the Commissioner determines that a financial institution is in violation of a consumer provision, the following compliance measures may be applied.

A. Letter of Reprimand

A Letter of Reprimand may be used in cases where a violation by a financial institution involves a non-systemic problem and where the matter is not serious enough to require a Notice of Violation. In a letter sent to the institution, the Commissioner notes the violation against the financial institution and, where applicable, reinforces the corrective measures to be implemented by the financial institution. The violation forms part of the institution's compliance history, pursuant to section 20 of the *FCAC Act*.

FCAC sends the Letters of Reprimand to the attention of the Compliance Liaison person of the financial institution involved.

³⁶ *Financial Consumer Agency of Canada Act*, subsection 22(1). -30 -





B. Compliance Agreement

The Compliance Agreement³⁷ is an agreement between the senior management of the financial institution and the Commissioner that specifies the measures required by the financial institution to ensure compliance with the consumer provisions, and secures corrective actions within an appropriate timeframe.

Failure to meet the terms and conditions of the Compliance Agreement may lead to a Notice of Violation and the assessment of an Administrative Monetary Penalty.

C. Notice of Violation

The Commissioner may issue a formal Notice of Violation with an Administrative Monetary Penalty. Notices of Violation are directed to the senior officer (CEO) of the financial institution, with a copy to the Compliance Liaison person.

The Notice of Violation triggers a process³⁸ set out in the *FCAC Act*³⁹.

i. Proceedings

Once the Commissioner believes, on reasonable grounds, that a financial institution has contravened a consumer provision or has not respected the terms of a Compliance Agreement, the Commissioner may issue a Notice of Violation. The Notice of Violation is served by registered mail or courier.

³⁷ *Bank Act*, section 661; *Trust and Loan Companies Act*, section 520.5; *Cooperative Credit Associations Act*, section 452.5; *Insurance Companies Act*, section 698.

³⁸ Appendix J summarizes the process in which the Commissioner issues a Notice of Violation.

³⁹ *Financial Consumer Agency of Canada Act*, section 22.



The Notice of Violation names the financial institution believed to have committed a violation, identifies the violation and sets out:

- the penalty that the Commissioner proposes to impose;
- the right of the financial institution, within 30 days after the Notice of Violation has been served, or within any longer period that the Commissioner specifies, to pay the penalty or to make representations to the Commissioner with respect to the violation and the proposed penalty; and
- the fact that, if a financial institution does not pay the penalty or make representations in accordance with the Notice of Violation, the financial institution is considered to have committed the violation and the Commissioner may impose a penalty with respect to the violation.

ii. Maximum penalties

The Notice of Violation states the amount of the penalty proposed by the Commissioner. The maximum penalty for a violation is \$50,000 in the case of a violation that has been committed by a natural person, and \$100,000 in the case of a violation that has been committed by a financial institution⁴⁰.

iii. Criteria for penalty

When setting the penalty amount⁴¹, the Commissioner takes into account:

- the degree of intention or negligence on the part of the financial institution which committed the violation;
- the harm done by the violation; and
- the history of the financial institution which committed the violation with respect to any prior violation within a five-year period before the violation.

⁴⁰ *Financial Consumer Agency of Canada Act*, subsection 19(2).

⁴¹ *Financial Consumer Agency of Canada Act*, section 20.



iv. Determination of responsibility and penalty

If the financial institution pays the penalty proposed in the Notice of Violation, the financial institution is deemed to have committed the violation⁴² and if the Commissioner is satisfied that all agreed upon measures are implemented, the case will be closed with a confirmation of violation.

If the financial institution makes representations in accordance with the Notice of Violation, the Commissioner shall decide, on a balance of probabilities, whether the financial institution committed the violation and, if so, may impose the penalty proposed in the Notice of Violation, a lesser penalty or no penalty⁴³. The Commissioner's decision will be made known by means of a notice of decision.

A financial institution that neither pays the penalty nor makes representations in accordance with the Notice of Violation is deemed to have committed the violation and the Commissioner may impose the penalty proposed in the Notice of Violation, a lesser penalty or no penalty⁴⁴. The Commissioner's decision will be made known by means of a notice of decision.

v. Notice of decision

Following the review of an institution's representations concerning the Notice of Violation, or if the Notice of Violation's representation deadline has expired, the Commissioner decides if the financial institution has committed a violation of a consumer provision. If the financial institution is deemed to have committed the violation, the Commissioner decides the penalty amount and informs the financial institution of the decision through a notice of decision⁴⁵. The notice of decision is served by registered mail or courier.

⁴² *Financial Consumer Agency of Canada Act*, subsection 23(1).

⁴³ *Financial Consumer Agency of Canada Act*, subsection 23(2).

⁴⁴ *Financial Consumer Agency of Canada Act*, subsection 23(3).

⁴⁵ *Financial Consumer Agency of Canada Act*, subsection 23(4).





The notice of decision also states that the financial institution may appeal the decision to the Federal Court.

The Commissioner may make public the nature of a violation, the name of the person who committed it and the amount of the penalty imposed⁴⁶. This process is described in FCAC's policy entitled "Communication and Compliance Procedures for Publication of Violations Under Section 31 of the *FCAC Act*"⁴⁷.

vi. Appeal to Federal Court

A financial institution on which a notice of decision is served may, within 30 days after the notice of decision is served or within any longer period that the Court allows, appeal the decision to the Federal Court⁴⁸.

vii. Penalty payment

Penalty payments are payable to the Receiver General of Canada.

viii. Limitation period

The Commissioner cannot commence proceedings with respect to a violation more than two years after becoming aware of the violation⁴⁹.

ix. Due Diligence

The person named in the Notice of Violation can raise a defence of "due diligence"⁵⁰.

⁴⁶ *Financial Consumer Agency of Canada Act*, section 31.

⁴⁷ See Appendix J.

⁴⁸ *Financial Consumer Agency of Canada Act*, section 24.

⁴⁹ *Financial Consumer Agency of Canada Act*, subsection 30(1).

⁵⁰ *Financial Consumer Agency of Canada Act*, section 28.



x. Publication of a violation

The Commissioner may make public the nature of a violation, the name of the financial institution that committed it and the amount of the penalty imposed⁵¹.

The procedure for the publication of violations is described in Appendix J.

D. Prosecution

Every person who, without reasonable cause, contravenes any consumer provision under the *Bank Act*, the *Trust and Loan Companies Act*, the *Insurance Companies Act* or the *Cooperative Credit Associations Act*, or regulations thereunder, is guilty of an offence punishable on summary conviction or on indictment, and is liable to a fine, imprisonment, or both fine and imprisonment⁵².

In circumstances where proceeding with a violation of an offence is appropriate, the matter is referred to the Attorney General of Canada.

E. Restraining order

If a financial institution or any director, officer, employee or agent of one does not comply with any consumer provision, the Commissioner or any complainant may, in addition to any other right that a person has, apply to a court for an order directing the financial institution, director, officer, employee or agent to comply with—or restraining the financial institution, director, officer, employee or agent from acting in violation of—the consumer provision and, on the application, the court may so order and make any further order it thinks fit⁵³.

⁵¹ *Financial Consumer Agency of Canada Act*, section 31.

⁵² *Bank Act*, sections 980 and 985; *Trust and Loan Companies Act*, sections 533(1) and 534; *Cooperative Credit Associations Act*, sections 465(1) and 466; *Insurance Companies Act*, sections 1023 and 1027.

⁵³ *Bank Act*, section 989; *Trust and Loan Companies Act*, section 537; *Cooperative Credit Associations Act*, section 460; *Insurance Companies Act*, section 1031.



VIII. *FCAC Reporting*

FCAC seeks to conduct its mandate as openly and as transparently as possible.

A. **Semi-annual reports to financial institutions**

On a semi-annual basis, the Compliance and Industry Relations Branch will provide all banks and all trust and loan companies with specific compliance statistics. It will also provide financial institutions with aggregate statistics relating to their specific industry sector. Moreover, financial institutions that had active compliance cases during the period will also receive a report detailing the status of cases during the period.

B. **Publication of a consumer provision violation**

FCAC may publish the name of the financial institution, the nature of the violation and the amount of the penalty. For FCAC's policy on Communication and Compliance Procedures for Publication of Violations Under Section 31 of the *FCAC Act*, see Appendix J.

C. **Reports to the Minister of Finance**

In addition to reporting to the Minister on the results of the annual examinations, the Commissioner may report to the Minister on issues of importance that have a significant impact on the financial services sector and, ultimately, on the consumer. For example, FCAC could send a report to the Minister following an industry-wide examination of the consumer provisions, codes of conduct or public commitments. Following each examination⁵⁴, the Commissioner reports his conclusions to the Minister of Finance.

⁵⁴ *Bank Act*, subsection 659(1); *Trust and Loan Companies Act*, subsection 520.3(1); *Cooperative Credit Associations Act*, subsection 452.3(1); *Insurance Companies Act*, subsection 696(1); *Financial Consumer Agency of Canada Act* subsection 5(1).





D. Examinations

Following each examination, including the annual examination, the Commissioner may provide the financial institution's Board of Directors with FCAC's findings. FCAC will endeavour to provide a copy of this report to both the institution's Chief Executive Officer and its Compliance Liaison person, before submitting it to the Board of Directors.

FCAC may also report its methodology and the aggregate results to the public. FCAC will inform the financial institution involved about the wording of the examination summary before it is published.

E. Annual Report

Each year, the Commissioner prepares a report for the Minister of Finance for tabling in the House of Commons and the Senate of Canada⁵⁵. This report discusses the operations of FCAC for the year and sets out, in aggregate form, FCAC's findings on the compliance of financial institutions with the consumer provisions.

In commenting upon FCAC's operations for the year, the Commissioner may also report on the financial institutions' compliance with the codes of conduct and public commitments. The Commissioner will provide information about the types and numbers of issues examined by FCAC, as well as their outcome. The Commissioner may also express his views about the implementation of certain codes of conduct or public commitments by financial institutions or by sector.

The annual report of FCAC contains general comments on the financial institutions' complaint-handling systems and procedures. The Commissioner also reports on all types of inquiries and complaints brought to the attention of FCAC. In addition, the Commissioner may provide an analysis of trends in areas of importance to the marketplace, and state how FCAC is reviewing all compliance-related matters.

⁵⁵ *Financial Consumer Agency of Canada Act*, section 34.





F. Mystery shopping

Prior to conducting any mystery-shopping exercise, FCAC will provide financial institutions with its methodology. Once the mystery-shopping exercise has taken place, FCAC will share individual and aggregate results with the financial institutions.

FCAC may report the methodology and individual results to the Minister following a mystery-shopping exercise⁵⁶.

FCAC may also report the methodology and aggregate results to the public. FCAC would inform the industry sector involved about the wording of the aggregate results before publishing them.

G. Case summaries on FCAC's Web site

i. Consumer provision issues

On a quarterly basis, FCAC publishes summaries of the Commissioner's compliance decisions on its Web site. The summary includes information such as the factors considered by the Commissioner in choosing the appropriate compliance measure. This is done to promote consumer and industry awareness about the consumer provisions.

FCAC would inform the financial institution involved about the wording of the summary of the decision before it is published.

⁵⁶ *Financial Consumer Agency of Canada Act*, subsection 17(2).





ii. Voluntary codes of conduct and public commitments

On a quarterly basis, FCAC may publish summaries of cases involving codes of conduct and public commitments. FCAC would summarize the relevant facts relating to the compliance issue, as well as its conclusions on the matter.

This information serves both the industry and consumers. It would provide the industry with FCAC's views on the codes of conduct or public commitments and how they are to be implemented. And it would increase consumers' awareness of their rights with regard to specific commitments made by institutions.

FCAC would inform the financial institution involved about the wording of the case summary before it is published.





IX. Appendices





A. Summary of FCAC Supervisory Model

| FCAC supervisory activities | Description of Activity | Deadline |
|---|---|---|
| Consumer complaints filed with FCAC ⁵⁷ | FCAC reviews all consumer complaints involving the consumer provisions, voluntary codes of conduct and public commitments it receives directly. | Continuous |
| Examinations on compliance-related matters | <p>Compliance issues may arise from a variety of sources, including the media. FCAC reviews matters involving the consumer provisions, codes of conduct and public commitments to confirm a financial institution's or industry sector's compliance with its obligations to consumers.</p> <p>If considered more efficient, FCAC may combine this examination with its annual examination of the consumer provisions.</p> | As deemed necessary |
| Reportable complaints ⁵⁸ | <p>FCAC reviews consumer complaints reported by financial institutions.</p> <p>A <i>reportable complaint</i> is a complaint involving a consumer provision, or an FCAC-targeted code of conduct or public commitment, that has been received by or forwarded to the designated reportable level, or higher, of the financial institution's complaint-handling process.</p> | Forward to FCAC within 60 days of receipt at the reportable level |

⁵⁷ *Financial Consumer Agency of Canada Act*, subsections 5(1) and 5(3); *Bank Act*, section 657; *Trust and Loan Companies Act*, section 520.1; *Cooperative Credit Associations Act*, section 452.1; *Insurance Companies Act*, section 694.

⁵⁸ Ibid.



| FCAC supervisory activities | Description of Activity | Deadline |
|--|--|----------------------|
| Annual Examination ⁵⁹ | On an annual basis, FCAC examines each financial institution and concludes on its overall compliance with the consumer provisions. FCAC reports the conclusions of all of its examinations to the Minister of Finance. | Continuous |
| Review of Legislative Compliance Management ⁶⁰ , OSFI Guideline E-13 | FCAC may review this OSFI requirement where financial institutions document the ways in which they monitor and control the risks of violation of legislative obligations, the procedures for internal monitoring and audits, and the corrective actions taken when violations occur. | On FCAC's request |

⁵⁹ *Financial Consumer Agency of Canada Act*, subsections 5(1) and 5(3); *Bank Act*, sections 657 and 659; *Trust and Loan Companies Act*, sections 520.1 and 520.3; *Cooperative Credit Associations Act*, sections 452.1 and 452.3; *Insurance Companies Act*, sections 694 and 696.

⁶⁰ *Financial Consumer Agency of Canada Act*, subsections 5(2) and 5(3); *Bank Act*, section 657; *Trust and Loan Companies Act*, section 520.1; *Cooperative Credit Associations Act*, section 452.1; *Insurance Companies Act*, section 694.



| Statutory Filing | Description of Activity | Deadline |
|--|--|-------------------------------------|
| Complaint procedures ⁶¹ | Financial institutions must file their complaint-handling procedures with FCAC. | Immediately |
| Public Accountability Statements ⁶² | These statements apply only to Canadian institutions with more than \$1 billion in equity. FCAC ensures that all statements are filed within the legislated timeframes and are made available to the public. FCAC also reviews the statements to ensure that their contents satisfy regulatory requirements. | Annually, as per regulations |
| Notice of branch closures ⁶³ | Financial institutions must file all notices of branch closures with FCAC, in accordance with the regulations. | Forward to FCAC, as per regulations |

⁶¹ *Bank Act*, subsections 455(2) and 573(2); *Trust and Loan Companies Act*, subsection 441(2); *Cooperative Credit Associations Act*, subsection 385.22(2); *Insurance Companies Act*, subsections 486(2) and 604(2).

⁶² *Bank Act*, subsection 459.3; *Trust and Loan Companies Act*, subsection 444.2; *Insurance Companies Act*, subsection 489.1.

⁶³ *Bank Act*, subsection 459.2(1); *Trust and Loan Companies Act*, subsection 444.1(1); *Cooperative Credit Associations Act*, section 385.27(1).



B. FCAC Supervisory Model and Commissioner’s Authority by Activity

| Review of all complaints involving the consumer provisions, voluntary codes of conduct and public commitments received directly by FCAC | |
|---|---|
| Relevant statute | Summary of the Commissioner’s powers |
| <i>FCAC Act</i> , paragraph 3(2)(a) | The objective of the Agency is to supervise financial institutions to determine whether they are in compliance with the consumer provisions that apply to them. |
| <i>FCAC Act</i> , paragraph 3(2)(c) | The objective of the Agency is to monitor implementation of the voluntary codes of conduct that are designed to protect the interests of customers of financial institutions, which have been adopted by financial institutions and are publicly available, and to monitor any public commitments made by financial institutions that are designed to protect the interests of their customers. |
| <i>FCAC Act</i> , subsection 5(1) | The Commissioner has the powers, duties and functions assigned by the <i>FCAC Act</i> and shall examine and inquire into, and report to the Minister from time to time on, all matters connected with the administration of this <i>Act</i> and of the consumer provisions. |
| <i>FCAC Act</i> , subsection 5(2) | The Commissioner may collect any personal information that is considered necessary to supervise a financial institution, in order to determine whether a financial institution is in compliance with the applicable consumer provisions. |



| Review of all complaints involving the consumer provisions, voluntary codes of conduct and public commitments received directly by FCAC | |
|--|--|
| <i>FCAC Act</i> , subsection 5(3) | The Commissioner may make or cause to be made any review considered necessary to monitor compliance with codes of conduct or public commitments. |
| <i>FCAC Act</i> , subsection 5(4) | The Commissioner shall have due regard for the role of any government body that has a role in monitoring compliance by financial institutions with codes of conduct or public commitments. |
| <i>Bank Act</i> , section 657 <i>Trust and Loan Companies Act</i> , section 520.1 <i>Cooperative Credit Associations Act</i> , section 452.1 <i>Insurance Companies Act</i> , section 694 | A financial institution shall provide the Commissioner with information at the time and in the form required for the purpose of administering the <i>FCAC Act</i> and the consumer provisions. |





| Reportable complaints: complaints involving the consumer provisions and FCAC-targeted codes of conduct and public commitments reported by the financial institutions | |
|--|--|
| Relevant statute | Summary of the Commissioner's powers |
| <i>FCAC Act</i> , paragraph 3(2)(a) | The objective of the Agency is to supervise financial institutions to determine whether they are in compliance with the consumer provisions that apply to them. |
| <i>FCAC Act</i> , paragraph 3(2)(c) | The objective of the Agency is to monitor implementation of the voluntary codes of conduct that are designed to protect the interests of customers of financial institutions, which have been adopted by financial institutions and that are publicly available, and to monitor any public commitments made by financial institutions that are designed to protect the interests of their customers. |
| <i>FCAC Act</i> , subsection 5(1) | The Commissioner has the powers, duties and functions assigned by the <i>FCAC Act</i> and shall examine and inquire into, and report to the Minister from time to time on, all matters connected with the administration of this <i>Act</i> and of the consumer provisions. |
| <i>FCAC Act</i> , subsection 5(2) | The Commissioner may collect any personal information that is considered necessary to supervise a financial institution, in order to determine whether a financial institution is in compliance with its applicable consumer provisions. |
| <i>FCAC Act</i> , subsection 5(3) | The Commissioner may make or cause to be made any review considered necessary to monitor compliance with codes of conduct or public commitments. |
| <i>FCAC Act</i> , subsection 5(4) | The Commissioner shall have due regard for the role of any government body that has a role in monitoring compliance by financial institutions with codes of conduct or public commitments. |



Reportable complaints: complaints involving the consumer provisions and FCAC-targeted codes of conduct and public commitments reported by the financial institutions

Bank Act, section 657

*Trust and Loan Companies Act,
section 520.1*

*Cooperative Credit Associations
Act, section 452.1*

*Insurance Companies Act, section
694*

A financial institution shall provide the Commissioner with information at the time and in the form required for the purpose of administering the *FCAC Act* and the consumer provisions.





| Annual Examinations and examinations of compliance-related matters | |
|--|---|
| Relevant statute | Summary of the Commissioner's powers |
| <i>FCAC Act</i> , paragraph 3(2)(a) | The objective of the Agency is to supervise financial institutions to determine whether they are in compliance with the consumer provisions that apply to them. |
| <i>FCAC Act</i> , paragraph 3(2)(b) | The objective of the Agency is to promote the adoption by financial institutions of policies and procedures designed to implement the consumer provisions that apply to them. |
| <i>FCAC Act</i> , paragraph 3(2)(c) | The objective of the Agency is to monitor implementation of the voluntary codes of conduct that are designed to protect the interests of customers of financial institutions, which have been adopted by financial institutions and are publicly available, and to monitor any public commitments made by financial institutions that are designed to protect the interests of their customers. |
| <i>FCAC Act</i> , subsection 5(1) | The Commissioner has the powers, duties and functions assigned by the <i>FCAC Act</i> and shall examine and inquire into, and report to the Minister from time to time on, all matters connected with the administration of this <i>Act</i> and of the consumer provisions. |
| <i>FCAC Act</i> , subsection 5(2) | The Commissioner may collect any personal information that is considered necessary to supervise a financial institution, in order to determine whether a financial institution is in compliance with its applicable consumer provisions. |
| <i>FCAC Act</i> , subsection 5(3) | The Commissioner may make or cause to be made any review considered necessary to monitor compliance with codes of conduct or public commitments. |
| <i>FCAC Act</i> , subsection 5(4) | The Commissioner shall have due regard for the role of any government body that has a role in monitoring compliance by financial institutions with codes of conduct or public commitments. |



| Annual Examinations and examinations of compliance-related matters | |
|---|---|
| Relevant statute | Summary of the Commissioner's powers |
| <p><i>Bank Act</i>, section 657</p> <p><i>Trust and Loan Companies Act</i>, section 520.1</p> <p><i>Cooperative Credit Associations Act</i>, section 452.1</p> <p><i>Insurance Companies Act</i>, section 694</p> | <p>A financial institution shall provide the Commissioner with information at the time and in the form required for the purpose of the administering the <i>FCAC Act</i> and the consumer provisions.</p> |
| <p><i>Bank Act</i>, section 659(1)</p> <p><i>Trust and Loan Companies Act</i>, section 520.3(1)</p> <p><i>Cooperative Credit Associations Act</i>, section 452.3(1)</p> <p><i>Insurance Companies Act</i>, section 696(1)</p> | <p>The Commissioner, from time to time but at least once in each calendar year, shall make or cause to be made any examination and inquiry considered necessary for the purposes of satisfying the Commissioner that the applicable consumer provisions are being complied with. The Commissioner shall report conclusions of each examination and inquiry to the Minister.</p> |



| Regulatory reliance: OSFI Guideline E-13 | |
|--|---|
| Relevant statute | Summary of the Commissioner's powers |
| <i>FCAC Act</i> , paragraph 3(2)(a) | The objective of the Agency is to supervise financial institutions to determine whether they are in compliance with the consumer provisions that apply to them. |
| <i>FCAC Act</i> , paragraph 3(2)(b) | The objective of the Agency is to promote the adoption by financial institutions of policies and procedures designed to implement the consumer provisions that apply to them. |
| <i>FCAC Act</i> , subsection 5(1) | The Commissioner has the powers, duties and functions assigned by the <i>FCAC Act</i> and shall examine and inquire into, and report to the Minister from time to time on, all matters connected with the administration of this <i>Act</i> and of the consumer provisions. |
| <i>Bank Act</i> , section 657 <i>Trust and Loan Companies Act</i> , section 520.1 <i>Cooperative Credit Associations Act</i> , section 452.1 <i>Insurance Companies Act</i> , section 694 | A financial institution shall provide the Commissioner with information at the time and in the form required for the purpose of administering the <i>FCAC Act</i> and the consumer provisions. |



C. Glossary

Administrative Monetary Penalty

A monetary penalty that the Commissioner can impose. This could be as high as \$50,000 for an individual or \$100,000 for an institution. The amount is determined on the basis of three criteria: the degree of intent or negligence of the violator, the harm done by the violation and any previous history of violations.

Case

A file opened by FCAC's Compliance and Industry Relations Branch pertaining to a compliance matter, such as an alleged contravention of a consumer provision, a code of conduct or a public commitment. Circumstances surrounding the matter are reviewed and assessed by the Branch.

Closed case

A compliance case investigated and closed by FCAC.

Code of conduct

A code adopted by a financial institution and made publicly available (for example, on its Web site), designed to protect the interests of customers of that financial institution or industry association. FCAC monitors compliance by federally regulated financial institutions with their voluntary codes of conduct.

Complaint

A verbal or written expression of dissatisfaction by a consumer, related to any area of activity of the financial institution.

Complaint-handling procedure

A procedure that federally regulated financial institutions are required, by law, to put in place for dealing with complaints made by persons who have requested or received products or services from a financial institution in Canada.

Financial institutions must file their complaint-handling procedures with FCAC.





Complaint Liaison person

Senior-level employee of a financial institution responsible for reviewing compliance issues referred by FCAC and for liaising with FCAC on the institution's reportable complaints.

Compliance

A finding by FCAC, after investigation of a complaint, that the actions of the financial institution concerned are consistent with its consumer provision obligations or voluntary code of conduct or public commitment governing such actions.

Compliance Agreement

An agreement entered into by the Commissioner and the senior management of the financial institution, specifying corrective measures designed to further compliance with the consumer provisions, and setting out the timeframe for their implementation.

Compliance Liaison person

A senior-level employee of a financial institution responsible for the implementation and monitoring of compliance activities within that institution.

Compliance measures

A series of actions that the Commissioner may impose on an institution following a violation of a consumer provision. Determined on a case-by-case basis, the compliance measures range from a Letter of Reprimand to a Notice of Violation, with an Administrative Monetary Penalty.

Compliance report

A report prepared by the FCAC Compliance Officer once he or she concludes that a financial institution may have violated a consumer provision. The report provides the Commissioner with information such as the compliance issue, the applicable legislation, relevant facts and recommended compliance measure(s).





Consumer provision

A provision of federal legislation/regulations identified as a consumer provision in section 2 of the *Financial Consumer Agency of Canada Act*. When designated by regulation, contravention of such a provision constitutes a violation.

Examination

An examination conducted by FCAC, as circumstances require, to satisfy the Commissioner that a financial institution is complying with the consumer provisions, codes of conduct and public commitments.

FCAC forwards the conclusions of such examinations to the Minister of Finance.

Filing

A document that a federally regulated financial institution is required, by law (the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*), to file with FCAC.


Legislated Compliance Management (LCM)

An existing requirement of the Office of the Superintendent of Financial Institutions Canada, known as Guideline E-13. This requirement promotes effective self-monitoring of regulatory risk by asking financial institutions to monitor their own level of compliance. The LCM helps FCAC promote the adoption, by financial institutions, of policies and procedures designed to implement the consumer provisions that apply to them.

Letter of Reprimand

An administrative measure, provided for in FCAC's Compliance Framework. The Commissioner may issue a Letter of Reprimand in a case where a violation by a financial institution involves a non-systemic problem and where the matter is not serious enough to require a Notice of Violation. In a letter sent to the institution, the Commissioner notes the violation and, where applicable, confirms that the proper corrective action has been taken. The violation forms part of the institution's compliance history, pursuant to section 20 of the *FCAC Act*.





Notice of decision

A notice provided for by law and issued by the Commissioner, informing a financial institution of the Commissioner's decision about a violation, and the amount of the penalty, if applicable. The notice of decision is issued following the Commissioner's review of the representations made by the financial institution on the Notice of Violation or, after the deadline has expired for the financial institution to provide representations with respect to a Notice of Violation.

Notice of Violation

A notice provided for by law and issued by the Commissioner, informing a financial institution that there is a belief, on reasonable grounds, that a financial institution has violated a consumer provision. The *Financial Consumer Agency of Canada Act* requires the notice to state the name of the institution that committed the violation, the nature of the violation and the proposed amount of the Administrative Monetary Penalty levied against the institution by FCAC.

Obligation to consumer

A financial institution's responsibility to consumers, as stated under a consumer provision, a code of conduct or a public commitment.


Public Accountability Statement

A statement that every financial institution with \$1 billion or more in equity is required, by law, to publish annually and file with the FCAC Commissioner. The statement describes the contributions made by the institution to Canada's economy and society.

Public commitment

A commitment made publicly by a financial institution (for example, on its Web site), designed to protect the interests of customers of that institution or association. FCAC monitors the compliance by federally regulated financial institutions with their public commitments.





Reportable complaint

A complaint involving a consumer provision or an FCAC targeted code of conduct or public commitment that has been received by or forwarded to the designated reportable level, or higher, of the financial institution's complaint-handling process.

Systemic problem

A situation in which non-compliance is widespread throughout an institution or sector.

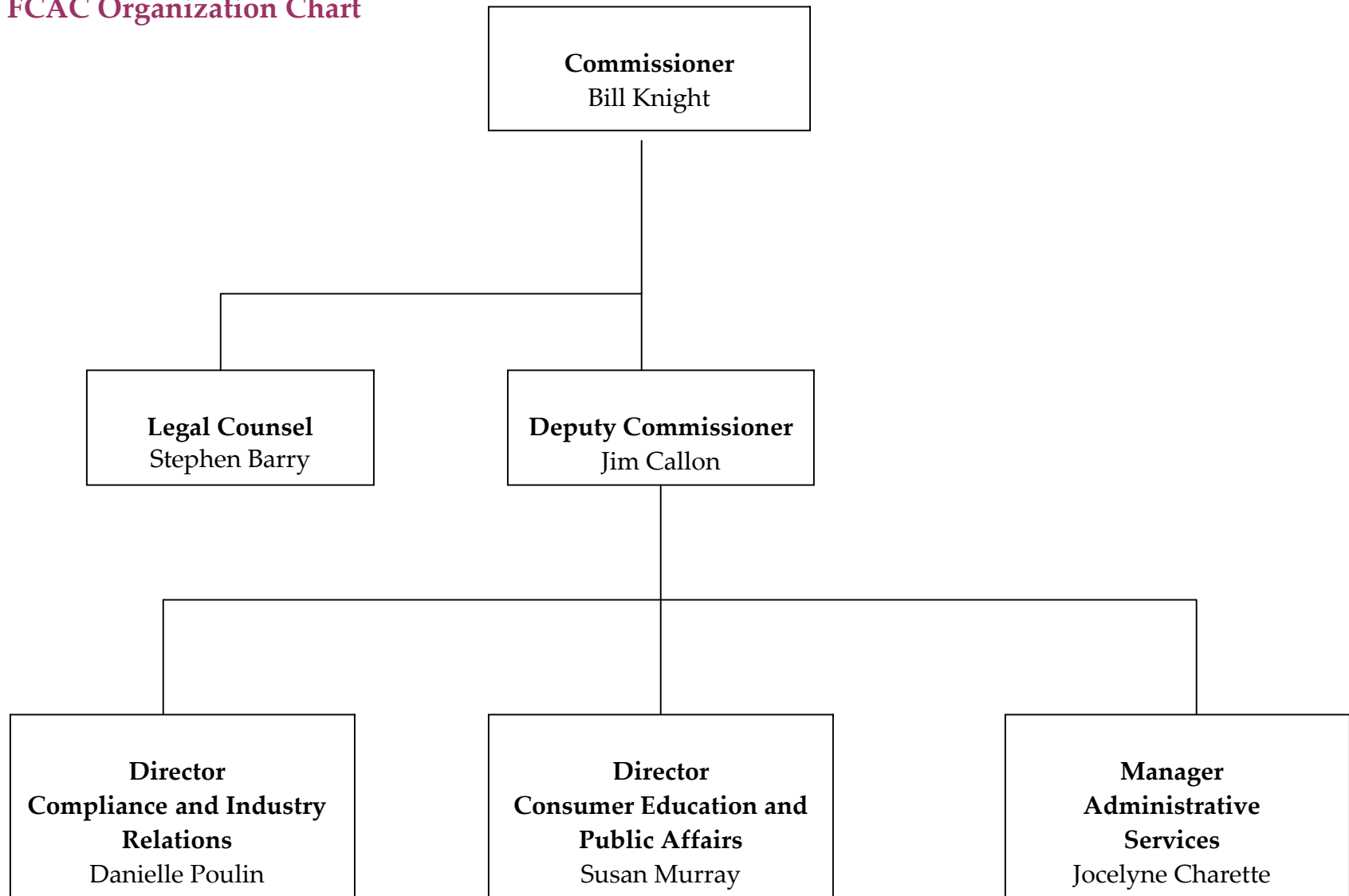
An example of a systemic violation may be, but is not restricted to, when the contravention affects a significant number of retail branches or a particular geographic region, or when the violation has an impact on a significant number of consumers. The term "systemic" may also be used when a violation is widespread throughout a financial sector.

Violation

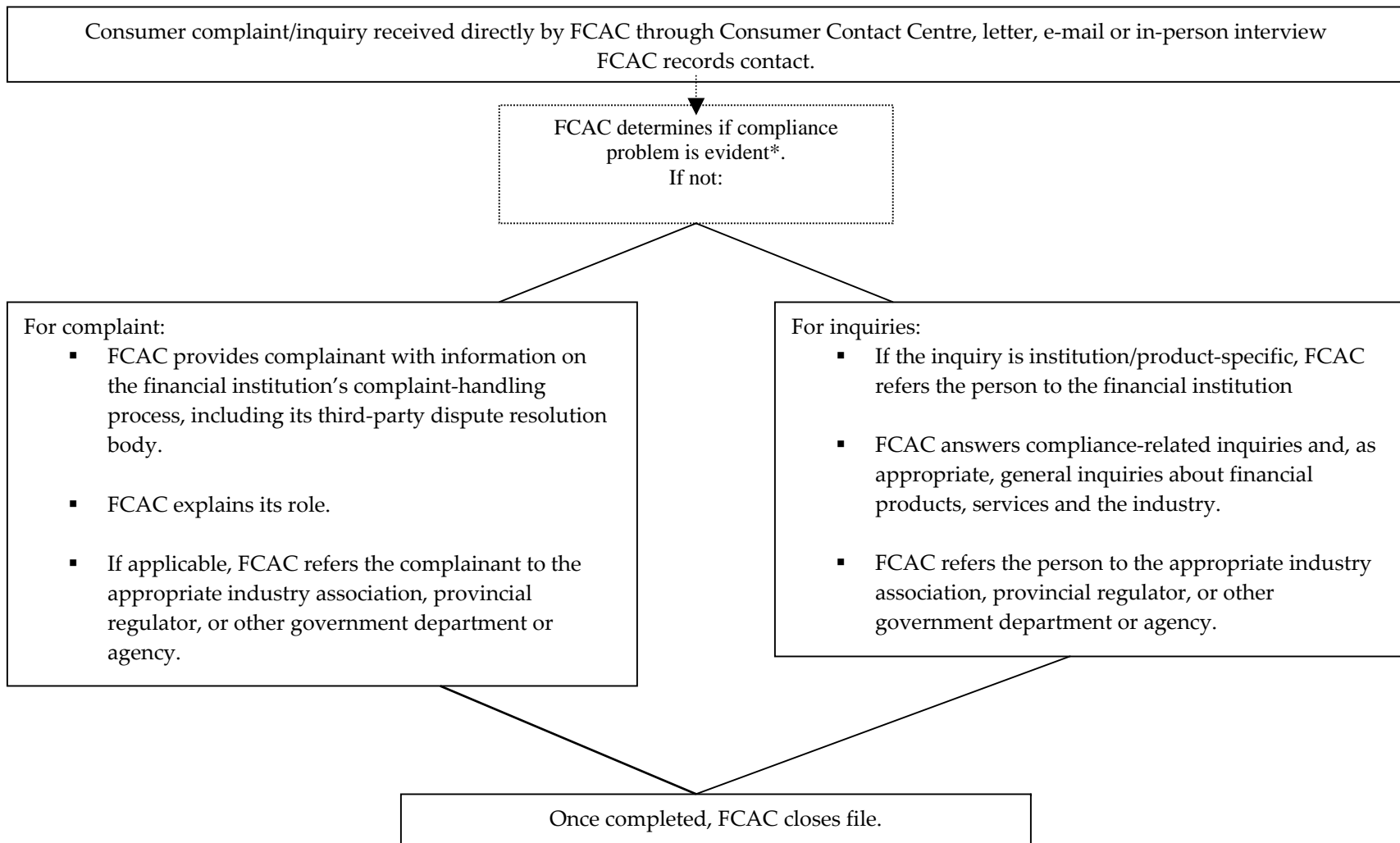
A contravention of a consumer provision, as designated by the *Financial Consumer Agency of Canada Designated Violations Regulations*.



D. FCAC Organization Chart

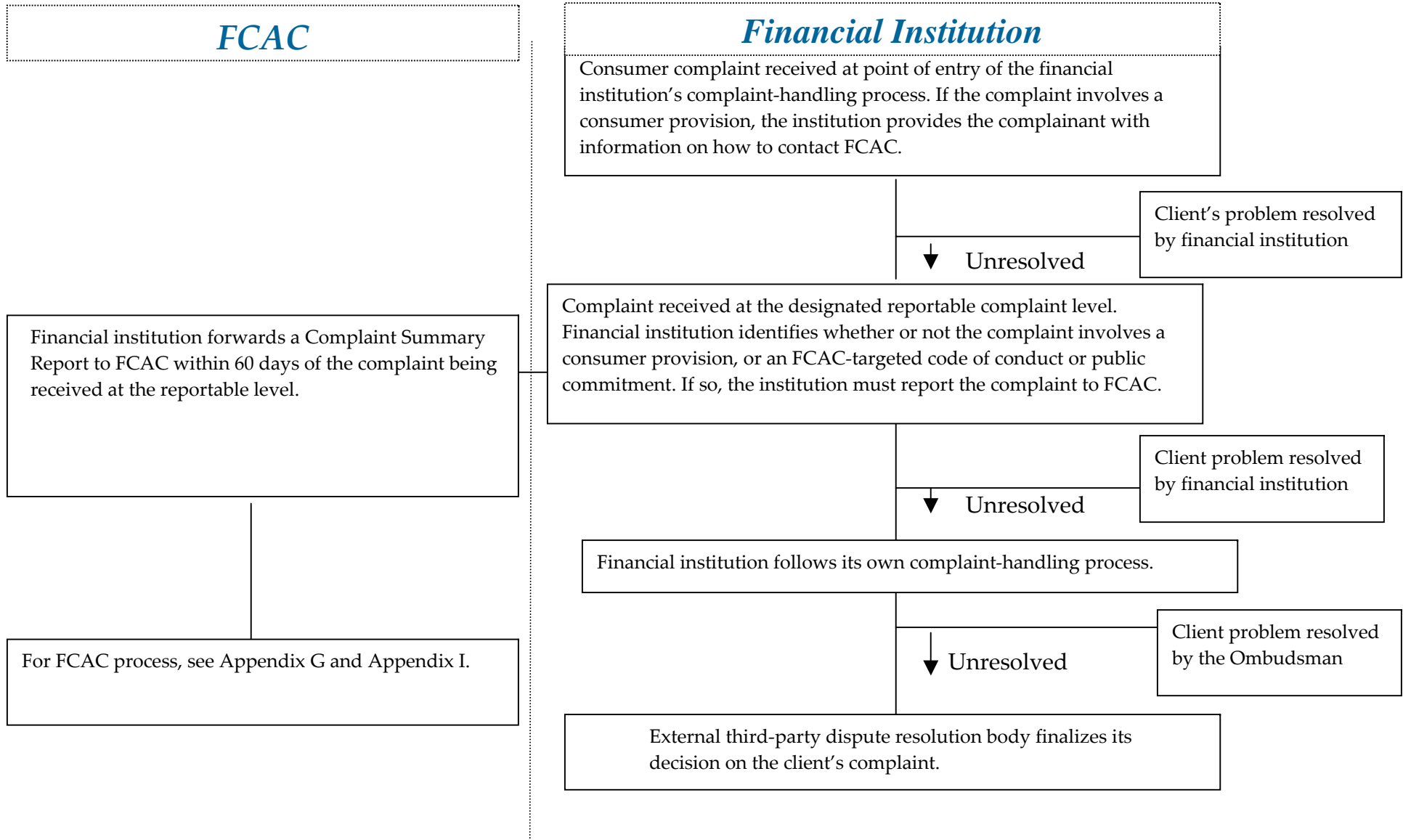


E. Processing of General Consumer Inquiries and Complaints by FCAC



* If it is a compliance issue, see Appendix G and Appendix

F. Example of a Financial Institution's Complaint-handling Process



G. FCAC Compliance Case Management Process

Process

FCAC opens a compliance case when:

- A consumer files a complaint with FCAC;
- A financial institution reports a potential compliance matter;
- A potential compliance concern develops, as a result of FCAC-monitoring activities, including:
 - FCAC examinations and inquiries;
 - FCAC mystery-shopping surveys;
 - consumer surveys or media reports.

Potential Outcomes

FCAC assigns a Compliance Officer to the case. The officer begins investigating and requests factual information from the complainant and/or the financial institution.

Determined not to be a compliance issue. FCAC closes the case and advises the financial institution, to this effect, in writing.

The Compliance Officer provides facts and an analysis of the case in a Compliance Report, with a recommendation on the compliance measure that the Commissioner should consider. FCAC sends a copy of the report to the financial institution for comment.

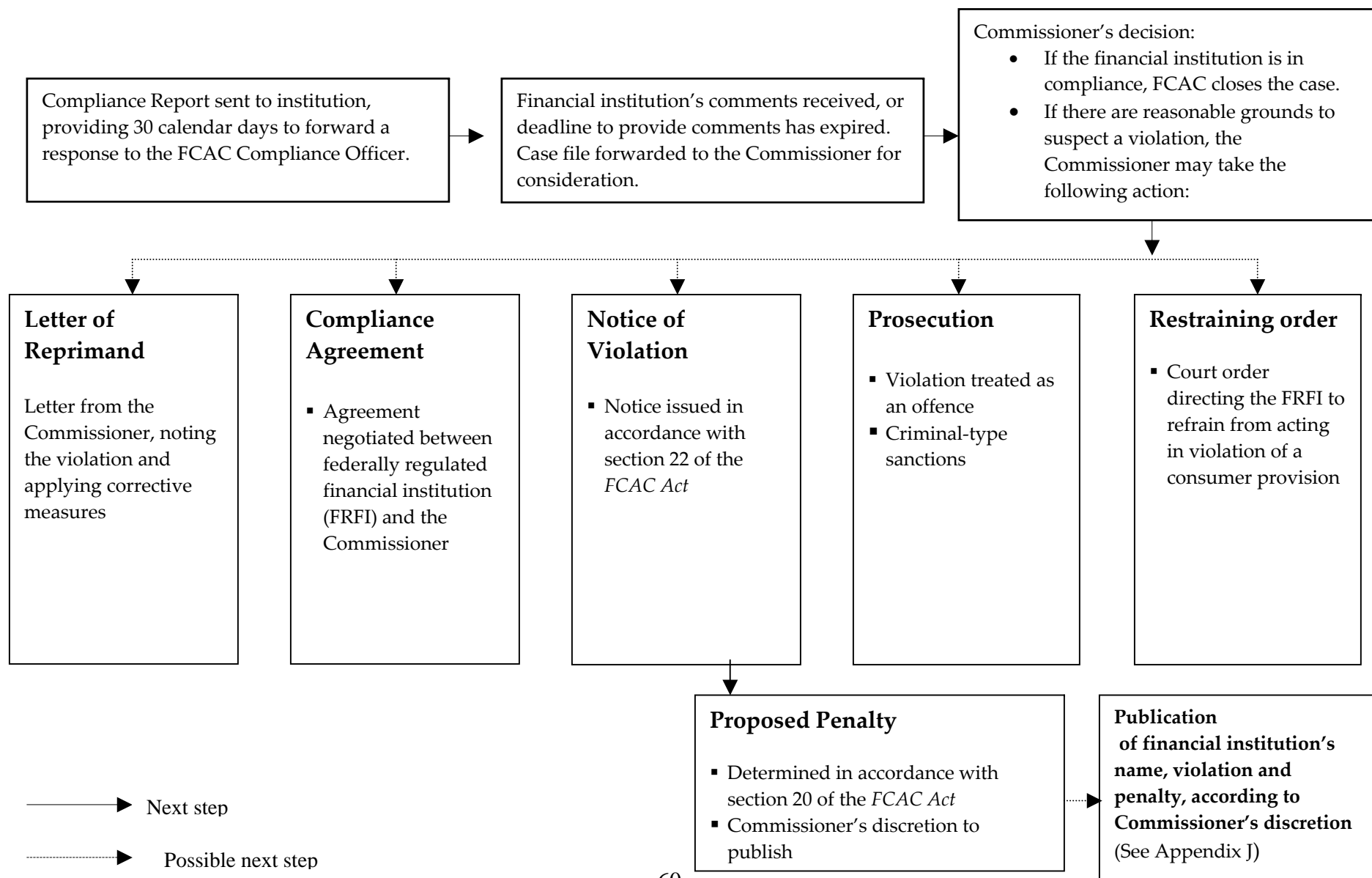
The Commissioner:

- considers the Compliance Report and the financial institution's comments;
- determines, on reasonable grounds, whether there is a violation; and
- if there is, applies an appropriate compliance measure.

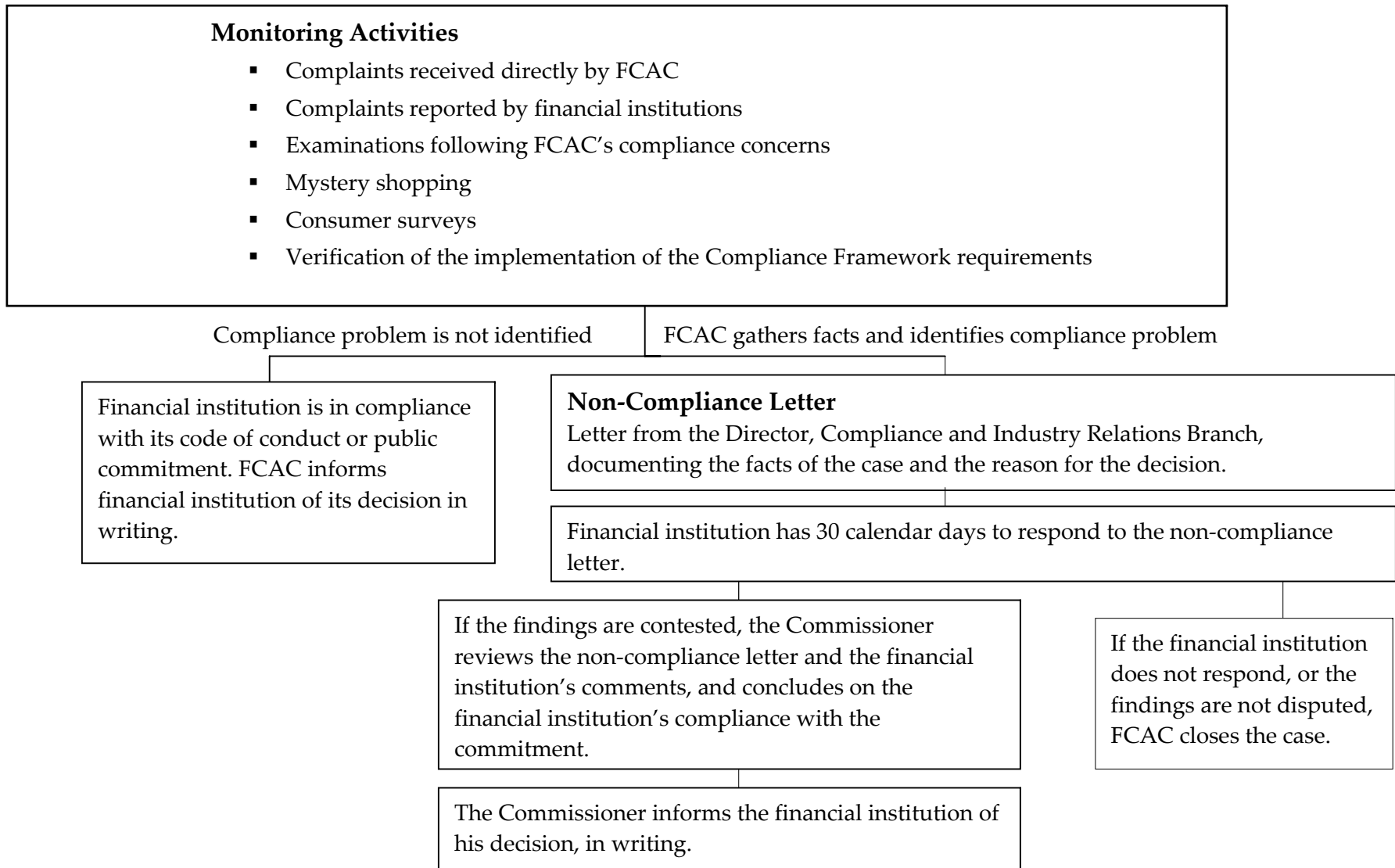
Compliance measures may include:

- Letter of Reprimand
- Compliance Agreement
- Notice of Violation, with Administrative Monetary Penalty
- Prosecution
- Restraining order

H. FCAC Compliance Measures Following a Violation of a Consumer Provision



I. Monitoring by FCAC of Codes of Conduct and Public Commitments





J. FCAC Communication and Compliance Procedures for Publication of Violations Under Section 31 of the FCAC Act

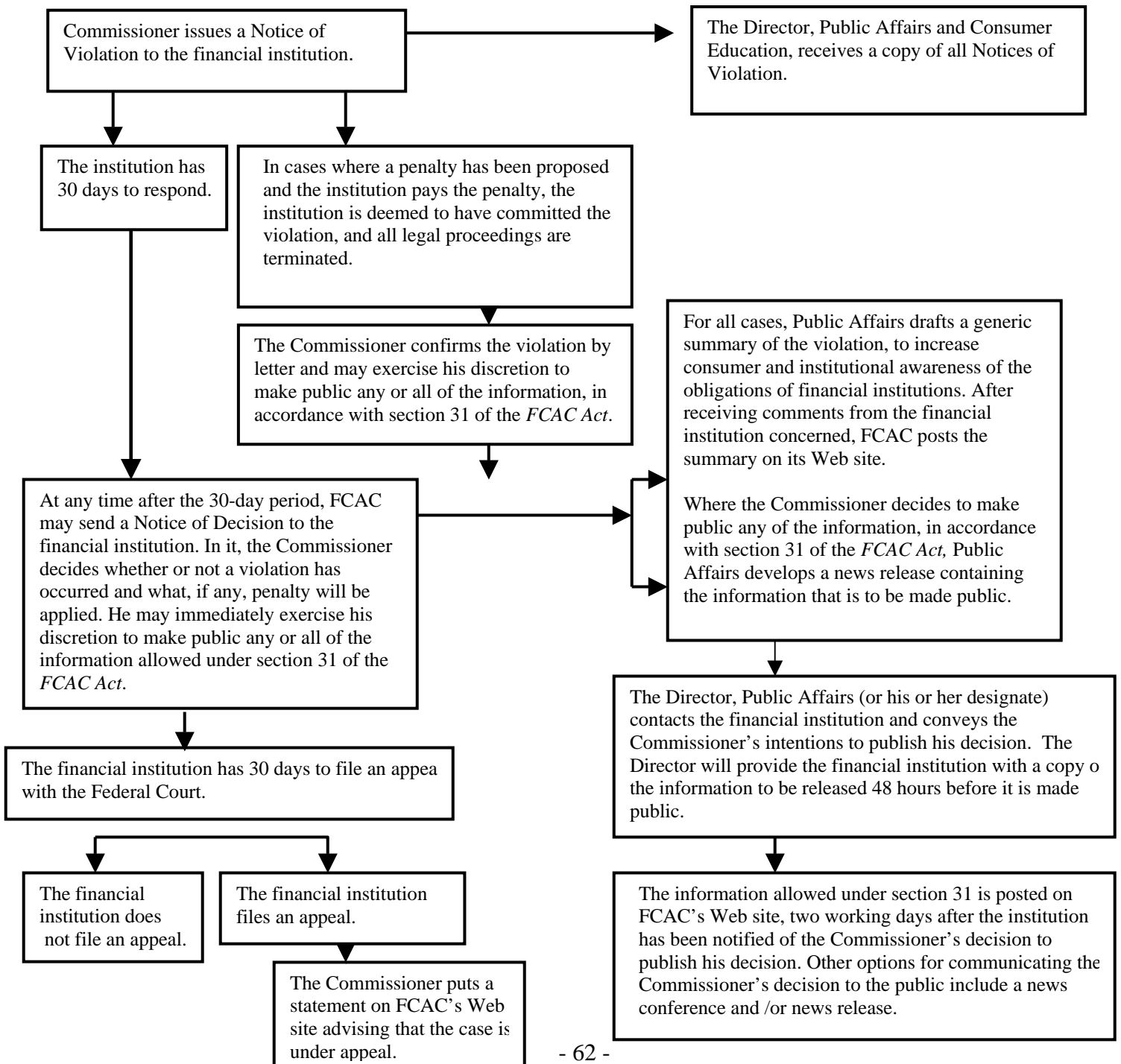
Background

Pursuant to section 31 of the *FCAC Act*, “the Commissioner may make public the nature of the violation, the name of the person who committed it and the amount of the penalty imposed”.

It is important that the process to “make public” be implemented consistently through a formal communications process, to ensure that the Commissioner’s decisions are clearly understood by relevant stakeholders and consumers. The process consists of a series of milestones for specific action and makes use of standardized formats for news releases and supporting materials, as well as a consistent distribution list and distribution channels.

Compliance Procedures

Public Affairs Procedures





K. Office of the Superintendent of Financial Institutions, Guideline E-13

To view this document, click on the following link:

http://www.osfi-bsif.gc.ca/eng/documents/guidance/docs/E13_2003_Final_e.pdf